

RESEARCH ARTICLE

The Afterlife of Problem Judgments: Case Review, Discipline and Judicial Accountability in China

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Abstract

This article examines the reality of “let the adjudicator judge” by investigating how Chinese judges are held accountable for their judgments under the expanded ex post case review system. We examine the first three years of the implementation of this headline initiative in a grassroots court (Court T) located in a major city in China. Our data include the internal quarterly reports produced by the court’s case review committee and interviews with judges. The assessments went beyond legal analysis, commenting on matters such as work ethic, diligence and moral sensibilities. Frontline judges view the review system as subjective and arbitrary. The new mechanism, however, alters the power dynamics between senior judges and their subordinates. While frontline judges no longer require pre-approval from senior judges, they rely on the goodwill of those same seniors to navigate the review process. Within this ostensibly freer framework, frontline judges are subjected to a more diffuse but pervasive form of discipline. Our analysis reveals how the adjudication committee, far from being sidelined, has shifted its role, concentrating ex ante supervision on a minority of difficult cases while holding judges accountable through ex post reviews of flawed judgments. The article further underscores the challenges of disentangling legal analysis from political supervision in a framework of authoritative legality.

摘要

本文考察了“让审理者裁判”这一改革口号的实践面貌，探讨在扩大的事后案件评查制度下，中国法官如何为其裁判承担责任。我们以某大城市一家基层法院（T法院）为个案，研究该制度实施头三年的运作情况。研究数据主要来源于该法院案件评查委员会编制的内部季度报告以及法官访谈。评查内容不仅涉及法律分析，还涵盖法官的工作态度、敬业精神和职业操守等方面。一线法官普遍认为评查制度具有主观性和随意性。然而，新机制改变了领导法官与下属之间的权力格局。一线法官虽然不再需要领导法官的事前审批，却依赖于同一批资深法官的善意宽容来应付评查的挑战。在这一表面上更加自由的框架下，一线法官实际上受到了一种更为弥散却无处不在的规训。我们的分析表明，审判委员会非但没有被边缘化，反而实现了角色转型——将事前监督集中于少数疑难案件，同时通过事后评查追究法官在瑕疵裁判中的责任。本文进一步揭示了在威权法治框架下，法律分析与政治监督之间难以厘清的深层困境。

Keywords: judicial accountability; judicial reform; case review; ex post supervision; frontline judges; grassroots courts

关键词: 司法责任制; 司法改革; 案件评查; 事后监督; 一线法官; 基层人民法院

Ma Jun versus Liu Gong and Wang Feng is as prosaic a contractual dispute as any that Court T handled daily.¹ Liu and Wang, a couple, contracted Ma to carry out a construction project. The two

¹ Pseudonyms are used throughout for case names and litigants. Courts are not named. Pseudonyms are also used for the judges we interviewed to preserve their anonymity.

sides disagreed over whether Ma had completed the work to the standard and scope specified in the contract. The couple claimed that they had to hire another contractor to redo Ma's work, but they failed to provide invoices for these repairs. Ma countered that the couple had completed the walk-through and had signed off on the inspection report for the work.

Judge Zhang ruled in favour of Ma and instructed Liu and Wang to pay the outstanding amount owed to Ma, which was approximately one million yuan. The couple appealed. In the appeal, Judge Sun of Court G, the intermediate court that handled the case, concluded that the appellants had already spent about 500,000 yuan on repairs, although he did not explain how he arrived at that figure. Judge Sun reduced the amount that the couple were required to pay by half. They remained dissatisfied and petitioned the provincial high court for a retrial. Their petition was swiftly denied.

This is the information that is available in the public records regarding *Ma Jun versus Liu Gong and Wang Feng*, a contractual dispute involving no extraordinary facts or novel legal arguments. However, there was another internal "hearing," which was conducted behind the scenes: a trial of the trial. Although Judge Zhang was not "named" as the defendant, he was given an opportunity to "explain" and present his side of the story. Internally, Court G opined that Zhang had made a mistake, which would mean that his year-end bonus would probably be reduced, and he would face further sanctions if egregious errors were identified. It would be up to the leaders of Court T to decide the outcome.

When given the opportunity to "defend" himself, Judge Zhang recalled that Judge Sun had told him that the defendant couple had "disagreed strongly" with his decision. The Chinese phrase he used to describe their reaction was *yijian jiaoda* 意见较大, which translates as "opinions are strong," a euphemism for vehement objections. A committee at Court T concluded that Judge Zhang's ruling was in accordance with the law: Liu and Wang had inspected the work before signing off and had provided no evidence of the "repairs" they claimed to have carried out. In contrast, the committee opined that Judge Sun's decision to reduce the outstanding balance by half, while it echoed the *zhongyong* 中庸 principle of finding the middle ground in Chinese culture, lacked a firm legal basis.

In the end, Judge Zhang's name was cleared by his superiors. Court T determined that there had been "no errors in this case" (*benan bu dingcuo* 本案不定错), an outcome that every judge longs to see, and no points were deducted from Judge Zhang's record.

Today, problem judgments in China have a secret afterlife, which is often more eventful than the public records of the cases in question would ever suggest. In this afterlife, the tables are turned: the judge becomes the judged. None of this is publicly disclosed or even known to the parties. The deliberations and the findings remain entirely internal. This meta-trial is a key instrument for implementing the so-called "lifelong accountability system" (*zhongshen wenzezhi* 终身问责制), arguably the most high-profile policy ushered in by the judicial reforms in the last decade.

For many years, grassroots judges in China have been subject to the close supervision of their superiors. Under the case-approval system (*shenpi zhi* 审批制), their judgments had to be signed off by their division heads before they were handed down.² Although this arrangement was putatively set up to support less experienced judges, in reality, it left them vulnerable to pressure from high-ranking judges and local governmental officials. The wide discretion given to judges in leadership positions also renders the practice susceptible to patronage and corruption.³ In recent years, the Supreme People's Court (SPC) has embarked on a series of reforms to curtail the case pre-approval system.⁴ For ordinary cases, adjudicating judges can now issue judgments without first obtaining the approval of their superior.⁵

2 Ng and He 2017; He 2012; Li 2012.

3 Li 2016; Ng and He 2017.

4 SPC 2019a; 2024.

5 SPC 2015; 2018.

From Shenpi to Pingcha

The new judicial accountability system is designed to achieve two seemingly opposing goals: to endow frontline judges with the authority to rule independently and to strengthen centralized supervision over grassroots decision making.⁶ In pursuit of the latter goal, the SPC has identified “four types of cases” (*silei anjian* 四类案件) that require the supervision of court leaders. These include cases involving group disputes that may affect social stability (for example, mass protests and labour strikes); difficult, complex cases with significant social impact (for example, high-profile environmental or tort disputes); cases that may potentially conflict with prior rulings by the same or higher courts (to ensure judicial consistency); and cases involving allegations of judicial misconduct (for example, reported corruption or bias).⁷ To further formalize supervision over these four types of cases, the SPC has introduced automation and digitization tools to record and track the supervisory activities of court leaders.⁸

At the same time, courts have set up a system of “conferences of professional judges” (*zhuan ye faguan huiyi* 专业法官会议) to offer non-binding guidance on complex legal issues. Judges handling difficult cases can consult senior colleagues on the conference, although they remain responsible for their own judgments under the accountability system.⁹

More recently, the SPC president Zhang Jun 张军 referred to a read-and-check system (*yue he* 阅核) that extends supervision beyond the “four types.”¹⁰ His comments raised concerns that the SPC was reverting to the old pre-approval system. Official reports later clarified that the read-and-check policy was intended to alleviate fears of illegitimate supervision, since not all problematic cases fall neatly within the scope of the “four types.” According to Zhang, senior judges were sometimes “afraid to supervise” (*bu gan guan* 不敢管).¹¹ The principle is that the procedures for dealing with cases that senior judges have decided to review further are no different from those for dealing with the “four types” of cases.¹² Questionable decisions are either sent back to the ruling collegial panel or referred to a professional judges’ conference or the adjudication committee for further discussion.

None of the recent developments suggests a reversion to the pre-approval system of old. By official estimates, over 98 per cent of the cases in the country were independently signed off by trial judges or collegial panels without triggering further superior supervision.¹³ But while *ex ante* supervision might help to identify the most controversial cases, there remains, from the SPC’s viewpoint, too many questionable judicial decisions that lead to appeals and retrials, and in some cases, petitions and protests. Some seemingly routine cases may morph into difficult cases in the hands of some inexperienced frontline judges in a phenomenon referred to as “cases begetting cases.”¹⁴ Jiang Huiling 蒋惠岭, formerly head of the SPC’s Judicial Reform Office, described the focus on judicial responsibility as “a politician’s wisdom.”¹⁵ It is against this backdrop that judges are now held accountable for their decisions for life (*zhongshen fuze* 终身负责). The full slogan of the policy reads, “let the adjudicator judge, but hold those who adjudicate accountable” (*rang shenlizhe caipan, you caipanzhe fuze* 让审理者裁判,由裁判者负责).¹⁶

6 SPC 2020; Papagiannas 2023. For policy directives, official commentaries and documents on the lifelong responsibility system, please refer to SPC 2021b.

7 SPC 2015; SPC 2021a.

8 SPC 2021a; Papagiannas 2023; Finder and Papagiannas 2022.

9 SPC 2021c; Finder 2021b.

10 Zhang 2023. Art. 7 of the “Guiding opinions on ‘four types of cases’” (SPC 2021a) already allows court leaders to apply “trial supervision and management” measures to specific cases outside of the four case types.

11 Zhang 2023.

12 Sun 2023; Wei 2023.

13 SPC 2021b, 81.

14 Hao 2024.

15 Finder 2023a.

16 SPC 2015.

Ascertaining Judicial Responsibility: Case Review System

But how are judges held accountable? When the NPC Standing Committee amended the Organic Law of the People's Courts, incorporating new provisions on "judicial responsibility" (see Article 8), it offered scant detail about how lifelong responsibility would work in practice.¹⁷ Traditional channels of accountability, including media scrutiny and the long-standing petition system (*xinfang* 信访), remain in place. However, these mechanisms are largely external to the courts and operate inconsistently. Although the Organic Law states that courts are to implement operating mechanisms "that integrate power and responsibility," our observations and interviews suggest that the expanded ex post case review system plays a decisive role in giving substantive teeth to lifelong accountability. It facilitates systematic monitoring of judicial decisions, allowing court leadership to identify and sanction judges whose rulings are found to be deficient after cases have concluded. As such, it is connected with the trial supervision procedure (*shenpan jiandu chengxu* 审判监督程序) and the mechanism for disciplining judges (*faguan chengjie jizhi* 法官惩戒机制). Taken together, these mechanisms reflect a broader Party effort to embed the day-to-day monitoring of political responsibility within formal governance and accountability structures.¹⁸

While the SPC did not impose a uniform framework for conducting case reviews, it did state that judicial responsibility could be ascertained by using "a combination of routine random reviews, targeted reviews, and special topic reviews, with particular attention to cases remanded for retrial, cases with modified judgments, petition-related cases, and cases that have previously fallen within the scope of long-pending cases or cases that suffered prolonged delay and were instructed to be concluded."¹⁹ The SPC was cognizant that variations across regions and localities meant that it was not feasible to implement a uniform mechanism. In the latest edition of its official reader on the subject, the SPC states that lower courts should decide the scope of the review exercise based on actual caseload. For some courts, the focus might be on appealed and retried cases, as well as long-pending cases and petition-related cases; others with lighter caseloads may decide to review all cases.²⁰

From our interviews with judges across the country, we learned that grassroots courts have dedicated considerable resources to conducting case reviews (see Table 4 below), and that while the review systems vary in detail across different courts, there are some common features:

- 1) In most courts, the case review system is managed and supported by the trial management office (*shenpan guanli bangongshi* 审判管理办公室). Reviews are conducted either on a quarterly or yearly basis.
- 2) Courts often use a grading system to determine whether a judge's handling of a case has fallen short of the expected standards. The primary focus is to identify any errors or flaws. If a judge is found to have committed an error or a flaw, the record is retained in the judge's personnel file. If a judge is found to have intentionally violated the law when committing a serious error, the case will be subject to further disciplinary review.
- 3) The reviews have an impact on the rewards and sanctions for judges.²¹ Courts often use a point-based system to tally judges' overall performance. Errors or flaws result in points being deducted; the most common sanction is a deduction from the judge's year-end bonus. More serious consequences may include being passed over for promotion. A judge's decision can also be assessed as "no error identified." In that case, the review concludes without any adverse consequences for the judge.

¹⁷ Finder 2021a.

¹⁸ Snape 2019.

¹⁹ SPC 2018, see also SPC 2019b; 2020.

²⁰ SPC 2021b, 94–95.

²¹ SPC 2021b, 140.

It is worth noting that accountability systems of some form existed prior to the latest judicial reforms.²² As Jeremy Daum observes, the rhetoric of judicial accountability has long been linked to preventing “wrongfully decided cases,”²³ while Carl Minzner documents that local courts included “incorrectly decided cases” in their annual performance targets at least as early as the 2000s.²⁴ These earlier attempts to identify problematic rulings, however, do not compare in either breadth or detail to the current system. The post-2015 reforms are distinguished by their multi-step review protocols, their expansive scope and regularity and the threat of career-long liability.

In this article, we draw on reports gathered from a grassroots court in China to examine the inner workings of this ex post system. We address the incentives the review system creates for individual Chinese judges and examine its broader implications for judicial accountability. Donald Clarke describes the topic of local court responsibility systems as “*terra incognita*” in empirical studies of law.²⁵ Recently, scholars have begun to question the extent to which the SPC’s efforts to centralize the court system have achieved their intended outcomes. For example, Ye Meng argues that the party-state’s reliance on horizontal lines of power and entrenched hierarchies undermines its own efforts to centralize authority and enhance judicial autonomy.²⁶ Similarly, Yueduan Wang suggests that local governments continue to exert significant informal influence over the courts.²⁷ These studies suggest that centralization operates unevenly. Our findings both confirm and complicate the picture. We suggest this accountability regime reconfigures the power dynamics between frontline and senior judges by creating new forms of bureaucratic surveillance and dependence.

Data and Methods

Court T is a basic-level court located in a suburban area of a major city. We had access to its case review reports (*anjian pingcha baogao* 案件评查报告), which are issued internally every quarter. These reports document the results of case evaluations and communicate them to judicial personnel, including frontline judges, judge assistants and clerks. Our data include the reports for the first three years of the review system in its current format (2020–2022). Both authors read the reports. In total, we reviewed 169 reports that were produced during the studied period.

In addition, the second author interviewed court personnel, including a vice-president, a division head and three frontline judges. The vice-president and division head oversaw the case review committee (*pingcha weiyuanhui* 评查委员会). They provided the court leadership’s perspective on the review process, while the frontline judges reflected on the experience of having their work extensively reviewed. We also spoke informally with two judge assistants (Table 1). Inevitably, focusing on one grassroots court raises questions about the generalizability of our findings. To address this, we approached other senior judges and frontline judges from 15 courts located in various regions. As shown below, the broader survey corroborated the findings from Court T (see Table 4 below).

How Case Review Works

The vice-president explained that not all judgments modified or reversed by the higher court lead to censure.²⁸ In principle, this allows judges to focus on the law without the constant fear of being

22 Ng and Chan 2021.

23 Daum 2016.

24 Minzner 2009, 67.

25 Clarke 2003; Minzner 2009.

26 Meng 2023.

27 Wang 2021.

28 These conditions include, e.g., disagreement in the understanding and interpretation of specific provisions of laws, disagreement or questions in a judgment concerning basic facts, or the modification of adjudication results based on the submission of new evidence. For the list of conditions for which a case trialled and modified shall not be deemed erroneous, see SPC 2015.

Table 1. Profile of Informants in Court T

Informant	Age	Gender	Rank
1	51	M	Vice-president
2	53	F	Division head
3	38	M	Judge
4	35	M	Judge
5	42	F	Judge

“judged by the outcome.” In practice, however, cases in which decisions are reversed, modified or sent back for retrial make up the overwhelming majority of cases that appear in the quarterly reports.²⁹ Since these decisions have been changed in one way or another by the appellate court, the first step is for Court G to offer a preliminary assessment.³⁰ Court G’s initial determination is forwarded to Court T for discussion and serves as the starting point of Court T’s own review. Court T will then decide if it agrees with the assessment. Agreement between the two courts is asymmetric: Court T invariably concurs when Court G finds no error, but it sometimes diverges when Court G identifies one.

Upon receiving the initial assessment, Court T designates a working group (*pingcha gongzuozu* 评查工作组) of three to four judges to review the case and draw up an evaluation report. Its own trial management office coordinates and provides clerical support to those involved in the review process. The group typically includes a division head and experienced judges who are selected from a pool of qualified judges. The report is then submitted to the case review committee. To facilitate the review, the trial judge is asked to provide an explanatory response (*shenbian yijian* 申辩意见). We observed that most judges do not submit a response. When a judge does respond, they invariably disagree with the assessment. As it deliberates, the working group may interview the trial judge to gather additional information or to seek a response to questions raised by the appellate court.

The case review committee is headed by the vice-president responsible for trial administration, with the head of the trial management office serving as deputy. Other committee members can include senior judges of the court and, occasionally, senior judges from neighbouring courts. The committee recommends whether to endorse or modify the working group’s conclusion in the report. The third and final step is for the powerful adjudication committee (*shenpan weiyuanhui* 审判委员会) to review the committee’s recommendations and finalize the decision. Any negative findings, such as identified flaws or errors, must be confirmed by the adjudication committee. The findings are then conveyed to the judge responsible for the case and circulated internally in the quarterly reports (see Figure 1 for the key steps of the review process).

Sliding scale of responsibility

The five possible outcomes of a review are, in ascending order of severity, *not wrong*, *flaw*, *major flaw*, *error* and *major error*. The exact terminology may vary from one court to another, yet the labels constitute a continuum along a multi-point Likert scale. Judges in Court T and elsewhere alike noted that the most basic distinction is between an *error* and a *flaw*. Flaws are violations of internal court management rules or breaches of legal provisions that do not result in an incorrect substantive judgment or cause any adverse effect. They are considered minor procedural mistakes or oversights. Errors, on the other hand, involve serious violations of legal procedures, substantive mistakes in judicial decision making, and clear errors in the application of law that result in significant harm to

29 A few decisions that drew repeated petitions and intense media scrutiny were also evaluated.
30 The provincial high court to which Court T belongs implements jurisdiction-wide review guidelines for assessing case handling and judicial decision making.

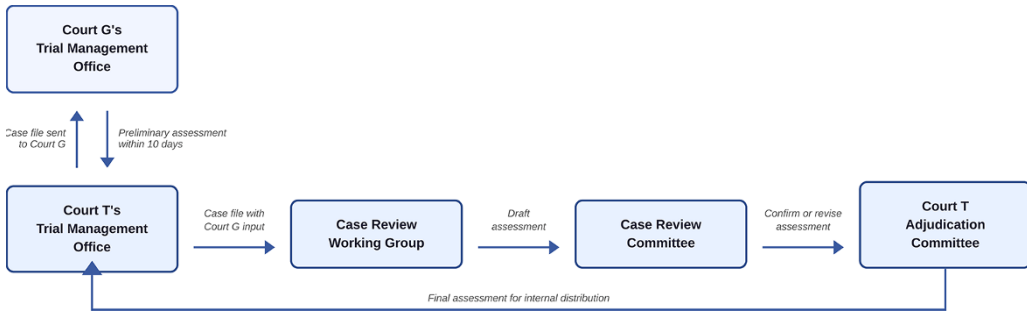


Figure 1. Court T's Case Assessment Process Flowchart

Source: Compiled by the authors.

the rights and interests of the parties involved, or that create a notably negative impact. A senior judge noted: “A quick and easy way to talk about it is to say there are basically three possible outcomes. First, it is a pass (*hege* 合格). The review committee finds there was a difference of *opinion* between the first-instance judge and the appellate judge. There will be no disciplinary action for the former. Second, there are flaws. The judgment has some shortcomings (*budaowei* 不到位), but there are no obvious mistakes. Third, there are errors. Obvious mistakes are found (*youguocuo* 有过错), leading to significant point deductions.”

Like other courts, Court T uses a merit point system to link the case review system to an annual performance evaluation of judges. The system awards points for positive outcomes and deducts points for flaws and errors. The relative gravity of the infraction is reflected in the number of points deducted from a judge's merit ledger: a minor flaw results in a deduction of 0.1 point; a major flaw leads to a deduction of 0.5 to 1 point, depending on the severity; a minor error causes a deduction of 2 points; and a major error incurs even greater point deductions, with the exact amount varying according to the circumstances.

In many urban courts, judges typically earn one point for closing 100 cases without reversal or remand. Thus, one major flaw can wipe out the cumulative merit of 100 properly handled cases. This deduction system creates the most concrete sanction for holding judges accountable. Point deductions adversely impact judges' eligibility for, and the size of, their annual financial bonuses, as well as their prospects of promotion (see Table 2).

More “Judicious” Assessments?

Table 3 summarizes the outcomes of the first three years of the new review system. The overwhelming majority of the cases reviewed were civil cases, with only a few criminal cases appearing in the reports. As criminal decisions are rarely reversed or remanded on appeal, their rarity should not come as a surprise. At Court T, the review process in its present form began in the fourth quarter of 2020, which explains the lower number of cases reviewed that year. There was a noticeable rise in the number of cases assessed in 2021 and 2022. Court T reviewed more cases as the mechanism became more established.

In over 60 per cent of the reviewed judgments, the intermediate court found that the judges of Court T had made mistakes (either errors or flaws) (*dingcuo* 定错). The numbers suggest that while reversals and retrials are not automatically followed by the finding of a mistake, it remains more likely than not that the first-instance judge erred when a reversal or retrial took place. It is important to note that the intermediate court did not specify whether the first-instance judge committed a flaw or an error in its assessments; it is for the leadership of Court T to assess the severity of the mistake. In fact, Court T's adjudication committee has the authority to either concur with or disagree with

Table 2. Consequences of Errors and Flaws

	Personnel Consequences	Other Consequences
Major error that involves possible legal violation	2+ points deducted from the judge's merit/demerit ledger. Case transferred to other departments for further disciplining of the judge.	Judge is subject to critique and education, year-end bonus deduction and repercussions for future promotion. Possible further disciplinary action under rules issued by the Central Commission for Discipline Inspection (CCDI).
Major error not involving legal violation	Major error recorded in personnel file; 2 or more points deducted from the judge's merit/demerit ledger.	Judge is subject to critique and education, year-end bonus deduction and repercussions for future promotion.
Error	2 points deducted from the judge's ledger.	Deduction of bonus and negative repercussions for promotion.
Major flaw	A deduction of 0.5 to 1 point from the merit ledger.	Deduction of bonus, impact on future promotion.
Flaw	A 0.1-point deduction from the merit ledger.	Deduction of bonus, impact on future promotion.
No error identified	Pass.	If a judge was originally ruled "erroneous" by the higher court, the bonus deduction that had been scheduled would be lifted or returned if it had already been imposed.

the appellate court’s initial assessments. In 2020, Court T concurred in all but one of the 11 cases in which Court G identified a flaw or error. By 2021, Court T agreed with only about 60 per cent of the 29 cases flagged by Court G, upgrading the rest to “not wrong.” The trend suggests that Court T increasingly diverged from Court G’s assessments over time.

Overall, flaws continue to outnumber errors. Yet while no errors were identified in 2021, 13 cases in 2022 resulted in the judges being found to have committed errors. This trend suggests that by the third year of the system, some judges were being assessed more harshly. That said, given the short period covered by our data, it is difficult to draw firm conclusions.

How Frontline Judges View Case Assessments

Subjectivity and inconsistency

A recurring concern among the frontline judges we interviewed in Court T and other courts was that the review process is too subjective and inconsistent. When a judge is found not to have erred, the report typically concludes with the formulaic statement: “this case involves differing understandings between the first and second instances (*yiershen renshi butong* 一二审认识不同) and is not considered an error.” When a judge is found to have committed flaws or errors, the reports commonly state that there was an “unclear ascertainment of facts” (*rending shishi buqing* 认定事实不清) or “misapplication of legal rules” (*faliu shiyong cuowu* 法律适用错误). However, beneath the surface regularity of these phrasings, there remains ambiguity over what qualifies as a difference in understanding and what constitutes a misapplication of the law. While egregious cases leave little room for dispute, such as when a judge has clearly overlooked crucial facts or misapplied the law, many cases fall into a grey zone where the quality of a judgment is open to interpretation.

Some judges even pointed out that the difference between the two ends of the spectrum – namely, a serious error and no mistake – was not as clear as the directives suggested. A judge in her 40s remarked: “I think judges are being asked to shoulder too much risk. Remember, some years ago,

Table 3. Case Review Outcomes of Court T, 2020–2022

Year	First Stage			Second Stage				
	Initial Assessment Offered by Court G			Review by Court T				
	Cases reviewed	Decisions in which judges were assessed to have committed an error/ flaw	Decisions in which judges were assessed not to have committed an error/ flaw	Decisions in which judges were assessed to have committed an error/ flaw				Decisions in which judges were assessed not to have committed an error/ flaw
				Major error	Error	Major flaw	Flaw	No error identified
2020	19	11	8	0	0	9	1	9
2021	55	29	26	0	0	12	6	37
2022	95	65	30	0	13	23	10	49
Total	169	105	64	0	13	44	17	95

there was the case of Judge Ma Ruizhi 马瑞芝 in Hebei. Although she was ultimately exonerated, her experiences highlight the risks we judges face in our line of work.” The judge was referring to the 2013 prosecution of Ma by the procuratorate for abuse of power. Judge Ma was the responsible judge in a routine private lending case. She successfully mediated the dispute. As it turned out, the litigants were withholding evidence to undermine the interests of a third party, who later petitioned the higher courts. Ma was suspended and subsequently prosecuted.³¹

Others took issue with the fact that the evaluation was a desk review based entirely on available case files. In most cases, there is no new investigation, as courts cannot afford to expend judicial resources on new fact-finding, especially given the current scale of the review. Judges who are recruited as evaluators are asked to take on these cases in addition to their assigned caseloads, and many cannot spare the time needed to review the cases thoroughly.

Ambiguities appear throughout the grading spectrum. If it is already difficult to distinguish an error from a flaw, distinguishing a major flaw from a flaw can only be more challenging. As Minzner has remarked of earlier efforts to standardize the evaluation of Chinese judges, creating standardized “grades” for all the various conceivable shades of judicial error involved in appellate reversal can never be clear-cut.³² In the context of the recent broader supervisory reform, some have also questioned the effectiveness of a sanction-based accountability system, as an official’s responsibility can easily be “reframed.”³³

In some reports, ad hoc justifications were offered to support a favourable evaluation of the responsible judge. Some judges were excused on the grounds of the complexity of the law applied, while others were criticized for failing to keep up with the latest developments in the law. This has led to confusion about how clearly the terms “errors” and “flaws” are defined. One judge said: “There is no well-established system or clear set of standards for this work.”

In one probate case, a woman, Ms Yang, filed a claim to inherit the village property of her deceased brother. Judge Dai approved the claim and awarded the property to Ms Yang, who had cared for her brother during the last years of his life. The appellate court, however, reversed the decision and awarded the property to the deceased’s brothers. In its review, Court T concluded that Judge Dai was “not wrong.” It went on to criticize the appellate court for “focusing too much on the law,”

31 For Ma’s own account of her encounter, see “Zhi zuigao renmin fayuan Zhou Qiang yuanchang de yifeng gongkaixin” (An open letter to President Zhou Qiang of the Supreme People’s Court). *Sina blog*, 17 July 2013, https://blog.sina.com.cn/s/blog_6592426a0102ecmc.html.

32 Minzner 2009, 84.

33 Tu and Gong 2022.

writing that the second instance “placed too much emphasis on pursuing legal effects when handling the case” (*ershen guoyu zhuiqiu anjian chuli de falü xiaoguo* 二审过于追求案件处理的法律效果). While Court T was sympathetic to the plaintiff, its dismissive stance towards “pursuing legal effects” is confusing, given that the reports have emphasized in many other instances the importance of adhering to the law.

In some reviews, the case review committee staunchly defended the first-instance judges, despite the appellate court’s blunt criticisms. In a case involving a debt assignment contract (*zhaiquan zhuanrang hetong* 债权转让合同) and a loan exceeding 23 million yuan, Judge Jiang ruled that Court T lacked jurisdiction and transferred the case to another court. The appellate court disagreed and sent it back to Court T for retrial. When reviewing Judge Jiang’s decision, the case review committee acknowledged that the second-instance judgment had correctly applied the law. However, it added: “Considering that adjudication standards across the city are inconsistent, it is recommended not to determine this as an error.” This reasoning would be more convincing if it were applied consistently. In other cases, judges were criticized for deviating from the standards set out by higher courts.

Dual role of appellate court

Frontline judges were sceptical of Court G’s dual role in both adjudicating appeals and providing input to the reviews of first-instance decisions. The higher court may use the case review mechanism to divert attention from the non-legal reasons that led it to reverse some decisions. This seems to be what Judge Zhang, whom we introduced in the opening vignette, implied when he disclosed what Judge Sun had told him.

It is noteworthy that the reports included a category of cases labelled “inconsistent factual findings between the first and second instances, *with the first instance’s findings deemed more reasonable*” (emphasis added). While there were no more than a handful of such cases per quarter, their inclusion shows that there were occasions when Court T disagreed with the higher court. Had Court T possessed the authority, it might have identified flaws in the appellate court’s decisions. But as senior judges explained to us, while some courts have advocated for two-way or upstream reviews – a mechanism where the first-instance court requests a review of errors committed by the second-instance court – they rarely occur.³⁴

The goal of the reviews is to hold judges responsible, not to re-open a case. When asked about this group of cases, the vice-president we interviewed replied: “Case reviews are an internal administrative function of the court. Final judgments, on the other hand, are authoritative determinations made by the people’s courts through statutory procedures and carry the force of *res judicata*.”

Informal consultations still matter

Requests for instructions, or *qingshi* 请示, have long posed a challenge to the SPC as it has attempted to formalize its appeal mechanism. Although the practice has existed for decades, the informal and undocumented nature of many *qingshi* requests has raised concerns regarding judicial fairness.³⁵ First-instance judges often informally ask their counterparts in higher courts for instructions to avoid making mistakes.³⁶ As part of the judicial reforms, the SPC recently formalized the procedures applied to *qingshi*; earlier proposals to “judicialize” the practice by making it a litigation procedure were even circulated within the SPC.³⁷

34 “Tansuo shuangxiang pingcha yiyi fankui chixu tisheng anjian shenpan zhixiao – Shanxi Ankang zhongyuan guanyu fagai anjian pingcha gongzuo de diaoyan baogao” (Exploring two-way assessment with objection feedback to continuously improve case trial quality: a research report on the assessment of reversed and remanded cases by the Ankang Intermediate Court, Shaanxi). *People’s Court Daily*, 17 June 2021.

35 Minzner 2009.

36 He 2012.

37 Finder 2023b.

The reports indicated that informal requests persist. In a case involving a multi-party contractual dispute, Judge Fu ruled that the defendant was not required to repay a 2 million-yuan penalty fee that the plaintiff had paid to a third party. On appeal, the intermediate court reversed that decision, ordering the defendant to pay the fee and holding him responsible for causing the plaintiff to incur the penalty. The appellate court criticized the trial judge for misunderstanding the legal nature of the penalty fee. Despite the harsh language used by the higher court, the working group reviewing the case determined that “the two courts had differing interpretations.” Since the conflicting judgments were the result of “different interpretations,” the working group concluded that no error or flaw should be ascribed to Judge Fu. In his response to the working group, Judge Fu admitted that he had already “communicated” with the higher courts:

Prior to handing down my judgment, I had already sought approval from the High Court, and I had also communicated with the Third Intermediate Court. I then inquired with the High Court again, and after review by their head judge, the High Court confirmed that there were no unclear facts in this case. Both parties explicitly stated that the 2 million yuan was paid to a third party. If the plaintiff claims a refund, it pertains to a separate legal relationship.³⁸

In the reports, judges who made clerical mistakes were found to have committed a “flaw” (see below), yet Judge Fu, who had mistakenly determined the nature of a 2 million-yuan penalty, emerged unscathed. By reaching this conclusion, the case review committee seemed to acknowledge that informal requests continue to have a place in the new system.

Beyond legal analysis

The reviews evaluated work style and habits that reflected normative expectations beyond legal matters. This is not a novel development. For a long time, the Chinese system of judicial discipline has considered judicial mistakes, illegal activities and moral infractions under the same expansive disciplinary regime.³⁹ The new system, however, is set apart by its scope. Judges can be criticized for their indolence, for failing to learn new laws and for carelessness. Many frontline judges believe that it is unfair to be sanctioned for small mistakes, which they attribute to their overwhelming workload. Below are a few examples from the review reports.

Clerical mistakes

Simple clerical errors, such as misspelt names, were the most clear-cut grounds for a “flaw” finding.⁴⁰ In one case, Judge Deng incorrectly wrote the plaintiff’s name, Zheng Congjian 郑从坚 as 郑丛坚. The simplified Chinese characters 从 and 丛 are homophones and look similar but carry different meanings. The report concluded that Judge Deng had committed a flaw:

The responsible judge mistakenly wrote the name “郑从坚” as “郑丛坚” from the very beginning. Throughout the case, Zheng was represented by an attorney. It would have been straightforward to verify his name. Upon reviewing the electronic file from the first-instance trial, it is clear that the photocopy of Zheng Congjian’s ID card and the power of attorney both bear his signature as “郑从坚.” The reviewer thus concludes that the responsible judge showed a lack of attention to detail in his work. Considering that this is the first occurrence of such an issue, the mistake is evaluated as a major flaw.⁴¹

³⁸ Authors’ translation.

³⁹ Chan and Xiao 2021; Finder 2021a; see also Daum 2021.

⁴⁰ Except for one case, in all instances where judges misspelt a party’s name, the judge was held accountable for committing a flaw. The exception involved a party who had changed their legal name shortly before the judgment was delivered. Although the judge technically “misspelt” the party’s name, the committee concluded that she was “not wrong.”

⁴¹ Authors’ translation.

Moralizing lessons

The reviews go beyond strictly judicial matters and also comment on the work ethic and moral sensibilities of judges. In a dispute between a customer (the plaintiff) and a spa facility that offered “medical beauty” (*yiliao meirong* 医疗美容) services – that is, cosmetic interventions that count as medical procedures and therefore require the practitioner to hold a special licence – Judge Zhou, the first-instance judge, asked the defendant to issue a refund without investigating whether the procedures were performed by qualified personnel. Judge Zhou was admonished for failing to keep up with the latest laws: “If the judge in charge had been actively learning and broadening his knowledge, the oversight and lack of understanding in this case could have been avoided.”

In a divorce case, Judge Liu granted the wife’s petition for divorce but stated in the judgment that the husband would be solely responsible for gambling debts incurred during the marriage. The committee criticized Liu for lacking moral discernment. Gambling is illegal in China, and by referring to “gambling debts” in an official judgment, the court effectively legitimized the illegal profits of bookies – profits that, by law, should be confiscated by the authorities.⁴²

Discussion: A New Form of Discipline

To complement our case study, we contacted judges in 15 other courts across the country. Our broader inquiry shows that the case review system has become a regular institutional practice across all three levels of the judiciary. While our survey is skewed towards urban courts owing to our personal networks, the system is also in place in rural courts.

Courts in different regions devote significant human resources to this ex post review system. Some courts assign large teams of judges to conduct reviews; some courts use fine-grained, point-based systems, while others rely on broader, qualitative assessments (see Table 4). Among the grassroots courts we surveyed, reviews focused primarily on appealed and retried cases, but they also extended to problematic cases, including those subject to repeated petitions. It is, however, common for provincial high courts to review all of their judgments, as their caseloads tend to be smaller, and each case carries higher stakes.

The survey provides a clear picture of how widely the case review system has been implemented under the new regime of judicial responsibility. With the retrenchment of vertical supervision, frontline judges are now permitted to render decisions without prior approval in an arrangement that, absent further oversight, effectively amounts to the devolution of judicial power to frontline judges. The identification of the four types of cases serves as a proactive mechanism of intervention for a smaller subset of difficult cases. But it is the ex post system, the more far-reaching of the two mechanisms, that shoulders the routine task of maintaining political oversight and judicial discipline.

Yet when the new *pingcha* 评查 system replaced the old *shenpi* 审批 system, it led to unexpected changes in the power dynamics between frontline judges and their superiors. Under the pre-approval system, junior judges sometimes came under overt pressure from superiors to render specific decisions in order to obtain a sign-off on certain cases. This arrangement was rightly criticized for fostering local protectionism and corruption. At the same time, the old approach spread accountability collectively, offering a sense of collegial liability when a decision led to adverse consequences. In the new system, frontline judges alone are held accountable. Responsibility has become individualized at a time when ex post evaluation has intensified. Judges are confronted with the unforgiving prospect of routinely deciding cases on a knife’s edge, when missteps could ruin a judicial career.

Judges who evaluated the judgments of their colleagues tended to adopt a “live and let live” attitude: “today it’s you, tomorrow it’s me.” Many of the reviewers and the judges under review knew

42 In China, the only legally permitted forms of gambling are the two state-sanctioned lotteries: the China Welfare Lottery and the China Sports Lottery.

Table 4. Survey of Other Courts Across the Country

Court Characteristics					Features of Case Review System			
No.	Court level	Locale	Size and composition of the reviewing team	How often does the review take place?	Types of cases reviewed	All cases or selected/sampled cases only?	Grading categories	Does the court use a point-deduction system?
1	Intermediate court	Major city	Exact number unknown; spearheaded by the trial management office	Quarterly	Appealed and retried cases	All	Pass, general flaw, major flaw, fail	Not aware of any point-deduction system
2	High court	Suburb/ small city	4 regular judges, with others recruited on an ad hoc basis	Quarterly; can be as frequent as monthly depending on caseload	All cases	All	10 categories based on points, with 100 being a perfect score	Yes
3	High court	Major city	>50	Semi-annually	Primarily appealed and retried cases, but other problematic rulings as well	Randomly sampled; at least two cases per judge reviewed	100 points being perfect; above 95 is excellent; 75–95 is a pass; below 75 is a fail	Yes
4	Basic-level court	Small city	17	As needed	Appealed and retried cases; petition-related cases	All	Merit, pass, flaw, problematic	Yes
5	High court	Major city	1 full-time judge, with other judges participating on a part-time basis	Regularly	All cases	A sample of cases is selected for evaluation	No flaw, general flaw, major flaw, fail	Not aware of any point-deduction system
6	Intermediate court	Small city	7 (5 quota judges and 2 judicial assistants)	Monthly	Primarily retried and appealed cases and petition-related cases	About 45% of all cases selected for review	Pass, flaw, mistake, illegal	Yes
7	Basic-level court	Major city	4 full-time staff (2 quota judges and 2 judicial assistants); all quota judges participate part-time in conducting reviews	Monthly	Appealed and retried cases; other problematic rulings	All appealed and retried cases; certain important cases also selected for review	Excellent, pass, minor flaw, general flaw, major flaw, general mistake, major mistake	No
8	Intermediate court	Major city	Exact number unknown; spearheaded by the trial management office	Quarterly for appealed and retried cases; other important and problematic cases reviewed as needed (e.g. petition-related cases)	Appealed and retried cases; other problematic rulings, including petition-related cases	All appealed and retried cases reviewed; some important and problematic cases also selected for review	Pass, flaw, obvious mistake	Yes

(Continued)

Table 4. (Continued.)

Court Characteristics			Features of Case Review System					
No.	Court level	Locale	Size and composition of the reviewing team	How often does the review take place?	Types of cases reviewed	All cases or selected/sampled cases only?	Grading categories	Does the court use a point-deduction system?
9	Basic-level court	Major city	No dedicated team; for each case, 3 judges form an ad hoc committee to conduct the review	Quarterly for appealed and retried cases; other important and problematic cases reviewed as needed (e.g. petition-related cases)	Appealed and retried cases; other problematic rulings, including petition-related cases	All appealed and retried cases reviewed; some important and problematic cases also selected for review	Pass, flaw, obvious mistake	No
10	Basic-level court	Major city	No designated team; all quota judges participate	Quarterly	Primarily appealed and retried cases	Sampled	Pass, flaw, error	Yes
11	High court	City	Coordinated by the trial management office, but reviews carried out by senior judges, size of team unknown	Regularly, but the interval is adjustable	Appealed and retried cases, and some other problematic rulings (e.g. cases that have been pending for an extended period)	All appealed and retried cases; certain important and problematic cases also sampled for review	Merit, pass, flaw, error	No, but a filing system is used
12	Basic-level court	Major city	Reviews randomly assigned to another quota judge of the court, coordinated by the trial management office	On an as-needed basis. No fixed interval	Appealed and retried cases; and other problematic rulings	Sampled	Pass, flaw, error	No
13	Intermediate court	Major city	Coordinated by the trial management office, reviews carried out by senior judges; for each case, 3 judges form a committee to conduct the review	Quarterly	Appealed and retried cases; other problematic rulings (e.g. petition-related cases)	All appealed and retried cases; certain important and problematic cases also sampled for review	Pass, general flaw, serious flaw, error	Previously, but no longer
14	Basic-level court	City	Coordinated by the trial management office, but reviews carried out by judges; size of team unknown	Monthly	Appealed and retried cases	All	Pass, flaw, error	For cases categorized as “flawed” or “erroneous,” direct deduction from bonus
15	Basic-level court	Major city	Around 10 judges, including staff from the trial management office and senior judges, including a vice-president	Quarterly	Appealed and retried cases; major letters-and-visits cases	All appealed and retried cases; certain important and problematic cases also sampled for review	Pass, general flaw, major flaw, mistake	No

each other and had previously worked together on cases. Consequently, there was a reluctance to cost a colleague a bonus or to trigger further disciplinary action. Yet peer solidarity can only go so far. A judge's fate in a case review ultimately depends on more than the goodwill of colleagues.

In an ironic twist, senior judges now hold the lifeline that could save the frontline judges of their courts from being condemned for errors and flaws. Much has been said about the diminishing role of the adjudication committee, which for a long time was the vehicle through which senior judges could exercise power over their subordinates.⁴³ The committee now surely supervises fewer cases. However, our study shows that the adjudication committee still holds the power to determine the outcome of case reviews. It would be wrong to say that the adjudication committee has been sidelined. What has happened is that its role has shifted, concentrating *ex ante* supervision on a minority of difficult and complex cases while holding judges accountable by disciplining mistakes detected in flawed judgments. In this new role, the adjudication committee can, should it choose to do so, declare that a judge is “not wrong,” even when that judge's decision has been modified or reversed by a higher court.

The broad scope of the *ex post* review lends a disciplinary character to the entire process – disciplinary in the Foucauldian sense in that the review goes beyond the decision-making process and directs the inquisitorial gaze onto the decision-makers themselves.⁴⁴ Many frontline judges perceive their assessments as being shaped by how they are viewed by peers and superiors. For example, factors such as whether a judge collaborates collegially with peers and responds enthusiastically to the directives and policies of superiors seem to play a role. In other words, frontline judges see their evaluators as drawing on information that goes beyond the specific case under review to formulate assessments. Given the same mistake, eager “team workers” are likely to be treated more leniently than judges who are perceived as unmotivated or lackadaisical. The system is also Foucauldian in the sense that such control is diffuse and indefinite.⁴⁵ Xin He aptly characterizes this influence as a “judicial panopticon,” where the power of senior judges is ever present but not explicitly exercised, even within this ostensibly freer framework.⁴⁶

Conclusion

Under the new judicial responsibility framework, *ex post* review has replaced pre-approval as the main mechanism of vertical supervision. Judges enjoy greater freedom in adjudicating cases but face tighter scrutiny when their work is evaluated. In routine cases, grassroots judges now sign off on their own judgments. At the same time, they are subject to an expansive case review system that defines judicial responsibility broadly and individualistically. The longstanding fusion of administrative and judicial duties in the Chinese legal system persists, if not intensifies, and surveys confirm that judicial responsibility and discipline are major factors in judges' attrition.⁴⁷

Perhaps the most consequential, yet overlooked, aspect of the *ex post* system is how it reconfigures the power that subjects frontline judges to discipline. Leaders who make up the adjudication committee can protect their subordinates by exercising their authority to finalize review outcomes, especially when an adverse review might threaten a young judge's career. Career-oriented judges are thus incentivized to be team players and to remain on the right side of superiors, rather than risk gaining a reputation as “renegades.” This perception rests on the belief that, in a review system that is still evolving, collegial relationships increase one's chances of survival.

Viewed as a whole, the judicial reforms strengthen control from the top in some respects and local leader control in others. Yet, for frontline judges, the reforms bring at once more freedom

43 He 2012.

44 Foucault 1995; He 2025.

45 Foucault 1980.

46 He 2023; 2025.

47 Finder 2018.

and more precarity. Their performance is subject to constant evaluation, and they see themselves as dependent on the goodwill of their seniors. Local dynamics, defined by interpersonal relationships and the preferences of local judges and officials, continue to permeate the hierarchy of supervision, albeit in a refigured guise. Even though the specifics of the disciplinary mechanism have changed, its implementation remains in the hands of senior judges of the same courts. The resulting form of disciplinary power is diffuse and amorphous.

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