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**SUING THE LOCAL STATE:  
ADMINISTRATIVE LITIGATION IN RURAL CHINA\***

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The promulgation of the Administrative Litigation Law (ALL) in 1989 was hailed in China as a "milestone of democratic and legal construction".<sup>1</sup> Hopeful observers anticipated that the law, by empowering citizens to dispute unlawful administrative acts, would curb official misconduct. However, more than a decade after the ALL came into force, the best evidence suggests that its deterrent effect has been modest. While the number of cases has grown (see Table 1 at the end of the paper) and about two-fifths of these reportedly result in some form of relief,<sup>2</sup> the law's implementation has been hounded by interference and feigned

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<sup>1</sup> See *Renmin ribao* (People's Daily), 10 April 1989, p. 1; also Yang Haikun, "Baituo xingzheng susong zhidu kunjing de chulu" (The Way Out of the Difficult Situation in the Administrative Litigation System), *Zhongguo faxue* (Chinese Legal Science), No. 3 (June 1994), p. 51; Minxin Pei, "Citizens v. Mandarins: Administrative Litigation in China", *China Quarterly*, No. 152 (December 1997), p. 835.

<sup>2</sup> Randall Peerenboom, "Globalization, Path Dependency and the Limits of Law: Administrative Law Reform and Rule of Law in the People's Republic of China", *Berkeley Journal of International Law*, Vol. 19, No. 2 (2001), p. 217; Pei, "Citizens v. Mandarins", pp. 843-4. On doubts about the representativeness of Pei's sample, however, see Stanley B. Lubman, *Bird in a Cage: Legal Reform in China after Mao* (Stanford: Stanford University

compliance.<sup>3</sup> To this day, the law is widely regarded as a “frail weapon” that has not greatly reduced administrative arbitrariness.<sup>4</sup>

The ALL’s effect has been especially problematic in the countryside, where many local officials continue to mistreat villagers in egregiously illegal ways. Litigating is expensive, getting a case accepted is difficult, and long delays are common. Even when rural complainants manage to win a suit, they often face retaliation or uncertain enforcement. Many villagers have understandably concluded that it is futile or even dangerous to contest unfair administrative decisions or unjust sanctions.<sup>5</sup> In a 1999–2001 survey in Fujian, Jiangsu and Jiangxi, for instance, only 9 per cent of 1,368 respondents said they would consider filing an administrative lawsuit if they discovered that their township government had made a decision contrary to central policies and regulations.<sup>6</sup>

Still, despite a widespread belief that suing the powerful is like “throwing an egg against a stone”,<sup>7</sup> hundreds of thousands of rural people have used the ALL to challenge acts by county and township governments, Public Security Bureaus, industrial and commercial departments, cultural, environmental and public hygiene agencies and Civil Affairs Bureaus. Charges commonly involve the grievances of individual villagers (such as detention, land confiscation or home

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Press, 1999), p. 210. Statistics concerning redress hinge on the interpretation of withdrawn cases, some of which undoubtedly result from intimidation rather than negotiation. That said, the likelihood of plaintiffs prevailing, even if considerably lower than 40 per cent, compares favourably with rates in the United States (12 per cent) and Taiwan and Japan (4–8 per cent). See Randall Peerenboom, *China's Long March Toward Rule of Law* (Cambridge: Cambridge University Press, 2002), p. 400.

<sup>3</sup> On obstacles to implementation, see Veron Mei-Ying Hung, “Administrative Litigation and Court Reform in the People’s Republic of China”, Ph.D. dissertation, Stanford Law School, June 2001; Jianfu Chen, *Chinese Law: Towards an Understanding of Chinese Law, Its Nature and Development* (The Hague: Kluwer Law International, 1999), pp. 155–6.

<sup>4</sup> For the quoted text, see Lubman, *Bird in a Cage*, p. 209; also Hung, “Administrative Litigation”, pp. 273–4, 329; Robyn Marshall, “Administrative Law in the People’s Republic of China: A Process of Justice”, Ph.D. dissertation, Australian National University, 2003, pp. 253, 259. Assessments that highlight achievements include Peerenboom, “Globalization, Path Dependency”, pp. 161–264; Pei, “Citizens v. Mandarins”, pp. 832–62.

<sup>5</sup> On people who dare not sue, are not willing to sue, or do not know how to sue, see Hung, “Administrative Litigation”, pp. 129–59.

<sup>6</sup> For more on the sampling in this survey, see Lianjiang Li, “Political Trust in Rural China”, *Modern China*, forthcoming. A survey of 745 villagers in Shanxi also showed that about 10 per cent of the respondents would consider “seeking assistance from a lawyer or the court” if they had a conflict with a government agency. Shi Qinghua and Chen Kai, “Xian jieduan nongmin falü yishi fenxi” (An Analysis of Legal Consciousness of Today’s Farmers), *Zhongguo nongcun guancha* (Rural China Surveys), No. 2 (March 2002), p. 73.

<sup>7</sup> Susan Finder, “Like Throwing an Egg Against a Stone? Administrative Litigation in the People’s Republic of China”, *Journal of Chinese Law*, Vol. 3, No. 1 (Summer 1989), pp. 10, 28.

demolition), as well as decisions that affect many people (such as increasing fees, closing village clinics, selling fake seed or selling off village land). While many suits are filed by individuals, others are organized efforts that involve hundreds, thousands, or even ten thousand plaintiffs.<sup>8</sup> These suits, particularly collective ones, are often preceded, accompanied or followed by non-judicial mass action, such as joint letter-writing, sending delegations to government compounds or media outlets, and group appeals to Party authorities or People's Congresses.<sup>9</sup>

That some villagers find the ALL to be a useful if imperfect tool to combat official malfeasance suggests that state-society relations in rural China can be fruitfully explored by examining the dynamics of administrative litigation. The cases recounted below cannot be said to be representative, but are illustrative of the problems that many plaintiffs encounter. They were chosen mainly to shed light on questions such as: what tactics do litigants and their targets employ both in and out of court? How have villagers fared in their struggles with local officials? What can the emerging set of practices surrounding the ALL tell us about the relationship between law and politics in contemporary China?

### Dynamics of Administrative Litigation: Gaining Access to Court

Although there is evidence that Chinese officials have become somewhat more accepting of being sued,<sup>10</sup> local officials generally do not welcome legal

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<sup>8</sup> On two-thirds of the villagers in a Shaanxi township joining an administrative suit concerning excessive fees, see Thomas P. Bernstein and Xiaobo Lü, *Taxation Without Representation in Contemporary Rural China* (New York: Cambridge University Press, 2003), pp. 193-5. Benjamin Liebman, "Class Action Litigation in China", *Harvard Law Review*, Vol. 111, No. 6 (April 1998), pp. 1523-41, mainly discusses multiparty suits filed under the Civil Procedure Law, though he notes (pp. 1530-1) that rural plaintiffs have also filed similar suits under the ALL.

<sup>9</sup> On lawsuits being a last resort when all else has failed and grievances are grave, see Hung, "Administrative Litigation", pp. 132-3. On a long-simmering water dispute, in which non-judicial forms of pressure set the stage for a collective suit, see Zhang Heping and Zong Xuan, "Wenzhou nongmin gao dao buzouwei de xian zhengfu" (Farmers in Wenzhou Win a Lawsuit against County Government Inaction), *Minzhu yu fazhi* (Democracy and Legality), No. 7 (6 April 2001), pp. 11-13.

<sup>10</sup> 46 per cent of the officials who responded to a Hunan survey that was conducted among public security, commercial, hygiene, construction and government (*zhengfu*) agencies recalled that shortly after the law was enacted they had believed the law would decrease administrative efficiency. By 1996, only 5 per cent expressed this concern. Jiang Ming'an, *Zhongguo xingzheng fazhi fazhan jincheng diaocha baogao* (An Investigative Report of the Course of China's Administrative Legal Development) (Beijing: Falü Chubanshe, 1998), p. 348. Of course, this reduction may have occurred partly because officials concluded that the Law does not have teeth and was unlikely to affect them. The survey also assumed that respondents had been officials since the early 1990s and could accurately remember what they had thought then. It should be noted, too, that there have been "amazingly few [ALL]

challenges, and often do everything possible to preempt, derail or undermine administrative litigation. They sometimes even block the local populace's access to official documents and regulations. When a county government, for instance, began distributing some pamphlets and books, township leaders ordered that no materials related to legal education be made available because "as soon as ordinary people learn anything about the law then they become impossible to govern".<sup>11</sup> In Dangshan County, Anhui Province, when villagers went to a township to request central and provincial circulars regarding the tax-for-fee reform, township officials said that they had received no such documents and had only been notified orally. Actually, the Anhui Party Committee had instructed that all relevant materials, including "A Letter to Farmers" from the provincial government, a provincial circular and a tax card, be hand-delivered to every household.<sup>12</sup>

Local officials may even use the police to limit popular knowledge of laws and regulations that they deem "inflammatory". In Henan, for example, the Qixian County Public Security Bureau detained a man for 14 days in 1998 for "distorting facts, spreading rumours, and instigating disturbances" simply because he publicized a central decision concerning rural tax and fee burdens that he had read about in *Henan Daily*.<sup>13</sup> Sometimes more extreme measures are employed to keep villagers in the dark. In 2000, a journal editor in Jiangxi compiled a small book of laws, regulations and central policies regarding the countryside and agriculture. Fearing that publication of the book might spur resistance to illegal fees, Jiangxi's leaders ordered that every copy be confiscated and pulped. County and township officials, village cadres and the police were mobilized to carry out this directive. Among other acts, the police raided the home of one villager and detained another for 15 days for making the collection available to his neighbours.<sup>14</sup>

Partly owing to such strong-arm tactics, many villagers remain unaware of laws and policies that can work to their benefit, despite the nationwide campaign

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cases relative to the total number of specific administrative acts"; see Peerenboom, *China's Long March*, p. 404; also Hung, "Administrative Litigation", pp. 129-89.

<sup>11</sup> Chen Lumin, "Dou shi pufa re de huo" (The Disaster is All Due to the Legal Education Drive), *Minzhu yu fazhi*, No. 11 (6 June 2001), pp. 31-2.

<sup>12</sup> Zhang Cuiling, "Zenyang duidai zheli de nongmin shangfang—Anhui Chengzhuang shijian diaocha baogao" (How to Deal with Farmers Lodging Complaints—An Investigative Report on Anhui's Chengzhuang Incident), *Fazhi yu xinwen* (Legality and News), No. 1 (January 2002), p. 6.

<sup>13</sup> Ma Zhongdong, "Huan gei wo yige gongmin de quanli" (Return Me My Citizenship Rights), *Fazhi shijie* (Legal World), No. 1 (January 2000), pp. 36-7.

<sup>14</sup> See Wang Zhiquan, "WTO neng gei nongmin dailai shenmo" (What Can the WTO Bring Farmers?), *Fazhi shijie*, No. 4 (April 2002), p. 6; Yang Xuewu, "Ling ren tongxin de zaoyu" (Deplorable Mistreatment), *Nan feng chuang* (Window on the South Wind), No. 4 (April 2001), p. 39.

to increase popular legal awareness (*pufa*) that has been underway since the 1980s. A 1997–98 survey that we conducted in seven provinces (Anhui, Beijing, Fujian, Hebei, Jiangsu, Jiangxi and Shandong) showed that only a quarter of the 9,843 respondents knew that township and village fees must not exceed five per cent of the average village income. When asked in our survey about a ten-year-old law that enables villagers to elect grassroots cadres, only 3 per cent of the respondents said they understood it fairly well, 28 per cent said they knew something about it, and 70 per cent said they knew nothing at all about it.<sup>15</sup>

Aggrieved villagers have developed a number of techniques to circumvent information blockades. Some try to acquire legal texts and regulations through relatives who work in the government; others buy legal compendia in bookstores. Others may even hire lawyers. Local officials can do little to head off the first two tactics, but they sometimes try to stop lawyers from helping villagers file a lawsuit. They may warn local attorneys not to aid potential litigants, and they may work to discredit outsiders. In December 2000, because no local lawyer would assist them, villagers in Longnan County, Jiangxi Province, hired two attorneys from a neighbouring county to prepare a suit against the county for increasing rural taxes and fees. The Longnan County leadership responded by having the local TV station repeatedly broadcast a speech by a county leader, who labelled the two outsiders “illegal lawyers” (*bufa lüshi*), accused them of “coming to Longnan to disrupt social order and public security” and threatened to “subject them to severe legal punishment”. To defend themselves, the two lawyers finally felt they had no choice but to sue the county for slander.<sup>16</sup>

Despite such pressure, lawyers and legally savvy officials often play a critical role in the early stages of litigation.<sup>17</sup> In Anhui Province, for instance, an elderly villager was so panicked after county police and township officials rushed into his home looking for his son that he committed suicide. The son went to the provincial Legal Aid Center, where he found a lawyer who volunteered his time to sue the county Public Security Bureau for conducting a search without a warrant and who also paid the man’s court fees.<sup>18</sup> Similarly, the director of a county agricultural station played a crucial part in a large lawsuit in Lezhi

<sup>15</sup> On the extent to which the *pufa* campaign has aided villagers in learning about laws, the results were: 23 per cent “very helpful”; 53 per cent “a little helpful”; 7 per cent “not helpful”; 17 per cent “there is no such campaign in my village”.

<sup>16</sup> Wang Zhiquan, “WTO neng gei nongmin dalai shenmo”, p. 6. On lawyers who have been detained for helping villagers lodge complaints, see Hung, “Administrative Litigation”, pp. 158–9.

<sup>17</sup> In one survey, having a good lawyer was rated as a very important determinant of success by 83 per cent of ALL plaintiffs (Jiang Ming’an, *Zhongguo xingzheng fazhi*, p. 430). It is sometimes difficult to obtain legal representation because there is limited monetary reward in handling most ALL cases; see Marshall, “Administrative Law”, p. 212.

<sup>18</sup> Zhu Xiaokai and Chu Jie, “Nongjia han zhuanggao gonganju” (A Farmer Sues the Public Security Bureau), *Fazhi daokan* (Legal Guide), No. 11 (November 2000), pp. 4–6.

County, Sichuan. He informed a villager who complained to him of excessive fees about the five per cent limit set by a 1991 State Council Regulation, gave him a copy of Sichuan's *Regulations Concerning Farmers' Burdens* and advised him that the fees were legally actionable. The villager returned home and began organizing a collective lawsuit.<sup>19</sup>

The toughest battle most litigants face is persuading a court to accept a case.<sup>20</sup> To start with, there are a number of restrictions on whom villagers can sue. They cannot sue any Party Committee or secretary, because the Party is not subject to administrative litigation—even though the Party and government are often difficult to disentangle. Local authorities sometimes try to use this overlap and the Party's immunity to deflect lawsuits. As one Chinese scholar explained: "In some places administrative departments employ illegitimate (*bu zhengdang*) means to preclude litigation. Whenever an action is subject to the ALL, they will have the Party Committee or the Party secretary be the entity that officially performs it, so that the administrative department can avoid any potential suits".<sup>21</sup> Moreover, villagers can sue only for specific misdeeds, not "abstract" decisions. According to a Chinese researcher: "courts can only manoeuvre around a handful of so-called 'concrete administrative acts', and dare not undertake big moves on the numerous general actions based on 'policies' (*zhengce*). Taking into account the large number of illegal actions, lawsuits filed and accepted amount to one cup of water when a whole cart of hay is on fire".<sup>22</sup>

<sup>19</sup> Peng Fangzhi, "Anningcun diaocha" (Investigation of Anning Village), in Zhao Shukai (ed.), *Nongcun nongmin* (The Countryside and Farmers), mimeo, pp. 57-61. On successful collective suits in rural Sichuan against unlawful local taxes, see Pei, "Citizens v. Mandarins", p. 851.

<sup>20</sup> On Party and government interference being most common before a case is accepted, see Hung, "Administrative Litigation", p. 160; Marshall, "Administrative Law", p. 259. Unlike courts in some countries, Chinese courts can reject litigation. The decision is supposed to be based on the merits of the case, but the rules that govern this are not always clear or consistent. Personal communication, Prof. Donald Clarke, September 2002.

<sup>21</sup> Yang Haikun, "Baituo xingzheng susong", p. 54. On avoiding litigation by issuing decisions in the Party's name, see also Jiang Ming'an, *Zhongguo xingzheng fazhi*, p. 351; Peerenboom, "Globalization, Path Dependency", p. 223. But since Party officials must formally act through government organs when, for instance, they detain a person, this loophole may not be as large as it appears. Personal communication, Prof. Donald Clarke, September 2002.

<sup>22</sup> Yang Haikun, "Baituo xingzheng susong", p. 52. On the narrow scope of the ALL, see Chen, *Chinese Law*, pp. 156-8; Lubman, *Bird in a Cage*, pp. 206-7. Peerenboom, "Globalization, Path Dependency", p. 212, notes that China is not the only nation that prohibits a review of abstract acts, but that such countries are in the minority. Marshall, "Administrative Law", p. 190, finds the distinction between abstract and specific acts to be a grey area amenable to abuse by officials who wish to shield their decision-making from popular scrutiny.

Yet another factor limits the scope of administrative litigation: Party Committees may issue internal orders forbidding courts to accept suits concerning sensitive matters. As a result, in some locations "the people's court simply doesn't have the nerve to accept cases related to 'hot issues' such as excessive financial burdens, violations of enterprise autonomy, unlawful birth control enforcement, land expropriation and illegal demolition of homes".<sup>23</sup> Even when such prohibitions do not exist, a local court will often consult the Party Committee and government at the same level before it accepts litigation on a hot-button issue.<sup>24</sup> One 1994 study showed that one-third of judges who presided over administrative lawsuits thought that "it is inappropriate for the court to offend administrative departments".<sup>25</sup> This tactfulness is hardly surprising, since the appointment and promotion of judges as well as the court's budget are controlled by the local Party Committee and government.<sup>26</sup> As a deputy chair of the Hainan Provincial People's Congress concluded: "Although courts have the authority to work independently, in reality appointment and promotion of major court leaders is controlled by the number one Party and government officials in a locality. If a court offends them by ruling according to law and the government loses, the consequences are obvious".<sup>27</sup>

<sup>23</sup> Yang Haikun, "Baituo xingzheng susong", p. 52; also interview with a researcher at the Development Research Center of the State Council, Beijing, 1999. According to an assistant judge in the administrative department of the Supreme Court, courts in some places are particularly hesitant to accept cases involving 1) birth control, owing to its sensitivity and to resistance from township governments and Public Security Bureaus, and 2) rural taxes and fees, because these often involve large numbers of plaintiffs and judicial officials fear that accepting such cases will produce a flood of similar suits. Gan Wen, "Woguo xingzheng susong zhidu fazhan jincheng diaocha baogao" (Investigative Report on the Development Course of our Country's Administrative Litigation System), in Ying Songnian and Yuan Shuhong (eds), *Zouxiang fazhi zhengfu* (Toward Government by Laws), (Beijing: Falü Chubanshe, 2001), p. 466.

<sup>24</sup> On locations in which all suits related to birth control and fees are considered "high voltage lines" and are rejected in the name of defending national policy and facilitating government work, or where courts must have the approval of the Party committee, local government and People's Congress to accept such cases, see Jiang Ming'an, *Zhongguo xingzheng fazhi*, pp. 351-2.

<sup>25</sup> Yang Haikun, "Baituo xingzheng susong", p. 55.

<sup>26</sup> Fan Jinxue, "Lun falü xinyang weiji yu Zhongguo fazhizhua" (On the Crisis of Faith in Law and China's Effort to Build the Rule of Law), *Shandong shehui kexue* (Shandong Social Sciences), No. 6 (November 1997), p. 49. See also Wang Binglu, "Yingxiang xiangzhen ganbu falü yishi xingcheng de zhuyao yinsu" (Primary Factors that Affect the Formation of Township Officials' Legal Consciousness), *Zhongguo nongcun guanxia*, No. 1 (January 1999), p. 63. Hung, "Administrative Litigation", p. 179, argues that the "heavy reliance on local funds exerts tremendous pressure on judges".

<sup>27</sup> Li Chao, "Min gao guan, kanke qi zai liu shen, guan baisu, yuan yu renda jiandu" (An Administrative Lawsuit Lasts Seven Years and Six Trials, and the Government Loses Due to

To generate pressure to accept a lawsuit, villagers sometimes turn to dramatic acts. In Lezhi County, Sichuan Province, dozens of villagers knelt before a county judge when they submitted their complaint concerning financial burdens. The strategy worked. The court's judiciary committee held an emergency meeting, at which it was decided to place the case on the docket.<sup>28</sup> But getting a case into court typically remains a high hurdle. Suits often are summarily rejected. In Shanxi, for instance, when villagers sued a township in 1993 for imposing illegal fees, the county court refused to accept the case and refused to give any explanation.<sup>29</sup>

Officials under threat of prosecution (or their protectors) may even question whether the complainants have a right to sue. This is particularly common when a group of plaintiffs file a collective lawsuit concerning the sale of village land. One routine tactic is to insist that the litigants do not constitute a legal person and thus cannot act on behalf of a village. In Hainan, for instance, over two thousand villagers sued Lin'gao County in 1996 for illegally selling collective property to a real estate company. Over the next five years, a series of elected villagers' small group leaders (who were representing the village) were either detained or not granted legal standing, on the grounds that their election had not been authorized.<sup>30</sup> The litigation was finally accepted only after the Hainan provincial People's Congress intervened.<sup>31</sup>

### After a Suit is Filed

Sometimes, acceptance of a suit induces the defendants to pursue a settlement out of court.<sup>32</sup> In many cases, however, the struggle between villagers and local authorities only intensifies after a suit is filed. Some officials go so far as to

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the Supervision of a People's Congress), *Minzhu yu fazhi*, No. 5 (A) (6 March 2002), p. 41. On judges feeling beholden to local governments that provide courts' salaries, housing and benefits, see Peerenboom, "Globalization, Path Dependency", pp. 214-15.

<sup>28</sup> Zhao Changfan, "Jianqing nongmin fudan yao kao falü" (Reducing Farmers' Burdens Must Rely on the Law), *Minzhu yu fazhi*, No. 2 (February 1993), pp. 28-9.

<sup>29</sup> *Fazhi ribao* (Legal Daily), 16 March 1993.

<sup>30</sup> On construing legal standing narrowly, see Peerenboom, "Globalization, Path Dependency", p. 235.

<sup>31</sup> Li Chao, "Min gao guan", pp. 40-1. Support within the village and the threat of collective action can also be critical. On representatives from 134 households signing or thumb-printing a petition that denounced a township decision to close a village clinic (and the village leadership endorsing it), see Li Jihong, "Xiangzhengfu weifa xiao nüzi buqu shanggao" (A Township Broke the Law and a Young Woman Refused to Give In and Sued), *Fazhi yuekan* (Legality Monthly), No. 1 (January 2002), pp. 34-6.

<sup>32</sup> On such settlements, see Pei, "Citizens v. Mandarins", pp. 839, 843. On resolving cases through disguised forms of mediation (e.g., *xietiao*), see Hung, "Administrative Litigation", pp. 260-5. Marshall, "Administrative Law", p. 211, prefers the term "pre-end-of-trial settlement" because judges are often intimately involved in the process.



employ unlawful means to encourage complainants to drop an action.<sup>33</sup> In Gongyi County, Henan Province, a villager was detained in 1997 after a dispute with a township policeman. He was confined in a guesthouse run by two relatives of a county police officer and was grossly overcharged for substandard food and lodging. Upon his release, he sued the county Public Security Bureau for illegal detention. The following day, the county police jailed him again and charged him with raping his former girlfriend. This time he was denied food and sleep for 48 hours, while the police tried to extract a confession. His onetime girlfriend later told a journalist that the police took her to the Public Security Bureau, made her kneel on the floor and threatened to imprison her for three years unless she accused her former boyfriend of rape. The beleaguered villager was finally released after two weeks, "at the urging of relevant departments at higher levels", which stepped in after his relatives made repeated visits to plead his case.<sup>34</sup>

If local officials cannot persuade a complainant to drop a suit, they sometimes intervene directly in the legal proceedings. One practice is simply to dictate a verdict, usually on grounds that cadres in judicial departments must obey Party leadership and support the government's work.<sup>35</sup> Local officials can also apply pressure on the judges who preside over administrative litigation. When 1,770 households sued a township in 1996 for selling spoiled rice seed, the county judge had to resist "all sorts of pressure" from the county Party Committee and government. He rejected an unreasonably low estimate of the losses and spent over a year collecting evidence from the affected families. He ultimately withstood the pressure largely because he had managed to obtain support from the city Party Committee and People's Congress. Eventually he ruled that the township had to pay the plaintiffs 510,000 yuan in compensation.<sup>36</sup>

<sup>33</sup> In each of the years from 1997 to 2000, between 37 per cent and 56 per cent of suits filed under the ALL were withdrawn; see Table 1. On withdrawn cases often representing out-of-court settlements (rather than official pressure), see Pei, "Citizens v. Mandarins", pp. 843-4. Reasons for withdrawal include: an administrative organ realizes it is in the wrong and alters its act; plaintiffs come to realize a suit is groundless; the parties settle out of court. See Hung, "Administrative Litigation", pp. 258-9. Although some of the judges Hung interviewed said that pressure to drop a suit was not a problem or was a problem of the past, other interviewees and an internal investigation conducted in Guangdong found that many plaintiffs were pressured by administrative organs to withdraw their cases. For analysis of the many reasons behind withdrawal, see Marshall, "Administrative Law", pp. 233-8; Jiang Ming'an, *Zhongguo xingzheng fazhi*, pp. 336-7.

<sup>34</sup> Hu Zhenjie, "Gongyi: nongmin gaodao gonganju" (A Farmer from Gongyi Wins a Lawsuit against the Public Security Bureau), *Fazhi yu xinwen*, No.12 (December 1998), pp. 8-10.

<sup>35</sup> Peerenboom, "Globalization, Path Dependency", pp. 195, 215, 224, argues that direct intervention by the Party in specific cases is the exception and is declining. Others have detailed substantial interference. See Hung, "Administrative Litigation".

<sup>36</sup> Jin Kunping, Hu Jie and Liang Jian, "Fayuan wei 7000 nongmin chengqi baohusan" (The Court Raises a Protective Umbrella for 7,000 Rural People), *Zhengfu fazhi* (Government and Legality), No. 11 (November 1998), pp. 39-41. On defendants wining and dining judicial

Such conscientious and determined judges are not the rule, however. Judges often find it difficult to resist a Party Committee or government department that decides to intervene—not least because courts and their personnel are ranked lower in the local bureaucratic hierarchy than many other administrative officials at the same level.<sup>37</sup> This interference may come in the form of an “inquiry” about a case or an “exchange of views” on a legal interpretation. It may be a direct approach to a judge or intervention through a court’s top leadership. It may even arrive unobtrusively in the form of a higher court telling a lower court to “pay more attention to a case”.<sup>38</sup> As one observer explained, most judges wish to be impartial but many eventually cave in to outside forces. They may be embarrassed when this happens, but also know that they might otherwise suffer consequences to their careers or even “cause the court to lose its supply of food and drink”.<sup>39</sup>

Nonetheless, local officials by no means always dictate verdicts, particularly when the evidence is strong and it is widely known which party is in the right. But this does not mean that all interference stops. Instead, outside parties (e.g., Party secretaries, government heads)<sup>40</sup> often press a court to procrastinate, hoping that endless delays will induce the plaintiffs to drop their suit. One time-tested strategy is to fail to appear in court. According to one Chinese researcher, “It is not rare for administrative departments to refuse to show up in court, refuse to answer questions, refuse to pay litigation fees and reject court rulings”.<sup>41</sup> In over

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personnel and seeking out leaders at higher levels to apply pressure on courts, see Jiang Ming'an, *Zhongguo xingzheng fazhi*, p. 352.

<sup>37</sup> The president of a provincial high court, for instance, has the same rank as a deputy provincial governor rather than a governor; see Marshall, “Administrative Law”, p. 206.

<sup>38</sup> Hung, “Administrative Litigation”, pp. 162-3. She concludes (p. 274) that judges remain susceptible to bribery and interference and, despite recent improvements, many local officials still lack a thorough understanding of and respect for laws.

<sup>39</sup> Yang Haikun, “Baituo xingzheng susong”, p. 51. Also see Wang Binglu, “Yingxiang xiangzhen ganbu”, p. 63. On threats to impartiality arising from outside control of funds and material resources, see Finder, “Like Throwing an Egg Against a Stone”, p. 23; Marshall, “Administrative Law”, pp. 198-9. On county leaders retaliating against a county court by withholding judges’ salaries and on People’s Congress deputies being mobilized to vote against court heads who ruled against the government, see Jiang Ming'an, *Zhongguo xingzheng fazhi*, pp. 344-5.

<sup>40</sup> In a survey of Anhui judges, respondents noted that interference in ALL cases, when it appeared, came mainly from administrative organs (72 per cent), Party organs (52 per cent), People’s Congresses (23 per cent) and unspecified outside parties (38 per cent). Jiang Ming'an, *Zhongguo xingzheng fazhi*, p. 444. To be fair, when local protectionism, judicial corruption or intra-agency disputes appear, Party organs may intervene to ensure that a final outcome is in accord with the law. Personal communication, Randall Peerenboom, August 2003.

<sup>41</sup> Yang Haikun, “Baituo xingzheng susong”, p. 52. Also see Li Chao, “Min gao guan”, p. 41; Wang Zhiqian, “Daguansi nan zai nali?” (Why is Suing Difficult?), *Fazhi shijie*, No. 10

200 first-instance ALL cases handled by a municipal court in Jiangxi from 1989 to 2000, 95 per cent of the time the defendant agency failed to appear on occasions when it was required to be present.<sup>42</sup> According to a 1997 investigation in Hunan, when public security bureaus “meddled” in economic disputes the court had to proceed without the defendant in up to 90 per cent of the cases.<sup>43</sup> (Unfortunately, our sources do not report the final outcome of these cases, though presumably the plaintiff often still did not win.)

When representatives of the department concerned do show up,<sup>44</sup> they sometimes perjure themselves or challenge the court to reject testimony that is widely held to be false. In Henan in 2001, when township authorities tried to confiscate the TV of a village woman who refused to pay a fine for having a second child, the villager asked for a receipt but the officials refused. A brawl broke out and a township staff member wrestled her to the ground, injuring her. During the ensuing trial, however, the officials who had been at the scene all testified that the woman had fallen herself, although a number of villagers who had witnessed the incident all disagreed.<sup>45</sup> In a similar case, when a Hebei villager sued a county Public Security Bureau for illegal detention, a township policeman was instructed to give false testimony and the county court readily accepted this. The plaintiff had to appeal to the Shijiazhuang city court, which overruled the county verdict.<sup>46</sup>

### Mobilizing Support

Many villagers understand how the legal system works, so they refuse to give up when a verdict goes against them. They know that ultimate authority does not rest with local courts, and so they frequently appeal to a higher court. They calculate

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(October 2000), p. 10. On officials who prefer not to “condescend” to go to court with ordinary citizens, see Finder, “Like Throwing an Egg Against a Stone”, p. 18. Although courts are free to proceed without the defendant, judges nonetheless sometimes allow defendants to frustrate proceedings in this way.

<sup>42</sup> Yang Bingsheng, Luo Laidong and Lu Chunlai, “Xingzheng lingdao chuting weihe shanshan laichi?” (Why are Administrative Leaders so Slow in Coming to Court?), *Fazhi ribao*, 24 October 2000. Cited in Hung, “Administrative Litigation”, pp. 161-2.

<sup>43</sup> Jiang Ming'an, *Zhongguo xingzheng fazhi*, p. 352.

<sup>44</sup> This may become more common. A 2002 Supreme Court interpretation (art. 36) requires a court to invalidate all evidence provided by defendants who fail to respond to a subpoena “without a legitimate (*zhengdang*) reason”. “Zuigao renmin fayuan guanyu xingzheng susong zhengju ruogan wenti de guiding” (A Supreme Court Measure Concerning Certain Questions on Evidence in Administrative Litigation), promulgated 24 July 2002.

<sup>45</sup> Luo Shui, “Qiang zheng fakuan shangren, xiangzhengfu baisu peiqian” (A Township Government Loses a Lawsuit and Pays Compensation for Extorting Fines by Force and Injuring a Villager), *Fazhi shijie*, No. 4 (April 2002), pp. 17-18.

<sup>46</sup> Xiao Ming, “Nongmin gao dao gonganju” (A Farmer Wins a Lawsuit against the Public Security Bureau), *Minzhu yu fazhi*, No. 3 (6 February 2001), pp. 50-1.

that the higher they go, the better the chance of locating a judge who can ignore the pleas of their local adversaries.<sup>47</sup> This strategy sometimes works. Higher courts are more likely to render favourable verdicts, not least because the effects of local protectionism are less pronounced at higher levels.<sup>48</sup> After a search without a warrant led to the Anhui suicide mentioned above, the Huangshan municipal court ruled that the county police were “undertaking a criminal investigation” and were not subject to litigation. It also determined that the township was not liable because it was simply fulfilling its duty of dispatching representatives to assist in an investigation. The plaintiff appealed. The Anhui provincial court then ruled that the police had not been engaged in a criminal investigation but rather in a “concrete administrative action”<sup>49</sup> liable to litigation.

A second strategy is to seek a helping hand from sympathetic leaders—sometimes through personal connections or through bureaucratic allies who have a stake in upholding a given policy. Largely based on faith in the good intentions of Beijing,<sup>50</sup> some rural residents believe that highly-placed backers can be found somewhere. Since they are often not precisely sure where such allies might be, villagers typically cast their net wide by appealing to all of the departments they can think of, including Party Committees, Disciplinary Inspection Commissions, Anti-corruption Bureaus, Letters and Visits Offices and People’s Congresses. They also seek to expose official malfeasance through media outlets such as TV stations, magazines and newspapers, hoping that such attention will draw in higher-level authorities.<sup>51</sup>

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<sup>47</sup> Peerenboom, *China’s Long March*, p. 399, notes that lower courts may even encourage such actions by ruling for an agency but then telling the plaintiff to appeal to a higher court that is less subject to local protectionism.

<sup>48</sup> Pei, “Citizens v. Mandarins”, p. 847, argues: “Given the higher professional qualifications of judges and legal staff in the appellate courts and their relative insulation from local government agencies involved in the lawsuits, it is reasonable to assume that Chinese appellate courts exercise a higher level of impartiality and autonomy in judicial review”. The Hunan High Court, for one, has noted that as many as 80 per cent of initial rulings by some lower courts are reversed because the law was not enforced impartially. Gan Wen, “Woguo xingzheng susong”, p. 468.

<sup>49</sup> Zhu Xiaokai and Chu Jie, “Nongjia han zhuanggao gonganju”, pp. 4-6.

<sup>50</sup> See Li, “Political Trust”; Kevin J. O’Brien, “Neither Transgressive nor Contained: Boundary-Spanning Contention in China”, *Mobilization*, Vol. 8, No.1 (February 2003), pp. 51-64; Kevin J. O’Brien, “Rightful Resistance”, *World Politics*, Vol. 49, No. 1 (October 1996), pp. 31-55.

<sup>51</sup> See Bernstein and Lü, *Taxation Without Representation*, chap. 6; Kevin J. O’Brien, “Collective Action in the Chinese Countryside”, *China Journal*, No. 48 (July 2002), pp. 151-3.

Over the last decade, Letters and Visits Offices and the media have shown an increased willingness to respond to popular appeals.<sup>52</sup> What is more notable, however, is that People's Congresses have also become more assertive in overseeing administrative litigation. In an effort to control judicial corruption, in the late 1990s a number of provincial People's Congresses (e.g., Sichuan and Yunnan) issued regulations that boosted their own role in supervising specific court cases.

The involvement of congresses in reopening misjudged ALL cases has commonly taken three forms. Sometimes a case attracts the attention of public-spirited legislators. In Yi'an County, Heilongjiang Province, for instance, 33 villagers filed suit on behalf of two thousand people against a neighbouring county for refusing to pay them for tree-planting after a large fire in 1987.<sup>53</sup> Both the prefectural court and the provincial court ruled against the county government. Instead of remitting the overdue wages, however, the county placed the two principal organizers of the lawsuit under detention on a trumped-up charge of fraud. After angry villagers mobilized a large collective complaint, a provincial congress deputy agreed to take it to his congress, so long as the villagers postponed their plans to go to Harbin, the provincial capital. The deputy chair of the Heilongjiang congress then promptly called on the provincial Public Security Bureau to conduct an investigation.<sup>54</sup>

Media reports have also prodded People's Congresses to intervene directly in litigation. In Henan, three villagers who organized a collective complaint against a corrupt village Party secretary were jailed by the Wuzhi county court in 1998 for disrupting the work of the county government, and their appeal was rejected by the Jiazuo city court. Just when their situation looked hopeless, *Legal World*, a magazine affiliated with Henan's judicial bureau, objected. The magazine's official commentator pointed out that allowing complaints to be lodged had always been a means by which the Party maintained close contact with the masses, and that judicial authorities had to distinguish between minor violations

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<sup>52</sup> On Letters and Visits Offices, see Laura M. Luchmann, "Facing Citizen Complaints in China", *Asian Survey*, Vol. 43, No. 5 (September/October 2003), pp. 845-66; Isabelle Thireau and Hua Linshan, "The Moral Universe of Aggrieved Chinese Workers: Workers' Appeals to Arbitration Committees and Letters and Visits Offices", *The China Journal*, No. 50 (July 2003), pp. 83-103. On the media and the muck-raking television show "Focus", see Alex Chan, "From Propaganda to Hegemony: *Jiaodian Fangtan* and China's Media Policy", *Journal of Contemporary China*, Vol. 11, No. 30 (February 2002), pp. 35-51. But it is also common for local authorities to delay, censor or block media coverage of ALL cases. See Hung, "Administrative Litigation", pp. 115-23.

<sup>53</sup> For a journalist's account of this fire, see Harrison E. Salisbury, *The Great Black Dragon Fire: A Chinese Inferno* (Boston: Little Brown, 1989).

<sup>54</sup> Peng Fei, "Shi nongmin zhaphian, haishi zhengfu keng nong?" (Do Farmers Cheat the Government, or Does the Government Frame Farmers?), *Fazhi yu xinwen*, No. 12 (December 2000), pp. 4-7.

of the regulations on letters and visits and “disrupting social order”.<sup>55</sup> The commentator warned that if the letters and visits channel was blocked, a temporary peace might be achieved by scaring off potential complainants, but the long-term consequences were “inconceivable”. This analysis attracted the attention of the Henan People’s Congress, which urged the provincial court to reopen the case. In October 1999, the high court overruled the original verdict and freed the three villagers. The village Party secretary was also removed.<sup>56</sup>

Villagers also find ways on their own to draw in people’s congresses. In May 1999, a group of complainants went to the Haikou City Congress after the city court handed down a verdict they felt was unjust. Six months later, the congress’s standing committee reviewed the case and unanimously decided to issue a “supervision letter” (*jiandu han*) that requested that the Haikou court handle the litigation through an open trial,<sup>57</sup> make a judgement according to law, and be impartial. In an unusual step, the congress even invited several of the complainants to attend the standing committee meeting at which their appeal was discussed.<sup>58</sup>

Complainants may also contact People’s Congresses through written petitions. In the Hainan land sale case discussed earlier, villagers appealed to various government departments without success. In 2000, they finally wrote to the deputy chair of the provincial People’s Congress. The congress agreed to intercede and, at its urging, the Hainan court accepted the suit but then handed down a strangely mixed verdict. On the one hand, it ruled against the villagers, but nonetheless it ordered the county to pay them compensation of 170,000 yuan. The villagers rejected the verdict and appealed to the provincial congress. The congress stepped in yet again and the Hainan court in 2001 finally ruled unambiguously in their favour.<sup>59</sup>

Largely because officials at higher levels tend to be less susceptible to pressure, access to them has become a source of friction between villagers and local leaders. Efforts by litigants to find a sympathetic ear at higher levels are

<sup>55</sup> On these regulations, see Luehrmann, “Facing Citizen Complaints”.

<sup>56</sup> Wang Zhiquan, “Shangfang nongmin bei cuopan, rujin wuzui fan jiayuan” (Rural Complainants are Wrongfully Convicted, Now They Return Home Acquitted), *Fazhi shijie*, No. 2 (February 2000), p. 33.

<sup>57</sup> On the wide discretion courts enjoy under the ALL to justify nonpublic hearings, see Pitman B. Potter, “The Administrative Litigation Law of the PRC: Judicial Review and Bureaucratic Reform”, in Pitman B. Potter (ed.), *Domestic Law Reforms in Post-Mao China* (Armonk, N.Y.: M. E. Sharpe, 1994), p. 286; Hung, “Administrative Litigation”, pp. 114-15.

<sup>58</sup> Lian Jimin, “Min gao guan renda jiandu zuo houdun” (People’s Congress Supervision Supports Ordinary People Suing Officials), *Minzhu yu fazhi*, No. 7 (6 April 2000), pp. 28-30. On chairs of local People’s Congress standing committees using their institutional power to obstruct administrative litigation, however, see Marshall, “Administrative Law”, p. 250.

<sup>59</sup> Li Chao, “Min gao guan”, pp. 40-1.

often obstructed by the local power structure. In the last few years, officials in many places have used a selective reading of the 1995 Regulation on Letters and Visits Work, among other tactics, to prohibit collective complaints and the bypassing of levels.<sup>60</sup> In Dangshan County, Anhui Province, for instance, grassroots leaders plastered their village's walls with posters announcing "it is illegal to send more than five people to lodge a complaint" and "it is illegal to instigate the masses to lodge a complaint".<sup>61</sup> Villagers then sought counsel from a magazine affiliated with the newspaper *Legal Daily*, which clarified that the 1995 regulations prescribed procedures for but did not outlaw collective complaints.<sup>62</sup> Local officials in Henan similarly put up posters that declared: "Bypassing levels when lodging complaints is to be severely punished". Villagers in this case sought clarification from the State Council's Bureau of Letters and Visits, which instructed the poster-writers to take down their misinterpretation of the Regulation.<sup>63</sup>

We must not, of course, overestimate the effect of intercession by officials at higher levels. The fate of the two organizers of the collective lawsuit in the Heilongjiang tree-planting case is instructive. The provincial Public Security Bureau, at the urging of the provincial People's Congress, examined the files submitted by the prefectural and county Public Security Bureaus, concluded that the charges against the two villagers were groundless, and ordered their immediate release. Most likely because the directive did not come from a superior who directly controlled their careers, the county leadership merely feigned compliance. Immediately after the Public Security Bureau released the two men, the county procurator charged them with bribery and detained them again. When the prefectural procurator intervened in response to complaints from other villagers, the county procurator dropped its charges. But instead of freeing the men, it handed them back to the county Public Security Bureau, which again charged them with fraud and again asked the county procurator to approve their arrest. As the case dragged on, the provincial deputy who initially reported the

<sup>60</sup> On "skipping levels" (*yueji*), see Kevin J. O'Brien and Lianjiang Li, "The Politics of Lodging Complaints in Rural China", *China Quarterly*, No. 143 (September 1995), p. 778; Lianjiang Li and Kevin J. O'Brien, "Villagers and Popular Resistance in Contemporary China", *Modern China*, Vol. 22, No. 1 (January 1996), p. 43. On this practice in earlier times, see Jonathan K. Ocko, "I'll Take It All the Way to Beijing: Capital Appeals in the Qing", *The Journal of Asian Studies*, Vol. 47, No. 2 (May 1988), pp. 291-315.

<sup>61</sup> Zhang Cuiling, "Zenyang duidai", pp. 4-8.

<sup>62</sup> Liu Wujun, "Shandai shumin de shangfang" (Treat Villagers Who Lodge Complaints Well), *Fazhi yu xinwen*, No. 1 (January 2002), p. 9.

<sup>63</sup> Wang Zirui and Wang Songmiao, "Yueji shangfang qineng yancheng?" (How Can the Government Severely Punish Those Who Bypass Levels when Lodging Complaints?), *Renmin xinfang* (People's Visits and Letters), No. 12 (December 2001), p. 31.

incident became increasingly frustrated and remarked that in this county “laws are treated with disrespect”.<sup>64</sup>

Even when villagers emerge victorious from the courtroom, it does not mean that their grievances will be redressed; in many cases a favourable verdict is just the beginning of another round of struggle. Rulings for plaintiffs sometimes go unexecuted when local governments either ignore or subvert them.<sup>65</sup> In rural Henan, several township leaders engineered the dismissal of a director of a Letters and Visits Office because they suspected he had exposed their corruption to the county Discipline Inspection Commission and Anti-corruption Bureau. They accused the director of using the township’s seal without authorization and instructed a staff member to testify against him. Although the director ultimately won a lawsuit against the corrupt officials, the township simply refused to accept the court’s order to rehire him.

Finally, in some cases where villagers prevail and the verdict is duly executed, their gains are soon lost when officials retaliate. Although two studies by Chinese researchers have quoted rates of retaliation, respectively, of one-tenth of one percent and five percent, we find these figures to be improbably low.<sup>66</sup> In our experience, local cadres typically make little attempt to hide their contempt for the villagers who sue them, and they often strike back when the attention of higher levels moves on to other matters.<sup>67</sup> In one such case, a villager won a law suit against a township that had illegally fined him. The township Party secretary then openly announced, “If we are required to carry out the court’s ruling, we are going to teach the villager a lesson. We will never permit him to obtain any compensation”. The villager was terrified and dared not pursue enforcement of the court’s decision.<sup>68</sup> Likewise, in Hengyang County, Hunan, a hotbed of rural activism, a number of “peasant leaders” (*nongmin lingxiu*) told us in early 2003 that they had won lawsuits concerning unlawful fees, illegal detention and the use of excessive force by township officials, but few if any of the rulings had been enforced. As one Chinese researcher concluded, “even when a few peasants who know how to use laws file suits or lodge complaints to protect their legal rights and interests, only a few get results, and this often starts a long journey in which

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<sup>64</sup> Peng Fei, “Shi nongmin zhapian”, pp. 4-7.

<sup>65</sup> For typical enforcement problems, see Hung, “Administrative Litigation”, pp. 270-2; Yang Haikun, “Baituo xingzheng susong”, p. 52.

<sup>66</sup> Cited in Peerenboom, *China’s Long March*, p. 442.

<sup>67</sup> Hao Fu, “Xinfangban zhuren biancheng shangfang ren” (A Director of the Letters and Visits Office Becomes a Complainant), *Fazhi shijie*, No. 4 (April 2002), pp. 12-15.

<sup>68</sup> Jiang Ming’an, *Zhongguo xingzheng fazhi*, p. 353.



they face retaliation, suffer much hardship, and ultimately lose everything they have".<sup>69</sup>

### Outcomes

The fact that in many cases justice is either denied or delayed can, of course, be demoralizing. Long waits, in particular, drain a complainant's money, energy and time.<sup>70</sup> A Yunnan villager who sued a township for confiscating his television set ended up spending well over ten thousand yuan to win his suit, and could have bought ten colour TVs with the money. As a legal analyst in Henan put it, "endless delay is a kind of judicial corruption; it seriously undermines people's trust and confidence in the legal system".<sup>71</sup>

Yet the victories that plaintiffs have won are equally significant; successful litigation sometimes results in compensation for miscarriages of justice and relief (though often temporary) from excessive fees, while also restoring a litigant's sense of self-respect. Involvement in a legal case also teaches villagers how to use the law, as they work their way through a complex and hitherto unfamiliar legal and political thicket.<sup>72</sup> The Yunnan villager who lost his TV learned so much about legal affairs that he was able to act as his own lawyer, and at various points in his trial he came up with arguments that the counsel for the township could not counter. Furthermore, successful suits can enhance a villager's sense of efficacy, as litigants who win one case feel able to go after bigger fish the next time.<sup>73</sup> Lastly, victorious plaintiffs may also gain stature in the community. The Yunnan man who took the township to task won so much respect from his fellow villagers that they now come to consult him whenever they have legal questions.<sup>74</sup> The organizer of the collective suit against excessive fees in Lezhi County, Sichuan, was later elected a small group leader.<sup>75</sup>

<sup>69</sup> You Zhanhong, "Nongmin wenti heshi jie?" (When will the Peasant Problem be Resolved?), *Zhengfu fazhi*, No. 3 (March 1999), p. 11.

<sup>70</sup> A villager in Jiangxi stressed that most rural people were in no position to engage in protracted legal struggles. He compared the law to a knife and insisted that officials held its entire handle, so that people like himself would have to grab it by its blade if they wished to sue. Interview, Jiangxi, 1999.

<sup>71</sup> Wang Zhiquan, "Daguansi nan zai nali?", p. 10.

<sup>72</sup> See also Thireau and Hua, "Moral Universe"; O'Brien, "Rightful Resistance", pp. 52-5; Michael W. McCann, *Rights at Work* (Chicago: University of Chicago Press, 1994).

<sup>73</sup> Peng Fangzhi, "Anningcun diaocha", pp. 57-61.

<sup>74</sup> Zhang Jinming, "Nongmin Chen Haiquan de jiannan kangzheng, zhi ma?" (Is Chen Haiquan's Difficult Battle Worthwhile?), *Ren yu fa* (Man and Law), No. 8 (August 1999), pp. 18-21.

<sup>75</sup> Peng Fangzhi, "Anningcun diaocha", pp. 57-61.

Administrative litigation is often a learning experience for both parties. Local officials also learn lessons, particularly if they lose. Some cadres have realized that suits can bring them not only “embarrassment and insult”<sup>76</sup> but threats to their career. In response, some of them undoubtedly ratchet up efforts to prevent villagers from filing or winning their cases. But others may draw a different conclusion and take more care not to break the law. In fact, in one recent survey in Jiangsu, 73 per cent of officials said that the ALL had led them to be more attentive to their duties and had increased their awareness of rule by law.<sup>77</sup>

Finally, administrative litigation may play a part in enlarging the still small bundle of rights that villagers possess. Legal knowledge and assertiveness is growing nationwide, and whereas a 1992 survey showed that 65 per cent of over 1,000 respondents in Harbin had never heard of the ALL, by the late 1990s 97 per cent of those polled in Jiangsu had heard of people suing officials.<sup>78</sup> In our 1997–98 survey, 14 per cent of the villagers queried in Anhui, Beijing, Hebei, Fujian, Jiangsu, Jiangxi and Shandong judged the ALL to be “very useful”. In a Sichuan case that may portend things to come, a villager sued the township police for failing to take action against a mentally unstable man who was harassing him. The stalker repeatedly demanded money from the villager and eventually drove him to leap from the second floor of his home, injuring himself. When the case was turned over to the city court, it halted the proceedings because there was no regulation that stipulated that a Public Security Bureau could be required to pay compensation for its inaction. After receiving an account of the case from the municipal court, Sichuan’s provincial court reported it to the Supreme Court and asked for an interpretation. The Supreme Court ruled that Public Security Bureaus should bear responsibility for compensation if, owing to a failure to fulfil their duties, citizens’, legal persons’, or other organizations’ legal rights are violated. In July 2001 the Supreme Court issued this decision to the nation as a legal interpretation.<sup>79</sup> This ruling has already paved the way for other plaintiffs to file similar suits. When Jiangxi villagers filed two lawsuits in 2002 against a

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<sup>76</sup> Wang Binglu, “Yingxiang xiangzhen ganbu”, p. 62.

<sup>77</sup> Reported in Peerenboom, *China’s Long March*, p. 404. A 1992 poll also found that 74 per cent of government officials said that they had begun to exercise greater caution in their work owing to the ALL. Reported in Pei, “Citizens v. Mandarins”, p. 860.

<sup>78</sup> Reported in Peerenboom, *China’s Long March*, p. 405. Awareness in rural areas is lower. Our 1997–98 survey in the Jiangsu countryside showed that 59 per cent of the respondents knew nothing about the ALL, while our 1999–2001 survey in four counties in three provinces showed that 68 per cent of rural respondents had never heard of the law.

<sup>79</sup> Xiao Wanning, “Bashu nongmin ‘min gao guan’” (A Sichuan Farmer Sued the Government), *Lüshi yu fazhi* (Lawyers and Legality), No. 3 (March 2002), pp. 16–20.

county Public Security Bureau for inaction, they no longer had to appeal all the way to the Supreme Court to establish their claim to compensation.<sup>80</sup>

## Conclusion

China's judicial system remains deeply embedded in politics. For rural litigants, a strong legal argument is indispensable, but even compelling evidence can fail to produce a favourable verdict. Just as important as a legal case *per se* are the political resources villagers mobilize in the course of filing suits and navigating their way through the courts. To offset the many advantages enjoyed by the government offices that are sued, including the propensity of judges and other officials to protect one another,<sup>81</sup> plaintiffs often need to secure support from advocates within officialdom or in the media. Collective action, or the threat of it, can also increase the likelihood of winning, so long as the litigants frame their demands and act in a way that does not alienate potential allies, some of whom also have their own stake in seeing the ALL implemented. Consequently, in many cases, pursuing a complaint entails seeking redress through the courts *and* through other institutions (e.g., People's Congresses, Letters and Visits Offices, high-ranking officials, the media) simultaneously or in sequence. (The defendant government offices also of course rally whatever extra-judicial support they can muster throughout the process.) In administrative litigation, mobilization seldom involves a choice between recourse to the law *or* to other strategies, but recourse to the law *and* to other strategies.<sup>82</sup>

The evidence presented in this article also provides a window on state-society relations in China. In particular, focusing on the interplay of plaintiffs, defendants and third parties puts courts in a broad political context and draws attention to the inner workings of a far-flung, many-layered state. That complainants can sometimes locate backers among the authorities encourages us to abandon dichotomies such as state-versus-society and us-against-them and to examine how specific parts of the state interact with (and provide opportunities

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<sup>80</sup> Lu Chengjian, "Xiean diechu shouhairen jia shu zhuanggao Tongguxian gonganju buzouwei" (Families of Murder Victims Sue the Tonggu County Public Security Bureau for Inaction), *Minzhu yu fazhi*, No. 2 (A) (6 February 2002), pp. 37-9.

<sup>81</sup> For many villagers, a court is just another government department and judges are just another group of officials. "In the understanding of many rural people, judges (*fa guan*) are officials (*guan*)." Tian Chengyou and Li Yixiong, "Xiangtu shehui minjian fa yu jiceng faguan jie jue jiufen de celue" (Customs in Rural Communities and Strategies of Conflict Resolution Adopted by Grassroots Judges), *Xiandai faxue* (Modern Law Science), Vol. 24, No. 1 (February 2002), p. 121; also Jiang Ming'an, *Zhongguo xingzheng fazhi*, p. 336. On the perception that officials protect each other, see Gan Wen, "Woguo xingzheng susong", p. 468. In a survey of 5,673 respondents from eleven cities, 40 per cent deemed judges to be incompetent, unfair or controlled by administrative agencies and the Party. See Hung, "Administrative Litigation", p. 138.

<sup>82</sup> This is not unique to China. See, for example, McCann, *Rights at Work*.

for) particular social forces. What emerges is a state that is less a monolith than a hodgepodge of disparate actors, some of whom have multiple identities and conflicting interests.<sup>83</sup> Disaggregating the Chinese state highlights its segmented, layered structure, helps us understand how litigants work the territory between courts and people's congresses, or lower courts and higher courts, and enables us to see how villagers' strategies adapt to the contours of a reforming regime as they discover which openings can be exploited and where their best opportunities lie.<sup>84</sup>

It is still far too early to gauge the long-term impact of the ALL in rural China. Many villagers undoubtedly continue to associate "law" with a duty to obey rather than rights against the state. For such people, laws exist to punish, not to protect.<sup>85</sup> They perceive laws as instruments of domination, not weapons to be deployed in disputes with local officials. Even so, some villagers, particularly the better educated and better off,<sup>86</sup> have adopted a view that laws can be used to "name, blame and claim"<sup>87</sup> and that they provide a means to check improper official conduct. As time passes, the ALL may take on a life of its own, as rural people with grievances, a little legal knowledge and outside support persist in litigating. Such individuals choose to ignore the defects of existing legal

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<sup>83</sup> Key organizers of a collective lawsuit that involved two-thirds of the villagers in a Shaanxi town ran the gamut from retired county and township officials to former and sitting village cadres to incumbent deputies in the county people's congress. Wang Haian, "Shang wan nongmin weihe shang fating" (Why did over Ten Thousand Rural People go to Court?), *Zhengfu fazhi*, No. 11 (November 1998), pp.15-17.

<sup>84</sup> On disaggregating the Chinese state, see Elizabeth J. Perry, "Trends in the Study of Chinese Politics: State-Society Relations", *China Quarterly*, No. 139 (September 1994), pp. 704-13; O'Brien, "Rightful Resistance", pp. 31-3; Neil J. Diamant, "Making Love 'Legible' in China: Politics and Society during the Enforcement of Civil Marriage Registration, 1950-1966", *Politics & Society*, Vol. 29, No. 3 (September 2001), pp. 453, 473.

<sup>85</sup> See Fan Jinxue, "Lun falü xinyang weiji", p. 49; Li Changqi, "Nongcun fazhi jianshe ruogan jiben wenti de sikao" (Reflections on some Basic Questions regarding Building Rule of Law in the Countryside), *Xiandai faxue*, Vol. 23, No. 2 (April 2001), p. 34. According to a Chinese analyst, "for a long time, many Chinese have not distinguished between 'laws' and 'penalties'; they one-sidedly think that only criminal law is law". Wang Junying, "Qian xi chuantong falü wenhua yu fazhi xiandaihua de chongtu" (A Preliminary Analysis of the Conflict between Traditional Legal Culture and Legal Modernization), *Zhongzhou xuekan* (Academic Journal of Zhongzhou), No. 1 (January 1998), p. 61. Hung, "Administrative Litigation", pp. 130-1, cites long-standing fears of becoming embroiled in the legal system, embodied in such proverbs as "don't go to courts when alive, don't go to hell after death".

<sup>86</sup> Our 1997-98 survey showed that such people were more likely to rate the ALL "very useful" or "somewhat useful", and our 1999-2001 survey showed that they were also more likely to file suits under the ALL.

<sup>87</sup> William Felstiner, Richard Abel and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming And Claiming", *Law and Society Review*, Vol. 15 (1980/81), pp. 631-55.

institutions and to use the laws they find at hand to press for their legal rights and interests. About 100,000 administrative suits have been filed annually in recent years (see Table 1), and there are signs that rights consciousness is on the rise.<sup>88</sup> Should confidence in the ALL spread, a reform designed to extend the life of an authoritarian regime will have nudged China a step closer to the rule of law.

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<sup>88</sup> On growing rights consciousness in the countryside, see David Zweig, "The Externalities of Development: Can New Political Institutions Manage Rural Conflict?", in Elizabeth J. Perry and Mark Selden (eds), *Chinese Society* (New York: Routledge, 2000), pp. 120-42; Bernstein and Lü, *Taxation Without Representation*; Kevin J. O'Brien, "Villagers, Elections and Citizenship in Contemporary China", *Modern China*, Vol. 27, No. 4 (October 2001), pp. 407-35; O'Brien, "Rightful Resistance"; Liebman, "Class Action Litigation". On rules consciousness prior to 1949, see R. Bin Wong, *China Transformed* (Ithaca, NY: Cornell University Press, 1997), pp. 235-7.

Table 1: First-Instance ALL Cases by Disposition, 1990-2000

<u>Year</u>	<u>Accepted</u>	<u>Concluded</u>	<u>Upheld</u>	<u>Rescinded</u>	<u>Modified</u>	<u>Refused</u>	<u>Withdrawn</u>	<u>Other</u>	<u>Administrative Compensation only</u>
1990	13,006	12,040	4,337	2,012	398		4,346	947	
1991	25,667	25,202	7,969	4,762	592		9,317	2,562	
1992	27,125	27,116	7,628	5,780	480	2,116	10,261	851	
1993	27,911	27,958	6,587	5,270	430		11,550	4,121	
1994	35,083	34,567	7,128	6,547	369		15,317	5,206	
1995	52,596	51,370	8,903	7,733	395		25,990	8,349	
1996	79,996	79,537	11,549	11,831	1,214		42,915	12,028	
1997	90,557	88,542	11,230	12,279	717	7,501	50,735	6,080	
1998	98,350	98,390	13,036	15,214		10,570	47,817	9,376	2,377
1999	97,569	98,759	14,672	15,251		11,837	44,395	9,491	3,113
2000	85,760	86,614	13,431	13,635		11,146	31,822	14,078	2,502
2001	100,921	95,984	15,941	12,943		11,516	31,083	21,736	2,765

Sources: Stanley B. Lubman, *Bird in a Cage* (Stanford: Stanford University Press, 1999), p. 208; *Zhongguo Falü Nianjian* (Law Yearbook of China), 1999, p. 1023; 2000, p. 1211; 2001, p. 1258.