

HIGH TURNOVER AND LOW REPUTATION? ELEMENTS OF SOCIOLOGY OF THE SUPREME PEOPLE'S COURT GRAND JUSTICES (Summary)

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This presentation about the Supreme People's Court (SPC) Grand Justices of the PRC consists of two papers. The first one discusses the high turnover of Grand Justices and the underlying reasons, while the second focuses on the reputation of Grand Justices. Actually, high turnover and low reputation have intrinsic connections.

Leaving the Supreme People's Court: the Turnover of SPC Grand Justices

In recent years, SPC has applied judge's professionalization to all the Courts of China so as to ensure the stabilization of judge group. On the contrary, three Grand Justices have left SPC since 2003. The first one is Zhu Mingsha, the Grand Justice of the first rank and Vice President of SPC, who left for the Committee for Internal and Judicial Affairs of Standing Committee of the National People's Congress (SCNPC) and



took the position as its Vice President. The second one is Zhang Jun, the Grand Justice of the second rank, from the Vice President of SPC to Vice Minister of Justice (he came back to SPC in Aug, 2005). The third one is Jiang Bixin, the Grand Justice of the second rank, from the Vice President of SPC to the President of the Higher People's Court of Hunan Province.

What leads to the above inconsistent phenomena?

Continual Turnover

Leaving the Court is one type of judge turnover. Judge turnover includes five types: (i) Interior turnover within the same court such as from criminal division to civil division or political section. (ii) Equal turnover at the court system, for example, from president of city Court to that of another city Court. (iii) Judges at lower Court transfer to higher Court. (iv) Judges at higher Court transfer to lower Court. (v) Judge at the court system transfers to other branches such as administration, social groups or law firms.

Leaving the Supreme Court occurred not only in China but also in USA. But in the 20th century, few Grand Justices in USA left the Supreme Court for higher reputation and greater impact. In China, 36 Grand Justices (only Presidents and Vice Presidents of SPC are taken into account) hadn't been in active service at SPC since 1949, among whom only 8 persons retired at SPC and didn't assume other positions.

TABLE 1 - Turnover of Grand Justices of SPC (1949-2005)

Destination	Number	Destination	Number
CPPCC	12	NPC	10
MJ	1	ACCP	2
HPC	1	Universities	1
CPLCP	1	Retired at SPC	8

CPPCC: Chinese People's Political Consultative Conference

NPC: The National People's Congress

MJ: Ministry of Justice

ACCP: Advisory Commission of the Communist Party

HPC: Higher People's Court

CPLCP: Commission for Politics and Law of the Communist Party

Why Turnover?

Most Grand Justices can no longer play an active role at SPC due to their age; some of them will be able to transfer to NPC, CPPCC, etc.

It is noted that the bureaucracy system in which the lower level is subordinate to the superior is important for modern state construction and economic modernization. Court system of China has established bureaucracy system the same as that of other branches since 1949. Judge is considered as civil servant and judge management is subject to the Civil Servants Law of PRC. This bureaucracy system makes it possible that judge can transfer to other branches.

Actually, the current judge's rank system strengthens rather than weakens this bureaucracy system. In accordance with the applicable law, the judge's rank is mainly determined by the judge's office position. Judge's rank can be divided into ministerial judge, vice-ministerial judge, director-general of a departmental judge, deputy director-general of a departmental judge, divisional judge, deputy divisional judge, principal staff judge, senior staff judge, staff judge, etc. So, the judge's rank system has strengthened the hierarchical relationship between lower judges and higher judges.

Aftereffect of Transferring to Lower Court

The transfer of Grand Justice Jiang Bixin to the Higher People's Court of Hunan Province is a more reasonable political arrangement than that of others. Actually, sending higher judge to lower court for the purpose of evaluation or promotion is a popular phenomenon.

Judge's converse transfer may destroy appellate jurisdiction by judicature logic, because the judge solves problems of the lower court, especially that of the trial court, according to SPC's standards (including appellate knowledge and self-interest). Similarly, SPC's judge will tend to affirm the judgment of first instance when such judgment is delivered by his former colleague at SPC. If similar cases happen continuously, judicial review will become administrative review. It will make SPC more and more like centralized court.

So it is important to respect separations of judicial knowledge. Judges at different levels solve different problems, and the different judicial knowledge is accumulated thereupon. Interconnected at judicial knowledge system, appellate knowledge and trial knowledge have equal statuses and can't substitute with each other.

After Leaving SPC: Grand Justices Are still Available?

When Zhu Mingshan was deposed from the position of vice president of SPC, did he still keep the title of Grand Justice of the first rank? According to the internal rules of SPC, the rank of judge will be kept when He/She is not in active service at the court and approaches the retiring age. He/She often transfers to CPPCC/NPC.

So, when Zhu Mingshan becomes Vice President of Committee for Internal and Judicial Affairs of SCNPC, he is still the Grand Justice of the first rank, his personal archives are still kept in the personnel departments of SPC. I think it is impliedly in conflict with Article 69 of the Constitution of the PRC, which provides that the member of SCNPC can't hold the position of administrative organization, adjudication organization and prosecutorial organization.

What Should the Grand Justice Be?

Grand justice represents his contribution to judicature or judicial knowledge custom. Grand Justice represents a specific knowledge, and is the symbol of judicial knowledge. Grand justice represents an independent knowledge, different from administration and legislation, from prosecutorial office, police office, judicial administration, or Committee of Legislative Affairs of National People's Congress. The transfer of Grand justices to other branches will endanger judge's neutrality and destroy credibility of courts. But the ideality can't replace the reality, due judicature logic can't solve the current problem; we must gradually but steadily promote the process of judges' professionalization in the framework of the bureaucratic court system.

Where Does the Reputation of SPC Grand Justices Derive From?

Court system's corruptions have entangled SPC for at least ten years. Though SPC has held high the flag of judicial reform and adopted many measures such as neatening the judge group, building up advanced representative judge to manage lower courts so as to change the image of the whole court system. Undoubtedly, SPC has been convinced of the importance of judge's reputation in the campaign of changing court image. But the effect of these measures is suspectable. We should deepen the comprehension on the reputation of judges, especially that of SPC Grand Justices.

What Is SPC Grand Justices' Reputation?

According to reputation theories, the base of reputation is his past behavior, his status in the social net structure, or social acceptability. In the law academia, Richard Posner is a forerunner who studied USA Supreme Court Grand Justices' reputation. To compare USA with some civil law jurisdictions such as Japan, Germany and Taiwan of China, etc, I study SPC Grand Justices' reputation by two guidelines : One is fame; the other is credibility.

In China, there are 42 Grand Justices (justices of military court excluded), 11 of whom currently serve in SPC. In the judge profession rank system, the reputation of the SPC Grand Justices is the highest not only because SPC is the highest but also Public has made SPC as the last line of defense of social justice. SPC grand justices will help to upgrade the collective reputation of all judges. Still, current judge system has some negative impact on SPC grand justices.

First, judge's rank is appendant to judge's office position. To be nominated as Grand Justice may give the judge a new chance to seek interests and increase personal welfare.

Secondly, grand justices are not limited to President and Vice President of SPC, but include discipline inspection director of SPC, political section director of SPC, full-time member of adjudicatory committee of SPC and President of HPC. Without focusing on SPC, it will affect the reputation of SPC grand justices.

Thirdly, within the SPC, ordinary judge will affect the reputation of Grand Justices, because as regards to whether to lodge an appeal, parties will pay more attention to the judge-in-charge other than Grand Justices in SPC who barely hear a case. It is the reputation of judge-in-charge, not Grand Justices, who can transfer information to parties and decide on the ultimate result of a specific case.

Where Does the Reputation of SPC Grand Justices Derive From?

The first guideline is to calculate the fame of SPC's Grand Justices. I used Google to search and count their exposal numbers (page layout numbers of internet).

TABLE 2 The Exposal Numbers of SPC's Grand Justices (1949-2004)

Name	Number	Name	Number	Name	Number	Name	Number
XiaoYang	37507	Shen Deyong	2270	Lin Zhun	792	Wang Weigang	113
Luo Haocai	21700	Jiang Bixin	2210	Tang Dehua	688	Zeng Hanzhou	111
Dong Biwu	18173	Jiang Xingchang	1740	Tan Guansan	650	Zheng Shaowen	68
Li Guoguang	5808	Liu Jiachen	1484	Duan Muzheng	629	Hua Liankui	66
Shen Junru	5490	Zheng Tianxiang	1312	Zhang Zhirang	480	Wang Zhanping	43
Cao Jianming	4530	Gao Changli	1285	Ma Yuan	450	He Lanjie	42
Ren Jianxin	3791	Yang Xiufeng	1239	Wang Rongjing	404	Song Guang	40
Zhang Jun	3724	Su Zelin	997	Wu Defeng	383	Xing Yimin	20
Xie Juezai	3560	Ma Xiwu	965	Xie Anshan	272	Wang Demao	10
Xi Xiaoming	3103	Zhu Mingshan	879	Wang Huaian	244		
Huang Songyou	2960	Jiang Hua	837	Gao Kelin	218		
Wan Exiang	2430	Chen Qihan	820	Wu Gaizhi	187		

Since 1949, there are 49 SPC's grand justices all together (only including the president and vice president of SPC). We can draw some conclusions by table 2.

First, generally speaking, Grand Justices who are in-service newly or just leave the court have more exposal chances and fames than those who have left the court for a long time. However, for judges in some other countries, not only news about them, but also their previous judgments, literatures and legal opinions, etc. will be easily googled in the Internet.

Secondly, statistics imply that many Grand Justices have high fame not because of their SPC Grand Justice identity, but because of other background. For example, Luo Haocai ranks No.2 among all SPC Grand Justices, and his exposal is mainly related to his post as Vice President of CPPCC and President of Zhigong Party identity. Dong Biwu is at No.3, whose exposal is related to his post as Vice-Premier of State Council of the PRC or Vice President of PRC, etc.

Thirdly, though many Grand Justices especially those in services have no other background, they have high fame due to their activities at SPC. But most of their

exposure is related to attending news conference about new judicial interpretations, attending court administration meeting, interviewing foreign guests, inspecting local courts, etc. Clearly, these Grand Justices are famous not for the Grand Justice identity who should adjudicate and interpret by the individual case, but for court administration activities. Also, the exposal includes the justices' legal paper, and three justices hold doctoral degree. These factors may enhance their personal reputations in a way.

But they are all famous not because of their contributions to law and judicial system by adjudication.

Why not Famous by their Contributions to Law and Judicial System by Adjudication?

The reason is not their personal preference or character but the system itself. By contrast, in USA, Grand Justices are famous for their contributions to law and judicial system such as Marshall, Holmes, Warren, Story, etc. Even related to their wisdom, factors impacting the reputations of justices are not only the amount of their academic publications, but more importantly the frequency his name appears in the paper and the times his legal opinions are cited by other judges. It is the frequency by which he is referred to, and not the amount of his own works, that determines the justice's reputations.

Of course, it may not be appropriate to make direct comparison between China and USA, because the judges in USA have different power from that of their Chinese counterparts. As a whole, China belongs to civil law system rather than a judge-made law country. Grand Justice represents personal judicial experience, knowledge and ability. In adjudication, legal opinion can enhance the reputation of Grand Justice. Chinese Grand Justices can't deliver majority opinion, concurring opinion, even minority opinion so as to direct subsequent cases. The character of Chinese adjudicate system is collective responsibility and doesn't give prominence to the role of an individual judge. But in Japan that also belongs to civil law system, the Supreme Court carries out the minority opinion system and 15 grand justices have made some influential judgments by excising the power of constitutional review. These enhance the reputation of grand justices of Japan. In Taiwan of China, 17 grand justices of judicial Yuan also have the power of reviewing constitutional cases and have made many significant constitutional interpretations. And the establishment of Grand Justice Council of Taiwan followed the example of Germany Federal Constitutional Court. In addition, in the 18th century, the

Parlement of Paris as one part of France Sovereign Courts was also famous for its antagonizing the Crown. The most famous justice is Malesherbes, the President of the Cour des Aides (another part of France Sovereign Courts).

In short, not only in USA but also in Japan, Taiwan of China and Germany that belong to civil law system, the power of constitutional review or the minority opinion system has helped judges contribute to law and judicial system. In Mainland China, Grand Justices adjudicate the cases rarely and have neither the power to issue minority opinions nor the power to undertake constitutional review. SPC admits the appeal from civil and economic case solely by reference to the disputed amount of money or political significance, so the case, which has a legal significance without significant pecuniary or political involvement can't be appealed to SPC. SPC review both the legal application and fact of the case, and the judgment has no authority of precedent. Even the judicial interpretation that may be contributed to the law is not based on the case, and looks more like legislative interpretation.

Another factor impacting the reputation is the tenure of judge. Like other civil law system jurisdictions, the judicial system in China features a fixed term of judge. But this system doesn't work well. Many justices transfer to other branches when they are still in the tenure (see also TABLE 1).

General Calculation of Judge's Credibility

Age, previous judicial experience, record of miscarriage, consistent actions are the factors that define a judge's credibility. Nevertheless, as Grand Justices of SPC rarely adjudicate the case, the credibility of Grand justices has insignificant relations with credibility of the court. The calculation of judge's credibility is applicable to the judges who adjudicate the case.

We may make reference to Hong Kong and Taiwan's experiences in this regard. Since 2001, Hong Kong Public Opinion Website (<http://hkupop.hku.hk/>) has investigated the credibility of the Chief Justice of Court of Final Appeal of Hong Kong Special Administration Region 3 times every year. Taiwan also has conducted several investigations on judge credibility, such as "2003 opinion investigation of court activities", "2003 lawyer satisfaction investigation of judicial reform effect", "2004 common people satisfaction investigation of court service", etc. They all accumulate investigation methods and experiences.