10 Professional Difficulty

Many of the challenges facing Chinese lawyers were described in Chapters 3 and 4. The difficulties lawyers experience center around various forms of obstruction, harassment, intimidation and threats, and even physical abuse, mostly at the hands of the gongjianfa, and are heightened in, but not limited to, criminal defense practice. In Chapter 7 I described the kinds and varying levels of organizational resources and support available to lawyers. In this chapter I explore the relationship between professional difficulty and the resources at lawyers' disposal. I offer three hypotheses:

First, owing to the privileges and protections ascriptively afforded to members of the state, exclusion from the state reduces shelter from the kinds of difficulties entrepreneurs and independent practitioners routinely face in socialist and post-socialist contexts. If this hypothesis is correct, professional difficulty among lawyers in China is greater in the private sector and less severe in the state sector. Conversely, state-sector lawyers receive greater cooperation from state agencies.

Second, where the hostility of the state and its agents toward lawyers increases, where lawyers are more widely viewed as a source of rent that can be exploited for the gain of local state organizations and/or the personal interests of its agents, the relative immunity of state-sector lawyers against such predatory behavior will be greater. If this hypothesis is correct, where the various manifestations of "professional difficulty" are most severe, private-sector lawyers will bear the brunt of these impediments and obstructions. More specifically, this hypothesis can be thought of as the small-city handicap: in China's smaller, more remote locales, professional difficulty is heightened and borne disproportionately by lawyers in partnership firms.
Third, lawyers will adopt relationship-based and reputation-building strategies to minimize professional difficulty. This hypothesis was derived from and obviously extends to other groups besides lawyers that depend on access to state power and at the same time are marginalized by the state. Chinese lawyers, along with business entrepreneurs in the private sector, are highly insecure, both financially owing to intense competition and professionally owing to their relative distance from state power. These conditions encourage the adoption of extra-legal, informal, and often shady strategies to enhance access to state power and maximize certainty and professional effectiveness. If this hypothesis is correct, lawyers with connections and good repute experience less difficulty in their work.

In this chapter I will test these hypotheses statistically with the survey data. But first I will provide a qualitative overview of the nature and dynamics of professional difficulty by way of a review of secondary reports and my interview and observational data.

**The Private-Sector Handicap**

Despite the state policy of privatization, the state remains hostile to the private sector (Tsai 2002). Lawyers, like private-sector entrepreneurs, complain that they are "outside the system"; like entrepreneurs, they are weighed down by ideological baggage from the socialist era limiting the scope of their activities; and members of both groups feel excluded and banished from the protections and administrative access afforded by state-sector membership status. Without state-sector shelter, they are vulnerable to predatory behavior from a wide variety of state agents.

**The Criminal Defense Handicap**

Vulnerability to obstruction, harassment, and arrest and detention is greatest in criminal defense practice. According to a survey commissioned by the Beijing Municipal Bureau
of Justice in 2002, 21 percent of lawyers reported that they frequently receive unfair
treatment from judicial organs in the process of carrying out criminal defense work, 77
percent said public security organs make it difficult for them to gain access to clients, and
over 50 percent said such access had never been granted (ACLA 2002e). At a conference
for lawyers held on September 1, 2001, a participant proclaimed:

Under the *Provisional Regulations on Lawyers*, lawyers were state civil servants.
Now they certainly aren't....Criminal defense is difficult [*lūshī biānhù nán*]. Li
Peng, President of the Standing Committee has even raised this problem. Mainly
it's the difficulty gathering evidence [*guīzhèng nán*]. Access to defendants is
difficult [*huījiàn bēigāo nán*]. Last time I was at the intermediary court I tried to
gain access six times. In the end only after slamming my fist on the table did I
finally get access. (conference notes)

Most lawyers surveyed in 2002 were unsatisfied with the level of support from
police, procuracy, and courts; 16 percent said they were "very unsatisfied." Lawyers with
at least 10 years of experience reported higher levels of satisfaction that lawyers with 5
years or less experience. The authors of the report speculate that the relationship between
satisfaction and years of practice has to do with accumulated *guānxi* with the relevant
parts of the legal system. The majority of lawyers surveyed—60 percent—said they
believe their rights with respect to litigation work are not guaranteed (ACLA 2002e).

But the plight of the criminal defense lawyer is not limited to denial of access to
clients; it also includes the illegal detention and torture of lawyers themselves (cf.,
Becker 2000; Rosenthal 2000; Eckholm 2001, 2002; Pomfret 2002a, 2002b). In the
Chinese media, Luo Xuan (2002) summarizes 21 cases of the abuse of lawyers, and 5
cases are described in detail in ACLA (2002b). In short, the "emancipation" of lawyers
through "unhooking" and privatization has had the effect of intensifying the obstruction
and abuse of lawyers (em16). Owing to these risks, lawyers have been steadily
abandoning criminal defense work (Li 2002; lfi04 and lfi13; em33). A lawyer informant
described the difficulty to me as follows:
If you pay attention to what's been happening in recent years, fewer and fewer lawyers, myself included, are doing criminal defense work. I haven't taken a criminal case in two years....And it's not for the reason most people say, that criminal defense doesn't make money....It's because criminal defense work is an abuse to our spirit. When you go to the public security and ask to see the criminal suspect, it would be easier to climb up to the heavens [bi deng tian dou nan]....Why are we abandoning criminal defense work? It's because they [the police] deprive lawyers any space to bring our function into full play. We simply can't get access to our clients....The second reason is an article [Article 306] in the Criminal Law on fabricating evidence. Law enforcement officers are slapping this new criminal offense on lawyers in huge numbers....The Criminal Law reveals how lawyers have absolutely no power in state organs (em11)

According to Zou (2000: 328), "It is widely reported that judicial corruption is the most corrupt phenomenon in China." Judicial corruption includes protectionism, favoritism, the illegal detention of lawyers and other interested parties, and the illegal levying of fees. Lü (2000:192–3, 198) argues that over the course of the post-Mao economic reforms, corruption has moved out of the industrial sector and into state agencies, including the legal system, where it has grown far more pervasive and institutionalized than it had ever been among managers of state-owned enterprises. Officials in the legal system have developed an assortment of techniques for extracting rents from lawyers (Alford 1995: 33; Ma 2001), rents on which the operation of courts and public security bureaus are increasingly dependent. Pretenses or euphemisms for rents include "file retrieval fees" (cha dang fei) and "service fees" (fuwu fei) (Wang and Gao 2000: 8). Rents are also extracted in the form of kickbacks from lawyer fees for referrals from judges (Wang and Gao 2000: 7). Wang and Guo (2000: 10) summarize their findings as follows: "In our interviews, lawyers universally acknowledged the importance of hooking up [goutong] and cultivating guanxi [gaohao guanxi] with judges."

Patronage from an administrative official, facilitated by gifts and favors, is a necessary investment that yields dividends in terms of protection from more capricious
forms of predation and abuse (cf. Young 1994). Tsai (2002: x) describes the situation among business entrepreneurs:

Microentrepreneurs in China expend tremendous energy in dealing with the staff of the state. On a typical day a vegetable vendor may be approached, and perhaps harassed, by cadres from the Industrial and Commercial Management Bureau, Sanitation Bureau, Public Security Bureau, local tax department, and other bureaucrats charged with monitoring and taxing those engaged in the most vibrant part of China's economy, the private sector. Minding one's own business is not a practical option for staying in business.

While symbiotic in the sense of mutually dependent, the lawyer-judge relationship is motivated less by sentiment and emotive friendship than by self-interest and professional survival. Lawyers resent the extra-judicial investments they make in *guanxi practice*, a host of activities ranging from wining and dining to bribing, from gift-giving to giving kickbacks, all aimed at securing access to and the support of influential players in state agencies and other state-sector organizations. They complain endlessly about being at the mercy of the good graces of powerful players. A lawyer in Wuhan interviewed by Wang and Gao (2000: 11) estimates that 60 percent of a lawyer's time is devoted to such extra-legal activities, and only 40 percent to legal work. Another lawyer in their survey declared that legal knowledge only determines 60 percent of a lawyer's overall professional ability, and that the remaining 40 percent is determined by "hustling ability" (*huodong nengli*) and "social knowledge" (*shehui zhishi*)—"the ability to handle human relationships [*chuli renji guanxi nengli*]" (p.12).

To be sure, American lawyers also devote considerable time and energy building personal relationships, both with clients (Fried 1976; Seron 1996; Sarat and Felstiner 1995) and with prosecutors and judges (Blumberg 1967, 1973). The plight of the Indonesian lawyer is even more similar. As Lev (2000: 311) describes, "Criminal defense was treacherous, filled with abusive police, corrupt and extortionate prosecutors, bureaucratically minded judges who favored prosecutors as colleagues and regarded
defense attorneys as interlopers. "In a society in which advantage inheres in official status many advocates have long been troubled by their lack of it" (p.311n8). Kafadi (2002: 8) paints a similar picture:

The field (primary) data hints [sic] at the occurrence of obstruction from the law apparatus of the State in many forms. 81.8% of the legal professionals encountered difficulty derived from law apparatus [sic] in the field of practice. Almost 50% of the respondents stated that they have experienced obstacles created by the judges. The most frequent obstacle from the judges was their request for bribes (44.3%). The partiality of the judges towards a particular party was cited as the second most frequently encountered obstacle by the lawyers (16.4%). It can be shown from the field (primary) data that 54.6% of Indonesian lawyers state that they have encountered professional obstruction from the public prosecutors....No less than 30% of the respondents indicated that the police officers have complicated the process in composing the case dossier, and others affirmed that police officers often ask them for bribes in order to guarantee that their clients receive favorable treatment.

The plight of the Chinese lawyer is no different insofar as the problem stems from a significant status differential between state officials in the organs of justice and lawyers who lack such official status and reside outside the state system. In China the roots of the guanxi imperative are in the public-private divide. The difficulty lawyers have gaining access through the front door is in large part the legacy of their socialist marginalization, and only encourages back-door practices. Yet the guanxi imperative has fiscal roots as well. Just as state cadres have come to depend on rents extracted from business entrepreneurs (Wank 1999b; Tsai 2002; Young 1994; Oi 1999), personnel in the state judicial system (the gongjianfa) have come to depend on lawyers. Corruption not only lines the pockets of individual officials, but represents a significant revenue stream for entire state agencies. Individual corruption has given way to what Lü (2000: 200–8) calls "organizational corruption," a state agency's fiscal dependence on extracting rents from those dependent on its administrative power. In the legal system, there is evidence that courts (fayuan) and courtrooms (ting) within courts are competing amongst one another for cases in order to increase their revenues flows (Wang and Gao 2000: 11).
The Small-City Handicap

The problem of lawyers beholden to or captured by the interests of judges and other state agents varies by context and is compounded in smaller cities. Recall in Case Example 1 (Chapter 9) the manager of the Beijing apparel company who did not believe he could find an impartial lawyer in the entire Chaoyang District of Beijing, the location of the court with jurisdiction over the case. At least in Beijing dangshiren can "lawyer shop." But what about in smaller cities? Given the problem of local protectionism endemic to smaller contexts, many dangshiren, frustrated by the legal institutions in their home towns, bring their cases to Beijing. Lawyers in small towns in the United States, too, are embedded into relationships that transcend and therefore constrain their work (Landon 1990). When a city has only one courthouse, it is easier for the gongjianfa to tighten the screws on local lawyers. This phenomenon in part reflects the tradition of appealing to central authorities after receiving an unfavorable local judgment—"I'll take it all the way to Beijing" (Ocko 1988). But more importantly this phenomenon reflects the significant variation in judicial corruption and professional difficulty by local conditions. Local level of economic development—which is closely related to city size1—is a fundamental determinant of the problems lawyers and dangshiren face in dealings with legal institutions.

A male lawyer in his early thirties, Lawyer Hu, had worked as a lawyer for about three years before we interviewed him in 2001. Before this he worked in a factory in a managerial position. In his words, "Beijing lawyers and those from small cities are no different in terms of their legal knowledge, but in small cities they are a little more lax [sanman] in their conduct and a little more temperamental [piqi]. In a small city lawyers

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1 Among the 25 cities in my sample, population and GDP are correlated at r=.842 (r=.846 with logged values). Among the 24 cities in the multi-city sample, population and GDP are correlated at r=.816 (r=.818 with logged values).
are very close with judges and prosecutors. After all, there is usually only one courthouse, so judges and prosecutors can often bully lawyers. But in these small cities, judges are quite good to lawyers from Beijing" (lfi13). Lawyer An, whom we saw earlier attend to the dispute with the cashmere factory (Chapter 9, Case Example 1), confirms the point about how lawyers from Beijing are treated relatively well in small cities: "Beijing lawyers get relatively more respect in small towns. When gathering evidence or materials, people say, 'If you weren't a lawyer from Beijing, if you were a lawyer from around here, I wouldn't let you have any of these materials.' So handling cases out of town is pretty easy...Once when I was still interning I went to a small city with an older lawyer. The mayor of this city was the old lawyer's former student, so we didn't have to lift a finger. The mayor's secretary did everything for us! All we did was eat, drink, and play for a few days!" (lfi01). In the following case examples, a prominent theme is the impotence of small-town lawyers.

Case Example 4

A women in her late forties traveled with her daughter from a mid-sized city in Inner Mongolia to Beijing in pursuit of justice that she was unable to receive at home. The attending lawyer was Lawyer An, whom we saw attend to the matter of the manager of the apparel company in Example 1. Walking in the office, mother is leaning on daughter as a crutch. In this case there is clear collusion between the involved government agencies. It is noteworthy that the mass media is raised as a viable alternative channel. In the context of strong local protectionism, Lawyer An expresses pessimism about her usefulness, and on this basis subtly refuses representation.

_Dangshiren:_ [sits for a while trying to summon the strength to speak; cries]
Dangshiren (daughter): Mom, don't cry, OK? Take your time. We're from Chifeng, Inner Mongolia. When my mom was sterilized in 1983 her tubes were improperly cut. They hit her bladder. At the time they gave her some medicine. But later she had trouble urinating. The local family planning office...
[interrupted]

Dangshiren: [still crying] What happened was they mistook the ureter for the oviduct and cut it.

Lawyer: Was it treated?

Dangshiren: They treated it. They discovered the problem when I was still on the operating table.

Lawyer: What did they do to treat it?

Dangshiren: They treated it for over a year. I went to the municipal hospital three times. I went to Hohhot [the capital] once. But they didn't admit fault. My medical chart was kept at the family planning office.

Lawyer: Why are you only dealing with this now?

Dangshiren: I've always intended to pursue this. [passing a piece of paper to the lawyer] They keep saying they'll treat it, and then they say again they'll treat it.

Lawyer: Let me take a look. The family planning office never issued a written...
[interrupted]

Dangshiren: They did. Document 851. But they never gave it to me. They sent it to my work unit.

Lawyer: [as he looks at the document] "Cut at a district hospital, treated..."
[interrupted]

Dangshiren: They wanted me to sign Document 851 to indicate complete recovery. But I refused to sign. During the surgery I felt pain in my ureter. I had to pee, so they told me to pee, but I couldn't pee. [cries] I went in at a little after 9am and didn't come out until after 1pm. As I emerged from the surgery room I said I wouldn't stay at the hospital. I had come as part of the mass sterilization drive [jieyu dahui zhan]. Every woman under 40 went. That evening a huge group of doctors performed a physical examination. They asked if I had any problems peeing before. I said no. The doctors then gave me a catheter and I filled up a whole tub of pee. The doctors asked who did this to me.
Lawyer: This is how far you've gotten since you got out of the hospital in 1985? Whom did you approach?

Dangshiren: I approached my work unit. I approached my work unit's overseeing unit. Later, in the factory workshop, when lifting heavy stuff I couldn't hold back my pee. My bladder got infected once a month. Later I lost my job [xia gang le]. People said I was sick, that I should approach the family planning center. But they said I should approach my work unit for treatment. I've been approaching every office and agency since then.

Lawyer: Why didn't you go above the family planning office to the Bureau of Health?

Dangshiren: I did. Since this was a mass sterilization they think there were too many women. They deceived me into thinking they cured me.

Lawyer: If they cured you, show me the diagnosis! Make the doctors furnish evidence!

Dangshiren: Every time I went it was them who accompanied me. Before it's my turn the Bureau of Health people call the doctors out to discuss the matter. When they return they say, "Oh, you again." Then they write a diagnosis. They say they had discussed the matter with the doctor committee. I can only reply that the problem is still on my body.

Lawyer: Did you get an official appraisal of the medical accident?

Dangshiren (daughter): My mother doesn't know.

Lawyer: You need to get an appraisal from the hospital that did the surgery. If they refuse then you need to file a petition with the first-level court ordering the appraisal. If that doesn't work, then you need to file a law suit. Go to court! Sue the hospital!

Dangshiren: Every time I go to Hohhot they follow me. Since I don't have a photocopy machine I don't have any evidence.

Lawyer: My guess is that they'll refuse, that you'll have to go over their heads.

Dangshiren: The people at the family planning center said the government has some medical equipment they can use to examine me.

Lawyer: Saying all of this is of no use. We have to work through proper channels. Right now our biggest weakness is that we don't have your medical chart. Medical chart, what do we need to do to get it?
**Dangshiren:** Our government issues medicine, I get batches of medicine on a scheduled basis, once every certain amount of time.

**Lawyer:** No, you need to go to court.

**Dangshiren:** I've been to court and they won't let me file a suit.

**Lawyer:** Why not? You've been physically injured. The critical issue is your medical chart.

**Dangshiren:** How about we try suing again?

**Lawyer:** We should ask the court to serve notice by way of issuing a written ruling.

**Dangshiren:** They said they already did this.

**Lawyer:** There's no use. The injury occurred over ten years ago and there's still no resolution. When you approach the hospital's overseeing unit, my guess is that there's local protectionism [*difang baohuzhi*]. You can only approach these agencies step by step. You approached the hospital, the family planning office, your work unit, the local government. What use is there to approach your work unit? They can't handle anything, they can't issue rulings.

**Dangshiren (daughter):** If we sue do we need to hire a lawyer?

**Dangshiren:** Our city is too small. Everyone knows everyone else.

**Lawyer:** I don't think it would be worthwhile. Transportation, hotel. It's just not worth it.

**Dangshiren:** I've been to the newspapers in Chifeng, but it's all the same. Above or below the family planning office, I get the same treatment.

**Lawyer:** This is all the past!

**Dangshiren:** Whom do I sue?

**Lawyer:** The hospital. You're not suing an individual. The doctor represents the hospital! Litigation is a true waste of effort and money [*laomin shangcai*].

**Dangshiren (daughter):** How much do you think it would cost us if we lose and appeal?
Lawyer: Not much. Court fees can be reduced, waived, or deferred, so long as you furnish proof of economic hardship.

Dangshiren: Maybe we should approach Jinri Shuofa [the television show, Law Today].

Lawyer: That's a good idea. They have a telephone hotline. You might be better off exposing your case through the newspapers and television stations.

Thus, in the end Lawyer An refuses the case.

Case Example 5

This is another example of a dangshiren who traveled from afar into Beijing in pursuit of justice. In this case a man in his early fifties came from a village outside Zhuozhou, Hebei Province. The attending lawyer, Lawyer He, a young man in his early twenties, only graduated from law school the year before. Throughout the consultation, Lawyer He desperately tries to defend the law and restore faith in the face of strong accusations of local protectionism.

Dangshiren: The family of four, they all beat me. At this point the father admits beating me, but the son does not. The son whacked me with a shovel. His wife then stabbed me with a knife. When they finished it was almost dark outside. That was when I passed out. The next day the local police made a report. But when they made the report they had already established a collusive relationship [chuantong hao le]. They already agreed to let the father take the fall. This way the father would take whatever came out of their criminal action and the son would be scot-free. Why would the father claim the criminal action as his own? So he could protect his two sons.

Lawyer: Let's not be too absolute about this. I mean the kid is only 20 years old!

Dangshiren: When we consulted with a lawyer before, he said we could only file suit against one person. That local lawyer is just a street-corner lawyer.

Lawyer: You can sue up to four people in a civil action. In a criminal suit you can only name one defendant. Now there's a civil mediation procedure: the other side
pays a settlement and you drop the charges. The only question is whether these people have any money.

_Dangshiren_: They have money. How could they build a house without money?

_Lawyer_: You'll need a medical appraisal documenting injury, and you'll need your medical chart. The Bureau of Health has an office that does this.

_Dangshiren_: We had absolutely no idea. But the court rejected [bohui] our petition.

_Lawyer_: You sued the son. You should be suing the father. You named the wrong defendant!

_Dangshiren_: The son was the one who beat me.

_Lawyer_: It would only be strange if the court didn't reject your petition.

_Dangshiren_: But the father admits beating me.

_Lawyer_: That's not right! Didn't you say you already hired a lawyer? What did this lawyer say? Did you go to court for the trial?

_Dangshiren_: No I didn't go. The people there told me I have to appear in court.

_Lawyer_: Who told you this? There's absolutely no such rule. Let me take a look.

_Dangshiren_: The court kept asking me who beat me most severely, so I pointed to the son.

_Lawyer_: That's totally unacceptable. You should have said you don't know. What would have been wrong with that? You're constantly pinning everything on the son. You shouldn't sue the son. You named the wrong defendant! It would only be strange if the court didn't reject the case!

_Dangshiren_: This case... [interrupted]

_Lawyer_: You fingered the wrong guy! Your petition was bound to be rejected. You need to sue again.

_Dangshiren_: The son doesn't admit beating me, but in reality he was the one who did it.

_Lawyer_: If he doesn't admit it, then so be it. If you steal 100 yuan and don't admit it then you don't admit it. If there's no compelling evidence proving you stole the
money then anyone can say you stole the money. Take fact as the basis, take law as the yardstick [yi shishi wei jichu, yi falü wei zhunsheng]! Now you're pursuing the son's criminal liability. I'm telling you, you'll never get there, you named the wrong defendant!

_Dangshiren:_ They're holding the case back, refusing the start a trial.

_Lawyer:_ You named the wrong defendant! Are they going to make a ruling [caiding] or reject your petition?

_Dangshiren:_ I think they're rejecting the case.

_Lawyer:_ Why do you insist on constantly pinning all responsibility on the son? You should have named all four as defendants and demanded compensation of 30,000 to 50,000 yuan.

_Dangshiren:_ There's no way they'll pay.

_Lawyer:_ They can't not pay if it's the court's decision!

_Dangshiren:_ The court is leaning in their favor.

_Lawyer:_ You can't get the story straight, can you?

_Dangshiren:_ Look, let's not pretend this is about the truth. I don't stand a chance in court.

_Lawyer:_ Don't say this is not about the truth... [interrupted]

_Dangshiren:_ The court is accepting bribes and perverting justice [tanzang wangfa]!

_Lawyer:_ There's no accepting bribes and perverting justice! You're wrong!

_Dangshiren:_ The mountain is tall and the emperor is far away [shan gao huangdi yuan], there is no law!

_Lawyer:_ Nowadays it's not as sinister as you imagine. You named the wrong defendant, it's your fault! Criminal cases are handled extremely rigorously. The defendant is facing jail time! You're filing your suit blindly! You should be filing a civil suit.

_Dangshiren:_ But didn't they line someone up [tuo ren]?

_Lawyer:_ Nonsense. How do you know this?
Dangshiren: Zhuozhou is not the same as Beijing!

Lawyer: Just don't file a petition against the son. The kid is only 20 years old!

Dangshiren: They're still fighting, still provoking me!

Lawyer: You can name the son as a defendant among several defendants in a civil action.

Dangshiren: The court rejected my petition. My grounds for litigation were dismissed, and now I'm left without grounds for litigation.

Lawyer: That's not true. You still have grounds; you just named the wrong defendant.

Dangshiren: I filed my petition in April last year [2000]. In April of this year they finally held the first hearing.

Lawyer: Damn, they're really fucking slow!

Dangshiren: The court and the Public Security Bureau are all leaning in their favor.

Lawyer: You pissed off the court, so even if they don't line up connections [tuo ren], they'll still lean towards the defendants!

Dangshiren: What if I hire you?

Lawyer: First of all, the fees for cases outside Beijing are very high. Second, I truly don't want to take this case. Just don't pin everything on the son. If you do, the more strongly you insist the more difficult your situation will become. You might want to find a witness.

Dangshiren: Some people aren't willing to appear in court.

Lawyer: In this case you could name the son as a defendant. But it looks like the court isn't willing to rule on the case. The kid is only 20 years old. If you were the judge you certainly wouldn't make a decision against the kid.
Note that Lawyer He's defense of the courts in his characterization their uncorrupt behavior is somehow contradictory with his claim that the courts can be swayed by sympathy—letting the kid off on the basis of his age.

**Case Example 6**

An older man in his mid-sixties traveled from Lüliang, Shanxi Province all the way to Beijing on behalf of his son who was hiding from the law. The family owned a gas station franchise, part of a major chain. But since November 9, 2000 (about ten months prior to this legal consultation), their gas station had been shut down by police order. A minor tussle had blown up into a major province-wide scandal, one of the provinces "10 biggest strike counterfeit" cases (*da jia shi da anjian*). On November 9 the son was hanging out with a man named Guo, a driver for the Bureau of Meters (*Jiliang Ju*), which happens to be one of the government offices responsible for certifying the gas station. They were drinking at the gas station and got into an altercation. For some unexplained reason the son locked Guo in a room inside the gas station. Using his mobile phone, Guo called the police, who freed him and shut down the gas station. It was quite late already and emotions were high, so the father told the police he would settle this matter the following day. The next day he smoothed things over; all sides agreed that the matter would be settled if he paid a fine of 350 *yuan*, the cost of replacing the lock. But soon afterwards the son complicated matters yet again. He and three friends tried to intimidate the Bureau of Meters by pretending to hold positions in powerful offices: two of the friends pretended to work as journalists for the television broadcast station and one for the procuracy. They went directly to the office of the Director of the Bureau of Meters, but the director was out of the office at the time. On their way out, the son and his three

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friends bumped into Guo, the driver for the Bureau of Meters with whom he had the fateful altercation the night before. This time their exchange of words escalated to physical blows. The son allegedly threw a brick through Guo's car window, injuring Guo, but not very seriously. This time the police issued warrants for the arrest of all four, but they only found the son's three friends. The son had fled. The three friends had been released with security bonds pending trial. The governor of Shanxi approved this case as a "strike counterfeit" case on the basis of the three friends who pretended to be journalists and a procurator. To support their case, charges were also allegedly trumped up. The police then claimed they beat up six people, one very seriously. In addition to the assault charges, the son was also charged with "obstructing the official duties of a government worker." The attending lawyer, Lawyer Qin, male, mid-forties, also believed the charges were trumped up. But he also explained why his hands were tied. Not only do the dangshiren not have official documents on hospital medical appraisals, but more importantly they already passed the filing deadline—60 days. The lawyer was therefore uninterested in the case. It is noteworthy that they tried hiring a lawyer locally first, but the local lawyer, captured by the interests of local state agents, was clearly unable to operate autonomously, independent of government influence.

[about half-way through the consultation, after the essential case details have been conveyed]

**Lawyer:** Why exactly did you come here?

**Dangshiren:** Following what's happened, the chiefs of the Public Security Bureau, the People's Court, and the People's Procuracy have all encouraged us to confess. We didn't do anything wrong. If we confess, then what?

**Lawyer:** You admit beating the guy, right?

**Dangshiren:** Right.

**Lawyer:** Do you agree it was a minor injury [qing shang]?
Dangshiren: No, I don't agree.

Lawyer: When was the medical appraisal?

Dangshiren: November 9.

Lawyer: At the time did you apply for a new medical appraisal?

Dangshiren: They told us family members couldn't apply, that only the accused himself could apply. But my son fled, and I think he has good reason for running. This is all fake.

Lawyer: Let's not discuss that. When did the police make their arrests?

Dangshiren: In December...

Lawyer: So those three guys admit to their role.

Dangshiren: The trial has already begun. The verdict should be rendered any day now. After these guys were arrested, the provincial government spoke out on the matter, calling this one of the province's biggest cases. So they needed facts to support their case.

Lawyer: What was the charge?

Dangshiren: Obstructing the duties of a government worker.

Lawyer: What are the statuses of these guys?

Dangshiren: Two reporters from the television broadcast station and an employee at the procuracy. They are all fake. This case has now become one of the ten biggest strike counterfeit cases [da jia shi da anjian].

Lawyer: Did you apply for judicial review with a higher court?

Dangshiren: No.

Lawyer: Did you appeal?

Dangshiren: No. We are trying to appeal but don't know how to do so. In a situation like ours in which they are persuading us to confess, we don't know what do to. Originally, according to regulations, if we paid a fine of 500 yuan there would be no more problem. But they insist on charging us with obstructing the duties of a government worker. Nothing can happen without the approval of the procuracy.
Lawyer: Let me explain. I've been trying to say this the whole time. In reality there are two problems here. First, with the beating of Guo, should those three guys bear any responsibility? Regardless of the reason for shutting down the gas station, if you assault someone and this assault is documented by the police, then it constitutes criminal assault and you most certainly will bear responsibility. Insofar as those three guys did not participate, the police investigation and the procuracy's charge of obstructing the duties of a government worker is simply the biggest joke in the world. He was not carrying out his duties as a government worker. He was just a driver who happened to get into a verbal altercation on the road. This is not obstructing the duties of a government worker, and there is no evidence to prove otherwise. So this is of comical proportions! If it were a charge of assault, this would be understandable. You can go back and tell those three guys that this is absolutely not a matter of obstructing the duties of a government worker. According to the Regulations on Public Security Administration and Punishment (Zhi’an Guanli Chufa Tiaoli) a slight injury (qingwei shang) cannot be prosecuted criminally. But if according to a medical appraisal the injury is minor (qing shang), then the action constitutes criminal assault and your son is fleeing in vain. The second problem is about shutting down your gas station. Since your station has a valid certificate issued by the Bureau of Meters, this is an administrative problem of law enforcement. Before the filing deadline, you should apply for judicial review or file an appeal. You must file within 15 days. If there's no reaction, you can file a petition within 60 days. You didn't do anything. Furthermore, making special contacts would be futile. You've already passed the deadline.

Dangshiren: We approached a lawyer in Shanxi. But as soon as he saw the charges were approved by the governor, he wouldn't take our case seriously anymore. We have no options left in Shanxi.

Lawyer: Why didn't you come looking for me earlier?
that their case is problematic from numerous standpoints. They rejected the medical appraisal. Their evidence is useless. And there's a filing deadline problem. He even questions the likelihood a court will accept a petition for judicial review or appeal.

**Survival Strategies and Aggravating Factors**

Individual- and firm-level characteristics and strategies can help reduce professional difficulty. Low levels of cooperation from state agencies and vulnerability to the predatory behavior of its agents can be ameliorated by *guanxi* and by a good reputation. That is, having friends in the right places or having a reputation among people occupying important positions reduces friction with the *gongjianfa* and other state organizations in the practice of law. Isolation from sources of professional support, on the other hand, can aggravate professional difficulties.

*Guanxi practice* is just one part of a repertoire of strategies. A rich vocabulary of idioms and euphemisms has developed among lawyers to describe the various activities that facilitate their work. They talk about importance of *tuo ren* (lining up connections, securing a pledge of support, finding a sponsor), *goutong* (hooking up), *da zhaohu* (making friendly contact for the purposes of obtaining help), and *baituo* (making a request to someone, entreatying the help of someone). Corruption in the form of gifts, banquets, and kickbacks are euphemistically called "*guanxi fees" and "renqing fees." Beyond the realm of direct *guanxi practice*, reputation and organizational affiliation also provide professional support and facilitate access to state agencies. Finally, the clients' sources of support (or lack thereof) come into play in the legal process, and can be enormously helpful to lawyers.

Not surprisingly, the connections of greatest utility are those to actors in state judicial organs, the *gongjianfa*. A significant proportion of lawyers are former judges (Alford 2002), and this special background facilitates their practice. As one informant
declared, "Lawyers who used to work in courts or the procuracy have an absolute advantage. There's no comparison. That they use guanxi from their prior positions in their current practice is a 100 percent certainty" (lfi13). In both samples, over one-fifth of lawyers reporting prior careers reported having worked in the gongjianfa (Chapter 6). And compared to other lawyers without these backgrounds, these lawyers derive a far greater percentage of billings from criminal defense work, are far more likely to resolve their cases in court, and are far more likely to report a specialization in criminal defense work.

Many retired officials from the gongjianfa entered the bar under the title "specially-invited lawyer" (te yao lüshi) (Wang and Gao 2000: 6; em28). This path of entry did not require certification or licensing. Since I conducted my survey, this position has been abolished. In accordance with a 1999 MOJ directive entitled Ministry of Justice Notice Regarding the Problem of Registering Specially-Invited Lawyers, starting in 2001, specially-invited lawyers must either pass the bar examination or abandon practice (em08). I was able to capture specially-invited lawyers in my survey before they disappeared.

But the abolishment of specially-invited lawyers has not eliminated the importance of prior careers as sources of guanxi; it has only made it more opaque.

Retired state cadres continue to work in law firms under the name lawyer:

Some lawyers have no legal ability and rely on guanxi. These lawyers are very rich....Behind some successful law firm partners are their "bosses," the ones who in actuality take the firm's profits. They aren't even lawyers, but people who wield guanxi resources. But on their business cards they print "high-level lawyer" because no one ever bothers to verify....What is this thing called "high-level lawyer"? Sometimes they are former bureau chiefs from the Bureau of Justice, or former deputy bureau chiefs, and after they retire they give themselves the "high-level lawyer" title. (em22)

Prior career is clearly an important proxy for connections that facilitate access to important state agencies.
Part-time lawyers (*jianzhi lùshi*) are formally based at other work organizations and only moonlight as lawyers. After 1989, only law school faculty members could work as part-time lawyers (em28). The formal institutional affiliation of a part-time lawyer is her law school, not her law firm. A law school affiliation is a signal for reputation and legal expertise, and is therefore an important source of credibility. Such an affiliation, especially to a well-known university of a high administrative rank, also facilitates access to state agencies and provides a certain degree of protection from harassment and obstruction.

Even ostensibly anonymous matching channels are pervaded by *guanxi*. The source of a case referral can represent a source of patronage. Whether a criminal defense case was assigned by the state or found by other means is an important determinant of professional difficulty. According to Liebman (1999: 226–7), legal aid lawyers in Guangzhou whose cases are assigned by local courts enjoy an unusually high degree of cooperation from the *gongjianfa*, including access to clients in police custody. A lawyer I interviewed in Beijing made the same point by describing the relatively great risk associated with criminal defense work handled on a private basis compared to criminal defense work assigned by the state (em11).

Clients often have better access to state agencies than do lawyers. As a result there is often a division of labor in the practice of law between lawyers and their clients, whereby the client secures the support of influential players and the lawyer goes through the technical legal motions. According to the two hemispheres theory of American lawyers (Heinz and Laumann 1994), lawyers' status is determined largely by their clients. In the American case, the divide is between individual and corporate clients. In the post-socialist transition context, on the other hand, the divide is between public- and private-sector clients. Public-sector organizations have administrative access to other state organizations. Private-sector units, relatively speaking, are excluded and marginalized.
Therefore, representing administrative units should reduce professional difficulty, and representing private-sector units should exacerbate professional difficulty. If lawyers and business entrepreneurs are both vulnerable and marginalized, then one should expect a double-whammy effect from the combination of the two, that the vulnerability of lawyers representing business entrepreneurs would be even greater (additively or multiplicatively).

**Case Example 75**

This case illustrates the frequent division of labor between lawyer and client. It involves Lawyer Lu and a male *dangshiren* in his late forties. The *dangshiren* is already the lawyer's client. This conference occurs over the dinner table. The *dangshiren* has invited the lawyer to an expensive restaurant in order that he "invest his full effort into the case." The matter at hand is a law suit over a large 13-room residential property in a very desirable central location in Beijing. During the Cultural Revolution the defendants were assigned part of this property. They have remained there ever since even though new policies in the early 1980s returned rights over the entire property to the plaintiffs. The sticking point is that the defendants claim they have nowhere else to live. This is the second law suit, the first law suit having been won by the defendants. The *dangshiren* at the dinner table insists he lost the last case because the other side lined up connections faster and more effectively than he did. This time he is determined not to let that happen again. One of the great features of this dialog is that the *dangshiren* is providing extra background and commentary for the benefit of the interviewers.

*Dangshiren*: I upheld my end of the bargain and did what I was supposed to do. Now you also put in your best effort!

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5 lfc09
**Lawyer:** No problem. I'll put in my best effort. It's not in my interest to lose this case either. There isn't a lawyer anywhere who hopes to lose a case!

**Dangshiren:** I'll take care of the court side of things. But during the trial I'll rely completely on you!

**Lawyer:** Don't worry, I'll do my best to handle this case well. But as far as the outcome is concerned, I can't guarantee anything.

**Dangshiren:** I've already lined up a guy named Gao at the court! They [the defendants] are shameless! They have other housing, and yet they also occupy my housing and refuse to leave! There are three rooms in this piece of the housing, it belongs to me and my older sister and originally belonged to my father's family. We are five children and there are 13 rooms altogether. We've already been to court over this housing together with three step-siblings from my father's first wife. At that time we lost the case because we lined up connections too late. The people I lined up couldn't make arrangements on time. This is why we lost. My older sister and I only have these three rooms, so this time I lined up connections at the beginning to avoid a situation like last time....I lined up someone at the Supreme People's Court. He should be able to help out. Last time things weren't handled properly. In principle this guy should help out. Last time I was probably too late lining people up, so in the end I still lost the case. I haven't contacted him since then; he really messed things up, so naturally I didn't feel like contacting him. This time I lined him up early. He knows the judge at the Dongcheng District People's Court, he already made friendly contact with this judge. There shouldn't be a problem.

The dangshiren uses his mobile telephone to call the younger brother of the contact named Gao at the Supreme People's Court.

**Dangshiren:** Hello? Is this Little Gao?...[they exchange pleasantries] There's a favor I need to ask. Recently my family has been embroiled in a lawsuit over housing. I think you already know the case is scheduled for next Monday. It's not about the demolition and relocation compensation; there's not much of this money coming anyway, it's only about 150,000 yuan. It's just that I can't hold back my anger. This guy is just rotten. He's really no good. I think your older brother knows the chief of the Dongcheng District People's Court. Any chance you can ask your older brother to make friendly contact with him?

The lawyer listens; Gao's younger brother on the other side of the phone seems to be asking about monetary compensation.
Dangshiren: No problem. Right now it's hard to say what your older brother will do. How about we wait until the case is over and I'll take you guys out for a great meal [cuo’r yi dun’r]! 

Gao’s younger brother on the other side of the phone is still asking about practical matters of material interest.

Dangshiren: OK, I think you're brother is up to the task. After we win the case there will be five "big heads" [da ren tou, referring to the 100 yuan bill with the heads of Mao Zedong, Zhou Enlai, Liu Shaoqi, and Zhu De].

The phone call ends and the dangshiren returns to talking with the interviewers.

Danshiren: Nowadays litigation is a matter of pulling connections [da guansi jiu shi da guanxi]. Whoever has stronger guanxi wins law suits! Nowadays if you have a matter [xiang ban yi dian’r shi’r], how can you ever succeed without guanxi?!? Don't even think about it! Although I'm not a particularly important person in my factory, my only benefit is knowing the right people! Every office in the central government! With connections it's very convenient to take care of business. The last trial was a second instance trial because we lost the first instance. We wanted to reverse the first decision. Since the judge presiding over the first instance trial was Judge Zhao, I lined up Gao. But Gao said reversing the decision would be very difficult because Judge Zhao has a very solid relationship with his superior, Li. Reversing the decision might damage the relationship between Zhao and Li. This is why he didn't help out the first time. Lawyer Lu, represent us well in court, OK? Go back and prepare well. I'll go make friendly contact again [zai gen tamen da yi ci zhaohu].

The Elite Lawyer's Contempt for the Courts: Legal Avoidance

In the smaller, less developed cities, as we have seen, lawyering is challenging at best and downright dangerous at worst. It is also clear that the situation improves with economic development. But the intensity of complaints about professional difficulty is not a linear function of development. Instead, the relationship seems to be the shape of an inverted U (∩-shaped). Problems are particularly severe in the small, poor cities, but at the upper extremes of development—in the elite law firms of large, wealthy cities—lawyers also
complain bitterly about the legal system. They describe it as "dirty" and "disgusting."

Elite lawyers in economically developed cities describe direct dealings with the court system as beneath their dignity.

A very successful female patent agent (licensed by the State Patent Agency, but still calling herself a patent "attorney") in her late thirties expressed her fear of using the courts. She insists that courts lower her success rate, that they are very unpredictable. Also, she claims that 90 percent of her clients are foreign companies, many of whom are trying to remedy patent or trademark infringement problems that occur in China, such as counterfeit products. In contrast to Guthrie's (1999) argument, exposure to foreign influences seems to encourage administrative solutions over formal legal solutions. This finding is contrary to Guthrie's argument that exposure to international influence increases rational legality. In this patent agent's account, lawyers seek predictability and certainty for their clients, and the courts are among the last places to go for this.

In China, renqing and human factors are too important, especially now. We very rarely do litigation, very rarely go to court. We do intellectual property rights work. I think in terms of legal practice that this [intellectual property rights] is a relatively clean field, not 100 percent, but comparatively speaking. Currently I don't think the judicial system in China can compare. Many of my friends are lawyers. They refuse to go to court. So they give the litigation work to corporate in-house counsel. Why? They think it's disgusting [e'xin], too dirty [angzang]. I think this is the reality of China. You won't survive if you don't do this. There's no way to enter the circle [quanzi]. Also, now everybody belongs to a circle. If you're not inside, then there's no way for you to get inside. There's another problem in China, what I believe is the biggest problem. The courts and judges are not autonomous. For example, let's say I'm the mayor of Beijing. I don't have any direct connection to the courts, right? I'm a government official. However, concerning some court cases I can write a memorandum [tiaozhi]. Do you know

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6 Of course in-house counsel are not licensed as lawyers, so technically they are not permitted to do trial work. However, in reality it is very prevalent under various guises, including "citizen representation." Article 58 of the Civil Procedure Law states: "A lawyer, a near relative of the party, a person recommended by a relevant social organization or a unit to which the party belongs or any other citizen approved by the people's court may be appointed as the party's agent ad litem." This is yet another example of the disjuncture between appearance and reality.
what it means to write a memorandum? You don't really understand. OK, say I'm the mayor and there's this court case. My friend approaches me and says A is suing B. A approaches me; I have a special relationship [teshu guanxi] with A. I want to speak on behalf of A. How can I speak on A's behalf? I could give the chief of the court a call on the phone, or I could take him out for a meal—or the deputy chief, or the presiding judge. I could also write a memorandum. What would I write in this memorandum? I'd write, "Please handle this case 'according to the law.'" There's nothing inherently wrong with this memo. He asked them to handle the case according to the law. But as soon as you read this memorandum you'll know that I'm siding with Enterprise A. You'd better consider this when rendering your judgment. If you don't take this into consideration, from now on you and I have no relationship. So you can see that government interference is very serious. This doesn't happen with every case, but it does with quite a large proportion. We've encountered some litigation cases. In each case the other side approached me to have a talk. For example, I represent Company A in this litigation. But Company A doesn't show up. Who arrives? The provincial governor of Company A will come and discuss the case with me. So in China right now these kinds of relationships between the government and enterprises and the judicial organs are extremely messed up [hunluan]. (em03)

About ten minutes later in the interview this patent agent explained that in her practice, relationships are fostered with government agencies rather than with the courts. Law firms cultivate relationships with courts. Her firm, on the other hand, cultivates relationships with government agencies. To remedy a patent violation, approaching the Bureau of Industry and Commerce is far easier and more effective than approaching the courts. When I asked why local government agencies would want to cooperate, she explained that interest comes from their keeping the fine money they levy. And from the patent agent's standpoint, successful enforcement is more likely and more speedy; the whole process normally takes three to four days. Thus, from her standpoint, handling matters through traditional administrative channels ensures greater certainty, predictability, and efficiency than the courts provide. The point she highlights is that the jurisdiction of courts and lawyers is still very limited and the jurisdiction of government agencies is still very large. The most important point here is that this is an international patent attorney almost exclusively representing foreign companies like Coca-Cola. She
and her firm represent the avant-garde of legal practice in China, yet she attributes her success to avoiding formal legal institutions.

I've have many years of experience in patents and trademarks. Whether you're talking about attitudes or cases, it's a relatively clean field. Say you bring a case to me. I can basically predict the chances of success or failure with 80 percent accuracy on the basis of my experience. This is to say that 20 percent of the time I can't predict the outcome because of factors that lie beneath the surface. Perhaps there are new political changes. I can't predict these. But I can guarantee accuracy 80 percent of the time. But if I start taking cases to the courts, then my guarantee drops to 40 percent. Perhaps 60 percent of the cases will be decided by human factors, factors that are uncertain. Personally I can't stand these human factors that are so important in China. But maybe the environment will change and conditions will change....In this regard, as an expert, one should like certainty and rules. But when human factors transcend certainty, the difficulty we have with cases is that we have no way of providing an analysis to our dangshiren. Materials we collect on behalf of dangshiren might be regarded as garbage by the judge, so our work is useless. In circumstances like this our work becomes very, very difficult. (em03)

This same point also emerged in a separate interview with a partner of one of the oldest law firms in China, and perhaps the first to handle major foreign investment projects. This firm, established in 1981 by the China International Trust and Investment Corporation, successfully bid for three out of the only four "BOT" (build, operate, and transfer) public utility projects in Beijing. This lawyer, without any goading on my part, made the point that foreign law offices based in China have little need for Chinese lawyers, as they are already well connected to the relevant government bureaus with jurisdiction over the matters of concern to their clients (em32).

The way lawyers describe encounters with the gongjianfa as "disgusting" and "dirty" reveals the aspirations for "professional purity" among elite lawyers in Beijing. This follows the classic pattern of the "professional defilement" of lawyers who enter the criminal court (Abbott 1982). The above statement that trial work is distasteful and difficult because of "human factors, factors that are uncertain" supports Abbott's (1982) theory that professional prestige derives from successfully removing "human complexity and difficulty" (p.823) and from the attainment of certainty and order under uncertain and
disorderly circumstances (p.829). The sense of defilement is particularly acute in the Chinese criminal justice system where lawyers' weak ability to control or predict outcomes stems from their location at the weak end of the power asymmetry between the actors in the system. Hence the pursuit of purity through avoidance of the legal system. As we will see below, the pursuit of a cleaner practice makes lawyers in high-status fields in more economically developed cities particularly sensitive to the difficulties of dealings with the *gongjianfa*.

**Survey Findings**

In my survey of lawyers, respondents were asked to rate the prevalence of fifteen items designed to measure professional difficulty. The weighted frequencies are presented in Table 10.1. By far the most prevalent situation is police obstruction. The second most prevalent situation is the meddling of government agencies and CCP units into lawyers' affairs. The third most prevalent situation is the building and maintenance of personal relationships with judges. The fourth most prevalent situation is unauthorized practice. Fifth is the distance and status inequality between lawyers and procurators. In terms of rarity, by far the most rare situations are those in which the status and rights of lawyers are recognized and protected and in which the functions of lawyers are respected and realized in court. Close behind is the rarity of situations in which the quality of a relationship between a lawyer and judge makes no difference as well as situations in which lawyers receive the full cooperation of government agencies. Also, recall from Table 7.9 that only 4 percent of lawyers are "very satisfied" with the level of respect their enjoy in court, the lowest level of satisfaction on a list of fourteen items.

Now we turn to explaining variations in the difficulties reported by Chinese lawyers. The importance of *guanxi* is negatively associated with economic development; *guanxi* is more important in poorer cities. But when the relationship is disaggregated by
ownership sector, it is clear that the negative association is explained entirely by lawyers in the private sector; the importance of guanxi remains constant in the state-sector (see Figure 10.1). In other words, where the demands of guanxi are heavier, private-sector lawyers bear the brunt of this incremental burden. Lawyers in state-owned firms, on the other hand, remain relatively shielded from such demands.

Guanxi is part of a larger complex of difficulties that plagues not only the bar but the private sector more generally. It can be seen from Table 10.2 that in a factor analysis of the fifteen professional difficulty items, the two guanxi items (Items 9 and 15) load highly on a factor that includes items measuring administrative obstruction and interference from public security organs, the status of lawyers vis-à-vis procurators, and the degree of cooperation from government offices. It is also important to point out that Item 15 (time invested in fostering relationships with judges) correlates more highly than Item 9 (the influence of lawyer-judge relations on court trials) with this factor. Item 15 is about investing time and effort (and probably banquets, gifts, and money) on building relationships with judges. This is closely related to the "difficulties" posed by rent-seeking and other forms of corruption. Item 9, on the other hand, is about the consequences of preexisting lawyer-judge relations, not about the quantity of investments such relations demand.
Table 10.1. Distributions of Responses to Items on Problems Facing Chinese Lawyers

<table>
<thead>
<tr>
<th>Item</th>
<th>Very Rare</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>Very Prevalent</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>In criminal cases, public security organs always find ways to obstruct lawyers' investigation work.</td>
<td>1%</td>
<td>6%</td>
<td>11%</td>
<td>15%</td>
<td>24%</td>
<td>43%</td>
<td>100%</td>
</tr>
<tr>
<td>According to China's Lawyers Law, professional misconduct on the part of lawyers is investigated and disciplinary decisions are made and carried out by professional organizations established and managed independently of the Party and the state. However, in reality, in these matters the influence of the Party and the state remains large.</td>
<td>1%</td>
<td>9%</td>
<td>14%</td>
<td>18%</td>
<td>27%</td>
<td>31%</td>
<td>100%</td>
</tr>
<tr>
<td>Lawyers I know about spend a lot of time fostering personal relationships [gao hao geren guanxi] with judges.</td>
<td>2%</td>
<td>7%</td>
<td>18%</td>
<td>18%</td>
<td>26%</td>
<td>26%</td>
<td>99%</td>
</tr>
<tr>
<td>Many people without legal training are doing the work of lawyers.</td>
<td>1%</td>
<td>4%</td>
<td>15%</td>
<td>25%</td>
<td>24%</td>
<td>30%</td>
<td>99%</td>
</tr>
<tr>
<td>In criminal cases, the prosecution has an advantage over the defense; there is no equality to speak of between the prosecution and the defense.</td>
<td>4%</td>
<td>11%</td>
<td>17%</td>
<td>21%</td>
<td>17%</td>
<td>30%</td>
<td>100%</td>
</tr>
<tr>
<td>When a state organization such as a state-owned enterprise is a defendant in a court case filed by an individual, the courts tend to favor this organization irrespective of the merit of the plaintiff's case.</td>
<td>4%</td>
<td>10%</td>
<td>18%</td>
<td>24%</td>
<td>26%</td>
<td>19%</td>
<td>101%</td>
</tr>
<tr>
<td>In disputes against state organizations such as state-owned enterprises, lawyers are just as willing to represent individuals as they are to represent other organizations.</td>
<td>5%</td>
<td>10%</td>
<td>20%</td>
<td>25%</td>
<td>19%</td>
<td>20%</td>
<td>99%</td>
</tr>
<tr>
<td>When courts make judgements in cases filed by individuals against state organizations such as state-owned enterprises, the letter of the law is more important than the interests of the organizations.</td>
<td>6%</td>
<td>16%</td>
<td>27%</td>
<td>27%</td>
<td>14%</td>
<td>10%</td>
<td>100%</td>
</tr>
<tr>
<td>In general, in the process of gather evidence lawyers get the full cooperation of related individuals and civil organizations.</td>
<td>5%</td>
<td>19%</td>
<td>29%</td>
<td>27%</td>
<td>15%</td>
<td>5%</td>
<td>100%</td>
</tr>
<tr>
<td>People without legal training doing the work of lawyers are very capable of fulfilling the occupational requirements of this work.</td>
<td>14%</td>
<td>22%</td>
<td>21%</td>
<td>24%</td>
<td>12%</td>
<td>6%</td>
<td>99%</td>
</tr>
<tr>
<td>In general, in the process of gathering evidence lawyers get the full cooperation of the related government offices.</td>
<td>12%</td>
<td>25%</td>
<td>28%</td>
<td>20%</td>
<td>13%</td>
<td>3%</td>
<td>101%</td>
</tr>
<tr>
<td>The quality of a relationship [geren guanxi] between a lawyer and a judge will not influence how a court case is tried.</td>
<td>19%</td>
<td>26%</td>
<td>23%</td>
<td>16%</td>
<td>10%</td>
<td>6%</td>
<td>100%</td>
</tr>
<tr>
<td>Lawyers in contemporary China are more concerned about protecting their wealth than about protecting the rights and interests of their clients.</td>
<td>17%</td>
<td>26%</td>
<td>25%</td>
<td>20%</td>
<td>8%</td>
<td>4%</td>
<td>100%</td>
</tr>
<tr>
<td>When involved in litigation, lawyers have an influence on the fairness of judicial procedures.</td>
<td>40%</td>
<td>23%</td>
<td>16%</td>
<td>13%</td>
<td>5%</td>
<td>5%</td>
<td>102%</td>
</tr>
<tr>
<td>Currently the laws concerning the rights of lawyers are sufficient to guarantee that lawyers' functions are brought into full play.</td>
<td>25%</td>
<td>35%</td>
<td>21%</td>
<td>12%</td>
<td>5%</td>
<td>2%</td>
<td>100%</td>
</tr>
</tbody>
</table>

NOTE: Weighted frequencies from combined sample with weights calculated according to the methods described in Appendix C. Presented in descending order according to sum of response "4" and "very prevalent." Some totals do not equal 100 percent due to rounding error. Observations range from a low of n=957 (multiple items) to a high of n=965 (multiple items).
Figure 10.1. City-Level Importance of *Guanxi* by Firm Ownership and Local Level of Development

NOTE: "P" before the city abbreviation refers to partnership firms; "S" denotes state-owned firms. Partnership firms are also italics. A quadratic term provided the best fit for partnership firms: adjusted \( R^2 = .528 \); \( r = -.019 \) for state-owned firms (with analytic weights for city sample size). "Importance of *guanxi* in legal practice" is the sum of items 9 and 15 in Table 10.2 (after inverting the response values of item 9 to make the direction consistent with item 15), and therefore ranges from 0 to 10.

The factor scores capture the low status of lawyers more generally, not just vis-à-vis state agencies. The overall prestige of the profession (Item 17) and the degree of cooperation from non-state entities (Item 12) load quite highly onto this factor. But comparing Items 11 and 12 it is clear that this factor best captures the difficulties originating specifically from state agencies. Item 11, which is about cooperation from state agencies, loads more strongly than Item 12. That the factor scores capture difficulty and discontent with state agencies is further reinforced by the fact that firm-specific satisfaction items (not included in the analysis) do not load onto this factor.
Table 10.2. Factor Loadings for "Professional Difficulty" Items

<table>
<thead>
<tr>
<th>Item Wording</th>
<th>Factor Loading</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. When involved in litigation, lawyers have an influence on the fairness of judicial procedures.*</td>
<td>0.023</td>
</tr>
<tr>
<td>2. In criminal cases, the prosecution has an advantage over the defense; there is no equality to speak of between the prosecution and the defense.</td>
<td>0.432</td>
</tr>
<tr>
<td>3. Currently the laws concerning the rights of lawyers are sufficient to guarantee that lawyers' functions are brought into full play.*</td>
<td>0.486</td>
</tr>
<tr>
<td>4. According to China's Lawyers Law, professional misconduct on the part of lawyers is investigated and disciplinary decisions made and carried out by professional organizations established and managed independently of the Party and the state. However, in reality, in these matters the influence of the Party and the state remains large.</td>
<td>0.393</td>
</tr>
<tr>
<td>5. Many people without legal training are doing the work of lawyers.</td>
<td>0.371</td>
</tr>
<tr>
<td>6. People without legal training doing the work of lawyers are very capable of fulfilling the occupational requirements of this work.*</td>
<td>0.209</td>
</tr>
<tr>
<td>7. In criminal cases, public security organs always find ways to obstruct lawyers' investigation work.</td>
<td>0.520</td>
</tr>
<tr>
<td>8. When a state organization such as a state-owned enterprise is a defendant in a court case filed by an individual, the courts tend to favor this organization irrespective of the merit of the plaintiff's case.</td>
<td>0.318</td>
</tr>
<tr>
<td>9. The quality of a relationship [geren guanxi] between a lawyer and a judge will not influence how a court case is tried.*</td>
<td>0.299</td>
</tr>
<tr>
<td>10. When courts make judgements in cases filed by individuals against state organizations such as state-owned enterprises, the letter of the law is more important than the interests of the organizations.*</td>
<td>0.272</td>
</tr>
<tr>
<td>11. In general, in the process of gathering evidence lawyers get the full cooperation of the related government offices.*</td>
<td>0.598</td>
</tr>
<tr>
<td>12. In general, in the process of gather evidence lawyers get the full cooperation of related individuals and civil organizations.*</td>
<td>0.452</td>
</tr>
<tr>
<td>13. Lawyers in contemporary China are more concerned about protecting their wealth than about protecting the rights and interests of their clients.</td>
<td>0.045</td>
</tr>
<tr>
<td>14. In disputes against state organizations such as state-owned enterprises, lawyers are just as willing to represent individuals as they are to represent other organizations.*</td>
<td>-0.024</td>
</tr>
<tr>
<td>15. Lawyers I know about spend a lot of time fostering personal relationships [gao hao geren guanxi] with judges.</td>
<td>0.478</td>
</tr>
<tr>
<td>16. satisfaction with &quot;the degree to which my opinions are respected by judicial organs during litigation&quot;</td>
<td>0.450</td>
</tr>
<tr>
<td>17. satisfaction with &quot;the prestige [shengwang] of the legal profession&quot;**</td>
<td>0.415</td>
</tr>
</tbody>
</table>

NOTE: * The order of the response categories were reversed for items followed by an asterisk in order to make the question wording consistent across all items. Multi-city and Beijing factor loadings are correlated at r=−0.804. This single factor explains 62 percent of variance in both samples. For the first fifteen statements, responses range from 0 (very rare) to 5 (very prevalent). For the two satisfaction items, items 16 and 17, responses range from 0 (very unsatisfied) to 5 (very satisfied).

I devote the remainder of this chapter to explaining the "professional difficulty" factor score presented in Table 10.2 as a dependent variable. Correlations between professional difficulty and private-sector demand for legal services provide support for
the double-whammy hypothesis—that lawyers are penalized for representing private-sector businesses. The data are therefore consistent with Heinz and Laumann's (1994) theory that the status of lawyers is significantly determined by the status of their clients. The findings also show that the deleterious effect of representing private-sector businesses diminishes with economic development and are therefore consistent with the argument that development helps erode some of the difficulties lawyers face.

Among the 22 cities for which official indicators are available (all except the two county-level cities, Nanhai and Changji), bar-level dependence on private business clients is correlated with the official number of getihu (individual entrepreneurs) at r=.406 (p<.06). Looking only at lawyers in partnership firms, the correlation is r=.695 (p<.001). These correlations provide convincing evidence of homophily between private-sector lawyers and private-sector business entrepreneurs. Private-sector lawyers are more likely than state-sector lawyers to represent private businesses, and this likelihood further increases as private businesses grow in number. As their local prominence increases and as lawyers concomitantly depend to greater degrees on their business, lawyers suffer greater difficulties in dealings with local state agents. These patterns are presented graphically in Figure 10.2, and strongly support the abundance of anecdotal evidence that local state agents lump lawyers together with private business entrepreneurs and treat members of both groups with contempt and hostility. But this double-whammy effect is only salient in the less developed cities.

In the remainder of this chapter I will describe the results of a regression analysis of the determinants of this "professional difficulty" factor score presented in Table 10.3. The means and standard deviations of the variables included in the analysis are presented in Table L.10. Variable definitions are in the Appendix D.

My main expectation is that ownership sector significantly determines professional difficulty, and that its effect varies according to the local severity of
administrative obstruction and rent-seeking. Where the predatory behavior of local state agencies is most severe, members of the state sector are relatively sheltered while members of the private sector are relatively exposed and vulnerable. Since testing these hypotheses involves interaction terms in the regression equations, some of the relevant coefficients are difficult to interpret individually. Before interpreting point estimates (i.e., predicted outcomes) from linear combinations of the quadratic and interaction terms, I will first describe the regression results in Table 10.3 that can be interpreted more directly and intuitively.

The regression results show that access and support through guanxi and through other organizational affiliations all reduce professional difficulty. Professional support of both types helps obviate the need to engage in expensive and time-consuming guanxi practice. Basically, a preexisting social connection to a judge obviates the need to invest in wining and dining judges. Likewise, shelter offered from a paternalistic law firm or a well-connected team leader reduces the aggravation of direct dealings with state agents. However, the effects of individual connections and organizational affiliations vary by level of development. In poorer cities, part-time lawyers' formal affiliations with law schools offer no protection. Indeed, it seems to exacerbate professional difficulty. In the wealthier cities, on the other hand, a law school affiliation drastically reduces professional difficulty. This disparity is probably a function of the much higher administrative ranks of law schools in Beijing. Local law schools in smaller cities have less clout in the eyes of local state officials than the law school affiliations in the Beijing sample, which include the Chinese Academy of Social Sciences (a Ministry-level unit) and Tsinghua University.
Figure 10.2. City-Level Mean Factor Score for "Professional Difficulty" by Private-Sector Characteristics and Local Level of Development

WEAK TERTIARY SECTORS

STRONG TERTIARY SECTORS

SOURCE: data on getihu from SSB (1999)
NOTE: A higher factor score means greater "professional difficulty." Correlations are calculated with analytic weights for city sample size. A weak tertiary includes cities with less than 40 percent of total GDP deriving from its tertiary sector in 1998, while a strong tertiary sector includes cities with at least 40 percent of total GDP deriving from its tertiary sector in 1998.
The effect of being a specially-invited lawyer—a lawyer who retired from the gongjianfa before entering the bar—is also strong and statistically significant. It is important to consider prior career information separately, since many but not all lawyers with prior careers in the gongjianfa were registered as specially-invited lawyers. As expected, the regression results show that this special background is an important asset in the practice of law, especially in dealings with government agencies and the gongjianfa.

Isolation and autonomy exacerbate professional difficulty, while affiliations with organizations and connections to important individuals in the state sector reduce professional difficulty. A reputation established with the help of the media, measured in terms of hard and soft advertising, helps reduce professional difficulty. Dependence on local courts for case referrals is similarly helpful. Case referrals from a court, which more often than not are criminal defense cases (cf. Liebman 1999: 226, 229), clearly facilitate dealings with public security organs and other state agencies. Referrals from courts also reflect preexisting relationships between firms and courts and between individual lawyers and court personnel.
Table 10.3. Determinants of "Professional Difficulty," OLS Regression Coefficients

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
<th>Model 5</th>
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<td><strong>BACKGROUND AND POSITION</strong></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>female</td>
<td>-.203**</td>
<td>-.172*</td>
<td>-.173*</td>
<td>-.123</td>
<td></td>
</tr>
<tr>
<td>age (logged)</td>
<td>-.188</td>
<td>-.176</td>
<td>-.112</td>
<td>-.165</td>
<td></td>
</tr>
<tr>
<td>prior judicial career (gongjianfa)</td>
<td>-.265*</td>
<td>-.263*</td>
<td>-.256*</td>
<td>-.220*</td>
<td></td>
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<tr>
<td>prior career data missing</td>
<td>-.118</td>
<td>-.088</td>
<td>-.102</td>
<td>-.116</td>
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<tr>
<td>part-time lawyer (jianzhi)</td>
<td>.143</td>
<td>-.006</td>
<td>.013</td>
<td>4.581***</td>
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</tr>
<tr>
<td>specially appointed lawyer (te yao)</td>
<td>-.657**</td>
<td>-.561*</td>
<td>-.478</td>
<td>-.546**</td>
<td></td>
</tr>
<tr>
<td><strong>LEGAL PRACTICE</strong></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>represent getihu</td>
<td>.189**</td>
<td>.227**</td>
<td>.198**</td>
<td>.169**</td>
<td>.188**</td>
</tr>
<tr>
<td>represent private enterprises</td>
<td>.044</td>
<td>.037</td>
<td>.029</td>
<td>.076</td>
<td>.016</td>
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<tr>
<td>represent state-owned enterprises</td>
<td>.157*</td>
<td>.164*</td>
<td>.101</td>
<td>.065</td>
<td>.096</td>
</tr>
<tr>
<td>criminal defense practice</td>
<td>.116</td>
<td>.068</td>
<td>.191*</td>
<td>.196*</td>
<td>2.759**</td>
</tr>
<tr>
<td>cases processed in court</td>
<td>.304***</td>
<td>.312***</td>
<td>.228***</td>
<td>.256***</td>
<td>.163**</td>
</tr>
<tr>
<td><strong>CASE ASSIGNMENTS AND INCOME</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>cases assigned by courts</td>
<td>-.381***</td>
<td>-.314***</td>
<td>-.256***</td>
<td></td>
<td></td>
</tr>
<tr>
<td>advertising, hotlines, direct solicitation</td>
<td>-.211***</td>
<td>-.206***</td>
<td>-.179**</td>
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<td></td>
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<tr>
<td>gross income from legal practice (logged)</td>
<td>.012</td>
<td>.003</td>
<td>-1.288***</td>
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<tr>
<td><strong>ORGANIZATION OF LEGAL WORK</strong></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>commission-based practice</td>
<td>.055</td>
<td></td>
<td>.015</td>
<td></td>
<td></td>
</tr>
<tr>
<td>autonomy from senior lawyers</td>
<td>.042</td>
<td>.047*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>partnership firm</td>
<td>.072</td>
<td></td>
<td>4.338***</td>
<td></td>
<td></td>
</tr>
<tr>
<td>firm perks and benefits (logged)</td>
<td>-.124*</td>
<td>-.154**</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>firm professional and political activities (logged)</td>
<td>-.091</td>
<td>-.122</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>firm organized in divisions</td>
<td>.296***</td>
<td></td>
<td>-1.669</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CITY CHARACTERISTICS AND INTERACTION TERMS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>% GDP from tertiary sector (logged)</td>
<td></td>
<td></td>
<td></td>
<td>-3.277***</td>
<td></td>
</tr>
<tr>
<td>× criminal defense practice</td>
<td></td>
<td></td>
<td></td>
<td>-.708**</td>
<td></td>
</tr>
<tr>
<td>× part-time lawyer</td>
<td></td>
<td></td>
<td></td>
<td>-1.201***</td>
<td></td>
</tr>
<tr>
<td>× partnership firm</td>
<td></td>
<td></td>
<td></td>
<td>-1.153***</td>
<td></td>
</tr>
<tr>
<td>× firm organized in divisions</td>
<td></td>
<td></td>
<td></td>
<td>.521*</td>
<td></td>
</tr>
<tr>
<td>× gross income (logged)</td>
<td></td>
<td></td>
<td></td>
<td>.359***</td>
<td></td>
</tr>
<tr>
<td>intercept</td>
<td>-.449***</td>
<td>.321</td>
<td>.430</td>
<td>.103</td>
<td>12.104***</td>
</tr>
<tr>
<td>R²</td>
<td>.053</td>
<td>.094</td>
<td>.156</td>
<td>.199</td>
<td>.292</td>
</tr>
<tr>
<td>n</td>
<td>830</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>strata (cities)</td>
<td>25</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PSUs (firms)</td>
<td>274</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>population size</td>
<td>95,881</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NOTE: * p<.10  ** p<.05  *** p<.01, two-tailed. Lawyers in firms other than state-owned and partnerships are excluded. Regression coefficients calculated using STATA's commands for survey data that adjust standard errors for sampling designs in which observations are clustered within strata (cities) and primary sampling units (firms), and in which sample weights are applied (see Appendix C). See Table L.10 for variable descriptives. Diagnostic tests for outlier influence were conducted. When the dummy variables for "represent getihu" and "represent private enterprises" are included individually (one at a time), the effects are the same as when included together (not presented).
Before controlling for court case referrals, the effect of practicing criminal defense law on professional difficulty is not statistically significant (Table 10.3, Model 2). After controlling for court case referrals, however, the positive correlation between criminal defense work and professional difficulty triples in magnitude and becomes statistically significant (Model 3). These are the classic symptoms of a suppressor variable. The omission of case referrals from courts suppresses the relationship between criminal defense practice and professional difficulty because such case referrals mitigate or negate the dangers associated with criminal defense work. The survey data clearly show that, all else being equal, criminal defense lawyers face significantly higher levels of professional difficulty, a finding consistent with a massive volume of anecdotal evidence. But as we can see from the interaction of criminal defense with the local level of development (Model 5), the dangers associated with criminal defense work vary according to the local level of economic development and are of significance only in China's relatively poor cities.

Just as criminal defense work increases professional difficulty, so too does a more general reliance on courts. Lawyers who report that at least half of their cases are processed in court also report significantly higher levels of professional difficulty.

Further support for the double-whammy hypothesis is found in the finding that lawyers who represent getihu report significantly greater professional difficulty. In contrast to the city-level findings presented in Figure 10.2, however, at the individual level there is no evidence that representing private enterprises increases professional difficulty. The problems are limited to getihu. Furthermore, at the individual level there is no evidence that the problems associated with representing getihu vary by economic development.

A lawyer’s relationship with her firm is a major determinant of professional difficulty. Close supervision from a more senior lawyer and the allocation of perks and
benefits including social security from one's firm all lower professional difficulty. These variables are all indicators of shelter from direct dealings with state agencies; they reflect the team-based organization of work in which more senior lawyers in the firm handle such dealings, often on the basis of 
\textit{guanxi}. The provision of fringe benefits and other perquisites contributes to lower levels of general vulnerability, both directly and indirectly. My interpretation of the indirect effect runs as follows: such perks and benefits reflect the strength and health of the law firm, which reinforce and reflect the firm's public reputation, which in turn facilitates dealings with state agencies. Interestingly, firm size, which one might expect to be a signal for reputation and credibility, had absolutely no effect on professional difficulty and was therefore not included in the models.

Lawyers in private firms face far graver difficulties than lawyers in the state sector. However, as expected, the relative gravity of their difficulties varies according to the local level of economic development. Higher levels of economic development are associated with lower levels of professional difficulty in the private sector. In other words, the protection afforded by state-sector membership applies only in relatively poor cities.

At the top of the bar, among elite lawyers in corporate practice settings, the professional difficulty score seems to be picking up more than merely objective levels of professional difficulty. In the upper echelons of the bar, the professional difficulty score also seems to capture subjective perceptions about dealings with government agencies and the 
\textit{gongjianfa}. As we saw earlier in this chapter, lawyers in this segment of the bar are particularly likely to regard such dealings as "dirty" (\textit{angzang}) and despicable. This phenomenon reflects the pursuit of "professional purity" (Abbot 1982). The final model (Model 5) shows that income and membership in a bureaucratically organized law firm interact with development, meaning that at the higher extremes of development, income
and membership in bureaucratically organized firms increase complaints about professional difficulty.

In order to aid the interpretation of the interaction terms introduced in the full regression model, I calculated predicted outcomes (y-hats) and present them in Figure 10.3. My methods for calculating predicted outcomes are described in detail in Appendix F. The most fundamental pattern in Figure 10.3, easily discerned at first glance, is the much greater level of professional difficulty reported by lawyers in poor cities. A closer examination reveals that in poor cities, only a total abandonment of criminal defense or membership in a state-owned firm brings professional difficulty down to levels resembling those reported in wealthy cities. The other findings reported above are easily discernable in the figure. Specially-assigned lawyers, who typically have backgrounds in the gongjianfa, report dramatically lower levels of professional difficulty. Case assignments from courts similarly reduces professional difficulty. The inverted U pattern of professional difficulty is also reproduced in the figure: in wealthy cities, high-income lawyers and lawyers in bureaucratically organized firms report levels of professional difficulty approaching those reported by lawyers in poor cities. These complaints are voiced vociferously despite the fact that lawyers in this segment of the bar are relatively unlikely to have regular encounters with the gongjianfa, and therefore undoubtedly reflect a quest for professional purity, a self-conscious distancing from sources of professional pollution.
Figure 10.3. Predicted Factor Scores for "Professional Difficulty"

Legend
- 90% confidence interval
- 95% confidence interval

NOTE: A higher factor score means greater "professional difficulty." The above means were predicted from regression Model 5 in Table 10.3. That is, these means control for all other variables in the model. All variables except those whose effects are of immediate interest were assigned values equal to the sample means presented in Table 10.3. A "poor city" is defined as a city with a tertiary sector that accounts for 25 percent of total GDP. A "wealthy city" is defined as a city with a tertiary sector that accounts for 60 percent of total GDP. "Low income" is defined as 20,000 yuan; "high income" is defined as 150,000 yuan. The above confidence intervals are more conservative than those for the individual coefficients presented in Table 10.3 because they absorb uncertainty about all the variables in the model, not just the variable of immediate interest. Significance tests for regression coefficients consider only uncertainty about the individual variable. See Appendix F for more methodological details.
I calculated predicted outcomes for four hypothetical lawyer profiles according to the same methods used to calculate the predicted factor scores in Figure 10.3 (see Appendix F):

- a "professional difficulty" score of .749 for a lawyer with a low income in a partnership firm who does criminal defense work in a city with a weak tertiary sector;
- a "professional difficulty" score of .182 for a lawyer that is not part-time with a high income in a partnership firm organized in divisions in a city with a strong tertiary sector;
- a "professional difficulty" score of –.860 for a part-time lawyer in a state-owned firm with a prior judicial career, no criminal defense practice, does not represent getihu, and enjoys a generous package of perks and benefits (5 out of 6 items); and
- a "professional difficulty" score of –1.074 for a specially-appointed lawyer in a state-owned firm with a prior judicial career, no criminal defense practice, does not represent getihu, and enjoys a generous package of perks and benefits (5 out of 6 items).

**Explaining Work Satisfaction**

Many of the same themes that have emerged so far, especially with respect to economic development, law firm paternalism, reliance on the gongjianfa, and individual backgrounds, are also clear in an analysis of the determinants of work satisfaction. These similarities are manifest despite the fact that satisfaction is not perfectly correlated with professional difficulty (r=–.344). As with the analysis of professional difficulty, the
dependent variable of this analysis is a factor score based on a factor analysis of twelve satisfaction items (see Appendix D, factor loadings not presented).

According to the models presented in Table 10.4, work experience increases work satisfaction; lawyers who have been around longer are happier with their work. This is consistent with the finding discussed in an official report (ACLA 2002e), although in this report satisfaction was specifically with respect to cooperation from the *gongjianfa*. In contrast, work experience did not emerge as a significant predictor in my analysis of the determinants of professional difficulty. Furthermore, one would expect that the relationship between years of practice and satisfaction and/or difficulty would be, at least to some degree, an artifact of selective attrition—higher exit rates among miserable lawyers.

As with professional difficulty, work satisfaction increases dramatically with economic development. Although criminal defense work is not a significant predictor of work satisfaction, both a reliance on courts and the handling of legal cases significantly reduce work satisfaction. This finding is consistent with the general theme of lawyer marginalization in the legal system and of their dislike for legal aid work (Chapter 7). Specially-appointed lawyers, with their special connections to the *gongjianfa*, report significantly higher levels of work satisfaction than lawyers without this special background. Lawyers representing international clients are more satisfied than those who do not. And not surprisingly, lawyers who enjoy a share of firm profits are more satisfied than those who do not.
Table 10.4. Determinants of Factor Score for Work Satisfaction, OLS Regression Coefficients

<table>
<thead>
<tr>
<th>INDIVIDUAL DETERMINANTS</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
</tr>
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<tbody>
<tr>
<td>female</td>
<td>-.034</td>
<td>.046</td>
<td>.019</td>
<td>.002</td>
</tr>
<tr>
<td>hours worked per week</td>
<td>.006*</td>
<td>.004</td>
<td>.004</td>
<td>.006*</td>
</tr>
<tr>
<td>years of practice (logged)</td>
<td>.248***</td>
<td>.162**</td>
<td>.164**</td>
<td>.163***</td>
</tr>
<tr>
<td>specially-appointed lawyer (te yao)</td>
<td>.545*</td>
<td>.628**</td>
<td>.672**</td>
<td>.600**</td>
</tr>
<tr>
<td>prior judicial career</td>
<td>.206</td>
<td>.202</td>
<td>.222</td>
<td>.207</td>
</tr>
<tr>
<td>all career data missing</td>
<td>-.038</td>
<td>-.029</td>
<td>-.043</td>
<td>-.025</td>
</tr>
<tr>
<td>degree from CUPL</td>
<td>-.322**</td>
<td>-.335***</td>
<td>-.320***</td>
<td></td>
</tr>
<tr>
<td>degree from regional UPL</td>
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<td>.033</td>
<td>.072</td>
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</tr>
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<td>all educational data missing</td>
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<td>-.075</td>
<td>-.033</td>
<td></td>
</tr>
<tr>
<td>gross annual billings (logged)†</td>
<td>.094**</td>
<td>.062</td>
<td>.041</td>
<td></td>
</tr>
<tr>
<td>enjoy share of firm profits</td>
<td>.245**</td>
<td>.224**</td>
<td>.263**</td>
<td></td>
</tr>
<tr>
<td>firm profits data missing</td>
<td>-.296***</td>
<td>-.363***</td>
<td>-.298***</td>
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<tr>
<td>dummy for billings from international clients (&gt;10%)</td>
<td>.190*</td>
<td>.201*</td>
<td>.186*</td>
<td></td>
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<tr>
<td>% billings from individual clients</td>
<td>.0002</td>
<td>.001</td>
<td>.003</td>
<td></td>
</tr>
<tr>
<td>criminal defense practice</td>
<td>.109</td>
<td>.095</td>
<td>.102</td>
<td></td>
</tr>
<tr>
<td>% cases processed in court</td>
<td>-.005**</td>
<td>-.004**</td>
<td>-.004*</td>
<td></td>
</tr>
<tr>
<td>any legal aid cases</td>
<td>-.076</td>
<td>-.181**</td>
<td>-.156*</td>
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<td>FIRM DETERMINANTS</td>
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<tr>
<td>partnership firm</td>
<td>-.179*</td>
<td>-.157</td>
<td></td>
<td></td>
</tr>
<tr>
<td>firm professional and political activities (logged)</td>
<td>.192**</td>
<td>.220***</td>
<td></td>
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<tr>
<td>firm facilities</td>
<td>.077**</td>
<td>.055*</td>
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<tr>
<td>firm size (logged)</td>
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<td>.099</td>
<td></td>
<td></td>
</tr>
<tr>
<td>any branch offices</td>
<td>-.201</td>
<td>-.299***</td>
<td></td>
<td></td>
</tr>
<tr>
<td>firm organized in divisions</td>
<td>-.103</td>
<td>-.100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CITY DETERMINANTS</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>% GDP from tertiary sector (logged)</td>
<td>-.826***</td>
<td>-1.418***</td>
<td>-1.590***</td>
<td>-3.847***</td>
</tr>
<tr>
<td>R²</td>
<td>.066</td>
<td>.153</td>
<td>.210</td>
<td>.231</td>
</tr>
<tr>
<td>n</td>
<td>775</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>strata</td>
<td>25</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PSUs</td>
<td>261</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>population size</td>
<td>92,295</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NOTE: * p<.10  ** p<.05  *** p<.01, two-tailed. † missing values imputed with STATA's impute command. Lawyers in firms other than state-owned and partnerships are excluded. Coefficients calculated using STATA's commands for survey data that adjust standard errors for sampling designs in which observations are clustered within strata (cities) and primary sampling units (firms), and in which sample weights are applied (see Appendix C). "CUPL" refers to "China University of Political Science and Law." "regional UPL" refers to the Southwest, the South-Central, or the Northwest University of Political Science and Law. CCP membership not significant. Income was not statistically significant. The effect of receiving perks and social security benefits from one's firm is just barely statistically significant (p<.107) when professional and political activities is excluded, but disappears when professional and political activities is introduced, suggesting multicollinearity (r=.313; see Table 7.8 in which professional and political activities is the most consistent predictor of perks and social security benefits). See Table L.11 for variable descriptives.
Organizational variables are important in very interesting ways. As anyone would expect, lawyers report higher levels of work satisfaction as their firms provide greater levels of support and resources. The positive effect of the organization of professional and political activities, which include family planning, political thought sessions, and CCP activities, is particularly interesting insofar as these activities represent the extension of political control into firms that have been set loose by the state (Chapters 3 and 7). One possible explanation is that lawyers lament their emancipation and yearn for the socialist paternalism of days gone. Another explanation is that these activities are associated with more generalized support, including social security support (see Table 7.8, in which professional and political activities is the most consistent predictor of perks and social security benefits).

It is somewhat puzzling that graduates of the China University of Politics as well as lawyers in firms with branch offices (or in firms that are branch offices) are so dissatisfied. One possibility is that these unexpected effects are artifacts of the lower levels of social security provided by the firms into which graduates of more prestigious universities are often recruited, including those with (or that are) branch offices. Indeed, the interpretation of the work satisfaction models must, at least to some degree, center around the provision of social security benefits because the factor score being used as the dependent variable includes "the social security benefits supplied by my firm" and "the policies and administration of my firm."

**Discussion**

The data strongly support the argument that lawyers more deeply embedded in the state structure are more likely to enjoy less encumbered dealings with state agencies in the legal process, which in turn helps obviate the need to resort to guanxi practice. Lawyers further removed from the state structure, on the other hand, are more vulnerable to the
predatory behavior of local state agencies. Without access and support of one form or another—whether it be through social connections to powerful players in state agencies, from a paternalistic law firm with well-connected senior lawyers, from a good public reputation, or from a formal or informal affiliation with an influential state agency—lawyers face all kinds of difficulties, including the imperative to invest dearly in the cultivation of relationships with actors who can expedite and simplify the legal process and arrange desirable outcomes. A preexisting stock of guanxi, organizational affiliations to others with useful guanxi, or a sufficient reputation all help reduce aggravations associated with the legal process, including the need to build guanxi.

The finding that social networks emerge from and help balance power-dependence relations reaffirms the basic principles of social exchange theory developed forty some years ago. An actor's power resides in another actor's dependence. To the extent that the dependent actor is able to secure the desired resource elsewhere, the power of the actor dispensing or controlling that resource diminishes (Emerson 1962; Blau 1964). The entrepreneurs in Tsai’s (2002) study developed their own informal institutions when all avenues to state financing were closed to them. But lawyers have no such recourse; there is no viable substitute for the gongjianfa—the public security, the procuracy, and the courts. If they have trouble getting in through the front door, they try the back door. But they must gain access somehow. This separates lawyers from entrepreneurs, who, with difficulty and determination, erect alternative structures. Lawyers, on the other hand, are forced to build informal coalitions that facilitate access to the gongjianfa.

The degree to which these sources of support are necessary varies by level of economic development. In particular, private-sector lawyers in cities with weak service sectors are most vulnerable to local state rent-seeking. This finding is consistent with findings from cross-national and time-series data showing that economic development
reduces corruption (Chong and Calderón 2000; Treisman 2000). Dickson (2002) likewise finds that the likelihood a business entrepreneur in China reports an alignment of interests with the state increases with economic development (i.e., perceived antagonism declines with economic development). As with Dickson's data, however, the data I analyze are cross-sectional, and do not allow the observation of causal processes, but only factors associated with professional difficulty. I am therefore hesitant to attribute causality to economic development. The possibility that things will improve in poor areas as they become less poor is only one of several scenarios. Another is that level of economic development is a proxy for something else that causes administrative obstruction and corruption, and that even after these areas develop economically they will continue to be characterized by predatory behavior toward the private sector and the bar. Local fiscal autonomy increases pressure on local governments to generate revenue, which in turn intensifies the predatory behavior of local state agencies and local resentment toward these agencies. Hence the particular acuteness of this phenomenon in rural areas (e.g., Li and O'Brien 1996; Lü 2000), which may or may not diminish with economic development.

In any case, in the short run, as the remaining state-owned law firms unhook from the state, there is little reason to believe corruption and the guanxi imperative will diminish. It is precisely where private-sector law firms are the scarcest that the difficulties their lawyers face are the gravest. When the survey was conducted in 2000, state-owned firms accounted for about 60 percent of all firms in cities with weak service sectors. As these firms "unhook" and enter the private sector, they may lose the privileged access to state agencies they once enjoyed.

A more likely scenario is that former state-owned law firms will continue to enjoy preferential access even after they privatize. A critical distinction will then be between law firms that were formerly state-owned and law firms that were never state-owned. I
regret that my survey data do not contain this information. I am thus unable to identify partnership law firms that were once in the state sector. Because law firms in the wealthier cities including Beijing started privatizing much earlier than law firms in the poorer cities, former state-owned firms that maintain their administrative networks could very well have watered down the effect of private-sector membership in the wealthier cities. In the poorer cities, on the other hand, private-sector law firms are much more likely to have been originally established as partnerships and their weaker status vis-à-vis the state sector is probably less diluted by state-owned firms that have "unhooked" and privatized. This could explain the differences between poorer and wealthier cities, why development seems to erode the "professional difficulty" gap between lawyers in the state and private sectors. If I were able to isolate former state-owned firms currently in the private sector, the disadvantaged status of partnership firms and their greater need to compensate through guanxi and other means of access and support may have been observable even in the more developed parts of China.

Nevertheless, my findings with respect to the double-whammy effect suggest that the plight of the marginalized lawyer (and of her marginalized private business clients) is significantly improved in China's more economically dynamic cities. In cities with stronger service sectors, lawyers' difficulties do not vary according to the ownership composition of their clients. An ameliorative effect of economic development is further supported by the finding that individual connections are more helpful than organizational support only in the samples outside Beijing, while organizational support is more helpful than individual connections in the Beijing sample.