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AN EMPIRICAL STUDY OF CHINA'S CHANGE-OF-VENUE
SYSTEM IN ANTI-CORRUPTION LITIGATION: IMPLICATIONS FOR ANTI-
CORRUPTION REFORM

Jinting Deng

Submitted to the faculty of the University Graduate School
in partial fulfillment of the requirements
for the degree of
Doctor of Juridical Science
Indiana University
May 2017

To my husband, my daughter and my parents

Jinting Deng

AN EMPIRICAL STUDY OF CHINA'S CHANGE-OF-VENUE
SYSTEM IN ANTI-CORRUPTION LITIGATION: IMPLICATIONS FOR ANTI-
CORRUPTION REFORM

Presenting the first empirical study of the change-of-venue (COV) system in Chinese corruption cases, this dissertation assesses the role of the COV system in China's anti-corruption campaign. Although COV is routinely triggered in Chinese corruption cases, COV remains understudied and poorly understood. Scholars, judges, and practitioners expected that the COV system would increase sentences by removing defendants from the jurisdictions of local judges where they would benefit from bias and cronyism. However, this dissertation's empirical findings – from an analysis of over 800 corruption cases in Beijing – indicate that, after accounting for other variables, sentences for corruption did not increase after COV. COV utilization patterns and their effects are therefore inconsistent with official claims that the COV is intended to prevent local bias, and also to protect the public image and authority of the judiciary.

Contradicting the accepted wisdom, this dissertation instead demonstrates that COV works to concentrate certain types of corruption cases in a small handful of courts known for efficiently rendering convictions. Given that COV has not achieved its stated goals, this dissertation explores other explanations for its widespread use in anti-corruption cases. Using in-

depth, qualitative interviews with procurators, judges, and lawyers, and an institutional analysis of incentive structures shaping the behavior of actors tasked with anti-corruption work, this dissertation reveals that the true incentives for COV lie in serving the political interests and needs of the Chinese Communist Party's leadership (CCP).

This dissertation presents three potential alternative explanations for COV behavior. First, rather than preventing local judicial bias towards local officials, COV reallocates resources within the city and cracks down on challenging and notorious cases to ensure the rapid and efficient completion of anti-corruption work. Second, COV enables superior party officials to direct off-site anti-corruption forces to investigate corruption cases when the on-site anti-corruption forces have failed to function because they were “captured” by the influence of the same local party leaders whom they were supposed to supervise. This addresses a deep-seated problem with China's previous anti-corruption system, where local party leaders primarily controlled local anti-corruption investigations. The COV system works to undermine local governmental control over local anti-corruption investigations, revitalize the non-functioning local anti-corruption forces, and invigorate China's recent anti-corruption campaign. Third, due to the institutional problems of the old anti-corruption system, the CCP has sought to weaken local protectionism and consolidate central CCP control. COV helps realize the central CCP's goal of maintaining leadership in anti-corruption, and thus constitutes an essential part of China's new anti-corruption model. These three alternative explanations help to illuminate COV's failure to respond to the types of local bias found in the data.

The dissertation ends with a discussion of the limits of the new anti-corruption model in China. Vague laws, weak legal institutions, and insufficient supervision make it easy for the new anti-corruption agency to abuse its anti-corruption power and avoid supervision, so that the whole system ends up relying heavily upon the existence of a strongly committed political leadership.

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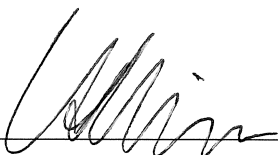
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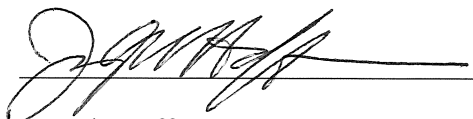
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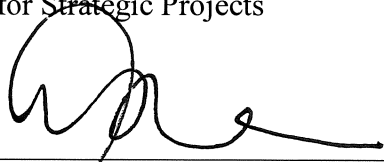
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Frequently Used Abbreviations

CCDI	The Central Commission of Party Discipline Inspection
CDI	The Commission of Party Discipline Inspection
COV	The Change-Of-Venue System in China's anti-corruption process
CPC	The Communist Party of China
NSC	The central level National Supervision Commission
SCs	The Supervision Committees at all levels
The SC system	The National Supervision Commission system
SPC	The Supreme People's Court
SPP	The Supreme People's Procuratorate

I INTRODUCTION

Like most criminal justice systems around the world, China's includes a mechanism for moving a trial from a court in the default jurisdiction to a court in another jurisdiction – what in this dissertation I call “change of venue” (COV) or “trying a case alternatively.” My underlying research motivation is to assess the operation of China's COV – when, how, and why it is used – and its consequences. I collected and analyzed over 800 court decisions from corruption cases in Beijing between 2008 and 2015. I initially expected to use these court decisions to tell a story consistent with official narratives about the purpose of COV. However, the results contradicted these narratives and instead suggested alternative explanations for the functions of COV.

Officially, COV fulfills two main purposes in public corruption cases. First, COV serves to prevent intensive local bias and protect the interests of justice. “Local bias” refers primarily to the protection of, or leniency towards, criminal suspects by local judges and other judicial actors. Some corruption cases involve high-level local officials who have strong influence over local judges and can thereby gain favor for themselves. Second, COV addresses the public's widespread suspicion about the fairness of corruption trials in default venues, so as to protect the judiciary's public image.

If the first of these official narratives – that the COV prevents local judicial bias in favor of local officials – were true, I would expect to find that COV has the overall effect of producing harsher criminal sentences for otherwise seemingly identical cases. The results of my analysis, however, fail to support this expectation. Instead, the data show that COV has no net positive effect of increasing sentences, and may actually have a negative effect of

decreasing sentences, net of other factors.

Furthermore, I found that the more serious the criminal offense, the greater the likelihood COV will be invoked. However, because the decision to invoke COV usually precedes the investigation stage of the case, and because the seriousness of the crime can be accurately and thoroughly determined only through the investigation process, it is apparent that “seriousness” is often predetermined. In other words, much of China’s anti-corruption work can be characterized as “seeking facts from truth.”

My study of the Beijing COV data revealed a number of related anomalies:

(1) I expected to find that COV is used in response to specific types of local bias observable in the data. For example, the data shows that defendants who hold state-owned company positions tend to receive increased sentences in corruption cases compared with defendants who do not have such positions, whereas defendants holding official village positions tend to receive lesser sentences than defendants without official village positions, after controlling for all other legal factors. This would seem to be a prime example of the kind of local bias that COV is supposed to address. My empirical findings show, however, that the use of COV is unrelated to such examples of local bias.

Among otherwise seemingly identical cases (i.e., holding the use of COV and other case characteristics constant), sentencing varied greatly between courts, strongly suggesting that sentencing is not determined solely by legal factors. Yet specific measures of local influence that should have been associated with the use of COV, such as the defendant’s administrative rank or degree of control over state assets, were actually unrelated to the use of COV, net of other factors.

(2) My empirical findings show that the use of COV is associated with other factors that do not significantly influence criminal sentencing. Certain factors that did not statistically affect sentences – such as holding a judicial position or governmental association position (i.e., associations that are established by governments, such as public universities and hospitals), or being a member of the general public – turned out to have a statistically significant influence on the use of COV.

(3) For certain factors that tended to produce increased sentences, such as holding a position with a state-owned company, the use of COV worked to further increase the sentence in these cases. This is because COV made these cases more likely to be tried at the Xicheng District Basic-Level People’s Court or the Beijing Number 1 Intermediate Court – both of which generally mete out harsher punishments than other courts. By contrast, for other factors that tended to decrease sentences, such as the holding of an official village position, the use of COV actually functioned to further decrease the sentence in these cases, because these cases were very unlikely to be transferred to the two harsher courts.

With respect to the second official narrative for COV: If COV is intended to protect the judiciary’s public image, I would expect to find that COV frequently works to transfer cases involving the types of local officials that are most likely to be – or at least to be perceived by the public as being – favored by local judges. Instead, with the exception of judicial officials, most local officials were actually more likely than ordinary people to be tried locally, indicating a conservative and protective attitude in using COV when local officials are involved. Even when extralegal factors – such as holding village leadership positions, economic or other executive agency positions, or local congressional or state-owned-

company positions – were found to have statistically significant effects on the sentences of cases with the same legal factors, the use of COV did not function to move the trials of these local officials elsewhere.

Overall, and despite my original expectations, I found that the court decisions failed to support the two official narratives for COV. My search for an account of the purpose of COV that better fit the data then led my investigation beyond the court decisions and into: (1) a series of in-depth, qualitative interviews with procurators, judges, and lawyers, and (2) an institutional analysis of incentive structures shaping the behavior of actors tasked with anti-corruption work.

In this dissertation, I challenge the official narrative of COV by revealing behavior that appears to serve primarily the political interests and needs of the Chinese Communist Party's leadership. In particular, I offer three alternative explanations for COV behavior:

First, rather than preventing local judicial bias towards local officials, COV serves to reallocate anti-corruption resources within the city – especially in challenging and notorious cases – thus helping to ensure the rapid and efficient completion of anti-corruption work.

Second, COV allows Chinese Communist Party superiors to mobilize anti-corruption forces from outside the local area to investigate local corruption cases – thus addressing the problem of local party leaders “capturing” local anti-corruption forces. This can help to break the power of the local officials over corruption investigations, revitalize local anti-corruption investigators, and invigorate anti-corruption efforts.

Third, in institutional terms, COV helps to realize the CCP's leadership in, and consolidate central CCP control over, anti-corruption efforts. This constitutes an essential

part of China's new anti-corruption model.

These three alternative explanations illuminate COV's failure to respond to the types of local bias found in the data, and explain why it has not corrected such biases.

Regarding the first alternative explanation, interviews with prosecutors and judges in Beijing disclose that the Xicheng District Procuratorate and the No.1 Intermediate Procuratorate are generally better equipped, and have more anti-corruption staff strength, than other procuratorates in Beijing. This explains why the data indicate that public corruption cases involving officials were much more likely to be transferred to these two procuratorates – because such an arrangement could utilize the greater capacity of these two procuratorates in resolving difficult or complicated public corruption cases.

At the same time, the data shows that a large number of public corruption cases were still investigated locally, and overall, the use of COV was only loosely related to the political level or job position of the defendants. The most likely explanation is that only difficult and complicated corruption cases involving public officials need to be transferred to the two resource-rich procuratorates. The allocation of these resources by the chief procurators of the city-level procuratorates (in other words, their concentration of corruption cases in a small handful of courts) appears driven by incentive structures: namely, the imperative to achieve results with limited resources. And once the chief procurator chooses to invoke COV, the chief procurator's control over subordinate procurators, performance evaluation systems, and informal arrangements of sharing recovered illicit funds ensure that subordinate procurators fall in line.

The second alternative explanation for the data must be understood in light of the well-

recognized problems of China's previous anti-corruption systems, before the most recent anti-corruption campaign. Public corruption in China has traditionally been handled through a dual-leadership, dual-track anti-corruption system.

“Dual-leadership” means that both the local party leader and the superior anti-corruption agency lead the local anti-corruption agency. Before recent reforms, the local party leader substantively controlled the nomination and promotion of the local anti-corruption agency leadership and provided the funds, equipment, and staffing capacity for the local anti-corruption agency. This meant that the local party leader actually prevailed over the superior anti-corruption agency in local anti-corruption issues.

Under the “dual-track” system, the first track involves the Commission of Party Discipline Inspection (CDI) investigating the case, primarily as an internal CCP disciplinary matter, and then deciding whether to transfer the case to the prosecutors. The second track is the judicial system. Such a “dual-track” system failed to combat local corruption effectively, because both tracks were primarily controlled by the local party leaders, making the local anti-corruption agencies subject to influence and “capture” by the agencies they were supposed to supervise.

In light of the malfunctioning local anti-corruption mechanism, it appears that COV is being used strategically to consolidate the central party's control and initiate the nationwide anti-corruption campaign that has been ongoing since 2012, after President Xi Jinping assumed power. The COV system provides the superior anti-corruption authorities with a legitimate means to call upon lower-level anti-corruption forces from outside the local area – and thus not subject to influence by the local party leader – to investigate whenever there is

suspicion of a large amount of corruption cases in that particular local area.

Because COV decisions are made by central party officials, COV greatly increases the anti-corruption power of the party center, by enabling the mobilization of all lower-level anti-corruption forces nationwide and avoiding the limitations of the default jurisdiction's ability to disrupt local corruption networks. Through the two key steps of cracking down on high-level "tigers" (i.e., prominent leaders, or "big game") and having offsite anti-corruption agencies deal with relevant lower-level corruption, the party center has successfully initiated the recent anti-corruption campaign and revitalized the previously non-operative local anti-corruption mechanism. This explains why COV has been routinely used in the current campaign. It also explains the null relationship between the use of COV and local judicial bias based on different types of extra-legal factors – because the decisions by the superior about whether or not to use COV are based on institutional factors that can affect anti-corruption investigations, rather than on factors that might correlate with such local judicial bias.

Regarding the third alternative explanation, I bring into sharp focus the top-down reforms that have made COV an important part of the new anti-corruption system the CCP has been establishing in recent years. Targeting the institutional problems of the old anti-corruption system, the CCP has taken a number of steps to move anti-corruption work out of the local party's control and to emphasize the role of the judicial system in anti-corruption – such as strengthening the seamless connection between the CDI and the procuratorates, so as to remove the arbitrariness of the CDI's selection of cases to transfer for prosecution, and leaving all cases possibly involving criminal violations to be handled by the procuratorates.

Moreover, the new National Supervision Commission (NSC) system will consolidate the CDIs and the procuratorates' anti-corruption forces, and the new Law on Supervision Committees (SC) will regulate the SCs' anti-corruption behavior, bringing the CDIs' previously discretionary behavior under legal regulation.

It would be natural to believe that such efforts would weaken CCP control and promote the rule of law. However, evidence I present in this dissertation fails to support the hypothesis that the CCP is relinquishing control, and instead supports an alternative hypothesis: that the CCP efforts to move anti-corruption into the SCs actually serves as a way to weaken local protectionism and consolidate central CCP control.

In this dissertation I introduce and develop the concept of CCP "leading control" over anti-corruption work. This concept helps us understand how the SC system, in conjunction with the COV, actually serves to strengthen the central authority of the CCP. "Leading control" refers to the CCP's continued dominance over anti-corruption work, despite a dramatic shift away from traditional mechanisms of local party leaders' control and towards judicial mechanisms of party control – namely, the SC system combined with the COV. New mechanisms to help realize this CCP "leading control" include (1) institutional arrangements that centralize control over local anti-corruption agencies, (2) cultivation of a well-controlled anti-corruption agency, (3) vague and incomplete anti-corruption laws that leave more room for party control, (4) provision of clear instructions, and (5) the COV system.

Basically, the COV system provides a routine, institutionalized mechanism by which a superior authority can scrutinize an inferior's loyalty, by deploying another offsite inferior's investigative force through the COV system. The power to decide whether and how to use the

COV system belongs to the superior, who is subject to the “leading control” of the party center, with very weak legal limits and few entities who can challenge the decision. Thus, COV works as part of the party center’s leading control over the local anti-corruption agency, and provides a method within China’s legal framework for the party center to influence the workings of the judicial system to realize its own interests.

I will elaborate upon the empirical study and unexpected empirical findings in Chapters 2 and 3, and the three alternative explanations in Chapters 4, 5, and 6, respectively. I will conclude in Chapter 7 by discussing some implications regarding the new anti-corruption system in China.

A. CHINA’S CHANGE-OF-VENUE SYSTEM (COV) IN THE ANTI-CORRUPTION CONTEXT

According to China’s Criminal Law, for a court to have jurisdiction to try a criminal case, it needs to be at the correct level, i.e., “level jurisdiction” (级别管辖), and in the right venue, i.e., “geographic jurisdiction” (地域管辖). Level jurisdiction means that the importance and complexity of the case corresponds to the administrative level of the court. In China, there are four levels of courts: district, intermediate, high, and supreme. All four can handle the trial of a criminal case. The more complicated and important the case is, the higher level the court must be to try the case.

After deciding the level of the trial court, the geographical jurisdiction determines the specific location of the court, i.e., its province, city, or district. The default venue of a criminal trial is the place where the crime was committed. In some circumstances, for the

sake of convenience, the place where the criminal suspect resides can also be the venue.

Article 26 of China's Criminal Procedure Law grants a superior court the power to instruct an inferior court that is not located in the default venue to try a case.¹ This is the change-of-venue (COV) system in China. There are few rules regulating the activation and operation of this system. Besides Article 26, some other relevant rules are Articles 16, 17, and 18 of the Supreme People's Court's (SPC) Interpretation on Several Issues When Enforcing the Criminal Procedure Law (2012), and Articles 14, 15, and 18 of the Supreme People's Procuratorate's (SPP) Rules on People's Procuratorates' Criminal Procedures (2012).²

The COV system provides temporary authorization to courts that do not have ordinary geographic jurisdiction to try a particular case. COV does not affect the "level jurisdiction," i.e., whether a high, or intermediate, or district court should hear the case. It only affects the venue of the case. Although the superior court could instruct the inferior court to try cases inconsistent with its level, thus affecting the level jurisdiction, this is beyond the scope of this dissertation, and I have not included it as a type of COV in the empirical study.

According to the above rules, COV can be activated through two mechanisms. First, when inferior courts have a dispute regarding the default venue of a criminal case, they can submit a request to their shared superior court for a decision about which court shall try the case. Second, when a case is special, the superior court can instruct an inferior court outside the default venue to try the case.

However, the rules do not provide any specific guideline or principle regarding when a

¹ China's Criminal Procedure Law, art. 26 (1997).

² Supreme People's Court Interpretation on Several Issues When Enforcing the Criminal Procedure Law, arts. 16, 17, 18 (2012); Supreme People's Procuratorate Rules on People's Procuratorates' Criminal Procedures, arts. 14, 15, 18 (2012).

case is eligible for the application of COV. The rules provide two kinds of cases as examples: (1) when the inferior courts have a dispute regarding jurisdiction over the case, and (2) when the president of the default court must withdraw from the case. In the second example, COV is used to address an extreme case within China's system of judicial withdrawal. According to China's recusal rules, a judge must recuse himself from the case if he has a personal relationship with the criminal suspect or a direct financial interest in the case. When a judge withdraws, other judges from the same court can fill in the vacancy. However, when the withdrawing judge is the president of the court – considering the leading role and strong influence of the president – other judges on the court may find it difficult to be impartial. Thus, in such a case, the whole court is considered to be biased, necessitating a change of venue. In this sense, COV could be seen as addressing the need for the entire court to withdraw.

The superior court can also decide to use COV in other circumstances. But as an exception to the default venue system, the use of COV shall be limited to extreme cases. According to the law, whenever COV is applied, the alternative court will try the case according to the same procedural rules as if the case were being tried in the default venue.

Although it is an exception to the usual rules of venue, COV has been routinized in investigating and trying public corruption cases involving officials at the ministerial level and higher. Since its first use in 2001 in the Mu-Ma case, which involved the former vice party secretary of Shenyang and more than one hundred officials, over 90% of all public corruption cases involving ministerial level officials have been tried in courts other than the default ones.³

³ How to Judge the Use of COV in High Level Official Corruption Cases, <http://theory.people.com.cn/n/2013/0205/c112851-20440156.html>.

This includes the 2004 case of LIU Fangren, the former party secretary of Guizhou province; the 2004 case of ZHANG Guoguang, the former president of Hubei province; the 2005 case of HOU Wujie, the former vice party secretary of Shanxi province; the 2007 case of HE Minxu, the former vice president of Anhui province; the 2012 case of BO Xilai, a former member of the CCP Politbureau; and the 2015 case of ZHOU Yongkang, a former standing committee member of the CCP Politbureau. In the recent anti-corruption campaign, COV has even been frequently applied in public corruption cases involving lower level officials. Based on the judgments analyzed in this dissertation, over 30% of such cases have been tried in an alternative venue. However, no further rules have been issued by SPC regarding the use of COV in public corruption cases.

The purpose of COV is not specifically provided in the law. However, an official narrative about the purpose of COV emerges from articles published in the official journal of the SPC and the general consensus of legal scholars. This official narrative has two parts. First, COV serves to prevent intensive local bias and protect the interests of justice. Some cases may be of great interest in the community and may challenge the impartiality of the local judges in the default venues. To ensure a fair trial, these cases can only be tried in alternative venues. Second, COV responds to the public's widespread suspicion about the fairness of corruption trials involving important political figures in the default venue.

Several problems have arisen during the application of COV. A change of venue can be highly expensive and time consuming, because the alternate procuracy, located elsewhere, must send people and equipment to carry out investigations, transfer witnesses and relevant persons elsewhere to collect evidence, provide housing for these personnel, and so on. COV

also deprives the local public of the opportunity to closely follow the case, and diminishes the original court's local image as impartial and capable in trying the case. Oftentimes, the superior procuracy fails to communicate with the superior court in advance about their intention to use COV when directing an offsite subordinate prosecutor to investigate cases. Then the corresponding subordinate court may turn out to be unable to try the case for reasons such as having an overload of cases. This has caused coordination problems between the procuracy and the court system in using COV. Moreover, because the defendant has no right to either activate or appeal COV, the superior court may arbitrarily use COV to satisfy its own purposes, which can undermine the defendant's right to a fair trial.

Notwithstanding all these problems, however, COV has become increasingly popular in anti-corruption cases.⁴ This is because the COV system is believed to have important value in preventing local bias, thus realizing the interest of justice and protecting the people's trust in judiciary.

There are a handful studies on the COV system in China, which can be divided into two types. The first type regards the use of COV in administrative cases and can be further subdivided into three kinds of studies: (a) Some studies analyze the basic function of the COV system, summarizing the situations when such a system has been applied and its aims. Normally, COV has been used in cases that involve a strong governmental interest and attract a lot of public attention, and thus aims to avoid local governmental influence over courts.⁵ (b)

⁴ Zhenhui Wang & Gangju Xie, *Practical Obstacles and Suggestions on the Change of Venue in Senior Official Crimes*, 39 J. WULING 74-77 (2014) (王贞会&谢刚炬, 高官异地审判的实践困境与完善构想, 武陵学刊 J. WULING, 2014年9月39卷5期, 页74-77).

⁵ Binlin Wang, *Judicial Routes in Building up Legal Institutions --- From the Formation of the Change of Venue System in Administrative Cases*, 6 WESTERN L.R. 26 (2011) (王斌林, 法律制度建构的司法进路 --- 以行政诉讼异地审判制的诞生为例, 西部法学评论, 2011年第6期页26)

A few studies involve empirical research on the effects of COV in administrative cases. One important study showed that in the studied city, administrative cases that were tried at a different court received a judgment in favor of the plaintiff (the person suing the government) at a 150% higher rate than those that were tried locally.⁶ (c) Many studies have detailed the initial development, function, and improvement of the COV system with jurisdictional reforms in administrative cases, especially to combat the difficulty of the courts in accepting administrative cases and trying them impartially without local governmental influence.⁷

The second type of COV study is about the use of the COV system in criminal public corruption cases involving senior officials. In the beginning, there were academic debates regarding whether it is legal and fair to use the COV system in such cases. But as the anti-corruption campaign persists, COV has been applied more frequently in these cases and such debates have waned.⁸ Recent attention focuses more on how to regulate the scope and procedures of the system, how to make its use more transparent and institutionalized, and how to improve the coordination among the CDI, the procuracy, and the court during the use of COV. These studies also discuss the benefits and drawbacks of the COV system, and analyze the use of such a system in senior public corruption cases. The problems include: conflicting with the existing criminal jurisdictional system; being highly expensive and time

⁶ Cailin He, *Reforms from the Crevice --- From the Administrative Jurisdiction Perspective*, 2 PEKING UNIVERSITY L.R. 520 (2009) (何才林, 夹缝中的变革---以行政审判管辖权为视角的叙事, 北大法律评论 2009 年第 2 期页 520) ; Zhejiang High Court's Project Team, *Empirical Studies on Administrative Jurisdiction Issues*, 1 J. L. APPLICATION 52 (2007) (浙江高院课题组, 行政案件管辖问题的调研报告, 法律适用 2007 年第 1 期页 52) .

⁷ Xiangshui Bao et al., *Research on Administrative Jurisdiction Issues*, 2 RES. ON RULE OF L. 44 (2007) (包祥水等, 行政案件管辖问题研究, 法治研究 2007 年第 2 期页 44) ; Bixin Jiang, *Research on China's Administrative Judicial System Reform*, 4 ADMIN. L.R. 3 (2013) (江必新, 中国行政审判体制改革研究, 行政法学研究 2013 年第 4 期页 3) .

⁸ Yuening Wei, *A Critical Look at the Change of Venue in Senior Official Crimes*, 2 PEOPLE'S TRIB. 54 (2013) (卫跃宁, 高官犯罪异地审判之检讨, 人民论坛, 201302 期, 页 54-55).

consuming; depriving the local public of the opportunity to follow the case closely; tarnishing the original court's local image with respect to skill and impartiality; causing coordination problems among the CDI, the procuracy, and the court; and deteriorating the defendant's right to a fair trial. The justifications of the COV system include: preventing local protectionism and protecting justice and the people's trust in the judiciary.⁹ Some studies also address the effectiveness of the system in preventing the media's influence.¹⁰

However, to date there has been no empirical study to test the effects of the COV system on the punishment of corruption cases, and previous discussions of the issue were based upon assumptions derived from the commonly believed purposes of the COV system. To fill this gap, I conducted an empirical study, detailed in Chapters 2 and 3, to test whether COV functions according to those purposes from an empirical perspective.

In practice, when COV is activated in public corruption cases, it includes three stages. In the first stage, the superior party's discipline commission (CDI) or the superior procuracy instructs an alternative inferior CDI or procuracy to investigate the case.¹¹ The instructed alternative CDI or procuracy sends its own personnel and equipment to collect evidence and

⁹ Binzhi Zhao, *Research on Important Reality Issues in China's Anticorruption Criminal Rule of Law*, 3 L.R. 8 (2014) (赵秉志, 中国反腐败刑事法治的重大若干现实问题研究, 法学评论, 2014年第3期, 页8-11); Zhihua Ge, *The Chinese Model of Judicial Anticorruption --- Research on the Venue of Change in Public Corruption Cases*, 7 POL. SCI. & L. 143 (2009) (葛治华, 司法反腐的中国模式---职务犯罪异地管辖研究, 政治与法律 2009年第7期页143); Yuping Li, *The Change of Venue and the Reforms and Improvements of China's Criminal Jurisdictional System --- From the Perspective of Senior Public Corruption Cases' Jurisdiction*, 2 CHINA CRIM. SCI. 1 (2009) (李玉萍, 异地审判与我国刑事管辖制度的改革与完善 --- 以高官职务犯罪案件的管辖为视角, 中国刑事法杂志, 2009年第2期, 页1-7); Zhenhui Wang & Gangju Xie, *supra* note 4, at 74-77 (王贞会&谢刚炬, 高官异地审判的实践困境与完善构想, 武陵学刊 J. WULING, 2014年9月39卷5期, 页74-77).

¹⁰ Qian Liu & Kunming Su, *On the Building of the Court's Firewall Preventing Public Opinion Pressures*, 12 J. L. APPLICATION 18 (2012) (刘茜、苏坤明, 论人民法院舆论防火墙机制的构建, 法律适用 2012年第12期页18) .

¹¹ For detailed discussions on the CDI and the procuracy's role in China's investigations in public corruption cases, please see Fenfei Li & Jinting Deng, *The Arbitrariness by China's Local Party Discipline Commissions in Anticorruption*, 25 J. CONTEMP. CHINA 75 (2016).

investigate the case from the original location. Upon approval from the superior CDI or procuracy, the alternative CDI or procuracy will normally detain the suspected officials and collect the confessions or witnesses' testimonies in its own facilities, rather than in the default original location.

The second stage occurs once the investigation is over, when the superior procuracy instructs an inferior procuracy to prosecute the case in court. Normally, the investigating procuracy or the procuracy at the same venue as the investigating CDI will prosecute the case. However, when the investigating procuracy has insufficient capacity, another procuracy may prosecute instead.

In the third stage, once the procuracy decides to prosecute the case, the superior court instructs an alternative inferior court to try the case. According to China's Criminal Procedure Law, a procuracy can only prosecute in its corresponding court, which is at the same level and located in the same area as the procuracy. For this reason, when deciding which procuracy to prosecute the case, the superior procuracy will normally communicate with the superior court to ensure that the corresponding inferior court will be capable of trying the case. Otherwise, either the prosecuting procuracy or the trying court must be changed according to the law, which wastes time and money.

The empirical study in Chapter 2 focuses on the third stage, i.e., the effects of COV on judges' decision-making regarding the punishment of these public corruption cases. To remove the influence of the first and second stages, so that only the effects of COV could be studied, the following two measures were taken:

First, when comparing judgments, only the facts recognized by the court – rather than

the facts claimed by both parties – were examined. This limited the impact of the first stage, as the quality and quantity of the evidence collected during that stage will affect the judge’s decision. This also served to exclude the influence of selective investigation by the CDI and selective prosecution, in which the procuracy intentionally drops the prosecution of certain criminal activities due to either plea bargain or prosecutorial misbehavior.

Second, when comparing judgments, I used the punishment, i.e., the sentence, as the dependent variable (the object of inquiry), rather than the conviction. Due to the procuracy’s dominant role in criminal trials and its internal evaluation system that incentivizes only prosecuting cases that are likely to result in conviction, defendants in these cases were almost always convicted. Among all the collected judgments, fewer than 1% of defendants were acquitted. The very small number of acquittal cases precludes statistical analysis. Although I still included these cases, and created a dummy variable “acquittal,” the sentence was used as the dependent variable. Since the procuracy has no legally authorized power to suggest a sentence and no authority to evaluate a given sentence, the punishment is for the court to decide according to the law. Thus, analyzing these cases based upon the recognized facts and the punishment largely excludes the effects of the first two stages on judges.

After I completed the empirical study and uncovered unexpected findings inconsistent with the commonly believed functions of the COV, my search for the real purpose of the COV took me beyond the court decisions and into (1) in-depth, qualitative interviews with procurators, judges, and lawyers, and (2) an institutional analysis of incentive structures shaping the behavior of actors tasked with anti-corruption work. I conducted qualitative interviews with CDI officials and prosecutors regarding their work during the first two stages

of anti-corruption cases, and with judges regarding the use of COV. To understand the role of the CDIs in corruption cases, I had previously conducted interviews in three city-level CDIs across two provinces.¹² The interviewees were the CDI leaders in charge of cases,¹³ the Case Division Chief, Section Directors in charge of anti-corruption cases, and frontline investigators who directly investigate cases (together, hereinafter, the “CDI Officials”). Interviewees also included businessmen who had experience with or information about corruption and the CDIs’ anti-corruption work.¹⁴ To understand the procuratorates’ role in handling corruption cases, I had also previously interviewed 39 prosecutors at different administrative levels from eight provinces, representing the north, south, middle, west, and east parts of China. Interviewees included prosecutor-generals,¹⁵ ordinary prosecutors, and investigators at the prosecutor’s office.¹⁶

For this dissertation, I conducted further interviews with several prosecutors and judges

¹² The studies were conducted intensively from mid-March to early May of 2014 and the data collected reflect the situations at that time. For security concerns, I have concealed the names of the interviewed CDI officials, the CDIs, and their located provinces.

¹³ The leadership of all CDIs nationwide includes one Secretary and several Vice Secretaries. Sometimes, the Secretary oversees cases. Other times, a certain Vice Secretary handles cases. For security concerns, the case leader I interviewed requested that whether he was the Secretary or a Vice Secretary be concealed. Thus, I only used the term “case leader” to show that he is in charge of cases.

¹⁴ These interviews were conducted to verify the data collected from the CDI officials. However, given the security concerns and the secrecy of this information, these interviews were done informally from mid-March to mid-June of 2014. The names and locations of these interviews have also been concealed.

¹⁵ The head of a procuratorate in China is the prosecutor-general. In this dissertation, unless specified as ordinary prosecutors or investigators, the word “prosecutor” also refers to the prosecutor-general.

¹⁶ These interviews were conducted in Beijing, Henan, Tianjin, Hunan, Hubei, Anhui, Jiangsu and Hainan from March 2014 to April 2015. I interviewed: in Beijing, one director of the prosecution preparation department of a provincial procuratorate, one director of the research office of a municipal procuratorate, three prosecutor-generals of district procuratorates, one director of the anti-corruption department and one deputy director of the approving arrest department of district procuratorates; in Tianjin, one prosecutor of a provincial procuratorate and one prosecutor-general of a district procuratorate; in Hunan, two prosecutor-generals, one deputy prosecutor-general and one director of the research office of municipal procuratorates; in Hubei, one deputy prosecutor-general of a municipal procuratorate, one prosecutor-general and two deputy prosecutor-generals of ratorates, one deputy director of the anti-corruption department and one prosecutor of district procuratorates; in Jiangsu, one deputy prosecutor-general and one director of the anti-corruption department of municipal procuratorates, two prosecutor-generals and one deputy prosecutor-general of district procuratorates; in Anhui, one deputy prosecutor-general of a provincial procuratorate, two prosecutor-generals, two deputy prosecutor-generals and two prosecutors of municipal procuratorates; and in Henan, one deputy prosecutor-general of a provincial procuratorate, two prosecutor-generals and two deputy prosecutor-generals of municipal procuratorates, and two prosecutor-generals and one prosecutor of district procuratorates.

in Beijing, Henan, Jiangsu, and Zhejiang from October 2016 to February 2017 to understand the motivations and decision-making involved in the use of COV.¹⁷ I also reviewed annual work reports of the SPP, the SPC, and the CCDI from 2008 to 2016, studied internal records and files, and analyzed procedural and substantive rules and regulations regarding anti-corruption and the work of the prosecutors and the CDIs.

Through this investigation, I developed three alternative explanations regarding the purposes of COV, which can better explain the unexpected findings in my data than the commonly believed narratives. I will elaborate on the empirical study and unexpected findings in Chapters 2 and 3, and on the three alternative explanations in Chapters 4, 5, and 6, respectively. (The second and the third alternative explanations must be understood in light of China's old anti-corruption system and its recent anti-corruption campaign, which I briefly introduce in the following section.) I will conclude, in Chapter 7, with implications regarding the new anti-corruption system in China.

B. CHINA'S ANTI-CORRUPTION SYSTEM

Before the recent campaign, China's anti-corruption system was a dual-leadership, dual-track anti-corruption system. This system failed to effectively combat local corruption because the local party leaders had primary control over both tracks – the CDI and the judicial system – leaving the local anti-corruption agencies prone to influence and “capture”

¹⁷ These interviews were conducted in Beijing, Henan, Jiangsu, and Zhejiang from October 2016 to February 2017. I interviewed: in Beijing, two prosecutor-generals of district procuratorates, one director and two frontline prosecutors of the anti-corruption department of a district procuratorate, six judges of three district courts and a director judge of a district court; in Henan, two prosecutor-generals of municipal procuratorates, and two prosecutor-generals and one prosecutor of district procuratorates, and two judges of a district court; in Jiangsu, one prosecutor-general of municipal procuratorates, and one prosecutor-generals and two prosecutors of district procuratorates; and in Zhejiang, two prosecutor-generals of municipal procuratorates, and one prosecutor-general and one prosecutor of district procuratorate, and two judges of a district court.

by the agencies they were supposed to supervise. Failures in this existing anti-corruption system, coupled with concerns about syndicated corruption, led the new leadership under President Xi to initiate the recent anti-corruption campaign.¹⁸

Given the weakness of routine anti-corruption institutions, the already syndicated corruption in China, and the malfunctioning of nationwide local anti-corruption systems, how is it possible for the party leadership to run an anti-corruption campaign? One alternative explanation (detailed in Chapter 5), inspired by the unexpected empirical findings in this dissertation, provides an answer to this question. The COV system enables the party center to legitimately instruct offsite anti-corruption forces to investigate corruption in a local area. Given that offsite anti-corruption agencies are less susceptible to influence from local party leaders of other jurisdictions, it is possible for the party center to mobilize the offsite anti-corruption forces. Thus, COV largely enables the party center to mobilize local anti-corruption forces across the country and revitalize the previously inoperative local anti-corruption system.

Moreover, it seems the new leadership may be sincerely committed to combating public corruption, as indicated in the three Decisions of the Plenums of the 18th CPC Central Committee, the two Reports of the Plenums of the 18th Central Commissions of Party Discipline Inspection (CCDI), and several speeches by political leaders, especially President Xi and the CCDI Secretary Wang Qishan. Additionally, for the first time, the rule of law was the topic for the Fourth Plenum of the 18th CPC Central Committee. But previous research has shown that strong political will may be insufficient to achieve anti-corruption success,

¹⁸ *Corruption in China Today: Consequences for Governance, Human Rights and Commercial Rule of Law: Roundtable before the Congressional-Executive Commission on China*, 113th Cong. 27 (2013).

due to the social and economic roots of public corruption and the institutional and structural weaknesses of China's anti-corruption agencies.¹⁹

Even if China's recent measures have achieved temporary success in fighting corruption, this success cannot persist without deep reforms. To that end, this dissertation analyzes recent structural and institutional reforms in China's main anti-corruption agencies, i.e., the CDIs and the procuracy systems, and studies the function of the COV system in these institutions and its role in the new anti-corruption system that the new party leadership is trying to establish.

There is already substantial scholarship on China's problem with public corruption. This scholarship addresses (1) how public corruption is defined, produced, and caused in China;²⁰ (2) the consequences that result from such public corruption;²¹ (3) the extent of China's corruption;²² (4) what anti-corruption measures exist in China and their efficacy;²³ and (5)

¹⁹ See MELANIE MANION, *CORRUPTION BY DESIGN: BUILDING CLEAN GOVERNMENT IN MAINLAND CHINA AND HONG KONG* (2004); Jon S.T. Quah, *Controlling Corruption in City-States: A Comparative Study of Hong Kong and Singapore*, 22 *CRIME, LAW & SOC. CHANGE* 391 (1955).

²⁰ See Kilko Ko & Cuifen Weng, *Critical Review of Conceptual Definitions of Chinese Corruption: a formal-legal perspective*, 20 *J. CONTEMP. CHINA* 359 (2011); Ling Li, *Corruption in China's Courts*, in *JUDICIAL INDEPENDENCE IN CHINA: LESSONS FOR GLOBAL RULE OF LAW PROMOTION* 196 (Randall Peerenboom ed., 2010); Ling Li, *Performing Bribery in China: guanxi-practice, corruption with a human face*, 20 *J. CONTEMP. CHINA* 1 (2011); Xin He, *Black Hole of Responsibility: The Adjudication Committee's Role in a Chinese Court*, 46 *LAW & SOC'Y REV.* 681 (2012); Jiangnan Zhu & Yiping Wu, *Who pays more "tributes" to the government? sectoral corruption of China's private enterprises*, 61 *CRIME, LAW & SOC. CHANGE* 309 (2014); Ting Gong & Alfred M. Wu, *Does Increased Civil Service Pay Deter Corruption? Evidence from China*, 32 *REV. OF PUB. PERSONNEL ADMIN.* 192 (2012); ANDREW WEDEMAN, *DOUBLE PARADOX: RAPID GROWTH AND RISING CORRUPTION IN CHINA* (2012); Jose Atilano Pena Lopez & Jose Manuel Sanchez Santos, *Does Corruption Have Social Roots? The Role of Culture and Social Capital*, 122 *J. BUS. ETHICS* 697 (2014); Ting Gong, *Corruption and Reform in China: An Analysis of Unintended Consequences*, 19 *CRIME, LAW & SOC. CHANGE* 311 (1993).

²¹ See Roderic Broadhurst & Peter Yang, *After the Bo Xilai Trial: Does Corruption Threaten China's Future?*, (RegNet Research Paper No. 2013/22, 2013), <http://ssrn.com/abstract=2347727>; Lynette H. Ong, *Between Developmental and Client list States: Local State-Business Relationship in China* (Aug. 12, 2010) (unpublished paper), <http://ssrn.com/abstract=1909110>; Aparna Mathur & Kartikeya Singh, *Foreign Direct Investment, Corruption, and Democracy*, 45 *APPLIED ECON.* 991 (2011), <http://ssrn.com/abstract=2212956>; Hualing Fu, *Stability and Anticorruption Initiatives: Is There a Chinese Model?*, (University of Hong Kong Faculty of Law Research Paper No. 2013/032, 2013), <http://ssrn.com/abstract=2293025>; Zengyu Mi & LIU Qiangzhi Liu, *Income Inequality, Fiscal Redistribution, and Governmental Corruption: Evidence from Chinese Provincial Data*, 48 *J. DEVELOPING AREAS* 119 (2014).

²² See Mayling Birney, *Decentralization and Veiled Corruption Under China's 'Rule of Mandates'* (Mar. 1,

how anti-corruption measures affect economic, political, and social development of China.²⁴

These studies provide useful information on different aspects of the public corruption situation in China, to predict whether the CPC will win or lose the battle against public corruption.

This dissertation contributes to current scholarship from a viewpoint focusing on anti-corruption models. China's anti-corruption institutions are recognized as having two approaches to anti-corruption, i.e., the traditional dual-leadership, dual-track style, and the approach of the new campaign. Previous scholarship has thoroughly discussed the history and current organization of the central and local CDIs, and their dominant role in anti-corruption cases;²⁵ the problems of the dual-leadership model, including the absorption of the role of legal institutions by the CDI, selectiveness in the application of the law due to the political intervention of local party leaders, and often overly lenient punishments;²⁶ the influence of new initiatives of social media and the "audit storm" (a term referring to the strong audit initiative of the National Audit Bureau) on transparency, public participation, and democracy;²⁷

2013) (unpublished paper), <http://ssrn.com/abstract=2279059>; Hilary K. Josephs, *The Upright and the Low-Down: An Examination of Official Corruption in the United States and the People's Republic of China*, 27 SYRACUSE J. INT'L L. & COM. 269 (2000), <http://ssrn.com/abstract=1312014>.

²³ See Hualing Fu, *The Upward and Downward Spirals in China's Anti-Corruption Enforcement* (University of Hong Kong Faculty of Law Research Paper No. 2011/014, 2011), <http://ssrn.com/abstract=1883348>; Andrew Wedeman, *Anticorruption Campaigns and the Intensification of Public in China*, 14 J. CONTEMP. CHINA 93 (2005); Ting Gong, *Audit for Accountability in China: An Incomplete Mission*, 68 AUSTL. J. PUB. ADMIN. S5 (2009).

²⁴ See Margaret K. Lewis, *Presuming Innocence, or Corruption, in China*, 50 COLUM J. TRANSNAT'L L. 287 (2012), <http://ssrn.com/abstract=1932858>; Roderic Broadhurst, *The Suppression of Black Societies in China, Trends in Organised Crime* (June 12, 2012) (unpublished paper), <http://ssrn.com/abstract=2042298>; Elizabeth A. Quade, *The Logic of Anticorruption Enforcement Campaigns in Contemporary China*, 16 J. CONTEMP. CHINA 65 (2007).

²⁵ See Hualing Fu, *supra* note 23; Ting Gong, *The Party Discipline Inspection in China: Its Evolving Trajectory and Embedded Dilemmas*, 49 CRIME, LAW & SOC. CHANGE 139 (2008); Xuezhi Guo, *Controlling Corruption in the Party: China's Central Discipline Inspection Commission*, 219 THE CHINA QUARTERLY 597 (2014); 97 Graham Young, *Control and Style: Discipline Inspection Commissions Since the 11th Congress* (1984).

²⁶ See Broadhurst & Yang, *supra* note 21.

²⁷ See Hualing Fu, *supra* note 23.

the conflict of interest measures limiting public officials' participation in business and disclosing their assets;²⁸ and surveillance of officials' actions by the general public.²⁹

However, few studies have systematically analyzed the recent reforms of the CDIs and the procuratorates under China's new leadership. It is important to understand these reforms as they are turning the campaign into a new anti-corruption model.

Many existing studies have pointed out that the current anti-corruption campaign may not last long. It is often deemed to be a mere instrument for recentralization by the new leadership, adverse to the rule of law in China, because the campaign has been observed to be politically selective and because it also serves to marginalize the legal system, keep the system undisclosed and non-transparent, and even suppress the civil society.³⁰ These studies have focused largely on the political aspect of this campaign.

However, given the lasting strength of the campaign for over four years, the ability of the leadership to mobilize anti-corruption forces nationwide, and the recent important decision by the party center to establish the National Supervision Commission system (the SC system), it is necessary to understand the campaign from an institution-building perspective and to analyze its relationship to ongoing institutional and legal reforms.

Although the current campaign may seem, on its face, to indicate that the party wants to decrease party control and promote the rule of law in anti-corruption, the efforts to reform the

²⁸ See Ting Gong & Jianming Ren, *Hard Rules and Soft Constraints: regulating conflict of interest in China*, 22 J. CONTEMP. CHINA 1 (2013).

²⁹ See Xiaoying Zeng & Jiang Wu, *Predicaments and Countermeasures of Network Supervision in the Government of Anti-Corruption in China*, 4 STUDIES IN SOC. OF SCI. 40 (2013).

³⁰ See Xuezhi Guo, *supra* note 25; Hualing Fu, *Wielding the Sword: President Xi's New Anticorruption Campaign*, in CORRUPTION AND MODERN STATE: ESSAYS IN POLITICAL ECONOMY (Susan Rose-Ackerman & Paul Lagunes, eds., 2015); Lin Zhu, *Punishing Corrupt Officials in China*, 223 THE CHINA QUARTERLY 595 (2015); Macabe Keliher & Hsinchao Wu, *Corruption, Anticorruption, and the Transformation of Political Culture in Contemporary China*, 75 J. ASIAN STUDIES 5 (2016).

CDIs and the procuratorates and to allow the CDIs to expand during the campaign actually show that the party may have selected an institution other than the legal system to control corruption at this stage. After all, the legal system may not be the only way to combat corruption. Understanding the characteristics and directions of institution-building in the recent campaign is important to understanding how the recent campaign has lasted so long, and to analyzing how it may progress in the future.

The empirical evidence I present in this dissertation supports a story of the CCP establishing a new anti-corruption model to consolidate the party center's control, which I refer to as "leading control." The new model represents the CCP's continued dominance over anti-corruption work, despite a dramatic shift away from the traditional mechanisms of local party leader control and towards newer judicial mechanisms of party control, namely, the SC system combined with the COV. I elaborate upon the new anti-corruption system, and the role of COV in that system, in Chapter 6. In the next chapter, I present the results of the empirical study, which provides the key evidence for my alternative explanations for the use of COV in anti-corruption cases.

II AN EMPIRICAL STUDY OF THE COV SYSTEM IN BEIJING

A. DATA AND METHODS

In this chapter, I detail the results of my empirical study of the operation of the COV system in Beijing's public corruption cases involving public officers. There are two reasons for focusing the study only on public corruption cases. One reason is, as an exceptional system, COV has seldom been applied in other kinds of cases. However, as the anti-corruption campaign in China continues, COV has become routinized in cases involving ministerial level officials and also frequently used in those involving lower level officials, which increases the possibility for manipulation and the necessity for and interest in the study of these cases. The other reason is that the commonly stated purposes for the application of COV in these public corruption cases (i.e., local judicial bias toward the defendant, as well as the protection of judicial reputation) are quite different from in other kinds of cases, such as death penalty cases or organized crime cases, where the main concern is local prejudice *against* the defendant. With this in mind, the current study has been limited to cases involving public corruption crimes.

For this study, I collected all judgments in public corruption cases involving officials decided by courts in Beijing between 2008 and 2015. This amounted to over eight hundred cases in total (excluding judgments with incomplete information for essential variables). Cases involving governmental or party officials, as well as officers of state-owned enterprises or associations, were included in the dataset. Although positions in state-owned enterprises are quite different from governmental or party positions with regard to power, local impact, legal rights, and liabilities, officers of some state-owned enterprises or associations have

corresponding ranks so that they can be compared with governmental officials. These cases were included in the analysis, using a dummy variable to indicate the category.

The judgments used in this study were collected from a public database that stores the judgments of all Beijing courts. However, judgments issued earlier than 2008 are seldom stored in this database and are difficult to collect. Following the SPC's November 2013 rule requiring courts nationwide to publish all judgments online within seven days after they become effective (with limited exceptions), many of the public corruption judgments that used to be inaccessible to outsiders are now being disclosed online.

To ensure that no judgments were overlooked, I then searched online for additional judgments, including on the centralized case website run by the SPC for all courts to submit their judgments online,³¹ and on two well-known databases of court decisions.³² I also searched databases on the official websites of all high courts and all high procuratorates, as some high courts publish their judgments only on their own websites and some high procuratorates publish judgments that have not been disclosed by courts. I limited the scope of my Internet search to cases involving bribe-accepting and graft crimes because these two crimes account for the vast majority of criminal public corruption cases involving governmental and party officials. I filtered the results to include only those in which the defendants were public officials. This returned around one hundred judgments, all of which were already included in the judgments collected from the Beijing court database.

The judges I interviewed in Beijing indicated that judgments involving the convictions

³¹ See CHINA JUDGMENTS ONLINE (中国裁判文书网), <http://www.court.gov.cn/zgcpwsw/>.

³² See PEKING UNIVERSITY LAW, <http://www.pkulaw.cn/Case/>; LAWYEE.NET, <http://www.lawyee.net/index.asp>.

of powerful officials at the ministerial level or higher may not be disclosed, even in the internal database.³³ However, fewer than twenty of these high-level “tiger” officials have been convicted in Beijing since the recent anti-corruption campaign began, so there is no large-scale systematic bias that could produce selective sample bias. I also created a dummy variable in the statistical model to control for cases involving officials at or above the ministerial level.

For this study, I analyzed only judgments from Beijing courts. I also collected data from other provinces, but they were not included in the analysis because I could not ensure the completeness of the collected dataset. Although the SPC requires the disclosure of all judgments, well over half of all criminal judgments on average remain undisclosed. The judges I interviewed indicated that some judgments have not been disclosed because they are related to other senior pending cases.³⁴ Some judges from Guangdong and Henan commented that sometimes the leadership of the court feels reluctant to disclose judgments for unspecified reasons. It may be because they want to avoid attracting too much attention to the case, or the case has already attracted much attention, or they have a conservative attitude toward the transparency reforms and want to publish the judgments online gradually rather than all at once.

Regardless of the reason, the end result is that only around one-third of public corruption judgments nationwide can be collected. Moreover, other provinces do not have a centralized provincial case database like the one in Beijing. To collect the judgments from other

³³ Interviews of five judges in Beijing, conducted between October 2016 and December 2016.

³⁴ Interviews of two judges from Henan and two judges from Zhejiang in Beijing, conducted between October 2016 and January 2017.

provinces, I would need to contact each court in that province to ask for their judgments, which would exceed the time limitations of this study. Additionally, because well over half of the public corruption judgments would be missing, this could produce selective sample bias towards the judgments of other provinces. For these reasons, I decided to focus only on Beijing. The findings therefore represent an example from only a single city of the functions of COV in anti-corruption cases, and general nationwide predictions could not be made based upon these findings.

“Public corruption” in China refers to multiple crimes, including bribe-giving, bribe-giving for the employer’s benefit, embezzlement, graft, and bribery by nongovernmental officials. Currently, China has no uniform anti-corruption law; relevant rules are included primarily in the Criminal Law and Party disciplinary rules. China’s Criminal Law (1997), which was last amended in 2015, has criminalized several corrupt activities, including bribery and graft.³⁵ Additional criminal judicial interpretations and procuratorate rules have supplemented these rules.

Articles 385, 388, 387, 392 and 395 of China’s Criminal Law (2015) criminalize bribe-accepting activities, directly or indirectly procured, by public officials and employees and their close relatives and close friends, along with former officials and employees and their close relatives, close friends, and work units.³⁶ The core crime is bribery committed by public officials, defined in Article 385 as follows: “whoever, being a public official, takes advantage of his/her official position, seeks or demands or illegally accepts any property from others, and seeks profits for such others, shall be convicted of the bribe-accepting crime and

³⁵ China’s Criminal Law (1997).

³⁶ *Id.*, at arts. 385, 388, 387, 392, 395.

punished according to Article 383.”³⁷ Other articles have extended the core bribery crime to cover close friends, former officials, and procurers. Article 163 similarly criminalizes commercial bribery committed by employees of non-state-owned companies, corporations, and other units.³⁸

Correspondingly, Articles 389, 391, and 393 criminalize the bribe-giving activities committed by persons or units to public officials and public units.³⁹ The core definition is that whoever gives property to any public official with the intent to seek illegitimate profits shall be convicted of bribe-giving and punished according to Article 390.⁴⁰ However, China’s bribe-giving crimes do not cover those who give bribes to close relatives or friends, former officials, or employees, and the profits sought must be illegitimate for the conviction of bribe-giving crimes, excluding legitimate profits. Thus, China’s bribery-related criminal laws are asymmetric, leaning more heavily on bribe-accepting. However, the draft of the ninth amendment of China’s Criminal Law (1997) has considered extending the bribe-giving crimes to cover a bribe given to close relatives and friends of the public officers and has been issued in 2015.⁴¹

Articles 382, 384 and 396 also criminalize several types of graft activities committed by public officials, defined as follows: whoever, being a public official, or its agent, takes its positional advantage to, or conspires to, misappropriate or embezzle public funds shall be punished according to Article 383.⁴² And Article 164 of the Criminal Law (1997) prohibits

³⁷ *Id.*, at arts. 385, 386.

³⁸ *Id.*, at art. 163 (amended in sixth amendment on June 29, 2006).

³⁹ *Id.*, at arts. 389, 391, 393.

⁴⁰ *Id.*, at arts. 389, 390.

⁴¹ *Id.*, at art. 40 (the draft of the ninth amendment of China’s Criminal Law, http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2014-11/03/content_1885029.htm).

⁴² *Id.*, at arts. 382, 384, 396.

overseas public corruption, defined as follows: whoever gives property to overseas public officials or officers of international organizations to seek illegitimate commercial profits shall be convicted of overseas bribe-giving and may be imprisoned or fined.

Among the judgments in the dataset, over 90% involve bribe-accepting crimes or graft crimes. Crimes other than bribe-accepting and graft account for only about 100 of the judgments. Moreover, these remaining crimes normally do not involve public officers. Due to China's asymmetric anti-corruption laws, these criminals are not the focus of the anti-corruption campaign. COV has been routinely used in public corruption cases involving public officers, but not in other kinds of public corruption cases.

After excluding the judgments that do not involve bribe-accepting or graft crimes, the final sample set consists of 771 judgments. To test whether COV affects the punishment of corrupt officials, I constructed the following regression model:

$$\text{totalsentence} = \alpha + \beta \text{cov} + \gamma X + \varepsilon$$

In this model, *totalsentence* represents the final declared punishment the corrupt official received in the judgment. The variable *cov* represents whether the case was tried at a court that did not have ordinary geographic jurisdiction to hear the case, i.e., using the COV system. If yes, *cov* is coded as 1; otherwise, it is 0. α is the intercept parameter. ε represents random error. *X* represents all other variables that may affect the punishment. These variables include both legal factors and extralegal factors. Legal factors are those legally established in criminal rules and sentence guidelines that courts should consider when making their decisions. Extralegal factors are those not legally established, but still deemed to have substantial influence over judicial decision-making. Extralegal factors include the

characteristics of the defendant himself/herself, as well as the characteristics of the court and the judge.

B. MEASURES

Total Observations

Of the 771 judgments in the sample set, 161 have more than one defendant. Each defendant has their own criminal activities, convictions, and sentences, so I created additional observations to ensure that each “case” represents the situation of one defendant, thereby increasing the total number of observations to 967. I also created a dummy variable (*muldef*) to record whether the judgment includes multiple defendants.

Variables Representing the Punishment

For the variable to represent the punishment, the existing literature mainly uses the natural log of the convicted sentence. The length of the sentence, in months, represents the limited term of imprisonment.⁴³ However, it is difficult to use the length of sentence in this manner to represent life imprisonment or a death sentence. As is well known, a limited term of imprisonment is a lighter sentence than life imprisonment, which is lighter than a death sentence. But the magnitude of these differences remains unsettled. Because it is so difficult to translate life imprisonment and the death penalty into concrete numbers of months, many scholars have eliminated such cases from their samples.⁴⁴

⁴³ See David B. Mustard, *Racial, Ethnic and Gender Disparities in Sentencing: Evidence from the US Federal Courts*, 44 J. L. & ECON., 285 (2001); Shawn D. Bushway & Anne Morrison Piehl, *Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing*, 35 J. L. & SOC’Y REV. 733 (2001); Sanford C. & Gregory A. Huber, *The Effect of Electoral Competitiveness on Incumbent Behavior*, 2 Q. J. POL. SCI. 107 (2007); Crystal S. Yang, *Free at Last? Judicial Discretion and Racial Disparities in Federal Sentencing*, 44 J. LEGAL STUDIES 75 (2015).

⁴⁴ See Mustard *supra* note 43; Bushway *supra* note 43.

Since life imprisonment means the convicted criminal must remain in prison until his/her death, it seemed reasonable to use the average age of the defendant to deduce the average length of life imprisonment.⁴⁵ The study here focuses on bribe-accepting and graft crimes. The average age of all of the defendants in the sample set was 48.0 years. Since females and males in China have different life expectancies, I first calculated the average length of life imprisonment for females and males separately and then calculated their weighted average length, which turned out to be 26.5 years.

Notice that, because my data set focuses on official corruption, the average age of most defendants is much older than for other types of crimes in other previous studies. For example, in Abrams' study, the average age in the sample was 29 years, whereas in Yang's, the average age was 34.7 years.⁴⁶ As a result, deducting the average age in my data set from the average life expectancy returned a much shorter sentence length to represent the equivalent of life imprisonment. Abrams coded life imprisonment as 60 years and Yang used 470 months, while the calculated life imprisonment length in my data was 26.5 years, or only 6.5 years longer than a 20-year prison sentence.

I soon realized, however, that I needed to adjust my calculations. The youngest public official who *actually received* life imprisonment in my sample set was a 36-year-old male, who could be expected to spend around 40 years in prison – or much longer than the calculated 26.5 years. Around 60% of all of the public officials who received life imprisonment in the sample set had more than 26.5 years of remaining life expectancy at the

⁴⁵ See David S. Abrams et. al., *Do Judges Vary in Their Treatment of Race?*, 41 J. LEGAL STUDIES 347 (2012).

⁴⁶ *Id.*; Yang *supra* note 43.

time of their sentencing. To reflect this, I needed to replace the overall average age in the sample set with the average age of only those defendants who received life imprisonment, and then calculate the weighted average length of life imprisonment – which turned out to be 37.1 years. Thus I ended up coding life imprisonment as 37.1 years, or 445.2 months, in prison.

An additional concern was how to code the total sentence length for a death sentence. Death sentences are very rare in the United States, and I did not find any literature coding death sentences in the United States. Jianjun Bai in China considered a death sentence as the equivalent of two times life imprisonment.⁴⁷ Based on this analysis, I coded a death sentence as the equivalent of 74.2 years, or 890.4 months, in prison.

In the sample set, there are 16 observations where the defendant received a death sentence with a reprieve of two years. This means that if the defendant did not commit any serious crimes, or if they made substantial contributions to other investigations, while confined in prison for two years, the sentence would be commuted to life imprisonment. Frequently, such a sentence would in fact be commuted to life imprisonment. Thus, I coded such a sentence as life imprisonment plus two years, or 39.1 years in prison.

For criminals who received imprisonment of less than (or equal to) three years, the courts could grant a reprieve of up to five years. This kind of punishment is frequently seen in public corruption cases involving public officials, and operates much like a suspended sentence with probation in most U.S. criminal justice systems. If the criminal does not

⁴⁷ Jianjun Bai, *Practical analysis of the statutes and jurisprudence*, 3 THE JURIST 37 (2001) (白建军, 法条与法理的实证分析, 法学家, 2001年第3期, 页37-40) .

commit any crime within the reprieve period, he/she will not serve any further imprisonment at the end of the reprieve period.

For example, a three-year imprisonment without a reprieve means that the defendant will serve a fixed prison sentence of three years after conviction. But a three-year imprisonment with a reprieve of three years means the defendant will not serve any prison time – provided he does not commit any crime within the three-year reprieve period after conviction. However if he commits any crime during that period, he will then need to serve the original three-year sentence in prison, beginning at the time of the subsequent crime.

It is unclear how to translate such a sentence with reprieve into a concrete length of imprisonment for purposes of analysis. The existing literature does not address this type of sentence. However, 156 of the observations in this study included sentences with reprieve, accounting for 19.5% of all convicted defendants and 61.4% of all convicted defendants who received imprisonment of less than three years. Such frequency makes it unreasonable to exclude this special kind of punishment from the study.

An ideal way to measure the comparable imprisonment length of a one-year reprieve would be to find the average length of the actual served imprisonments of those who completed a reprieve sentence, but that data was not available for this analysis. So I needed to come up with a reasonable estimate.

Given the relatively high probability of avoiding imprisonment entirely, a three-year imprisonment with reprieve is obviously a lighter sentence than one without a reprieve. But it still seems wrong to say that a three-year imprisonment with any length of reprieve is actually lighter than a two-year imprisonment without a reprieve – especially since, even during the

reprieve period, the defendant is not completely free. Rather, he must regularly report to the supervising agency and live under supervision. For these reasons, when coding the reprieve cases, I used the original declared prison sentence the criminal received and then deducted a certain number of months, based on the length of the reprieve. To determine exactly how much time should be deducted from the convicted sentence, I used the following formulas, where x represents the amount of time deducted for each year of reprieve, b represents how many years of reprieve the defendant received, and a represents the defendant's convicted sentence length.

(1) to ensure the deducted sentence can never be negative: $a - b * x > 0$

(2) according to the rules on reprieve length: $a \leq b \leq 2a$

Thus, to ensure that the deducted sentence is never negative (Equation 1), x shall be less than the minimum value of a/b , i.e., $x < 0.5$. Based on a general sense regarding the severity of living for one year outside of prison but under supervision, I gave x a value of 0.4, which means the severity of a one-year reprieve period is equal to 0.6 year of imprisonment. Then *totalsentence* should be adjusted by excluding the decreasing effects of the reprieve, i.e., the total length of the reprieve period multiplied by the reduced effect of each year's reprieve. Since the original sentence has an effect on the final declared sentence, it is unreasonable to use the cumulated length of all reprieve years, i.e., $b * 0.6$, directly to calculate the adjusted final sentence.

The model also had to account for the 166 defendants, out of 967 in the sample set, who were convicted of more than one crime. In China, for defendants who commit multiple crimes, the court first gives each of the convicted crimes a sentence according the rules and sentence

guidelines for that crime, and then combines the sentences to declare a final total sentence, called the “declared sentence” (宣告刑). To control for the effects of different crimes, I created the following variables: (1) *convictcrime1*, *convictcrime2*, *convictcrime3* (dummy variables to indicate the crimes the defendant was convicted of); (2) *sentence1*, *sentence2*, *sentence3* (to indicate the sentence received for each respective crime); and (3) *totalsentence* (to indicate the final declared sentence).

When a defendant is convicted of multiple crimes, the total declared sentence is not a simple addition of all the individual sentences, but is generally lighter than that sum. To control for this influence, I used the different sentences as dependent variables in different models, rather than relying solely on the declared total sentence. Because these sentence variables are highly skewed, and violate the OLS regression assumption of a normal distribution, I used the log of the sentence in the following models. But to be robust, when running the following models, I ran the models both ways, with different sentence variables as the outcome variable, and found that the results are essentially the same and do not change my substantive conclusions. For simplicity, here I only present the results using the log of the adjusted total sentence as the outcome variable.

The cov Variable

To test the effects of COV on the sentence, it is first essential to decide whether a case was tried using COV. I created a dummy variable to indicate which cases were tried using COV. By definition, the COV system means that a case is tried at a court that ordinarily has no jurisdiction to hear the case. Because the superior court instructs the receiving court to try the case, that court thereby gains temporary jurisdiction. Thus when coding the judgments, if

the trial court had no ordinary jurisdiction to try the case, the case was coded as having been tried alternatively (*cov*=1).

But sometimes it may be unclear whether the trial court has ordinary jurisdiction. Some scholars suggest relying on whether the judgment itself indicates that the case was tried alternatively, according to the superior court's instruction. However, after reading dozens of judgments, I found many cases that were obviously tried alternatively, but which did not have such a COV statement in the judgment. Also, judges told me in interviews that they were not required to include such a statement in the judgments, and oftentimes forgot to include it.⁴⁸ Therefore it is not possible to rely on the existence of such a statement.

According to my interviews with Beijing judges⁴⁹ and observations of judgments, and consistent with China's criminal procedure law, when deciding whether a court has proper geographic jurisdiction to hear the case, the judges look at both the place where the crime was committed and the officially registered residence, or "hukou," of the defendant. However, in public corruption crimes involving public officers, such public corruption activities could take place anywhere and can include multiple places, making it very difficult to decide the appropriate court. It is thus unreasonable to try to define the exact place where the public corruption crime occurred. Instead, in practice, the location of the organization or agency to which the defendant belongs is generally deemed by the court or the investigators to be the place where the public corruption crime was committed.

However, in some graft or bribe-accepting crimes, the criminal may not belong to any

⁴⁸ Interviews of six judges from Beijing and two judges from Henan, conducted in Beijing between October 2016 and January 2017.

⁴⁹ Interviews of five judges from Beijing, conducted between October 2016 and December 2016.

agency or organization, but instead temporarily undertakes some public project or task, thus making him/her eligible to commit public corruption crimes. In these kinds of situations, the defendant's officially registered residence, or hukou, location is generally taken to be the default venue.

For these reasons, when coding the judgments, I created the following dummy variables: *plemp* for the place of the defendant's agency or organization; *residence* for the place the defendant frequently resides; *hukou* for the place of the defendant's officially registered hukou; and *trialjd* for the jurisdiction of the trial court. For defendants whose *plemp* was not missing, if *plemp* was the same as or fell under the jurisdiction of *trialjd*,⁵⁰ I coded *cov* as 0, meaning the case was tried at the default venue; if they were different, the case was tried alternatively and *cov* is 1. For defendants whose *plemp* was missing, if *residence* or *hukou* was equal to *trialjd*, I coded *cov* as 0, meaning the case was tried at the default venue; if they were different, the case was tried alternatively and *cov* is 1. For all cases where the defendant worked outside Beijing but was tried by the Beijing courts, they were obviously COV cases and were coded as such.

Variables Representing Legal Factors

Both legal and extralegal factors can affect sentencing. Legal factors are all those that are legally established in the sentence guidelines issued by SPC in 2014,⁵¹ and in the criminal law and judicial interpretations, which the court is required to consider when deciding the

⁵⁰ If the trial court is an intermediate court, it has jurisdiction across several districts. In that case, as long as the district where the defendant's agency or organization is located falls in those districts, the case is tried without COV applied. Although the intermediate court may be instructed by the superior court to try the case, notwithstanding the level jurisdiction requirement, this is not taken as a kind of COV and is not studied in this article as explained above.

⁵¹ The complete set of sentencing guidelines can be found at <http://www.court.gov.cn/shenpan-xiangqing-6622.html>.

sentence. To test the effects of COV, I needed to control for the effects of these legal factors.

For example, I needed to control for legal factors that determine the category of punishment, such as whether the crime is bribery or graft or embezzlement, the monetary value of the bribe or embezzled fund, and whether other criminal activities are involved. I therefore created the following dummy variables: *bribery* to indicate whether any of the convicted crimes was a bribe-accepting crime; and *graft* to indicate whether any of the convicted crimes was a graft crime.

Graft crimes frequently involve multiple criminals. Both the amount obtained by the specific criminal in question, and the total amount grafted by the entire group, substantively affect the sentence of the criminal. Thus, I used the variable *prograindtotal* to record the prosecuted amount of the grafted fund obtained by the defendant individually; *progratotal* for the prosecuted amount of funds grafted by the defendant and his accessories together; *ctgraindtotal* for the convicted amount of funds obtained by the defendant individually; and *ctgratotal* for the convicted amount of funds grafted by the defendant and his accessories together.

On the other hand, bribe-accepting crimes are seldom group crimes. Even in the few such cases, the judgments failed to make clear whether the amount of the bribed funds corresponded to a specific criminal or to the group as a whole. Thus, I did not include the same coding distinction in bribery cases as in graft cases. I used the variable *probriindtotal* to record the prosecuted amount of bribed funds obtained, either by the defendant individually or the group together; and *ctbriindtotal* for the convicted amount of bribed funds obtained, either by the defendant individually or the group together.

To reflect accurately the complexity and seriousness of the cases, I also coded whether the grafted funds were “special” funds, such as for earthquake or disaster relief; whether the crime resulted in any serious accidents, injuries, or deaths affecting the general public; whether it was a group crime and involved a large monetary value; and whether the defendant committed other crimes at the same time.

I also needed to control for many other legal factors that could legally increase or decrease the punishment, including whether the defendant turned himself/herself in to the authorities; confessed his/her guilt; tried to overturn his/her confession during the trial; voluntarily returned the bribed or grafted funds; actively asked for bribes; was merely an accessory to the crime; contributed to the discovery and apprehension of other criminals; and other similar legal factors.

Variables Representing Extralegal Factors

The variables representing extralegal factors that might nevertheless affect the defendant’s punishment are drawn partly from academic discussions which consider them to be influential, and partly from the specific hypothesis that I wished to test. Although these factors are not supposed to have legal significance, judges sometimes include the influence of these factors when making sentence decisions:

I introduced a control variable for whether or not COV was used in the case, i.e., whether the defendant was transferred from another jurisdiction.

I introduced a control variable for the political level of the official, ranging from ministerial/provincial to city/“ting” (厅级) to district/“chu” (处级) to “ke” (科级) to village levels.

I introduced a control variable for the type of position the relevant official held, such as whether the position was an economic, judicial, or party position. Officials of agencies that have authority to investigate or try public corruption cases may have influence over those cases involving themselves, so I created a category called *judiciary* under the variable *area*, referring to procuratorates, CDIs, police, judiciary, and prison guards. For officials of agencies closely connected with economic development and state asset management, their corruption cases frequently involved large amounts of money, so I created the category *economy* under the variable *area*, referring to financial, development, asset management, and tax organs. Officials of agencies that are party committees and organs have strong political power that can affect case investigations, making their corruptions a special concern, so I created the category *party* under the variable *area*, referring to party committees, organization departments, party propaganda departments and united front work departments. I created several additional categories to reflect the political influence of the other agencies or organizations: *otherorgancon* for local people's congress/political consultative conferences; *association* for public associations/universities; *statecompany* for state-owned enterprises; *village* for village cadres; and *public* for those with no public position.

I introduced a control variable for personal characteristics including the ethnicity of the official and whether the defendant was Han or minority; the gender of the defendant; and the place where the defendant was tried. This last variable was to control for the fixed effects of different judicial districts in Beijing.

I introduced a control variable for whether the judgment was from a first-instance trial court or an appeals court. In previous research on court judgments, some scholars only take

into consideration final judgments, regardless of whether they are trial or appellate judgments, because non-final judgments may be overturned on appeal and thereby become ineffective. Others limit their research to appellate judgments, because only these can be confidently viewed as final and effective.

In Chinese courts, the court of second instance is the court of last instance. A trial judgment becomes final and effective only when the defendant gives up his right to appeal or the period for appeal expires. However, the trial judgment itself does not indicate whether it is final and effective or whether the defendant later appealed, and sometimes an appellate judgment may not be disclosed at all. Thus, in China, it is not safe to decide whether a trial judgment is final and effective by searching for an appellate judgment in the same case.

I think it is important for the current study to include all trial judgments, and to make a distinction between first-instance trial judgments and second-instance appellate judgments. More than half of the judgments I collected for my data set are first-instance trial judgments. Since only very few judgments are missing, very few trial judgments are included that may later be overturned and become ineffective.

Moreover, even for final and effective trial judgments that are no longer subject to an appeal, they can still be overturned someday through the retrial system that exists in China. For this reason, “finality” should not be the standard to select judgments, because it is an unstable and unfixed standard. Although a trial judgment may be overturned someday, or even has already been overturned on appeal, that trial judgment nevertheless reflects the end result of the trial court’s decision-making, and is thus meaningful for the current study.

Trial courts and appellate courts may have categorical differences towards sentencing,

so I included all trial judgments as well as appellate judgments in the study and created a dummy variable, *triallevel*, to reflect whether the judgment was a trial, appellate, retrial, or appeal-of-a-retrial judgment.

I introduced a control variable for the administrative level of the trying court, i.e. whether it was a district, intermediate, or high court. Other factors such as the decision date, the defendant's age, the defendant's birthplace, and the defense lawyer's location were also included. These factors are frequently considered in the current literature to represent extralegal influences over judges when deciding public corruption cases. Please refer to Table 2.1 for a complete list of operational definitions for the variables that are used in later tables.

Table 2.1 Definitions of Variables

Descriptive Labels	Variable Names	Operational Definitions (1=Yes, 0=No; or the numerical value of the variable)
sentence	reptotalpenalty	the final total convicted sentence given by the court to the defendant
lnsentence	lnreptotalpenalty	natural log of reptotalsentence
bsentence	adbripenalty	the convicted sentence for bribery crime
lnbsentence	lnadbripenalty	natural log of adbripenalty
gsentence	adgraftpenalty	the convicted sentence for graft crime
lngsentence	lnadgraftpenalty	natural log of adgraftpenalty
acquittal	Innocent	whether the defendant was found innocent by the court
reprieve	reprieve2	whether the defendant received a reprieve
cov	cov2	whether the case was tried alternatively
gamount	ctgratotal2	the graft's monetary value, in total, for the entire defendant group convicted by the court, in 10 million RMB
lgamount	lnctgratotal2	natural log of ctgratotal2
bamount	ctbriindtotal2	the monetary value of the bribe, in total, for the individual defendant convicted by the court, in 10 million RMB
lbamount	lnctbriindtotal2	natural log of ctbriindtotal2
accessory	congfan2	whether the defendant is an accessory in a group crime
return	tuizang3	whether the defendant has returned illicit assets before the judgment is made
surrender	zishou2	whether the defendant voluntarily surrendered to the investigation agency
confess	tanbai2	whether the defendant confessed
overturn	fangong2	whether the defendant overturned his confession during trial
contribute	ligong2	whether the defendant contributed to the investigation of other crimes
askbribe	suohui2	whether the defendant actively required the bribe
othercrime	othercrime	whether the defendant was convicted of multiple crimes
triallevel	Triallevel2	whether the case is a first trial case
ctlevel	trialctlevel	the administrative level of the trial court: 1=district court; 2=intermediate court; 3=high court
jurisdiction	trialj	the jurisdiction of the trial court
area	area	the type of position the defendant holds
age	age3	the age of the defendant, in 10 years
senior	senior	whether the position is >= city level
party	party	whether the defendant held a party organ position
judiciary	judiciary	whether the defendant held a judicial position, including court, CDI, prosecutor, or

economy	economy	police whether the defendant held an economic public position
othercon	otherorgancon	whether the defendant held other executive organ or congressional positions
association	association	whether the defendant held a public association position, including public university, public hospital, or public research institution
St.co.	statecompany	whether the defendant held a state-owned company position
village	village	whether the defendant held a village public position
public	public	whether the defendant held no public position

Table 2.2 Descriptions of Variables

	Obs	Mean	Std. Dev.	Min	Max
sentence	967	108.999	102.485	.000	890.400
lnatp	967	4.164	1.280	.000	6.793
bsentence	520	106.994	115.529	.000	624.000
lnabp	520	4.199	1.101	.000	6.438
gsentence	459	125.439	144.856	.000	900.000
lnagp	459	4.276	1.247	.000	6.804
acquittal	967	.014	.120	.000	1.000
reprieve	953	.164	.370	.000	1.000
cov	945	.275	.447	.000	1.000
cgjt	435	.112	.406	.000	4.909
lncgit	435	.078	.195	.000	1.776
gamount	967	.128	.561	.000	7.831
lngamout	967	.079	.228	.000	2.178
bamout	967	.083	.311	.000	4.128
lbamout	967	.059	.173	.000	1.635
accessory	967	1.134	.932	.000	1.000
return	967	1.392	.838	.000	2.000
surrender	967	.273	.446	.000	1.000
confess	967	.597	.491	.000	1.000
overturn	967	.011	.106	.000	1.000
contribute	967	.035	.184	.000	1.000
askbribe	967	.101	.302	.000	1.000
brib	967	.538	.499	.000	1.000
graf	967	.474	.500	.000	1.000
othercrime	953	.174	.379	.000	1.000
adml	967	3.550	1.685	.000	1.000
Han	967	.934	.249	.000	1.000
triallevel	967	1.267	.538	1.000	5.000
ctlevel	967	1.528	.665	1.000	3.000
jurisdiction	967	10.244	6.370	1.000	22.000
area	967	5.891	2.167	1.000	9.000
gender	966	1.156	.363	1.000	2.000
age	967	47.961	9.319	15.314	78.090

C. Models

Distribution of the Use of COV by Different Case Factors

As can be seen in Table 2.3, when not controlling for other factors that may influence the sentence, COV has a statistically significant positive effect on punishments – and this effect

is robust whether the total sentence, the bribery sentence, or the graft sentence is used as the outcome variable. Use of COV is also statistically positively correlated with the amount of graft or bribe convicted by the court, and negatively correlated with the age of the defendant.

Table 2.4 shows that the use of COV is also statistically significantly correlated with whether the defendant has returned illegal funds before being convicted; whether the defendant overturned his confession at trial; whether the defendant actively asked for the bribe in bribery crimes; whether the defendant was of Han ethnicity; whether the case was tried at Xicheng District Court or No.1 Intermediate Court in Beijing; whether the trial court was a district or intermediate court; whether the defendant held a judiciary position, an association position, a state-owned company position, a village leadership position, or some other executive position; and whether the defendant was a member of the general public.

Table
2.3
Distrib
ution
of
Contin
uous
Case
Factors
by the
use of
COV

COV	mean of the variable of total observations	mean of the variable when cov=0	mean of the variable when cov=1	statistical significance of differences
sentence	108.522	102.967	123.155	all t-tests, $p = .007$
(N) judgments	945	685	260	
lnsentence	4.157	4.094	4.321	all t-tests, $p = .015$
(N) judgments	945	685	260	
bsentence	106.250	99.597	119.674	all t-tests, $p = .060$
(N) judgments	513	343	170	
lnbsentence	4.198	4.124	4.347	all t-tests, $p = .030$
(N) judgments	513	343	170	
gsentence	125.078	117.876	151.743	all t-tests, $p = .045$
(N) judgments	442	348	94	
gamount	.122	.101	.180	all t-tests, $p = .052$
(N) judgments	945	685	260	
bamout	.081	.063	.130	all t-tests, $p = .003$
(N) judgments	945	685	260	
lbamout	.058	.046	.090	all t-tests, $p = .000$
(N) judgments	945	685	260	
age	4.809	4.861	4.671	all t-tests, $p = .005$
(N) judgments	945	685	260	

Table 2.4 Distribution of the Use of COV by Dichotomous Case Factors

COV (yes 1; no 0)	proportion COV of total observations	proportion COV when variable =1	proportion COV when variable =0	statistical significance of differences
return	.275	.254	.346	all chi-squared tests, $p = .008$
(N) judgments	945	728	217	
overturn	.275	.545	.272	all chi-squared tests, $p = .044$
(N) judgments	945	11	934	
askbribe	.331	.438	.307	all chi-squared tests, $p = .014$
(N) judgments	513	96	417	
Han	.275	.283	.159	all chi-squared tests, $p = .032$
(N) judgments	945	882	63	
xicheng	.237	.425	.211	all chi-squared tests, $p = .000$
(N) judgments	659	80	579	
1 st Intct	.364	.469	.226	all chi-squared tests, $p = .000$
(N) judgments	286	162	124	
ctlevel	.266	.238	.348	all chi-squared tests, $p = .003$
(N) judgments	717	(1=district ct) 530	(2=int ct) 187	
judiciary	.275	.549	.246	all chi-squared tests, $p = .000$
(N) judgments	945	91	854	
association	.275	.208	.296	all chi-squared tests, $p = .010$
(N) judgments	945	226	719	
St.co.	.275	.353	.249	all chi-squared tests, $p = .002$
(N) judgments	945	235	710	
village	.275	.022	.302	all chi-squared tests, $p = .000$

(N) judgments	945	91	854	
othercon	.275	.155	.300	all chi-squared
(N) judgments	945	161	784	tests, $p = .000$
public	.275	.458	.254	all chi-squared
(N) judgments	945	96	849	tests, $p = .000$

Baseline Models: Bribe or Graft Amount Only

When controlling for the amount of the bribe or graft funds held by the court, the COV's effect loses its statistical significance, although its coefficient is still positive. However, there is a statistically significant positive correlation between the amount of the illicit funds and the sentence; the larger the funds that were bribed or grafted by the official, the higher the sentence he/she received. Although in graft crimes both the grafted funds obtained by the individual official and the total funds grafted by the group were considered by the court, I excluded the grafted funds obtained by the individual official after finding that the two are significantly correlated. The correlation ratio of the two is 0.99.

The statistically positive relationship between the use of COV and the variable representing the illicit fund amount, as shown in Table 2.4, helps to explain why the effect of COV is no longer significant. If a public corruption case involving a public official concerns a larger monetary value, the case is deemed to be more serious, and it is then more likely to be tried alternatively. At the same time, because the official bribed or grafted a larger monetary value, he/she is legally supposed to receive a much longer sentence and harsher punishment. Thus, net of the effects of the illicit monetary amount, the COV itself does not statistically significantly affect the punishment. In other words, courts do not hold a harsher attitude towards COV cases simply because the officials in these cases are not local officials.

Table 2.5 OLS Estimates of the Relationship of COV to Sentences, Controlling for Illegal Fund Amount

	lnsentence	lnbsentence	lngsentence
cov	.11 (.09)	.16 (.09)	-.01 (.14)
gamount	.53*** (.07)	.40** (.13)	.50*** (.07)
bamount	1.08*** (.13)	1.12*** (.11)	1.88*** (.49)
_cons	3.97*** (.05)	3.97*** (.05)	4.09*** (.06)
adj. R2	.13	.20	.15
N	945	513	442

Models Adding Controls for Legal Factors

After adding the variables representing the legal factors of the cases, the COV's effect remains insignificant with regard to all of the sentence variables. There is still a statistically significant positive correlation between the illicit monetary value of the case and the sentence.

Following the current literature, I also considered the effect of the monetary value amount to be non-linear and instead used a quadratic function. As can be seen in Table 2.6, the quadratic function of the monetary amount variables is also statistically significantly related to sentence severity. Controlling for other legal factors and COV, the average convicted sentence for bribe-accepting and graft crimes increases as the amount of the bribe or graft increases. But the rate of the sentence increase gradually diminishes as the monetary value gets larger, eventually reaching a peak and then declining.

Moreover, the results in Table 2.6 demonstrate that the effects of certain legal factors are consistent with the requirements of criminal law and sentence guidelines. On average, and holding all else constant, if the defendant returned the illicit funds before conviction, he/she received a shorter sentence; if he/she voluntarily surrendered to the investigative agency, he/she received a shorter sentence; if he/she was only an accessory to the crime, he/she

received a shorter sentence; if he/she was convicted of multiple crimes, he/she received a longer sentence.

Although the variables representing whether the defendant confessed during investigation, whether the defendant overturned his confession during the trial, and whether the defendant contributed to other criminal investigations had no statistically significant effect, these results can be readily explained. Because those who voluntarily surrendered would normally also confess, the effect of the confession is greatly lessened by the effect of the voluntary surrender. Only 34 of the observations involved defendants who contributed to the investigation of other criminals, accounting for only 0.3% of the sample, and thus there were too few such cases to measure the effect of the contribution. The same reasoning holds for the variable representing whether the defendant overturned his/her confession during trial, which occurred in only 11 of the observations. Whether the defendant actively asked for the bribe was a factor only in bribe-accepting crimes, and not for graft crimes. Within the smaller subset of bribe-accepting crimes, a statistically significant effect *was* present – defendants who actively asked for bribes received longer sentences than otherwise, all else being equal.

Table 2.6 OLS Estimates of the Relationship of COV to Sentences, Controlling for Case Factors

	Insentence	lnbsentence	lngsentence
cov	-.04 (.07)	.01 (.08)	-.03 (.12)
gamount	1.36*** (.15)		1.68*** (.17)
gamount ²	-.18*** (.02)		-.21*** (.03)
bamount	2.04*** (.25)	2.60*** (.24)	
bamount ²	-.44*** (.09)	-.58*** (.09)	
return	-.17* (.08)	-.04 (.10)	-.15 (.12)
surrender	-.56*** (.08)	-.44*** (.10)	-.49*** (.13)
confess	-.21** (.08)	-.21* (.09)	-.34** (.12)
overturn	.31 (.30)	-.25 (.30)	-.08 (.47)
contribute	.06 (.18)	-.46* (.22)	.04 (.25)
askbribe	.33** (.11)	.42*** (.10)	
accessory	-.49*** (.10)	-.74*** (.16)	-.46*** (.13)
othercrime	.60*** (.09)	.26* (.10)	.28* (.12)
_cons	4.33*** (.08)	4.16*** (.11)	4.45*** (.12)
adj. <i>R</i> ²	.36	.38	.34
<i>N</i>	931	513	442

Standard errors in parentheses, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Models Adding Controls for Different Trial Courts

After controlling for the effects of different trial court jurisdictions, I was surprised to find that the effect of COV upon sentences became statistically significant once again. But this time, it has a *negative* effect. Table 2.7 shows that in public corruption cases involving public officials that were tried alternatively, the defendants received sentences that were more than 10 months shorter, on average, than those tried at the original venue. Compared with the positive effect of the use of COV on the sentences seen in Table 2.2, this change in the effect of COV is astonishing. All of the other variables remain either positive or negative, with only

slight changes in the absolute values of the coefficients.

To understand how the *trialjd* variable causes this change in the effect of COV, I used t-tests to see how the use of COV is related to different trial jurisdictions. Since the jurisdiction of the trial court includes both district-level courts and intermediate-level courts, which have different “level jurisdictions” in China, I distinguished the district courts from the intermediate courts. Table 2.8 shows that among the district courts, cases tried at Xicheng, Chaoyang, Fengtai, Shijingshan, and Mengtougou District Courts were more likely to be cases that had been transferred from elsewhere (i.e., COV cases). These five courts decided 58% of all COV cases, but only 37% of all cases. Xicheng District Court was the single most likely court to try a COV case, with 43% of its cases being transferred from other districts, while no cases at all were transferred to either Huairou or Miyun Districts. The average rate of COV cases in the district courts was 28%.

Among intermediate courts, cases tried at No. 1 Intermediate Court were, on average, more likely to be COV cases than at the other intermediate courts, with 47% of the cases in No. 1 Intermediate Court being transferred from elsewhere. The comparable figure for the No. 2 Intermediate Court was 28%. In other words, COV cases were much more likely to end up in No. 1 Intermediate Court than No. 2 Intermediate Court. Since the No. 3 and No. 4 Intermediate Courts were recently established, their data is not informative.

In short, the cases that were tried alternatively were not randomly distributed among different trial courts. At the district level, COV cases were more likely to be transferred to Xicheng District, and at the intermediate level, COV cases were more likely to be sent to the No. 1 Intermediate Court.

Moreover, Table 2.9 further shows that Xicheng District Court imposed much harsher punishments on average, and at a statistically significant level, than several other courts in public corruption cases involving officials. It is also statistically significant that the No. 1 Intermediate Court had much harsher punishments than the No. 2 Intermediate Court, on average.

This explains the change in the effect of COV after controlling for trial court jurisdiction. Cases that were tried alternatively through the COV system were centered in specific courts that normally imposed much harsher punishments than elsewhere, and this masked the actual effects of COV. In fact, once the trial court was held constant, together with the monetary amount and other legal factors, COV cases actually received, on average, shorter sentences than cases originally tried in the same court's jurisdiction.

Table 2.7 OLS Estimates of the Relationship of COV to Sentences, Controlling for the Amount of Funds, Squared, & Trial Jurisdiction

	Lnsentence
cov	-.12 [^] (.07)
gamount	1.00 ^{***} (.15)
gamount ²	-.13 ^{***} (.02)
bamount	1.45 ^{***} (.25)
bamount ²	-.29 ^{**} (.09)
return	-.23 ^{**} (.08)
surrender	-.46 ^{***} (.08)
confess	-.17 [*] (.07)
overturn	.31 (.28)
contribute	.17 (.17)
accessory	-.61 ^{***} (.10)
askbribe	.22 [*] (.11)
othercrime	.50 ^{***} (.09)
_cons	4.86 ^{***} (.65)
adj. <i>R</i> ²	.43
<i>N</i>	931

Standard errors in parentheses, [^] $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

NOTE: The results of the jurisdiction variables are omitted for simplicity.

Table 2.8 Number of Cases Tried Alternatively at Different Jurisdictions

Trial jurisdiction	Number of transferred-in cases	Total judgments	% tried alternatively in that court	% of all district-level COV cases tried by that court	% of all Int.-level COV cases tried by that court
Dongcheng district	15	57	26	10	
Xicheng district	34	80	43	22	
Chaoyang district	15	49	31	10	
Haidian district	16	80	20	10	
Fengtai district	16	49	33	10	
Shijingshan district	17	47	36	10	
Fangshan district	8	38	21	5	
Tongzhou district	2	28	7	1	
Shunyi district	2	16	13	1	
Daxing district	9	35	26	6	
Changping district	8	58	14	5	
Pinggu district	1	15	7	1	
Huairou district	0	24	0	0	
Mentougou district	8	21	38	5	
Miyun district	0	18	0	0	
Yanqing district	5	29	17	3	
Railway district ct	0	15	0	0	
No.1 Int. ct	76	162	47		73
No.2 Int. ct	28	104	27		27
No.3 Int. ct	0	13	0		0
No.4 Int. ct	0	2	0		0
Railway Int. ct	0	5	0		0
Total judgments	260	945		100	100

Table 2.9 OLS Estimates of the Effects of Xicheng District and No. 1 Intermediate Court to Total Sentence

	Insentence (trial court=district, xicheng as the base group, COV controlled)	Insentence (trial court=district, xicheng as the base group, COV not controlled)	Insentence (trial court=Int. court, No.1 Int. court as the base, COV controlled)	Insentence (trial court=Int. court, No.1 Int. court as the base, COV not controlled)
Dongcheng district	-.229	-.255 [^]		
Chaoyang district	-.173	-.163		
Haidian district	-.077	-.041		
Fengtai district	-.049	-.082		
Shijingshan district	.184	.157		
Fangshan district	-.356 [*]	-.341 [*]		
Tongzhou district	.272	.290 [^]		
Shunyi district	-.012	.034		
Daxing district	-.441 [*]	-.441 [*]		
Changping district	-.021	.000		
Pinggu district	-.064	-.007		
Huairou district	-1.078 ^{***}	-1.016 ^{***}		
Mentougou district	-.486 [*]	-.495 [*]		
Miyun district	-.298	-.241		
Yanqing district	-.168	.136		
No.2 Int. ct			-.243 ^{**}	-.238 ^{**}
No.3 Int. ct			-.171	-.154
No.4 Int. ct			-.200	-.162
Railway Int. ct			-.207	-.122
<i>N</i>	638	652	279	287

Standard errors in parentheses, [^] $p < 0.1$, ^{*} $p < 0.05$, ^{**} $p < 0.01$, ^{***} $p < 0.001$.

NOTE: The results of the legal case factors same as in Table 2.7 are omitted for simplicity.

Models Controlling All Legal and Extralegal Factors

Having added all of the legal factors into the model, I next added the extralegal factors which are most commonly recognized as having a high possibility of influencing judicial decision-making. I first added variables representing the characteristics of the trial court and the trial level. Because the variable *jurisdiction* already included the administrative level of the trial court (*jurisdiction*<17 indicates the trial court is a district court while *jurisdiction*>=17 indicates the trial court is an intermediate court), I substituted for it the variable *district*, in order to control only for the fixed effects of different districts in Beijing.

The first column of Table 2.10 represents the results of the OLS regression after adding court-characteristic variables. It shows that all legal factors remain similar to the models above, and the COV's effect is also similar to the models above, with a p-value of 0.051. The administrative level of the court has a statistically significant positive effect on the total sentence. On average in Beijing, public corruption cases involving officials concluded by district courts receive shorter sentences than those concluded by the high court; and those concluded by intermediate courts also receive shorter sentences than those concluded by the high court, all else being equal.

The level of the trial also has a positive effect, although it is not significant. However, the trial level is correlated with the trial court level, as the high court almost never hears trial cases and district courts only hear trial cases, rather than appeals. After using the *jurisdiction* variable instead of the *ctlevel* and *district* variables in column two, the effect of the trial level becomes highly significant. On average, with all else equal, public corruption cases involving officials receive shorter sentences at trial than at appeal. This seems to indicate that when all

legal factors are the same, convicted corrupt officials receive harsher punishments when they appeal, which would be inconsistent with the legal principle that the punishment cannot be increased in an appeal by the defendant.

However, a closer look at the sample shows that the previous interpretation of the result is incorrect. Among 750 trial observations, only 216 involved an appeal and had an appellate judgment included in the sample set. Simply adding the *triallevel* variable to the full model did not exclude those cases in which the defendant did not appeal. Since the non-appealed cases may well have involved less serious punishments, thus making the defendants less likely to appeal, it is reasonable to surmise that sample bias resulted in the finding of statistically significantly lighter punishments for trial observations than for appeal observations. Indeed, after excluding the non-appealed cases, the OLS regression results in Table 2.11 reflect that the trial level did not have a significant net effect on the punishment. This is reasonable because in China, not only can the defendant appeal for a lighter sentence or acquittal, but also the prosecutor can appeal for a harsher sentence or conviction.

I next added additional variables representing the individual characteristics of the defendant, including whether or not the defendant was a senior official,⁵² as well as his/her gender, age, and minority status. The results in Columns Two and Three of Table 2.10 reflect that, all else equal, male officials received, on average, longer sentences than female officials. But the senior level, age, and minority status variables had no significant effect on the punishment. The COV's effect remained unchanged after adding in these individual characteristics.

⁵² Since officials of political rank above city/"ting" (厅级) are normally deemed as senior officials, I coded these officials as senior and for officials of lower ranks, such as district and village, I coded them as not senior.

I then added variables representing the specific type of position the official held upon being investigated. *Party* means the official held a party committee or party organ position, including the party propaganda organ, the party committee secretary, and the party united front work organ. *Judiciary* means the official held a position closely related with anti-corruption work, including the court, the prosecutor, the party discipline inspection committee, the police, and the jail organization. *Economy* means the official held a position in an economic department, including tax, customs, finance, development, and reform departments, and the state asset department. *Othercon* includes other executive departments excluding those listed above, the local people's congress, and the political consultative conference. *Association* includes public universities, colleges, research institutes, hospitals, and other nonparty non-administrative public associations. *St.co.* refers to state-owned enterprises. *Village* means the official held a position in village governance, including village party committee secretary, village head, and village cadre. (The village-level positions are not included in China's executive ranking system but are important leadership positions and enjoy local autonomy.) *Public* means the defendant did not hold any public position. Such a defendant may still commit a public corruption crime because he may be an accessory or undertake a public project.

Because all of these positions are mutually exclusive, I added them into the model one by one. Columns Five through Twelve in Table 2.11 show that only *economy* and *village* had marginally statistically significant effects on the total sentence, at the $p < 0.1$ level. The effect of COV on the total sentence remained marginally statistically significant, at the $p < 0.1$ level.

Table 2.10 OLS Estimates of the Relationship of COV to Total Sentence, All in

	Insentence w/ ct&trial	Insentence w/ senior added	Insentence w/ indivi- added	Insentence w/ party added	Insentence w/ economy added	Insentence w/ judiciary added	Insentence w/ ot-organ added	Insentence w/ associatio n added	Insentence w/ st-co. added	Insentence w/ village added	Insentence w/ public added
cov	-.12 [^] (.07)	-.12 [^] (.07)	-.12 [^] (.07)	-.12 [^] (.07)	-.11 [^] (.07)	-.10 [^] (.07)	-.11 [^] (.07)	-.12 [^] (.07)	-.13 [^] (.07)	-.14 [*] (.07)	-.12 [^] (.07)
gamount	1.13 ^{***} (.16)	1.12 ^{***} (.17)	1.09 ^{***} (.17)	1.09 ^{***} (.17)	1.06 ^{***} (.17)	1.07 ^{***} (.17)	1.10 ^{***} (.17)	1.09 ^{***} (.17)	1.09 ^{***} (.17)	1.09 ^{***} (.17)	1.10 ^{***} (.17)
gamount ²	-.16 ^{***} (.03)	-.15 ^{***} (.03)	-.15 ^{***} (.03)	-.15 ^{***} (.03)	-.15 ^{***} (.03)	-.15 ^{***} (.03)	-.15 ^{***} (.03)	-.15 ^{***} (.03)	-.15 ^{***} (.03)	-.15 ^{***} (.03)	-.15 ^{***} (.03)
bamount	1.44 ^{***} (.25)	1.45 ^{***} (.26)	1.43 ^{***} (.26)	1.42 ^{***} (.26)	1.41 ^{***} (.26)	1.42 ^{***} (.25)	1.39 ^{***} (.26)	1.42 ^{***} (.26)	1.43 ^{***} (.25)	1.39 ^{***} (.25)	1.43 ^{***} (.26)
bamount ²	-.29 ^{**} (.09)	-.29 ^{**} (.09)	-.29 ^{**} (.09)	-.29 ^{**} (.09)	-.30 ^{**} (.09)	-.29 ^{**} (.09)	-.28 ^{**} (.09)	-.29 ^{**} (.09)	-.29 ^{**} (.09)	-.28 ^{**} (.09)	-.29 ^{**} (.09)
return	-.23 ^{**} (.08)	-.24 ^{**} (.08)	-.25 ^{**} (.08)	-.25 ^{**} (.08)	-.25 ^{**} (.08)	-.25 ^{**} (.08)	-.26 ^{**} (.08)	-.25 ^{**} (.08)	-.25 ^{**} (.08)	-.24 ^{**} (.08)	-.25 ^{**} (.08)
surrender	-.45 ^{***} (.08)	-.46 ^{***} (.08)	-.44 ^{***} (.08)	-.44 ^{***} (.08)	-.44 ^{***} (.08)	-.45 ^{***} (.08)	-.44 ^{***} (.08)	-.44 ^{***} (.08)	-.44 ^{***} (.08)	-.45 ^{***} (.08)	-.44 ^{***} (.08)
confess	-.15 [*] (.08)	-.15 [*] (.08)	-.15 [*] (.08)	-.15 [*] (.08)	-.15 [*] (.08)	-.15 [*] (.08)	-.16 [*] (.08)	-.15 [*] (.08)	-.15 [*] (.08)	-.15 [*] (.08)	-.15 [*] (.08)
overturn	.31 (.28)	.30 (.28)	.26 (.28)	.24 (.28)	.27 (.28)	.29 (.28)	.27 (.28)	.26 (.28)	.28 (.28)	.26 (.28)	.26 (.28)
contribute	.17 (.17)	.18 (.17)	.19 (.17)	.19 (.17)	.19 (.17)	.18 (.17)	.19 (.17)	.19 (.17)	.18 (.17)	.16 (.17)	.19 (.17)
accessory	-.59 ^{***} (.10)	-.59 ^{***} (.10)	-.55 ^{***} (.10)	-.55 ^{***} (.10)	-.55 ^{***} (.10)	-.56 ^{***} (.10)	-.54 ^{***} (.10)	-.56 ^{***} (.10)	-.55 ^{***} (.10)	-.52 ^{***} (.10)	-.55 ^{***} (.10)
askbribe	.23 [*] (.10)	.22 [*] (.11)	.22 [*] (.11)	.21 [*] (.11)	.22 [*] (.11)	.22 [*] (.11)	.21 (.11)	.21 [*] (.11)	.22 [*] (.11)	.21 [*] (.11)	.22 [*] (.11)
othercrime	.49 ^{***} (.09)	.49 ^{***} (.09)	.47 ^{***} (.09)	.47 ^{***} (.09)	.47 ^{***} (.09)	.47 ^{***} (.09)	.48 ^{***} (.09)	.47 ^{***} (.09)	.47 ^{***} (.09)	.49 ^{***} (.09)	.47 ^{***} (.09)
triallevel	.23 (.14)	-.13 (.07)	-.13 (.07)	-.13 (.07)	-.13 (.07)	-.12 (.07)	-.12 (.07)	-.13 (.07)	-.13 (.07)	-.13 (.07)	-.13 (.07)
Districtct	-.69 ^{**} (.23)										
Intct	-.26 (.15)										
Highct	.00 (.00)										
senior		.12 (.14)	.05 (.14)	.04 (.14)	.04 (.14)	.04 (.14)	.03 (.14)	.05 (.14)	.05 (.14)	.02 (.14)	.04 (.14)
Han			.12 (.12)	.12 (.12)	.11 (.12)	.11 (.12)	.12 (.12)	.12 (.12)	.12 (.12)	.12 (.12)	.12 (.12)
men			.21 [*] (.08)	.20 [*] (.08)	.21 [*] (.08)	.21 [*] (.08)	.21 [*] (.08)	.20 [*] (.08)	.19 [*] (.08)	.21 [*] (.08)	.20 [*] (.08)
age			.06 (.03)	.06 (.03)	.06 (.03)	.05 (.03)	.06 (.03)	.06 (.03)	.06 (.03)	.07 [*] (.03)	.06 (.03)
party				.12 (.19)							
economy					.34 [^] (.22)						
judiciary						-.15 (.11)					
othercon							.12 (.09)				
association								-.02 (.07)			
St.co.									.09 (.07)		

	Insentence w/ ct&trial	Insentence w/ senior added	Insentence w/ indivi- added	Insentence w/ party added	Insentence w/ economy added	Insentence w/ judiciary added	Insentence w/ ot-organ added	Insentence w/ associatio n added	Insentence w/ st-co. added	Insentence w/ village added	Insentence w/ public added
village											
public											
_cons	4.55*** (.28)	4.89*** (.41)	4.19*** (.69)	4.20*** (.69)	4.22*** (.69)	4.37*** (.71)	4.22*** (.69)	4.27*** (.47)	4.29*** (.47)	4.18*** (.47)	4.20*** (.70)
adjR ²	.43	.43	.43	.43	.43	.43	.43	.43	.43	.44	.43
N	922	922	922	922	922	922	922	922	922	922	922
cov	-.12^ (.07)	-.12^ (.07)	-.12^ (.07)	-.12^ (.07)	-.11^ (.07)	-.10^ (.07)	-.11^ (.07)	-.12^ (.07)	-.13^ (.07)	-.14* (.07)	-.12^ (.07)
gamount	1.13*** (.16)	1.12*** (.17)	1.09*** (.17)	1.09*** (.17)	1.06*** (.17)	1.07*** (.17)	1.10*** (.17)	1.09*** (.17)	1.09*** (.17)	1.09*** (.17)	1.10*** (.17)
gamount ²	-.16*** (.03)	-.15*** (.03)	-.15*** (.03)	-.15*** (.03)	-.15*** (.03)	-.15*** (.03)	-.15*** (.03)	-.15*** (.03)	-.15*** (.03)	-.15*** (.03)	-.15*** (.03)
bamount	1.44*** (.25)	1.45*** (.26)	1.43*** (.26)	1.42*** (.26)	1.41*** (.26)	1.42*** (.25)	1.39*** (.26)	1.42*** (.26)	1.43*** (.25)	1.39*** (.25)	1.43*** (.26)
bamount ²	-.29** (.09)	-.29** (.09)	-.29** (.09)	-.29** (.09)	-.30** (.09)	-.29** (.09)	-.28** (.09)	-.29** (.09)	-.29** (.09)	-.28** (.09)	-.29** (.09)
return	-.23** (.08)	-.24** (.08)	-.25** (.08)	-.25** (.08)	-.25** (.08)	-.25** (.08)	-.26** (.08)	-.25** (.08)	-.25** (.08)	-.24** (.08)	-.25** (.08)
surrender	-.45*** (.08)	-.46*** (.08)	-.44*** (.08)	-.44*** (.08)	-.44*** (.08)	-.45*** (.08)	-.44*** (.08)	-.44*** (.08)	-.44*** (.08)	-.45*** (.08)	-.44*** (.08)
confess	-.15* (.08)	-.15* (.08)	-.15* (.08)	-.15* (.08)	-.15* (.08)	-.15* (.08)	-.16* (.08)	-.15* (.08)	-.15* (.08)	-.15* (.08)	-.15* (.08)
overturn	.31 (.28)	.30 (.28)	.26 (.28)	.24 (.28)	.27 (.28)	.29 (.28)	.27 (.28)	.26 (.28)	.28 (.28)	.26 (.28)	.26 (.28)
contribute	.17 (.17)	.18 (.17)	.19 (.17)	.19 (.17)	.19 (.17)	.18 (.17)	.19 (.17)	.19 (.17)	.18 (.17)	.16 (.17)	.19 (.17)
accessory	-.59*** (.10)	-.59*** (.10)	-.55*** (.10)	-.55*** (.10)	-.55*** (.10)	-.56*** (.10)	-.54*** (.10)	-.56*** (.10)	-.55*** (.10)	-.52*** (.10)	-.55*** (.10)
askbribe	.23* (.10)	.22* (.11)	.22* (.11)	.21* (.11)	.22* (.11)	.22* (.11)	.21 (.11)	.21* (.11)	.22* (.11)	.21* (.11)	.22* (.11)
othercrime	.49*** (.09)	.49*** (.09)	.47*** (.09)	.47*** (.09)	.47*** (.09)	.47*** (.09)	.48*** (.09)	.47*** (.09)	.47*** (.09)	.49*** (.09)	.47*** (.09)
triallevel	.23 (.14)	-.13 (.07)	-.13 (.07)	-.13 (.07)	-.13 (.07)	-.12 (.07)	-.12 (.07)	-.13 (.07)	-.13 (.07)	-.13 (.07)	-.13 (.07)
Districtct	-.69** (.23)										
Intct	-.26 (.15)										
Hightct	.00 (.00)										
senior		.12 (.14)	.05 (.14)	.04 (.14)	.04 (.14)	.04 (.14)	.03 (.14)	.05 (.14)	.05 (.14)	.02 (.14)	.04 (.14)
Han			.12 (.12)	.12 (.12)	.11 (.12)	.11 (.12)	.12 (.12)	.12 (.12)	.12 (.12)	.12 (.12)	.12 (.12)
men			.21* (.08)	.20* (.08)	.21* (.08)	.21* (.08)	.21* (.08)	.20* (.08)	.19* (.08)	.21* (.08)	.20* (.08)
age			.06 (.03)	.06 (.03)	.06 (.03)	.05 (.03)	.06 (.03)	.06 (.03)	.06 (.03)	.07* (.03)	.06 (.03)
party				.12 (.19)							
economy					.34^ (.22)						
judiciary						-.15 (.11)					
othercon							.12				

							(.09)					
associati on												
St.co.												
village												
public												
_cons	4.55***	4.89***	4.19***	4.20***	4.22***	4.37***	4.22***	4.27***	4.29***	4.18***	4.20***	
	(.28)	(.41)	(.69)	(.69)	(.69)	(.71)	(.69)	(.47)	(.47)	(.47)	(.70)	
adjR ²	.43	.43	.43	.43	.43	.43	.43	.43	.43	.44	.43	
N	922	922	922	922	922	922	922	922	922	922	922	

Standard errors in parentheses, $\hat{p} \leq 0.1$, $* p \leq 0.05$, $** p \leq 0.01$, $*** p \leq 0.001$

NOTE: The results of the district variables and the jurisdiction variables are omitted for simplicity.

Table 2.11 OLS Estimates of the Relationship of Trial Level to Total Sentence Excluding Non-Appealed Cases

	Lnpenaltysentence w/ fund amount	Lnpenaltysentence w/ legal factors	Lnsentence w/ all in
triallevel	.10 (.10)	.01 (.08)	.02 (.08)
cov	.05 (.11)	-.05 (.09)	-.10 (.10)
gamount	1.99*** (.25)	1.72*** (.20)	1.59*** (.21)
gamount ²	-.36*** (.06)	-.32*** (.05)	-.30*** (.05)
bamount	2.58*** (.43)	1.73*** (.36)	1.65*** (.37)
bamount ²	-.70*** (.18)	-.40** (.15)	-.41** (.15)
return		-.26** (.10)	-.28** (.10)
surrender		-.46*** (.12)	-.44*** (.12)
confess		.13 (.10)	.10 (.10)
overturn		.45 (.29)	.56 (.30)
contribute		.04 (.23)	.09 (.23)
accessory		-.56*** (.13)	-.36** (.14)
askfor		.26 (.13)	.25 (.14)
othercrime		.45*** (.10)	.48*** (.10)
Han			-.10 (.15)
men			.20 (.11)
age			-.01 (.05)
St.co.			.27* (.13)
village			-.43* (.18)
_cons	4.09*** (.08)	4.45*** (.10)	4.17*** (.40)
adj. <i>R</i> ²	.24	.38	.40
<i>N</i>	427	419	419

Standard errors in parentheses, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

III REASSESSING THE OFFICIAL NARRATIVES ABOUT THE COV SYSTEM

A. INTERPRETATION OF QUANTITATIVE FINDINGS

Is COV a Response to Legal Factors?

From the findings presented in Chapter II, it is clear that COV has functioned to move many serious public corruption cases to certain targeted trial courts. These cases are not randomly selected to be tried alternatively, and the alternative trial court is not decided randomly, either. As can be seen from Table 2.3, the monetary value of the illicit funds leads to a statistically significant increase in the likelihood of a case being tried alternatively. Tables 2.8 and 2.9 show that at the district level, cases are more likely to be transferred to Xicheng district, whereas at the intermediate level, cases are more likely to be sent to the No. 1 Intermediate Court.

I also looked at the effects of other legal factors on the probability of being tried alternatively, and these results further confirm that the more serious the case, the higher the possibility it will be tried alternatively. As seen in Table 2.4, if the defendant actively asks for a bribe, which would tend to increase his sentence if convicted, he is statistically more likely to be tried alternatively; and if he voluntarily returns the illicit funds before the trial, which would tend to decrease his sentence, he is statistically less likely to be tried alternatively.

Moreover, in operation, the COV system functions to decrease the differences in sentence caused by the change of the trial court. Since the targeted alternative trial courts impose, on average, harsher punishments than other similar courts in Beijing, a change of venue has a statistically significant negative net effect on the sentence, which cancels out such difference. Table 2.9 shows that Xicheng District Court imposes, on average,

statistically harsher punishments than the majority of other district courts in Beijing; and cases concluded by the No. 1 Intermediate Court involve, on average, longer sentences than all of the other intermediate courts in Beijing, all else equal. Table 2.10 shows that COV actually functions to decrease the sentence, all else equal.

Based on the data, it seems that COV operates to prevent local bias in serious public corruption cases by transferring them to other courts, while at the same time ensuring that the cases are still tried under the same standards as in their home courts by decreasing the difference between the home court and the alternative court. However, such a conclusion may not withstand further analysis.

First, the perceived seriousness of a public corruption case may not actually be the *reason* to use COV, but instead the *result* of its use. It is always difficult to draw a causal conclusion from a statistical relationship.

In China, cases *tried* alternatively are also *investigated* alternatively. When COV is activated in public corruption cases, the alternative handling of the case involves three stages: investigation by an alternative agency, prosecution by an alternative prosecutor, and trial by an alternative court. According to China's Criminal Procedure Law, a prosecutor can only prosecute in its corresponding court, which is at the same level and located in the same area as the prosecutor. Thus, a case that is tried alternatively is *always* a case that has been investigated alternatively.

At the beginning of an investigation, however, the seriousness of a case is not obvious. Factors like whether the suspect has actively asked for a bribe, or whether the suspect has returned the illicit funds, cannot be readily known and thus cannot have an effect on the

decision whether to implement COV. Only factors regarding the identity, position, and political level of the suspect, the number of suspects, and a rough idea of the monetary value can be easily obtained, and can therefore possibly influence the COV decision. Once a case is selected to be investigated alternatively, the new investigator will be more motivated than in local cases to dig thoroughly and to ensure that the case results in conviction. These investigations thus may turn out to uncover larger monetary values than similar investigations in the default jurisdiction. Moreover, factors like the position and the administrative level of the suspects also have a positive relationship with the monetary value of the public corruption case, increasing its seriousness.

In short, although COV is closely *related* to the seriousness of a case, COV is not *caused* by such seriousness. Given that the true seriousness of the crime can only be accurately and thoroughly determined at the conclusion of the investigation process, “seriousness” for COV purposes is essentially predetermined.

Because the decision to invoke the COV often precedes the investigation stage, much of China’s anti-corruption work can be characterized as “seeking facts from truth.” Although the use of COV *looks* to be associated with the seriousness of corruption cases, the use of COV actually *produces* such seriousness. In essence, the decision to invoke COV is predetermined, and adheres to a political logic rather than a legal one.

Second, the use of COV has not prevented or corrected local bias, but instead has increased punishments and/or exaggerated differences in sentencing. The statistically significant difference in sentence among different trial courts remains, even after COV has been used frequently. The effect of COV on decreasing sentences is too small to correct for

the underlying sentencing differences between courts, and in some circumstances, COV even increases the difference. As seen in Table 2.9, a case transferred from No. 2 Intermediate Court to No. 1 Intermediate Court through the COV system still receives, on average, a longer sentence than a case with the same legal factors tried ordinarily at No. 2 Intermediate Court. The difference is even greater if the case is transferred from Shijingshan District Court to Xicheng District Court.

The use of COV centralizes the transfer of the cases into certain specifically targeted trial courts, like the Xicheng District and No. 1 Intermediate Courts. For the few transferring courts that routinely impose harsher punishments than these targeted courts, COV makes the punishment of transferred cases even lighter than cases with the same legal factors tried at the transferring courts. And for the majority of transferring courts that impose, on average, lighter punishments than the targeted courts, COV leads to significantly harsher punishments for transferred cases than non-transferred ones with the same legal facts. In both situations, COV has not functioned to make the judgment fairer, to correct local bias, or to protect justice. This further confirms that the use of COV, in practice, does not correct for local bias in serious public corruption cases.

Is COV a Response to Extralegal Factors?

As indicated in the section above, the relationship between COV and various legal factors is insufficient to explain the use of COV, and extralegal factors may actually exert substantial influence over decision-making regarding whether or not to activate the COV system. I further studied this relationship, between the use of COV and extralegal factors, to see whether COV functions to prevent local bias in cases involving certain extralegal factors.

Table 2.4 shows that the use of COV has a statistically significant positive correlation with whether the defendant holds a position in agencies including anti-corruption agencies, police and the court, or state-owned enterprises; whether he/she is an ordinary citizen without any public position; and whether his/her ethnicity is Han. At the same time, the use of COV has a statistically significant negative correlation with whether the defendant holds a position in agencies including public universities and associations, other executive organs, or local congresses and political consultative conferences; whether the defendant holds a village management position; and his/her age. Other extralegal factors do not have a statistically significant relationship with COV.

The COV system is supposed to help correct for local bias against certain kinds of cases and defendants, which can be operationalized to mean that COV should help to decrease the differences in punishments between such cases and other cases containing the same legal factors. It is therefore necessary to look at the differences in punishments between cases with the same legal factors but different extralegal factors, which can reveal the effect of such extralegal factors on the sentence.

Table 2.10 shows that some extralegal factors do indeed have statistically significant effects (at a significance level of 0.1 or 0.06) on the total sentence, when all legal factors are held equal. Since cases with the same legal factors should not be judged differently simply because some extralegal factors are different, the existence of a net effect for some of these extralegal factors indicates that there is evidence of unreasonable bias towards those cases and defendants. To illustrate clearly how the use of COV is related to these extralegal factors which have different relationships to the total sentence, I summarized their effects in Table

3.1, which is based on the results in Tables 2.3, 2.4, 2.9, and 2.10. Keep in mind that Table 2.10 shows that COV continues to have an overall effect of decreasing the sentence, even after adding extralegal factors.

Controlling for all legal factors, the gender of the defendant does not have a statistically significant effect on the sentence. But other extralegal factors – i.e., the defendant’s age or ethnicity, and certain types of positions – do have such an effect. Moreover, when all legal factors are the same, economic officials receive the highest sentence, followed by (party, state-owned company, and other organ) officials, then by association officials and the general public, then by judicial officials, and finally by local congress and village officials, who receive the lightest sentence. This can be summarized as follows:

In sentence as the outcome variable: economic officials > (party, state-owned companies, other organs) > (associations, general public) > judiciary > (congress, village)

With these findings in mind, let us return to COV’s relationship to extralegal factors. When analyzing the effect of extralegal factors on the use of COV, I did not control for all legal factors, but simply correlated COV with each extralegal factor. But as we have already seen, the decision to try a case alternatively through the COV system is actually pre-decided at the investigation stage, during which time the legal factors do not have an influence because they have not yet been determined. Because an alternatively tried public corruption case necessarily follows an alternatively investigated case, the *cov* variable here actually represents the use of COV *during investigation*, which will necessarily be the same as the use of COV *during trial*. Thus the legal factors actually *do not need to be controlled* in this model. Only facially obvious factors, i.e., extralegal factors like the defendant’s characteristics and

official position, can possibly make a difference at the start of the investigation stage.

Some of these factors overlap or are correlated with each other. Table 2.4 shows that, at a significance level of 0.1, defendants who are of Han ethnicity tend to hold judicial positions, are from state-owned companies, or are members of the general public, and are much more likely to be investigated alternatively; while defendants who are older, hold positions in other executive organs, are from governmental associations, or are village officials, are much less likely to be investigated elsewhere through the COV system. Gender, senior-level position, or economic or party positions do not have a statistically significant effect on the use of COV. Using each area (or type of position) as the base group to compare with cases involving other position areas, I further found that economic and village officials are least likely to be investigated alternatively, followed by governmental associations and other executive organs, then party organs and state-owned companies, then the general public, with judicial officials being the most likely to be investigated elsewhere, as follows:

judiciary > general public > (party, state-owned companies) > (governmental associations, other organs) > (economic, village officials)

From these findings, it is clear that the use of COV does not actually respond to the perceived existence of local bias as represented by the extralegal factors that have a statistically significant effect on the punishment. With the exception of judicial officials, most public officials are more likely than ordinary people to be tried locally, indicating a conservative and protective attitude in using the COV towards non-judicial public officials. Even when village, economic, state-owned-company, and congressional or other executive organ positions are found to have a statistically significant effect on the sentence of cases

with the same legal factors, the use of COV did not function to move cases involving these officials elsewhere.

Moreover, the use of COV is mismatched with the effects of extralegal factors. Use of COV does not have a statistically significant correlation with any of the factors that statistically affect the sentence, such as the senior level of the defendant and economic positions. On the other hand, for factors that do *not* statistically affect the sentence, such as judicial positions, governmental association positions, and the general public, the use of COV turns out to be statistically significantly related to each of them.

Furthermore, for factors that result in a statistically significant increase in sentence, such as state-owned company positions, the use of COV works to further increase the sentence in these cases, as it makes these cases more likely to be tried at Xicheng or No. 1 Intermediate Courts, which generally impose harsher punishments. In contrast, for factors that result in a statistically significant decrease in sentence, such as village positions, the use of COV functions to further decrease the sentence in these cases, as it makes these cases very unlikely to be transferred to the harsher courts. Even when COV works in the correct direction to cancel out the biased effect of extralegal factors, the effect of the use of COV is too slight to make a substantive difference.

Table 3.1 A Summary of Each Extralegal Factor’s Effect on Total Sentence and the Use of COV

	Lnsentence	COV
age	+	-
Han	+	+
men	X	X
int ct	+	+
senior	+	X
village	-	-
party	X	X
judiciary	X	+
economy	+	X
othercon	+	-
association	X	-
St.co.	+	+
public	X	+

NOTE: X means there is no statistically significant effect; detailed results in Tables 2.3, 2.4, 2.9, and 2.10.

B. DISPROOF OF OFFICIAL NARRATIVES

As indicated in the previous chapter, it is widely agreed (even if not legally established) that two prevailing theories may uphold the routine use of COV in public corruption cases involving officials. The first theory posits that COV serves to prevent intensive local bias so that justice can be realized. Some cases may greatly affect the interests of the local community and be so serious that the impartiality of local judges cannot be ensured. Such cases must be transferred to alternative venues. “Local bias” in public corruption cases refers primarily to the protection of, or leniency towards, criminal suspects by local judicial actors. The second prevailing theory posits that COV serves to protect the image of judiciary, as the public may distrust the fairness of the trial in these cases, if they were tried locally. However, as indicated by the analysis earlier in this chapter, the first theory may not stand at all, while the second theory is insufficient to explain the use of COV, thus calling for alternative explanations.

Limitations of the First Prevailing Theory

Based on the data, I have demonstrated that – contrary to the fear of local judicial protectionism – in actuality, there is local judicial hostility towards certain kinds of cases and defendants. Some district courts in Beijing, in areas with similar levels of economic development, impose much harsher punishment than others in cases with the same legal factors. Within the same district and for the same criminal activities, economic officials receive harsher punishment than judicial officials; and senior level officials receive harsher punishment than low-level and village officials. However, the use of COV does not respond effectively to these local hostilities toward certain cases and defendants. COV fails to move senior officials to other courts, or to transfer serious public corruption cases elsewhere, in a manner that reduces the severity of the sentences. On the contrary, COV operates to transfer such cases to courts that generally impose harsher punishments than most courts, and thus increases the severity of sentences.

As compared with the public perception, the data here does not indicate that there is a problem with local protectionism towards public corruption cases involving officials. Although the effects of the monetary value indicate that as the amount of bribed or grafted money increases, the sentence increases at a decreasing rate, such an effect – which generally favors public officials who corruptly obtain larger amounts of money – is actually caused by China’s criminal rules, not local judicial favoritism, and is constant across different judicial districts. The COV system cannot alter this result, because no court is better than any other in this regard.

It is possible that because of the use of COV, local protectionism has been completely corrected and thus does not appear in the sample set. In other words, if the cases in the

sample set had *not* been transferred, perhaps they *would have received* statistically significantly lighter sentences. And since the COV system is operating to transfer cases disproportionately to targeted courts that generally impose harsher punishments, it seems plausible that COV does have the aim to increase the punishment of the transferred cases, thus eliminating the original protectionism.

But the data reveals that *even if* COV is intended to eliminate local protectionism, such a function is being used selectively and has been targeted at only certain groups, indicating at best a mixed mission for the use of COV. As shown above, different groups of public officials receive differential treatment with respect to COV. Judicial, village, and governmental association officials generally all receive much lighter punishments than economic and congressional officials in the same types of cases. If the COV system is meant to prevent local protectionism, it should work by transferring the cases involving *all three* of these types of public officials, all of whom typically receive lighter sentences. However, cases involving village officials are almost never moved to other places, as are less than one-third of the cases involving governmental association officials, whereas half of those involving judicial officials are transferred.

Limitations of the Second Prevailing Theory

The second prevailing theory is that the COV system serves the purpose of protecting the public reputation of the judiciary, by transferring difficult cases that could undermine the public's view of the integrity of judicial officials. A closer examination of the COV treatment of corruption cases involving judicial officials reveals the limitations of this theory.

The relatively widespread use of COV in public corruption cases involving judicial

officials actually tends to support the theory that the COV works to protect public confidence in judicial justice. First, when a judicial official is charged with public corruption, there is great suspicion among the general public that the resolution of the case will not be fair or just, due to the judicial official's influence over the agencies that directly work on the investigation and must reach a conclusion about his/her alleged criminal activities – although the data shows there is actually no local protectionism towards judicial officials, as compared with the general public. Moreover, as established in China's criminal rules, whenever the president of the default court has to withdraw from a case, that case needs to be transferred elsewhere. The influence of the court's president over the case judgment is comparable to the influence of high-level leaders of other anti-corruption agencies over the resolution of the case. Thus, the finding that COV has been used frequently in corruption cases involving judicial officials tends to indicate that such use may, in fact, be intended to protect the image of the judiciary.

Second, judicial officials do indeed receive lighter sentences than other types of public officials. The possibility that judicial officials may be unreasonably favored in the default court thus seems to be higher, further increasing public suspicion regarding these cases. Under the COV system, cases involving judicial officials are more likely to be transferred than cases involving other public officials. The same pattern occurs with governmental association officials. Regarding village officials, in Beijing, the village is situated at a lower administrative level than the district courts, and district courts are located at a district center outside the village. District courts thus are not perceived as “belonging” to a village – there is no “village court” in Beijing – and thus the fairness of district courts in trying village officials

in Beijing is not viewed with public suspicion. So the relatively rare use of COV in cases involving village officials is not necessarily contrary to the “judicial integrity” theory.

Third, the data about corruption cases involving judicial officials tends to show that the COV system must be more about protecting the *image* of the local judiciary than it is about affecting the *actual sentences* imposed in such cases. This is because judicial officials tend to receive lighter punishments than the ordinary public in general, and as we have seen, the use of COV actually *decreases* the severity of the punishments imposed against judicial officials, all else being held equal.

However, the use of COV in corruption cases involving judicial officials only represents a small part of its use in the overall sample set. If the purpose of COV was to protect the judicial image, and to erase public suspicion towards local courts trying local public officials, then why are some other types of public officials much less likely than the ordinary public to be tried alternatively? Even cases involving party organ officials, who are generally deemed to have great influence over the local judiciary, are seldom transferred elsewhere.

Moreover, COV is not well suited to protect the image of the local judiciary. Although COV operates by removing a case from a local court that may be viewed with suspicion by the local public, COV also deprives the local public of the chance to witness the trial of the accused public official in a local forum. And in any event, the public’s primary focus is probably not on the trial, but on the end result – i.e., the conviction and sentence imposed against the accused public official. To build public confidence in the local judiciary, it would be both more efficient and more effective for the superior court simply to instruct the original court to punish judicial officials more severely than others – which would render it

unnecessary (and inefficient) to transfer the cases elsewhere.

Furthermore, “public suspicion” and “judicial image” are both obscure and inoperable concepts. It is unclear how much the judiciary’s position is affected by public suspicion in the local judiciary. The data showing that some types of public officials receive generally harsher punishment than the general public, and that judicial officials receive generally lighter punishment than other types of public officials, further weaken the connection between judicial position and public suspicion in the local judiciary. Such suspicion can also be theoretically supported in cases involving other types of public officials, making the theory incapable of distinguishing these other officials from judicial officials. Besides, the choice to try a case alternatively is pre-decided at the investigation stage. Public suspicion is not likely to be a concern during this early investigation stage, because the public likely does not yet know much about the case. There must be factors other than judicial image that are affecting the decision-making regarding COV.

Finally, considering China’s centralized authoritarian polity, the influence of public opinion over agency decision-making is quite limited. The public not only lacks the information and channels to influence decisions, but more importantly lacks the power and resources to play a substantive role in political decision-making. This also applies in the COV context. When the superior court or anti-corruption agency decides whether to use COV, public concern about the local judiciary may be a factor, but obviously not the only factor.

In conclusion, the second prevailing theory about the purpose of COV may hold true under certain circumstances, but it is inaccurate as applied to other situations, and in any event does not suffice to explain the data concerning COV. The analyses regarding both of

the currently prevailing theories indicate that COV has a mixed mission, and operates with multiple factors playing a role in the decision making about COV.

Explaining the Gap between Intended Purpose and Actual Use

One possible way to reconcile the loosely coupled nature of the “official” purposes of the COV and its actual use would be to claim that the COV system has malfunctioned. Malfunction of an institution could be defined in several ways, and multiple forms exist even within each definition.

(1) Malfunction could refer to a mismatch between the observed situations and the intended ones, i.e., the observed operation of the institution deviates substantively from its original design. The design of an institution normally consists of several parts. As in the COV system, there are at least two parts: the designed use of COV and the designed results from such use. If either of the two prevailing theories is used as the design, then the designed results would be the prevention of local bias and the protection of public confidence in the local judiciary; in short, fair trials in those cases that are designated to be tried alternatively.

Different parts of an institution may or may not have the designed interactions. The designed interactions can take form in causal, correlative, or moderating relationships, or many other kinds – with the exception, under normal circumstances, of contradictive or cancelling relationships. As for the COV system, there is an intended causal relationship between the use of COV and the results after its use. With the use of COV, trials in the transferred cases should be fair.

A mismatch occurs when any observed part of the institution deviates from its corresponding designed part, or any observed relationship between different parts of the

institution differs from its corresponding designed relationship. But as is widely agreed, a single mismatch would not constitute the overall malfunction of an institution. A malfunction requires a mismatch of a certain degree and scope. A mismatch of a single part or relationship, even if it is substantive, is not enough. There must be substantial mismatches in substantive or essential parts or relationships of the institution in order to constitute an institutional malfunction. Again, different mismatches could have different relationships between them, such as causal, moderating, overlapping, contradictive, or no relationship at all.

If we assume that the COV system was designed according to the two prevailing theories, the data indicate that the use of COV is substantively inconsistent with the supposed use under both theories, including (a) which cases should be transferred, (b) where the cases should be transferred to, and (c) how the alternative courts should judge the transferred cases. The results of the use of COV represented in the sample set are also inconsistent with the designed result under both theories: local hostility to some cases and defendants still exists, many types of public officials remain more likely to be tried locally than the general public, and officials holding different positions continue to receive different treatment.

Even the designed causal relationship between the designed use of COV and the designed results of its use is not found in the data. Because COV is used to send cases to targeted courts that generally impose harsher punishments, defendants in transferred cases cannot be guaranteed fair trials, but instead can easily be treated more unfairly than in cases that have not been transferred. Under this definition, the COV system's operation could be taken as a kind of malfunction from its theoretical design.

In some situations, even substantive mismatches should not be taken as an institutional

malfunction. When mismatches happen, the operation of the institution can take several forms. It may operate following a random or arbitrary pattern, following no rule. This is recognized as a malfunction. Or its operation may still follow a rule, or multiple rules, although not the designed rules. Or its operation may not be sufficiently regulated to be considered to have rules at all, but the system may still have some sequences, orders, or informal rules that are fluid and flexible. These rules or informal orders may further interact with each other and have different or intertwined effects on different parts/relations of the institution. Additionally, because an institution has several parts and relations, it is also possible that its operation consists of some parts/relations having rules, some parts/relations having transitional or quasi-rules, and some parts/relations operating randomly.

In the COV system, the use of COV and the results found in the data still do follow some rules. The use of COV focuses on judicial officials, centralizes transferred cases in harsher courts, and decreases the harsh punishment of those alternative courts in the sentencing of transferred cases. The results of the use of COV are that most officials are tried locally, local hostility remains, and different types of officials receive different sentences. Under these circumstances, it is difficult to claim that the institution has malfunctioned, because there are still theories that can explain those rules or informal orders, to explain its operation. Such theories may reflect an underlying design, an expected design that unfolded later, or an unexpected but still allowable design. Or it can be argued that, although being unexpected, such operation is still good because it protects or provides order. This brings us to another type of definition of an institutional malfunction.

(2) An institutional malfunction could also mean that the observed deviating operation

of the institution does not satisfy some normative evaluation. This means that if deviant operations pass the normative standard, they cannot be called malfunctions. For example, the deviating operation might be cost/benefit efficient; or it might be legitimate and have a sufficient legal basis; or it might be moral and just. Philosophical, economic, psychological, sociological, anthropological, jurisprudential, or historical theories may all provide such normative standards for evaluating whether or not the institution has malfunctioned. They may evaluate the operation of different parts or relations of the institution, or the rationality of the rules or informal orders or their interactions or their accumulations of the deviating operations, or even the theories or the normative standards that have been used to evaluate such functions.

Under this definition, the mismatch of the function of COV with the two prevailing theories may not simply be taken as a malfunction. The data already indicate that the operation of the COV system at least represents some kinds of informal rules that could be further explained or justified, and that the COV probably has a mixed mission.

Moreover, the answer to whether or not an institution has malfunctioned is never the end of the analysis. It is only a way to guide the future of the institution: to decide whether, and how, it should be continued or reformed. The main value of the malfunction question is that identifying an institutional malfunction signals the need either to reform or to terminate the institution.

Some may argue that since the answer is not stable, under different definitions of malfunction, then it is not reliable as a signal for future action; and that, since the end result of the malfunction question is to determine whether a specific and sound theory can be found

to explain the deviation, then would it not be better to omit the middle step, i.e., the malfunction question, and simply look directly for a theory to explain the data?

The first concern is justified, but the malfunction definitions can be integrated into two steps. The first step is to determine whether there is a mismatch, and if so, its scope and degree. The second step is to determine whether the mismatch satisfies any rule or informal rule or sequence. The answers to these two questions would trigger different presumed diagnoses for the operation of the institution or its parts/relations, leading to different subsequent questions, and calling for correspondingly different actions.

The second concern cannot stand, because the way to find or build a theory to explain the data is never a direct way. It is always a trial-and-error process: first, a possible theory is offered to explain the data, and then the mismatch appears, which leads to the development of another possible theory to explain, qualify, or eliminate the mismatch. In reality, the malfunction is an inherent part of the operation of an institution, and thus cannot be skipped.

Before collecting data regarding the operation of an institution, there is a designed theory that supported the rational decision to implement the institution in the first place. So whether the institution operates according to the designed theory matters a lot, and different kinds of deviations call for different actions. Furthermore, if the definition of a malfunction is watered down to mean that only the completely random and arbitrary operation of an institution qualifies as a malfunction – and as long as there is *some* theory (or rule or informal order) that could explain the deviation, then the malfunction does not exist – then it would be too difficult to identify a malfunction, because it would be necessary to understand and apply all possible sound theories to the data before claiming a malfunction. At the same time, the

signal value of the malfunction would decrease to almost zero, because almost no malfunction could ever be found, and many deviating operations could pass the test. A categorical definition of malfunction is important in order to realize the signal value of the concept.

Using the two-part definition of malfunction proposed above, it is easy to achieve a general picture of the categories of institutional malfunctions, with corresponding signals. The method involves asking the following three questions: First, whether the institution or its certain parts/relations needs to be corrected instantly, or conditionally, or within a certain period, or in the long run. Second, how to correct the deviations, or which rule or theory to follow when making the necessary corrections. Third, what concrete measures can be taken to adjust the operation of the institution.

Within the second question, there are three sub-questions:

(1) The competition among different theories for the correction standard. As indicated from second definition of “malfunction,” when a substantive mismatch occurs, it does not necessarily activate a correction according to the designed theory. It depends upon the importance of realizing the designed theory, as compared with other possible theory candidates that support the mismatch or other correction plans. If the original designed theory has constitutional value, then a substantive deviation should trigger a “must-correct” signal according to the designed theory.

By contrast, if other possible theories have value superior to that of the designed theory, or if they may be justified as another designed theory, then the correction will primarily follow such other theories.

In the middle, there could be mixed theories that produce the correction standard. For complicated institutions, there could even be different theories supporting different parts/relations of the institution. The competition of these theories could occur independently in different parts/relations, or correlatively across groups of parts/relations. The standard for the competition could vary according to the values or functional conditions of the competing parts/relations.

(2) The correction of previously mistaken understandings about the relations and values of different parts of the institution. The institution may have multiple parts which have different relations between them, including direct/indirect, causal/moderating, and cumulative relations. Different parts play respective roles in the whole operation of the institution and have different values, which together create the values of the institution that are affirmed by the winning theories, and also represent the reasons why they should win the theory competition. Sometimes, the mismatch simply represents a misunderstanding of such relations or the values of the different parts, or how they may be integrated into a single institution. In these situations, a scientific correction, rather than a normative one, is required.

(3) Supplemental measures and the correction of side-effects. At this level, besides the normative and scientific correction plans, some facilitating measures that can help the correction fit into the already existing operation of the institution should also be considered. It is also important to consider how the correction may influence the interaction between the reforming institution and other closely related institutions, and even the operation of a larger group of institutions. It is necessary to include in the correction plan some supplemental measures to address contradictive parts of other institutions, to clean up obstacles for the

institution's operation, and to facilitate its role within the larger system. Moreover, using a holistic and systematic perspective, or a periodic or long-term perspective, and putting the isolated static institution back into the changeable dynamic and integral groups of institutions, the answers to some of the earlier questions might be challenged and might need to be revised.

In the COV system, we have found in the empirical data a substantive mismatch with the two prevailing theories about the purposes of COV. However, as explained, such a mismatch does not necessarily mean a malfunction, and does not automatically call for a correction of the institution's function according to those two prevailing theories, even if they are deemed to be the originally designed theories.

China's criminal procedure law recognizes the basic principle that, in some special situations, the superior court can instruct the default court to transfer a criminal case to another court – even though no such rule has been passed, by either the legislature or legislative organs, establishing the mission and the use of the COV system. The two prevailing theories, claiming that this COV system has been established to prevent local bias and to ensure public confidence in local judiciary, clearly have not been enacted by the legislature and involve no other constitutional values. These two prevailing theories may therefore be overcome or revised by other possible theories that can better explain the observed data and can uphold superior values – especially because the use of COV still follows some rules or informal order, as is evidenced by the data.

As for the mismatch that remains unexplained, the normative correction will be implemented following a discussion of the revised theories. The mismatch in the data,

regarding the causal relation between the use of COV and its results, is not explained by the two prevailing theories and needs a scientific correction to reevaluate and rebuild the relation. In addition, supplemental measures and holistic and periodic analyses will be used to facilitate and justify the correction process of the COV system. The third and last step in the reform process would be to develop a concrete correction plan, but that last step is beyond the scope of this dissertation and will not be discussed herein. Finally, even if the substantive mismatch with the two prevailing theories is seen as a malfunction, the two theories are simply inadequate – and the necessary correction thus cannot be based on those theories, without trying to better understand the true character of the unexplained observed data.

IV ALTERNATIVE EXPLANATION 1: RESOURCE REALLOCATION

A. THREE ALTERNATIVE EXPLANATIONS

As discussed in the previous chapter, the two “official” narratives about the use of COV – that COV prevents local bias and protects the public image of the judiciary – are insufficient to explain the characteristics of the use of COV and its results as presented in the data. In the remainder of this dissertation I will propose three alternative explanations for the purpose and operation of COV that are consistent with the empirical findings in Chapter 2. This sets an agenda for future research.

According to my first alternative explanation, rather than preventing local bias in favor of local officials, COV actually helps to reallocate resources within the city and crack down on hard cases to ensure the completion of the anti-corruption goals that have existed since before the start of the 2012 anti-corruption campaign. According to my second alternative explanation, rather than protecting the public image of the local judiciary, COV actually works to disrupt local governmental control over anti-corruption work and revitalize ineffective local anti-corruption forces, thereby helping to initiate the recent anti-corruption campaign. The third alternative explanation is that COV helps to establish centralized party leadership in anti-corruption work, and constitutes an essential part of China’s new anti-corruption model. I will refer to this new, centralized, party-led approach as “the party center’s leading control.” “Leading control” refers to the CCP’s ability to maintain continued dominance over anti-corruption work without directly participating in such anti-corruption work or directly deciding case outcomes.

The institutional design, prosecutors' incentives, and superior prosecutors' control over subordinate prosecutors' anti-corruption work all support the first alternative explanation of COV in reallocating resources. I will elaborate upon the first alternative explanation in the remainder of this chapter; in Chapters 5 and 6, respectively I will discuss the other two alternative explanations, and in Chapter 7, I will conclude with implications regarding the new anti-corruption system in China.

B. THE COV SYSTEM'S INSTITUTIONAL DESIGN

Article 26 of China's Criminal Procedure Law grants the superior court the power to instruct an inferior court that is not located in the default venue to try certain cases. This is the legal basis for the change-of-venue system in China. There are few rules regulating the activation and operation of this system. Besides Article 26, additional rules are found in Articles 16, 17, and 18 of the SPC Interpretation on Several Issues When Enforcing the Criminal Procedure Law (2012) (最高人民法院关于执行刑事诉讼法若干问题的解释), and Articles 14, 15, and 18 of the Supreme People's Procuratorate's (SPP) Rules on People's Procuratorates' Criminal Procedures (2012) (人民检察院刑事诉讼规则). Seen against the backdrop of China's entire legal and political system, these rules serve the main purpose of establishing COV as a tool for the city-level prosecutor to reallocate resources for anti-corruption work.

The power to initiate COV in public corruption cases is largely controlled by the superior prosecutors, with very weak legal limits and few entities to challenge the decision. First, according to China's Criminal Procedure Law, a prosecutor can only prosecute in its corresponding court, which is at the same level and located in the same area as the prosecutor.

Thus, if the corresponding alternative court does not want to try a case that has already been alternatively prosecuted and investigated by the prosecutor, there could be a conflict between the alternative prosecutor and the court. However, because prosecutors play a dominant role in public corruption cases, the courts are generally cooperative and will tend to go along with the prosecutors' decision to investigate a public corruption case alternatively. There are also sometimes internal communications between the superior prosecutor and the court, when the superior prosecutor decides to have a public corruption case investigated alternatively. Thus, the prosecutor generally prevails over the court in initiating COV.

According to interviews I conducted with judges,⁵³ when deciding whether to have an alternative court try the case, or whether to agree with the decision of the procuratorate to investigate the case alternatively, the courts indeed do take a look at the potential monetary value involved in the case, the number of officials suspected, the political level and type of position held by the suspected officials, and the complexity of the case. However, judges do not play an independent role in the decision-making, instead mostly cooperating with the decisions of the anti-corruption agency.⁵⁴ This is consistent with the “iron triangle” structure of the prosecutor, police, and court systems, and the relatively weak role that the court usually plays in criminal cases⁵⁵.

Second, according to the existing rules, COV can be activated in two ways. One occurs when the inferior prosecutors have disputes regarding the default venue of a criminal case.

⁵³ Interviews with seven judges from Beijing, two judges from Henan, and two judges from Zhejiang conducted in Beijing between December 2016 and February 2017.

⁵⁴ Interviews of four judges from Beijing, one judge from Henan, and two judges from Zhejiang conducted in Beijing between December 2016 and January 2017.

⁵⁵ Na Jiang, *Iron triangle of the gong jian fa: Lessons from wrongful convictions in capital cases?*, 46 INT'L J. L., CRIME, & JUSTICE 406 (2014).

They can submit a request to their common superior prosecutor to decide which court shall try the case. The other way occurs when a case is special, in which case the superior prosecutor could instruct an inferior prosecutor outside the default venue to investigate and prosecute the case. No matter how it is first activated, the power to decide whether COV is initiated is in the hands of the superior prosecutor. The defendant can neither make a request for, nor argue for or against the use of, COV at any stage. Nor can the defendant appeal the decision to use COV in the investigation, prosecution, or trial.

Besides the inability to challenge the superior prosecutor's decision regarding COV, the legal limits are also too vague to truly constitute limits on such decision-making. Except for the rules authorizing the superior prosecutor and court to decide to use of COV, there are no rules to limit such decision-making, such as any principles or specific guidelines regarding when a case is special enough to authorize the application of COV.

Moreover, the superior prosecutor decides where the case will be transferred to, without any legal limits. Thus, the prosecutor has complete power in the use of COV, not only regarding whether the system is initiated but also how the system is used, without any legal limits or possibility of being challenged.

C. THE PROSECUTORS' INCENTIVES TO REALLOCATE RESOURCES

The institutional context and incentive structure have the effect of motivating the superior prosecutor to use COV to reallocate resources and crack down on hard cases in anti-corruption. First, prosecutors have financial incentives to investigate sufficient numbers of public corruption cases, including hard and complicated ones. The budgets provided by local governments for most prosecutors remain tight. In the early 2000s, they were insufficient to

cover even the salaries of some prosecutors.⁵⁶ In some poor areas, the local government has even partly relied upon the prosecutor to relieve its own financial stress.⁵⁷ Things have improved recently, and in wealthy areas expenses related to ordinary prosecutorial work and case investigations can be resolved partly by the central government and partly by the local government.⁵⁸ However, in undeveloped poor areas, the finances of the prosecutor remain under severe pressure.⁵⁹

If the prosecutor wants to improve the working environment, build good office buildings, purchase advanced equipment, hold trainings and team activities, and increase employees' assistance, it needs to find money for itself. There has been an unspoken rule that the illicit funds collected from public corruption cases investigated by the prosecutor would first be submitted to the local treasury and then partly returned to the prosecutor as financial assistance.⁶⁰ In wealthy areas, this unspoken rule has since been terminated, but in poor areas it is still effective.⁶¹ The ratio of how much of the fund is returned varies depending on the place. For example, in one district interviewed, all of the illicit funds would be returned; in another district interviewed, 80% of the illicit funds would be returned.⁶²

⁵⁶ Lin Ge, *The Function of the Procuracy System From The Sufficient Finance Perspective*, 1 J. YUNNAN U. (L. EDITION) 114 (2013) (葛琳, 经费保障视野下的检察院运转, 《云南大学学报法学版》, 2013 年第 1 期第 114 页。)

⁵⁷ Interview of a prosecutor-general from Henan, conducted in Beijing, November 2014.

⁵⁸ Interviews of prosecutors from Beijing, Shanghai, and the south of Jiangsu, conducted in Beijing, April 2015.

⁵⁹ Interviews of prosecutors from Henan, the north of Jiangsu, and Anhui, conducted in Beijing, April 2015.

⁶⁰ Provisions of the Supreme People's Court, the Supreme People's Prosecutor, the Ministry of Public Security, the Ministry of State Security, the Ministry of Justice, and the Legislative Affairs Commission of the Standing Committee of the National People's Congress on Several Issues concerning the Implementation of the Criminal Procedure Law, art. 36 (effective on Jan. 1, 2013). It requires the submission to the national treasury of the illicit fund collected in convicted cases. According to the interviews, such fund in poor areas would still be returned to the prosecutor.

⁶¹ Series of interviews in Beijing, Henan, and Tianjin between March 2014 and April 2015; Ge, *supra* note 56, at 115 (葛琳, 第 115 页).

⁶² Interviews in Beijing in November 2014 and March 2015.

Second, prosecutors aim for high conviction rates to ensure positive annual evaluations. Each year, prosecutors have to be evaluated provincially, and the rankings are published publicly and recognized as a factor affecting promotion. The numbers of public corruption cases investigated and convicted annually are essential factors in this internal evaluation and have substantial influence over the prosecutors' reputations and promotions. To achieve high evaluation points, prosecutors have to handle a sufficient number of cases, including a sufficient number of cases involving large monetary values or senior officers. Prosecutors also must achieve a high conviction rate for docketed cases.

Because China's anti-corruption system is asymmetric and focuses largely on public officials, cases involving the bribed party are more important than cases involving the bribers.⁶³

Moreover, because of the "victimless" nature of public corruption, evidence is very limited in these cases. China requires the prosecutor to prove an illegal motive in public corruption cases under a high standard of proof.⁶⁴ The motive must be specifically related to certain incidences of official activities, decisions, or omissions.⁶⁵ In some cases, there are notes or diaries written by the officials to record these corrupt activities, which can be used as evidence to prove the motive. Otherwise, however, it is difficult to prove the motive, especially because China has a culture of maintaining social life or social networks through gifts and "red envelopes" containing cash. Thus, confessions by the officials or bribers are extremely important to ensure conviction in public corruption cases.

Because more important cases carry a heavier coefficient in the annual evaluation and

⁶³ Fenfei Li & Jinting Deng, *The Limits of Arbitrariness in Anticorruption by China's Local Party Discipline Inspection Committees*, 25 J. CONTEMPORARY CHINA 75, 82 (2016).

⁶⁴ *Id.*

⁶⁵ *Id.*

tend to involve larger monetary values, the successful investigation of these kinds of cases means much more to the prosecutor than other, smaller cases. Thus, to secure a confession and to increase the successful resolution of senior cases, the personnel assigned to these cases must have good interrogative skills, investigative techniques, and rich experience. Thus, it is much safer to allocate complicated public corruption cases to excellent and experienced investigators and prosecutors than to less well-equipped prosecutors.

Interviews of prosecutors⁶⁶ reveal that, when deciding whether to have an alternative prosecutor investigate the case, prosecutors may look at some factors concerning the judges – but they mostly care whether the case can be successfully resolved and whether the conviction of the defendants can be guaranteed. The success of the investigation is the key to deciding whether the local prosecutor can be trusted to investigate the case.⁶⁷ This is due mostly to the internal evaluation requirement within the procuracy system. As noted, annually, the city-level prosecutors have to be evaluated provincially, and the rankings are published publicly and recognized as a promotion factor.⁶⁸

The prosecutors and judges I interviewed in Beijing further disclosed that the Xicheng district procuratorate and the No.1 Intermediate procuratorate are generally better equipped and have greater anti-corruption staff strengths than other procuratorates in Beijing.⁶⁹ The

⁶⁶ Series of interviews of prosecutors conducted in Beijing between October 2016 and February 2017. I interviewed: in Beijing, two prosecutor-generals of district procuratorates, one director and two frontline prosecutors of the anti-corruption department of a district procuratorate; in Henan, two prosecutor-generals of municipal procuratorates, and two prosecutor-generals and one prosecutor of district procuratorates; in Jiangsu, one prosecutor-general of a municipal procuratorate, and one prosecutor-generals and two prosecutors of district procuratorates; and in Zhejiang, two prosecutor-generals of municipal procuratorates, and one prosecutor-general and one prosecutor of district procuratorate.

⁶⁷ *Id.*

⁶⁸ Interviews of five prosecutors from Beijing and two from Henan, conducted in Beijing between December 2016 and February 2017, and interviews of three prosecutors from Jiangsu and two from Zhejiang, conducted in Zhejiang in October 2016. This is also consistent with the findings of the interviews I previously conducted, from 2014 to 2015.

⁶⁹ Interviews of five prosecutors from Beijing, conducted in Beijing between December 2016 and February

data indicating that public corruption cases involving officials are much more likely to be transferred to these two procuratorates confirms that at least one main reason for such an arrangement is to utilize the strong capacity of the two procuratorates for resolving public corruption cases.

This also explains why a large number of public corruption cases in the data were still investigated locally, and why the use of COV was only loosely and inscrutably related to the political level and type of position held by the defendants – because only difficult and complicated public corruption cases involving officials needed to be transferred to these two procuratorates. Thus, at the city level, when the superior prosecutor in the city decides whether to alternatively investigate a case, he/she first has to consider how best to utilize the capacity and resources of different inferior procuratorates to satisfy the annual evaluation requirements. The COV system allows him/her to avoid the default jurisdiction of the inferior procuratorates when necessary, and thereby integrate the whole city's anti-corruption resources.

COV also provides the superior prosecutor with the chance to reallocate anti-corruption resources in different situations, so that the hardest cases can be cracked by the most advanced and most well-resourced inferior procuratorates, and the overall efficiency of the whole city in resolving public corruption cases can be increased. Although in some cities the district-level procuratorates also need to be annually evaluated, those evaluations are decided mostly by the heads of their superior procuratorates, rather than being based on the numbers, whereas the provincial evaluations are mostly determined by the numbers, such as the

conviction rate and the number of resolved cases. Thus, it is quite reasonable for a city-level procuratorate to want to integrate all of its subordinate district-level procuratorates to accomplish the best provincial annual evaluations.

Furthermore, prosecutors consider anti-corruption work as their responsibility, and feel proud and socially worthwhile when they are performing anti-corruption work. “This [investigating public corruption cases] is the job. I should do it. Otherwise, why did I become a prosecutor?”⁷⁰; “When I investigate cases, people come to know me and consider me as important. Otherwise, nobody cares about you.”⁷¹ Thus, successfully investigating and prosecuting a sufficient number of complicated public corruption cases also provides strong professional satisfaction for the procuratorate.

D. THE SUPERIOR’S CONTROL AND REGULAR INCENTIVES PROMPT COOPERATION BY INFERIOR PROSECUTORS

Local Prosecutors’ Anti-Corruption Work Procedures

Public corruption crimes are a major kind of case directly investigated by the prosecutors, rather than the police. After the investigation, only the prosecutors can prosecute these cases in court and supervise the execution of the judgment after conviction. The procuracy system has a structure similar to the courts. The Supreme People's Prosecutor (SPP) sits at the top of the prosecutorial system and directs the work of the prosecutors at lower levels, including prosecutors at the provincial, municipal, and district/county levels. Under the dual leadership of both the superior prosecutors and the local governments, local

⁷⁰ Interview of investigators of public corruption cases in the investigative department of a provincial procuratorate and a municipal procuratorate, conducted in Beijing, September 2014.

⁷¹ *Id.*

prosecutors are tasked with investigating, prosecuting, and supervising the execution of judgments in public corruption cases, while also facilitating the leadership of the local government and the coordination of the local CDIs in anti-corruption.

The procuratorate's anti-corruption work generally has seven steps.⁷² First, when receiving information, the prosecutor-general decides whether to perform a preliminary investigation after a meeting with the director of the concerned department within the procuratorate. Information regarding officers at district/county party secretary levels (xianychu level, 县处级) shall be submitted one level up to the provincial procuratorate.⁷³ Information regarding officers at municipal levels (tingyju level, 厅局级) shall be submitted one level up to the SPP.⁷⁴

Second, after the preliminary investigation, if there is evidence that a public corruption crime may exist, the investigators write a report suggesting docketing the case, which the prosecutor-general decides whether to approve.

Third, after the docketing of the case, investigative techniques restricting the personal freedom of the suspects can be used according to the Criminal Law, such as bail, detention, arrest, and living at a designated residence under supervision (LDRS).⁷⁵ Among these techniques, arrest and LDRS can be used only after the superior procuratorate approves.⁷⁶ The investigative department of the procuratorate formally investigates the case.

⁷² For the CDI's work process, please see Li & Deng, *supra* note 11. For the procuratorate's work process, see China's Criminal Procedure Law, arts. 161-185 (effective Jan. 1, 2013).

⁷³ China's Criminal Procedure Law, art. 163 (effective Jan. 1, 2013).

⁷⁴ *Id.*

⁷⁵ *Id.*, at art. 148.

⁷⁶ *Id.*, at art. 73.; Tentative Rules on Subjecting the Using of Arrest in Cases Investigated by Procuratorates Below Provincial Level To the Approval of the Superior Procuratorates, art. 1, issued by SPP (effective on Sept. 4, 2009).

Fourth, once the facts of the crime are clear and the evidence is sufficient, the investigative department closes the investigation, writes an opinion for prosecution, subject to approval by the prosecutor-general, and transfers the case files to the prosecution department of the procuratorate, which reviews the files and prepares the prosecution. There may be some back and forth between the two departments if the facts are unclear, or if there may be insufficient evidence for prosecution.

Fifth, once the prosecution department is ready for the prosecution and the prosecutor-general agrees, the procuratorate prosecutes the case to the court.

Sixth, the court then tries and decides the case. If the court convicts the suspect, the procuratorate can then close the case. The court may also suggest the procuratorate withdraw the case if it thinks there is no case, or it may suggest supplemental investigation if it thinks there is insufficient evidence.

Seventh, if the court denies the prosecution and acquits the suspect, the procuratorate can protest the case to the superior court, subject to the superior procuratorate's approval, and initiate the appeals procedure. With the appellate decision, the procuratorate can once again close the case.

Unlike the CDI, the decisions regarding whether to accept, preliminarily investigate, docket, formally investigate, prosecute, and protest the case must be filed with the superior procuratorate, which could direct the inferior procuratorate to change its decisions if it finds any such decision wrongful.⁷⁷ The procuratorate also needs to notify any known whistleblower of the decision not to docket the case, who can then appeal the decision to a

⁷⁷ China's Criminal Procedure Law, arts. 165, 166, 167, 177, 178, 179, 183, 184 (effective on Jan. 1 2013).

different department of the procuratorate.⁷⁸

The Superior Prosecutor's Control

The superior prosecutor has several checks on the local prosecutor. First, the superior prosecutor has a large say in the nomination of the local prosecutor and the potential promotion of the local prosecutor to the leadership role of superior prosecutor.

Second, the superior prosecutor has a good measure of control over the inferior's handling of casework through a detailed internal evaluation system, which consists of several ratios, such as the numbers of cases and important cases that shall be docketed, investigated, and convicted.

Third, there is a nationwide online casework reporting system. Once a case is docketed, its files must to be uploaded into the reporting system. Delayed uploading is a disciplinary violation. Once uploaded, the case cannot be removed unless it is closed with a conviction or a withdrawing decision, and all the documents are open to the superior prosecutor which can question the handling of the case.

Fourth, each essential decision regarding case investigation has to be filed with the superior prosecutor, and during investigation, certain essential investigative techniques such as arrest and designated residence under supervision (DRUS) cannot be used without the superior prosecutor's approval.

Fifth, when the local prosecutor receives an acquittal verdict, which is very harmful to its internal evaluation, the superior prosecutor's support is necessary in order for the local prosecutor to appeal.

⁷⁸ *Id.*, at art. 184.

Having such considerable control over the selection, promotion, evaluation, and the handling of casework by the local prosecutor, the superior prosecutor can obstruct the local prosecutor's anti-corruption work simply by directing the inferior prosecutor not to start the case or to passively investigate the case, or by disapproving the use of arrest and DRUS in order to obstruct the investigation.

The whole work process of the prosecutors in anti-corruption cases is summarized in Figures 4.1-4.3, where the interactions with the local party leader, the superior prosecutor (abbreviated as "SP" in the Figures), and the CDI are bolded, underlined, and italicized, respectively. As seen in these Figures, the superior prosecutors' influence exists throughout all of the subordinate prosecutors' anti-corruption work steps.

Figure 4.1 The Investigation

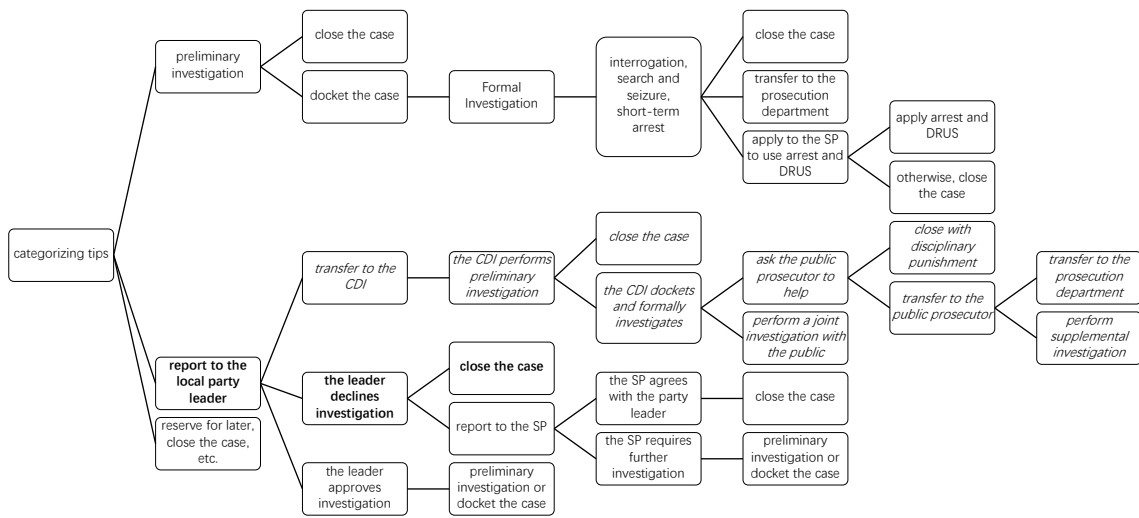


Figure 4.2 The Prosecution Preparation

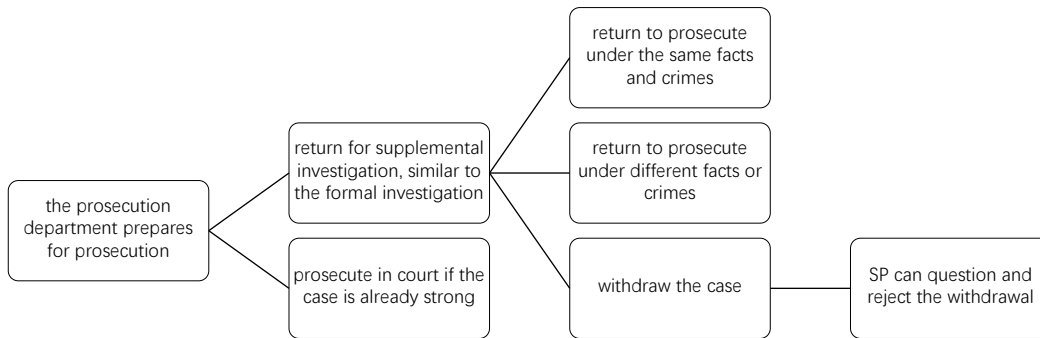
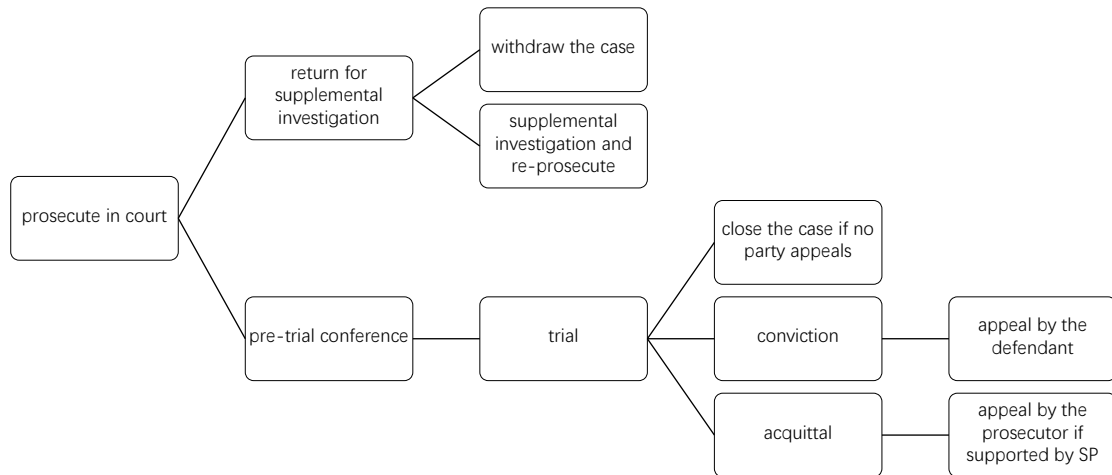


Figure 4.3 The Trial



In the current situation – where public corruption is extensive, the anti-corruption caseload is heavy, and anti-corruption resources are relatively insufficient⁷⁹ – the rules establishing the COV system grant to the superior prosecutors the complete power, without legal limits or challenging entities, in initiating and deciding how to use the COV system. Given the strong motivation to successfully investigate and prosecute a sufficient number of hard public corruption cases, these rules make the COV system a direct tool for superior prosecutors to break the default jurisdictional rules and to reallocate public corruption cases, so that the anti-corruption forces within the prosecutors’ jurisdiction can be fully utilized to realize a high success rate for investigation and prosecution of public corruption cases.

V ALTERNATIVE EXPLANATION 2: DISRUPTION OF LOCAL CONTROL AND FUNCTION IN INITIATING RECENT CAMPAIGN

This chapter will discuss the second alternative explanation of the COV system in China’s recent anti-corruption campaign, in light of the well-recognized problems of China’s anti-corruption agencies, i.e., local party control and the recent reforms aimed at decreasing

⁷⁹ See MELANIE MANION, CORRUPTION BY DESIGN: BUILDING CLEAN GOVERNMENT IN MAINLAND CHINA AND HONG KONG (2004).

such control. Against such a backdrop, the recent routinized use of COV functions to break up local control over anti-corruption forces, and thereby helps to initiate the recent anti-corruption campaign and series of reforms.⁸⁰

In the next section, I will explain how the local anti-corruption mechanism has failed to function. I will first explain the essential steps in anti-corruption investigations taken by the two different anti-corruption agencies, and then argue that local authority leaders can substantially influence local anti-corruption agencies by controlling the agency leaders and by technically intervening in their work resolving public corruption cases. I will then explain the purpose of recent reforms in centralizing control over anti-corruption investigative forces, and finally argue that the routinized use of COV has helped to disrupt the local network, recentralize control over local anti-corruption forces, and thus initiate the recent anti-corruption campaign.

A. LOCAL CONTROL OVER THE LOCAL CDIS

Local CDI's Work Procedures

Under the traditional system used in China for attacking public corruption, corruption investigations begin with the Commission of Party Discipline Inspection (CDI), which handles allegations of corruption primarily as an internal party disciplinary matter, and then decides whether or not to refer the case to the prosecutor. This is part of the traditional anti-corruption system previously referred to, in Chapter 1, as the “dual-leadership, dual-track” system.

Several rules issued by the Central Commission of Party Discipline Inspection (CCDI)

⁸⁰ *Id.* at 120-154.

govern the performance of public corruption investigations and guide the work of local CDIs in handling cases. These rules include the Rules on Case Work of CDIs (Work Rules) and Rules Thereof for Implementation (Implementation Rules), both enacted in 1994.⁸¹ The general procedures for the acquisition and handling of information and evidence are established therein.

Step 1: Collecting Case Information. One major channel for collecting case information is the general letter-and-visit center (hereinafter, the Center), independent of the CDI, serving the entire city. Any citizen can report public corruption to the Center. Instead of reporting to letter-and-visit offices of different agencies (including the CDI's own letter-and-visit office), citizens may report to the Center, from which all reports are collected and distributed.

Many public corruption-related files are transferred from the Center to the CDI. Information indicating legal violations or concerning low-level officials will be distributed to the procuratorate. Reporters can either report to the letter-and-visit office of the CDI, which is independent of the Center and belongs to the CDI, or report to the CDI via hotlines and the Internet. Moreover, the Internet provides another source, through the exposure of potential public corruption online, e.g. photos of an official with many luxury watches. CDI officers may also start to make an investigation by themselves.

Information sources are similar across China, except that the CCDI further dispatches Central Circuit Inspection Teams (hereinafter, the Teams) to collect information on local public corruption. China's new leadership frequently sends the Teams to gather information regarding the behavior of local officials. Rather than investigating or resolving cases, the

⁸¹ The Rules on Case Work of CDIs and the Implementation Rules for the Rules on Case Work of CDIs, issued by the Central CDI (Mar. 25, 1994).

Teams just collect information and submit it to the central leadership and the CCDI.

Information regarding possible corrupt activities of CPC members according to the Party Constitution and disciplinary rules, or regarding the activities of public officers who are not CPC members according to the Administrative Supervision Law and administrative disciplinary rules, would constitute a possible public corruption file. Both CPC members and non-CPC members with governmental positions are under the supervision of the CDI, which merges with the executive supervision agency for public corruption and official misconduct.⁸² Activities that are supervised by the CDI include illegal activities that potentially violate relevant laws, Party rules, or administrative disciplinary rules. Public corruption cases that possibly violate criminal laws are later transferred to the procuratorate. Cases that involve officials of certain levels or positions are first investigated by the CDI and later transferred to the procuratorate. In addition, a CDI supervises only Party or non-Party public officials who are at lower political levels.⁸³ Whistleblowers are required to report to a CDI at the level higher than the suspect's highest level. If information regarding a public official at higher-than-city level is misdirected to a lower CDI, it will be transferred, level by level, until it reaches a CDI that has jurisdiction over the case.

Step 2: Categorizing Case Information. Consistent with the Work Rules, public corruption files transferred from the Center are divided into five categories based upon the sufficiency and validity of proof in the file: (1) being sufficient to docket the case (立案) for formal investigation (调查); (2) being enough for preliminary investigation (初核) but

⁸² The CCDI and the Ministry of Supervision have been merged together, with the same people under two names, since 1994. See 7 *Zhongguo gongchandang zuzhi shi ziliao* 186 (2000) [*Materials on the CPC Organizational History*], (Beijing: Zhonggong dangshi chubanshe, 2000).

⁸³ The Rules on Case Work of CDIs, art. 10, issued by the central CDI on Mar. 25, 1994; The Law on Administrative Supervision, art. 16 (amended on June 25, 2010).

insufficient for formal investigation (调查); (3) having some proof for a case but not enough and thus going on the waiting list for preliminary investigation (暂存); (4) having no proof and clearly no case; and (5) being a very small case that is quickly settled or resolved.

Although the CCDI's Work Rules do not actually include Category 3, the Rules do not forbid this category and Category 3 has been added in practice.

Normally, to divide up the files in a CDI, a meeting of the CDI Case Leader, the Case Division Chief, and letter-and-visit officers will be held, during which they discuss the files and the Case Leader makes the final decision on the categorization of the files. Meetings are held fortnightly to divide files received in the previous two weeks. Besides the principled standard provided in the Work Rules regarding the division between Categories 1 and 2, there are neither concrete standards established in the CDI for the division of cases, nor reasons provided on the record for the division.

Step 3: Preliminary Investigation.⁸⁴ During the meeting, after the files are divided, Category 2 files are assigned to two CDI investigators who make preliminary investigations, or to a lower-level CDI for further investigation. After preliminary investigation, investigators provide a report of collected proof, discovered facts, and suggestions for resolution, and submit it to the Case Leader for approval. The investigators, Case Division Chief, and Case Leader must all sign the report for the record. They are responsible for the case during their lifetime.

According to the Work Rules, preliminary investigations aim to collect evidence and

⁸⁴ The Tentative Work Rules on the CDIs' Supervision of Law and Discipline has been passed by the seventh plenum of the 18th session of CCDI members concluded on January 8, 2017, which has expanded the techniques allowed for use in preliminary investigation.

decide whether the case will be docketed and whether formal investigations should be conducted.⁸⁵ The standard for docketing a case is regulated by Article 16 of the Work Rules: if, after preliminary investigations, there are facts related to violations of Party disciplinary rules and such violations will receive disciplinary punishment, the case will be docketed according to specified procedures, and formal investigations will be conducted.⁸⁶ Thus, after preliminary investigations, some Category 2 files may become Category 1 files and follow the same procedures as other Category 1 files; other files may be closed, if no facts reveal a violation or if the facts reveal a violation that is too light to warrant any punishment.

Step 4: Formal Investigation. Files in Category 1 are further discussed in a meeting of a committee consisting of the CDI Secretary, Vice Secretaries, and Division Chiefs. This committee is similar to the judicial committee in the court system in its function and composition. The CDI committee consists of CDI leadership and important senior officials, who decide on important issues collectively. Whether a file will finally be docketed and receive a formal investigation is decided during the meeting, according to a majority vote. If not docketed, the file may be closed or receive further preliminary investigation.

For Category 1 cases in which the suspect is at the same or higher political level as the CDI or the allegations suggest a very serious violation, the committee can only provide suggestions to the higher-level CDI, which decides whether the file will be docketed and receive formal investigation. This procedure follows Articles 17–21 of the Work Rules.⁸⁷ For files that are selected to be docketed, formal investigations are conducted. After the formal

⁸⁵ The Work Rules 1994, art 12.

⁸⁶ *Id.*, at art. 16.

⁸⁷ *Id.*, at arts. 17–21.

investigations, cases may be resolved in three ways: (1) suspects receive only Party disciplinary punishment; (2) suspects' activities warrant legal punishment, and the files are transferred to the procuratorates to commence prosecution; or (3) investigations find no violating activities, or the activities are too insignificant to warrant any punishment.⁸⁸

Categorical division is essential because only the files in Categories 1 and 2 will be further investigated, and the applicable investigative techniques are different in the formal (Category 1) and preliminary (Category 2) investigations. The applicable investigative techniques for preliminary investigations are limited, according to Work Rules and information from the interviews I conducted.⁸⁹

For example, tracking and monitoring techniques cannot be used. Typically, investigators can only review relevant materials and documents, and check bank accounts. Because public corruption activities are very secretive and money cannot be found on the surface, CDI officers rely primarily on interviews with suspects and witnesses. Witnesses from the private sector can and will most likely reject taking part in such interviews, but CPC members and non-CPC member public officers cannot reject such interviews. No laws govern these interviews. The informal, internal rule is that they will be undertaken during the daytime and cannot last overnight.⁹⁰ They are different from *shuanggui* (an extra-legal, Party disciplinary process that involves possibly illegal detention and interrogation),⁹¹ which can be used only after the file is docketed and the higher-level CDI approves the use of *shuanggui*.⁹²

⁸⁸ *Id.* at arts. 34, 35, 37; The Implementation Rules, arts. 36, 38 (1994).

⁸⁹ The Work Rules 1994, arts. 13, 28.

⁹⁰ According to comments made by the Chief Director of a city CDI, interviewed in April 2014 in X province.

⁹¹ See, for example, the following article on the history, scope, organization, recent reform and character of *shuanggui*: Flora Sapio, *Shuanggui and Extralegal Detention in China*, 22 CHINA INFO. 7 (2008).

⁹² Interview with the CDI Case Division Chief and the frontline investigators, anonymous, in early April 2014 in X province. The Tentative Work Rules on the CDIs' Supervision of Law and Discipline issued by the

Limitations on investigative techniques can greatly affect the attainability of evidence and the results of investigations.

Step 5: Joint Investigation. Once formal investigations begin, CDIs frequently become short-staffed. Therefore, CDIs cooperate with the public security bureau to investigate private public corruption activities, with the procuratorates investigating public corrupt activities that potentially warrant legal punishment, and sometimes with the audit bureau officials facilitating investigations, which is called a ‘joint investigation’. During joint investigations, the CDI works as an organizer and coordinator, making an overall investigative plan, distributing responsibilities to involved agencies, facilitating communication among agencies, collecting proof and evidence, and making suggestions or deciding the parts of the case that concern breaches of Party discipline.⁹³ The resolution of the parts that warrant legal punishment is decided by the procuratorate.⁹⁴

Shuanggui is used in many joint investigations. When a case is docketed, a request for *shuanggui* may be submitted to the higher-level CDI, i.e., the provincial CDI, and upon its approval, *shuanggui* can be carried out. In line with Professor Sapio’s research, I found that currently, local CDIs can use *shuanggui* only with the approval of higher-level CDIs, which strengthens higher-level CDIs’ control over *shuanggui* and limits lower CDIs’ abuse.

Although *shuanggui* measures now have a time limit of six months, the limit can be extended to one or two years under the approval of a superior CDI. As far as the case is concerned, *shuanggui* could last forever, and officials being *shuanggui*ed likely think the

CCDI on January 8, 2017 has eliminated the word “*shuanggui*” and substituted it with the technique “Tanhua” (Interview, 谈话).

⁹³ The Work Rules 1994, arts. 17–21.

⁹⁴ Thus, the CDI only decides part of the case; different agencies decide different parts of the case according to the respective power these agencies have.

same. In current practice, *shuanggui* has, or at least seems to have, no real time limit.⁹⁵ The lack of a time limit is the most important value of *shuanggui*. This policy makes it more likely that confessions will be obtained.⁹⁶

During *shuanggui*, interrogation is neither video nor audio recorded, and suspects and investigators are not separated. Because only Party members and supervised public officers can be *shuanggui*ed – whereas public corruption cases frequently involve non-Party members or non-public-officer suspects, such as relatives of Party members and private-sector bribers – joint investigations must treat them together. During joint investigations, an area will be isolated for investigation, e.g. an area in which several hotels are located. One hotel houses suspects who receive *shuanggui* under the CDI’s supervision, and other hotels house suspects who are detained without *shuanggui* but are under the public security’s or the prosecutors’ supervision. Then, all relevant suspects can be jointly investigated.

Moreover, if, before or during *shuanggui*, the activities of the suspects appear to violate Party disciplines or break laws, then the prosecutors will join the investigations to ensure that the confessions, depositions, and relevant evidence obtained during this period are legally admissible for later prosecution. Such joint investigations are effective in resolving public corruption cases but are legally problematic because after joining in, prosecutors’ investigations are also under the protection of *shuanggui* and are not restricted by laws, particularly regarding the time and interrogative limits and the rights of the suspects in the criminal procedure law.

⁹⁵ Interviews with the Case Leader and frontline investigators of a city CDI conducted in X province in March and April 2014.

⁹⁶ Comments made by one frontline investigator. Interview with anonymous frontline investigators of a city CDI in X province, in early April 2014.

Control over Local CDIs by Local Party Leaders

(1) Local party leaders used to strongly control the nomination and promotion of the leaders of the local CDIs, and provided the funding and work equipment support for the local CDIs.

The finances of the local CDIs are governed by the local government under the leadership of the local Party Standing Committee (hereinafter, PSC), of which the CDI Secretary is a member. However, CDI Vice Secretaries are not members. Because local PSC members are nominated by the next higher PSC without superfluous candidates, it is the superior PSC that selects the CDI Secretary.⁹⁷ However, previously, the superior PSC largely followed the nominations proposed by the local PSC leader. The Vice Secretaries who are not PSC members are certainly decided by the local PSC Secretary. Thus, the funding and the Vice Secretaries of the local CDI are heavily controlled by the local government, as Professor Fu Hualing concluded in his study.⁹⁸

Moreover, there is no internal evaluation system like that of the procuratorates, i.e., a CDI or CDI investigator does not need to resolve a certain number of public corruption cases to fulfill his duty and qualify for further promotion. As the appointment power of the mid-level leadership of the local CDI is heavily controlled by the local PSC Secretary, the local PSC Secretary's instructions prevail over the higher-level CDIs because investigators are afraid of not being promoted if they disregard his instructions, and the local PSC Secretary's close relationship with the local party leader makes it harder to cheat him. The higher-level

⁹⁷ CPC Constitution, arts. 24, 25, 27, 29, the (amended on Nov. 14, 2012).

⁹⁸ Hualing Fu, *The Upward and Downward Spirals in China's Anti-Corruption Enforcement* 13, 14 (University of Hong Kong Faculty of Law Research Paper No. 2011/014, 2011), <http://ssrn.com/abstract=1883348>.

CDI can itself make investigations and break the local control of the case, however this method is subject to the time and staff limits of the higher-level CDI.

(2) There exists substantial room for manipulation and arbitrariness in the essential steps of local CDIs' anti-corruption work.

When the case information has been transferred to the CDI, files are divided into the above-mentioned five categories. Decision-making herein is vulnerable to arbitrariness. Although many people attend the meeting, the normal CDI officials are at lower levels than – and are appointed and promoted by – the CDI leader. The CDI leader is not restricted by concrete established standards in any rule or internal regulation and does not need to provide any reason for divisions on record. His decision-making when categorizing files is therefore non-transparent to outsiders.

This internal decision-making system – in which the superior instructs the subordinate's work with no reasons kept on record, and in which such instructions provide the primary basis, or legitimacy, for the subordinate's decisions – is analogous to the decision-making system argued by Professor Ling Li to be the reason for the existence of public corruption in China's court system.⁹⁹ In fact, here it is even more arbitrary than in the courts, where a subordinate is promoted considering a certain internal evaluation system, because in the CDIs, promotion is purely subject to the superior's wishes. The control of a superior over a subordinate is even tighter in the CDIs than in the courts.

After the categorical division, Category 2 files are preliminarily investigated by two CDI

⁹⁹ Ling Li, *Corruption in China's Courts*, in JUDICIAL INDEPENDENCE IN CHINA: LESSONS FOR GLOBAL RULE OF LAW PROMOTION 196 (Randall Peerenboom ed., 2010). From comments received in the interviews of the three CDIs, most of the cases investigated by the officials are because the superiors require the investigations.

officials who report investigative results and suggest possible resolutions based upon collected evidence. Here, the potential for improper selection arises again because the CDI officials can passively ‘investigate’ the cases that the officials or the CDIs superiors want to dismiss. Such passive investigations are hard to track because limited investigative techniques for preliminary investigations are allowed, and the evidence consists primarily of confessions or testimonies from interviews. The effectiveness of interviews relies heavily on the questioning techniques, preparation, and efforts of the interviewing officials and can thus easily be manipulated by investigators. To be even more subtle in dismissing a case, the CDI leader could assign it to two CDI officials who lack investigative abilities.

Moreover, because public corruption investigations require high confidentiality, the skillful leakage of relevant secret information would further destroy investigations and legitimize the dismissal of a possibly good case. Particularly in small cities or towns, leaked information can easily find its way to those under investigation. Because promotion within CDI is decided by the CDI leader without considering investigative abilities, CDI officials are under the control of their CDI leader. Therefore, the discretionary power within preliminary investigations is significant.

However, the control of local CDI leadership over investigators could actually decrease the risk of arbitrariness at the level of the individual investigator. At least two investigators should be on the scene for such interviews, which decreases the arbitrariness of a single investigator.¹⁰⁰ However, this helps little in decreasing the CDI leader’s opportunity to aact

¹⁰⁰ CCDI, ARTICLE 3, THE OPINION ON THE INTERVIEW WITH THE SUSPECTS OF CASES BY THE CDIS AND THE SUPERVISION AGENCIES, PRACTICE HANDBOOK OF LAWS AND RULES COMMONLY USED BY CDIS AND SUPERVISION AGENCIES IN THEIR WORK 1009 (2006).

arbitrarily, because both investigators are subject to discretionary promotion by the leader. Preliminary investigations at this stage are secret, even to higher-level CDIs, because interviewing the suspects is neither audio nor video recorded. Although the new reforms require the submission of investigative results to the higher-level CDI, these results are prepared by the investigators with little supervision over their investigations.

Once a case is suggested for docketing, a meeting of the CDI committee is held to decide whether to dismiss, close, or docket the case. There is also room here for arbitrariness. No concrete standards or rules for such dismissals are established, no reasons are needed for the record, and such decisions are neither available to the general public nor challengeable by the whistleblower. Moreover, the decisions are made under the name of the entire committee, rather than the CDI Leader, which likely creates a ‘responsibility hole’ similar to that created by the judicial committee of the court, as analyzed by Professor Xin He.¹⁰¹

To summarize, in the traditional “dual-leadership, dual-track” anti-corruption system, the local party leader used to strongly control the CDI leader’s nomination, promotion, and work funding and equipment; the CDI leader in turn tightly controls the CDI investigators’ promotion and evaluation; and the rules regarding the information categorization, the preliminary investigations, and the formal investigations provide insufficient limits and supervision to control arbitrariness. Thus, the local party leader used to substantially affect the local CDI’s anti-corruption work by controlling the CDI leader, having the CDI leader report the case information to the local party leader, and technically manipulating the loopholes in the essential steps of the CDI’s case work. When public corruption in China

¹⁰¹ Xin He, *Black Hole of Responsibility: The Adjudication Committee’s Role in a Chinese Court*, 46 LAW & SOC’Y REV. 681, 681 (2012).

became syndicated and serious, the local CDI was obviously incapable of combatting public corruption involving the local party leader or his people.

B. LOCAL CONTROL OVER THE LOCAL PROCURACY

The Influence of Local Party Leaders and Local CDIs over Local Prosecutors

The work procedures of local prosecutors have been discussed in the previous chapter. This section proceeds to discuss the local control over local prosecutors. Multiple agencies are involved at different stages of China's anti-corruption system. Normally, the party leader, the CDI, the superior prosecutor and the prosecutor are involved in the investigation stage; the prosecutor and the superior prosecutor in the prosecution stage; and the prosecutor and the court in the trial stage. Due to the dominant role of the prosecutor in criminal trials,¹⁰² the first two stages are deemed to determine the outcome of a public corruption case. In the following section, I will discuss how the local party leader and the local CDI affect the local prosecutor's anti-corruption work during the first two stages.

(1) The Local Party Leader's Control

The local party leader, who is also the head of local government, has several checks on the local prosecutor. First, the local government decides the financial budget and the staff strength of the prosecutor. Second, the nomination of the deputy prosecutor-general and the promotion of prosecutors have to be approved by the local party head to be effective. Third, to uphold the leadership of the local party leader in anti-corruption efforts, an internal rule has been formulated that whenever anti-corruption cases involve senior officers¹⁰³ within its

¹⁰² Jiang, *supra* note 55, at 406.

¹⁰³ "Senior officers" refers to officers only one level lower than the prosecutor-general, as well as officers

jurisdiction, the prosecutor needs to report such cases to the local government and needs its approval before carrying out investigations.¹⁰⁴

Accordingly, the local party leader has several ways to obstruct the work of the prosecutor. First, if the case involves senior officers, whenever the prosecutor reports it to the local government head, he/she could simply decline the investigation. In some districts, around half of the cases reported had been turned down.¹⁰⁵ Normally, without such approval, the prosecutor will not start an investigation.

Second, the party leader can have the CDI investigate the case instead. For serious or obvious cases,¹⁰⁶ it is very risky for the local head of government to simply decline the investigation, as it is difficult to hide such cases from the superior. Once it is disclosed, the superior will blame the local leader for declining the investigation, probably as a dereliction of duty, and if party disciplinary rules or laws are violated in such declination, the local leader has to receive disciplinary or legal punishment. Having the CDI investigate is one way to balance the risk of dereliction and the need to protect local colleagues. Given the operation of the CDI,¹⁰⁷ as previously discussed, it is easier for the CDI to hide the case under the guise of legitimate reasons.

(2) The Local CDI's Influence

Based on China's anti-corruption policy in which the party head leads and the CDI

two levels lower than the prosecutor-general but holding essential positions, such as financial department deputy heads.

¹⁰⁴ I was unable to find formal documents specifying such rule. However, from interviews with dozens of prosecutors from different provinces and cities, they all said such rule exists. Series of interviews conducted in Beijing, Henan, and Tianjin from March 2014 to April 2015.

¹⁰⁵ Interviews conducted in Beijing and Henan from March 2014 to December 2014.

¹⁰⁶ Normally, cases involving important senior officers, or many officers, or large amount of monetary value, or heavy public attention/complaints, causing instability of that area, will be deemed serious. Cases having clear facts, concrete bribe-accepting incidents, photos, videos or audios, or financial statements indicating corresponding fund movements are deemed having obvious evidence.

¹⁰⁷ See Li & Deng, *supra* note 11.

coordinates the anti-corruption work, corruption is never just a legal issue, nor is it purely an institutional issue involving certain identified agencies' independence. It is a much more complicated matter, concerning numerous individuals, from the party head to every party and governmental department. Accordingly, the CDI can influence the prosecutor's anti-corruption work in two ways. First, whenever the prosecutor reports the case to the local head, the CDI's suggestion will be important to the local head's decision. Second, certain kinds of cases have to be first investigated by the CDI, and the prosecutor can come in only after the CDI transfers the case to it.¹⁰⁸

Normally, when receiving such information about possible public corruption, both the prosecutor and the CDI will report it to the local head. If the local head distributes the case to the CDI, or if the CDI has already investigated the case, the prosecutor will withdraw from it.¹⁰⁹ This is true not only for serious cases, as mentioned before, but also for highly sensitive and influential cases. Until recently, all public corruption cases concerning provincial-level officials were first investigated by the CCDI and then transferred to the SPP, and all public corruption cases of municipal-level leaders were investigated by the provincial CDIs and then transferred to the provincial prosecutors.

The higher the CDI's level, the more important it becomes in anti-corruption efforts, the more resources and staff strength it is equipped with, and the bigger say it has in the prosecutor's anti-corruption work. In high level public corruption cases, the CDI decides whether to preliminarily or formally investigate, subject to the local head's approval,

¹⁰⁸ Series of interviews conducted in Beijing, Henan, Tianjin, Anhui, Hubei, Hunan, and Jiangsu from March 2014 to April 2015.

¹⁰⁹ *Id.*

conducts preliminary and formal investigations of the case, and decides whether to transfer the case to the prosecutor, subject to the local head's approval. Sometimes, the CDI borrows the prosecutor's staff or coordinates a joint investigation involving the prosecutor, the public security, the audit agency, etc.¹¹⁰ During such joint investigations, the CDI still has an important influence on the direction, scope, and results of the investigations.¹¹¹

The control of these special cases also affects the prosecutor's work in other ordinary public corruption cases. For example, when the incumbent municipal head of a district, whom I had previously interviewed, was arrested by the provincial CDI under *shuanggui*, the district prosecutor was instructed by the municipal prosecutor to suspend any public corruption investigation.¹¹² Whenever one or several such "tigers" are *shuanggui*ed, concerns for possible political instability can arise; "if the prosecutor continues to investigate public corruption cases strongly, many officials may be very worried and the situation may get out of control."¹¹³

Moreover, the CDI could influence the prosecutor's work through the pressure of the superior prosecutor and the local head. And at the central level, every public corruption case is a special case and subject to the CCDI's investigation; the president of the SPP is also a member of the CCDI, and thus under the leadership of the CCDI chairman. Thus, the SPP is subordinate to the CCDI in its anti-corruption work, and has no motive or ability to counteract the CCDI's obstruction.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Interviews of prosecutor-generals from Henan, conducted in Beijing in December 2014 and April 2015.

¹¹³ *Id.*

C. RECENT REFORMS CENTRALIZING CONTROL OVER THE LOCAL ANTI-CORRUPTION AGENCIES

Recent Reforms Have Decreased the Local Party Control over the Local CDIs

(1) The Main CDIs

As indicated in the Decision passed at the 18th CPC Plenum, discussed previously in Chapter 1, the local CDIs may be horizontally divided into the main CDIs, their dispatched CDI teams, and their Circuit Inspection Teams (CITs). For example, at the provincial level, the main group is the provincial CDI, established to supervise the provincial party committees. Before the most recent reforms, the main CDIs operated under the dual leadership of the provincial party committees and the CCDI.

Based on the most recent information available about the reforms, although the dual leadership of the main CDIs will remain unchanged, the local party's control will be decreased to a considerable degree. First, the heads and vice heads of the local CDIs will be nominated and evaluated by higher CDIs, together with higher organizational departments.¹¹⁴ Previously, vice heads were chosen by the local party head, and the vice head was also largely affected by the local party head's opinions. This reform will strengthen the control of higher CDIs over personnel and weaken the local party's control.

Second, case investigations will follow the direction of the higher CDIs over supervised parties, and decisions about information and cases will be reported simultaneously to higher CDIs and local parties.¹¹⁵ Previously, information and progress of investigations needed to be submitted only to the local party head, and if he declined to pursue investigations, then the

¹¹⁴ WANG QISHAN, REPORT ON THE WORK OF THE CENTRAL COMMISSION FOR DISCIPLINE INSPECTION 2(1) (2014), http://www.wenming.cn/djw/gcsy/yw/201401/t20140128_1721704.shtml.

¹¹⁵ *Id.*

CDI could not investigate. After this reform, the CDIs will not need the local heads' approval, as long as the higher CDIs agree to authorize the investigation. This reform has weakened the local head's control over the CDI's work.

Third, higher CDIs will strengthen their contacts with lower CDIs through various methods, including interviews (约谈) and work reports (述职).¹¹⁶ Previously, because CDIs were located close to the local governments, had frequent contact with them, and conducted some work together, after several years they naturally developed close relationships with each other, and certainly became strangers to and remote from the higher CDIs. This reform seeks to strengthen the relationship between lower CDI's and higher CDI's, thus increasing the possibility of control exerted by the higher CDIs.

(2) The Dispatched CDI Teams

The dispatched CDI teams are those dispatched by the main CDIs to investigate different departments of the supervised party committees and governments. After 2004, they were placed under the sole leadership of the main CDIs, although they still operated under the substantial influence of the supervised departments. According to the 2004 resolution, the power to nominate the dispatched CDIs' team heads and members remained in the control of the main CDIs, but the funding, workplace, and logistic services were all still provided by the supervised departments serving as the hosts,¹¹⁷ which meant these departments still wielded a large influence over the dispatched CDI teams.

¹¹⁶ *Id.*

¹¹⁷ NEWS OF THE COMMUNIST PART OF CHINA, CIRCULAR OF THE GENERAL OFFICE OF THE CPC CENTRAL COMMITTEE AND THE GENERAL OFFICE OF THE STATE COUNCIL ON THE IMPLEMENTATION OF THE CIRCULAR OF THE CENTRAL COMMISSION FOR DISCIPLINE INSPECTION, THE CENTRAL ORGANIZATION DEPARTMENT, THE CENTRAL ORGANIZATION AND THE MINISTRY OF SUPERVISION ON THE IMPLEMENTATION OF THE UNIFIED MANAGEMENT OF THE CENTRAL ORGANIZATION'S DISCIPLINE INSPECTION DEPARTMENT 3(7) (2004), <http://cpc.people.com.cn/GB/64162/71380/102565/182146/11002358.html>.

The most recent reforms are basically continuations of the 2004 reforms, designed to ensure the sole leadership of the main CDIs over the dispatched teams. First, the dispatched teams are now “under uniform names and regulations.”¹¹⁸ Several specific measures have been implemented, such as that the duties, structures, personnel, and work insurance of the dispatched teams shall be established by the CCDI’s guidance opinions, which strengthens the relevant codes of conduct for the dispatched teams; the main CDIs’ regulations are enhanced through evaluation, incentive, and accountability systems; and, consistent with the recent transformation in the mission of the dispatched teams, the team heads must withdraw from other work unrelated to supervision.

All of these measures have helped to enhance the control of the CDI over the personnel and work of the dispatched teams. But as noted previously, the experience after the 2004 reforms revealed that the superior CDI’s enhanced control over the local CDI is insufficient if the superior controls only the appointment and removal of the local CDI heads and their work; other aspects of daily regulation and contacts are still necessary to achieve the goal. In the context of the dispatched teams, the work funds are still usually provided by the supervised departments, although now it is required that such funds be secured and listed separately. Such reforms may not be effective, however, because the department heads still tightly control the budget and its use. And even if the funds are listed separately, there are many opportunities for the department to make the funds insufficient or unrealized when the legal protections are weak.

¹¹⁸ Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform, Part 36 (promulgated by the Third Plenum of 18th CPC Central Committee, (Nov. 12, 2013).

However, the party center has strongly encouraged creative, effective institutions to further strengthen the dispatched teams' work. Under the direction of the uniform names and regulations, several cities and counties have pursued innovative new approaches to ensure the adequacy of funding and capacities for their dispatched teams.¹¹⁹ For example, the Sanxiamen city CDI abolished all previously dispatched teams and established ten large dispatched teams supervising sixty-three departments.¹²⁰ The personnel and funds for these ten teams were provided by the city. The team heads' positions were established at the same level as the supervised department heads. And the Xiangyang city CDI established four "section teams," funded by the city, to supervise fifty-six departments, while still retaining the old dispatched teams, funded by the departments, for ten important departments.¹²¹

The nationwide course of these reforms is still under discussion. If the concept of "section" dispatch teams is accepted by the CCDI, this would greatly decrease the influence of the supervised departments, because the funding for the teams would no longer come from the departments and there would no longer be so much daily contact and strong emotional relationships between the dispatch teams and the supervised departments.

(3) The Circuit Inspection CDI Teams (CITs)

The CITs are the circuit inspection teams established by the higher party committees and operated by the higher-level main CDIs. The institution of "circuit inspection" has been formally used ever since the Han Dynasty.¹²² In regard to the CPC, early in 1921, the central

¹¹⁹ *E.g.*, Chengdu city in Sichuan and Xiangyang city in Hubei

¹²⁰ YANGJIANG CITY, THE DIRECTION OF THE REFORM OF CHINA'S DISCIPLINE INSPECTION AND SUPERVISION ORGANIZATION (Dec. 12, 2013), <http://www.yjlz.gov.cn/html/?604.html>.

¹²¹ Chengdu has similar reforms. See *On the Spirit of the Third Plenary Session of the 12th Session of the Municipal Commission for Discipline Inspection*, CHENGDU DAILY (2014), http://www.cdrb.com.cn/html/2014-03/06/content_2010598.htm.

¹²² Tailei Gong (贡太雷), *Historical Progress of the China's Old Circuit Inspection Institution* (中国古代巡视制度的历史沿革), 3 CHINESE CADRES TRIBUNE (中国党政干部论坛) 28 (2014).

party would send special commissioners to “circuit” and instruct on work.¹²³ This historic institution was strengthened during later periods in order to facilitate communication and local organization construction.¹²⁴ After the Reform and Open Policy, its work gradually focused on internal supervision.

After several years of tentative exploration, a statement was finally written into the 16th CPC Plenum Report “to reform and improve the discipline inspection system of the party and to establish and improve the circuit inspection institution.”¹²⁵ In the Interim Rules on CPC Internal Supervision in 2004, the circuit inspection institution was principally noted as one of the ten internal supervision institutions.¹²⁶ In 2003, the party center established five teams for local inspections and, in 2004, each of the provinces gradually established provincial level circuit inspection institutions – 121 in total.¹²⁷ In 2005, the party center added one institution for financial inspection, three for enterprises, and two for central governments, totaling eleven central level CITs.¹²⁸

In 2007, the circuit inspection institution was written into the party constitution.¹²⁹ In 2009, the Interim Rules on CPC Circuit Inspection Work (Interim Circuit Rules) provided more concrete rules on this new form of the historic institution.¹³⁰ In 2010, the institution was

¹²³ Shuzhen Zhou (周淑真), *Historical Progress, Current Achievements and Institutional Creations of the Circuit Work* (巡视工作的历史沿革、现实成就和制度创新), 3 CHINESE CADRES TRIBUNE (中国党政干部论坛), 7 (2014).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Regulations of the Communist Party of China on Party Supervision, arts. 27-29, http://www.gov.cn/test/2005-06/27/content_9940.htm.

¹²⁷ Zhou, *supra* note 123, at 7.

¹²⁸ Qin Tang (唐勤), *Historical Progressing of the Inner Party Circuit Inspection Institution* (党内巡视制度的历史演进), 8 SOC. SCI. OF CHONGQING (重庆社会科学) 84 (2014).

¹²⁹ Zhou, *supra* note 123, at 8.

¹³⁰ The Communist Party of China to Inspect the Work of the Ordinance, CHINA NEWS.COM (July 13, 2009), <http://www.chinanews.com/gn/news/2009/07-13/1771809.shtml>.

expanded into the military.¹³¹ Also, in 2010, the CCDI issued the Interim Work Rules for Central CITs (CCITs), further regulating inspection work (Interim Central Circuit Rules).¹³²

According to the Interim Circuit Rules, central and provincial party committees shall each establish a Circuit Inspection Work Leader Team, whose head is normally the head of the main CDI at the corresponding level.¹³³ For example, the Central Circuit Inspection Work Leader Team's head is Qishan Wang; and the Guangdong Provincial Circuit Inspection Work Leader Team's head is Yaoxian Huang, the current head of the Guangdong CDI. The leading teams are responsible for making circuit inspection work plans, monitoring their implementation, and reporting to the relevant party committees.¹³⁴ Their daily-operating offices are located in the corresponding CDIs.¹³⁵

Next, party committees also need to establish several CITs to carry out circuit inspection work at the next-lower-level party committees, governmental leaders, and cadres.¹³⁶ These CITs are accountable and shall report to the Leader Teams. As both the head and the workplace of the Leader Teams are the same as for the corresponding CDIs, these CITs actually report to the CDI heads, and thus become effectively one part of the main CDI – although theoretically, when the information obtained is too important or serious, the CIT heads could report directly to the party center, thereby avoiding the Leader Team.

The CIT team heads are nominated jointly by the CDIs and the corresponding organization departments.¹³⁷ The main CDIs decide the salaries, evaluations, and promotions

¹³¹ Zhou, *supra* note 123, at 8.

¹³² BAIDU, *Working Rules of the Central Visiting Section of the Central Committee of the Communist Party of China* (Apr. 1, 2010), <http://baike.baidu.com/view/12743058.htm?fr=aladdin>.

¹³³ Interim Central Circuit Rules, art. 5.

¹³⁴ *Id.* at art. 9.

¹³⁵ *Id.* at art. 6.

¹³⁶ *Id.* at art. 7.

of the team heads and members. Thus, the main CDIs have relatively strong control over the CIT teams.

To summarize: The main section of the CDI is in charge of the party committees at each level, including the party heads, the organization departments, the propaganda departments, and the united front departments, and is responsible for all anti-corruption work in the entire area. The dispatched CDI teams are responsible only for the supervised departments. These are mainly executive departments and judicial organs at the corresponding level, including the People's Daily, the development and reform departments, the education departments, the financial departments, the urban planning departments, the industrial and commercial departments, the courts, and the procuratorates.¹³⁷ The main CDIs often rely on the dispatched teams for information and preliminary investigations of the dispatched agencies. The CIT system exists for the purpose of vertical supervision, covering both party and governmental agencies at the next lower level.

Recent reforms of the Central Circuit Inspection CDI Teams (CCITs) are very thorough and worthy of discussion. Although the CCDI's control over CCITs is relatively strong, with control over the personnel, salaries, and organizational relations, the circuit inspection work happens only twice and each time lasts for only several months per session.¹³⁸ And the work funding, as well as the worksite for the investigation, are provided by the inspected subjects. Article 39 of the Interim Central Circuit Rules forbids the circuit inspectors from accepting

¹³⁷ *Id.* at art. 48. The CCDI and the Central Organization Department shall explain these Rules together.

¹³⁸ For the list of CCDI's dispatched teams, see <http://www.chinanews.com/gn/2013/11-07/5472591.shtml>. For the list of the Guangdong CDI's, see CHINA NEWS NETWORK, *The Central Commission for Discipline Inspection of the Ministry of Supervision announced the presence of the agency discipline inspection team leader list* (Nov. 8, 2013), <http://www.gdjct.gd.gov.cn/pzcyj.jhtml>. For the list of the Guangzhou City CDI's, see GUANGDONG PROVINCIAL COMMISSION FOR DISCIPLINE INSPECTION, *CPC Guangdong Provincial Commission for Discipline Inspection presences*, <http://news.sohu.com/20060712/n244213701.shtml>.

¹³⁹ Interim Central Circuit Rules, art. 14, <http://www.chinanews.com/gn/news/2009/07-13/1771809.shtml>.

above-standard amenities, high-level accommodations, or reimbursement for individual expenses,¹⁴⁰ but all normal expenses for circuit inspection work are borne by the inspected entities.

Although offering additional amenities to the circuit inspectors is forbidden, the reality may well be different – especially after the fiscal decentralization in China, under which the superior decides the fate of the subordinate officials and the amount of money transferred to local government. Obviously, the subordinate has a strong incentive to offer circuit inspectors accommodations, entertainment, and dinners that are as luxurious in nature as possible. In 2011, the media exposed that during the twenty days of the circuit inspection of Zigui county – an impoverished county, based on national standards – thirteen members of the sixth CIT of Hubei province had expensed around 800,000 RMB, all borne by the county, equaling roughly 200 times the annual income of local peasants.¹⁴¹ After accepting such amenities and even monetary payments, it is doubtful that the inspections were effective.

Traditionally, the heads of the CITs are not temporary positions, but are fixed. For the CCITs, the heads are all cadres at the provincial (ministerial) level 正省（部）级 who have just left the “front line” workplaces but have not yet retired. They typically remain as CCIT heads until formal retirement at seventy years old,¹⁴² turning this position into a distorted benefit for second-line or retired officials.¹⁴³ Although CCIT members are sometimes

¹⁴⁰ BAIDU, *Working Rules of the Central Visiting Section of the Central Committee of the Communist Party of China* (Apr. 1, 2010), <http://baike.baidu.com/view/12743058.htm?fr=aladdin>.

¹⁴¹ http://news.ifeng.com/shendu/xsjzk/detail_2011_09/13/9138550_0.shtml?_from_ralated(last visited Jun 28, 2017)

¹⁴² Chao Liu (刘超), *Disclose the secret CCITs* (揭秘中央巡视组), 6 Office Affairs 59 (办公室业务).

¹⁴³ Deshui Zhuang (庄德水), *The CIT supervision shall be fully covered and long lasting* (巡视监督应实现全覆盖和长效化), 3 CHINESE CADRES TRIBUNE 22 (中国党政干部论坛) (2014).

temporarily borrowed from other departments, they all report to the team heads.

Moreover, the CCIT teams are traditionally assigned to inspect certain fixed places. As previously explained, CCITs for local places, for enterprises, for the central government, and for finance are all distinct from each other. Thus, there is a fixed one-to-one relationship between the CCITs and the inspected entities, similar to the situation of the dispatched CDI teams with respect to the supervised departments. Given that the retired officials who serve as the CCIT heads are no longer subject to evaluation or promotion, the control of the CCDI over the CCIT becomes very weak.

However, recent reforms have altered such relationships, strengthening the CCITs' independence from the inspected entities. These reforms are represented by both the CCDI and the Central Organization Ministry in the Opinions on Further Enhancing the Circuit Inspection Works.¹⁴⁴

The first example is the “three-unfixed reforms” (三不固定). First, the head of each CCIT is no longer a fixed position. According to an interview with Yangchun Peng, the department director of the CCIT Leader Team, at Renmin Net, on July 23, 2013,¹⁴⁵ the party center has established a pool for CCIT heads consisting of the first- or second-line provincial (ministerial) level cadres. Before the beginning of each circuit inspection, the party center will select each CCIT head according to the concrete situation, in order to strictly avoid conflicts of interest. So far, I have found that none of the CCIT heads and vice heads selected

¹⁴⁴ The opinions were issued in June 2013. The full text of these opinions could not be found. But several comments have presented the reforms therein. See BAIDU, *Central inspection work leading group*, <http://baike.baidu.com/view/10659959.htm?fr=aladdin>; CHINESE SIMPLIFIED, *Highlighting the problem and strengthening the deterrent effect - Summary of the tour in 2013* (Jan. 9, 2014), http://www.gov.cn/gzdt/2014-01/09/content_2562678.htm.

¹⁴⁵ PEOPLE'S NETWORK, *Central inspection group office responsible person guest network* (July 24, 2013), <http://fanfu.people.com.cn/n/2013/0724/c64371-22303196.html>.

under this new leadership reform came from the inspected places or industries, and they were all selected and published before the beginning of each inspection. Each time a particular CCIT conducts an inspection, there could be a different head.¹⁴⁶

Second, the places inspected by each CCIT are no longer fixed. The CCITs do not have any special names, and the CCIT teams are numbered from one to ten, with three additional teams for special inspections. If the Number One CCIT inspects a particular place once, that same team may inspect another place the next time. Similarly, the inspection area is not fixed. One time it may be finance, and the next time it could be enterprise or local government.

The “three-unfixed reform” has completely changed the relationship between the CCITs and the inspected entities. The pool of potential CCIT heads contains over one hundred cadres, making it impossible for the entities to maintain a close relationship with all of them, and meaningless to maintain a close relationship with just one or a few of them.

The second example of a recent reform affecting the CCITs involves a combination of increased circuit inspections and an enhanced accountability system. Since second-line officials are not concerned with their promotions or evaluations anymore, accountability must be achieved by means of a different method. In both the Interim Circuit Rules and the Interim Central Circuit Rules, there are articles regarding work discipline, responsibility, and accountability of CIT and CCIT inspectors.¹⁴⁷

The new leadership has further emphasized the implementation and concretization of these existing institutions. At the central circuit inspection mobilization meeting on October

¹⁴⁶ For the name list of each time circuit inspection under the new leadership, see BAIDU, *Central inspection work leading group*, <http://baike.baidu.com/view/10659959.htm?fr=aladdin>.

¹⁴⁷ Interim Circuit Rules, art. 40-42, 44, <http://www.chinanews.com/gn/news/2009/07-13/1771809.shtml>; Interim Central Circuit Rules, art 35-40, at <http://baike.baidu.com/view/12743058.htm?fr=aladdin>.

23, 2013, Qishan Wang emphasized, “it is a failure of duty to fail to discover big issues that should be discovered; and it is dereliction to fail to report objectively the discovered problems; and these activities shall be accounted for according to the situations.”¹⁴⁸

A prerequisite for such accountability is that any problems could be later exposed; otherwise, a breach of duty by the CCIT might not be discovered. Given that China’s corruption is entrenched, and local CDIs and dispatched teams often fail to function effectively, if there are only one or two circuit inspections during the whole term of a session – and even with the “three-unfixed reform” mentioned above – the possibility for the second CCIT to discover the malfeasance of the first is very low, and the chances are even lower to discover a problem with the second CCIT. This makes it too easy for the two CCITs and the agencies inspected by them to collude and hide any problems.

The new reforms have increased the number of routine circuit inspections and also created special circuit inspections. From May 2013 to August 2014, four rounds of CCITs were completed, and all provinces had been inspected once. Such routine inspection rounds have increased from two in 2013 to three in 2014.¹⁴⁹ In addition to the ten routine CCITs, there were also three more CCITs created for special inspections,¹⁵⁰ further increasing the frequency and coverage of the circuit inspections. The possibility of discovering a previous CCIT’s malfeasance is now much higher. Competition among the different CCITs further strengthens the incentives to discover any problems.

The third example of recent reform involves increasing the focus of the CCITs on anti-

¹⁴⁸ Tieying Ren(任铁纓), *Several thoughts on the Supervision by the CITs* (对巡视组进行监督的几点思考), 3 CHINESE CADRES TRIBUNE (中国党政干部论坛) 17 (2014).

¹⁴⁹ <http://bj.people.com.cn/n/2014/1107/c14545-22840522.html> (last visited Jun 28, 2017)

¹⁵⁰ BAIDU, *Central special inspection*, <http://baike.baidu.com/view/12500378.htm?fr=aladdin>.

corruption activity. Previously, the circuit inspection missions included a relatively broad scope, ranging from monitoring policy implementations to democratic centralism to cadre nominations.¹⁵¹ Now, the CCITs focus on discovering four kinds of information (四个着力):

(1) Pursuant to the current party policy of clean government without corruption, information about the existence of exchanges of power for money, the exercise of power for personal profit, the embezzlement of public funds, and bribery; (2) The implementation of the “Eight Rules,” issued by Xi Jinping, regarding formalism, bureaucracy, hedonism, and extravagancy; (3) Breaches of party political discipline; and (4) Malfeasance and corruption in cadre selection and appointment.¹⁵² Three of these four areas deal with the corruption problem.

Thus, with their new specialized mission, the CCITs are much less influenced by the general affairs of the inspected entities, such as their economic growth and social stability, when gathering information.

Recent Reforms Have Decreased Local Party Control over the Local Prosecutor

(1) Local Party Control Over Personnel, Funding, and Work Support of the Local Prosecutor Has Decreased

Similar to the local CDIs, recent reforms will further strengthen the vertical control within the prosecutor system, because the finances, personnel, and work equipment will all be uniformly regulated by the provincial government. The municipal and district governments will lose almost all control over local prosecutors. The goal is to strengthen the independence of the local prosecutor from the local party leader. Therefore, if the local leader simply declines an investigation, the prosecutor can turn to the superior prosecutor for help, who has

¹⁵¹ Interim Circuit Rules, art. 12, <http://www.chinanews.com/gn/news/2009/07-13/1771809.shtml>.

¹⁵² The talk by Qishan Wang at the central circuit work mobilization and training meeting in May 2013.

the power to overcome the rejection of local leader and direct the prosecutor to continue the investigation. This is workable because the superior prosecutor is at a political level at least equivalent to that of the local party leader.

Moreover, the superior prosecutor is subject to evaluation, and therefore shares the same incentives as the inferior, with respect to the numbers of cases and the respective rates of conviction and withdrawal. In addition, being prosecutors, both the superior and the inferior share many other common internal needs as well as similar attitudes and concerns – such as the professional desire to be heavily involved in anti-corruption efforts, and the desire to improve the financial situation of the office through anti-corruption work. It is rare for the superior to obstruct the inferior's anti-corruption work, according to interviews.¹⁵³

(2) The Professional Strengthening of the Prosecutor and the Emphasis on the Party Leader's Responsibility in Anti-Corruption Efforts

Strengthening of the prosecutors' professional standing is a natural extension of the decades of reforms on professionalization of the prosecutors. Together with a strong emphasis on the party leader's accountability in anti-corruption efforts, when there is a strong case, the local head is now likely to be hesitant to decline an investigation when he/she knows that laws may have been broken. He/she is especially aware that the prosecutor-general could submit the case to the superior prosecutor to overturn its rejection. Thus, he/she will often listen to the suggestions of the prosecutor-general to determine the possibility of corruption crimes therein, the potential seriousness of the cases, and the willingness of the prosecutor-general to investigate. With specialized legal knowledge and experiences in anti-

¹⁵³ Series of interviews conducted in Beijing, Henan, and Tianjin from March 2014 to April 2015.

corruption, the prosecutor-general has a strong chance of persuading the local head not to suppress the investigation.¹⁵⁴ Many prosecutor-generals have commented that the local heads are easily persuaded and “controlled,”¹⁵⁵ through such tactics as over-emphasizing the strength and importance of the case and exaggerating the extent of public attention to it.

D. THE COV SYSTEM’S EFFECT ON LOCAL CONTROL AND ITS ROLE IN INITIATING THE RECENT ANTI-CORRUPTION CAMPAIGN

Against the backdrop presented in the previous sections of this chapter, the second alternative explanation for the use of COV argues that COV helps the superior authority to supervise its inferiors, disrupt the inferior’s protective network, and limit the inferior’s power. The superior authority can constantly check on any inferior’s loyalty by deploying another inferior through the COV system, regardless of the default localized jurisdiction, and the frequency of the superior’s use of COV for this purpose largely depends upon its trust in the inferior and its judgment of the inferior’s power within that area.

This function of COV explains the null relationship between the use of COV and the local bias based on different types of extralegal factors, because the use of COV is subject largely to the discretion of the superior. This function also works as a common foundation for the use of COV in all areas of the Chinese polity – not only at the investigation, prosecution, and trial stages of an anti-corruption case, but also with respect to the nomination, promotion, and exchange of senior officials¹⁵⁶ and the operation of the circuit inspection system, because

¹⁵⁴ Series of interviews conducted in Beijing, Henan, and Tianjin from March 2014 to April 2015.

¹⁵⁵ Interview conducted in March 2015 in Beijing.

¹⁵⁶ Use of the COV in nomination and promotion of senior officials refers to the system in China that selects senior or important positioned officials who reside outside the location area of the position and that horizontally exchanges the location areas among the same level officials after a certain period of incumbency,

in all of these areas the COV is designed in a similar way.

Such design also inherits from China's historical COV system a similar function – to strengthen imperial control over inferior authorities. As discussed above, the CITs are the circuit inspection teams established by the higher party committees and operated by the higher-level, main CDIs. They are intended to help the superior CDI's achieve vertical supervision, covering both party and governmental agencies at the next lower level. Thus, the CIT system enables the superior anti-corruption force, i.e., the superior CDI, to investigate the inferiors' corruption and misbehaviour, constituting another kind of COV in China. In this way, the COV system in anti-corruption cases helps the superior to interrupt the local control over anti-corruption cases, and enables the superior to utilize a different inferior from outside the default jurisdiction to deal with public corruption cases.

The frequent and routinized use of COV within the recent anti-corruption campaign provides further evidence that the local anti-corruption mechanism no longer functioned properly, and probably had grown outside of the superior's control – and that China's public corruption therefore had become quite entrenched. The routinized use of COV helps to centralize the anti-corruption mechanism.

Since the 18th Plenum of the Communist Party of China (CPC), more than 150 provincial/ministerial-level cadres (or “tigers”) have been investigated and removed from official positions for corruption, including: Zhou Yongkang, a previous Standing Committee member of the Politburo; Caihou Xu, the previous Vice Chairman of the Central Military Commission; and Rong Su, the previous Vice Chairman of the political consultative

normally five to ten years.

conference. This is quite astonishing as, from 2009 to 2012, the number of “tigers” caught for corruption was only eight, six, seven, and five, respectively. Given the local party’s history of dominant control over the local anti-corruption agencies, how could this happen? The use of the COV system in anti-corruption efforts has been very instrumental to the success of the recent anti-corruption campaign.

At the beginning, the CCDI circuit inspection team, which is a part of the overall COV system, is sent out by the CCDI to collect corruption information from the inspected local areas, and then transfers the information to the CCDI’s anti-corruption investigative departments, which consequently carry out the investigations of the cases disclosed by the transferred information. Instead of relying on the local anti-corruption agencies to collect and investigate corruption within that local area, the party center has utilized anti-corruption forces from outside the local area to uncover the corruption cases within that area. The existence of the COV system, as an exception to the default jurisdiction, legitimately allows the party center to instruct alternative anti-corruption forces to break up the local network and realize the central party’s leadership interests.

After cracking down on several high-level “tiger” officials in the local areas, routine corruption cases involving lower-level officials may become too numerous for the CCDI’s anti-corruption forces to handle. In that context, COV makes it possible for the CCDI to instruct lower-level CDI’s anti-corruption forces from outside the local area to continue investigating the large number of corruption cases involving lower-level officials in that area. The COV system authorizes other CDIs, at the same level, to investigate corruption outside their own jurisdictions. Thus, the COV system largely increases the anti-corruption power of

the CCDI, by enabling it to mobilize all lower-level CDIs nationwide without being limited by the default jurisdiction. Through these two steps, i.e., first cracking down on high-level “tigers” and then having alternative CDIs deal with relevant lower-level corruptions, the party center has successfully initiated the recent anti-corruption campaign and has revitalized the previously non-operative local anti-corruption mechanism.

VI ALTERNATIVE EXPLANATION 3: USING COV TO REALIZE LEADING CONTROL IN THE NEW ANTI-CORRUPTION MODEL

As presented in Chapters VI and V, while ordinarily COV helps the superior to achieve its goals and constantly check on its inferior's work, during unusual times – such as during the recent anti-corruption campaign – the COV system helps to initiate the campaign and centralize, or recentralize, control over local anti-corruption efforts. Thus, the COV system plays an essential role in unitarian governance. This is the foundation for the third alternative explanation for the newly expanded use of the COV system.

The third alternative explanation is closely related to this realization of unitarian control, and must be understood from the holistic perspective of the overall reform of anti-corruption efforts in China. Besides helping to initiate the recent campaign, COV also works as a part of the party center's new model of "leading control," providing an important aspect of legitimacy for such "leading control" within China's new anti-corruption system – which involves trying to consolidate the CDIs and the procuratorates into one, single anti-corruption agency under the party center's leading control.

The most recent anti-corruption campaign in China had a very different style from previous ones. Previous campaigns lasted only a short time, normally around a year; relied mostly on political pressure to activate ordinary anti-corruption agencies and mobilize the general public; required both CDIs and prosecutors to significantly increase investigations of corruption cases; encouraged self-surrender in exchange for lighter punishment; and ended with kicking out only a few political figures and prosecuting very few corruption cases.¹⁵⁷

By contrast, through targeting the well-noted problems of the anti-corruption agencies,

¹⁵⁷ MELANIE MANION, *CORRUPTION BY DESIGN: BUILDING CLEAN GOVERNMENT IN MAINLAND CHINA AND HONG KONG* 180–200 (2004).

the recent campaign has made significant efforts to institutionally reform the local anti-corruption system while pushing forward anti-corruption efforts.¹⁵⁸ Early in the campaign, President Xi and CCDI Secretary Wang emphasized that anti-corruption work is a systematic, continuous task that will be carried out through three steps: (1) Making officials afraid to be corrupt; (2) Making officials unable to be corrupt; and (3) Making officials unwilling to be corrupt.¹⁵⁹

The first step is designed to buy time and help prepare for later reforms. The basic mission of the first step – to make officials scared of corruption – explains why that part of the campaign lasted four years, with the resulting dramatic impact of bringing down over a hundred provincial/ministerial-level officials and occupying nearly 10% of all incumbent ministerial-level officials nationwide – with more than 90% of those caught during 2012-2015 being transferred to judicial proceedings, and more than 90% of the concluded cases leading to prosecution and conviction.¹⁶⁰

Moreover, during this first step of the campaign, and in order to prepare for later reforms to remake the CDIs into a single anti-corruption agency, the “three-transform” reform first required the CDIs to focus on supervision; the centralization of control over the CDIs then strengthened their independence from the local governors; the “three-unfixed” reform of the CITs further enhanced the CDIs’ anti-corruption capacity; and the routinized use of offsite

¹⁵⁸ See Xuezhong Guo, *Controlling Corruption in the Party: China's Central Discipline Inspection Commission*, 219 THE CHINA QUARTERLY 597–624 (2014); Hualing Fu, *Wielding the Sword: President Xi's New Anticorruption Campaign*, in CORRUPTION AND MODERN STATE: ESSAYS IN POLITICAL ECONOMY (Susan Rose-Ackerman & Paul Lagunes, eds., 2015).

¹⁵⁹ See CHINA.COM, *Xi Jinping: do not dare to achieve the initial goal does not want to destroy the dam is building* (Jan. 6, 2017), http://news.china.com/zh_cn/domestic/945/20170106/30147766_all.html.

¹⁶⁰ See the data at: http://baike.baidu.com/link?url=6eNEoscUctAqRbDXR1Yv9986hUzVjLj1ekNe5qrO5Kaxjbq9andgpq-QCwwJkPaC_9PVeU0Qdn3pVmYY9SEea1tq4Hjj_FM7UurRUoUVmldxEtYL7eBia8ksNxreZ9qS714XAHbJvzYYgL6MT0e47CEezWiot4pyKAwQGvSMnVFC9y85BitT7mvk2rVSRyS1d47-zhyMqgskTInqSDL9zoY7shVl9tdoCu2AYe3NODkj-XR4EkmUHPa4hKpwily#2 (last visited June 28, 2017).

investigations (through COV) as well as the joint investigation systems temporarily resolved the short-term problems of the CDIs, without addressing at such an early stage the more difficult long-term reform of expanding the CDIs' size. In addition, the CDIs won broad public support, popularity, and enhanced reputation through successful investigations against “tiger”-level corruptions; the opening of the CCDI's website; and the promotion of the CDIs' anti-corruption work in the public media. All of this provided enhanced legitimacy for the CDIs ultimately to absorb other anti-corruption forces, especially the anti-corruption departments of the procuracy.

With a new series of party-adopted provisions institutionalizing these reforms, and the recent decision to establish the NSC system, the anti-corruption campaign has now moved on to the second step: Reforming the prior anti-corruption system, together with reforming the official asset reporting system, the cadre selecting and promoting institutions, and the governmental power over markets, all with the ultimate goal of rendering public officials incapable of being corrupt. The third and final step of the reform initiative – to make public officials unwilling to be corrupt – has also been initiated, for example through the strengthened idea of building up a clean party with integrity.¹⁶¹

Thus, although initiated by political pressures and by selectively fighting against “tiger” corruption, the current campaign's long-lasting strength and broad coverage – as well as the reliance upon and permanent implementation of institutional reforms of the CDIs and the procuratorates during the campaign and their strategic relation with the following steps –

¹⁶¹ Series of provisions to clean party have also been issued, including Provisions on the Standards of Inner Party Democratic Life Under New Situation, issued on Oct. 27, 2016; and Provisions on the Standards of the Party Members to be Honest and Self-Disciplined (effective on Jan. 1, 2016). Provisions will not be discussed in detail in this article.

have distinguished the current campaign from previous anti-corruption campaigns, and demonstrate that it is a part of a strong overall reform plan.

Moreover, with the expanded role of the CDIs within the campaign, the decision to have the CDIs absorb the procuratorates, and the increased centralized control over the CDIs and the procuratorates, the current campaign has pursued institutional reforms designed to transform the previous “dual-leadership, dual-track” anti-corruption model into a new model based on the party center’s “leading control” over a single anti-corruption agency. In this new system, COV functions to help realize the party center’s “leading control,” and to provide the legal authority for such control.

A. THE PARTY CENTER’S LEADING CONTROL IN ANTI-CORRUPTION

The leading control of the central party in anti-corruption work constitutes another example of “consultative authoritarianism,” which utilizes the causal role of local officials in the furtherance of civil society in China to argue that operationally autonomous civil society can exist even in an authoritarian regime.¹⁶² Similarly, here, the central party has played an important causal role in enabling the substantive but controlled participation by outsiders in anti-corruption efforts.

“Leading control” refers to the idea that when an authoritarian regime becomes institutionally open and participative, with the inclusion of multiple entities and outsiders, the scope, principle, direction, and focus of such participation in turn are substantively controlled by the central party, and such control becomes institutionalized. As applied to the situation of anti-corruption work, “leading control” means that the central party does not directly decide

¹⁶² Jessica Teets, *Let Many Civil Societies Bloom: the Rise of Consultative Authoritarianism in China*, 2013 CHINA QUARTERLY 19 (2013).

the outcome of the investigation or the prosecution of specific public corruption cases.

Instead, the central party outlines the principles for the anti-corruption initiative, and controls the direction, the scope, and the degree of the anti-corruption work. The central party also retains the power to decide some particular high-level, sensitive public corruption cases.

Party leadership over the legislature is legitimate under China's legal framework, as China's constitution upholds the party's leadership in every aspect of the country's governance and functioning.¹⁶³ Moreover, the empirical findings in this dissertation closely reflect the fundamental characteristics of this kind of "leading control." The central party does not participate directly or indirectly in the anti-corruption process, nor does it determine any concrete decision during any stage of an anti-corruption case. The central party merely leads the anti-corruption process by predetermining its directions, principles, and goals. The party exerts such "leading control" in three ways: (1) By controlling anti-corruption agencies, and creating balance between anti-corruption agencies; (2) By enacting vague laws; and (3) By providing clear instructions through regulations, policy documents, and political talks.

B. ESTABLISHING LEADING CONTROL BY CONTROLLING ANTI-CORRUPTION AGENCIES, HAVING VAGUE LAWS, AND ESTABLISHING PARTY RULE SYSTEM

Centralizing Control Over Anti-Corruption Agencies

The previously discussed reforms have not only decreased the local party's control over the local prosecutors, but also centralized the control over the local prosecutors within the central party. The elimination of the local party's control does not create true independence for the local prosecutors. Instead, the central party's leading control has taken the place of the previous system of local party control.

¹⁶³ See XIANFA (1982) (China), http://www.npc.gov.cn/wxzl/gongbao/1982-12/04/content_1478495.htm.

For the CDIs, the nomination, promotion, and evaluation of CDI leaders is determined, level by level, up to the CCDI which reports to the president. Although the funding and work support of the CDIs continue to be provided by the local government, reforms of the budget law will contribute to ensuring a sufficient budget for the CDI's work and decreasing the local government's ability to arbitrarily reduce the CDI's funding.

More importantly, the local CDI does not need the local party leader's approval to initiate a corruption case investigation, but instead needs to report to the superior CDI and is subject to the superior CDI's decision on the case. The local CDI cannot decide the cases entirely on their own. In practice, the local CDI must report to the superior CDI, and in many situations must have the superior CDI's approval, including on such matters as: (1) categorizing the case information; (2) deciding whether to initiate a preliminary or formal investigation; (3) deciding the scope, focus, and degree of the investigation; (4) deciding whether to use a joint investigation; (5) deciding whether to use some strong or special investigative techniques such as *shuanggui*; (6) deciding how to conclude the case; and (7) deciding whether to transfer the case to the prosecutor. Thus, the CCDI effectively controls the work of local CDIs, level by level. Recent reforms have successfully transferred control over the local CDIs from the local party leader to the superior CDI and then, level by level, up to the CCDI, and thereby to the party center.

For the local prosecutors, the superior prosecutor's control used to be stronger than the superior CDI's control over the local CDI. With recent reforms further emphasizing the decisive power of the superior prosecutors in the nomination and promotion of the local prosecutor's leader, and further strengthening the relationship between the superior and the

inferior prosecutors, the local prosecutor is even more strongly controlled than previously by the superior prosecutor – and, level by level, up to the supreme procuratorate leader, who must report to the party center.

More importantly, the recent decision by the party center (and later adopted by the NPC Standing Committee) to establish the National Supervision Committee (NSC) will help the CDIs to gradually absorb the anti-corruption forces currently located within the prosecutorial system.¹⁶⁴ Previously, both the CDIs and the prosecutors served as the routine anti-corruption forces in China. And with the CCDI and provincial CDIs now playing a leading role in senior-official or other “hot” corruption cases, the prosecutors have become important figures in combating ordinary local corruption, and possess a strong staff strength and good equipment.¹⁶⁵

With this recent NSC decision, the previous multiplicity of anti-corruption institutions in China will become unified in the form of a single NSC system that will include, as “people holding two titles,” the same anti-corruption investigators who currently work for the CDIs. Beijing, Shanxi, and Zhejiang provinces have been selected to be the three experimental locations to first carry out these reforms, moving the anti-corruption departments currently in the procuratorates into the corresponding CDIs,¹⁶⁶ in preparation for the nationwide implementation of these NSC reforms during the nineteenth plenum of the party starting in 2017.

¹⁶⁴ See PEOPLE.CN, *China decided to carry out the national supervision system reform pilot in Beijing, Shanxi and Zhejiang* (Dec. 27, 2016), <http://leaders.people.com.cn/n1/2016/1227/c58278-28979210.html>.

¹⁶⁵ See Fenfei Li & Jinting Deng, *The power and the misuse of power by China’s local procuratorates in anticorruption*, 45 INT’L J. L., CRIME & JUSTICE 12 (2016).

¹⁶⁶ See PEOPLE.CN, *China decided to carry out the national supervision system reform pilot in Beijing, Shanxi and Zhejiang* (Dec. 27, 2016), <http://leaders.people.com.cn/n1/2016/1227/c58278-28979210.html>.

The meeting communique of the seventh plenum of the 18th session of CCDI members, concluded on January 8, 2017, further clarifies that the Supervision Committees (SCs) will be organized as a three-level system, with the NSC at the national level, then the provincial SCs, and finally the city SCs, thereby replacing the previous four-level system involving both central and local CDIs and procuratorates.¹⁶⁷ The new SC system, which will be discussed below, is the sole anti-corruption agency that will be established to consolidate the multiple anti-corruption agencies currently existing in China. The previous four-level system was established to correspond to the four-level party and governmental system, which is consistent with the old idea that the CDIs are the assistants to the local party. After the new three-level anti-corruption system is established, the SCs will no longer correspond in this same way to the party and governmental system.

What will probably follow is that the NSC will investigate corruption of provincial-level officials, the provincial SCs will be responsible for investigating city-level corruption, and the city SCs will be for the investigation of county-level corruptions. Once the new system is in place, the SCs will be superior to the agencies or organizations they supervise, and therefore will not be subject to the influence by them.

Vague and Incomplete Anti-Corruption Laws and Rules Leave Room for Party Control

The anti-corruption laws and rules in China provide insufficient legal and institutional limits to regulate the local CDI and prosecutorial behavior in anti-corruption cases, and thus create room for the party center to implement its “leading control” and even exercise its discretion within the work of local anti-corruption agencies, consistent with the general legal

¹⁶⁷ See the meeting communique at http://www.ccdi.gov.cn/xwtt/201701/t20170108_92483.html.

framework in China.

(1) China's anti-corruption criminal law remains incomplete and unprincipled in several respects. First, China does not criminalize accepting or giving illegal gratuity. China has no such concept as 'illegal gratuity,' and specific intent remains necessary to convict someone of a bribery crime in many parts of China. However, this specific intent requirement has been loosened by some courts to cover situations in which a public official accepts illegal rewards after legally completing his official act. In this situation, the official act may not have been influenced, but the court nonetheless finds specific intent from the official's subsequent knowing acceptance of the illegal rewards.¹⁶⁸

Second, as defined in Article 383 above, China currently recognizes only 'property from others' as a bribe, clearly excluding other benefits that might be seen as comparable to property rights, e.g. opportunities for job promotion, educational opportunities, and sexual services.¹⁶⁹ It remains unclear whether 'property from others' covers common gifts, such as wines and cigarettes or the right to use cars and houses. However, courts in several jurisdictions have extended the concept of a bribe to include travel opportunities, debt exemption, and the provision of free services.¹⁷⁰ Although the ninth amendment of China's criminal law (1997) includes property rights as a kind of bribe, the law still excludes some frequently-seen benefits such as sexual services or the right to use cars and houses.¹⁷¹ Overall, the definition of public corruption remains relatively narrow in China.

¹⁶⁸ YU ZHAO, PRACTICE GUIDELINES FOR PUNISHING GRAFT AND BRIBERY CRIMES [CHENGZHI TANWU HUILU FANZUI SHIWU ZHINAN] 214–215 (2014).

¹⁶⁹ Bingzhi Zhao, *On the improvement of criminal rule of law on China's anticorruption* [*Lun woguo fanfubai xingshi fazhi de wanshan*], 3 CONTEMP. L.R.[DANGDAI FAXUE] 53 (2013).

¹⁷⁰ ZHAO, *supra* note 168, at 221.

¹⁷¹ Ninth Amendment of China's Criminal Law, art. 44 (effective on Nov. 1, 2015), http://www.npc.gov.cn/npc/xinwen/2015-08/31/content_1945587.htm.

Third, China currently requires that the bribed individual actually have received the bribe and tried to act in a manner as to benefit the bribers.¹⁷² A narrow textual interpretation of this requirement would exclude from the definition of bribery those situations where the bribed individual made a promise but had not yet actually sought to benefit the bribers, particularly where the bribed individual accepted the bribe knowing that the bribers had a very specific request. Although a 2003 judicial interpretation clarified that bribery involves three stages – the promising, the carrying out, and the realizing – and that satisfying any stage would be sufficient to commit the crime of bribery, it remains in dispute whether this 2003 interpretation will be binding.¹⁷³

Fourth, a benefit of over 5,000 RMB is sufficient to constitute a public corruption criminal offence, e.g., embezzlement or bribery, and a conviction for receiving a benefit of over 100,000 RMB could result in over ten years' imprisonment, life imprisonment, or even the death penalty.¹⁷⁴ These two standards can be easily reached. But for allegations of corrupt dealings that exceed 100,000 RMB, there is no further standard to distinguish the degree of seriousness.¹⁷⁵

In general, the current law in China does not provide practical standards to decide the seriousness of public corruption allegations, which are then subject to local CDI leaders' discretion. For example, in a small, less-developed city, allegations or records of dealings over 20,000 or 30,000 RMB would normally count as serious, but dealings less than 20,000 RMB would be deemed 'light' – and if there is no proof, such cases may be dismissed. With

¹⁷² Zhao, *supra* note 169, at 54.

¹⁷³ Zhao, *supra* note 168, at 241–243.

¹⁷⁴ China's Criminal Law, arts. 363, 386.

¹⁷⁵ Zhao, *supra* note 169, at 54–55.

the ninth amendment of China's Criminal Law (1997), such numerical standards are substituted by terms such as 'relatively large amount', 'huge amount', and 'extremely huge amount', making the standards somewhat more reasonable and practical.¹⁷⁶ However, anti-corruption agencies still have much discretion to decide the seriousness of the allegations of corruption, as the ninth amendment provides only those three standards.¹⁷⁷ Moreover, the Interpretation on Applying Law in Corruption and Bribery Cases issued by the Supreme People's Court (SPC) and the Supreme People's Procuratorate (SPP) raised the minimum standard to trigger criminal responsibility for bribery from 5,000 RMB to 30,000 RMB, making it more difficult to legally punish corrupt officials.¹⁷⁸

Fifth, China's criminal law has no independent criminal offence for conflict of interest. The holding of conflicting positions, or specific acts based on conflicting interests, do not trigger criminal liability unless those behaviors happen to satisfy the legal definition of some other crime. China's rules to prevent conflicts of interest remain in preliminary stages.¹⁷⁹ The Law on Judicature, the Law on Prosecutors, the Law on Public Officials, the Law on Audit, the Law on Securities, the Law on Administrative Supervision, laws on procedures, and the Regulations on the Punishment of Administrative Officers all have scattered articles addressing withdrawals to prevent conflict of interest.¹⁸⁰ However, none of them have established institutions to investigate violations and enforce these rules. Due to China's weak

¹⁷⁶ Ninth Amendment of China's Criminal Law, art. 39.

¹⁷⁷ Ninth Amendment of China's Criminal Law, art. 44 (effective on Nov. 1, 2015), http://www.npc.gov.cn/npc/xinwen/2015-08/31/content_1945587.htm.

¹⁷⁸ SPC and SPP's Interpretation on Applying Law in Corruption and Bribery Cases, art. 1 (effective on Apr. 18, 2016), <http://www.court.gov.cn/fabu-xiangqing-19612.html>.

¹⁷⁹ Ting Gong & Jianming Ren, *Hard Rules and Soft Constraints: regulating conflict of interest in China*, 22 J. CONTEMP. CHINA 1 (2013).

¹⁸⁰ Zilu Nie, *Theories and Practice on the Legislation of Public Officials Conflict of Interest Prevention Law*, [Fangzhi Gongzhi Renyuan Liyi Chongtu Lifa de Lilun yu Shijian], 6 CHINA LEGAL SCI. [ZHONGGUO FAXUE] 160 (2013).

administrative litigation laws, weak implementation of government information disclosure, and deficient disclosure laws on conflict of interest, the general public has neither the information nor the capability to push for investigations of such violations. As a result, allegations of conflict of interest can hardly be deemed to constitute a case.

(2) There are very few rules governing the categorization of case information. As indicated above, case categorization is essential because it determines whether an investigation will be initiated and, if so, what kind of investigation – which can greatly affect the final outcome of the case. Under the current procedures, file categorization remains controlled by the Party and hidden to outsiders. Although social media helps quickly spread certain information, anti-corruption cases exposed on the Internet comprise only a small portion of all public corruption cases. And in many cases, information must be kept entirely confidential to ensure the success of further investigations.

Standards for file categorization are not fixed in any published rules and can thus easily be changed. Moreover, file categorization can be biased whenever the information contradicts party concerns. Normally, when the information concerns a large number of public officials and large or sensitive interests, and when the investigation might affect the Party leadership and the political stability in the area, the information may be dismissed or suspended in light of the Party's concerns.¹⁸¹ This balancing of legal and political interests is not legally based and is done in secret, thus providing a potential source of arbitrariness.

Moreover, no law governs the preliminary investigations that are performed either by the CDI or by the prosecutor. The only rule regarding the CDI's investigation is the Opinion

¹⁸¹ Interview with the CDI Case Leader of X province, conducted in April 2014 X province.

on the Interview with the Suspects of Cases by the CDIs and the Supervision Agencies, issued by the CCDI in 2006.¹⁸² The only legal requirement contained there is that more than two investigators must attend the interview.¹⁸³ Preliminary investigation by a prosecutor is subject to similar rules. Current reforms to strengthen the superior's control over local anti-corruption work cannot rectify the problem of confidential, passive preliminary investigations that might produce an insubstantial response to a public corruption claim.

Furthermore, no concrete standards or rules for dismissing corruption cases have been established, and no reasons need to be provided in the record. The dismissal decisions are neither available to the general public nor challengeable by the whistleblower, and the decisions are made under the name of the entire committee, rather than the Case Leader, which creates a 'responsibility hole' similar to that created by the judicial committee of the court, as analyzed by Professor Xin He.¹⁸⁴

In addition, no law or published rules govern the performance of joint investigations or *shuanggui*. However, consistent with Professor Sapio's study, I was told during interviews that there are internal informal rules – but they basically only recognize the different roles of each agency, and roughly outline the process.¹⁸⁵ The informal rules are insufficient to prevent the abuse of power during *shuanggui*. Several cases have been exposed on social media in which the interrogated officials died abnormally during *shuanggui*.¹⁸⁶ Laws are needed to

¹⁸² CCDI, ARTICLE 3, THE OPINION ON THE INTERVIEW WITH THE SUSPECTS OF CASES BY THE CDIS AND THE SUPERVISION AGENCIES, PRACTICE HANDBOOK OF LAWS AND RULES COMMONLY USED BY CDIS AND SUPERVISION AGENCIES IN THEIR WORK 1009–1010 (2006).

¹⁸³ *Id.*

¹⁸⁴ He, *supra* note 101, at 681.

¹⁸⁵ Sapio, *supra* note 91, at 12–16.

¹⁸⁶ *An official abnormally died during shuanggui in Wenzhou City, Zhejiang province*, YUNNAN INFORMATION NEWSPAPER, Apr. 10, 2013, http://news.ifeng.com/gundong/detail_2013_04/10/24047054_0.shtml ; Fen Liu, *The director of a bureau in Hubei Huangmei died during shuanggui*, CCTV (June 20, 2013), <http://roll.sohu.com/20130620/n379392913.shtml>.

regulate this process, but strong pressure exists to prevent legal regulation.

(3) The scope, degree, and focus of case investigation, and the use of information collected during the investigation, are subject to no concrete rules or laws. For example, I found that corrupt officials were normally punished only for accepting bribes. De Ma, a former city-level Party Secretary, was punished for public corruption crimes and sentenced to the death penalty with two years' reprieve. Only his acceptance of bribes was investigated and punished. It was not until Guizhi Han, De Ma's superior, was punished for accepting De Ma's bribes that De Ma's giving of bribes was also disclosed and confirmed.¹⁸⁷ Obviously, in De Ma's case, the information regarding Guizhi Han's potential public corruption was intentionally omitted.

Several factors may affect the selection or use of information in investigations:

(a) Sometimes, suspects give selective confessions. An admission of giving bribes would further aggravate a suspect's case and drag down other officials, particularly higher-level officials, which would destroy the informal network that could potentially help the suspect, both inside and outside of prison. Therefore, the suspect will often avoid confessing to giving bribes.

(b) When a case involves almost all of the officials of an agency, or even within a geographic area, the breadth of the case may be controlled by investigators, and only certain high-level officials will be punished – taking into consideration the political stability of the local society, the ordinary operation of the agency, and the preservation of confidence in the

¹⁸⁷ For detailed discussions regarding the two cases, see Fenfei Li, *Why do corrupt officials only accept and never give bribes?* [*Tan guan wei he zhi shou bu song*], FANGYUAN MAGZINE [FANGYUAN LVZHENG] 4 (2013).

local government. For example, in the Yinguo Luo case, Yinguo Luo disclosed the illegal activities of over 100 local officials, but only a few of them were further investigated and punished.¹⁸⁸ Frequently, in public corruption judgments where several officials are involved, the investigations of officials other than the convicted ones are marked as ‘resolved in other cases’. However, no judgments related to them can be found.

(c) Finally, plea bargains between the prosecutors and the suspects can sometimes result in selective omissions. During public corruption investigations, it is difficult to obtain sufficient evidence because many corrupt transactions are made in cash. Prosecution and conviction relies heavily upon confessions of the bribed individual and the briber. Thus, prosecutors frequently offer to forego prosecution of certain activities in exchange for confessions of other activities, in order to secure a conviction for those other activities. The security of conviction is important for local prosecutors’ internal evaluations and promotions.

However, these factors are not guided or established by any regulations or internal documents. The investigations are well controlled and isolated from the public. The inclusion or exclusion of information cannot be reviewed or challenged. Selective omission of information remains arbitrary and subject to the party’s leading control.

Most current CDIs’ anti-corruption work remains heavily controlled by ‘man’, not by ‘law’. The internal decision-making system concentrates power within the CDI leadership, then in the CCDI leadership, and finally in the party center. With no other supervision, the high-level discretion can hardly be regulated. Some local public corruption may also be

¹⁸⁸ *Guangdong Maoming City ex-mayor Luo Yinguo public corruption case has involved 218 officials at district levels (xianchujī 县处级)*, XINHUA NET, (Apr. 13, 2012), http://news.ifeng.com/mainland/detail_2012_04/13/13874705_0.shtml.

dismissed, if it is against the interests of the Party leadership in the area. Although such dismissals may have politically clear standards within the Party, they are not governed by any legal rule and thus can be changed easily by the political leader. Just as with the CDIs under the traditional anti-corruption system, the case categorization standards, the decision standard on preliminary and formal investigations, the standard for deciding not to prosecute the case, and the rules regarding plea bargains all are insufficient to provide clear limits on the prosecutor's anti-corruption work, and thus leave room for the party's leading control.

Expanding the CDI System and Cultivating a Well-Controlled Anti-Corruption Agency

(1) Making the CDIs Focus on Anti-Corruption

A main problem with the CDIs' anti-corruption efforts is that they are indistinguishable from the party committees, aiming to facilitate the party's work generally, rather than specializing in anti-corruption. Thus, the CDIs may refrain from fighting corruption when it contradicts other missions, i.e., economic growth, or the overall situation.

Recent reforms under China's new leadership have specialized the CDIs' mission from two distinct perspectives. First, the reforms have made anti-corruption the primary focus of the CDIs' mission. Second, the reforms have eliminated CDI tasks that are irrelevant to fighting corruption.

In the Decision passed at the Third Plenum of 18th Central Committee of CPC, the CDI's supervisory responsibility was emphasized and the reform of the CDIs system was put onto the schedule.³¹ The Decision especially emphasized that the CDIs shall function as the specialized, inner-party (i.e., internal to the Party) supervisory agency.¹⁸⁹ Compared with the

¹⁸⁹ *Id.*

previous CDIs' mission, the new one abolished the task to "monitor the implementation of the party line, guidelines, policies, and decisions," which was too general and barely related to corruption, and clarified that anti-corruption was the key to "uphold the party constitution and party regulations," and "to assist party committees in strengthening party style."¹⁹⁰

Along with the mission's specialization, the organization and work style of the CDIs have also become more specialized. All of these changes are represented within the "three-transform" (三转) reform of the CDIs promoted by Qishan Wang.¹⁹¹ The Year 2013-2017 Work Plans to Establish and Optimize the Anti-corruption Punishment and Prevention Systems, passed by the new party center, stated that the CDIs shall transform their missions, methods, and styles (转职能, 转方式, 转作风), withdraw from other tasks and positions, and focus mainly on strengthening social norms against corruption and investigating public corruption cases.¹⁹²

Then, at the Third Plenum of the 18th CCPI, Qishan Wang systematically discussed the "three-transform" reform, concretely explaining the meaning of the mission-transformation and requiring all CDIs to carry out such reforms.¹⁹³ He said that the CDIs should focus on supervision, clarify their duty as distinct from party committees and other agencies, withdraw from work that should be regulated by other responsible agencies rather than the CDIs, and ensure that the CDIs do "not exceed, not omit, and not malposition" their authority.¹⁹⁴ He

¹⁹⁰ *Id.*

¹⁹¹ See XINHUA, *Wang Qishan: "three turn" to focus on the central task to supervise the accountability of accountability* (May 19, 2014), http://news.xinhuanet.com/politics/2014-05/19/c_1110760906.htm

¹⁹² See CAIXIN, *Central Political Bureau: To reform the party's discipline inspection system* (Aug. 27, 2013), <http://china.caixin.com/2013-08-27/100574474.html>; XINHUA, *The CPC Central Committee issued the "Establishment and Improvement of Punishment and Prevention of Corruption System 2013-2017 Work Plan"* (Dec. 25, 2013), http://news.xinhuanet.com/politics/2013-12/25/c_118708522_5.htm.

¹⁹³ PEOPLE'S DAILY, *Wang Qishan's Report on the Work of the Central Commission for Discipline Inspection* (Jan. 28, 2014), http://www.wenming.cn/djw/gcsy/yw/201401/t20140128_1721704.shtml.

¹⁹⁴ *Id.*

provided, as an example, that the CCDI has decreased the coordinating institutions of other government organs it attended from 125 to 14.¹⁹⁵ By limiting the number of institutions, the CCDI could affect, and thus be involved in, the resolutions of general affairs.

Moreover, these reforms have clear schedules and are to be carried out accordingly. The planned schedule was to complete the reforms of provincial-level CDIs in 2014, then city-level CDIs in 2015, and finally county-level CDIs in 2016.¹⁹⁶ By May 18, 2014, the reform plans for all thirty-one provincial CDIs were approved, and twelve had already completed their reforms and started to operate.¹⁹⁷ The CDI reforms all mainly address three aspects: increasing the staff and departments to investigate cases, decreasing the number of coordinating institutions, and adding internal supervision departments.¹⁹⁸

By June 2014, at the national level, the previous total of 4619 coordinating institutions had been decreased to 509; the national average percentage of investigative staff and departments within CDIs had increased, to 57.6% and 63.3%; and all of the provincial CDIs had added internal supervision departments.¹⁹⁹ By June 2015, on average, over 85% of the unrelated institutions had been eliminated at city-level CDIs, whose anti-corruption forces represent over 60% of all its internal staff strength, and most CDI leaders are now exclusively responsible for supervision.²⁰⁰ Thus, with these concrete models and clear schedules, the CDIs now have adopted a specialized mission to fight against corruption, and have largely

¹⁹⁵ *Id.*

¹⁹⁶ FENGHUANG WANG FINANCE, *31 provincial level Commission Commission reform program approved by the Central Committee* (June 13, 2014), http://finance.ifeng.com/a/20140613/12533001_0.shtml.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ See CENTRAL DISCIPLINE INSPECTION COMMISSION OF SUPERVISION PEOPLE'S REPUBLIC OF CHINA, *Deepen the "three turn" endless* (June 17, 2015), http://www.ccdi.gov.cn/yw/201506/t20150617_57963.html, “深化三转无止境”.

withdrawn from work unrelated to this mission.

(2) Making the CDI the Coordinator and Leader in Local Anti-Corruption Work

During the 1990s and 2000s, as public corruption grew quickly and pervasively, the strengthening of anti-corruption norms and the investigation of public corruption cases were firmly added to the CDIs' mission.²⁰¹ The CDIs formally became the coordinator of anti-corruption work in 2002.²⁰² In 2008, the Central Party Commission urged all levels nationwide to improve the operation of the Anti-corruption Coordination Teams at different levels, and required that the CDI secretary become the team leader to coordinate anti-corruption work among entities including the CDI, the judiciary, the procuratorate, the police, and the audit bureau.²⁰³

As expressed in China's anti-corruption policy – i.e., that the party secretary leads and the CDI coordinates – anti-corruption work in China is never just a legal issue, nor an issue of certain identified agencies' institutional independence. It is a complicated situation, involving a wide range of actors, from the party commission to every party and governmental department. In this complex environment, although the party secretary has the final say, the CDI drafts concrete work plans, coordinates the work of different departments, and makes suggestions on case handling to the party secretary. Being the coordinator in anti-corruption work, the CDI can also initiate a joint investigation to utilize the prosecutor's anti-corruption

²⁰¹ ZZZB [Zhonggong zhongyang zuzhi bu] (eds.), *Zhongguo gongchandang zuzhi shi ziliao [Materials on the CPC Organizational History]*, 6 BEIJING: ZHONGGONG DANGSHI CHUBANSHE 184e85 (2000).

²⁰² *The Compiles of CPC's Party Constitutions (中国共产党历次党章汇编)* (1921e2012), CHINA FANGZHENG PRESS (中国方正出版社), 427, 442 (2012).

²⁰³ The 2008 to 2012 Work Plans for Establishing and Improving the Public corruption Prevention and Punishment System, issued by the Central Party Commission in June 2008, part 7(4), <http://cpc.people.com.cn/GB/64093/64371/7411326.html>. 50 Interview conducted in Beijing of one vice prosecutor-general of a provincial procuratorate on September 10, 2015.

forces, subject to the superior CDI's approval.

(3) Prioritizing the CDIs in Investigating Corruption Cases

The CDI has priority to initiate the investigation of public corruption cases in an overlapping jurisdiction, which may determine the final outcomes. The jurisdiction of the CDI and the procuratorate in public corruption cases are largely overlapping. In cases involving party members, the CDI's jurisdiction is much broader than the procuratorate's. For example, the CDI jurisdiction covers village cadres and violations of party discipline, while the procuratorate only supervises "governmental civil servants 国家工作人员",²⁰⁴ normally excluding village cadres, and only investigates criminal corruption.

Until recently, all public corruption cases concerning provincial-level officials were first investigated by the CCDI and then transferred to the SPP, and a large proportion of public corruption cases of municipal-level officials were investigated by the provincial CDIs and then transferred to the provincial procuratorates. In high-level public corruption cases, the CDI decides whether to preliminarily or formally investigate the case (subject to both the superior CDI and the local party secretary's approvals), conducts preliminary and formal investigations, and decides whether to transfer the case to the procuratorate (also subject to both the superior CDI and the local party secretary's approvals).

Moreover, as the anti-corruption team leader, the CDI can mobilize larger anti-corruption resources and thus has a stronger ability to investigate corruption cases. Frequently, when the CDI and the procuratorate get the information at around the same time, or when the procuratorate, as the first finder, has insufficient resources to investigate the case,

²⁰⁴ Kilko Ko & Cuifen Weng, *Critical Review of Conceptual Definitions of Chinese Public corruption: a Formal-Legal Perspective*, 20 J. CONTEMP. CHINA 359e378 (2011).

the CDI will prevail over the prosecutor to investigate the case first. As the anti-corruption team leader, if the CDI feels unable to conduct the investigation, it could borrow people from different entities and start joint investigations, as the case may require, to help the investigation progress. But the procuratorate has no such coordinative power. Cases requiring such joint coordination will be first investigated by the CDI, even if the procuratorate is the first finder.

Another advantage of prioritizing the CDI is that the information relating to violations of party discipline is easier to collect, while the information involving criminal corruptions is much harder to find. Often such criminal information comes from the investigation of party disciplinary violations. Several CDI officers admitted during interviews that criminal information discovered from the CDI's investigations often will not be transferred to the procuratorate.²⁰⁵ The reasons include pressure from the party secretary, the CDI's own self-interest, or social or political considerations.²⁰⁶ From the CCDI's 2015 annual work report, only 12,000 of the 232,000 officers that were investigated and punished by the CDIs were transferred to the procuratorates, a rate of only 5%.

Therefore, although the recent reforms have to some degree clarified the dividing line between the prosecutor and the CDI, and have regulated the coordination between the two within the large area of overlap in anti-corruption work, the party center clearly relies more on the CDI system. Through the reforms, the party center has expanded the CDI's role in anti-corruption work, made the CDIs the primary coordinator, expanded its staff strength and mobilizing power, ensured its funding support, and prioritized its investigative power in

²⁰⁵ Interviews conducted in Beijing between July and early September 2015.

²⁰⁶ *Id.*

corruption cases. Because the legal requirements governing the CDI's anti-corruption work are much weaker than for the prosecutors, and because the party center's control over the CDI is both stronger and more discretionary than it is over the prosecutors, the party center's asymmetric reliance upon the CDIs in anti-corruption investigations represents another measure for realizing the party's leading control, i.e., by strengthening the particular agencies that are better controlled by the party center.

Reforms of the procuratorate are simultaneously ongoing, but such reforms do not increase the prosecutors' relative importance in anti-corruption efforts. Although Wang Qishan has emphasized the seamless connection between the CDIs and the prosecutors in investigating corruption cases, and has urged the CDIs to transfer cases to the prosecutors as soon as they find that the suspect's behaviors violated the law, such words remain mere words without concrete legal requirements or operative institutions to follow.

Until now, all corruption cases concerning provincial-level or higher officials were first investigated by the CCDI and then transferred to the SPP, and all corruption cases of prefecture-level leaders were investigated by the provincial CDIs and then transferred to the provincial prosecutors. In these cases, the CDI decides whether to preliminarily or formally investigate, performs the preliminary and formal investigations, and decides whether to transfer the case to the prosecutor. The reliability of the CDIs in these high-profile cases has earned the CDIs nationwide popularity and public confidence regarding the ability of the CDIs to combat corruption, which has overshadowed the prosecutors' achievements in lower-level corruption cases and thus makes the CDI's eventual absorption of the prosecutors more easily acceptable by the public.

(4) Establishing the SC System Based upon the CDIs

The party center recently passed the Decision to Establish the NSC System, and selected Beijing, Shanxi, and Zhejiang provinces as experimental pioneer locations.²⁰⁷ The Decision states that the NSC is supposed to consolidate multiple anti-corruption forces for greater efficiency, with the NSC sitting at the top and two lower levels of supervision commissions (SCs) below, at the provincial and city levels.

At the beginning of 2016, President Xi mentioned the urgency of reforming the national anti-corruption system, which was confirmed in the Decision passed by the Sixth Plenum of the 18th Session of CCP.²⁰⁸ Since then, there have been several routes discussed regarding the rank of the NSC, its relation to the party committees, the National People's Congress (NPC), the State Council, and the judiciary, the role of the CDIs, the prosecutors, and other anti-corruption agencies in the NSC, etc.

One route has the NSC established as a specialized committee directly under the NPC, responsible for anti-corruption coordination and possessing the power to investigate possible corruption of, and hear complaints against, the anti-corruption agencies. In another route, the NSC is an independent national agency with equivalent rank to the State Council – not an administrative agency under the State Council – reporting directly to the president, and acting as the sole anti-corruption authority according to the anti-corruption law. In this route, the CDIs, the Supervision Ministry (which was merged into the CDIs in 1993), the prosecutors, and the National Corruption Prevention Bureau (NCPB) will no longer play a role in anti-

²⁰⁷ See CHINA.COM, *2017 Anti-Corruption Institutional Reform Starts Administrative Supervision Law will be changed to State Supervision Act* (Dec. 31, 2016), <http://news.china.com/domestic/945/20161231/30131674.html>.

²⁰⁸ See Ma Guoying, *National Commission opened! How to recreate existing anti-corruption agencies?*, PEOPLE.CN (Nov. 18, 2010), <http://politics.people.com.cn/n1/2016/1108/c1001-28845567.html>.

corruption activity. According to a third route, the National Anti-Corruption Bureau of the Supreme Procuratorate could be upgraded to become the NSC, independent from the procuracy system, and could absorb the anti-corruption duty of the CDIs, to become the sole anti-corruption agency in China. In a fourth and final route, the NSC is only a coordinative institution for realizing the seamless connection between the CDIs and the prosecutors, and to ensure that the decisions of the CDIs are also followed by the prosecutors.

The party center's Decision to establish the NSC, Wang Qishan's later talk to mobilize the implementation of this Decision,²⁰⁹ and the later-enacted NPC Standing Committee's Decision to Establish SCs Tentatively in Beijing, Shanxi, and Zhejiang Provinces²¹⁰ all indicate that in actuality, none of the above possible routes have been selected. Instead, the party center has chosen to transform the CDIs to become the sole anti-corruption agency.

First, both of the aforementioned Decisions state that the NSC will be of equivalent rank to the State Council, and the SC system will work jointly with the CDIs to include the same people serving under two titles, i.e., 合署办公 (*he shu ban gong*). Through these measures, the CDIs will be expanded from a party organization into a national anti-corruption agency, and the CCDI will be upgraded from a ministerial-level agency to a national agency equivalent to the State Council, in the name of establishing the NSC system.

Second, both Wang's talk and the NPCSC's Decision explicitly clarify that the anti-corruption-related departments of the procuracy system, including the anti-corruption bureau,

²⁰⁹ See SINA CORPORATION, *Wang Qishan: the essence of the Commission is anti-corruption agencies, public officials to monitor the full coverage* (Nov. 26, 2016), <http://news.sina.com.cn/o/2016-11-25/doc-ifxyawxa2774320.shtml>.

²¹⁰ See XINHUA NEWS AGENCY, *NPCSC Decision Approving the Establishment of the SC System in Beijing, Shanxi and Zhejiang* (Dec. 25, 2016), http://news.xinhuanet.com/politics/2016-12/25/c_1120184274.htm?spm=0.0.0.0.m4S54o&from=timeline&isappinstalled=0.

the anti-dereliction of duty department, and the corruption prevention department, as well as the National Corruption Prevention Bureau system, will be transferred entirely to the SC system, including at least the people and the equipment thereof. After the transfer, these agencies will become departments of the SCs and thus subject to the SCs' leadership, which is the same as the leadership of the original CDIs, and the procuracy will have no authority to investigate corruption.

However, the prosecutor will still have the monopolistic power to prosecute criminal cases. The CDI, under the name of SC, will then be able to command the anti-corruption forces originally within the procuracy system, and the CDI will become the only agency that can investigate public corruption. Its only duty will be to prevent corruption and supervise the integrity and dereliction of duty of public officials. It will be able to use the investigative measures possessed by both the original CDIs and the prosecutor's previous anti-corruption-related departments, including *shuanggui* (双规), Appointed Interview (约谈), and legal investigative measures. It will supervise both party members (previously covered by the CDIs) and public officials, including nonparty officials, as well as private entities related to public corruption, such as bribers (originally covered by the prosecutors). Additionally, the SC will possess the power to make disciplinary punishment decisions, as the CDIs, and the power to decide whether to initiate preliminary and formal investigations of disciplinary and legal violations, and whether to transfer the cases to the prosecutors for prosecution.²¹¹

In addition to merging the two tracks of the previous dual-track anti-corruption system, the dual-leadership system may also be reformed, as discussed below. Although the NPCSC's

²¹¹ *Id.*

Decision states that the provincial supervision commissions (PSC) will be elected by the provincial people's congress and will answer to both the provincial congress and the higher supervision commissions, i.e., the NSC for the PSC, the local party and government will not have a leadership role as it did under the original dual-leadership framework.²¹² The SCs will not be established from scratch, outside of the existing organizations, but instead will be built upon the existing CDIs and will use the same people as the CDIs.²¹³

This means that after the establishment of the SCs, the CDIs will still exist and will still operate according to the CDIs' current institutional framework. Thus, it is implicitly clear that the existing leadership institutions within the CDIs will continue into the SCs. Given the institutional reforms that prioritize the higher CDIs' control over deciding the CDIs' leaders and handling corruption cases, the higher SCs' leadership role will also prevail over the local party's control. Although the dual-leadership framework may continue under the SCs, the local leadership will be much weaker because the local leaders cannot overturn any decisions made by the higher SCs regarding case handling or the nomination of local SCs' leaders.

Providing Clear Instructions

It is widely recognized that authoritarian governance requires two fundamental features in order to function: control over the inferior officials, and clear instructions for them to follow.²¹⁴ The former is represented by the central party's control over the local prosecutor and the local CDI within the current legal framework. The latter refers to the ways that the

²¹² *Id.*

²¹³ See CHINA.COM, *2017 Anti-Corruption Institutional Reform Starts Administrative Supervision Law will be changed to State Supervision Act* (Dec. 31, 2016), <http://news.china.com/domestic/945/20161231/30131674.html>.

²¹⁴ Jidong Chen, Jennifer Pan, & Yiing Xu, *Sources of Authoritarian Responsiveness: A Field Experiment in China*, 60 AM. J. POL. SCI. 383 (2016).

central party can deliver its instructions for how the anti-corruption should be carried out. Such instructions can be divided into three categories: legal or quasi-legal rules, party rules, and political instructions.

For the CDIs' work, the CCDI issued Work Rules on Cases of CDIs in 1994 to uniformly guide the casework of all CDIs regarding Party members.²¹⁵ Later, the CCDI issued several additional rules interpreting the meaning of certain articles within the Work Rules. The primary interpretive rules are the Rules for Implementation, also from 1994.²¹⁶ The Administrative Supervision Law and relevant implementing rules also govern CDI work with regard to non-Party public officials. Regarding the scope of supervised activity, CDIs rely on public corruption laws and relevant regulations and Party disciplinary rules.²¹⁷ Together, these rules constitute a legal basis for the CDIs' anti-corruption work.

The legal basis for prosecutors' work is found in the criminal law, the criminal procedure law, judicial interpretations issued by the supreme court explaining these laws, work rules published by the supreme procuratorate, and several other laws and regulations that concern corruption definitions and anti-corruption procedures.

Additionally, the central party has issued the Provisions on Inner Party Law Making to establish a party rule system, parallel to the law system, to facilitate its delivery of clear instructions for how anti-corruption work should be carried out. A recent series of party provisions issued by the party center – such as the Inner Party Supervision, the Party Circuit

²¹⁵ The Rules on Case Work of CDIs, (Mar. 25, 1994).

²¹⁶ The Implementation Rules for the Rules on Case Work of CDIs (Mar. 25, 1994).

²¹⁷ For detailed and comprehensive rules regarding the case work of CDIs, refer to CCDI, THE OPINION ON THE INTERVIEW WITH THE SUSPECTS OF CASES BY THE CDIs AND THE SUPERVISION AGENCIES, PRACTICE HANDBOOK OF LAWS AND RULES COMMONLY USED BY CDIs AND SUPERVISION AGENCIES IN THEIR WORK (2006).

Inspection Work, and the Party Discipline Punishment provisions – provide standards for the CDIs’ anti-corruption work, making up for much of the deficiencies of the anti-corruption law in China.

Political instructions from the party leaders are also important. These come from political lectures made by the party leadership at various public occasions, policy documents issued by central agencies on behalf of the central party, regulation rules passed by the central party or governmental organs, and supplemental articles published in official media. Lectures can be given in public at the national scale, or in private at internal high-level meetings. Similarly, policy documents can be issued broadly and openly, or confidentially and internally. Through all of these multi-faceted approaches, as well as through the party’s indirect influence over the law-making process, the central party outlines its requirements, emphases, concerns, and attitudes to varying degrees (from clearly determined to relatively uncertain) to both drafters and participants. Such outlines provide political instructions to the local prosecutor and the local CDI, and help to shape the scope, pace, direction, mission, and participant attitudes of the local anti-corruption forces.

C. THE COV SYSTEM HELPS TO ESTABLISH THE NEW ANTI-CORRUPTION MODEL

As analyzed above, the power to decide whether and how to use the COV system is currently assigned with very weak legal limits or challenging entities to the superior prosecutor, who is generally subject to the authority of the party center. Reconsidering the design of the COV system in light of the context of the entire mechanism of the new “leading

control” anti-corruption model, my third alternative explanation for the use of COV argues that COV has worked as part of the party center’s “leading control” over the local prosecutor, and has helped enhance the party’s ability to communicate its desires and to exercise its discretion with respect to anti-corruption cases within China’s legal framework.

a) Initiating the Anti-Corruption Campaign

As discussed previously under the second alternative explanation, regarding the COV’s function of breaking up local networks, the most important role of the COV system in anti-corruption work is to make sure that the anti-corruption investigation actually happens. In the beginning, the CCDI circuit inspection team collects corruption information from the inspected local areas and then transfers such information to the CCDI, which subsequently carries out the investigations. Instead of relying on the local anti-corruption agencies, the party center utilizes an anti-corruption force from outside the local area to investigate these corruption cases.

The existence of the COV system as an exception to the default jurisdiction allows the party center to legitimately instruct alternative anti-corruption forces to break up the local network and to realize the central party’s leadership interest in starting an investigation. In situations involving a large number of corruption cases of lower-level officials in a particular area, COV makes it possible for the CCDI to instruct the anti-corruption forces of lower-level CDI’s from outside the local area to conduct the investigation. Thus, COV largely increases the anti-corruption powers of the CCDI. Through the two steps – i.e., cracking down on high-level “tigers” and having alternative CDIs deal with relevant lower-level corruption – the party center has been able to successfully initiate the recent anti-corruption campaign and

revitalize the previously ineffective local anti-corruption mechanism.

b) The COV as Part of the Leading Control over Local Agencies

Aside from its importance in initiating the recent anti-corruption campaign, even during more normal times the COV system constitutes an important part of the party center's leading control over local agencies. The COV system eliminates the monopoly that local anti-corruption agencies would otherwise have over the investigation of corruption within their local area. COV also ensures that the local government will not be the sole and final decision-maker regarding corruption issues in the area.

Policing power is a very important sovereign power of local governments. The existence of the COV system transfers part of this local policing power to the superior, thereby limiting the autonomy of local agencies. Even during normal times, the existence of the COV system enables the central party to have the superior agencies, as well as agencies at the same level but from outside the area, investigate corruption involving local agencies, so that the central party can check on the behavior and loyalty of the local agencies and respond, consistently and routinely, to their misbehaviors. Such capability forms an essential part of the central party's "leading control" over the local agencies, including both the local party leader and the local anti-corruption agencies.

c) The COV Provides Part of the Legitimacy for the Leading Control

As discussed above, vague and incomplete anti-corruption legal rules leave ample room for party control, because the party center can direct the local agencies' anti-corruption work according to its own leadership interests without bending or breaking any legal requirements.

In addition to all of the vagueness and incompleteness, China's law has in some

instances actually supported the realization of the party's leading control. The COV system is one example of such support, within China's legal system, for the exercise of discretion by the party leadership. The establishment of the COV system within the legal system – granting only the superior the power to invoke the COV system, and without any governing legal rules or limitations – has created a legal basis for the party center to mobilize the nationwide anti-corruption forces for its own leadership interests, notwithstanding the legally-established default jurisdiction rules. Such a design allows the party center to utilize the COV system according to the wishes of the party center, without being legally challenged for violating the default localized jurisdiction system.

VII IMPLICATIONS AND CONCLUSIONS

The previous chapters have presented the empirical findings and analysis of the data, and have argued for three alternative explanations of the purposes of the COV system. In particular, applying a holistic perspective, the COV system plays an essential role in initiating the recent anti-corruption campaign and building up the new anti-corruption model in China.

This final chapter extends the previous conclusion on the new “leading control” model, by discussing some of the underlying reasons for the existence of such a model and analyzing the flexibility and advantages of the new model in relieving the current tensions in China. The chapter concludes with an example of the kind of misbehavior in anti-corruption work by local prosecutors that can illustrate the possible limits of the new model, i.e., insufficient control over the local agencies.

A. REASONS FOR THE EXISTENCE OF THE LEADING CONTROL, BASED ON THE EXAMPLE OF LEGISLATION

As ongoing reforms in China make the government procedurally more open to the participation of outsiders, another important application of the “leading control” model is that the participation of outsiders in governmental activities is conditional upon the preservation of the leading control of the party center.²¹⁸ Such outsider participation is not so obvious in the anti-corruption context, but it is easier to observe in the context of legislation. The controlled outsider participation in legislation is also roughly comparable to the controlled anti-corruption work by the local agencies, because both can be seen as participants in a task assigned by the party center with the dual mission to both realize the leadership interest and

²¹⁸ Shaogang Wang, *Changing Models of China's Policy Agenda Setting*, 34 MODERN CHINA 81 (2008).

complete the assigned task. Both the local agencies (in anti-corruption work) and the outsiders (in legislation) have become directly involved in the task, i.e., by obtaining certain procedural rights to participate in the process, while the substantive powers of both are inconsistent with the nature of their respective roles and their participation. Because it is easier to observe the reasons for the existence of the leading control in the legislation context, the following section uses the legislation example to explain how the interaction between procedural participation rights and substantive power affects the leading control.

In the legislation context, the limits of multi-party participative processes that guarantee substantive deliberative bargaining help to shape a symbiotic relationship between the party leadership and the court system, and determine the extent to which the leading control can be preserved.²¹⁹ The substantive power of participants, and the interests involved in the expressed opinions, are the two main factors that limit the effects of the process over draft content, informing the limits of leading control.²²⁰ To understand how these two aspects affect and interact with the procedures, the next section first defines them and then draws assumptions regarding their relationship.

The substantive power of participants refers to the power that participants have to influence the final passage of a law through the legislative process. This can include direct power (e.g., a congressperson's right to vote for or against a law, or a drafter's right to draft or revise the content of a law). Such power can also be indirect (e.g., a party or governmental leader's right to nominate or to remove congresspersons or drafters or their candidacy). Such

²¹⁹ Jessica Teets, *Let Many Civil Societies Bloom: the Rise of Consultative Authoritarianism in China*, 2013 CHINA QUARTERLY 20 (2013).

²²⁰ *Id.*

power can also be remote (e.g., the power to persuade and influence leaders). Such power can be applied to varying degrees, ranging from strong to moderate to light to non-existent.

Perceptions of power by different actors can, to some extent, deviate from reality.²²¹ Different interests present different thresholds for the power to overcome and to operate. Power is changeable, temporary, contextual, and can at times be applied only once. Factors including political moods, public crises, emergent situations and social problems can all affect the power of certain actors within a specific lawmaking process. Other more permanent ways to obtain power involve delegation, authorization, struggle and conquest.

Some assumptions can be made about the relationship between substantive power and the participatory process: (1) Procedural rights are derived from substantive power, without which procedural rights cannot be created. (2) Procedures automatically conform to types and differential degrees of substantive power, with some deviations due to their own value and counter-effects on substantive power. (3) Substantive power can expand its influence indirectly, by affecting participant attitudes so that those without power recognize their inferior status, accept being ignored, and thus voluntarily give up bargaining or behave passively. (4) Once established, procedural rights have their own value and can be used to counter substantive power through habitual and customary exercise. Such countering effects are limited in maintaining procedural rights that have achieved such habitual and customary power. The longer these effects endure and the more fundamental they are, the greater their value becomes.

With these basic assumptions, it is easier to understand the limitations of the

²²¹ MURRAY SCOT TANNER, *THE POLITICS OF LAWMAKING IN POST-MAO CHINA: INSTITUTIONS, PROCESSES AND DEMOCRATIC PROSPECTS* (1999).

participatory process in shaping the substance of the legislative draft. In a democratic polity, substantive power is initially equal to the content of the law. Those with substantive power draft and determine what the law should be. Procedures are established to help make law in an orderly way. Procedures can also partly influence the content of the law. When procedures are maintained for a long period of time and when lawmaking becomes sufficiently complex, single participation in such procedures can affect the substantive content of the law.

It could be the case that after legislation exists for a long period of time, and becomes significantly professionalized and complex, procedures become routinized. Then opportunities to participate, and lengths of time given and ways to express opinions, can become so important that the procedures become representative of substantive power. Unlike invisible substantive power, procedural rights start being favored to ensure the realization of democracy. Procedural rights thus become important factors for examining and evaluating the democratic nature of a polity.

Everything has two sides. The existence of the leading control reminds us of the other side of the story, i.e., the importance of having substantive power, at least initially. Unlike in a democratic polity, where participation is intended to promote substantive independent participation, procedural rights within an authoritarian regime are defined as participation bestowed by the dictator at his will.²²² Outsiders invited by the party center to attend meetings were not afforded either direct or indirect power to substantively influence the passage of the law. Without the requisite substantive power, procedures are only procedures. Procedures alone cannot produce substantive power.²²³ Although outsiders could participate

²²² *Id.*

²²³ *Id.*

in meetings, they were not afforded substantive power to influence draft content. As a result, their opinions were arbitrarily ignored and no meaningful negotiations were held.²²⁴

When substantive power is missing, participants' rights to fully express their opinions on procedures cannot be protected. When substantive power is missing from the start, no amount of time is sufficient for the procedure to become representative of substantive power. The procedure thus cannot influence the substance of the law. As time goes on, and even as the procedure obtains its own value, its influence remains limited in ensuring procedural rights, i.e., providing ways for actors to express their views, and can even limit such rights. When no alternative resources produce the original requisite power, employing only those procedures commonly observed in a democratic polity does not denote the true existence of democratic progress, and does not promote more democratic lawmaking.

Interests also affect the procedure. Two characteristics of the interest function are as follows: (1) The first characteristic refers to the contradictory nature of interests. When not contradicting the drafters' interests, even without substantive power, the powerless participants' views can be accepted. Such interests could also be important to opinion-raisers, but because they are not contradictory, they are not contested. For these types of interests, weak forms of substantive power can bring them into the drafting process. (2) The second characteristic is the importance of the concerned interest. When an interest is not opposing, and when it is important to a powerless opinion-raiser, as long as the opinion-raiser is given an opportunity to elaborate on it, it is easier to persuade drafters and more difficult for them to simply ignore it without at least some consideration. If it is considered an important view

²²⁴ Wang, *supra* note 218.

to the drafters, it certainly would influence draft content, regardless of whether the opinion-raiser is powerless. The less contradictory and the more important an interest is, the more likely it is to be reflected in draft content.

The situation is more complicated for cases in which participants have considerable power but are clearly inferior to the party center. When an interest is slightly critical and when it is very important to the participants, but not important to the party center, it can easily be fully accepted despite the fact that such an article may be bad for the society. However, when interests are directly contradictory and also important, and even when the agency has considerable power, such interests might still be declined by the party center.

Thus, for participants possessing some power, the views of theirs that could plausibly affect the substance of a legislation draft are those that are proportionate to the power of the opinion-raiser. Different interests present different thresholds for the amount of power needed in order to be successful. As in the case of substantive power, perceptions of the contradictory nature of an interest and its importance can also have an effect. Organizational problems such as fragmentation, organizational stages, and attitudinal problems can influence both substantive power and interests. Representative and participatory problems may also have an effect here.

Procedural rights, to some degree, represent substantive power – but they are not the same as substantive power. In authoritarian regimes, when allowed by the party or by local officials at the beginning, either through participation in legislation or by the agency in anti-corruption, does not mean independent democratic participation or autonomy as it does in a democratic polity. Potential agreements based on interests and substantive power among

different parties define their meanings and make them different from their democratic counterparts. Continuous changes in these factors and their interactions determine the limits and evolving direction of the leading control in China.

B. THE FLEXIBILITY OF THE LEADING CONTROL AND LESSONS FOR UNDERSTANDING FRAGMENTED AUTHORITARIANISM

The flexibility of the leading control and differentiated strategies of the central party help to explain why the central party can maintain its leadership role while still allowing the unitarian polity to be occasionally fragmented and at times responsive and consultative. “Fragmented authoritarianism” was used to explain disjointed relations between ministerial-level agencies and the central government in China.²²⁵ When decentralization reforms began, \mainly in economic areas, authority was distributed across multiple lower-level agencies that had formed their own institutional interests. Then, when enforcing their respective authority, these agencies competed, bargained, or colluded with one another to realize their own interests in such ways that enforcement mechanisms deviated significantly away from the original goals of the central government.²²⁶

In contrast, the responsive state model captures another phenomenon whereby the Chinese government actively responds to public concerns, outsiders substantively influence lawmaking, and public pressures help to shape legislation.²²⁷ The leading control model here further deepens the understanding of the fragmentation in an authoritarian regime, and

²²⁵ KENNETH LIEBERTHAL & MICHEL OKSENBURG, POLICY MAKING IN CHINA: LEADERS, STRUCTURES, AND PROCESSES (1988).

²²⁶ *Id.*

²²⁷ Chen et al., *supra* note 214.

discloses the underlying reasons behind the fragmented authoritarianism and the responsive state model in China.

This dissertation's findings extend the fragmented authoritarianism model into the criminal law enforcement authority area. Previous literatures focused mainly on policy making, and found that ministerial-level bureaucratic agencies realized their own interests by influencing policymaking.²²⁸ Here, the analysis finds another strategy that lower-level governments possess to realize their own interest, i.e., selective law enforcement. At least in the anti-corruption area, there have already been lots of studies showing that anti-corruption investigations have been used politically and selectively to crack down on those whom the leaders do not want and create room for those in the leaders' network.²²⁹

The findings here once again confirm that the local party leader previously had both the motive and the capability to obstruct corruption investigations concerning its own interests, even against the interests of the central government in terms of anti-corruption. Thus, besides influencing policy making, lower-level governments could directly control the enforcement of the law, which leveraged its ability to move away from the central government.

Although dangerous, this tool was very powerful to realize the interests of the local government. On one side, criminal investigations involve coercive measures and may result in imprisonment and property confiscation, which concern fundamental civil and property rights, and thus anyone would be afraid of such kinds of investigations. Given the entrenched nature of corruption in China, and balancing against such risk, it is much easier to make

²²⁸ Andrew Mertha, "*Fragmented Authoritarianism 2.0*": *Political Pluralization in the Chinese Policy Process*, 200 CHINA QUARTERLY 995–1012, 995-1012 (2009).

²²⁹ Margaret K. Lewis, *Presuming Innocence, or Corruption, in China*, 50 COLUM. J. TRANSNAT'L L. 287 (2012).

someone obey the interests of the local government.

On the other hand, as anti-corruption investigations may uncover the illegal behaviors of the local party leader or obstruct their short-term “administrative achievement” (Zhengji), e.g., the GDP growth rate of that geographical area, the power to suppress such investigations substantially ensures the security of the local government’s interest. The control by the local party leader over law enforcement agencies – including the prosecutor, the police, and the CDI – was essential to its ability to pursue selective law enforcement, and could be seen as an authority delegated by the central government, incident to the decentralization reforms.

Current reforms decreasing the local party’s control over the anti-corruption agencies, and making them more responsive to local corruption and more independent from the local government than before, look like a symptom of the responsive state model that argues the Chinese government has been responsive to societal and public demands. However, the disclosure of the underlying “leading control” of the party center over the local anti-corruption agencies, substituting for the local party control, proves that such responsiveness is conditional in China upon preserving the party’s leading control.

Under the principles and outlines established by the party center to realize its leadership interests, the party center allows the state mechanism to be sometimes fragmented and sometimes responsive through the “leading control” institution. The disclosure of the underlying leading control model reminds us that, when answering the fragmentation problem, the party center may take some measures that respond to the social and public demands. However, the underlying logic of such responsiveness is not simply that because of loss of control, China necessarily moves toward further democratization. Instead, it means the

party center has already built in its “leading control” to the responsive measures. Moreover, the fragmentation does not necessarily mean the loss of control by the party center. Instead, it may be because the party center allows the fragmentation to some degree, as long as its leading interest is ensured.

Fragmentation alone cannot achieve pluralism. The statement that it is somewhat fragmented, but not so fragmented to be counted as a pluralistic polity in China²³⁰, can be misleading – because it seems to imply that sufficient fragmentation would turn an authoritarian regime into a pluralistic one, where outsiders can generally exert their influence over governmental decisions. Fragmentation means that identity and interest have been horizontally and vertically disaggregated into multiple diverse or contravening ones, at different levels, among party and bureaucratic agencies within the polity. Such disaggregation makes the agency of lower rank more motivated and capable to some extent to take actions directly or indirectly against the wills of its supervisors or leaders, rather than just obeying the superior’s decisions. The extent of this autonomy depends upon how much the lower ranked agency is motivated and enabled. This creates some degree of checks and balances, both horizontally and vertically between the party and the governmental agencies and within the party or the governmental systems. However, a sufficient fragmentation creates only the possibility and the need for changes in the polity; but it does not necessarily lead to a pluralistic change. As indicated by the study here, elimination of the local party control over the prosecutor does not guarantee the independence of the prosecutor. Such elimination may be substituted by the party center’s leading control.

²³⁰ LIEBERTHAL, *supra* note 225, at 12.

The leading control model presents advantages, by allowing for controllable activities by the local anti-corruption agencies or the outsiders in different situations to relieve tensions between the central party's limited capacities and society's demand for good governance, and by connecting the central party to the public as a balance against bureaucracy. However, it still has its limitations and problems.

As shown below, when the central party backs certain entities, these entities can manipulate such support to realize their own interests, while attitudinal and fragmented problems of other participants adversely affect their further participation. Weak entities and unsupported parties are wholly ignored, and cannot operate as effective challenging or balancing entities. Thus, while the focus, direction, and principles of anti-corruption work may be in the central party's interests, the manipulation by the local agencies can lead to unwanted results.

Moreover, without deliberative discussion and professional participation, the central party can make incorrect judgments regarding directions and principles. The capacity and willingness of the central party to make good leadership judgments, the central party's control over participants embedded in further institutionalization and China's Nomenklatura system, the growth of the entrepreneurial class, and public determinations on the extent of consultative authoritarianism could all affect such contradictions observed in China.

Will the party's leading control be preserved, or transform into party leading constitutionalism or some other form of modern democratic polity? It is widely recognized that there are two main systems of democratic legislation.²³¹ Under one system, the general

²³¹ LIEBERTHAL, *supra* note 225.

public elects lawmaking officials after effective competition. Effective competition and elections ensure that lawmaking remains democratic. Under the other system, laws are made through deliberative discussion. This latter system does not focus on the election of lawmaking officials but on discussions and negotiations held during the lawmaking process for democratic purposes.

Concerning democratic systems, reforms made to China's anti-corruption system, with its continuous emphasis on sole party leadership, can only be in line with the second kind of system. Procedural reforms, or the elimination of local party control alone, are insufficient to facilitate a deliberative or democratic movement. For further democratization, it is necessary to place constitutional limits on the central party's degree of leading control, and such limits must be afforded substantive power to become real and practical.

C. AN EXAMPLE OF THE LIMITS OF THE LEADING CONTROL MODEL

From the interviews of the prosecutors, with only the leading control over the local prosecutor, the supervision is insufficient to prevent abuse of power in anti-corruption cases by the local prosecutor. The prosecutors have the incentive both to actively investigate and to manipulate anti-corruption investigations and prosecutions. Although the prosecutors want to investigate and convict in public corruption cases, my research interviews show that they seem to not care very much about the lawful investigation, rightful prosecution, and fair punishment of these suspects. The misuse of the prosecutorial authority in anti-corruption cases represents an example of the limits of the leading control, which fails to provide sufficient supervision.

1. The Prosecutors Have Motivations for Misbehaving in Anti-Corruption Cases

First, the prosecutors have financial incentives for misbehaving in public corruption cases. The budgets from the local government, for most prosecutors, remain tight. If the prosecutor wants to improve its working environment, build good office buildings, purchase advanced equipment, hold trainings and team activities, and increase employees' salaries, it needs to find more money on its own. There has been an unspoken rule that the illicit funds collected from the public corruption cases investigated by the prosecutor would firstly be submitted to the local treasury and then partly returned to the prosecutor as a form of financial assistance.²³² Although now in some wealthy areas, such unspoken rule has been terminated, in many poor areas it is still effective.²³³ The ratio varies in different places.

Thus, my interviews show that the prosecutors sometimes manipulate the investigation and prosecution to gather more illicit funds in public corruption cases. The general method, based on my interviews, is that the suspects voluntarily pay certain money, as illicit benefits from his/her criminal activities, to the prosecutor in exchange for a decision not to freeze the suspect's assets, not to arrest, not to prosecute, or to impose a light sentence. Just as with the illicit funds convicted by the court after trial, these illicit benefits collected during the investigative period are also submitted to the local treasury and later returned to the prosecutor at certain ratio.²³⁴

²³² Provisions of the Supreme People's Court, the Supreme People's Prosecutor, the Ministry of Public Security, the Ministry of State Security, the Ministry of Justice, and the Legislative Affairs Commission of the Standing Committee of the National People's Congress on Several Issues concerning the Implementation of the Criminal Procedure Law, art. 36 (effective on Jan. 1, 2013). This requires the submission to the national treasury of the illicit funds collected in convicted cases. According to interviews, such funds in poor areas would still be returned to the prosecutor.

²³³ Series of interviews conducted in Beijing, Henan, and Tianjin from March 2014 to April 2015 ; 葛琳, 第 115 页。

²³⁴ Although the return of illicit convicted funds has been terminated in several developed areas, the return of illicit benefits without conviction remains nationwide.

During these bargains, the prosecutors behave like businessmen. These bargains have no legal basis. According to the law, the suspects' assets can become illicit only after the conviction by the court, and plea bargaining is not allowed. Moreover, the calculation of illicit benefits is unclear in the law. For example, in one case interviewed, the briber gave bribes to the official to obtain certain business at market price. The profits earned from such business were considered by the prosecutor as illegal because "the process obtaining the business is illegal," argued by the prosecutor-general.²³⁵ But such profits may not be considered illegal in court, because when the result is based on the normal market price, it depends whether the house has obtained any unfair competitive advantage for the suspect in retaining this business.²³⁶

Although the General Office of the Party's Central Committee and the General Office of the State Council have issued a joint rule to regulate the confiscation of assets related with criminal cases, the scope of the assets and the standard to decide such assets remain unclear, and thus the prosecutors still retain great discretion in practice.²³⁷

Second, the prosecutors seem to aim for a high conviction rate and manipulate plea bargains to ensure good evaluations. Annually, the prosecutor has to be evaluated provincially, and the ranking is published publicly and recognized as a promotion factor. The numbers of public corruption cases investigated and convicted annually are essential factors in the internal evaluation, and have a substantial influence over the reputation and promotion of the prosecutor. To achieve high evaluation points, the prosecutor must handle sufficient

²³⁵ Interview of a prosecutor-general conducted in Beijing in June 2014.

²³⁶ Interpretations on Several Issues in Applying Laws in Bribe-Giving Criminal Cases, art. 12, issued by SPC and SPP (effective in Aug. 2012).

²³⁷ See the Opinions on Resolution of Assets During Criminal Cases, issued jointly by the General Office of the Party's Central Committee and the General Office of the State Council (Dec. 30, 2014).

amounts of cases in general, and also sufficient cases of large monetary value or involving senior officers, and a high conviction rate of docketed cases. As China's anti-corruption law is asymmetric and focuses on public officials, cases involving those receiving bribes are more important than cases involving the bribers²³⁸.

Moreover, because of the victimless nature of public corruption, the evidence is very limited in these cases. China requires the prosecutor to prove the illegal motive in public corruption cases under a high standard of proof.²³⁹ The motive must be specifically related with certain incidences of official activities, decisions, or omissions.²⁴⁰ In some cases, there are notes or diaries written by the officials to record these corrupt activities. Such could be the sufficient evidence to prove the motive. Otherwise, it is difficult to prove the motive, especially because China has the culture of maintaining social life or network through gifts and cash payments in "red envelopes." Thus, the confessions by the officials or the bribers are very important to ensure a conviction in public corruption cases. To secure the confession, my interviews show that the prosecutor has to offer some kind of bargain, including withdrawing the prosecution, prosecuting for a lighter crime based on only part of the defendant's criminal activities, or advocating for a lighter sentence.²⁴¹

Because more serious cases have a heavier coefficient in the prosecutor's evaluation, and often involve a large monetary value, the successful investigation of these cases means much more to the prosecutor than other small cases. The prosecutors will offer considerable bargains to secure the confessions of the bribers or the inferior officials related to such

²³⁸ Li & Deng, *supra* note 11, at 82.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Series of interviews conducted in Beijing, Henan, and Tianjin from March 2014 to April 2015

serious corruption cases, such as withdrawing the prosecution of them.²⁴² Accordingly, these bargains can unfairly result in either no prosecution or a light punishment of the corrupt criminals, thus obstructing the anti-corruption efforts.

2. Insufficient Challenging Power and Vague Legal Limits to Supervise the Local Prosecutors

First, lack of supervision and lack of a separation of powers contribute to the ability of prosecutors to manipulate the outcome. Unlike other criminal cases that are investigated by the police and prosecuted by the prosecutors, public corruption cases are both investigated and prosecuted by the prosecutors. There is no sufficient separation of powers here.

Regarding the use of arrest and seizure, the prosecutors can make the decisions themselves within the prosecutorial system, rather than obtaining any warrant from courts. The arrest decision needs to be approved by the superior prosecutor, which counts as a weak balance because the superior prosecutor has similar incentives as the local prosecutor. As demonstrated above, the influence of the local party leader, the superior prosecutor, and the local CDI over the prosecutors' investigations and prosecutions are limited. Although the local party leader and the superior prosecutor lead and control the work of the prosecutors, such checks aim to fight public corruption more harshly, or perhaps to protect the people in their own network, rather than to protect individuals from abusive investigations or prosecutions. There is little supervision over the prosecutors' abusive use of coercive measures.

Moreover, China's criminal law authorizes the prosecutor to decide not to prosecute or

²⁴² Series of interviews conducted in Beijing, Henan, and Tianjin from March 2014 to April 2015

to withdraw prosecution whenever the illegality of the case is small or the evidence is insufficient.²⁴³ According to interviews, the prosecutor has several ways to manipulate this power with little checks and balances. The prosecutor may intentionally omit some criminal activities and make selective prosecutions.²⁴⁴ The prosecutors may also prosecute for a lesser crime whose sentence is relatively light.²⁴⁵ Notice that the evaluation system only cares about the conviction rate, not the specific crime or the specific sentence. As long as the case can be convicted and sentenced, the needs of the evaluation are satisfied. The lighter crime or lighter sentence could then be bargaining chips.

Second, weak or compromised courts and weak defense lawyers further contribute to the problem. On one hand, as already noted by other scholars, courts in China are weakly positioned in criminal trials²⁴⁶. Against the strong need and power of the prosecutors in securing the verdicts they want, courts do not have much say over the final decisions in criminal cases. The court has to maintain good relations with the prosecutor because the prosecutor has the power to supervise the court. Moreover, the courts don't even have the power to balance the prosecutors' use of coercive techniques, as such usage does not require the issuance of a warrant by the court.

On the other hand, there are common internal needs to fundraise by the courts. There was a case, discussed in the interviews I conducted, where the court became allied with the prosecutor to charge the case under a lighter crime, because the lighter crime would allow the court to fine the company while the truly deserved crime didn't involve such a penalty. The

²⁴³ China's Criminal Procedure Law, arts. 15 and 173 (effective on Jan. 1, 2013).

²⁴⁴ Series of interviews conducted in Beijing, Henan, and Tianjin from March 2014 to April 2015.

²⁴⁵ Series of interviews conducted in Beijing, Henan, and Tianjin from March 2014 to April 2015.

²⁴⁶ Jiang, *supra* note 55, at 406

criminal was finally found guilty, and received only probation for his giving of bribes of over 8 million RMB.²⁴⁷ By sustaining the lighter prosecution, the court protected the relationship with the prosecutor, secured for itself a significant amount of the illicit benefits, and did not need to worry about an appeal by the suspect.

Notice that in the particular scenario described, the defense lawyer would also likely collude in the outcome, because it would result in a lighter sentence for the defendant. In cases regarding abusive investigations and prosecutions, because the court is weak, and sometimes even ends up in an alliance with the prosecutor, the rights of the suspect and the defense lawyer as established in the law cannot be well protected – which is another aspect of the fact that the defense lawyers in China have quite limited power.

Third, legal loopholes regarding bargaining behaviors, the use of coercive measures, and the manipulation of the prosecution further rationalize the manipulation: (1) Under the ideological view that the prosecutors cannot bargain with the criminal suspects, and that all criminals shall receive full legal punishments, plea bargains are officially disallowed in China. However, because plea bargaining widely exists in practice – and some of them are reasonable – the lack of a clear legal rule here turns out to mean that all kinds of irregular plea bargaining behaviors by the prosecutor can hardly be found illegal.

(2) The legal lines regarding the use of coercive measures, and the legal standard to not prosecute in some small cases, are unclear and subject to the prosecutor's discretion. For example, the legal conditions to arrest are: (a) whether there is evidence proving the existence of crimes; (b) whether the suspects could receive the penalty of more than imprisonment; and

²⁴⁷ Li & Deng, *supra* note 11, at 18–19.

(c) whether the DRUS or the bail is insufficient to prevent the danger to the society.²⁴⁸ But there is no concrete legal rule about when other coercive measures would be insufficient. Moreover, there is no law authorizing individuals who undergo abusive investigations to bring civil lawsuits against the investigators or prosecutors, such as the Section 1983 statute that allows such claims in the United States.

(3) The option of prosecuting for a lesser crime, such as the bribe-giving-by-an-entity crime, leaves legal room for prosecutorial manipulation. Article 393 defines the crime of bribe-giving-by-an-entity as the bribe-giving crime committed by the entity leaders or employees for the entity's benefit.²⁴⁹ For this crime, the involved entity leaders or employees may be punished for no more than five years, while in the case of an individual bribe-giving crime, the individual could be punished up to life imprisonment.²⁵⁰ In the public corruption cases, it is frequently unclear whether the briber is acting for his own benefit or for the benefit of the company. It could be both, because the benefits of the company will eventually result in individual benefits for the briber.

Therefore, because of insufficient checks and balances, a lack of separation of powers, and a lack of effective supervision, the likelihood of a prosecutor being held responsible or even being investigated for their misbehaviors during public corruption investigations and prosecutions is pretty low. Because of legal loopholes and unclear legal standards, these behaviors will rarely constitute a serious legal violation, even if there is an investigation. Because of the absence of a legal right to make any claim in court for these misbehaviors, the

²⁴⁸ China's Criminal Procedure Law, art. 79 (effective on Jan. 1. 2013).

²⁴⁹ *Id.*, at art. 393.

²⁵⁰ *Id.*, at art. 390.

victim does not have a good ways to protect himself or herself. Because the likelihood of being held to account are pretty low, the prosecutors tend to manipulate and conduct their investigations and prosecutions in public corruption cases in order to obtain extra illicit funds, and confessions or other essential testimonies, which improve the prosecutors' financial situations and performance evaluation outcomes.

Such manipulations will adversely influence China's anti-corruption efforts. Although the number of public corruption cases has increased, and more criminals are being caught, they are not being punished according to the law. The prosecutors have learned to manipulate their powers to earn money for the institution, and thus internally think of themselves as businessmen, not as fighters for justice. The prosecutors consider the public corruption cases as not that wrongful, so they can accept the lack of prosecution of these criminals. The suspects experience how the law gets manipulated, and how their legal rights get violated by both the prosecutor and the court which is responsible for the enforcement of the law, which leads them to condemn the value of the law and lose faith in rule of law.²⁵¹ Consequently, suspects come to think that they have not committed a serious wrong, and can receive no harsh sentence even if the case is serious, as long as they can pay the money needed by the prosecutor and the court. More importantly, the prosecutor has often abused its investigative powers towards ordinary people, violating their property rights and civil rights through these manipulations, for which these people have no good remedy.

This example of the local prosecutor's misbehavior in anti-corruption cases for its own

²⁵¹ I had the opportunity to interview one suspect in a public corruption case through his defense lawyer. The suspect was quite pessimistic about the rule of law in China. Interview of the suspect conducted in X district in April 2015.

interest represents an important limit of the leading control model, in that the leading control may be good enough to realize the leadership interest of the party center, but still insufficient to prevent the misbehavior of the local prosecutor and to guarantee the good-faith operation of the prosecutor in anti-corruption cases. The distorted financial incentives and the lack of any challenging power are the two main problems that the leading control model needs to resolve, so that it may further relieve the tensions between the party leadership and the social demands for good governance.

D. CONCLUSIONS

This dissertation started with an empirical study on the operation of the COV system in resolving public corruption cases, trying to understand both the role of COV in the new anti-corruption campaign and to comprehend the campaign and its future from the perspective of the operation of the COV. The dissertation's empirical findings, from an analysis of over 800 corruption cases in Beijing, indicate that – after accounting for other variables – sentences for corruption did not increase after COV. COV utilization patterns and their effects are therefore inconsistent with the “official” claims that COV is intended to prevent local judicial bias and to protect the public image and authority of the judiciary.

Contradicting the accepted wisdom, this dissertation instead demonstrates that COV works mostly to concentrate certain types of public corruption cases in a small handful of courts known for efficiently rendering convictions. Because the empirical study only focuses on Beijing, the findings here only represent the situation in Beijing. It is but one example to understand the operation of COV in anti-corruption cases, and general predictions nationwide cannot be made based upon these findings. However, since the design of the COV system is the same nationwide, the generalized conclusion based upon theoretical analyses of such design can be applied generally.

The use pattern of COV and the results found in the data cannot be explained by the claimed purposes of the COV to prevent local judicial bias and protect the image of the local judiciary. Instead, this dissertation argues for three alternative explanations for such findings, which are also consistent with the findings from the interviews of local anti-corruption agency officials and the judges. First, rather than preventing local judicial bias towards local officials, COV reallocate resources within the city and cracks down on challenging and

notorious cases to ensure the rapid and efficient completion of anti-corruption work. Second, in light of the problems rooted in China's previous anti-corruption system, where the local party leaders primarily controlled local anti-corruption work, COV makes it legitimate for the superior to direct offsite anti-corruption forces to investigate on-site corruption cases when the on-site anti-corruption forces fail to function because they have been captured by the local party leaders whom they were supposed to supervise. Thus, rather than protecting the image of the local judiciary, the COV actually works to undermine local governmental control over anti-corruption cases, revitalize the non-functioning local anti-corruption forces, and invigorate China's recent anti-corruption campaign. Third, targeting the institutional problems of the old anti-corruption system, the CCP has made many efforts to weaken local protectionism and consolidate central CCP control. The recent anti-corruption campaign in China has a very different style from previous ones. Its long-lasting strength and broad coverage, and the strategic relation with the subsequent anti-corruption reform steps, have already distinguished it from previous anti-corruption campaigns, and indicate that it is a part of an overall reform plan.

Moreover, with the expansion of the role of the CDIs in the new campaign, the decision to have the CDIs absorb the procuratorates, and the centralized control over both the CDIs and the procuratorates, the recent campaign has been institutionalized to transform the previous "dual-leadership, dual-track" anti-corruption model into a party center "leading control" model with a single anti-corruption agency. In the new system, COV helps to realize the CCP's leadership in anti-corruption reform, and constitutes an essential part of China's new anti-corruption model.

The new anti-corruption model still has its risks and its limits. China is going through great changes. Its semi-market, semi-state economy is being challenged by the new information economy, while the state-party governance structure is being challenged by new sources of power, including giant internet companies and civilized society. As an authoritarian power, the party center has been struggling with centralizing and decentralizing its control over the local governments vertically, and the different departments horizontally. The expansion of the local governments and departments, during decades of economic reform, has resulted in a fragmented polity and threatened the central party's leadership.²⁵² Environmental pollution, downward economic pressure, the growing social inequality, the aggravating trend of an aging population, and the arising of new economic types have greatly increased the demand for efficient and good governance. Serious corruptions of the party and government have been deemed to contribute to these challenges, by obstructing the reforms that could respond to them, weakening the party's control and governance capacity, and deteriorating the party leadership's reputation.²⁵³

Facing all of these challenges, combined with political compromises and interest alliances, as well as to uphold the party leadership, the new party center leadership has chosen a vertical and horizontal centralization reform in the anti-corruption area, to make the local party leadership symbolic in the campaign and to consolidate multiple anti-corruption forces. So far, the new anti-corruption campaign has won the new leadership a lot of public support, has strengthened its control over the inferiors, has largely decreased the facially most obvious misbehaviors and corruptions of the government and party, has expanded the CDI

²⁵² Lewis, *supra* note 229.

²⁵³ Manion, *supra* note 157, at 120–154.

system, and has paved the way for later institutional reforms.

However, there are also side effects. Being afraid to make mistakes, many government officials begin to act passively. The increased supervision generates many additional burdens on the supervised agencies broadly, including the new obligations to report to the CITs more frequently, to hold criticism and self-criticism meetings, and to hold meetings to discuss the party provisions. Many talented people, even at the senior level, have quit their public positions and joined private companies, especially the new kinds of economic entities. It has become more difficult to recruit new talents into public positions. Moreover, corruptions that are secret are still ongoing, and new forms of corruptions tend to be more secret, because the foundational reforms have been difficult to push forward. Industrial corruptions remain serious and are not the focus of the current anti-corruption campaign.

Going forward, many challenges await. On the one hand, improper consolidation may not produce sufficient efficiency to combat corruption. Insufficient legal rules and inadequate supervision may allow the new anti-corruption system to be captured by the supervised agencies, relying on strong political leadership, and abusing the anti-corruption powers. On the other hand, the institutionalization and enhanced anti-corruption capacity may be too rigid and too unified to accommodate the dynamic phenomenon of modern China. With a loss of talent, the management ability of the party and the government may be further undermined, forcing it to open the gates to let in talented outsiders who have different sources of power and different ideologies. For the original officials who remain, without economic motivations, the ideology of being loyal to the party may be insufficient to ensure their integrity. This will become even more difficult after entering into the second and third stages of the anti-

corruption reform campaign.

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Education

University of Indiana – Maurer Law School

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Doctor of Juridical Science

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- State Council Scholarship, Department of Education, China (August 2015 – August 2016)

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- State Council Scholarship, Department of Education, China (August 2007 – August 2010)

Michigan State University College of Law

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August 2007-May 2008

- King's Scholars Full Tuition Scholarship; Accountant for Chinese Law Society School of Law, Renmin University of China (RUC)

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- Outstanding Graduate Student of Beijing, awarded to top 3 students in Law School by Beijing Municipal Commission of Education

Experience

Renmin University of China, School of Law

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Associate Professor of Law

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- Teaching Chinese Anticorruption and Commercial Criminal Risk (in English), Evidence Law, Legal English (in English), and Common Law
- Researching on anticorruption, judicial system, evidence, law and society

Beijing Yilian Labor Legal Aid and Research Center (NGO)

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- Represented employees in court for their back pay; drafted proposals for government on work related injury protections; proposed, later accepted by government, to raise minimum wage in Beijing in 2011

UM Law Geneva Externship at ISHR (NGO)

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Legal Intern

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- Attended and reported UN and treaty committee meetings including the Universal Periodic Review, the Convention on Women Discrimination, the Convention on

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- Researched on the interaction between treaty bodies and the UPR

Publications

- English Articles
 - The Limits of Arbitrariness in Anticorruption by China's Party Discipline Inspection Commissions, contact author, Journal of Contemporary China, Vol. 25 No. 97, January 2016 (SSCI)
 - The Power and the Misuse of Power by China's Local Procuratorates in Anticorruption, contact author, International Journal of Law, Crime and Justice, Vol. 44 Issue 2, June 2016 (SSCI)
 - A Functional Analysis of China's Guiding Cases, sole author, June 2016, China: An International Journal (SSCI)
 - Consultative Authoritarianism: The Drafting of China's Internet Security Law and E-Commerce Law, forthcoming in October 2017, first author, Journal of Contemporary China (SSCI)
 - The Guiding Case System in Mainland China, sole author, Frontiers of Law in China, Vol. 3, No. 10, 2015.
- Chinese Articles
 - Theories on Deciding Ratios and Inspirations for China's Guiding Cases, sole author, Studies in Law and Business, Vol. 3, 2015 (CSSCI)
 - Latest Developments and Inspirations from The New Legal Realism, sole author, Jurist Journal, Vol. 4, 2014 (CSSCI)
 - American Experience on the Construction of the Judicial Precedent System, sole author, Journal of East China University of Political Science and Law, No.2, 2014 (CSSCI)
 - *Protections of Domestic Migrant Workers in the New Work Related Injury Insurance System*, co-author, China Social Security, Vol. 3, 2011 (CSSCI)
- Books (all in Chinese)
 - Comparative and Empirical Studies on China's Guiding Cases, sole author, Renmin University Press, July 2015
 - *Selected Translation on Foreign Internet Crime Law Systems*, subeditor, Chinese People's Public Security University Press, January 2012
 - *Contemporary American Law (edited version)*, subeditor, Social Sciences Academic Press(China), June 2011

Projects

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- *American Case Law System and Its Application in China*, funded by Renmin University, director, July 2011 – 2014
- *The Instructional Case System in Mainland China --- A Collision Among Chinese Legal History, Western Case Law, and Current Chinese Legal System*, funded by Renmin University, director, November 2011-2014
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