

Emerging role of expert opinions in Chinese criminal justice

Opinion

On 13 March 2017, I left the Netherlands for Beijing to begin a week of meeting Chinese practicing lawyers about their experiences working within the criminal justice system. My overall observation is that the popular discourse for enhancing China's criminal procedural fairness is not only a concerted sentiment, but also a concrete effort among professionals in the field. Below, I reflect upon key insights I obtained during a lively training session, and then offer two remarks on how scholars can play a role to improve the world's largest criminal justice system through knowledge exchange and practical cooperation. The training series that I took part in was held at a renowned forensic centre founded by a forensic expert Dr. Zhang, a retired professor from the People's Public Security University of China. The participants consisted of some 30 legal professionals with rich experiences either in defending criminal charges as an attorney, investigating criminal cases as a police officer, or providing forensic records and opinions as a sanctioned expert.

Role of 'expert witnesses' during criminal trials

Three factors were identified as being crucial challenges to the development of expert testimony in criminal trials. Firstly, the application of forensic-based examinations and the involvement of expert opinions are new to Chinese criminal proceedings at the conceptual level. Judicial and prosecutorial authorities alike are sceptical about the impartiality and validity of expert reports and testimonies in criminal cases. The focus of the above-mentioned training was Zhuanjia Fuzhuren - literally meaning 'support experts'. Some speakers preferred to use 'expert witness', indicating criminal experts were distinct from lay witnesses. Others tended to favour 'expert appraiser' or 'expert with special knowledge', as this said more about the exact function that the expert would fulfil. Secondly, police investigation and court trial in China are not ready to rely on forensic evidence. According to Dr. Zhang during the training, eyewitness accounts are still deemed a very important element of the crime investigation. Criminal court judges are inclined to adopt prosecution-proffered evidence - sometimes referred to as 'attitudinal blinders' - in their admissibility decisions. They are also seen as unwilling - sometimes unable - to lead a cross-examination on forensic reports submitted by expert witnesses invited by the defendant party.

In a rape case before an Intermediate People's Court, Dr. Zhang received a legal notice and was allowed to present her opinion in court in February 2017. A middle-aged judge shot a question to Dr. Zhang in a somewhat contemptuous manner: "on which basis do you think your forensic evaluation is preponderant enough to be considered here?" "On the basis of my over 30 years' professional experience as a forensic expert," responded Dr. Zhang. This is merely one of many similar encounters causing obvious offense to Dr. Zhang who has an extensive experience and admirable reputation in the field. Difficult situations that expert witnesses have to deal with are not infrequent. Another lawyer from Beijing shared his story that his requests for

Volume 4 Issue 6 - 2017

Cong Rui Qiao

PhD Candidate, Public Disputes and Collective Actions in China, Utrecht University, The Netherlands

Correspondence: Cong Rui Qiao, PhD Candidate, Public Disputes and Collective Actions in China, Utrecht University, Room 1.34, Achter Sint Pieter 200, 3512 HT Utrecht, The Netherlands, Tel 31 30 253 8117, Email C.Qiao@uu.nl

Received: May 31, 2017 | **Published:** June 01, 2017

inviting an expert for testimony had been rejected twice by the court in 2014, due to the lack of a strong reasoning on 'necessity'. Lastly, there are some structural defects in the Chinese criminal justice system. The status and role of criminal experts are not clearly defined by laws or regulations. For instance, there are no nationally applicable standards for validating identification reports and expert opinions, nor a set of rules for judges to accept and adopt appraisal opinions. The ambiguous legal validity of expert reports is another acute problem. "It is hard to convince the court to take a forensic identification or evaluation opinion into consideration," said Dr. Zhang, "and even if an expert opinion is accepted by the court, it is very hard to get a legal notice for clarifying such opinion in court." The belief seems to be wide-spread in China that the recent development in forensic science and also in other disciplinary domains calls for a greater attention to expert witnesses for identifying and prosecuting offenders. Experts are, however, often upset as their role is rather restricted under the current system. For example, the Vice President of the Supreme People's Court Huang Ermei submitted his explanatory note concerning the role of expert witnesses, that "their opinions presented in court are outside the legal scope of evidence and therefore cannot be considered as part of the basis for making a decision."

Despite the many challenges ahead, the lawyers and criminal experts I met with during the trip to Beijing are largely positive that expert witnesses are to play a more important role in criminal cases in China. Dr Zhang said:

It has been over two decades since the reforms of China's criminal justice system initiated in 1996. The progress is not only seen in legal documents, but also in practice. Since 2008, the pilot for engaging expert witness in the investigation and trial of crimes has been under experiment in four intermediate-level and three basis-level courts. In a rape case before the Haidian district court in Beijing, for instance, I was invited as an expert and allowed to present my reports in 2011. The defence lawyer and I succeeded in challenging the prosecutor in court, and we were pleased that the defendant was finally acquitted.

More recently, there are some progressive measures for achieving an effective cross-examination of forensic evidence and expert reports

in Chinese courts. The Standing Committee of the National People's Congress revised the "Administration of Forensic Identification and Evaluation" in April 2015, and the Ministry of Justice ordered a revised 'General Rules on the Procedures for Forensic Identification and Evaluation' in February 2016. As of 2015, there are over 4,900 licensed forensic centres with some 556,000 forensic experts in China.

How can scholars make a contribution?

The adoption of forensic science evidence in criminal trial litigation in China remains relatively low, with the yearly percentage ranging from 9 to 18 percent in the last decade. I am aware of a range of structural and procedural deficiencies in China's criminal justice system. In the meanwhile, having worked with Chinese legal professionals in the field since 2013, I am aware that China has made some great legal developments in the last 20 years. And I have met many who show a great dedication to improving China's criminal proceedings. Located within the academia, I think scholars can join this meaningful enterprise and further enhance Chinese criminal justice. Firstly, the shifting role of expert opinions in the Chinese criminal justice system is not well examined in China and abroad. The progress of criminal justice is closely related to that of popular mentalities. Confessions, seen as an expression of repentance, could lead to various degrees of exemption from punishment under China's traditional criminal justice framework. This tradition saw its modern resonance in the widespread practices of self-examination and self-criticism during China's revolutionary time. The ancient tradition and modern variant still retain their hold on today's understanding in Chinese society. On the other hand, forensic science has been rapidly developing in China over the past decade or so. How does

this development affect the popular mentality in general and criminal proceedings in particular? Scholars can contribute to deepening the understanding on this topic.

Secondly, it is encouraging to see that Chinese practicing lawyers are keen to learn from 'the best practices' from Europe. A Dutch scholar Professor Tom Zwart, also affiliated with Utrecht University's Montaigne Centre for Judicial Administration and Conflict Resolution, was invited as a keynote speaker to introduce international experiences of engaging expert opinions during criminal investigations and adjudications in the above-mentioned training. This example shows that Chinese criminal justice professionals have a strong motivation to learn from the best practices acknowledged at the international level. In addition, senior and junior attorneys from the renowned Dongfang Law Firm explicitly express their wishes to learn from Dutch experiences. They are keen to learn about how the direction of police investigations and court hearings became focused on forensic evidence, and how the trust in expert opinions has been achieved through the institutionalization of special expertise from various disciplines. It will be a complementary and also meaningful enterprise when scholars and legal professionals work together to exchange knowledge and experience, and push for changes on the ground on a long-term basis.

Acknowledgments

None.

Conflicts of interest

None.