

THE CONSTRUCTION OF GUILT IN CHINA

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A Dossier Based Criminal Justice System

Witnesses are absent in the courts...

- Are investigative dossiers truly reliable?
- What procedural safeguards are available within the system to avoid miscarriages of justice?
- The concept of truth as objectivity

The Official Version Of Truth

Our neighbour who was selling pears called at him (the suspect), 'give me two bowls of noodles'. Then the young man came to me and accused me of having told everyone that he sold dumplings for 4 yuan (under the market price). I did not say things like that. Then the man said it was my neighbour told him about it. I asked him which neighbour said. The young man threw a bowl at me. The dirty sauce in the bowl was splashed on my clothes. Then we started to cuss at each other. The young man came over and pulled me out. We were fighting together. Soon my husband came out of the shop to protect me. Then the young man came over and punched my husband three times on his face. He injured his eyes, nose and mouth. *(The victim's statement: CASEA 32)*

The woman's (victim's) neighbour who was selling pears called me, 'give me two bowls of noodles'. Then I asked the woman (the victim) whether she told people that my dumplings were sold at 4 yuan. She said that she did not say things like that. Then I said it was the man (the woman's neighbour) told me about it. She asked me which neighbour said. I threw a bowl at her. The dirty sauce in the bowl was splashed on her clothes. Then we started to cuss at each other. We were fighting together. Very soon, her husband came out of the shop to protect her (the victim). I was so mad that I punched him three times on his face. His eyes, nose and mouth were injured. *(Interrogation record: CASEA 32)*

The Official Version Of Truth

[Field note APU-13]

Researcher: Why are the languages in those different statements so similar?

Police: We have to determine the investigative direction in the beginning. The initial account reported by the victim and informant sometimes is the cornerstone of the investigation ... later evidence must reflect on the victim's account.

The Official Version Of Truth

[Interview BPS-1]The prosecutor explained to me the problems in the police investigation:

'The police officers tailor the suspect's statement to the victim's account in practice. They force the suspect to say the same thing as the victim said to them. They would ask the victim initially and then interrogate the suspect in a way that the suspect's statements can dovetail with the victim's statement.'

The Official Version Of Truth

[Field note APU-55]

Prosecutor: I have to warn you that if you keep making all the details of different accounts exactly the same, the truthfulness of these statements will be doubted. In many circumstances, witnesses cannot remember the exact time ... So, if you just keep the details roughly the same and leave some reasonable discrepancies, the evidence is more convincing. If you try to match everything in the dossier, the effect may be contrary.

Manipulating the Written Statement

[BDL-1 Interview] Defence lawyer: Yesterday I talked to my client, who told me that when he confessed his crime the first few times, the police did not even write his confession down. That's because the police believed that what he said did not conform to the direction in which the investigation was going. So they did not even record it!

Manipulating The Written Statement

[Field note APU-6] An excerpt of the record of interrogation (first time) of a theft case:

Police: What did you steal from this shop?

Suspect: I stole 49 clothes, their serial numbers are: KVI-34-P90, JRV-54-V20, RKI-89-99V, RSK-39K-90K, REK-49-PE3, KVQ-90S-VI3, ISIP-39L-GIS, EKS-E30-SLK, KOO-LD-3L8 [...]. I also stole 59 pieces of jewelleries, their serial numbers are: KOS-39S-SKJ, K39-SKI-SKP, QID-JI3-VIP, [...]

Police: Did you confess the truth?

Suspect: Yes, I did.

Manipulating The Written Statement

[Field note APU-21]

Prosecutor: During police questioning, you said that you wanted to keep them [the drugs] for yourself because you had a quarrel with your ex-boyfriend who had these drugs.

Suspect: No, it is not true. I did not say anything like that. It was made up by the policeman. [. . .] I was only asked to sign.

Prosecutor: Did you sign the record?

Suspect: No. They did not let me read what they wrote. They forced me to sign my name.

The Role Of Prosecutor

[APS-3 interview] Prosecutor: Frankly speaking, as a prosecutor in China, it is impossible to be a neutral officer. [...]I don't think we can be a neutral officer because our job is to fight against crime.

Prosecutorial Interrogation

[Field-note APU-16] Prosecutor: Did you tell the truth in the police station?

Suspect: I didn't...I said nothing.

Prosecutor: [Stopped typing the statement and looked at the suspect] The crime you committed does not carry a heavy penalty.

Suspect: [Explains that he was arrested whilst waiting for his friend]...

Prosecutor: [Angrily] I tell you, if you don't plead guilty now, you cannot do that in the court.

Suspect: What? Speak louder?

Prosecutor: [Shouting] Let's see who will win! You will receive a very heavy sentence! You deserve it!

Defence Lawyers as Outsiders of the Criminal Justice System

- The duty lawyer scheme is in its infancy
- Problems of criminal legal aid
- Article 306 of Criminal Law (perjury) has been frequently used by police and prosecutors to silence and subjugate active defence lawyers
- Obstacles in accessing case dossiers
- Obstacles in meeting suspects in detention centres
- Defence opinions are discriminated by the courts

Trial Without Witnesses

[Field-note APU-51] Prosecutor: [...] This case will be convicted for sure. If the judge was not going to convict the case, she would have communicated with me before the trial. It has been pre-decided, as most other cases are.

Judicial Decision-making

[Interview CDL-1] Defence lawyer: The way judges treat us is completely different from the way they treat the evidence of the prosecutors. [...] If certain issues have been mentioned by the prosecutors, they will be taken into account by the judge. However, if the prosecutors have not mentioned the exculpatory factors, it will be very hard for this to be admitted by the judge, as the judge does not listen to us.

Conclusion

- The Chinese criminal justice system lacks in integrity.
- There has been a lack of functional equivalence of case construction in formulating a competing version of fact for the defence.
- The entire system is built on the ideology of control.
- The criminal justice system in China is structurally weak in preventing miscarriages of justice.