

MAYBE A PLEA, BUT IS IT A BARGAIN?

An Initial Study of the Use of Simplified Procedure in China

A U.S.-Asia Law Institute study examines plea bargaining in the Chinese criminal justice system, and explores whether it conserves judicial resources at the expense of justice for defendants.

By Elizabeth M. Lynch

In every country, the story begins the same. Plea bargaining, or its functional equivalent,¹ emerges as a response from the judges, prosecutors, and lawyers, those responsible for the daily administration of justice, to society's ever-increasing demands for less crime, more convictions, and always at a cheaper cost. But when society finally sees the result of its demands for more convictions, it is left with a quandary: forsake the widespread use of plea bargaining for justice or retain it for the efficiencies it brings to the system. This is a battle that plea bargaining always wins.

By the turn of the twentieth century, plea bargaining was a daily occurrence in most trial courts in the United States, unbeknownst to a majority of criminal law scholars and even appellate courts.² But in the 1920s, as cities and states established crime commissions to study the criminal justice system, the public was shocked by plea bargaining's prevalence. For the next fifty years, the U.S. Supreme Court, sometimes purposefully, avoided hearing cases about the constitutionality of plea bargaining.³ Finally, in 1970, seventy years after most jurisdictions had guilty plea rates of well over 70 percent, the Supreme Court declared plea bargaining constitutional.⁴ By that time, the justice system had become so dependent on plea bargaining that no other result was feasible. Today, over 95 percent of all felony convictions in the U.S. result from plea bargaining.⁵

Until 1982, Germany was considered “the land without

plea bargaining.”⁶ But again, what scholars were reporting was not the reality on the ground. During the 1970s, plea bargaining became more common in Germany, but was not openly discussed; in fact, the author of the first German article on the subject used a pseudonym.⁷ Today, however, the practice of public “Absprachen,” agreements

before the court roughly equated with plea bargaining,⁸ is widely accepted in Germany; a remarkably high average of 20 percent to 30 percent of all convictions are the result of a confession.⁹

In China, the story of plea bargaining has taken a similar path. Innovation has come from the bottom up and its increasing use is a response to the exploding criminal caseload in most courts. However, unlike the U.S. and Germany in their early stages, China openly discusses its experiment with plea bargaining and even encourages further innovation. Such openness is likely the result of China's long-standing policy of “leniency

to those who confess, and harshness to those who resist,”¹⁰ making China a receptive place for plea bargaining.

China's candor about plea bargaining offers the unique opportunity to observe its development as it is happening. How did plea bargaining—more commonly referred to as “Summary Procedure” (*jianyi chengxu*

[简易程序]) in cases where the sentence is three years or less or “Simplified Procedure” (*putong chengxu jianhua shen* [普通程序简化审]) in cases with a punishment greater than three years—emerge in China? How



Fifteen suspects of robbery facing charges in a court in Xi'an, Shaanxi Province, March 16, 2005. Photo Credit: AP PHOTOS.

is it applied in practice? In cooperation with Chinese experts, NYU School of Law’s U.S.-Asia Law Institute conducted the first-ever empirical study of the use of plea bargaining in China and reports the findings here. Based on this limited initial study, does China, a country whose formal criminal procedure affords little protection of defendants’ rights, strike the appropriate balance between efficiency and justice?

I. FROM SUMMARY PROCEDURE TO SIMPLIFIED PROCEDURE: A STORY OF GRASSROOTS INNOVATION

A. The Government Permits “Summary Procedure” For Cases with a Sentence of Three Years or Less

In 1996, to deal with the burgeoning criminal caseload in many courts,¹¹ China amended its Criminal Procedure Law (CPL) and introduced many changes, one of which was “Summary Procedure” for minor criminal cases.¹² In cases where the potential sentence is three years or less, the facts are clear, the evidence is sufficient, and the defendant confesses, Summary Procedure may be applied. All parties—the prosecutor, judge, and defendant—must agree to the use of Summary Procedure.

Although use of Summary Procedure is similar to a guilty plea in the U.S., because China still retains somewhat of a civil law approach similar to that of continental Europe,¹³ there are some distinct differences. First, Summary Procedure does not completely eliminate the trial. Because of the centrality of the judge’s role in a civil law system, maintaining some form of a trial, even in a case where the defendant confesses, is common.¹⁴ Unlike in the adversarial system of the U.S., in civil law countries, the defendant cannot end the process merely by admitting guilt. As a result, under Summary Procedure, the court is presented with the prosecutor’s entire case file for review, a trial is called, and the defendant is entitled to make a final statement before the judge. A second difference from U.S. plea bargaining is that in China, the prosecutor has little, if any, discretionary authority to bargain with the defense; Summary Procedure in the CPL does not change this situation. In a civil

law system, the judge is not a passive observer of the battle between the prosecutor and defendant like judges in an adversarial system.¹⁵ Instead, the judge is an independent participant in the proceeding and thus cannot be constrained by any agreement reached between the prosecution and the defense. It is ultimately the judge who will confirm the defendant’s guilt and deliver the sentence.

Even with these differences from U.S. plea bargaining, Summary Procedure still shortens the length of the trial and conserves the limited resources of the prosecutor and judge: the case is heard by only one judge instead of three (or one judge and two people’s assessors); the prosecutor is not required to attend the hearing if the case file has already been sent to the judge;¹⁶ and verification of the evidence and examination of witnesses is unnecessary.¹⁷ Generally, the judge announces his verdict at the conclusion of the trial and a written judgment is delivered within five days. The entire trial process under Summary Procedure cannot exceed 20 days.¹⁸

With over 700,000 criminal cases filed each year in China,¹⁹ Summary Procedure provides much needed relief to an overburdened system. But Summary Procedure only applies to minor criminal cases where the sentence cannot exceed three years. What about major criminal cases with sentences over three years, cases that are increasing in China exponentially?

B. Local Courts Take Summary Procedure Further: The Unauthorized Development of Simplified Procedure

With rapidly growing criminal dockets but without any statutory authority, local courts looked to Summary Procedure as a model and began to experiment with simplifying ordinary trial procedures in cases where the sentence exceeded three years. In 1998, the Haidian People’s Procuratorate and the Haidian People’s Court, operating in a district in Beijing that has a high crime rate,²⁰ became the first agencies to simplify criminal procedures for major criminal cases. After a two-year effort, the “Haidian Experiment” was deemed a success and other localities began to institute what became

known as “Simplified Procedure” for criminal cases where the sentence can exceed three years.²¹

After the Haidian Experiment, Simplified Procedure became common, although implementation differed from court to court. Finally, on March 14, 2003, the Supreme People’s Court (SPC), the Supreme People’s Procuratorate (SPP), and the Ministry of Justice (MOJ) acknowledged the widespread use of Simplified Procedure and validated it by issuing a joint opinion codifying national standards and encouraging further reform (the “Joint Opinion”).²² Under the Joint Opinion, Simplified Procedure is the same as Summary Procedure with two major exceptions: one judge and two people’s assessors must be empanelled,²³ and the prosecutor must appear in court to, at the very least, read the indictment.²⁴ Additionally, unlike the 1996 CPL, Article 9 of the Joint Opinion specifically authorizes the court to provide a lesser sentence if the defendant pleads guilty.²⁵ Simplified Procedure cannot be used in death penalty cases.²⁶

Today, in all non-capital criminal cases, the defendant can plead guilty, forgo a formal trial, and receive a shorter sentence. Given China’s increasing crime rates and a population that has little tolerance for crime, plea bargaining is unavoidable and necessary to preserve judicial, prosecutorial, and societal resources. But in increasing the efficiency of the criminal justice system, does China forgo justice? Does the court-created doctrine of Simplified Procedure protect the rights of the defendant and establish a fair system?

II. THE U.S.-ASIA LAW INSTITUTE’S EMPIRICAL STUDY OF SIMPLIFIED PROCEDURE²⁷

To answer these questions, NYU School of Law’s U.S.-Asia Law Institute, in coordination with its Chinese partners, conducted a seven-month study of the use of Simplified Procedure in five different courts in China (three in a northern Chinese city and two in a southern Chinese city). The first of its kind to study the use of Simplified Procedure, the method of analysis included: (1) in-depth interviews of judges, prosecutors, defense counsel, and defendants familiar with Simplified Procedure; (2) questionnaires to 100 judges, 100 prosecutors,

and 100 defense counsel; (3) examination of over 150 case files in which Simplified Procedure was used; and (4) observation of 45 Simplified Procedure trials.

Although our sample size is relatively small, the U.S.-Asia Law Institute offers its findings as a modest first step in understanding Simplified Procedure.

A. Prevalence of Simplified Procedure

One-fifth to one-third of all cases in our study were disposed of using Simplified Procedure. In the northern city, 32 percent of the cases we analyzed used Simplified Procedure; in the southern city 21 percent. However, in the south, we were able to ascertain that in the courts we studied, another 60 percent of cases used Summary Procedure, resulting in only 19 percent of criminal cases subjected to a formal trial under the CPL. Interestingly, we found that defendants in Simplified Procedure cases are underrepresented by counsel at a greater rate than in regular cases. In regular criminal cases in which there is a full trial, 30 percent of defendants receive representation.²⁸ In Simplified Procedure cases, our study found that approximately only 24 percent of defendants were represented.

B. Guilty Pleas in China: Voluntarily and Intelligently Given?²⁹

The low rate of representation might help explain the ad hoc nature by which defendants are informed of their right to Simplified Procedure and the potential repercussions of its use.³⁰ Of the eleven defendants interviewed, only one learned about his rights under Simplified Procedure from a lawyer and only two were informed about Simplified Procedure at the time of indictment and notice of rights. Four defendants learned about Simplified Procedure at the detention center through daily chats with prison guards, and two defendants were first informed about the option for Simplified Procedure while in court at their trials. In fact, our survey found that, in northern China, in a majority of cases, the court initiated the use of Simplified Procedure during the actual trial. While the court must obtain the defendant’s consent prior to using Simplified Procedure, first learning about the procedure

during the trial and being asked to make an instantaneous decision does not permit the defendant much time to consider his options. Observational data confirmed this: we found that the court’s explanation of Simplified Procedure was cursory at best, with almost no explanation of the legal consequences of admitting guilt and using Simplified Procedure or the defendant’s right to waive its use. While the courts we observed did obtain the consent of the defendants, defendants’ understanding of the procedure was questionable. In southern China, however, the majority of Simplified Procedure cases were initiated by the prosecutor. Presumably, this would occur prior to trial, giving the defendant at least some time to think about the consequences of forgoing a trial and pleading guilty.

C. Efficiency & Justice: Shorter Trials and Shorter Sentences, but at What Cost?

Simplified Procedure does shorten the length of trial. Our study found that on average, the length of time of a Simplified Procedure trial is 30 minutes (average 36 minutes in northern China; average 27 minutes in southern China). Additionally, judges and prosecutors questioned in both the south and the north overwhelmingly agreed that Simplified Procedure saved “some time,” if not “a lot of time.” For defense lawyers, while a majority agreed that Simplified Procedure saves some time, roughly 25 percent of those surveyed said that it made no difference, and less than 10 percent believed that it saved “a lot of time.” This disparity could be due to the fact that the Joint Opinion is largely directed toward prosecutors’ and judges’ behavior, such as eliminating the need to verify evidence, to cross-examine witnesses, or to argue over the facts of the crime. Additionally, given the already limited role that a defense attorney plays in regular trials in China, reducing their workload will likely have only a marginal impact.

Does the shortened trial translate into a shorter sentence for the defendant? In southern China, 81 percent of the defendants in Simplified Procedure received a reduced sentence of three years or less, and 15 percent received a sentence between three and seven years. Given that Simplified Procedure applies to all crimes

that have a minimum potential penalty of three years or more, defendants are receiving shorter sentences. In northern China, however, the results were not as promising. Only 55 percent of defendants in Simplified Procedure cases received a sentence of three years or less; 28 percent received a sentence between three and seven years. It is unclear why there is such a disparity in sentencing between the two cities, especially since in both cities, 87 percent of judges surveyed stated that they “always” consider the defendant’s confession. Unfortunately, these judges do not use their written decision to articulate the basis of their sentencing decision; not a single written decision we reviewed cited the defendant’s guilty plea as a basis for a shorter sentence.

On the surface it appears that Simplified Procedure achieves its objective of efficiency by reducing the length of the trial and shortening the defendant’s sentence. But does it preserve justice?

On the surface it appears that Simplified Procedure achieves its objective of efficiency by reducing the length of the trial and shortening the defendant’s sentence. But does it preserve justice? In trying to gauge the perceived success of Simplified Procedure in regards to justice, we surveyed judges, prosecutors and lawyers as to their attitudes toward the procedures: 91 percent of judges in northern China and 86 percent of judges in southern China believed that Simplified Procedure was either “very successful” or “successful;” 68 percent of prosecutors in northern China and 73 percent in southern China agreed. Defense counsel, on the other hand, had a markedly different perspective: the overwhelming majority either had no opinion or believed that Simplified Procedure was unsuccessful (81 percent of defense lawyers in northern China and 63 percent in southern China). Defense counsel’s opinion on Simplified Procedure’s overall success is particularly revealing in determining if it serves justice, since defense counsel’s interests most greatly match those of their clients, and they inevitably have a clearer understanding of the pressures that defendants experience.

Even in light of the high marks judges and prosecutors gave Simplified Procedure, they still are aware that the procedures may put justice at risk. We asked judges, prosecutors, and lawyers two separate, but related, questions: (1) “what is the current aim of Simplified Procedure,” and (2) “what should be the goals of Simplified Procedure.” In response to the first question, over 90 percent of both judges and prosecutors believed that the current aim of Simplified Procedure is to preserve judicial resources; very few (18 percent of judges and 7 percent of prosecutors) believe that judicial fairness and justice is an actual aim of Simplified Procedure. When asked, however, what the goals of Simplified Procedure *should* be, 30 percent of judges and approximately 23 percent of prosecutors agreed that judicial justice and fairness should be goals. Thus, compared to what currently exists, more judges and prosecutors believe that judicial fairness should be a goal of Simplified Procedure. However, even with this increase, 70 percent of judges and 77 percent of prosecutors still did not think that judicial fairness should be a goal of Simplified Procedure.

III. ANALYSIS & CONCLUSION: WHAT CAN CHINA DO TO RESTORE JUSTICE?³¹

Most countries like to believe that their criminal justice system is just; but plea bargaining forces society to question that assumption. When plea bargaining first emerged in the U.S. as a widespread practice, many were appalled that justice could be reduced to nothing more than an auction.³² Germany faced a similar crisis when the public first learned of plea bargaining’s prevalence.³³

Widespread plea bargaining can easily jeopardize the entire legitimacy of the criminal justice system, especially when defendants’ rights are afforded little protection. If justice and truth are pushed to the shadows of the system, and efficiency is emphasized at all cost, then the system risks that a large number of innocent people will plead guilty.

Our study found that Simplified Procedure in China does indeed forsake defendants’ rights for efficiency at a dangerous cost, and could potentially lead to a large

number of false confessions. But China is at the beginning of its experiment and has the potential to change Simplified Procedure to better balance justice and efficiency. China can do this by improving the reliability of a defendant’s guilty plea, maintaining a more civil law-like system when Simplified Procedure is applied, and decriminalizing certain behavior.

A. Improve the Reliability of Defendant’s Guilty Plea

Defendants are not fully informed of their rights under Simplified Procedure and rarely understand that they can waive its use. This misinformation can lead to a greater number of false confessions, a risk that is already too high in China. To overcome this, and to systematically guarantee that most guilty pleas are reliable, China should take the actions listed below.³⁴

1. Provide an Attorney to the Defendant at the Investigation Stage to Explain Simplified Procedure.

In China, most confessions occur during the police interrogation. At the stage prior to a suspect’s first opportunity to plead guilty, a lawyer or legal assistant should be brought in to explain Simplified Procedure, inform the defendant of his rights under Simplified Procedure, and explain any potential repercussions of its use. A lawyer or legal assistant that can protect defendants’ rights when they are the most at risk—as is the case when pleading guilty—should be stationed at every public security bureau and prosecutor’s office. This simple action could enhance the defendant’s knowledge of Simplified Procedure, allow him to make an informed decision, and greatly increase the reliability of his guilty plea.

2. Guarantee that the Defendant is First Told of Simplified Procedure when Indicted.

When the defendant first learns of Simplified Procedure at his own trial, the reliability of his guilty plea is questionable. He has no time to consider other options, and no time to seek the advice of others (be it a lawyer, a relative or even others in the detention center), increasing the risk of a false guilty plea. In order to lessen this risk, the defendant should be told of his rights under Simplified

Procedure at as early a stage as possible, but at the very latest, at the time of indictment.

3. Avoid Significant Disparity Between the Length of a Sentence Under Simplified Procedure and Under a Traditional Trial.

In the U.S., plea bargaining can reduce a sentence from life imprisonment to five years.³⁵ With such a grave disparity in sentencing, the risk that a defendant will plead guilty even if he did not commit the crime is high; this could partially explain the excessive rates of guilty plea convictions in the U.S. In Germany, on the other hand, a guilty plea is rewarded with only one-fourth to one-third of the time of the sentence reduced.³⁶ This limits the danger of false confessions. China should seek to avoid the U.S. model. If the discount for pleading guilty is too high, too many innocent people will opt for Simplified Procedure—why risk a long prison term? Additionally, too great a disparity can also lead to defendants who rightly deserve a long sentence receiving a shorter one. China has already started on this path by prohibiting Simplified Procedure in death penalty cases, a practice that the U.S. has yet to follow. China should continue with this practice, and guarantee that the disparity between a potential sentence through a formal trial and one through Simplified Procedure is not great.

B. Return to a Civil Law Model for Simplified Procedure

With the revised 1996 CPL, China attempted to import elements of an adversarial system of justice to its criminal procedure. However, with cases under Simplified Procedure, China should move away from the adversarial system and return to a model more similar to Germany’s “Absprachen,” in which the judge plays a central role. In a system where defendants have few rights and limited legal representation, an active judge is important to protect the interests of the defendants. China’s current criminal justice system, which affords little protection of defendants’ rights and provides a tremendous amount of power to the police and prosecutors, makes any type of “negotiation” between prosecutor and

defendant a farce. However, in a German-style system, the judge, who is a party to the negotiation, is theoretically better able to safeguard the defendant’s rights and guarantee that the guilty plea was not a result of unequal bargaining.

Simplified Procedure in China does indeed forsake defendants’ rights for efficiency at a dangerous cost, and could potentially lead to a large number of false confessions. But China is at the beginning of its experiment and has the potential to change Simplified Procedure to better balance justice and efficiency.

Additionally, the investigation and discovery phase under a German-style model better guarantees, at least theoretically, that guilty pleas are accurate. Compared to the adversarial model, discovery in Germany occurs at a much earlier stage and most of the evidence is collected before going to trial. As a result, defense counsel can see the evidence that will be used against his client and provide intelligent advice. In countries like China, where there is little legal representation, early discovery is still beneficial and can guarantee the accuracy of the defendant’s confession. Because the court will review the entire case file, it can theoretically protect the defendant and question the veracity of the guilty plea if the evidence is not sufficient.

Currently, China’s Simplified Procedure is largely representative of such a German-style system. Until it provides greater protection of defendants’ rights, China should avoid any attempt to bring adversarial elements to Simplified Procedure and look more to how civil law countries handle plea bargaining.

C. Decriminalize Behavior

In the U.S., critical reliance on plea bargaining is partly a result of the large amount of behavior that is captured by its criminal law, as the U.S. subjects to prison terms a

wide array of behavior that other industrialized nations no longer criminalize.³⁷ As a result, the system is overburdened with crimes that only marginally impact social stability; in a system like the U.S., high levels of plea bargaining are unavoidable.

China is on a similar path, increasing the categories of crimes and their sentences, and thus making plea bargaining necessary. But another way to improve efficiency in the justice system without resorting to high levels of plea bargaining is to decriminalize certain behavior. China should analyze its Criminal Law to determine which crimes only slightly impact society, and remove these categories from their criminal code. Otherwise, China could potentially surpass the U.S. as the country with the largest share of plea bargaining, but with substantially greater costs given its lax protection of defendants' rights.

NOTES

1. In this article, "plea bargaining" is applied to procedures used in the United States as well as to comparable mechanisms used in other countries. Civil law countries, such as Germany, do not use the translation "plea bargaining" to describe their functional equivalent, since their procedures are different. In the United States, because of the adversarial system, plea bargaining is a negotiation that occurs only between the prosecutor and the defendant and eventually results in a plea agreement. The prosecutor offers to charge the defendant with a crime that will shorten the length of a potential sentence if the defendant agrees to plead guilty and forgo his right to a trial. In the United States, a judge is not permitted to be a part of the negotiation between the prosecutor and the defendant. However, the judge does review the plea agreement at the plea hearing. See G. Nicholas Herman, *Plea Bargaining* 182, (2d ed., 2004). The Germans, on the other hand, have a practice called "Absprachen" which is different from U.S.-style plea bargaining in two central ways: (1) the prohibition of negotiations between the prosecution and the defense outside the presence of the court, and (2) the inability to waive the trial even if an agreement is reached. Thus, negotiations have to be carried out in front of the judge and will typically occur with his participation; any deal reached will be entered into the record at trial (although the judge is prohibited from promising a specific sentence). After reviewing the files of both the prosecution and the defense, the judge will issue a sentence at the conclusion of the defendant's trial. For a more detailed comparison between the plea bargaining in the United States and Absprachen in Germany, see Jenia Iontchera Turner, Judicial Participation in *Plea Negotiations: A Comparative View*, 54 AM. J. COMP. L. 199 (2006).
2. See Albert W. Alschuler, "Plea Bargaining and its History," *Columbia Law Review* 79, no. 1 (1979), 1.
3. *Ibid.*
4. *Brady v. U.S.*, 397 U.S. 742 (1970).
5. Susan R. Klein, "Enhancing the Judicial Role in Criminal Plea and Sentencing Bargaining," *Texas Law Review* 84 (2006), 2023, 2027 n. 26.
6. Maximo Langer, "From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure," *Harvard International Law Journal* 45, no. 1 (2004), 39.
7. *Ibid.*
8. Turner, *supra* n. 1.
9. Turner, *supra* n. 1, at 234.
10. See Jerome A. Cohen, "The Criminal Process in the People's Republic of China: An Introduction," *Harvard Law Review* 79 (1966), 469, 503; Sheryl WuDunn, "Democracy Leader on Trial in China," *New York Times*, January 24, 1991.
11. In 1989, 389,597 criminal cases were filed. See Gan Zhongdou, ed. [甘重斗主编], *1990 Law Yearbook of China* [1990 中国法律年鉴] (China Law Yearbook Press [中国法律年鉴社], 1990), 39. By 1995, the number of criminal cases filed rose by 27 percent from 1989, to 495,741. See China Law Yearbook Press [中国法律年鉴社], *1996 Law Yearbook of China* [1996 中国法律年鉴] (China Law Yearbook Press [中国法律年鉴社], 1996), 123.
12. Criminal Procedure Law of the People's Republic of China (hereafter, Criminal Procedure Law of the PRC) [中华人民共和国刑事诉讼法], issued by the National People's Congress [全国人民代表大会], promulgated July 7, 1979, effective January 1, 1980; revised March 17, 1996, effective January 1, 1997, Arts. 174–79.
13. The 1996 amendments to the Criminal Procedure Law attempted to structure the criminal process as a more adversarial system like the U.S. This experiment has largely been deemed a failure and it appears that China still retains many aspects of an inquisitorial system. See Randall Peerenboom, "What Have We Learned About Law and Development: Describing, Predicting, and Assessing Legal Reforms in China," *Michigan Journal of International Law* 27, no. 3 (2006), 823, 845.
14. Langer, *supra* n. 6, at 40.

15. In an adversarial system, the judge, while passive compared to her counterpart in a civil law jurisdiction, does play some role in guaranteeing that the guilty plea is proper. After the prosecutor and defendant negotiate the terms of the guilty plea and reach a “plea agreement,” the court then calls a “plea hearing.” At this hearing, the court will talk to the defendant to guarantee that the defendant is aware of his right to plead not guilty and go to trial, understands the direct repercussions of his guilty plea, and the court will inquire if the defendant felt coerced into making his plea. Based on these answers, the judge can reject the defendant’s guilty plea. However, in an adversarial system, the judge is not permitted to be a part of the actual negotiation of the plea itself. See Herman, *supra* n. 1, at 174–97.
16. Criminal Procedure Law of the PRC, Art. 175.
17. *Ibid.*, Art. 177.
18. *Ibid.*, Art. 178.
19. China Law Yearbook Press [中国法律年鉴社], *2007 Law Yearbook of China* [2007中国法律年鉴] (China Law Yearbook Press [中国法律年鉴社], 2007), 149.
20. The Haidian district court received 1,125 criminal prosecutions in 1995 and 2,198 in 2008. See Chen Weidong [陈卫东], *Beigaoren renzui anjian jianhua shenli chengxu* [被告人认罪案件简化审理程序] (Zhongguo Jiancha Chuban She [中国检察出版社], 2004), 213.
21. *Ibid.*
22. Guanyu shiyong putong chengxu shenli “beigaoren renzui anjian” de ruogan yijian (shixing) [关于适用简易程序审理“被告人认罪案件”的若干意见(试行)], issued by the Supreme People’s Court, Supreme People’s Procuratorate, and Ministry of Justice [最高人民法院, 最高人民检察院, 司法部], promulgated March 14, 2003, and effective on March 14, 2003, available at http://www.law-lib.com/law/law_view.asp?id=42941.
23. *Ibid.* Although the Joint Opinion only mentions a “collegial panel” which can be made up of either three judges or one judge and two people’s assessors, all of the cases researched and observed in our empirical study of Simplified Procedure had a judge and two people’s assessors. No cases empanelled three judges. This should not be surprising since a purpose of Simplified Procedure is to conserve judicial resources.
24. *Ibid.*, Art. 7.
25. *Ibid.*, Art. 9 (“The People’s Court shall give the defendant who pleads guilty voluntarily, a lesser punishment depending on circumstances.”).
26. *Ibid.*, Art. 2(2).
27. Funding for this study was generously provided for by the Ford Foundation. The study was conducted from March 1, 2006 through October 1, 2006. As with all research in China, in order to obtain data, the courts studied were not randomly selected. Instead, the U.S.-Asia Law Institute used its connections with certain courts to obtain information. Regardless, we believe that our study offers an important snapshot of the use of Simplified Procedure in China.
28. Congressional-Executive Commission on China, *Annual Report 2008*, October 31, 2008, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:45233.pdf.
29. In the United States, guilty pleas are valid only if they are made “both ‘voluntarily’ and ‘intelligent(ly).’” *Brady v. U.S.*, 397 U.S. 742, 747 (1970).
30. Not surprisingly, access to defendants remains low. We were only able to collect data from a total of eleven defendants, six in northern China and five in southern China.
31. The conclusions included in this article are those of the author and differ with some of the conclusions drawn in the original report of this study.
32. See Alschuler, *supra* n. 2, at 26.
33. Thomas Swenson, “The German ‘Plea Bargaining’ Debate,” *Pace International Law Review* 7 (1995), 373, 375.
34. Given the lack of protection of defendants’ rights, there are a lot of actions China can take to shore up its criminal justice system. However, for purposes of this article, only a few that are central to plea bargaining are mentioned.
35. See *Bordenkircher v. Hayes*, 434 U.S. 357 (1978) (affirming defendant’s sentence of life imprisonment for writing a forged check and rejecting the argument that the choice between admitting guilt for a guaranteed five-year sentence and going to trial was unconstitutional).
36. See Turner, *supra* n. 1, at 235.
37. Adam Liptak, “Inmate Count in U.S. Dwarfs Other Nations,” *New York Times*, April 23, 2008.