Crime, Law and Social Change

The Deep Divide in China's Criminal Justice System: Contrastng Perceptions of Lawyers and the Iron Triangle

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Response to Reviewers:	Two footnotes (footnote 1 & footnote 2) are added and we also modified the wording from "semi-adversarial model" to "more adversarial model" throughout the manuscript to avoid confusion.

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Abstract

China has witnessed significant changes in its criminal justice system in the last three decades. As one of the major components of criminal procedure reform, the (re)emergence of criminal defense lawyers (and their expanding roles) is among the most noteworthy. Nevertheless, research on criminal defense work in China continues to post serious questions about the effectiveness of criminal defense in the current Chinese legal system. Based on recent survey data from a diverse group of criminal justice practitioners in J province, China, this study examines how actual criminal defense practices are evaluated by defense attorneys themselves and by the dominant 'iron triangle' (i.e., the coalition of the court, the prosecution, and the police officials). Our empirical findings consistently reveal that the work of Chinese defense lawyers is grossly undervalued by the 'iron triangle'. Chinese criminal defense lawyers concur readily with the 'iron triangle' that the effectiveness of their legal representation is questionable and that their work bears little substantive impact on the final outcomes of the criminal trials. Implications for future reforms and research are discussed.

Key words: criminal defense lawyer, China, iron triangle, empirical evaluation of defense work

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Introduction

Since its economic reforms in the 1980s, China has made significant efforts to improve its legal system. A substantial increase in scholarly interests on the subject of Chinese legal reform can be found in recent decades (e.g., Clarke 2008; Epstein 1991; Liang 2008; Lo 1995; Lubman 1999; Potter 1999). One critical focus has been placed on China's criminal law and criminal procedure reforms. It is helpful to keep in mind that China's socio-historical context and the dramatic changes that took place in the last three decades are both indispensible in understanding China's current criminal justice practices. On the one hand, the criminal trial procedure has been influenced tremendously both by China's historical legal tradition and the continental legal system (modeled on that of the former Soviet Union). As a result, the inquisitorial model has dominated China's trial procedure, and the role of criminal defense was reduced to bare minimum for several decades.

On the other hand, years of efforts to modify China's criminal and criminal procedure laws culminated in the passages of the revised 1996 *Criminal Procedure Law* (96CPL) and the revised 1997 *Criminal Law* (97CL). Both of these laws aim to provide greater protections and afford more legal rights to criminal defendants as well as their defense attorneys. Among the key revisions, the most important provisions included defense lawyers' broader scope of legal assistance, earlier intervention in criminal proceedings, easier access to case files, and their right to call and cross-examine witnesses at trials. The most recently amended 2012 *Criminal Procedure Law* (12CPL) to some degree continued to provide further protections to defense lawyers' practice by granting new measures such as simplifying the procedure to meet one's

detained clients without police supervision (e.g., Article 37), and adopting exclusionary rules against evidence illegally obtained through torture (e.g., Articles 50, 53, 54).[1]

Despite these significant changes in the book, researchers continued to question the effectiveness of Chinese defense lawyers' work. Recent studies have revealed numerous difficulties reported by defense lawyers in their daily practices (e.g., Halliday & Liu, 2007; Hou & Keith, 2011; Liu & Halliday, 2011; Lu & Miethe, 2002; Lynch, 2011). Most of these studies focused on practical obstacles faced by Chinese defense lawyers (e.g., the "Three Difficulties" to be discussed below) and exposed the discrepancies between law in the book and law in action. The current study, which is based on empirical survey data, takes on a different angle and examines how the works of Chinese defense lawyers are valued by other players of the court system in comparison to their self-evaluation. In particular, we pay special attention to the dominant "iron triangle" in the Chinese criminal justice system. This term refers to the coalition of three dominant players, including the police, prosecution, and the judges. Commonly known as "gong, jian, fa", they were designed as key players from the very beginning of China's inquisitorial criminal justice system. Though China is in a process of transitioning to a more adversarial model (discussed below), little has changed about the dominance of the 'iron triangle'. Such a contrast helps to focus on the interactive relationship between the "new comer" (criminal defense) and other players of the old system.[2] It can be argued that how and to what extent the new adversarial components would impact China's criminal trial to a large extent

[1] One of the reviewers correctly pointed out that our data which was collected during 2009-2011 may not be representative of the context of new stipulations provided by the amendment of the Chinese Criminal Procedure Law in 2012. Ongoing evaluations are certainly needed to assess the impact of the most recent changes.

[2] Reference of current Chinese criminal defense lawyers as "new comer" is made in the context of the lawyers' expanded roles and increasingly autonomous professional status compared to their former role as state-employees (representing the best interest of the state instead of their clients). We would like to acknowledge the reviewer's helpful suggestion for this clarification.

depends on how well criminal defense lawyers are received by the old guards (i.e., the 'iron triangle').

In the remainder of the article, we first review China's reforms on criminal procedure. We pay special attention to Chinese defense lawyers and examine their increasing roles in the books and their struggles in daily practices. Second, we analyze the struggles of Chinese defense lawyers in a transitional process in which the Chinese system is moving towards a more adversarial system. The key in this process is how to accommodate the new comer (i.e., criminal defense) with the old practice and thus the relationship between the defense lawyers and the other players, especially the 'iron triangle', may have a determinant role to play in examining the actual works of Chinese defense lawyers. Next, we turn to our survey data and empirically examine how the work of Chinese defense lawyers is evaluated, both by themselves and by the 'iron triangle'. Lastly, we summarize main findings of this study, highlight potential policy implications to future criminal procedure reforms in China, and discuss also limitations of this study.

Reforms on Criminal Procedure and Criminal Defense

There is little doubt that China has witnessed significant changes in its criminal justice system in the last three decades (For a detailed study of the current Chinese criminal justice system, see McConville et al 2011). In Mao's era, China's criminal justice system was utilized as a weapon against all 'enemies' of the state. As a result, very little legal rights were given to criminal defendants. Defense lawyers (whenever existed) worked as state employees to help the court find the truth and reach a verdict instead of fighting for defendants' rights. Consistent with the nature of the socialist state and the inquisitorial system, one's individual rights (i.e., defendants' rights) were trumped by the collective rights (i.e., the rights of the people), and the

prosecution, the police, and the defense were all supposed to work with the court to punish the criminal and safeguard the interests of the nation (e.g., Cohen, 1968, 1970; Li, 1978; Leng, 1985).

In the reform era, a series of new laws (e.g., the *Criminal Procedural Law*, the *Criminal Law*, the *Lawyers' Law* and their subsequent revisions) were adopted to better protect the rights of defendants in the criminal proceedings (such as the right to request bail and the assistance of legal counsel), to shift the power from the police and the procurator (i.e., prosecutor) to the court and to set up a more neutral role for judges (e.g., via limiting judges' active roles in investigation and prosecution), and to expand the roles of defense lawyers (such as granting a broader scope of compulsory legal assistance, earlier intervention in case investigation, easier access to case files, and the right to call and cross-examine witnesses in trials). Though these new laws are by no means perfect and their actual practices are often questionable, they epitomized significant changes in China's criminal law and criminal procedure reforms (Fu, 1998; Liu & Situ, 2001).

Among all these measures, the emergence of defense lawyers and their expanded roles are probably the most noteworthy. These changes are seen as signals of a transition towards a more adversarial model. As pointed out by Lu and Miethe (2002), both in ancient times and in Mao's communist era, lawyers (or their equivalent) have had very low prestige in China and were sometimes labeled 'litigation tricksters' (*songgun* in Chinese). In the reform era, greater efforts have been put forward to establish and reorganize the systems of lawyers, to expand their roles in the legal system, and to professionalize and formalize their legal representations (Liang, 2008). Despite being considered the most risky professional choice (compared to civil case legal representation), criminal defense work has gradually stepped up in China. In 1981, Chinese lawyers were involved in a total of 65,179 criminal cases; the number increased to 232,206 in

1989, and broke the 300,000 marker in 1999. The number hovered around 300,000s in the early years of the new century but climbed to 495,824 in 2007, 511,971 in 2008, and reached an all-time high of 564,204 in 2009 (data from Chinese Statistical Yearbooks). Despite such effort, the overall rate of representation in China over the years was not satisfactory: though it fluctuated over the years, the average rate hovered around 25%, and most defendants (close to 70%) were not represented by legal counsel (e.g., Ji, 2011).

Nevertheless, whether and to what extent changes in the written laws have brought meaningful results in actual practices remains a serious question, as criminal defense lawyers continue to run into insurmountable obstacles in their work. Among all such obstacles, the most notorious are the so-called "Three Difficulties" (*sannan*), which refer to the difficulties in (1) meeting with the detained clients without police supervision; (2) obtaining a copy of the prosecutor's case files, and (3) gathering evidence and cross-examining witnesses at trial. These difficulties consistently raised deep concerns for defense work (Halliday & Liu, 2007; Liu & Halliday, 2009; Lynch, 2010). The most recent 12CPL seemingly aimed to tackle these difficulties by allowing greater access to defense lawyers. For instance, the new law grants permission to lawyers' early intervention in the *investigation* stage (e.g., Articles 33 & 36), simplifies the procedure for lawyers to meet with detained clients without police supervision (e.g., Article 37), and adopts exclusionary rules against evidences illegally obtained through torture (e.g., Articles 50, 53, 54). The effect of the new law, however, remains to be seen.

As Liu and Halliday (2009) have argued, Chinese criminal lawyers' difficulties have deep roots in the recursive nature of the criminal procedure reforms, in particular by interactions of recursive factors such as the indeterminacy of law, inherent contradictions, diagnostic struggles, and actor mismatch in both lawmaking and law implementation. For instance, when

new laws (e.g., the 2007 amended *Lawyers' Law* and the 12CPL) were adopted to address old concerns and placed more power in the hands of defense lawyers, they do not necessarily negate other existing laws that could present conflicts. This makes the implementation of the new laws extremely difficult (Hou & Keith, 2011).

In addition to legal factors, extra-legal factors (e.g., political, ideological, and institutional factors) may also work against Chinese defense lawyers (e.g., Li, 2010). Take anti-crime campaigns for example. During these campaigns, both defendants' and defense lawyers' rights are discarded in the name of serving the greater interests of the society (see Liang, 2005; Trevaskes, 2002, 2003, 2007). Even Chinese domestic scholars openly criticized the inadequacy and ineffectiveness of these new laws. They pointed out long-standing problems such as the lack of legal protection of the defendant's right to remain silent, lack of witness testimonies at trial, heavy reliance on written documents in all (before, during, and after) stages of the trials, and serious gaps in evidence law (e.g., Chen, 1996, 2000; Chen, 2001; Chen & Liu 2008; Long 2008; Xiao, 2008; Zuo 2009).

Contrast of Two Models: Defense Lawyers in the Eyes of Others

In addition to the historical, cultural, legal and extra-legal reasons, the struggle of defense lawyers within China's current criminal justice system can be examined as a process in which Chinese defense lawyers as a new courtroom player fight for their indeterminate status in a transition towards a semi adversarial system. The contrast between the inquisitorial model and the adversarial model has long been discussed and examined by scholars and practitioners, especially in comparative studies of criminal justice systems (e.g., Liu and Situ, 1999; Liu and Situ, 2001; Reichel, 2008). Fundamental differences between these two models lie in many aspects (e.g., roles by each player including the judge, the prosecutor, the defendant and the

defense attorney), but the focus of this paper is on the relationship between the defense lawyers and other players in the courtroom. In an adversarial system, defense lawyers play significant roles in defending the best interests of their clients, and a judge acts as a neutral referee between the two competing parties (i.e., the prosecution and the defense) and supervises the trial. To the prosecutor representing the state, the defense side is a challenger and a contender. In contrast, defense lawyers in an inquisitorial system are expected to serve as a facilitator of the court in finding truth; therefore, their roles are much less contentious by design.

China's criminal procedure reforms in the last three decades signaled a transition from the traditional inquisitorial model to a hybrid model. As new laws provide more and more rights to the defendant and their defense lawyers, the roles of the criminal defense started to change from facilitation to contention (to the eyes of prosecutors at least). Due to various reasons briefly discussed above, nevertheless, major components of the traditional inquisitorial system did not fade away. They co-exist and contend with the new adversarial components. As a result, how the work of defense lawyers is perceived and received by other players in the courtroom is critical. As both domestic and foreign scholars have acknowledged, criminal trials in China still work in a streamline fashion in which the police, the prosecution and the judges share the same goal of solving cases and punishing criminals expeditiously. The 'iron triangle' formed by the police, the prosecution and the court has proven difficult to fracture, penetrate and dismantle (e.g., Chen 1996, 2000; Halliday and Liu 2007). In such a system, the efforts rendered by the criminal defense often turn out to be fruitless if not counter-effective (Lu & Drass, 2002; Lu & Gunnison, 2003; Lu & Miethe, 2002).

In addition, the prosecution and the police have another formidable weapon against 'troublesome' defense lawyers in China, the so-called "Big-Stick 306", which refers to Article

306 of the 97CL. Along with Article 42 of the 12CPL, Article 306 makes it a criminal offense for any defense lawyer to "help the suspect of a crime or defendant to conceal, destroy, or fabricate evidence; collude with each other; threaten or induce witnesses to alter their testimony, provide false evidence, or engage in other activities to interfere with the litigation procedure of the judicial organs". Perfectly legitimate in rhetoric as it seems, the Big-Stick 306 was often wielded by the authority against defense lawyers who would defend serious criminals 'inappropriately' (e.g., Fu, 1998; Halliday & Liu, 2007; Hou & Keith, 2011; Liu & Halliday, 2009; Lynch, 2010). Though majority of the charges against lawyers under Article 306 had resulted in acquittals in court (Hou & Keith, 2011, 393; Young, 2005), more than enough guilty verdicts have been returned to defense lawyers (e.g., Li Zhuang's case) to raise their level of fear beyond its limit (Big-Stick 306, 2011; Li, 2010).

In short, compared to the past, significant changes have occurred to China's criminal procedure and criminal defense in the reform era. At the same time, there is serious question by scholars and practitioners on how and to what extent these changes in the book can be or have been translated into actual practice. Given the reality of the current system, Chinese defense lawyers are caught in a dilemma: on the one hand, they are not afraid of playing their adversarial roles in the system (as a contender) and fight for more and more rights whenever possible; on the other hand, they often feel frustrated and helpless and, have to be careful and selective in choosing their *defense strategies* in the courtroom (e.g., choosing confession and asking for lenience instead of a not-guilty plea) to 'work' with the 'iron triangle' in order to seek the best results for their clients (e.g., Lu and Miethe, 2002, 2003). This conundrum hinges upon, to a significant degree, the evolving, interactive relationship between the defense lawyers and the 'iron triangle', an issue not yet fully examined so far.

The Current Study

Based on empirical data, this study examines one particular issue of the relationships between Chinese defense lawyers and the traditional iron triangle: how is the work of Chinese defense lawyers evaluated by the 'iron triangle', in comparison to their self-evaluation? Granted, there could be significant variations within the group of 'iron triangle', and our data (not shown in the paper) do show some variations on some (but not all) of our measurements. However, there is no discernable pattern to suggest that we miss something systematic in our discussion by contrasting lawyers with the 'iron triangle'. Rather, in this study we focus on the contrast between the lawyers and the 'iron triangle' given what past studies suggested both conceptually (e.g., Chen, 1996, 2000) and empirically (e.g., Ji, 2011).

Specifically, we contrast evaluations by both groups from three different aspects: (1) defense lawyers' overall representation, (2) defense lawyers' pre-trial intervention and trial preparation, and (3) defense lawyers' trial performance. Informed by the literature, we come to the following two hypotheses:

- H1: we anticipate that there are significant differences between evaluations by the 'iron triangle' and by defense lawyers themselves. More specifically, given defense lawyers' new and indeterminate status and all the difficulties faced by them (e.g., the "Three Difficulties"), we hypothesize that defense lawyers' overall work would not be appreciated and therefore *undervalued* by the 'iron triangle'. Of course, whether the work of the defense lawyers is undervalued by the 'iron triangle' or overvalued by themselves (depending upon the actual reference group) is subject to debate. The key in our hypothesis is that the 'iron triangle' would give less credit than what the defense lawyers would give to themselves.

- H2: given the harsh reality faced by defense lawyers (e.g., not being able to make significant differences in final outcomes), we also hypothesize that there would be very *little* differences on measures of *final outcomes* or *effectiveness of lawyers' work*. This hypothesis does *not* conflict with the last one. We argue that though Chinese defense lawyers as a new profession value more their overall work in comparison to that of the 'iron triangle', they may feel frustrated and helpless when it comes to the final outcome of their representation given their relatively powerless position.

Survey Data

Data used for this article is based on a two-year (2009-2011) pilot study jointly designed and carried out by researchers from both the U.S. and China.[3] The study was conducted in J province which has 9 prefectures and 85 counties, with a total population of 35 million at the time of the study. We design the questionnaire to be applicable to respondents of different criminal justice related careers. We target on judges, prosecutors, defense attorneys, police officers (and those in other professions) enrolled in professional *Juris Master*s (*JM*) degrees offered by two major law schools in the Province. Majority of these students are legal professionals from different regions of the Province. They are either full-time government employees in justice agencies or attorneys from private law firms who spend three months a year to attend graduate professional study at area university law schools. For example, one of the University Law Schools enrolls about 150 of *JM* candidates per cohort. Two cohorts of this group of respondents were surveyed during the 24 month study period. The content of the survey is designed specifically for the pilot study. Questions cover 1) demographic information; 2) pre-trial issues relevant to legal representation and due process right protection; 3) issues related to

[333] Grateful acknowledgement is made to the John D. and Katherine T. MacArthur Foundation for funding the pilot project. The points of view in this document are those of the authors and do not necessarily represent the position of the Foundation.

court process at the adjudication stage; 4) perceptions of respective organizational environment, job significance, job satisfaction and court resource distribution; 5) courtroom interactions between defense attorneys, prosecutors and judges; 6) attitudes toward ongoing legal reforms in China; and 7) open-ended questions at the end for additional comments.

A total of 642 completed survey questionnaires have been collected. Among our survey respondents, there are 348 (or 54.7%) practicing attorneys, 177 (27.8%) criminal justice practitioners (85 from courts, 47 from procurator's office, and 45 from public security agencies) and 111 (or 17.5%) employees of other government or non-government units. Overall, the demographics of our survey respondents suggest that 1) they are mostly male (64.5%); 2) they are between 25 to 44 years old (83.5%); 3) about half of them are Communist Party members (49.1%); 4) most of them have Bachelor of Law or higher degrees (82.9%); 5) more than half of them are practicing attorneys (54.7%); and 6) more than half of all respondents (56.8%) work in the three largest cities and all of the nine prefectural level cities are represented in the sample.

Data Analyses

Table 1 compares and contrasts information on defense lawyers' legal representation and shows a number of telling results. First of all, defense lawyers self-estimated a significantly higher percentage of legal representation than that of the 'iron triangle', and this is true in both violent crimes (41.69% vs. 36.03%) and property crimes (37.67% vs. 27.64%). Second, we further explore potential reasons why defense attorneys reject potential clients. Data on three main reasons showed interesting contrast between the two groups. The 'iron triangle' assigned more weight to the financial reason and believed that defense lawyers reject potential clients due to financial concerns (cases not being cost-effective), while lawyers themselves displayed much more concerns about personal safety (significantly more so than the 'iron triangle') given the

risky nature of criminal defense practice and the threat of the Big-Stick 306 as discussed above. When it comes down to the final outcome of the case, there was *no* statistically significant difference between these two groups. In other words, both groups agreed that one main reason why Chinese defense lawyers refuse to take on some clients is because of their lack of success in influencing the final outcome of the case.

In comparison, when both groups were asked to estimate main reasons why potential clients refuse to accept legal representation, both groups agreed on clients' financial concerns (i.e., clients cannot afford legal representation), but the 'iron triangle' was more likely than defense lawyers to point to the factors such as: the defense lawyers are not effective and, some defense lawyers are irresponsible to their clients.

[Table 1 About Here]

Pre-trial intervention and trial preparation

In Table 2, information is presented on defense lawyers' pre-trial intervention and trial preparation, both of which have been claimed by Chinese defense lawyers as problematic in carrying out their work. With regard to pre-trial intervention, in comparison to the 'iron triangle', a significantly higher percentage of lawyers reported early intervention at the investigation stage (59.1% v. 37.7%), though about one-fifth of both groups reported very late intervention (not until the trial stage). On the question "how soon one's lawyer can meet the client (under detention) upon client's request", no significant differences were found between the two groups. Nevertheless, a higher percentage of the 'iron triangle' (42.3% v. 32.5%) believed that the meeting would happen within 48 hours (the official limit, per Article 37 of the 12CPL), defense

lawyers reported a higher degree of difficulty, either meeting clients after 48 hours or no meeting at all until the *client's lawyer* specifically requests it. The differences here may well reflect the fact that defense lawyers often run into practical difficulties that other players are either not aware of or underestimate. While both groups showed little difference on the question "if defense lawyers' involvement at the investigation stage offers protection to the defendant's rights", a significantly higher percentage of defense lawyers than the 'iron triangle' (62.7% vs. 46.4%) believed that defense lawyers' presence and investigation at the investigation stage would have greater impact in safeguarding the defendant's legitimate interests.

With regard to trial preparation, significantly higher percentages of lawyers reported that their meetings with clients were monitored (*jianting*) by the authority either "sometimes" (45.2% vs. 31.4%) or "often" (21.9% vs. 17.6%) while the 'iron triangle' believed that monitoring "never" occurred (51.0% vs. 32.9%). On the question "what's the defense lawyer's reaction upon learning that his/her client was threatened or tortured", the 'iron triangle' more likely reported that defense lawyers would "do nothing" or "persuade clients to tolerate", but over 60% of defense lawyers (61.3%, significantly higher than that of the 'iron triangle') reported that they would raise the issue to the court. In contrast, when the question is on "prosecution's reaction to the issue of torture" after it is raised by the defense, a much higher percentage of defense lawyers than the 'iron triangle' (79.7% vs. 45.7%) reported that the prosecution would *do nothing* to address the issue. Torture is still a common practice by the police in their investigation in China and presents a thorny issue to all other players. The newly amended 12CPL now adopts exclusionary rules against evidence illegally obtained through torture in order to stop such practice (e.g., Articles 50, 53, 54), but the effect remains to be seen. Lastly, on the question "what would happen to defense lawyers' objection to excessive detention and other coercive

measures", a sharp contrast is found: while a significantly higher percentage of the 'iron triangle' (70.6% vs. 22.6%) reported that such objections would be granted by the court, a significantly higher percentage of the lawyer group (77.4% vs. 29.4%) reported the opposite.

[Table 2 About Here]

Trial practice

A number of measures were presented in Table 3 to contrast both groups' evaluation of defense lawyers' trial practice, including effectiveness, specific difficulties, and relations with the other players. First of all, on the effectiveness of criminal defense, both groups were asked to estimate "percentages of trials in which defendants were acquitted, received more lenient sentence(s), or the initial charges were changed by the prosecution after the intervention of defense lawyers". *No* statistical differences were found on the acquittal rate and the rate of charges being changed, but significant differences were found on the rate of receiving more lenient sentence(s) as lawyers reported a much higher rate than the 'iron triangle' (39.54% vs. 28.21%). On a general question "what effect do lawyers have on criminal trials of the 1st instance", a higher percentage of lawyers (18.6% vs. 11.8%) reported "great effect" but a higher percentage of the 'iron triangle' (30.9%) reported "no effect", though the differences were not statistically significant.

When reasons for lawyers' ineffective representation (dummy coded) were asked, a higher percentage of the 'iron triangle' pointed their fingers to lawyers' incompetence or lack of effort (i.e., "lawyers did not try their best"), but a much higher percentage of lawyers blamed the "inadequate and defective defense system" than the 'iron triangle' (83.7% vs. 56.6%). Similarly,

when both groups were asked to name key factors (dummy coded) that impact the effectiveness of criminal defense, a higher percentage of the 'iron triangle' blamed defense lawyers' (in)competence (36.8% vs. 12.8%), but the lawyer group more so than the 'iron triangle' pointed to the judicial (in)competence (21.2% vs. 10.3%) and the need for the improvement of defense system (53.8% vs. 41.9%). It seems that Chinese defense lawyers, as a new challenger of the system, would more likely support further structural and systemic changes in the Chinese criminal procedure. In contrast, the established 'iron triangle' often questions defense lawyers' competence and individual effort. This exactly reflects the stake of each interest group in China's criminal procedural reforms.

Next, we examined a few specific difficulties faced by the defense as identified in the literature, including lack of witness testimony, evidence gathering and presentation in trial. Very similar to some results above, the general pattern is that the 'iron triangle' seemed to overestimate their practice of 'abiding by the laws' but underestimate practical obstacles faced by defense lawyers. For instance, a significantly higher percentage of lawyers than the 'iron triangle' (65.2% vs. 44.7%) claimed that "no live witness testimony in trial affects the defense greatly". When defense lawyers request witness to testify in trial or request new evidences, new appraisal, or investigation, a much higher percentage of the 'iron triangle' claimed that the court would grant such requests. In contrast, a much higher percentage of the lawyer group reported that the court would deny such requests. On the question "what are the most important factors in determining if defense lawyers' argument is acceptable", a much higher percentage of the 'iron triangle' chose the "merits of the argument" (59.6% vs. 38.4%), but a significantly higher percentage of the lawyers (33.7% vs. 16.6%) believed that it's the judge's opinions that would ultimately matter.

Lastly, we directly contrast defense lawyers' work with prosecutors' work in a few questions. On the question "whether prosecutors read defendant/witness's testimony selectively or out of context when the testimony is presented to the court", a much higher percentage of defense lawyers chose "very often" (47.5% vs. 18.1%) than the 'iron triangle', and the latter more likely chose "never" (34.4% vs. 7.4%) instead. On the issue of "interruption by judges in their courtroom presentation", more defense lawyers believed that they are interrupted "very often" by judges but the prosecutors were "never" interrupted when making presentations. This result not only contrasted perceptions of courtroom interruptions by different parties, but also reaffirms the reality of courtroom practice where prosecution often dominates over the powerless defense (Liao, 2009). This is further confirmed by the question "if prosecution and defense share equal status in courtroom", in which 72.4% of defense lawyers "disagreed" in comparison to 38.2% of the 'iron triangle'.

[Table 3 About Here]

Discussions

In this study, we gained invaluable data based on surveys of a diverse group of legal practitioners to examine how the actual work of Chinese criminal defense lawyers were evaluated. Such a comparison helps to shed light on our understanding of Chinese defense lawyers' daily practice, especially in a transitional process where defense lawyers try to establish their new competitive roles in the courtroom but often feel powerless in breaking through the coalition of the 'iron triangle' and bringing meaningful results in their defense. Our comparison

focused on three key aspects, including overall legal representation, pre-trial intervention and preparation, and trial practice. Informed by previous studies, we hypothesized that the work of Chinese defense lawyers would *not* be highly appreciated by the 'iron triangle', and Chinese defense lawyers would *agree* with the 'iron triangle' when it comes down to their *marginal* influence over the final outcome of the cases. Though primitive and explorative in nature, results of this study largely confirmed our hypotheses.

First, it is clear that the 'iron triangle' does not value the work of Chinese defense lawyers as much. The data consistently show that the 'iron triangle' underestimate defense lawyers' representation (e.g., overall representation rates in both violent and property crimes) and questions the effect of their actual representation (e.g., at investigation stage, trial preparation, and trial performance). One major reason for their under-evaluation of defense lawyers' work is that the 'iron triangle', as well-established as it is in the current criminal justice system, does not experience (or seem to worry about) the actual obstacles observed by the defense lawyers in their daily practice. Consistently, our empirical data shows that defense lawyers are more likely than the 'iron triangle' to report various difficulties in case investigation (e.g., cannot meet their clients within officially stipulated time), trial preparation (e.g., meeting with clients being monitored, clients being tortured but no official action taken to address the issue), and at trial practice (e.g., difficulty in securing witness testimony, new evidence, appraisal or additional investigations). These practical difficulties experienced by the defense lawyers contrast sharply with the more rosy picture canvassed by the 'iron triangle' as players of the latter are more likely to believe that they are abiding by the laws in operating the current system. For instance, on the issues of the prosecution's response to torture allegations and the court's response to excessive detention challenges raised by the defense, the 'iron triangle' is more

likely than defense lawyers to report that such challenges/ allegations would be addressed properly based on the laws. In contrast, the defense lawyers are much more cynical about how these issues were actually handled by the 'iron triangle' on daily basis. The contrast between defense lawyers' practical difficulties and the 'iron triangle's rosy picture of the current system shows exactly the different expectations of these two groups, as the well-entrenched group (as major stakeholders) is trying to hold on to the old system while the new comer (as the major challenger) is trying to break into the system.

Second, it is also obvious that in the current system, the effectiveness of defense lawyers' works falls far short of their expectations. The harsh reality in which defense lawyers feel helpless and powerless results in an *mutual agreement* between the lawyer group and the 'iron triangle' that the impact of Chinese criminal defense lawyers' representation remains minimal in influencing the outcomes (either at pre-trial investigation and preparation phases or at the trial phase). In addition, what's more telling are that factors that affect the effectiveness of criminal defense: while the lawyers blamed their lackluster performance to the trial system itself, the 'iron triangle' more readily assigned blames to lawyers themselves (e.g., for being incompetent and irresponsible). A fact remains clear that going through the transition from the well-entrenched socialist inquisitorial system to a semi-adversarial system is not easy, and such a transition presents ample challenges not only to the defense lawyers but also to the 'iron triangle' players in the courtroom (e.g., Chen, 2000; Liu, 2006; Liu & Halliday, 2009). Our data shows that the new comers are not afraid of utilizing their new rights to defend their clients but the attitude of the players of the old practice is not as positive to such changes. While Chinese defense lawyers would welcome further structural reforms, the counter forces of the old practice make it more like a tug-of-war and may ultimately dictate the pace of future changes.

Our study carries a number of important implications with regard to China's reforms on criminal procedural in general and on criminal defense in particular. First of all, despite great efforts in the last two decades, criminal defense lawyers in China have *not* become the independent, third-party contender as they are in a true adversarial legal system. As our data show, their work is not valued by the current system and by the other players. More often they have to 'fit' into instead of changing the current system in order to function. The 'iron triangle' still goes as strong as it used to and, it is unrealistic at this moment to expect Chinese criminal defense lawyers to break down such barriers *singlehandedly*. The new 12CPL aims to grant further rights to the defense, nevertheless, the question of their actual implementation and result remains to be seen.

Second, we argue that the effect of Chinese criminal defense (and the difficulties that defense lawyers run into) has to be studied within the evolving and interactive relationships between the defense and the players of the old practice, typified by the 'iron triangle'. When the work of the new comer (defense lawyers) is not welcomed or even viewed 'troublesome' by the already established players, the practice of the new comer will be largely restricted and hampered. Unfortunately, there seems to be little incentive in the current system for the 'iron triangle' to 'welcome' the new comer, and the latter seems to be the lone reformer who longs for further structural changes. When Karpik and Halliday (2011) discussed the concept of the legal complex and its emerging roles in applications, they emphasized how different legal occupations (e.g., lawyers, judges, prosecutors) may be mobilized as alliances on a given issue at a given historical moment to make social and legal changes (e.g., pursuing political liberalism). Our data here unfortunately appear to show a deep cleavage between the 'iron triangle' and Chinese defense lawyers. Such a cleavage may well be one major obstacle to prohibit the formation of

interactive dynamic among diverse legal occupations in China to pursue institutional changes together.

Third, in such a reality, what Chinese defense lawyers can do in their practice is rather limited. Previous studies revealed that defense strategy still matters under the current system (e.g., Lu and Miethe, 2002, 2003). Unfortunately for criminal defendants in China, successful defense strategies in the current system are often limited to submissive cooperation with the 'iron triangle' (e.g., guilty plea in exchange of more lenient sentences) instead of aggressive contention (e.g., non-guilty plea). Our data show that the 'iron triangle' still dominates the process of criminal prosecution and trials, and criminal defense is still the powerless party as compared to the prosecution. In order to make their arguments more 'persuasive' and 'effective', the defense lawyers often have to be the facilitator rather than the contender of the current system. In addition, a few past studies showed that different types of attorneys also matter, either being political embedded (Liu & Halliday, 2011) or governmental/legal-aid lawyers (Liebman, 1999). To build upon previous findings, our argument is that *the type of lawyers matters when it affects the relationship of the defense lawyers with the rest of the system the most, the iron triangle in particular*. Granted, having a good relationship with other players of the courtroom such as judges and prosecutors always helps defense lawyers (and this is most likely true in other nations as well), but the strong coalition of the 'iron triangle' and the powerless status of defense lawyers in China have fundamentally constrained Chinese defense lawyers' practices. As Liu and Halliday (2009) showed, Chinese criminal lawyers' difficulties have deep roots in the recursive nature of the criminal procedure reforms. In particular relevance, our data clearly showed the diagnostic struggles: Chinese defense lawyers and the 'iron triangle' do not match expectations in their diagnostic understandings of the functioning of China's criminal justice

system. Such a mismatch is likely to continue in near future and carry a long-lasting impact on the ongoing reforms in China. In order to make criminal defense more meaningful, China has still a long way to go, and the effect of future reforms may lie in an overhaul of the whole system and one key is to adjust relationships between the defense and the iron triangle by involving all players rather than simply injecting one new comer into the system.

In the end, we'd like to acknowledge some major limitations of this study. First of all, due to the design of the study (i.e., field observation) and difficulties in implementation and data triangulation, many measurements utilized are imperfect and other key variables (e.g., outcome variables) are missing. For instance, questions utilized in the survey collected data on respondents' *perceptions* of our measurements instead of more objective standards. One's perception of lawyers' and others' works may well be different from the actual works. Future studies would definitely need to evaluate defense lawyers' work from multiple angles and based on multiple sources. Second, though our sampling covers extensively criminal justice practitioners from many courts in J province, it is not a representative sample of the nation. For instance, the fact that all of our respondents were enrolled in Juris Masters programs made them a unique sample. Being more educated and more familiar with emerging norms of adversarial representation, respondents in our sample would be more likely aware of key issues surveyed in our questionnaire. Perceptional differences found between defense lawyers and the 'iron triangle' are therefore likely to be understated. As a result, our study should be viewed as explorative and limited. Nevertheless, J Province's experience to a large extent may present a similar picture to other better developed provinces and large cities. As unusual as the high percentage of legal representation in our sample, it may well be the goal and the model of other less advanced cities and places in the future.

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table
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Table 1. Contrast of overall legal representation, between lawyers and court/prosecution/police

Variables	Lawyers	C/P/P	Chi-square/t-test
Estimated representation (%)			
In violent crimes	41.69 (n=306)	36.03 (n=149)	2.013*
In property crimes	37.67 (n=307)	27.64 (n=150)	3.022**
Attorneys' rejections			
R1: Not-cost effective			
Agree/strongly agree	112 (38.2%)	85 (53.8%)	
Neutral	72 (24.6%)	17 (10.8%)	15.711***
Disagree/strongly disagree	109 (37.2%)	56 (35.4%)	
R2: High personal risk			
Agree/strongly agree	233 (73.3%)	49 (34.0%)	
Neutral	35 (11.0%)	31 (21.5%)	65.823***
Disagree/strongly disagree	50 (15.7%)	64 (44.4%)	
R3: Little difference in outcome			
Agree/strongly agree	236 (73.8%)	116 (74.4%)	
Neutral	46 (14.4%)	19 (12.2%)	.588
Disagree/strongly disagree	38 (11.9%)	21 (13.5%)	
Clients' rejections			
R1: Lawyer useless			
Agree/strongly agree	192 (61.5%)	101 (67.3%)	
Neutral	31 (9.9%)	26 (17.3%)	12.302**
Disagree/strongly disagree	89 (28.5%)	23 (15.3%)	
R2: Lawyer irresponsible			
Agree/strongly agree	18 (7.3%)	57 (45.6%)	
Neutral	52 (21.1%)	40 (32.0%)	100.995***
Disagree/strongly disagree	177 (71.7%)	28 (22.4%)	
R3: Cannot afford one			
Agree/strongly agree	230 (75.7%)	132 (84.1%)	
Neutral	44 (14.5%)	15 (9.6%)	4.353
Disagree/strongly disagree	30 (9.9%)	10 (6.4%)	

Note: ***p<0.001, **p<0.01, *p<0.05 significance (two-tailed).

Table 2. Contrast of pre-trial intervention and trial preparation

Variables	Lawyers	C/P/P	Chi-square/t-test
Attorneys' intervention			
Intervention timing			
At investigation	189 (59.1%)	57 (37.7%)	
At indictment	66 (20.6%)	57 (37.7%)	21.274***
At trial	65 (20.3%)	37 (24.5%)	
How soon to meet one's lawyer?			
Within 48 hours	89 (32.5%)	47 (42.3%)	
After 48 hours	80 (29.2%)	30 (27.0%)	3.599
Not without lawyer request	105 (38.3%)	34 (30.6%)	
Does lawyer's involvement in investigation offer protection to defendant's rights?			
Strong protection	69 (20.7%)	39 (24.1%)	
Some protection	199 (59.8%)	103 (63.6%)	4.089
No protection	65 (19.5%)	20 (12.3%)	
Effect of lawyer's presence and investigation at investigation phase?			
Great effect	205 (62.7%)	70 (46.4%)	
Some effect	102 (31.2%)	76 (50.3%)	16.505***
No effect	20 (6.1%)	5 (3.3%)	
Trial preparation			
Lawyer-client meeting being monitored?			
Never	72 (32.9%)	52 (51.0%)	
Sometimes	99 (45.2%)	32 (31.4%)	9.784**
Often	48 (21.9%)	18 (17.6%)	
Lawyer's reaction to threat or torture?			
Pers. toleration/do nothing	103 (38.7%)	63 (57.3%)	
Raise the issue to court	163 (61.3%)	47 (42.7%)	10.861**
Prosecution's reaction to torture?			
Will address the issue	49 (20.3%)	57 (54.3%)	
Not to address/no response	192 (79.7%)	48 (45.7%)	39.677***
Attorney's objection to over-detention and other coercive measures?			
Usually granted	54 (22.6%)	72 (70.6%)	

Usually not granted	185 (77.4%)	30 (29.4%)	70.684***

Note: ***p<0.001, **p<0.01, *p<0.05 significance (two-tailed).

Table 3. Contrast of trial practice (effectiveness, difficulties, relations with other players)

Variables	Lawyers	C/C/P	Chi-square/t-test
Effectiveness			
Estimated % in which			
Defendant acquitted	7.16 (n=136)	6.71(n=24)	.202
Initial charges changed	9.75 (n=170)	9.07 (n=38)	.275
Defendant received more lenient sentence(s)	39.54 (n=208)	28.21 (n=33)	2.683**
What effect do lawyers have in trial?			
Great effect	62 (18.6%)	18 (11.8%)	
Some effect	185 (55.6%)	87 (57.2%)	3.946
No effect	86 (25.8%)	47 (30.9%)	
Primary reasons[a] for lawyers' ineffective representation			
Lawyers' incompetence	20 (6.2%)	25 (19.4%)	3.536***
Defective judicial system	272 (83.7%)	73 (56.6%)	5.602***
Lawyer did not try best	20 (6.2%)	22 (17.1%)	3.043**
Factors[a] affecting effectiveness of criminal defense			
Lawyers' competence	36 (12.3%)	43 (36.8%)	5.011***
Social connection	32 (11.0%)	10 (8.5%)	.725
Judicial competence	62 (21.2%)	12 (10.3%)	2.967**
Defense system overhaul	157 (53.8%)	49 (41.9%)	2.180*
Difficulties			
Effect of witness not testifying in court on lawyers' defense success?			
Great effect	225 (65.2%)	72 (44.7%)	
Some effect	97 (28.1%)	69 (42.9%)	19.408***
Little/no effect	23 (6.7%)	20 (12.4%)	
When lawyers request witness to testify in trial, the court:			
Would grant request	128 (50.8%)	98 (84.5%)	
Would deny request	124 (49.2%)	18 (15.5%)	38.044***
When lawyers request new evidence in trial, the court:			
Would grant request	123 (48.8%)	96 (85.7%)	
Would deny request	129 (51.2%)	16 (14.3%)	44.063***
When lawyers request new appraisal or investigation in			

trial, the court:			
Would grant request	92 (36.9%)	53 (55.2%)	
Would deny request	157 (63.1%)	43 (44.8%)	9.482**
Most important factors[a] in determining if defense lawyer argument is accepted:			
Whether argument has merit	106 (38.4%)	90 (59.6%)	4.282***
Judge's opinion	93 (33.7%)	25 (16.6%)	4.117***
Judicial committee decision	52 (18.8%)	22 (14.6%)	1.147
Prosecution's objection	12 (4.3%)	3 (2.0%)	1.408
Defense lawyer's reputation	7 (2.5%)	4 (2.6%)	.070
Relations with other players			
Prosecution's selective/out of context reading of testimony?			
Very often	161 (47.5%)	29 (18.1%)	
Sometimes	153 (45.1%)	76 (47.5%)	74.181***
Never	25 (7.4%)	55 (34.4%)	
Interruption of defense lawyers by judge in trial?			
Very often	137 (42.0%)	25 (18.5%)	
Sometimes	176 (54.0%)	97 (71.9%)	25.543***
Never	13 (4.0%)	13 (9.6%)	
Interruption of prosecution by judge in trial?			
Very often	16 (5.0%)	4 (3.3%)	
Sometimes	147 (46.1%)	76 (63.3%)	10.385**
Never	156 (48.9%)	40 (33.3%)	
Do prosecution and defense have equal status?			
Agree	34 (10.0%)	41 (24.8%)	
Neutral	60 (17.6%)	61 (37.0%)	55.354***
Disagree	247 (72.4%)	63 (38.2%)	

Note: ***p<0.001, **p<0.01, *p<0.05 significance (two-tailed).
Variables with ([a]) are dummy coded, and the reported percentages are percentages in which the respondents answered the question 'positively': for instance, 6.2% of lawyers (vs. 19.4% of the iron triangle) believed that defense lawyers' incompetence is one primary reason for lawyers' ineffective representation. T-tests are utilized to test the significance of the observed differences.