

“THE ELEPHANT IN THE ROOM” AND “THE TOOTHLESS
WATCHDOG”: THE POLICE-PROSECUTORIAL DYNAMICS IN THE
PRETRIAL DETENTION PRACTICE OF A CHINESE CITY

A THESIS
SUBMITTED TO THE
STANFORD PROGRAM IN INTERNATIONAL LEGAL STUDIES
AT THE STANFORD LAW SCHOOL,
STANFORD UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
MASTER OF THE SCIENCE OF LAW

By
Liang Tang
May 2005

ABSTRACT

Over the past five years, China's numerous campaigns against illegal detentions have all failed. The detention rate is unreasonably high, and the prosecutor's supervisory function is far from satisfactory in practice. This empirical study was conducted in a middle sized Chinese city, based on the case files and statistics in 2001 and observations and interviews in 2002. The purpose of this research is to seize the academic void by demonstrating the critical element of the constant failure of the detention reforms: the distorted police-prosecutorial relationship in practice. The law theoretically creates a structural balance between police and prosecutors for the detention system, based on their mutual reliance. Nonetheless, the outside interference breaks the balance, including the administrative power of the police and the influences from the political authority. As a result, the prosecutor has become a "toothless watchdog" that can not effectively control the police misconducts, though it is vested in ultimate authority to supervise the police investigation. In contrast, like "the elephant in the room," the police maintain actual predominance in the detention practice. This disparity between the "law in books" and the "law in action" is a result of inter-departmental competition of different interests in the system. The competition of organizational or sectional interests generates various forces (internal and external) that simultaneously support or limit the abuse of detention. Those forces interact with each other and change the ecology of criminal justice. In response to the political dynamics, police and prosecutors developed a "sliding scale" working relationship, formally and informally, beyond the legislative purpose and the institutional design. A comprehensive understanding of the political dynamics in the criminal justice system is fundamental to make further criminal policies and implement detention reforms.

Table of Contents

INTRODUCTION	5
PART ONE: SETTINGS OF STUDY	7
Chapter 1: Contexts.....	7
<i>Social Movements</i>	<i>7</i>
<i>Proceedings: Laws and Operations.....</i>	<i>7</i>
Chapter 2: Methodologies and Locality.....	15
<i>Methodologies.....</i>	<i>15</i>
<i>Representativeness and Objectiveness.....</i>	<i>17</i>
<i>Demographic Background.....</i>	<i>19</i>
PART TWO: POLICE	22
Chapter 3: Proportionality of Police Arrests	22
<i>Police Arrest Rates</i>	<i>22</i>
<i>Dispositions of Arrests.....</i>	<i>24</i>
<i>The Length of Detention.....</i>	<i>28</i>
Chapter 4: Causes for Detention Abuse	33
<i>Difficulties in Police Investigation.....</i>	<i>33</i>
<i>Community Security and Police Image.....</i>	<i>36</i>
<i>Economic Interests in Bail Bonds Forfeiture.....</i>	<i>37</i>
Chapter 5: Constraints on Illegal Detentions.....	39
<i>Outside Checks and Balances.....</i>	<i>39</i>
<i>Police Internal Inspections</i>	<i>41</i>
<i>Cross-Sectional Limits.....</i>	<i>44</i>
PART THREE: PROSECUTOR	45
Chapter 6: Investigation and Prosecution.....	46
<i>Prosecutorial Investigation.....</i>	<i>46</i>
<i>Prosecution Review.....</i>	<i>47</i>

Chapter 7: Detention Warrant	50
<i>Warrant Approval Rate.....</i>	<i>50</i>
<i>Considerations in Decision Making</i>	<i>51</i>
PART FOUR: POLICE PROSECUTORIAL RELATION	57
Chapter 8: The Inter-Departmental Dynamics.....	57
<i>Formal Supervision.....</i>	<i>57</i>
<i>Informal Interaction.....</i>	<i>60</i>
Chapter 9: Political Influences	62
<i>Individual Case Review.....</i>	<i>63</i>
<i>Quota Mandate and Inspection.....</i>	<i>64</i>
<i>Non-Law Engagements</i>	<i>66</i>
CONCLUSION	67
APPENDIX.....	71
BIBLIOGRAPHY	72