Guilty Pleas and New Challenges to Criminal Defence Practices in China

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Introduction

Criminal trials in China have never been exemplary in any sense. The contested court hearing has often been criticised for its lack of substance: witnesses rarely come to courts to testify and what happens at trial is largely incidental to the verdict, occasionally functioning to serve a wider social or political purpose (McConville et. al, 2011; Mou, 2020). Senior state officials who work within the system have been alive to these long-standing problems in trial procedures. As a result, several rounds of trial centred criminal justice reform have taken place since the criminal procedure reform in 1996. The effort was renewed in 2017 when the Supreme People's Court (SPC) announced its commitment to improving evidence examination at trial, emphasising the importance of preventing miscarriages of justice (SPC, 2017). Just as these hopes for the criminal trial in China were rekindled, a new principle known as Leniency for Pleading Guilty and Accepting Punishment (*renzui renfa congkuan zhidu*, hereinafter 'Plea Leniency') was formally launched by the Criminal Procedure Law 2018 (CPL, 2018), diminishing the trial-centred criminal process in lieu of a procedure which encouraged and even, demanded for guilty pleas.

The introduction of Plea Leniency has profoundly changed the landscape of criminal justice in China. The immediate effect of its initiation was the drastic decline in formal adjudications, replaced by an abbreviated judicial verification process following the accused's guilty plea and the sentence proposal suggested by the prosecutor. Five years on since its implementation, over 90% of criminal cases are now disposed of by this fresh way of administering criminal justice (SPP, 2023). The contested trial is making way for a different power shift within the criminal justice system. Studies on Plea Leniency have delineated the expanded power of the prosecutor, which now takes the centre stage, and the diminished safeguards for the accused in the criminal process (He, 2023; Li, 2022). A new measure introduced by Plea Leniency is the mandatory requirement of legal advice for the accused, which can be provided either by a defence lawyer retained by the accused, or by a duty lawyer pursuant to Article 174 of CPL 2018. A large body of literature has hence been devoted to the recently developed duty lawyer scheme and the Legal Aid Law 2021 (Li, 2022; Han, 2021; Chen & An, 2020; Chen, 2021; Min, 2017). While these issues are worth investigating, to date scant research has been directed to the impact that Plea Leniency has had on criminal defence lawyers, who are key players in the criminal justice arena. Aside from the duty lawyer scheme, little is known about the defence challenges that have been brought about by the transformed power structure under the Plea Leniency regime. Multiple issues follow from this line of investigation. To what extent has Plea Leniency changed criminal defence practices and had an impact on the role of defence lawyers? How have defence lawyers adapted to the new reality and formulated strategies to overcome the obstacles?

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To pursue these enquiries, this paper proceeds in three main sections. Section One explains how and why Plea Leniency was created as a new system to substitute the traditional criminal proceedings. It explains that, at the outset of invention, Plea Leniency was designed to reflect the interests of criminal justice institutions, the procuratorate and the courts in particular; with the voice of defence parties largely ignored. The purpose of the new system to offer an expeditious and cost-effective way of dealing with large volumes of cases stands antithetical and indeed constrains defence rights. The system has made it difficult for an accused to withdraw a guilty plea after recognisance is signed and any exercise of the right to appeal is likely to be threatened with a harsh sentence. Section Two reviews the way in which defence lawyers have responded to the changed reality in practice. In exploring their newly-added responsibilities now encumbered by the fast-paced, ever more opaque, criminal process, this section outlines the initial struggles of defence lawyers and how they have gradually adapted to the novel system. Section Three moves on to explore two particular uncertainties that defence lawyers face in processing Plea Leniency cases. One is related to the delicate boundary between advancing a defence case and the retraction of a guilty plea; the other is concerned with the phenomenon of judicial decision-making which overrides the Plea Leniency agreement. These difficulties highlight the systematic disadvantages and the state induced coercion that defence lawyers face in their practice under this new regime. However, defence lawyers are not alone in their grievances against this system as the efficiency demanded from this process extends also to their prosecutorial opponents.

This chapter draws from empirical data on criminal defence lawyers' experiences based on 15 Plea Leniency cases. We collected all the information of these defence cases, consisting of the case dossiers, criminal judgments, defence counsels' account of their interactions with the legal actors involved (especially prosecutors and judges) and their observations of criminal justice administration. Drawing from these first-hand resources, we have compiled 15 case studies which represent variegated features and challenges of criminal defence practices. To be sure, these cases by no means represent the general status quo of the concerns in defending Plea Leniency cases in China. These detailed, professional experience, nevertheless, allows us to appreciate the particular challenges raised by the new regime of Plea Leniency and the injustice that has followed, as identified by legal professionals. The case studies were based on cases mainly from three major cities in East China.[3] The types of cases consist of cases ranging from financial crimes and mafia-style gang crimes to relatively minor drug offences and obstructing the administration of public order.[4] Of the 15 cases, judgments of six of them can be viewed on the China Judgments Online.[5] To protect the identities of the people (not least the prosecutor and the judges) involved, we decided to anonymise these cases to protect the private information of the individuals. The empirical data is organised in the form of case studies and each case is given a code that begins with *PL_A*. Despite the proliferation in Plea Leniency studies in recent years, the impact of this new regime in legal practice, and particularly on defence practice, has not been addressed by academic researchers both inside China and

[3] Shanghai (n=8), Shuzou city, Jiangsu (n=3); Wuxi (n=3) and Yunhe country, Zhejiang (n=1).

[4] The crimes involved in these cases encompass selling counterfeit registered trademark (n=1); selling toxic and harmful food (n=2); illegally taking in public deposits (n=1); fraud (n=4); falsely making out special invoices for value-added tax (n=1); illegally opening a casino (n=1); organising prostitution (n=2); extortion of property (n=1); harbouring prostitution (n=1); defrauding a government compensation fund for relocation (n=1); and picking quarrels and provoking troubles (n=3). In certain cases, the defendants were charged with multiple offences.

[5] The China Judgments Online (https://wenshu.court.gov.cn/) is a centralised judicial platform to publish a proportion of judicial documents, especially judgments, in China. It has been a major resource of judicial data for Chinese legal studies.

beyond. This chapter therefore aims to remedy that gap by investigating these issues in practice, exploring the impact that Plea Leniency has on defence practices in the Chinese context.

1. The Rise of Plea Leniency and the Diminished Room for Criminal Defence

1.1 The Creation of Plea Leniency

There is little doubt that the guilty plea system as structured under the principle of Plea Leniency is an adopted version of plea bargaining. Differing from the practice in the US, where plea bargaining was organically developed by the 'vast, unregulated power of prosecutors', Plea Leniency, from the very outset, was designed and engineered by top-down policy and legislation (Stuntz, 2004). The idea that plea bargaining enables a formal or informal agreement to be entered into, usually by the prosecutor and defence lawyer, under which a lesser sentence can be entertained as a 'reward' for a plea of guilty for the defendant's waiving a full trial, has long been acquainted with and debated by Chinese scholars (Wang, 2002; Chen & Liu, 2002; Ji, 2007). Plea bargaining as a mechanism to dispose of cases on a mass scale can be traced back to the early 2000s. Through judicial interpretations, the Chinese courts allowed a simplified trial procedure and a lesser sentence to be considered in exchange for the defendant's admission of guilt.[6] Since then, guilty pleas have gained greater prominence in each ensuing criminal procedure law reform. Notably, the Criminal Procedure Law 2012 (CPL, 2012) extended procedures on a guilty plea to most of the criminal cases tried by the basic courts.

Although guilty pleas and abbreviated trial procedures were introduced to Chinese criminal justice two decades ago, Plea Leniency is saliently different from guilty plea procedures in the traditional sense. The term, Plea Leniency (*renzui renfa*), first emerged in the pilot scheme of the expedited criminal procedure proposed by the Standing Committee of the National People's Congress (SCNPC). Following a flurry of judicial decisions, the pilot scheme on the expedited trial procedure was soon turned into an experiment project of Plea Leniency, seeking to maximise the effect of plea negotiations between the prosecution and the defence in efficiently addressing backlogs at court.[7] In his speech addressed to the SCNPC on 29 August 2016, the former President of the Supreme People's Court (SPC), Zhou Qiang stressed the urgency to overcome the caseload pressure for petty crimes. His speech appealed to a solution to alleviate the heavy burden beset by low level criminal cases and encumbered by unnecessary trial procedures (SPC & SPP).[8] In response to the call, efficiency and managerialism were prioritised in the pilot project of the expedited trial procedure, and Plea Leniency was suggested in the criminal justice reform.

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[6] The first guilty plea procedure was introduced by a judicial interpretation titled 'Several Conditions of the application of the guilty plea proceeding by the Supreme Court, the Supreme Procuratorate and the Department of Central Justice in China in 2003' issued by the Supreme People's Court.

[7] These decisions are *The Decision on Delegating the Supreme People's Court and the Supreme People's Procuratorate to Implement Expedited Procedures to Process Criminal Cases in Certain Areas* (promulgated by the Standing Committee of the National People's Congress, 27/06/2014); *Measures on Implementing the Pilot Work of Expedited Procedures* (Jointly promulgated by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice, 22/08/2014); *Several Important Decisions on Promoting Rule of Law by the Central Committee of the Communist Party of China* (Promulgated by the Fourth Plenary Session of the Eighteenth Communist Party Conference, 20-23/10/2014); *Notice on Implementing the Pilot Work of Expedited Procedures in Criminal Cases* (Promulgated by Ministry of Public Security; 20/22/2014).

[8] See explanation on *The Decision on Delegating the Supreme People's Court and the Supreme People's Procuratorate to Implement Expedited Procedures to Process Criminal Cases in Certain Areas (Draft).*

New ways to dispose of criminal cases in a cost-efficient manner became the focus of criminal justice institutions during the pilot scheme. Thus, Plea Leniency carried different meanings for different institutions. For the police, Plea Leniency was there to strengthen their ability to acquire the evidence of confession and to enhance smoother cooperation with the procuratorate and the judiciary (Ministry of Public Security, 2016).[9] For the prosecutor, Plea Leniency was a way to secure the accused's guilty pleas and to redeem the recommended sentence at court (SPC & SPP).[10] As far as the courts were concerned, Plea Leniency was considered to be the ultimate solution to ease caseload and to resolve and finalise minor cases expeditiously. After two years of experimentation to accommodate these needs advanced by the criminal justice institutions, it was eventually codified through the Criminal Procedure Law 2018 (CPL, 2018).

Plea Leniency is therefore a reflection of the efficiency demanded by the police, the procuratorate and the courts. Unlike the previous guilty plea policies that merely encouraged all suspects to plead guilty, Plea Leniency under CPL 2018 is an overarching principle designed to offer a formalised system to systematically substitute the existing criminal process (CPL, 2018).[11] Allowing a lesser sentence to be considered in exchange for the accused's admission of guilt, Plea Leniency is applicable to all types of crimes and criminal procedures, regardless of the stage of the criminal proceedings or the instance of the trial (Hu, 2020).[12] From the official reports published during the pilot process, Plea Leniency was predominantly designed and orchestrated by criminal justice institutions to the exclusion of defence lawyers, whose voices were not paid attention to and whose concerns were largely ignored (SPC et.al, 2016; Zhou, 2017; SPC, 2018).[13] An explanation to this perhaps lies in the fact that Plea Leniency is not, and ought not to be, interpreted as a level playing field where negotiations between the prosecution and the accused (and their representatives) can be held on equal terms. Thus, in the official speech in 2019, the then SPC vice President, Li Shaoping, emphasised that Plea Leniency is distinguished from US-style plea bargaining in that the accused and her defence lawyers have no right to 'negotiate' or 'bargain' with their potential sentences: they are merely offered an opportunity to appeal to a degree of leniency subject to the discretion of the courts and the prosecution (SPC, 2019).[14] In this regard, Plea Leniency is fundamentally different from plea bargaining. Chinese defendants have a different legal status compared to their western counterparts and are merely granted a form of leniency from the benevolent state based on guilty admissions.

[9] *Notice on Implementing Pilot Work of Plea Leniency by the General Office of the Ministry of Public Security*, Issued on 8/12/2016.

[10] *The Decision on Delegating the Supreme People's Court and the Supreme People's Procuratorate to Implement Expedited Procedures to Process Criminal Cases in Certain Areas.*

[11] There is no separate section of Plea Leniency in CPL 2018. Instead, as a criminal justice principle, it is scattered throughout the law. The relevant articles are Articles 15; 36; 81; 120; 162; 173;176; 182; 190; 201, 222-226 in CPL 2018.

[12] In practice the application of Plea Leniency is often associated with one of two fast-tracked trial procedures, namely the simplified procedure, or the expedited trial.

[13] See *The Method on How to Implement Plea Leniency in the Criminal Process in Certain Areas*, jointly published by the SPC, SPP, Ministry of Public Security, Ministry of National Security, Ministry of Justice on 11/11/2016 (Fa Ban [2016] no. 386); *The Mid-Term Report on the Implementation of Plea Leniency on Certain Areas by the SPC and SPP*, delivered by the President of the SPC, Zhou Qiang, on 23/12/2017; and *The Final Summary Report of the Pilot of Plea Leniency*, published by the SPC in 2018.

[14] SPC, *The Notice on Issuing and Circulating the Speech Delivered by the Vice President Li Shaoping on Promoting and Implementing the Work of Plea Leniency* (SPC, Doc. Fa Ban 2019, no 49; 27/02/2019).

Early on, concerns were raised about the impact of retracting guilty pleas entered during pre-trial, which may lead to a reversed procedure and render the earlier effort a fruitless journey, thereby incurring greater operational resources (Wei, 2021). It was on this ground that the duty lawyer scheme was set up and integrated into Plea Leniency. Duty lawyers are tasked to help the accused appreciate the legal consequence of entering into a guilty plea.[15] Their participation was to validate and secure the guilty plea by explaining the consequences of entering the guilty plea by signing the recognisance (*jujieshu*), which is a pro forma written statement used to acknowledge their decision to admit guilt and accept the sentence proposed by the prosecution (Law Daily, 2019; Han, 2021). Signing the recognisance hence has the *conclusive* legal effect that the entry of a guilty plea is a truly voluntary act of the defendant, witnessed by the suspect's defence lawyer or a duty lawyer.[16] Once the terms on the recognisance are accepted, contrary indications from the accused are not conventionally expected in a later phase of the process. The signature on recognisance signifies the relinquishment of any challenge to the prosecution case in the contested trial.[17] The significance of entering into a guilty plea is therefore material to decision-making, necessitating the presence of legal representatives even in these minor and non-serious matters. In the event that the defendant withdraws the plea after signing the recognisance, he or she runs the risk of being imposed a heavier sentence (Wang, 2021). However, of all the rights forgone under such circumstances, the right to appeal is perhaps one of the most impactful.

1.2 The Punitive Approach to the Right to Appeal

Attaching a waiver of the right to appeal to the plea agreement is nothing new in jurisdictions where plea bargaining is part of the criminal justice system (Borman, 1975; Dyer & Judge, 1999; Reimelt, 2010). However, appeal waivers in plea bargains are not without problems. Research has highlighted that adverse consequences derive from appeal waivers, as it undermines the due process principle and the state's legitimate interest in providing appellate review of criminal cases (Teeter, 2005; Zachary, 2003; Ivsan, 2017). In China, Plea Leniency does not explicitly prohibit defendants from appealing to the higher court if they plead guilty. Since Plea Leniency cannot be understood as a negotiation between the prosecution and the defence, no such waiver clauses can be validly attached to the recognisance. This nevertheless does not stop the procuratorate from finding alternative ways to discourage appeals against the Plea Leniency arrangement. The whole purpose of Plea Leniency is to relieve prosecutors and judges from the burden of conducting full trials for the criminal cases. Allowing a trial in the second instance to ascertain the facts and evaluate the sentence undoubtedly defies the purpose of a reduced workload (Wang, 2021). To prevent the defendant from appealing to the higher court, the procuratorate normally takes a vindictive reaction against the defendant. Hence, when an appeal is made against the Plea Leniency arrangement, a threat of graver sentence often occurs in the second instance.[18]

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[15] This information is also notified by 'the Information Notice of Plea Leniency' (*Renzui renfa congkuan zhidu gaozhishu*) delivered by the procuratorate.

[16] According to Article 190 of CPL 2018, the validity and lawfulness of the recognisance must be ascertained by the court before the sentence discount is decided.

[17] Legitimate reasons to withdrawals of previous recognisances include the lack of factual foundation of the guilty plea and if the procuratorate unilaterally changes the sentence agreement (Wang, 2021).

[18] According to Article 237 of CPL 2018, when the defendant exercises her right to appeal, the second instance court (either a higher court or the original court that retries the case) must not aggravate the punishment on the defendant unless there is any new crime and/or the procuratorate initiates a supplementary prosecution or a counter-appeal protest. This procedural safeguard is often undermined by the procuratorate's counter-appeal protests.

Judicial practices in the last few years for Plea Leniency have given a shape to a baneful effect when the defendant exercises her right to appeal. On 9th April 2019, the Supreme People's Procuratorate (SPP) posted a case comment on its official WeChat website, with a striking title 'Fancying to Use Appeal to Get a Sentence Reduction? Outsmarting the System with a Devious Plan Only to Fall into one's Own Trap!'. In this case commentary, the procuratorate lambasted a defendant, Jiang, who was not pleased with his Plea Leniency arrangement and appealed for a lighter punishment after receiving a custodial term of 9 months and a fine of 2,000 RMB. The case commentary caricatured Jiang as a 'trickster' of the system (*dongji buchun*) who tried his luck by appealing to the higher court, but ended up with a heavier punishment. Jiang was 'duly' meted out a sentence of a 15-month imprisonment and a fine of 10,000 RMB due to the procuratorate's counter-appeal protest (*kangsu*) in the court of appeal (SPP, 2019). A similar situation was reported in 2021 when a defendant, Luo, charged with theft, appealed against the sentence of eight-month imprisonment as provided for on the Plea Leniency terms. He received a doubled jail term after the procuratorate sought retribution for his bad faith (Guangzhou Daily, 2023).

Reports like this send a chilling effect on defendants and defence lawyers alike who must now think twice when considering an appeal against the Plea Leniency arrangement. To be sure, the procuratorate's counter-appeal protest is not always supported by the appellant courts. In Xie's (2023) research on prosecutor's retaliatory counter-appeal protests, he found that the procuratorate's retributive suggestions were approved in only 81 out of 232 cases (34.9%). Indeed, the courts are currently divided as to whether or not the defendant retains the right to appeal in Plea Leniency cases (Xie, 2023). In the meantime, empirical research found that defendants' motives to appeal were mixed. Apparently, a number of defendants appealed for practical reasons other than merely seeking a lighter sentence (Lan & Zhao, 2020). For example, some defendants who have already been remanded in custody for a period of time and wanted to prolong their time in the same detention centre may appeal strategically. In making an appeal, they effect their case to be held in abeyance pending the final judgment while the custodial time is still running, thereby preventing themselves from being relocated to a different detention centre, especially when the custodial sentence is relatively short (Yuan & Yuan, 2021).

Nevertheless, the practice that the prosecutor should robustly and emphatically respond to the defendant's appeal against the Plea Leniency decision is publicly endorsed by the SPP. In an official interview with the SPP Chief Representative in 2022, the SPP made it clear that prosecutors must initiate a vindictive counter-appeal protest to pre-empt an unnecessary second instance trial (SPP, 2022). Their decision was based on the ground that the defendant's earlier indication of a guilty plea was not a true reflection of their remorse; and therefore, they should be divested from the entitlement of a lenient sentence (SPP, 2022). The flaw in this justification is clear: it is one thing that the prosecution has the power to recommend a lighter sentence based on the defendant's guilty pleas; it is quite another to propose a retaliatory sentence where an appeal is lodged to deter a defendant from retracting a prior guilty plea and exercising her right to appeal. For the latter, the law certainly did not grant the power to the prosecution. Nonetheless, prudent defence lawyers must advise their clients cautiously, mindful of the procuratorate's determination to reinforce this iron-fisted policy. Given the diminution of defence rights in Plea Leniency, the question of how to react strategically to protect their clients' best interest is ever more pressing. Given the reality that Plea Leniency cases are less likely to be reviewed and without running the risk of an appeal penalty, any defence advice that is not circumspect enough can tread the danger of ruining the defence case completely. As such,

defence lawyers are faced with greater pressure in carrying out their roles with all the above complexities in mind from the outset.

2. The Unprepared and Slowly Adapted: Plea Leniency's Impact on the Criminal Defence Community

2.1 The Delayed Response from the Defence

With hindsight, the criminal defence community in China did not respond promptly enough to the changed reality brought about by Plea Leniency process. As noted, defence lawyers were not amongst the legal actors who laid the foundation for Plea Leniency. They were excluded from the consultation process and have never been an active participant in Plea Leniency since its inception. The news on the efficacy of Plea Leniency in disposing of large volumes of low-level crimes circulated shortly after its implementation (NPC, 2020). This, however, was thought to be a minor tinkering with the old guilty plea system as far as many defence lawyers were concerned (*PL_A1, A2 and A4*). Even when Plea Leniency was in full swing and became heavily utilized to substitute the traditional criminal process in the majority of instances, defence lawyers' reaction on the sea change remained lukewarm. Up until 2021, hardly any practitioners' seminars, exchange papers, lawyers' blogs or public lectures inside the defence community touched upon issues surrounding Plea Leniency (Zhou, 2021). In fact, many defence lawyers were oblivious to the advent of Plea Leniency, its seismic shift in criminal justice and its far-reaching impact on criminal defence practices (*PL_A1*). It was only until 2022 when Plea Leniency already dominated and became completely cemented into the system, had its impact on criminal justice been appreciated by the defence professionals. As if suddenly awakened to the issues, the defence community started seriously to consider Plea Leniency. Seminars, publications and internal discussions on Plea Leniency burgeoned on various professional platforms, exploring strategies on how to overcome the challenges raised in the new regime (*PL_A3 and A4*).

The delayed response from the defence community was caused by several reasons. To begin with, discussions on defence strategies within the community were often led by eminent defence lawyers, whose attention at the time was drawn elsewhere (*PL_A1*). As previously mentioned, the SPC inaugurated a wave of judicial reform in 2017 to strengthen evidence examination procedures at trial and to prevent miscarriages of justice (SPC, 2018). Defence lawyers formed an impression that the due process principle was being embraced by the criminal justice system and as a result, their focus diverted to improving their advocacy skills in cross-examinations (*PL_A1; A7*). The judicial reform agenda in 2017 stroked the inner resonance of leading defence lawyers, many of whom held an obstinate, wishful, belief that "guilty pleas are merely applicable to petty little crimes; but when it comes to serious, complicated criminal cases, lawyers are expected to win the case by their guns-blazing courtroom advocacy skills" (*PL_A12*). Such a dismissive attitude towards Plea Leniency was not without reason. For many, pleading guilty is considered a matter of their client's own business (*PL_A3; A4*). As legal professionals who represent their rights, lawyers are not supposed to influence their decision making (*PL_A3; A4*). This *laissez-faire* attitude made many defence lawyers reluctant to engage with their clients in the decision-making process. In addition, the success of a defence lawyer is measured by their track record of defending complex and serious cases, and legal fees charged by defence lawyers are based on their professional profiles. Plea Leniency cases, due to the less intensive court advocacy skills required, produce limited financial incentives to ambitious lawyers, who are keen to build up their professional reputations.

2.2 New Obstacles Arising Out of Plea Leniency

The landscape of criminal justice nevertheless transformed to the obliviousness of defence lawyers. When defence lawyers caught up with the new rules, they came to face challenges compelling them to change their defence practices. The first obstacle was the fast-paced criminal process. A large number of Plea Leniency cases are eligible to be processed by the expediated procedure according to Article 222 of CPL 2018.[19] The expediated procedure greatly accelerates the turnaround of cases by imposing a tight deadline on both the prosecutor and the courts: the prosecutor is given a maximum of ten days to review and to propose a sentence; the court has no more than ten days to finally resolve the case (CPL, 2018 Art.172 & 225). Efficient as it is in enhancing the administration of criminal justice in this way, the condensed criminal process creates significant difficulties for defence.

Since the introduction of the Criminal Procedure Law 1996 (CPL, 1996), the first point of contact with their clients in the vast majority of instances has been during the prosecution review, i.e. after the completion of the police investigation and when the criminal case dossier is formally transferred to the procuratorate (CPL, 1996 Art.33; CPL, 2012; CPL, 2018 Art.34).[20] For ordinary criminal procedures, this point of defence entry poses no particular problem, as defence lawyers are able to prepare the case at a manageable pace, particularly due to common delays caused by supplementary investigations during the prosecution review. The timeline of the expediated procedure, however, has completely changed the rhythm that defence lawyers engage with cases. The expedited procedure has not taken account of the time for defence preparation, neglecting the fact that the defence lawyer needs time to review the case and to formulate defence strategies. The situation is particularly tense if there are multiple defendants involved in a case and the facts in question are complicated. Take *PL_A1* as an example, a case concerning selling counterfeit registered trademarks. Although being processed with the expedited procedure, the case was a complex one, with large volumes of evidence and four co-defendants involved. The case arrived at the procuratorate in site A on Thursday 18th November 2021; on the next day (Friday 19th November) the defence lawyer requested a copy of the case dossiers containing all the prosecution evidence. Immediately after the weekend (Monday 22nd November), the suspect was informed to sign the recognisance. Upon receiving the short notice, the defence lawyer filed a complaint for the limited time available to read through and digest all the evidence and to prepare an opinion. However, the protest was disregarded by the prosecutor, who, apparently under the time constraint, threatened that if the suspects did not sign the recognisance on that particular day and accept the proposed sentence of the 39-month imprisonment, the minimum sentence that the accused shall receive would be a jail term of four or five years. Facing the threat from the prosecution, the suspect and the defence lawyer had no choice but to accept the sentence proposal.

[19] Article 222 of CPL 2018 states that the expediated procedure applies to a case where the defendant may be sentenced to fixed-term imprisonment of not more than three years, provided that the facts of the case are clear, the evidence is definitive and sufficient, and the defendant admits guilt, accepts punishment, and agrees with the application of the fast-track sentencing procedure; the case shall be tried by a sole judge.

[20] Although the accused can retain defence lawyers during the police investigation, their assistance is limited at this stage, subject to their lack of case information: they can only access the criminal investigative dossier after the case was passed on to the procuratorate (CPL 2018, Art.34). The main reason to retain a defence lawyer during the police investigation is to visit the suspect in the detention centre. For minor crimes where the suspect is not remanded in custody, getting a legal advisor during police investigations is often regarded as unnecessary.

Timing is of paramount importance to defending a Plea Leniency case. The tight turnaround means that any delay on the part of the defence (no matter the suspect's initial contact with a defence lawyer, the defence lawyer's decision to get involved, or her access to the case dossier and her communication with the client) may result in the loss of an opportunity in challenging the prosecution case. In *PL_A2,* a case concerning selling toxic and harmful food, the defence lawyer was retained on the same day when the suspect was asked to sign the recognisance by the prosecutor. Due to the late intervention, the defence lawyer had no time to go through the details of the case, not to mention advising his client. Under this time pressure, he advised his client to enter the guilty plea agreement and accept the prosecutor's suggestion of a six-month imprisonment which appeared reasonable for such type of cases. After studying the case in greater detail later on, the defence lawyer reflected regretfully on the advice, as the facts of the case presented a realistic opportunity that the suspect may have got a non-custodial sentence had he been given more time to prepare the defence case.

Literature on Plea Leniency has acknowledged the prevalent phenomena that defence counsel chiefly operate as a witness to the suspect's signing of the recognisance (Li, 2022; Han, 2021; Chen, 2021). Li's (2022) empirical study based on 34 interviews with duty lawyers in Shanghai found that the lawyer-suspect consultation is 'no more than providing emotional support' and that duty lawyers identify themselves as observers, explainers, and persuaders. Our case study confirms that duty lawyers are overall more compliant than privately retained defence lawyers. The passive role playing is, however, not limited to duty lawyers, as the service of some retained defence lawyers is also restricted to informing their clients of the alleged offence and its legal basis. The extraordinarily high conviction rates in China mean that a criminal case resulting in an acquittal is highly unlikely if not entirely impossible (China Law Year Book, 2022).[21] Identifying the grounds to challenge the prosecution case and endeavouring to mitigate the sentence as much as practically possible is the principal task for criminal defence professionals. Under the Plea Leniency regime, the room to do so has substantially shrunk. On the one hand, defence lawyers are under the obligation to discern the weakness of the prosecution case in the hope that the sentence can be reduced for their client. On the other hand, they must be careful enough not to leave a wrong impression that their client refuses to cooperate, which may prompt the prosecutor to drop the Plea Leniency proposal altogether and recommend a draconian sentence as retribution. The best defence strategy for guilty plea cases is to tread a delicate line between cajoling the prosecutor into realising the flaws of the prosecution case but not losing the benefit of sentence reduction under Plea Leniency. The success of achieving this goal hinges on effective communications with the prosecutor, which is considered to be one of the most difficult tasks for many defence lawyers (*PL_A2; A4*).

Defence lawyers are a marginalised group within the Chinese criminal justice system who suffer from antagonistic relationships with state officials (McConville et. Al, 2011 p.349-50; Mou, 2020 p.163-65; Liu & Halliday, 2016 p.73-9). While they can manage to reduce their private contact with the prosecutor to the minimum in ordinary cases, this can no longer be the case when it comes to dealing with Plea Leniency. According *to The Guidance on Sentence Recommendations in Handling Guilty Plea Cases* (hereinafter Sentence Guidance) published by the SPP in 2021, defence lawyers are obliged to be an active source of consultation for the prosecutor's decision making. As the power of the procuratorate has expanded under Plea Leniency, prosecutors have taken on the roles of case manager, adjudicator and sentencer (Mou, 2022). Since a contested trial is rarely available, effective communication with the prosecutor becomes the main avenue to present the defence case, through which defence issues

[21] China's conviction rates have been over 99.9% for over two decades. China Law Year Book (2010-2022).

surrounding guilty pleas can, to a certain extent, be incorporated into the Plea Leniency arrangement, reflecting the interest of the accused. However, drawing from conversations with the defence lawyers in our case study, we can easily perceive their vulnerability when engaging with prosecutors. The power imbalance ensures that defence lawyers constantly feel they are at the mercy of prosecutors' capricious decision making (*PL_A11*).

To be specific, a defence lawyer's plight manifests in three aspects. First, meeting with prosecutors is often described as a 'depressing' and 'disagreeable' experience. The disparity in power and standing between lawyers and state officials is the status quo in the Chinese criminal justice system (Liu & Halliday, 2016). This unequal status can lead to unpleasant interactions between the two legal actors in the course of communications (*PL_A7*). Thus, defence lawyers often complain about prosecutors' impatience and their condescending attitude when they submit their defence views (*PL_A8*). Prosecutors' lack of respect towards defence lawyers may be attributed to the fact that they are under no legal obligation to consider their views and factor them in in their decision making, other than merely offering them an opportunity to express their opinions in compliance with the Sentence Guidance (Article 25). The timing to reach out to the prosecutor is crucial. If the defence lawyer fails to take initiative and discuss the defence case with the prosecution in good time, the opportunity to persuade them to downgrade the charge and/or recommend a lighter sentence will disappear. As the defence lawyer in *PL_A3* revealed, once the prosecutor has reached a decision and showed his card, it is an uphill challenge to change their mind.

This is in connection with the second predicament for defence lawyers. To effectively engage with the prosecution, defence lawyers are required to know their work routine and synchronise their own work pace with the prosecutor's in the Plea Leniency process. This poses significant challenges for defence lawyers, as many of them are not familiar with the inner workings of the procuratorate, its bureaucratic constraints and the specific pressures to which prosecutors are subject. Also, prosecution practices may vary from region to region and each prosecutor may have an individualised work style. Thus, defence lawyers have revealed that they were without the knowledge of prosecutor work routines, which rendered them not being able to take advantage of prosecutors' weak spot (such as their pressure to fulfil certain performance indicators) and to advance their defence strategically (*PL_A 12; A 13*). The defence lawyer in *PL_A1,* for example, lamented that had she been aware that the prosecutor was anxious about the 'end of year appraisal evaluation' (*niandi kaohe*) when processing the Plea Leniency case, she would have adjusted their defence strategy and engage with the prosecutor in a very different manner.

Finally, some defence lawyers are reluctant or lacking in confidence to robustly confront misconduct of the prosecutor in handling Plea Leniency matters. Defence lawyers are perceptive of the ways in which guilty plea are given, whether procured or facilitated through malpractice carried out by state officials. Yet concerns about the potential retaliatory actions may have implications on future cases in their career which may discourage many defence lawyers from reporting the misconduct, quietly tolerating the unfair treatment. Defence lawyers have revealed to us that in some cases, prosecutors demanded the suspect to replace his own defence counsel, who was prepared to challenge the prosecution case, with an obedient duty lawyer to ensure that the suspect 'signed the cognisance without any drama' (*PL_A5*). Similarly, in *PL_A15* the prosecutor asked the accused to substitute his lawyer who insisted that he should plead not guilty with a duty lawyer who would have advised in support of a plea of guilty. In the face of prosecutorial misconduct, many defence lawyers choose to acquiesce rather than file a complaint for a protest. Indeed, the present Plea Leniency framework offers no substantial

remedies to which that they can seek recourse for oppressive prosecutorial power and to address the power abuse. As such, they are unable to protect their own legal rights, let alone the rights of their clients.

3. Uncertainties in the Rules and the Exercise of Judicial Power

Aside from the challenges in adapting to Plea Leniency as a new system, two plights were particularly highlighted by defence lawyers in our case studies. The 'predicament (*kunjin*)', as referred by to some of the defence lawyers, is related to the uncertainties they face in preparing defence cases in Plea Leniency. Compared to the traditional criminal process, where the reactions from the prosecution and the courts are relatively predictable after many years' experience, defence lawyers indicated that there are two new factors in the consensual justice which may render the defence effort futile. On the one hand, there is an ambiguity between effectively advancing the defence case in pleading a lenient treatment and an interpretation of insincerity in remorse that amounts to a retraction of guilty plea. On the other hand, judicial review of the Plea Leniency agreement is a variable that may lead to unexpected outcomes. Both uncertainties derive from the exercise of discretionary power from these criminal justice institutions. They pose special challenges for the defence because the motives that underpin those decisions are driven by the institutional interest under the given circumstances, rather than a rule-based consideration that can be anticipated.

3.1 The Binding Effect of the Recognisance and the Power to Withdraw

As mentioned earlier, the main distinction between US plea bargaining and Plea Leniency in China lies in the unequal status of the parties, namely the accused and her defence lawyer, whose legal standing disqualifies them from negotiating with the prosecution on an equal footing (SPC et.al, 2019).[22] This inequality embodied in the guilty plea agreement is reflected in the power relations and legal consequences: the agreement is binding on the accused, but not on the prosecution. As a result, when the suspect retracts the guilty plea, she will be punished with a heavier sentence for breaching the guilty plea agreement, whereas the prosecution are given the freedom to withdraw the cognisance if necessary.

There are three ways of retracting guilty pleas in the context of Plea Leniency, which, as many scholars have suggested, should be treated differently. The first one is the withdrawal of the facts of the case. Section 6 of the Sentence Guidance distinguishes the material facts of the case (*zhuyao fanzui shishi*) from facts associated with certain isolated circumstances (*gebie qingjie*), stipulating that only the denial of the former amounts to withdrawing guilty pleas. The second type is related to the withdrawal of the charged offence to which the defendant pleaded guilty. The general view on this kind of retraction is that any challenge to the charge on the part of the defendant would be regarded as a formal cancellation of the guilty plea (Wang, 2021). Nevertheless, Liang (2022) argues that the principle to deal with this form of retraction should be the same as the withdrawal of the material facts of the case, as the prosecution and the courts need to identify the main charge(s) from minor charge(s); if the defendant denies the minor charge(s) and admits the guilt as indicated in the main charge(s), his guilty plea is still valid and is entitled to the sentence discount. The last category of retraction is related to recanting the agreed sentence proposed by the prosecution. There is a dispute as to whether the agreement

[22] This inequality is also embodied in the Plea Leniency rules, see *Guiding Opinions on the Application of Plea Leniency* published by the SPC, SPP, Ministry of National Security, Ministry of Public Security, and Ministry of Justice on 24/10/2019.

in sentencing represents the core of guilty pleas (Liang, 2022). But Article 201 (2) of CPL 2018 has clearly stated that the prosecution can adjust the sentence proposal if the defendant objects to the recommended sentence. If the proposed sentence can be revised subject to the opinion on the authority of law, later withdrawal of the sentence agreement, as an expression of the defendant's choice, should be allowed without incurring any penalties. In keeping with this legal principle, any challenge of the suggested sentence should not represent any retraction of the guilty plea entered into.

Despite the nuanced academic analysis of retractions, both the prosecution and the courts have taken a hard line in practice. Min (2021) found that any dispute with the charged offence and the sentence arrangement submitted by the defence is currently recognised as a formal retraction, which will revoke the Plea Leniency agreement and the sentence discount. Studies have also noticed that the demarcation between the material facts and isolated circumstances is rather fluid; the uncertainty has led to the practice that *any* contentious issues raised by the defence are currently interpreted as a challenge to the material facts by the prosecutor (Liang, 2022). The expansive approach to retractions seems to have applied to sentence arrangements too, despite the explicit law in CPL 2018. In *PL_A4*, a case concerned with falsely making out special invoices for value-added tax, the defendant pleaded guilty and agreed upon a sentence proposal of three years and four months' imprisonment. Regretting that the accepted sentence proposal was too harsh for his crime, the defendant retained a defence lawyer afterwards to test out whether there was any latitude to reduce his sentence. During the pre-trial conference with the judge, the defence lawyer expressed a view that the proposed sentence was out of proportion, as these type of cases were normally sentenced with non-custodial sentences based on statistic surveys of published judgments. In response to the challenge, the prosecutor increased the sentence proposal to a term of five years and eight months at trial, with an intention to penalise the defendant's insincere acceptance of the guilty plea agreement, despite that the defendant maintained his guilty plea and showed his remorse by indicating his willingness to hand in all the criminal proceeds,. Controversially, the court in this case also concurred with the prosecution and declared that challenging the accepted sentencing arrangement was a retraction of guilty plea. The case ended up with the court meting out a jail term of three years and five months, taking into account his remorse and effort in remedying the situation financially.

Whilst it is clear that defendants attempting to amend the recognisance will result in a vindicative penalty, prosecutors enjoy the liberty to withdraw the guilty plea proposal without incurring any adverse implication for the prosecution case. In fact, some of the prosecutors have sometimes retracted the signed recognisance tactically to enable a more serious sentence to be imposed. For instance, the prosecutor in *PL_A15* unilaterally withdrew the Plea Leniency proposal after the suspect signed the recognisance with a suggested sentence of a two-year imprisonment. The purpose of withdrawing the guilty plea agreement in this case was to ensure that the defendant could be punished without any discount. Defence are powerless in situations such as this, where the rule on Plea Leniency is clearly on the prosecution's side. Article 52 of the Sentence Guidance explicitly states that retraction by the prosecution will render the recognisance void, allowing the prosecutor to bring a fresh charge against the defendant and recommend a new sentence commensurate with it.

The rationale of the regulation is hence a reflection of the power relations in Plea Leniency, which is commandeered by the prosecution (He & Peng, 2020). Such regulations appear to be based on the assumption that since the prosecution initiates the guilty plea agreement and determines the final decision, they have the absolute power to adjourn or cancel the process, without heeding the potential impact the decision has on defence. Rules like this cast doubt on

the promulgated values of the criminal process by compounding the power disparity between the two parties rather than respecting procedural rights of the individual.

3.2 The Legitimate Power to Override?

The defence's predicament in Plea Leniency, however, is not limited to the prosecutor's tough stance and capricious decisions. Courts may also take a punitive approach in processing Plea Leniency cases to ensure that they can exert their judicial authority. Literature has shown the intricate power dynamics between the procuratorate and the courts with the advent of Plea Leniency (Zeng, 2021; Long, 2020). It is well acknowledged that the procuratorate has greatly profited from the newly acquired power of sentence recommendations in Plea Leniency, resulting in the judicial power being reduced to the official ascertainment of the guilty plea and approval of the sentence recommendation (Sun, 2021). While prior research indicates that judges generally endorse the sentence proposals advanced by the prosecution, this is not always the case (Sun & Tian, 2021). Although mutual cooperation between the courts and the procuratorate are standard, discord erupts sporadically. High-profile cases such as *Yu Jinping*[23] have showcased the court's ability to override the arranged Plea Leniency arrangements and impose more serious sentences if they see fit (Long, 2020; Sun, 2021).

A similar instance is *PL_A3*, a case concerning the financial crime of illegally taking in public deposits, in which the defendant pleaded guilty and consented to be punished with a proposed sentence of three years' imprisonment with a reprieve of three years. Despite the recognisance agreed upon by both the prosecution and the defendant, the court issued an objection and requested the procuratorate to amend the sentence and re-propose with a more serious sentence. The prosecutor in this case disregarded the judicial suggestion, without notifying the defence. Throughout the process, the defendant and the defence lawyer were kept in the dark about the court's disapproval of the agreement. When the judgment was handled down, they were shocked to find out that the court imposed a jail term of seven years with no reprieve, a draconian sentence departing significantly from the sentence agreed upon by the accused and the prosecution. A similar instance occurred in *PL_A4*, a case related to defrauding a government compensation fund for relocation. The defendant was investigated and prosecuted for defrauding 400,000 yuan in a public-funded relocation scheme. The defendant pleaded guilty and agreed to disgorge all the criminal proceeds as well as paying extra compensation of one million yuan. Based on the defendant's remorseful suggestion, the prosecutor recommended a sentence of four years and six months' imprisonment. During the course of the trial, the court did not raise any objection as to the guilty plea agreement. Unexpectedly, shortly before the judgment was due to be delivered, the court notified the defendant that the recognisance could only be approved if he was willing to pay an extra million yuan. The defendant was unable to afford such a large sum of money at the time and turned down the court's condition. Upon receiving the rejection, the court handed down a judgment and sentenced the defendant to a jail term of six years and three months.[24]

[23] The case involved an incident of drink-driving, occasioning the death of the victim. The defendant signed the recognisance and agreed a proposed sentence of three years' imprisonment with a reprieve of four years. However, the court rejected the sentence suggestion, and imposed a term of two years' imprisonment with no reprieve, a sentence that is legally deemed to be substantially harsher than the prosecutorial recommendation, given the reprieve component of the sentence. When the case was appealed to the intermediate court, the sentence was replaced by a harsher custodial sentence of three years and six months without reprieve. For more details of this case see Long 2020.

[24] Interestingly, the prosecution in this case also refused to revise the agreed proposal on receiving the request from the court.

Judicial practices such as these are deeply worrying to the defence community. Indeed, the courts have the power to impose the final sentences regardless of the parties' prior arrangement as specified by the law. Be that as it may, one may wonder what purpose judicial control aims to achieve under such circumstances other than exerting their power. The courts may have concerns on perceived leniency following the guilty plea agreement and decide to take an action to re-balance the outcome. Even so, the sentencing proceedings in these instances are fundamentally flawed. The court hearing concerning Plea Leniency is pro forma only. The defence in these instances are not expected to adduce the defence case or attack the prosecution case, based on the conventional understanding that the court operates to approve the recognisance. In consequence, the facts affirmed on such an occasion may be compromised on the part of the defendant, having relinquished the right to contest the prosecution case as an exchange for discount on sentence. Without hearing the defence case or fully investigating and ascertaining the overall facts impartially, the basis on which the final sentence is meted out can be fallible; and that in return makes the sentence incommensurate with the defendant's culpability. The defence counsel in *PL_A3* expressed his frustration:

> The defendant and I are both shocked at the court's decision since we completely trusted the expected validity and legal effect of recognisance. We gave up any substantial defence right at trial. We cannot believe that our trust and acceptance was returned by the sentence ambush from the court, whose role is supposed to provide us with remedies rather than divesting them from us.

It is trite to say that Chinese criminal justice is not truly an adversarial system. Yet completely dismissing individual autonomy by overruling considered negotiations between the parties is highly problematic. This research is not in a position to investigate the extent to which such judicial practice exists, although the defence lawyers who participated in this study had explicitly raised the issue and expressed their deep concern on the role the courts play in those instances. Indeed, the judiciary, being widely perceived as the last bastion against injustice, is expected to be impartial and to safeguard the procedural rights of the defendant and to proffer remedies to those unfairly treated. For all that, what has manifested in these cases has been nothing but blatant state-induced coercion, which is punitive in nature. When a court makes the controversial decision to supersede the Plea Leniency sentence arrangement, they pay no heed to defence rights, especially their right to information, nor take notice of its detrimental consequence on the defendant. How the decision was made and how messages were communicated between judges and prosecutors are opaque and dubious.

3.3 The Margin of Negotiation

Given the above, does that mean defence lawyers can do nothing but to passively submit to the powers of the prosecution and the courts in Plea Leniency? The answer is quite the opposite, as our case study suggests. In fact, most of the lawyers with whom we had conversations emphasised the importance of a well-planned defence strategy and active confrontation and engagement with the state officials (*PL_A1, A3 and A4*). They declared that their role is not, and should never be, a mouthpiece of their clients, or a facilitator of Plea Leniency on behalf of the State. Some of them were gravely concerned about the widespread application of Plea Leniency in criminal justice, which, in their view, may lead to a mass production of miscarriages of justice (*PL_A14*). It has long been noted in the Western literature that plea bargaining poses serious risks to the innocent due to the state-induced coercion (Baldwin & McConville, 1977; Bottoms & McClean, 1976; McConville & Marsh, 2014). Such risk seems

to be magnified in China. The Chinese criminal justice system has been dominated by the criminal justice institutions marginalising defence lawyers; the coercive police interrogations give raise to a remarkably high confession rate. (Mou, 2020; McConville et. Al, 2011 p.122-124). As a result, the pressure to which suspects are exposed is significantly greater.

In the meanwhile, the phenomenon of overcriminalisation in China exacerbates these concerns (Cai et. al, 2020). Defence lawyers in our case study reported that a good proportion of their clients are victimised by the expansion of criminal law in the last few years, as their conduct would not have been considered as crimes a decade ago (*PL_A9; A11*). The problem was particularly acute during the Sweeping Away Black and Eradicating Evil Force (SABEEF) Campaign between 2018 and 2020. During that time, the judicially invented concept of evil force crime (*e'shili fanzui*) widened the net of criminalisation to encompass certain tort feasances, breaches of contract, and administrative violations (Yin & Mou, 2022). These cases were prosecuted due to the top-down demand to fulfil political campaign targets. Due to the campaign-style law enforcement, some of the prosecuted cases were weak in nature and should not have been investigated or prosecuted in the first place (*PL_A9; A11*). Prosecutors in charge were aware of the deficiencies of these cases and there was a general tendency to dispose of them through the Plea Leniency route. Knowing the weaknesses of the prosecution case, defence lawyers have occasionally identified a realistic scope for negotiation with the prosecutor. *PL_A11* is one of such cases. The defendant was involved in a peer-to-peer online lending platform which was cracked down during the SABEEF campaign. The accused was charged with five offences, including black society gang crime, fraud, extortion of properties, picking quarrels and provoking troubles, and infringement of citizens' personal information. Through a painstaking analysis of a multitude of evidence contained in 420 case dossiers, dissecting and taking issue with the charged offences, defence counsel successfully persuaded the prosecution and the courts to acknowledge the weaknesses of the case. On that account, the prosecution decided to drop four out of the five intended charges. The case ended with a Plea Leniency agreement with a much lighter sentence. Another successful defence case is *PL_A12*, where the defendant was originally charged with organising prostitution, with criminal proceeds of 500,000 yuan. After a thorough analysis of the evidence, defence counsel vigorously disputed with the prosecution's claim of the prostitute organisation. Through several rounds of communication with the prosecution and intense negotiations, the prosecution finally agreed to adopt the defence proposal and downgraded the charge to the offence of harbouring prostitution, with 500-yuan criminal proceeds. Based on this, the defendant pleaded guilty and received a non-custodial sentence.

Compared to defending traditional criminal cases in a contested trial, Plea Leniency cases are more demanding to the defence in the sense that they have a tight timeframe available to identify the flaws of the prosecution case and to develop a sound defence strategy. Despite this, the defence lawyers in our case study have observed that the quick turnaround in Plea Leniency cases are equally unfavourable to the prosecution. Prosecutors are subjected to regimented and taxing managerial performance targets which require them to process large volumes of cases in an expeditious manner (Yu, 2015). To prioritise efficiency, prosecutors may need to compromise the strength of the prosecution case and quite often may not be able to effectively check the reliability and sufficiency of the prosecution evidence. This may be damaging to the prosecution case especially when the investigation was poorly executed. Meanwhile, prosecutors have to cope with a heavy caseload, meaning that the time and energy they can invest on each case is limited. By taking advantage of these weaknesses, defence lawyers can indeed avail themselves to discuss terms in favour of their client and to secure their best interests.

Conclusion

There is no doubt that Plea Leniency has ushered in a new era in Chinese criminal justice. Drawing from 15 case studies on criminal defence practices, this chapter has examined the new hurdles that confront defence lawyers when defending guilty plea cases. As a new form of criminal justice administration, Plea Leniency was set up to substitute the traditional criminal procedure and to facilitate the needs of the criminal justice institutions, especially the procuratorate and the courts. The system was therefore created to meet the prosecutorial and judicial demands of procedural efficiency, whilst the interests of defence were largely ignored. Defence lawyers found themselves in a profound predicament given the diminished room to defend criminal cases under this process. The punitive approach underlying the process has made it difficult to withdraw a guilty plea after the accused has signed the recognisance and her exercise of the right to appeal is likely to be threatened with a harsh sentence. The tight timeframes to prepare defence cases and the challenges in communicating with prosecutors have made the defence job tougher and unpalatable. The uncertainties they face in advancing defence views without triggering an adverse inference of retracting the guilty plea and the judicial ambush that overrides the prior Plea Leniency agreement also showcase the continued perpetuation of criminal defence marginalisation. In light of the changed reality of Chinese criminal justice, there is no surprise that defence lawyers are deeply concerned about the mass production of miscarriages of justice in the Plea Leniency era. It is true that criminal defence lawyers can take advantage of the sentence discount and protect their clients' best interest in certain cases. But the rules in relation to Plea Leniency and the professional interactions between state officials and defence lawyers have certainly compounded defence lawyers' disadvantaged status in China's criminal justice system.

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