

MASTER IN ANTI-CORRUPTION STUDIES PROGRAMME

The Role of Lawyers in Judicial Corruption in China and Suggestions on how to Mitigate Judicial Corruption

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Table of Contents

| | |
|---|-----|
| Abstract | III |
| List of Tables | IV |
| Introduction..... | 1 |
| 1. Literature Review..... | 4 |
| 2. Research Questions/Hypotheses | 10 |
| 3. Methodology | 19 |
| 4. Structure..... | 27 |
| Chapter One: The role lawyers play in judicial corruption | 29 |
| 1. The nationwide situation of lawyer bribery..... | 29 |
| 2. The situation of lawyer bribery in Shanghai..... | 33 |
| 3. Conclusion..... | 40 |
| Chapter Two: The motives of lawyers’ participating in judicial corruption | 42 |
| 1. Public perception and “guanxi” culture | 43 |
| 2. Competition pressure | 48 |
| 3. Litigants evaluate the lawyers by their winning rate..... | 52 |
| 4. Greed: pursuing higher economic benefits..... | 54 |
| 5. Worsened industry sentiment and lawyers lack of professional honor..... | 58 |
| 6. Lawyer’s low status is not a main reason as well | 60 |
| 7. Conclusion..... | 60 |
| Chapter Three: Lawyers’ ability to participate in judicial corruption | 62 |
| 1. Judges have the demand to accept bribes | 62 |
| 2. Judges’ large discretionary power will lead to corruption | 66 |
| 3. Lack of trust foundation between judges and litigants..... | 69 |
| 4. Asymmetric information | 72 |
| 5. The advantages of lawyers’ profession | 74 |
| 6. Conclusion..... | 75 |
| Chapter Four: The ways lawyers participate in judicial corruption | 76 |

| | |
|---|----|
| 1. Cultivating a long-term guanxi with judges by giving gifts..... | 79 |
| 2. Bribing judges on a case-by-case basis | 82 |
| 3. The forms of bribe offered by the lawyers..... | 84 |
| 4. Conclusion..... | 89 |
| Chapter Five: Suggestions | 90 |
| 1. Eliminating guanxi belief by legislation..... | 90 |
| 2. Prohibiting unfair competition..... | 92 |
| 3. Strengthen the enforcement of law against lawyers' bribery..... | 93 |
| 4. Increasing judges' income and narrowing their discretionary power..... | 96 |
| 5. Lowering competition pressure | 97 |
| Conclusion | 99 |
| Bibliography | i |

Abstract

Recent judicial corruption cases in Shanghai attracted the interest of the researcher regarding the role lawyers play in judicial corruption and how they participate in such activities. Many books and articles have addressed judicial corruption in China in a broad context rather than from a more 'microscopic' viewpoint of paying attention to the individuals involved, such as lawyers, and their enabling role in this phenomenon. In this study, through interviews with six practising lawyers and a case study, we demonstrate that lawyers act as intermediaries in judicial corruption and that the main reasons for this are guanxi (a concept rooted in Chinese culture), greed and the high pressure of competition. Due to the characteristics of their profession, lawyers have advantages in terms of acting as intermediaries in judicial corruption. They can either cultivate long-term guanxi with judges by giving gifts or bribe judges on a case-by-case basis.

Based on the findings, we provide suggestions for mitigating judicial corruption. These recommendations include eliminating the influence of guanxi through legislation, prohibiting unfair competition, strengthening the enforcement of laws aimed to combat bribery by lawyers, increasing judges' income and narrowing their discretionary power, and lowering competition pressure by restricting the number of lawyers and increasing public procurement of legal services.

List of Tables

Table 1: General demographic information of the six interviewees

Table 2: List of interview questions

Table 3: Punishment for lawyer bribery cases published on the Ministry of Justice website (January 2018–May 2019)

Table 4: Extract from list of New Year gifts sent by YDS Law Firm

Introduction

On 8 August 2019, the Nanchang Intermediate People's Court in Jiangxi Province held a hearing on the judicial bribery case of Pan Furen, a former president of the Shanghai No. 1 Intermediate People's Court (the Pan Case). The indictment disclosed by the court shows that Pan Furen was accused of receiving bribes in the amount of RMB 8.05 million (approximately USD 1.18 million), of which RMB 0.3 million (approximately USD 43,000) was a bribe given to him by a lawyer, Li who was a partner at a local law firm in Shanghai.. Li's family was believed to have deep ties with the legal industry in Shanghai and therefore to have a high level of *guanxi* ('personal relationship' or 'social connection') with many senior judges in Shanghai. In January 2019, Shanghai Yan Dansheng Law Firm (YDS)'s 'New Year's gift list' (the YDS List) was released to the public by the mistress of Mr. Yan Dansheng, the founder of YDS, which shook up the judicial community of Shanghai (the YDS Incident). According to the YDS List, gifts including expensive traditional Chinese medicine, RMB 1,000 (approx. USD 150) shopping cards and RMB 10,000 (approx. USD 1,500) cash had been distributed to 54 judges, prosecutors and judicial officials by YDS. The gifts are believed to have been used by the firm to cultivate its *guanxi* with those judges, prosecutors and judicial officials.

Both the Pan Case and the YDS Incident attracted the interest of the researcher in the role played by lawyers in judicial corruption in China and the ways in which they

participate in this phenomenon. The researcher qualified as a lawyer in China and has been practising law in Shanghai for nearly 20 years, in a practice mainly focusing on mergers and acquisitions, compliance/regulatory consulting and international arbitration and litigation. While the researcher has limited experience in dealing with domestic civil litigation in Shanghai, many other lawyers in the practice have more expertise in this area. The researcher has heard about judicial corruption from time to time and knew there was a chance that some colleagues may have engaged in it, but there had not been an opportunity to explore this issue in more depth, especially not on the basis of sufficient empirical data. Therefore, given the importance of this matter and recent developments regarding the issue, this thesis for the Master in Anti-Corruption Studies (MACS) program investigates the role of lawyers in judicial corruption.

The observations of this study are restricted to the corruption activities in the civil litigation field in Shanghai. Both the Pan Case and the YDS Incident took place in Shanghai. The research is concerned with establishing the answers to the aforementioned questions by observing the realities of the legal field in Shanghai and talking to lawyers practising in Shanghai. The researcher has a natural advantage on the basis of location for closely observing lawyers' practice and the Chinese judicial environment. Being a Chinese practising lawyer also allows for sufficient access and resources to interview peers working in civil dispute resolution in Shanghai. On the other hand, with the researcher's own practice area mainly focusing on mergers and

acquisitions, compliance/regulatory consulting, and international arbitration and litigation, it is possible to maintain a suitable distance and view the issue of corruption in domestic civil litigation in Shanghai from an objective and impartial perspective. For the aforementioned reasons, we only consider the corruption activities in the field of civil litigation in Shanghai as examples for the purposes of the discussion in this thesis.

The Chinese word ‘guanxi’ has been used in the title of the thesis and mentioned once above. We will now explain this concept in more detail. According to the Chinese *Xinhua Dictionary*¹, the definition of guanxi is “the contacts and relations with certain properties among people. Literally, as highlighted by Zhang Chi and Hong Seock-Jin, guanxi can be simply translated as a ‘personal relationship’ or a ‘social connection’;² however, it is a more complicated concept of a personal relationship than as understood in Western countries. Guanxi itself is a neutral term; it is neither ‘good’ nor ‘bad’. However, guanxi can be utilised to facilitate corrupt activities, which is understood as the negative connotation of guanxi. In this thesis, we refer to this as ‘corrupt guanxi’. Furthermore, corruption activities and social exchanges based on corrupt guanxi are termed ‘guanxi-based corruption’ (Li, 2018) and ‘guanxi-based exchanges’, respectively.

¹ Institute of Linguistics, Chinese Academy of Social Sciences, 2020, *Xinhua Dictionary* (12th version), The Commercial Press. p.165.

² Zhang, C. and Hong, S., 2019. How it affects the business model of Chinese firms. In: Paulet, E. and Rowley, C. (eds.) *The China business model: Originality and limits*. Chandos Publishing.

1. Literature Review

Many books and articles address corruption in China. Most of them discuss this issue in broad contexts such as the history of corruption, political corruption and anticorruption campaigns. Some of them specifically discuss judicial corruption and explore the causes of this phenomenon in China, including political interference, judicial dependency, a lack of funding, etc. However, the literature seldom covers judicial corruption from a more 'microscopic' viewpoint, paying little attention to the individuals involved, such as lawyers, and their enabling role in these activities.

Defining the concept of corruption is always a challenge. In his book *Analyzing Corruption*, Dan Hough (2017) highlights that there is not one definition, or even one set of definitions, that can satisfy everyone. For instance, the World Bank defines corruption as 'the abuse of public office for private gain',³ while the Organisation for Economic Co-operation and Development (OECD) regards it as 'active or passive misuse of the powers of Public officials (appointed or elected) for private financial or other benefits'.⁴ However, the core of the definition of corruption is the abuse of

³ The World Bank, 1997. Helping countries combat corruption: The role of the World Bank. [Online]. Available at: <<http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm>> [Accessed 3 September 2019].

⁴ OECD, 1997. Effects of European Union accession: Part 1 – Budgeting and Financial Control, OECD SIGMA Paper No. 19, p. 160 [pdf]. Available at: <<https://www.oecd-ilibrary.org/docserver/5kml61892zr2-en.pdf?expires=1570615879&id=id&accname=guest&checksum=434700B9E8D3EE1595C698B21E653734>> [Accessed 3 September 2019].

entrusted power for private gain. Professor John Hatchard (2013, p. 15) notes that ‘a somewhat diverse range of acts (or sometimes omissions to act) can constitute corruption’. Article 385 of the Chinese Criminal Law defines the crime of bribery as referring to ‘state personnel who take advantage of their office to demand money and things from other people or if they illegally accept money and things from other people and give favors to the latter’. In the context of Chinese law, judges are regarded as state personnel. The current thesis focuses on discussion of judicial corruption, which specifically refers to judges illegally demanding or accepting money or gifts from litigants or lawyers and, in exchange, granting favours to those parties in legal proceedings. Such favours can be in the form of ruling in favour of the bribe providers, increasing or decreasing the amount of compensation awarded, or deliberately expediting or delaying enforcement procedures.

Professor Ting Gong (2004) highlights that judicial corruption has become rampant in contemporary China. Some scholars have attempted to explain what drives judges to engage in corruption from a new institutionalist perspective and have concluded that judicial corruption in China is closely associated with the political dependence of the judiciary and with judges’ lack of accountability. This corruption involves judges accepting invitations from lawyers to dine and drink together as well as receiving valuable gifts such as television sets, watches, cars and gold from litigants. It was reported that, during the period from January to August 2000, 30 local courts rejected a total of more than 234,000 dinner invitations (Gong, 2004).

In Yuhua Wang's study of the relationship between court funding and judicial corruption in China, he finds that one reason for this kind of corruption in China is insufficient court funding. He points out that judges in inadequately funded courts are more likely to be 'captured' by economic interests (Wang, 2013).

Eric Chi-yeung Ip (2008) suggests that the true reasons for judicial corruption in China are the belief that the law is mandated to serve political ends and a lack of funding for courts, which make the courts politically and economically dependent. In order to address these issues, China needs to move away from the idea that the judiciary should principally serve political and economic interests (Ip, 2008).

In studying the incentives behind corruption in American courts, Stratos Pahiis (2009) found that anti-judicial-corruption institutions are ineffective at preventing this activity. In his article, he states that judicial corruption can be understood as the selling and purchasing of legal decisions, where litigants and lawyers are the buyers and judges are the sellers . A litigant will bribe a judge if the expected gains of the corrupt decision are greater than the costs of the bribe and getting caught, while when deciding whether to sell a corrupt decision, judges will consider whether the price of the bribe is greater than the expected costs of accepting it (Pahiis, 2009).

Some studies realise that lawyers act as professional brokers and catalyse judicial

corruption activities in China. For example, in her doctoral dissertation 'Legality, discretion and informal practices in China's courts - A socio-legal investigation of private transactions in the course of litigation', Ling Li from the University of Vienna defines lawyers as one group of professional brokers of judicial corruption in China and claims that lawyers' brokering activities have catalysed corruption in China's courts, for which they have been repeatedly denounced by the judicial authorities in China over the last three decades. The bribing litigants need to personally cultivate ties with the judges in their litigation cases. Due to the dyadic and personal nature of the relations between the judges and the litigants as well as the time and cost constraints for cultivating ties in litigations, access to exchange opportunities should be limited. Without lawyers' brokering, the transactional costs of judicial corruption would be extremely high; in other words, lawyers have lifted those barriers to effectively facilitate judicial corruption (Li, 2018).

In his thesis 'The twin faces of judicial corruption: Extortion and bribery' (1997), Ian Ayres from Yale Law School highlights that the offering and extortion of bribes that take place in courts are often accompanied by each other. Some litigants are forced to bribe judges - if a judge who is expecting bribes cannot be satisfied, this would increase the possibility of unjust judgments. In return, for various reasons (such as avoiding trouble or distrust of the reporting system) those litigants may not prosecute judges who seek bribes. Under these circumstances, the purpose of bribes is to prevent unfair judgments (Ayres, 1997).

Xiangwei Gu points out in his thesis 'Interpretation of Lawyers' Bribery Act' (2003) that the phenomenon of bribery by lawyers is a product of the unhealthy judicial environment, reflecting the disregard of partial lawyers to the concept of procedural justice. Furthermore, the law-breaking acts of lawyers who have a knowledge of the legislation also expose the defects of bribery legislation. Therefore, Gu proposes speeding up judicial reform and increasing the supervision over lawyers through methods such as establishing integrity files for lawyers and publishing them regularly (Gu, 2003).

Jiubing Zhu claims that the roots of lawyers' bribery acts lie in China's specific traditional culture, the social background of an acquaintance-based society and the reality that one of the criteria for a client to select a lawyer is whether the lawyer has a special relationship with the judge (Zhu, 2017). He proposes solving the problem by reducing the discretionary power of judges and increasing the severity of punishments for lawyers who violate the regulations (Zhu, 2014).

In his paper 'Analysis of judgment of judicial corruption at both ends of the balance' (2007), Dr Yuanqiong He analyses the game process of litigants, judges and lawyers participating in judicial corruption by establishing a game-theory-based model. He points out that lawyers, as participants with their own interests, profoundly influence the game of judicial corruption and, furthermore, that a lawyer participating in the act

of a litigant bribing a judge makes the corruption 'contract' more enforceable and assured (He, 2007).

2. Research Questions/Hypotheses

We will address the main research question of the thesis through analysing and answering the following four sub-questions.

Question 1: Do lawyers participate in judicial corruption in the field of civil litigations in Shanghai? If so, what role(s) do they play? The hypothesis is that lawyers do participate in judicial corruption as intermediaries between judges and litigants. This hypothesis will be tested by observing the present context of civil judicial practice in China and especially in Shanghai. The observations will mainly involve analysing empirical data, including open cases of lawyer bribery published by the Ministry of Justice of the People's Republic of China (PRC) (the Ministry of Justice) and the All China Lawyers Association (CLA), other judicial corruption cases reported by authoritative media channels, and the opinions of lawyers interviewed by the researcher.

Question 2: Why do lawyers participate in judicial corruption; in other words, what are lawyers' motivations for participating in judicial corruption? On the one hand, being a lawyer is a respectable job in Shanghai, offering a relatively high income and social status. On the other hand, judicial corruption is a wrongful act, which means that lawyers will be punished if such actions are discovered. They may be punished, fined or prohibited from practising, and in severe situations, they may even

face imprisonment. Therefore, there must be reasons for lawyers to become involved in judicial corruption in spite of the aforementioned risks, and these motivations deserve due attention.

We propose a number of hypotheses to explain and answer the question of lawyers' motivations for participating in judicial corruption. These include the low status of lawyers in the judicial system, the need for price compensation for legal services and the desire to maintain business.

(1) The status of lawyers in the Chinese judicial system is relatively low. Lawyers are second parties to litigants as they provide them with legal services and earn lawyers' fees from them. In the Chinese inquisitorial court jurisdiction context, lawyers tend to be obedient to judges and to have a relatively low status in litigation cases. First, if lawyers want to survive in such disadvantageous judicial context, they tend to flatter judges or aim to maintain positive *guanxi* with judges through bribery. Under such circumstances, if judges actively ask for bribes, it can be very difficult for lawyers to refuse their demands. Second, in the Chinese legal services market, many lawyers are under relatively high pressure to satisfy their clients in many respects. Sometimes, in order to retain clients, lawyers choose to succumb to their improper requirements of bribing judges to gain a better position (or outcome) in a litigation case. Otherwise, it is very likely that the clients will lose confidence and trust in their lawyers, who can then be easily replaced.

(2) Price compensation. Compared to the highly developed rule-of-law systems in countries like the US, China has a small legal services market from the perspective of nationwide legal fee turnover levels. Clients are less willing to pay legal fees, and the hourly rate of those fees is lower, which results in Chinese lawyers' average income levels being lower than those in, for example, the US or the UK. Furthermore, in China, the cost of becoming a lawyer is high. An individual who wants to practise as a lawyer must obtain a bachelor's degree through four years of study in a law school, pass the legal professional qualification examination and complete one year of training in a law firm. While actively practising, lawyers are required to continue to pursue advanced studies every year. Practising lawyers also need to spend considerable amounts of money on maintaining a professional image, including by buying business suits (formal wear) and using appropriate transportation, and participating in social activities, which leads to relatively high costs of living.

Lawyers cannot increase their income by simply increasing legal fees as this may lead to them losing their clients. At the same time, lawyers' costs of practising and of daily living are relatively high. Therefore, the failure of balance provide strong motivation for some lawyers to seek additional income in the legal industry by other means, thereby virtually increasing the price of their legal services, which we refer to here as price compensation. The need for price compensation can drive lawyers to suggest to litigants that they should bribe judges and to help them to do so as they will then

obtain a proportion of the bribe money as commission. Alternatively, lawyers may bribe judges personally for a favourable judgment so they can charge extra fees to the litigants under the name of a success fee or a contingency fee.

(3) Desire to maintain business. There are many ways for a lawyer to implicitly advertise that their services are superior to others in the market. Two common methods are to earn as many honours and prizes in the legal industry as possible and to maintain a high success rate in litigation practice. The purposes of both of these are the same – to attract and win as many clients and cases as possible and to maintain and expand their legal services business. For lawyers practising in the area of domestic litigation, those honours and prizes issued by the Judicial Bureau and by Lawyers' Associations are the most important as they are the most likely to be interpreted by clients as signals that the awardees have broad resources and positive connections within the judicial system. Similarly, a high win rate can be interpreted as an indicator of both a lawyer's professional skills and their access to resources and connections within the judicial system.

To win more legal industry honours and prizes and maintain a high success rate, lawyers may choose to bribe judicial officials who have the power to decide which lawyers will be honoured and judges who have the power to decide which litigant will win the case, respectively. Some people believe that a sense of honour normally results in moral rewards and self-discipline. If that is correct, lawyers who win honours

or prizes in the legal industry should be more self-disciplined because of cherishing their fame. However, another hypothesis is that the opposite is true as new prize-winners who are still in their early career stages may show improved self-discipline and their conduct may be more self-regulated. However, whether for the sake of vanity or profits, many lawyers are likely to try their best to expand their client bases and case resources to maintain their business scale and stay on the prize/ranking lists, which may lead them to bribe judges to improve their win rates. From this perspective, lawyers whose names appear on these prize/ranking lists may be more likely to engage in corrupt activities than those whose names do not. Nevertheless, in the long term, lawyers whose names continue to appear on the award ranking lists for many years may come to value moral rewards and reputation much more highly and tend towards self-regulating their behaviour once they no longer lack clients and case resources. The motivation for bribing judges for the purpose of winning litigation cases is self-explanatory; it can clearly be helpful for guaranteeing a lawyer a high win rate and, consequently, for attracting more clients and business for corrupt lawyers.

3: Why are lawyers capable of acting as intermediaries of judicial corruption? We propose two hypotheses to address this question: lack of trust, and asymmetric information.

(1) Lack of Trust

The first reason that lawyers can act as intermediaries in judicial corruption is because litigants and judges are not familiar with each other and lack trust for each other. Both parties would face a huge risk if they attempted a bribe without the foundation of trust. Consequently, it is necessary to find an intermediary who is acceptable and trustworthy to both sides to help them establish a connection. In legal practice, lawyers naturally have the trust of both parties as they deal with both litigants and judges during legal proceedings. Therefore, it is reasonable that lawyers can act as intermediaries between litigants and judges; they can transport improper interests between litigants and judges in a similar way to how banks open letters of credit and facilitate transactions between buyers and sellers.

To strengthen the concealment of bribing activities and avoid legal sanctions, some judicial officials only accept bribes through individuals they trust rather than doing so themselves directly. The natural advantage of lawyers taking part in judicial corruption activities as intermediaries is that they have a 'cooperative' relationship with both sides. They are in close contact with litigants for the purpose of providing legal services, and they also have many opportunities to meet with judges while handling litigation cases. Under Chinese law, it is legal for lawyers to meet judges in their offices to deliver submissions, accept orders, prepare for hearings and even discuss legal issues. This situation means that lawyers have the trust of both sides – the bribe offeror and the bribe receiver – so they can act as a bridge between them and facilitate the completion of corrupt transactions.

Furthermore, many lawyers and judges may have been primary or secondary school classmates, alumni of the same universities, colleagues or neighbours, which also helps to establish a foundation of trust or, at the very least, an acquaintance relationship (*guanxi*) to allow for bribery. In consideration of the high risk of bribes, judges are typically not willing to accept gifts from people who they are unfamiliar with. Generally, they will not have face-to-face meetings outside their offices with lawyers or litigants who are not within their 'small social circle' unless those lawyers or litigants are recommended by mutual acquaintances.

(2) Asymmetric Information

As offering a bribe is a high-risk action that creates criminal liability, it is not possible for litigants to blindly offer bribes to judges under normal circumstances. If all judges in a court were corrupt, there would be no need for lawyers to act as intermediaries because litigants would be able to bribe any judge dealing with their cases directly without fear of being rejected or accused of illegal conduct. However, in reality, normally only some judges in a court are corrupt, while others are not. In such a situation, if a litigant were to target the wrong recipient by offering a bribe to a judge who was not corrupt, they would be very likely to find themselves in serious trouble.

A lawyer who often deals with judges in a certain court is likely to be familiar with the

occupational quality and the moral principles of those judges. They will know which judges are corrupt and which are not, and they may even be aware of the corrupt judges' preferences in terms of receiving different kinds of bribe. It will also be quite clear to such a lawyer how to offer bribes without being noticed. The information available to lawyers is thus asymmetric compared to that available to litigants who are rarely engaged in lawsuits, similar to the relationship between a real estate agent and an ordinary property buyer. Therefore, litigants' precise targeting of certain judges through lawyers can reduce legal risk, increase the efficiency of the corrupt transaction and help to obtain maximum profits with minimum costs.

Similarly, lawyers are more likely to know which litigants are willing to offer bribes. Therefore, corrupt judges need lawyers' help to locate targets for seeking bribes and to reduce their risk of being prosecuted.

4: How do lawyers participate in judicial corruption? From the perspective of economics, if offering and receiving bribes are regarded as a type of business transaction, then judges are the sellers and litigants are the buyers. Due to a lack of trust and asymmetric information, demand and supply cannot match up directly. Lawyers thus act as intermediaries to facilitate transactions between the providers and receivers of bribes, supporting an exchange of power resources with monetary interests based on guanxi.

On the basis of the analysis and discussion of the above four sub-questions, this thesis will deliver suggestions on how to mitigate judicial corruption by regulating lawyers' activities, by improving their practising environment or by other means.

3. Methodology

This study aims to expand on the work of existing studies to discuss the issue of Chinese lawyers, specifically lawyers in Shanghai, participating in judicial corruption in first-instance civil litigation procedures from the perspective of lawyers being in an enabling role of such activities.

The thesis is mainly based on empirical data, including disciplinary cases regarding lawyer bribery published by the Ministry of Justice and the CLA, judicial corruption cases reported by authoritative media channels and information collected by the researcher during interviews with six Shanghai-based lawyers conducted for the purposes of the research. The study primarily adopts qualitative analysis to analyse the empirical data obtained from the various aforementioned sources.

With regard to the interviews with lawyers, to maximise the accuracy of the research, the researcher targeted lawyers practising in Shanghai and limited the discussion to first-instance civil litigation procedures. First, Shanghai is the most economically developed city in China, with a relative transparent judicial system and strict judicial supervision compared to other cities in the country. Additionally, the rule of law in Shanghai is widely regarded as the strictest system in China. It is thus worthwhile to investigate whether bribery activities are taking place between lawyers and judges in Shanghai. Second, the courts in Shanghai hear the largest number of cases of any

courts in China each year. The litigants for civil cases greatly vary, and practising lawyers are under high levels of competitive pressure. Many typical materials are believed to have been collected during the interviews. Third, the researcher is familiar with the local judicial environment after nearly 20 years' personal experience practising law in Shanghai. Pertinent interpretations can thus be made according to the actual research context when analysing the interview answers. Fourth, the study focuses on civil cases rather than criminal cases because criminal cases have a greater influence on the rights of liberty and life for litigants, which is a very serious matter. As a result, few interviewees may be willing to talk about bribery honestly in this context, which would make it difficult to collect relevant/accurate responses. Compared to criminal cases, judges usually enjoy greater discretionary power in civil cases, and it would not result in such a severe issue if a judge were to show slight favour towards one party in a judgment decision; for example, many bribes do not change the winner or loser of a case, but only affect the amount of compensation or the efficiency of the judicial compulsory enforcement. Thus, interviewees may be less worried about talking about civil cases and more willing to reveal truthful information in this context.

In order to analyse the underlying reasons for lawyers' participation in judicial corruption in depth, the original plan was to interview around 15–20 lawyers. However, it became clear that the researcher had underestimated the cautious and even inimical mentality held by many Chinese lawyers in relation to the interview topic. Attempts

were made to reach out to around 15 lawyers asking to arrange an interview on the topic of lawyers' participation in judicial corruption for the purpose of MACS thesis research. The confidentiality and privacy principles to be upheld in the interview and the study were emphasised. However, some of them still felt that talking about bribing judges was too sensitive and may cause unforeseen consequences for their career. They also expressed concern about exposure to foreign institutions and did not appreciate the idea that the thesis would be submitted to the International Anti-Corruption Academy, even though it is an academic institution. Therefore, some of the lawyers refused the requests politely. Eventually, the researcher was only able to hold in-depth interviews with six lawyers, each having decades of experience practising in Shanghai, to investigate their experiences of direct or indirect participation in judicial bribery.

Before each interview started, the researcher explained to the interviewees that the purpose of the research is to collect data/information in relation to lawyers' participation in judicial corruption in Shanghai to be used in the researcher's MACS thesis and that there is a possibility that the thesis will be published in the future. They were told that notes would be taken on a computer to record the interview discussion, but all sensitive personal and identifiable information would be removed from the notes, draft, thesis and any other related documentation. They were assured that they would remain strictly anonymous and that their materials and information would be confidential through the whole process of the thesis writing, defence and

even if the work is published later. The researcher also explained to the interviewees that the interviews were completely voluntary and they were not obliged to answer every question. They were informed that they were free to refuse to participate in (to withdraw from) the research at any time they should wish without any negative consequences. All six interviewees felt comfortable with the interviews. On this basis, it is assumed that the data and information collected are truthful, factual and objective. General demographic information about the six interviewees is presented in Table 1 below.

| Interviewees | Gender | Age | Years Practising | Scale of Law Firm |
|---------------|--------|-----|------------------|-------------------|
| Interviewee 1 | Female | 35 | 7 | 20 lawyers |
| Interviewee 2 | Female | 33 | 7 | 20 lawyers |
| Interviewee 3 | Male | 45 | 18 | 700 lawyers |
| Interviewee 4 | Male | 39 | 15 | 40 lawyers |
| Interviewee 5 | Female | 38 | 12 | 40 lawyers |
| Interviewee 6 | Female | 40 | 18 | 600 lawyers |

Table 1: General demographic information of the six interviewees

With regard to the interview method, a one-to-one private conversation was conducted with each interviewee. A list of questions was designed based on the research questions and hypotheses. The questions are mainly focused on three issues: (1) the general situation regarding judicial corruption in Shanghai from the interviewee's

point of view; (2) examples and details of lawyer bribery cases that the interviewee has personally experienced, witnessed or heard about, especially the method, procedure, amount, motivation, and results of the bribes; and (3) the interviewee's thoughts and attitudes towards this social phenomenon and suggestions on how to address it. The list included the questions presented in Table 2 below.

| Number | Question(s) |
|--------|--|
| 1 | What is your gender? What is your age? How many years have you been practising and what scale is your law firm (number of lawyers)? |
| 2 | What is your current total annual income as a lawyer? Do you have any 'grey income' generated from corrupt activities? Do you think a Shanghainese lawyer's legal fee income/salary can provide for a decent lifestyle in Shanghai? How about yours? |
| 3 | Is it unusual or common for a lawyer to give gifts to judges within their circle of colleagues, schoolmates and friends? Do you regard this social phenomenon as the norm? Can you roughly estimate what percentage of lawyers in Shanghai are involved in corruption? |
| 4 | Have you ever experienced, witnessed or heard about any bribery cases in the course of your practice? If yes, can you share some details: the cause of the action, the subject matter and focus of controversy of the litigation, the probability of winning for each party, the scope of discretion of the judge, etc.? |
| 5 | Have you experienced any litigant requiring you to bribe a judge or any |

| | |
|----|---|
| | judge asking for a bribe from your client? If yes, how did you deal with such requirements or requests? |
| 6 | In what way does a lawyer bribe a judge; for example, through cash, gifts or providing entertainment? Does there exist a tacit understanding of the formula for calculating the amount of a bribe based on the disputed amount? |
| 7 | How does a corrupt lawyer contact and negotiate with the judge and eventually carry out the corrupt deal? Would the lawyer normally bribe the judge personally or ask someone else to be the intermediary for the transaction? |
| 8 | Do you think lawyer bribery can have a substantial influence on the result of a civil litigation case on most occasions? In your experience, will the corrupt judge rule in favour of the party undertaking bribery? |
| 9 | Let us talk about the costs of corruption. Is there a high possibility of a participant in corruption being caught? What kind of punishment have you seen being applied to corrupt lawyers? Do you feel the risk of being caught is relatively low so that, in reality, the benefits of participating in corruption are much higher than the risks? |
| 10 | In your experience or opinion, what reasons, if not mentioned previously, could likely drive a lawyer to bribe a judge? |
| 11 | Is it necessary for a lawyer to have existing corrupt guanxi with a judge in order to deliver a bribe to them successfully? Does there normally |

| | |
|----|--|
| | exist a long-term connection for conveying improper interests between a corrupt judge and a corrupt lawyer? |
| 12 | Have you seen any lawyer purposely cultivate long-term corrupt guanxi with a judge? If yes, in what way did they cultivate such guanxi and how do they maintain its stability (avoiding either party reporting the corruption to anti-corruption agencies or authorities)? |
| 13 | What kind of influence do these corruption activities have on the judicial environment? |
| 14 | Compared with young lawyers, do experienced lawyers carry out bribery more often? Do lawyers who frequently receive awards show more compliance and self-discipline? |

Table 2: List of interview questions

During the interviews, the researcher only asked those questions deemed appropriate for each interviewee at the time, as after asking and answering one question, subsequent questions would sometimes become inapplicable. Similarly, some new questions that are not contained in the list were raised and discussed with interviewees for the purpose of collecting as much information as possible. After each interview, the researcher summed up previous experience and modified the question list to achieve the goal of obtaining more relevant information and ensuring to cover the key points.

Qualitative analysis will be conducted on the interview responses and the other empirical data collected, including published information on disciplinary cases regarding lawyer bribery and corruption cases reported through authoritative media channels. Based on the conclusions of this analysis, suggestions will then be provided on how to curb lawyer bribery and reduce judicial corruption in Shanghai.

4. Structure

At the beginning of this thesis, we stated two examples of judicial corruption to demonstrate the severity of this issue. This helped to introduce the background for why this phenomenon was selected as the research topic. Next, we briefly presented the literature review. The researcher conducted searches in the IACA eBook Collection and Google Scholar using key words such as corruption, judicial corruption, lawyer, Chinese lawyer and guanxi. Most of the existing books and articles in this field were found to address corruption in China in a broad context and usually from a macroscopic viewpoint. Following the literature review, the research questions and hypotheses were set forth. Four research questions were raised, and each was explained in depth. Based on this analysis, a number of hypotheses were formulated in relation to the research questions. All the hypotheses will be examined later on the basis of the information collected during the literature review, the researcher's interviews with six lawyers and the selected case study. Some of the hypotheses are proved to be incorrect. We then presented the methodology for researching and writing this thesis, mainly consisting of interviews and case studies. We described how the interviews were conducted and what kinds of question were asked.

One of the research questions is discussed per chapter across chapters XX-XX. In each Chapter, we explain what the problem is in reality and the researcher's findings from the research and interviews. During this process, we examine the hypotheses, finding that some of the hypotheses are supported by research result while others are not. A

conclusion is also presented for each question, representing the core of this thesis. Among these four chapters, Chapter One concerns the question of the role that lawyers play in judicial corruption, and Chapter Two is about the motivations for lawyers to participate in judicial corruption. Chapter Three addresses why lawyers are able to play such a role in judicial corruption, within which we discuss guanxi-based corruption, to which the author particularly wishes to draw readers' attention. Chapter Four concerns how lawyers participate in judicial corruption. Following the research and analysis, we provide suggestions and solutions relating to this issue in Chapter Five. The last part of the thesis presents the overall conclusions.

Chapter One: The role lawyers play in judicial corruption

Question 1: Do lawyers participate in judicial corruption in the field of civil litigations in Shanghai? If so, what role(s) do they play?

To address this issue, we first observe the phenomenon of lawyers' participation in judicial corruption, both nationwide across China and specifically in Shanghai, through searching for and examining open cases concerning lawyer bribery published by the Ministry of Justice and the CLA as well as other judicial corruption cases reported by authoritative media channels. This question was also raised in each interview to obtain corresponding responses from the participants. The interviewees' responses on this question constitute part of the observations that are explored in this chapter.

1. The nationwide situation regarding lawyer bribery

According to data published on the official website of the Ministry of Justice, a total of 200 punishment decisions for practising lawyers all around China were publicly listed between January 2018 and May 2019, of which six were made on the grounds of lawyer bribery. Among these six punishment decisions, one was a warning, one was an order to prohibit the involved lawyer from practicing for six months and the other four involved revoking the lawyers' practice certificates in response to their

intentional crimes of bribery.

| Name/Position | Grounds | Punishment |
|---|--|---|
| <p>Li Yingbin (Guangdong Jinfan Law Firm)</p> | <p>Li offered Xu, a former deputy president of a district court in Chaozhou, a benefit fee of RMB 5,000 after he won a case.</p> | <p>Professional disciplinary punishment: warning.</p> |
| <p>Zheng Xuegang (Zhejiang Nankong Law Firm)</p> | <p>Zheng offered Yang, a policeman working at Quzhou Detention Center, RMB 2,000 to ensure convenience of visiting litigants.</p> | <p>Professional disciplinary punishment: practising licence suspended for six months.</p> |
| <p>Li Tiefeng (Beijing Changjiu Law Firm, Kunming Office)</p> | <p>Li, as the CEO of a company, offered RMB 340,000 to the party secretary of Kunming Luding County to obtain various benefits for his firm.</p> | <p>Criminal punishment: six months' imprisonment on probation for one year and a fine of RMB 100,000 for the crime of corporate bribery. Professional disciplinary punishment: revocation of</p> |

| | | |
|---|---|--|
| | | practising licence. |
| Hu Qiao (part-time lawyer at Zhejiang Zehou Law Firm; Professor in the Law School at Zhejiang Technology and Business University) | Hu offered RMB 820,000 to Liu, a former judge of the Gansu Higher People’s Court, to obtain case resources. | Criminal punishment: verdict unavailable. Professional disciplinary punishment: revocation of practising licence. |
| Yang Yang (Yunnan Tiantu Law Firm) | To obtain the help of Qiu, the enforcement director of the Kunming Intermediate People's Court, Yang treated him to high-end consumption (in restaurants and nightclubs) and offered him half of Yang’s legal services fee after the completion of each enforcement case. Bribe amounted to a total of RMB 970,000 (approx. USD 140,000). | Criminal punishment: three years’ imprisonment on probation for five years and a fine of RMB 300,000 (approx. USD 43,000) for the crime of bribery. Professional disciplinary punishment: revocation of practising licence. |

| | | |
|-------------------------------------|----------------------------|---|
| Su Dongbo, (Fujian Yiquan Law Firm) | Su bribed a civil servant. | Criminal punishment: one year's imprisonment for the crime of bribery. Professional disciplinary punishment: revocation of practising licence. |
|-------------------------------------|----------------------------|---|

Table 3: Punishment for lawyer bribery cases published on the Ministry of Justice website (January 2018–May 2019)

The data released by the Ministry of Justice does not, however, cover all the punishment decisions imposed by lawyers' associations in China over this one-and-a-half year period. In addition to the cases reported by the Ministry of Justice, the researcher found at least four other bribery cases in the 'Notification of typical disciplinary cases' section of the CLA website: (1) Tian Xinjing (Jiangsu Shuanghui Law Firm) maintained an unusual level of contact with a judge (including dining together, sending gifts, travelling together three times and paying for part of the judge's travel expenses) – practising licence suspended for one year by Wuxi Lawyers Association; (2) Chen Hongliang (Liaoning Hexiang Law Firm), reported for acts of bribing a judge – practising licence suspended for six months by Panjin Lawyers Association; (3) Zhang Jinghua (Liaoning Tailai Law Firm), reported for acts of inducing litigants to bribe a judge – practising licence suspended for six months by Panjin Lawyers Association; and (4) Zhang Guoqing (Hunan Xingao Law Firm), committed the crimes

of offering bribes and abuse of power – sentenced to eight months’ imprisonment by the Hunan Shuangfeng People’s Court and practising licence revoked by the Hunan Department of Justice.

The above cases are circulated publicly as typical disciplinary cases. By doing so, both Ministry of Justice and the CLA are aiming to educate and deter other lawyers from conducting similar illegal activities. For the sake of ‘self-image’, it is not unusual that the Chinese authorities do not disclose all administrative punishment cases to the public; however, this suggests that there might be more punishment cases that have not been reported by the authorities and even more corrupt lawyers who have never been caught or punished for their illicit actions.

2. The situation regarding lawyer bribery in Shanghai

On 8 August 2019, the Jiangxi Nanchang Intermediate People’s Court held a hearing on the Pan Case. Pan Furen is a former president of the Shanghai No. 1 Intermediate People’s Court. The indictment disclosed in the court indicates that Pan Furen was accused by the procuratorate of receiving bribes of RMB 8.05 million (approx. USD 1.18 million), of which RMB 0.5 million (approx. USD 1.18 million) was provided by Xu Qiang, a partner at Shanghai Huating Law Firm, RMB 0.3 million (approx. USD 43,000) by Li, a partner at a local law firm in Shanghai and a further RMB 0.5 million (approx. USD 72,000) by Chen Qiufang, the former general manager of Shanghai Pepsi

Cola Co., Ltd, through Fu Qiangguo, a partner at Shanghai Huacheng Law Firm. Pan Furen gave assistance to the bribe providers in matters related to their cases after his receipt of the bribes.⁵ Starting from 1981, Pan served in the Shanghai County Court, the Pudong New District Court, the Shanghai No. 1 Middle Court and the Shanghai High Court successively. From 2006 to 2011, he was the president of the Shanghai No. 1 Intermediate People's Court. He retired in 2014 and was investigated by the Communist Party of China (CPC) Shanghai Commission for Discipline Inspection in 2017. On 21 July 2017, the Commission issued a circular saying that Pan had:

... violated the spirit of the Eight Provisions of the Central Committee, entered private clubs in violation of regulations and accepted private travel arrangements; violated organisational discipline and did not report personal matters according to regulations; seriously violated the integrity discipline, and received gifts and gifts for himself and his relatives; Violation of work discipline, interference in judicial and market economic activities in violation of regulations; serious violation of national laws and regulations, use of power and influence for the benefit of others and accepting huge amounts of property, suspected of bribery crime.⁶

In the trial on 8 August 2019, Pan raised arguments regarding the truthfulness of the allegation, only admitted to receiving part of the alleged total sum of bribes, objected

⁵ China News Weekly, 2019. Pan Furen claims to have been tortured to extort confessions. 16 August [Online]. Available at:

<<https://sina.com.hk/news/article/20190816/0/1/2/%E6%9B%BE%E5%96%8A%E5%86%A4%E7%9A%84%E6%B3%95%E9%99%A2%E5%8E%9F%E9%99%A2%E9%95%B7%E6%BD%98%E7%A6%8F%E4%BB%81-%E7%95%B6%E5%BA%AD%E7%A8%B1%E9%81%AD%E5%88%91%E8%A8%8A%E9%80%BC%E4%BE%9B-10510628.html>> [Accessed 26 August 2019].

⁶ Dai, W., 2019. The president of the private club said in court that he had been tortured to extort confessions and the trial had to be suspended. *JQKNews*, 16 August [Online]. Available at: <<https://www.jqknews.com/news/249591>> [Accessed 4 September 2019].

to the written testimony and denied the charges, and lawyers Xu Qiang and Li stated to Pan's defending lawyer that they had not sent money to Pan but had been forced to say they had under pressure. Although the trial for the Pan Case is still ongoing and not all of the facts of the bribery have yet been affirmed by the court, lawyers' participation in judicial corruption in Shanghai has nevertheless been highlighted through this case, leading to the issue attracting public attention once again.

Prior to the Pan Case, on 15 October 2018, the Guangxi Zhuang Autonomous Region Nanning Intermediate People's Court publicly pronounced a judgment on the bribery case of Chen Xu, a former party secretary and chief procurator of Shanghai People's Procuratorate, once known as the 'law manipulator of Shanghai' (the Chen Case).⁷ From 1979, Chen served successively as a judge at the Shanghai No. 1 Intermediate Court, then at the Shanghai High Court and finally took the office of party secretary and chief procurator of Shanghai People's Procuratorate in 2008, which he held until he retired in 2016. The CPC Central Commission for Discipline Inspection started to investigate Chen in 2017. He was found to have received bribes totalling RMB 74.23 million (approx. USD 11 million) in personal gifts or through family members between 2000 and 2015. He was sentenced to life imprisonment as well as confiscation of all his personal property and bribery income as punishment for the crime of accepting bribes. He confessed to his crimes and expressed remorse in court. According to the

⁷ Wang, H., 2018. The private legal circle of Chen Xu in Shanghai. *Caixin Weekly*, 4 June [Online]. Available at: <<http://weekly.caixin.com/2018-06-02/101261562.html?p0#page2>> [Accessed 4 September 2019].

investigation of the Commission, Chen had seriously violated a range of party rules and laws, illegally interfered in judiciary process, pursued private gain by misusing his entrusted power to interfere in certain cases (thus seriously damaging the credibility of the judiciary), engaged in superstitious activities, allowed others to pay for his consumption in luxury private clubs, travel and golf games, engaged in profitable business, accepted gifts and huge amounts of money (either himself or through his relatives) and misused his position to benefit others who were already suspected of crimes of bribery.⁸ Among the bribe providers, Fu Qiangguo, a partner at Shanghai Huacheng Law Firm (who was also involved in the Pan Case as a bribe provider), was found to have a close relationship (corrupt guanxi) with Chen and to have paid bribes to Chen. After Chen's crime of bribery was investigated, Fu chose to cooperate with the prosecutors and to testify as a witness to testify regarding the bribe he provided to Chen. Owing to an undisclosed deal with the prosecutors, Fu was not charged or convicted for his bribery.

On 16 September 2017, the Shanghai XuHui People's Court convicted Wang Kangwu, the former deputy president of the Shanghai Jing'an District People's Court, for the crime of accepting bribes (the Wang Case). Wang served as a judge in the Shanghai Intermediate Court, the Shanghai High Court and the Shanghai Jing'an District

⁸ Cheng, S., 2017. A confession reveals the senior official's luxury life. *Nanfang Metropolis Daily*, 29 July [Online]. Available at: <<http://www.oeeee.com/mp/a/BAAFRD00002017092954085.html>> [Accessed 4 September 2019].

People's Court, successively. In 2000, he left the court system and assumed the office of secretary general of the Shanghai Arbitration Commission, which he held until he retired in 2012. As secretary general, he acted as the head of the arbitration commission and had absolute authority to appoint sole arbitrators or chief arbitrators for arbitration cases. The investigation against Wang started in early 2016. During his trial, the court affirmed that, between 1994 and 2012, when Wang held positions in various Shanghai courts and the Shanghai Arbitration Commission, he misused his entrusted power to accept property and money from others and gain benefits from them, or, in other cases, by utilising the influence and advantage of his office and power, solicited other officials to assist individuals who had provided a bribe to him to gain illicit benefits.⁹ Wang accepted bribes totalling RMB 6.11 million (approx. USD 0.88 million) and USD 90,000, including cash RMB 960,000 (approx. USD 137,000) and USD 5,000 provided by Lin Xinghe, the managing partner of Shanghai Tianyun Law Firm. Wang was sentenced to a prison term of six-and-a-half years and was fined RMB 400,000 (approx. USD 57,000).

In August 2013, four judges (Chen Xueming, Zhao Minghua, Ni Zhengwen and Wang Guojun) of the Shanghai High Court (SHC) were exposed in videos posted online that

⁹ Wang, H., 2018. The private legal circle of Chen Xu in Shanghai. *Caixin Weekly*, 4 June [Online]. Available at: <<http://weekly.caixin.com/2018-06-02/101261562.html?p0#page2>> [Accessed 4 September 2019].

showed them consorting with prostitutes in nightclubs (the SHC Case),¹⁰ which attracted significant attention in Shanghai. The businessman who posted the video, Mr Ni, had been a defendant in a case handled by the city's lower courts (Shanghai Zhabei District People's Court and Shanghai No. 2 Intermediate Court). According to him, both the plaintiff and the lawyer of the plaintiff of his case are relatives of Zhao Minghua, a judge of Shanghai High Court, which is the superior court of the first-instance and appeal courts, the Zhabei District People's Court and the Shanghai No. 2 Intermediate Court, respectively. Mr Ni suspected that Judge Zhao was corrupt and had interfered unfairly with his case against Zhao's relatives. This disgruntled businessman spent a year trailing the judge and discovered evidence that four Shanghai High Court judges were involved in regular corrupt activities, including accepting lawyers' invitation to restaurants and luxury clubs, and allowing lawyers to hire prostitutes for them. He compiled videos from security cameras and footage he had recorded while trailing the judges, and he uploaded them to the internet. Nearly 4.3 million people viewed the videos and images. Five days later, on 6 August 2013, the CPC Shanghai Commission for Discipline Inspection announced that the four judges appearing in the videos had been dismissed from their offices. They also were punished by the police under administrative detention in jail for a term of ten days as punishment for participating in sexual activities with escorts. Mr Han Zheng, the party

¹⁰ Perlez, J., 2013. Chinese judges disciplined in prostitution scandal after videos circulate online. *The New York Times*, 7 August [Online]. Available at: <<https://www.nytimes.com/2013/08/08/world/asia/chinese-judges-disciplined-for-cavorting-with-prostitutes.html>> [Accessed 1 September 2019].

secretary of Shanghai at the time, issued a warning statement to judges:

Although this case involved only a few corrupt and dissolute officials, it has shamed the entire judicial and legal system of Shanghai, and indeed, the entire city itself. Certain judges have spurned law and discipline, forsaken ethics and morality, and behaved with reckless abandon.¹¹

Eight lawyers in Shanghai were required to assist in the investigation of this case, including Shou Rulin, a Partner of Shanghai Lianhe Law Firm.

The Pan Case, the Chen Case, the Wang Case and the SHC Case are examples of criminal cases concerning severe judicial corruption in Shanghai in recent years. These four cases clearly reveal the fact that lawyers do participate in judicial corruption activities, mainly by providing bribes to judges in the Shanghai court system.

In addition to the above four judicial corruption cases that have been criminally tried, other corruption activities have been exposed in the judicial circles of Shanghai. For instance, as mentioned at the beginning of this thesis, in January 2019, YDS Law Firm was exposed for sending gifts to numerous judges, prosecutors and judicial officials. Apparently, the firm's gift-sending activity was systematic (a routine). It has been confirmed that 54 persons (of which six are incumbent bureau-level cadres) have received improper gifts, including several presidents of the District Court in Shanghai, the director of the Anti-Corruption Bureau of Shanghai Procuratorate, the deputy chief prosecutor of Shanghai Procuratorate and the deputy director of the Shanghai Justice

¹¹ Ibid.

Bureau. The lawyer who sent the gifts is the founder of YDS Law Firm and had previously worked successively in Shanghai Yangpu District Procuratorate and the Shanghai Huangpu District Justice Bureau. At present, this incident is still under investigation by the CPC Shanghai Commission of Discipline Inspection, and the results and punishment decisions have not yet been published. Regardless, it is clear that, even in 2019, with the rule of law flourishing in China and Shanghai considered to be at the forefront of Chinese cities in terms of judicial reform and showing some of the country's highest levels of judicial transparency, there still exist in this city hidden complex interest chains between lawyers and judges, which is not a promising sign for the situation in other Chinese cities.

3. Conclusion

This chapter has demonstrated that there is no doubt that lawyers in Shanghai do participate in judicial corruption activities. In the Pan Case, lawyers Xu Qiang, Li and Fu Qiangguo bribed Judge Pan with substantial amounts of money; in the Chen Case, lawyer Fu Qiangguo maintained long-term corrupt *guanxi* with Judge Chen and bribed him across a number of years; in the Wang Case, lawyer Lin Xinghe bribed Judge Wang with substantial amounts of money; and in the SHC Case, the judges were found to have accepted lawyers' invitations to restaurants and luxury clubs, and to have allowed lawyers to hire prostitutes for them.

Lawyers mainly participate in judicial corruption in two ways. One is to become long-term trusted partners of judges by cultivating and maintaining long-term corrupt guanxi through consistently providing them with gifts, benefits and complimentary services. The other is to act as intermediaries or judicial brokers between litigants and judges in specific cases. These two approaches will be explained in more detail below.

Chapter Two: Motivations for lawyers to participate in judicial corruption

Question 2: Why do lawyers participate in judicial corruption; in other words, what are lawyers' motivations for participating in judicial corruption?

In Shanghai, being a lawyer is a respectable job that generally offers higher-than-average income and social status levels. Judicial corruption is a wrongful act, and if corrupt activities are discovered, the corrupt lawyer may be punished, fined or prohibited from practising by the relevant lawyers' associations. In severe cases, they may even face imprisonment. In this context, what drives lawyers to take high risks and bribe judges?

To address this question, we turn to the information collected from the researcher's interviews and the case studies mentioned in Section 1 and 2 of Chapter One. As previously discussed, the hypotheses concerning this question revolve around the low status of lawyers in the judicial system, the need for price compensation for legal services and the desire to retain business by winning honours/prizes and maintain a high success rate. These hypotheses are examined through the research findings, including from the interviews and case studies; however, the discussion is not limited to the scope of the hypotheses. From conducting the research, it was found that the main motivations for lawyers to participate in judicial corruption include dealing with the high competition pressure in the legal service market, maintaining high win rates

to attract more clients and pursuing increased economic benefits (greed). The low status of lawyers in the judicial system and the need for price compensation for legal services are shown not to be among the primary reasons or motivations.

1. Public perception and guanxi culture

Inputting key words or phrases such as ‘lawyers bribe’ or ‘lawyers collude with judges’ on any Chinese internet search engine brings up countless news reports. In fact, lawyers bribing judicial officials seems to be an unspoken secret among the general public in China. This is rooted in the public perception of Chinese society that guanxi is the key factor in winning a lawsuit. Jiubing Zhu claims that lawyers’ bribery acts are inseparable from China’s specific traditional culture and its social background based on a system of acquaintances (Zhu, 2017). A widely known proverb states that, ‘the deciding factor in large cases is politics, the deciding factor in middle cases is guanxi, only in small cases the deciding factor is the profession’. In the perception of the Chinese public, litigants in cases with small amounts of money under dispute will be reluctant to offer bribes in consideration of the high costs of bribery, which means that the trials for these cases are likely to be relatively fair and just; thus, what matters most in these cases is the professionalism of the lawyers. For cases in which large amounts of money (billions of RMB) are under dispute, where both parties involved may have high-level political connections, the outcomes of such cases will be largely dependent on the battle of political interests. Meanwhile, for median cases disputing

millions to hundreds of millions of RMB, the litigations results are largely expected be determined by the judges' discretion; thus, whether the litigants and their lawyers have corrupt guanxi with the judges becomes more determinative. For this reason, median cases have become the hardest-hit areas in terms of litigants and their lawyers entering into bribery activities.

We now consider the meaning of guanxi in more depth. As mentioned at the beginning of this thesis, guanxi in itself is a neutral concept; it is neither 'good' nor 'bad'. Literally, guanxi can be translated as referring to a 'personal relationship' or 'social connection' between two persons.¹² As Don Hough points out, '[g]uanxi, for example, can be nothing more than a network of friends and acquaintances, or it can be something rather more complex that helps you circumvent problems and challenges as and when required' (Hough, 2017, p. 34). In their article 'An introduction to the study of guanxi', Thomas Gold, Doug Guthrie and David Wank highlight that, '[g]uanxi has both positive and negative connotations, with the latter dominating most of the discussions. Critics see it as fuelling the country's rampant corruption, and as obstacle to China's becoming a modern society based on the rule of law (Gold, 2002). In her article 'Moral economy of corruption - Guanxi networks in China's courts', Ling Li (2018) suggests that guanxi is 'an omnipotent and omnipresent social phenomenon in China' (Li, 2018) and states that it represents a

¹² Zhang, C. and Hong, S., 2019. How it affects the business model of Chinese firms. In: Paulet, E. and Rowley, C. (eds.) *The China business model: Originality and limits*. Chandos Publishing.

particularistic relationship used to facilitate favour exchange. Furthermore, Thomas Gold believes that guanxi has a potent symbiotic relationship with corruption and that it is therefore sometimes difficult to separate one from the other (Gold, 2002).

In Chinese, guanxi literally means the 'existence of a relationship between people' or 'actual connections or contact between people' (Wang, 2017). It is true that guanxi has a natural potential to be used to facilitate corrupt exchanges. For example, in reality, only a lawyer who has close guanxi with a judge would be able to walk into that judge's office or home, invite them to dinner, a night out in a luxury club or to go travelling together, or send money or gifts to them without being rejected. From this perspective, guanxi forms the basis of judicial corruption. Looking at the Pan Case, the Wang Case and the Chen Case, Pan, Wang and the lawyer Fu Qianguo all had very close personal relationships, and they were all formerly Chen's subordinates for many years. Fu was educated in China, the former Soviet Union and the US. He served as a judge in the court system of Shanghai for 14 years, and then, in 1999, he set up his own law firm to continue practising. After setting up his firm, he employed as senior consultants many judges and judicial officials who had retired or resigned from their offices. In this way, he built up strong guanxi with the most influential judges and officials in Shanghai judicial circles.

When I discuss guanxi in this thesis, I refer to its negative connotation, that is such kind of relationship between lawyers and judges enabling judges to accept bribes

from lawyers, which I call in this thesis “corrupt guanxi”. The corrupt activities and social exchange based on corrupt guanxi will be called as “guanxi-based corruption” and “guanxi-based exchange” the in this thesis.

In contemporary Chinese society, social relationships are an extremely important resource and the concept of guanxi is a deeply rooted value. In their article ‘Guanxi culture: How it affects the business model of Chinese firms’, Zhang Chi and Hong Seock-Jin reach the conclusion that, “for Western people who want to invest in China, or doing business with Chinese partners, guanxi practice with key personnel is an inevitable process”. It is true that China is a society typically based on acquaintances. Many people believe in the well-known proverbs ‘it is convenient to do anything if you have friends in government’ and ‘it is impossible to get anything done if you have no friends in government’. It has become an unspoken rule that people can rely on acquaintances and guanxi to get things done, which has cultivated the environment that has given rise to judicial brokers.¹³ When a potential bribe provider wants to ask a power holder for help but they do not have guanxi or their guanxi is not deep enough, there is a need for a guanxi provider to act as an intermediary to bring the bribe provider and the bribe receiver together. Some litigants give more weight to lawyers’ guanxi with judges than their professional abilities when they choose representatives. All the interviewees in this research mentioned having experiences of being directly asked by some of their litigant clients whether they had guanxi (i.e. corrupt guanxi) with the relevant judges during the process of the litigants making

¹³ Wang, G. and Li, L., 2013. Corruption broker makes power rent-seeking more secret. *Procuratorial Daily*, 10 September.

the decision of which lawyer to engage. This indicates that some litigants make the guanxi factor their primary criterion when selecting lawyers to entrust with their lawsuits. Interviewee 5 stated that some litigants had even directly asked her to solve cases with the judges for them.

A private network of corrupt guanxi results in strong concealment and confidentiality of lawyers' bribery because all such activities only occur within a small social circle. Outsiders find it difficult to discover the internal secrets hidden behind what appears on the surface unless the internal relationships break down or information about the guanxi-based corruption is leaked by insiders. The concealment of bribery activities between judges and litigants is also strengthened by the participation of lawyers. Compared to litigants, lawyers have a better understanding on how the law regulates bribery crimes and therefore it is easier for them to evade legal supervision in many ways.

In the Pan Case, the Chen Case and the Wang Case, as mentioned above, it was reported that Wang, Pan and the lawyer Fu Qianguo were all former subordinates of Chen. During their professional histories, they established long-term corrupt guanxi with each other. These four individuals formed a small covert social circle within the judicial system in Shanghai that lasted for two to three decades. At various times, members of the group served as judges, prosecutors, the secretary general of the Arbitration Commission and lawyers. The effect was that they divided their work

among trial, prosecution, arbitration and ad-litem agent responsibilities, which essentially covers the full realm of judicial activities in Shanghai. They stood and connected tightly as a group, and they manipulated judicial activities and circumvented the law in Shanghai. Huge amounts of money and belongings came into their pockets and the system of social justice was therefore damaged.

All the interviewees stated agreement that cultivating guanxi is a norm rooted in Chinese culture and is acceptable to the public. Members of the public also accept the reality that lawyers may utilise their guanxi to conduct corrupt social exchanges with judges to benefit the interests of their clients (in the case that the opposing party does not provide a bribe) or to protect their clients from losses (in the case that the opposing party does carry out a bribe). Subconsciously, many lawyers think that following the crowd and participating in guanxi-based corruption is forgivable as it has a cultural foundation and is accepted by the public.

2. Competition pressure

Only about half of the lawyers in Shanghai are salaried lawyers – the rest are partners and independent lawyers who have to seek and attract clients and expand their business independently. Therefore, an ability to impress and attract clients and gain legal service contracts is the key to becoming a successful independently practising lawyer. The legal services market in China is relatively underdeveloped. It is difficult

for people living in developed countries with true rule-of-law systems to imagine that a litigant would evaluate a lawyer primarily based, not on their professional experience and skills, but on whether they have strong a relationship with the judge who is hearing the case, which will potentially enable them to negotiate a corrupt deal with said judge. However, this is the reality of contemporary China. Interviewee 1 stated that he believes that most Chinese litigants hope that the lawyers they engage have guanxi and are able to collude with the judges who hear their cases. It is common for a litigant to ask directly whether their prospective lawyer has guanxi with the judges in the court that have jurisdiction over their case when they first meet with the lawyer. As most litigants positively seek lawyers who have resources to collude with judges, the most popular lawyers in the market are inevitably those who have strong guanxi with judges, or who at least declare that they do.

To improve their chances of being engaged, when a potential client explicitly or implicitly expresses their concern about the guanxi a lawyer or a law firm has with the court, a sophisticated lawyer will always choose to persuade the client of the strength of their guanxi; even if they do not have guanxi with the judge(s) in question, the lawyer will normally be reluctant to directly admit this. One smart approach is to give an ambiguous response to the client. Interviewee 1 mentioned that it is not unusual in China for lawyers to emphasise that they have guanxi with the relevant court when they pitch to clients and to use this as a means of showing off their capabilities. In the article 'Chinese courts: History and transition' (2004), Xin mentions

that, as part of their attempts to attract potential clients, some law firms even publicly advertise that some of their employees are relatives of serving judges. The Pan Case, the Wang Case and the Chen Case involved the lawyer Fu Qiangguo, who resigned from the court system after serving as a judge for 14 years and set up his own law firm. As a business strategy, he recruited many retired judges and judicial officials. He also directly poached judges from the court to work for him. These former judges and judicial officials, now serving as senior consultants of Fu's law firm, promoted his services in the market. It became widely known that the organisation had strong *guanxi* within the judicial system in Shanghai, which caused the firm's business to bloom. In return for this, the total value of the bribes that Fu provided to influential people in the judicial system amounted to over one million USD.

In the article 'Standing on the end of scale - Game theory on judicial corruption', Dr Yuanqiong He highlights that there is a high level of competition pressure in the Chinese legal services market since it is a buyers' market with an issue of oversupply. In this context, lawyers tend towards catering to litigants' demands to adopt bribery strategies to ensure winning lawsuits, inducing litigants to pay bribes for the lawyers' own benefits in cases where they are charging fixed fees, or taking the initiative to pay bribes to judges independently in cases where they are charging a success fee (He, 2007).

Jiubing Zhu claims that the relationship between Chinese lawyers and clients is the

root cause for the phenomenon of lawyers' bribery. As lawyers have no business without cases, clients are especially important to them. Lawyers are in the position of being selected by their clients, and they can be replaced easily in most cases. The main criterion for a client when selecting their lawyer is often not based on professional skills, but rather on whether the lawyers has personal resources, whether they have a special relationship with the relevant judge and whether they can help to settle the matter at hand with the judge (Zhu, 2014).

The Chinese legal services market is an undeveloped market. The history of practising law as a career goes back less than 40 years in China. Most of the law firms in Shanghai are partnerships; in a Chinese partnership law firm, all the partners and independent lawyers (except salaried lawyers and trainees) have the responsibility to earn fees, and their income levels will reflect a certain percentage of the fees they earn. If they earn no fees, their income will be zero. At the end of 2018, there were a total of 423,000 lawyers across China, of whom 23,975 were practising in Shanghai.¹⁴ The population of Shanghai is roughly 24 million, which makes the ratio of number of lawyers to whole population 1:1,000. As recently as 2014, there were only 16,900 lawyers in Shanghai; this means that, in a period of four years, the number increased by 40%. Going back to 2008, the number was just 10,071, which indicates a 139% increase over ten years. With this increase in the number of lawyers, the competition

¹⁴ Zhou, Z. and Dong, Y., 2019. *Data comparison between lawyers from Beijing and Shanghai. Intelligest*, 8 April [Online]. Available at: <<https://www.zhihedongfang.com/60703.html>> [Accessed 22 September 2019].

for obtaining clients in the market is inevitably becoming tougher.

All the interviewees in the current research believe that the phenomenon of litigants picking lawyers based on their guanxi with judges is abnormal and should be discouraged. However, in reality, a single person is unable to act against the market's needs. Even a well-educated and highly trained lawyer may do what they can to compromise when faced with the competition pressure in the free market. Some lawyers turn to cultivating and managing their guanxi with judges, while others simply do not admit to their clients that they do not have a high level of guanxi.

3. Litigants evaluate lawyers by their winning rate

It is difficult for litigants to tell whether a lawyer has guanxi with judges based only on the conversations they have with the lawyer. In some instances, a lawyer may lie to them or exaggerate the facts. Therefore, many litigants are keen to see some indicators. The winning rate of a lawyer is often regarded as one such indicator by litigants when they are determining whether to hire a particular lawyer or not. To maintain better statistics in terms of this indicator, lawyers must aim to win as many of their lawsuits as possible. This makes it more likely for lawyers to collude with or induce litigants to bribe judges to win cases to improve their own position in the fiercely competitive market.

In a lawsuit, the ultimate goal of the litigants is to win the case. Chinese lawyers are often asked a direct question by litigants about the odds of winning the case when they first meet. Clients want lawyers to be able to foresee everything from the outset and prejudge the final outcome of their cases in a straightforward manner. They often have no interest in listening to a lawyer's lengthy professional analysis.

Judges have certain degrees of discretionary power in civil litigation, especially in cases where the rationale and evidence bases of both the litigants are evenly matched; in such contexts, which litigant has better *guanxi* with the judge may become a key factor in the outcome of the case. In the field of litigation in China, it has become a very obvious tendency for litigants to judge the abilities of a lawyer based on the results of litigation. As Interviewee 1 stated, a lawyer will be regarded as successful from the perspective of their clients as long as they can win their lawsuit, regardless of the methods they employ to win. On the contrary, if a lawyer ultimately loses the lawsuit, even if they have shown a high level of professionalism and have prepared exceptionally for the lawsuit, the litigants will generally still be dissatisfied with the lawyer and their work. This situation leads some lawyers to aim to cultivate corrupt *guanxi* with judges separately from their professional work in order to secure more controllable and beneficial results in litigation proceedings. Interviewee 2 pointed out that, in her eyes, lawyers are businessmen who need to improve their success rates for the benefit of their business. Interviewee 6 mentioned that, in Shanghai, the winning rate is not an absolutely reliable indicator for whether a lawyer is

professionally competent, as some lawyers devote themselves to developing and applying corrupt guanxi to win lawsuits rather than to improving their legal skills. The result is that some lawyers with low professional competence are ranked very highly in terms of case success rates.

Additionally, Interviewee 6 mentioned that lawyers feel very pressured during enforcement procedures as well as trial proceedings. In Chinese civil litigation cases, the lawsuit enters enforcement procedures directly after the ruling is confirmed. To eventually realise their rights and interests, litigants usually need to entrust lawyers to apply to the court to appoint an enforcement judge to ensure compulsory judicial enforcement against the defendants' assets, properties and bank accounts. However, the current legislation does not require the court to publicly disclose the process of enforcement, which makes it impossible for the public to observe and supervise these activities. Furthermore, there is no strict time limit for applying enforcement procedures. Hence, enforcement judges have more room to operate in enforcement cases, which catalyses a stronger desire in litigants and lawyers to win enforcement judges' attention and secure priority in the processing of their cases by bribing the judges. To some extent, bribing judges thus becomes a judicial self-rescue act for litigants to promote the enforcement of the rulings of their cases.

4. Greed: Pursuing increased economic benefits

Before conducting the interviews, one of the research hypotheses proposed that the main reason why lawyers participate in bribery is that, due to their high costs of living and work expenses alongside their relatively low income levels, lawyers in Shanghai intend to obtain illegal commission through assisting litigants in bribing judges. We assumed that, in this way, lawyers would be able to obtain additional income over and above their formal fees for legal services, which can be regarded as constituting price compensation for lawyers. From this perspective, the reason for lawyers gaining illegal commissions would be that they have to do so as the price of their services in the market is lower than it should be.

However, our interview results demonstrate that price compensation is not the main reason for Shanghai lawyers to participate in bribery. The common perception of the Interviewees is that Shanghai lawyers' income levels are much higher than those of judges and other judicial officials and are generally adequate for lawyers to pay for housing, to fund their children's education and to maintain a decent lifestyle. According to a survey conducted by Average Salary Survey in 2018, the average annual salary of a lawyer in Shanghai in that year was USD 36,903.¹⁵ This amount can even be doubled if we take into account the statistics disclosed elsewhere online. Sina.com disclosed that, in 2018, there were a total of 23,975 lawyers in Shanghai and the total

¹⁵ Average Salary Survey, 2018. *Lawyer salary in China*. 15 April [Online]. Available at: <<https://www.averagesalariesurvey.com/lawyer/china>> [Accessed 5 September 2019].

value of the fees they earned was RMB 23.75 billion (approx. USD 3.4 billion).¹⁶ Therefore, the average legal services fees (before costs and taxes) earned by each Shanghai lawyer in 2018 were USD 143,000. If we set profit margins at 50%, which is approximately the case in the researcher's law firm, the average annual income for a lawyer in Shanghai comes out at around USD 71,500.

The verdict of the Wang Case shows that Wang accepted bribes totalling RMB 960,000 (approx. USD 137,000) and USD 5,000 from Lin Xinghe, the managing partner of Shanghai Tianyun Law Firm. In exchange, Wang utilised the advantages of his position as a judge to corruptly facilitate Lin's litigation and made use of his power as the head of the Shanghai Arbitration Commission to appoint chief arbitrators to gain illegitimate benefits for Lin in his arbitration proceedings.¹⁷ Although it cannot be determined how much Lin gained from these corrupt exchanges with Wang, it can be assumed that his returns also comprised a large amount of money, which cannot simply be regarded as reasonable legal price compensation for his professional services.

In the Pan Case, the bribes that the lawyers provided to the judge also involved

¹⁶ Sina.com, 2018. *Average Annual income of lawyers in Shanghai is RMB 990,000 in 2018*. 27 May [Online]. Available at: <http://k.sina.com.cn/article_3215894747_bfaea8db01900gsy2.html?wm=3049_0032> [Accessed 5 September 2019].

¹⁷ Wang, H., 2018. The private legal circle of Chen Xu in Shanghai. *Caixin Weekly*, 4 June [Online]. Available at: <<http://weekly.caixin.com/2018-06-02/101261562.html?p0#page2>> [Accessed 4 September 2019].

substantial sums of money; for example, RMB 300,000 (approx. USD 43,000) from Li and RMB 500,000 (approx. USD 72,000) from Fu Qiangguo. Again, we do not know how much commission the lawyers gained from these bribery activities. The researcher understands that the common practice is for commission from corrupt activities to always be separated from normal legal service fees. They may be billed to the clients in one invoice statement, but the lawyer will always charge their legal services fees separately from any corrupt commission charges. In large-scale corrupt deals, it is not surprising that a lawyer will gain much more from this type of commission than from their legitimate fees. This paper does not present statistics or empirical data about the proportion of lawyers' monetary gains from bribery. However, based on the information obtained from our interviews, it is reasonable to speculate that a lawyer's corrupt commission can amount to 25% to 50% of the total bribe value. Interviewee 2 stated that, when lawyers agree to bribe judges for litigants, the litigants will normally give a certain amount of money to the lawyers and not ask about the details of the bribery. On the surface, all the money provided by the litigants should be given to the judges; however, ultimately, only the lawyers themselves know how much is actually paid as a bribe and how much is retained as their own commission. In some extreme situations, lawyers may keep most of the money provided by the litigants and only pass on a small proportion of the intended bribe to the judges.

From both the Wang Case and the Pan Case, we can see that the monetary gains of lawyers involved in bribery are on a very large scale. These amounts of money cannot

be explained simply as legal price compensation as the sum of the legal fees and the corrupt commission exceeds normal legal service fees by too great an extent. The true motivation is to gain as high a level of pecuniary benefits as possible. As Interviewee 2 pointed out, to a certain degree, lawyers are simply businessmen, and the nature of a businessman is to pursue higher profits by any and all means. Even though corrupt lawyers understand that bribery is illegal, they still choose to participate in judicial corruption out of greed.

5. Deteriorating industry sentiment and lawyers' lack of professional honour

Interviewee 3 believes that young lawyers are more likely to bribe judges than lawyers with more years of practising experience. One reason for this is that age and work experience can affect a person's ability to assess risk. Another factor is that young lawyers are under greater pressure to survive in the ruthlessly competitive market environment. In comparison to older lawyers, who are more likely to have accumulated a stable client base, young lawyers are more reliant on gaining recognition from clients and obtaining case resources. Beliefs such as the idea that case resources must be their first priority have impacted many young lawyers' values. Even if they have not formed a clear career plan yet, they are eager to make profits quickly in the short term.

Interviewees 3 and 4 both stated that the working atmosphere in the legal industry

sector is gradually deteriorating, that lawyers lack a sense of professional honour and that legal practitioners are not respecting their profession. Few lawyers and judges want to devote their full attention to processing cases and studying laws. Due to the deteriorating working atmosphere and the negative influence of the social environment, some lawyers would rather prioritise ingratiating themselves to judges or yielding to litigants' unlawful requests for tangible economic benefits than continue to study the law and improve their professional skills. Interviewee 5 pointed out that the 'implicit rule' of lawyers colluding with judicial officials is becoming an 'explicit rule', which has obviously damaged the working atmosphere and the practising environment throughout the legal industry in Shanghai.

According to a survey conducted by a city lawyers' association on lawyer practice, social activities have become an indispensable part of work for lawyers. The survey's findings indicate that 82.4% of lawyers in Shanghai have weekly social activities; the largest proportion of these (69.8%) spend one to three days a week on social activities, while 10.9% spend more than four days a week on social activities.¹⁸ Interviewee 5 mentioned that many lawyers measure their success simply by how much they can earn. Some lawyers take pride in being able to earn high fees without needing to appear before the court and attend court hearings. In other words, in the eyes of these lawyers, the most important ability in their profession is to make money in the market by whatever means, which is just like the view a businessman would take.

¹⁸ Huo, H., 2015. The embarrassing Chinese lawyers. *International Herald Leader*, 1 June.

6. Lawyers' low status is not a main motivator for corruption

All of our interviewees agreed that the 'low status' of lawyers is related to many lawyers' participation in judicial corruption; however, none of them believed that this is a main motivator. From a macro perspective, it is true that the status of lawyers in the Chinese legal system and judicial structure is relatively low. The work of lawyers is to assist judges in establishing the merits of cases and deciding on the appropriate amount of compensation. In many cases, judges have a high level of discretion in their rulings; therefore, judges are more important to the outcomes of lawsuits than lawyers. However, lawyers are professional services providers. The services that they sell to litigants are their expertise and experience in the field of dispute resolution. Generally speaking, lawyers in Shanghai are respected by the litigants they represent and by the public. In any case, lawyers have the liberty to choose whether to collude with corrupt judges or not. The factors that actually influences lawyers' decisions in this type of corrupt activity are ultimately based on monetary benefits.

7. Conclusion

In conclusion, cultivating guanxi is a norm rooted in Chinese culture, and the general public holds the perception that it is difficult to win a lawsuit without guanxi. Most litigants want to find a lawyer who has strong guanxi with the judge for their case.

Therefore, catering to the public's perception can be seen as one of the motivations for lawyers to participate in judicial corruption. High competition pressure in the legal service market is another important motivation. If a lawyer does not participate in cultivating guanxi with judges, they will probably lose out in terms of gaining clients and consequently will earn no, or at least significantly reduced, income. For the same reason, the drive to maintain high win rates in order to attract clients is another driving factor. Many lawyers are not satisfied with an average income; they want to obtain as much profit as they can in the market when there are opportunities for them to do so. Earnings large amount of money by way of bribery is completely driven by greed, which is obviously a main motivation in this context. Deteriorating industry sentiment and lawyers' lack of professional honour also contribute to the high frequency of judicial corruption activities.

Chapter Three: Lawyers' ability to participate in judicial corruption

The empirical data demonstrates that lawyers in Shanghai do participate in judicial corruption, mainly based on the motivations of high competition pressure and greed for excessive profits. The problem to address here, and the third question of this thesis, is why lawyers are capable of participating in judicial corruption.

1. Judges have the demand to accept bribes

From 2010 to 2015, the courts in Shanghai lost an average of 67 judges per year, and the losses usually consisted of the elite members of the courts, ranging from 40 to 50 years old.¹⁹ It is understood that the main reasons for the departure of these judges were high work pressure and low income levels. On the one hand, under the inquisitorial trial system in China, the courts need massive amounts of manpower to try cases. According to an official work report issued by the SHC, during the five-year period 2013–2017, the judges in Shanghai completed adjudication of a total of 3.15 million cases²⁰ – about 630,000 cases each year. There were approximately 2,855

¹⁹ Li, Y., 2015. More than 300 judges have been lost in Shanghai in five years and CPPCC members recommend a substantial increase in remuneration. *The Paper*, 27 January [Online]. Available at: <https://www.thepaper.cn/newsDetail_forward_1298454> [Accessed 26 September 2019].

²⁰ Cui, Y., 2018. Report on the work of Shanghai Higher People's Court. *Shanghai Court Net*, 9 February [Online]. Available at: <<http://shfy.chinacourt.gov.cn/article/detail/2018/02/id/3206067.shtml>> [Accessed 22 September 2019].

judges in total in Shanghai during this time; therefore, each judge had to try about 220 cases per year. The manpower in the courts is not sufficient, which increases the pressure in terms of handling cases. On the other hand, judges experience high pressures in terms of their lives, their rank and their remuneration. In her article 'Compromise and breakthrough: Path choice of reform on judge salary mechanism in China' (2017), Lei Li mentions that the average monthly income of civil servants in Shanghai is approximately RMB 10,000 (approx. USD 1,500).²¹ However, we believe that this figure is accurate for judges only when they are at entry level. Salaryexpert.com provides its own figures suggesting that the average base salary of a judge in Shanghai is RMB 28,1870 (approx. USD 40,000) per year.²² This figure is closer to the real income for senior judges around the age of 45, whose annual salaries can range from USD 35,000 to USD 40,000. Li (2017) also mentions that 'the actual treatment of the judge is worse than the civil servant at the same level'. Even if that is not the case, considering the actual workload and the responsibilities that judges face, it must be acknowledged that the current annual salary for judges around the age of 45 is at a low level compared to the average for civil servants.²³ As

²¹ Li, L., 2017. Compromise and breakthrough: Path choice of reform on judge salary mechanism in China. *DEStech Transactions on Economics, Business and Management* [pdf]. Available at: <<http://dpi-proceedings.com/index.php/dtem/article/download/13126/12652>> [Accessed 23 September 2019].

²² Salary Expert, 2019. *How much does a judge make in Shanghai, China?* [Online]. Available at: <<https://www.salaryexpert.com/salary/job/judge/china/shanghai>> [Accessed 23 September 2019].

²³ In comparison, the remuneration of judges in Hong Kong is 1.36 times to 14.25 times higher than that of other civil servants, and the remuneration of British judges can be 6.5 to 13 times that of other civil servants. See: Li, Y., 2015. More than 300 judges have been lost in Shanghai in five years and CPPCC members recommend a substantial increase in remuneration. *The Paper*, 27 January [Online]. Available at: <https://www.thepaper.cn/newsDetail_forward_1298454> [Accessed 26 September 2019].

mentioned above, the average annual income for a lawyer in Shanghai is approximately USD 71,500, which is nearly twice that of senior judges. Judges within this age group often face problems in paying for their children's education and making improvements to their homes in Shanghai. Thus, they need to find another way to maintain a certain level of economic income to ensure a high standard of living.

in the context of the low salary levels of their jobs, judges can only turn to opportunities in litigation. As a matter of fact, it has long been an unspoken implicit rule in the Chinese judicial circle that some lawyers and a minority of judges have formed interest chains to obtain illegal interests through the introduction of case sources, coordination of relationships and intervention in cases. Relevant individuals from the Official Investigation Office of Chongqing Procuratorate have stated that in court corruption investigations, lawyers are sometimes the direct bribe providers and sometimes the brokers between judges and clients. On average, a judge being shown to have accepted bribes will reveal more than five lawyers who have offered bribery in cases relating to that judge's corrupt activities. From the perspective of a corrupt judge, a lawyer who they trust concludes a high-price legal service agreement with a litigant, while the judge utilises his judicial power and enforcement power to support the litigant's claim, and then the price will be distributed by the lawyer and the judge proportionally after the illegal interest is realised.

The needs and pressures of children's education and housing improvement expenses

may indeed cultivate judges' intentions and actions in relation to accepting bribes. This could be an explanation for cases of bribes involving small amounts of money. However, this reason does not seem able to explain several cases in Shanghai that have been criminally tried in recent years, including the Pan Case, the Chen Case, the Wang Case and the SHC Case. The sums of money involved in the bribes received by the judges were extremely high in these cases, far exceeding the normal expenses of a family. Chen Xu, who was confirmed to have received bribes totalling RMB 74.23 million (approx. USD 11 million), stated the following in his letter of confession:

If I drink liquor, I only drink Maotai [a top liquor brand in China] and I can tell which year it was made; if I drink wine, I only drink wine from the three major French wineries and I can tell which brand it is; I also have a hobby of smoking cigars; I started to learn how to play golf in 2005 when playing golf was a popular sport in society, which all constitute my high-consumption life.

Wang Kangwu was confirmed to have accepted bribes of RMB 6.11 million (approx. USD 880,000) and USD 90,000, while Pan Furen was accused of accepting bribes of RMB 8.05 million (approx. USD 1.18 million). Zhao Minghua, Chen Xueming and the other judges in the SHC Case had frequently visited high-end restaurants, nightclubs and brothels together. In cases with bribes involving very large sums of money, corrupt judges' demands for or acceptance of bribes is not just due to their remuneration not being high enough, but also because they wish to pursue a luxurious or even extravagant lifestyle and high levels of enjoyment. Whatever the reason for a judge's pursuit of money is, there will be a demand for judges to accept or ask for bribes. Once there is a demand, in normal occasions, there will be supply.

2. Judges' high levels of discretionary power lead to corruption

Lawsuits can be divided into three categories. The first category involves cases in which a lawyer's clients do not have much strong evidence and their odds of winning are relatively low. The second category comprises cases in which the evidence held by both parties is evenly matched and the odds of either client winning are difficult to prejudge. The third category consists of cases in which the evidence held by a lawyer's client is clearly in the dominant position and there are legitimate and sufficient grounds for those litigants to win the lawsuit. Here, we also classify enforcement cases into the third category. In many situations, after the verdict of the court becomes effective, the clients need to continue to apply to the court to ensure the enforcement of this effective verdict. In such enforcement cases, the clients have already won their lawsuits and the court is under an obligation to enforce its rulings. However, the clients may still face difficulties in securing enforcement against the defendants' assets and properties in a successful and timely manner. In reality, in many situations, if a lawyer's clients cannot obtain extra attention and help from the enforcement judges, it may take many years for them to receive their compensation, or they may even get nothing in the end.

For cases falling within the first category, since the clients do not have reasonable rationales or strong claims/defences, under normal circumstances, judges will not

want to accept bribes and intervene unfairly in such cases. This is because, if the judge accepts a bribe to 'reverse black and white', the opposing parties will feel that justice has not been served at all and will inevitably appeal the case to a second-instance appellate court. The possibility that the appeal court will overrule the judgment of the first instance is very high, and the parties involved may even take some unexpected measures to attack the judges. The risk that the corrupt exchange between the judge and the clients being discovered will thus be relatively high. The SHC Case is a vivid example of this. The whistle-blower, who was the defendant of a lawsuit, was initially disgruntled as he suspected that Judge Zhao Minghua of the SHC was corrupt and had interfered unfairly with the lawsuit he had been involved in against Zhao's relatives. He then spent one year trailing the judge and shot footage of the activities he took part in during his spare time. As a result, the judge's secret and corrupt activities were revealed. For this reason, neither judges nor lawyers will be willing to enrage the opposing party in the first type of lawsuit and take the risk of them taking revenge.

For cases falling within the second category, the outcome of the lawsuits depend heavily on how the judges weigh the evidence presented by both parties and their application of their judicial discretionary power. Thus, the attitudes and opinions of the judges are critical. There is a high risk of this discretionary power creating opportunities for corruption. The researcher's findings demonstrate that, in reality, a high number of severe corruption incidents have occurred in such cases, in which the

amounts of money in dispute are huge and the judges have substantive decision-making power. The issue in these cases is that judges have broad flexibility to adjust and manipulate the final outcomes of the lawsuits without those outcomes being questioned. In other words, the outcome of such a lawsuit may be slightly biased towards a party who has bribed the judge, but the grounds for the ruling are still very justifiable and the outcome is logically self-consistent, which makes it unlikely to be reversed on appeal. Therefore, for corrupt judges and lawyers, bribery related to this category of cases is relatively safe.

With regard to cases falling within the third category, although they seem the least likely to involve corruption, in reality, some litigants still want to bribe judges via their lawyers to secure winning their lawsuits and thus ensure their legitimate rights and interests. Such a mindset of increasing the security of winning is also evident in enforcement cases. Since the enforcement procedures of Chinese courts are lengthy without clear time limits and one enforcement judge can be handling dozens of enforcement cases at the same time, even if the client's application of enforcement is completely legitimate and justified and the court is under a statutory obligation to enforce its ruling, the applicant may still face many obstacles if attempting to realise their interests effectively and efficiently without extra attention and help from the judge. As Interviewee 6 also stated, it is thus not difficult to understand why so many bribes occur in relation to enforcement proceedings.

3. Lack of a trusting foundation between judges and litigants

Since both offering bribes and accepting bribes are highly risky activities, both bribe providers and bribe receivers want their bribery to be conducted under covert and safe conditions. Our research demonstrates that, out of the considerations of covertness and safety, judges tend only to accept bribes from people they trust.

Since litigants and judges usually do not know each other and there is no foundation of trust between them, while lawyers have connections with both of these groups, there is a need for lawyers to play the role of judicial intermediaries or brokers in the process of litigants bribing judges. Both litigants and judges will face huge risks if they participate in bribery without a foundation of trust; thus, it is necessary to find an intermediary who is acceptable and trustworthy to both sides to help them establish connections. Our research indicates that whether a judge takes a lawyer's bribe will largely depend on how close the *guanxi* is between them. Interviewee 1 stated that, if a lawyer does not have a pre-existing corrupt *guanxi* with a particular judge, that judge will normally not accept bribery from them. The implication is that not everyone is 'eligible' to offer bribes to judges. In consideration of the high risks of offering and accepting bribes, judges would typically not easily agree to requests from unfamiliar lawyers or have face-to-face meetings outside their offices with lawyers who are not within their 'small social circle' unless they are recommended by the judges' acquaintances. Lawyers can act as intermediaries in such corrupt

exchanges because they deal with both litigants and judges during judicial proceedings, which means they have cooperative relationships with both sides. The lawyers are naturally trusted by both parties; therefore, it is reasonable that lawyers can act as intermediaries between litigants and judges.

Through establishing trust with a corrupt judge, a lawyer can ask to be allowed to introduce more clients to them and can request for the judge to give a more favourable verdict for their clients or to facilitate the compulsory judicial enforcement procedures for certain cases. Additionally, the lawyer can take advantage of their corrupt guanxi with the judge to act as a judicial broker to introduce other lawyers to them. In return, the corrupt judge will obtain a bribe from a litigant or be offered a share in the lawyer's legal service fees. In other words, lawyers construct a corrupt symbiotic relationship with judges through bribery, wherein lawyers play the role of judicial brokers to provide convenience in the conducting of bribery between judges and litigants.

Yan Bo, a former assistant judge in the Enforcement Department of the Chongqing Higher People's Court, accepted a bribe of RMB 3,850,000 (approx. USD 558,000) from Qiu Xingsheng, the director of Chongqing Guangxian Law Firm. In exchange, Yan provided case resources to Qiu and gave him additional assistance in compulsory judicial enforcement procedures. On this basis, Qiu was sentenced to four years' imprisonment and his practising licence was revoked, while Yan was sentenced to 15

years' imprisonment. Judge Yan wrote in his letter of confession that:

In my point of view, the guanxi between judges and lawyers is just like the guanxi between doctors and medical representatives. Lawyers allocate part of their legal service fees to judges, in the same way as medical representatives give kickbacks to doctors. Bribery has become an implicit rule in both the legal and medical industries.²⁴

Lawyers hold advantages in terms of establishing long-term trust or corrupt guanxi with judges. On the one hand, a large number of lawyers and judges graduate from the same law schools. In the researcher's case, out of a total 50 students in their graduating class in 1999, 25 work in Shanghai and the others work in other cities across China. Among the 25 individuals who work in Shanghai, six are judges, two are judicial officials and six are lawyers. In Shanghai, lawyers and judges are highly likely to be alumni or former classmates from the same school or to share common friends who have such connections. Some lawyers also serve in the courts before they transfer to working as lawyers; therefore, these lawyers have a relationship with judges due to being former colleagues. There are numerous overlaps between the social circles of lawyers and judges, which makes it likely that a friend of a lawyer's friend may be a friend of a judge. Thus, it is often easy for lawyers to take advantage of such connections to form a trusting foundation and become acquaintances with judges. On the other hand, given that lawyers are often in contact with judges in

²⁴ Zhu, W., Wu, S., Tong, F. & Tu, M., 2013. Media reports there are average more than five bribe-giving lawyers behind a bribe-taking judge. *People.cn*, 14 August [Online]. Available at: <<http://politics.people.com.cn/n/2013/0814/c1001-22565607.html>> [Accessed 22 May 2019].

litigation activities, they will naturally generate a good understanding of each other's characters, personalities, credibility and lifestyles over a period of time, which can also help to establish a certain degree of trust or even a sense of tacit understanding to ultimately increase the efficiency of each other's work. Such a relationship of trust constitutes the base of the corrupt guanxi between lawyers who intend to offer bribes and judges who intend to accept bribes.

As mentioned at the beginning of this study, guanxi itself is a neutral word; it does not inherently have either directly negative or directly positive connotations. However, guanxi naturally has both of these types of connotation (Gold, 2002). In this thesis, we use the term corrupt guanxi to indicate the negative connotations of guanxi. In cases of corrupt guanxi, a judge and a lawyer have a deep foundation of trust and can conduct 'guanxi-based corruption' (Li, 2018).

After lawyers have established a certain level of trust with both the litigants and the judges, it is understandable and reasonable that they can act as intermediaries to help to communicate the needs and trading conditions of each group between litigants and judges. The way in which lawyers are able to help to convey interests between litigants and judges is quite similar to the way banks can issue letters of credit and facilitate transactions between buyers and sellers due to their excellent credit.

4. Asymmetric information

From the perspective of litigants, the first problem they face when they intend to offer bribes to judges is asymmetric information. As offering bribes is a high-risk action that involves criminal liability, it is not possible for litigants to blindly offer bribes to judges under normal circumstances as, typically, only some judges in a particular court are corrupt, while others are not. The litigants will thus need their lawyers to act as intermediaries to connect them with corrupt judges.

Given that lawyers often deal with judges in their daily work, they are usually familiar with the occupational quality and moral principles of said judges. It is not unusual for a lawyer to know which judges are corrupt and which are not within a given court, and even to know the corrupt judges' preferences in terms of receiving different kinds of bribe. It will also be quite clear to such a lawyer how they can secretly offer bribes without being noticed. Therefore, the information available to lawyers is asymmetric with that available to litigants who are rarely engaged in lawsuits. This is similar to, for example, the asymmetric information about real estate available to real estate agents and ordinary property buyers. Thus, litigants precisely targeting suitable judges via their lawyers can reduce the risk, increase the efficiency of the corrupt transactions and help to secure maximum profits at minimal costs. Dr Yuanqiong He (2007) points out that the width and frequency of the game mechanisms that lawyers are involved in with different judges makes it easier for them to understand the judges' utility and their reputations in terms of bribery and thus become the collector and

master of the judges' credit in judicial corruption activities. This feature of lawyers is obviously of great value to clients who have less information available to them. By the same token, lawyers will know better than judges which litigants are more willing and likely to pay bribes. Therefore, judges who intend to accept bribes also needs to locate their targets for seeking bribes through using lawyers as their middlemen to reduce their risk of being discovered and sanctioned.

From an economic perspective, if offering and receiving bribes is regarded as a method for conducting business transactions, then judges are the sellers and litigants are the buyers. Due to lack of channels for direct information exchange between these sellers and buyers, demand and supply cannot match up. On that basis, lawyers act as intermediaries to facilitate the transactions between bribe providers and bribe receivers, thus creating exchanges of power resources with monetary interests based on corrupt guanxi.

5. The advantages of lawyers' profession

Lawyers provide legal counsel and attorney services to clients in litigation cases and therefore charge legal service fees. Lawyers can package their work as intermediaries to influence judges as a part of their legal services and sell it to clients. They can even issue legitimate invoices for the bribes paid by the clients so that the clients' improper expenses can be taxed and properly credited in their account books (Li, 2018).

Additionally, under Chinese law, lawyers are allowed to enter judges' office with judges' prior permission. Thus, lawyers can access judges' offices more easily than their clients can by using the legitimate excuse of discussing the case and thereby exchange opinions with judges in person without worrying about being monitored.

6. Conclusion

The research findings demonstrate that the reasons why lawyers are able to participate in judicial corruption include judges' demand for bribes due to their high adjudication work pressures and relatively low income levels. Judges' discretionary powers create plenty of opportunities for them to take bribes. Litigants and judges usually do not know and trust each other since the litigants normally do not appear in front of the judges frequently; however, lawyers do. The lack of a foundation of trust between litigants and judges and the asymmetric information between lawyers and their clients lead to lawyers being required to step in and play the role of intermediaries. In addition, the lawyers' profession grants them advantages in terms of participating in judicial corruption.

Chapter Four: The ways in which lawyers participate in judicial corruption

As discussed above, there are many reasons why lawyers are in a position to act as the intermediaries of bribery between judges and litigants. There is no doubt that lawyers' roles in corruption involve acting as both the long-term trusted partners of judges and the intermediaries between litigants and judges. The next question to consider is how they act in these roles in the process of corrupt exchanges.

The research findings demonstrate that the methods of lawyers' participation in judicial corruption activities can be classified into two categories. The first approach is to cultivate and maintain long-term *guanxi* with judges and then apply such *guanxi* to facilitate a corrupt exchange in relation to a specific lawsuit in which the litigant demands or agrees to bribe the judge in exchange for a biased ruling in favour of the bribe-paying litigant. In this context, cultivating *guanxi* with judges is similar to buying a high-class club membership. Once an individual purchases membership, they are allowed to bring their friends into the club and to enjoy the facilities and entertainments on offer, although perhaps an extra cost will be charged for such friends. Without the club membership, an individual is not allowed to bring their friends into the club. As the club is a high-class establishment, individuals must meet all the strict conditions and may need to wait a long time to obtain membership. Such a process of obtaining the high-class club membership is similar to building up a long-term *guanxi* with the judges. Once the membership is obtained – that is, long-term

guanxi has been established with a judge – a lawyer will be able to bring a litigant to the judge to negotiate a corrupt deal. Cultivating guanxi with a judge may take the lawyer years of time and repeated plying of the judge with gifts and benefits, dining, travelling, entertainment activities and complementary services, both for the judge themselves and for their family members. According to media reports, Fu Qiangguo maintained rather strong guanxi with the leading members of the Shanghai court system and frequently invited them to travel abroad. In the Chen Case, when Chen's ex-wife died, Fu helped Chen to organise the funeral, including buying the gravesite. Later on, when Chen got married again, Fu took care of everything for the wedding. First, he purchased some shares in a pre-IPO company, and then he transferred a proportion of these shares valued at RMB 25 million (approx. USD 3.6 million) directly to a fund company controlled by Chen's son. In the Wang Case, Fu also maintained long-term trusting guanxi with Wang. Wang's daughter lived in Fu's house in the US when she went to study there at a very young age.²⁵ In the SHC Case, more than a year after the photos and videos were released, a whistle-blower confirmed that a lawyer had paid for Zhao Minghua, one of the judges involved, to visit nightclubs many times. It is conceivable that the regular consumption of entertainment activities is an indispensable element in lawyers establishing long-term guanxi with judges.

After this long-term interactive process, a lawyer may finally win the trust of a judge and be allowed free access to their office or even their home. Once such long-term

²⁵ Ibid.

guanxi is well established, when a specific lawsuit arises where the litigant wants the lawyer to bribe the judge, the lawyer can immediately talk to the judge to negotiate about the corrupt arrangements/deals and whether and how to collude as they already trust each other based on their pre-existing long-term guanxi. The importance and universality of this approach was affirmed by all the interviewees, and they all stated that it is a common phenomenon. From the perspectives of income and client acceptance, the most successful litigation lawyers in Shanghai are those who start to cultivate and maintain long-term guanxi with the judges who they have the most frequent business contact with from the very beginning of their careers. The longer the guanxi is established for, the deeper the trust becomes between the lawyer and the judge. In the Pan Case, the Wang Case and the Chen Case, the history of guanxi between the bribing lawyers and the judges was more than two decades long.

The second approach is case-by-case bribery. First, even if a lawyer already has guanxi with a judge, they will still need to pay a bribe in relation to a specific lawsuit. The guanxi only means that the lawyer is 'qualified' to negotiate this type of case-by-case bribery. Second, the lawyer may be engaged by a client in a lawsuit in a court that they are not familiar with, and therefore, where they do not have long-term guanxi with the judge. However, they might still consider bribing the judge in charge of the lawsuit as requested by the litigant. In this situation, what drives the bribery is not the long-term guanxi between the lawyer and a particular judge, but the demands of the litigant and the lawyer's desire to earn more money. When taking this approach,

a lawyer will need to seek help from another lawyer or a different individual who has long-term guanxi with the judge in charge of the lawsuit. This other individual can then introduce the lawyer and endorse their credibility to the judge so that the lawyer can negotiate the case-specific bribe with the judge.

1. Cultivating long-term guanxi with judges by giving gifts

All the interviewees indicated a belief that, among the judicial corruption activities in which Shanghai lawyers participate, only a few cases are purely case-by-case bribery; most of the corruption involves lawyers establishing long-term guanxi with judges, prosecutors or judicial officials in various ways and mutual trust developed over a long term. Interviewee 2 admitted that she thinks that corruption by way of establishing long-term guanxi has become an ‘industry rule’ that everyone working in this industry knows well. As discussed above, the term guanxi sometimes has a specific meaning in Chinese culture of referring to strong trust that can be used to conduct corrupt transactions in a narrow sense. Here, we refer to corruption based on such guanxi as ‘guanxi-based corruption’, and we can also call this type of guanxi ‘corrupt guanxi’. In this thesis, absent any other explanation, the guanxi we discuss refers to this type of corrupt guanxi.

The establishment of corrupt guanxi is a long-term and gradual process. Lawyers need to build, manage and maintain such guanxi diligently and carefully across a long

period of time. Normally, when a lawyer accepts a lawsuit and the litigant requests for them to bribe the judge to obtain biased support, the lawyer will not directly contact the judge who is in charge of the case immediately and propose to bribe them, regardless of whether or not they already have corrupt guanxi with the judge. If the lawyer hastily proposes a bribe to a judge with whom they do not have corrupt guanxi, the judge may report their intentions to the appropriate authorities, which will lead to the lawyer being punished. Such an approach obviously confuses the secret social transactions of judicial corruption with open market transactions and is very unlikely to be accepted by the judge. In contrast, Interviewee 1 gave an example that a state-owned enterprise she once provided services to had been providing a fixed amount of around RMB 300,000 (approx. USD 43,000) to the court of the area where the enterprise is based every year as a routine public relations fee. Providing such a public relations fee is not directly related any specific cases the enterprise is involved in; rather, the purpose is to maintain long-term trust and guanxi with the court. In exchange, if a lawsuit involving the enterprise comes up in this court, the judges will have a tacit obligation to protect the interests of the enterprise as far as possible within their judicial discretionary power. Similarly, in the YDS Incident mentioned above, YDS Law Firm sent various gifts and cash as New Year gifts to 54 judges, prosecutors and judicial officials. It is believed that the firm had done the same each year for many years. The purpose of these gifts was also simply to maintain long-term guanxi with these judges, prosecutors and judicial officials, rather than to bribe them for any specific lawsuits.

The findings of the current research also demonstrate that many lawyers believe that developing and maintaining long-term guanxi with judges is a standard thing that they have to do as they are litigation lawyers and their work involves dealing with judges on a daily basis. The purpose of developing such guanxi is not necessarily to require judges to pervert the law and adjudicate disputes unjustly; often, it is merely done in the hope that judges will not side with the opposing party and to improve the efficiency of adjudicative activities. A lawyer cannot know whether their opposing counsel has guanxi with a judge or not. If one party has guanxi with the judge and they reach a corrupt deal, this will be detrimental to the interests of the other lawyer and their litigant. Meanwhile, if one lawyer already has pre-existing guanxi with the judge, the judge will be more likely to reject a corrupt deal offered by the opposing party. Additionally, even if a lawyer's demand is legitimate, meaning that they are not asking the judge to pervert the law, the lawyer may still need help from the judge to make their client's interests a priority. For example, during an enforcement procedure, if the lawyer has guanxi with the judge, the judge may help to improve the efficiency of the enforcement. This cannot be said to be perverting the law or showing bias towards the applicant, but it is still crucial to the applicant. In such a scenario, where the applicant is pursuing a legitimate interest as they have a right to obtain compensation from the enforcement procedure, long-term guanxi between lawyers and judges can also be used to support these lawful rights.

2. Bribing judges on a case-by-case basis

As mentioned above, only after lawyers have built a long-term guanxi with judges, in a manner similar to obtaining membership in a high-class club, are they able to contact the judges and negotiate corrupt transactions for specific cases when necessary. If a lawyer does not hold the right membership card, meaning that they have not yet built sufficient guanxi with the judges beforehand, it is impossible for the judges to accept bribes from that lawyer in relation to specific lawsuits.

Lawyers establishing their guanxi with judges through giving gifts, benefits and complimentary services (or by other means) to obtain the trust of judges is merely the first step of bribery. In the long-term process of maintaining guanxi with judges, the expenses covered by lawyers often come from their own money. In other words, by spending their money, they obtain the trust of the judges. The state-owned enterprise mentioned by Interviewee 1 provides around USD 43,000 per year to a specific court as a public relations fee. The intention of the enterprise is that, one day, when it becomes a litigant in the court, the court will aim to protect its interests, presumably on a biased basis. Unlike this enterprise, lawyers need to further 'sell' the trust of judges to their clients and get paid by their clients so that they can recover all the costs they have incurred in building such guanxi and ultimately earn a personal profit. The costs of establishing long-term guanxi with judges are relatively constant regardless of how many times the lawyer may come to the judge ask for favours in

the future. The more times the lawyer comes to the judge – that is, the greater the number of corrupt exchanges the *guanxi* facilitates – the lower the costs will be for each exchange.²⁶ To this end, lawyers tend to seek more litigants who want to bribe judges and to continue acting as intermediaries in facilitating corrupt exchanges between the judges and the litigants.

In most instances, the long-term *guanxi* established between lawyers and judges serves merely as a qualification to carry out bribery. When a lawyer contacts a judge regarding a bribe for a specific lawsuit, the judge will need to look into the merits of the case first and then have a discussion with the lawyer to establish the conditions of the corrupt exchange on a case-specific basis. The judge will first evaluate whether they can apply their discretionary power to bend the law and rule the dispute justly on the surface while actually benefiting the bribing party. The judge will also need to assess the difficulties and risks involved in doing so. Based on this assessment, the judge will quote the required bribe. The lawyer will then contact the litigant and ask for a price composed of the price demanded by the judge and the lawyer's commission. The lawyer will normally just ask for a total price without disclosing the proportions being used for the bribe and being taken as commission.

As cultivating long-term *guanxi* is by definition a long-term process, generally speaking, most lawyers only establish *guanxi* with the judges in the courts where they

²⁶ Li, L., 2018. Moral economy of corruption – *Guanxi* networks in China's courts. *International Political Science Review*.

work most frequently. Therefore, it is understandable that lawyers will mainly accept engagements for those lawsuits in the same courts in which they appear frequently and in front of the same judges repeatedly. However, a lawyer may sometimes have a chance to be engaged by a client for a lawsuit in a court they are not familiar with. In China, lawyers are allowed to practise all around the country; thus, a lawyer from Shanghai may be requested to appear in a court outside Shanghai. Although the lawyer will not have long-term guanxi with the judge in a different court, their client may still ask them to bribe the judge overseeing the lawsuit. In this situation, what drives the bribery is not long-term guanxi between the lawyer and the judge, but the requirements of the litigant and the lawyer's desire to earn more money. In such cases, the lawyer will need to seek the help from another lawyer or a different individual who does have long-term guanxi with the judge in charge of the lawsuit. This other contact can then introduce the lawyer to the judge and endorse the lawyer's credibility so that they will still have a chance to negotiate with the judge regarding a case-specific bribe.

3. The forms of bribery offered by lawyers

Illegal activities between judges and lawyers cover a wide range of inappropriate behaviours such as money laundering, inappropriate granting of special privileges and commercial sexual transactions. There are instances, for example, when lawyers have to settle a bill for a judge at a restaurant late at night or cover the shopping expenses of female judges (Peerenboom, 2002).

The current researcher’s findings demonstrate that lawyers have developed a wide variety in terms of the forms of gift they offer. In the YDS Incident mentioned above, the gifts in the list included (but were not limited to) those shown in Table 4 below.

| Bribe Receiver | Gifts | Note |
|----------------|---|--|
| Huang | One box of New Year gifts; RMB 5,000 cash. | |
| Gong | One box of New Year gifts; shopping card worth RMB 5,000; membership card for a beauty salon. | The bribe receiver is the leader of Shanghai Procuratorate. |
| Zhu | One box of New Year gifts; shopping card worth RMB 5,000. | |
| Wang | One box of New Year gifts; shopping card worth RMB 5,000. | |
| Wang | One box of New Year gifts; shopping card worth RMB 5,000; stamps; membership card for a beauty salon. | The bribe receiver is the leader of the Shanghai Justice Bureau. |
| Jiang | One box of New Year gifts; shopping card worth RMB 5,000; 250g of dendrobium; membership | |

| | | |
|------|--|--|
| | card for a beauty salon. | |
| Xu | Cordyceps extract; RMB 10,000 cash. | |
| Yin | One box of New Year gifts; stamps; 250g of dendrobium; shopping card worth RMB 10,000; membership card for a beauty salon. | |
| Ding | One box of New Year gifts; shopping card worth RMB 5,000; stamps; membership card for a beauty salon. | The bribe receiver is the leader of the Anti-Bribery Office in Shanghai Procuratorate. |
| Tian | One box of New Year gifts; shopping card worth RMB 5,000; stamps; tea; membership card for a beauty salon. | |

Table 4: Extract from list of New Year gifts sent by YDS Law Firm

Providing cash as a bribe is very straightforward. For example, Cai Wensheng, who was the managing partner of Guangdong Gewei Law Firm for 20 years, went directly to a judge’s office and handed him a paper bag full of cash. Cai also handed paper

envelopes several times to Huang Changqing, a former deputy president of the Shenzhen Intermediate People's Court, each containing RMB 100,000 (approx. USD 15,000) (made up of ten bundles of 100 x RMB 100 notes).²⁷ Interviewee 1 stated that, as far as she knows, when a lawyer provides cash to a judge, they like to send tea in a tea box or a carton of cigarettes to pretend that they are just sending a common social gift to the judge and avoid suspicion. However, the lawyer will hide cash in these boxes or cases. For example, in the serious criminal case regarding illegal sentence commutation for Zhang Hai in Guangdong Province, China, a former deputy party secretary of the Guangdong Department of Justice, Wang Chengkui, following an introduction through an intermediary, accepted a tea jar from a bribe provider in a small fishing village. The criminal judgment report of this case reflects that the bribe provider admitted that 'money was packed in the tea jar, of which HKD 1,000 each note and for a total of 30 notes'.²⁸ In another instance, Li Tiefeng, a lawyer from Beijing Changjiu Law Firm's Kunming Office, paid RMB 340,000 (approx. USD 48,500) of bribes in cash on behalf of a litigant by giving a shoe box full of cash to the case judge.²⁹

Some bribe providers carry out their corrupt activities through providing entertainment and high-end consumption. For instance, in the SHC Case in August 2013, the whistle-blower exposed a video revealing that four judges of the SHC had

²⁷ China Court Criminal Verdict (2016) Yue 19 Xin Chu No. 169.

²⁸ China Court Criminal Verdict (2013) Hui Hai Fa Xin Chu No. 1370.

²⁹ China Court Criminal Verdict (2016) Yun 23 Xin Zhong No. 70.

accepted an invitation to dinner and had participated in sexual activities with escorts at a resort in outer suburbs of Shanghai. The most well-known of the lawyers involved in this case was Shou Rulin, the deputy director of Shanghai Lianhe Law Firm. He was one of the “lawyers especially cultivated by the Chinese Communist Party (CCP)”. He was awarded the “Ethics Model of Legal Professional” by the Shanghai Justice Bureau in 1999. In the SHC Case, Shou was found to have accepted so-called ‘bridge-building fees’ (commission for corrupt exchange) for utilising his corrupt *guanxi* and connecting young lawyers to conduct bribery with Judge Zhao Minghua.

In the past few years, ‘Mahjong bribery’ has been popular in China. The two parties involved in money- and power-based transactions adopt the approach of playing Mahjong (a traditional Chinese gambling game with elements of chess and card games) together to transfer the bribe from the provider to the receiver. The bribe provider intentionally loses the game and therefore has an excuse to pay money to the bribe receiver at the Mahjong table. On the one hand, the embarrassment of giving and taking money directly can be avoided. On the other hand, they can disguise the bribery under the cover of excuses such as the bribe receiver ‘has his luck’ or ‘is good at playing Mahjong’.³⁰ The practice of ‘Mahjong bribery’ has become so prevalent in China that, in recent years, the government has prohibited civil servants from participating in Mahjong games with gambling stakes.

³⁰ Zhang, G., 2005. See through the essence of Mahjong bribery. *People’s Procuratorate*, 2, p. 54.

4. Conclusion

Echoing the dual roles of lawyers as long-term trusted partners of judges and intermediaries between litigants and judges, the ways in which lawyers participate in judicial corruption can be classified into two categories. One involves cultivating and maintaining long-term guanxi with judges and then applying this guanxi to facilitate a corrupt exchange in relation to a specific lawsuit, while the other involves offering a bribe for a specific case, regardless of whether there is pre-existing long-term guanxi. For the first approach, lawyers need to give judges gifts, cash, benefits or complimentary services. For the second type, lawyers must negotiate with judges to establish the conditions of the corrupt exchange for the specific lawsuit. The current research findings also show that bribes can take various forms, including cash, goods, beauty salon membership cards, shopping cards, stamps, entertainment activities, high-end consumption, etc.

Chapter Five: Suggestions

This research has explored multiple issues related to lawyers' participation in judicial corruption in Shanghai, including the motivations for lawyers choosing to participate in corrupt activities and the ways in which they do so. This chapter provides the researcher's suggestions for mitigating judicial corruption by either eliminating the motivations driving lawyers' participation in these activities or blocking the channels by which they do so.

1. Eliminating guanxi system through legislation

This research has demonstrated that the tradition of guanxi is deeply rooted in Chinese culture. It is a general perception that it is difficult to achieve anything without guanxi, including winning a lawsuit. Lawyers participating in corrupt activities think what they do is forgivable as so many other people are doing the same thing and the practice has a cultural foundation and is accepted by the public. This is not just a phenomenon in China – it is a common trend across Confucian societies, including Japan and South Korea as Confucian social philosophy emphasises 'social cohesion and the deliberate preservation of relationships through giving gifts'.³¹ An interview conducted with "Koreans I interviewed" shows that 'these gifts [a]re at the

³¹ Spalding, A., 2018. South Korea: An anti-corruption tiger. *The FCPA Blog*, 16 February [Online]. Available at: <<https://www.fcpablog.com/blog/2018/2/16/south-korea-an-anti-corruption-tiger.html>> [Accessed 24 September 2019].

same time the genuine expression of affection or respect, and the purchasing of favorable treatment',³² which indicates that gifts are mixed up with bribes. In 2015, the South Korea government passed the Improper Solicitation and Graft Act (the Kim Young-Ran Act), which was enforced on 28 September 2016. The Kim Young-Ran Act prohibits giving gifts worth above a very low value to public officials. Such restrictions are intended to draw a line between a genuine gift and a bribe and to eliminate everyday corruption activity. The Kim Young-Ran Act is known as the strictest graft law in the world, and people believe that it will be very positive in making Korea more transparent.³³ There is no such legislation in China; thus, China could learn from the Kim Young-Ran Act and enact a similar new law to restrict gift-giving activities between lawyers and judges. Once cultivating guanxi by giving judges gifts or inviting them out for dinner or entertainment becomes illegal, such activities will decrease and, as an ultimate goal, the public belief in guanxi will be effectively restricted and eventually eliminated.

Meanwhile, the relationship between lawyers and judges should be transparent and limited to normal social etiquette. If there is a special connection between a lawyer and a judge – for example, if they are former schoolmates, colleagues, share connections in terms of schoolmates or colleagues of spouses, partners, family

³² Ibid.

³³ Strother, J., 2017. A year after South Korea passed an anti-corruption law, some businesses say it goes too far. *The World*, 29 November [Online]. Available at: <<https://www.pri.org/stories/2017-11-29/year-after-south-korea-passed-anti-corruption-law-some-businesses-say-it-goes-too>> [Accessed 24 September 2019].

members or relatives – the lawyer should be required to report such connections to the relevant lawyers’ association in advance. The association should be entitled to officially publish information about such connections. The purpose of publishing these special connections would be to allow the public to supervise the activities undertaken between these connected lawyers and judges. If a lawyer utilises this connection/guanxi for a corrupt exchange, people would be encouraged to come forward about it. For this purpose, multiple channels for whistle-blowing should be established and announced to the public – designated email addresses, mailboxes, telephone hotlines, social media channels, etc.

2. Prohibiting unfair competition

Article 47 of the Lawyers Law of the PRC stipulates that a lawyer shall not solicit business through improper means and that, if they do so, a punishment will be imposed by the relevant city’s judicial bureau. However, the law itself does not define what constitutes improper means. For this, we can look to Chapter 4 of the ‘Code of Ethics for Practicing Lawyers of Administrative Measures for the Practicing of Lawyers’ (the Administrative Measures) issued by the Ministry of Justice on 18 September 2016. Article 42 of this chapter states that lawyers shall engage in fair competition and shall not mention explicitly or implicitly to litigants that they have a special relationship with the courts, government departments or officials. The Administrative Measures legislation also stipulates that, if any lawyer breaches Article 42 and engages in unfair

competition, including declaring that they have guanxi with judges or judicial officials, the relevant city's judicial bureau shall impose administrative penalties on them pursuant to Article 47 of the Lawyers Law of the PRC. The administrative penalties under Article 47 include warnings, a fine of no more than RMB 5,000 (approx. USD 720), confiscating illegal gains and, if the case is serious, suspension from practising for a period of no more than three months.

The researcher's findings indicate that the punishments applied for lawyers' misconduct related to unfair competition, especially the actions involved in promoting guanxi with judges, are not strong enough to deter them from committing those offences. Furthermore, in reality, the implementation of these laws is questionable, as will be explored further below. Our recommendation is that heavier punishments should be imposed such as extending the period of suspension from practising from three months to six months, and that the implementation of these laws and measures should be strengthened. The purpose of this approach is to discourage lawyers from improper conduct such as declaring their guanxi with judges. It would also help to promote and purify the ethical standards of the legal industry.

3. Strengthening the enforcement of legislation against lawyers' bribery

Both the Criminal Law and the Lawyers Law of the PRC address how to punish lawyers who engage in judicial corruption. Article 389 of Criminal Law of the PRC stipulates

that an act of giving civil servants or public officials articles of property in order to seek illegitimate gains constitutes a crime of offering bribes. The threshold value of a bribe to constitute a crime is RMB 10,000 (approx. USD 1,500) in instances where bribes are offered to judges or other judicial officials that affect judicial justice.³⁴ According to Article 390 of the Criminal Law of the PRC, an individual who commits the crime of offering bribes shall be sentenced to imprisonment of not more than five years and subjected to a fine. If the circumstances are severe or cause serious loss to the national interest, the period of imprisonment can be extended to ten years in addition to a fine or forfeiture of property. Alongside determining criminal liability, the city judicial bureaus have the power to suspend or revoke a lawyer's practising licence if they are found to have offered bribes to judicial officials. Article 49 of the Lawyers Law of the PRC stipulates that a lawyer who offers bribes to judges, prosecutors, arbitrators or any other related staff members, acts as an intermediary for such bribes or incites or induces another party to offer such bribes shall be subject to suspension of practice for a period of more than six months but less than one year and may be subject to a fine of not more than RMB 50,000 (approx. USD 7,000). Furthermore, any illegal income shall be confiscated. If the circumstances are serious, the city judicial bureau shall revoke the lawyer's practising licence. However, the law does not explain what constitutes 'serious' circumstances. Article 55 of the Articles of Association of the Shanghai Bar Association (SBA) stipulates that the SBA shall

³⁴ Article 7 of Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Issues Concerning Application of Law in Handling Criminal Cases of Corruption and Bribery.

suspend or revoke a member lawyer's qualification of membership if they breach the Lawyers Law of the PRC.

While the stipulations of the relevant laws are one matter, how to implement them is another issue. Chinese law expressly stipulates that, if a lawyer commits a crime of bribery, they shall be sentenced to imprisonment for a certain number of years, and that, if a lawyer commits an act of bribery but the value of the bribe does not exceed the threshold of crime, the city judicial bureau shall suspend their practising licence and the relevant lawyers' association shall suspend their bar association member qualification. However, there exist many cases in reality where lawyer who have been found to have offered bribes have not been convicted criminally. In our case study, it is surprising that none of Fu Qiangguo, Lin Xinhe or Li were prosecuted for crimes of bribery, and the Shanghai Judicial Bureau has not suspended or revoked their practising licences. Furthermore, the SBA has not suspended or revoked their member qualifications as well. Currently, they are still practising law as normal in Shanghai.

The concealment feature of judicial corruption makes it difficult to find and prove these corrupt activities. In addition, weak implementation and enforcement of the relevant laws does not cause fear for people carrying out these crimes. Therefore, the enforcement of legislation against lawyers' bribery should be strengthened. Especially in those influential cases known to the public, the prosecutors, judicial bureaus and lawyers' associations should enforce the law in a stricter and demonstrate to the

public, and especially to members of the legal profession, that any lawyer who engages in corrupt activities shall be severely punished.

4. Increasing judges' income and narrowing their discretionary power

One main reason why lawyers are able to participate in bribery is that judges have corrupt demands due to the high work pressure they face and the low incomes they earn. Their gains through corruption can be several times higher than their legitimate income from their jobs, which presents a strong temptation. Although the Chinese government claims that the remuneration and treatment of civil servants have gradually improved over the past few years, it remains the case that judges' remuneration and treatment have never been reviewed separately from those of other civil servants. In China, judges are regarded as civil servants and, therefore, their remuneration and treatment are determined according to the same standards as other civil servants; that is, mostly according to their personal administrative ranks. Lei Li (2017) points out that, 'since the administrative rank of court is lower than the government at the same level, the actual treatment of the judge is worse than the civil servant at the same level, and the wages and benefits are lower'.³⁵ In order to decrease judges' desire to take bribes, the government should consider separating

³⁵ Li, L., 2017. Compromise and breakthrough: Path choice of reform on judge salary mechanism in China. *DEStech Transactions on Economics, Business and Management* [pdf]. Available at: <<http://dpi-proceedings.com/index.php/dtem/article/download/13126/12652>> [Accessed 23 September 2019].

the remuneration and treatment structures of judges from those of other civil servants and reviewing them against higher standards.

A further suggestion is to enact more detailed implementation rules and guidelines to help judges to fulfil and standardise their adjudication work. In this way, judges' discretionary power can be narrowed and restricted to a reasonable scope. This will help to reduce opportunities for judicial corruption.

5. Lowering competition pressure

Lawyers in Shanghai face very high competition pressure. One reason for this is that the number of lawyers is continuing to increase rapidly while the scale of the legal market remains unchanged. In recent years, the Chinese government has announced policies to increase the number of lawyers to echo the need for implementing the rule of law. The number of lawyers in Shanghai increased to 23,975 in 2018, representing an increase of 40% compared to the total of 16,900 in 2014. With such a rapid increase in the number of lawyers, the competition to obtain clients in the market is inevitably becoming fiercer.

To lower the competition pressure in the legal services market, the government should consider modifying its policies for increasing the number of lawyers rapidly unless it also launches corresponding policies to expand the scale of the legal services

market. If the government can restrict the number of lawyers and at the same time encourage governmental departments to purchase legal services, thereby increasing public procurement of these services, this will hopefully reduce the level of competition pressure for lawyers.

Conclusion

Recent judicial corruption cases in Shanghai attracted the interest of the researcher regarding the role lawyers play in judicial corruption and the ways in which they participate in this phenomenon. Many previous books and articles have addressed judicial corruption in China in a broad context such as from the perspective of the history of corruption, political corruption and anticorruption campaigns. Some of them discuss judicial corruption in China and explore its causes based on macroscopic factors such as political interference, judicial dependency, lack of funding, etc. However, the existing literature seldom covers judicial corruption from a more 'microscopic' viewpoint and thus does not pay attention to the individuals involved, such as lawyers, and their enabling roles in judicial corruption.

By analysing empirical data, including from case studies and interviews with practising lawyers in Shanghai, this thesis has demonstrated that lawyers mainly participate in judicial corruption activities in two ways: one is becoming the trusted partners of judges through cultivating and maintaining long-term corrupt *guanxi* by consistently giving them gifts, benefits and complimentary services, and the other is acting as intermediaries or judicial brokers between litigants and judges in specific cases.

The research findings indicate that the motivations that lead lawyers to choose to participate in judicial corruption activities include adapting to traditional *guanxi*

culture and the general public's belief in guanxi, reacting to high competition pressure and litigants' evaluation of lawyers based on their success rates, and being eager to increase their profits due to greed. Deteriorating industry sentiment and lawyers' lack of professional honour also contribute to the frequent occurrence of judicial corruption issues.

This research has also found that the reasons why lawyers are able to participate in judicial corruption include judges' demands for bribery owing to their high adjudication work pressure and relatively low income levels. Judges' broad judicial discretionary powers create plenty of opportunity for them to take bribes. The lack of a trusting foundation and the existence of asymmetric information between litigants and judges requires lawyers to step in and play the role of intermediaries for them. In addition, the advantages of their profession allow lawyers to participate in judicial corruption.

Echoing their roles as long-term trusted partners of judges and intermediaries between litigants and judges, the ways in which lawyers participate in judicial corruption can be classified into two distinct approaches. One is to cultivate and maintain long-term guanxi with judges and then apply that guanxi to facilitate a corrupt exchange in relation to a specific lawsuit. The other is to participate in bribery for a specific case regardless of whether there is any pre-existing long-term guanxi. For the first approach, lawyers need to give judges gifts, cash, benefits or

complimentary services. For the second, they need to negotiate with judges to establish the conditions of the corrupt exchange for the specific lawsuit. Our findings show that these bribes can be in various forms: cash, goods, beauty salon membership cards, shopping cards, stamps, entertainment activities, high-end consumption, etc.

Based on the analysis and research presented in the thesis, we have provided suggestions on how to mitigate the issue of judicial corruption. These include eliminating guanxi belief through legislation, prohibiting unfair competition, strengthening the enforcement of laws combating lawyers' bribery, increasing judges' income and narrowing their discretionary power, and lowering competition pressure by restricting the number of lawyers and increasing public procurement of legal services.

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