

# The Proper Orientation of China's Lawyer on Duty System

## —Discussion on the Leniency System of Pleading Guilty and Accepting Penalty

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### Abstract

In order to cooperate with the trial of quick judgment procedure and the leniency system of pleading guilty and accepting penalty, the lawyer on duty system came into being. Through comparison, it can be found that after the introduction of the duty lawyer system, China has carried out a local reform of defending humanization. The litigation rights enjoyed by the duty lawyer far exceed the setting of the country of origin. And the purpose of this transformation is to expect that it will shoulder the important task of safeguarding the criminal suspect or defendant to obtain the effective legal help and prevent the risk of unjust and wrong cases easily caused by the leniency system of confession and punishment. However, the legal status, working style and compensation method of the duty lawyer decide that it cannot guarantee the voluntariness of the defendant and the suspect in plea cases, which will endanger the legitimacy of the leniency system and the minimum procedural justice. Justice cannot ignore the cost, but it is empty talk that the low cost and wide coverage of on-duty lawyers can guarantee effective legal assistance for defendants and suspects in the cases of confession... Justice is the soul and life of justice; the necessary cost of safeguarding justice can never be saved. It is suggested that the suspect and defendant in the cases of guilty plea and punishment should be provided with a mandatory designated defense system instead of the system arrangement provided by the duty lawyer in the current judicial interpretation, so as to ensure the justice of the procedure and the justice of the judiciary, and restore the basic attributes of on-duty lawyers only providing timely, preliminary, and extensive legal services.

### Keywords

On-Duty Lawyer, Defense Humanization, Effective Legal Assistance, Plead

## 1. Introduction

Since the 18th National Congress of the Communist Party of China, the CPC Central Committee with General Secretary Xi at the core has proposed comprehensive deepening of reforms, and has carried out a top-level design with judicial system reform as an important breakthrough point. Therefore, since 2014, China has launched the largest judicial system reform since 1979, and has made reform plans from two aspects: one is to establish a trial centered litigation system; the other is to promote the reform of leniency system of pleading guilty and accepting penalty. The Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security and Ministry of Justice, Ministry of State Security (hereinafter referred to as the "two Supremes and three Ministries") jointly issued two judicial interpretations in November 2016 and October 2019, so as to regulate the criminal justice activities in confession and punishment cases.

On the one hand, China has always had the "confession to evidence" investigation habits; on the other hand, the number of criminal cases continues to grow, and the number of criminal cases has been further promoted by the special campaign to "Eradicate black and evil" carried out in recent years, so the case-handling organs are facing enormous pressure to handle cases. The combined effect of the above two is easy to disintegrate the leniency system of pleading guilty and accepting penalty into a tool to exchange guilt confessions for profit induction. For the case handling organ, the defendant and the suspect once pleaded guilty; the confession formed by his pleading has become the direct evidence of his crime, which reduces the difficulty of judicial investigators' investigation and evidence collection and trial, which can undoubtedly improve the efficiency of handling cases. By pleading guilty, the accused and the suspect can also obtain the benefits of lenient physical punishment and procedural simplicity, which have been clearly defined by the "Guiding Opinions". The "benefit sharing" mechanism of the leniency system of pleading guilty and accepting penalty makes it have strong internal and external incentives. However, it will coexist with "false confession" and result in unjust, false and wrong cases (Bai, 2019). Through empirical observation, we can predict that it is very likely that the defendant will confess his guilt against his will, and the proportion is as high as one fifth (Li, 2018). It can be seen that the Leniency system of pleading guilty and accepting penalty may induce special risk of wrongful conviction, so the legal profession must be vigilant. Undoubtedly, in pleading guilty cases, obtaining effective legal assistance for criminal suspects and defendants is the best choice for preventing unjust and wrong cases and maintaining judicial justice. China's judicial reformers choose the mode of providing legal help from the duty lawyer. In the 2018 Criminal Procedure Law Amendment the duty lawyer system has become an integral part of the defense system, and has been placed high hopes in

the vigorously implemented leniency system of pleading guilty and accepting penalty. It seems that the duty lawyer system has shown a trend of continuous improvement. However, there is only one regulation on the duty lawyer system in the current code. In addition, there are still many controversies regarding the future development of the duty lawyer system. Therefore, the duty lawyer system still needs in-depth discussion.

## 2. Investigation on the Foreign Duty Lawyer System

The duty lawyer system originated in the UK, since then, Japan, Canada and other countries have established this system one after another, but it is not a legal aid system commonly established in the world. China has introduced the duty lawyer system based on the needs of judicial system reform. Therefore, it is necessary to sort out the foreign duty lawyer system to provide reference and guidance for the construction of this system in China.

In order to adjust the inequality between the criminal suspect and the police and to ensure that the criminal suspect understands his rights, the Police and Criminal Evidence Act 1984, 6.1 stipulates that in addition to the restrictions set out in Annex B, all persons detained by the police must be informed that they have the right to get in touch with their lawyer individually by meeting, letter or phone, they can also obtain free independent legal advice from the duty lawyer... (Chen, 2004) This law made Britain the birthplace of the duty lawyer system. The United Kingdom has implemented the Duty Lawyer Program since 1986. The purpose is to ensure that every detainee who needs legal advice can get advice quickly (John Sprack, 2009). There are three ways of criminal legal aid in the UK: Advice and Assistant, Advocacy Assistant, Representation. The on-duty lawyer mainly provides Advice and Assistant and Advocacy Assistant (2016)<sup>1</sup>, but the detainees obtain the legal advice is not an absolutely necessary precondition for interrogation or continued interrogation.

The right to get help from a lawyer is a constitutional right of Canadian citizens, so everyone has the right to get help from a free lawyer on duty. Canada (requires the police) to promptly inform detainees that they have the right to hire a lawyer and the right to give instructions to the lawyer is that when arrested or detained, the criminal suspect needs to get help from legal advice in time... In the early stage of arrest or detention, one of the main functions of the on-duty lawyer is to ensure the existence of the privilege of silence enjoyed by the criminal suspect and to inform the criminal suspect how to exercise this right... In addition, when arrested or detained, one of the important reasons why a criminal suspect needs immediate legal advice is to protect the criminal suspect's right to not incriminate himself (Zhu & Guo, 2012). These timely and preliminary legal services cannot be provided by the traditional legal aid system, so the duty lawyer system was established. There are three main types of duty

<sup>1</sup>Legal Aid Statistics in England and Wales July to September 2016, produced by the Legal Aid Agency's statistics team and published by the Ministry and Justice, p. 12, cited in Gu. Y.Z. & Li, X.Y., *On the Proper Position of Duty Lawyers in China*, No. 4, 2017, pp. 78.

lawyers in Canada: 24-hour telephone consultation duty lawyers, court duty lawyers and other types of duty lawyers (Gu & Li, 2017a). The significant difference between the Brydges Duty Counsel Service (that is, 24-hour duty lawyer service in Canada) and the other legal aid available to the defendant is the provision of simple, free and timely assistance from lawyers on duty through 24 hours a day telephone service without considering the suspect's income status, but this form of telephone help can obviously only provide very limited help.

In order to make up for the shortcomings of the "Criminal Lawyer Recommendation system" implemented in 1984 in accepting commissions from criminal suspects in a timely manner, and taking the British duty lawyer system as the main reference, Japan began to implement the "Duty Lawyer system" in 1990. The so-called on-duty lawyer system is a consultation system for criminal suspects, that is, lawyers take turns on duty, and they go to receive consultation after receiving the request of relevant personnel, and the first lawyer fee is exempted (Taguchi, 2001). At the first meeting, the on-duty lawyer shall explain the litigation procedure to the criminal suspect, inform him of the relevant litigation rights, and provide necessary consultation and advice (Gu & Li, 2017b). However, in this case, only the first lawyer consultation fee is exempted, if the criminal suspect requests a defender, he still has to pay for it. For this reason, in 1990, the Legal Aid Association began to establish the "Criminal Suspect Defender Assistance System" to provide assistance to defenders of criminal suspects. Due to the increase in the number of cases and financial distress, Japan's 2004 amendment to the Criminal Procedure Law and the enactment of the Comprehensive Legal Support Law completely changed the nationally elected defender system that was only applicable to defendants, and formed a nationally elected defender supply system from investigation to trial (Taguchi, 2010). In short, the main system supply for the protection of the right to defense in Japan is the nationally selected defender system, the on-duty lawyers only provide free first consultation services to criminal suspects who have been arrested or detained. In other word, duty lawyers play the initial "one kilometer" role in the entire defense system, it is an "icing on the cake" institutional arrangement for the protection of criminal suspects' right to defense.

From the criminal litigation legislation and judicial practice of the above countries represented by the United Kingdom, Canada, and Japan, it can be seen that the on-duty lawyer system in these countries has many commonalities: first, these countries have established the defendant's right to silence, the privilege of not self-incrimination, and strict rules for exclusion of illegal evidence in the criminal procedure law. The concept of procedural justice is deeply embedded in the concept of criminal justice. In order to ensure the realization of criminal suspects' litigation rights, when criminal suspects are detained or arrested, they urgently need lawyers to inform them of these litigious rights so as to ensure the authenticity and voluntary nature of the interrogation transcript. Second, the duty lawyers in these countries are only responsible for providing legal advice or legal advice to the suspects, which is different from the traditional legal aid sys-

tem to provide substantial and continuous legal service needs. In other words, the law does not give the duty lawyer greater rights, or from another angle, stipulates heavier obligations. Third, because these lawyers take turns on duty or even 24-hour telephone duty, they can only provide preliminary and timely legal help and do not perform their duties as defenders. Although the legal aid defense lawyer and the duty lawyer are both part of criminal legal aid, the time, place, object and manner of their responsibilities are completely different. To put it vividly, the on-duty lawyer is responsible for the legal assistance of the “first kilometer”, and the legal aid defense lawyer is responsible for the defense of all subsequent litigation stages.

### 3. The Development Process of China’s Duty Lawyer System

In a clearly managed country like China or the Soviet Union, we can see that all levels of the judicial system are permeated with strong policy implementation colors (Mirjan R Damaska, 2015). The development of China’s duty lawyer system is an interpretation of this.

Since 2006, the Ministry of Justice and the United Nations Development Program have jointly launched a pilot project of the “Legal Aid Duty Lawyer System” in Henan. On this basis, some places have been selected to expand the scope of the pilot project. The project provides timely and preliminary legal consulting services for criminal suspects and defendants at all stages of criminal proceedings by dispatching duty lawyer in public security organs, people’s procuratorates, and people’s courts (Reporter, 2017).

The contradiction of the large number of cases but the small number of judicial personnel has led to the simplification of procedures, and the criminal quick judgment procedures can be established in law. The quick judgment procedure is a new and extremely simplified trial procedure. The defendant’s right to defense must be guaranteed to be realized in order to avoid doubts about the legitimacy of the procedure. However, the legal aid system in China at that time could not provide support. For this reason, the on-duty lawyer system born in response. So in August 2014, the *Measures on carrying out the pilot work of quick judgment procedure of criminal cases in some areas* (Law [2014] No. 220) was issued by the Supreme People’s Court, Supreme People’s Procuratorate, Ministry of Public Security and Ministry of Justice, its article 4 stipulated: to establish legal aid duty lawyer system, and the legal aid institutions shall assign legal aid duty lawyer in the people’s courts and detention centers... It’s the first time that it put forward to establish the legal aid duty lawyer system in the form of judicial interpretation, but it is only the declaration of system construction. In June 2015, the General Office of the CPC Central Committee and the General Office of the State Council issued the *Opinions on improving the legal aid system* (ZBF [2015] No. 37), the article (4) “strengthening the work of criminal legal aid” reviewed again the announcement of duty lawyer system construction of law [2014] No. 220.

In the past two years, the system of on-duty lawyers has not been guided by laws and regulations, and it is completely left to local exploration. Not only does this approach make the system of on-duty lawyers inconsistent, it may also make the system a “gorgeous” display. In order to give full play to the role of duty lawyers in criminal proceedings and promote the leniency system of pleading guilty and accepting penalty decided by the Party Central Committee, the “two Supremes and three Ministries” jointly issued the “*Measures for Carrying out pilot Work of Leniency system of Pleading Guilty and Accepting Penalty in Criminal Cases in Some Regions*” in November 2016. The measures make it clear that “in cases of guilty plea and punishment, if the suspect or defendant does not have a defender, he/she shall get legal assistance through duty lawyers and other forms; duty lawyers provide legal assistance to criminal suspects and defendants in providing legal advice, selecting procedures and applying for alteration of compulsory measures, etc.” In order to thoroughly implement the document of CBF [2015] No. 37, the “two Supremes and three Ministries” jointly issued the *Opinions on Carrying out The Work of Legal Aid Duty Lawyers* in August 2017, its second article clearly states that legal aid duty lawyers shall perform the following duties in accordance with the law: answering legal consultation; guiding and helping to apply for legal aid, transferring application materials. In the pilot of the leniency system reform, legal advice, procedure selection and application for alteration of compulsory measures are provided for suspects and defendants who voluntarily confess and punish; put forward the opinions on the conviction and sentencing of procuratorial organs; be present when the suspect signs a written confirmation of the confession of a guilty suspect; to act as an agent to appeal and sue in the circumstances of inquisition by torture or illegal evidence collection. The Opinions change the mode of legal assistance provided by the on-duty lawyer from the application of the party concerned to the notification of the case handling organ, and also makes comprehensive provisions from the working mode, supervision and management, work security and so on.

Article 36 of the amendment to the Criminal Procedure Law of 2018 is added lawyers on duty provide legal help for suspects and defendants, such as legal advice, procedure selection advice, application for alteration of compulsory measures, opinions on case handling, etc. From then on, the duty lawyer system is written into the code of criminal procedure, but it shows a cautious attitude compared with the provisions of judicial interpretation.

It is believed that the judicial interpretation does not give the duty lawyer the two important litigation rights, the right to meet and the right to consult files, which makes it impossible for the duty lawyer to give legal opinions on whether the criminal suspect has made a decision to plead guilty and punished, and the sentencing recommendations made by the procuratorate, which may endanger the legitimacy of the leniency system. So the “two Supremes and three Ministries” issued the *Guiding Opinions on The Application of the Leniency system of Pleading Guilty and Accepting Penalty* (hereinafter referred to as the “Guiding

Opinions”). In October 2019, the right of meeting and consulting files of lawyers on duty has been increased, it has broken through the provisions of the Criminal Procedure Law. In August 2020, the “two Supremes and three Ministries” jointly issued again *the Working Methods for Duty Lawyers of Legal Aid* (hereinafter referred to as “the Working Methods”). It defines the duty lawyer for the first time, and improved regulations for duty lawyers on the duties, operation mode, supervision and management, departmental cooperation, funds guarantee and other aspects, but the provisions on duty lawyer’s duty still follows the “Guiding Opinions”.

By sorting out the legal documents, we can see that China’s lawyer on duty system has a relatively complete system of norms and guidelines. From the beginning of the introduction of only “to provide legal advice”, it has developed to possess the rights of traditional defense talents, such as “the right to meet, the right to consult files”, and even set up a new litigation right, “the right to put forward opinions”.

The duty lawyer system is an imported product, and its mission in the country of origin is to provide preliminary and timely legal services for criminal suspects, arrested and detained persons. After being introduced into China, after localized transformation, the duty lawyers are required to provide a wide range of legal services. “The Working Methods” is pointed out that the duty lawyer system is shouldering the lofty mission of providing effective legal help for suspects and defendants without defenders, and promoting fair justice and human rights protection. However, can the duty lawyer system fulfill the mission entrusted by “the Working Methods”?

#### **4. The Duty Lawyer System Cannot Provide Effective Legal Help**

Compared with the traditional legal aid model, the duty lawyer system is favored by reformers because it allows more individuals to obtain basic legal services with less judicial resources (Wu & Feng, 2018), It has become the “standard allocation” and “new favorite” of judicial reform pilot, and has become the service mode of criminal legal aid together with legal consultation, criminal defense and criminal agent.

However, by examining the duty lawyer system, which is the main system to guarantee the guilty plea and defense right of criminal suspects and defendants, it is not difficult for us to draw a depressing conclusion: the duty lawyer cannot afford to guarantee the voluntariness and truthfulness of confession and punishment of criminal suspects and defendants. Due to the limitation of space, the following is only discussed from the perspective of duty lawyer.

##### 1) Duty lawyer’s legal status is embarrassed

According to “the Working Methods”, duty lawyers refer to lawyers assigned or arranged by legal aid organizations to provide legal assistance to criminal suspects and defendants without defenders by establishing legal aid workstations in detention centers, people’s procuratorates, people’s courts and other places.

Obviously, the duty lawyer is not a defender. Although the provisions on “duty lawyer” stipulate in the chapter of “defense and agency” of the code of Criminal Procedure, it only indicates that the functions performed by “duty lawyer” are regarded as defense functions in a broad sense. In addition, many legal documents have juxtaposed “legal aid lawyer on duty” and “legal aid defense lawyer”. It has become a consensus of the official and academic circles that the two belong to different legal aid subjects. Finally, the “litigants” listed in Item 4 of Article 108 of the current Criminal Procedure law do not include “duty lawyer”. In this way, the position of lawyers on duty in criminal proceedings is very embarrassing, which is very similar to the status of “legal aid lawyer” in the Criminal Procedure Law Amendment of 1996. As the saying goes, the name is irregular and the words are not smooth, so the legislation should clarify duty lawyer’s legal identity firstly.

2) Duty lawyers are unable to perform their duties because of the way they work

Both the “the Working Methods” and the “guiding opinions” endow lawyers on duty with extensive litigation rights, and the aim is to ensure that the confession and punishment of suspects and defendants are voluntary and real by the duty lawyers’ exercise of these litigation rights. However, the most obvious difference between duty lawyers and other forms of legal aid is their “on-duty” working mode, whether it is the on-site duty mode with fixed specially-assigned person, rotating duty or appointment duty, or telephone duty or network duty, “on duty” means to serve unspecified people, which forms a natural difference from the “one-to-one” service mode of defense lawyers, and it is this that determines its extensive and preliminary characteristics. Try to ask, if the duty lawyer goes to meet, to consult files, that is still called “on duty”? The answer is obvious. However, it is impossible to know the facts of the case without meeting suspect and defendant or consulting files, nor is it possible to know what evidence the prosecution had, how can the duty lawyer provide procedural advice, to put forward legal opinions such as accusation identification and sentencing suggestions to the case handling organs, and to ensure that the accused and the suspect make voluntary confession? The contradiction between system regulation cannot dissolve, formed fast knot.

3) The way of calculating the remuneration of duty lawyers determines that they cannot fulfill their responsibilities

The way the duty lawyer works determines the way he is paid by the day, which is also the common way in the countries of his origin. However, after the introduction of the duty lawyer system into China, due to the needs of the reform of the judicial system, the judicial interpretation has given it a wide range of rights and a greater mission, which has gone far beyond the arrangement of its birthplace. The rights has increased, from another perspective, the obligations have also increased, but the original intention of the legislation is to achieve wide coverage at low cost, and this starting point has not changed. Taking into account the response of the practical community and the feedback from judicial



practice, the “Giding Opinions” stipulate that the subsidy standard for legal assistance such as legal advice provided by duty lawyers and transfer of applications for legal aid shall be calculated on a working day basis. The subsidy standard for providing legal assistance to criminal suspects and defendants in cases of guilty plea and punishment shall be calculated on a piece-by-piece basis or on working days in the light of local actual conditions in each locality. Although the judicial interpretation has opened an opening to the payment method of duty lawyers in the case of confession and punishment, the problem and contradiction remain unresolved. First, if it is calculated on a piece-by-piece basis, then the duty lawyer and the defense lawyer are paid the same way. Why should the duty lawyer in this case be retained? Wouldn’t it be better to replace it with the mandatory defense system? Second, would duty lawyers meet and consult files and submit legal opinions if they were still calculated on a working day and only paid a small amount, such as 200 yuan per day in Dazhou, Sichuan province, where the author is located? The answer is clearly no. Meeting, consulting files and giving legal advice are rights allocated to duty lawyers, but rights can be waived. Therefore, the extensive empowerment of lawyers on duty does not change the fact that procuratorial organs are “dominated by one family”, because they will not exercise these rights, let alone the so-called equal consultation between the prosecution and the defense, even if the “sentencing proposal” put forward by the procuratorate, the lawyer on duty will hardly object. Thirdly, if the cases of guilty plea can be calculated on a piece-by-piece basis or by day, for the legal aid center, it will not only increase the difficulty of management, but also breed new judicial corruption.

Duty lawyers often do not have a strong professional level and professional ability, because the remuneration of duty lawyers is calculated on a daily basis and meagre in principle, only those who have just entered the profession or have little business are willing to do so; in addition, they do not have the concept of “client” or “customer” and lack the basic sense of loyalty and obligation. Therefore, they are difficult to provide effective legal help, and even disregard the real wishes of suspects and defendants in order to establish a good working relationship with the procuratorial organs (Chen, 2019).

## 5. Finding and Analysis

The Third Plenary Session of the 18th Central Committee of the Communist Party of China put forward the basic strategy of ruling the country according to law. To comprehensively promote the rule of law requires not only justice, but also justice, efficiency and authority (Chen, 2017). Justice is undoubtedly the first judicial value, efficiency should be improved on the premise of ensuring justice. In China, the reform to improve the Leniency system of pleading guilty and accepting penalty is not the product of the highly developed adversary system, it is more based on the pragmatism consideration of the increasingly fierce contradiction between more cases and fewer people and the difficult implementation of the criminal policy of temper justice with mercy (Zeng, 2018). It is the

rational choice of criminal justice to divide the complicated and simple cases and try the simple cases quickly. It's an official commitment to simplify procedures but not to simplify rights. As for the particularity of the crime of confession and punishment, the guarantee of the voluntary and truthfulness of the guilty suspect and defendant is the basis of the legitimacy of the system and the key to prevent miscarriage of justice. However, the voluntary nature and authenticity of confession and punishment must be guaranteed by effective defense. The "Guiding Opinions" also clearly states that "the criminal suspects and defendants should receive effective legal assistance". However, the duty lawyer system in China cannot shoulder the important task. To some extent, the duty lawyer has even become the "second public prosecutor", and they often act as witnesses to witness a criminal suspect and defendant signing a written confirmation of confession. To add insult to injury, both "the Guiding Opinions" and "the Working Method" allow suspects and defendants to refuse legal help from duty lawyers. As most of the criminal suspects and defendants are not highly educated or even illiterate, they do not have a good understanding of the right to defense, they may unwisely give up the formalized right to legal help, so the Leniency system of pleading guilty and accepting penalty can easily become a hotbed for wrongful cases.

Since this year (2019), the SPP has held two teleconferencing sessions on the lenient punishment system for national procuratorial organs, and proposed at the national conference on the work of criminal prosecution at the end of August that the application rate should be raised to about 70 percent (Xinhuanet, 2019). It can be seen that it is the general trend to increase the application rate of leniency of guilty plea. What we need to think about is how to keep the bottom line of procedural justice while improving efficiency. For the Leniency system of pleading guilty and accepting penalty, that is how to make effective legal help for the suspect and defendant. In judicial practice, the duty lawyer mainly provides legal advice and the procedure selection advice for the suspect and defendant and act as the witness when the suspect and defendant sign the confession. Their so-called legal consultation and procedural selection only explain relevant regulations and policies to criminal suspects. In short, the legal help duty lawyers provide is superficial and formalized, which cannot provide effective help at all. Therefore, it is imperative to reform.

The reform of the duty lawyer system should first clarify its role, for which there are different opinions in the academic circle. Some argued that it was "suggested to be the defender of the accused in the case of confession and punishment" (Qi, 2019). Some people think that "the duty lawyer is a special advocate" (Gu & Li, 2017c). Some people claim that it is a "quasi defender" in different stages (Yao, 2017). Others argue that the lawyer on duty is the "substantial defender" (Min, 2017). From the judicial interpretation issued by the government, it is the official choice to "humanize the lawyer on duty". However, as a reform idea, "the defence of on-duty lawyers" may seem to be somewhat idealized at present, and it is not appropriate to promote it (Fan, 2018). The author

opposes the on-duty lawyer's defense, agree with Professor Fan's above view and believe that his prediction is not alarmist. The state has promised to provide effective legal assistance to the criminal suspects and defendants in the case of guilty pleas and punishments, but the on-duty lawyer system obviously cannot provide institutional supply, it has reached the point where it must be reformed.

## 6. Conclusion

Justice cannot be cost-free, but access to justice cannot be without cost, when justice is threatened, the state cannot ignore it on the grounds of cost savings. As a large developing country, our finances have the strength to guarantee the most basic procedural justice. Therefore, in the case of confession and punishment, if the suspect or defendant is willing to admit guilt and punish, the legislation should stipulate that the legal aid institution must appoint the defender for him, so that the leniency system of pleading guilty and accepting penalty should be justified from the procedure, fully protect the defense rights of the suspects and defendants, and prevent the wrong cases from the source. As for duty lawyers, they should return to their duty, play the function of "sending charcoal in the snow", and provide legal services for criminal suspects and defendants who have not yet entrusted defenders or legal aid agencies have not yet appointed defenders. Specifically, they can play the following roles: 1) the suspect and defendant are in custody, providing advisory services for them, relieving the unease of detention and relieving their isolation; 2) explain legal knowledge such as litigation procedure to them and inform them of their litigation rights; 3) supervise the appropriateness of the investigation activities of the investigation organs, and appeal or sue on behalf of the suspect when the investigation is found to be illegal; 4) when a suspect is eligible for legal aid, a duty lawyer applies for legal aid on his behalf. In a word, the duty lawyer only provides immediate, preliminary and wide coverage of legal assistance through the functions of providing information, protection and assistance, and does not provide traditional defense

Justice is the soul and life of justice, justice is the lifeline of the rule of law, the innovation of judicial system must adhere to the bottom line of justice, and the improvement of efficiency cannot be at the cost of the loss of justice. At present, the judicial injustice and the lack of judicial credibility in practice are very prominent; it has reached the point of having to reform (Chen, 2017); we must bear in mind the lessons of history and never let judicial innovation become a hotbed of judicial injustice.

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## References

- Reporter (2017). The Person in Charge of the Ministry of Justice Answered Reporters' Questions on the Work of Legal Aid Lawyers on Duty. *Justice of China*, No. 10, 93.
- Bai, Y. (2019). *Research on the Leniency System of Pleading Guilty and Accepting Penalty* (p. 52). Doctoral Dissertation of People's Public Security University of China.
- Chen, R. H. (2019). Review and Prospect of Criminal Defense System in the Past 40 Years. *Tribune of Political Science and Law*, No. 6, 11.
- Chen, W. D. (2004). *Criminal Procedure Law Teaching Reference Book* (p. 166). Beijing: China Renmin University Press.
- Chen, W. D. (2017). Experience of China's Judicial System Reform—Research on Xi Jinping's Thought on Judicial System Reform. *Chinese Journal of Law*, 39, 7.
- Damaska, M. R. (2015). *Diverse Faces of Justice and State Power: Legal Order in Comparative Perspectives* (Translated by Zheng Ge, p. 18). Beijing: China University of Political Science and Law Press.
- Fan, C. Y. (2018). Local Narration of Duty Lawyer System: Review, Orientation and Perfection. *Journal of Law*, No. 9, 5.
- Gu, Y. Z., & Li, X. Y. (2017a). On the Proper Position of Duty Lawyers in China. *Journal of Hunan University of Science & Technology (Social Science Edition)*, No. 4, 79.
- Gu, Y. Z., & Li, X. Y. (2017b). On the Proper Position of Duty lawyers in China. *Journal of Hunan University of Science & Technology (Social Science Edition)*, No. 4, 80.
- Gu, Y. Z., & Li, X. Y. (2017c). On the Proper Position of Duty Lawyers in China. *Journal of Hunan University of Science & Technology (Social Science Edition)*, No. 4, 84.
- Guidance on the Application of Leniency System of Confession and Punishment Issued by Two Supremes and Three Ministries, 2019-10-24 16:55:55*. Xinhuanet.
- Li, H. J. (2018). An Empirical Study of Voluntary Confession. *Procedural Law and Judicial System*, No. 2, 130.
- Min, C. L. (2017). Effective Defense in the Case of Confession. *Contemporary Jurisprudence*, No. 4, 31.
- Qi, J. J. (2019). Summary of the Symposium on "The Development, Insufficiency and Prospect of Criminal Defense System in the Past 40 Years". *Justice of China*, No. 7, 91.
- Sprack, J. (2009). *Emmins on Criminal Procedure* (Translated by Xu Meijun and Yang Litao, p. 47). Beijing: China Renmin University Press.
- Taguchi, S. (2001). *Criminal Procedure Law* (Translated by Liu Di, Zhang Ling and Mu Jin, p. 91). The Law Press.
- Taguchi, S. (2010). *Criminal Procedure Law* (5th ed., Translated by Zhang Ling and Yu Xiufeng, p. 109). Beijing: China University of Political Science and Law Press.
- Wu, H. Y., & Feng, W. (2018). Report on the Development of China's Legal Aid System (Year 2017). *People's Rule of Law*, No. 4, 154.
- Yao, L. (2017). The Role and Function of Duty Lawyer in the Procedure of Confession and Punishment. *The Study of Law and Commerce*, No. 6, 42.
- Zeng, Y. (2018). A Study on the Balance between Prosecution and Defense in the Leniency System of Confession and Punishment. *Chinese Journal of Criminal Law*, No. 3, 40.
- Zhu, K., & Guo, J. (2012). On the Legal Help Right of the Criminal Suspects in Canada. *China Criminal Law Journal*, No. 10, 70.