

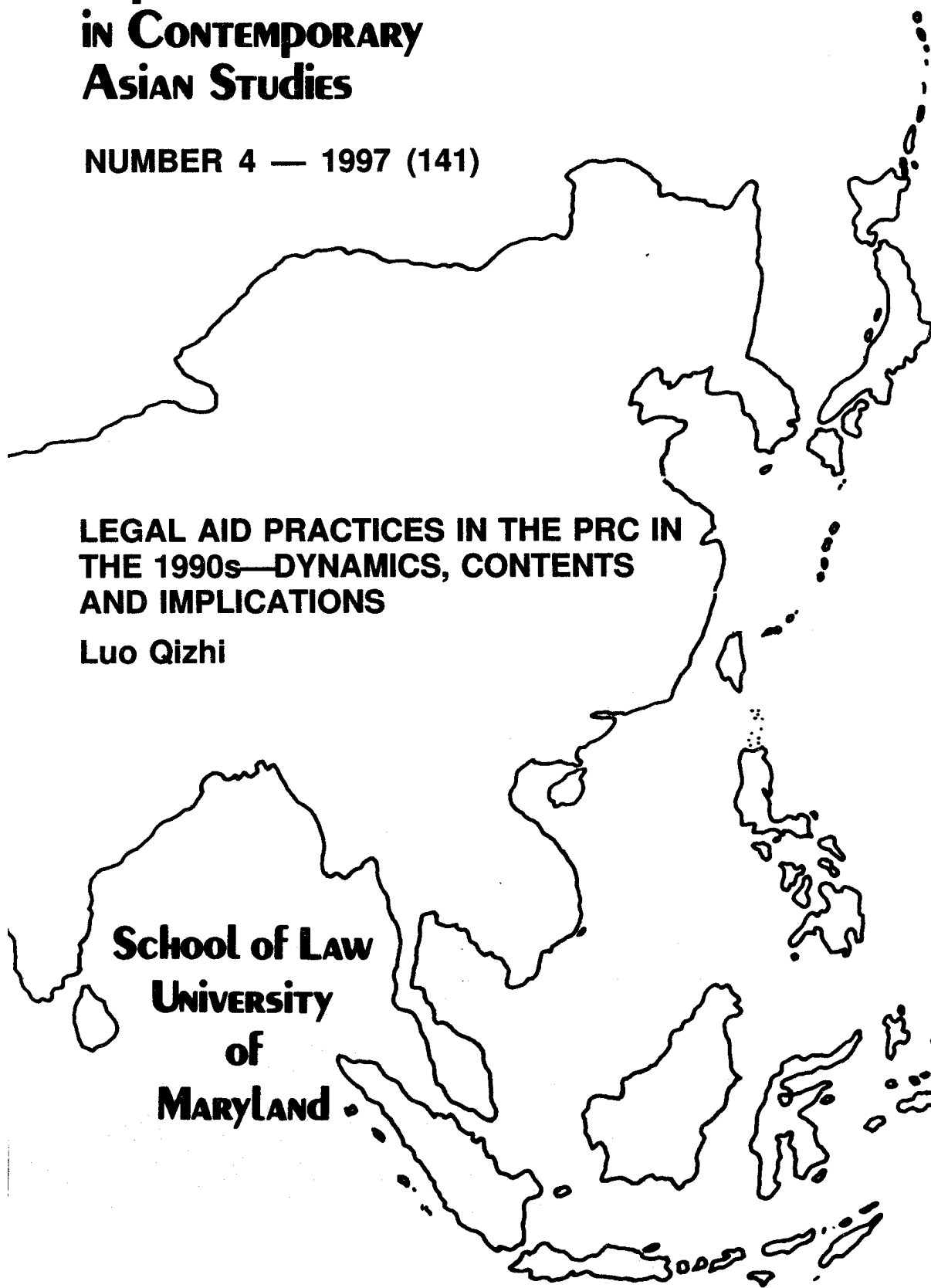
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**LEGAL AID PRACTICES IN THE PRC IN
THE 1990s—DYNAMICS, CONTENTS
AND IMPLICATIONS**

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TABLE OF CONTENTS

CHAPTER I INTRODUCTION	2
CHAPTER II DYNAMICS OF WESTERN LEGAL AID SCHEMES .	8
CHAPTER III THE PRC LEGAL SYSTEM AND ITS SOCIAL CONTEXT DURING THE REFORM ERA	11
A. The PRC Legal System and Its Recent Development	11
B. Social Context of the PRC Legal Aid System in the 1990s.....	21
CHAPTER IV LEGAL AID PROGRAMS AND RELATED PUBLIC INTEREST LITIGATION IN THE PRC	23
A. Legal Aid Program in Beijing	23
B. Legal Aid Program in Guangzhou	25
C. Legal Aid Program in Qingdao	27
D. Legal Aid Program in Shanghai	28
E. Legal Aid Program in Wuhan	30
F. Miscellaneous Legal Aid Practices in Hunan Province	33
G. Public Interest Litigation in Progress	35
CHAPTER V THE MOJ'S FIRST LEGAL AID CONFERENCE AND RECENT DEVELOPMENT OF THE PRC'S LEGAL AID SCHEME	37

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A. State Involvement, Lawyers' Duty and Public Participation	39
B. Legal Services Provided by Legal Aid Centers versus Private Lawyers	42
CHAPTER VI SOME OBSERVATIONS OF THE PRC LEGAL PROFESSION AND LAW STUDENTS ON LEGAL AID SERVICES	43
A. Locating the Sample	44
B. Legal Profession's Views on Legal Aid Services ..	45
C. Law Students' Views on Legal Aid Services	47
CHAPTER VII A PROPOSAL FOR THE PRC LEGAL AID SCHEME	49
CHAPTER VIII CONCLUSION	55
A. Awakening Legal Consciousness among PRC Citizens	55
B. Observations of the PRC Legal Profession: An Increasingly Influential Group?	56
C. The Future Implications of the PRC Legal Aid System	61
GLOSSARY	64

"No Chinese can for a moment comprehend such a conception as is embodied in the phrase *pro bono publico*. He never heard of such a thing, and what is more, he never wants to hear of it."—Rev. Arthur H. Smith, *Village Life in China* (1899; reprint, Boston: Little, Brown, 1970), pp. 25-26.

CHAPTER I. INTRODUCTION

Contrary to Smith's observation of nearly one century ago, the *pro bono publico* ideal, in the form of legal aid services (*falu yuanzhu*), is beginning to be realized in mainland China today.

Many countries in the world, particularly those with advanced legal systems, have programs of legal aid services for the underprivileged. Legal aid services provide an important counterbalance to evident inequalities in society. The goal of legal aid is to help secure more equal access to justice for needy citizens who, most often, are the indigent.

In some welfare states, like the Scandinavian countries, legal aid systems are in fact seen as part of the established social security and welfare systems. In Norway, it is generally assumed that no one should lack legal assistance because of economic status. Thus, the

legal aid system provides a scheme of insurance under which everyone has access to legal services.¹

Both the legal aid system and the welfare system aim to reduce social stratification and social conflicts. Within stratified societies, structured inequality between social and economic classes generates increased conflicts among individuals and groups. Therefore, in many countries, while complex legal systems are developed to cover almost every sphere of social life, the legal aid system is established as an integral part of the legal systems, in order to reduce conflicts and stabilize society, as well as to protect the justice-related rights of the indigent.

Basically, there are three principal systems for providing legal aid services to the needy. These include (1) *pro bono* programs, according to which private attorneys, bar associations or non-profit organizations offer free legal services or for a specific, relatively low fee; (2) assigned counsel schemes, according to which a presiding judge can "call upon" a lawyer to "defend a case"; and, (3) public legal aid systems, under which an organization funded by the government and staffed by full-time, salaried lawyers is responsible for assisting the indigent and other needy persons.²

At present, in mainland China there is not yet an established nationwide legal aid system, although on May 26, 1997, a national legal aid foundation and a legal aid center were established under the Ministry of Justice. Some legal aid programs of the aforementioned modes, however, have been set up in some provinces and cities since 1994, when Xiao Yang, the Minister of Justice formally called on establishing a legal aid scheme to help those who were not able to afford legal representation.³ In November 1995, China's first government-funded legal aid organization was set up in Guangzhou, Guangdong province.⁴

1. Eugene Harrington, *Fri Rettshijelk: A Comparative Study of Legal Services for Lower Income Persons in the United States and Norway*, s. l.: s. n., 1982, p. 152.

2. Andrew Raffell, "Legal Assistance," in Mark S. Gaylord & Harold Traver, ed., *Introduction to the Hong Kong Criminal Justice System*, Hong Kong: Hong Kong University Press, 1994, p. 117.

3. "National Legal Aid Foundation Established," *Xinhua English Newswire*, May 26, 1997, available in WESTLAW, Allnews. See also Gao Zhen & Liu Xiaolin, "Ruozhe, Shui Lai Baohu Ni?" (The Weak, Who Will Protect You?) *Renmin Ribao* (overseas edition) (People's Daily), July 13, 1996, p. 4.

4. Beijing, Guangzhou, Shanghai and Wuhan are probably the first four cities where legal aid programs were set up. By the end of 1996, legal aid programs reportedly had been established in eight Chinese provinces and 16 provincial capital cities, including Yinchuan, Ningxia and Xining, Qinghai in the remote northwestern part of the

After the establishment of the Communist regime in 1949, Chinese legislators passed some laws and regulations, which included free or low-fee legal services or legal representation. A regulation dated back to October 1956 resulted in cases in which free or low-fee legal services were provided by lawyers.⁵ Free or low-fee legal services and legal representation of the poor through court appointment were sporadically provided in such laws and regulations as the Criminal Procedure Law (*xingshi susong fa*), Civil Procedure Law (*minshi susong fa*) and Provisional Statute on Lawyers (*lushi zanxing tiaoli*).⁶

Free legal consultation services (*mianfei falu zixun fuwu*) are in fact not new to urban, if not all, Chinese citizens. In the past decades, for political or propaganda purposes, it was not unusual to see lawyers gathered in the streets offering legal advice to interested passers-by. For example, every year around March 5, the memorial day of Mao's campaign to "learn from Comrade Lei Feng", a People's Liberation Army soldier famed for anonymously doing good deeds for his comrades-in-arm and other people, Chinese citizens from all walks of life are called upon to "serve the people and do good deeds for the people" following the example of Lei. Lawyers thus offered to provide free legal advice to people on the streets. Every August 26th⁷, lawyers all over the country are called upon to provide free consultation to celebrate the anniversary of the Provisional Regulation on Lawyers passed on that date in 1980. But these and other kinds of politics-oriented or propaganda-oriented free legal consultation services are scattered and will not be taken as the legal aid practices in point here. This paper will focus on the more conventional legal aid practices that have emerged in a

mainland. See Chen Yanni, "Law Sector Progress Rapidly," *China Daily*, Jan. 27, 1997, p. 1. Zhang Xiufu, the executive Minister of Justice, reported in a news conference held by the Information Office, State Council, that there were 47 legal aid organizations in large and medium Chinese cities as of March 1997. See Xinhua News Agency, "Wo Guo Fazhi Jianshe Qude Xin Jinzhan," (New Progress Has Been Made in Legal System Construction in the Country) *Renmin Ribao* (People's Daily), April 1, 1997, p. 3. By the end of May, 1997, there were reportedly some 17 province, autonomous regions, municipalities, and 50-plus large and medium-sized cities throughout the country had set up or had been working to set up their legal aid organizations. See *Xinhua English Newswire*, *supra* note 3.

5. Xiao Yang, "Jianli You Zhongguo Tese de Falu Yuanzhu Zhidu," (Establishing a Legal Aid System with Chinese Characteristics) *Zhongguo Lushi Bao* (China Lawyer News), May 25, 1996, pp. 1 and 3.

6. *Ibid.*

7. Xinhua (August 26, 1994), "Lawyers Nationwide Offer 'Free Consulting'," in *FBIS-CHI-94-167*, August 29, 1994.

few major cities since the early 1990s. Among these legal aid programs, there are *pro bono* programs initiated and funded by law firms and legal professionals⁸ as well as legal aid programs established and funded by local governments⁹ and lawyers' associations (*lushi xiehui*).¹⁰

In China, legal aid programs organized by lawyers' associations are not confined to *pro bono publico* services in the Western sense of legal help rendered to clients by private attorneys for no fee or a reduced fee. At the same time, lawyers' associations in China are not equivalent to those in the Western countries, but rather, as "mass organizations" (*shehui tuanti*), they are supervised and directed by government authorities (*zhengfu zhuguan jiguan*), i.e., the Ministry of Justice (*sifabu*, hereafter referred to as the MOJ) and its affiliated bureaus of justice in various localities. At this stage, however, it is not necessary to differentiate between *pro bono* services and other legal aid services in a Chinese context, because the concept of legal aid services remains rather blurred in China. The concept encompasses, in its broadest and most general terms, a hybrid of programs, including those organized by both the lawyers' associations and the government authorities, as well as *pro bono publico* services by legal professionals and their law firms.

With the amendment of the Criminal Procedure Law of the PRC (*zhonghua renmin gongheguo xingshi susong fa*) in March 1996 and the passing of the PRC Lawyers' Law (*zhonghua renmin gongheguo lushi fa*) in May 1996, the elements were in place to make legal aid services a realistic endeavor when both laws took effect on January 1, 1997. In the Criminal Procedure Law, it is stipulated that the People's Courts may assign lawyers to undertake

8. For example, in Hunan, Hubei and Henan provinces, some law firms set up *pro bono* programs in their firms. See Sun Jibin, "Shi Xiang Pinruozhe de Nuoya Fangzhou," III (Noah's Ark Sailing Towards the Poor and the Weak) *Zhongguo Lushi Bao* (China Lawyer News), July 6, 1996, p. 1. A private law firm in Beijing started a Saturday free legal advice program and offered services to more than 1,500 people within two years. See Tian Bingchuan, "Rang Baoxiao Shehui de Zhihui Guangyan Yongcun," (Let the Intellectual Flame of Rendering Services to the Society Last Forever) *Zhongguo Lushi* (China Lawyer), No. 1 (1997), p. 28.

9. The Guangzhou Legal Aid Center reportedly was the first legal aid services organization with staff lawyers set up by a local government. See Qiu Shi, "Guangzhoushi Falu Yuanzhu Zhongxin Guapai Kaiye," (Guangzhou Legal Aid Center Is Licensed to Operate) *Zhongguo Lushi* (Chinese Lawyer), No. 12 (1995), p. 39.

10. In cities like Wuhan and Beijing, the local lawyers' associations have stipulated legal aid rules for their member lawyers. See Sun Jibin, "Shi Xiang Pinruozhe de Nuoya Fangzhou," (II) (Noah's Ark Sailing Towards the Poor and the Weak) *Zhongguo Lushi Bao* (China Lawyer News), July 3, 1996, p. 1.

legal aid obligations to defend those defendants who do not themselves retain representatives because of their poor economic status. Lawyers are also to be assigned to undertake legal aid obligations in cases where the defendants are blind, hearing or speech-impaired, juveniles, or accused of a capital crime.¹¹ Legal aid services are further stipulated to be an obligation of lawyers by the Lawyers' Law and the Law specifies the kinds of legal aid cases that may compose the obligation.¹² In order to implement the laws, the MOJ has promulgated a directive (*tongzhi*) to its affiliated organs, which will be discussed further below, calling for the creation of a national legal aid service network for the indigent. The directive requires that every one of China's more than 100,000 practicing lawyers should take a certain number of legal aid cases.¹³ Also, the MOJ impaneled a state-sponsored organization to take charge of national legal aid work. Virtually, every province has begun to create provincial level legal aid organizations. Hunan province, for instance, expects to open a legal aid center for minors and a hotline offering legal consultation services.

MOJ executives have spoken eloquently about legal aid services as a dynamic force for social good and the improvement of China's human rights record¹⁴ as well as for the expansion of the social welfare system.¹⁵ According to Xiao Yang, legal aid will cover a wide range of civil and criminal cases. Legal aid will even be available in lawsuits concerning the infringement of basic civil liberties, such as the right to stand for election. Legal aid services will be provided to citizens, enterprises and even indigent foreigners in

11. Article 34 of the *Criminal Procedure Law of the People's Republic of China*.

12. Chapter Six of the *Lawyers' Law of the People's Republic of China*, including three articles, specifies the provision of legal services. Article 42 obliges lawyers to undertake legal aid duty under the law. According to Article 41, citizens may qualify for legal aid services, if they do not have sufficient means to afford legal representation, in cases involving support, industrial injuries, criminal defense, state compensation, and pensions.

13. *Sifabu Guanyu Kaizhan Falu Yuanzhu Gongzuo de Tongzhi*, (The MOJ's Notice on Expanding Legal Aid Work) May 1997. On file with the author.

14. For example, Zhang Xiufu, the executive minister of Justice, claimed that the legal aid centers in China have had a wide variety of positive influence on society. See Xinhua News Agency, *supra* note 4.

15. Xiao Yang, "Jianli he Jianquan Falu Yuanzhu Zhidu Shi Jiaqiang Shehui Zhuyi Jingshen Wenming Jianshe Tuidong Shehui Jinbu de Shiji Buzou," (Establishing and Perfecting a Legal Aid System Is a Practical Measure to Strengthen Socialist Spiritual Civilization Construction and Promote Social Progress), speech delivered at the First National Conference on Legal Aid of the MOJ in Guangzhou during November 18-21, 1996, p. 14. On file with the author.

criminal cases.¹⁶ MOJ plans to establish and improve a legal aid system in five to fifteen years by setting operational guidelines for the task.¹⁷

The Minister of Justice claims that the establishment of the Chinese legal aid system will effectively help to guarantee the human rights of indigent people and justice in a broader sense. As a matter of fact, in its response to Western criticisms about its human rights record (see the State Council's White Paper of December 1995 "The Progress in Human Rights in China"),¹⁸ the PRC government specifically claimed that legal aid programs have been set up in four major cities in order to strengthen human rights protection in China. "The Progress in Human Rights Course in China in 1996" further claimed that the Lawyers' Law and other legal documents were passed, and that the Criminal Procedure Law and Criminal Law were significantly amended in an effort to protect human rights in the PRC.¹⁹

To determine whether such optimism about the ultimate impact of the legal aid system is warranted, it is necessary to probe into why legal aid practices and programs are now emerging in China. The nature of the incipient Chinese legal aid system, the extent to which it will be developing and the role of the PRC legal profession in the provision of legal aid services, and the degree to which the legal aid system may improve Chinese human rights protection are all issues salient to an understanding of the value that legal aid services may have for the indigent community.

Judges, lawyers, activists and scholars in China have expressed a growing interest over the last few years in establishing a system of legal aid for the poor and have actively begun to establish the framework for a legal aid system in China. Chinese scholars have done study on legal aid systems in other countries.²⁰ According to Tao Mao, the provision of free legal services to indigent people has been one of the frequent tasks for the PRC "legal workers" (*falugongzuo zhe*). He speculated on the need for a legal aid system that

16. Xiao Yang, *supra* note 5.

17. Xiao Yang, *supra* note 15, p. 25.

18. *Beijing Review*, Vol. 39, Special Issue, January 1996, p. 13.

19. The State Council Information Office, "1996 Nian Zhongguo Renquan Shiye de Jinzhan," (The Progress in Human Rights Course in China in 1996) *Wen Hui Po* (Hong Kong), April 1, 1997, p. A7.

20. A research institute affiliated with the MOJ has undertaken to translate the legal aid laws and ordinances in foreign countries including the United States, Britain, Canada, Hong Kong, Japan, South Africa and South Korea.

comports with “the process of socialist legal system construction” and outlined the framework for this system.²¹ Similar calls for the establishment of a legal aid system with “Chinese characteristics” were echoed by, among others, Yan Junxing²² and Ma Yu-e,²³ and Xiao Shengxi, who briefly introduced some legal aid modes in other jurisdictions and proposed a Chinese legal aid delivery mode under the supervision and guidance of multi-level authorities.²⁴

Those scholarly articles, however, lacked a comprehensive survey of legal aid practices in mainland China and were therefore largely speculative. To bridge the gap, this author will investigate legal aid programs in China by examining legal aid cases and analyzing their effect within the Chinese social context.

CHAPTER II. DYNAMICS OF WESTERN LEGAL AID SCHEMES

The relationship between law and social change has been and remains controversial among scholars.²⁵ While it is not the purpose of this paper to join in the discussion of whether law primarily changes society or social change primarily alters law, it is vital to the purpose of this paper to understand the conditions under which social changes cause the emergence of legal aid practices and systems. To this end, in this section we will look at the social dynamics that have led to the establishment of legal aid systems in Western countries.

21. Tao Mao, “Guanyu Jianli Woguo Lushi Falu Yuanzhu Zhidu de Gouxiang,” (Considerations in Establishing a Lawyer-Based Legal Aid System in Our Country) *Zhengfa Luntan* (Law and Politics Tribune), No. 1 (1996), pp. 1-5.

22. Yan Junxing, “Jianli You Zhongguo Tese de Falu Yuanzhu Zhidu,” (Establishing a Legal Aid System with Chinese Characteristics) *Zhongguo Lushi Bao* (China Lawyer News), April 8, 1996, p. 2.

23. Ma Yu-e, “Ying Jianli Juyou Zhongguo Tese de Falu Yuanzhu Zhidu,” (A Legal Aid System with Chinese Characteristics Should Be Established) *Guangming Ribao* (Guangming Daily), May 25, 1996, p. 7. In fact, Cheng Tizhen and Gao Guiqin are probably the first authors to discuss a legal aid system with Chinese characteristics. In 1991, they proposed nine principles according to which the legal aid system should be developed, but addressed the issue from a political perspective. See “Wanshan Woguo Falu Fuzhu Zhidu Chuyi,” (A Preliminary Discussion to Improve the Chinese Legal Aid System) *Sifa Xingzheng* (Justice Administration), No. 4 (1991), pp. 27-28.

24. Xiao Shengxi *et al.* “Ruhe Jianli Zhongguo de Falu Yuanzhu Moshi,” (How to Establish a Legal Aid Mode in China) *Dangdai Sifa* (Judicature Today), No. 10 (1996), pp. 4-7.

25. Steven Vago, *Law and Society*, Englewood Cliffs, NJ: Prentice-Hall, 1991, p. 215.

Many legal scholars and sociologists generally contend that the emergence of a legal aid system is the result of the development of legal perception and social justice values. With society becoming more and more complex, people developed the perception of litigants' rights of equal and effective access to the court purely from the perspective of equal protection under the law. The idea of providing legal aid to the poor is therefore to ensure equal access to the courts. It is held that in truly democratic systems, equality before the law is a matter of right rather a matter of charity or of favor.²⁶

In modern society, people are living through a variety of social and economic changes and are confronted with a series of new individual risks. As a result, legal schemes have increasingly been created to protect individuals. Such legal schemes must take into account social welfare laws, such as provisions for worker's compensation, unemployment insurance, old age pensions and Medicare.²⁷ Legal aid schemes, as a result of the attention paid to social welfare in the legal arena, were created to provide access to justice for individuals, especially the indigent and "working poor," at a reasonable cost and quality.

Constitutions in many countries and relevant international treaties are framed to ensure social justice and incorporate principles that social, economic and political justice will be available to all. The governments in such countries is responsible not only for the nations' development, but also for the well-being of their individual citizens, which naturally includes equal protection of citizens' rights and equal access to justice. Therefore, it is the duty of the state to ensure that justice is not denied to anyone because of economic constraints. In the absence of effective steps taken by the state to provide legal aid services to the poor people, the concept of social, economic and political justice will remain a mere declaration of ideals.

The development of legal aid systems has been intimately connected with the rise and development of the legal profession. The legal profession, as an integral part of the justice system, plays a vital role in providing legal aid services to the poor. Some scholars hold that it is the duty of the legal profession to ensure that no

26. K. D. Gaur, "Legal Aid and Legal Services in India," working paper for Madrid Conference on the Law of the World, Sept. 16-20, 1979, p. 5.

27. Philip M. Hauser, "Demographic Changes and the Legal System," in Murray L. Schwartz, ed., *Law and the American Future*, Englewood Cliffs, NJ: Prentice-Hall, 1976, p. 24.

person should be denied justice because of a lack of means to secure access to the judicial system.²⁸ Although there are always voices from the legal profession against providing free services to the indigent,²⁹ at any given time a number of lawyers do provide legal services *pro bono publico* for the poor.

As legal systems have expanded to cover almost every area of social life, there has been a rise in social consciousness among lawyers. The legal profession acknowledges that it has the responsibility to provide legal services to the indigent. Public interest practices have thus emerged, as have legal aid lawyers. During the process, the legal profession's commitment to public interest duty also increases the general public's confidence in lawyers, thus making the profession a distinguishable self-governing social institution.

In the United States, a legal aid office was opened in New York in 1876 to serve those German immigrants "who may appear worthy thereof," but "[were] unable to procure [legal services]."³⁰ Other cities followed suit and the idea of meeting the civil legal needs of the poor by delivering to them legal services free of charge took root in the country.³¹ In the 1960s, legal aid became an important social welfare for the poor community in the United States. As part of President Johnson's "War on Poverty," the federal government began to provide funds to civil legal services for the indigent through the Office of Economic Opportunity in 1965³², and in 1974 the Legal Services Corporation was set up to assume the burden of legal aid work. In the process of institutionalizing legal aid services

28. A. M. Ahmadi, "Access to Justice and the Role of the Lawyer in Society: an Indian Perspective," conference proceedings at the Barcelona Conference on the Law of the World, Oct. 6-11, 1991, p. 23. Tigran W. Eldred and Thomas Schoenherr argue that lawyers have a fundamental duty to provide legal services to the poor, which is derived from the monopoly that the legal profession has over legal services; the legal profession therefore is in a unique position to meet the needs of the poor. See Eldred & Schoenherr, "The Lawyer's Duty of Public Service: More Than Charity?" *West Virginia Law Review*, Vol. 96 (1993-94), pp. 367-403.

29. Frank K. Upham, "The Role of the Legal Profession in Social Change in the USA," in Khaki Rojumoto, ed., *The Social Role of the Legal Profession*, Proceedings of the International Colloquium of the International Association of Legal Science, Sept. 3-6, 1991, Tokyo: International Center for Comparative Law and Politics, Faculty of Law, the University of Tokyo, 1993, p. 265.

30. A. Saltzman, "Private Bar Delivery of Civil Legal Services to the Poor: A Design for a Combined Private Attorney and Staffed Delivery System," *Hastings Law Journal*, Vol. 34 (1983), p. 1166.

31. *Ibid.*

32. A. Saltzman, *supra* note 30, p. 1168.

to the poor, the American legal profession has always remained an important driving force for social and political change.³³

CHAPTER III. THE PRC LEGAL SYSTEM AND ITS SOCIAL CONTEXT DURING THE REFORM ERA

A. The PRC Legal System and Its Recent Development

From the founding of the PRC to the end of the 1970s, the Chinese legal system was basically centered in the civil sense on the creation of a planned economy and in the criminal sense on its use as an instrument of class struggle. For almost three decades, few laws and regulations were introduced to regulate social and economic settings. Legal procedures were simplified and access to justice became extremely simple with low costs³⁴ and less formality. It was the duty of the judge to control the whole procedure in the courts. Whether poor or rich, Chinese litigants did not pay for filing cases in the People's Courts.

Although the Constitution and other regulations provided that criminal defendants were entitled to be defended,³⁵ criminal defendants essentially did not have the right to defend themselves or hire lawyers to defend them at trials. Lawyers were defined as "state legal workers" (*guojia falu gongzuo zhe*). Their obligation to protect socialism and the state interests took priority over their duties to protect their individual clients.³⁶ Therefore, at times when law was much less pervasive in the lives of citizens, and less complicated and more easily administered, and justice was almost free, there was little need for China to develop a legal aid system like other industrialized democratic countries.

Since the 1980s, however, the demands of economic reform have required a new and more extensive application of law that had

33. Frank K. Upham, *supra* note 29, p. 275.

34. In 1981, the MOJ adjusted legal fees from rates that existed since 1956. However, even according to the adjusted rates, lawyers could only charge 10-30 yuan renminbi for criminal cases and 10-30 yuan renminbi for non-property civil disputes and 10-30 yuan renminbi for property disputes involving less than ten thousand yuan renminbi. See the MOJ's "Lushi Shoufei Shixing Banfa," (1981) (Tentative Scheme for Lawyers' Fee) in Zhang Xiufu, ed., *Zhongguo Sifa Xingzheng Nianjian* (1995) (China Judicial Administration Yearbook), Beijing: Law Publishing House, 1996, p. 664.

35. The PRC Constitution Law, as early as 1954, stipulates that criminal defendants are entitled to a defense. Article 6 of the General Principles of the People's Court Organization of 1950 stipulates that defendants may hire defenders to defend them.

36. William Alford, "Tasselled Loafers for Barefoot Lawyers: Transformation and Tension in the World of Chinese Legal Workers," *The China Quarterly*, No. 141(1995), p. 28.

little relevance to China's decades-long emphasis on the law's class nature. Therefore, a great number of laws have been passed to create a more encompassing legal system. PRC efforts to develop a legal system to accommodate divergent economic interests, and the state's growing tolerance for a diversity of property ownership and interests have yielded far more extensive, complex and far-reaching legal rules than a single planned economy would require and beyond which ordinary people could possibly understand.

In addition, despite modest progress, public law reform has been undertaken and a few laws, regulations and rules of public interest have been passed to allow individuals as a class to bring lawsuits. Confidence by individuals with regard to law and order has increased, especially in matters of divorce, family issues, housing and property. Even farmers, who used to suppress their rage at exorbitant levies imposed by some officials at the grass-roots levels, have begun turning to the legal system for protection of their rights and interests.³⁷

As has been suggested by a recent poll in China, eighty percent of surveyed people said that they might resort to lawsuits if their rights and interests were infringed upon.³⁸ As a result, there has been a litigation boom in the PRC in the past decade and the number of cases litigated has steadily increased every year. Consequently, the use of lawyers' services has expanded gradually beyond the state and collective enterprises, administrative agencies and individual enterprises, and the needs of individuals for professional counseling and representation have increased.³⁹ Individuals from all walks of life have begun to seek out legal services.⁴⁰ This is a significant development in a society where non-litigious dispute settlement has been firmly entrenched as a result of traditional norms and Socialist ideology.

37. Zhou Wanting *et al.*, "Cong Xingzheng Anjian Kan Nongmin Guanzhu de Xingzheng Redian Wenti," (Looking at the Administrative Hot Issues among the Farmers from Administrative Cases) *Renmin Fayuan Bao* (People's Court News), July 11, 1996, p. 3. See also Wang Zhenzhong, "Farmers Turn to Legal System," Beijing Xinhua News Agency, June 20, 1993, in *FBIS-CHI-93-118*, June 23, 1993.

38. Xing Zhigang, "Chinese Still Prefer Mediation to Lawsuits," *China Daily*, Jan. 28, 1997, p. 3.

39. According to a document from the Nanjing Lawyers' Association, Nanjing lawyers received more than 6,200 citizens for counseling in twelve monthly sessions of "Legal Consulting Day" in 1995. On file with the author.

40. Sun Guodong, "Youshi, Qing Zhao Wo de Lushi," (Any Problems, Please Contact My Lawyer) *Zhongguo Lushi Bao* (China Lawyer News), July 31, 1996, p. 1.

In 1986, the Chinese authorities launched a campaign to implement a "first five-year plan" to extensively equip all citizens with legal common knowledge (*jiben puji falu changshi*). This was designed to mobilize some 700 million people to be involved in mass education.⁴¹ The main purpose of the campaign was to help citizens learn about laws and thus abide by them.⁴²

The second five-year plan started in 1991, and stressed the publicizing of citizens' rights and obligations. It helped citizens understand more of their legal rights.⁴³ In May 1996, the third five-year plan was launched, which emphasized laws relevant to citizens' daily work and life and the maintenance of social stability.⁴⁴ From these and other legal knowledge dissemination campaigns, Chinese citizens have become more aware of their individual rights. Even in the countryside, the legal knowledge education campaigns have led farmers to realize that law and order are essential to life in their communities.⁴⁵ This makes it possible for the Chinese people to pursue their legitimate rights through legal means when their rights are infringed up.⁴⁶

At the same time, Chinese litigants, unlike their counterparts under the command economy, have to pay for filing cases in the

41. *Zhongguo Falu Nianjian* (1991) (Law Yearbook of China), Beijing: Press of Law Yearbook of China, 1992, p. 109.

42. "Zhonggong Zhongyang Xuanchuanbu, Sifabu Guanyu Xiang Quanti Gongmin Jiben Puji Falu Changshi de Wunian Guihua," (Communist Central Propaganda Ministry and Justice Ministry Five-year Plan for Extensively Educating All the Citizens about Legal Common Knowledge) (Nov. 5, 1985), State Information Center, *Laws and Regulations of China*, CD-ROM GD-9602, Beijing: State Information Center, 1996.

43. Zhang Guangxing, "Shehui Fazhan Zhong de Renshen Quanli," (Individual Rights in the Process of Social Development) in Xia Yong, ed., *Zou Xiang Quanli de Shidai* (Time Towards Rights), Beijing: Chinese Political Science and Law University Press, 1995, p. 414.

44. "Zhongxuanbu, Sifabu Guanyu Zai Gongmin Zhong Kaizhan Fazhi Xuanchuan Jiaoyu de Di San Ge Wunian Guihua," (Communist Central Propaganda Ministry and Justice Ministry Third Five-year Plan for Education of Legal Knowledge Among the Citizens) (May 1996). See *Xinhua Yuebao* (Xinhua Monthly), No. 6 (1996), pp. 33-34.

45. A Beijing researcher reported that when he did field work in some villages, farmers were ready to relate their rights as part of the legal knowledge education campaign. When asked whether the farmers were genuinely interested to learn more about the law, a CCP secretary in the village replied, "in the past you wouldn't catch up with the political trends without studying documents, while now you will suffer from not studying law," and then cited some examples of the sufferings from ignorance of law and order in his village. See Xia Yong, ed., *supra* note 43, p. 717.

46. According to a survey by some Beijing researchers, 220 among 275 people replied that they got to know about their individual rights after they took mass legal education classes. *Supra* note 43, p. 414.

People's Courts in accordance with the PRC Civil Procedure Law and other regulations. Although those with difficulties in paying litigation fees may appeal for deferral of, deductions from, or exemptions from litigation fees, approval is in the courts' discretion. Some litigants cannot even afford the minimum 150 yuan renminbi filing fee,⁴⁷ let alone the cost of professional counseling or representation. Counsels act as "a check on the possible arbitrary exercise of power by the judges."⁴⁸ Litigants, when underrepresented, are more likely to suffer mistreatment and injustice,⁴⁹ and rights and guarantees under the law would be meaningless for them. Therefore, unless some provision is made for assisting the indigent and needy litigants for the payment of court-fees and lawyers' fees and other costs of litigation, it is questionable whether they can be protected properly at a time when the state legal system is becoming more complex.

With the adoption of seven new laws in 1979, including the Criminal Law and the Criminal Procedure Law, the Chinese legal profession began to redeliver legal services after years of turmoil during the Cultural Revolution. In 1980, the Provisional Regulations on Lawyers were passed and by the end of 1981 there were 5,500 lawyers working in China.⁵⁰ The MOJ started to hold a national bar exam in 1986 every other year to admit PRC citizens into the practice of law. Since 1993 the exam has been held annually and an increasing number of PRC citizens have applied to sit for the national bar exam.⁵¹ In 1993 alone, nearly 20,000 people were admitted to practice law in China.⁵² The legal profession in China has proliferated to 102,000 licensed lawyers by early 1997⁵³ among a

47. Xiao Ma, "New Service Provides Poor with Legal Ease," *China Daily*, Nov. 17, 1995, p. 2.

48. A. M. Ahmadi, *supra* note 28, p. 22.

49. Andrew Raffell, *supra* note 2, p. 109.

50. Tao Mao, *et al.*, *Lushi Zhidu Bijiao Yanjiu* (Comparative Study on Lawyer Systems), Beijing: Chinese Political Science and Law University Press, 1995, p. 22.

51. Since 1993 every year more than 100,000 people take the exam. A Ji, "Zhengyi Yu Jinqian, Ni Wei Shui Bianhu?" II (Justice and Money — for Which Do You Defend?) *Zhongguo Lushi* (China Lawyer), No. 10 (1996), p. 9. According to Wu Xiaoji, during the first few years, the passing rate was 25%. However, the bar exam has become more and more difficult and the passing rate has been around 10% in recent years. See Wu Xiaoji, "Dalu Lushi Xiehui de Diwei he Zuoyong," (The Status and Role of the Mainland Lawyers' Associations) paper presented at a symposium on Taiwan and mainland lawyers' system held in Taipei in July 1996, p. 4.

52. *Zhongguo Falu Nianjian* (1994)(Law Yearbook of China), Beijing: Press of Law Yearbook of China, 1995, p. 151.

53. Xinhua News Agency, *supra* note 4.

population of 1.22 billion.⁵⁴ Furthermore, this growth rate does not seem to show any sign of declining. As indicated by Minister of Justice Xiao Yang, China has set a target of having over 150,000 lawyers by the end of this century.⁵⁵

Due to China's increasing reliance on the market economy mechanism, Chinese lawyers are playing a far more active role than their planned economy counterparts. They not only provide services in counseling, advising, defense and mediation, but also work to prevent potential legal problems. There were about 8,265 law firms operating across the country as of early 1997.⁵⁶ In 1988, the MOJ cautiously sanctioned pilot co-operative law firms in a few big cities.⁵⁷ Since 1992, so-called co-operative law firms (*hezuo zhi lushi shiwusuo*) and partnership law firms (*hehuo zhi lushi shiwusuo*) have emerged in significant numbers.⁵⁸ In Beijing alone, during seven continuous months in 1994, about 70 co-operative or partnership law firms were issued licenses; on average one law firm was licensed every three days.⁵⁹ These law firms, unlike their state counterparts, which are owned by local justice organs, are operated according to the principles of "two nos and four selves" (*liang bu si zi*), that is, not requesting state funding (*bu yao guojia jingfei*), not having state staff (*bu zhan guojia bianzhi*), organizing by themselves (*ziyuan zuhe*), deriving earnings and making expenditures by themselves (*zishou zizhi*), developing by themselves (*ziwo fazhan*) and restraining themselves (*ziwo yuesu*). Lawyers in such law firms are no longer labeled as "state cadres" (*guojia ganbu*), as they used to be under the planned economy mechanism.

The increase in the number of Chinese lawyers and law firms, however, should not necessarily lead one to believe that ordinary people can gain greater and easier access to professional counseling

54. In the United States, lawyers numbered 896,000 among nearly 260 million people in 1995. Kenneth F. Boehm & Peter T. Flaherty, "Legal Disservices Corp.: There Are Better Ways to Provide Legal Aid to the Poor," *Policy Review*, No. 74 (1995), pp. 17-24.

55. Cited in Xiao Yang, "Reform of the Lawyer's System in China," a speech delivered on Oct. 15, 1993.

56. Xinhua News Agency, *supra* note 4.

57. A Ji, *supra* note 51, p. 12.

58. However, the author's interview with a Xiamen lawyer on May 5, 1997 revealed that the authorities have started to restrict the expansion of private law firms in an effort to support the development of state-owned law firms since 1997.

59. By the end of June 1995, there were 7200 law firms across the country. Of these firms, more than 500 were co-operative law firms and more than 1,200 were partnership law firms. See A Ji, *supra* note 51, p. 13.

or representation. Without funding from the government⁶⁰ and under the competitive pressure of the legal market, many law firms and lawyers are likely to charge extremely high fees, which are far more than what ordinary, let alone poor, people can afford. A national survey conducted during 1993-94 revealed that 29.38% of the surveyed people held that lawyers charged very high service fees.⁶¹ Law firms and individual lawyers now tend to be reluctant to take low-profit cases, let alone those in which clients are not able to pay even the modest officially-prescribed rates. For example, because the official rate for criminal cases currently is 30 to 150 yuan renminbi per case and can reach a maximum of only 300 yuan renminbi for complex cases, and because of other concerns among lawyers as well,⁶² not many lawyers want to take criminal cases.⁶³ As a result, there has been a decline in the legal profession's involvement in criminal cases in recent years. As indicated in Table 3-1, in one of the Higher People's Courts, about fifty percent of criminal cases were litigated without defense counsel, and the number of lawyers defending per case has declined during the past five years.⁶⁴

60. Besides the co-operative law firms and partnership law firms, many state-owned law firms no longer have government support. This means that lawyers in such law firms are no longer on the government payroll. In 1995, there were more than 5,500 state-owned law firms out of 7,200 law firms across the country. Among these state-owned law firms, 2,674 law firms (48.6%) were required to handle their own expenditures. See A Ji, *supra* note 51, p. 13.

61. Chen Zexian, "Xingshi Fazhi Fazhan yu Gongmin Quanli Baohu," (Criminal Legal System Development and Protection of Citizens' Rights) in Xia Yong, ed., *supra* note 43, p. 493.

62. Before the amendment of the Criminal Procedure Law in 1996, the lawyers' role in criminal defense cases was restricted and it was not unusual that their counsel's opinions were ignored by judges at trials. Besides, in the past few years, there have been risks and dangers to lawyers dealing with criminal defense cases. See A Ji, "Zhengyi Yu Jinqian, Ni Wei Shui Bianhu?" I (Justice and Money — for Which Do you Defend?) *Zhongguo Lushi* (China Lawyer), No. 9 (1996), p. 21.

63. Lawyers and law firms who otherwise make efforts to take criminal defense cases are publicized for "serving the needs of the society and promoting good professional images." For example, a three-lawyer private law firm in Jinan was positively publicized for taking 48 criminal defense cases in eight months. See Hu Youxiang, "Jinan Taihengsuoban Xing An Xian Shenshou," (Jinan Hengtai Law Firm Make Efforts to Take Criminal Cases) *Zhongguo Lushi Bao* (China Lawyer News), May 18, 1996, p. 3.

64. The cases litigated here only refer to those tried in the first instance. It should be mentioned that standards for statistics are unclear here and thus discrepancies and errors are expected. However, as the statistics include the criminal cases heard in the same province in five consecutive years, discrepancies and errors can be regarded as peripheral to the statistics. According to a Beijing researcher, no more than 30 percent of criminal defendants get professional defenders' help at trials in some counties and

Table 3-1 Number of Lawyers Defending in Criminal Cases in a Provincial Higher People's Court (1991-1995)

Year	No. of Criminal Cases Litigated	No. of Criminal Defendants	No. of Cases with Defenders	No. of Lawyers as Defenders	Perct. of Cases with Defenders	No. of Lawyers per Case	No. of Lawyers per Defendant
1991	8,927	13,235	4,755	8,539	53%	0.96	0.65
1992	8,318	12,416	4,323	7,572	52%	0.91	0.61
1993	7,763	12,175	3,911	6,746	50%	0.87	0.55
1994	11,330	18,040	5,145	8,131	45%	0.72	0.45
1995	12,280	18,966	7,686	7,958	50%	0.65	0.42

Source: The Higher People's Court, *Statistics of Cases*, 1991, 1992, 1993, 1994 & 1995.

As a matter of fact, in general, while the number of lawyers has increased in recent years, the numbers of criminal cases and administrative cases that lawyers took have been declining. The situation has become so embarrassing that statistics and discussion about lawyers' involvement in criminal cases have been conspicuously absent from the MOJ's publications and other law yearbooks in the last few years. Before we are able to conduct a comprehensive survey of Chinese lawyers' involvement in criminal cases, one of the MOJ's publicized reports in 1994 might shed some light on the distribution of Chinese lawyers' legal services.

According to the report, in 1993 the numbers of lawyers and law firms increased as did those of civil and economic cases taken by lawyers, but the number of criminal cases defended by lawyers declined by 12.71 percent nationwide and surprisingly by more than 40 percent in some provinces.⁶⁵ Other sources also report that in 1993 the number of administrative cases handled by lawyers declined by 5% compared with that in 1992.⁶⁶ It was reported that in some places it has been hard for individual clients to get access to lawyers' services.⁶⁷ Some scholars assert that 70% of criminal cases

cities. See Wang Minyuan, "Xingshi Beibaoren Quanli Yanjiu," (Research on the Rights of Criminal Defendants) in Xia Yong, ed., *supra* note 43, p. 533.

65. Si Tong, "1993 Quanguo Lushi Gongzuo Gailan," (Summary of Lawyers' Work Nationwide in 1993) *Dangdai Sifa* (Judicature Today), No. 5 (1994), pp. 8-9.

66. Zheng Hangsheng, ed., *Cong Chuantong Xiang Xiandai Kuaisu Zhuanxing Guocheng Zhong de Zhongguo Shehui* (Chinese Society in the Process of Rapid Transition from Tradition to Modernization), Beijing: Chinese People's University Press, 1996, p. 82.

67. Wang Haiying, "Lushi Weishenmo Bu Yuan Ban Xingshi Anjian?" (Why Are Lawyers Reluctant to Take Criminal Cases?) *Zhongguo Lushi* (China Lawyer), No. 11 (1996), pp. 25-26.

currently are tried without defense counsel.⁶⁸ Poor clients, however, especially need legal services and support. Knowing one's rights does not automatically mean one can claim them, especially when access to the justice system is expensive.

In the past few decades, like other service industries, the PRC legal profession has more or less kept in line with the Communist Party's call to serve society. With the reform of the lawyer system in recent years, however, many lawyers have overlooked their duty to serve society and allowed themselves to be influenced by immediate materialistic considerations, thereby making the legal practice a self-interest-oriented business. In fact, their pursuit of materialistic gain has affected the prestige of the legal profession.⁶⁹

Because some lawyers charge high service fees, and are more enthusiastic over high-profit economic and civil cases than criminal cases, government authorities have become concerned over access to legal representation by poor and ordinary people. It is not unusual therefore, for the local justice bureaus to require law firms under their supervision to take an annual quota of criminal defense cases. For example, lawyers in Nanjing are required to take four criminal cases each year as a prerequisite for renewal of their licenses. Otherwise they have to pay 500 yuan renminbi per case into the criminal defense fund.⁷⁰ In Beijing, the local justice bureau requires that from 1996, newly-licensed lawyers take five criminal defense cases during their first year of practice in order to "advocate the role of lawyers in stabilizing the society."⁷¹

Meanwhile, increased activity in the market economy by legal professionals has elevated their status in the PRC, as well. With the expansion of legal services and the heightening of lawyers' economic status, the legal profession has started to elevate its social status and project a more positive and identifiable social image.⁷²

68. Liu Zhijun, "Lushi: Rang Ren Huanxi Rang Ren You," (Lawyers: Leave People Happy on the One Hand and Leave People Worried on the Other) *Zhongguo Lushi* (China Lawyer), No. 10 (1996), p. 8.

69. A Ji, *supra* note 62, p. 22.

70. Chen Ping, "Nanjing Lushi Xu Ban Si Jian Xing An," (Nanjing Lawyers Must Take Four Criminal Cases) *Zhongguo Lushi Bao* (China Lawyer News), March 20, 1996, p. 1.

71. Wang Jihong, "Beijing Lushi Zhiye Di Yi Nian Xu Banjie Wu Jian Xing An," (Beijing Lawyers Must Deal with Five Criminal Defense Cases During Their First Year of Practice) *Zhongguo Lushi Bao* (China Lawyer News), Feb. 14, 1996, p. 1.

72. The major issues on the agenda for the All-China Lawyers' Association's Third Meeting held in July 1995 were: that the legal profession should project a positive social image, the rights of legal profession should be strengthened and protected, and efforts

Some prominent lawyers have proposed rules that require lawyers to take a certain number of legal aid cases, especially criminal defense cases, to fulfill their professional responsibility.⁷³ Some lawyers and law firms have either set up *pro bono* programs in their law firms⁷⁴ or established *pro bono* programs with the co-efforts of social mass organizations, such as local women's federations and disabled people's associations.⁷⁵

Another factor that should be underscored is that the PRC legal system has been increasingly influenced by Western legal systems and Western legal profession. In recent years, Chinese lawyers have had some exchanges with their Western counterparts through various conduits. At least in major urban centers, lawyers have shown more and more interest in the models of their Western counterparts⁷⁶ and exchanges between Chinese lawyers and Western lawyers have grown steadily in the past decade.⁷⁷ Ren Jisheng, the

should be made to promote understanding and support for the legal profession in society. See Guo Jianmei, "Lushi Gongzuo Gaige de Zhongda Jucuo," (Significant Steps for the Reform of Work on Legal Profession) *Zhongguo Lushi* (China Lawyer), No. 8 (1995), pp. 7-11.

73. See Zhao Xiaolu (a partner in a Beijing private law firm), "Xingshi Susong. Lushi Jiang Da You Ke Wei," (Lawyers Will Be Playing an Important Role in the Criminal Defense Cases) *Zhongguo Lushi Bao* (China Lawyer News), April 17, 1996, p. 3.

74. For example, the Jiacheng Law Firm in Shijiazhuang committed itself to provide free legal services as one of its five strategies to provide qualified services. See Liu Zhengkui, "Jiacheng Suo: Ba Wo de Chengyi Jiaogei Nin," (Jiacheng Law Firm: Present My Sincerity to You) *Zhongguo Lushi Bao* (China Lawyer News), Feb. 10, 1996, p. 3. A Hefei law firm also established a *pro bono* scheme in order to be a top law firm in Anhui Province. Sun Guodong, "Dacheng Suo: Ba Da Zhidu Cheng Xianjin," (Dacheng Law Firm: Eight Schemes Set up to Be Advanced) *Zhongguo Lushi Bao* (China Lawyer News), April 6, 1996, p. 3. A Nanjing law firm set up a hotline to provide legal counselling services in 1995. See Chen Ping, "Jinling zhi Ye de Yi Zhan Deng," (A Light in the Dark in Nanjing) *Zhongguo Lushi Bao* (China Lawyer News), Feb. 3, 1996, p. 2.

75. For example, law firms in Zhengzhou set up some *pro bono* programs with a local women's federation and the disabled people's association to provide free legal services to targeted clients. See Sun Jibin, "'Dagong' Wu Si, Fuwu Ruozhe," (Dagong Law Firm Unselfishly Serves the Weak) *Zhongguo Lushi Bao* (China Lawyer News), March 9, 1996, p. 1. See also Sun Jibin, "Zhengzhou Kaiyuansuo Kaishe Laofuyou Falu Yuanzhu Zhongxin," (Zhengzhou Kaiyuan Law Firm Established Legal Aid Center for the Old, Women and Juveniles) *Zhongguo Lushi Bao* (China Lawyer News), March 16, 1996, p. 1. See also Li Xiaobao, "Ha Shi Shou Jia Canjiren Falu Fuwu Zongxin Chengli," (The First Legal Service Center for the Disabled Established in Haerbin City) *Zhongguo Lushi Bao* (China Lawyer News), Jan. 20, 1996, p. 1.

76. William Alford, *supra* note 36, pp. 36-37.

77. Liu Aijun, "Kaifang de Zhongguo Lushi Ye," (Chinese Legal Profession in the Opening Process) *Zhongguo Lushi Bao* (China Lawyer News), March 27, 1996, p. 1.

head of the current All-China Lawyers' Association, has committed the Association to a complete set of professional rules and a disciplinary code in the next couple of years "by learning from the experience of foreign countries."⁷⁸ It is therefore arguable that the emergence of PRC legal aid practices can be attributed in part to the influence of Western legal aid systems.⁷⁹

More significantly, it has been at the top of the PRC authorities' agenda to reform the administration system of PRC lawyers and encourage lawyers to get actively involved in the market economy and expand the legal services market. In 1993, the MOJ decided to extensively develop self-disciplined private law firms to correspond to the "socialist market economy system."⁸⁰ The authorities no longer stress that lawyers are government legal workers but promote the legal profession's administration by self-discipline (*zilu guanli*). In the meantime, however, the authorities also hope that an appropriate degree of control can be exercised over legal practitioners and insist that it be the responsibility of lawyers to help the poor and ordinary people, if they are confronted with difficulties in getting access to legal counsel.⁸¹ In one of its most recent circulars regarding the administration of legal practitioners, the MOJ called for lawyers to cultivate their consciousness of social responsibility (*shehui zerengan*) to combat the current ill practice of preferring civil to criminal cases among lawyers, and required lawyers to make the "social effects and benefits" (*shehui xiaoyi*) their priority. The circular further called for lawyers to mobilize so as to provide legal aid services to promote a positive social image for the legal profession.⁸²

78. Xinhua News Agency, "China Now Has 82,000 Lawyers," July 15, 1995, in *BBC Summary of World Broadcasts*, July 18, 1995.

79. This was confirmed by an official at Beijing Justice Bureau, whom the author interviewed in January 1996, and by a deputy general secretary of the All-China Lawyers Association in an interview by the author in July 1996.

80. "Sifabu Guanyu Shenhua Lushi Gongzuo Gaige de Fang'an" (MOJ's Plan for Deepening the Reform of Lawyers' Work), in *Zhongguo Falu Nianjian* (1994) (Law Yearbook of China), Beijing: Press of Law Yearbook of China, p. 776.

81. Xiao Ma, *supra* note 47. See also Xiao Yang, *supra* note 15, p. 9.

82. The MOJ's circular (1996). *Sifabu Guanyu Yangde Zhixing <Lushi Fa> Jin Yibu Jiaqiang Lushi Duiwu Jianshe de Jueding* (MOJ's Decision on Strictly Applying Lawyers' Law to Further Improve the Construction of Lawyers' Team), pp. 7 and 10. On file with the author.

For this purpose, mandatory legal aid has been stipulated in the National Legal Professional Ethics Code⁸³ by the MOJ and in some provinces' legal profession regulations. For example, lawyers in Shanghai must fulfill under the assignment of their law firms⁸⁴ their obligation to provide legal aid services for clients who are not able to pay for representation. In Guangdong, law societies are required to set up legal aid mechanisms to allocate to law firms the responsibility of providing legal aid services to clients with economic incapability.⁸⁵ Other municipal authorities merely require that lawyers not decline to represent poor clients for "unjustified reasons" (*bu zhengdang liyou*).

B. Social Context of the PRC Legal Aid System in the 1990s

When we seek to understand the dynamics of Chinese legal aid practices in the 1990s, besides the reform and development of the legal system, social context and its evolution should by no means be neglected. According to Raffell, it is particularly significant to provide legal aid services to the indigent in highly stratified societies.⁸⁶ In a country such as the PRC, which is undergoing a tremendous transition, legal aid programs reflect, *inter alia*, the Chinese authorities' great concern about social stratification and their efforts to combat it, as well.

Like other countries in the process of development, China unexceptionally is undergoing social stratification. During the first few years of economic reform, the mainland authorities advanced the slogan of "some people getting rich first" (*yi bufen ren xian fu qilai*) in order to alleviate Chinese people's doubts and concerns about economic reform. Social stratification, however, has now become one of the government's major concerns.

As reforms expand and deepen, especially the reform of the once overwhelmingly powerful state-owned enterprises, the income gap between rich and poor city residents has enlarged to three times in 1994 from 1.8 times in 1978. The gap between rich and poor countryside residents has grown to 6.6 times in 1994 from 2.9 times

83. For example, *Sifabu Guanyu Lushi Zhiye Daode he Zhiye Jilu Guifan* (Code of Professional Ethics and Discipline for Lawyers), the Ministry of Justice, December 27, 1993.

84. *Shanghaishi Lushi Guanli Banfa* (Measures on Administration of Shanghai Lawyers), Shanghai Municipal Government, December 23, 1994.

85. *Guangdongsheng Lushi Zhiye Tiaoli* (Statute on Legal Practice in Guangdong Province), Guangdong Bureau of Justice, 1995.

86. Andrew Raffell, *supra* note 2, p. 117.

in 1978.⁸⁷ In a country where social stratification was abhorred between 1949 and the 1980s, re-stratification has inevitably become one of the crucial realities the government authorities have had to face. They are concerned that social re-stratification would impair social stability, which has been listed as the regime's top task in the past few years. In 1991, the CCP called for government and military authorities and mass organizations at all levels to play their own roles in the "multi-improvement of public security" (*shehui zhian zonghe zhili*) and required them to undertake responsibility for maintaining public security and social stability in their own fields.

In order to guarantee social stability, government authorities have taken various palliative measures in order to narrow the social disparity and solve social conflicts caused by such disparity. In June 1996, the Ministry of Civil Affairs (*minzheng bu*) announced plans to set up a minimum living standard scheme for the country's city residents.⁸⁸ Local governments in some cities such as Shanghai have set up minimum income schemes to benefit poverty-stricken citizens. Various mass organizations, such as trade unions and women's federations, are also required to set up "aid-the-poor" schemes to help those in financial difficulties.⁸⁹

Maintaining social stability has also been at the top of the agenda of public security and justice administration organizations in recent years.⁹⁰ In his speech to the Central Committee for Comprehensive Management of Public Security, Ren Jianxin, the secretariat of the CCP Central Committee and the secretary of the Commission of Politics and Law of the Committee, explicitly required that officials at all levels take the entire situation into consideration and prevent petty issues from developing into severe problems.⁹¹

The government authorities' concerns for social welfare are manifested within the legal system as efforts to provide legal aid and to improve the judicial system. This enhances social justice for

87. Deng Weizhi, "Shichang Jingji yu Pingfu Chabie," (The Market Economy and Gap between the Rich and the Poor) *Qiusuo* (Search), No. 4 (1996), p. 34.

88. Nan Yan, "Zhongguo Ren Shouru Chaju You Duo Da?" (How Big Is the Income Gap among the Chinese People?) *Shenzhou Xueren* (Chinese Scholars) No. 9 (1996), pp. 22-23.

89. AFP, "100 Cities to Adopt Urban Relief Plan," *South China Morning Post*, Aug. 8, 1996, p. 9.

90. *Zhongguo Falu Nianjian* (1995) (Law Yearbook of China), Beijing: Press of Law Yearbook of China, p. 86.

91. Xinhua News Agency, "Police to Streamline Grassroots Security," *China Daily*, March 2, 1997, p. 2.

the underprivileged and prevents minor issues from evolving into serious disputes. The legal profession should play a unique role in maintaining social stability.⁹² Proposals to set up a nationwide legal aid network thus reflected part of the government authorities' blueprint for China's social welfare system and their view of the role that law and lawyers might play in aiding the poor.

Since 1989, PRC authorities have been under constant pressure from Western countries to improve China's notorious human rights record. Although the PRC authorities' primary position on human rights remains unchanged, even as such pressure grows, the regime is making efforts, whether genuine or not, to modify its position on human rights, one of which is to reform existing enactment or create new legal schemes.

CHAPTER IV. LEGAL AID PROGRAMS AND RELATED PUBLIC INTEREST LITIGATION IN THE PRC

With the discussion of the dynamics of Chinese legal aid practices in mind, it is necessary to investigate what has been done thus far to provide legal aid services to the poor in order to judge their value and predict the future development of the Chinese legal aid system. The legal aid programs in Hunan Province and five major cities, namely Beijing, Guangzhou, Qingdao, Shanghai and Wuhan, provide a point of departure for this investigation. Legal aid centers in China have handled about 7,600 free legal consultative cases of various kinds since 1995. Moreover, a couple of related public interest litigation cases also will be discussed.

A. Legal Aid Program in Beijing

As early as 1993, the Beijing Justice Bureau began to stipulate that law firms under its supervision devote at least two days each month to free legal consultations. Each lawyer was required to take on at least one case for free each year.⁹³

In August 1994, the local Justice Bureau and the Law Society co-founded a legal aid fund and soon thereafter set up a legal aid foundation, the first of its kind on the provincial level in the country. Briefly, the work of the Beijing legal aid project involves the following steps: (a) law firms and lawyers decide to provide free or

92. Bai Tingju, "Lushi Gongzuo Zai Shehui Zhian Zonghe Zhili Zhong de Diwei he Zuoyong," (The Status and Role of Lawyers' Work in Multi-Improvement of Public Security) *Sifa Xingzheng* (Justice Administration), No. 8 (1991), p. 30.

93. Sun Jibin, *supra* note 10.

low-fee legal services to certain clients at their discretion; (b) law firms and lawyers make application to the legal aid foundation for grants to remunerate their legal aid services; and, (c) the legal aid foundation decides whether to remunerate the applicants after screening the application. In 1995, more than 100 lawyers from twenty-seven law firms applied for legal aid remuneration.⁹⁴

As a matter of fact, some Beijing law firms and lawyers have long been doing *pro bono* work in various guises. They have dealt with civil, criminal and administrative cases. For example, six lawyers once successfully defended some farmers from Hebei province against local township government officials. In 1984, one of these farmers was beaten to death and the other five were arrested for their action against the local township authority's illegal occupation of their land. It took the farmers ten years to appeal their grievances and cost the six lawyers more than ten thousand yuan to deal with the case. With the help of the press, the lawyers finally got the Supreme People's Court (*zui gao renmin fayuan*) to agree to accept their appeal and overturn the verdict against the farmers.⁹⁵

Another case involved eighteen farmers outside of Beijing who banded together to sue an agency of the local railway's Herbal Medicines Development Department for its breach of a contract to buy herbs from them. Since the farmers had already invested a huge amount on the seeds, a Beijing lawyer agreed to represent these farmers without charge. A local People's Court ordered the defendants to pay the farmers 410,000 yuan renminbi for their losses. The farmers were so grateful that they presented the lawyer a banner for his behavior of "striving for justice."⁹⁶

Another private law firm helped a group of 13 households of senior citizens and other low income people to file a suit in a local district People's Court for illness caused by fumes from a nearby building company. The defendant was in the end ordered to pay each of them 2,000 yuan renminbi.⁹⁷ A lawyer in the same law firm once helped an innocent sixteen-year-old schoolboy in a civil action against some assailants. The boy was severely beaten by a group of

94. Author's interview with an official at the Beijing Lawyer's Association, July 1996.

95. Sun Jibin, "Shi Xiang Pinruozhe de Nuoya Fangzhou," I (Noah's Ark Sailing Towards the Poor and the Weak) *Zhongguo Lushi Bao* (China Lawyer News), June 29, 1996, p. 1.

96. Todd Crowell & David Hsieh, "People Power," *Asiaweek*, Oct. 18, 1996, p. 31.

97. AP, "Great Strides in Law Reforms But Dissidents Fail to Benefit," *South China Morning Post*, Jan. 18, 1997, p. 7.

students seeking revenge for an earlier incident caused by someone else and was left paralyzed for the rest of his life. After the assailants were punished, the boy's parents attempted to file a civil suit for compensation and future medical expenses. The lawyer took the case free of charge and helped the desperate family to win a total compensation of 470,000 yuan renminbi.⁹⁸

B. Legal Aid Program in Guangzhou

Adjacent to Hong Kong and Macao and provided with privileged preferential policies, Guangzhou Municipality has been exposed to international practices and customs and has benefited tremendously from such exposure. While in May 1995, the Guangdong Provincial Justice Department (*Guangdong sheng sifa ting*) passed a regulation requiring that lawyers' associations set up mechanisms to allocate law firms responsibility for providing legal aid services to clients with economic incapability, the Guangzhou Justice Bureau had even earlier started to probe the nature of the Hong Kong legal aid system and practices. It was able to officially operate the Guangzhou Legal Aid Center (*Guangzhou shi falu yuanzhu zhongxin*, hereafter referred to as GLAC) beginning in November 1995.⁹⁹ Unlike legal aid programs in other cities, GLAC, following the example of the Hong Kong Legal Aid Department, is the first of its kind in mainland China to be supported by local government and staffed by lawyers on the government payroll.

In early 1995, the local Justice Bureau decided to transform state-owned law firms into private law firms. Private lawyers were allowed to charge hourly fees as high as 200-300 yuan renminbi; some poor people meanwhile were not able to afford the cost of a legal consultation. The justice authorities therefore decided to maintain one state-owned law firm and changed it into a legal aid service organization.¹⁰⁰ The establishment of the GLAC reflected the Guangzhou government's efforts to transform the role it had

98. Huang Wei, "Noah's Ark for the Weak and Impoverished: Legal Aid in China," *Beijing Review*, Vol. 39, No. 49 (Dec. 2-8, 1996), p. 11.

99. Wu Daoshan, "Wu Qian Ye Neng Qing Lushi—Quanguo Shou Jia Zhengfu Falu Yuanzhu Jigou Zai Sui Chengli," (Access to Lawyers Even without Money—the First Government-Funded Legal Aid Organization Set up in Guangzhou) *Yatai Jingji Shibao* (Asia-Pacific Economics Times), Nov. 19, 1995, p. 5.

100. Author's interview with a Guangzhou Justice Bureau official in April 1996. See also Xiao Jun, "Lushi Hehuo Jin Shichang, Liu Kuai Yuanzhu Ziliudi," (Partner Lawyers Enter the Market, 'Private Plot' Legal Aid Maintained) *Guangdong Laodong Bao*, (Guangdong Labor News), Nov. 19, 1996, p. 1.

under the planned economy into one of providing social services and social welfare to society under market economy scheme.¹⁰¹

The GLAC occupies a two-floor office building located on a street nick-named "law street" (*falü jie*), where dozens of private law firms are concentrated. Although there was, and still remains, controversy about the GLAC lawyers' competence, the GLAC is committed to taking criminal defense cases assigned by the courts, civil cases involving juveniles, the elderly and labor compensation, and other cases that they determine should be granted legal aid status, such as those involving the social order and public interest.¹⁰² Like its counterpart in Hong Kong, the GLAC also maintains a list of private lawyers who volunteer to take legal aid cases.¹⁰³ Within a year after the establishment of the GLAC, GLAC lawyers, together with volunteer private lawyers, have dealt with nearly four hundred cases.¹⁰⁴

Among these cases, one of the highlights was the defense of a group of sixteen people convicted of murders, on a legal aid appeal assignment from the Guangdong Provincial Higher Court (*guangdong sheng gaoji renmin fayuan*). Among the sixteen people who were convicted on charges of murder and plunder, twelve defendants did not themselves hire defense lawyers. The Higher Court then assigned twelve GLAC lawyers as defense counsel. The legal aid lawyers successfully persuaded the court to change one woman's sentence from death to suspended death.¹⁰⁵

Another criminal defense case involved two defendants charged with the murder and plunder of two policemen. Two legal aid lawyers at the Center were assigned to defend them. The accusation might have led to capital punishment for both of the defend-

101. Author's interviews with two Guangzhou justice bureau officials in April 1996. See also Qiu Shi, *supra* note 9.

102. *Guangzhoushi Sifaju Falü Yuanzhu Shixing Banfa* (Tentative Legal Aid Scheme of Guangzhou Justice Bureau), in Xiao Yang, ed., *Tansuo You Zhongguo Tese de Falü Yuanzhu Zhidu* (Search for Legal Aid System with Chinese Characteristics), Beijing: Legal Publishing House, 1996, p. 119.

103. Huang Ying & Zhang Wenli, "Guangzhou Falü Yuanzhu Mingtian Geng Meihao," (Brighter Tomorrow for Guangzhou Legal Aid) *Guangzhou Fazhi Bao* (Guangzhou Legal News), April 23, 1996, p. 1.

104. Ying Zhu, "Falü Yuanzhu: Ti Ruò Zhè Shuohuà," (Legal Aid: Asserting for the Weak) *Beijing Fazhi Bao* (Beijing Legal News), Sept. 1, 1996, p. 1.

105. Case collected from Guangzhou Legal Aid Center. Also see Lei Zhe & Xi Diaoling, "Fu Limin Gai Pan Si Huan de Beihou," (Background for Changing Fu Limin's Death Penalty to Suspended Death Penalty) *Guangdong Fazhi Bao* (Guangdong Legal News), Jan. 18, 1996, p. 1.

ants. However, the lawyers asserted that one defendant was only responsible for plunder, but not murder, and that the other defendant had not yet reached the age for legal responsibility when he committed the two alleged crimes. The Court then accepted the lawyers' arguments, and convicted the first defendant and imposed the death penalty for the plunder charge only. The second defendant was convicted, but a suspended death penalty was imposed upon consideration of the legal age of the defendant.

C. Legal Aid Program in Qingdao

The Qingdao municipal government sanctioned Qingdao Justice Bureau's legal aid scheme in September 1996: a legal aid center was set up by the Justice Bureau to organize and implement legal aid work throughout the city. The center is a "non-profit service" unit (*shiye danwei*) with a quota of thirty non-profit personnel (*shiye bianzhi*) (among them are eight administrative posts) and 300,000 yuan renminbi funded by the local government.¹⁰⁶ The establishment expenses and remuneration paid to the center staff are paid out of the initial funding.¹⁰⁷

Under the Qingdao legal aid regimes, only permanent Qingdao residents are eligible to apply for legal aid services from the center. They must be either rural residents who are social welfare beneficiaries or urban residents who do not have a regular salary or whose salary does not exceed the minimum wage level in Qingdao.¹⁰⁸ The issues in dispute should be within the jurisdiction of Qingdao.¹⁰⁹ An eligible person desiring to get legal aid is required to make a written application and deposit 50 yuan as a registration fee.¹¹⁰

106. Zheng Ketí, "Guanyu Woshi Jianli Falu Yuanzhu Zhidu de Tansuo," (The Search for Establishing a Legal Aid Scheme in [Qingdao]) in Xiao Yang, ed., *supra* note 102, p. 200.

107. Based on the author's interview with an official in charge of the legal aid center in November 1996. The justice bureau had proposed to the local government that the latter sanction an annual appropriation for the legal aid center to cover the remuneration paid to the administrative staff. In December 1996, another official revealed that since the center was nominated as one of the MOJ's three legal aid "window units," the local justice bureau was attempting to submit a proposal on legal aid to the local legislature, hoping to get regular financial and institutional support from the government. The author's interview in December 1996.

108. The minimum wage level of 1996 is 140 yuan renminbi per month. The author's interview with a local official in December 1996.

109. The Qingdao Legal Aid Center, "Shenqing Falu Yuanzhu Zhe Xu Zhi," (Issues to Know When Applying for Legal Aid), the Center's leaflet for the general public, 1996. On file with the author.

110. *Ibid.*

By the end of December 1996, the center has given about 250 free legal consultations and acted in a few cases.¹¹¹ Most of these cases were related to misconduct of government authorities and labor disputes. With constraints in legal aid funds,¹¹² the center is in great need of qualified lawyers. In December 1996, there were only eight young staff lawyers working in the center. It had been proposed that private lawyers be invited to take cases that might be too sensitive for the center to tackle or those cases that require lawyer-ing skills not available at the center.

Fortunately, with a grant from the United Nations Development Program (hereafter referred to as UNDP), the center is able to diversify its legal aid fund sources and has become the first government legal aid office with foreign funds in China. Under the grant scheme, the UNDP pays six volunteer lawyers, as of January 1, 1997, to work in the center for three years.¹¹³ The lawyers are not permitted to serve clients outside of the volunteer program.

D. Legal Aid Program in Shanghai

In Shanghai during recent years, the local justice authorities have organized lawyers to participate in various kinds of free legal consultation activities.¹¹⁴ The Yangpu District Justice Bureau set up the first free legal advice office in Shanghai in early 1995. Besides offering free legal advice to individuals, the office effectively worked with other government agencies to tackle some common grievances in the district. For example, together with the District Housing Administration Authority and District Public Notary Office, it provided notary services to more than 7,000 residents in the district for their private estates. Some law firms in the District also set up their own *pro bono* programs to cater to the needs of the general public, especially those of the poor.¹¹⁵ To enhance the long-term success of the free consultation program, a legal aid fund is reported to have been set up by the Yangpu District Justice Bureau in order to remunerate those providing legal aid services.¹¹⁶

111. The author's interview with the center director in December 1996.

112. Zheng Ketí, *supra* note 106.

113. See Guo Nei, "UN-Paid Attorneys to Aid Qingdao Poor," *China Daily*, Nov. 13, 1996, p. 3.

114. Zhou Yi, "Falu Yuanzhu zai Xingdong," (Legal Aid in Action) *Wenhui Bao* (Wenhui Daily), April 27, 1996, p. 5.

115. Haiou, "Falu Yuanzhu zai Yangpu," (Legal Aid in Yangpu) *Dangdai Sifa* (Judicature Today), No. 10 (1996), pp. 30-31.

116. *Ibid*, p. 31.

The Shanghai Justice Bureau set up a "Lawyer Chen Free Legal Advice Station," following the name of a lawyer in a local soap opera, featuring a well-liked lawyer who is always ready to fight for justice. It was reported that more than 200 lawyers offered legal advice to about 1,571 people within two months in 1995. In order to generate the government authority's awareness of some social problems revealed as a result of legal advice services, volunteer lawyers at the Station decided to hold regular meetings with relevant government authorities to address these problems on a larger scale.¹¹⁷

Among the several legal aid projects in Shanghai, the Provisional Pudong New District Legal Aid Scheme (*Pudong xinqu falu yuanzhu jihua* [zanxing], hereafter referred to as PNDLAS) is probably the most well-organized.¹¹⁸ It was set up in September 1995. Under the PNDLAS, both staff attorneys at the Pudong New District Legal Aid Center (*Pudong xinqu falu yuanzhu zhongxin*), which is affiliated with the Pudong New District Justice Bureau (*Pudong xinqu sifa ju*, hereafter referred to as PNDJB), and lawyers at private law firms under the supervision of PNDJB are obligated to provide legal aid services.¹¹⁹ Each Pudong lawyer is required to take on at least one legal aid case each year.¹²⁰ The PNDLAS mainly targets poor social welfare beneficiaries in both rural and urban areas of the Pudong New District.¹²¹

PNDLAS provides free legal advice, criminal defense and civil representation. Legal aid-related problems are identified and solved by lawyers-on-duty, or are referred to the Legal Aid Center. By the end of August 1996, more than four hundred Pudong lawyers and eighteen notaries¹²² have been mobilized to participate in the PNDLAS.¹²³ They have helped about 1,300 citizens with various kinds of legal problems. Among these legal aid services recipi-

117. Shi Yanping, "Jian Hangye Wenming Chuangkou, Wei Gongmin Paiyou Jienan," (Establishing Professional Civilization Window and Resolving the Grievances of the Citizens) *Dangdai Sifa* (Judicature Today), No. 11(1995), pp. 25 & 29.

118. Zhou Yi, *supra* note 114.

119. Article 2 of *Shanghai Shi Pudong Xinqu Falu Yuanzhu Jihua (Zanxing)* (Provisional Legal Aid Scheme of Pudong New District, Shanghai). In Xiao Yang, ed., *supra* note 102, pp. 132-134.

120. Article 7 of *Provisional Legal Aid Scheme of Pudong New District, Shanghai*.

121. Article 3 of *Provisional Legal Aid Scheme of Pudong New District, Shanghai*.

122. Unlike their counterparts in the United States, Chinese notaries provide certain kinds of vital services beyond officiating documents.

123. Shanghai Justice Bureau, *Shanghai Sifa Jianbao* (Shanghai Justice Newsletter), No. 31, Oct. 4, 1996, p. 1. On file with the author.

ents, eighty-eight low-income citizens were offered free representation in their litigation and non-litigation matters and 177 people accused of criminal charges were defended by legal aid lawyers.¹²⁴

Those who are economically underprivileged are generally underprivileged in access to information, as well. In order to propagate publicity for the legal aid scheme among poor citizens, the PNDJB works extensively with the press. It also works closely with the civic affairs organizations in Pudong to inform welfare benefit recipients of their legal aid services.¹²⁵ The PNDJB has expanded its PNDLAS network to such mass organizations as the Pudong New District Women's Federation (*Pudong xinqu funu lianhe hui*) and Pudong New District Youth League (*Pudong xinqu tuanwei*) and has set up branch offices within these mass organizations. These offices concentrate on women and juvenile law-related problems and are mainly legal consultation centers.¹²⁶ In September 1996, the PNDJB further improved its legal aid scheme by signing a memorandum with the Pudong New District People's Court to guide the assignment of attorneys as criminal defenders.¹²⁷

E. Legal Aid Program in Wuhan

Wuhan in Hubei province is one of the major cities in the central mainland. Legal aid programs in Wuhan were initiated by the lawyers and law firms in the city. The Qiushi Law Firm, a private law firm formed in 1993, initiated a *pro bono* scheme by setting aside two percent of its annual profit for *pro bono* cases. During 1995, the firm took on thirteen cases without charge.¹²⁸ In May 1995, based on the *pro bono* project of the Qiushi Law Firm, the Wuhan Lawyers' Association established the "Wuhan Lawyers' Legal Aid Scheme" (*Wuhan shi lushi falu yuanzhu banfa*). The Scheme required each Wuhan law firm to formulate its own *pro*

124. *Ibid.*

125. In June 1996, the Pudong New District Justice Bureau distributed pamphlets on legal aid to 15,000 Pudong households under the social welfare scheme. See PNDJB pamphlet "Pudong Xinqu Sifaju Chengli Falu Yuanzhu Zhongxin Wei Di Shouru de Gongmin Mianfei Tigong Lushi Bangzhu," (PNDJB Sets up Legal Aid Center to Offer Free Legal Services to Low-Income Citizens"). On file with the author.

126. "Shanghaishi Pudong Xinqu Falu Yuanzhu Zhongxin Yi Zhounian Gongzuo Baogao," (PNDJB Working Report on Shanghai Pudong New District Legal Aid Center's First Anniversary), August 21, 1996. On file with the author.

127. PNDJB Document, No. 103, 1996. On file with the author.

128. Sun Jibin, *supra* note 8.

bono program and set up its own legal aid fund.¹²⁹ A legal aid committee was set up in the Wuhan Lawyers' Association to supervise and direct the *pro bono* programs. The Wuhan Lawyers' Legal Aid mainly covers civil and labor law cases,¹³⁰ but it is not only limited to such cases.¹³¹ Like its counterparts in Beijing, Wuhan lawyers and law firms have the discretion offer free or low-fee legal services and apply for remuneration thereafter either from their law firms or from the legal aid committee. Legal aid fund sources consist of ten percent Law Society membership fees, the relevant law firms' legal aid funds and donations from other sources.¹³² Therefore, the legal aid programs are essentially funded by lawyers and law firms.

Besides the legal aid scheme of the Wuhan Lawyers' Association, another noteworthy feature of the legal aid program in Wuhan is the presence of a Center of Protecting the Rights of the Weak (*shehui ruozhe quanli baohu zhongxin*, hereafter referred to as the Center) set up by the law faculty of Wuhan University as early as May 1992; this is China's first non-governmental legal aid organization. Similar to legal clinics at law schools in North America, the Center represents the first instance in which a Chinese law school has offered legal aid to an underrepresented segment of the population.

Consisting of volunteer jurists, professional lawyers and scholars, the Center also attracts tens of law student volunteers who offer free legal consulting services each semester. Some graduate students with licenses even represent clients in courts. Legal education is an early and formative experience in constructing lawyers' views about the law and the legal process. Although the Center is not operated entirely like legal clinics in American law schools, since the lawyers-to-be are inculcated with the idea of "sharing re-

129. Article 2 of *Wuhan Lawyers' Legal Aid Scheme*, Wuhan Lawyer's Association, May 1995. In Xiao Yang, ed., *supra* note 102, pp. 135-137. By the end of 1995, among the 52 law firms in the city, 48 law firms has provided legal aid services. See Ma Yu-e & Zheng Tianshu, "Guanyu Guangzhou, Shenzhen, Wuhan San Di Falu Yuanzhu Gongzuo de Diaocha Baogao," (A Survey of Legal Aid work in Guangzhou, Shenzhen and Wuhan) *Sifa Yanjiu* (Justice Research), No. 5(1996), p. 35.

130. Article 3 of *Wuhan Lawyers' Legal Aid Scheme*, Wuhan Lawyers' Association, May 1995.

131. Author's interview with the deputy secretary of the Wuhan Lawyers' Association, June 1996.

132. Article 6 of *Wuhan Lawyers' Legal Aid Scheme*, Wuhan Lawyers' Association, May 1995.

sponsibilities with the government”¹³³ while volunteering time and legal skills to the poor, the Center has a special meaning for those who wish to pursue a practicing career. In fact, only those with outstanding academic achievements can work in the Center. Among the seven student volunteers that the author interviewed, almost everyone admitted that his/her initial goal was to participate in the social practice (*shehui shijian*) in order to have a better career opportunity, but some of them also saw themselves developing a better understanding of the law, “social justice” and Chinese society. They believe that their experience at the Center will enhance their appreciation of the legal profession’s social responsibility and ethical duty to perform services for the underprivileged.¹³⁴

The Center’s legal aid project is currently funded by donations from enterprises and individuals.¹³⁵ The Center concentrates on juvenile, women, administrative, disability and environmental protection laws. There are specialized offices for each of the areas of the law, headed by a director, a deputy director, and staffed by a lawyer and a few student volunteers.¹³⁶ The Center’s work mainly includes conducting in-person consultations, answering telephone and mail inquiries, and providing representation in litigation cases. As of October 1996, the Center received more than 6,000 letter inquiries, dealt with more than 4,000 in-person consultation, and represented clients in about 216 cases.¹³⁷

Because of its lawyers’ relative independence and the program’s loose governance, the Center has tackled some cases that may not be readily taken on by other legal aid programs. Its lawyers have successfully represented citizens against public security organs and government officials in several administrative cases, and patients against hospitals in malpractice cases. It has filed a class action in which dozens of farmers are suing enterprises for environmental damages.

In administrative lawsuits brought by individuals, one common scenario is the individuals’ doubts about the chances of winning

133. The initiator of the Center, Law Professor Wan Exiang of Wuhan University, quoted in Bai Yun, “Legal Aid in China,” *China Today*, No. 4 (1996), p. 35.

134. The author’s interviews with seven volunteer students on duty at the Center on December 23, 1996.

135. Bai Yun, *supra* note 133.

136. *Wuhan Daxue Shehui Ruozhe Quanli Baohu Zhongxin Zongjie Baogao*, (The Center Summary Report) (1994-95), p. 1. On file with the author.

137. The Center, “Zhongguo Tese de Falu Yuanzhu zhi Lu,” (Legal Aid Path with Chinese Characteristics) material distributed at the MOJ’s first legal aid conference in Guangzhou, Nov. 1996, p. 4. On file with the author.

their appeals and fears of pressure from the opposing party. The Center is especially committed to dealing with administrative cases on behalf of those who are not just economically weak, but relatively weak politically. For example, the Center once successfully represented a surnamed Hu, a young staff member of a county bank, against the local public security bureau, in a case claiming unlawful detention. Hu, after winning his appeal, was convinced that bringing an administrative lawsuit was not "a dream."¹³⁸

Besides providing legal aid services, the Center personnel have written a number of articles and reports based on their experience in legal aid services. They have even gone so far as to make suggestions for law reform. For example, their suggestion on the amendment of one clause in the Criminal Procedure Law was accepted by China's legislature, the National People's Congress.¹³⁹

F. Miscellaneous Legal Aid Practices in Hunan Province

Legal aid work in Hunan province was initiated in early 1996 when the provincial justice bureau established a legal aid organization affiliated with the Provincial Lawyers' Association. The legal aid organization is in charge of organizing and guiding legal aid work in the province and assigning cases to law firms when necessary. Lawyers' associations at the prefecture level are required to organize lawyers to offer a free legal consultation in person or by telephone, and assign lawyers to take legal aid cases. To propagate legal aid services among the public, the provincial legal aid organization also organized a weekly hotline legal consultation program at a provincial radio station, and expects to open a legal aid center for minors in the near future.

Pilot legal aid programs were established in some prefectures of the province. These pilot programs have been conducted at five law firms in three cities, namely, Changsha, Hengyang and Zhuzhou. These pilot programs were either set up by law firms or set up by justice bureaus but affiliated to law firms, and they were generally financed by the legal professionals and law firms, with limited financial support from the government and social groups.

Almost without exception, these law firms work closely and regularly with the local mass media to offer free legal advice, which helps to publicize legal aid services. A law firm in Changsha also

138. Wang Ming, "Wuhan You Ge Ruo Zhe Baohu Shen," (There is a God of Protection for the Weak in Wuhan) *Zhongguo Qingnian* (China Youth), No. 7 (1996), p. 27.

139. The Center, *supra* note 137.

holds training sessions for more than 80,000 elderly citizens, disabled citizens, women and juveniles. In 1996 these law firms dealt with 158 legal aid cases, including criminal, civil and administrative cases. They also experimented by offering free legal services to some deficient state-owned or collective-owned enterprises.

Among the cases handled by the legal aid lawyers, one involved two lawyers in Zhuzhou who represented an 81-year-old man who had sued his two daughters for their occupation of his house and abandonment of their obligation to care for him. The two daughters were orphans and had been raised by the old man. After they got married, however, the daughters abandoned their father and one of them even occupied the old man's house. With help from legal aid lawyers, the old man had the court affirm his property rights and order his daughters to pay monthly living expenses to their father.

Another case involved the defense of a public security officer and his wife against criminal charges. The officer, surnamed Zhou, once caught a tax revenue officer for illegal gambling and whoring. The tax revenue officer then sought revenge against Zhou by persistently fining for tax evasion a vendor shop contracted by Zhou's wife. One day, after a tax revenue collector had sent yet another fine notice to the Zhou's, Zhou had a severe fight with, and injured, the revenue collector. After the local press publicized the incident negatively against Zhou, some party and government officials ordered the Zhous to be punished severely. Zhou and his wife were then arrested and charged with the crime of refusing to pay taxes. In the first instance Zhou was sentenced one year in prison and a fine of 2,000 yuan renminbi and his wife was found guilty and fined 5,000 yuan. In their appeal they were offered free defense by two legal aid lawyers. The conscientious lawyers prepared successful strategies for their clients and convinced the appeals court to accept their defense and overturn the verdict against the Zhous. Zhou was lightly fined for the crime of impeding an official performing his duty and his wife was acquitted.

Besides offering free legal consultation services and representing clients in civil litigation and criminal defense cases, lawyers in these law firms sometimes work as mediators to solve some thorny problems for their clients. For example, the Zhuzhou legal aid center is reported to have once helped a retired worker solve his 26-year old compensation appeal. In 1970, the worker's three children were burned to death while playing in an air-raid shelter. The worker had been voicing his grievances ever since then and had not

been able to come to any settlement. The legal aid center represented him on appeal to the mayor and sought compensation. The mayor then ordered the local Labor Department and the Civil Affairs Department to deal with the appeal and the worker was compensated 16,000 yuan renminbi.

Another case revealed that some Hengyang lawyers once represented an old man who sued the local public security bureau for administrative compensation. The son of the old man surnamed Wang, died of some disease while he was illegally detained by the Public Security Bureau. With help from some legal aid lawyers, Wang sued the Public Security Bureau at the Intermediate People's Court. The court found the Public Security Bureau responsible for the death of his son. Wang and the Public Security Bureau then came to a resolution wherein the latter agreed to compensate Wang 20,000 yuan renminbi and change the rural permanent residences (*nongcun hukou*) of the son's wife and two juvenile sons to urban permanent residences (*chengshi hukou*).¹⁴⁰ It is reported that all the relevant parties were satisfied with the settlement.¹⁴¹

These settlements may not be regarded as precedents to resolutions for other similar issues; however, the experience of the Hunan legal aid lawyers suggests that to some extent such settlements may serve to console and comfort the specific underprivileged whose grievances might otherwise have been ignored or suppressed. To many of the underprivileged, getting lawyers to help them pursue recovery free of charge is of vital importance. Clearly, an institutionalized system will essentially help the underprivileged pursue justice through legal action when necessary. However, given the constraints under the current legal system and social conditions, it is perhaps not uncommon that, for the foreseeable future, the resolution of some grievances of the underprivileged will require administrative intervention as well as legal action, and will require taking both pragmatism and legal principles into consideration.

G. Public Interest Litigation in Progress

The past few years have seen that public interest litigation is progressing in China. "Revolutionary laws" — including the Ad-

140. Currently, in China the permanent residency system still greatly influences many spheres of people's everyday life and there are still differences between the urban and rural permanent residences. For example, there are generally better and more education and employment opportunities for urban residents.

141. Materials distributed at the MOJ's legal aid conference in Guangzhou in November 1996. On file with the author.

ministrative Procedure Law, the State Compensation Law and the Consumer Rights Protection Law — and other institutional reforms, have led an increasing number of Chinese citizens to bring lawsuits against government organizations, companies or other organizations or to air their grievances through relevant channels for action.

Because of the legal profession's involvement in legal aid practices, it is useful to discuss a couple of public interest litigation cases related to legal aid practices. Cases are selected from *Zhongguo Lushi Bao* (China Lawyer News, hereafter referred to as CLN) during the period from January 1 to June 30, 1996. CLN was established by the MOJ in January 1994 to target a readership mainly among lawyers, public notaries and legal workers at the grassroots level. The biweekly newspaper is committed to report lawyers' work and the reform of the legal system with legal services (*falü fuwu*)¹⁴² as its core.¹⁴³

CLN of January 10, 1996 depicted an appalling case involving 2,371 farmers in a Guangxi county who suffered lack of a rice harvest on 8,000 *mus* of paddy because of fake seeds planted in the summer of 1995.¹⁴⁴ The outraged farmers voiced their grievances to Nanning government organizations and party authorities of all levels, as well as to the local mass media. The local government organizations had to form a special working team to investigate the matter and console the farmers. The Nanning Justice Bureau was requested to call for lawyers in the county to represent the farmers and file a suit because of the fake seeds. With the support of the local government, eight local lawyers volunteered to start a crusade in the interests of the 2,371 farmers, who were scattered across 15 counties and towns. At the end of the year, a local People's Court ordered three defendants to pay the farmers nearly six million yuan renminbi.

Another case involved two Henan farmers' loss from low-quality seeds.¹⁴⁵ The farmers bought carrot seeds from a research institute only to find that their carrots never ripened, and they

142. The term refers to all kinds of services that lawyers, public notaries and legal workers at grassroots level deliver to their clients.

143. See *supra* note 90, p. 1022.

144. Wang Qishan, "Ba Qian Mu Zaodao Jueshou Yihou," (After the 8,000 Mus of Paddy Yielded Nothing) *Zhongguo Lushi Bao* (China Lawyer News), Jan. 10, 1996, p. 1.

145. Liu Weixing, "Lushi Shenchu Yuanzhu Zhi Shou," (Lawyers Give Their Hands to Aid) *Zhongguo Lushi Bao* (China Lawyer News), April 6, 1996, p. 3.

harvested just 120 kilograms of carrots in a field of 52 *mus*. After lodging a series of fruitless complaints, they sued the institute and a seed supplier. Two local lawyers took the case without charge. A few months later, a local People's Court ordered the defendants to pay the two farmers more than 46 thousand yuan renminbi. In addition, it was noteworthy that the trial was broadcast by the official Henan TV Station and later on by the China Central TV in one of its feature programs on consumer protection.

Although many cases involving the encroachment on the interests of the public remain unsolved,¹⁴⁶ a couple of encouraging signs are certainly noteworthy here. First, the public has become more outspoken against violations of their rights and interests as a result of the growth of popular legal consciousness. Second, public interest litigation is evolving and the legal practitioners have started to get involved in related services and to perform satisfactory tasks. Third, and perhaps most significantly, a salient message was that the government authorities recognize the lawyers' role to protect the rights and interests of certain segments of the society and support the lawyers to safeguard the enforcement of the law. This will further help to encourage the legal profession to get involved in public interest litigation and help to enhance the popular legal consciousness. This suggests that the Communist regime can afford to improve the general public's social status within the existing framework as long as this does not create much danger to itself. It recognizes that the legal system may play an important role in this process, and qualified legal professionals are essential to the legal order. The government authorities still hold firmly that the overriding concern of the state's judicial work is to maintain political and social stability;¹⁴⁷ however, with the legal system being improved gradually and legal resources becoming more accessible, legal aid to underprivileged people should not impede that goal.

CHAPTER V. THE MOJ'S FIRST LEGAL AID CONFERENCE AND RECENT DEVELOPMENT OF THE PRC'S LEGAL AID SCHEME

The six legal aid programs and the evolving public interest litigation discussed above reveal prototypes for the development of

146. Wang Qishan, *supra* note 144.

147. Xinhua News Agency, "Zhengfa Gongzuo de Shouyao Renwu Jushi Weihu Guojai Zhengzhi he Shehui Wending," (The Supreme Task of the Judicial Work Is to Maintain the State Political and Social Stability) *Fazhi Ribao* (Legal Daily), Dec. 19, 1996, p. 1.

legal services to the indigent in the PRC in the 1990s. Although these and other projects have encountered problems involving too many clients, cases, priorities and insufficient program funding, they have brought about increased protection of human rights for the indigent and the enhancement of social stability.¹⁴⁸

A nationwide legal aid scheme and human rights expansion cannot, however, be based on the generous spirit of a few lawyers, nor on the scattered, tentative legal aid programs that now exist in some parts of the country. What have the MOJ decision-makers learned from the current, prototypical legal aid programs, some of which have preceded the efforts of the MOJ?¹⁴⁹ What plans do the central authorities have with regard to the construction of a nationwide legal aid scheme?

The legal profession has a duty to provide the under-privileged access to justice in accordance with the new Criminal Procedure and Lawyers Laws. The MOJ seeks to have lawyers fulfill this duty through a nationwide scheme to facilitate and govern the provision of legal services to the needy. Accordingly, the MOJ convened a national conference on the legal aid system in Guangzhou from November 18-21, 1996, the first meeting of its kind at such a high level. The keynote speaker was the Minister of Justice, Xiao Yang. The conclave also drew representatives from the Ministry of Finance (*caizheng bu*), the personnel department of the State Council, and other departments, thus making it a multi-ministry conference, through which the MOJ aimed to achieve a better understanding of, and more support for, its legal aid plan from other ministries.

The conference discussed, *inter alia*, the question of the establishment and implementation of a legal aid program with "Chinese characteristics" within the existing legal framework. A number of suggestions and measures for strengthening legal aid services and legal aid institutions in the country were also given. The Minister of Justice summarized and evaluated the legal aid programs that had been set up in various provinces and cities since 1994 and called for big cities to emulate the legal aid project in Guangzhou. He further

148. Xiao Yang was cited to contend that the legal aid scheme was proved to be effective in "promoting reform and mitigating social problems" at a press conference during the Communist Party's 15th National Conference. See China: Minister of Justice Answers Reporters' Questions in Beijing, *China Business Information Network*, Sept. 17, 1997, available in WESTLAW, Allnews.

149. For example, the Center for Protecting the Rights of the Weak in Wuhan University allegedly is "the first organization that specializes in legal aid services in Communist China" which was set up in May 1992. The Center, *supra* note 137, p. 1.

provided a legal aid framework which was manifested in the MOJ's draft Statute for Legal Aid Enforcement (*falü yuánzhǔ shíxíng tiáoli*, hereafter referred to as the Statute).¹⁵⁰

According to the draft Statute, the grant of legal aid to the poor is a state responsibility. The MOJ was to set up a national legal aid center on behalf of the state to govern and supervise local legal aid work throughout the country; the center was to create a legal aid fund for this purpose and support legal aid services in remote areas in particular. On May 26, 1997, the national legal aid center became a reality.

The provinces were to set up legal aid institutions and authorities to supervise legal aid work throughout the respective provinces. Through this means, provinces, localities, lawyers, public notaries and legal service workers at the grassroots level are to be mobilized and organized to provide uniform legal aid services. Under the Statute, besides taking assigned cases at a lower fee, lawyers are obligated to deal with one or two legal aid cases for free. The Statute provides that, among other social mass groups, law schools and law students are encouraged to render legal aid under the guidance of local legal aid authorities. Funds for legal aid are to be derived from the central government and local governments' budget allotment, lawyers' association dues and public donations.¹⁵¹

The tasks ahead for the government authorities and the legal profession in their attempt to broaden the scope of the PRC's legal aid scheme are no doubt many. Only two important factors, however, are singled out here for comment, as they may have a particularly significant impact on China's legal aid scheme, and the PRC authority's endeavor to strengthen human rights protection across the country.

A. State Involvement, Lawyers' Duty and Public Participation

While government authorities insisted that appropriate control and supervision be exercised over legal aid services and legal practitioners,¹⁵² there seemed to be an overwhelming consensus that it

150. Xiao Yang's speech delivered at the conference. See Xiao Yang, *supra* note 15, pp. 26-34.

151. The MOJ's draft "Statute for Legal Aid Enforcement," *the MOJ Document 57* (1996). On file with the author.

152. The MOJ and its subordinate justice bureaus are concerned that the legal aid services may be abused at the initial stage — for example, some lawyers might misleadingly compete for clients in the name of legal aid — and that the legal practitioners fulfill their legal aid duty.

was the government's responsibility to set up a national legal aid system. However, differences remained among different ministries and departments, as well as legal professionals, over procedural and structural matters regarding the status and operation of legal aid organizations. According to the Lawyers' Law, a specific legal aid scheme is to be drafted by the Ministry of Justice and promulgated by the State Council.¹⁵³

With difficulties in achieving a compromise among relevant ministries, the MOJ, rather than seeking to promulgate a State Council legal aid regulation that would be authoritative for all State Council ministries, pragmatically planned to make the draft Statute appear as a State Council ministry-level (MOJ) regulation endorsed by the State Council. However, it now seems that it is yet to be endorsed by the State Council, thus ending up as a directive from the MOJ, which only dictates to the local justice authorities.¹⁵⁴ In China, a ministry-level directive or order can only reach local bureaus affiliated with the ministry, whereas an order or regulation from the State Council can reach all the ministries and their affiliated organs under the State Council.¹⁵⁵ Therefore, it has cast doubt on the authority and practicability of the legal aid scheme, i.e., the degree to which the justice bureaus' legal aid schemes can gain support from other departments of local governments: for example, the finance and personnel departments.

Fears have thus mounted among both legal professionals and local justice organs that, before the legal aid directive emerges as a State Council regulation, the legal profession will have to shoulder a disproportionate share of the burden of legal aid services if the local government authorities did not provide substantial funds and legal aid personnel. Legal practitioners, especially those from big cities in the developed areas, are afraid that they would quickly be confronted with an overwhelming number of cases, if they opened

153. Article 43 of the *PRC Lawyers' Law*.

154. See "Sifabu Guanyu Kaizhan Falu Yuanzhu Gongzuo de Tongzhi" (MOJ's Notice on Undertaking Legal Aid Work), May 1997. On file with the author.

155. Donald Clarke explains the dysfunction of the Chinese polity when seeking to understand the weakness of the Chinese courts. Political powers penetrate the Chinese official bureaucracies according to two separate principles, i.e., the principle of vertical control, *tiao* and the principle of horizontal control, *kuai*. According to the two principles, superiors in a certain bureaucratic hierarchy dictate inferiors, while a particular body can not exercise power over bodies at a given level of administration. See Donald C. Clarke, "Power and Politics in the Chinese Court System: The Enforcement of Civil Judgments," *Columbia Journal of Asian Law*, Spring, Vol. 10, No. 1, 1996, p. 85.

their doors to poor clients.¹⁵⁶ As for local justice organs, they doubt that they can get sufficient long-term financial support from local governments for legal aid organs per se, since “a number of high-level officials” hold that legal aid services are solely the legal profession’s moral obligation.¹⁵⁷ They also doubt that private lawyers can be mobilized to “serve the poor” without the government’s funding, as many lawyers are themselves struggling to survive under conditions of market competition. Given the still small number of licensed lawyers in the PRC compared with its overall population, even if all private attorneys were mobilized to take on legal aid cases, the demand for legal aid services would certainly remain high.

To partially solve the conflicts and alleviate some of the concerns, the MOJ executives had suggested that state-owned enterprises should be eligible for legal aid services.¹⁵⁸ If the central and local governments are legal services consumers, it is likely that they will support legal aid services financially and institutionally. However, such hope might prove too ambitious, given the large number of state-owned enterprises notoriously losing profit. Although legal aid organizations in a few cities committed to serve the state-owned enterprises and might continue to do so, the vast majority of the legal professionals and the local justice authorities were against providing free legal services to state-owned enterprises. For better or for worse, state-owned enterprises are not covered in the MOJ’s directive on legal aid.

If government authorities cannot sufficiently support legal aid schemes and lawyers cannot provide all the legal aid services needed, a supplementary, if not alternative, scheme must be found through public participation. The MOJ has learned of the importance of public involvement, and it encourages law schools and “mass organizations” to offer relevant legal services, although it insisted they should be governed and guided by local legal aid organizations.¹⁵⁹

156. Sun Jibin, *supra* note 8.

157. Guangzhou Bureau of Justice, “Guanyu Jianli Juyou Zhongguo Tese de Falu Yuanzhu Zhidu de Ruogan Lilun he Shijian Wenti,” (Several Theoretical and Practical Questions on Establishing a Legal Aid System with Chinese Characteristics) in Xiao Yang, ed., *supra* note 102, p. 85.

158. Xiao Yang, *supra* note 15, p. 19.

159. *Ibid.*, p. 28.

B. Legal Services Provided by Legal Aid Centers versus Private Lawyers

Among the existing legal aid programs in China, the GLAC is generally considered to be the most well-organized organization. It is staffed with lawyers on the government's payroll and was highly commended by the MOJ at the Conference. Indeed, not being constantly driven by profit, staff lawyers at legal aid centers can be more engaged and more efficient than those at private firms. What is more, legal aid centers may undertake a large amount of work designed to obviate litigation, something which private firms can seldom emulate.

However, when we begin to explore the issue of whether the GLAC experience and model is to be expanded or replicated in other parts of the country, additional factors should be probed. First of all, it is universally held that publicly-funded legal aid centers have to be selective about the kinds of cases to be taken, a particularly acute issue in China, where the legal aid system is as yet in its formative stages.¹⁶⁰ Among the legal aid projects depicted above, within one year of its operation, GLAC was reported to have dealt with 342 criminal and 30 civil cases.¹⁶¹ In contrast, Wuhan University's relatively independent law school legal clinic has successfully represented individuals in a few administrative cases¹⁶² and fifty-one farmers in a class action against twenty-eight factories, including state-owned enterprises.¹⁶³ It is obvious that the existence of relatively independent private legal services projects can well serve to supplement publicly-funded and staffed attorney projects by taking cases that may otherwise not be taken because of social or political constraints.

Besides, given the high demand for legal services and the small number of legal practitioners, it would be impractical for staff lawyers in legal aid centers to be the sole bridge of the gulf between

160. Such concerns as suing against government organizations were voiced at the Conference. Also the author's interviews with some delegates.

161. Guangzhou Legal Aid Center, "Kaiye Zhounian Yewu Qingkuang Xiaojie," (Summary of Work for Our First Year Anniversary) Nov. 1996, p. 1. On file with the author.

162. See *supra* note 136.

163. Yan Zuhai, "Wushui Yang Yu Shui Zhi Guo" (Who Is at Fault Raising Fish in Polluted Waters), *Zhongguo Huanjing Bao* (Chinese Environmental News), March 23, 1996, p. 3. Also the author's interview with one of the representing lawyers, June 3, 1996. The trial of the case was broadcasted on "Xianzai Kaiting" (Trial Begins Now), a legal feature program of the local Wuhan TV Station.

demand and supply. Therefore, even under public legal aid center schemes, private lawyers should be mobilized to play a supplementary role, if not a major role, in the provision of legal services. In Guangzhou, the local justice authority has realized that there are not enough legal aid staff attorneys and has proposed to increase their number.¹⁶⁴ Moreover, as the GLAC is still constantly confronted with financial difficulties and staff quota limits, the efficacy of the project remains in doubt.¹⁶⁵ However, only sixty of the nearly nine hundred private lawyers in Guangzhou have so far volunteered to take *pro bono* cases assigned by the GLAC.¹⁶⁶

In Pudong District, Shanghai, the local justice bureau organizes lawyers from more than fifty firms under its supervision to offer *pro bono* services under a "duty lawyer" system at its legal aid center. The system offers free legal services to the public in two forms, by providing legal consultation and by representing clients in litigation and non-litigation matters. This structure ensures the private lawyers' involvement and avoids the constraints from tight budgets and staff quotas that affect a public-funded legal aid center. At this stage, with political, social and economic constraints, legal aid centers with staff attorneys may not necessarily guarantee a more efficient way for providing legal aid to the poor. It would be more practical and efficient if all practicing lawyers were mobilized to respond to the demand, which is certainly much higher than what they can actually offer.

CHAPTER VI. SOME OBSERVATIONS OF THE PRC LEGAL PROFESSION AND LAW STUDENTS ON LEGAL AID SERVICES

Besides government, which is the most powerful player in legal aid services, lawyers play an equally critical role in establishing, maintaining and shaping legal services for low-income people. In order to get a clear picture of what is happening and, more significantly, what is going to happen in the field of legal aid services in the PRC, exploration made from the perspective of the legal profession and law students on legal aid services should help to shed some light on the Chinese legal profession's role in delivering serv-

164. Guangzhou Justice Bureau, "Jianli You Zhongguo Tese Falu Yuanzhu Zhidu de Chubu Tansuo," (Preliminary Exploration of Establishing a Legal Aid System with Chinese Characteristics) material distributed at the Conference, Nov. 1996, p. 17. On file with the author.

165. *Ibid.*

166. *Ibid.*

ices to the poor, and help to evaluate the prospects of legal aid services in China on a grander scale.

What follows, therefore, is an examination of the Chinese lawyers or "lawyers-to-be" (the law students) on their attitudes towards providing legal aid services and other related issues. The analysis is based primarily on two surveys conducted at the end of 1996 and the beginning of 1997, respectively: one is of lawyers' views on legal aid services in Beijing, Nanjing, Qingdao and Wuhan and the other is of law students in Beijing, Wuhan and Xiamen on the same subject.

A. Locating the Sample

The questionnaires for lawyers were distributed mainly through the author's friends who are practicing lawyers, and who then approached their colleagues or friends to answer the questions. A total of 72 questionnaires were distributed and 67 questionnaires were completed, although certain questions were not answered. Of the 67 respondents, 42 were male and 25 were female; 14 were under 25 years old, 35 were between 25 and 35 years old, 10 were between 36 and 45 years old, and 8 were above 46 years old; 35 held bachelor degrees and 20 held master or doctorate degrees, 10 were college diploma holders. Income levels ranged from a low of less than 30,000 yuan per year to a high of 100,000-300,000 yuan renminbi per year. Admittedly, a higher income level for PRC lawyers can be expected.¹⁶⁷

The survey of the law students was conducted at the Chinese People's University and Chinese University of Political Science and Law, Wuhan University and Xiamen University.¹⁶⁸ 170 questionnaires were distributed through teachers or class representatives and 166 were completed. Of the 166 respondents, 55 were female and 111 were male; 88 were between 18-22 years old, 69 were between 23 and 29 years old and 8 were above thirty years old; 4 were Ph.D. candidates, 84 were master candidates and 78 were undergraduate students; 88 majored in Chinese law and the other 78 were in international law programs.¹⁶⁹

167. It is reported that a Beijing lawyer earned three million yuan renminbi in 1995. See A Ji, *supra* note 62, p. 24.

168. Admittedly, the four universities draw law students of the highest caliber from across the country.

169. Chinese law herein includes civil law, criminal law and economic law, and others, whereas international law programs include public international law, private international law and international economic law.

The sample might not necessarily represent PRC lawyers and law students as a whole; it nevertheless serves as a useful starting point to understand the dynamics of the PRC legal profession. The author believes that self-reports may be exaggerated while evaluation of others may be more reliable and contain fewer subjective considerations. Because of that, the author infers that what those sampled believe their colleagues or classmates think of legal aid services reflects the opinions of those sampled, as well.

B. Legal Profession's Views on Legal Aid Services

The survey of lawyers revealed that equally the same proportion of lawyers (41.8%) either generally agrees or generally disagrees that a client's capacity to pay the lawyers' bills should not be an important prerequisite to taking cases.

It was also revealed that there exists in a great majority of lawyers' practices a form of *ad hoc pro bono* which is integral to being a lawyer. Of sixty-seven lawyers surveyed, fifty-seven (more than 85%) reported that they took at least one *pro bono* case every year. Lawyers providing such *pro bono* services are either not paid or are paid reduced fees, and such services are not organized. While such practices are sometimes effective for a few lucky clients, the public is generally unaware of the lawyers' *pro bono* services. If lawyers were to provide legal aid services, it is encouraging that nearly 45% thought that they could take up to three cases a year and nearly the same number of respondents replied that they could deal with up to six cases a year. It seems that lawyers are generally willing to offer their time to serve the poor, and perhaps what is needed is an efficient system to organize and implement the legal aid programs.

Nearly half of the respondents replied that they believed that some law firms set up *pro bono* programs in order to make themselves known among the general public and promote their competitive capacity, while nearly 40% of them generally disagreed. This indicates that Chinese lawyers and law firms have developed some sense of entrepreneurship under market competition, as they realize that *pro bono* programs may as well serve to promote their publicity. However, they are also concerned that greater publicity may cause many more indigent clients to seek their help, as indicated by nearly 68% of the respondents.¹⁷⁰

170. It is also reported that a legal aid clinic at the Jiangxi Social Science Academy prefers to keep a low profile because of lack of funding and staff. See Liu Zhijun, "Shang Wei Zhengfu Paijie Fenyong, Xia Ti Ruozhe Shenzhang Zhengyi," (To Mediate

When asked whose responsibility it is to provide legal aid services to the poor, 29.9% of the respondents thought it should be the government's responsibility and 14.9% of the respondents believed that it is exclusively the responsibilities of both the government and the legal profession. Only 26.9% of them believed that it is the responsibility of the legal profession and 20.9% of them even held that providing legal aid services to the poor is merely a matter of morality; thus lawyers could provide such services on a voluntary basis and legal aid services were merely an act of charity. A majority of the respondents (65.8%) held that government should be the major provider of legal aid funding, while 13.4% and 16.4% of the respondents thought public donations and lawyers' donations respectively should be the major sources of legal aid funding.

Only a minority of the respondents (less than 18%) held that state-owned enterprises should be covered by legal aid schemes. A vast majority of the respondents (91%) held that indigent criminal defendants are priority clients of legal aid services; among these respondents nearly 50% held that legal aid programs should also help indigent citizens in civil and administrative cases.

When being asked about the kinds of legal services they preferred to provide, nearly 30% of the respondents listed general legal consultations as their most preferred form of legal services (35.8% of the respondents listed general legal consultations as their first or second preferred form of legal services). Fifteen percent of them listed representing poor clients in civil cases as their most preferred legal service (21% of them listed it as their first or second preferred legal service). Interestingly, nearly 30% of the respondents listed criminal advocacy as the most preferred and nearly 9% of them listed it as the least preferred. However, only 9% of the respondents most preferred representing indigent clients in administrative cases, and 26.9% of them least preferred administrative cases. While the same number of respondents (26) listed representing the indigent in administrative cases and in criminal defense cases as their first or second preferred service, only 18% of the respondents listed representing poor clients in criminal defense cases as the fourth or fifth preferred choice, however, nearly 45% of them listed representing poor clients in administrative cases as such.

These findings suggest that the lawyers generally appreciate indigent criminal defendants' need for defense counsel and for free

legal consultation for other indigent clients, but they are less ardent in representing the indigent in civil and administrative cases. One interpretation might be that it takes more time and effort to deal with civil litigation than to offer general free legal advice services, and obviously many lawyers prefer to offer their time and effort on a free legal consultation basis if possible. As for administrative cases, lawyers may find them even harder to deal with in a corrupted "law enforcement environment" (*zhifa huanjing*) caused by ignorance and resistance to the rule of law, which is derived from personal and social networks, administrative and party interference and local protectionism concerns.¹⁷¹

In response to which organization should administer and operate legal aid programs, a sizable proportion of the respondents (50.8%) thought that justice administration bureaus and lawyers' associations should co-administer legal aid programs and nearly 24% of them advocated that lawyers' associations should take charge of the administration and operation of legal aid. This reflects the current status of administration in Chinese lawyers' work, that is, it is under the charge of both justice bureaus and lawyers' associations, and yet it still mirrors the growing demand among some Chinese lawyers for expanding the role of lawyers' associations.¹⁷²

C. Law Students' Views on Legal Aid Services

The law student survey showed that law students more or less have some concept of professional ethics and the social influence of practicing law. A significant majority of the students surveyed (115/166, 69.3%) held that the clients' capacity to pay lawyers' bills should not be an important determinant of whether to take their cases. Ninety-three students (56%) did not agree that involvement in legal aid work would negatively affect their billable work; however, one quarter of the respondents had such concerns.

Ninety-nine students reported that during their law school careers they had participated in legal consultation activities, and 148 students (89.2%) believed that most of their classmates were interested in participating in free legal consultation activities in their

171. In December 1996, the author interviewed a Wuhan lawyer, who, based on the experience of dealing with administrative law cases in his firm, acknowledged that it was generally predictable to deal with malpractice by the authorities at the village and township levels in administrative cases, but it was unpredictable for cases involving malpractice by authorities at the county level and above.

172. Author's interview with one of the council members of All-China Lawyers' Association in August 1996.

schools, and if there were established legal aid groups in their law schools, 119 students (71.7%) believed that most of their classmates would actively get involved in such groups. One hundred twenty-five students (75.3%) mentioned that they were interested in lawyers' involvement in legal aid services.

When being asked about their business preferences as lawyers, however, among 153 students who planned a practicing career (surprisingly only 12 expressed a desire to practice law as a first job after graduation), 43.8% preferred to be long-term legal consultants (*changnian falu guwen*), 23.5% preferred to represent clients in civil cases (*minshi susong daili*), and 17.6% preferred to take non-litigation legal matters (*fei susong falu shiwu*) while only 10.5% preferred to take criminal defense cases and 1.3% to take administrative law cases.¹⁷³ This finding is consistent with the perception that lawyers currently are generally ardent about taking civil and economic cases, but reluctant to take criminal defense and administrative cases.

Studies in the United States have suggested that participation in law school social action programs during one's law school education is, among others, a most important predictor of who will take public interest law jobs after graduation.¹⁷⁴ It is also argued that although drifts in career and interest are expected, lawyers with experience in the legal service sectors are more likely to represent underprivileged clients¹⁷⁵ than other lawyers without such experience. Data on Chinese law students working in the public interests sector after graduation is not available, but there currently is not a clear-cut distinction between private law practice and public interest law practice in China as in other Western countries. The survey, however, can help us to predict the future legal profession's view of legal aid services and their role thereafter. It also suggests that law students can be mobilized to be involved in supportive action groups during their law school careers and that such efforts will enable law students to briefly appreciate law and society, and perhaps even more radically, to be rewarded with "attracting power" for those who eventually engage in public interest law work.

173. In China's legal services statistics, the legal services usually are classified into seven categories, i.e., long-term legal consultancy, representation in civil cases, criminal defense, representation in administrative cases, non-litigation legal matters, general legal consultation and legal documents writing.

174. Erlanger, Howard, *et al.*, "Law Students Idealism and Job Choice: Some New Data on an Old Question," *Law & Society Review*, Vol. 30, No. 4 (1996), p. 862.

175. *Ibid.*

CHAPTER VII. A PROPOSAL FOR THE PRC LEGAL AID SCHEME

As we can see from the discussions above, currently the two principal obstacles to establishing an effective legal aid scheme in China are: (1) the lack of money to fund legal aid services, and (2) a lack of consensus on how legal professionals could be effectively mobilized to aid the indigent. A third obstacle is a lack of appreciation of the significance of legal aid programs.

According to Gaur, legal aid is an integral part of social-economic planning and is related to the entire legal system.¹⁷⁶ This requires that the central government legislate on legal aid. A legal aid system should draw attention and efforts from a variety of institutions of the state authority, that is, the MOJ (as an executive branch of the central government) should not be solely responsible for the establishment of a national legal aid system. Central government authorities and local authorities should be under a national statutory duty to institutionally and financially provide legal aid services to the indigent. If the central government does not include legal aid on its agenda, when the MOJ requires local justice bureaus to set up legal aid organizations, these organizations will receive only lukewarm financial and institutional support from local provincial governments.

A legal aid committee must be appointed by the central government to recommend and coordinate the provision of legal aid services and initiate educational programs and implement related socio-economic measures to the indigent throughout China. The committee should consist of judges, prosecutors, lawyers, representatives from public securities, civil affairs and other relevant government and mass organizations,¹⁷⁷ preferably with a Supreme People's Court judge as the chairperson of the committee. The committee should meet periodically to review the national legal aid work progress based on local legal aid progress reports, and should formulate policies and actions herein. Legal aid committees of similar functions can be formed at the provincial and municipal levels to

176. K. D. Gaur, *supra* note 26, p. 10.

177. The MOJ's draft Statute for Legal Aid Enforcement did not provide for establishing a national legal aid committee as of early 1997. But the Minister of Justice addressed the issue in his speech at the MOJ's conference on legal aid in November 1996. He sketched a framework of three organizations charged with recommending, implementing and supporting legal aid work on the national level, that is, the national legal aid committee, the national legal aid center and the China legal aid foundation. See Xiao Yang's speech, *supra* note 15, p. 27. See also *supra* note 4.

be responsible for the implementation of legal aid system in respective localities.

An effective legal aid system should concentrate on solving the funding problem through the currently-existing system. For example, during the past few decades, the People's Courts have exercised the powers of granting legal aid to some poor defendants by assigning lawyers and having funds, albeit limited, to pay them. These funds are allocated to the courts by the government. As there have been growing concerns that government appropriations are improperly used,¹⁷⁸ it is time to review how the People's Courts' appropriations for assigning legal aid lawyers should be effectively used.

The national legal aid organization should take the initiative to work out appropriate schemes for the use of the existing defense counsel appropriations in a proper and efficient manner. The principal goal is to use existing resources to encourage and finance lawyers representing the indigent. Given appropriate compromise, arrangements could possibly be made between legal aid organizations and the People's Court about the People's Courts' already-existing budget for assigning lawyers to represent criminal defendants. As a matter of fact, the memorandum between Shanghai PNDJB and the Pudong New District People's Court for the assignment of private attorneys as criminal defenders touched on the issue, but didn't provide new measures to allocate the court's appropriations for assigned defense counsel.¹⁷⁹

In addition, and perhaps most importantly, the government should commit itself to expand its appropriation for legal aid, at least for the services delivered to indigent criminal defendants. Delivery of legal aid services to poor criminal defendants is one of the very basic components of legal aid systems in many other parts of the world and one of the most fundamental human rights in most international human rights treaties.¹⁸⁰ There is not yet a wide-

178. The author's interview with a court judge in Shanghai in the summer of 1996.

179. Article 4 of the memorandum specifies that the Pudong People's Court will continue to pay fees to assigned defense lawyers and the two sides will decide new schemes after the authority of superior level make new rules. See PNDJB Document, No. 103, 1996. On file with the author. Interestingly, in a co-signed notice by the Supreme People's Court and the MOJ on assigning legal aid counsel, there is simply no provision on allocation of fees to legal aid counsel. See "Zuigao Renmin Fayuan Zhonghua Renmin Gongheguo Sifabu Guanyu Xingshi Falu Yuanzhu Gongzuo de Lianhe Tongzhi," (Joint Notice from the Supreme People's Court and the MOJ on the Criminal Legal Aid Work), April 1997. On file with the author.

180. For example, in Hong Kong in 1962 the government-sponsored legal aid first provided legal representation for indigent criminal defendants in the Supreme Court.

spread public defender system in China, and it should be the initial step of the PRC legal aid system to provide representation for poor criminal defendants.

Besides government appropriation, additional funds to pay lawyers representing the indigent may come from a number of sources, such as grants from volunteer agencies and donations from the local lawyers' associations and foreign grants. If the sources of legal aid fund are diverse, legal aid work will be less influenced by unwanted politics and the vagaries of appropriations. This would also help to alleviate some people's discomfort that the government is sponsoring one organization to sue another organization. Furthermore, the more diverse the sources of funding, the greater people's interests in keeping the system free from corruption and political influence.¹⁸¹

Lawyers should offer their time at legal consultation centers or set up lawyer-on-duty systems to perform advisory work and resolve some disputes or conflicts before they go to courts. In the PRC during the past few decades, much experience has been accumulated to resolve people's disputes through inexpensive and efficient systems such as negotiation or mediation. A vast majority of the disputes at the grassroot level perhaps do not involve many complicated or serious procedures of law through the courts. If members of the legal profession play an active role at the very inception of a dispute, they would be able to expeditiously resolve some disputes without the court's intervention, which could result in much time saved.

Legal aid systems in many jurisdictions usually combine two service delivery modes — the compensated private practitioner mode and the salaried staff attorney mode, although degrees of such combination vary in different countries.¹⁸² As such, the roles of private practitioners are different, with varying results accord-

A few years later the system evolved to include civil cases. In 1973, legal aid was provided for serious offenses in the District Court, and by 1978 legal aid had been extended to all criminal cases heard in the District Court. See Director of Legal Aid Departmental Report (1993-94), p. 1, Hong Kong Government. Article 6 of the *European Convention on Human Rights* stipulates the provision of legal assistance to criminal defendants who do not have sufficient means to pay for legal counsel. Similar provisions are found in the *United Nations International Covenant on Civil and Political Rights*.

181. Richard. Gordon, Jr. & Jonathan M. Lindsay, "Law and the Poor in Rural India: the Prospects for Legal Aid," *American University Journal of International Law & Policy*, No. 5 (1990), p. 770.

182. H. Y. Yeo, "Assessing the State of Civil Legal Aid in Singapore," *International and Comparative Law Quarterly*, Vol. 41 (Oct. 1992), p. 878.

ingly. For example, in Hong Kong, the Legal Aid Ordinance requires the Director of Legal Aid Department to prepare and maintain a list of private barristers and solicitors who are willing to take legal aid cases assigned by the Department¹⁸³ and in 1995, only about one-fourth of the civil cases and the majority of High Court criminal cases for which legal aid was granted were dealt by the Department's own lawyers.¹⁸⁴

This implies that private practitioners undertake the majority of the legal aid cases in Hong Kong. Whereas in Singapore, which also combines both service delivery forms, it was once estimated that only 5% of legal aid cases were referred to private practitioners and some 15% of Singapore lawyers were involved in the government legal aid system.¹⁸⁵ Perhaps different scales of remuneration for engagement in legal aid work may contribute to the differences in private attorneys' involvement in legal aid services.¹⁸⁶ In Hong Kong, fees payable to private practitioners are not lowered and are subject to normal taxation on a common fund basis.¹⁸⁷ During 1994-95 fiscal year, nearly 200 million HKD was allocated to private attorneys for their involvement in legal aid litigation in Hong Kong.¹⁸⁸ Whereas in Singapore, private lawyers are remunerated at 50% of their normal taxed fees charged for High Court litigation and even less for ordinary advice.¹⁸⁹ From the discussion of Hong Kong and Singapore experiences regarding remuneration of private lawyers, a useful lesson to the PRC is that incentives must be created for private lawyers to offer free or reduced fee legal services. One possible way is to offer preferential taxation status to lawyers and law firms involved in legal aid work, and at the initial stage, such lawyers and law firms should be granted a tax exempt status. With incentives, private lawyers or law firms may possibly take initiatives to offer legal services to needy persons and even specialize in such services.

Legal service rates should be adjusted, as well, to appeal to diversified clientele. At present, the official legal fee rates are far

183. *Annual Departmental Report by the Director of Legal Aid for the Years 1994 & 1995*, Hong Kong Government, p. 21.

184. Legal Department of Hong Kong Government, *Legal System in Hong Kong 1996*, 1996, p. 47.

185. H. Y. Yeo, *supra* note 182, p. 879.

186. *Ibid.*

187. Reg. 5, *Hong Kong Legal Aid (Scale of Fees) Regulation*, Cap. 91, S. 28, 1989 Ed.

188. *See supra* note 183.

189. H. Y. Yeo, *supra* note 182, p. 879.

below the actual rates that legal practitioners charge. The legal profession is thus left in a position of charging individualized legal fees and there is no norm to regulate the quantum of such fees.¹⁹⁰ To ensure that legal service fees are commensurate with the efforts that lawyers make, it is essential that a code be made to fix the schedule of fees for different types of professional services. Besides, differential fees for certain types of legal services and certain kinds of clients are logically more appropriate.

In addition to exploring the existing system to help provide legal aid services through new sources of funding, legal literacy among the general public should be further improved. From a long-term perspective, the legal aid system must strike at the ignorance and lack of awareness of people's legal rights. As a matter of fact, the extensive-education-of-legal-knowledge campaign has already helped to raise the general public's legal literacy and has inspired a great interest in law.

Handbooks, newsletters and posters could be distributed to the public, disseminating information on procedural issues, such as what types of cases are amenable to legal action and how to pursue legal means for taking such actions, how the local legal aid systems work and what services needy people can get access to. Besides, legal aid services and legal aid lawyers should be publicly and frequently acknowledged to the general public.

Legal aid services should be extended to public interest litigation cases, as well. Such cases include consumer product liabilities, labor disputes, industrial safety, environmental protection, arbitrary charge and levy activities, and the status of certain segments of the society, which may involve people who are not necessarily indigent but are vulnerable in terms of political or social status. Similarly, as has been shown in the aforementioned legal aid programs, lawyers' participation in legal aid services has enabled them to voice to relevant authorities some legitimate grievances. Although this may not in the foreseeable future lead to a civil rights movement, like that which occurred in the United States, legal aid services in public interest litigation, given appropriate and wide publicity, may be expected to bring about political and ideological mobilization in

190. The current official legal rate for criminal cases ranges between 30-150 yuan renminbi and can reach 300 yuan renminbi. However, many lawyers usually charge their service fees based on agreement with their clients, ignoring the official rates. It is reported that one Beijing lawyer charged 50,000 yuan for a criminal case. See A Ji, *supra* note 62, p. 24.

society and address systematic social problems through legal reform.

As the needs of legal aid services are too vast, it is impossible for legal aid organizations under the auspices of the government to achieve success alone. Given monetary and priority constraints, mass organizations and existing law school student interests groups should be encouraged to offer assistance to legal aid lawyers in preparing cases and strategies or to organize their own legal clinics to offer counseling services.¹⁹¹ Effective exposure to the general public's legal needs will be helpful to sensitize law students to justice, and society to the legal profession's role. By engaging in legal aid assignments, the students would be exposed to a variety of legal work done in practice both as to procedural and substantive areas of law. As the experience of the Center at Wuhan University demonstrates, student volunteers can be an indispensable supplementary legal aid force. Most of the law students are eager to take part in action groups and to learn more of how the law functions in practice. This should encourage legal educators to refine their course curricula to satisfy students' needs.

Legal aid services should also be decentralized and thus more accessible to the needy. There have been complaints that free legal advice centers are difficult to find for the concerned people.¹⁹² Therefore, at least in large urban areas, legal aid resources should be distributed throughout the cities and a network of free legal advice offices for the convenience of the public should be established.

These suggestions would need to be implemented differently depending on varying conditions. Admittedly, the legal aid network in China, in many ways, is still in its infancy and mainly exists in large and medium cities. In many places, there have already been various modes of legal aid programs under the auspices of the government, lawyers' associations and mass organizations. In any case, pilot programs should be encouraged to experiment with different

191. There already exist some student legal aid interest groups across the country. Quasi-Lawyers' Society, a student community in the Chinese University of Political Science and Law, was reported to have established a free legal advice group. See Chen Liming, "Zhong Zheng Da Xuesheng Falu Yuanzhu Zhongxin Chengli," (Student Legal Aid Group Set up in the Chinese University of Political Science and Law) *Fazhi Ribao* (Legal Daily), Oct. 12, 1996, p. 2. Some law students at Beijing University formed a legal aid interest group to provide legal advice, as well as volunteer work for the MOJ. The author's interview in Beijing in July 1996.

192. For example, it is reported that the "Lawyer Chen Free Legal Advice Station" in Shanghai is difficult to reach because of its isolated location. See Shi Yanping, *supra* note 117.

ways of funding legal aid organizations and programs and service delivery modes. Pilot legal aid programs could be organized cost-effectively and avoid many potential difficulties. Starting with poor citizens and specific segments of the society members,¹⁹³ avoiding new bureaucracies, and concentrating on the development of the existing legal framework, such pilot programs will have a realistic opportunity to succeed, if supported by extraordinary leadership, economical administration, and mass organizations, as well as extensive volunteership.

CHAPTER VIII. CONCLUSION

A. Awakening Legal Consciousness among PRC Citizens

As was mentioned, the development of legal perception and social justice values was the major reason for the establishment of legal aid schemes for the poor in Western countries. Similarities can be found in PRC legal aid practices.

Since economic reform in the 1980s, there have been tremendous changes made to the social structure in the PRC, namely changes in property ownership, social organizations and the people's social status of the pre-reform era. When individuals are allowed to engage in private economic activities, awareness of individual rights and equality consequently will heighten among the general public, and especially so after the PRC authorities attempt to instill respect for law and order and legal process among the citizens through mass education campaigns.

In the past few years, typical of the billboards on China's streets and other public areas have proclaimed governing the country, provinces, cities, counties, towns and villages (and perhaps almost all units of people) by law. These signs have substituted typical empty political proclamations during the Mao era. Although these proclamations represent much more a facade than a real essence, they reveal people's ideals on the role of law and order in the society. Consequently, these ideals will influence people's behavior in the society.

193. The MOJ has signed documents with the Ministry of Civil Affairs, the All-China Women's Federation, China Disabilities Association and Chinese Youth League calling for provision of legal aid services to needy senior citizens, women, the disabled and juveniles, respectively. See Sixuan, "Falu Yuanzhu Gongzuo Ying Guanzhu Teshu Shehui Qunti," (Legal Aid Work Should Target Specific Segments of the Society) *Fazhi Ribao* (Legal Daily), Dec. 16, 1996, p. 1.

Accordingly, people have a stronger desire to seek settlement of their disputes or a remedy for damages through legal action. In a society where litigation was abhorred as a result of traditional norms, Chinese traditionally tended to solve their disputes through unofficial channels. During the past one and a half decades, however, the number of litigation cases tried in the courts has increased, while the number of disputes solved through mediation has not increased much and has been declining in the 1990s.¹⁹⁴ This reveals the heightened awareness of individual rights and the need for more effective protection of such rights.

The recent couple of years has seen PRC legal reform oriented towards better implementation of the constitution and other legislation. PRC authorities, more often than not, have tended to employ legal mechanics to re-shape China's changing political, social and economic order, although this does not necessarily reflect their genuine respect for the rule of law. As a result, a number of pieces of legislation have been enacted to implement the authorities' social, economic and political policies. This legislation has started to stress social order as well as individual rights. Legal aid, as a system to facilitate access by the poor to justice, is regarded by government authorities as an important step towards full implementation of the constitution. Therefore, the emergence of legal aid is, in part, the result of the PRC authority's response to the public's growing demand for legal services.

B. Observations of the PRC Legal Profession: An Increasingly Influential Group?

As discussed above, as private practice becomes a crucial source of income for the PRC lawyers, autonomy from the state administration will gain popularity among lawyers. The autonomy of the Chinese legal profession has been increasing in the 1990s, especially after July 1995 when the All-China Lawyers' Association reconstituted its council of directors, which for the first time consists of legal professionals.¹⁹⁵ Such autonomy under the authorita-

194. Gao Hongjun, "Zhongguo Gongmin Quanli Yishi de Yanjin," (Evolution of the Chinese Citizens' Rights Consciousness) in Xia Yong, ed., *supra* note 43, p. 34.

195. In Beijing, as early as in January 1994, the local lawyers' association began to take charge of a large amount of administrative work after its council of directors was formed by legal practitioners. The author's interview with the secretary of the Beijing Lawyers' Association in the summer of 1996. It should also be mentioned that in April 1993, more than 300 lawyers from about 150 cities across the country convened a so-called "co-operative meeting." Delegates from the All-China Lawyers' Association also

rian rule of Communist Party regime is still far from that in Western nations. However, at least in large cities, reformist lawyers and lawyers' associations have begun advocating increased autonomy for the group from the administrative regulation of justice bureaus.¹⁹⁶

As the survey of lawyers indicated, nearly a quarter of the respondents suggested that legal aid programs should be operated and administered by lawyers' associations instead of justice bureaus. In the meantime, legal professionals are getting more active in the legislative and political process.¹⁹⁷ Lawyers' associations are playing a growing and meaningful role in the law-making process, and what is more, the authority encourages legal professionals to actively participate in such a process.¹⁹⁸

In a society undergoing tremendous transition, how the reconstituted PRC legal profession will distinguish itself in society is of substantial interest to observers of the Chinese legal system and Chinese society. The question requires more in-depth inquiries and may constitute another paper. In this section the author will make some overall observations of the PRC legal profession with regard to the subject of legal aid services, and hopes to pave the way to a comprehensive understanding of the question.

In the past few years, there have been extensive inquiries and studies about whether there is emerging a civil society in the PRC and consequently what the prospects are for democracy. Evidence for strategies of certain social groups is presented for the purpose of

participated in the meeting. The meeting revealed that there has been a growing consciousness of professionalism and cooperation and self-governance among PRC legal practitioners. See Chen Qiulan, "Quanguo Bai Cheng Lushi Hezuo Dahui Caifang Lu," (An Interview of the Cooperative Meeting of Lawyers from 100 Cities across the Country) *Zhongguo Lushi* (China Lawyer), No. 6 (1993), pp. 5-6.

196. The author's interview, in the summer of 1996, with a Shanghai lawyer who is on the council of directors of All-China Lawyers' Association and Shanghai Lawyers' Association.

197. More than 400 lawyers were parliament members and about 500 lawyers were CCPCC members at various levels as of October 1996. See Xu Lai, "Lushi Yi Bu Ke Xiao Shi," (Lawyers Should not be Ignored) *Zhongguo Lushi Bao* (China Lawyer News), Oct. 9, 1996, p.1.

198. For example, the legislative committee of the NPC specially held a meeting with the All-China Lawyers' Association on drafting a uniform contract law in June 1996. See "Lushi Canyu Lifa de Xin Qidian," (New Starting Point for Lawyers to Participate in Legislation) *Zhongguo Lushi* (China Lawyer) No. 9 (1996), p. 7. According to the general secretary of the Association, they would actively organize lawyers to participate in the legislative process, which was also regarded as a good opportunity to raise the legal profession's social status and play a unique role in Chinese society.

discussion.¹⁹⁹ Regardless of whether a civil society is emerging or has emerged in the PRC, it is apparent that newly emerging social forces and those long existing mass groups, as well as institutional departments, are competing to protect their interests in a rapidly changing society.²⁰⁰ Inquiries of PRC social groups, which conclude an “emerging civil society” in China, have either cited conflicts between society and the state as evidence²⁰¹ or emphasized that social groups seek independence and autonomy from state and party control.²⁰²

These perspectives may run the risk of being simplistic and superficial. Some researchers further explore the relationship between the Chinese social groups and institutions and the state by drawing our attention to the role of the state and the Communist Party in the dynamics, in other words, “bring[ing] the state back in.”²⁰³ According to this perspective, the state and civil society are intermingled and the two form a complex interrelationship.

Interestingly, the increasingly influential PRC legal profession and its role in China’s political arena has received scant scholarly attention compared with other institutional groups. Nevertheless, it is by no means convincing to assert that the PRC legal profession — once a *de facto* part of the state authority as “state legal workers” — adopts similar strategies as other social institutions when it tries to advance its own interests. How do we perceive the relationship between the legal profession and the state and Communist Party in the transition period? Is the legal profession evolving into a distinctive political role in Chinese society? And if so, what are the strategies of the legal profession?

China reintroduced lawyers into its judicial system in 1980 and the All-China Lawyers’ Association was established in July 1986. The lawyers’ work and lawyers’ associations were under the control of the MOJ and its affiliated justice organs. In the late 1980s, private law firms started to emerge in large cities. Not until 1993 did the MOJ decide to reform the lawyers’ work and administration

199. See, e.g., among others, Heath B. Chamberlain, “On the Search for Civil Society in China,” *Modern China*, Vol. 19, No. 2 (April 1993), pp. 199-215; Tony Saich, “The Search for Civil Society and Democracy in China,” *Current History*, Sept. 1994, p. 260-4; Christopher E. Nevitt, “Private Business Associations in China: Evidence of Civil Society or Local State Power?” *The China Journal*, No. 36 (July 1996), pp. 25-43.

200. See Kathy Chen, “China’s Competing Interests Are Eroding Central Power,” *Asian Wall Street Journal*, March 17, 1997, pp. 1 and 6.

201. See *supra* note 199, Heath Chamberlain, p. 201; Tony Saich, p. 260.

202. See *supra* note 199, Heath Chamberlain, p. 202; Tony Saich, p. 261.

203. See *supra* note 199, Heath Chamberlain, p. 211.

system. The principle of the reform was to improve the status and income of lawyers.²⁰⁴ The legal profession was recognized as an intermediary organization (*zhongjie zuzhi*) in the socialist market economy.²⁰⁵ Since then, lawyers' associations have begun to enjoy more autonomy from the MOJ and local justice bureaus, and the government authorities exercise only minor supervision and guidance (*jiandu he zhidao*). Members of the legal community started to urge lawyers' associations to be more assertive in the negotiation and protection of lawyers' common interests and to provide more quality services to them. As was been shown by the survey of lawyers, when being asked about the role of lawyers' associations, more than 38% of the respondents replied that they would like the lawyers' associations to protect lawyers' rights and strive to advance the interests for lawyers; nearly 65% of the respondents wished that the lawyers' associations would provide more training courses and information services.

This does not, however, mean that members of the legal profession have been genuinely independent or are willing to be so. As the chairman of the Beijing Lawyers' Association mentioned, "...without the Ministry's support, our association would be in a very hard position. If we were really on our own, our influence would be much less than before."²⁰⁶ Such views are by no means unusual. As the survey indicated, nearly 20% of the lawyers believed that legal aid programs should be administered by justice bureaus while more than half of them held that both justice bureaus and lawyers' associations should be responsible for lawyers' legal aid programs. This indicates that, while the legal profession is striving towards gaining more independence from government authority, the majority still like to see themselves, at least in the transition period, as a *de facto* part of the authority seeking greater influence. That is, instead of challenging the authority of the government under the CCP leadership, the legal profession has opted to reorganize its apparatus within the authoritarian structure. This may have to do with the yet many "political, professional and moral"

204. Shen Zongling, "The Role of Lawyers in Social Change: China," *Case Western Reserve Journal of International Law*, Vol. 25 (Spring 1993), p. 167.

205. Wu Xiaoji, *supra* note 51.

206. Richard Tomlinson, "A Much Criticized Legal System Takes Tentative Steps toward Reform," *International Herald Tribune*, Nov. 25, 1996, p. 6.

problems with the legal profession,²⁰⁷ and the yet still limited public appreciation of the legal profession.

The legal profession has been blamed for their falling ethical standards by society and government authorities. The government authorities together with the lawyers' associations have shown their determination to discipline erring members of the profession.²⁰⁸ Desired results remain yet to be determined. For the PRC legal profession, proper ethical standards are essential to its greater autonomy and influence in Chinese society. If the prestige of the profession is to be preserved, it must be ensured that members of the profession maintain and safeguard high standards of professional ethics and do not tarnish their image and reputation.

To project a positive social image, about 26% of the surveyed lawyers held that lawyers should pay appropriate attention to the social effects of the law; nearly 40% of the respondents believed that involvement in legal aid services would help to polish their social image and accordingly raise their social status. Offering legal aid services to the poor is therefore one of the legal community's strategic steps toward its goal of identifying itself as an ethically positive group in a society under the support and tolerance of government authorities. This will in turn help to enhance the legitimacy, for better or for worse, of CCP authority.

It seems unlikely that in the near future the PRC legal profession, which traditionally has never occupied a prestigious position in society, will go beyond the indigent's grievances and advocate legal reforms to address social problems like their American counterparts in the 1960s and 1970s.²⁰⁹ However, it cannot be gainsaid that the PRC legal profession's involvement in legal aid programs will enable it to play an important role in the Chinese political arena during the transition period. As has been demonstrated by the Center at Wuhan University, lawyers have been invited to provide consultation services for local government authorities and legislators regarding the welfare and rights of certain segments of

207. AFP, "Minister Lists Flaws in Lawyers," *South China Morning Post*, Sept. 28, 1996, p. 9.

208. See *supra* note 82. The All-China Lawyers' Association declared in its publication *Zhongguo Lushi* (China Lawyer) that vigilance as to the profession's weaknesses will help the PRC legal profession develop faster and better. The Association launched a "Discussion of PRC Lawyers' Image" and has held such discussions since Oct. 1996.

209. One dominating school of thought regarding the role of the legal aid system in the United States is to address the root causes of the poor's grievances through legal action and convince judges to change the law in their favor. See, Frank K. Upham, *supra* note 29, p. 265.

society, thus influencing the government authority's policies and legislation.

As for the justice administration authority's strategy in the transition period, following the CCP's call to instill "spiritual civilization," the Minister of Justice spoke eloquently about the moral resources of the legal community to push for the establishment of a legal aid system²¹⁰ and the coordination of building a legal system and socialist morality.²¹¹ Many China observers interpret the "spiritual civilization" campaign as a "leftist resurgence" or a "conservative backlash." However, the campaign may well be employed by reformers to build a more convincing strategy to push their reformist agenda.²¹² A stratagem as such may allow legal reformers to eloquently address legal aid system issues within the party's line on the one hand, and on the other, may gain sufficient support from other institutions and local government authorities.

C. The Future Implications of the PRC Legal Aid System

This paper has discussed the dynamics of Chinese legal aid programs and what legal aid programs have done so far by providing a description and analysis of legal aid programs in Hunan Province and the five cities of Beijing, Guangzhou, Qingdao, Shanghai and Wuhan. The surveys of lawyers and law students reveal that there is a realistic chance that the legal aid programs in the PRC will be successful given appropriate organization and administration.

Admittedly, as with other types of legal services, legal aid services are also confronted with problems derived from ignorance of and resistance to the rule of law, and administrative and party interference and local protectionism. And to some extent it is even more difficult to deal with legal aid cases. It is reported that there are four principal issues in dealing with legal aid cases, namely, investigation, filing of cases, trial of cases and enforcement of court decisions.²¹³ The lack of regard for the rights of criminal defendants is another obstacle to legal aid for indigent criminal defendants. Officials and the public generally hold that legal aid in civil cases might

210. Xiao Yang's speech, *supra* note 15.

211. Xiao Yang, "Lun Shehui Zhuyi Fazhi Jianshe Yu Daode Jianshe de Xietiao Fazhan," (On Coordinated Development of Socialist Legal System Building and Morality Building) *Renmin Ribao* (People's Daily), Feb. 1, 1997, p. 6.

212. Laurence J. Brahm, "Reformist Ideology," *Asiaweek*, Jan. 17, 1997, p. 56.

213. See *supra* note 141. This was again confirmed by an official at the Fuzhou Legal Aid Center. The author's interview in Fuzhou in May 1997.

prompt better “social effects” than that in criminal defense cases,²¹⁴ and some people, including members of the legal community, hold that providing legal aid services is merely charitable behavior on the part of the legal profession. There is no doubt that the expansion of a legal aid system and the protection of the underprivileged depend on further improvement of the social justice consciousness among members of society, government authorities and the legal system as a whole.

The years ahead undoubtedly will be challenging for lawyers, local justice organs and public volunteers. Clearly, Chinese lawyers will have to be mobilized to carry out legal aid work. The responsibility for the dispensation of justice to the poor rests on the state, as well. As the Chinese Constitution speaks of equality before the law and equal protection under the laws, it implicitly imposes an obligation on the state to ensure that opportunities to secure justice are not denied because of any social and economic disability. It therefore argues that while there is no doubt of the need to mobilize the legal profession to offer *pro bono* services, an efficient nationwide legal aid network will require the government to take initiatives to fund legal aid services. The government authorities are to set up legal aid organizations to carry out legal aid work, particularly the criminal defense work, or substantially remunerate private lawyers for undertaking legal aid cases.²¹⁵

Much attention has been paid to China’s persecution of political dissidents and its record of political suppression. It is indeed an attention-getting issue that many dissidents are imprisoned without proper charges or appropriate legal procedures, and there is no doubt that much is yet to be scrutinized. For most Chinese, especially the indigent, however, the provision of access to legal counsel for representation on mundane legal issues would mean an improvement of human rights. What is more, legal aid under the auspices of the government may even allow the Chinese to pursue their grievances against administrative authorities. These and other legal

214. The author’s interview with a legal aid lawyer in Guangzhou on Nov. 19, 1996. He admitted that they had to balance case priorities between criminal defense cases and civil cases.

215. A legal aid foundation has been set up to promote the development of legal aid in the country. The Legal Aid Foundation of China, with a registered fund of 2.1 million yuan (253,012 USD), received 10 million yuan as its first donation. This donation was made by overseas and domestic organizations and individuals, most of whom were companies and law firms. See Xin Zhigang, “Fund Set up to Provide Free Legal Services,” *China Daily*, May 27, 1997, p. 1.

aid programs have brought about greater prospects for improving China's system of justice, despite the conflicting interests involved and the difficulties encountered.

In a society where most people would still prefer to live their lives without having to deal with lawyers, for some, access to a lawyer and the law can be an essential human right. Especially in criminal defense cases, getting access to a lawyer helps to ensure a more equal legal process between the prosecution and the defense. It is reported that the Chinese government is considering signing two significant international human rights covenants.²¹⁶ There is as yet no evidence to support the claim that recent legal reform in China will provide access to legal services for all and therefore lead to the full protection of individual rights. However, few would doubt that legal aid programs have the potential to improve human rights in a country whose system of justice had failed to offer counsel to the indigent in the recent past.

216. He Junren, "Zhongguoren Ye Yao Renquan Baozhang," (Chinese Also Needs Human Rights Protection) *Ming Pao*, March 13, 1997, p. C7.

Glossary I. Simplified Chinese Characters

buyaoguojiajingfei 不要国家经费

buzhanguojiabianzhi 不占国家编制

buzhengdangliyou 不正当理由

caizhengbu 财政部

changnian faluguwen 常年法律顾问

chengshihukou 城市户口

falu fuwu 法律服务

falugongzuozhe 法律工作者

falujie 法律街

faluyuanzhu 法律援助

faluyuanzhushixing tiaoli 法律援助试行条例

feisusong falushiwu 非诉讼法律事务

guangdong sheng gaoji renmin fayuan 广东省高级人民法院

Guangdong sheng sifa ting 广东省司法厅

Guangzhou shi faluyuanzhu zhongxin 广州市法律援助中心

guojia falugongzuozhe 国家法律工作者

guojia ganbu 国家干部

hehuozhi lushi shiwusuo 合伙制律师事务所

hezuo zhi lushi shiwusuo 合作制律师事务所

jiandu he zhidao 监督和指导

jibenpuji faluchangshi 基本普及法律常识

liangbusizi 两不四自

lushi xiehui 律师协会

lushi zanxing tiaoli 律师暂行条例

mianfei faluzixun fuwu 免费法律咨询服务

minzhengbu 民政部

minshi susongdaili 民事诉讼代理

minshi susong fa 民事诉讼法

nongcun hukou 农村户口

Pudong xinqu fa lu yuanzhu jihua [zanxing] 浦东新区法律援助计划 [暂行]

Pudong xinqu fa lu yuanzhu zhongxin 浦东新区法律援助中心

Pudong xinqu funu lianhehui 浦东新区妇女联合会

Pudong xinqu sifa ju 浦东新区司法局

Pudong xinqu tuanwei 浦东新区团委

shehui ruozhe quanli baohu zhongxin 社会弱者权利保护中心

shehui shijian 社会实践

shehui tuanti 社会团体

shehui xiaoyi 社会效益

shehui zerengan 社会责任感

shehui zhian zonghe zhili 社会治安综合治理

shiye bianzhi 事业编制

shiye danwei 事业单位

sifabu 司法部

tongzhi 通知

Wuhan shi lushi fa lu yuanzhu banfa 武汉市律师法律援助办法

Xiao Yang 肖扬

xingshi susong fa 刑事诉讼法

yi bufen renxian fuqilai 一部分人先富起来

zhengfu zhuguan jiguan 政府主管机关

zhifahuanjing 执法环境

zhonghua renmingongheguo lushi fa 中华人民共和国律师法

zhongjie zuzhi 中介组织

ziluguanli 自律管理

zishouzizhi 自收自支

ziwo fazhan 自我发展

ziwo yuesu 自我约束

ziyuan zuhe 自愿组合

zui gao renmin fayuan 最高人民法院

Glossary II. Complicated Chinese Characters

- buyaoguojiajinfei* 不要國家經費
buzhanguojiabianzhi 不佔國家編制
buzhendangliyou 不正當理由
caizhengbu 財政部
changnianfaluguwen 常年法律顧問
chengshihukou 城市戶口
falufuwu 法律服務
falugongzuozhe 法律工作者
falujie 法律街
faluyuanzhu 法律援助
faluyuanzhushixingtiaoli 法律援助試行條例
feisusongfalushiwu 非訴訟法律事務
Guangdongshenggaojirenminfayuan 廣東省高級人民法院
Guangdongshengsifating 廣東省司法廳
Guangzhoushifaluyuanzhuzhongxin 廣東市法律援助中心
guojiafalugongzuozhe 國家法律工作者
guojiaganbu 國家幹部
hehuozhilushishiwusuo 合伙制律師事務所
hezuozhilushishiwusuo 合作制律師事務所
jianduhezhidao 監督和指導
jibenpujifaluchangshi 基本普及法律常識
liangbusizi 兩不四自
lushixiehui 律師協會
lushizanxingtiaoli 律師暫行條例
mianfeifaluzixunfuwu 免費法律諮詢服務
minzhengbu 民政部
minshisusongdaili 民事訴訟代理
minshisusongfa 民事訴訟法
nongcunhukou 農村戶口
Pudongxinqufaluyuanzhujihia (*zanxing*) 浦東新區法律援助計劃 (暫行)
Pudongxinqufaluyuanzhuzhongxin 浦東新區法律援助中心
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