Preamble

The reform and opening-up cause of China has witnessed a 30-year splendid and brilliant course since the third plenary session of the 11th Central Committee in December 1978. The 30 years of reform and opening-up was accompanied with the 30 years of hardships and explorations, the 30 years of fluctuations and transitions and the 30 years of advancements within each passing day. We have, during these 30 years of reform and opening-up, gone through earthshaking social developments and changes and have acquired spectacular achievements to which worldwide attention was drawn. Whether it was related to the changes of nature to the evolutions of systems, or even the reshaping of values to the emancipation of minds, it was implied that we have accomplished an unprecedented leap-forward in the socialist modernization building, and manifest that we are now facing a new opportunity for historical development. Having a retrospect view of the brilliant course of our reform and opening-up during the thirty-year period, establishment of modern legality is a vivid topic throughout the entire course. Every grand course, from constitutionalism, democracy, freedom to human rights etc, is the effort of establishing modern legality and it is also the vision of social modernization pursued by our countrymen. Criminal legality, as an important constituent of modern legality,
owing to its universality in adjusting social relations, its importance in protecting legitimate rights and its specific seriousness in manners of punishing criminal acts and, what’s more, since the major issue it deals with is criminal act – a phenomenon obviously opposing legality in the society, so criminal legality, for its typical and representative features, plays a critical role in the course of building and reshaping modern legality society. So, through the review and conclusion of the criminal legality over the 30 years of reform and opening-up, we will to a large extent experience and realize the pulse and sign of legality advancement of our country, and will wish subsequently to be capable of finding and capturing the track and direction of reform and opening-up from the long-gone historical pieces.

It is undeniable that the building of our criminal legality in the past 30 years has accomplished a significant advancement, and that the level of the criminal legality has stepped up one stage by another. In the process of building a country with modern democracy & legality, endless vivid and typical cases were deduced from our criminal legality course, and every case has been deeply engraved with the features of the implementation and development of our criminal legality, which requires our retrospect and meditation in certain extent. Through each of these typical cases, we can generally discover the development course of our criminal legality during the 30 years of reform and opening-up, and would ponder over the meaning of every case upon legality and the enlightenment for us.

I have selected some of the typical cases happened during the 30-year period since the third plenary session of 11th Central Committee in December 1978, and take the same as the major perspective of studying and outlining our criminal legality during this 30 years. The reason why selecting these typical cases not just because the extensive attention they had drawn during the time but also more importantly for the fact that they had, more or less, influenced and drove the development and progress of our criminal legality. These cases had, from different point of views, demonstrated the development and improvement of our criminal law and the practice of the criminal legality during the 30 years of reform and opening up.

In the meantime, we have also incorporated the evolution of criminal legislation during these 30 years into the scope of study. Since the same, as the foundation and starting point of the criminal legality, is undoubtedly of critical importance for the advancement of the criminal legality, therefore, it is necessary to have a review and conclusion over the evolution of criminal legislation during the 30 years in order to outline the development course of our criminal legality during these 30 years of reform and opening up. In light of this, we will, in line with the stages and routes of our criminal legislation development, try to outline our criminal legality during the 30 years of reform and opening up in a macro sense through these representative and typical cases as the major perspective.

I. Outline of the criminal legality prior to the promulgation and implementation of the 1997 Penal Code (1978-1997)

In December 1978, our Party held the historically significant third plenary session of 11th Central Committee, which has initiated the new historical period of reform and opening up. We have, amid the welcoming ambience of reform and opening up, greeted the bright days of legal system building, while the criminal legality building was also presented with an unprecedented development opportunity. Spirits of the third plenary session of 11th Central Committee had been important in directing and powerful in driving our drafting of the first penal code. The Commission of Legal Affairs, Standing Committee of the National People’s Congress, was set up during late February 1979. The Commission, presided over by Comrade Peng Zhen, the then Director of the Commission of Legal Affairs, Standing Committee of National People’s Congress, proceeded the legislation work seriously from mid-March 1979. Based on the 33rd draft and with new situations, new experiences and new issues being considered, three drafts were prepared successively after relevant departments of the Central Government were consulted and upon the basis of significant changes being made. The second draft was passed in principle in the Political Bureau of the Central Committee of the CPC and was reviewed in the plenary session of the Commission of Legal Affairs.
and in the 8th session of the 5th Standing Committee of the National People’s Congress, in which certain
changes and supplements were made. The final draft was unanimously passed in the 2nd session of 5th
Standing Committee of the National People’s Congress on 1st July 1979, (4:05 p.m.) and was promulgated
officially on 6th July of the same year and implemented on 1st January 1980. Since then, our 1979 Penal
was enacted, and this was the first penal code in nearly 30 years since the founding of our country.

The Penal Code, with only 192 articles at the time of promulgation, had been in its preparatory stage
for 25 years starting from the drafting by the Legal Office of the Standing Committee of the National
People’s Congress in 1954. In fact, the preparatory time involved was only a little more than 5 years, and
a period of nearly 20 years was in a state of suspension. The preparation was suspended for 15 years
since the completion of the 33rd draft! This has explained the extent of impact acted upon the legal system
building of China because of the thinking of “To treat class struggle as the centre”, the legal nihilism and
the successive political movements! Hardly can it be deemed the serious lagging of legal system building
since the first penal code in grossly form came out 30 years after the founding of the country! As the saying
goes, “the country would be stabilised when the statutes are implemented, and the country would be in
chaos when the statutes are ignored”, this is not only the arts of ruling proven by history of all times and all
over the world, but is also the lesson drawn by Chinese people upon paying for with blood. Only by deeply
memorizing such historical experiences and lessons can we be smarter and more self-consciousness in the
historical route of building a country of legality.

There is no doubt that the 1979 Penal Code has played an important role in penalizing criminals,
protecting the people and safeguarding the successful performance of our reform, opening up and
modernization building. However, due to the limit of historical conditions and legislative experience at the
time, the Penal Code was defective in certain extent in terms of the system structure, regulatory scope
and the legislative techniques. To address this, starting from 1981 to 1997 prior to the promulgation of the
new penal code, the Standing Committee of the National People’s Congress has sanctioned 25 separate
criminal laws including “Interim Regulations of the People’s Republic of China on Punishment of Servicemen
who Commit Crimes Contrary to Their Duties”. In addition to this, accessory criminal regulations were
incorporated into 107 non-criminal laws including “Law of the People’s Republic of China on the Protection
of Cultural Relics”. These separate criminal laws and the accessory criminal regulations of non-criminal laws
have made series of supplements and changes to the 1979 Penal Code. In general, these supplements
and changes are embodied in the following aspects: (1) the principle of universal jurisdiction was created in
terms of scope of application, (2) principles adopted by some separate criminal laws were different from the
principle of following the old laws and less severe punishment provided in the 1979 Penal Code in terms of
retrospective effect, (3) regulations were created for crimes committed by authority regarding certain crimes
in terms of principal of crime, (4) certain supplements were made in terms of the conviction and principles of
punishment for joint offences, (5) new penalties were created in addition to the nine penalties provided in the
1979 Penal Code, such as servicemen committing crimes may be additionally deprived of the decorations,
medals and honorary titles, (6) in terms of the sanction of death penalty cases: it was provided in the 1979
Penal Code that death sentences, except where imposed by the Supreme People’s Court according to law,
should be submitted to the Supreme People’s Court for approval; however, in order to cater the needs of
fighting crimes, the right of sanction for certain death penalty offences were delegated as provided in the
“Decision for the Sanctioning of Death Penalty Cases” made by the Standing Committee of the National
People’s Congress in 1981; the Standing Committee of the National People’s Congress amended the
“Court Organization Law” in 1983, providing that the right of approval for death penalty in respect of cases
of seriously jeopardizing public security and social order such as homicide shall be granted by the Supreme
People’s Court to the High People’s Court at the provincial, autonomous regions and Municipalities level
when necessary, (7) in terms of the system of sentencing, regulations for more severe penalty were created
for certain circumstances in addition to the heavier punishment, lighter punishment, reduced punishment
and immunity from punishment as provided in the 1979 Penal Code, (8) in terms of the number of crimes,
some individual criminal law expressly provided that a combination of punishment for several offences should be followed under certain situations, thus excluding the treatment of implicated offence and inclusive offence, (9) a new probation system was created, (10) in terms of the offence in specific provision, only 130 offences were provided in the 1979 Penal Code, which had been increased to 263 offences (prior to the passing of the revised penal code in 1997) upon the continuous supplement by individual criminal laws and accessory criminal laws, (11) in terms of the fact of crime (detailed constitution of a crime), concepts and features were supplemented for certain crimes to make the constitutions of the crimes more detailed and specific, (12) in terms of legally prescribed punishment, the punishment was increased for many more crimes (death penalty was created for certain crimes); the number of crimes subject to death penalty in the 1979 Penal Code was 28, while it had been increased by 44 after the amendment and supplement by separate criminal laws, which made a total of 72 crimes may be subject to death penalty, (13) in terms of the application of fines, the sum of fines for certain crimes were provided, (14) in terms of the application of legal provisions, the constitution of crimes provided in certain articles of the 1979 Penal Code was expanded through the legislation manner of “Contrast”, and so on.

According to the above partial supplements and amendments to the 1979 Penal Code, the criminal legislation has remained our focus since the promulgation of the first Penal Code, and the effect of guidance and standardization upon judicial practice has been tremendous. However, several problems still existed. Firstly, it was quite disorderly and hard to master comprehensively because there were so many separate criminal laws and accessory criminal regulations in addition to the Penal Code and also without a systematic generalization. Secondly, as the successive supplement and generalization of separate criminal laws had no coordination in between and the situation of inter-crossings were commonly found among provisions, which made the legally prescribed punishments out of balance unavoidably. In particular, as a result of our establishment of socialist market economy, many profound changes were found in every aspect in order to realize the transformation of the system, as well as many new conditions and new issues were found in the regime of crime. An all-around consideration shall be given whether the illegal behaviour found in the market economy shall be classified as crime or not, and how should the boundary between crime and non-crime to be drawn, and how should various crimes found in the society to be further generalized and classified scientifically, where such issues cannot be addressed simply by supplement and amendment of several separate criminal laws. Notwithstanding, various improvements made during 1978 and 1997 (19 years) in our criminal legislation cannot be obliterated.

On the basis of an overview upon our criminal legislation since the reform and opening up in 1978 and prior to the promulgation of the 1979 Penal Code, we will, following the logic of thinking, shift the perspective to the observation and pondering of the representative criminal cases arisen in our criminal legality practice in these 19 years, i.e. from 1978 to 1997.

Many representative and typical cases were arisen in our criminal legality practices during these 19 years, i.e. from 1978 to 1997, out of which some would make people gnash their teeth in hatred, such as Lin Biao & Jiang Qing Counter-revolutionary Group Case, and some were unbelievable, such as Han Kun Bribe-taking Case and so on. These typical cases have been left away from the public attention with the passing of time, however, what they have left with us were heavy and long-lasting thinking. We will try to review and reflect upon these typical cases in chronological order as follows.

(I) Lin Biao & Jiang Qing Counter-revolutionary Group Case

Principals for the counter-revolutionary group headed by Lin Biao and Jiang Qing, including Lin Biao, Jiang Qing, Kang Sheng, Zhang Chunqiao, Yao Wenyuan, Wang Hongwen, Chen Boda, Xie Fuzhi, Ye Qun, Huang Yongsheng, Wu Faxian, Li Zuopeng, Qiu Huizuo and Jiang Tengjiao, etc, handed in gloves and joined in a conspiracy in the Cultural Revolution, carried out tricks by right of their statuses and powers, and framed-up and persecuted leaders of the party and the State with premeditation through legal and illegal
measures, open and secret methods, military and civil actions for the ambition of conspiring to usurp the party and state power. In September 1971, Lin Biao, Ye Qun, Lin Liguo, Zhou Yuchi and Jiang Tengjiao, etc, conspired to murder President Mao Zedong and instigated the counter-revolutionary armed coup d’état, subsequent to the failure of which Lin Biao, etc, betrayed the country and fled away and the Lin Biao-headed Counter-revolutionary Group was disclosed and cracked. The Gang of Four (Jiang Qing, Zhang Chunqiao, Yao Wenyuan and Wang Hongwen) counter-revolutionary group headed by Jiang Qing continued the counter-revolutionary conspiracy activities, which was not disclosed and cracked until October 1976. On 29th September 1980, it was determined in the sixteenth session of the Standing Committee of the 5th National People's Congress that a special procuratorial department of the Supreme People's Procuratorate and a special tribunal of the Supreme People's Court was established for trying the principals of Lin Biao & Jiang Qing Counter-revolutionary Group. The special tribunal of the Supreme People's Court adopted the practice of “trying by separate courts, reviewing among all courts and consolidating cases in one judgment” for ten principals of the counter-revolutionary group including Jiang Qing, etc, and sentenced the principals to death penalty (with two years suspension), life imprisonment and 16-20 years fixed-term imprisonment, which were determined to be the final judgment and subject to no appeal. During 1982 and 1983, the Higher People's Court and Intermediate People's Court in Shanghai City, Beijing City, Sichuan Province, Zhejiang Province, Henan Province and Hunan Province, etc, carried out open trial according to law upon the cadres and key members of Lin Biao & Jiang Qing Counter-revolutionary Group in respective places, and the Martial Court of PLA also carried out open trial upon the cadres and key members of Lin Biao & Jiang Qing Counter-revolutionary Group in army according to law. Since then the trial for the Lin Biao & Jiang Qing Counter-revolutionary Group Case was successfully completed in the entire nation.

Lin Biao & Jiang Qing Counter-revolutionary Group Case was the specifically severe counter-revolutionary criminal case during the ten-year riot of Cultural Revolution, the principals of which were brought to justice and punished, which had indicated the ending of the “Unruliness” days and symbolized the beginning of a new era of “Rule of Law”. The days of surpassing laws, trampling laws and getting out of the restraint of laws, of randomly encroaching on people's democratic rights, endangering the state security and of being “unruliness” in the terrible decade had gone. Trying the ten principals in the Lin Biao & Jiang Qing Counter-revolutionary Group Case was also the important measure of strengthening socialist legal system. The trial activities had disclosed to the people nationwide the significant maleficence of Lin Biao & Jiang Qing Counter-revolutionary Group and penalized severely ten principals of the Group including Jiang Qing, etc. The trial had enabled hundreds of millions of Chinese people to receive a good education of legal system, enabled the peoples and crowds to further recognize the severe harms Lin Biao & Jiang Qing Counter-revolutionary Group had brought to the state and the people and moreover, the important meaning of strengthening the socialist legal system and protecting the people's democratic rights. The people have, from the bitter historical lesson in which the state and the people had suffered great loss, deeply understood the extreme importance of advocating the socialist democracy and strengthening the socialist legal system. Therefore, the extensive peoples and crowds and cadres, upon crashing Lin Biao & Jiang Qing Counter-revolutionary Group, have been greatly desirous of strengthening the socialist democracy and legal system. The Party Central Committee also specifically paid attention to such issue and made the determination of advocating the socialist democracy and strengthening the socialist legal system in the third plenary session of the 11th Central Committee. Subsequent to which, the state took various specific measures in recovering and improving the democratic system, reinforcing the legislation and judicature work, enhancing the development and consolidation of the stability and solidarity conditions of the country.

In addition, the trial and punishment of principals in the Lin Biao & Jiang Qing Counter-revolutionary Group Case also indicates that we have to firmly perform the legal system requirement required by the CPC in the third plenary session of 11th Central Committee of “there must be laws to go by, the laws must be observed and strictly enforced, and lawbreakers must be prosecuted” and earnestly implement the
principles of Equality before the Law (in particular, Equality before Criminal Law). Any people, no matter who he/she is, how seniority his/her official position is, how powerful his/her is, he/she would be subject to the trial and due punishment of the state without exception if his/her actions endanger the interests of the state and the people, violate the state criminal law and constitute crime; and the personal rights and democratic rights of the citizens ought to be protected by laws shall be practically protected by laws equally, truly reflecting the principles of “equality before criminal law”. Ten principals of Lin Biao & Jiang Qing Counter-revolutionary Group Case tried, though were the big shots of the party, Central Government and PLA, and most of them were among leaders of the party and the State, including nine of them occupying the post of Deputy Chairman of the party, standing committee member and member of the Political Bureau of the Central Committee of the party, Vice Premier of the State Council, chief of staff/deputy chief of staff of PLA, they had no privilege of surpassing laws and were forbidden to get away with guilt. In fact, they paid great price for their guilty behaviour at last and were tried rightfully and punished by laws, losing all standings and reputations. In one word, the trial of Lin Biao & Jiang Qing Counter-revolutionary Group Case was an important milestone for our country to forward the democratic and law-ruled society, and was of epoch-making significance for the implementation of “ruling the country according to law” and the establishment of modern legal system.

(II)  Han Kun Bribe-taking Case

Han Kun was a former assistant engineer of Shanghai Institute of Rubber Product. In November 1979, Han Kun was visited for three times by Secretary of the Party Committee of Qianqiao Village because of his wife's relative (working in Qianqiao Rubber Factory of Fengxian County). Han Kun, therefore, took the post of technical consultant of Qianqiao Commune-run Enterprise of Fengxian County, overworked on Sundays and finally successfully researched and developed supportive rubber gasket ring urgently needed in exported products. This reversed the financials of the rubber factory from a loss to a profit of RMB130, 000 and saved RMB60, 000 of foreign exchange for the country. This had not only saved a township enterprise on the brink of collapse but also had filled in a technical blank for the country. The Commune-run Enterprise paid an approved reward of over RMB3, 400 for rewarding his efforts and contributions. No one knew that such RMB3,000 or so would constitute the evidence of so-called “Bribery Crime”. In November 1981, two years after Han Kun was employed as the consultant of Qianqiao Rubber Factory, an activity fighting the violation and criminal behaviours in economic area throughout the country was carried out extensively. Han Kun was charged and tried by the local people's procuratorate for Bribery Crime. The fate was then reversed: quarantined for investigation, property being confiscated, qualification for promotion to engineer was revoked, etc. The “meritorious man” deemed to have contributed to Qianqiao Village was turned into a criminal overnight, and the case subsequently initiated a nationwide discussion of “Han Kun Event” for around two months in headline of front page of Guangming Daily in early 1980s. Lastly the case shocked the Central Government, regarding which Secretariat of the Central Committee once specifically held meetings for discussion on this case and concluded that Han Kun was innocent!

Upon the statement made by the Central Government on the “Han Kun Event”, Mr. Zhao Shouyi, the then Minister of the Ministry of Labour, made a speech on issues like intellectuals engaging in secondary occupation during spare time, clearly stated that intellectuals could accept appropriate rewards, which was subsequently reported by all media of the Central Government and of local authorities. After that, “Sunday Engineer” became legitimate and many intellectuals thereby were able to have more extensive chances for repaying the state and contributing to the society. After the “Han Kun Event”, the Central Government delivered two important decisions throughout the country: firstly, all detained engineering technicians similar to Han Kun would be acquitted; secondly, all investigations underway had to be terminated. Such decision freed large amount of intellectuals similar to Han Kun from imprisonment and gave the intellectuals under investigation or being “quarantined” the freedom.
Though over twenty years have passed since the “Han Kun Event”, yet it has brought us many heavy thinking. The argument of guilty or not-guilty of Han Kun, from the very beginning, was not or only just the matter of a person or a case, but was a significant issue concerning whether technicians could serve the country and the society during spare time, so it was a major issue involving the cause of reform and opening up. It should be noted that the occurrence of the “Han Kun Event” was in a certain extent related to the social background at the beginning of our reform and opening up. Though it was the spring of 1981, yet the “political climate” in China was still in short warmth followed by coldness. The “pinko idea” was still pretty well received in the society. The concept and acknowledgement of people were not unified and the legal system was yet to be completed at the time. In someone’s eyes, the behaviour of Han Kun should be strictly punished. Luckily, “the miserable days will be gone eventually”, and the spring breeze lastly blew into “the barren land”. The times when intellectuals were treated as “stinking ninth category”, imposed with “political labels” and imprisoned were gone. In fact, from the viewpoint of today’s development, the guilty or not-guilty of Han Kun shall be mainly determined on whether his behaviour is endangering the society or not. In one word, one have to see whether his behaviour and outcome would be harmful to or beneficial for the reform and opening up and the socialist building of the country. It was proven by fact that Han Kun has done the right thing, not only did he make no harm to the society, instead he had made great contribution to the country and the collective. If behaviours like those of Han Kun were sentenced as guilty, then there would not be any technicians and intellectuals willing to devote their intelligence and ingenuity to the socialist building cause of the reform and opening up? At the beginning of our reform and opening up, intellectuals like Han Kun had devoted themselves to the reform and opening up cause with all their hearts and all their souls unselfishly, they should be rewarded, and how could they be tried guilty? What delighted us was that the meaning of the “Han Kun Event” discussion was more and more recognized by people in the course of implementing policies regarding intellectuals, especially in the process of establishing a relaxing environment for intellectuals to devote their intelligence and ingenuity. Reflecting and reviewing the Han Kun Bribe-taking Case is of great significance for us today to deeply comprehend the epoch-making meaning of the third plenary session of 11th Central Committee, so as to understand the rough course at the beginning of reform and opening up, and to motivate us to further emancipate our mind, reinforce the socialist legality building, promote the “advancement with times” of criminal legality and carry forward the great cause of reform and opening up staunchly.

(III) Jiang Aizhen Intentional Homicide Case

Jiang Aizhen, female, a former nursing assistant of 144 Regiment Hospital of Agricultural 8th Division of Xinjiang Production and Construction Corps. She was defamed and framed-up by others and suffered severe persecution and abasement in dignity and reputation. She found no way of confiding her grievance and felt enough about the condition, therefore, on 29th September 1978, she revenged upon the person defaming and framing-up her, killing three and injuring one. Upon the occurrence of the case, People’s Daily printed on 20th October 1979 “Why did Jiang Aizhen commit killing?”, which attracted great response at home and abroad immediately. Many cadres and people wrote letters and articles to show sympathy, support and backup for Jiang Aizhen and requested to severely punish the person defaming and framing-up Jiang Aizhen. The extensiveness and significance of the influence were rarely seen. In September 1984, the Intermediate People’s Court of Xinjiang Shihezi Region ruled the judgment of first instance that Jiang Aizhen would be sentenced to life imprisonment for intentional homicide. Subsequent to which Jiang Aizhen refused to obey the judgment of first instance and instituted an appeal. On 16th January 1985, the Higher People’s Court of Xinjiang Uygur Autonomous Region ruled the final judgment that Jiang Aizhen would be sentenced to 15-year imprisonment. In light of the performance of Jiang Aizhen in prison, she had her imprisonment commuted and was discharged from prison in 1991. Information about her work arrangement after discharge was also widely reported nationwide.

The details of the Jiang Aizhen Intentional Homicide Case were not complex, in fact. Then, what made it attract such a strong response and even the attention of People’s Daily, a newspaper of the party’s
Central Committee? From the viewpoint of legal principle of criminal law, the extensive attention paid to Jiang Aizhen Intentional Homicide Case and the lighter “punishment” ruled against Jiang Aizhen were understandably attributable to the following two special factors: the first one was the obvious mistakes made by the victims previously and the second one was the social sympathy towards Jiang Aizhen, and in this case, the effect of the second factor was more profound than the first one. Jiang Aizhen revenged with gun against the person defaming and framing-up her, caused the severe aftermath of three dead and one injured, and should be sentenced to death according to the law. However, we are not discussing whether the final judgment of 15-year imprisonment delivered by the court against Jiang Aizhen is reasonable or not, or whether the judgment conformed to the principle of “Compatibility of Crime, Liability, and Penalty” or not, it was advisable that the circumstance for sentencing that the victims had behaved wrongfully previously was fully considered. The sentencing of intentional homicide crime shall not only take into account the result of the death of victims or not, but also consider comprehensively other circumstances such as the social harmfulness incurred from the behaviour of the actor and his/her personal dangerousness. All facts in a case shall be taken as the basis for a comprehensive determination under the principle of objective and subjective integration. In case where victims obviously behave wrongly, the degree of the culpability of the accused shall be reduced accordingly. Of course, the degree of the involvement of victims would, to a large extent, influence the evaluation of the risk posed by the accused and further influence the seriousness of punishment. This is in fact a normal condition. Secondly, in this case, the people’s court took into account another important factor in sentencing Jiang Aizhen, namely, the social sympathy. The behaviour of Jiang Aizhen in killing three and injuring one didn’t rise public outrage, but attracted the universal sympathy, support and mercy of varieties of cadres and people who requested to severely punish persons defaming and framing-up Jiang Aizhen. It could not be denied that public opinion made an indispensable contribution to the lighter “judgment” against Jiang Aizhen for 15-year imprisonment. Then, how should we view such condition in a rational manner? Since a long time ago, we seemingly have accustomed to the act of proving the legitimacy of a policy “in the name of the people” and “support and advocacy of the masses”. Many judicial organs would be influenced by the public opinion in trying cases, just as the saying goes “the public opinion cannot be contravened”. It is in our opinion that a proper and reasonable intervention of public opinion into judicial system is quite necessary for a sound development of a society, which is also an effective promotion force for the masses to express ideas and appeals and for the social justice to be done. It was reasonable for the people’s court to appropriately take into account, but not following like a sheep, the public opinion in sentencing. After all, public opinion is not the embodiment of justice and justice may not necessarily be sought from where majority of the public opinion agree. In fact, a country shall not only listen to the voice of the public but also shall be obliged to direct the public opinion in a reasonable way. Varieties of circumstances (such as, whether victims behaved wrongfully) shall be considered thoroughly in penalty consideration, but shall not follow like a sheep, including the public opinion to proper extent. This is not just the essential requirement for ensuring criminal judicial fairness, but also a symbol of criminal legality of a country advancing towards maturity and reasonableness.

(IV) December Eighth Karamai City (Xinjiang) Major Liability Incident & Negligence of Duty Case

In the afternoon of 7th December 1994, “Two Basics” (basically realizing nine-year compulsory education by and large and basically eliminating illiteracy among young and middle-aged people) Appraisal & Acceptance Inspection Group of Xinjiang Uygur Autonomous Region Education Commission went to Karamai for inspection. Karamai City organized the “Two Basics” Appraisal & Acceptance Inspection Group Reception Team headed by Ms. Zhao Lanxiu, deputy mayor, and Mr. Fang Tianlu, deputy director of Xinjiang Oil Management Bureau, to greet the acceptance inspection. In the preparation conference held by the Education Commission of Karamai City participated into by Tang Jian, Kuang Li, Zhu Minglong and Zhao Zheng, and in the preparatory work reporting of Tang Jiang and Kuang Li, etc, to Zhao Lanxiu and Fang Tianlu, safety caution requirements were not put forward regarding the organization of secondary school and primary school students for art performance, and no related safety tasks were made thereafter. At 18:00
of 8th December, the special art performance organized by Education Commission of Karamai City and the Education & Training Center of Xinjiang Oil Management Bureau were performed in Youyi Guan (Friendship Stadium). 796 persons, including all students and part of the teachers from fifteen standard classes (from seven secondary schools and eight primary schools), members of the Appraisal & Acceptance Inspection Group, relevant leaders of Karamai City and Xinjiang Oil Management Bureau attended the performance. When the performance proceeded to around 18:20, the second light beam lamp (100W) count backwards to the north of the centre stage lit up the curtain. Fire spread quickly, wires were burnt and lamps were off, the stadium was in a complete chaos. All kinds of inflammable materials gave off large amount of toxic gas after being burnt and caused the death of 323 persons (including 284 distinguished students from secondary schools and primary schools of aged 6-15), the injury of 132 persons (including 60 badly injured) and the direct economic loss of over RMB38 million. On 14th August 1995, the Intermediate People's Court of Karamai City ruled against 14 persons directly held responsible for the incident and holding leadership responsibility including 阿不來提· 卡德尔 and Zhao Xiulan, etc, for the 4-7 years fixed-term imprisonment and subject to no criminal punishment by the crime of major liability incident and crime of negligence, etc.

This nation-shocking case of Karamai December Eighth Significant Safety Liability Incident had caused extremely severe casualties and significant losses to the lives, properties and safety of the people and masses, with especially bad influence and particularly severe damage. In particular, victims in the case were mostly children of aged 6-15, who were the most distinguished secondary school and primary school students of Karamai City. Around 400 families suffered from the death or injuries of their children, most of which were one-child families complying with the state policy of family planning, and the parents of those children were already in their middle age and many of them were out of fertility (or facing many a difficulties even they are capable of bearing child). Those parents suffering the extreme misfortune of losing child in their middle age would also be facing the dismal days of no child when getting old or the difficulties of getting old but with very young child. In the meantime, the casualties of the people would inevitably bring the deep and lasting grief for the family members and relatives of the dead and the injured. The heartquaking casualties of the people and the severe aftermath thereby were caused by the said 14 persons due to their violation of regulations and rules, serious irresponsibility, serious bureaucratism and formalism, negligence of duty, failure to perform or wrongly performing duties. What's more, the nearly 400 children suffering from death or injury in the incident were arranged by the organizers and leaders of the performance to participate into an art performance of formalism and the content of which was to welcome the superior and which was totally unrelated to their studies. Therefore, the children were jeopardised innocently. Upon the occurrence of the incident, the feelings of the public were running high, many people, in particular relatives of the victims, requested to punish those who caused the incident seriously. Relevant Leading Authorities and the Political and Legal Authorities of the Central Government, those of Xinjiang Autonomous Region and those of Karamai City paid great attention to the investigation of the Karamai December Eighth Significant Severe Safety Liability Incident and the trial of the criminals thereof, and requested the judicial organs responsible for the case investigation and trial to seriously investigate the crime and punish the criminals bearing in mind that they should be responsible to the people and the country. According to the provision of the criminal law prevailing then, the four suspects including 阿不來提· 卡德尔 broke the provisions of Article 114 in the penal code, namely, the Crime of Major Liability Incident, while the maximum statutory penalty of such crime was only a seven-year fixed-term imprisonment; and other ten suspects including Zhao Lanxiu, etc, broke provisions of Article 187 of the penal code, namely the Crime of Negligence of Duty, while the maximum statutory penalty of such crime was only a five-year fixed-term imprisonment. However, the aftermath of the case was particularly severe and the liability of the criminals was also extremely serious, and owing to the fact that the responsible personnel were not honestly and seriously in admitting their guilt and repentance, therefore, sentencing the maximum statutory penalty for the Crime of Major Liability Incident and the Crime of Negligence of Duty would hardly meet the requirement of “Compatibility of Crime, Liability and Penalty” nor the expectation of the public over justice. Therefore, in the course of investigating this case, relatives of the victims unanimously considered the said penalty was too light for the criminals of this case, and even
once requested to impose heavier penalties by analogy or by modifying laws or promulgating special laws through the Standing Committee of the National People’s Congress so as to impose heavier punishments upon the defendants. Many citizens, even some people in leading authorities of all levels and in the political and legal authorities, were also of the opinion that the penalty at the time were too light for the criminals of this case, and that the penalty was not matching the crime. In fact, it was also unanimously recognized by people of the state legislation authority, judicial system and criminal law academics in recent years that the shortcomings of the statutory penalty for Crime of Major Liability Incident and the Crime of Negligence of Duty were in fact too light, the maximum statutory penalty of which could not address the need for punishing and preventing these two crimes which might usually cause serious aftermath and results and could not address the need of implementing the principles of “Compatibility of Crime, Liability and Penalty”. Therefore, the relevant provision of the penal code was destined to be amended, while this issue was pushed to the front stage by the Karamai December Eighth Major Liability Incident and Negligence of Duty Case, and the progress of amending the statutory penalty for the Crime of Major Liability Accident and for the Crime of Negligence of Duty in the penal code by the state legislation authority was expedited. Therefore, at the time when the 1997 Penal Code was amended, the statutory penalty of the Crime of Negligence of Duty was increased accordingly, and the maximum statutory penalty was increased from the original five-year fixed-term imprisonment to seven-year fixed-term imprisonment. On the basis of extensive research and further conclusion of practical experience, we made substantial amendments to the Crime of Safety Liability Incident as provided in the 1997 Penal Code according to the Sixth Amendment to the Criminal Law of the People’s Republic of China passed on 29th June 2006, where the criminal law was further refined and the statutory punishment on the Crime of Safety Liability Incident was increased. In an overall sense, the value of “To be more stringent” was realised. It should be said that the above amendment was closely related to the punishment being too light for the Crime of Major Liability Incident and the Crime of Negligence of Duty as exposed in the Karamai December Eighth Major Liability Incident and the Negligence of Duty Case.

II. Outline of the criminal legality subsequent to the promulgation and implementation of the 1997 Penal Code (1997-2008)

The development of our criminal legality stepped into a brand-new stage since the promulgation of the 1997 Penal Code. It should be said that the amended penal code in 1997 has laid a solid foundation for the advancement and development of our criminal legality in a new period. The penal code included three components, i.e. the general provisions, specific provisions and supplementary provisions. There was 15 chapters and the number of articles was increased to 452 from 192 in the 1979 Penal Code. The extensiveness and breadth of the amendment was unprecedented in our legislation territory. This penal code as amended had surpassed and developed the 1979 Penal Code, in which significant reform and remarkable advance were made. In general, the penal code amended in 1997 was the most comprehensive, most systematic and most contemporary milestone penal code in the history of new China. It was guided by Deng Xiaoping Theory and conformed to the requirement for the development of the times. The fundamental tactics of “Ruling the Country according to Law and Establishing the Country of Socialist Legality” was implemented, and our progress of the criminal legality, as well as the entire legality building was greatly driven.

However, the steps of social development will never come to an end, therefore, when compared with the practical life and judicial practice of a society, the law will exhibit certain degree of lagging. Therefore, in order to ensure the consistency of the development of law with that of a society, it is inevitable to amend laws or promulgate new laws cautiously and timely according to the development and changes of the social situations. As an important constituent of the state legal system, criminal law is no exception. As a matter of fact, our criminal law legislation did not stop because of the amendment of the 1997 Penal Code. On the contrary, in terms of frequency and content, criminal law legislation was one of the active territories in our legislation work. Starting from the promulgation of the 1997 Penal Code and up to the
passing of the Sixth Amendment to the Criminal Law on 29th June 2006, the Standing Committee of the National People's Congress passed one resolution, six amendments and nine interpretations on criminal law legislation, which were related to extensive areas of crimes like those endangering the public security, endangering the order of socialist market economy, breaching the company and enterprise management order, disrupting the society management order and bribery and corruption, etc. Being specific, these included the NPC Standing Committee's Decision Concerning Punishment of Criminal Offences involving Fraudulent Purchase, Evasion and Illegal Trading of Foreign Exchange passed on 29th December 1998, Amendment to the Criminal Law of the People's Republic of China passed on 25th December 1999; the Second Amendment to the Criminal Law of the People's Republic of China passed on 31st August 2001; the Third Amendment to the Criminal Law of the People's Republic of China passed on 29th December 2001; the Fourth Amendment to the Criminal Law of the People's Republic of China passed on 28th December 2002; the Fifth Amendment to the Criminal Law of the People's Republic of China passed on 28th February 2005; the Sixth Amendment to the Criminal Law of the People's Republic of China passed on 29th June 2006. Simply speaking, the modifications and supplements made to the specific provisions of the Penal Code by the Standing Committee of the National People's Congress through the foregoing separate criminal laws and amendments to Criminal Law mainly realized in the following three aspects: first, the creation of new classification of crimes, by far, eighteen new crimes have been created; Second, the modifications and supplements to constituents of certain crimes, which is mainly embodied in the modifications and supplements to the behaviour methods and scope of objects for certain crimes; third, the adjustment for statutory penalty of certain crimes. In addition to the said separate criminal laws and amendments to the Criminal Law, the Standing Committee of the National People's Congress, with respect to the issues of discrepancies over the comprehension and understanding of provisions in the criminal law in the course of the application of the penal code since the promulgation of the 1997 Penal Code, passed nine interpretations regarding the criminal law legislation. These nine criminal law interpretations are: Article 93 (2) of the Criminal Law of the People's Republic of China passed on 29th April 2000; Interpretation regarding Article 228, Article 342 and Article 410 of the Criminal Law of the People's Republic of China passed on 31st August 2001; Interpretation regarding Article 294 (1) of the Criminal Law of the People's Republic of China passed on 28th April 2002; Interpretation regarding Article 384 (1) of the Criminal Law of the People's Republic of China passed on 28th April 2002; Interpretation regarding Article 313 of the Criminal Law of the People's Republic of China passed on 29th August 2002; Interpretation regarding the application of subject of crime provided in Chapter IX of the Criminal Law of the People's Republic of China passed on 28th December 2002; Interpretation regarding provisions of credit card of the Criminal Law of the People's Republic of China passed on 29th December 2004; Interpretations about the Provisions of the Criminal Law of the People's Republic of China regarding Other Invoices for Export Rebate and Tax Offset passed on 29th December 2005; Interpretation about the Application of the Provisions of the Criminal Law of the People's Republic of China on Cultural Relics to the Fossils of Ancient Vertebrates and Ancient Humans of Scientific Value passed on 29th December 2005. These interpretation documents for criminal law legislation has made detailed and accurate definitions regarding the disputed concepts in judicial practices of the criminal law, or has terminated the deadlock arising from the discrepancy of understanding of certain criminal law provisions between the procuratorate authority and trial authority, etc.

It was undeniable that the development of criminal law legislation over the ten years or so since the promulgation of the 1997 Penal Code has greatly promoted the advancement and development of our criminal legality in the new period and under the new situations, and this was closely related to the progress in our criminal law legislation within the recent ten years and the following striking features. Firstly, in terms of the form of legislation, amendments to criminal law was established as the basic legislation mode to modify and supplement the penal code by the legislation during this period, namely forming the legislation pattern of amendments to criminal law as the body and the separate criminal law and criminal legislation interpretations as the supplements. Modifications and supplements to the penal code through amendments to the criminal laws were provided with the following three advantages: firstly, amendments
to criminal laws were flexible, timely, specific and simple in legislation process; secondly, amendments to the criminal laws were the modifications, supplements, replacements or additions of provisions to the penal code, so such amendments would not only promote directly the improvement of the penal code but also unlike the separate criminal laws which could be independent from the penal code and subject to application, they should be incorporated into the penal code and became the components of the penal code, in order to make them easy for understanding and application; thirdly, amendments would not only be incorporated into the penal code, but also their legislation technique would not cause them to intervene the sequence of provisions of the penal code, and this would safeguard the intactness, continuity and stability of the penal code and would be conducive to the uniformity and coordination of the criminal legality. In the meantime, starting from the promulgation of the amended penal code in 1997, the Standing Committee of the National People's Congress adopted the form of legislation interpretations to the criminal law, which would be conducive to the state legislation authority to make up the insufficiency of criminal law legislation, and it can be known as the important step of the criminal legality process of our country. Since the criminal law legislation will be comparatively generalized and principle-based, and the criminal law legislation technique is also accompanied with certain problems inevitably, and in practice, the Supreme People's Court and Supreme People's Procuratorate, the supreme judicial organs granted with the right of judicial interpretation, will be inconsistent in the comprehension of provisions of criminal law, so there is always the need to have the Standing Committee of the National People's Congress to interpret the Criminal Law in criminal law practice. Therefore, the state legislation authority shall attach importance to and fully make use of the interpretation of criminal law legislation to improve criminal law and promote the criminal legality. Secondly, in terms of the context of legislation, the legislation after 1997 was focused in response to the need of economic and social development, and the focus of concern was obviously related to the characteristics of the times, for example, to safeguard the order of socialist market economy, to address the new conditions in market economy development, to supplement provisions relating to the crime of breaking the order of market economy, to practice the criminal law appropriately as the rule of the market and to define the crime of manipulating the futures market and the crime of bankruptcy fraud. In addition, the amendments to criminal law made necessary creations, modifications and supplements to the crimes of terrorist activities, money laundering and receiving stolen goods, etc, and this was definitely provided with obvious characteristics of the times, and so on.

We should not forget that, over the ten years or so since the promulgation of the 1997 Penal Code, this systematically amended new penal code has enabled us to uphold the justice, punish and eliminate the evil and guilty, led our criminal judicial system to step up one stage by another, and drove our criminal legality to the maturity, rational, civilized and harmony. Neither should we forget that the greatly responsive and overwhelming classical cases in criminal legality over these ten years or so have directly or indirectly influenced the progress of our criminal legality. Therefore, in order to summarize the development course of our criminal legality since the promulgation of the 1997 Penal Code, we have to reach those representative and typical cases which could demonstrate the criminal legality in practice with vitality, in addition to have a macro understanding over the development of criminal law legislation over these ten years or so. In the following, we will have a review and thinking over these cases.

(I) **Zhang Ziqiang Case**

Under a joint secret plan, Hong Kong residents Zhang Ziqiang, Qian Hanshou, Liu Dingxun bought a big amount of explosives, detonators and fuses via illegal channels in Shanwei City, Guangdong Province and secretly shipped them to Hong Kong in September 1997 with the financial support of Zhang Ziqiang. In 1991 and 1996, the gang led by Zhang Ziqiang shipped a batch of illegally purchased guns and ammunition from Mainland to Hong Kong. The gang met up in Guangzhou, Shenzhen and Dongguan for many times and secretly masterminded respective kidnappings of a Mr. Li, Mr. Lin and Mr. Guo in May 1996 and September 1997 in Hong Kong and asked for a hefty ransom. From the end of 1994 to the beginning of 1995, the gang consisting of Chen Zhihao, Ma Shangzhong, Liang Hui, Cai Zhijie, Yu Hanjie and Huang Yi, etc, were
involved in a robbery of the goods delivery order owned by Tianjin Goods and Materials Comprehensive Trade Centre. A batch of steel materials were collected and sold illegally. During the robbery, a victim surnamed Li were killed. Respectively in June 1991 and March 1992, defendants including Chen Zhihao, Ma Shangzhong, Zhu Yucheng and Li Yun secretly masterminded for many times and carried guns and bullets illegally purchased from the Mainland and robbed seven gold shops of a batch of goldwares in Hong Kong. Guangzhou Intermediate People’s Court came to a judgment that offenders such as Zhang Ziqiang, Chen Zhihao, Ma Shangzong, Qian Hanshou, Zhu Yucheng, Li Yun, etc, played roles to organize, plan, command or play the critical roles in the joint crime and they should be treated as principal criminals. They should be punished for all the crimes they participated, organized or commanded. Twenty-nine subjects of crime including Cai Zhijie shall bear relevant liabilities as per their respective criminal facts, circumstances, consequences and roles played in the joint crimes. On 12th November, 1998, the court made the first instance ruling and Zhang Ziqiang was convicted of the crimes of illegal trading of explosives, smuggling weapons, ammunition and kidnapping. The sentences for various crimes were combined and led to the death sentence of Zhang Ziqiang and deprivation of political rights for life as well as a confiscation of property worth RMB 662.1 million. More than 30 accomplices involved in the Zhang Ziqiang Case were also sentenced to punishments such as death penalty, life imprisonment, fixed-term imprisonment, confiscation of property for respective crimes accordingly. On 5th December, 1998, the Guangdong Higher People’s Court dismissed Zhang Ziqiang’s appeal and maintained the original judgment as the final verdict.

The criminal group headed by Hong Kong resident Zhang Ziqiang committed crimes which hit the peak in the last decade of 20th century, also known as “Century Robbery” and “Top Case in Asia” by the general public. The criminal gains, with a robbery of RMB tens of millions and ransoms for kidnappings and blackmails amounted to RMB 1.638 billion, broke the Guinness World Record again and again. Zhang Ziqiang was in this regard crowned as “Thief of the Century”. Nevertheless, the reason why the case and the trial drew national and global attention was not only because of the severity of the case and the huge ill-gotten gains, but also the sophistication and uniqueness of the case. This crime involved joint crimes committed by criminals from Hong Kong and the Mainland with criminal activities taking place across Hong Kong and the Mainland and an interweaving of various crimes. All of the criminals were caught and tried and sentenced with criminal punishment in the Mainland. While the case was investigated and tried, conflicts of criminal jurisdictions between Hong Kong and the Mainland and relevant issues triggered warm discussions and controversies especially in Hong Kong. Although the so-called “Century Trial” was drawn to a close long time ago, generic discussions and sessions on the conflicts of criminal jurisdictions between Hong Kong and the Mainland China and relevant issues were still prevalent. Steps were accelerated to establish an inter-regional mutual judicial assistance relationship in criminal matters and a more realistic and more in depth issue was raised on the inter-regional legal relationship under the framework of “One Country, Two Systems”. From our point of view, the “Principle of Territoriality” shall be adopted to address the jurisdiction for the mutually involved criminal cases between Hong Kong and the Mainland. According to the principle, criminal cases taking place in Hong Kong shall be subject to the jurisdiction of the judicial organs of Hong Kong and shall be subject to the criminal law of Hong Kong no matter the defendant or victim is Hong Kong resident or the Mainland resident. Criminal cases taking place in the Mainland shall be subject to the jurisdiction of the judicial organs of the Mainland and shall be subject to the criminal law of the Mainland no matter the defendant or victim is Hong Kong resident or the Mainland resident. Criminal cases taking place in the Mainland shall be subject to the jurisdiction of the judicial organs of the Mainland and shall be subject to the criminal law of the Mainland no matter the defendant or victim is Hong Kong resident or the Mainland resident. With respect to three categories of cases which are more complicated in nature, namely (i) cases where crimes occur in two places, for example, the criminal behaviour and consequences take place in two places respectively; (ii) cases where the suspect is suspected to be involved in more than one crime, of which some crimes take place in Hong Kong and some take place in the Mainland; (iii) cases where the number of suspect is more than one in any single crime, of which some suspects are Hong Kong residents and the others are the Mainland residents, and they act as a group and commit crime together, but such kind of grouping and committing crime together may just take place either in Hong Kong or the Mainland or may take place in Hong Kong and the Mainland simultaneously, then
such issue shall be subject to further research of the judicial organs from Hong Kong and the Mainland. Currently, we usually apply the principle of “Actual control” and “First trial gets priority” to deal with the above cases, that is to say, the jurisdiction shall be performed by the judicial organs which detect the case and try the case in the first place. As the Zhang Ziqiang Case fell into such three complicated categories, the jurisdiction should be performed by the judicial organ of Guangdong Province which detected and tried the case in the first place.

**(II) Gong Jianping Football “Black Whistle” Case**

Gong Jianping was previously a teacher of Capital Institute of Physical Education and being an international football referee. Between 2000 and 2001, he was assigned as a referee for National Football Jia A & Jia B League by China Football Association. During his tenure as a referee for National Jia A & Jia B League, Gong Jianping took advantage of his duties to receive property worth of over RMB 380,000 illegally from the participating football clubs such as Qingdao Yizhong Hainiu, Shanghai Shenhua, Zhejiang Greentown and Dalian Shide. On 17th April, 2002, Xuanwu District People’s Procuratorate of Beijing Municipality officially approved to arrest Gong Jianping by the reason of his suspected involvement in the crime of enterprise staff bribery. On 24th December of the same year, The Procuratorate brought Gong Jianping to Xuanwu District People’s Court of Beijing Municipality and charged him of enterprise staff bribery. On 29th January, 2003, the court issued the judgement of the first instance and sentenced Gong Jianping a ten-year imprisonment for the crime of bribery. Gong was aggrieved and appealed against the judgment. On 28th March, 2003, Beijing No. 1 Intermediate People’s Court issue the final verdict on the Gong Jianping Bribery Case by dismissing his appeal and maintained the judgment of the first instance.

The Gong Jianping Case once gave a stir to the football community and the legal academic community of the country and drew attention from various parties. The arrest of Gong Jianping was regarded as the first clampdown upon “Black Whistle” according to law. The case was also regarded as the first case for the judicial organs to deal with the corruption in the football community. Therefore, the investigation, prosecution and judgment were widely watched by the whole country. Generic issues such as whether it was reasonable for the judicial organs to deal with the “Black Whistle” of football and the specificity of Gong Jianping as the criminal subject led to an extensive argument in the society. The procuratorate organs brought charges against Gong Jianping on the crime of corporate and enterprise staff bribery whilst the courts of the first and the second instance regarded his behaviour being constituted as the state personnel bribery. There were still some people from the criminal law academic community and the society to consider Gong’s behaviour was not guilty. The argument was tit-for-tat. Or we should put it this way, the Gong Jianping Case was indeed in the grey area of our criminal law. It was because, according to the 1997 Penal Code, Gong was a referee for National Football Jia A & Jia B League, instead of the state personnel or corporate and enterprise personnel. He was a personnel engaged in sports activities solely on his professional sports knowledge. Although his behaviour of accepting property jeopardized the society in certain extent, such behaviour was not regulated under the criminal law at that time. Hence, he was not a criminal subject under the crime of enterprise staff bribery or bribery. According to the principle of a legally prescribed punishment for a specified crime, it was inappropriate to treat his behaviour of accepting property from the football clubs as a crime. Regarding the exactness of the conviction of crime, measurement of punishment and nature of crime made by the courts of the first and the second instance against Gong Jianping, it would be subject to the examination of history. Though the Gong Jianping Case was a highly controversial case, it brought a tremendous impact on our legal community and the legal academic community and exerted crucial influences on the improvement of our criminal legality. The case promoted our awareness of the brand new legal issues emerged from our practical lives and should refine our regulation on criminal law. This would further enable us to rule by law if similar circumstances ever happen again in the future. In fact, this was proved by the development of our criminal legislation. The Sixth Amendment to the Criminal Law...
passed on 29th June, 2006 made constructive response in respect of such issue positively. Section 7 of such amendment revised and refined the provisions as stipulated in Section 163 “Corporate and Enterprise Personnel Bribery Crime” of the 1997 Penal Code. Under such amendment, the scope of criminal subject has been extended to “Personnel of Other Units” and the corresponding crime has been changed to “Non-state Personnel Bribery Crime”. In this sense, it is appropriate to depict the Gong Jianping Case as a significant milestone in the development of our criminal legality.

(III) Zheng Xiaoyu Bribe-taking & Negligence of Duty Case

Zheng Xiaoyu was previously the Commissioner of State Food and Drug Administration. While he served as the Commissioner of State Medicine Administration, State Drug Administration and State Food and Drug Administration between June 1997 and December 2006, he was petitioned to seek benefits for eight pharmaceutical enterprises in respect of the approval of medicine and medical equipment and received illegally cash and properties worth of over RMB 6.49 million offered by person-in-charge of the above enterprises directly or via his wife and son. Between 2001 and 2003, while Zheng Xiaoyu served as the Commissioner of State Drug Administration and State Food and Drug Administration, he was found of gross negligence of duty, failure of making serious deployment and lowering the approval threshold while implementing a uniformed extension and granting of medicine production license number on a nationwide basis. A random inspection found that many drugs supposed to be disqualified or suspended of the license number were instead being granted relevant license number as a result of Zheng Xiaoyu’s negligence of duty, and six types of drugs are found to be bogus. On 29th May, 2007, Beijing No. 1 Intermediate People’s Court made a combination of all sentences and sentenced Zheng Xiaoyu to death, deprived him of political rights for life and confiscated all of his personal property for the crimes of bribery-taking and negligence of duty. Zheng Xiaoyu was aggrieved and appealed against the judgment. Beijing Higher People’s Court conducted an open trial and made the second instance ruling on 22nd June of the same year by dismissing his appeal and maintaining the original judgment. Upon the verification and approval of the Supreme People’s Court, the death sentence of Zheng Xiaoyu was executed on 10th July, 2007 in Beijing.

The execution of Zheng adequately manifests people’s will power and wishes and firmly promoted the fairness and probity of law. Zhang Xiaoyu was the fourth senior official with deputy ministerial rank or above being sentenced to death penalty in recent years. Although he was neither the first deputy ministerial official nor the highest ranking official being sentenced to death and he only took bribery worth of RMB 6.49 million, other senior officials convicted with corruption crimes, such as Han Guizhi (Former Chairman of Heilongjiang Provincial Committee of CPPCC), Li Jiating (Former Governor of Yunan Province) and Cong Fukui (Former Executive Deputy Governor of Hebei Province), with the amounts of bribery far more than he did whereas all of them were merely sentenced to death probation. People could not help throwing doubt on the legal appropriateness of death sentences and immediate execution. In particular, under the new context where the reviewing power on death penalty cases are consolidated and returned to the Supreme People’s Court and the sentence of death penalty is restricted and reduced, Zheng Xiaoyu not only returned the bribery actively but also confessed his crime partially. Even with such circumstances of being penalized leniently, why was he still sentenced to death penalty? This was indeed the critical reason why the Zhang Xiaoyu Case caught such an unprecedented wide attention from the public. Based on the perspective of legality, though Zhang Xiaoyu confessed some facts of bribery and actively returned the bribery, the circumstances and hazards of his crime was indeed very grave if we have an overall look at the case. Perching on such an important position vital to national well-being and people’s livelihood, his act of taking bribes out of greed not only eroded the cleanness of government officials, but also disregarded the crucial interests of the country and the people, sought illegal benefits for respective enterprises, resulted in the uncontrolled order of state food and drug supervision, posed serious threats to people’s lives and health, gravely undermined the public credibility of the authority of State Food and Drug Administration and caused very bad influences on the society. The social harmfulness and circumstances of crime were both very serious in extent. During the prosecution process after Zhang Xiaoyu committed the crimes, these circumstances of being penalized
leniently and relevant factors, on an overall basis, still could not reduce the severity of the harmfulness of his criminal behaviour. Therefore, an immediate execution of death sentences by the court was reasonably matching his crimes and conformed to the principle and rule of our penalty measurement.

The significance of the Zhao Xiaoyu Bribery-taking and Negligence of Duty Case towards the criminal legality also involved the issue of applicability of death penalty on bribery-taking and corruption crimes in China. This was an inevitable and unavoidable issue. Of course, restriction and reduction of sentencing death penalty and a gradual repeal of death penalty is a requirement on the criminal legality for us to establish a socialist harmonious society, and is consistent with the trend of international communities fighting crimes in a rational manner. However, approaches on the legislation of death penalty and judicial reforms shall be unfolded gradually and is required to consider the status of social development and the situations in China and public opinion. Hence, we propose to place the legislation on the reform agenda for gradually repealing death penalties as a result of non-violence crimes. Meanwhile, we consider that it is inappropriate to immediately repeal the death penalty imposed on serious corruption and bribery-taking crimes, instead we shall gradually impose stricter restrictions and proceed to repeal them when conditions are ripe. In the context where death penalty is in place for serious corruption crimes as compliant with current criminal law, death penalty sentenced according to law and including its immediate execution on criminals charged with serious corruption crimes and involved in huge amount of money or with especially serious circumstances constitutes no negation on the restriction and reduction of the applicability of death penalty. On the other hand, it exactly places more strict regulation on the applicability of death penalty. It is also a normal, legal and reasonable procedure and phenomenon while we restrict and reduce the use of death penalty and gradually repeal it.

(IV) Xu Ting Theft Case

At approximately 21:00 at the night of 21st April, 2006, Xu Ting, a general worker, withdrew money from an automatic telling machine (ATM) of Guangzhou Commercial Bank located at No. 163, Xi Ping Yun Road, Huangpu Avenue, Tianhe District, Guangzhou. Xu Ting’s bank card was not granted any overdraft facility and he prepared to withdraw RMB 100 from his account which had a balance of RMB 176.97. At 21:56 at the same night, Xu Ting inadvertently inputted the instruction to withdraw RMB 1,000 but the ATM produced RMB 1,000 immediately. Xu Ting checked and found that there was still around RMB 170 in his bank card. He realized the abnormality of the ATM which could produce amount over the balance of the account and failed to deduct the withdrawn amount. During three time buckets, namely from 21:57 to 22:19, 23:13 to 23:19, and 00:26 to 1:06 of the next day, Xu Ting took the bank card and made 170 money-withdrawing instructions at the ATM and withdrew a total of RMB 174,000. Xu Ting absconded with the money on the afternoon of 24th day of the same month. Xu Ting was seized on 22nd May, 2007 in Baoji City of Shaanxi Province and the illicit money was completely consumed. On 20th November of the same year, Guangzhou Intermediate People’s Court made the first instance ruling that Xu Ting was convicted of the crime of stealing from financial institutions. Given such huge amount was involved, he was sentenced to life imprisonment, deprived of political rights for life and confiscated all of his personal property for the crime of stealing from financial institutions. Xu Ting was aggrieved and appealed against the judgment. On 9th January, 2008, the Higher People’s Court of Guangdong Province made a ruling to rescind the original judgment and remand the case to the original court for retrial by reason of the unclear fact and insufficient evidence of the theft crime committed by Xu Ting. After the retrial, Guangzhou Intermediate People’s Court made a judgment on 31st March, 2008 and commuted the previous sentence to a 5-year imprisonment and a fine of RMB 20,000 under the crime of stealing from financial institutions applicable to special mitigated punishment. Xu Ting was still aggrieved and appealed against the judgment again. On 22nd May, 2008, the Higher People’s Court of Guangdong Province made the final judgment by dismissing the appeal and maintaining the original judgment. At this point, the widespread attending Xu Ting Case was basically finalized.
The Xu Ting Case had caught wide concern from the communities since it was reported by the media, just like a tossed stone stirred up a thousand ripples. Government officials, scholars and the general public all participated acute arguments in theoretical and practical aspects, generally focused on issues whether the act of Xu Ting constituted a crime, whether he should be convicted of theft crime or other crimes, whether he stole from financial institutions and whether the penalty measurement was too tough. The case was regarded as one of the Top Ten Influential Litigation in 2007. One should say that, the Xu Ting Case was escalated from an ordinary criminal case to a public incident drawing wide public concerns and hot discussion among the public. The significance of the case obviously went beyond itself. It is a vivid example to further demonstrate China's contemporary criminal legality in the progress of democracy and legality. Although the case was basically put to an end after the first instance ruling, retrial of the first instance ruling and the final second instance ruling (the final second instance ruling had to be verified and approved by the Supreme People's Court because of the specific nature of mitigated punishment), the complicated contexts it represented and its significance to the criminal legality were thought-provoking and enlightening, and its implication to us was expressed in various aspects. The Xu Ting Case vividly depicted the conflict between sentiment and law, the interaction between power and public opinion and the entanglement between the epoch and people's innermost feelings. Furthermore, many more deep-seated issues were lively reflected by the case, such as the reasonable balance between formal justice and substantive justice, the organic unification of legal effect and social effect, and the rational construction of balance between crime and punishment. In some senses, the jurisprudence discussion and emotional inspiration of the Xu Ting Case actually an useful cultivation, training and establishment of a legal civilization and civil society. In this regard, the Xu Ting Case became a landmark in the realm of criminal legality in China's contemporary progress of democracy and legality.

(V) Several Typical Cases with Criminal Fled Away (Yu Zhendong Case, Hu Xing Case and Lai Changxing Case)

With the intensifying trend of economy globalization and the increasingly frequent flow of personnel across the world, criminal activities are increasingly identified by its transnational and global features. Many criminals absconded with the huge illicit money to overseas in order to evade the legal sanctions after their “plot comes to light”. In particular, the abscondence of corrupt officials to overseas have been very rampant in recent years and the situation was extremely grave. Statistics showed that approximately 4,000 corrupt officials or other personnel fled to overseas and took away capital of over RMB 50 billion since China’s reform and opening-up over 20 years ago. It was just the figure conservatively estimated by the authority. Under such serious situation, there is a need to beef up international criminal and judicial cooperation among different countries to prevent criminals from fleeing to overseas in such a low-risk and high-yield manner and clamp down and scare away cross-country or cross-border criminals. Robert Mueller, the Director of FBI was quoted as saying, “Only by means of close cooperation and concerted efforts can we resist our common threats and protect our people. Meanwhile, only by means of close cooperation can we make the criminals flee nowhere.” Since the promulgation of the new criminal law 10 years ago, much fruitful work have been accomplished in the areas of international criminal and judicial cooperation with our counterparts, joint prevention and fighting of trans-national and trans-border crimes and enhancement of the seizure of overseas fugitives. We have not only effectively seized a large number of fled-away criminals but also actively defended our criminal and judicial sovereignty. Many successful examples (the relatively typical ones are the Yu Zhendong Huge Corruption and Embezzlement Case and the Hu Xing Bribery-taking Case) are especially worthy of our reconsideration. In addition, typical cases such as the Lai Changxing Huge Smuggling Case where the criminals are still at large but are of great importance and exert wide influences on our implementation of criminal and judicial cooperation with foreign countries are worthy of our serious consideration.

On 16th April, 2004, Yu Zhendong, the former head of Bank of China’s Kaiping Sub-branch of Guangdong Province and the principal criminal of the “Kaiping Case” was repatriated and escorted by
the United States back to China. He was the first fled-away suspect of economic crime being officially escorted and assigned by the United States back to China, and was also the first fled-away corrupt official escorted to China since our signing of the UN Convention Against Corruption. It was learnt that Yu Zhendong, together with Xu Chaofan and Xu Guojun, the two former heads of Bank of China’s Kaiping Sub-branch of Guangdong Province, blueprinted a conspiracy in bribery and embezzlement of public funds up to US$ 482 million. Yu Zhendong fled to the United States after the case came to light. After he was repatriated and escorted by the United States back to China in April 2004, the Jiangmen Intermediate People's Court held the first instance open trial on his huge corruption and embezzlement case and sentenced Yu Zhendong to a 12-year imprisonment and confiscation of personal property worth of RMB 1 million under the combined punishment for corruption and embezzlement crimes. Yu Zhendong agreed to the judgment and did not make an appeal. We should say that the Yu Zhendong Huge Corruption and Embezzlement Case is not the only more successful case in the cooperative history of transferring fugitive between China and the United States but also a successful practice for China to initiate the overseas assistance and cooperation in criminal and judicial aspects.

Another major and key case (in addition to the Yu Zhendong Huge Corruption and Embezzlement Case) of great influence on the initiation of criminal and judicial cooperation with other countries and drawing wide attention from all communities is the Huxing Bribery-taking Case. The Hu Xing Bribery-taking Case is a successful quintessence of China's transnational seizure of escaped corrupt officials, bringing them back to the Mainland for judicial judgment and subject to deserved punishment. Hu Xing, a fled-away corrupt official, was the former Deputy Commissioner of the Department of Communications of Yunnan Province. During a period of more than 10 years, he took briberies of over RMB 40 million in total, and the amount of RMB 32 million was taken in one of those briberies. This amount made him the record-keeper of corrupt officials of China who took the largest amount of money in one single bribery-taking. After his crimes came to light, Hu Xing realized that he couldn’t escape the net of justice on account of his untold crimes and fled away in haste. On 17th February, 2007, Hu Xing, being stuck in a hotel of Singapore, signed the “Application for Voluntary Return to China” under the effort and the patient persuasion of case-handling personnel. The wise path he chose offered him a slim of chance. Hu Xing was supposed to be sentenced to death penalty but he was given a mitigated punishment by reason of his circumstances such as voluntary surrender, actively return of illicit gains and showing repentance. He was sentenced to life imprisonment, deprived of political rights for life and confiscation all of his personal property by Kunming Intermediate People’s Court. In the wake of the sentence, Hu Xing said that he confessed the crimes and did not make an appeal. The Hu Xing’s bribery case was regarded as a typical case for the “Corruption of the Deputy Commissioner of the Department of Communications” because of his specific identity, extremely huge amount of money and lots of government officials and celebrities in business circles involved.

In contrast to the successful practices of the international criminal and judicial cooperation in repatriation of Yu Zhendong and transnational seizure of Hu Xing, the extradition of Lai Changxing, the principal criminal of the nation-shocking Xiamen Yuanhua Huge Smuggling Case was much more complicated and twisted. Lai Changxing absconded to Canada since the Xiamen Yuanhua Huge Smuggling Case was exposed in 1999. Eight years had passed but he was still at large. Though Lai Changxing was “a flash in the pan” and the smuggling case gradually faded from the limelight, it did bring unprecedented harmfulness to the society and concerns from home and abroad. The Xiamen Yuanhua Huge Smuggling Case was the largest economic crime of its kind being crushed since the establishment of the new China. The smuggling gang headed by Lai Changxing smuggled various articles worth of RMB 53 billion and evaded a tariff of RMB 30 billion within three years, aggregating over RMB 80 billion. The case caused enormous losses to the country. After the case came to light, more than 600 personnel involved in the case were investigated in more than one year’s time, and the criminal responsibility of over 300 criminals were ascertained according to law. Over 70 criminals in this case fled away. A lot of
senior officials of the party or government including Li Jizhou (Former Deputy Minister of the Ministry of Public Security), Liu Feng (Former Deputy Party Secretary of Xiamen) and Lan Fu (Former Deputy Mayor of Xiamen) were subsequently involved in the case. In order to extradite Lai Changxing back to China and put him under the strict legal punishment, the Chinese Government has continuously made efforts to conduct negotiation, exchange and cooperation with Canadian Government on criminal and judicial assistance issues. Our Government made a promise to Canada that Lai Changxing would not be sentenced to death penalty, in order to create conditions for extradition of Lai Changxing back to China as soon as possible.

Not only do we see the future of criminal and judicial cooperation between China and foreign countries, but also deeply recognize the staunch determination and firm stance of the party and government on anti-corruption and strict fighting of criminal crimes via the above three typical cases of exemplary significance. From the perspective of the construction of the criminal legality, the breakthrough significance achieved by the three typical cases as described above bring us multi-faceted enlightenments. Key enlightenments are:

First of all, how should we treat the non-extradition of death penalty. “Non-extradition of Death Penalty” is an international practice and legal principle generally recognized by many countries in the world. As the principle of “Non-extradition of Death Penalty” involves macro issues such as human rights protection, policies on death penalty and criminal jurisdiction, we always holds a very cautious attitude and keeps a low profile in the treatment of the principle of “Non-extradition of Death Penalty” while we conduct bilateral extradition treaty negotiations with foreign countries in respect of the criminal and judicial cooperation. In fact, our legislation of extradition takes a dodgy attitude towards the principle of “Non-extradition of Death Penalty”. Nevertheless, it becomes a main objective hurdle for us to sign extradition treaties with many countries and stalls the on-going international cooperation in extradition. With regard to the Yu Zhendong Huge Corruption and Embezzlement Case, since we have not entered any specific extradition treaty with the United States, however, according to US law, entering an extradition treaty is the prerequisite for the United States to conduct extradition cooperation with foreign countries. Therefore, it is difficult for China and the United States to kick off an effective extradition cooperation in the absence of an extradition treaty. At last, our Government had to respond to US’s request by promising not to sentence Yu Zhendong to death before US repatriated and assigned him back to China. Similar issues were encountered in the Lai Changxing Huge Smuggling Case. As we have not entered into any specific extradition treaty with Canada, the prerequisite for extradition of Lai Changxing is that the Chinese Government promises not to sentence Lai Changxing to death. If no promise can be made on the “No Death Sentence” on Lai Changxing, it will not be possible to get Lai Changxing repatriated according to Canada law. In this sense, an important enlightenment is presented to us by the Yu Zhendong Huge Corruption and Embezzlement Case and the Lai Changxing Huge Smuggling Case. The enlightenment urged our Government to ponder over the further refinement and improvement of our current mechanism for international criminal and judicial assistance and cooperation (especially the refinement of our extradition mechanism), adapt it to the international environment and conjunct with the legal system of international extradition, realize our judicial extradition cooperation with our counterparts in a normal and orderly manner, expand and strengthen international cooperation in the course of fighting crimes and effectively punish and prevent criminals fleeing to foreign countries or borders.

The second issue is how to treat promises made on punishment measurement. Considering the difference of legal system between the requesting party and the requested party, the requested party usually, according to compulsory regulations as stipulated by its domestic law, imposes some restrictive conditions on criminal extradition and requests the requesting party to make promises to ensure the smooth extradition. With respect to the Yu Zhendong Huge Corruption and Embezzlement Case, our competent authority responded to the requests of the United State and made the following promises in order to seize Yu Zhendong and brought him back for the deserved punishment: China merely charged
Yu of his criminal facts between 1991 and 2001, no death penalty would be sentenced to Yu, the maximum imprisonment sentenced to Yu would be no more than 12 years, and guaranteed that Yu would not be tortured during his imprisonment. With respects to the Lai Changxing Huge Smuggling Case, our Supreme People’s Court promised Lai Changxing would not be sentenced to death. Did this promise on penalty measurement transcend legal procedures, was there any legal ground or did it defy judicial fairness? The question kindled acute argument among the public, drew wide concern and stirred intensive responses. During the “Two Sessions”, NPC representatives and CPPCC members threw doubt on this issue. Ni Shouming, a spokesperson with the Supreme People’s Court, made a clear reply to this issue, stating that our promise of not sentencing Lai Changxing to death was the necessary condition to seize Lai Changxing via international cooperation. It was also the reasonable price to ascertain the criminal responsibility of Lai Changxing as well as the right choice after balancing the advantages and disadvantages. This kind of cases could not be simply compared to those with no international factors involved, and the promise of not sentencing Lai Changxing to death had nothing to do with the judicial fairness. In fact, not only did the promise of not sentencing Lai Changxing to death penalty have nothing to do with the judicial fairness, but also there was a legal ground for that promise. As stipulated in Clause 2 of Article 63 of Criminal Law of People’s Republic of China stipulates: in cases where the circumstances of a crime do not warrant a mitigated punishment under the provisions of this Law, however, in light of the special circumstances of the case, and upon verification and approval of the Supreme People’s Court, the criminal may still be sentenced to a punishment less than the prescribed punishment. In addition, it is expressly stipulated in Clause 1 of Article 50 of the Extradition Law of People’s Republic of China clearly stated: Where the Requested State grants extradition with strings attached, the Ministry of Foreign Affairs may, on behalf of the Government of the People’s Republic of China, make assurance on condition that the sovereignty, national interests and public interests of the People’s Republic of China are not impaired. The assurance with regard to restriction on prosecution shall be subject to decision by the Supreme People’s Procuratorate; the assurance with regard to measurement of penalty shall be subject to decision by the Supreme People’s Court. From this point of view, the Supreme People’s Court of People’s Republic of China have the final discretion on the measurement of penalty and is entitled to make a promise on the measurement of penalty to the requested states on extradition issue. Treaties of penalty measurement entered into by us and foreign countries in respect of extradition and transfer of criminals are the “Specific Situation” considered by the court on deciding special mitigation of penalty. It simply does not transcend legal procedures.

The last issue is how to treat the fleeing corrupt officials being persuaded to come back to China to receive criminal investigation to be regarded as “surrender”. The most typical example of such issue is the Hu Xing Bribery-taking Case. As a corrupt official, Hu Xing abscended to overseas after taking bribe worth of over RMB 40 million and was persuaded to go back to receive criminal investigation under the great efforts made by judicial organs. Why should his act still be regarded as “surrender” and granted lenient punishment? This is an issue especially susceptible to social controversy. From our point of view, Hu Xing agreed to come back for criminal investigation under enormous pressure and the patient persuasion of judicial personnel. It seems that he was unwilling to do so, however, if we see through the phenomena and grasp the essence, we will find that his return to China for criminal investigation was out of his own will power. If he didn’t turn himself in on his own accord and refused to come back for criminal investigation, the case-handling personnel would not be able to enforce the law publicly and seized Hu Xing under the jurisdiction of Singapore. If he didn’t turn in, it would become an indeterminable and highly variable issue of whether he could be seized. In this aspect, he was regarded as “Voluntary Surrender”. Judging from the subsequent progress of case handling, Hu Xing actively cooperated with judicial organs in investigation of other crimes, actively returned illicit gains and truthfully confessed his criminal facts. Therefore, it is indisputable to identify the act of Hu Xing as “surrender”.

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Conclusion

The development of the legality is a progressive course. In line with the stages and footprints of our development in criminal legislation, we can see that the development of the criminal legality since China kicked off reform and opening-up 30 years ago is not only a simple course of legislation refinement, but also a course of gradual improvement driven by the on-going criminal and judicial practices and influenced by the social development. By means of such judicial practices, our concept of legality underwent continuous reform and improvement, which further accelerated the development and refinement of our legality (especially the criminal legality). We firmly believe that the benign interaction between the criminal legislation and the criminal judicial practices based on social progress and change of times shall be concerned, maintained and guided by us to cultivate the perfect criminal legality for our country, society and race. This is the necessary road leading to a socialist country with modern legality.

“From shore to shore it is wide at high tide, and before fair wind a sail is lifting.” Let us hold high the great banner of socialism with Chinese characteristics, rally more closely around the Central Committee, intensively implement the scientific outlook of development, thoroughly apply the basic criminal policy of “Combination of Strictness and Lenience”, holds more confident and active attitude and take more effective measures to create a new situation of the criminal legality with Chinese characteristics and contribute to the construction of a socialist country with legality and a socialist harmonious society.