Some scholars are optimistic about the eclipse of relationship-based strategies in China and the ascendance of rational-legal procedures to replace them. When I conducted my field research in 2000–2001, however, guanxi remained an entrenched part of the economic and legal landscape. Among the optimists, Peerenboom (2002: 378–83), for example, portrays Chinese lawyers as a force advancing the rule of law, partly because they possess a collective interest in abandoning guanxi practices and partly owing to the improving quality of their education. Guthrie (1998, 1999) argues that exposure to foreign business firms promotes rational-legal behavior and rational bureaucratic organization; even firms without foreign partnerships mimic Western structures and procedures for purposes of legitimacy. Of course they qualify their claims by reminding us that legal cultural change is gradual and incremental and that certain individuals will continue to benefit from guanxi. Nevertheless, Guthrie (1998) describes a rather sudden, non-incremental sea change that unfolded rapidly between 1988 and 1995.

In contrast to this relatively rosy picture, my findings suggest that greater exposure to foreign firms may actually have an effect quite contrary to what Guthrie expects: insofar as foreign firms demand certainty, calculability, and predictability, China's legal institutions seem to be among the last places to which foreign firms turn for help.1 In the optimists' portrayal of the declining significance of guanxi is an implicit, and sometimes explicit, counterposing of "backward" legal practice in China and "rational"

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1 Part of this reflects legal jurisdiction. Many foreign-related disputes are handled through international arbitration (see Peerenboom 2001). Nevertheless, I consider the possibility that, all else being equal, foreign firms are at least as court-shy as their Chinese counterparts.
legal practice in the West, which ultimately converge as the former follows the enlightened path of the latter. It is important to recall the prevalence of relationship-based practices among American lawyers in general (e.g., Sarat and Felstiner 1995) and among American criminal defense lawyers in particular (e.g., Blumberg 1967, 1973), and that the prevalence of these practices stems more from the demands of the courts and prosecutors than from the collective interests and inherent inclinations of lawyers, who are often forced to play by the rules of the game over which they have little control. This is no different from how Carlin (1962: 157) described Chicago solo practitioners:

The use of personal influence and the trading or buying of favors in the courts or administrative agencies in order to obtain special treatment for a client is frowned upon by the Canons. These prohibitions, however, make certain assumptions about the operation and personnel of the courts and administrative agencies and about the law that, like the rules restricting advertising and solicitation, appear to be at odds with actual metropolitan conditions. For a variety of reasons, the use of personal influence and the trading or buying of favors become an almost indispensable part of the individual lawyer’s job, especially for those lawyers with more than occasional contact with the courts and administrative agencies.

This passage is of particular importance to the extent that it reveals the distance between the law on the books—in this case *The Canons of Professional Ethics*—and the law in action, the reality of legal practice in the Chicago bar. A similar gap exists in China, where a large volume of anti-*guanxi* rules and regulations are in place.

In China the *guanxi* imperative is exacerbated by a gulf between the socialist state sector in which the *gongjianfa*—the police, the procuracy, and the courts—reside and the nascent private sector to which lawyers now belong, the significance of which will be more fully explored in Chapter 10. The importance of *guanxi* is driven less by lawyers themselves, their interests, and their professional competence than by their weak status vis-à-vis the *gongjianfa*. 
The Law on the Books: Anti-Guanxi Regulations

The abundance of laws and regulations designed explicitly to deal with various forms of judicial corruption should be seen more as window dressing that serves to legitimate the legal system than a reflection of rationality in the legal system. Article 397 of China's 1997 revised CL ("Any functionary of a State organ who engages in malpractice for personal gain") is an obvious example. Even China's Constitution has been invoked in well-intended but ultimately unsuccessful legal actions against judges. In Liaoning Province, Zhang Baoren, with the help of a lawyer, sued a judge claiming malpractice through favoritism for bribes (xunsi wubi) and the handling of a case in violation of the law (weifa ban an). The lawyer representing Zhang invoked Articles 41 and 128 of the Constitution in support of his case.\(^2\) Since the Constitution calls for lodging a formal complaint with the overseeing administrative unit, the lawyer brought the matter to the local government. Shortly afterwards, in late 2000, Zhang Baoren learned he was formally charged with "intentionally fabricating and disseminating lies, debasing the integrity of the judge, damaging the judge's good name, and producing extremely negative social and political influence" in a criminal counter-suit filed by the judge. He lost the first instance trial and spent three months in prison. His lawyer appealed in 2001 and the verdict was overturned in this second instance (LNFZB 2001).\(^3\) This sort of reversal, in which the plaintiff or her lawyer becomes defendant are being reported with increasingly frequency in the Chinese media. Given the risk of this kind of reversal, suits

\(^2\) Article 41: "Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary....Citizens who have suffered losses through infringement of their civil rights by any state organ or functionary have the right to compensation in accordance with the law." Article 128: "Local people's courts at different levels are responsible to the organs of state power which created them."

\(^3\) Unfortunately the newspaper article provides no information about the original case that provoked Zhang Baoren to sue the presiding judge.
filed against lawyers are far more prevalent than suits against judges, which remain extremely rare and risky. In recent years an increasing number of malpractice suits have been filed by disgruntled clients against their lawyers, claiming their lawyers charged excessive *guanxi* fees and *renqing* (human feelings) fees that failed to produce the desired results. In this kind of case, the 1996 *Lawyers Law* is typically invoked. (For a discussion of the professional ethics content of the *Lawyers Law*, see Peerenboom [1998: 67–8].)

In addition to the *Lawyers Law*, there is also a *Judges Law* and a *Procurators Law*, both of which were initially promulgated in 1995, and both of which had new amendments that took effect on January 1, 2002. The amendment that attracted the greatest popular interest was the requirement that all judges and procurators pass a unified "judicial examination" (*sifa kaoshi*) that now also applies to lawyers, thereby replacing the national lawyers examination in place since 1986. The inaugural examination was held on March 30, 2002 (Li and Wei 2002). Another amendment widely reported in the media was the ban on judges from doing civil litigation or criminal defense work as a lawyer until two years after retiring from the bench. ⁴ A separate item in this same article stipulates that spouses and children of a judge are prohibited from representing clients in his or her court (JFRB 2001). The former but not the latter rule also appears in the *Lawyers Law* (Peerenboom 1998: 68).

Finally there is a panoply of local rules and regulations governing the behavior of lawyers. Between 1998 and 2001, fourteen such bodies of regulations were drafted, revised, and implemented in Beijing (Niu 2001). The most notable among these is the

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⁴ This replicates a pattern from the Republican period. The common path of mobility from the bench to the bar "was obviously open to abuse, and this avenue was cut off or delayed for many when the Ministry of Justice issued an order barring judges or other court officials (including procurators and court clerks) from entering law practice in their former jurisdiction for three years after their resignation or retirement" (Conner 1994: 234–5).
Beijing Municipal Standards for the Professional Conduct of Lawyers (Test Version), promulgated in July 2001 and containing 82 articles in 12 chapters. The ethical rules included in this body of regulations include: "Not treating to meals [qing ke] or giving gifts [song li] to judges or arbitrators for the purpose of gaining profit or advantage, not demanding extra fees from clients besides those charged for legal services, and not meeting privately to discuss case details with judges or arbitrators in violation of relevant litigation or arbitration regulations" (BJFZR 2001). Another regulation that has attracted a fair amount of public attention is the Beijing Municipal Methods for the Administration of Law Firm Advertising (Test Version), promulgated on July 1, 2000 and revised on September 23, 2000 (see Chapter 7 for more about advertising).

Despite widespread judicial improprieties that stymie the work of lawyers, and despite a large arsenal of laws and regulations at their disposal to take action against such judges, lawyers are extremely reluctant to take such action. Lawyers express great fear this sort of action would backfire, that they themselves would end up named defendants in separate criminal suits, charged with "fabricating evidence," a crime in the 1997 revised CL. A special conference organized by the BLA was held on April 15, 2000 to discuss ways to revise the CL and eliminate the infamous Article 306 (Wang Jin 2001; Yuan and Zhang 2000). Lawyers in China frequently describe Article 306 as a device used by the courts and procuracy to keep lawyers form challenging their authority. This is the law in action.

Insofar as they remain loosely coupled with actual practices, laws in China serve an important symbolic function. In practice, on the other hand, they also serve as tools to reinforce the administrative authority of the state (Woo 1999). Indeed, my contention is that lawyers themselves are significant at least in part for their symbolic value. The contemporary Chinese lawyer, working under the name "lawyer" in a partnership "law firm" and sporting a three-piece suit is certainly more familiar and palatable to the
Western sensibility than his predecessor of less than twenty years ago working under the name "state legal worker" in a "state legal advisory office" and sporting a uniform complete with epaulets and a military-style visor hat (em25). Indeed, the version of the 2001 *Beijing Municipal Standards for the Professional Conduct of Lawyers* circulated for opinions stipulates a dress code for lawyers: "When appearing in court, male lawyers must wear a Western suit of dark colors with a tie, white or light long-sleeved shirt with a collar, and black leather shoes, or a white or light short-sleeved shirt with tie and black leather shoes. When appearing in court, female lawyers must wear a Western dress-suit or suit with pants, a white or light shirt, and black shoes" (BXXB 2001).5 Despite their appearance, lawyers remain subordinated to Party-state interests (Alford 2002). The three-piece suit itself is less important than whom it contains.

**The Law in Action: The Lawyer-Judge Relationship**

Judges do not rise from the ranks of lawyers. The social and educational backgrounds of lawyers and judges are distinct, they enjoy different levels of socio-economic status, and the political power they wield is highly unequal. This pattern is consistent with legal systems in other socialist contexts. In East Germany, law students were divided into three separate streams: lawyers, judges, and prosecutors (Markovitz 1996: 2275–6). According to a prominent scholar at the Chinese Academy of Social Sciences, the complete separation of lawyers from the state system in general and the courts and other branches of the judicial system in particular, which remain government bureaus more than rational-legal institutions, is the most formidable obstacle to the strengthening of civil rights in China (Zhang Zhiming 2000). One of the most insightful journalists in China writing

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5 These dress code stipulations were dropped from the final version. In any case they would have been superceded by the new *Methods for the Administration of Lawyers' Use of Uniforms in Court Appearances* effective January 1, 2003 stipulating that black robes be worn in court.
about lawyers also argues that given the lack of court autonomy and the marginalization of lawyers vis-à-vis judges and procurators, lawyers are forced to resort to extra-legal methods of obtaining the cooperation of judicial personnel; legal skill on the part of lawyers is rendered essentially irrelevant (Ma 2001). Relations between lawyers and judges are less collegial and professional than instrumental. Theirs is an unhappy alliance made endurable by the exchange of favors.6

A well-known journalist for a major daily newspaper who also works part-time as a lawyer makes similar, but even more critical comments:

The status of lawyers is low because the general judicial environment is bad. For example, in court a lawyer may have many very persuasive words that are logically water-tight. He may cite articles and clauses from bodies of law, but the judge won't take them into consideration. Lawyers were produced by the law; they require a rule-of-law society in order to bring their function into play. Even if they are even more skilled, they still can't bring their function into play because an administrative leader from the inside put in a word to the judge; there's no way to win the case in court. Lawyers' work environment is lacking, as is their status. In the mentality of ordinary people, lawyers are useless. They say litigation is a matter of pulling connections [da guansi jiushi da guanxi]. This is correct. Hiring a lawyer wouldn't be as good as giving the lawyer's fees directly to the judge. This conclusion is further supported by comparing their roles. Of all those who study law in university, some become judges and some become lawyers. I often hear the following kind of dialogue in court. For example, after a trial concludes, I'll approach the bench and shake the judge's hand and thank him. Actually I don't even know him. Some judges will have this kind of reaction: "What are you thanking me for? You're the one making the money and I'm the one rendering the judgment." Many judges feel bitter because their incomes are so much lower than lawyers' but they're the ones deciding cases. So they feel bitter. And this bitterness makes them treat lawyers badly. So you can often see judges showing an attitude towards lawyers. This is a psychological effect created by bitterness. (em14)

This "bitterness" caused by being economically inferior but politically superior to lawyers is more commonly described as being "put out of countenance" (xinli bu

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6 Another reason for lawyers' marginalization cited both in the literature and in personal interviews is the perception among those "inside the system" (tizhi nei) that lawyers make their work difficult by "speaking on behalf of the bad guys" (ti huai ren shuohua) (Yuan and Zhang 2000; em16).
pingheng, literally "an unbalanced heart"). As one lawyer put it, "Lawyers say they [the gongjianfa] take bribes and pervert justice, and they say we make too much money" (lf12).⁷

Despite their extreme cynicism about the legal system, lawyers often find themselves defending the integrity of the legal system in order to give the impression that their legal skill and expert knowledge will help achieve the desired outcome. Without their expert knowledge, lawyers are regarded merely as hired guns in a battle of guanxi, a service that can be performed by an array of interchangeable actors and that therefore erodes lawyers' claim to professional jurisdiction. Lawyers' professional power depends on being unsubstitutable (Abbott 1988). This is why lawyers walk a fine line between guanxi talk and legal talk. As we will see, many dangshiren—clients and prospective clients—firmly believe that court outcomes depend on guanxi, on lining up connections beforehand. Lawyers vigorously resist this popular perception. But lawyers' espousing rational legal procedures flies in the face of the reality of their guanxi practices. This tension between promoting what cannot be practiced generates professional dissonance.

The relationship between lawyers and judges is a love-hate relationship. Despite what is generally described as their mutual loathing, they live in a sort of symbiosis. Many lawyers depend on judges for referrals, and the judges, in turn, depend on kickbacks from these lawyers (Wang and Gao 2000; Ma 2001). Lawyers who devote considerable effort to cultivating relations with judges have been nicknamed "san pei

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⁷ This bears a striking resemblance to the plight of the Indonesian lawyer: "In court their troubles multiplied if they insisted on legal correctness. It was not simply a matter of judicial corruption, in which some advocates came to participate more or less equitably in the so-called 'judicial mafia' of collusive prosecutors, judges, and private lawyers. Rather, the problem was (and remains) that these were just about the only terms on which advocates could claim something more than pro-forma membership in the judicial system. For the most part they were kept at a distance, as outsiders, for which they and their clients suffered. Most (not all) judges resented advocates as well-off, self-serving, unofficial, private intruders upon public authority. Not only were the courts inefficient and expensive, because of extraordinary fees, and execution of judgements highly uncertain, but advocates were often treated contumaciously, ignored by judges, obstructed, and occasionally even forbidden to enter courtrooms" (Lev 2000: 310–1).
[escort] lawyers" for their practice of wining and dining judges (Liu Wujun 2001; also see Cohen 1997: 801). Part of this is pressure from danghiren who decide whether or not to hire a particular lawyer according to the lawyer's guanxi with the judge who will decide the case (Xie 1994). In a legal consultation over an administrative dispute, the danghiren asked directly, "Do you know a judge in Chaoyang?" (lfc15) Given this symbiosis, lawyers have a disincentive to challenge judges, appeal cases, or apply for judicial review on behalf of danghiren. It is important to remember that American criminal defense lawyers have been described in similar ways:

They [criminal defense lawyers] are also visible politically, with clubhouse ties reaching into judicial chambers and the prosecutor's office. The [lawyer] regulars make no effort to conceal their dependence upon police, bondsmen, jail personnel, as well as bailiffs, stenographers, prosecutors, and judges. These informal relations are essential to maintaining and building a practice. Some lawyers are almost entirely dependent on such contacts to find clients, and a few even rely on an "in" with judges to obtain state-paid appointments which become the backbone of their practice. (Blumberg 1973: 68)

Even if lawyers have no connections to judges, they often act like they do. A legal affairs journalist in Beijing investigated the interesting phenomenon of law firms clustering geographically around courthouses. One reason is to absorb danghiren who approach the courts alone and subsequently discover or are informed that the paperwork and other requirements are too onerous to complete competently on a pro se basis. Some of these surrounding law firms even go so far as to place signs next to the courthouse "in order to create the following kind of impression to people who do not understand how things really work: This law firm has abundant strength, could not possibly be passing itself off as such falsely in order to scam people, and possesses remarkable abilities enhanced by its very intimate guanxi with the court and its judges" (Wang Xiaoxing 2001).8

8 This clustering phenomenon is not unique to Beijing. One observer noted a similar phenomenon in Zhengzhou, but with respect to rice-roots legal offices (fälü shiwusuo): "In the immediate vicinity of the
The foregoing suggests that, relative to guanxi, a low premium is attached to expert legal knowledge. It can also be seen that the lawyer-judge relationship is less collegial than instrumental and racket-like. Judges, who for the most part lack formal legal training, are recruited in large numbers from the military (Alford 2002, citing a well-known Southern Weekend article authored by Zhu Suli; Cohen 1997: 795; Su 2000: 322–59). Thus, the nexus of their relationship is not a common social or educational background, but rather self-interest. Indeed, lawyers almost universally look down upon judges as legal ignoramuses of low moral character. One particularly notorious judge was nicknamed Judge "San Mang," referring to his "three 'mangs'": illiteracy (wenmang), legal illiteracy (famang), and lechery (liumang). Other infamous cases of corrupt judges, one even affiliated to organized crime, abound in the media (Li and Wei 2002). A representative view was voiced by Lawyer Lu, a male intern in his late twenties: in terms of legal knowledge, judges rank the lowest and lawyers the highest. He asserts, "A lot of procurators and judges are fundamentally ignorant of the law." Meanwhile, in terms of political power, lawyers rank the lowest and judges the highest (lfi21).

However, some lawyers believe this situation may change with the new unified judicial examination implemented in 2002 to replace the national lawyers examination. With new pressure to meet minimum standards of legal knowledge, judges and procurators are going back to school to get formal legal training. However, insofar as school ties are an important basis for enduring guanxi networks (Gold, Guthrie, and Wang 2002: 6), some lawyers are less optimistic about the reforming effects of this
examination. According to Lawyer Bai, this examination will only tighten judicial networks by adding a collegial dimension to what is currently primarily economic. He calls the network of procurators, judges, and lawyers a "monopolistic conglomerate" (longduan jituan)—similar to what Lev (2000) calls the "judicial mafia" in Indonesia (see note 7 in this chapter)—that will only strengthen with the new unified judicial examination (lfi02).

But the image of a collegial "monopolistic conglomerate" belies the fact that lawyers are structurally marginalized outside the state system both in terms of housing, social security, and other redistributive amenities (Chapter 7), but also in terms of the difficulty obtaining cooperation from state agents in the process of carrying out their professional duties. Local courts are beholden to the interests of local governments, a situation that both encourages administrative interference and makes appealing or reversing court decisions extremely difficult. According to Cohen (1997: 800), "The presidents of the local people's courts at various levels are elected and removed by the people's congresses at the corresponding levels. Appointment and removal of other judges of those courts, none of whom enjoy security of tenure, is handled by the standing committee of the corresponding level of people's congress upon the nomination of the president of the relevant court. Moreover, court budgets and the salaries and welfare benefits of judges are determined by the local government, not by the Supreme Court or central government." It is standard procedure to reduce a judge's bonus according to the number of verdicts reversed on appeal, a situation that discourages judges from cooperating with lawyers and from deciding cases according to legal criteria (lfi36; Clarke 2003).
The Law in Action: The Perceptions and Experiences of Dangshiren

The public perception is that formal legal institutions are not particularly rational. Like anything else, they can be influenced with the right connections or the right price; they are merely forums where inside connections lined up by disputing parties duke it out. In this regard, lawyers are often viewed as hired hands in a battle of guanxi, not as purveyors of expert knowledge. In an article on "guanxi hands," a Beijing journalist writes, "Many litigants start frantically lining up people who might influence their case [tuo ren] as soon as they enter the court, even turning cooks and janitors into sponsors [tuo'er] on their behalf....Since judges are unable to avoid pretrial meetings with the parties to litigation and their counsel, during which unethical behavior may occur, it is easy for them to lose their position of neutrality, turning the court into a theater and producing consternation among the masses" (Zhang Peng 2000). In an effort to stem this problem, the Number One Beijing Intermediary People's Court became an experimental court by introducing a new "Procedure Office" to handle all pretrial formalities, including entering the case onto the docket (li an), freezing assets in dispute (caichan baoquan), submitting evidence, and so on, in order to prevent pretrial contact between litigants and judges.9

In late 1997, two prominent legal scholars at Tsinghua University's School of Law conducted in-depth interviews of lawyers in the large city of Wuhan. Their findings were published in the official journal of the ACLA. The themes that emerged from their interviews paint a picture of a legal system in which technical procedures are of little importance relative to guanxi: "Some dangshiren say, 'Lawyers? What good are they? I'll go find guanxi instead" (Wang and Gao 2000: 6). Even when lawyers win cases in court,

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9 I have not encountered any account or assessment of the results of this experiment. However, these experimental measures are clearly unable to prevent pretrial contract between litigants and judges arranged through other means.
the chronic difficulty enforcing verdicts (zhixing nan) renders the win meaningless. This common situation—what Wang and Gao (2000: 8) call "winning the case, losing money"—reinforces low public trust in legal institutions and a popular preference for extra-judicial, and often outright illegal, means of redress.

*Guanxi* permeates every part of the legal process. Lawyers use *guanxi*. They advertise their *guanxi*. They boast about their *guanxi* in front of *dangshiren*. With many *dangshiren*, lawyers can openly strategize about how to pervert the system to obtain the desired result. However, this approach is not suitable for all *dangshiren*. Sometimes lawyers encounter recalcitrant *dangshiren* who despair of the corruption and arbitrariness of the legal system. Securing the trust (and business) of these *dangshiren* often requires restoring some degree of faith and confidence in legal institutions. These *dangshiren* have abandoned hope in achieving justice and approach the lawyer both to vent their anger and as a last-resort effort to redress their problem. When this happens, lawyers are often forced into a defensive position, and work vigorously to legitimate the legal system. However, even when they defend the integrity of the legal system rhetorically, they nevertheless invoke *guanxi* in actual practice. This creates professional dissonance. In other words, regardless of whether a *dangshiren* is amenable to or refuses to be party to the mobilization of *guanxi*, the *dangshiren* nevertheless agrees on the pervasiveness and utility of *guanxi*, and in either case the lawyer is likely to mobilize *guanxi* anyway. Hence the return of the *songgun* discourse (Chapter 1). Lawyers are fighting a public relations war in the face of their negative public image. What are the implications of reproducing and reinforcing practices that contradict the discourse they invoke in consultations with *dangshiren*? Trapped in an institutional system that demands groveling and ingratiation and that therefore encourages *guanxi* practices, lawyers ultimately act to reinforce the negative public image they are hoping to shake.
Many dangshiren firmly believe court outcomes depend on lining up connections beforehand. This undermines lawyers' professional power insofar as dangshiren believe lawyers are interchangeable, substitutable with any actor who happens to possess the right guanxi. As Xie (1994) points out, many dangshiren hire lawyers only because of their connections to judges; when deciding whether or not to hire a lawyer, connections to judges are an important consideration. Not surprisingly, lawyers strongly resist this practice. Lawyers invoke legal discourse to deal with recalcitrant, cynical dangshiren with little faith in the legal system. They attempt to empowerment dangshiren with cliched language like "stand up for your rights!" (lfc07 and lfc14). Meanwhile dangshiren show their disgust with the system and their moral superiority by insisting that their motives are pure—"it's not about money, it's about justice." This genuine struggle that unfolds in the lawyer's office over meaning in the legal process creates professional dissonance by constraining lawyers to invoke a discourse they find difficult to realize in practice.

A recurring theme in the observational data gathered at our law firm field site is the tremendous cynicism of dangshiren. Of course we cannot extrapolate to the general population because not everyone has a grievance. But the data do show that people who have tried redressing their grievances are profoundly cynical about the system and its ability to deliver justice. The language invoked by the dangshiren shows a very low level of confidence in the fairness of judicial institutions: "taking bribes" (tanzang), "perverting justice" (wangfa), "unjust treatment" (yuanwang), and "releasing anger" (chu zhe kou qi) are recurring words dangshiren use to describe their experiences. And the way dangshiren describe their experiences reveals how they attribute their experiences to guanxi practice portrayed as endemic to the legal system.
The Law in Action: The Fickle and Demanding Dangshiren

Based on their extensive interviews of lawyers in Wuhan, Wang and Gao describe how clients often blame lawyers directly when they lose cases (Wang and Gao 2000: 8). Many dangshiren approach formal law not as forum in which decisions are made according to objective consideration of the respective arguments and evidence submitted by both sides and which therefore could go either way, but rather simply as a means to an end, akin to buying a consumer product—if the price is paid the item is delivered; if the item is not delivered the consumer is entitled to a refund. The problem is that litigation is a zero-sum game; only one side can win. Therefore dangshiren often demand a promise of success before hiring a lawyer. Regardless of the technical merit of the case and the persuasiveness of the evidence at hand, many lawyers are unwilling count on the courts to deliver a favorable outcome without providing extra-judicial incentives. Thus, the pressure to deliver on a promise of success often compels lawyers to engage in extra-judicial activities. If extra-judicial incentives can guarantee success, many dangshiren are willing to make the necessary additional investments. Hence the "guanxi fee." The dangshiren believes she has already paid for a product that should arrive within an acceptable amount of time. But when the product that has already been purchased gets lost or intercepted by another party, the dangshiren naturally demands a refund. Legal malpractice suits and formal administrative complaints are therefore a growing threat to lawyers.

10 The situation in Indonesia is very similar: "To this day, the epithet of 'case broker' directed at lawyers still has application, as 26.6% of the members of the public deem that Indonesian lawyers use bribery to facilitate their practice and 20.4% consider that Indonesian lawyers will do anything for the money. Lawyers in Indonesia often stand between their clients and the State's law enforcement apparatus, and act as buyers and sellers of artificial justice within the corrupt system. At present, when people get in touch with lawyers, they are not only requesting legal representation, but also asking to be put in contact with the State's law officers to ensure that they win their case at whatever cost is necessary. As a result, many poor justice seekers will lose their case, since they cannot afford to pay the fees of a top lawyer and the inducements to the State's law officers required to win their case" (Kadafi 2002: 10).
Formal complaints against lawyers are not trivial. The BLA has established a complaints office that opens weekly to the public. Over the previous three years (leading up to when these figures were published, presumably), this office received 265 complaints, of which 159 were formally accepted and pursued and of which 136 were concluded. The disciplinary special committee of the Lawyers Association investigated 60 cases and had meted out disciplinary action in 10 (Niu 2001). This article does not provide breakdowns of types of cases. But an earlier report from Guangzhou does attempt to decompose such complaints. According to an official in the Guangzhou Bureau of Justice, 60–70 percent of all complaints were filed by dangshiren who lost their cases and blamed their lawyers for failing to fulfill their professional responsibilities. In the typical language of a complaint, "The lawyer originally said the case would be handled in such-and-such way, but this is not how things turned out" (Bao 1998). Blumberg (1973: 72) paints a similar picture of the American criminal justice system, how criminal defendants typically feel betrayed by their lawyers:

The lack of a visible end product offers a special complication for the professional criminal lawyer. The plain fact is that the accused in a criminal case almost always loses, even when he has been freed by the court. All the hostility resulting from arrest, incarceration, possible loss of job, and legal expense then is directed toward the lawyer. Thus, it can also be said that the criminal lawyer never really wins a case. The really satisfied client is rare, since even vindication leaves him feeling hostile and dissatisfied....It is this state of affairs that reinforces the casting of the lawyer as a con man.

A case that attracted popular attention occurred in Wuhan. A criminal defendant lost his case and was jailed for five months. When he was released he approached a newspaper (the Chutian Dushi Bao, a major Wuhan newspaper) to expose the lawyer's allegedly dirty tricks. The client complained that the lawyer charged 30,000–40,000 yuan in legal fees and, to the client's amazement, still lost the case. The lawyer's response was that the 30,000 yuan fee was actually a guanxi fee spent on the dining and gift-giving
necessary for there to be any chance of winning the case. The money had already been spent, the lawyer maintained, so there was nothing left to refund (Zhao Qiancheng 2001).

In a similar case, "guanxi fees" were happily paid under the condition that the lawyer win the case. Therefore, upon losing the case, the client sued the lawyer demanding a refund. On December 8, 2000 the dangshiren had signed a legal representation contract in which he agreed to pay 12,000 yuan in legal fees plus 4–6 percent of the amount collected through successful litigation against a hospital for medical malpractice. Despite the 40,000 yuan for medical costs charged by the hospital for treating his child, the court petition specified 500,000 yuan in damages for emotional distress incurred from his son's allegedly being rendered mentally retarded by the hospital staff's incompetence. The plaintiff lost the case in court, spurring his subsequent legal malpractice suit against his lawyer. In this legal malpractice suit, the plaintiff insisted in court that "the 12,000 yuan lawyer fee paid up-front was not even a lawyer fee, but rather a fee for the lawyer's obtaining a medical appraisal and fees to pay for guanxi and renqing. When the representation contract was signed, the agreement was that if the case was lost in the first instance, the lawyer would charge only 1,500 yuan for the second instance. But after collecting his base fee, the lawyer's failure to investigate aggressively caused the loss of the first instance trial. When he prepared to pursue the second instance, the lawyer refused representation, telling him to find another lawyer with better guanxi in the intermediate court." The plaintiff argued that 12,000 yuan was an exorbitant fee given that the medical costs totaled only 40,000 yuan. Therefore, in his suit against the lawyer, he specified damages of 12,000 yuan; it was a demand for a refund. However, in his defense, the lawyer pointed out that the fee he demanded was very low compared to the damages specified in the original court petition. Furthermore, the lawyer argued, no lawyer can guarantee the outcome of a case. The court sided with the lawyer and dismissed the case (Ye 2001).
These cases illuminate how demanding some dangshiren can be, insisting lawyers win their cases. Dangshiren sometimes view formal law in instrumental terms, as a channel that can be exploited to achieve a desired outcome. They also show how winning cases and mobilizing guanxi are often seen as synonymous. The charging of so-called "guanxi fees" is already perceived as an institutionalized practice. Perhaps the lawyers pocket this fee rather than spending it on guanxi, a possibility suggested by Zhao Qianzheng (2001). But even if they do, what really matters is that they were able to justify charging this fee in the first place.

In our law firm field site, we observed Lawyer Zhong reacting jubilantly after learning a formal complaint lodged against him with the BLA had been dismissed (Ifc19). He suggested the Lawyers Association deals with many frivolous complaints. This same client filed a separate complaint against another lawyer in the firm, Lawyer Hu. The matter that led to the complaint against Lawyer Zhong was a labor dispute (the details of which were not divulged by Lawyer Zhong). Lawyer Zhong handled the matter through administrative channels rather than in court. He wrote four letters on behalf of the client, one of which was to the Deputy Party Secretary of the Beijing Party Committee and the remainder of which were to leaders of the involved companies. For each letter Lawyer Zhong charged 500 yuan. In addition to these letters, Lawyer Zhong applied for labor arbitration. For representation in labor arbitration Lawyer Zhong charged an additional 2,000 yuan. The basis of the client's formal complaint was the four letters. He claimed to be utterly mystified as to how a short letter could possibly cost 500 yuan. Lawyer Zhong explained that his letters were carefully drafted legal responses to the charges. "He didn't scare me by filing the complaint against me. I have absolute confidence in my legal abilities, I fulfill my professional duties to the fullest. If you accuse me of gluttony or lechery, the charges might stand! [laughs]... Only when he filed the complaint did I realize what a good lawyer I am. Originally the Lawyers Association wasn't going to
accept the complaint, but I specifically requested that they take the case. I have full confidence in my professional caliber! My principles of conduct include not perverting justice through bribery [tanzang wangfa]. Everything I do is legal...."

Owing to the danger of such complaints, lawyers need to be very cautious in their choice of wording. They try to avoid making promises or guarantees when clients ask them to predict outcomes. In almost all legal consultations observed and recorded, the dangshiren wanted to know whether or not she can win. This seemingly innocuous inquiry often escalates to a demand.

My research assistants once overheard a telephone call taken by Lawyer Yan (lfc35). The dangshiren on the telephone wanted to know whether Lawyer Yan could guarantee success in litigation. She answered, "Besides legal factors, there are many extra-legal factors in the process of handing court cases, such as guanxi and mianzi [face]. Lawyers can only control the legal factors, so I can only clearly explain the legal aspects to you. In the end the case is decided by the judge. Before he announces his decision, anything could happen to influence his decision. So no one can guarantee success in litigation, no one can guarantee who will win."

Case Example 1

The matter of a manager (male, approximately 30 years of age) of an apparel manufacturing company is the ideal exemplification of popular disillusionment with the legal system. His company had a binding contract with a cashmere factory in Inner Mongolia. The manager in Beijing believed the factory was in breach of contract for supplying cashmere of substandard quality. For this reason the apparel company refused to pay for the cashmere. Meanwhile, after the contractually stipulated time for making

\[\text{\footnotesize{\textsuperscript{11} lfc05}}\]
payment expired, the cashmere factory sued the apparel company for breach of contract. At the time of this legal consultation, the apparel company wanted to file a counter suit for losses incurred by having to arrange new supply channels. To advance its interests, the cashmere factory allegedly "lined up connections" (tuo ren) from the Supreme People's Procuracy to the Chaoyang District People's Court. This infuriated the manager.

Lawyer An, a female in her late twenties, lightly chastises the manager for not dealing with this matter within the 60-day payment period stipulated in his contract. Then she tries to persuade the manager to file a counter suit.

*Lawyer:* You should really file a counter suit. Why would I file a counter suit? Because your merchandise is bad, your product's quality is substandard. Alternatively you could file a counter suit demanding they accept a return of the merchandise of substandard quality. [telephone rings: lawyer answers]

*Dangshiren:* Here's what I'm thinking. Assuming we counter-sue, first of all, how much will it cost? Also, how long will it take?

*Lawyer:* We can apply for a simple procedure. It will take about three months.

*Dangshiren:* First, he lined up connections [tuo ren]. Second, I absolutely refuse to pay for the merchandise because your merchandise was substandard. No matter what anyone says, you scammed me! You found a loophole in the law or a loophole in our contract. The Chaoyang court said this contract favors me by including a provision on inspecting the quality of the merchandise upon receipt. This means that even though I receive the merchandise, the merchandise isn't necessarily of passing quality. Your stuff was delivered to me, I examined it. This shows that your merchandise arrived. But as to whether or not it meets quality standards...

Lawyer An then points out that the cashmere factory would argue that inspecting the merchandise upon receipt implies that the merchandise meets quality standards. The dangshiren groans in disgust. He then hands the court ruling to Lawyer An.

*Dangshiren:* Take a look, here are two copies of the court ruling. This is the pretrial ruling. Let me ask you, should there be a date on the pretrial ruling?

*Lawyer:* Yes, of course! The date should be written!
Dangshiren: Someone from the inside told me that the judge has been sitting on this ruling for a long time attempting to get me into mediation. I don't stand a chance.

Lawyer: Did the judge approach you?

Dangshiren: He's been trying to get me into mediation, but I refused. I understand exactly what's going on. He's been lined up by the other side (tuo ren)! Take a look. There's no date on this ruling, but there's an official court seal. How did the official court seal get on this? Take a look at these two rulings. They are identical—except for the date.

Lawyer: How is this happen? How did you get two copies?

Dangshiren: This morning I got another copy.

Lawyer: Wow!

Dangshiren: They've been trying for a long time to get me to go. Today they gave me another copy.

Lawyer: When did they give it to you?

Dangshiren: Before filing the suit, when assets were frozen by the court (baoquan).

Lawyer: Do you have originals?

Dangshiren: I sure do! The two are identical, even the document identification numbers.12

Lawyer: Both dates?

Dangshiren: Uh-huh. This is why I can't hire a lawyer. Even if I hire a lawyer I don't stand a chance! There's no point for a lawyer to go! Lawyers aren't judges. The lawyer does whatever the judge tells him to do, right?

At this point the lawyer goes on the defensive. She has to justify her services by legitimating the legal system. She needs to portray the system as one in which ordinary

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12 All court documents, even copies, are supposed to have unique identification numbers.
people can get a fair shake. This is where we start to see a contest over meaning, a clash of discourses.

_Lawyer:_ Here you're wrong! We... [interrupted]

_Dangshiren:_ Someone like me, if I can find the right person I can win. Let me ask you, is this case a joke or not? There's no date on this thing. This is why I'm here consulting you. Tell me, shouldn't there be a date on this?

_Lawyer:_ Didn't you see how surprised I was that these two documents are identical?

_Dangshiren:_ This is extremely basic, common sense. This is why I didn't dare approach a lawyer in Chaoyang District. They were hoping so badly that I would find a lawyer in Chaoyang District! [laughs] These guys are diffident, afraid of getting caught! But as far as I'm concerned, I'm ready to give up. Whatever you tell me to do, I'll do.

_Lawyer:_ Whoa! Whao! This is absolutely unacceptable!

The foregoing introduces another prevalent theme in the data: the perception that local lawyers are captured by their relationships with court personnel. The discourse contest continues.

_Dangshiren:_ You still don't get it. Look at... [interrupted]

_Lawyer:_ Listen up! I'm telling you this as a lawyer! Your way of thinking is absolutely wrong! Furthermore, you've never been involved in litigation before!

_Dangshiren:_ That's right, I've never been in a law suit before!

_Lawyer:_ If you abandon the first instance, the second instance is extremely difficult.

_Dangshiren:_ After the first instance trial is concluded, can't I use this stuff as evidence for the second instance trial?

_Lawyer:_ Weren't you trying to tell me that you're about to abandon the first instance trial?

_Dangshiren:_ But I have to appear in court!
Lawyer: First of all, everyone knows—and you, a businessman, of all people should know—that the first instance is critical. If you miss this chance the second instance is extremely difficult, even if you line up the right people.

Lawyer An is referring to the difficulty of getting court decisions reversed. This is another theme that emerges from the data across independent consultation sessions.

Dangshiren: The judge called me on the phone. He told me... [interrupted]

Lawyer: If he truly believes he has good cause, he summons you once and you don't go, he summons you again and you still don't go, forget it, the defense stand will be empty. He absolutely will not summon you again! This means he believes this case is difficult to judge. But you can't go make your case, which is why you should hire a lawyer who can make a clear case in front of the judge because your knowledge of the law definitely isn't as deep as an expert's!

Dangshiren: Wrong! It's easy for you to tell me to hire a lawyer. But it's pointless to send a lawyer. Let's just throw in the towel.. [interrupted]

Lawyer: What do you mean throw in the towel?!? What do you mean throw in the towel?!?

Dangshiren: We could definitely hire a lawyer. If this were an ordinary law suit we'd definitely hire a lawyer. When a legal problem arises, we definitely lack an understanding of the law, so we should consult a lawyer, right? But now hiring a lawyer is totally useless! Why is it useless? Because when it's all said and done, the judge had already made up his mind. The reason why things have gone to where they are now is because they went through connections at the Supreme People's Procuracy. Get it? Everybody knows how it works. This isn't just my imagination! Do you think I'm a skeptic? Actually I am a bit of a skeptic. The lawyer in Chaoyang told me I'd be best off mediating. I asked him why. You made me suffer losses, I can't go on like this! People say a law suit like this takes at least eight months!

Lawyer: Regular procedures take six months. Let me give you some advice—as a friend. If you mediate, the problem will be resolved very quickly. Both sides know exactly what's going on. When it's time, we'll state our case very clearly. There's no need to be so impetuous. [telephone rings]

Dangshiren: Lawyer, I've consulted a lot of lawyers. They all told me to go ahead with the litigation. But my friends, they all tell me to avoid litigation!
Lawyer An spends considerable time persuading the manager to accept mediation and negotiate a settlement. They then discuss the lawyer fee, which Lawyer An proposes be paid on a contingency basis.

Lawyer: Negotiate a settlement (*xieshang*) through mediation. If that doesn't work then you can always return to litigation. If you think your losses are too great, then ask the judge to render a verdict! Also, the Beijing Supreme People's Court recently issued a document calling for more rigorous trial procedures. If nothing else works, you can always approach relevant government offices.

Dangshiren: The more he bribes the happier I am. The craziest is how it all ends up. You're the one without a case and look, you're the one making the claim and making arrangements. From Inner Mongolia he started lining up this and that connection [*tuo ren, tuo ren*], a whole big circle [*yi da quan*] and took it into Beijing's procuracy! It's enough to make you laugh!

... 

Lawyer: On February 28 the court ruled to freeze assets (*baoquan*). So freezing the assets followed after filing suit.

Dangshiren: No! Freezing the assets was first, before the suit was filed.

Lawyer: How do you know?

Dangshiren: He told me.

Lawyer: So whatever you were told is how it was?

Dangshiren: He said the money was frozen by the court before the suit was filed.

Lawyer: Oh my! This means he violated proper procedures. This is what you can do: use this as evidence to file a suit against him!

Dangshiren: But I already told you, he knows people!

Lawyer: Right! Right! Right!

Dangshiren: If I sue, he'll definitely win! This is why I never hired a lawyer. I'd have to pay lawyer fees! That lawyer in Chaoyang District told me a story about a guy who made friendly contact [*da zhaohu*] with a judge. In the end this judge sat on the case and refused to hear it. He forced the other guy to mediate! The guy who told me this, I know him really well, which is why he told me! A second
scenario is a lawyer without fear—you might bump into him by chance or he may have just graduated. These are fresh lawyers unaware of reality, with no understanding of how to negotiate the legal terrain. These lawyers will make a mess of everything! [laughs] Isn't this right?

*Lawyer:* No, it's not right.

*Dangshiren:* He isn't acting on the basis of human reality. But when he's finished with the case he'll understand everything! Someone like you who handles law suits every day, you must understand everything.

*Lawyer:* Not necessarily!

*Dangshiren:* This is your official position as a lawyer speaking. But what I said is definitely a factor, wouldn't you say?

*Lawyer:* People like you have a special trait. You're rash and make arbitrary decisions on a whim. And you won't miss an opportunity.

*Dangshiren:* That's not true. How did I get here today? I was on my way to the Supreme Procuracy! But here I can see that your law firm's lawyers have all received the proper moral education of the Communist Party. So many banners!

...  

*Dangshiren:* How do you calculate your lawyer fees for something like this?

*Lawyer:* Our fees are the cheapest!

*Dangshiren:* How are they calculated? I'd like to listen. You never know when I'll be involved in a law suit! I originally planned to represent myself. But listening to you just now I learned I have absolutely no understanding of the law! All I talked about was dishonest methods! It was all nonsense!

*Lawyer:* You should carefully consider this problem, whether you should mediate or spend the rest of your life entangled with these people!

*Dangshiren:* Mediation takes place in court, no?

*Lawyer:* Absolutely!

*Dangshiren:* Then mediation won't get rid of this basic problem.
Lawyer: I recommend you first mediate. The law will waste your time and energy. So much time! However, if mediation increases your losses, then go to court! I don't deny the problem you raise. Really!

Dangshiren: I mean... [interrupted]

Lawyer: It's definitely a problem!

Case Example 2

Lawyer Hu, a male around 30 years of age who has been practicing law for three years, manages to restore enough faith in an individual who initially lacked any confidence in the fairness of legal institutions. The dangshiren, a woman around 50 years of age, has a 13-room house. After the Cultural Revolution her housing use rights were never fully restored until a special court ruling in 1993. This ruling allowed for the eviction of three other residents. However, one of these three, the occupant of two rooms, not only refused to leave, but also refused to pay rent. This occupant refused to acknowledge the housing use rights of the dangshiren. The dangshiren filed a suit in court in 1996. At the time the court ruled that the occupant should vacate one room and continue to occupy the remaining room on the grounds that alternate housing was unavailable. Neither side was satisfied with this ruling; both sides appealed. The dangshiren lost the second-instance trial. This dangshiren also lacks confidence in the legal system. She regrets ever pursuing formal legal channels. She is convinced the process is rigged. This puts Lawyer Hu on the defensive.

Lawyer: When was the second-instance trial concluded?

Dangshiren: It's been over a year. I'm very disappointed. The court displayed clear favoritism [piantan]. The policy under which our family housing falls came into effect in 1993.
Lawyer: You must mean 1983.

Dangshiren: No, it was 1993. Our situation is somewhat special. This policy was issued directly from the Supreme People's Court. Our case was featured in the Fazhi Ribao [the Legal Daily newspaper]. But they still failed to acknowledge that we were their landlord. We've discussed this matter with them many times.

Lawyer: [as he reads the relevant legal documents] Why were there so many defendants?

Dangshiren: Originally there was just one, but the court later added a bunch. At the time of the first trial, one of their sons got a housing assignment from his work unit. He's a teacher. But they switched photos. They also have another son who lived in a shack he built himself just outside the entranceway to the courtyard. They had switched photos so that it appeared the teacher was still living in the housing. But the teacher received a housing assignment elsewhere.

Lawyer: But wasn't the judgment from the first-instance trial that they vacate the premises?

Dangshiren: The judgment was to vacate one room. Both sides appealed this decision, both sides felt the decision was unfair. The final judgment took ages. Then suddenly the verdict was delivered. Favoritism was so obvious. They talked about some sort of investigation [kancha] during the first-instance trial, but we requested a more thorough investigation. What a coincidence! As soon as the photos were switched, they investigators arrived. The use of guanxi is too obvious here. This is not the People’s Congress. Xiao Yang [the chief of the Supreme People's Court] said nowadays litigation is a matter of pulling connections [da guanshi jiushi da guanxi]. We thought we stood a chance without having to resort to guanxi. It was around this time that my father died from all the stress.

Lawyer: Have you applied for an appeal?

Dangshiren: No. We don't even want to anymore. We don't understand. The results from lining up connections [tuo ren] are a world apart from not lining up connections. During the first-instance trial, he [the teacher] said he lived in the north room of the east section of the house. And his 12 year-old daughter lived in another room in this section. Now they've recanted.

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14 In China, judges do not deliver their judgments when court is in session. They announce their verdicts only after what is sometimes protracted contemplation and consultation with superiors.
Lawyer: That's impossible. [pointing at the legal documents] We have the court transcripts, they can't recant.

Dangshiren: But they did. It's so obvious they have guanxi.

Lawyer: It's impossible. Here's his signature, and here's the official court seal. You can appeal that the housing is yours. The other side claiming this is a matter of eating up state land resources is total nonsense. If you sue, you satisfy all the requirements for an eviction.

Dangshiren: But he recanted and now the verdict is for him not to evict.

Lawyer: The appeal process is precisely for people like you who believe the verdict was unfair.

Dangshiren: Now it's been twisted so that we're the ones without housing.
A discussion develops about whether or not the case had been reopened in 1996. The dangshiren is unsure, but she is certainly suspicious of the so-called investigation into the actual living situation of the defendant.

Lawyer: They definitely have a relationship on the inside [you renqing]. This case is definitely worth pursuing.

Dangshiren: But they greased someone's palms [maitong le guanxi]!

Lawyer: So you should appeal. They can't grease the palms of the entire court system!

Dangshiren: I wouldn't hold my breath. We've been driven from pillar to post. We want to cry but have no tears left. You have to help us.

Lawyer Hu agrees to draft an appeal application for a fee of 100 yuan. But the dangshiren is finding it increasingly difficult to contain her emotions.

Lawyer: Leave your documents here. I'll draft a petition. I charge 100 yuan for an appeal petition.

Dangshiren: Fine. Just don't regard this as a simple matter. I've made things very complicated. Before the Cultural Revolution, this property was the Hongqiao Motel. Their [the defendant's] housing was exchanged for some rooms here. But they refuse to acknowledge that we're the landlord.
Lawyer: Don't get ahead of yourself. After the case is entered into the court docket [li an] we'll consider these matters. The housing is yours. And you meet the conditions for eviction. Isn't this simple?

Dangshiren: But we've now become the defendants. We have no voice.

Lawyer: Plaintiffs and defendants are equal.

Dangshiren: I finally understand that this is a matter of pulling connections [da guanxi]; this has become just like Qin Xianglian.¹⁵

Lawyer: Don't worry, OK?

Dangshiren: We're dying of injustice here. My younger brother is already 30 years old. Since he has no housing he can't get married. His mental state has already lapsed. If I had known this beforehand I would have rather been beaten to death than enter the court system.

Lawyer: The court system isn't as sinister as you imagine.

Dangshiren: I no longer dare go to court. I no longer dare rely on the law.

The dangshiren then happens to mention that the latest gossip in the neighborhood is how an elderly couple got together. They both lost their spouses and then decided to move in together. They occupy a unit in the housing property and refuse to leave. The lawyer's eyes light up as he exclaims, "This is an easier case to litigate that the other one!" (This is considered illegal cohabitation because they are not formally married.) When the dangshiren confesses having no evidence for her scandalous allegation, the lawyer replies

¹⁵ This refers to a famous opera set in the Song Dynasty about a man, Chen Shimei, who, on the basis of his stellar performance on the Confucian civil service examination, was recruited as a Number One Scholar under the emperor, leaving his wife, Qin Xianglian, and children in his home village far away in what is now Hubei Province. After waiting three years for any word from her husband, and after a drought devastated her village, Qin Xianglian and her children traveled to Beijing in search of her husband. When they discovered he had concealed his marriage from the emperor and married the emperor's daughter, Chen Shimei decided that the only way to avoid decapitation for lying to the emperor was to arrange for the murder of his family. Qin Xianglian escaped the murder plot and fled to Kaifeng where she beseeched the intervention of Magistrate Bao, who had Chen Shimei executed against the wishes of the emperor.
that so long as she can furnish an accurate address he or the court can investigate the matter.

*Lawyer:* This problem has been dragging on for far too long. Over a year, two years. No one's done the legwork. You should have filed a lawsuit a long time ago. There's only one situation for eviction: when the other party already has housing, or else if the unit cannot be completely vacated then one out of three rooms is vacated.

*Dangshiren:* But we can't even buy private housing.

*Lawyer:* That's right, because you already have housing. These problems are historical legacies. In the past all housing belonged to the Communist Party. It was a form of welfare. You couldn't get protection of private property. The state was responsible for all property. But now the state can't shoulder this responsibility and has sloughed this responsibility off onto the heads of the masses.

*Dangshiren:* But they [the defendants] don't even pay rent.

*Lawyer:* Even if they do pay, it's only 20 yuan per month. If you switch tenants you could charge 500 yuan per month.

*Dangshiren:* If we ask for a housing assignment we wouldn't get one.

*Lawyer:* Your 13-room property is more than sufficient. This is a very common problem in Beijing: the tenant lives better than the landlord. They wait for demolition and relocation and then go hog wild with the money. Once the unit relocates, it's 100,000 yuan per family. There are two parts of the demolition and relocation compensation: ownership rights and use rights. The compensation for ownership rights is not much. Of 200,000 yuan, you might get 140,000 or 150,000 yuan. This is what you'll get.

*Dangshiren:* But they refuse to leave. They told me they want the housing and that I'll never see this 150,000 yuan. They'll get the 150,000 yuan. What about me? Why is it that they have all the rights and I have none?

*Lawyer:* This law suit is definitely worth pursuing. You only pay a few thousand yuan for legal counsel and if you win back a single room there's over 100,000 yuan for you.

*Dangshiren:* Last time I hired a lawyer he only said a few words. I had to draft the petition myself by copying an existing form. What was I to do? Financially I couldn't afford to litigate, emotionally I also couldn't afford to.
Lawyer: I'll accept a contingency fee. First make a payment of several hundred or a thousand yuan. Later you can pay more.

Dangshiren: Contingency fee, huh? That would be fine. At least I'll be able to release my anger [chu kou qi].

Case Example 3

This example clearly illustrates the tension in lawyers' work between legal discourse and pressures to turn to guanxi. Lawyer Bo, male, early twenties, a recent graduate from an elite law school in Beijing, was the attending lawyer for three dangshiren who came with a contract dispute. Since June 2000 they had been renting retail space on Wangfujing, a very popular shopping street in Beijing, for 180,000 yuan per year. This street was closed and completely revamped with a major Western-style mall and set of office towers. They renovated the space and subleased it for 400,000 yuan per year. However, after the street reopened in July 2000 they discovered that the market value of this property was far greater than what they were charging. They approached the lawyer looking for ways to void their contract and evict the tenant. Two possibilities were discussed: First, the two copies of the contract had contradictory terms: one was for two years, the other four. Thus the sublease contract appeared to have problems that could serve as grounds for nullification. Second, rent was overdue for the current quarter (rent was paid in quarterly installments); according to the contract, the lessor could nullify the contract if rent was over five days late. The dangshiren were concerned that the judge might find their goals transparent and accuse them of fraud (qipian).

16 lfc06
Lawyer: The judge won't believe this is fraud because there is no written evidence that you deliberately withheld facts.

Dangshiren: So the judge definitely won't decide that this is a fraudulent act.

Lawyer: Well, I can't say if the judge has some under-the-table deal [maoni].

Lawyer Bo is concerned about the fairness of the judicial process. The dangshiren clearly also have similar concerns.

Dangshiren: What if I arrange for some guys to muscle him out? The only problem with this is that Wangfujing is under close supervision given the current National People's Congress and the Chinese People's Political Consultative Conference. This sort of thing could blow up into a big stink.

Lawyer: Let's discuss this matter from a legal standpoint only. So what do you plan to do?

Dangshiren: She [the subleaser] keeps demanding that we withdraw. This is obviously unacceptable.

Lawyer: I believe there should be no problem filing a law suit.

Dangshiren: But she has powerful friends in Beijing!

Lawyer: It's hard to say how useful this kind of guanxi is. You could hire a lawyer, or you could mobilize guanxi. We also have guanxi, you know!

The dangshiren then decide to pursue litigation. The rest of the conference is devoted to discussing the details of fees and the time frame. Like many others, this conference reveals the tension between legal discourse and guanxi-talk.

Discussion

The skeptic might take the rhetoric observed in this chapter as evidence of lawyers' commitment to the rule of law and their belief in the essential fairness and utility of legal institutions. The most straightforward interpretation is to take what lawyers say in front of dangshiren at face value, as their true beliefs. On the other hand, the most cynical
interpretation is that this rhetoric is pure chicanery, a sales pitch aimed at securing the confidence of the dangshiren, and her fee. My sense is that the truth is somewhere in between, that the professional interests of lawyers would be advanced by the cleaner, more transparent legal system they describe to dangshiren, and that they therefore want to believe their own rhetoric. Yet they are well aware of the gap between the rosier portrayals they paint in the comfort of their law firms and the more grim reality they experience in the courts and in the police stations, both directly and vicariously. A more thorough and balanced assessment of the opinions, attitudes, interests, and motivations behind such rhetoric must take into consideration the voices of lawyers heard outside the context of the lawyer-dangshiren consultation. In the next chapter, drawing on the lawyer survey data, I continue to describe and account for the nature, depth, and prevalence of the difficulties lawyers face in their everyday practice.