

# University of Cincinnati Law Review

---

Volume 80 | Issue 4

Article 9

---

September 2013

## Chinese Wrongful Convictions: Causes and Prevention

Huang Shiyuan

Follow this and additional works at: <https://scholarship.law.uc.edu/uclr>

---

### Recommended Citation

Huang Shiyuan, *Chinese Wrongful Convictions: Causes and Prevention*, 80 U. Cin. L. Rev. (2013)  
Available at: <https://scholarship.law.uc.edu/uclr/vol80/iss4/9>

This Article is brought to you for free and open access by University of Cincinnati College of Law Scholarship and Publications. It has been accepted for inclusion in University of Cincinnati Law Review by an authorized editor of University of Cincinnati College of Law Scholarship and Publications. For more information, please contact [ronald.jones@uc.edu](mailto:ronald.jones@uc.edu).

## CHINESE WRONGFUL CONVICTIONS: CAUSES AND PREVENTION

*Huang Shiyuan*\*†

### I. INTRODUCTION

In recent years, the rectification of some notorious wrongful conviction cases, especially the cases of Du Peiwu, She Xiangling, and Zhao Zuohai, have resulted in unusual heated public debate in China. Public outrage over these high-profile wrongful convictions has seriously undermined confidence in China's criminal justice system and has created new momentum for criminal reforms.

This Article aims to find out the underlying causes of officially acknowledged wrongful conviction cases in China and recommend remedies to prevent such miscarriages of justice from happening again. I have encountered a number of difficulties in researching and analyzing the causes of Chinese wrongful convictions. First, China has not established a case reporting system, so the public has no access to verdicts and other trial documents of erroneous cases. Second, the Chinese government does not publicize comprehensive or disaggregated data on wrongful convictions.

The two primary sources of information used in this Article are newspapers and the Internet. Twenty-six widely reported wrongful conviction cases were selected as the focus of this research. This method of research is statistically problematic because these cases were not chosen at random. But given the difficulties in collecting data on wrongful convictions, it may be the best method available at present.

### II. BASIC INFORMATION OF CHINESE WRONGFUL CONVICTIONS

To better understand the causes of wrongful convictions we need to know some basic information about the twenty-six review cases.

---

\* Associate Professor of Law, Shandong University. B.A., Liaocheng University, 1999; M.A., Zhongnan University of Economics and Law, 2002; Ph.D., Peking University, 2008.

† This article is being published as part of a symposium that took place in April 2011 in Cincinnati, Ohio, hosted by the Ohio Innocence Project, entitled The 2011 Innocence Network Conference: An International Exploration of Wrongful Conviction. Funding for the symposium was provided by The Murray and Agnes Seasongood Good Government Foundation. The articles appearing in this symposium range from formal law review style articles to transcripts of speeches that were given by the author at the symposium. Therefore, the articles published in this symposium may not comply with all standards set forth in Texas Law Review and the Bluebook.

TABLE 1: INFORMATION ABOUT THE WRONGFUL CONVICTIONS

Name	Location	Charge(s)	Sentence	Date of Detention	Date of Release	Reason for Rectification
Chen Jinchang	Yunnan	Murder, robbery	Death penalty with reprieve <sup>1</sup>	05/17/1995	02/17/1998	Actual perpetrator was found
Chen Shijiang	Shandong	Murder	Death penalty with reprieve	12/05/1998	04/18/2006	Insufficient evidence
Du Peiwu	Yunnan	Murder	Death penalty with reprieve	04/22/1998	07/11/2000	Actual perpetrator was found
Hao Jinan	Henan	Murder, robbery	Death penalty with reprieve	01/24/1998	12/2007	Actual perpetrator was found
Huang Yaquan	Hainan	Murder, robbery	Death penalty with reprieve	08/22/1993	09/01/2003	Actual perpetrator was found
Li Detian	Liaoning	Mayhem	12 years	02/29/2004	09/25/2008	Codefendant admitted perjury
Li Huawei	Liaoning	Murder	Death penalty with reprieve	12/19/1986	04/18/2001	Actual perpetrator was found
Li Jie	Sichuan	Murder	Life imprison	09/25/1995	06/16/2003	Actual perpetrator was found
Liu Qian	Hebei	Rape	6 years	04/14/1998	2004	Insufficient evidence
Meng Cunming	Hebei	Rape	9 years	10/31/1995	10/30/2004	Insufficient evidence
Pei Shutang	Gansu	Rape	7 years	08/13/1986	07/1993	Victim admitted perjury
Qin Junhu	Guangxi	Robbery, Mayhem	Death penalty with reprieve	02/27/1999	02/2003	Actual perpetrator was found
She Xianglin	Hubei	Murder	15 years	04/11/1994	04/1/2005	Victim appeared
Sun Wangang	Yunnan	Murder	Death penalty with reprieve	01/03/1996	02/10/2004	Insufficient evidence
Teng Xingshan	Hunan	Murder	Death penalty	12/06/1987	01/28/1989 (executed)	Victim appeared
Wang Haijun	Jilin	Murder	15 years	10/25/1986	08/03/1998	Actual perpetrator was found
Wang Junchao	Henan	Rape	9 years	06/15/1999	08/30/2005	Actual perpetrator was found

1. If the immediate execution of a criminal punishable by death is not deemed necessary, a two-year suspension of execution may be pronounced simultaneously with the imposition of the death sentence; if the person who is sentenced to death with a suspension of execution commits no intentional crime during the period of suspension, his punishment shall be commuted to life imprisonment upon the expiration of the two-year period; if he has performed major meritorious service, his punishment shall be commuted to 25 years upon the expiration of the two-year period; if it is verified that he has committed an intentional crime, the death penalty shall be executed upon verification and approval of the Supreme People's Court. *See* CRIMINAL LAW OF THE PEOPLE'S REPUBLIC OF CHINA, art. 48-50 (1997), available at <http://www.china.org.cn/english/government/207319.htm>.

Wen Chongjun	Guangxi	Rape	5 years	07/10/1989	07/1993	Insufficient evidence
Wu Daquan	Zhejiang	Murder, robbery	Death penalty with reprieve	09/07/2006	10/22/2010	Actual perpetrator was found
Wu Hesheng	Hubei	Murder	Life imprison	04/15/1991	12/23/1999	Actual perpetrator was found
Xu Jibin	Hebei	Rape	8 years	04/1991	07/28/2006	New blood type test
Xu Jingxiang	Henan	Robbery	16 years	04/13/1992	03/15/2005	Insufficient evidence
Yang Mingyin	Hunan	Murder, robbery	16 years	11/06/1996	09/15/2006	Actual perpetrator was found
Yang Yunzhong	Heilongjiang	Murder	Life imprison	12/02/1994	03/11/2002	Actual perpetrator was found
Zhao Xinjian	Anhui	Murder, rape	Death penalty with reprieve	08/07/1998	06/23/2006	Actual perpetrator was found
Zhao Zuohai	Henan	Murder	Death penalty with reprieve	05/09/1999	05/09/2010	Victim appeared

According to the information in Table 1:

(1) The twenty-six wrongful convictions were located in fifteen of the thirty-one provinces in Mainland China, with eight in Eastern China, eleven in Middle China, and seven in Western China.

(2) Among the twenty-six cases, seventeen cases involved murder (five of which also involved robbery and one of which also involved rape), six cases involved rape, two cases involved robbery (one of which also involved mayhem), and one case involved mayhem. It is not surprising that all the cases involved felonies because all the cases were widely covered by media in China and the media is interested in serious crimes, which garner more attention from the public. In addition, when an innocent person is sentenced to a severe punishment, he and his relatives are more likely to present petitions for rectifying the wrongful conviction, and the government is more likely to be concerned with the case and correct the error.

(3) All the innocent men had received severe punishments, including one being sentenced to death, eleven being sentenced to death with reprieve, and two being sentenced to life imprisonment. Comparatively speaking, the sentences of the six men who were convicted of rape were less severe, which resulted in nine, nine, eight, seven, six and five years of imprisonment.

(4) The sentences served by these wrongfully convicted persons span from less than two years to more than fifteen years, with an average of nearly eight years in prison before being exonerated. Teng Xingshan is not counted, because he was executed sixteen years before he was declared to be innocent.

(5) Seven wrongful convictions were rectified after the innocent people had completed their punishment. Teng Xinshan was executed in 1989 and declared to be innocent by the Hunan Province Higher People's Court in 2005.<sup>2</sup> Liu Qian was released upon completion of his sentence in 2004 and declared not guilty in 2007.<sup>3</sup> Meng Cunming was released after serving his sentence in 2004 and acquitted in 2005.<sup>4</sup> Xu Jibin was released after completing his sentence term in 1999 and acquitted in 2006.<sup>5</sup> Wen Chongjun was set free after serving his sentence in 1993 and he received his verdict of "not guilty" in 2006.<sup>6</sup> Wang Haijun was released in 1998 and found not guilty in 2005.<sup>7</sup> Pei Shutang was set free in 1993 and declared to be not guilty in 2011.<sup>8</sup> China holds that the idea of "mistakes must be corrected whenever discovered." As such, when a conviction is found to be erroneous, even if the sentence of the convicted has been completely carried out, it should be rectified. This will not only help with the compensation to the innocent or their heirs, but also eliminate the stigma of conviction upon the families of those wrongly convicted people.

(6) Fourteen wrongful convictions were corrected because the actual perpetrators were found. In three cases, the men who were convicted of murders were proved innocent when the alleged victims turned up alive. Six convictions were overturned because courts ruled that there was not sufficient evidence to prove that those convicted were guilty. Unlike the other twenty cases, these six cases were not "factual innocence" cases, but "legal innocence" cases. Two wrongful convictions were overturned because the codefendant or the alleged victim admitted that they had committed perjury. One wrongful conviction was overturned because a

---

2. Chen Tuo, *Cuo Sha Teng Xingshan 17 nian hou Beipan Wuzui* [Teng Xingshan was Wrongfully Executed and Found Not Guilty 17 Years Later], [http://www.qdh.gov.cn/issue/root/sub/sfj\\_sfj/sfj\\_alzz/20060331/8ac77f232c7c6107012c7db35eb12daf/index.shtml](http://www.qdh.gov.cn/issue/root/sub/sfj_sfj/sfj_alzz/20060331/8ac77f232c7c6107012c7db35eb12daf/index.shtml).

3. Li Yanhong, *Hebei yi Xiaohu Bei Pan "Qiangjian Weisui" Ruyu Jiunian Zhaoxue Yuanqing* [A Youth of Heibei Province Was Exonerated after 9 Years Imprisonment for Attempted Rape], YANZHAO DUSHI BAO [YANZHAO METROPOLIS DAILY], July 26, 2007, [http://news.xinhuanet.com/legal/2007-07/26/content\\_6433053.htm](http://news.xinhuanet.com/legal/2007-07/26/content_6433053.htm).

4. Li Yanhong, *Nanzi Zaoyu Qiangjian Ruyu Niunian* [A Man Convicted of Raping Was Wrongfully Imprisoned for Nine Years], YANZHAO DUSHI BAO [YANZHAO METROPOLIS DAILY], July 20, 2007, <http://news.sina.com.cn/s/1/2007-07-20/021912237000s.shtml>.

5. Fazi Zaixian: *Xuezheng* ["The Rule of Law Online": Blood Evidence], YANGSHI [CHINA CENTRAL TELEVISION], <http://news.sina.com.cn/s/2006-09-19/163411050148.shtml>.

6. Qing Xingwang, *Laoshi "Qiangjianfan" Mengyuan 17 Nian*, [The Wrongful Rape Conviction of a Teacher Was Rectified Seventeen Years Later], ZHEJIANG FAZHI BAO [ZHEJIANG LEGAL NEWS], August 30, 2006, <http://fzb.zjol.com.cn/gb/node2/node802/node240379/node394807/node394820/userobject15ai5336748.html>.

7. Liu Shuang, Wang Zhendong & Gu Ran, *19 Nian Sha Qi Yi An Diaocha* [The Investigation of a Wife Murder Case Occurred 19 Years Ago], XIN WENHUA BAO [NEW CULTURAL NEWS], July 25, 2005, <http://news.sina.com.cn/s/2005-07-25/15476524049s.shtml>.

8. Ma Guoshun & Wen Jie, *Yige Mingyuan Zhe de 25 Nian Shensu Lu* [25 Years of Petition of a Wrongful Convicted], GANSU RIBAO [GANSU DAILY], Jan. 28, 2011, <http://gsrb.gansudaily.com.cn/system/2011/01/28/011873009.shtml>.

more sophisticated.

### III. CAUSES OF WRONGFUL CONVICTIONS

TABLE 2: CAUSES OF THE 26 WRONGFUL CONVICTIONS

Name	Torture	False confession	False witness testimony	Problematic expert testimony	Police misconduct in handling exculpatory evidence	Arguments of counsel not being accepted	Extra-judicial factors
Chen Jinchang	√	√	√		√	√	
Chen Shijiang	√	√		√	√	√	
Du Peiwu	√	√		√	√	√	√
Hao Jinan	√	√	√		√	√	
Huang Yaquan	√	√	√		√	√	√
Li Detian			√		√	√	√
Li Huawei	√	√	√	√	√	√	√
Li Jie	√	√			√	√	√
Liu Qian	√	√	√		√		
Meng Cunming	√	√		√	√	√	√
Pei Shutang			√	√	√	√	
Qin Junhu	√	√	√	√	√	√	
She Xianglin	√	√	√	√	√	√	√
Sun Wangang	√	√		√	√	√	
Teng Xingshan	√	√		√	√	√	√
Wang Haijun	√	√					
Wang Junchao	√	√	√	√	√		
Wen Chongjun			√	√	√		
Wu Daquan	√	√	√		√		
Wu Hesheng	√	√		√		√	
Xu Jibin			√	√		√	
Xu Jingxiang	√	√			√		
Yang Mingyin	√	√					
Yang Yunzhong	√	√	√		√	√	
Zhao Xinjian	√	√			√	√	√
Zhao Zuohai	√	√	√		√	√	√

All twenty-six cases involved multiple causes leading to the wrongful conviction. The key causes include torture and false confession, false witness testimony, problematic expert testimony, police misconduct in handling exculpatory evidence, arguments of counsel not being accepted by judges, and extrajudicial factors.

### *A. Torture and False Confession*

#### 1. Torture

Of the twenty-six cases, twenty-two involved false confessions extracted through torture, which is probably the leading cause of these wrongful convictions. Forms of torture in these cases include beating, cigarette burns, electric shocking, painful shackling of the limbs, and subjection to extreme heat or cold.

In the She Xianglin case, She was arrested in April, 1994 for murdering his wife. The police officers were divided into two groups to interrogate She around the clock and She was deprived of sleep for ten days and eleven nights. He was beaten so cruelly that he saw double and could not stand or walk.

In the case of Du Peiwu, Du was stripped of sleep for twenty days and nights in July, 1998. He was forced to kneel down to answer questions. He was beaten, kicked, and hung on doors and windows with handcuffs. His fingers and toes were stricken by an electric baton.

After being arrested for murdering Zhao Zhenshang in 1999, Zhao Zuohai was deprived of sleep for more than thirty days and nights while he was being interrogated. He could not stand after being beaten and kicked brutally. The investigators struck his head with a pistol and a wooden stick, which left a scar on his head. When he felt dizzy, the police officers set off fireworks over his head. A police officer told Zhao that if he did not confess, he would kick him out of a running car and shoot him. The officer claimed that he would not be punished for doing so because he could explain to his supervisor that he shot Zhao because Zhao attempted to flee.

On January 24, 1998, the police arrested Hao Jinan and began to strip and beat him. When the police officers found that Hao had lost consciousness, they poured cold water over him to make him regain consciousness. Later, he was taken to a hospital by the officers of the detention center and one of his spleens was resected because it was seriously injured.

Yang Mingyin was arrested on Nov. 6, 1996 for murdering a couple. He was deprived of food and sleep and subjected to extreme cold in the interrogation. When he was beaten until he lost consciousness, a police

officer used a pair of red-hot tongs to wake him up. When Yang claimed that he was innocent, a police officer gave him a slap in the face while saying that he believed in his innocence. On another day, a police officer pointed a loaded pistol toward Yang's face, and shouted that he would shoot him if he did not confess. Then the police officer hit Yang on the head with the pistol, which left a permanent scar.

In the case of Zhao Xinjian, Zhao was suspected of murdering a girl on Aug 7, 1998. As soon as he was brought to a police station, nearly ten police officers began to beat him repeatedly. They struck his forehead against a desk and burned him with lit cigarette butts. He was denied food or water for three days and two nights.

After being suspected of robbery, Chen Jinchang was brought to a police station on May 14, 1995. The police tied Chen Jinchang's hands with a water-soaked rope and kicked him to kneel down. They beat and verbally abused him for seven hours. The hands of Yao Zekun, Chen's codefendant, were tied by a water-soaked rope too. When Yao refused to confess, they beat him repeatedly with an electric baton, knocked his head against the ground, and stamped their feet on his head. He was beaten to unconsciousness and cold water was poured on him to regain consciousness. He also got electric shocks, which left scars all over his body. Yao was deprived of water and given just two pieces of bread over five consecutive days and nights.

In the case of Xu Jingxiang, Xu was detained for robbery on April 1, 1991. He was tied up with a rope, and the police officers beat him repeatedly at his feet with a stick and stamped on his anklebones so badly that he lost consciousness. The anklebone on Xu's right foot is still deformed now. After the torture continued for three consecutive days and nights, Xu finally confessed.

Wang Haijun was detained in October, 1986 for murdering his wife. The police directed Wang's inmate to beat him. The inmate tried to persuade him to confess, but he refused. Then the inmate began to beat him brutally. One day, the inmate severely beat his head with a board for more than one hour.

## 2. False Confession

In the twenty-two cases that involved torture, the suspects all gave false confessions, and the false confession played a substantial role in leading to these erroneous convictions.

According to Article 95 of the Criminal Procedure Law of People's Republic of China (the "Criminal Procedure Law"), the record of an interrogation shall be shown to the criminal suspect for review. When the criminal suspect acknowledges that the record is free from error, he



shall sign or affix his seal to it. In the Sun Wangang case, one interrogation record in which Sun made a false confession played an important role in his conviction, but later the signature of Sun was found to be forged by one investigator. In the Xu Jingxiang case, the signatures of Xu in more than ten interrogation records were forged by one investigator. It is possible that the investigators in these two cases forgot to ask the defendants to sign them, and then forged the signatures to avoid the trouble of asking the defendants to sign it. Maybe these interrogation records were fabricated by the investigators. But it is also likely that the records were not fabricated, and the defendants refused to sign them because their confessions were not true.

To escape continued tortured, the defendants in these cases would generally confess only to what the interrogators told them explicitly or implicitly.

In the case of Li Jie, He Jun, Li's codefendant, was told by the police that two victims were killed by the murderer with a stone. When a police officer asked him the shape of the stone, he made a wide guess and said that it was round. The police officer beat him brutally. Then he said that it was sharp, but was beaten again. At last when the police officer asked him whether one half of the stone was round and the other half was sharp, he knew the answer the police officer wanted, and said "yes." This time he was not beaten.

In the Chen Jinchang case, the interrogators wrote down a "confession" and read it to Yu Zhekun, the codefendant of Chen. After reading each sentence, they paused and ask Yu whether it was true. If his answer was "yes," the interrogators would not beat him. If his answer was "no," he would be beaten brutally. At first he answered "no" to some of the questions. But later he answered "yes" to whatever question they asked to avoid brutal beatings.

In the Wu Hesheng case, Wu was beaten by the police officers until his statement matched the evidence they collected. They fabricated some of the "confession" and asked Wu to sign it. Wu refused at first, but later he could not bear the torture and signed it.

In the case of Zhao Zuohai, the interrogators told Zhao to repeat what they said. If he did not repeat it, he would be beaten. They wrote down what he repeated and said it was his "confession."

In the She Xianglin case, one interrogator asked She the location of the alleged victim's body. Since She did not commit the crime, he could not tell the location. Then the investigator drew a picture of the crime scene, marked the location of the body in the picture, and forced She to copy the picture.

### 3. Analysis

Torture is illegal in China. Article 43 of the Criminal Procedure Law states that the use of torture to coerce confession and the gathering of evidence by threats, enticement, deception, or other unlawful means is strictly forbidden. According to Article 247 of the Criminal Law, a police officer who extorts a confession from a criminal suspect or defendant by torture shall be sentenced to a fixed-term imprisonment of not more than three years of criminal detention. If injury, disability, or death is caused to the victim, the officer shall be convicted and given a heavier punishment in accordance with the provisions of Article 234 or 232 of the Criminal Law. Articles 234 and 232 prescribe how to punish those who commit mayhem and murder respectively. Article 61 of the Interpretation on Several Issues Regarding Implementation of the Criminal Procedure Law of the People's Republic of China by the Supreme People's Court stipulates that, upon being verified to have been obtained through torture, inducement, intimidation, or deception, the statement of a defendant should not be used as the basis for conviction. Unfortunately these laws are not enforced strictly.

#### *a. Police and Courts Rely too Heavily on Confessions to Solve Cases*

To prevent government officers from relying too heavily on confessions to solve cases, Article 46 of the Criminal Procedure Law advises that credence shall not be readily given to confessions; defendants cannot be found guilty if there is only a confession but no other evidence, and that the defendant may only be found guilty if the evidence is sufficient and reliable even without his confession. But in reality, convictions in China are strongly dependent on confessions, and most of the judges often refuse to find the accused guilty if there is no confession by the defendant. As for the police, torture is an effective interrogation technique and helps to solve the cases quickly. They cannot only extract a confession by torture, but also collect other evidence derived from coerced confession. As Professor Cui Min stated, "using substantial amounts of evidence derived from torture and other illegal means (especially the defendant's confession) remains, as before, a principal basis for proving cases."

#### *b. Courts Fail to Give Credence to False Confessions*

A prominent example is the case of Dui Peiwu. Du took his shirt off during the first session of his trial to reveal wounds from being beaten, hung by handcuffed wrists, and being tortured with an electric shock baton. But the judges ignored his claim. In the second session, Du

dramatically stripped off his jacket to show the tattered garments in which he had been tortured. The judges ignored his claim again and forbade him from producing evidence in support of his torture.

In two of the twenty-two cases which involved false confession, the defendants did not withdraw their torture statement. In Zhao Zuohai's case, Zhao was tortured into falsely confessing to a murder, but did not retract his confession in his trial. He did not even appeal his conviction. He told a reporter of a newspaper that he did not recant his confession because he was afraid that if he did so he would be beaten again by the investigators. In the case of Wu Daquan, Wu did not disavow his confession because he believed that disavowal made no sense and the court would find him guilty even if he retracted his confession.

*c. Torture is Still Tolerated, Even Condoned by the Authorities*

In practice, police officers who torture the defendants generally do so with impunity. Only tortures that have caused wrongful convictions or resulted in death or serious injury to defendants are likely to be investigated by the authorities.<sup>9</sup> Torture cases that are prosecuted always result in very lenient penalties. These torturers often receive only suspended sentences, even when the victims are severely injured or killed. On the other hand, most of the torturers get salary increases, cash bonuses, or promotions because they successfully broke the cases.

*d. The Systemic Defects of the Criminal Procedure Law Add to the Prevalence of Torture in Criminal Investigations*

First, under the Criminal Procedure Law, suspects do not have the right to remain silent or the privilege against self-incrimination. On the contrary, according to Article 93 of the Criminal Procedure Law, the suspects shall answer the investigators' questions truthfully. Second, the suspects are not allowed to have access to counsel while under interrogation. So they do not have attorneys present during interrogations. Third, the police are not required to make audio and video recordings of interrogations. Finally, an overwhelming majority of defendants waiting for trial are held in detention. According to Article 69 of the Criminal Procedure Law, warrantless detention, which does not require approval from prosecutors or judges, can legally last up to 37 days. This means that the police have time to extract confessions from defendants.

---

9. Ma Haijian and Li Bingtao, *Procedural Instrumentalism and Torture for Extracting Statements* [Chengxu gongju zhuyi yu xingxun bigong], JOURNAL OF PUBLIC SECURITY UNIVERSITY, 1997, at 37.

*B. False Witness Testimony*

In fifteen of the twenty-six cases, witnesses made false testimonies. These testimonies, especially the eyewitness testimonies, played a substantial role in convicting the innocent defendants. In the Pei Shutang case, the alleged victim told the police that Pei, an official of the Wuwei City Bureau of Culture of Gansu Province, raped her in his office. In 1987, Pei was convicted of rape. In 2000, the victim admitted to Pei that she had lied to the police, and it was her husband and Pei's bosses who forced her to make perjured testimony. According to her accounts, the director and deputy director of the Wuwei City Bureau of Culture disliked Pei. They promised that if she reported to the police that Pei had raped her, they would help her and her husband find jobs in their office. In 2011, Pei's conviction was overturned.

The "victim" of the Pei Shutang case obviously made false testimony intentionally, although not involuntarily. However in the three cases below, there is no evidence to show whether these witnesses made false identification intentionally. In the Xu Jibin case, the victim claimed that the rapist looked like her neighbor, Xu, although she did not see the rapist clearly because it was dark at the time. In the Liu Qian case, the victim identified Liu as the rapist, and Ma, an eyewitness, alleged that Liu looked like the rapist. In the Wen Chongjun case, the victim claimed that Wen raped her and forced her to be with him for a whole night. These three convictions were all overturned because the courts that retried them held that there was not sufficient evidence to convict the defendants. It is unknown whether these witnesses perjured themselves intentionally.

In five of the twenty-six cases, the police beat, bullied, and/or offered inducement to witnesses to testify against the defendants. In the Zhao Zuohai case, Zhao's wife claimed that the police locked her up in a factory for more than one month and beat her until she "confessed" that the plastic bags with which the victim's body was wrapped came from their house. In the Li Huawei case, the police forced Li's mother to falsely testify that Li told her how he killed his wife. In the Huang Yaquan case, the police beat six teenagers and told them that they would not be allowed to go home until they gave police the name of the perpetrator. With the hints of the police officers, the teenagers falsely testified that Huang committed the murder. In the Hao Jinan case, the police locked Zhang Qingfang in an office and threatened that he would not be allowed to go home unless he made a statement that Hao was the murderer. In the Yang Yunzhong case, Zhang Jingjiang gave the police a testimony favorable to Yang. The police officers believed that he perjured himself, so they coerced him into making a different statement and then arrested him for perjury. He was sentenced to two years

imprisonment.

### *C. Problematic Expert Testimony*

The problems with expert testimony include not submitting physical evidence to experts for examination, and false expert testimony. Half of the twenty-six cases involved problematic expert testimony.

#### 1. Not Submitting Physical Evidence to Experts for Examination

In the She Xianglin case, a relative of Zhang Zaiyu told the police that the rotting corpse found in a pond on January 20, 1994 was the corpse of Zhang who had been missing for more than two months. The police did not use DNA profiling to identify the victim. She Xianglin was convicted of murdering Zhang in 1998, but released in 2005 because Zhang returned to her village. In the Meng Cunming case, the police collected the semen of the rapist from the cotton-padded mattress of the victim, but they did not ask the expert to examine it. Meng was convicted of rape in 1995, and 12 years later declared to be not guilty because the retrial court found that the evidence was insufficient. Similarly, in Liu Qian case, the police collected the blood from the clothes of the victim who told police that it was the blood of the rapist, but did not submit it for testing. Liu was convicted of rape in 1998, but the conviction was overthrown in 2007 because the court of retrial found that there was not sufficient evidence to prove that he was guilty.

#### 2. False “Scientific” Evidence

In some wrongful conviction cases, the expert examination results were proved to be incorrect later, but there were no evidence showing that they intentionally reached the wrong inclusions. In the Xu Jibin case, the three medical experts from the She county police office concluded that the blood type of the semen collected from the scene and the blood sample of Xu were both type B. Xu was convicted of rape. Fifteen years later, several experts from hospitals found that his blood type is type O. The wrongful conviction then was rectified.

On April 20, 1998, the corpses of Wang Xiaoxiang and Wang Junbo were found in a police car. Two days later, Dui Peiwu, Wang Xiaoxiang’ husband, was arrested for shooting them. On August 3, 1998, the police used ten police dogs to find whether the odor of the shoes and socks of Du, dust from the collar of Du, and the paper money from the pocket of Du, matched the odor of the brake pedal and accelerator pedal of the police car. The testing found that forty-one out

of forty-three items matched. Dui Peiwu was then convicted of murder. Two year later, Yang Tianyong was arrested for other cases and the police found in Yang's house a pistol which belonged to Wang Junbo and was used to kill Wang Junbo and Wang Xiaoxiang. Yang confessed that he robbed Wang Junbo of his pistol and killed him and Wang Xiaoxiang with it. Yang was arrested and sentenced to death and Du was released from prison.

In the Sun Wangang case, one important reason leading to the wrongful conviction was that the blood sample was not properly preserved. After testing, Li Zhanglin, the expert, concluded that the type the blood of the murder victim and the blood collected from Sun's trousers, sheet, quilt, and blanket was type AB, while the blood type of Sun was type B. In 1998, Sun was convicted of murder. Later Li Zhanglin admitted that when Sun's trousers, sheet, quilt, and blanket and the bloodstained clothes of victim were sent to his laboratory, they were put together, so it is possible clothes contaminated Sun's belongings. In 2004 Sun was declared by Yunnan Higher People's Court to be not guilty because the evidence was insufficient.

The Chen Shijiang case was the only one of the twenty-six cases involving fabricating trace evidence and delivering it for examination. A woman was killed in her house in 1998. There were some shoeprint impressions on her snow-covered yard. The police officers suspected Chen Shijiang to be the murderer, but they found that Chen did not match the shoeprint impressions of the scene. Then the police officers asked Chen to walk on a cement floor without gypsum powder and a cement floor covered with gypsum powder, and submitted the photographs of these shoeprint impressions to the laboratory of the Ministry of Public Security for examination. They told the experts of the MPS that the shoeprint impressions collected from the cement floor covered with gypsum powder were obtained from the victim's yard covered with snow. The experts concluded that the shoeprint impressions of Chen matched those at the crime scene. The report that the examiners issued was sent to the court. In 2001 Chen was convicted of murder. In 2006 Chen was declared not guilty by Shandong Higher People's Court because the evidence was insufficient.

#### *D. Police Misconduct in Handling Exculpatory Evidence*

One important factor leading to false convictions is police misconduct in handling exculpatory evidence, which includes failure to collect exculpatory evidence, ignorance of the importance of exculpatory evidence, intentionally concealing exculpatory evidence, and improperly preserving exculpatory evidence. Of the twenty-six wrongful

convictions, police misconduct was found in twenty-two cases. This police misconduct shows that some police officers were incompetent, and their investigations were questionable, cursory, and rushed.

#### 1. Failure to Collect Exculpatory Evidence That Should Have Been Collected

In some of the erroneous conviction cases, the police refused to collect important and reliable alibi evidence. On the night when Liu Yinhe was killed, Hao Jinan had been playing poker with a coal-miner until 11 p.m. Hao asked the investigators to question the coal-miner for an alibi, but they refused. When the crime for which Xu Jingxiang was convicted was committed in the Henan Province, he was working in Shandong province with two men from his hometown. Xu told the police this alibi, but the police officers refused to investigate it.

In the case of Li Jie, Li Jie had a verifiable alibi as well. When the murder of which he was convicted occurred, Li, Huang Daming, and Huang Maoyuan were in a hospital. Li asked police officers to question the two men about this, but his request was rejected.

In the Huang Yaquan case, Huang Yaquan had an airtight alibi for the night when the victim was killed. He went to Huang Daojun's house that afternoon, helped prepare food and drank with more than ten men until 10 p.m. that evening. He told police officers about this alibi, but they did not investigate it.

In some cases the police did not investigate important leads in addition to an alibi. In March 1992, several masked men broke into Liang Xiuge's house and robbed her of money, a bike, and a green sleeveless woolen vest. Xu Jingxiang was arrested because he had the same kind of vest. He claimed to the investigators several times that he bought this vest from a fair, and that Xu Zuguo could prove it. But they did not question Xu Zuguo.

In the Wen Chongjun case, Wen told the police officers that he fell to the ground and bruised himself on the way to attend the ceremonials of ancestor worship. He asked them to investigate the people who were with him at that time, but they refused. Instead, they insisted that he had received these bruises when he was bitten and scratched by the victim when he raped her.

In the Hao Jinan case, the police found a pair of shoes and a bloodstained shirt in Hao's house. The sole prints of the shoes matched the footprints left at the crime scene and the blood type on the shirt – and the blood type of the victim matched as well. Hao told the police officers that Niu Jinhe and Yang Xiaoguo sold the shoes to him and left the shirt at his house. But the police officers did not question them. In

1998, Hao was convicted of murder. Eight years later, the real murderers, Nie and Yang, were arrested by the police.

## 2. Ignorance of the Importance of Exculpatory Evidence

In the Yang Yunzhong case, the police found a pair of bloodstained shoes belonging to Yang. After a serological test, the police found that the blood on the shoes and the blood of the victim were the same blood type. Yang told the police that one month before the murder he fought with a man, and man's blood was on his shoes. When he fought, Zhang Jinjiang was standing nearby. The police officers questioned Zhang and Zhang told them that the blood was from the man who fought with Yang. However, the police claimed that she made a false statement and forced her to give a different testimony.

In some cases, both police officers and judges did not pay adequate attention to evidence favorable to the defendants. On April 27, 1987, a female corpse was found in Mayang County of the Hunan province. The police suspected that she was Shi Xiaorong, a woman who was missing at that time. Investigators sent the skull of the corpse and Shi's pictures to an expert. The expert told them that some parts of the skull did not match that of Shi. However, both the police and the court did not pay adequate attention to these findings. Teng Xingshan was sentenced to death for murdering Shi. In 1993, Shi reappeared in her hometown.

In Zhao Xinjian case, two eyewitnesses who saw the rapist in the bright moonlight told the police that he had a stout and compact build, was just over one and a half meters tall, and did not look like any man from their village. Zhao, by contrast, was thin, well over one and a half meters tall, and lived in the same village with the eyewitness and the victim. In fact Zhao's house was not far from the two witnesses' houses. If Zhao was the rapist, they could have identified him. Li Weifeng, whose appearance matched the descriptions of the two witnesses, was summoned by the police officers for questioning. His hair and Zhao's hair were collected and sent to the laboratory of Ministry of Public Security for testing. Li ran away after being summoned. According to the result of the test, Li's blood type matched the hair collected at the crime scene. The police and the court did not pay adequate attention to this evidence. Zhao was arrested and convicted of murder. Four months later, Li confessed to the rape after being arrested.

Sun Wangang was charged with killing Chen Xinghui. The police officers collected two buttons and a belt buckle at the crime scene. Testing revealed that one button came from Chen, but the other button and the belt buckle belonged to neither Chen nor Sun. Most likely, they were left by the person who killed Chen. The police officers, however,



did not investigate this important lead.

### 3. Concealing and Improper Preservation of Exculpatory Evidence

In the case of Meng Cunming, the rape victim told the police that the rapist was about five foot-six, had shoulder-length hair, and spoke Mandarin Chinese fluently. But Meng was only five-foot-three, with short hair, and could not speak Mandarin. The record of the testimony of the victim was not presented to the court. Meng was convicted of rape.

In the Qin Junhu case, the police officer asked Qin to point out the crime scene where the robbery was committed, but he made a misidentification. Qin told the police that he sold the beeper, which was robbed, to Wang, but Wang said that he did not buy it from him. The police did not record the misidentification and Wang's testimony in the case file which was transferred to the court later. The police found a shoe at the crime scene, which was just over twenty-seven centimeters long, but Qin wore twenty-four-centimeter long shoes. Because the shoe had not been properly preserved, the shoe was missing later, and could not be presented to the court.

#### *E. Arguments of Counsel Not Being Accepted by Judges*

In twenty of the twenty-six cases, the defendants were represented by counsel retained by them or appointed by the courts. The attorneys in nineteen cases claimed that their clients were not guilty and presented reasonable arguments, but their arguments were not accepted by the courts.

In the Meng Cunming case, Meng's defense attorney questioned several of Meng's colleagues, and they all verified his whereabouts at the time the crime was committed. But the court did not accept that alibi.

In the case of Xu Jibin, three medical experts from the She County police office concluded that Xu's blood matched the semen collected from the crime scene. Wang Zhenrong, Xu's counsel, requested that the court appoint other experts to conduct the test, but his request was rejected. In China, the defendant and his counsel cannot appoint experts to conduct examination. If they think the examination of the expert appointed by the police is problematic, they can only ask the police or the court to appoint other experts. Xu was convicted of rape in 1991, and released in 1999 after serving his sentence. In 2005 Xu asked experts from hospitals to do the blood test and these experts found that his blood type did not match the semen from the scene. The wrongful conviction was then rectified.

Although the attorneys of nineteen cases declared that their clients were innocent, they probably could not produce convincing arguments, even though they were competent and effective. In reality, it was hard for them to meet with their clients, collect evidence, or access the evidence gathered by the prosecutors. Therefore, their abilities to prepare an effective defense were substantially weakened. In September, 2000, the Standing Committee of the National People's Congress sent inspection groups to six province-level administrations (Tianjin, Inner Mongolia, Heilongjiang, Zhejiang, Hubei, and Shanxi) to review the implementation of the Criminal Procedure Law over the past three years. They found during the inspections that torture had reached epidemic proportions and that defense attorneys encountered a great deal of difficulty in fulfilling their professional duties.

In practice, lawyers are usually required to obtain approval from police to meet with the suspects, and in many cases, especially during the early stage of investigation, they are denied access to suspects. Even if they are granted such permission, so many restrictions are imposed on the substance of the meetings that they are often rendered meaningless. For example, they are sometimes permitted to meet with their clients only once, and the meeting can last for no more than half an hour. If the meeting occurs at a certain stage of the investigation, the police officers who investigate the case will be present at the meeting and monitor the meeting, which makes the suspects reluctant to discuss the case with their attorney. Generally speaking, it will become less difficult for the defense attorneys to meet with their clients when the police have finished their investigation.

According to Articles 36 and 150 of the Criminal Procedure Law, defense attorneys have no access to any evidence collected by the police during the investigation stage; no access to the physical evidence, documentary evidence, witness testimony, defendant's statement, and crime-scene records. And while they do have access to judicial documents after the prosecutor receives the case from the police to review for prosecution, defense attorneys do not have access to any evidence except copies of "major evidence" after the defendants are indicted by the prosecutors. In sum, defense attorneys' access to evidence collected by the police is excessively restricted.

Article 37 of the Criminal Procedure Law stipulates that defense attorneys cannot collect evidence until the police have finished their investigation and submitted the cases to the prosecutors. In reality, as the Chinese government does not provide witnesses with necessary resources and guarantees of personal safety, defense attorneys have difficulties in calling witnesses to the stand to testify. Even worse, the abuse of Article 306 of the Criminal Procedure Law greatly discourages

defense attorneys from questioning witnesses. Article 306 of the Criminal Procedure Law provides that defense attorneys shall be sentenced to a fixed-term imprisonment of not more than seven years if they coerce or induce witnesses to commit perjury. In practice, some defense attorneys are harassed, intimidated, and even arrested or prosecuted by the police or the prosecutors simply because the witnesses changed their testimony after they met with defense attorneys, thus arousing the suspicion of the police or the prosecutors that defense attorneys had suborned perjury. Sida Liu and Terence Halliday estimated that hundreds of defense lawyers had been prosecuted under Article 306. Although the majority of lawyers prosecuted have been acquitted, the long, demeaning process of investigation is in itself a severe punishment. Liu and Halliday stated that this was why the vast majority of Chinese lawyers do not collect their own evidence in criminal cases.

The courts seldom subpoena witnesses. Fewer than 5% of witnesses in criminal cases appear before the courts. After being read aloud before the courts, the statements of witnesses are used as the basis for decisions. It deprives the defense attorneys of the chance to confront and cross-examine adverse witnesses, thus undermining their ability to represent their clients.

A large percent of defendants in China are too poor to afford an attorney. According to Article 34 of the Criminal Procedure Law, only those who are juveniles, blind, deaf, mute, or face the death penalty have the right to be appointed free counsel by the courts. The not surprising result is that in more than 70% of criminal cases in China, the defendants do not have counsel.

### *F. Extra-Judicial Factors*

#### 1. The Undue Pressure to Solve Cases

The huge pressure on police officers from their leaders to crack highly publicized crimes quickly is another factor causing erroneous convictions. The police leaders often set strict investigation deadlines in major cases, and some investigators have to extort false confessions through torture and even fabricate evidence to meet the deadlines. The salaries and promotions of police officers are tied partly to the case-breaking rate, which also has contributed to wrongful convictions.

In November 2004, the Ministry of Public Security required that local police should solve all homicide cases. Since then, the funds that local police receive from the Ministry of Public Security are in part linked to the breaking rate of homicide cases. This has produced mixed results. In

2005, Chinese police cracked 87.2% of murder cases, which represented a 9% increase over 2003. However, in 2009 in the Henan province, where the rate of solved homicide cases reached 97.55% for that year (and ranked number one in China for the past six years), the police of the Weishi County arrested an innocent man, Liu Weizhong, for murder. Liu was detained on December 24, 2009, and more than 20 days later he was declared to be the murderer, but released because he was insane. In May 2010, the director and the deputy director of the Weishi County police were dismissed for intentionally implicating Liu in the murder.

## 2. Overwhelming Stress of Cooperation Between the Police, Prosecutors, and Courts

According to Article 7 of the Criminal Procedure Law, the police, prosecutors, and courts should coordinate with one another to ensure the correct and effective enforcement of law. In reality, the police, prosecutors, and courts work together as a team, rather than in a system with checks and balances, in the fight against crime. Judges sometimes join hands with police and prosecutors in making the case against the suspects, acting more like prosecutors than neutral and impartial adjudicators in trial. It is not surprising that the defendants and their lawyers are marginalized within the criminal justice system, and prosecutors almost never lose cases brought to trial. In 2009, 997,872 suspects were tried in China and 996,666 were found guilty, with a conviction rate of over 99.88%. Even when the evidence is insufficient, the court sometimes is reluctant to acquit a defendant of his charge. In the Zhao Xinjian case, although the judges of the Bozhou City Intermediate People's Court in Anhui Province were clearly aware that there was insufficient evidence to prove Zhao's guilt, they still found him guilty, but imposed a lenient sentence. A judge of that court stated that the judges convicted Zhao because if he had been acquitted, the police and prosecutors would have to assume responsibility for it. It is worth noting that courts have a lower status in the hierarchy of government departments than the police. This has also contributed to the reluctance of courts to acquit defendants.

## 3. The Intervention of the Politics and Law Committee

The Politics and Law Committee is a functional branch of the Chinese Communist Party (CCP) Committee at all levels. Its responsibilities include implementing the Chinese Communist Party's policies in legal affairs, nominating judges and prosecutors, solving disputes among police, prosecutors, and court, and reviewing sensitive

or important criminal cases. The police, prosecutors, and court have the obligation to report their work to the Politics and Law Committee, especially when they have divided opinions on sensitive or important criminal cases (for example, when the court believes that a defendant should be acquitted for insufficient evidence, while the police or the prosecutors believe that the evidence is sufficient and insists that the defendant be convicted). In some extreme cases, the Politics and Law Committee will preside over a “joint office meeting” with the head of the police, the chief prosecutor, and the president of the court to make joint decisions. If the case is not among the most important ones, but needs to be coordinated by the Politics and Law Committee, the deputy head of the police, the vice chief prosecutor, and the vice president of the court will attend the meeting. The police, prosecutors, and court should follow the decisions of the meeting. Nearly half of the heads of the thirty-two provincial Politics and Law Committees in China concurrently serve as the director of the provincial police department. Therefore, to some extent, the decision of the Politics and Law Committees is the same as that of the head of the police. All of these not only undermine judicial independence, but also may lead to wrongful convictions.

In the Li Jie case, the Politics and Law Committee of Yibin City demanded that the court convict all the defendants in this high profile case. Zhang Guozhen, the defense attorney for the defendant Huang Guang, told a reporter that she and other defense attorneys on the case wanted to plead that their clients were not guilty, but the committee criticized them for it and ordered them not to do so. They had to follow the order.

In the Li Huawei case, according to the statement of Ma Sheng, Li’s lawyer, the Yingkou City Intermediate People’s Court was not sure whether Li was the real perpetrator, so the Politics and Law Committee of Yingkou City called a conference of the head of police, the chief prosecutor, and the president of court and concluded at the meeting that Li was guilty.

She Xianglin was convicted of murdering his wife and sentenced to the death penalty by the Jingzhou City Intermediate People’s Court in 1994. He appealed and the Hubei Province Higher People’s Court rescinded the conviction and remanded the case to the Jinzhou City Intermediate People’s Court for retrial. At the same time the Hubei Province Higher People’s Court listed five reasonable doubts about the conviction. In October 1997, the Politics and Law Committee of Jingmen City called a meeting of the president of the Jingmen City Intermediate People’s Court and the chief prosecutor of the People’s Procuratorate of Jingmen City. Considering that there were still three

reasonable doubts left and the Hubei Province Higher People's Court would overthrow the conviction again if She was sentenced to death penalty a second time, the Politics and Law Committee of Jingmen City decided that She would be tried by the Jingshan County Primary People's Court and sentenced to 15 years in prison to avoid the review by the Hebei Province Higher People's Court. In China, if a defendant is likely to be sentenced to the death penalty or life sentence, the case should be tried at an intermediate people's court and can be appealed to a higher people's court. Otherwise, the case will be tried at a primary people's court and can be appealed to an intermediate people's court, but the judgment of the latter is final and cannot be appealed to a higher people's court. She was sentenced to 15 years imprisonment by the Jingshan County Primary People's Court. She appealed to the Jingmen City Intermediate People's Court, but the appeal was rejected. Then the conviction became final, and She was sent to prison.

In the Zhao Zuohai case, Zhao was arrested for a murder in 1999, but was not indicted until 2002 because the prosecutors thought that there was insufficient evidence to prove his guilt. Then the Politics and Law Committee of Shangqiu City called a meeting of the heads of the police, the prosecutor, and the court of Shangqiu City; it was decided at the meeting that Zhao should be indicted and convicted.

#### 4. The Notion of "Sentencing Lenient Punishment when the Evidence is Insufficient"

According to Article 162 of the Criminal Procedure Law, if the evidence is insufficient, the court should declare the defendant not guilty. But in some wrongful convictions, when the evidence is insufficient, the courts chose to declare the defendants guilty but give them lenient punishment.

She Xianglin was convicted of murdering his wife and sentenced to 15 years imprisonment by Intermediate People's Court of the Jingmen City in 1998, but was released in 2005 because the alleged victim returned to her hometown alive. The president of the Jingmen Intermediate People's Court told the media that this wrongful conviction case taught the judges of the court a lesson. He said that in the past when there was some evidence, but evidence was not sufficient to prove the charge, the judges sometimes would convict the defendant lest the real perpetrator probably be set free.

Sun Wangang was convicted of murdering his girlfriend and sentenced to death with reprieve by the Yunnan Province Higher People's Court in 1998, and was released in 2004 by the same court for lacking sufficient evidence. Liang Zian, the judge of the Yunnan

Province Higher People's Court who overthrew the conviction, told the host on a talk show on China Central Television on April 14, 2004 that if he was the judge who tried this case six years ago, he would have convicted Sun because at that time the popular idea was that when there was some evidence but not sufficient, the court could convict the defendant but give a relatively lighter punishment. He said that if the defendant was not the real perpetrator, he could present his petition and the police could dig up more evidence.

There is some evidence showing that Li Huawei's conviction was based on insufficient evidence. Ma Changsheng, the defense attorney of Li Huawei, asked the vice president of the Yingkou City Intermediate People's Court after Li was sentenced to death with reprieve on December 4, 1989, why the court did not sentence Li to death since they found him guilty of murder. The vice president told Ma that the reason was that there were still some issues to be clarified. Later the real perpetrator was arrested, and Li was released from prison. A leader of the court who asserted that Li should be convicted of murder in 1989 was in charge of rectifying the wrongful conviction. He claimed that when Li was wrongfully convicted, judges did not practice the idea of "acquitting the defendant if there is insufficient evidence."

Zhao Zuohai was convicted of murder and sentenced to death with reprieve by the Shangqiu City Intermediate People's Court in 2002. Eight years later, the alleged victim turned up alive and Zhao was released from the prison. In this case, Yang Songting, a judge of the court, deduced that the reason why Zhao was sentenced to death with reprieve must be that there were some issues to be clarified, because if there was sufficient evidence to prove that he killed the victim and behead him, he should have been sentenced to death according to the policy at that time.

Dui Peiwu was convicted of murdering two police officers (one of them was the deputy director of the Shilin County Public Security Bureau) with a handgun, but was sentenced to death with reprieve in 1999 by the Yunnan Province Higher People's Court because there were several issues to be clarified. Yang Mingying was convicted of robbing and murdering a couple cruelly, but only sentenced to 16 years imprisonment in 2000; obviously he received a lenient punishment because the judges did not firmly believe that he was guilty.

##### 5. Undue Pressure from the Relatives of Victims

In 1998, a 17-year-old girl was raped and killed in a village of Bozhou City, Anhui province. Zhao Xinjian became the main suspect. The Bozhou City Public Security Bureau asked the People's

Procuratorate of Bozhou City to approve its request to arrest Zhao, but was refused because the prosecutors thought that the evidence was insufficient. The victim's grandmother truly believed that Zhao was the real perpetrator. With the support of the locals from her village, she twice went to Beijing and petitioned to the Anhui provincial government, the Public Security Bureau of Anhui Province, the People's procuratorate of Anhui Province, and the Anhui Province Higher People's Court several times, requesting that Zhao be arrested and convicted. This brought great pressure to the law enforcement agencies of the Bozhou City. Zhao was arrested on January 5, 2000. After he was indicted, the victim's grandmother stood in the doorway of the Bozhou City Intermediate People's Court, holding a poster, claiming that if Zhao was not sentenced to death penalty, she would hang herself right in the court. There were many factors that have resulted in the wrongful conviction, and the pressure on the law enforcement agencies from the victim's grandmother probably was one of them.

#### IV. POLICY RECOMMENDATION FOR PREVENTING WRONGFUL CONVICTIONS

After having researched and analyzed what went wrong in the twenty-six wrongful conviction cases, I intend to offer suggestions on what could be done to prevent similar miscarriages of justice in the future. In fact, in the last few years, China has adopted certain methods to prevent wrongful convictions.

##### *A. Recording Interrogations*

To prevent police officers from torturing suspects, some police, the public security authorities of Sichuan Province, Hubei Province, and Zhengzhou City, for example, have required that interrogations in major cases (such as murder), be video recorded since 2005.

##### *B. Excluding Coerced Confessions*

Responding to the Zhao Zuohai case, the Supreme Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Justice jointly issued the Regulations on the Exclusion of Illegally Obtained Evidence in Criminal Cases on June 24, 2010 which stipulates that any confessions obtained through torture shall be excluded at trial.



### *C. Reform in Death Penalty System*

The Criminal Procedure Law promulgated in 1997 includes sixty-eight capital offenses. Its eighth amendment, passed on February 25, 2011, removed thirteen offences, all of which are nonviolent, economic crimes, from the list of crimes punishable by death. It also stipulates that the death penalty should not be imposed on people who are seventy-five or older at the time of their trials, unless they are convicted of crimes involving “exceptional cruelty.” These rules would probably help reduce wrongful convictions by decreasing the number of death sentences handed down.

The Supreme Court issued a judicial interpretation on August 28, 2006 which stipulates that as of September 25, 2006, all the second-instance trials of death sentence cases shall be heard in open court rather than by way of documentary reviews. This has also helped reduce the possibilities of wrongful convictions in capital offence cases.

While Article 199 of the Criminal Procedure Law requires the Supreme Court to review all death sentences, the Supreme Court had delegated this power in cases involving certain charges, for example, rape and murder, to provincial higher courts. To decrease the number of death penalties and prevent wrongful convictions, the Standing Committee of National People’s Congress passed a resolution on October 31, 2007 to make it mandatory that all death sentences be reviewed and ratified by the Supreme Court. This is an important step in preventing wrongful executions.

Obviously, all the above reforms have helped prevent wrongful convictions, but China still has a long way to go in preventing erroneous convictions. Below are some proposed solutions:

- (1) Revise the Criminal Procedure Law to give suspects the right to remain silent, the privilege against self-incrimination, and the right to have access to lawyers during interrogations. The interrogations of suspects should be video-recorded. These measures would be a huge step forward in decreasing the number of tortured and coerced confession.
- (2) Establish an effective mechanism to ensure that allegations of torture are investigated promptly, vigorously, effectively, and impartially. Also, coerced confessions and evidence derived from coerced confessions should be barred from criminal trials.
- (3) Allocation of more funds to be used in investigations and provide training to police officers to enhance their professionalism. Some local police do not have resources to investigate criminal cases. Some police officers receive poor training, lack professionalism, and rely heavily on confessions to solve cases.
- (4) Stipulate that witnesses should be called to trial and subjected to

cross-examination. This measure will help expose false testimony.

(5) Revise the Criminal Procedure Law to allow more involvement by defense attorneys in the criminal procedure, which would help improve innocent suspects' chances of exoneration.

(6) Incorporation of Article 8 of the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, into the Criminal Procedure Law. This article stipulates that all arrested or detained persons shall be provided with adequate opportunities, time, and facilities to communicate and consult with a lawyer, without delay, interception, or censorship, and in full confidentiality; further, such consultations may be within sight, but not within the hearing, of law enforcement officials.

(7) Implement an adequate and fair discovery system, which allows defense attorneys to access all officially collected information on the cases before trial, and prohibits authorities from deliberately concealing official information from defense attorneys.

(8) Ensure that all defense attorneys be able to perform their professional functions without intimidation, hindrance, harassment, improper interference, prosecution, or punishment.

(9) Strengthen judicial independence. The judges should be free from interference from other government branches, the Politics and Law Committee, or their leaders.

(10) Educate judges on the principle of "acquitting the defendant if there is insufficient evidence," because when there is insufficient evidence, it is better to free the real perpetrator than to convict the innocent people.

## V. CONCLUSION

Chinese law stipulates that judges should not use coerced confessions as the basis for convictions, but in practice judges just ignore the rule. Similarly, according to Article 96 of the Criminal Procedure Law, defense attorneys can meet with their clients in custody, but in reality they are usually required to obtain approval from the police to be able to meet with them, and the police often refuse their requests. The gap between the "law in the books" and the "law in action" in the Chinese criminal justice system is so wide that the most important reform is to establish an effective mechanism to ensure that the laws and regulations already on the books be enforced strictly. The strength of the law and regulations can only be realized through implementation and enforcement of these regulations, and they will not have significant impact in practice unless the courts give life to them.