The Ten Most Influential Cases That Changed China in 2009*

Southern Weekend** Editorial Board, translated by Catherine Wong Jayne, Jordan Cormier, Matthew Radik, and Lawrence C. Foster

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EDITORS’ NOTE

Started by Beijing’s Public Welfare Justice Team and now done annually, the list of The Ten Most Influential Cases that Changed China in 2009, currently jointly sponsored by Southern Weekend and China Law Society’s Case Research Committee, is now formally published. Selection for this year’s ten most influential cases began in mid-October 2009 when we decided on a new public selection process. The new process combined online votes with votes from 1000 representatives selected from the public.
From October 25 to December 20, 2009, we solicited cases. We used a nation-wide public announcement in Southern Weekend to recruit candidate cases. At the same time, the Influential Cases Organizing Committee organized more than 150 famous lawyers and legal scholars from across the country to conduct initial case selections.

From the extensive body of 2009 cases, we especially looked for cases with institutional significance as well as those with a comparatively large influence on society—those model cases that can give rise to legislative and judicial reform and public policy changes, examine rule of law principles, influence the public’s perception of the rule of law, and promote the safeguarding of citizens’ rights. From December 20 to December 30, 2009, experts met to discuss the cases and to select thirty cases from the candidates. These thirty cases were then released via Southern Weekend and the China’s Influential Cases website. The voting period to select the top ten cases from among the thirty candidate cases lasted from January 6 to January 25, 2010 and took place both online and by the selected representatives from the public. Online voting took place simultaneously on the Southern Weekend website and the China’s Influential Cases website. As for voting by the selected representatives from the public, 1000 representatives were selected based on their proportionate internet usage. Each representative received a ballot that could be returned through email or text message. Southern Weekend’s web data shows that 350,000 participated in this year’s selection of the ten most influential cases. The final ranking was determined based on the following formula: Southern Weekend’s online votes were weighted 0.6, China’s Most Influential Cases’ online votes were weighted 0.2, and written votes were weighted 0.2. The results were integrated and the cases were ranked from highest to lowest; the top ten are The Ten Most Influential Cases that Changed China in 2009.

I. “HIDE AND SEEK”

A. Details of the Case

Twenty-four-year-old Li Qiaoming died an odd death while in a detention center. The Public Security organs explained that the cause of death was that he had been playing the game “hide and seek” with other inmates. Countless citizens questioned the validity of this explanation. Afterward, an investigation revealed that other inmates had intentionally beaten Li Qiaoming to death. Kunming’s Intermediate Court sentenced the “prison bullies” to life and definite term sentences. The Songming County

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Court found the detention center’s civil policeman, Li Mou, guilty of neglecting his duty and mistreating a prisoner.

B. The Influence of the Case: Who Will Watch Over the Detention Centers?

“Hide and seek,” is a simple game of child-like innocence, but when played in a violent environment such as a detention center, the game can turn deadly and be used as a method to cover-up the truth. Claiming the injuries came from a game of hide and seek rather than from a beating defies common sense. This incident reminds one that detention centers must be watched over. This incident exposed problems within the prison system such as bullying, inadequate management, and lax supervision, which provoked great public concern and reflection. The incident also directly led to a series of reforms in the administration of justice.

C. Comment by Mao Yushi (Noted Economist, Head of the Tianze Economic Research Institute): This Case Should Be Entered into the Book of Absurd World Records

A young person in custody died inexplicably. The police offered the explanation that he was killed while playing “hide and seek,” which was so extremely unbelievable that the phrase “hide and seek” became 2009’s most popular phrase. This type of incident is not restricted to China and should be entered in the book of absurd world records. There have been many similar incidents in which officials have abused their positions. These officials have no fear of whether others will believe them or of becoming the butt of jokes. As long as they lack principles, they will continue making irresponsible remarks, regardless of face. Such officials ultimately will lose public confidence, which can only lead to a dead end.

II. The Open Chest Lung Examination Labor Arbitration Case

A. Details of the Case

Beginning in 2004, Zhang Haichao, a farmer, began working in Henan’s Xinmi City doing odd jobs including crushing rocks, operating a press, and other hazardous types of work. Later, hospital tests diagnosed him with pneumoconiosis, but the Zhengzhou City Occupational Disease Prevention and Treatment Office diagnosed him with tuberculosis. To prove his occupational pneumoconiosis, Zhang Haichao paid for his own “open chest lung examination.” The Office then changed its previous diagnosis to “stage three pneumoconiosis.” Zhang Haichao applied for labor arbitration, and after mediation, Zhang received 610,000 RMB$^2$ in compensation.

$^2$ Roughly 92,000 USD.
B. The Influence of the Case: Critical for the Defense of Physical Rights

The “Open Chest Lung Examination” case is 2009’s version 1.0 for using one’s own body to protect one’s rights. Zhang Haichao underwent serious self-inflicted physical harm to gather medical evidence for a labor arbitration proceeding. This citizen was not seeking bitterness or behaving masochistically; he had no other choice. Fair arbitration came only after his astounding act aroused media attention. The phrase “open chest lung examination” has become a common saying to warn the world: when China is proud of being the world’s factory, does China’s system for ensuring laborer’s rights and benefits and its mechanism for protecting rights willingly and sincerely open the doors and welcome laborers?

C. Comment by Xu Youyu (Researcher in China’s Academy of Social Sciences Institute of Philosophy): This Brings to Mind the Old Story of Bi Gan Cutting Out His Own Heart

It is said that to prove his loyalty to King Zhou of the ancient Shang Dynasty, Bi Gan cut out his own heart and died. That ancient folk story can be used to criticize a tyrant. It is hard to imagine that in China today, such an “open chest lung examination” would actually happen. In my fit of anger, I want Zhang Haichao’s boss, along with the staff from the Occupational Disease Prevention and Treatment Office, to also open up their chests and allow us take a look at their black hearts and rotten lungs.

III. TANG FUZHEN’S “VIOLENT RESISTANCE AGAINST THE LAW”

A. Details of the Case

Unsatisfied with the amount of demolition and relocation compensation she had received, and unwilling to accept the Urban Management Law Enforcement Bureau’s demolition deadline, Tang Fuzhen doused her body in gasoline and set herself on fire. Attempts to rescue her were in vain, and she died. The Chengdu Jinniu District Urban Management Law Enforcement Bureau proceeded with completing the demolition and relocation that same day. The Jinniu District Public Security Sub-bureau detained seven relatives from the Tang and Hu families, who were suspected of being involved in the incident.

B. The Influence of the Case: The Extreme Tragedy of Relocation and Demolition “Regulations”

Tang Fuzhen’s case was 2009’s version 2.0 for using one’s own body to protect one’s rights. This was the world’s latest version of a citizen’s defense of their rights. Tang Fuzhen chose to destroy her own body to defend her rights, believing that making this sacrifice would cause those living to rally for her rights. This raging inferno led to a chorus of legal scholars clamoring for the “demolition and eviction of the ‘Demolition and Eviction Regulations.’” Soon after, five scholars from Beijing University offered a proposal to amend the law, and the State
Council’s Legal Affairs Office enthusiastically responded. The public began comparing Tang Fuzhen with Sun Zhigang.\(^3\) Comparing these two cases, however, is not intended to be a hymn in praise of legislation, but rather raises a question: why were the laws so clearly inadequate; why were they not amended before the tragedies occurred?\(^4\)

C. Comment by He Weifang (Beijing University School of Law Professor): The Root Cause is the Monopoly Over Land Rights

The Tang Fuzhen tragedy shocked the world. If the root cause of this problem is not resolved, similar tragedies will certainly continue to unfold. Disputes over property condemnation, building demolition, and eviction stem from the deeply rooted national land rights monopoly. Because of this monopoly, the negotiating capabilities of the owner and user are weak, and compensation standards lack a fair market value basis. The land rights monopoly also leads to widespread short-term thinking in housing construction, which prevents urban construction from getting on the right track toward natural growth. Moreover, in this case, the administration of justice was biased, which exacerbated the problem. If the courts had been a fair platform for restricting power and protecting the rights of the people, Tang Fuzhen would not have had to confront the government’s violence or chosen to set herself on fire. The legal system has never fundamentally understood the broad preventative function of the just administration of the justice system, thus it is unavoidable that people simply wring their hands and sigh when the system fails in this capacity.

D. Comment by Jiang Yiping (Well-known Journalist): A Kind of Expectation Not Without Cruel Overtones

Tang Fuzhen’s desperate act, sacrificing her life in defense of private property, reflects common citizens’ helplessness and hopelessness in seeking private property rights. Even the Constitution and the Property Law, which state that “legitimate private property cannot suffer infringement,” fail to properly control the regulations dealing with demolition and eviction. Government regulations, rather, have deprived property rights. Tang Fuzhen’s death made many people think of Sun Zhigang. And, after five Beijing University Scholars petitioned the National People’s Congress, the public expected more than ever that this tragedy would bring about the end of an evil law. This is an expectation

\(^3\) Sun Zhigang died in 2003. He had been mistakenly taken into custody, and, while in custody, was beaten to death by other inmates. The inmates involved, as well as the staff in charge of the facility, were punished. Later, the State Council issued new regulations aimed at avoiding similar false arrests.

\(^4\) Forced demolition and eviction continues to cause injuries and deaths throughout China. This is a matter of great concern for the central government. The State Council issued China’s most recent regulations addressing citizen concerns about demolition and eviction in late 2010.
not without cruel implications: it could cost a human life to bring further progress to the rule of law. By turning this expectation into reality through enforcing the true laws of the country, restricting government authority, and protecting private rights, we can show our respect to those who have lost their lives.

IV. Deng Yujiao’s Case

A. Details of the Case

Deng Yujiao, a female service staff person in the Yesan’guan Hotel in Hubei Province’s Badong County, stabbed Deng Guida, the Director of an Investment Office, with a fruit knife because she would not offer bathing services to him – someone of the opposite sex. Badong County’s Public Security Bureau detained Deng Yujiao as a suspect for intentional murder. The case aroused a flurry of internet discussion, which transformed this common criminal case into one of 2009’s most significant public incidents. The court ultimately found Deng Yujiao guilty of intentional assault, but exempted her from criminal punishment.

B. The Influence of the Case: From a Common Criminal Case to the Largest Public Incident

If this case were not dealing with “an official and a female service staff person” with great differences in relative power and social backgrounds, Deng Yujiao’s case would have been a common criminal case. Nevertheless, because of these circumstances, this common criminal case boiled over into a sensational national public incident. The fact that Deng Yujiao received a “guilty but no punishment” verdict was a result of the important roles played by public concern and public opinion as well as the exceptional response of law enforcement agencies. By balancing public opinion and reason, the judiciary has strived to use good law and good governance to resolve the grievances of the weak, which reflects judiciary enlightenment and reflection.

C. Comment by “Linghu Buchong” (Web Commentator): A Eulogy for Mankind

As soon as Deng Yujiao’s case circulated on the web, she became legendary—like a sudden storm rising over rivers and lakes. Young Deng Yuqiao was suddenly referred to as a “Virtuous Woman” and a “Heroic Woman” across the country. A “Virtuous Woman” is firm in the face of violent repression and would rather die than yield. Unfortunately, these ancient indelible impressions are hard to dispel. A “Heroic Woman” relies on martial arts to punish adulterers and get rid of evil, but real life is not a

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5 “Rivers and lakes” is an allusion to a genre of Chinese literature, similar to the Robin Hood stories in the West, featuring righteous, chivalrous swordsmen and heroic women.
fantasy. These nicknames are unfitting for a weak girl. Deng Yujiao lives in the present; she is young and beautiful, but her position in life is quite low. She earns her livelihood as a service staff person in a bath house. She was targeted by a predator to have sex. She could not bear to do this, so she used a knife on the perpetrator. On the web, Yesan’guan Township was likened to lands of heroes and heroines and it became a magical place about which distinguished people from all over could give their opinions. On and off the web, people interacted with civility, and, as a direct result, the law was merciful. The weak girl, Deng Yujiao, avoided a criminal sentence and was set free. Only then did the storm abate. The case of Deng Yujiao looks like it may well be that the “righteous way of the rivers and lakes” will be upheld. There may be rivers and lakes in this world, but, in reality, there are no chivalrous swordsmen. Thus, this result is all the more a victory for justice, an accomplishment for the law, and a eulogy for mankind.

V. “ENTRAPMENT”

A. Details of the Case

Shanghai resident Zhang Hui picked up a pedestrian when he was driving. The Minhang District Traffic Administration Law Enforcement Division detained and fined him for operating a taxi without a taxi license. This case sparked nationwide controversy over the practice of “entrapment.” Zhang Hui filed an administrative lawsuit with the Minhang District Court seeking revocation of the administrative fine. The court ruled that the accused agency’s fine was illegal.

B. The Influence of the Case

At the time, Shanghai was in the midst of two major endeavors. One was establishing an international financial center and a shipping center. The second was preparing for the 2010 World Expo. These two endeavors required the highest degree of the rule of law; not merely the perfecting of the commercial laws, but also carrying out and applying the law with justice and transparency in a civilized manner. Without achieving this, how could Shanghai bid to host a civilized exposition? Zhang Hui ultimately obtained a just ruling in his “entrapment” case. But, this is a random victory; it is still just the beginning of a wave of justice that ultimately will depend on how deeply this “entrapment” organization reflects on its wrongdoing and makes improvements.

C. Comment by Zhang Ming (Political Scientist at Peoples’ University):

This is No Different Than a Scam Set Up by Gangsters

Entrapment, in form, is a kind of deception. In essence, there is little to distinguish it from a gang’s swindle. In this specific case, the so-called entrapment takes advantage of the entrapped person’s benevolence. Even gangsters express contempt for this type of scam. This kind of law
enforcement, however, actually reflects government expansion into department activities. The entrapment department in this case is the so-called Municipal Management Traffic Enforcement Unit. In fact, it is illegal for Municipal Management to manage traffic. For this kind of organization to survive, it must be able to support its staff. Staff requires support and support requires revenue. In order to get revenue, Municipal Management must draw on the government’s authority. Regardless of whether this authority is legal, if they have the tacit support of higher-ups, they can continue their operations. Ultimately, in order to ensure their revenue, they must engage in entrapment.

VI. LINGBAO, HENAN’S “CROSS-PROVINCE ARREST”

A. Details of the Case

Wang Shuai, who was working in Shanghai, phoned the national land departments of Henan Province, Sanmenxia, and Lingbao City to report that the government in his hometown, Lingbao, Henan, had illegally expropriated a large piece of arable land in Nanyang Village, located in Dawang Township. But his efforts were to no avail. In February 2009, he posted a series of photographs titled “Lingbao, Henan Peasants’ Unique Way of Fighting Drought,” insinuating that the local government illegally took over the land. This aroused web attention to the case. Afterward, he was detained by local Public Security officers who had come to Shanghai from Henan Province to detain him on suspicion of slandering and smearing the government because he said the government’s efforts to fight the drought were ineffective. After eight days of detainment, the police declared the evidence insufficient and released Wang Shuai on bail. The case gave rise to a sizeable amount of public attention and opinion. The term “cross-province pursuit” became the year’s hot phrase. In the end, the Lingbao City government apologized to Wang Shuai and gave him 780 RMB\(^6\) as compensation.

B. The Influence of the Case: The Legal Limits of Freedom of Expression

One posting calls for eight days confinement. Accusing Wang Shuai of a crime because of his speech is not a way to win over the people through the law. Web Friends denounced the Lingbao, Henan municipal Public Security Bureau’s cross-province pursuit for “implementing the law just like a private citizen would vent his anger.” The Constitution provides that citizens have the right to offer criticism and advice to any government organ or government worker. And yet, because a citizen used an internet post to exercise this right, he was immediately taken into custody. Our reflection is this: where is the line between criticism and slander? How should the government handle citizens’ criticism and queries?

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\(^6\) Roughly 118 USD.
C. Comment by Yi Zhongtian (Xiamen University History Professor): Calling Out the Name “Magical Piece of Jade”

The transformation of the Henan officials and police from “cross-provincial pursuit” to “public apology” has brought about a step forward in establishing our country’s rule of law. However, this is only “the first step in a long journey.” There are three issues still to be discussed. First, according to the penal code, slander is a matter for “private prosecution.” Only citizens have this “private right to prosecute”; how can a governmental entity do this? Second, if the government can use this crime to file suit against citizens whenever it wants, how will those citizens realize their rights to know, participate, express, and supervise the government? Third, when citizens exercise the aforementioned rights, they cannot guarantee that everything they say is “accurate and without error.” What guarantee is there that citizens will not be “prosecuted for their words”? It would appear that the “right of freedom of speech” bestowed on a citizen by the Constitution still needs real protection. This case that happened in Lingbao thus is called a “magical piece of jade.”

VII. Hangzhou’s “Speeding Car”

A. Details of the Case

In May 2009, Hu Bin crashed his car into Tan Zhuo, a twenty-five-year-old Zhejiang University graduate student, when she was crossing the street and sent her flying through the air. As a result, she died at the scene. The initial police investigation determined that the car was moving only seventy kilometers per hour. There were no details whether the car had been modified or whether the decedent was walking in a marked crosswalk. This initial report set off mass criticism, and later an expert determined that Hu Bin’s car actually had been moving between 84 and 101 kilometers per hour. Pressured by public opinion, the Hangzhou municipal government publicly apologized for the seventy kilometers per hour statement. The court in Hangzhou’s West Lake District sentenced Hu Bin to a fixed term of three years imprisonment.

B. The Influence of the Case: Crimes by Rich Kids

The perpetrator, Hu Bin, was criminally detained on suspicion of the crime of causing a traffic accident and faced a three-year prison term,

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7 This is from the famous eighteenth century Chinese novel, A Dream of Red Mansions (红楼梦). The main character, Jia Baoyu, was born with this piece of jade in his mouth. See generally CAO XUEQIN, A DREAM OF RED MANSIONS (Yang Xianyi & Gladys Yang trans., 2001). The name of the city in this case, Lingbao, is the same two characters as the two middle characters in the phrase “magical piece of jade.”

8 Approximately forty-four miles per hour.

9 Approximately fifty-two to sixty-three miles per hour.
but it was difficult to quell the peoples’ outrage. Speeding is a far cry from a normal traffic accident and a much greater threat to public safety. Some experts say the criminal nature of a speeding car is “indifference to the safety of unspecified members of the public.” This case points out a blind spot in the law: how to use criminal rules and regulation to control speeders. At the same time, the traffic and police organs’ mistaken initial investigation pronouncement that the car was moving only seventy kilometers per hour initiated deep reflection—how can investigating and handling accidents involving especially serious circumstances and great social impact be more open and just?

C. Comment by Zhang Ping (Media Personality): Not Being Labeled Will Not Lead to Justice

People have innocently given the Hangzhou speeding-car case a number of labels. I always strive to consider things as they appear to be, and to not expand public opinion or randomly assign labels. And yet, without these labels, this incident could not have become a publicly known incident arousing such anger and broad attention, both of which led to such strong pressure from public opinion. The incident would have simply been “treated as it appeared to be” and, in the hands of the traffic police, it would have been handled as a seventy kilometers per hour case. Therein lies the tragedy: even though an innocent life was taken away, the case was not taken seriously, and moreover it might not have been handled fairly. It still needed to have enough labels put on it to arouse the citizens’ anger to draw criticism of the Mayor by his superiors. Only then could the case find the path toward fairness.

VIII. THE THEFT OF LUO CAIXIA’S IDENTITY

A. Details of the Case

In March 2009, Tianjin Normal University student Luo Caixia, when signing up for online banking services, unexpectedly discovered that her high school classmate, Wang Jiajun, had stolen her identity back when they were both taking the national university entrance exam. Clueless as to why she had done poorly on the examination, she had to study an extra year before taking the examination again. After finding out, Luo Caixia applied to file a civil lawsuit\(^\text{10}\) for name and education rights infringement in the Tianjin’s Xiqing District Court. She was trying to sue seven institutions and individuals, including Wang Jiajun, Wang Zhengrong (Wangs’ father\(^\text{11}\)), and Guizhou University. Her application was rejected three times and still has not reached a resolution.

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\(^{10}\) Before filing a civil lawsuit in China, one must first apply to the court for permission. If the court approves the application, the lawsuit is then formally filed.

\(^{11}\) It was the father, a local official, who allegedly arranged for the identity switch to ensure his daughter’s admission to a good university.
B. The Influence of the Case: Making Peace between Rights and the System for Recruiting Students

How can such a heavily fortified system be repeatedly and easily broken into? First Qi Yuling,12 and now Luo Caixia—why can’t identity theft be stopped? Because of this case, high schools nationwide have opened investigations into students suspected of identity theft in college admissions. But, with corruption so widespread, how can a one-off investigation keep identity theft in check?

C. Comment by “Shinian Kanchai” (Commentator): An Injury Worse than Bloodshed

At first, Luo Caixia merely posted her story on the web, recounting her encounter with her classmate Wang Jiajun who stole her identity to go to college. But, despite countless postings, the traditional media did not show any interest. Afterwards, she said that she contacted a number of newspaper offices. Some did not think this was such a big deal. Others sent out reporters to investigate, but nothing came of it. Afterwards, I suggested that a friend at Zhongjing newspaper investigate the matter, and he became the first traditional media reporter to expose the situation. It is not strange that this matter created such a stir; too many people nowadays suffer from the malady of being anxious about fairness. From the perspective this actual injury’s impact, we can say that this was not as bad as a mining disaster, self-immolation, or the terribleness of open chest surgery. Luo did manage to make it into Tianjin Normal University after studying again for the annual entrance exam. However, on the contrary, the side-effect of damage to the fairness system is perhaps worse than bloodshed. The lives of poor people’s children are not easy. Compared to rich people’s children or officials’ children, poor children are totally disadvantaged when it comes to accessing social resources. But the national college entrance exam is an important system that could allow them to change their unfortunate situations and that could advance social justice. Yet Luo Caixia was so offhandedly trampled upon. What happened to Luo Caixia was a blow to all of society’s conscience. How can one say that what happened to her was not excessive?

IX. THE LI ZHUANG CASE

At the end of 2009, Li Zhuang, a criminal defense lawyer in the Chongqing gang case, was suddenly informed on by his client, Gong Gangmo. The Chongqing police immediately detained him. The procuratorate quickly arrested and charged him, and, on January 8, 2010, Chongqing’s Jiangbei District Court announced its verdict that he was guilty of fabricating and destroying evidence and sentenced him to a fixed term of two-and-a-half years in prison. The Li Zhuang case, which came

12 An earlier case of identity theft.
about suddenly in the middle of the storm of Chongqing’s gang-busting campaign, became a vantage point for observing the administration of justice in China because it was the result of the deep interactive relationships between four agencies (the Public Security Bureau, the Procuratorate, the courts, and the Ministry of Justice).

A. The Influence of the Case: A Criminal Defense Lawyer’s Guilt or Innocence

The verdict in the Li Zhuang case will become a memorable historic moment. The result of a criminal defense lawyer being informed on by a gang suspect and subsequently being conviction will necessarily result in the unintended weakening of the protective screen of rights and justice. The core issue here is not the determination of the nature of Li Zhuang’s actions, but rather how the nature of Li Zhuang’s actions was determined. This evaluation is not meant to exclude questioning this lawyer’s immorality and wrongdoing, but rather it stresses that organs of justice cannot have the same prejudice against the right to criminal defense as the general masses have. A former head of the Supreme People’s Court, Xie Juezai, once said, when the spirit of the “Great Leap Forward”13 was influencing the court, “[i]mprovement in the quality of the handling of cases means that cases must be handled with even more accuracy, practicality, and meticulousness.”

B. Comment by Liang Wendao (Columnist): The Fragility of Our Rule of Law Culture

The Li Zhuang case itself can be criticized on its own, but the variety of discussions that have unfolded around it also merit attention.14 A number of people on the internet believe that the important issue is not whether Li Zhuang was suspected of eliciting perjury, nor whether the legal system in this case was just or not, but rather whether the “gang-busting” campaign is correct or not. Also, authorities had early on determined that the defendants in Chongqing’s “gang-busting” campaign were bad people and that, therefore, it was unnecessary to have a trial on what had already been

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13 The Great Leap Forward took place between 1958 and 1961. It was an attempt to rapidly transform China from a primarily agrarian economy to a modern communist society through agriculturalization, industrialization, and collectivization. It was abandoned as a failure in 1961. During the course of the program, many of those who criticized the program were persecuted. See generally Great Leap Forward, WIKIPEDIA., http://en.wikipedia.org/wiki/Great_Leap_Forward (last visited March 5, 2011); William Harms, China’s Great Leap Forward, UNIV. OF CHICAGO CHRONICLE, Mar. 14, 1996, available at http://chronicle.uchicago.edu/960314/china.shtml.

14 There were at least two differing interpretations of the events by commentators at the time. One interpretation was that the criminal defense lawyer was, in fact, guilty. Another interpretation was that this was yet another move by the government against criminal defense lawyers and a criminal defendant’s right to a defense in a criminal trial.
decided – that they were criminals. Because they were bad people, the defense lawyer running to defend them, of course, is also an issue; if he was not there to make money, then he was there to promote himself. Also, because the “gang-busting” campaign made the people quite happy, any small questionable actions taken during the process were unimportant. As such, the Li Zhuang case and even the public opinion that arose out of it are good examples that will cause people to understand just how fragile our culture of rule of law is.

X. AMENDING THE SENTENCE FOR “PROVISIONAL RAPE”

A. Details of the Case

In June 2009, two security personnel from the Zhejiang Province, Huzhou City, Nanxun District, Shanlian Township Consolidated Administrative Police Assistants Association, surnamed Qiu and Cai, raped two women in a hotel room. The Huzhou City Nanxun District Court considered the case a “provisional kind of spontaneous crime,” tried them separately, and sentenced each to set terms of three years imprisonment. After the case was reported, it garnered widespread attention. The use of the term “provisional, spontaneous crime” left Web Friends collectively dissatisfied. On retrial, the Huzhou City Intermediate Court sentenced Qiu and Cai to eleven years and eleven-and-a-half years imprisonment, respectively, for their rape convictions.

B. The Influence of the Case: Ad Hoc Court Decisions

The standardized nature of the law and the diversity of given cases means that the courts must have a definite freedom of discretion, but a judge’s judicial discretionary freedom is not freedom to do as the judge pleases without limits. “When two defendants rape the same woman at the same time, one after the other, that conduct is called gang-rape.” This fact and the nature of the case are not something that judicial discretionary freedom can change. “Spontaneous intent” is one form of criminal intent and is only one circumstance to be considered in measuring the degree of the crime. It should not be used as an excuse to indulge criminals. The Huzhou City Intermediate Court’s amended sentence fully demonstrates these two points.

C. Comment by Wuyue Sanren (Web Commentator): Police Assistants are the Grandsons of the Law

If something is unpremeditated, then just call it unpremeditated and be done with it. If you hoist up the formal looking phrase “provisional kind of spontaneous rape,” don’t blame other people if they think that this phrase should become popular. If you look like a steamed bun, do not blame the dog for chasing you. However, you should pay attention to the fact that when the offender is a police assistant, the offender is no ordinary hoodlum. Although there are often people who violate the law even though
they know it is illegal, in the end, the police are considered the sons of the law, and police assistants are the law’s grandsons, aren’t they? The light sentence from the court of first instance could easily make people doubt that “provisional” would really come into vogue. However, at the review by the higher court, “provisional” might have become “permanent.” Had that happened, our respect for the law would have become this “permanent rape’s” ultimate victim.