



# The power and the misuse of power by China's local procuratorates in anticorruption<sup>☆</sup>

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## Abstract

Previous literature mainly blames the party commission's leadership and the CDI's leading role in anticorruption for China's procuratorate's ineffective anticorruption work, which only reflects part of the picture. This article has analyzed the interactions between local procuratorates and other entities in anticorruption based upon findings from interviewing prosecutors, CDI officers, and suspects, and conducting content analysis of internal records and files, procedural and substantive rules regarding anticorruption and the work of the procuratorate. It argues that there exist balances between local procuratorates and other entities; and local procuratorates have strong institutional motives from the evaluation system, fundraising needs and legal loopholes to manipulate and transact the power in investigating and prosecuting corruption cases with little supervision, which contributes to the selective prosecution and light sentence in corruption.

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China's corruption and anticorruption are everlasting research topics in China studies. Previous literature tends to focus on how the corruption is defined, produced or caused in China; what consequences are or can be caused by such corruption; and how effective the anticorruption agencies work, especially the China's Committees of Party Discipline Inspection (CDIs).<sup>1</sup> The local procuratorates have been perceived as failing to effectively investigate and prosecute corruption resulting in ineffective anticorruption due to the lack of independence and capability under the dual leadership of local party secretary and superior procuratorate and the dominant role in anticorruption of the CDI.<sup>2</sup> This perception only reflects part of the picture of the local procuratorate's role in China's anticorruption, ignoring its power and internal problems. According to China's Supreme People's Procuratorate's (SPP) 2015 annual work report, all national procuratorates have prosecuted around 40 thousand officials for corruption crimes, including over four thousand senior officials (chuji, 处级以上), who are at levels equal or higher than county/district leaders.<sup>3</sup> Among them only 12 thousand officials were investigated by the CDIs.<sup>4</sup>

This paper intends to discuss the other part of the picture of local procuratorates in China's anticorruption, by analyzing motives and obstructions during their interactions with other agencies in anticorruption. Based on interviews, record reading and content analysis of rules, this article explains how the procuratorates balance with other agencies and misuse their power

<sup>1</sup>See Graham Young, "Control and Style: Discipline Inspection Commissions since the 11th Congress," (1984) *The China Quarterly* 97, pp. 24–52; Hilary K. Josephs, "The Upright and the Low-Down: An Examination of Official Corruption in the United States and the People's Republic of China" (Summer 2000), 27 *Syracuse Journal of International Law and Commerce* (2000), 269; Melanie Manion, *Corruption by Design: Building Clean Government in Mainland China and Hong Kong*, Harvard University Press, November 2004, pp. 120–154; Andrew Wedeman, "Anticorruption Campaigns and the Intensification of Corruption in China," (2005) 14 *Journal of Contemporary China* 42, pp. 93–116; Elizabeth A Quade, "the Logic of Anticorruption Enforcement Campaigns in Contemporary China," (2007) 16 *Journal of Contemporary China* 50, pp. 65–77; Ting Gong, "The Party Discipline Inspection in China: Its evolving trajectory and embedded dilemmas," (2008) 49 *Crime Law Soc Change*, pp. 139–152; Hon S. Chan & Jie Gao, *Old wine in new bottles: a county-level case study of anticorruption reform in People's Republic of China*, *Crime Law Soc Change*, 2008, Vol. 49, pp. 97–117; Kilko Ko & Cuifen Weng, "Critical Review of Conceptual Definitions of Chinese Corruption: a Formal-Legal Perspective," (2011) 20 *Journal of Contemporary China* 70, June, pp. 359–378; Li Ling, "Performing Bribery in China: Guanxi-Practice, Corruption with a Human Face," (2011) 20 *Journal of Contemporary China* 68, pp. 1–20; Aparna Mathur and Kartikeya Singh, "Foreign Direct Investment, Corruption, and Democracy" (November 3, 2011), 45 *Applied Economics* 8, available at SSRN: <http://ssrn.com/abstract=2212956>; Xin He, "Black Hole of Responsibility: The Adjudication Committee's Role in a Chinese Court," (2012) 46 *Law & Society Review* 4, pp. 681–712; Margaret K. Lewis, "Presuming Innocence, or Corruption, in China" (3 May 2012), 50 *Columbia Journal of Transnational Law* 2(2012); Ting Gong & Jianming Ren, "Hard Rules and Soft Constraints: regulating conflict of interest in China", (2013) 22 *Journal of Contemporary China* 79, pp. 1–17; Xiaoying Zeng & Jiang Wu, "Predicaments and Countermeasures of Network Supervision in the Government of Anti-corruption in China", (2013) 4 *Studies in Sociology of Science* 4, pp. 40–44; Mayling Birney, "Decentralization and Veiled Corruption Under China's 'Rule of Mandates'" (1 March 2013), *World Development*, Forthcoming, available at SSRN: <http://ssrn.com/abstract=2279059>; Fu Hualing, "Stability and Anticorruption Initiatives: Is There a Chinese Model?" (12 July 2013), University of Hong Kong Faculty of Law Research Paper, available at SSRN: <http://ssrn.com/abstract=2293025>; Jiangnan Zhu and Yiping Wu, "Who Pays More 'Tributes' to the Government? Sectoral Corruption of China's Private Enterprises", (2014) 61 *Crime, Law and Social Change* 3, pp. 309–333; Xuezhong Guo, "Controlling Corruption in the Party: China's Central Discipline Inspection Commission," *The China Quarterly/Firstview Article/August* 2014, pp. 1–28.

<sup>2</sup>Melanie Manion, *Corruption by Design: Building Clean Government in Mainland China and Hong Kong*, Harvard University Press, November 2004, pp. 120–154.

<sup>3</sup>See the 2015 work report by the SPP, at [http://www.spp.gov.cn/gzbg/201503/t20150324\\_93812.shtml](http://www.spp.gov.cn/gzbg/201503/t20150324_93812.shtml).

<sup>4</sup>See the 2015 work report at the fifth plenum of the Eighteenth Central CDI, at: [http://www.ccdi.gov.cn/xxgk/hyzl/201501/t20150130\\_50785.html](http://www.ccdi.gov.cn/xxgk/hyzl/201501/t20150130_50785.html).

in anticorruption for their own profits. It provides insights for China's further reforms in anticorruption.

## 1. Introduction

The Chinese procuratorate is tasked with conducting prosecution in criminal cases on behalf of the state and supervising the activities of public security agencies and courts. The SPP sits at the top of the prosecutorial system and directs the work of the procuratorates at lower levels including procuratorates at the provincial, municipal, and district/county levels. Local procuratorates are under the dual leadership of both the superior procuratorates and the local party commissions. Formally speaking, a China's local procuratorate shall answer to both the superior procuratorate and the local people's congress at the same level. The budget, staff strength and resources of the procuratorate shall be supported and thus decided by the local people's congress through the local government at the same level. However, in fact, it is the local CCP commission (as "party commission") that makes final decisions at a local level. The head of the party commission is the party secretary at that level. Since the local party commissions at the same level control the personnel and finance of the procuratorates, the superior procuratorates' leadership is relatively weak. Within a procuratorate, there is one prosecutor-general and several deputy prosecutors-general leading its work. The prosecutor-general is the party secretary of the procuratorate. There is a prosecutorial committee in each procuratorate comprising the prosecutor-general, deputy prosecutors-general, full time committee members and persons in charge of important departments of the procuratorate.<sup>5</sup> It discusses important cases and issues and makes decisions by a majority vote.<sup>6</sup>

Corruption crimes are a major kind of cases directly investigated by the procuratorates. After investigations, only the procuratorates could prosecute them in court and supervise the execution of them after conviction. Besides, ever since 1990s, China has established the anticorruption leadership and working institution that the party commission uniformly leads and the CDI coordinates the anticorruption at each level. In 2002, the Party Constitution incorporates the article that CDI shall coordinate anticorruption work. With recent reforms, CDIs become powerful specialized anticorruption agencies in China. Many senior corruption cases have to be firstly investigated by CDIs. There are criticisms on such model. First, CDIs are heavily influenced by local party commission and thus may arbitrarily withdraw or passively investigate certain corruption files. Second, the procuratorates can come in only when CDIs finish their investigations and decide to transfer their cases and thus have little voice in the results of these cases.

Together, under the dual leadership, the procuratorate is tasked with investigating, prosecuting and supervising the execution of corruptions on one hand, and facilitating the leadership of the local party commission and the coordination of the local CDI in anticorruption on other hands. Things are easy when these tasks are consistent with anticorruption. It becomes challenging and important when they contradict with anticorruption. To analyze how the procuratorates cope with these challenges, we have conducted series of interviews with 39 prosecutors including prosecutor-generals, ordinary prosecutors and investigators at procuratorates of different levels from eight provinces in China from March 2014 to April 2015 and

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<sup>5</sup>[Organization Regulation of the Prosecutorial Committee of the People's Procuratorate] (promulgated by the Prosecutorial Comm. of the Supreme People's Procuratorate, Feb. 2, 2008, effective Feb 2, 2008), art. 2 (China).

<sup>6</sup>*Id.* at arts. 4, 5, 11.

follow-up interviews of seven of them from July to September 2015, representing the north, south, middle, west and east parts of China.<sup>7</sup> We have also interviewed the officers of different levels in a city-level CDI in X province and two city-level CDIs in Y province from mid-March to early May of 2014 and conducted supplemental interviews of six CDI officers from July to September 2015 to verify the data collected from the procuratorate.<sup>8</sup> We have incorporated these findings in our following analysis and provide further theoretical discussions in the end. Through this analysis, we find that there are undergoing balances between the procuratorate and other entities; and that the institutional needs in evaluation and fundraising within the procuratorate system partly explain its ineffectiveness in anticorruption.

## 2. Part 1 the balance with the leadership of local party commissions in anticorruption

A local party commission has several checks on its local procuratorate. First, it decides the financial budget of the procuratorate through its control over the finance department. Second, it decides the staff strength (*bianzhi* 编制) of the procuratorate through its control over human resource departments. The prosecutor-general may retain an employee without *bianzhi*, i.e. outside the staff strength limit, by contract. But such contracts won't have the benefits bound with *bianzhi*. For examples, these employees are not counted as civil servants and thus have no promotion route; the salaries of these employees are not funded by the government; their *hukous* (户口) cannot be resolved; and their children have no preferential treatment in attending good schools affiliated to the government. Having no benefits of *bianzhi*, such contract cannot offer competitive salaries to attract talented people.<sup>9</sup> Besides, the nomination of the deputy prosecutor-general and the promotion of prosecutors have to be approved by the local party secretary to be effective. Third, to uphold the leadership of local party commissions in

<sup>7</sup>Series of interviews done by the authors in Beijing, Henan, Tianjin, Hunan, Hubei, Anhui, Jiangsu and Hainan from March 2014 to April 2015. We have interviewed: in Beijing, one director of the prosecution-preparing department of a provincial procuratorate, one director of the research office of a municipal procuratorate, three prosecutor-generals of district procuratorates, one director of the anticorruption department and one deputy director of the approving arrest department of district procuratorates; in Tianjin, one prosecutor of a provincial procuratorate and one prosecutor-general of a district procuratorate; in Hunan, two prosecutor-generals, one deputy prosecutor-general and one director of the research office of municipal procuratorates; in Hubei, one deputy prosecutor-general of a municipal procuratorate, one prosecutor-general and two deputy prosecutor-generals of district procuratorates, one deputy director of the anticorruption department and one prosecutor of district procuratorates; in Jiangsu, one deputy prosecutor-general and one director of the anticorruption department of municipal procuratorates, two prosecutor-generals and one deputy prosecutor-general of district procuratorates; in Anhui, one deputy prosecutor-general of a provincial procuratorate, two prosecutor-generals, two deputy prosecutor-generals and two prosecutors of municipal procuratorates; and in Henan, one deputy prosecutor-general of a provincial procuratorate, two prosecutor-generals and two deputy prosecutor-generals of municipal procuratorates, and two prosecutor-generals and one prosecutor of district procuratorates. The follow-up interviews were conducted by the authors in Beijing from July to September 2015. The interviewed officers include: one vice prosecutor-general of a provincial procuratorate; four prosecutor-generals of four municipal procuratorates, and two prosecutor-generals of two district procuratorates.

<sup>8</sup>The first series of interviews were conducted by the authors intensively from mid-March to early May of 2014, which formed the basis for a paper forthcoming as: Fenfei Li & Jinting Deng, The limits of arbitrariness in anticorruption by China's local party discipline inspection commissions, *Journal of Contemporary China*, Vol. 25, No. 97, January 2016. The follow-up interviews were conducted by the authors in Beijing from July to September 2015. The interviewed officers include: one case-department deputy director of a provincial CDI, two secretaries of two municipal CDIs, two case-department directors of two municipal CDIs, and one secretary of one county CDI.

<sup>9</sup>A recent online survey of over four thousand prosecutors indicates that 80% of the surveyed prosecutors are disappointed with their salaries. Their current salaries range from 3500 to 5000 RMB per month, while their satisfactory salaries range from 8000 to 12,000 RMB per month. “*检察官生存状态调查问卷*” at the [wenjuan.com](http://wenjuan.com) website.

anticorruption, there has formed an internal rule that when cases involve senior officers in its jurisdiction, the prosecutor needs to report such cases to the local party secretary and needs its approval before carrying out investigations<sup>10</sup>. “Senior officers” refer to officers of only one level lower than the prosecutor-general and officers of two levels lower than the prosecutor-general but holding essential positions, such as financial department deputy directorship.<sup>11</sup>

Given these checks, if a local party commission wants to protect certain corrupt officials, it has several ways to obstruct the work of the procuratorate. First, if the case involves senior officers, when the procuratorate reports it to the party secretary, he/she could simply decline the investigation. In some districts, around half of the cases reported have been turned down.<sup>12</sup> Normally, without such approval, the procuratorate will not start the investigation. Second, if the case is serious or has strong evidence, the party secretary may hesitate to disallow the investigation. Instead, he/she would ask the procuratorate to transfer the case to the CDI. Normally, cases involving important senior officers, or many officers, or large amount of monetary value, or a lot of public attention/complaints, causing instability of that area, will be deemed serious. Cases having clear facts, concrete bribe-accepting incidents, photos, videos or radios, or financial statements indicating corresponding fund movements are deemed having strong evidence. For these cases, it is very risky for the party secretary to simply decline the investigation, as it is difficult to hide such cases from the superior's notice. Once it is disclosed, the superior will blame the party secretary for declining the investigation, probably as dereliction, and if party disciplinary rules or laws are violated in such declination, the party secretary has to receive disciplinary or legal punishment. Having the CDI to investigate is a way to balance the risk and the need to protect. Unlike the procuratorate, no laws regulate the CDI's investigation which remains very confidential; and the CDI is better controlled by the party secretary than the procuratorate.<sup>13</sup> Thus, it is easier for the CDI to terminate a case under the guise of legitimate reasons while the true reason is the interest of the local party commission.

In these situations, it is challenging for the procuratorate if it wants to dig the case. Well, it may not be such challenging in many of these situations. When there is a good case, the local party secretary is actually hesitant in declining the investigation because he/she knows laws may have been broken. Especially, he/she knows the prosecutor-general could submit to the superior procuratorate to overturn its disapproval. Thus, he/she wants to listen to the suggestions of the prosecutor-general to decide the possibility of crimes therein, the seriousness of the cases and the willingness of the prosecutor-general to investigate. With specialized legal knowledge and experiences in anticorruption, the prosecutor-general has big chance to persuade the local party secretary to give up the intention to hide.<sup>14</sup> Many prosecutor-generals have

<sup>10</sup>We cannot find formal documents specifying such rule. However, from our interviews with dozens of prosecutors from different provinces and cities, they all said such rule exists. Series of interviews done by the authors in Beijing, Henan and Tianjin from March 2014 to April 2015.

<sup>11</sup>Id. For example, for a district procuratorate, the prosecutor-general is at deputy county party secretary level (副处级, fuchuji). To him, senior officers include those at village party secretary level (正科级, zhengkeji) and those at deputy village level (副科级, fukeji) holding departments like finance and house.

<sup>12</sup>Interviews done by the authors in Beijing and Henan from March 2014 to December 2014.

<sup>13</sup>See Fenfei Li & Jinting Deng, the Limits of Arbitrariness in Anticorruption by China's Local Party Discipline Inspection Committees, forthcoming in *Journal of Contemporary China*, vol. 25, no. 97, Jan 2016, online preview available at: <http://www.tandfonline.com/eprint/nNRzqjZXZECnRKWcq9HB/full>.

<sup>14</sup>Series of interviews done by the authors in Beijing, Henan and Tianjin from March 2014 to April 2015.

commented that the local party secretary is easy to be persuaded and “controlled.”<sup>15</sup> They could over-emphasize the strength and importance of the cases and inflate the public attention thereof.

It may neither be challenging if the local party secretary wants to transfer the case to the CDI. With recent reforms, the leadership of the superior CDI is strengthened; case information needs to be submitted to the superior CDI; case investigation is led by the superior CDI.<sup>16</sup> The manipulation room by the local party secretary over the CDI is limited and only exists at the early stage.<sup>17</sup> Due to limited personnel and technique resources, the CDI always asks the procuratorate to join in the investigation.<sup>18</sup> As from our interviews of county-level CDIs, a typical county CDI usually has only six officers for investigating cases, two officers for one case.<sup>19</sup> Thus, when a formal investigation begins, it frequently becomes short of hand and needs to start a joint investigation, to borrow people from the procuratorate or police. Take one of our interviews for example.<sup>20</sup> In that district, the CDI has no equipment and trained personnel to monitor the suspect and collect information from the suspect's cell phones or computers. Especially, when there is a complex criminal scheme, the CDI has no ability to conduct the whole investigation. “Thus, they always borrow our people to help them with the investigation.”<sup>21</sup> Being specialized in laws and investigative techniques, the prosecutors have some room to influence the CDI's investigation.

However, if persuasion fails and the case is disallowed to transfer to the CDI for investigation, it becomes challenging. There is one such case from our interviews.<sup>22</sup> A prosecutor-general of a district/county level procuratorate wanted to investigate a case involving a senior officer who was in the net of the district party secretary. After communicating the importance and strong proof of the case with the party secretary, the prosecutor-general was still disallowed to investigate. Then, he submitted this case to its superior procuratorate who supported the investigation. The superior reported the case to the municipal party secretary who also agreed with the investigation. The municipal party secretary then directed the district party secretary to approve the investigation. Finally, the district party secretary approved and the case was investigated.

From this case, we could see that when being disallowed investigation by the local party secretary, the prosecutor-general could get help from the superior prosecutor-general, and then the superior party secretary who could direct the local party secretary to approve the investigation. This is workable because senior officers of the inferior government are usually not senior officers of the superior government and are not in the net of the superior party secretary. Thus, the superior party secretary has no intention to protect them. Moreover, the superior procuratorate needn't the superior party secretary's approval to investigate them because they are not senior at the superior level, and thus can by itself directly investigate, or direct the inferior procuratorate to investigate them, overcoming the inferior party secretary's disapproval.

However, such a way bears several risks. First, no matter who finally directs the investigation, it is obvious to the local party secretary that its prosecutor-general has disregarded its rejection and submitted the case to the superior institutions. The exact influence of such

<sup>15</sup>Interview by the author in March, 2015 in Beijing.

<sup>16</sup>Fenfei li & Jinting Deng.

<sup>17</sup>Fenfei li & Jinting Deng.

<sup>18</sup>Fenfei li & Jinting Deng.

<sup>19</sup>Fenfei li & Jinting Deng.

<sup>20</sup>Interview by the authors in Beijing of a county-level general prosecutor in March 2015.

<sup>21</sup>Id.

<sup>22</sup>Interview of a prosecutor from Henan by the authors in Beijing in November 2014.

incidence on the relation between the local party secretary and its procuratorate depends upon the evolving of the case, the personality of the local party secretary, the power of the prosecutor-general and the routine relation between them. But anyway, it is deemed very bad to the relation according to our interviews.<sup>23</sup> If the relation becomes bad, both the funds and the staff strength can be shortened by the local party secretary. Besides, for the success of investigations, the procuratorate needs the facilitation from other governmental departments, such as banks and audits. When the relation is tense, such facilitation can also be affected.

Second, when the superior procuratorate or the superior party secretary considers whether to support the investigation, it looks at not only the strength of the case but also the power of the local party secretary. Although the senior officers of the inferior government are not senior officers of the superior one, the inferior party secretary is definitely a senior officer of the superior. It is usually of one level lower than the superior prosecutor-general. Some inferior party secretaries of important districts are of the same level as the superior prosecutor-general. Some may previously work in the superior procuratorate and maintain a good network therein. For our previous case, the local party secretary previously worked at the superior procuratorate. Thus, it is possible for a strong case to be rejected by the superior institutions.

Thus, when there is a corruption case with strong evidence involving the local party secretary's interest, the procuratorate may still investigate it if it receives support from the superior procuratorate and wants to bear the analyzed risks. Then why does it want to do that? From our findings, we conclude that because with the mentioned checks, the local party secretary does not wholly control its procuratorate and there are balancing motives. On one hand, the prosecutor-general is nominated by both the superior procuratorate and the superior party organizational department and appointed by local national congress; and can be removed only by the superior's suggestion subject to approval by the superior congress.<sup>24</sup> The superior procuratorate's opinion is primary and has the final voice here. Further, the promotion of the prosecutor within the procuratorate system is decided by the superior procuratorate. There are requirements in investigating cases from both the superior procuratorate and the procuratorate's self-professional satisfactory needs. On another hand, a large part of the procuratorate's fund comes from cases successfully investigated by them.<sup>25</sup> The illicit funds of the convicted cases, including the bribes received by the corrupt officials or offered by the bribers, the embezzled funds by the officials and the fines punished by the court, will be firstly collected to the local treasury and then returned largely to the procuratorate.<sup>26</sup> Moreover, it is possible for the procuratorate to intercept part of the illicit funds discovered during investigations.<sup>27</sup> First, the witnesses of the search are selected by the procuratorate. Second, for the corrupt officials, they want to have a smaller amount of illicit funds resulting in lighter sentence. The interviewed prosecutors all admit that investigating cases can improve the finance of the procuratorate.<sup>28</sup> Then, as long as the procuratorate can raise its funds outside the local party secretary, it can increase the benefits to its employees.

<sup>23</sup>Series of interviews done by the authors in Beijing, Henan and Tianjin from March 2014 to April 2015.

<sup>24</sup>Articles 22, 23, 26, the Organization Law of the Procuratorate in China, effective on 2 Sep 1983.

<sup>25</sup>Beijing and Shanghai have already terminated the return. However, in many other provinces, the illicit fund collected in corruption cases would still be returned to the procuratorate at certain ratios, ranging from 60 to 100%. Series of interviews done by the authors in Beijing, Henan and Tianjin from March 2014 to April 2015.

<sup>26</sup>Id.

<sup>27</sup>The illicit funds discovered during investigations before being convicted by court may be collected under the title of "illicit benefits" by the procuratorate, as analyzed in 4(3). Such fund is different from the convicted illicit funds.

<sup>28</sup>Series of interviews done by the authors in Beijing, Henan and Tianjin from March 2014 to April 2015.

Given the syndicated corruption situation in China, the local protectionism happens frequently. When the local leadership obstructs anticorruption, three ways exist for the procuratorate to overcome its obstruction: by persuasion, by joining the CDI's investigation, or by achieving the superior's support. Although the procuratorate is formally under the primary leadership of the local party secretary, such leadership is not strong enough to make the procuratorate its puppet. The procuratorate has the motives and the ability to some degree to overcome its obstruction in anticorruption, formulating a counterforce against the local party secretary. However, such degree depends upon the power of the local party secretary. "Normally, the local party secretary follows the suggestions of the prosecutor-general to decide whether to investigate a case; but if the local party secretary is very powerful, such as having held senior positions previously in the superior procuratorate, he would not care much the advice from the prosecutor-general," commented by an interviewed prosecutor-general.<sup>29</sup>

### 3. Part 2 the balance with the leadership of superior procuratorate in anticorruption

As the other leader, the superior procuratorate also has several checks on the inferior procuratorate. First, the superior prosecutor-general nominates the inferior prosecutor-general. Although such nomination needs the superior organization department's agreement to be effective, the organization department normally respects the opinion of the superior prosecutor-general. Since the inferior prosecutor-general has to be appointed by the inferior congress, the superior organization department also considers the opinion of the inferior party secretary on the candidate recommended by the superior procuratorate. Normally, the inferior party secretary will not object such candidate as it is supported by the superior party organization. Thus, the superior prosecutor-general has a big saying in the selection of inferior prosecutor-general. Moreover, if an inferior prosecutor-general wants to be promoted to the leadership of the superior prosecutor-general, the superior prosecutor-general has a bigger saying here as such position is not appointed by the inferior congress but the superior congress. The superior prosecutor influences largely both the selection and the promotion of the inferior prosecutor-general.

Besides, the superior procuratorate leads the inferior's work, i.e. case handling, and the standards are clearly specified in the Constitution, the Organization Law of People's Procuratorates, the Criminal Procedure Law and relevant judicial interpretations. There is an internal evaluation system in the procuratorate system, comprising several rates and numbers, through which the superior controls and supervises the work of the inferior.

To understand the evaluation system, it is necessary to briefly introduce the work process of the procuratorates. More than the CDI, the procuratorate's work has generally seven steps.<sup>30</sup> First, when receiving information, the prosecutor-general decides whether to perform preliminary investigation after a meeting with concerned department director of the procuratorate. The information regarding officers at county/district party secretary levels (xian \ chu level, 县处级) shall be submitted level up to the provincial procuratorate.<sup>31</sup> The information regarding officers at municipal levels (ting \ ju level, 厅局级) shall be submitted level up to the SPP.<sup>32</sup>

<sup>29</sup>Interview by the authors in Beijing in December 2014.

<sup>30</sup>For the CDI's work process, please see Fenfei Li & Jinting Deng. For the procuratorate's work process, see Articles 161–185, China's Criminal Procedure Law, effective on 1 Jan 2013.

<sup>31</sup>Article 163, China's Criminal Procedure Law, effective on 1 Jan 2013.

<sup>32</sup>Id.

Second, after preliminary investigation, if there is evidence proving some corruption crimes may exist, the investigators will write a report suggesting docketing the case. The prosecutor-general decides whether to approve. Third, after the docketing of the case, investigative techniques restricting personal freedom of the suspects can be used according to the Criminal Law, such as bail, detention, arrest and living at designated residence under supervision (LDRS).<sup>33</sup> Among them, the arrest and the LDRS can be used only after the superior procuratorate approves.<sup>34</sup> The investigative department of the procuratorate will formally investigate the case. Fourth, once the criminal facts are clear and the evidence is sufficient, the investigative department will close the investigation, write an opinion for prosecution subject to approval by the prosecutor-general and transfer the case files to the prosecution department of the procuratorate which reviews the files and prepares the prosecution. There may be back and forth between the two departments if anyone finds unclear facts or insufficient evidence for prosecution. Fifth, once the prosecution department is ready for the prosecution and the prosecutor-general agrees, it will prosecute the case to the court. Sixth, the court then tries and decides the case. If the court convicts the suspect, the procuratorate can then close the case. The court may also suggest the procuratorate to withdraw the case if it thinks there is no case, or it may suggest supplemental investigation if it thinks there is no sufficient evidence. Seventh, if the court denies the prosecution and acquits the suspect, the procuratorate can protest the case to the superior court subject to the superior procuratorate's approval and initiate the appeal procedure. With the appellate decision, the procuratorate can close the case. Unlike the CDI, the decisions regarding whether to accept, preliminarily investigate, docket, formally investigate, prosecute and protest the case have to be filed with the superior procuratorate, which could direct the procuratorate to change its decisions if it finds any decision wrongful.<sup>35</sup> The procuratorate also needs to notify the real-name whistleblower of the decision not to docket the case, who can appeal the decision to a different department of the procuratorate.<sup>36</sup>

Accordingly, the major factors in the evaluation system include the sum of all the cases, or the sum of senior cases, i.e. cases of large amount of monetary value or senior officers, that have been investigated, docketed, or prosecuted by the procuratorate in that year; the percentage of cases firstly prosecuted but then withdrawn by the procuratorate, i.e. the withdraw rate; and the percentage of the prosecuted cases that have been finally convicted by the court, i.e. the conviction rate.<sup>37</sup> The sum of each number multiplied by its coefficient is the total points earned by the procuratorate. All the procuratorates within a same province will be ranked accordingly.<sup>38</sup> Top-ranked procuratorates will be rewarded as excellent prosecutors and advanced procuratorates, and publically commended. Bottom ranking is absolutely a shame and negation on the procuratorate's work, and could adversely affect the promotion of the prosecutor-general. Among the factors, the withdraw rate and the conviction rate are super important. For example, for one of our interviewed district-level procuratorate, if there is one

<sup>33</sup>Article 148, China's Criminal Procedure Law, effective on 1 Jan 2013.

<sup>34</sup>Article 73, China's Criminal Procedure Law, effective on 1 Jan 2013 and Article 1, Tentative Rules on Subjecting the Using of Arrest in Cases Investigated by Procuratorates Below Provincial Level To the Approval of the Superior Procuratorates, issued by SPP, effective on 4 Sep 2009.

<sup>35</sup>Articles 165, 166, 167, 177, 178, 179, 183 and 184, China's Criminal Procedure Law, effective on 1 Jan 2013.

<sup>36</sup>Article 184, China's Criminal Procedure Law, effective on 1 Jan 2013.

<sup>37</sup>Articles 21–27, the enabling rules of the evaluation system in the district procuratorates in Beijing, obtained from the interview by the authors in March, 2015.

<sup>38</sup>All procuratorates nationwide used to be ranked together. Considering significant geographic difference, SPP now requires such rank conducted provincially. The interview by the authors in Beijing, December 2014.

verdict of innocence for the year, or if there are more than three cases that the procuratorate later withdraws, then it is impossible for the procuratorate to be the advanced procuratorate.<sup>39</sup> Thus, the prosecutor cares a lot about the conviction and the withdraw rates and could allow very few such cases.

Through this evaluation system, the superior procuratorate directly controls the work performance of the inferior procuratorate, such as the numbers of cases and senior cases that shall be docketed, investigated and convicted. Moreover, there is a uniform national internet system in the procuratorate system. Once a case is preliminarily investigated, its files have to be uploaded into the system. Delayed uploading is against discipline. Once being uploaded, the case can't be removed unless being closed with a conviction or withdrawing decision and all the documents are open to the superior procuratorate which can question the handling of the case. Even without such a system, because each essential decision regarding case investigation has to be filed with the superior procuratorate, the superior procuratorate has a strong control over the inferior's investigation. Besides, during investigation, without the superior procuratorate's approval, the arrest and the LDRS can't be used. The LDRS is essential for the success of the investigation. It is used to an extent similarly as the *Shuanggui* technique in the CDI's investigation.<sup>40</sup> Furthermore, the superior procuratorate's support is needed for the inferior's protest of an innocent verdict. In light of the super importance of the conviction and the withdraw rates, if the court thinks there is no case, to avoid later protest, it will communicate with the prosecutor privately to suggest withdrawing to avoid an innocent verdict. Although a withdrawal is better than an innocent verdict, it is still bad. Then, the prosecutor will request for instructions from the superior procuratorate because only if the superior supports the case, it can then avoid withdrawing and can protest for an appeal if the case is acquitted, hoping for a favorite appellate decision.

Given these checks, if the superior procuratorate wants to obstruct anticorruption, it can do so by directing the inferior prosecutor-general not to start the case or passively investigate the case as it well controls the inferior's selection, promotion and evaluation, or by disapproving the use of arrest and LDRS to obstruct the investigation, or by refusing to support the inferior's protest on the court's innocent or too light verdict. Theoretically, it is stronger than the local party secretary's influence. However, due to limited communications and the long distance, it is easy for the inferior to hide the case information from the superior. The inferior procuratorate's relation with the superior is far looser than with the local party secretary, especially when the inferior prosecutor-general works at a local area for a long time. As long as the local party secretary approves, the inferior could start the investigation. Moreover, those that the inferior has the power and the responsibility to investigate are at levels lower than the inferior and thus are not concerned by the superior; while those concerned by the superior are at levels at least equal to the inferior and thus are not within the inferior's jurisdiction. Furthermore, the superior procuratorate is also evaluated and cares similarly as the inferior on the sums of cases, the conviction and the withdraw rates. Besides, being procuratorates, the superior and the inferior have many other common internal needs, similar attitudes and concerns, such as the professional satisfactory need in anticorruption and to improve the financial situation from

<sup>39</sup>The interview of a prosecutor in Beijing by the authors in Beijing, June 2014.

<sup>40</sup>孙煜华, 指定居所监视居住的合宪性审视 (The Constitutionality Review of the LDRS), 《法学》2013 年第6期第146页。

anticorruption. It is not often for the superior to obstruct the inferior's anticorruption according to our interviews.<sup>41</sup>

That said, if the superior wants to obstruct, the inferior has no good way to counteract. The local party secretary has no motive or ability to support the inferior in this situation. The inferior cannot submit the case to a further higher level. As the superior is even more specialized in legal knowledge and investigative experiences than the inferior, it is also difficult for the inferior to persuade or treat the superior by exaggerating the case. "It is usually easy to persuade the local party secretary as he/she does not know law. You could exaggerate its factual and legal seriousness. But it is very difficult to treat the superior this way as they know clearly how the law is or the fact could be," commented by several of our interviewed prosecutor-generals.<sup>42</sup> Moreover, the superior procuratorate could obstruct under the guise of facially legitimate reasons. For example, one interviewed district prosecutor-general told us that once he had a case suspecting that a real estate developer had purchased a house worthy of 0.3 million RMB for the housing department director (正科级, zhengkeji).<sup>43</sup> There was sufficient evidence proving that the title of the house was under the director and the developer obtained a project at that area thereafter. However, there was a receipt signed by the accountant of the developer stating that she had received the money purchasing the house from the director. The statements of the developer, the director's wife, the director himself, the director's daughter and the accountant were contradictive. The prosecutor-general then submitted the request to arrest the director to the superior procuratorate which declined the request, arguing that there was insufficient evidence to prove whether the house was purchased by the developer. But according to our interviews, in corruption cases, signing a fake receipt is frequent to hide the corruption facts.<sup>44</sup> Normally, in such situations, the superior procuratorate would approve the case. However, in this case it declined. Moreover, the interviewed prosecutor-general had received some information regarding the director's networking with the superior procuratorate. Afterwards, because of the time limits of interrogations and detaining,<sup>45</sup> the procuratorate had to release the suspects and then they communicated with each other to make uniform statements regarding the receipt, failing the investigation finally.

Recent reforms would further strengthen the vertical control within the procuratorate system as the finance, personnel and work equipment will all be uniformly regulated by the provincial level. Then, the municipal and district party commissions would almost have no control over its procuratorates. The idea is to strengthen the independence of the local procuratorate from the local party commission. But there are concerns that the superior procuratorate's control would become too strong to maintain the inferior's independence in anticorruption, as under China's spreading corruption, there are proofs of serious corruptions in the procuratorate system. "We think that the obstruction of the local party secretary is not so tough as he/she does not know law. The influence from the superior is instead a real trouble."<sup>46</sup> It is problematic if the supervision of the procuratorate system is weak. The national plan of the reform has not been decided. Six places are experimenting different models. It remains to see after this reform how to balance the control of the superior and the supervision of the procuratorate system.

<sup>41</sup>Series of interviews done by the authors in Beijing, Henan and Tianjin from March 2014 to April 2015.

<sup>42</sup>Interviews by the authors in Beijing and Tianjin in March, 2015 and December 2014.

<sup>43</sup>Interview of a district prosecutor-general in Beijing by the authors in April 2015. For security reasons, the place is not disclosed.

<sup>44</sup>Series of interviews done by the authors in Beijing, Henan, Hunan, Hubei, Anhui, Tianjin and Jiangsu from December 2014 to April 2015.

<sup>45</sup>The detain cannot last over 37 days. Article 89, China's Criminal Procedure Law, effective on 1 Jan 2013.

<sup>46</sup>Interview by the authors of a prosecutor-general from Tianjin, in Beijing, March 2015.

#### 4. Part 3 the balance with the local CDI in anticorruption

During the 1990s–2000s, as the corruption grew quickly and heavily, the anticorruption style building and case investigations were firmly added into the CDIs' mission.<sup>47</sup> The CDIs formally became the coordinator in anticorruption in 2002.<sup>48</sup> In 2008, the Central Party Commission urged all levels nationwide to improve the function of the Anticorruption Coordination Teams at different levels and required that the CDI secretary to be the team leader to coordinate the anticorruption work among entities including the CDI, the judiciary, the procuratorate, the police and the audit bureau.<sup>49</sup> Like expressed in China's anticorruption policy that the party secretary leads and the CDI coordinates the anticorruption work, anticorruption in China is never just a legal issue, nor an issue of certain identified agencies' independence. It is a whole thing, concerning from the party commission to every party and governmental department. In this whole thing, although the party secretary has the final call, the CDI drafts concrete work plans, coordinates the work of different departments, and makes suggestions on case handling to the party secretary. Accordingly, the CDI influences the procuratorate's anticorruption work through two ways.

First, when the procuratorate reports the case to the local party secretary, the CDI's suggestion is important on the local party secretary's decision. But the CDI does not have the power to ask the procuratorate to withdraw a case. Although recently the function of the anticorruption coordination team has been emphasized and the CDI secretary is normally the team leader, the procuratorate does not need its approval to make any decision. It only needs to file any decision to docket a corruption case to the team leader, i.e. the CDI secretary within three days after it has decided to docket the case.<sup>50</sup>

Second, more importantly, the CDI has priority to investigate the corruption cases in the overlapping jurisdiction first, which may determine their final outcomes. The jurisdiction of the CDI and the procuratorate in corruption are largely overlapped. In cases involving party members, the CDI's jurisdiction is much broader than the procuratorate. For example, the CDI covers village cadres and violations of disciplines, while the procuratorate only supervises “governmental civil servants 国家工作人员”,<sup>51</sup> normally excluding village cadres, and only criminal corruptions. Until now, all corruption cases concerning provincial level officials were firstly investigated by the CCDI and then transferred to the SPP; and a large part of corruption cases of municipal level officials were investigated by the provincial CDIs and then transferred to the provincial procuratorates. In the high level corruption cases, the CDI decides whether to preliminarily or formally investigate them subject to both the superior CDI and the local party secretary's approvals, conducts preliminary and formal investigations of them, and decides whether to transfer the case to the procuratorate subject to both the superior CDI and the local party secretary's approvals.

<sup>47</sup>ZZZB (Zhonggong zhongyang zuzhi bu) (eds.). 2000. *Zhongguo gongchandang zuzhi shi ziliao* (Materials on the CPC Organizational History). Beijing: Zhonggong dangshi chubanshe. Vol. 7, pp. 184–85.

<sup>48</sup>*The Compiles of CPC's Party Constitutions* (中国共产党历次党章汇编) (1921–2012), China Fangzheng Press (中国方正出版社), 2012. pp. 427, 442.

<sup>49</sup>The 2008–2012 Work Plans for Establishing and Improving the Corruption Prevention and Punishment System, issued by the Central Party Commission in June 2008, part 7(4), at: <http://cpc.people.com.cn/GB/64093/64371/7411326.html>.

<sup>50</sup>Interview done by the authors in Beijing of one vice prosecutor-general of a provincial procuratorate on September 10, 2015.

<sup>51</sup>Kilko Ko & Cuifen Weng, “Critical Review of Conceptual Definitions of Chinese Corruption: a Formal-Legal Perspective,” (2011) 20 *Journal of Contemporary China* 70, June, pp. 359–378.

However, the CDI's priority in investigating corruption cases does not mean that all cases in the overlapping area have to be firstly investigated by the CDI. From our interviews, there exist informal rules in practice drawing the line between local CDIs and procuratorates' overlapping jurisdiction.<sup>52</sup> The principle rule is who gets the information first has the right to investigate the case first.<sup>53</sup> Otherwise, the procuratorate will have no motive to search for information. In the procuratorates we have interviewed, the median ratio of the corruption cases transferred from the CDI in all corruption cases annually investigated by the procuratorate is around 20%, i.e. the corruption cases that have been investigated firstly by the CDI.<sup>54</sup> The ratio is consistent with the annual work reports of the CCDI and the SPP.<sup>55</sup> Thus, a large part of the procuratorate's corruption cases are firstly investigated by the procuratorate. Relying on the CDI transferring cases would not be sufficient to satisfy the procuratorate's evaluation needs.

A supplementary rule to the principle is that who investigates deeper gets the case.<sup>56</sup> This happens when the two fail to communicate the information and both have started working on it. Then, when they find out both are working on the same case, the one who has spent more time and effort and achieved more progress can continue and the other will withdraw and close the case with the result of the continuing entity's work.

The exception to the principle is that who has the ability to investigate gets the case. This happens when the CDI and the procuratorate get the information at around the same time or when the procuratorate, as the first finder, has insufficient resource to investigate the case. For the CDI, if it feels unable to conduct the investigation, as the anticorruption team leader, it could borrow people from different entities and start joint investigations, as the case may require, to help it go further. But the procuratorate has no such coordinative power. Cases requiring such joint coordination will be firstly investigated by the CDI even if the procuratorate is the first finder. This constitutes a priority of the CDI.

Another priority of the CDI is that, the information relating to violations of party disciplines is easier to collect, while the information involving criminal corruptions is much harder to find. Often times, such criminal information comes from the investigation of disciplinary violations. Several CDI officers admitted during interviews that often times criminal information discovered from the CDI's investigations will not be transferred to the procuratorate.<sup>57</sup> Reasons include the party secretary's pressure, the CDI's self-interest, or social or political considerations.<sup>58</sup> From the CCDI's 2015 annual work report, only 12 thousand among 232 thousand

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<sup>52</sup>The existence of such rule and its content has been admitted by both the CDI officers and the prosecutors. Interviews by the authors in Beijing in September, 2015.

<sup>53</sup>From our interviews, several prosecutors and CDI officers said that if the information is collected by the CDI or the procuratorate, that is the achievement of that entity and will expect that entity to investigate the case. Interviews done by the authors in Beijing from mid August to early September, 2015.

<sup>54</sup>Interviews done by the authors in Beijing from July to early September, 2015. We have also collected the data from the CDI officers in the corresponding cities or counties, which confirm with the data collected from the prosecutors. We think the average ratio is not representative as the ratios center from 10% to 20%, with only one procuratorate has the ratio of 50%.

<sup>55</sup>As from the 2015 annual work reports of the CCDI and the SPP, 12 thousand corruption cases have been transferred from the CDIs to the procuratorates and 55 thousand corruption cases have been investigated by the procuratorates, which gives the ratio of 21%. See the CCDI's 2015 annual work report at: [http://www.guancha.cn/politics/2015\\_01\\_29\\_307997\\_s.shtml](http://www.guancha.cn/politics/2015_01_29_307997_s.shtml); see the SPP's 2015 annual work report at: [http://www.spp.gov.cn/gzbg/201503/t20150324\\_93812.shtml](http://www.spp.gov.cn/gzbg/201503/t20150324_93812.shtml).

<sup>56</sup>Id.

<sup>57</sup>Interviews done by the authors in Beijing from July to early September, 2015.

<sup>58</sup>Id.

officers that have been investigated and punished by the CDIs have been transferred to the procuratorates, which is only 5%.

A third priority is that, the party secretary could ask the procuratorate to withdraw from the case even if he finds it first. This happens and there are some ways for the procuratorate to overcome it as analyzed in part 1. When receiving the information of serious corruptions, either the procuratorate or the CDI will report it to the local party secretary. Or, they may communicate such information during the anticorruption team meeting. The local party secretary can distribute the case to the CDI against the previous rules.<sup>59</sup>

Having no control of the appointment, personnel, finance and work equipment of the procuratorate, the CDI has no other checks upon the procuratorate. It may use its anticorruption power to investigate the corruption of the procuratorate. But the procuratorate also has such power and could investigate the CDI. This has happened in reality. From our interviews, one procuratorate has once had such bad relation with the CDI that the two have investigated the corruptions of each other.<sup>60</sup>

Thus, a large part of the corruptions investigated by the procuratorates are firstly investigated by the procuratorates, other than being transferred from the CDIs. For cases that are firstly investigated by the CDIs, because the CDIs frequently borrow the procuratorate's people and techniques, the procuratorates still have some room to influence the investigations. As analyzed in part 1, this is one way for the procuratorate to overcome the local party secretary's obstruction. Moreover, the influence of the CDI's investigation over the final legal punishment has been decreased in recent measures. From our follow-up interviews, since late 2014, local CDIs began to turn over the cases to the procuratorates as soon as the information they obtained reveals criminal corruptions, so that they could have more time and resource for more disciplinary violations.<sup>61</sup> That is, although being firstly to investigate, the CDIs only care about the disciplinary violations and the criminal part will be further investigated by the procuratorates. This has been emphasized by WANG Qishan several times during important meetings of CDIs from 2013 to 2014 that the CDI shall focus on the party disciplinary violations, and the criminal part shall be left for the procuratorates.

## **5. Part 4 the internal needs and the misuse of power by the procuratorate in anticorruption**

According to our interviews, the internal needs of the procuratorate could be divided into two kinds: the private interest of the procuratorate's leadership and the investigators and the institutional needs. Institutional needs include financial, evaluation, and professional satisfactory needs. First, the budget from the local government has always been tight. It used to be unable to cover even the salaries of the procuratorate back in early 2000s.<sup>62</sup> In some poor areas, the local government even relied upon the procuratorate partly to relieve its financial stress.<sup>63</sup> Things are better

<sup>59</sup>Id.

<sup>60</sup>Interviews by the authors in Beijing in December 2014.

<sup>61</sup>Interviews of the CDI officers by the authors in Beijing from late July to early September, 2015. In one interviewed CDI, the total cases investigated by them this year have increased by 20% from last year. In another CDI, they have not used any Shuanggui for this year's cases because they only need to prove party disciplinary violations and transfer the cases to the procuratorates if there appear criminal corruptions. They do not have to expand achievements “扩大战果” as they used to be.

<sup>62</sup>葛琳, *经费保障视野下的检察院运转*, 《云南大学学报法学版》, 2013年第1期第114页。

<sup>63</sup>Interview of a prosecutor-general from Henan by the authors in Beijing, November 2014.

now and in wealthy areas expenses during ordinary work and case investigations can be resolved partly by the central government and partly by the local government.<sup>64</sup> However, in undeveloped poor areas, the finance of the procuratorate remains intense.<sup>65</sup> If the procuratorate wants to improve its working environment, purchase advanced equipment, organize trainings and team activities, and improve employees' benefits, it needs a lot of money. Many of these programs cannot get financial support from the government. Thus, there has been an unspoken rule that the illicit fund collected from the corruption cases investigated by the procuratorate would firstly submitted to the local treasury and then partly returned to the procuratorate as a financial assistance.<sup>66</sup> Although now in wealthy areas, such unspoken rule has been terminated, in poor areas it is still effective.<sup>67</sup> The ratio varies in different places. For example, in one district interviewed by us, all of the illicit fund will be returned; in another district interviewed by us, 80% of the illicit fund will be returned.<sup>68</sup>

Second, annually, the procuratorate has to be evaluated provincially and the ranking is published publically and recognized as a promotion factor. To achieve high evaluation points, it has the needs to handle more cases generally and more cases of large monetary value or senior officers, and to ensure the conviction of docketed cases. Consequently, the procuratorate would like to divide a big case into several small cases to increase the sum, and to sacrifice some small cases to ensure the conviction of senior cases.<sup>69</sup> Third, all interviewed prosecutors consider anticorruption as their work responsibility and feel proud and socially identified during anti-corruption. "This (to investigate corruption cases) is my job. I should do it. Otherwise, why do I become a prosecutor?"<sup>70</sup>; "When I investigate cases, people become to know me and consider me as important. Otherwise, nobody cares you."<sup>71</sup>

Thus, normally, anticorruption is beneficial for fundraising, evaluation and professional satisfactory needs and thus is consistent with them. The procuratorate has thus strong internal motives to investigate corruption cases. However, there are circumstances when they contradict. First, if the case involves the private interest of the procuratorate leadership or investigators, the prosecutor-general or the investigators may obstruct the anticorruption. This situation happens sometimes if the corruption spreads in this area, especially given the significant corruption situation in China. Seventeen prosecutors have been found seriously corrupt according to the SPP's 2015 annual work report.<sup>72</sup>

Second, because of the victimless nature of the corruption, the evidence is very limited in these cases. China requires the procuratorate to prove the illegal intention in corruption cases

<sup>64</sup>Interviews of prosecutors from Beijing, Shanghai and the south of Jiangsu by the authors in Beijing, April 2015.

<sup>65</sup>Interviews of prosecutors from Henan, the north of Jiangsu and Anhui by the authors in Beijing, April 2015.

<sup>66</sup>Article 36, Provisions of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security, the Ministry of Justice, and the Legislative Affairs Commission of the Standing Committee of the National People's Congress on Several Issues concerning the Implementation of the Criminal Procedure Law, effective on 1 Jan 2013. It requires the submission to the national treasury of the illicit fund collected in convicted cases. According to our interviews, such fund in poor areas would still be returned to the procuratorate.

<sup>67</sup>Series of interviews done by the authors in Beijing, Henan and Tianjin from March 2014 to April 2015; 葛琳, 第115页。

<sup>68</sup>Interviews by the authors in Beijing in November 2014 and in March 2015.

<sup>69</sup>Series of interviews done by the authors in Beijing, Henan and Tianjin from March 2014 to April 2015.

<sup>70</sup>Interview of some investigators in the investigative department of corruption cases of a provincial procuratorate and a municipal procuratorate by the authors in Beijing, September, 2014.

<sup>71</sup>Id.

<sup>72</sup>See the SPP's 2015 annual work report, at: [http://www.spp.gov.cn/gzbg/201503/t20150324\\_93812.shtml](http://www.spp.gov.cn/gzbg/201503/t20150324_93812.shtml).

under a high standard of proof.<sup>73</sup> The intention has to be specifically related with certain incidences of official activities, decisions or omissions.<sup>74</sup> In some cases, there are notes or diaries written by the officials to record these corrupt activities. Such could be the evidence to prove the intention. Otherwise, it is difficult to prove the intention, especially as China has the culture of maintaining social life or network through gifts and red envelopes. Thus, the confessions by the officials or the bribers are super important to ensure the conviction of corruption cases. For example, in the Bo Xilai case, the prosecutor charged him of the bribe-accepting crime, arguing the bribe was indirectly accepted by Bo's wife and son when Bo knew such acceptance. Bo defended that he did not know such acceptance. Finally, Bo's knowledge was proved by the confession of Bo's wife saying that Bo knew these bribes.<sup>75</sup> To secure the confession, the procuratorate has to offer some bargains, including withdrawing the prosecution, prosecuting under light crimes upon part of the criminal activities, or suggesting for a lighter sentence. In addition, sometimes, the anticorruption in some small cases may affect the investigation of some senior cases. Senior cases have heavier coefficient in evaluation and involve large monetary value. Thus, the successful investigations of these cases mean much more to the procuratorate than other small cases. The procuratorate would be more likely to offer considerable bargains to secure the confessions of the bribers or the inferior officials related with the senior cases, such as withdrawing prosecution of them. This is due to the asymmetric characteristic of China's anticorruption.<sup>76</sup> Accordingly, these bargains would result in no prosecution or light punishment of the corrupt criminals, obstructing the anticorruption.

Third, motivated by the fundraising needs, the procuratorate frequently manipulates the bargains with the suspects in corruption cases. The general way is that the suspects voluntarily pay certain money, as illicit benefits from his/her criminal activities, to the procuratorate in exchange for no freezing of assets, no arrest, no prosecution, or light sentence. Similarly as the illicit fund convicted by the court after trial, these illicit benefits collected during investigative period are also submitted to the local treasury and later returned to the procuratorate at certain ratio.<sup>77</sup> During these bargains, the prosecutors behave like businessmen. These bargains have no legal basis, but are considered as an unspoken rule in practice. According to the law, the suspects' assets can become illicit only after the conviction by the court. Moreover, the calculation of illicit benefits is unclear in the law. For example, in one case interviewed by us, the briber gave bribes to the official to obtain certain business at market price. The profits earned from such business were considered by the procuratorate as illegal because "the process obtaining the business is illegal," argued by the prosecutor-general. But such may not be considered illegal in court because when the result is normal market price, it depends whether the house has obtained any unfair competitive advantage for the suspect in retaining this business.<sup>78</sup> Although the General Office of the Party's Central Committee and the General Office of the State Council have issued a joint rule to regulate the confiscation of assets related

<sup>73</sup>Fenfei Li & Jinting Deng.

<sup>74</sup>Id.

<sup>75</sup>龙宗智, 薄熙来案审判中的若干证据法问题, 《法学》, 2013 年第10 期第 4–6 页。

<sup>76</sup>Fenfei Li & Jinting Deng.

<sup>77</sup>Although the return of illicit convicted funds has been terminated in several developed areas, the return of illicit benefits without conviction remains nationwide.

<sup>78</sup>Article 12, Interpretations on Several Issues in Applying Laws in Bribe-Giving Criminal Cases, issued by SPC and SPP, effective in August 2012.

with criminal cases, the scope of and the standard to decide such assets remain unclear and thus can be very extensive in the procuratorates' practice.<sup>79</sup> The fundraising needs in these situations may result in unreasonable no or light prosecution, obstructing anticorruption.

In these cases when internal needs contradict with anticorruption, the prosecutor has strong motives to manipulate its anticorruption power. Then unlike other kinds of contradictions, the question becomes how the procuratorate is supervised under the dual leadership? 1. Among the seven steps of the procuratorate's anticorruption work, steps to decide whether to preliminarily investigate and docket the case are important as they determine whether the case could be started. But the prosecutor's arbitrariness is small. Given the existence of multiple anticorruption agencies and national reporting channels, the information can hardly be kept confidential by the procuratorate.<sup>80</sup> Once the local party secretary and the superior procuratorate know the case, they could direct the procuratorate to docket and investigate it. 2. The investigation step is important as the prosecutor could manipulate the investigation of the case to achieve the result it wants. But if the case attracts the dual leadership's attention, the prosecutor dares not do so. Unlike the high secrecy of the CDI's investigation, the procuratorate's is relatively open and the suspects have more legal rights. All the interrogations have to be radioed and videoed subject to legal time limits for review by the superior procuratorate.<sup>81</sup> The suspects' rights to retain and see defense lawyers are protected by law.<sup>82</sup> With limited rights, the defense lawyers still play an important role in balancing the arbitrariness of the procuratorate.<sup>83</sup> However, the procuratorate could arbitrarily decide which coercive measures to use and thus influence the result of the investigation. For example, there is an unspoken rule among the procuratorates that if the suspect is arrested, the case is almost successful. If the suspect is granted bail, there is negotiation room and the case may not be prosecuted.<sup>84</sup> The conditions to arrest are: there is evidence proving the existence of crimes; the suspects could receive the penalty more serious than imprisonment; and the LDRS or the bail is insufficient to prevent the danger to the society.<sup>85</sup> But there is no concrete rule interpreting when other coercive measures would be insufficient. The legal line is unclear and subject to the procuratorate's discretion. 3. Steps regarding preparation for prosecution and prosecution in court are important as they decide whether and what crimes the suspect may be charged by the prosecutor, determining the final punishment. China's criminal law authorizes the prosecutor to decide not to prosecute or withdraw prosecution when the illegality of the case is small or the evidence is insufficient.<sup>86</sup> According to our interviews, the prosecutor has several ways to manipulate this power. It may intentionally omit some criminal activities and make selective prosecution.<sup>87</sup> It may also prosecute under light crimes of which the sentence is light.<sup>88</sup> The evaluation system only cares

<sup>79</sup>See the Opinions on Resolution of Assets During Criminal Cases, issued jointly by the General Office of the Party's Central Committee and the General Office of the State Council, on 30 Dec 2014.

<sup>80</sup>Fenfei Li & Jinting Deng.

<sup>81</sup>Articles 117 and 121, China's Criminal Procedure Law, effective on 1 Jan 2013; Article 2, Rules on Full-Time Instant Video and Radio Recording Interrogations of Duty Crimes by the Procuratorates, issued by SPP on 1 Nov 2005.

<sup>82</sup>Article 33, China's Criminal Procedure Law, effective on 1 Jan 2013.

<sup>83</sup>李奋飞, On the Defense With Characteristics of Performance 论“表演性辩护”, *Tribune of Political Science and Law (政法论坛)*, Vol. 33, No. 3, pp. 78–90, Mar 2015.

<sup>84</sup>Series of interviews done by the authors in Beijing, Henan and Tianjin from March 2014 to April 2015; Wang Biao (王彪), 刑事诉讼中的“逮捕中心主义”现象评析, *中国刑事法杂志*, 2014年第2期第72–83页。

<sup>85</sup>Article 79, China's Criminal Procedure Law, effective on 1 Jan 2013.

<sup>86</sup>Articles 15 and 173, China's Criminal Procedure Law, effective on 1 Jan 2013.

<sup>87</sup>Series of interviews done by the authors in Beijing, Henan and Tianjin from March 2014 to April 2015.

<sup>88</sup>Series of interviews done by the authors in Beijing, Henan and Tianjin from March 2014 to April 2015.

the conviction rate, not the specific crime or the sentence. As long as the case can be convicted, the evaluation need is satisfied. The light crime or sentence could then be bargains.

### 5.1. A real case analysis

An example from our interviews clearly explains the manipulation by the prosecutors. It is a case disclosed during the investigation of a high-level official corruption and thus some practices are special.<sup>89</sup> The suspect is considered to have bribed a senior official by purchasing a house for the official worthy of around 80a (to substitute the real number for security reasons) million RMB in exchange for some business which have earned him around 200a million RMB. There has been routine business at normal market price between the suspect's company and the official's government. They also maintain a long personal good relation with each other. One day, the official asked the suspect to lend him the money to purchase this house. The suspect agreed and then purchased the house under the official's name. Later, the official paid back 13a million to the suspect. The rest has never been repaid. Besides, the suspect had offered around a million cash and some gifts to the officials, such as cameras and furniture, worthy of around 2a million. The case was directed by the CCDI to a provincial procuratorate and then further to a municipal procuratorate to investigate. The geographic investigative jurisdiction in China is based upon the residence of the suspect or the place where the criminal conducts happened. But the superior procuratorate could change the venue by directing an inferior procuratorate at a different place to investigate if it thinks the procuratorate from the residence or the scene places is improper to handle the case, such as avoiding strong local protectionism. In directed investigation, the superior procuratorate intends a strong investigation. This helps the bargain of the investigating procuratorate.

During the investigation, the prosecutor granted the suspect bail, then threatened the suspect that it would change the bail to the arrest and freeze his bank account if he did not submit around 100a million RMB to the procuratorate, while at the same time, promised him a light sentence if he did so. "He obtained the business by bribing the officials and thus the 200a million RMB profits are illegal."<sup>90</sup> "If he voluntarily submits these money, his attitude is good and may receive no sentence. Otherwise, we can still freeze his account and transfer out the money. It is his opportunity."<sup>91</sup> In ordinary cases, the procuratorate needs the superior's approval to arrest the suspect and has no power to freeze the account and transfer out the money directly. But since the superior intends a strong investigation in directed cases, such an approval is presumed. We are unclear whether the procuratorate has the power to freeze and directly transfer out the money since it is a special case. In normal cases, they don't have such power; but in this special case, we are not sure.<sup>92</sup> But the result is that the suspect dared not to challenge, had little bargaining power, wished no sentence and paid the full amount to the procuratorate's designated account as "illicit benefits". Having received 100a million RMB, the

<sup>89</sup>Interviews of a prosecutor-general and several prosecutors in a district procuratorate (as X) by the authors in that district from December 2014 to April 2015. Because of the specialty of the case, we have to conceal the location of this procuratorate.

<sup>90</sup>Interview of one investigator in the investigative department of the X procuratorate by the authors in December 2014.

<sup>91</sup>Id.

<sup>92</sup>China's Criminal Procedure Law has specified several measures that the procuratorate could use during investigation, which do not include the power to freeze the suspect's account and transfer out the money directly. The People's Bank of China has once issued a reply to following banks, confirming that the procuratorate can only check the account, it can't freeze or transfer out the money unless it has closed the case with a conviction decision. See the Reply by the People's Bank of China to the Question Submitted by its Hangzhou Branch Bank, effective on 30 Oct 1995.

procuratorate not only maintained the bail but also decided to ignore the house, the cameras and other gifts, recognized only the a million cash and made a no-prosecution-decision suggestion when closing the investigation and transferring the case to the prosecution-preparing department of the procuratorate.

However, when the case was preliminarily reviewed by the prosecution-preparing department, the investigative department of the procuratorate added the prosecution of the house, the cameras and other gifts. The defense lawyer told us that the reason for such change was unclear.<sup>93</sup> Now if all these are considered, the amount of the bribe would exceed 10 million and the sentence of the individual bribe-giving crime would have to be over 10 years' imprisonment.<sup>94</sup> Being worried that the suspect may be provoked and concerning the promise made in the bargain, the procuratorate substituted the previous bribe-giving-by-individual crime to be the bribe-giving-by-entity (dan-wei 单位) crime, of which the highest sentence is five years' imprisonment.<sup>95</sup> Then considering the good attitudes, the confession, the voluntary surrender, the return of illicit fund, etc., the procuratorate finally suggested a probation in prosecution. Then after the pretrial conference with the court, the judge privately communicated with the defense lawyer that if the suspect was willing to pay 5a million RMB to the court, they would give a probation.<sup>96</sup> After negotiation, the suspect finally paid 4a million RMB to the court's designated account as "prepaid fines". The court decision is still pending but highly probably will convict the suspect of the bribe-giving-by-entity crime and issue a probation punishment. Thus, in this case, the procuratorate has successfully manipulated its power in selecting coercive measures and deciding prosecution to bargain for the 100a million RMB from the suspect. There is no rule or standard in calculating how much the suspect should pay. It is a bargain. The procuratorate normally consider the profits related with the criminal activities and the suspect's ability to pay.

There are some other findings from this case. Such manipulation is skillful and balanced by the superior procuratorate, the court and the defense lawyer, although to a very limited extent. First, the 100a million RMB is not secretly in the pocket of the prosecutor-general or the procuratorate. It is put in the designated account submitted to the local treasury or the central treasury and thus known by the superior procuratorate. "Nobody dares to reserve such money privately which would be embezzlement."<sup>97</sup> Thus, it is because such bargain remains permissive in the procuratorate system that the procuratorate dares to accept such money. The law or discipline has not criminalized or forbidden such bargain. There is an institutional need in fundraising within the procuratorate system. Second, in normal cases, the superior's approving power in using the arrest measure restricts the procuratorate's arbitrariness. However, in special cases that are directed by the superior, the approval is presumed. Third, the superior could balance the procuratorate's selective prosecution. In this case, it originally wanted to omit the purchasing of the house, 80% of possible bribe; but failed after it was transferred for prosecution preparation. Although we are unclear of the reason, we tend to think that it is because after transferring the case with a no prosecution suggestion, the superior procuratorate can review the case and question such suggestion. We are unclear why the superior rejected the no prosecution decision. No rule regulates such bargain, and the legal standard is unclear. The

<sup>93</sup>Interview of the defense lawyer in Beijing by the authors in April 2015.

<sup>94</sup>Article 390, China's Criminal Procedure Law, effective on 1 Jan 2013, and Article 4, the Joint Interpretation on Several Issues of the Application of Criminal Law in the Bribe-Giving Criminal Cases by the SPP and the SPC, effective on 1 Jan 2013.

<sup>95</sup>Article 393, China's Criminal Procedure Law, effective on 1 Jan 2013.

<sup>96</sup>Interview of the defense lawyer in Beijing by the authors in April 2015.

<sup>97</sup>Interview of a prosecutor-general of the X procuratorate by the authors in December 2014.

rejection might be because the omission is too substantial; or because if only a million RMB was prosecuted, the 100a million RMB “illicit benefits” would be unreasonably high.

Fourth, the existence of the light crime, i.e. the bribe-giving-by-entity crime, leaves legal room for such manipulation. Article 393 defines that the bribe-giving-by-entity crime as the bribe-giving crime committed by the entity leaders or employees for the entity's benefits.<sup>98</sup> In this crime, the involved entity leaders or employees may be punished for no more than five years, while in the individual bribe-giving crime, the individual could be punished up to life long imprisonment.<sup>99</sup> In the corruption cases, it is frequently unclear whether the briber is for his own benefit or for the business of the company. It could be both as the benefits of the company finally result in individual benefits. That said, this case is closer to individual bribe-giving crime as the decision to purchase the house was not a company decision and the money went out from the suspect's personal account instead of the company account. However, the court here did not ask the procuratorate to change the prosecution. From its later behavior, we think besides considering the relation with the procuratorate, a major reason could be that the bribe-giving-by-entity crime legally allows the court to fine the company, while in the individual bribe-giving crime, there is no fine punishment.<sup>100</sup> Thus, the court asked the suspect to pay the 4a million RMB as prepaid fines and later legalized it as a fine of the company in the judgment. It protected the relation with the procuratorate, secured itself a significant amount of benefits without worrying the appeal by the suspect and offered the probation as a consideration in the bargain. Again, the money was institutional benefits, not legally criminalized or forbidden, other than any individual private interest. Other than balancing with the procuratorate, the court became an ally in the bargain. These light crimes become legal loophole and thus create motives for the manipulation by both the procuratorate and the court.

Fifth, the suspect and his lawyer could balance the procuratorate's arbitrariness. In this case, the corrupt intention is questionable as there was a long personal good relation between the suspect and the official, and the money was claimed to be borrowed by the official and had been partly paid back. The existence of illicit profits could also be argued as there was routine business at normal market price. Both the corrupt intention and the existence of illicit profits are necessary to find the suspect liable under the bribe-giving crimes.<sup>101</sup> Were the case not related with the high-level official case, the suspect should have better chance to have a case.<sup>102</sup> Then, he and his lawyers could have used these legal arguments as a more powerful bargain to argue for a smaller payment or reject the payment. Being worried about the non-conviction decision or the overturning appellate decision, the procuratorate and the court would have been less arbitrarily. However, given the strong power of the procuratorate, the suspect's balance remains very limited even in ordinary corruption cases.

## 6. Summary and analysis

Although the local party secretary has several checks on its procuratorate, it is balanced by the specialized knowledge and skills of the procuratorate, or indirectly balanced through the

<sup>98</sup>Article 393, China's Criminal Procedure Law, effective on 1 Jan 2013.

<sup>99</sup>Article 390, China's Criminal Procedure Law, effective on 1 Jan 2013.

<sup>100</sup>Articles 390 and 393, China's Criminal Procedure Law, effective on 1 Jan 2013. Problems of China's courts help explain the court's behavior. See Huaide Ma, “Building an Administrative Court as a Goal of Administrative Judicial System Reform,” (2014) 9 *Frontiers of Law in China* 1, pp. 32–34.

<sup>101</sup>Id.

<sup>102</sup>Because the case relates with the high-level official's case, it is politicized and the defending room is little.

superior procuratorate. Motivated by internal needs in anticorruption, the procuratorate frequently tries to overcome local obstructions through these ways. However, there is no effective balance against the superior procuratorate. With recent reforms strengthening vertical control within the procuratorate, the integrity and the supervision of the procuratorate system becomes more important. The supervision against the prosecutors' individual interest is very strong, given the effective evaluation and the case uploading systems, the existence of laws, the recording of the prosecutors' behaviors, the participation of defense lawyers, and the trials by the court. However, the supervision against institutional interest in fundraising through passive investigation, intentionally omission of corrupt activities, selective prosecution and prosecution under light crimes is very insufficient.

There are several reasons. The law has not regulated the bargaining behaviors of the procuratorates. The discretion of the procuratorate is big during investigation in selecting coercive measures and there are vague, exchangeable crimes conferring different lengths of sentences. The procuratorate's evaluation system has not counted on the crimes or the sentences. The court has to maintain good relation with the procuratorate because the procuratorate has the power to supervise the court. There are common internal needs in fundraising by the superior procuratorate and the court. Moreover, the court is weak against and even allies with the procuratorate, while the rights of the suspect and defense lawyers as established in the law could hardly be secured.

Overall, the procuratorate has strong motives in investigating corruption cases, other than punishing the criminals in corruption according to the law. The prosecutors make the anti-corruption partly like business transactions. Such transactions adversely influence China's anticorruption. Although the number of cases investigated increases and more people are caught, they are not punished according to the law. From these transactions, the prosecutors have learned to manipulate its power to earn more money for the institution, thus internally think themselves as businessmen, not to fight for justice, and consider the corruption forgivable so that they could internally accept no prosecution of these criminals. The suspects experience how the law is manipulated and how his legal rights are violated by the procuratorate and the court which are responsible for the enforcement of the law, and thus internally condemn the value of the law and the faith in rule of law.<sup>103</sup> Consequently, they think in corruption they have not committed something wrongful and can receive no harsh sentence even if the monetary value is large as long as they could pay the money needed by the procuratorate and the court. These consequences have very bad effects in the success of anticorruption.

To prevent such manipulation, laws or rules shall be issued by the legislatures or the SPP to regulate such bargain behaviors to restrict the discretion of the procuratorate during investigation and preparation for prosecution. The intentionally wrongful confiscation of the suspects' assets during investigations shall be legally forbidden or criminalized. The plea bargain system has already been established in developed countries. China could learn much experience from them. The criminal law shall be reformed to either clarify these vague exchangeable crimes or delete unnecessary light crimes, or unify their punishment. The procuratorate's evaluation system should include factors representing the convicted crimes and sentences. The court could be rewarded for finding out the procuratorate's wrongful prosecutions. Most importantly, both the convicted illicit funds and the illicit benefits without conviction collected in anticorruption shall not be returned to the procuratorate. Although given the fundraising necessity and the

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<sup>103</sup>We have had the opportunity to interview the suspect through his defense lawyer. He was quite pessimistic about the rule of law in China. Interview of the suspect by the authors in X district in April 2015.

anticorruption motive created therefrom, such return looks useful in anticorruption, the money-motivated anticorruption intention adversely affects the integrity of the procuratorate, the building of honesty and faith in the procuratorate, the superior supervision and the impression of justice in the criminals. This is of vital importance to an anticorruption agency. Otherwise, they can become easily corrupt. There should be sufficient, independent and guaranteed fund for the procuratorate's work.

## **7. Theoretical discussions**

The findings and analysis above help us better understand the problems of China's anti-corruption work. As well noted by scholars, the essential problem has been the party leadership over the procuratorate. It realizes its control by influencing the nomination, the promotion, the fund and the personnel support of the procuratorate. It can also influence the procuratorate's anticorruption work by the CDI's coordination, i.e. having the CDI investigate the case first. The results are that the procuratorate either drops the case, or decides not to prosecute it, or prosecutes under a crime with light sentence. This is what we blame a lot for the ineffectiveness of China's routine anticorruption work, i.e. "low prosecution rate and light sentence." This article confirms the existence of control from the party leadership over its procuratorate and the role of CDI's coordination in realizing the party leadership's willingness in the procuratorate's anticorruption. But it argues that these two alone cannot account for the procuratorate's ineffectiveness. There exist both motives in the procuratorate and workable methods in the system to balance the party leadership's control and to counterinfluence the CDI's anticorruption, so that plenty of corruption files have been firstly investigated by the procuratorates. The motives are mainly the fundraising, evaluation, and profession satisfactory needs. The methods are mainly that the procuratorate could take advantage of its professional skills, knowledge of law and facts, and routinely good relation with the party commission and the CDI to influence their decisions and behaviors in anticorruption, or obtain the superior procuratorate's support to reject their decisions in corruption cases. Thus, there is a balance between local procuratorates and party commissions or CDIs. Besides, it reminds us that when blaming the external influence for its ineffective anticorruption, we shall also pay attention to the institutional problems within the procuratorate system. Especially, China's recent reforms aim to decrease the power of the local party commissions and strengthen the independence of the procuratorate. For example, China plans to establish the city-level procuratorate under the direct leadership of the province. Although there is dispute regarding whether the leader shall be the provincial party commission or the provincial procuratorate and how much the fund shall be bored by the provincial government, either way would largely deprive the city-level party commission's control over its procuratorate's personnel and resources.

The article further argues that there exist institutional problems in the procuratorate. One is the vertical influence from the superior procuratorate. It is problematic because once it decides to obstruct the lower procuratorate's anticorruption, there is little way to avoid such influence. The superior procuratorate's control is strong and the ways to realize its influence include not only traditional behind-the-scene measures, but also legal ones. However, many times it is not problematic because the superior procuratorate has similar motives as the lower one. Another problem is that the procuratorate has motives and methods to misuse its power in anticorruption, which result in selective prosecution and light sentence in corruption cases. Moreover, they make the procuratorate think the whole anticorruption as a business, depriving them and the corrupt criminals of faith in law and internal integrity. The defects in the motive setting are

that the procuratorate has the fundraising needs only in investigating the cases and the evaluation needs only in convicting the criminals, but not in punishing them according to the law and with legitimate sentence, thus motivating the procuratorate to trade corruption cases other than to faithfully combat corruption. The supervising defects are that both the court and the defense lawyer are such institutionalized that they could not effectively supervise or balance the procuratorate's manipulation. Although the superior procuratorate has the power to supervise, it has similar defects in its motive setting. Moreover, China's anticorruption law has loopholes for the procuratorate to manipulate its investigative and prosecutorial power over corruption cases, such as providing no rules on its bargains with the criminals for no arrest, no freezing of property, no prosecution, or prosecuting under a light crime or for a light sentence.

Having said that the procuratorate has a balance with the CDI, the article still confirms that the CDI plays a leading and coordinating role in China's current anticorruption. It has some priorities in investigating corruption cases first and influencing the legal punishment. Existing literatures like to compare China's anticorruption model with the specialized anticorruption agency model (SAA), such as Hong Kong's Independent Commission Against Corruption (ICAC). Learning from the SAA model, the main reason for China's ineffective routine anticorruption has been recognized as the ineffectiveness of China's CDIs, resulted from its lack of autonomy, insufficient fund and resource, and weak accountability. Further, because of the CDI's dominance in anticorruption, the procuratorate is absorbed and cannot function effectively. Thus, the whole anticorruption system is ineffective. However, agreeing with the problems of China's CDIs, this article's findings provide objections to the conclusion that China's procuratorate's ineffective anticorruption is largely because of the CDI's leading role in anticorruption. Rather, it presents that the CDI's coordination is limited in a small part of cases investigated by the procuratorate. Even in cases firstly investigated by the CDI, recent measures have been that the CDI only investigates the disciplinary violation part and the criminal part has been left for the procuratorate. The procuratorates' failure to prosecute and punish a large part of corruptions according to the law is not because of the CDIs' coordination. Furthermore, it may be nothing wrong to have the CDI investigate the case first. Hong Kong's ICAC, a successful SAA model, has exclusive investigative power over corruption cases. Separation of investigative and prosecutorial power in anticorruption has been well noted as a good way to prevent the abuse of power by the procuratorate. As shown from the findings, the procuratorate in China has sometimes manipulated its investigative power in corruption cases for institutional benefits, easily without much obstacle. Moreover, having the central public integrity agency as the coordinator could be beneficial, especially when cases are complicated and syndicated. Usually, anticorruption involves multiple agencies, not only investigative and prosecutorial agencies, but also police, audit, information, and finance agencies. It has been recognized that "corruption control is most effective when the central public integrity agency is part of both a local anticorruption network and a local public management network,"<sup>104</sup> so that the anticorruption could be coordinated well.

Having said that, it does not mean that the CDI could not adversely affect the procuratorate at all. As explained in another paper, the CDI is better controlled by the party commission and has less motives and resources than the procuratorate to avoid the party commission's influence. However, such influence shall not be exaggerated. A suggestion to improve China's anticorruption that the CDI shall not play a leading role and the procuratorate shall be the core would

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<sup>104</sup>Frank Anechiarico, *Protecting Integrity at the local level: the role of anticorruption and public management networks*, *crime law soc change*, 2010, 53:79–95, p. 79.

be oversimplified and possibly counterproductive. Both have its own problems and the hierarchy has been historically nested within China's political structure. The procuratorate's problems shall receive adequate attention. Which agency being the coordinator is better needs more detailed research. But the separation of investigative and prosecutorial power is good as it creates the balance between the two. If the CDI is motivated to aim for high prosecution, like the Hong Kong's ICAC, it would work as a balance over the procuratorate's manipulation in no prosecution. If the procuratorate is motivated for answering to whistleblowers, it would try to influence the CDI's abusive drop of cases or passive investigation. Unfortunately, both have no such motives although there is informal tendency in the CDI to pursue high prosecution rate of the cases they have investigated.<sup>105</sup> These provide insights for China's further anticorruption reform.

Having observed China's problems, this article also deepens the understanding of anticorruption and the SAA model. Hong Kong and Singapore's outstanding success in anticorruption have created big confidence and hope in the SAA. After several failures in other countries that have established SAA, scholars began to analyze the underlying reasons. The diagnosed reasons focus on the SAA, which normally has similar problems as China's CDI, such as lack of independence and insufficient fund<sup>106</sup>. However, this article reminds us to focus on not only the SAA, but also the procuratorate. Investigation is the first step. But prosecution, conviction and sentence are the other steps to complete the whole anticorruption process. Missing any of them could make the whole anticorruption ineffective. People usually are interested only in who gets investigated. But insiders, i.e. the anticorruption officers and the corrupt suspects, care much more for the final results. Only when they receive legal and fair punishment, could the incentive function of investigating corruption cases be achieved. Looking back at Hong Kong's ICAC, it investigates each case with the aim for prosecution and the plea bargain of the procuratorate in Hong Kong is much better regulated than mainland China.<sup>107</sup>

This article's findings on the procuratorate's balance with the party commission and the CDI also shows that informal institutions are important to understand the agency and could change the ways the agency has been designed to act from its formal institutions in a transitional country, like China. There could be a balance or even contradictions between the formal and informal institutions, which together formulate the behaviors of the agency. Moreover, this article has analyzed both motives and methods of the procuratorate to find out informal influential institutions which create either a balance with external agencies or internally motivated misuse of power. Formal institutional settings are normally easy to diagnose from the fund and resource origin, the nomination and promotion of its head, the supervising agency, etc. These would provide a *prima facie* analysis of the independence and capacity of the agency. With that in mind, it is still worth well to conduct detailed observations of their work and interviews of the officers to find out whether there are findings inconsistent with the previous analysis. In our study, we have unexpectedly found that there are several cases that we thought should have been rejected for investigation or investigated by the CDI first were actually firstly

<sup>105</sup>Interviews with one CDI officer, case section head, in Beijing, April 2014, by the authors. The officer said that currently the CDI would hold the disciplinary punishment until the corrupt officer was convicted by the court, to ensure the case was successful, the so called “铁案 Tie An”.

<sup>106</sup>Bertrabd De Speville, *Anticorruption Commissions: The “Hong Kong Model” Revisited*, *Asia–Pacific Review*, Vol. 17, No. 1, 2010, p. 47.

<sup>107</sup>Kevin Kwok-yin Cheng, Wing Hong Chui, *Beyond the shadow-of-trial: Decision-making behind plea bargaining in Hong Kong*, *International Journal of Law, Crime and Justice*, xx(2014) 1–15, pp. 6–12.

investigated by the procuratorate and finally prosecuted. Having found these unexpected findings, analyzing both motives and methods is very useful to figure out the subtle institutions that explain the agency's behaviors. Such analysis comprises of two major parts, i.e. the motive and the method parts, involving questions like: 1) why does the officer do this, what are the causes, does he/she do this on behalf of the agency; and 2) how can he/she do this, what are the ways, skills or channels for him to do this, could this be frequently or seldom or randomly workable, etc.

Moreover, when analyzing the problems of an agency positioned in a system involving multiple agencies, like the ineffectiveness of the procuratorate in the anticorruption system, it is important to look at not only the interplay between agencies, even if that is a central powerful agency in the system, like the party commission or the CDI in China's anticorruption, but also the intra problems within the agency accounting for such problems, like the defective settings within the procuratorate identified in this article. It is also important for diagnosing the main cause to distinguish whether the interplay or the intra problems account mainly for the problematic outcome, or how much each shall be responsible for, or how the two are intertwined to influence the outcome. Furthermore, a thorough analysis of the relations between agencies shall include both formal and informal interplays between the agencies. Thus, not only that the procuratorate is led by the party commission and the CDI in certain ways is important, but also important is that the procuratorate has motives and methods to counteract with the party commission and the CDI's willingness in some situations. Then the questions become that: how frequently are these situations, what are the underlying conditions, are they institutionalized, secured, or just accidental, etc.