

9 The practice of law as an obstacle to justice

Chinese lawyers at work¹

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MALE LAWYER 1 (L₁): How could you have signed this [labor] contract? Were you scatterbrained?

FEMALE CLIENT (C): Yes, at the time, I signed it with my eyes shut. I didn't read it at all.

L₁: Well, if you signed with your eyes shut, you should face the consequences alone. What were you thinking? ... Are you divorced? Or is it possible you have other issues? You can't let go of problems. In your everyday life, do you often get into arguments with people? ...

C: Why ask about my marriage?

L₁: I've already answered your legal question. Let's conclude this consultation here, okay?

C: I don't think you have any principles!

L₁: When someone asks you about your contract, do you have evidence? *Evidence! Evidence! Evidence! Evidence! ...*

MALE LAWYER 2: Let me tell you, you've passed the filing deadline; the labor arbitration committee will not arbitrate. The guy is right ... I'm the lawyer, don't be so stubborn! ... You have no chance! Get it? This is all I can say. If you still don't understand, seek the advice of someone wiser.

Labor dispute consultation at the BC Law Firm, Beijing, August 23, 2001

It has been accepted as a scholarly truism that access to justice cannot be reduced to access to courts. To answer questions about the overall accessibility of official justice, we must begin our analysis with the institutions that facilitate and limit the initial awareness of injuries and other violations, the escalation of these perceived transgressions to grievances, and the escalation of grievances to claims that may or may not end up in court.² Building on a research tradition in which lawyers are seen to "hold the keys that open or close the gates of the legal system",³ this chapter scrutinizes the role of lawyers and law firms in these access-enhancing and access-depriving processes. My goal is to explain motive and mechanism in the case-screening process: why and how Chinese lawyers function as gatekeepers to justice by refusing to represent certain kinds of clients with certain kinds of problems. By showing how lawyers exercise power in the legal process through the control of meaning, this chapter explicitly links micro-level discourse to the macro-level issue of access to justice.

In the wake of China's economic reforms and restructuring of the state sector, the growing volume of labor disputes involving pensioners, laid-off workers, injured workers, and workers owed back wages has received both heightened scholarly as well as media attention.⁴ Against this backdrop, observers of China sometimes assume that the rapidly expanding corps of lawyers and the rapid pace of legal reform serve to advance the interests of aggrieved workers.⁵ To be sure, individuals are using the law – and using it successfully – with increasing frequency as a weapon to advance their rights and interests.⁶ Yet, we must also consider the extent to which the law is a weapon lawyers use to refuse representation to, and therefore to undermine the rights and interests of, aggrieved citizens, as well as the reasons why they do so and the methods they employ in this effort.⁷ As we will see in this chapter, lawyers serve as a gateway – which they frequently slam shut – to the legal system.

Researching Chinese lawyers in action

Observations of interactions between lawyers and clients at a Beijing law firm I will call the BC Law Firm serve as the primary source of data in support of my argument that lawyers are an obstacle to justice. Between March and August 2001, two Chinese undergraduates studying sociology at a major university in Beijing, hired and trained by me, observed 48 legal consultation sessions – representing 45 unique cases – at the BC Law Firm. They tape-recorded approximately half of all these consultation sessions; on the basis of notes taken by hand during the consultations, they were able to reconstruct each remaining session in its entirety. Five sessions were recounted after the fact by the attending lawyers. This research strategy allowed data to be collected without my presence as a foreign observer. The research assistants also conducted separate open-ended, semi-structured interviews with 35 of this firm's lawyers.

Of all 48 consultation sessions we observed, five – or almost 10 percent – involved labor disputes. Two of the sessions concerned wrongful termination and were pursued as labor-contract violations, one a pension dispute, one a dispute over wages owed, and the remainder representation in labor arbitration. Of all 48 sessions, nine had clients who could be identified as either migrants residing in Beijing or residents of locations outside Beijing. The clients in all labor consultations appeared to be Beijing residents. The consultations were split fairly evenly by gender, with 22 involving female clients, 17 male, and eight clients of both genders. There is no clear difference in the kinds of disputes brought by men and women. The estimated age of the client ranged from the mid-twenties to the early eighties, with the median age in the mid-forties. The only pattern with respect to age is that clients with housing-inheritance disputes tended to be older and those with economic disputes tend to be younger.

The 48 sessions I analyze involved a total of 27 lawyers. They were a very diverse group: some had worked only as lawyers, while some had held other careers prior to switching to law. Some had experience in other law firms. Some were from Beijing, some were from distant provinces. They were at different

career stages: some were fully licensed lawyers, some were interning lawyers, and one was a partner. Only four were female. The average age was about 33; the oldest lawyer was in his mid-forties and the youngest were in their early twenties.⁸ The names of all lawyers cited in this chapter are pseudonyms.

The plurality of the consultation sessions concerns housing disputes. This category includes nine disputes with other residents or tenants over property rights, many of which originated during the Cultural Revolution (1966–76) or earlier. Economic disputes, the second largest category, consist for the most part of debt and contract disputes. The administrative category includes a botched tubal ligation, a dispute over irregular fees levied by a local government office, and the case of an old man seeking reparations from the Japanese government for performing forced labor service in Japan during the Sino-Japanese War (1937–45). The police disputes include the assault of a woman by a police officer, a case of administrative detention, and a police shooting in which a teenage boy was killed. The criminal disputes include several serious assault cases and a case of incest.

I also marshal evidence from sources outside the BC Law Firm. I draw on additional data from 33 unstructured in-depth interviews I conducted alone with lawyers, legal scholars, government officials, and journalists in Beijing outside the firm (in 1999–2001 and 2004) and a survey of almost 1,000 lawyers in 25 cities across China conducted in the summer of 2000.⁹

The solo character and financial insecurity of Chinese lawyers

The financial success of lawyers in China's top corporate law firms working on international commercial transactions belies the grim reality that most Chinese lawyers are struggling for survival. At the root of this struggle is a model of organization giving rise to a life-and-death imperative to bill. We cannot understand why lawyers screen cases without understanding the pressure engendered by the organization of the Chinese law firm to generate legal fees.

Lawyers classify themselves according to their method of remuneration – salaried lawyers versus commission-based lawyers (E26).¹⁰ Commission-based lawyers are typically called “lawyers who take a cut” (*ticheng lüshi*), but sometimes they also go by the name “cooperating lawyer” (*hezuo lüshi*), referring to a status more closely resembling that of loosely affiliated contract workers than that of stable, full-fledged firm members. While about half of all lawyers in Beijing in the summer of 2000 were paid exclusively on a commission basis,¹¹ almost all – 93 percent – of the lawyers I interviewed in the BC Law Firm reported getting paid this way. Larger firms organized in divisions handling larger, more complex commercial cases tend to employ more salaried lawyers, while the far more representative smaller firms handling run-of-the-mill civil cases tend to consist of more commission-based lawyers. In the smaller cities outside Beijing, with fewer large commercial transactions, 80 percent of lawyers are paid on a commission basis.¹² Salaried lawyers – who are called precisely this (*xinjin lüshi*), “lawyers

that draw a salary” (*lingxin lüshi*), or “hired lawyers” (*pinyong lüshi*) – are found almost exclusively in the elite corporate law firms of China’s big cities. They remain the exception to the rule. Commission-based lawyers, by contrast, account for the vast majority of Chinese lawyers.¹³ Most Chinese lawyers “eat what they kill”; despite mandatory membership in a law firm containing at least three full-time lawyers,¹⁴ they operate like solo practitioners, solely responsible for finding and representing clients from beginning to end. Indeed, a popular expression used to describe the life of commission-based lawyers is “fighting the battle alone” (*dan da du dou*).

The Darwinian struggle in the Chinese bar has been exacerbated by its rapid privatization.¹⁵ Like China’s small-scale private entrepreneurs, Chinese lawyers are autonomous, independent, and self-reliant. Known as *geti hu* (literally, “independent households”), these “[i]ndividual enterprisers are people who do not have formal positions at any state- or collective-owned work unit, but make their living solely from the market”.¹⁶ A popular professional nickname captures the plight of Chinese lawyers: “*geti hu* who know the law” (E14, E18, and I13). As one lawyer informant – who also worked as a journalist for a major national newspaper – summarized in 2001, “Lawyers are *geti hu*, just like those who set up stalls on the side of the road, like *geti hu* who sell fruit” (E14).

Privatization has aggravated not only lawyers’ financial vulnerability, but also their institutional vulnerability *vis-à-vis* the state. In the wake of the privatization of the bar, lawyers’ heightened autonomy from the state in their day-to-day work – the work of finding and managing clients and of investigating and processing cases – has ironically contributed to the persistence of their exposure to predatory harassment, intimidation, obstruction, and rent seeking from officials in various government agencies, including the police and procuracy. Owing to the professional, and even physical, dangers associated with their institutional marginalization, lawyers tend to screen out criminal defense, administrative litigation, and other cases that pit them directly against the interests of the state.¹⁷ As a matter of selective adaptation to this hostile environment, an estimated one-fifth of lawyers surveyed in Beijing reported prior employment in the police, the procuracy, and the courts. Owing to the real measure of protection offered by their special “insider” connections to state actors, lawyers with such backgrounds are more likely than other lawyers to work in criminal defense and other politically risky fields of practice and less likely to report difficulty in their everyday professional practice.¹⁸ Despite their salience in the screening process, these *political* pressures to avoid cases that could be construed as undermining the state’s overriding goal to preserve social stability are beyond the scope of this chapter. Instead, the more limited focus of this chapter is on the effects of lawyers’ *socioeconomic vulnerability*.

Given the difficulty most firms have in providing such basic resources as law libraries and computers, it should not be surprising that firms are even harder pressed to provide social security benefits. Among 283 law firms I surveyed in 25 cities across China in 2000, 30 percent failed to provide a single item from a list of five perks and fringe benefits, and only 13 percent provided at least two of the five items.¹⁹ As might be expected, of 14 items lawyers were asked to rate in

terms of their level of satisfaction, “social security benefits provided by my firm” rated far and away the lowest. The almost 1,000 lawyers I surveyed across China were twice as likely to say that they were “very unsatisfied” with their firms’ provision of social-security items than they were with the item generating the second highest levels of dissatisfaction.²⁰

Like many, if not most, Chinese law firms, the BC Law Firm imposes minimum annual billings quotas. In 1996 lawyers at BC were required to bill at least 15,000–20,000 yuan per year to stay in the firm; the firm collected these billings directly, and one-half then went back to the lawyer. Within a few years, minimum billing requirements had risen to 40,000 yuan. To put this in perspective, I estimate that in 2000, the median pre-tax, take-home income of lawyers in Beijing – above and beyond what their firms take from their gross billings – was 38,000 yuan.²¹ In Beijing, a 50 percent rule governing lawyers’ commissions – or fee retention – was the general policy across law firms, in accordance with Bureau of Justice regulations. Later, this policy was loosened to enhance law firms’ discretion over lawyer remuneration, and some law firms increased commission rates to 60 percent to attract legal talent. Elsewhere, commissions have been as low as one-third of total billings (E25). At the BC Law Firm, the commission was still 50 percent in 2001 (I14).

Regardless of how lawyers are paid and the client is billed, legal fees are almost always paid from the client’s own resources or from funds recovered or collected from the client’s adversary in the dispute. In China, there is no norm or expectation of fee shifting; neither the English rule of two-way fee shifting – in which the loser unconditionally pays the winner’s legal fees – nor the common American practice of one-way fee shifting – in which the loser pays the winner’s legal fees if the loser is the defendant but not if the loser is the plaintiff – applies.²² In contrast to American plaintiffs’ lawyers, who survive on awards underwritten by insurance companies, the incipience of the liability insurance industry in China solidifies lawyers’ dependence on clients rather than on an insurance payout. But even if lawyers could count on an insurance payout, the courts neither execute fee agreements nor withhold the fee from awards, but rather leave it to clients to adhere to such agreements on their own accord.²³ Consequently, lawyers experience great difficulty in collecting their fees, and they try to avoid “risky” clients.

The profound financial and social insecurity caused by these factors undermine the ability of lawyers to defend the rights and interests of the poor. Many lawyers echoed the sentiment that their first task is to ensure their own financial security (E02). “Lawyers are hunting and killing each other ... Lawyers are not like people think they are. They do not find justice ... Most lawyers consider only their basic survival” (I02).²⁴ The economic pressures produced by this remuneration and billing system overwhelm lawyers’ ideals to represent aggrieved individuals. As Lawyer Mu described it, “When I first started working as a lawyer, I believed my interests and my clients’ interests were united. At the time, if I lost a case I was devastated. Now I understand things better. My interests are not the same as my clients’. When I do my work, it’s enough just to make some money” (I23).

Refusing cases with low fee potential

The consequences of lawyers' financial insecurity are not surprising. Cases with low fee potential, such as labor cases representing workers, are particularly undesirable. Yet they are advanced by clients for whom the small amount of money at stake is financially important. These matters are often about non-monetary issues, such as wrongful termination of employment and illegal working conditions. Sometimes claims are made on principle, to defend a sacred socialist entitlement. In the words of a retired cadre in his seventies who was fighting for a small retirement bonus promised to veterans of the Revolution, "I have over fifty years of Communist Party membership. How can I take this quietly? ... This is not about my one month's pension. I'm not short of money" (C31). Given the small sums of money involved, however, lawyers are rarely interested in cases of this sort.²⁵

In the summer of 2004, the absolute minimum fee for legal representation was 2,000 yuan at a similar law firm (led by a former director of the BC Law Firm). Legal fees for criminal defense, especially for economic crimes, could be as high as 10,000 yuan. Legal fees for economic cases were typically charged on a sliding scale, according to the value of the object in dispute or the amount recovered or collected. The director explained that the firm's lawyers are inclined toward economic cases because of their potential to generate lucrative fees. As he put it, a labor case, by contrast, may involve recovering a month's salary, perhaps amounting to 2,000 yuan – a little more than employed workers' average monthly income in Beijing, and just enough to pay the firm's minimum fee. Under these circumstances, the lawyer lacks an incentive to accept the case; at the same time, the client lacks an incentive to hire the lawyer (E35).²⁶ In the field of labor disputes – representing workers – only work-related accidents, especially those involving dismemberment and wrongful death, offer the hope of a large award or settlement.²⁷

Yet even lawyers who accept and win such cases report difficulty collecting fees. In addition, cases that are financially valuable on paper are not always convertible to cash. This is especially true for housing cases. Even if a housing property in dispute is of great value, the client may intend to live in it, in which case lawyers will tend to display only lukewarm interest at best. However, if the client intends to sell the property – or collect compensation from the property's occupant – or rent it out at market price, lawyers will tend to be far more enthusiastic. Lawyers are often interested in straightforward debt-collection cases, especially when the debtor has the financial means to pay his obligation. In short, whether or not the case involves recovering cash or convertible property is a critical determinant of the way it will be screened by a lawyer.

Among the 48 consultations we observed at the BC Law Firm, three-quarters of the economic cases – more than any other type of case – involved recovering cash or convertible property. At the same time, less than one-fifth of the housing disputes involved property that the client hoped to sell or use to earn cash. Not a single labor dispute involved collecting a significant amount of money or compensation.

Problems involving the recovery of cash or convertible property are far more likely to arouse lawyers' interest and enthusiasm. The way lawyers expressed

interest in accepting a case was by: clearly indicating a desire to take it – making a sales pitch to promote his or her services – or discussing a fee – either a set amount or a contingency fee. According to this definition alone, attending lawyers expressed interest in 42 percent of all 48 consultation sessions. However, they expressed interest in 75 percent of the economic cases and in none of the labor cases. At the same time, while the attending lawyers explicitly refused the case in 21 percent of the 48 consultation sessions, they did so in 40 percent of the labor cases and in none of the economic cases.²⁸ The likelihood that a lawyer would express some interest in accepting a case was over three-and-a-half times greater if the problem involved recovering cash or convertible property – 92 percent versus 25 percent. While the attending lawyer explicitly refused the case in 28 percent of the consultation sessions that did not involve recovering cash or convertible property, he or she did not explicitly refuse any case that involved recovering cash or convertible property. In this small sample of consultations, the cases of aggrieved workers were screened out and economic cases were screened in. As we will see in the following section, however, economic considerations are sometimes trumped by cultural ones.

Refusing the high-risk client

In light of lawyers' dependence on clients to pay their legal fees out of their own accord and the client's weak incentive to pay, the lawyer-client relationship is antagonistic and adversarial. Lawyer Zhong, male, in his late thirties, and one of the more successful lawyers in the firm, says that lawyers need to treat their clients as their greatest enemy (I01). In another interview, the same lawyer reflects: "As a lawyer, you must conquer your client ... The contradictions between lawyers and clients are the most concentrated. If the lawyer loses control, the lawyer will suffer the most harm of all ... This is ten years of experience in a nutshell" (I39).

An important source of power that clients wield is the threat of non-payment. It is not uncommon for clients to refuse to pay lawyers' fees (I01).²⁹ The experience of Zhou Litai is instructive. Rising to domestic and international prominence thanks to his specialization in recovering compensation on behalf of migrant workers dismembered in industrial accidents, his celebrity has extended as far as *The New York Times*, *The Washington Post*, *Newsweek*, *USA Today*, and other foreign media outlets. Despite his tremendous success in representing over 800 migrant workers injured on the job, Zhou Litai has more recently proclaimed, undoubtedly with more than a tinge of hyperbole, "I have been judged China's most famous lawyer, but I am absolutely the poorest lawyer".³⁰ Asserting that 161 clients owe him a total of 5 million yuan – or US\$605,000 – he has started filing law suits against clients who fled after collecting their awards.³¹ This amount dwarfs those owed to the American divorce lawyers interviewed by Mather *et al.*, which ranged from US\$30,000 to US\$125,000.³² Zhou Litai claims to lose 60 percent of the fees he bills.

Clients not only refuse to pay; they may also retaliate by suing their lawyers after an undesirable outcome.³³ According to an official in the Guangzhou Bureau

of Justice, 60 percent to 70 percent of all administrative complaints against lawyers in the late 1990s were filed by clients who lost their cases and blamed their lawyers. In consultations with clients, lawyers are on the lookout for signs of implacable, uncooperative clients. The warning signs of a troublemaker include anger, ranting and raving, and “hysterical” outbursts couched in moralistic language about right and wrong, good and bad, and unfulfilled state obligations.

Although business clients may also cheat lawyers of their fee,³⁴ lawyers’ overwhelming response has been to screen individual clients. Lawyer Mu gives serious consideration to all cases that he believes will generate fees, but he tries to avoid representing clients who are unreasonably demanding and who present unreasonable cases (I23). When explaining why they refuse clients, Chinese lawyers reported an aversion to: “clients of low quality [*suzhi di*]”; “clients with whom I have difficulty communicating”; “clients who try to direct my work”; “clients who have a foul moral character”; and “clients who won’t stop pestering me”.³⁵ The discourse of low quality also reflects a practice of “profiling” clients according to cultural stereotypes of workers and peasants with lower levels of education. As Zhou Litai states, “The critical problem is how to elevate the quality and cultivation of these people”.³⁶

A lawyer I interviewed used the term *diaomin* to characterize clients who fight their employers tooth and nail for wages and pensions, for example.³⁷ *Diaomin*, who are deemed more likely to challenge their employers and pursue labor grievances, are the most contentious and recalcitrant category of clients, precisely the troublemakers lawyers try to avoid. According to this lawyer, *diaomin* who challenge their employers are also more likely to challenge the lawyers they hire to do so and to demand a refund of their fees if their wishes are not completely fulfilled (E34). To be sure, lawyers “profile” prospective clients to some degree on the basis of experience; Lawyer Zhong’s experience representing a client in a labor dispute seems to confirm the stereotype of the *diaomin*. After Lawyer Zhong applied for labor arbitration and wrote letters to the Deputy Party Secretary of the Beijing Municipal Party Committee and to leaders of the responsible enterprise, apparently to no avail, his client filed a formal complaint with the Beijing Lawyers Association, claiming that the legal fee was too steep (C19).

As we saw in the quotation that opened this chapter, lawyers even invoke and perpetuate stereotypes about the questionable moral quality of divorcees. In this particular example, by indicating that the client fit the profile of a divorcee, the lawyer effectively labeled her a “problem client”. Divorcees in China continue to be evaluated as morally dubious, as troublemakers who have difficulty getting along with others, and as less fit to be good parents and productive citizens.³⁸ This, of course, is a cultural stereotype that becomes a reason and pretense for refusing representation.

Yet lawyers are not always stone-cold and heartless. Presenting their case in a way that elicits lawyers’ sympathy is a major source of power wielded by clients. Some lawyers view such efforts to secure their sympathy as evidence of how crafty and emotionally manipulative clients can be. But other lawyers do try to help “deserving” clients in seemingly desperate circumstances, even if they are

unable to pay the legal fee. This phenomenon is what Kritzer calls “de facto pro bono” work.³⁹

In this section we have seen that economics sometimes trumps culture: lawyers like Zhou Litai accept cases with high fee potential even – indeed, exclusively – from “risky” clients. At the same time, however, we have also seen that culture sometimes trumps economics: lawyers not only report representing morally worthy clients even when their cases are unprofitable but, as we will continue to see in the following section, they also, and more typically, report refusing to represent clients who fit the profile of the *diaomin*, regardless of the fee potential of the case.

How lawyers use law as a weapon

The prior two sections concern the question of screening motive. Now I will turn to the question of mechanism. Refusing a case may be direct and explicit, but more often lawyers use methods to discourage clients that are less direct. Lawyers may quote excessively high fees: Lawyer Hou demanded 8,000 yuan for a case for which he would normally charge 3,000 yuan (I12). Another common technique is mis-educating and mis-informing the client in an effort to redefine the problem as one beyond the scope of the law. Legal discourse – what Sarat and Felstiner call “law talk” – is a strategic weapon lawyers use to control the situation and to placate and vanquish clients who themselves are trying to assert some degree of control over the legal process.⁴⁰ Lawyers invoke evidentiary issues, filing deadlines, a low probability of winning, and a high probability of court rejection as pretenses for denying the legal legitimacy of the case and for discouraging clients from pursuing redress by way of actual legal opportunities that may exist.

Clients talk about moral rights, justice, feelings and relationships, but for lawyers to gain full control, such discourse must be purged from consideration. Lawyers often contrast “feeling” with “reason” and “law”; they emphasize the need to separate what is reasonable from what is legally feasible and permissible. They use words like “rambling” and “annoying” to describe clients who try to gain their sympathy with long-winded sob stories. At best, lawyers deem these stories irrelevant blather, and they interrupt impatiently, demanding that the client stick to the relevant facts. At worst, lawyers view this discourse as an indication of a “problem client”.

A client in a consultation session pleaded for help with a housing dispute that had eluded resolution for decades: “But he’s so old and in poor health”. To this Lawyer Ni replied, “The court doesn’t care about feelings, the court cares only about evidence”. About 10 minutes further on in the consultation, the client said, “My father took family very seriously”. Lawyer Ni responded, “The court doesn’t consider the goodness of people. For all those years, you didn’t do anything. Why didn’t you stand up for your rights? Frankly speaking, the court doesn’t care about feelings”. Earlier in this same consultation the lawyer said, “Evidence; the court doesn’t care about feelings, it only cares about evidence” (C07).

When efforts to (mis)educate and “talk sense” into clients fail, lawyers display impatience, condescension, and exasperation. Lawyers’ impatience with clients is

a function of the financial potential of the case: The probability that the attending lawyer expressed impatience was more than three times greater if the case did not involve recovering cash or convertible property than if the case did involve recovering cash or convertible property – 25 percent versus 8 percent.⁴¹

The relationship between case screening and fee potential is often mediated by evaluations of the client's character of the client. A red flag for lawyers is raised when a client expresses anger and moral outrage.⁴² As a consequence, lawyers aim to discourage such clients. While they are slightly more likely to refuse representation explicitly when clients express moral outrage – 25 percent when the discourse of moral outrage is present versus 20 percent when it is not present – lawyers are far more likely to use less direct tactics of discouragement to screen out cases they deem risky and undesirable: They are about half as likely to express interest in accepting the case – 25 percent versus 45 percent – more than three times as likely to display impatience – 50 percent versus 15 percent – and, consistent with the quotation that opened this chapter, almost three times as likely to invoke evidentiary problems or filing deadlines – 50 percent versus 18 percent. Importantly, even when the case entails recovering cash or convertible property, lawyers nonetheless send discouraging signals – disinterest, impatience, and ostensible evidentiary problems and filing deadlines – to clients who express moral outrage. When the case is not lucrative *and* the character of the client is undesirable, it is a virtual certainty that the lawyer will dodge representation.

The general empirical pattern is unambiguous: lawyers are more likely to turn away – both explicitly and indirectly – clients who bring cases that do not involve cash or convertible property and who are deemed potentially troublesome. Although the small number of observations prohibits definitive conclusions, the implications are clear: since labor cases typically involve small amounts of compensation pursued by urban China's most economically needy, this is precisely the category of disputes we would expect lawyers to shun the most. Of the four consultation sessions – among all 48 we observed – in which the attending lawyer invoked filing deadlines as a reason for refusing representation, three were labor disputes.⁴³ Institutional norms and legal doctrine do, to some degree, hinder lawyers from accepting labor disputes. But by obscuring the real opportunities to pursue labor disputes in the legal system, legal doctrine simultaneously serves as a tool for screening out these undesirable cases.

Discourse and deception

As we have seen, a common tactic deployed to refuse labor cases is to claim that a statutory 60-day filing deadline – stipulated by Article 82 of the 1995 Labor Law – has been exceeded. What lawyers do *not* say, however, is that this filing deadline is actually quite flexible. Article 85 of the Ministry of Labor's 1995 Opinion Regarding Some Problems in the Implementation and Enforcement of the Labor Law states, “‘The date on which the labor dispute arose’ shall mean the date on which a party knew or should have known that his rights had been infringed on”.⁴⁴ The legal difficulties associated with establishing when a client

“should have known” of a certain event introduces freedom and flexibility into the labor arbitration process.⁴⁵

Furthermore, lawyers' discourse of the evidentiary imperative of litigation and of strict legal standards contradicts much of what we know about the actual operation of Chinese courts. Lawyers portray a legal system that is rigidly by-the-book and that offers little in the way of wiggle room for negotiation, persuasion, and informal influence. They deny the centrality of “sentiment and feelings” in a court system that, in fact, has been characterized as flexible, accommodating, and conciliatory.⁴⁶ Their discourse of the evidentiary imperative of litigation, their forceful negation of claims that “the law also considers sentiment and feelings”, is part of an effort to strip cases of their legal significance and to negate the merit of clients' legal claims.

Such a conclusion can only emerge from a *constitutive* approach to sociolegal studies, in which law is treated not as a reified, stable, and transparent entity but rather as the product of a struggle between competing actors over naming the problem, over defining the problem as one that merits a legal solution, some other kind of solution, or no solution at all. Law is a fluid and contested process constituted by its actors, who imbue it with meaning and derive meaning from it through their actions, interactions, and struggles. In short, the power of law includes the power to obscure and obfuscate; law both reflects and reinforces power.⁴⁷ The practice of law is a confidence game in which “truth” and “reality” are manipulated for strategic purposes.⁴⁸

Screening in comparative perspective

Chinese lawyers' motives and mechanisms for refusing representation reaffirm patterns observed elsewhere in the world, and in so doing contribute to the construction of a general theory of case screening. Research on lawyers in various Western contexts shows that lawyers can and do advance the interests of individuals with legal needs⁴⁹ and exhibit a widespread willingness both to represent the poor and the powerless⁵⁰ and to advance other “causes”.⁵¹ Nevertheless, contextually specific institutional conditions can produce countervailing economic pressures that overwhelm their ideals and altruism. In the American context, tort reform measures in most states, which impose caps on non-economic and/or punitive damages awarded by courts, have intensified competition and heightened the imperative in the American bar to adopt entrepreneurial strategies. These include the screening of prospective clients.⁵² Not surprisingly, an estimated one-half to two-thirds of cases brought to contingency-fee lawyers are rejected.⁵³ Owing in part to economic disincentives produced by caps on awards and fees, rates of refusal are highest in the fields of medical malpractice and labor.⁵⁴

In comparison to Chinese lawyers, American lawyers more commonly collect fees from insurance companies and from their clients' adversaries through fee-shifting. But when legal fees are paid directly by the client using the client's own resources, as is often the case in hourly- or fixed-fee arrangements, American lawyers, like their Chinese counterparts, become concerned about not getting

paid.⁵⁵ Finally, American lawyers, too, are concerned about malpractice suits⁵⁶ and collecting legal fees. With respect to mechanisms, lawyers in the West have also been shown to put aside clients' discourse of everyday reason and feelings and to redefine clients' problems in strictly legal terms; Sarat and Felstiner call this strategy an "ideology of separate spheres".⁵⁷ After redefining the problem as a strictly technical-legal matter, lawyers can more easily exercise the power to "educate" the prospective client about legal "reality" – reality as defined by the lawyer to serve the lawyer's interests.⁵⁸ Mis-information and mis-education about the legal merit of the case become the basis for refusing or discouraging representation or for setting more "reasonable" and "realistic" goals and expectations for clients.⁵⁹

Discussion and conclusions

As gatekeepers to justice, lawyers work to educate and to mis-educate people to the realities of legal institutions. By removing emotions and everyday reason and narrowing the scope of discussion to the relevant "legal" norms – as they variously define them – Chinese lawyers act as lawyers do elsewhere in time and place. Their use of rigidly legalistic discourse to deny the legal validity of claims advanced by clients is, to some degree, a function of institutional norms and legal doctrine, which privilege enterprise mediation committees and government labor arbitration committees. But this normative and doctrinal explanation is inconsistent with the reality that labor-dispute mediation within industrial enterprises has all but disappeared;⁶⁰ furthermore, it is also incongruent with the more flexible and more accommodating realities of the Chinese legal system as it operates on the ground. Legal doctrine is an important tool of obfuscation, wielded by lawyers to manage and screen out commercially undesirable cases brought by socially undesirable prospective clients.

Why do lawyers screen cases? Case screening is the manifestation neither of an inherent unwillingness to represent the poor and the powerless nor of a lack of social justice ideals. Rather, screening is the result of an institutional context in which lawyers, who are under enormous economic pressure, receive scant institutional support to protect the rights of the most vulnerable members of society. Yet lawyers' decisions do not adhere to an economic logic alone; the situation in China also reveals a clear cultural logic. By "profiling" prospective clients, lawyers reproduce social categories and thus reproduce social inequalities. Their use of cultural stereotypes to sort and filter cases brought by "undeserving" or "troublesome" clients reinforces barriers to justice and undermines the rights and interests of China's laborers by blocking access to the legal arsenal that has developed for the redress of their work-related grievances.

Yet clients are not hapless subjects. Taking labor disputes to lawyers in the first place is a reflection of the agency of aggrieved workers. The perverse irony is that, in their efforts to exercise agency, clients become agents of their own defeat by reinforcing lawyers' need to screen out potentially troublesome clients and their commercially undesirable cases. The state's paramount goal in China's legal reform

is to preserve social stability by resolving popular grievances and complaints. Yet, insofar as the development of the Chinese bar serves systematically to deny justice to a potentially volatile segment of society, the present legal reforms may to some measure undermine this official goal.

Official efforts to improve access to justice for the poor have been concentrated in the legal aid system. China's legal aid system is developing slowly but surely in an attempt to fill the hole left by private legal practice,⁶¹ especially following the 2003 enactment of the Regulations on Legal Aid. Although, in principle, legal aid lawyers are not supposed to refuse representation to qualifying clients, the very question of qualification is subject to the same discursive manipulation that occurs in the private bar. Indeed, in Katz's study of legal assistance offices in Chicago, lawyers not only rationalized screening out clients with whom they had difficulty communicating by labeling them "crazies", but also screened out clients perceived as shifty, of questionable moral character and credibility.⁶² Anecdotal evidence from China suggests that, in practice, the same intolerance for and cultural stereotypes about "annoying" clients is even more prevalent among legal aid lawyers on the government payroll, for whom fee potential and fee collection are less relevant concerns than they are among commission-based private-sector lawyers, for whom the legal fee is the paramount concern.⁶³

Consistent with previous research,⁶⁴ this chapter has shown that fee potential and fee arrangements are at the heart of case screening. Outside the legal aid system, courts sometimes waive litigation fees for the poor – on the basis of the 1989 Measures of the People's Court on Litigation Fees – and sometimes they shift litigation fees to the loser. However, there is less systematic, doctrinal flexibility with respect to *lawyers'* fees. On December 6, 2004, in recognition of the magnitude of the problem, the Ministry of Justice promulgated a directive calling on lawyers in the private bar to accept more cases from migrant workers trying to collect back wages and to reduce or waive legal fees when doing so.⁶⁵ The remission of legal fees in such cases remains voluntary, and while it is strongly encouraged, it has not been made mandatory.

Students of contemporary China have uncritically assumed that improving procedural and distributive justice in the courtroom improves justice writ large. This chapter points to a more useful research agenda: why are so few grievances transformed into legal claims? What is the role of lawyers in this transformation process? An additional direction for future research is to tease out more clearly the dialectical interplay between economics and culture, to specify more rigorously and definitively the relative importance of economic and cultural considerations. These effects, to be sure, are additive – and possibly multiplicative: clients who are both socially undesirable *and* whose cases are commercially undesirable are almost guaranteed to get screened out of the law firm. Under what circumstances does a desirable potential fee outweigh an undesirable cultural profile? Conversely, under what circumstances does a desirable cultural profile erase the disincentives brought by low fee potential? Such questions are not only among those awaiting future research, but also among those subject to policy influence.

Would any policy measures introduced in the private bar improve access to justice and the prospects for cause lawyering? There is currently a push to introduce a fee-shifting measure that would require the payment of lawyers' fees by the losing party⁶⁶ although superior courts have thus far stymied reform efforts.⁶⁷ At the same time, lawyers' incentives to represent aggrieved workers are likely to be greater if more law firms were to establish base salaries and pro bono systems to pay their lawyers for devoting some time to the protection of the legal rights of the poor and powerless.⁶⁸ Finally, lifting the ban on solo practice would hamper the widespread fleecing of affiliate lawyers by the owners of law firms and, concomitantly, would permit more lawyers to retain a greater share of their legal receipts. Any of these reforms, if adopted, would most probably help to reduce disincentives for lawyers to accept labor disputes and other cases of the poor. Even if adopted, however, such reforms would not address formidable *political* disincentives, a topic beyond the scope of this chapter, which must await more thorough treatment elsewhere.

Notes

- 1 This chapter is an abridged and re-edited version of an article of the same title originally published by Blackwell in (2006) 40 *Law & Society Review*, March: 1–38.
- 2 William L. F. Felstiner, Richard L. Abel, and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming ...", (1980–1981) 15 *Law & Society Review*: 631–54.
- 3 Herbert Jacob, *Law and Politics in the United States*, 2nd edition, New York, NY: HarperCollins College Publishers, 1995: 118, cited in Joanne Martin and Stephen Daniels, "Access Denied: 'Tort Reform' Rhetoric is Closing the Courthouse Door", (1997) 33 *Trial*: 26. Also see Herbert Kritzer, "Contingency Fee Lawyers as Gatekeepers in the American Civil Justice System", (1997) 81 *Judicature*: 22–9.
- 4 Publications on worker grievances and protest are too numerous to cite individually here. See Ching Kwan Lee's chapter in this book.
- 5 See Mary E. Gallagher, "'Use the Law as Your Weapon!' The Rule of Law and Labor Conflict in the PRC", in Neil J. Diamant, Stanley B. Lubman, and Kevin J. O'Brien (eds), *Engaging the Law in China: State, Society and Possibilities for Justice*, Stanford, CA: Stanford University Press, 2005: 54–83; Doug Guthrie, "The Transformation of Labor Relations in China's Emerging Market Economy", in Kevin T. Leicht (ed.), *Research in Social Stratification and Mobility*, Vol. 19 (*The Future of Market Transition*), Amsterdam: JAI Press, 2002: 139–70; Doug Guthrie, "The Evidence Is Clear: Foreign Investment Spurs Workplace Reform in China", (2000) 28 *Chronicle of Higher Education*: B11; Doug Guthrie, "The Quiet Revolution: The Emergence of Capitalism", (2003) 25 *Harvard International Review*: 48–53; Anita Chan, "Some Hope for Optimism for Chinese Labor", (2004) 13 *New Labor Forum*: 67–75.
- 6 Gallagher, "'Use the Law as Your Weapon'".
- 7 Austin T. Turk, "Law as a Weapon in Social Conflict", (1976) 23 *Social Problems*: 284; Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field", (1987) 38 *Hastings Law Journal*: 827, 835–6.
- 8 This approximates what we know about the true age and gender distributions of the Beijing bar. The mean age of Beijing's lawyers at the time was well below 40; at least three-quarters were younger than 40. About 30 percent were female. Ethan Michelson, "Unhooking from the State: Chinese Lawyers in Transition", PhD, Dissertation, University of Chicago, 2003: 41–2, 237.
- 9 See Michelson, "Unhooking from the State".
- 10 In the notation I use in this chapter for citing the primary data, "E" refers to interviews I conducted myself; "I" to interviews carried out by my research assistants; and "C" to the 48 lawyer–client consultation sessions. Thus, E18 (for example) refers to my interview number 18.
- 11 Michelson, "Unhooking from the State": 209–10.
- 12 Michelson, "Unhooking from the State": 191.
- 13 In Beijing, an estimated 12–17 percent of lawyers are paid a fixed salary and 30–39 percent a combination of base salary plus commission. Outside Beijing, only an estimated 3 percent of lawyers surveyed reported getting paid a fixed salary and 15 percent a combination of a base salary plus commission. Michelson, "Unhooking from the State": 43.
- 14 Although the general ban on solo practice remains in effect, in 2002, five solo-practice firms were established in Beijing on a trial basis. Michelson, "Unhooking from the State": 67.
- 15 Between 1993 and 2002, the proportion of state-owned law firms in Beijing shrank from 41% to zero. Across China as a whole, 23 percent of law firms were still state-owned in 2001, a precipitous drop from 65 percent in 1997. Michelson, "Unhooking from the State": 470–1.
- 16 Mayfair Mei-hui Yang, *Gifts, Favors, and Banquets: The Art of Social Relationships in China*, Ithaca, NY: Cornell University Press, 1994: 160.
- 17 Yongshun Cai and Songcai Yang, "State Power and Unbalanced Legal Development in China", (2005) 14 *Journal of Contemporary China*: 117–34; Ping Yu, "Glittery Promise vs. Dismal Reality: The Role of a Criminal Lawyer in the People's Republic of China after the 1996 Revision of the Criminal Procedure Law", (2002) 35 *Vanderbilt Journal of Transnational Law*: 827–64.
- 18 Michelson, "Unhooking from the State": 157, 162, Chapter 10.
- 19 These five items are: retirement pension, medical insurance, unemployment insurance, life insurance, and housing. Michelson, "Unhooking from the State": 219.
- 20 Michelson, "Unhooking from the State": 224.
- 21 Michelson, "Unhooking from the State": 336. In 2001 the official exchange rate was about 8.3 yuan per 1 United States dollar.
- 22 Herbert M. Kritzer, "Lawyer Fees and Lawyer Behavior in Litigation: What Does the Empirical Literature Really Say?", (2002) 80 *Texas Law Review*: 1943–83 for a helpful typology of fee arrangements and fee-shifting regimes; also see (1984) 47 *Law and Contemporary Problems*, special issue on "attorney fee shifting". Although the absence of fee shifting is the general rule in China, there are some important, albeit patchy, exceptions to this general rule.
- 23 To minimize losses and prevent working for nothing, commission-based lawyers typically charge an up-front base fee of 2,000 yuan to 3,000 yuan per case, plus some sort of commission, often 5 percent of the value of the case – the *biaodi*, the value of the object in dispute or the amount recovered or collected. However, it is important to emphasize the enormous variation with respect to the amount of both the base fee and the commission. Despite official fee standards set by the government, the general practice is to negotiate fees. Michelson, "Unhooking from the State": 200–1.
- 24 A lawyer I interviewed asserted that 90 percent of lawyers in Beijing are barely making a living. As he put it, "They don't know where their next meal is coming from", and they are "hustling for the sake of survival"; he estimates that only 9 percent enjoy high incomes (E19). According to my survey data, in Beijing, the top 20 percent of the bar earn 70 percent of total income, while the top 5 percent of the bar earn 39 percent. The bottom 60 percent earn only 15 percent of total income, while the bottom 80 percent earn only 30 percent Michelson, "Unhooking from the State": 338, a level of inequality even more extreme than that in the Chicago bar. John P. Heinz *et al.*, *Urban*

- Lawyers: The New Social Structure of the Bar*, Chicago, IL: University of Chicago Press, 2005: Chapter 7.
- 25 Indeed, it is the policy at many Shanghai law firms to prohibit their lawyers from representing workers in labor cases. Mary Gallagher. Personal email correspondence (August 23, 2004).
 - 26 Yunqiu Zhang, "Law and Labor in Post-Mao China", (2005) 14 *Journal of Contemporary China*: 538–9.
 - 27 See Joseph Kahn, "China's Workers Risk Limbs in Export Drive", *New York Times*, April 7, 2003: A3.
 - 28 Examples of lawyers expressing interest by making a sales pitch for their legal services include: "I'll do my best to see that you get extra compensation. Now if you'll just sign this representation contract" (C30, a criminal assault); and "I can tell you're a morally upright individual"; "Pursuing justice through the law is better than any other method" (C37, a neighbor dispute). On a methodological note, I assigned a code of "1" when evidence of the respective characteristic is present – in this case, when evidence of "some interest in accepting the case" is present. The codes are conservative. For example, if a consultation session is assigned a code of "1" for "lawyer explicitly refused the case", we can be sure the lawyer refused the case. A code of "0," however, does not imply that the lawyer did not refuse the case, much less that the lawyer accepted the case, but indicates only that no evidence of explicitly refusing the case is present in the consultation transcript. Likewise, a code of "0" for "lawyer displayed impatience with client" implies not that the lawyer was gracious and polite, but only that no evidence to the contrary is present in the consultation transcript.
 - 29 Wang Chenguang and Gao Qicai, "Lüshi Zhiye De Xianzhuang Diaocha: Wuhan Lüshi Fangtan Zongshu" (A Survey on the Current State of the Legal Profession: A Summary of Interviews from Wuhan), (2000) *Zhongguo Lüshi*, December: 7–8.
 - 30 Li Gantu and Xun Qingju, "'Dagongzai Lüshi' Zhou Litai Xianzhuang Kundun" (The Weariness of the Workers' Lawyer, Zhou Litai), posted by the *Guangzhou Ribao*, December 8, 2003. Online: available at www.dayoo.com/content/2003-12/08/content_1318244.htm (accessed September 26, 2005).
 - 31 Yao Ying, "Legal 'Savior' Fighting For His Fees", *China Daily*, July 5, 2004. Online: available at www.chinadaily.com.cn/english/doc/2004-07/05/content_345478.htm (accessed September 26, 2005).
 - 32 Lynn Mather, Craig A. McEwen, and Richard J. Maiman, *Divorce Lawyers at Work: Varieties of Professionalism in Practice*, Oxford and New York, NY: Oxford University Press, 2001: 143.
 - 33 Zhao Qiancheng, "Lüshi de 'Ku Shui' yu Duzhe de 'Wu Shui'" (A Lawyer's 'Bitter Water' and a Reader's 'Foggy Water'), *Beijing Qingnian Bao*, June 11, 2001: 8; Tian Lianfeng, "Shu le Guansi Gao Lüshi (Upon Losing a Law Suit the Lawyer is Sued), *Shenghuo Ribao*, September 20, 2002; Chen Min and Yang Gang, "Guansi Da Bu Ying Lüshi Cheng Beigao" (Upon Losing Law Suit Lawyer Becomes Defendant), *Yangzi Wanbao*, February 24, 2004.
 - 34 See Bo Licheng "'Fengxian Daili' Hou Nan Shou Qian: Lüshisuo Gao Weitou Danwei Yaohui 40 Wan" (Collecting a Contingency Fee is Difficult: A Law Firm Sues an Organizational Client for 400,000 yuan), *Dianchi Zaobao*, September 25, 2004: 8; Zhou Mu, "Shui Lai Wei Lüshi Tao 'Gongqian?'" (Who Will Collect Back Wages on Behalf of Lawyers?), *Chengdu Wanbao*, December 13, 2004.
 - 35 These are some of the verbatim responses written on questionnaires I administered in 25 cities in the summer of 2000.
 - 36 Li and Xun, "'Dagongzai Lüshi' Zhou Litai Xianzhuang Kundun".
 - 37 Kevin O'Brien and Lianjiang Li define the term *diaomin* as "shrewd and unyielding people" who mobilize legal resources to protect their rights and interests. See O'Brien and Li, "Villagers and Popular Resistance in Contemporary China", (1996) 22 *Modern China*: 30–1.
 - 38 Xu Anqi, "One-Parent Family: Social Assistance for Marginal Groups", presented at Conference on Socioeconomic Rights in China, Dickinson College, April 16–18, 2004. On file with the author. Also see Emily Honig and Gail Hershtatter, *Personal Voices: Chinese Women in the 1980s*, Stanford, CA: Stanford University Press, 1988: 212, 224, 237–9.
 - 39 Kritzer, "Lawyer Fees and Lawyer Behavior in Litigation": 1945; also see Mather *et al.*, *Divorce Lawyers at Work*: 143.
 - 40 Austin Sarat and William L. F. Felstiner, *Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process*, New York and Oxford: New York University Press, 1995.
 - 41 Impatience is manifested in different ways: lawyers may become patronizing and insulting, e.g. "You have serious problems!" (C35, a boyfriend/girlfriend problem). They may interrupt clients, e.g. "Let's stick to material issues!" (C31, a labor dispute). They also may raise their voices or rapidly and loudly tap their pens on their desks (C35).
 - 42 Examples of emotionally charged language and moral outrage include: "It's just that I can't hold back my anger. This guy is just rotten" (C05, an economic dispute); and "Now good things do not come to good people. When I was still working, I was honest and pure, I was the stupid cow of society! Nowadays only the conniving get ahead in society, and the law protects these people!" (C14, a housing inheritance dispute). Although I found no evidence that a common discourse of "releasing anger" and "unjust treatment" varies by gender – either the gender of the client or the gender of the attending lawyer – the data do show clearly that older clients are more likely to invoke such emotionally charged, morally laden language.
 - 43 Among all 48 consultation sessions we observed, evidentiary problems – including filing deadlines – were invoked as reasons for refusing representation in 11 – or 23 percent. Among the five consultations over labor disputes, however, evidentiary problems were invoked in three – or 60 percent.
 - 44 *Chinese Law and Government*, 2002: 70.
 - 45 Guangyu Li, "You Guan Laodong Zhengyi Chuli Wenti de Taolun" (A Discussion of the Issue of Handling Labor Disputes), (2004) 2 *Zhongguo Laodong*: 44.
 - 46 Margaret Y. K. Woo, "Law and Discretion in the Contemporary Chinese Courts", (1999) *Pacific Rim Law and Policy*: 581–615; Isabelle Thireau and Linshan Hua, "Legal Disputes and the Debate about Legitimate Norms", in M. Brosseau, Kuan Hsin-chi, and Y.Y. Kueh (eds), *The China Review 1997*, Hong Kong: The Chinese University Press, 1997: 349–78; Lucie Cheng and Arthur Rosett, "Contract with a Chinese Face: Socially Embedded Factors in the Transformation from Hierarchy to Market, 1978–1989", (1991) 5 *Journal of Chinese Law*: 143–244; Li Su, *Song Fa Xia Xiang: Zhongguo Jiceng Fazhi Zhidu Yanjiu* (Bringing Law Down to the Countryside: Research on China's Grassroots Legal System), Beijing: Zhongguo Zhengfa Daxue Chubanshe, 2000.
 - 47 See, for example, Lynn Mather and Barbara Yngvesson, "Language, Audience, and the Transformation of Disputes", (1980/1981) 15 *Law & Society Review*: 775–822; Bourdieu, "Force of Law"; Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans*, Chicago, IL: The University of Chicago Press, 1990.
 - 48 Abraham S. Blumberg, "The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession", (1967) 1 *Law & Society Review*: 15–40; Carl J. Hosticka, "We Don't Care about What Happened, We Only Care about What is Going to Happen: Lawyer-Client Negotiations of Reality", (1979) 26 *Social Problems*: 599–610.
 - 49 Maureen Cain, "The General Practice Lawyer and the Client: Towards a Radical Conception", (1979) 7 *International Journal of the Sociology of Law*: 331–54; Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes"; Carroll Seron *et al.*, "The Impact of Legal Counsel on Outcomes for Poor Tenants in New

- York City's Housing Courts: Results of a Randomized Experiment", (2001) 35 *Law & Society Review*: 419–34; Frank Munger, "Miners and Lawyers: Law Practice and Class Conflict in Appalachia, 1872–1920", in Maureen Cain and Christine B. Harrington, *Lawyers in a Postmodern World: Translation and Transgression*, Buckingham: Open University Press, 1994; Peter Karsten, "Enabling the Poor to Have Their Day in Court: The Sanctioning of Contingency Fee Contracts, A History to 1940", (1997/1998) 47 *DePaul Law Review*: 231–60.
- 50 Louise G. Trubek, "Embedded Practices: Lawyers, Clients, and Social Change", (1996) 31 *Harvard Civil Rights-Civil Liberties Law Review*: 415–41; Douglas J. Besharov, *Legal Services for the Poor: Time for Reform*, Washington, DC: AEI Press, 1990; Jack Katz, *Poor People's Lawyers in Transition*, New Brunswick, NJ: Rutgers University Press, 1982; Rebecca L. Sandefur, "Organization of Lawyers' Pro-Bono Service and Poor People's Use of Lawyers for Civil Matters", presented at the Law and Society Association Annual Meeting, Chicago, May 27–30, 2004.
- 51 Austin Sarat and Stuart Scheingold (eds), *Cause Lawyering: Political Commitments and Professional Responsibilities*, New York, NY and Oxford: Oxford University Press, 1998; Sarat and Scheingold, *Cause Lawyering and the State in a Global Era*, New York, NY and Oxford: Oxford University Press, 2001; Stuart A. Scheingold and Austin Sarat, *Something to Believe In: Politics, Professionalism, and Cause Lawyering*, Stanford, CA: Stanford University Press, 2004.
- 52 Stephen Daniels and Joanne Martin, "'The Impact That It Has Had is between People's Ears': Tort Reform, Mass Culture, and Plaintiffs' Lawyers", (2000) 50 *DePaul Law Review*: 453–96; Daniels and Martin, "'We Live on the Edge of Extinction All the Time'", in Jerry Van Hoy (ed.), *Legal Professions: Work, Structure and Organization*, Amsterdam and London: JAI, 2001; Daniels and Martin, "It Was the Best of Times, It was the Worst of Times: The Precarious Nature of Plaintiffs' Practice in Texas", (2002) 80 *Texas Law Review*: 1781–828; Jerry Van Hoy, "Markets and Contingency: How Client Markets Influence the Work of Plaintiffs' Personal Injury Lawyers?", (1999) 6 *International Journal of the Legal Profession*: 345–66.
- 53 Kritzer, *Risks, Reputations, and Rewards*: 71; Kritzer, "Contingency Fee Lawyers": 24.
- 54 Martin and Daniels, "Access Denied": 28; Herbert M. Kritzer, *Legal Advocacy: Lawyers and Nonlawyers at Work*, Ann Arbor, MI: University of Michigan Press, 1998: 25; Kritzer, *Risks, Reputations, and Rewards*: 69.
- 55 Kritzer, *Legal Advocacy*: 117–18; Blumberg, "Lawyers with Convictions", in Abraham Blumberg (ed.), *The Scales of Justice*, New Brunswick, NJ: Transaction Books, 1973: 72–3; Blumberg, "The Practice of Law": 24–7; Mather *et al.*, *Divorce Lawyers at Work*: 142–3.
- 56 John Gibeaut, "Avoiding Trouble at the Mill", (1997) 83 *ABA Journal*: 48–54; Katja Kunzke, "The Hazard: Failure to Screen Cases", (1998) 84 *ABA Journal*: 57; Mary Beth S. Robinson, "Putting Clients to the Test: Careful Screening at Initial Interview Can Minimize Malpractice Risks", (1998) 80 *ABA Journal*: 80; Mark Bassingthwaight, "Screen Clients to Avoid Trouble", *Virginia Lawyer's Weekly*, August 2003. Online: available at www.virginialaw.com/alpsva12.cfm (accessed September 26, 2005).
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- 58 Carl J. Hosticka, "We Don't Care".
- 59 Mather *et al.*, *Divorce Lawyers*: 38, 93–4, 96–8; Kritzer, "Contingent-Fee Lawyers and their Clients: Settlement Expectations, Settlement Realities, and Issues of Control in the Lawyer-Client Relationship", (1998) 23 *Law and Social Inquiry*: 795–821; Sarat and Felstiner, *Divorce Lawyers*: 56; Douglas Rosenthal, *Lawyer and Client: Who's in Charge?*, New Brunswick, NJ: Transaction Books, 1974.
- 60 Fu and Choy, "From Mediation".
- 61 Benjamin Liebman, "Legal Aid and Public Interest Law in China", (1999) 34 *Texas International Law Journal*: 211–86.

- 62 Katz, *Poor People's Lawyers*: 29–32.
- 63 I am indebted to Sida Liu and Mary Gallagher, both of whom have participated in and extensively studied Chinese legal aid work, for contributing this point.
- 64 Kritzer, "Lawyer Fees and Lawyer Behavior"; Kritzer, *Risks, Reputations, and Rewards*.
- 65 The 2004 Circular on the Provision of Legal Services and Legal Aid to Resolve the Problem of Construction Fee Arrears in the Construction Industry and the Problem of Back Wages Owed to Migrant Workers (Ministry of Justice Document No. 159) was jointly promulgated with the Ministry of Construction for the purpose of implementing the 1993 Circular of the General Office of the State Council on Intently Resolving the Problem of Construction Fee Arrears in the Construction Industry (State Council Decree No. 94).
- 66 He Xin *et al.*, "Lüshi Daibiao Jianyi Shui Shu Guansi Shui Fu Lüshi Fei" (Lawyer Representative Suggests that the Losing Party in Litigation Pay Lawyer Fees), *Nanfang Ribao*, February 11, 2004; Liu Xianren and Chen Hong, "Lüshi Fei Daodi Gai Shui Chu?" (Who Ultimately Should Pay the Lawyer Fee?), *Guangzhou Ribao*, September 30, 2004.
- 67 Tian, "Shu le Guansi Gao Lüshi".
- 68 See Sandefur, "Organization of Lawyers' Pro-Bono Service".