

# Depoliticization and Politicization: The Resilience of Chinese Sīkē (Diehard) Lawyers' Movement

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## ABSTRACT

*Legal mobilization consistently faces tremendous challenges, particularly in China, where maintaining stability is a top priority. However, over the last decade, a group of Chinese defense lawyers known as Sīkē (die-hard/死磕派) lawyers turned to collective action and mobilization to fight for criminal justice. The Sīkē lawyers' movement, marked by its unique resilience and transformation, presents a remarkable story of legal mobilization within a restrictive landscape. Existing studies on Sīkē lawyers have lumped them together with human rights lawyers, assuming that they "disappeared" after the "709 Crackdown" on human rights activists in 2015. This confusion obscures the uniqueness and persistent struggle of Sīkē lawyers. To clear up the confusion, this article, based on in-depth interviews and participatory observation, reveals the survival and persistence of Sīkē lawyers in the aftermath of the crackdown.*

*The resilience of the Sīkē lawyers' struggle has broken the widespread impression that legal mobilization has no space in China. This article illustrates that the vitality of the Sīkē lawyers' movement has shown a synergistic interplay of three key elements in legal mobilization: a group of leading lawyers (driving force), a space (albeit fuzzy and ever-changing), and strategy (the tactics employed by these lawyers in their advocacy). The interaction mechanism among these three elements is characterized by how these Sīkē lawyers, through their Sīkē strategies, discover and navigate a dynamic process to carve out a hidden and evolving space for legal mobilization. In this process, an essential strategy of Sīkē lawyers is to pragmatically combine depoliticization and politicization, relying on the existing legal framework while pushing for incremental change. This "political pragmatism" approach shows a unique relationship between defense lawyers and politics in China, differing from both political embeddedness and political liberalism.*

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*The Sīkē lawyers' movement exemplifies a strategy for initiating criminal justice reform through grassroots legal mobilization in a restrictive context, carving out a local path distinct from the traditional human rights lawyer. By focusing on individual cases, the movement exposes systemic flaws and catalyzes broader institutional changes, demonstrating adaptability and using public awareness to pressure the system incrementally. Its effectiveness within a restrictive legal framework highlights the power of persistent and targeted advocacy where broader protests are infeasible. This dynamic interaction between targeted legal challenges and wider institutional transformations offers a promising avenue for legal reform from the bottom up. It serves as a blueprint for similar efforts in other authoritarian contexts, inspiring both activists and legal professionals. This cross-pollination of strategies enhances the global dialogue on human rights and legal reform, fostering a more interconnected and informed effort to dismantle authoritarian legal structures and improve the rule of law worldwide.*

## INTRODUCTION

In the forty years of development of China's legal profession,<sup>2</sup> perhaps nothing has attracted more attention and controversy than the Sīkē (die-hard) lawyers (死磕派律师).<sup>3</sup> In 2011, when Sīkē lawyers came under the public spotlight seemingly overnight, they were "a group of tough defense lawyers who make tit-for-tat protests against judicial officials, which mostly manifests as fierce confrontations between lawyers and judges."<sup>4</sup> They rose to prominence for several high-profile cases, such as the Li Zhuang case,<sup>5</sup> the North

2. See The Organic Law of the People's Courts of the People's Republic of China (中华人民共和国人民法院组织法), art. 8 (1979); Zhonghua Renmin Gongheguo Lüshi Zanxing Tiaoli (中华人民共和国律师暂行条例) [Provisional Regulations of the People's Republic of China on Lawyers] (1980). For the evolution of Chinese legal profession, see generally Sida Liu, *The Changing Roles of Lawyers in China: State Bureaucrats, Market Brokers, and Political Activists*, in *THE NEW LEGAL REALISM: STUDYING LAW GLOBALLY* 180, 180–198 (Heinz Klug & Sally Engle Merry eds., 2016).

3. The word "Sīkē" is a dialect from Northeast China, which means to fight against someone or something to the end and never give up until the goal is achieved. The term "Sīkē lawyers" was self-proclaimed by the lawyers in the Small River Case, and it spread quickly in 2012. Some scholars translated it as "die-hard" lawyers. See, e.g., Alexa Olesen, *Meet China's Swaggering, 'Diehard' Criminal Lawyers*, FOREIGN POLICY (May 16, 2014), <https://foreignpolicy.com/2014/05/16/meet-chinas-swaggering-diehard-criminal-lawyers/> [<https://perma.cc/9ZPL-K5K5>]; see also Hualing Fu, *The July 9th (709) Crackdown on Human Rights Lawyers: Legal Advocacy in an Authoritarian State*, 27 J. CONTEMP. CHINA 554, 562 (2018); James Moliterno & Lan Rongjie, *The New-Breed, "Die-Hard" Chinese Lawyer: A Comparison with American Civil Rights Cause Lawyers*, 25 WASH. & LEE J. C.R. & SOC. JUST., 99, 100 (2018); Li Kege, *Do Birds of a Feather Flock Together? Rights Protection (Weiquan) Lawyering in China*, 7 ASIAN J. L. & SOC'Y 127, 128 (2020). However, the translation missed some vital aspects embedded in "Sīkē," which requires not only persistence, but also bravery, adaptivity, Sīkē spirits, and Sīkē methods, etc. Thus, this article chooses to use the term "Sīkē lawyers" to avoid oversimplification.

4. See Ye Zhusheng (叶竹盛), *Sike Pai Lüshi* (死磕派律师) [On Sīkē Lawyers], 18 NAN FENG CHUANG (南风窗) [S. REVIEWS] 82, 84 (2013).

5. Li Zhuang Case (李庄案) is about a lawyer named Li Zhung convicted of perjury in 2009. Li's attorney published this case on the Internet and attracted support from many lawyers and scholars. See Sida Liu, Lily Liang, & Terence C. Halliday, *The Trial of Li Zhuang: Chinese Lawyers' Collective Action against Populism*, 1 ASIAN J. L. & SOC'Y 79, 83 (2014).

Sea case,<sup>6</sup> the Changshu case,<sup>7</sup> and the Small River case.<sup>8</sup> In each case, a group of defense lawyers who barely knew each other teamed up to protest against judicial injustice, took the disputes online, and advocated for their clients, including several detained lawyers. Some of the defendants were acquitted or released immediately after trial,<sup>9</sup> which is rare in China.<sup>10</sup> This was almost the first time in history that Chinese defense lawyers spontaneously formed a group to defend their peers. Forced by the risk of being harassed, detained, and convicted,<sup>11</sup> Chinese defense lawyers started to fight for their right to practice.

From 2011 to 2015, widespread media coverage of Sīkē lawyers and their cases sparked heated debates.<sup>12</sup> Sīkē lawyers teamed up to defend not only the accused lawyers but also other clients.<sup>13</sup> Their slogan is “To Realize the Rule of Law in China by Sīkē (磕出一个法治中国).”<sup>14</sup> Although there were voices

6. Beihai An (北海案) [North Sea Case] is about defense lawyers teamed up to defend their peers against the alleged perjury. In 2011, four lawyers were arrested while investigating a murder case. 20 famous lawyers formed a group to defend the detained lawyers and their clients. They won success in both cases. See Li Meng (李蒙) *Li Zhuang Yu Beihai Weibei Cheng Le Xin Dibiao* (李庄与北海为何成了新地标) [Why Li Zhuang and North Sea Became New Landmarks?] 24 MINZHU YU FAZHI (民主与法制) [DEMOCRACY AND LEGAL SYS.] 24, 24–27 (2011).

7. Changshu Case (常熟案) is about lawyers teaming up to defend six immigrant workers against judicial injustice. In 2011, an affray drew public attention after a video of the crime scene was posted online. About 12 lawyers voluntarily formed a team to provide legal aid for these workers. Their sentence got reduced after the second trial. Meanwhile, the other party to the fight who was not caught in the first trial was also convicted. See Jia Haiguang (贾海光), *Zhengdang Fangwei De Shiyong Zai Sikao—You Jiangsusubeng Changshushi “Caidadui” Huanji “Kandaodui” Anjian Yinqi* (正当防卫的适用再思考—由江苏常熟市“菜刀队”还击“砍刀队”案件引起) [Rethinking the Application of Justifiable Defense—Caused by the Case of “Chopper Team” Fighting Back Against “Machete Team” in Jiangsu Changshu], 23 QUNWEN TIANDI (群文天地) [ARTICLE WORLD] 267, 267 (2012).

8. Xiaohé An (小河案) [Small River Case] is about a group of 120 lawyers that teamed up to defend 57 defendants against the accusation of gangster crimes. The case was widely circulated on social media platforms which attracted national attention. The result was not satisfactory, but some defendants including the second defendant were acquitted. See Lu Yufeng (陆宇峰) *Wangluo Gonggong Lingyu De Falü Yulun: Yiyi Yu Xiandu—Yi “Weibo Shang De Xiaohé An” Weili* (网络公共领域的法律舆论: 意义与限度—以“微博上的小河案”为例) [Legal Public Opinion in the Internet Domain: Significance and Limitations—Taking “Small River Case on Weibo” as An Case], 1 SHEHUI KEXUE YANJIU (社会科学研究) [SOCIAL SCIENCE RESEARCH] 1, 1–9 (2014).

9. See Yang Xuelin (杨学林), Lun Sike Pai Lüshi (论死磕派律师) [On Sīkē Lawyers], SOHU BLOG (Apr. 10, 2014), <https://cmcn.org/archives/2855> [<https://perma.cc/BVU5-JPC8>].

10. See Li Li, *High Rates of Prosecution and Conviction in China: The Use of Passive Coping Strategies*, 42 INT’L. J. L. CRIME & JUST. 271, 274 (2014) (noting conviction rates between 98.98% to 99.85% from 2000 to 2007); see also SAFEGUARD DEFENDERS, PRESUMED GUILTY: A BRIEFING ON DATA CONCERNING ARRESTS, PROSECUTIONS, AND TRIALS IN CHINA 2013–2020, 5–6 (2021) (reporting conviction rates between 98.97% and 99.96% from 1984 to 2020).

11. See generally Hualing Fu, *When Lawyers Are Prosecuted: The Struggle of a Profession in Transition*, 2 J. COMP. L. 95 (2007); Yanfei Ran, *When Chinese Criminal Defense Lawyers Become the Criminals*, 32 FORDHAM INT’L. L. J. 988 (2009); see also Sida Liu & Terence C. Halliday, *Political Liberalism and Political Embeddedness: Understanding Politics in the Work of Chinese Criminal Defense Lawyers*, 45 LAW & SOC. REV. 831, 854 (2011) (noting that, compared with other fields, criminal defense in particular is a solo field because of its difficulties and risks).

12. See, e.g., Southern Weekend (南方周末), Southern Metropolis Daily (南方都市报), South Reviews (南风窗), China Youth Daily (中国青年报), Xiaoxiang Morning Herald (潇湘晨报), The Paper (澎湃新闻), The Beijing News (新京报), Global Times (环球时报), People’s Daily (人民日报), and The Beijing Times (京华时报).

13. Interviews #1, #2, #3, #5, #6, #7 (on file with author) (noting that the defendants are mainly those who are innocent or who have been tortured).

14. See Liang Yan (梁言), *Sike Pai Lüshi “Ke” chu Yige Fazhi Zhongguo* (死磕派律师“磕”出一个法治中国?) [Sīkē Lawyers Try to Realize the Rule of Law in China by Sīkē?], ZHENGYI WANG (正义网) [JUSTICE

of doubt, most media reports spoke highly of Sīkē lawyers.<sup>15</sup> Some officials privately and publicly affirmed the positive role of Sīkē lawyers.<sup>16</sup>

However, on July 9, 2015, a nationwide crackdown took place, targeting human rights lawyers, activists, and other perceived government critics.<sup>17</sup> It involved 276 people who were detained, arrested, or invited to talk with police or national security officers; 241 of them were released shortly.<sup>18</sup> Among them, eighteen people, including twelve lawyers, were arrested or placed under residential surveillance. 124 lawyers were briefly detained to talk with officials, after which most people were released.<sup>19</sup> Four lawyers were convicted for subversion of state power.<sup>20</sup> International media and scholars began to pay close attention to the crackdown.<sup>21</sup>

WEB] (Apr. 24, 2013), <https://news.ifeng.com/opinion/special/sikelvshi/> [<https://perma.cc/U6YG-TDTE>].

15. See, e.g., Editorial, *Beihai Lǐshì Tuan Wei Shuí Er Zhàn* (北海律师团为谁而战) [Who is North Sea Lawyers Group Fighting For?], JINGHUA ZHOUKAN (京华周刊) [THE BEIJING WEEKLY] (Aug. 16, 2011); Li Jing (李靖), *Changshu Douou An Gaipan Beibou Zhi Kongbian Aozhan: Lǐshì Ziwei Baotuan* (常熟斗殴案改判背后之控辩鏖战: 律师团自卫抱团) [The Fierce Battle between the Prosecution and the Defense behind the Change of Sentence in the Changshu Case: The Lawyers Teamed up in Self-defense], JINGHUA SHIBAO (京华时报) [THE BEIJING TIMES] (Apr. 13, 2012); Editorial, *Beihai Lǐshì An Shengli, FaLǐ Jiaozhen de Yihui* (北海律师案胜利, 法律较真的一回) [Victory in the North Sea Lawyer Case, Serious about the Law for Once], NANFANG DUSHI BAO (南方都市报) [SOUTHERN METROPOLIS DAILY] (Mar. 16, 2013); Xia Zhenglin (夏正林), Opinion, *Fazhi Zhongguo Xuyao Lǐshì Sike Er Fei Zuo Qianke* (法治中国, 需要律师死磕而非做掮客) [The Rule of Law in China Needs Lawyers to 'Sike' and Not Be Brokers], GUANGZHOU RIBAO (广州日报) [GUANGZHOU DAILY] (Sept. 11, 2014).

16. Interviews #1, #2, & #7 (on file with author) (noting that several judicial officials texted to praise their defense at trial; some officials praised them in person). See, e.g., Wu Qingbao (吴庆宝), *Faguan Buyao Yu Lǐshì Gegiang Duihua* (法官不要与律师隔墙对话) [Judges Don't Talk to Lawyers Over Walls], [GLOBAL TIMES] (June 26, 2013).

17. The "709 Crackdown" is a national wide crackdown on rights activists. See China Human Rights Lawyers Concern Group (中国维权律师关注组), <https://www.voachinese.com/a/china-crackdown-human-rights-lawyers-20150714/2860931.html> [<https://perma.cc/YZ9X-3S3P>] (listing individuals affected by the crackdown); see also John Sudworth, *Wang Quanzhang: The Lawyer Who Simply Vanished*, BBC NEWS (May 22, 2017), <https://www.bbc.com/news/blogs-china-blog-39974953> [<https://perma.cc/UQP6-PDPP>]. Most interviewees avoid talking about this event, saying it is too sensitive.

18. China Human Rights Lawyers Concern Group, *supra* note 17.

19. China Human Rights Lawyers Concern Group, *supra* note 17.

20. The four convicted lawyers are: Zhou Shifeng; on August 4, 2016, the Tianjin No. 2 Intermediate People's Court sentenced Zhou to seven years in prison and deprived him of political rights for five years. [https://www.spp.gov.cn/zd gz/201608/t20160805\\_161480.shtml](https://www.spp.gov.cn/zd gz/201608/t20160805_161480.shtml) [<https://perma.cc/8GAJ-HRJM>]; Li Heping; on April 28, 2017, a Tianjin court convicted Li of "subverting state power" and sentenced him to a three-year probation; <https://www.hrw.org/zh-hans/news/2017/05/01/303104> [<https://perma.cc/AFS4-9K3Z>]; Wang Quanzhang; on January 28, 2019, the Tianjin No. 2 Intermediate People's Court sentenced Wang to four and a half years in prison and deprived him of political rights for five years for "subverting state power"; <https://www.hrw.org/zh-hans/news/2020/04/03/340365> [<https://perma.cc/3ESM-NZLZ>]; Xie Yang; on December 26, 2017, the Changsha Intermediate People's Court convicted human rights lawyer Xie Yang of "inciting subversion of state power," but exempted him from criminal punishment; <https://www.frontlinedefenders.org/zh/case/case-history-xie-yang> [<https://perma.cc/78UU-WJ9Q>]; see also *Detained Chinese Lawyers Admit Guilt in Disorder Charges—State Media*, REUTERS (July 24, 2015), <https://www.reuters.com/article/uk-china-rights-lawyer/detained-chinese-lawyers-admit-guilt-in-disorder-charges-state-media-idUKKCN0PT04120150724> [<https://perma.cc/VHT8-D3AW>]; David Green, *Chinese Rights Lawyer Fires His Own State—Appointed Lawyer in A Dramatic Court Appearance*, LOS ANGELES TIMES (Dec. 26, 2018), <https://www.latimes.com/world/asia/la-fg-china-rights-lawyer-20181226-story.html> [<https://perma.cc/SUE7-X4TJ>].

21. See *Gagging the Lawyers: China's Crackdown on Human Rights Lawyers and Implications for U.S.-China Relations: Hearing Before the Congressional-Executive Commission on China*, 115th Cong. 7–10 (2017) ("a statement of Terence Halliday described the ideals of these lawyers. Rights activists Teng Biao said, 'Dozens of lawyers were severely tortured, including beatings, electric shocks, sleep deprivation, death threats . . . and so on.'").

Browsing the list shows that the “709 Crackdown” targeted activists, not Sīkē lawyers.<sup>22</sup> Most Sīkē lawyers have denied that they are human rights lawyers since 2010, and they deliberately keep a distance from those activists.<sup>23</sup> However, official media reported that the convicted lawyers were “a handful of Sīkē lawyers” who were subverting the rule of law.<sup>24</sup> There are two explanations for this mismatch. One is that the authority wrongly matched the label of Sīkē lawyers with the corresponding group. The other is that the government intentionally took this opportunity to publicly discredit this label, causing a chilling effect on Sīkē lawyers. After all, the label quickly disappeared from media reports. From “right-fighters” to “troublemakers,” there had never been such a time of so much simultaneous glory and controversy in the history of Chinese criminal defense lawyers.

Research on Sīkē lawyers remains limited and often misunderstood due to the complexity of the subject itself. In China, stringent controls on speech make this a particularly sensitive topic, deterring many scholars from engaging with it. Beyond mainland China, there are only a handful of studies on Sīkē lawyers.<sup>25</sup> Furthermore, censorship and restricted access have led to the retroactive deletion of many news reports, articles, blogs, and other online content since 2017, exacerbating the scarcity of information and increasing barriers to research. Most existing literature focuses on the 709 crackdowns, attributing the repression of human rights activists to the authorities, yet fails to explore the unique origins and evolution of Sīkē lawyers. The Sīkē lawyers are often misidentified as general human rights or Weiquan (rights-protection) lawyers.

Although some scholars have recognized the distinctiveness of Sīkē lawyers, the absence of in-depth and systematic analysis has obscured the significance of the Sīkē lawyer movement. Notable scholars like Fu have identified Sīkē lawyers as a distinct category within human rights lawyers,<sup>26</sup> while Li has placed them within the circle of rights-protection lawyers.<sup>27</sup> Elsewhere, comparisons by Moliterno and Lan have aligned Sīkē lawyers with U.S. civil rights cause lawyers.<sup>28</sup> Post-crackdown, the study of human rights lawyers has stalled,<sup>29</sup>

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22. China Human Rights Lawyers Concern Group, *supra* note 17.

23. Interviews #1, #8, & #9 (on file with author) (noting that they intentionally keep a distance from some human rights lawyers and rights-protection lawyers to avoid political sensitivity); Ye Zhusheng, *supra* note 4 (Many human rights lawyers and rights activists signed up for the conferences organized by Sīkē lawyers. However, Sīkē lawyers did not send invitations to these lawyers.).

24. See CCTV New Report on July 19, 2015 (broadcast).

25. See, e.g., Fu, *supra* note 3, at 554–555, 560, 562–563; Moliterno & Lan, *supra* note 3, at 129–130; Li, *supra* note 3, at 128; see generally Liu, *supra* note 5 (Liu did not explicitly use the term Sīkē lawyers, but the collective action among criminal defense lawyers that he examines involves the same group of lawyers).

26. See Fu, *supra* note 3, at 560, 562–563 (pointing out that Sīkē or die-hard lawyers are different from human rights lawyers in various aspects and summarize some distinctive features of the Sīkē lawyers); see also Hualing Fu & Han Zhu, *After the July 9 (709) Crackdown: The Future of Human Rights Lawyering*, 41 *FORDHAM INT'L L. J.* 1135, 1163, 1149 (2018).

27. See Li, *supra* note 3, at 128.

28. See Moliterno & Lan, *supra* note 3 (discussing the similarities that they both surpass the traditional practice methods and face the risk of being accused; the difference lies in the different legal environments they are in).

29. See Fu & Zhu, *supra* note 26; see also Eva Pils, *The Party's Turn to Public Repression: An Analysis of the “709” Crackdown on Human Rights Lawyers in China*, 3 *CHINA L. & SOC'Y REV.* 1, 35 (2018).



with increased surveillance leading to some lawyers being convicted or ceasing to represent cases.<sup>30</sup> Some scholars have shifted their focus to state-adjacent lawyers, aiming to uncover the positive roles these lawyers might play within the system.<sup>31</sup> However, in the middle ground between activists and state-adjacent lawyers, the ongoing narrative of most Sīkē lawyers—what happened to them and what they are currently doing—remains largely unexplored.

Discussing Sīkē lawyers in the discourse of human rights lawyers obscures their uniqueness. Such discourse overlooks that many Sīkē lawyers are still actively fighting for criminal justice after the “709 crackdown.” This research aims to fill this gap by focusing on the survival and ongoing activities of Sīkē lawyers from 2015 to 2022. By documenting and analyzing their strategies and adaptations, this study will provide deeper insights into how defense lawyers can effectively pursue legal mobilization, protest, and reform in China. This investigation will not only enrich academic discourse but also offer a valuable framework for navigating and influencing legal systems under restrictive political conditions, thereby contributing to a broader understanding of the dynamics of legal resistance and resilience in authoritarian contexts. This research is based on interviews, participatory observation, online observation, newspapers, online posts, blogs, and articles.<sup>32</sup> From 2014 to 2022, the author conducted eighty-one in-depth interviews, among which there are: forty-three interviews of Sīkē lawyers, twenty-one judges, seven procurators, five police officers, and five other judicial officials. The author worked with a leading Sīkē lawyer from 2014 to 2015 and observed the evolution of this group from the inside. The lawyers were identified by recommendations from several leading Sīkē lawyers and journalists.<sup>33</sup> It used the snowball sampling technique. Other interviewees are judicial officials who were randomly chosen from different levels of the ladder of judicial authority.<sup>34</sup> What’s more, the author conducted participatory observations of five cases represented by leading Sīkē lawyers.<sup>35</sup> In this way, the author witnessed the lawyers’ strategy discussions, court hearings, trials, and out-of-court meetings with officials, clients, scholars, and

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30. See generally BIDDULPH, SARAH, AND JOSHUA ROSENZWEIG, EDS. *HANDBOOK ON HUMAN RIGHTS IN CHINA* (2019); see also Potter, Pitman B, *Human Rights in China: Resisting Orthodoxy*, in *THE ROUTLEDGE HISTORY OF HUMAN RIGHTS*, 298–315 (Jean Quataert & Lora Wildenthal eds, 2019); EVA PILS, *HUMAN RIGHTS IN CHINA: A SOCIAL PRACTICE IN THE SHADOWS OF AUTHORITARIANISM* (2017).

31. See, e.g., Lawrence J. Liu & Rachel E. Stern, *State-Adjacent Professionals: How Chinese Lawyers Participate in Political Life*, 247 *CHINA Q.* 793, 797–98 (2021).

32. From 2014 to 2017, the author archived relevant important online articles, Weibo posts and media reports.

33. During the rise of Sīkē lawyers, several journalists interviewed most of the leading Sīkē lawyers.

34. Judges were interviewed from various levels of courts, ranging from basic to higher-level courts. The procurators represented different tiers, from district-level to higher-level procuratorates. Police officers came from local district stations up to the municipal public safety bureau.

35. Case #1 was observed for one month in 2014; Case #2 was observed for two weeks in 2018; Case #3 was observed for one week in 2022; Case #4 was observed for two weeks in 2022; Case #5 was observed for two weeks in 2022.

journalists. Besides, the author conducted online observations of five other cases based on trial transcripts and videotapes from 2018 to 2022.<sup>36</sup>

This Article focuses on the leading and active Sīkē lawyers. It identifies them with both internal and external perspectives. The internal perspective comes from direct interviews with Sīkē lawyers, offering insights into their personal experiences and strategies. The external perspective is gained from public sources such as court judgments, news reports, and online articles, providing a broader view of the lawyers' roles and the public responses to their actions. First, it looks at the landmark cases through preliminary interviews with several leading Sīkē lawyers. Second, a list of lawyers involved in these cases is obtained by reviewing court judgments, news reports, and online articles. Third, the author identifies Sīkē lawyers through further interviews and cross-validation. The list of leading and active Sīkē lawyers is finalized by comparing the three types of sources. The first generation of Sīkē lawyers plays a crucial role in the movement, taking part in any of the five landmark cases.<sup>37</sup> Many lawyers started to Sīkē in the Small River case in 2012.<sup>38</sup> Others joined the group in the Liu Yibai case in 2013.<sup>39</sup> The estimated number of Sīkē lawyers is about 120.<sup>40</sup> About twenty lawyers participated in more than two landmark cases, and several lawyers participated in one case but became very active, all of whom are active Sīkē lawyers. At least ten lawyers were known as the leading Sīkē lawyers, who were the initiators, organizers, and key members of the lawyers' groups. After the crackdown, many Sīkē lawyers turned low profile, but leading Sīkē lawyers continued to fight. The active and leading lawyers are the most important representatives of Sīkē lawyers. They and their followers are easy to locate. Some are recognized by others and self-identified as Sīkē lawyers. They are the center of this study.

Part I of this Article provides an overview of the emergence of the Sīkē lawyers, detailing the contexts in which they operate and the various challenges

36. Case #6, based on notes shared by lawyers in 2018; Case #7, based on the video tapes of the trial published online in 2020; Case #8, based on notes shared by lawyers in 2020; Cases #9 & #10, based on public transcripts in 2022.

37. Interviews #1, #2, #3, #5, #7, #34, #37, #38 & #40 (on file with author) (confirming that the five most important cases during the rise of Sīkē lawyers are the Li Zhuang case, the North Sea case, the Changshu case, the Small River case, and the Liu Yibai case).

38. Interviews #1, #2, #3, #5, #7 & #38 (on file with author) (noting that more than one hundred defense lawyers joined the Sīkē lawyers' group in this case).

39. Liu Yibai Case (刘义柏案) was represented by a group of forty-eight lawyers in early 2013. Liu and the other thirty-four defendants were accused of gangster crimes. Lawyers revealed serious torture in this case. The court excluded twenty-two confessions from ten defendants but finally made a guilty verdict. See *Liu Yibai Deng Ren Shebei An Ersben Xuanpan* (刘义柏等人涉黑案二审宣判) [*Liu Yibo et al. Sentenced in Second Instance of Gangster Crime*], Loudishi Zhongji Renmin Fayuan Guanfang Weibo (娄底市中级人民法院官方微博) [Loudi Intermediate People's Court Official Weibo] (Nov. 14, 2014), [https://weibo.com/p/1001603776837099625836?pids\\_Pl\\_Offici\\_al\\_Card\\_MixFee\\_dv6\\_\\_4&feed\\_filter=2](https://weibo.com/p/1001603776837099625836?pids_Pl_Offici_al_Card_MixFee_dv6__4&feed_filter=2) [https://perma.cc/D5CU-5P3D].

40. The number includes all the first generation of Sīkē lawyers and their followers who become Sīkē lawyers later. This number is just an estimate and does not represent the entire group, as this group is always changing. Outside of the core group of active Sīkē lawyers, the composition of more peripheral Sīkē lawyers often shifts and fluctuates, demonstrating a high degree of flexibility. Lawyers' strategies often change in response to their assessment of environmental risks—some may abandon Sīkē-style tactics and return to more traditional forms of defense, while others may occasionally join the Sīkē lawyers' collective actions. Therefore, the figure should be interpreted as an optimistic estimate at best.

they face. It sets the stage by highlighting the initial motivations and conditions that led to the rise of this distinct group of defense lawyers.

Part II delves into the survival and resilience of the Sīkē lawyers following the “709 crackdown,” a pivotal moment that intensified scrutiny and risk for human rights activists in China. This section examines why Sīkē lawyers continue to advocate for criminal justice reforms despite potential personal and professional risks. It looks into the personal convictions and broader societal impacts that motivate these lawyers to persist in their endeavors.

Part III explores the core strategies employed by Sīkē lawyers, which are crucial to their enduring resilience. A key strategy involves a balance of “depoliticization” and “politicization”: working within the existing legal framework to advocate for clients while simultaneously pushing for incremental legal and policy changes. This dual approach allows them to navigate the sensitive political landscape effectively. They treat politics as a means to achieve criminal justice, not an end in itself, which distinguishes them from traditional strategic litigators. They can advance reforms without directly confronting authorities by focusing on individual cases and legal arguments rather than overt political activism. This method enables them to address systemic issues subtly and persistently, fostering change within the constraints of the authoritarian context and setting them apart from those who prioritize broader political objectives over specific legal outcomes.

Meanwhile, this section explores the main Sīkē methods, including extrajudicial advocacy through social media, collective action, an emphasis on procedural justice, and forming alliances with other civil society actors. It examines how these methods adapt to various scenarios, demonstrating their flexibility. This Article illustrates a nuanced relationship between criminal defense and politics in China, marking a departure from both political embeddedness and political liberalism.

Part IV analyzes the operational space of the Sīkē lawyers. While this space may appear hidden, ambiguous, and even fluid, it is nonetheless real and crucial for their work. The creation of this space is facilitated by the existing legal framework, triggered by judicial injustices, and widened by the discrepancies between law and practice. It is further shaped by the advocacy of the lawyers themselves and the varying degrees of tolerance by the government. This section emphasizes how Sīkē lawyers navigate and expand this space, continuously adapting to the shifting legal and political environment to advocate for criminal justice and reform.

This Article illustrates that the resilience of the Sīkē lawyers’ movement is rooted in a synergistic interplay of three key elements in legal mobilization: a group of lawyers (the driving force), a space (albeit fuzzy and ever-changing), and strategy (the tactics these lawyers employ in their advocacy). The interaction among these elements showcases how Sīkē lawyers navigate and carve out a dynamic space for legal mobilization in an authoritarian context, focusing initially on the basic rights of lawyers and defendants without a broader strategic plan.



These findings are instructive for researchers examining legal activism in various regimes, suggesting that the appearance, evolving processes, and strategies of legal mobilization in authoritarian contexts differ from those in democratic countries due to the unique legal and political landscapes. The Sīkē lawyers' focus is primarily on achieving justice in individual cases rather than pursuing systemic reform through strategic litigation. They prioritize addressing immediate injustices in specific cases over pushing for broader legal changes. Despite this, their approach has led to long-term impacts by spotlighting the injustices within individual court cases and raising awareness of broader legal deficiencies. The Sīkē lawyers' movement highlights the potential for achieving substantial impacts through targeted individual case advocacy before gradually scaling up to broader systemic challenges. Understanding this context-specific interplay offers a valuable framework for exploring how legal actors can effectively pursue mobilization, protest, and reform in similar environments. This analysis deepens academic discourse and provides practical insights for legal practitioners navigating similar contexts. Therefore, the Sīkē lawyers' movement serves as a vital case study that underscores the potential for legal reform through strategic legal action, highlighting that meaningful change is achievable even in challenging political landscapes by adapting to and interacting with local conditions.

## I. THE RISE OF THE SĪKĒ LAWYERS' MOVEMENT

The rise of the Sīkē lawyers' movement dates back to 2009. The Sīkē lawyers drew inspiration from the Li Zhuang Case in 2010. The North Sea Case, led by a team of twenty lawyers, further fueled the movement in 2011.<sup>41</sup> The Sīkē lawyers then explored various methods to mobilize in numerous cases. One milestone was the Small River Case in 2012, where a group of eighty-eight lawyers participated, attracting over a hundred lawyers.<sup>42</sup> Since 2015, Sīkē lawyers have encountered increasing obstacles, including political backlash, judicial setbacks, and the 709 crackdown. Afterward, Sīkē lawyers receded from the media. However, what has been overlooked is that Sīkē lawyers did not disappear but largely continued to fight for criminal justice in a relatively low-profile way.

### A. Background

There is a remarkable gap between the law and legal practice in China's criminal justice. The Criminal Procedure Law ("CPL") grants the defendant the right to counsel and a fair trial.<sup>43</sup> However, in practice, criminal defense is

41. See Yang Jinzhu (杨金柱), *Beihai Lǚshìtuán 20 Wei Lǚshì Zuìbǒu Queding* (北海律师团20位律师最后确定) [20 Lawyers of the North Sea Lawyers Group are finalized], CAIXIN BOKE (财新博客) [CAIXIN BLOG] (July 20, 2011), <https://chenyouxi.blog.caixin.com/archives/22524> [<https://perma.cc/9JBM-978C>].

42. See Liang Yan, *supra* note 14.

43. Criminal Procedure Law of People's Republic of China, arts. 29, 238, 33–34 (2018) (originally enacted in 1996) (The provision regarding the right to a fair trial is not explicitly listed, but it can be

seen as risky and ineffective.<sup>44</sup> Chinese legal culture puts substantive justice above procedural rights.<sup>45</sup> Since 2004, judicial reform has implicitly shifted to equal emphasis on substantive and procedural justice (实体正义与程序正义并重),<sup>46</sup> but the transformation has been slow. Insufficient judicial independence impairs the possibility of having fair trials. The criminal justice system centers on investigation (以侦查为中心), and the trial is often merely a formality.<sup>47</sup> It is difficult for defense lawyers' opinions to be taken seriously by judges.<sup>48</sup> Some criminal lawyers maintain good relationships with officials to facilitate their practice and attract clients, which implies that even defendants prefer to hire lawyers with good relationships with officials to secure favorable case rulings.<sup>49</sup>

Before the rise of Sīkē lawyers, the story of criminal trials was rarely known to the public. Zealous advocacy was foreign to defense lawyers.<sup>50</sup> Under Chinese law, Chinese lawyers are explicitly expected to not only safeguard "the legitimate rights and interests of clients (维护当事人合法权益)" but also "the correct implementation of the law, social fairness and justice (维护法律正确实施, 维护社会公平和正义)."<sup>51</sup> The law emphasizes that lawyers should prove

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inferred from related articles, such as Article 29 and Article 238. In addition, judicial authorities have consistently emphasized the importance of judicial fairness. This also relates to the legislative habits and phrasing style in Chinese law.)

44. Yang Xuelin, *supra* note 9; *supra* note 11 (discussing various risks); see also Hong Lu and Terance Miethe, *Legal Representation and Criminal Processing in China*, 42 BRIT. J. CRIMINOL. 267, 276 (2002); Ethan Michelson, *Lawyers, Political Embeddedness, and Institutional Continuity in China's Transition from Socialism*, 113 AM. J. SOCIOL. 352, 360 (2007) (discussing the risks and judges' tendency to ignore lawyers' arguments in court hearings).

45. See Hou Xinyi (侯欣一), *Zhongguo Chuantong Shehui Qingshi Chengxufa Yaunin Zai Tan* (中国社会轻视程序法原因再探) [Revisit the Reasons of Contempt for Procedural Law in Chinese Traditional Society], 77 HUADONG ZHENGFA XUEYUAN XUEBAO (华东政法学院学报) [ECUPL J.] 81, 77 (2014).

46. The revision of the Constitution of the People's Republic of China in 2004 added provisions—article 33—on human rights protection, which is seen to have initiated a shift towards equal emphasis on substantive justice and procedural justice.

47. The legal reform began to shift to a "trial-centered judicial system (以审判为中心)" in 2016, but the effectiveness has been doubted. See *Opinions on Advancing the Reform of the Trial-Centered Criminal Procedure System* (2016); see also Luo Sha & Luo Zhengguang (罗沙 & 罗争光), *Cong "Yi Zhencha Wei Zhongxin" Dao "Yi Shenpan Wei Zhongxin"—Xingshi Susong Zhidu Rube Shouwei Gongping Zhengyi Dixian* (从"以侦查为中心"到"以审判为中心"—刑事诉讼制度改革如何守卫公平正义底线) [From "Investigation-centered" to "Trial-centered"—How does the Reform of Criminal Procedure System Safeguard the Bottom Line of Fairness and Justice], XINHUA SHE (新华社) [XINHUA NEWS AGENCY] (Oct. 10, 2016), [http://www.gov.cn/xinwen/2016-10/10/content\\_5116936.htm](http://www.gov.cn/xinwen/2016-10/10/content_5116936.htm) [<https://perma.cc/N82V-ZW7J>].

48. Interviews #61, #64, & #73 (on file with author) (stating that many criminal defense lawyers are not responsible or professional; they are paid to speak for the defendants; their arguments are often unpersuasive). See Michelson, *supra* note 44, at 360.

49. See Sida Liu, *Lawyers, State Officials and Significant Others: Symbiotic Exchange in the Chinese Legal Services Market*, 206 CHINA Q. 276, 284, 291 (2011) (discussing how embedded lawyers try to attract clients by staying in close relationship with officials); see also Liu & Halliday, *supra* note 11, at 834, 852.

50. Interview #1 (on file with author) (One of the leading Sīkē lawyers said, "Before the Li Zhuang case, I had never thought that we could fiercely fight for the rights of the defendants or challenge the judicial officials.").

51. *Law of the People's Republic of China*, art. 2 (2017) (originally enacted in 1966 and revised in 2007).

their cases. But lawyers face many difficulties in conducting investigations.<sup>52</sup> The most serious risk is being convicted of perjury.<sup>53</sup> Thus, most defense lawyers rarely investigate. What's worse, as defense lawyers usually work alone, most of the time, there is no effective remedy when their rights are violated.<sup>54</sup>

The Sīkē lawyers' movement stemmed from a profound longing for justice deeply ingrained in the Chinese legal tradition. The main motivation is to protect the rights of defense lawyers, to establish an independent legal profession, and to foster a strong sense of zealous advocacy. A range of political, juridical, and social factors, such as anti-corruption campaigns, the advocacy of the rule of law, the revision of Criminal Procedural Law, the fight against organized crime, and the boom of online social media, have inadvertently fueled the rise of the Sīkē lawyers' movement.

52. Interviews #21 & #31 (on file with author) (noting that they have difficulties in finding the witnesses, facing the risks of being accused of perjury, among other challenges).

53. Criminal Law of the People's Republic of China, art. 306 (2020) (originally enacted in 1997, this provision pertains to the offense of defense counsel or legal representatives destroying or fabricating evidence, or obstructing witness testimony); see also Terence C. Halliday & Sida Liu, *Birth of a Liberal Moment? Looking through a One-Way Mirror at Lawyers' Defense of Criminal Defendants in China*, in FIGHTING FOR POLITICAL FREEDOM: COMPARATIVE STUDIES OF THE LEGAL COMPLEX AND POLITICAL LIBERALISM 76 (Halliday, T. C., L. Karpik, & M. M. Feeley, eds. 2007); Zhao Bingzhi & Shi Yanan (赵秉志, 时延安), *Bianbu Lushi Zhiye Huomian: Jin Zai Yanqian Haishi Yao Buke Ji — Guanyu Lushi Xingshi Zeren Liang Ge Redian Wenti de Yantao* (辩护律师执业豁免: 近在眼前还是遥不可及——关于律师刑事责任两个热点问题的研讨) [*Defense Lawyers' Professional Immunity: Within Reach or Out of Reach—A Discussion on Two Hot Issues Concerning Lawyers' Criminal Liability*], 7 ZHONGGUO LUSHI (中国律师) [CHINESE LAWYER] 31, 32 (according to statistics from the All China Lawyers Association, in 1995, the association received only a dozen or so rights protection cases reported by local bar associations or individual lawyers; however, by 1997 and 1998, the number had risen to more than 70 cases annually, 80% of which involved allegations of fabrication of evidence or obstruction of testimony); Han Fudong (韩福东), *Lushi Weizheng Zui Youwang Quxiao* (律师伪证罪有望取消) [*The Crime of Lawyer Perjury May Be Abolished*], XINWEN ZHOUKAN (新闻周刊) [NEWSWEEK], Issue 15, (Oct. 1, 2004), <https://news.sina.cn/sa/2004-10-01/detail-ikkncsci4402579.d.html> [<https://perma.cc/B5VD-RYH7>] (noting that The All China Lawyers Association conducted a statistical analysis of 23 cases about lawyers' perjury, finding that in 11 of them, the accused lawyers were either acquitted or the charges were dropped; 6 resulted in guilty verdicts, 1 in exemption from criminal penalty, and 5 cases remained unresolved—the data suggests an error rate exceeding 50%); Wang Lei & Yan Xiaohui (王磊, 闫晓辉), *Lushi Weizheng Xingshi Wenze de Chidu Baowo* (律师伪证刑事问责的尺度把握) [*Grasping the Boundaries of Criminal Liability for Lawyers Committing Perjury*], 7 RENMIN SIFA (人民司法) [PEOPLE'S JUDICIARY] 80, 80–83 (2015) (It notes that between 1997 and 2010, a total of 109 lawyers were prosecuted for the crime of perjury, with only 31 receiving guilty verdicts. The authors argue that the statutory definition of the crime is vague, with the use of elastic and ambiguous terms such as “inducement” making it difficult to clearly distinguish between criminal and non-criminal conduct in the context of investigation by lawyers.).

54. See Liu & Halliday, *supra* note 11, at 854–55 (showing that criminal defense is especially isolating for Chinese lawyers due to its high risks and challenges; nearly two-thirds (64.84%) of the 112 respondents—mostly ordinary practitioners—said they primarily rely on themselves when facing difficulties in the criminal process); Yang Xuelin, *supra* note 9; Interviews #15, #16, #37, & #39 (on file with author) (noting that they work alone in most cases); Interviews #1, #2, #3, & #7 (on file with author) (stating that Sīkē lawyers work in a team for major cases, which is not common in ordinary cases).

### B. Definition of Sīkē Lawyers

The term “Sīkē lawyer” emerged during the Small River case retrial on January 9, 2012, when lawyer Chi Susheng described the need for a tenacious spirit, commonly referred to as “Sīkē” in certain Chinese dialects.<sup>55</sup> The term Sīkē lawyer soon became popular. The endorsements from prominent lawyers and widespread blog readership solidified “Sīkē lawyer” as a term representing defense lawyers who zealously fight for their clients’ rights and justice despite facing severe risks.

In the Chinese domestic context, what makes Sīkē lawyers special compared to other criminal lawyers is that they adopt a professional attitude of zealous advocacy. The term Sīkē lawyers is originally intended to distinguish them from other types of lawyers, such as “perfunctory lawyer (形式派),” “fixer (勾兑派),” and “legalist (法条技术派).”<sup>56</sup> The “perfunctory lawyer” performs their work by routinely participating in necessary proceedings, whose work is superficial and hardly affects the case’s outcome. The “fixers” are politically embedded, trying to build a good relationship with officials to gain merits for their clients and themselves. They often invite officials to dine and drink to maintain relationships. The “legalist” merely focuses on legal arguments.<sup>57</sup>

Chinese criminal trials have been seen as an inquisitorial process or even a show trial, where the lawyers’ existence is merely a formality.<sup>58</sup> Sīkē lawyers bring revolution to this picture. The Sīkē lawyers are distinct from the other three factions of lawyers. They turn to challenge judicial misconduct openly and fiercely. They rejected traditional modes of defense that were mild, cowardly, and hypocritical. Instead of colluding with officials, Sīkē lawyers adopt an approach that is confrontational with judicial officials. In addition to the legal arguments in the routine proceedings, Sīkē lawyers use a variety of methods to influence the outcome of a case.

In the international discourse, the term Sīkē lawyers is used to distinguish them from human rights lawyers and rights-protection lawyers. These lawyers exhibit certain commonalities in motivation and strategy, with some overlap among individuals. However, the differences between them are far more pronounced. Sīkē lawyers’ primary goal is to protect their clients. In contrast,

55. See Ye Zhusheng (叶竹盛), *supra* note 4, at 82–83; Li Meng (李蒙), *Sike Pai Lüshi Shi Zenme Lai De* (死磕派律师是怎么来的) [How did Sike Lawyers Come to Be?] 24 MINZHU YU FAZHI (民主与法制) [DEMOCRACY AND LEGAL SYSTEM] 17, 17–20 (2014) (noting that the term gained wider attention in February 2012 after lawyers like Yang Jinzhu humorously advocated for a formal “Sīkē lawyer” certification; at that time, Yang Jinzhu’s blog had over 30 million reads, with each article typically receiving over a thousand reads by lawyers).

56. Yang Xuelin, *supra* note 9.

57. Interviews #1, #2, #3, #5, #7 & #38 (on file with author) (noting that Sīkē lawyers make much more efforts outside court); [On Sīkē Lawyers], *supra* note 4, at 83.

58. See generally Ping Yu, *Glittery Promise vs. Dismal Reality: The Role of a Criminal Lawyer in the People’s Republic of China After the 1996 Revision of the Criminal Procedure Law*, 35 VAND. J. TRANSNAT’L L. 827 (2002); Rongjie Lan, *A False Promise of Fair Trials: A Case Study of China’s Malleable Criminal Procedure Law*, 27 UCLA PAC. BASIN L. J. 153 (2009); Elisa Nessossi, *Compromising for “Justice”? Criminal Proceedings and the Ethical Quandaries of Chinese Lawyers*, in *COMPARATIVE PERSPECTIVES ON CRIMINAL JUSTICE IN CHINA* (Mike McConville & Eva Pils eds, 2013).

most human rights lawyers, rights-protection lawyers, and cause lawyers strive for collective interests that transcend the individual.<sup>59</sup> Sīkē lawyers also pursue judicial reforms, but it is built upon individual cases. In a leading Sīkē lawyer's view, "[t]he difference is that Sīkē lawyers primarily aim at fighting for their clients and pursuing justice in specific cases, while the idealism of certain human rights lawyers and rights-protection lawyers may inadvertently hurt their clients for bigger goals."<sup>60</sup>

In this Article, the Sīkē lawyer is defined by the Sīkē-style advocacy (死磕式辩护), that is, "a lawyer who makes tit-for-tat protests against the procedural violations of judicial officials, which mostly manifests as fierce confrontations between lawyers and judges."<sup>61</sup> The Sīkē-style advocacy combines the "Sīkē spirits (死磕精神)" with the "Sīkē methods (死磕方式)." Whereas outsiders tend to define Sīkē-style merely by the methods, the Sīkē lawyers believe that the spirit of Sīkē is indispensable.<sup>62</sup> The "Five Can't Spirits" is the earliest version of Sīkē spirits summarized by Sīkē lawyers in 2011, which is "can't be scared away, can't be frightened of being beaten, can't fall when tired, can't collapse in a prolonged fight, [and] can't die from angry."<sup>63</sup> Driven by Sīkē spirits, lawyers developed a series of Sīkē methods. Some are frequently used by most Sīkē lawyers, such as targeting procedural issues, posting disputes on social media, collective action, etc.<sup>64</sup> Some other methods are occasionally used or only used by radical lawyers, such as performance art, signing joint open letters, protests with placards, and hunger strikes, amongst others.<sup>65</sup>

Since Sīkē lawyers often work in groups, they are known to the public as a collective image. However, the tricky thing is that this "group" has no fixed organization or fixed members; instead, it is an invisible and flexible alliance formed around specific cases.<sup>66</sup> When Sīkē lawyers became increasingly popular in 2012, many lawyers started to use this label.<sup>67</sup> Some human rights

59. See CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 4 (Austin Sarat & Stuart Scheingold, eds. 1998).

60. Interviews #1 & #40 (on file with author).

61. Yang Xuelin (杨学林), *supra* note 9 (noting that this definition was put forward by a leading Sīkē lawyer named Yang Xuelin in 2014); Interviews #1, #2, #8, #9, #17, #18, #30, #31, #35 & #38 (on file with author) (pointing out that Yang Xuelin was seen as the spokesperson of Sīkē lawyers; Yang's analysis of the definition and rise of Sīkē lawyers has been widely recognized by lawyers).

62. Interviews #1, #2, #3, #4, #5, #6, #7, #17, #18, #25, #27, #30, #31, #35, #38 & #39 (on file with author) (emphasizing the importance of Sīkē spirits); see Qing Shi (青石), Jiedu Sikepai Lüshi (解读死磕派律师) [Interpretation of Sīkē Lawyer], June 7, 2014, <http://www.taikunlv.com/ruleInfo4/3045.html> [<https://perma.cc/P2YA-SWUA>].

63. See Qian Yang (钱杨), *Sikepai Lüshi Rube Sike* (死磕派律师如何死磕) [How Sīkē Lawyer Sīkē?], REN WU (人物) [PEOPLE] (Mar. 2013), <http://bianhuren.net.cn/wei.php/article/read/aid/3973> [<https://perma.cc/28SM-8E6H>].

64. See Li Meng (李蒙), *supra* note 55, at 17–20.

65. Yang Xuelin (杨学林), *supra* note 9; Interviews #1, #2, #3, #39 (on file with author) (noting that some lawyers use the radical approaches only when other methods are ineffective in a case).

66. Yang Xuelin, *supra* note 9. This is also confirmed by all the interviews of Sīkē lawyers (on file with author).

67. Yang Xuelin, *supra* note 9 (noting that some lawyers label themselves as members of the Sīkē Lawyers, not out of a commitment to protecting their clients' rights, but rather as a means of self-promotion).



lawyers and rights-protection lawyers also claimed to be Sīkē lawyers.<sup>68</sup> Some lawyers are recognized as Sīkē lawyers only by officials or self-assertion.<sup>69</sup> For outsiders, it may not be easy to pinpoint real Sīkē lawyers. To avoid confusion, this study used a combination of internal and external perspectives to identify leading Sīkē lawyers, as described in the introduction.

### C. *An Unplanned Movement*

The Sīkē lawyers' movement is an ongoing process where a group of Chinese criminal defense lawyers has adopted a series of methods, including publicity, collective actions, and protests, to advocate for the rights of lawyers, defendants, and criminal justice. This movement began in 2010. Unlike traditional lawyer movements or social movements, it has several unique features. It wasn't initiated through advanced planning but rather emerged from spontaneous collective efforts in specific cases. The movement is notably dynamic and fluctuates in visibility, suggesting an intermittent presence. Despite this, it maintains significant persistence, a point that will be elaborated on in Part II. While the intensity and scale of this movement might seem modest, its subtle and profound influence could be far-reaching, with a strong intensity in specific contexts.

#### 1. *The Goals of Sīkē Lawyers*

The primary goals of the Sīkē lawyers' movement include three key aspects: to protect the rights of defense lawyers, to safeguard the legitimate interests of their clients, and to achieve a favorable outcome of the case.<sup>70</sup> Some of the indirect objectives are: to increase the independence of the legal

68. Interviews #1, #2, #7, #34, #37, #38 & #40 (some human rights lawyers also call themselves Sīkē lawyers, and some Sīkē lawyers also represent cases related to human rights lawyers).

69. See Guo Jingbo (郭敬波), *Mo Ji Wang Yi "Ke" Chengming* (莫寄望一“磕”成名) [*Do NOT Expect a "Sīkē" to Become Famous*], RENMIN FAYUAN BAO (人民法院报) [PEOPLE'S COURT DAILY] (May 18 2014), [http://rmfyb.chinacourt.org/paper/html/2014-05/18/content\\_82168.htm?div=-1](http://rmfyb.chinacourt.org/paper/html/2014-05/18/content_82168.htm?div=-1) [<https://perma.cc/MDZ3-5XNC>] (this court-affiliated newspaper article categorized the lawyer involved in the Beijing Li's rape case as a Sīkē lawyer and proceeded to issue broad criticisms of the Sīkē group. This prompted strong dissatisfaction from Si Weijiang, a key figure within the Sīkē circle, who argued that the lawyer cited as a representative example was not, in fact, a Sīkē lawyer at all); Si Weijiang (斯伟江), *Guize Gaibian Xiaobe An Huigu* (“围剿”死磕派，只有死磕没有派) [“Encircling” the Sīkē faction—there is only Sīkē, no faction] (May 21, 2014), [https://www.chinaaid.net/2015/07/blog-post\\_31.html](https://www.chinaaid.net/2015/07/blog-post_31.html) [<https://perma.cc/HA5Y-MF7D>] (It points out that the lawyer mentioned in the “Do NOT Expect “Sīkē” to Become Famous” article regarding the Li's case is not the Sīkē lawyer that the public discusses, and it is unlikely that anyone would consider them part of the Sīkē faction. The so-called Sīkē faction cannot be certified, nor can its ranks be cleared, so when judicial authorities identify a lawyer as a Sīkē lawyer, or when a lawyer claims to be part of the faction, their shortcomings are often attributed to the Sīkē faction as a whole. This is the issue with the article in People's Court Daily).

70. See Ye Zhusheng (叶竹盛), *supra* note 4, at 84; Yang Xuelin, *supra* note 9; Li Meng (李蒙), *Sike Shenme* (死磕什么?) [*Sike What?*], 24 MINZHU YU FAZHI (民主与法制) [DEMOCRACY & LEGAL SYSTEM] 21, 24 (2014).

profession, to advance the reform of the criminal justice system, and to promote the rule of law.<sup>71</sup>

Initially, Sīkē lawyers united with the objective of protecting their peers, striving to prevent unjust arrests and accusations, and creating a safer working environment for defense lawyers.<sup>72</sup> Incidents like the Li Zhuang case and the North Sea case served as stark reminders of the potential dangers of providing criminal defense.<sup>73</sup> Both cases involved lawyers being arrested or charged with perjury in the course of their representation in criminal cases. The arrest of lawyers while performing their duties sparked a sense of urgency and solidarity within the lawyers' community, driving them to band together in defense of the basic rights of lawyers.<sup>74</sup>

When Sīkē lawyers fight for their rights to practice law, they simultaneously advocate for their clients' interests. The rights to meet clients, access case files, and collect evidence are not only lawyers' rights but also essential in defending the accused. Moreover, Sīkē lawyers have tried to invigorate various procedural rights legally accorded to defendants, including the right to a fair and public trial, the right to confrontation, and the application of the exclusionary rule.<sup>75</sup> While these rights are enshrined in the Criminal Procedure Law, they often remain theoretical. Through their advocacy, Sīkē lawyers aim to make these rights a reality in the judicial process.

Securing a favorable verdict is the goal of protecting client interests. Sīkē lawyers, therefore, employ a rigorous yet flexible strategy, balancing fierce courtroom advocacy with strategic compromises as needed. Even the notably radical Sīkē lawyer Yang Jinzhu demonstrates pragmatism. For example, while Yang initially criticized the judiciary publicly in one case, he later opted for silence online after learning the judiciary had made concessions and sought to preserve its image.<sup>76</sup> This strategic shift, prompted by a desire to protect client interests, underscores the adaptability of Sīkē lawyers. Recognizing that Sīkē lawyers are, first and foremost, dedicated legal professionals, their primary aim is to secure the best possible outcomes in their cases.

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71. See Yang Xuelin (杨学林), *Woshi Rube Bianwei Sike Lishi de* (我是如何变为死磕律师的) [*How I Became a Sike Lawyer*], SOHU BLOG (July 19, 2015), [https://www.sohu.com/a/23343222\\_118779](https://www.sohu.com/a/23343222_118779) [<https://perma.cc/TK3C-KMPN>] (this online article features an interview with Yang Xuelin by Law House, where he mentioned the goal of driving progress in the rule of law through specific cases); Zhou Ze (周泽), *Yige Xingbian Lishi de Tanbai* (一个刑辩律师的坦白) ["Confessions" of A Criminal Defense Lawyer] (Nov. 15, 2021), <https://mp.weixin.qq.com/s/tVMl2LKIVcGxT28DtxI3Rg> [<https://perma.cc/GDY8-XPYS>] (in this autobiographical article, Zhou, a key Sīkē lawyer, explains that because criminal defense involves citizens' lives, freedom, and dignity—and even more importantly, the fundamental principles of the rule of law and human rights—this is why his focus has completely shifted to this field).

72. Li Meng (李蒙), *supra* note 70, at 22.

73. See Interviews #1, #2, #3, #4, #5, #6, #7, #17 & #39 (on file with author).

74. Yang Xuelin (杨学林), *supra* note 9.

75. Qian Yang (钱杨), *supra* note 63.

76. See Interviews #1, #2, #3, #4, #5, #6, #7 & #17 (on file with author).

## 2. *The Flourishing of the Sīkē Lawyers' Movement*

In 2009, the case of Li Zhuang, who was accused of inciting witness perjury in a high-profile criminal case, captured national attention.<sup>77</sup> This case provided criminal defense lawyers with two significant insights. Firstly, it highlighted the grave risks associated with their practice, leading to a wider consensus and solidarity within the community of defense lawyers. Secondly, it prompted criminal defense lawyers to explore spaces for collective action and diversified strategies, such as publicity. Li Zhuang's lawyer, Chen Youxi, adopted methods like publicizing on the Internet and organizing teams of experts to garner public support for the case. These strategies not only enriched the defense lawyers' toolbox but also broadened their strategic thinking in advocacy.<sup>78</sup>

Soon after, the first generation of Sīkē lawyers emerged in the North Sea case. In 2011, four lawyers were arrested while investigating a murder case in the North Sea City.<sup>79</sup> Yang Jinzhu, a lawyer in Hunan province, learned the news and posted the case on his blog.<sup>80</sup> Shortly after, dozens of lawyers across the country volunteered to provide legal aid.<sup>81</sup> Twenty lawyers formed the North Sea Lawyers Group (北海律师团).<sup>82</sup> They started to work together but faced various obstacles, such as being insulted near the detention center and beaten by unknown persons in front of the courthouse. They protested, posted the incidents online, held a press conference in Beijing, and launched an online fundraiser and received 750,000 yuan.<sup>83</sup> Several Provincial Bar Associations expressed support for these lawyers. At trial, lawyers argued fiercely with the procurators and judges, scrutinized the evidence, and applied

77. Yang Xuelin (杨学林), *supra* note 9 (It describes how, in 2005, Zhejiang, in an environmental case caused by group events, many farmers were arrested. Ten Beijing lawyers went to provide legal aid. The first conflicts were the challenge of the jurisdiction of the case; all lawyers refused to comply with the wrong jurisdiction. The results of were success that the higher court designated the case to another court.).

78. See Interviews #1, #2, #3 & #7 (on file with author) (defense lawyers began to realize that they could confront judicial officials and publicize the case to seek public support); [On Sīkē Lawyers], *supra* note 4, at 84; Yang Xuelin, *supra* note 9.

79. See Wang Xing (王兴), *Beihai An Dashi Quanlan* (北海案大事全览) [Overview of the Major Events in North Sea Case], [SINA BLOG] (Feb. 4, 2013), <https://chinadigitaltimes.net/chinese/278120.html> [<https://perma.cc/G92A-3EZE>] (It reports that in Aug. 2010, four defendants were charged with murder. Lawyer Yang Zaixin's client told him, "I was beaten by the police." Yang and other lawyers started to investigate and interview witnesses. In June 2011, the four lawyers and two witnesses were detained for suspicion of obstruction of witnesses.).

80. Interviews #1, #38 & #40 (on file with author) (It recalls that Yang Jinzhu's blog was one of the three most influential websites among Chinese defense lawyers around 2010. The two others are the personal websites of lawyer Chen Youxi and lawyer Chen Guangwu "Chenguang Zhai." Many defense lawyers waited for their updates every day.).

81. Interviews #1, #2 & #29 (on file with author) (It recalls that many of these lawyers are not familiar with each other. They either met once or never before. Some went there when they saw the blog. Some others were called by other lawyers.).

82. Yang Jinzhu, *supra* note 41.

83. See Zhou Ze (周泽), *Beihai Lǐshítuán Cǒukuanwen* (北海律师团筹款文) [North Sea Lawyers Group Fundraising Letter], [SINA BLOG] (Sept. 24, 2011), [https://blog.sina.com.cn/s/blog\\_4bdb1fa00102dshi.html](https://blog.sina.com.cn/s/blog_4bdb1fa00102dshi.html) [<https://perma.cc/H2JU-XQ8B>]; see also Li Meng, *supra* note 55, at 19.

for the exclusion of illegal evidence. Finally, on February 6, 2013, all defendants were released after verdicts were announced.<sup>84</sup>

The impact of the Sīkē lawyers is like a stone setting off huge waves in a calm ocean. They opened new horizons in criminal defense, where lawyers are aggressive and proactive, the conflicts in the trial are constantly intensifying, and criminal trials keep making headlines. In 2011, the collective action in the Small River case reached a peak of 120 lawyers under the calling of an online post by a lawyer.<sup>85</sup> The trial was posted on Weibo and lawyers' blogs every day.<sup>86</sup> The term "Sīkē lawyers" was brought up and quickly became popular. Sīkē spirit and Sīkē methods came into shape. More and more lawyers joined the invisible allies of Sīkē lawyers.

As the emergence of Sīkē lawyers is a new phenomenon, the authorities need time to explore regulatory mechanisms. Officials also need to consider the public's support for Sīkē lawyers.<sup>87</sup> It is not wise to go directly against the public opinion. They need to wait for the right opportunity. Besides, during the political transitional period, a significant amount of tolerance was given to Sīkē lawyers. In those three to five years, Sīkē lawyers continued to flourish. From 2012 to 2015, Sīkē lawyers participated in dozens of influential cases<sup>88</sup>

84. Interviews #1, #2 & #29 (on file with author) (All defendants were found not guilty of murder, but four defendants were convicted of picking quarrels and provoking troubles. One defendant got acquittal. At about the same time, all detained lawyers and witnesses were released without being charged.); see also Li Meng, *supra* note 55, at 19; Wang Xing, *supra* note 79; Editorial, *Guangxi Beibai Lushi Weizheng An Xuanpan Lushi Zhengren Jie Huo Ziyou* (广西北海律师伪证案宣判 律师证人皆获自由) [*Beibai Lawyer Perjury Case Verdict: Lawyers and Witnesses All Freed*], SICHUAN NEWS NETWORK (四川新闻网), <http://szlawyer.lsxh.homolo.net/info/a9fce6cbe87b1b480f39ab3940d2fd9> [https://perma.cc/7B3B-KWBT].

85. See Zhou Ze (周泽), *Xunqiu Lishi Tonghanng Zhiyuanshu* (寻求律师同行支援书) [A Letter Asking for Support from Fellow Lawyers], SINA BLOG (Sept. 3, 2011), <https://chinadigitaltimes.net/chinese/176935.html> [https://perma.cc/35LR-N8F3]; see also Zhou Ze (周泽), *Jiu Liqingbong An Bianhu Wenti Da Wangyou Wen* (就黎庆洪案辩护问题答网友问) [Answers to Netizens' Questions about the Defense of Li Qinghong Case], SINA BLOG (Aug. 9, 2012) [on file with author].

86. Lu, *supra* note 8, at 1–9; Interviews #13, #17, #29, #38 & #40 (on file with author).

87. Nanfang Dushi Bao, *supra* note 15 (most media reports spoke highly of Sīkē lawyers); see also Zhao Lei (赵蕾), *Niandu Guanzhu Renwu—Lishituan: Wei Fazhi er Gongming* (年度关注人物—律师团: 为法治而共鸣) ["People of the Year to Watch" Lawyers Group: Resonating for the Rule of Law], SOUTHERN WEEK-END (Dec. 30, 2011), [https://www.infzm.com/contents/67056?source=124&source\\_1=67185](https://www.infzm.com/contents/67056?source=124&source_1=67185) [https://perma.cc/JTX2-79DP].

88. See, e.g., Yang Xuelin, *supra* note 9 (discussing "Wanggang Case (王刚案), in which a dozen lawyers worked together in 2012); Wu Changlong, et al. Bombing Case (吴昌龙等五人爆炸案), U.S.-ASIA L. INST. (May 20, 2022), <https://usali.org/wc-case-archive/wu-changlong-case> [https://perma.cc/L9V2-Y9VK] (summarizing "Wu Changlong Case (吴昌龙案)," in which two lawyers used performance art to send sweet potatoes to judges and broadcast live on Weibo, satirizing judicial injustice; Wu was exonerated in 2013); Zhu Mingyong (朱明勇), *Wuzui Bianhu* (无罪辩护) [INNOCENT DEFENSE] 285 (2015) (discussing "Zhou Wenbin Case (周文斌案)," in which the defense lawyer was kicked out of court four times after fierce argument with the judge); *Guangxi Beibai Jueshi Lishi Jieshu Kangyi Xingdong* (广西北海绝食律师结束抗议行动) [*Guangxi Beibai Hunger Strike Lawyers End Protests*], BBC NEWS CHINESE (May 23, 2013), [https://www.bbc.com/zhongwen/simp/china/2013/05/130523\\_china\\_guangxi\\_lawyers](https://www.bbc.com/zhongwen/simp/china/2013/05/130523_china_guangxi_lawyers) [https://perma.cc/SWC2-JNGK] (reporting that two lawyers went on hunger strike in 2013); *Nian Bin Poisoning Case* (念斌投放危险物质案), U.S.-ASIA L. INST. (May 25, 2022), <https://usali.org/wc-case-archive/nian-bin-case> [https://perma.cc/3Z68-FY72] (describing a group of lawyers working together to promote the redress of this case, and Nian Bin was exonerated in 2014); Jiang Jue, *Legal and Political Rights Advocacy in Wrongful Conviction Death Penalty Cases in China: A Study of the Leping Case of Injustice*, 29 COLUM. J. ASIAN L. 96, 127 (2016) (discussing the "Leping Case" (乐平案) of 2015, in which a dozen

that attracted extensive media coverage, resulting in the tendency of “a single spark starting a prairie fire” (星星之火, 可以燎原).<sup>89</sup>

#### D. Major Obstructions and New Regulations

The rise of Sīkē lawyers triggered a backlash from the authority. Since 2013, the Communist Party of China (“CPC”) has increasingly tightened its control over ideology.<sup>90</sup> The political environment became more hostile to lawyers. Sīkē lawyers have drawn public attention to criminal cases, sparked an awakening of rights, and raised concerns among authorities that lawyers could inspire civil uprisings and destabilize state power. Lawyers’ criticism of judicial officials is perceived as disrespectful, destructive, and exaggerating the dark corners of the judiciary.<sup>91</sup>

Since 2015, Sīkē lawyers have encountered more obstacles, such as political admonitions, judicial frustrations, skepticism from the official media, and criticism from non-Sīkē lawyers. The immediate wave of resistance comes from the courts. Challenging a judge in court may result in a lawyer being warned or expelled.<sup>92</sup> Moreover, Sīkē lawyers frequently received calls or requests for meetings from officials asking for their cooperation.<sup>93</sup> In particular, the “709 crackdown” caused the most serious hindrances to the development of Sīkē

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lawyers held placards in front of the court to protest for 19 days, fighting for the right to read case files; all five petitioners were exonerated); Michael Forsythe, *China Exonerates Man It Executed for Murder in 1995*, N.Y. TIMES (Dec. 2, 2016), <https://www.nytimes.com/2016/12/02/world/asia/china-court-exonerates-innocent-executed.html> [<https://perma.cc/9FG8-GWLF>] (reporting on defense lawyers efforts to promote the redress of the case of Nie Shubin).

89. A Chinese proverb meaning “a single spark can start a prairie fire.” It conveys the idea that small actions or seemingly minor events have the potential to ignite widespread change or inspire significant movements. Often associated with grassroots efforts, this phrase underscores how incremental, localized actions can collectively lead to powerful, transformative outcomes. It originates from a letter written by Mao Zedong to Lin Biao in January 1930. See MAO ZEDONG (毛泽东), 1 SELECTED WORKS OF MAO ZEDONG 94 (People’s Publ’g House 1967).

90. See Xu Jingyue (徐京跃) & Hua Chunyu (华春雨), *Xi Jinping: Yishi Xingtai Gongzuo Shi Dang De Yi Xiang Jidian Zhongyao De Gongzuo* (习近平:意识形态工作是党的一项极端重要的工作) [*Xi Jinping: Ideological Work is an Extremely Important Task of the Party*], XINHUANET (Aug. 20, 2013), [http://www.xinhuanet.com/politics/2013-08/20/c\\_117021464.htm](http://www.xinhuanet.com/politics/2013-08/20/c_117021464.htm) [<https://perma.cc/72R4-KE2K>].

91. Interviews #56, #57, #58, #59, #60, #61, #62, #64, #65, #66, #67, #68, #69, #77, #78 & #81 (on file with author); see also Shen Nianzu (沈念祖), *Fayuan Fuyuanzhang De Yali* (法院副院长们的压力) [*Pressure Felt by Court Vice Presidents*], JINGJI GUANCHAO BAO (经济观察报) [ECONOMIC OBSERVER] (May 19, 2012), <https://finance.sina.cn/sa/2012-05-19/detail-ikftpnxx8046141.d.html?from=wap> [<https://perma.cc/4PDB-L9DT>] (quoting Zhang Jun, vice president of the Supreme People’s Court: “In more cases, due to the lack of fairness in the procedure, or what should be done is not done, which leads to hype by lawyers. . . . The situation caused very few unscrupulous lawyers to sue the court and seriously violated the order of the trial. After it was announced, no one believed the judge, nor the court, but only believed the nonsense of those lawyers”); He Weifang (贺卫方), *Fuyuanzhang Yu Zhenglüishi: Yichang Buduicheng Zhanzheng* (副院长与正律师: 一场不对称战争) [*Vice Presidents of Court Versus Lawyers: An Asymmetric War*], [BiWEEKLY-ARCHIVE] (May 31, 2012), <https://www.rfi.fr/cn/%E4%B8%AD%E5%9B%BD/20120522-%E5%89%AF%E9%99%A2%E9%95%BF%E4%B8%8E%E6%AD%A3%E5%BE%8B%E5%B8%88%E4%BA%89%E4%B8%80%E5%9C%BA%E4%B8%8D%E5%AF%B9%E7%A7%B0%E6%88%98%E4%BA%89>.

92. Interviews #1, #2, #3, #4, #5, #6, #7, #13, #17, #18, #19 & #33 (on file with author) (noting that almost all leading Sīkē lawyers have been kicked out of court at least once; one of them was kicked out of the courtroom about nine times).

93. Interviews #1, #2, #3, #4, #5, #6, #7, #10, #13, #17, #18, #20, #29 & #38 (on file with author).



lawyers.<sup>94</sup> It is regarded as a turning point, marking a significant escalation in the government's efforts to silence dissent.<sup>95</sup>

State media criticism and official warnings represent soft constraints, while the more stringent restrictions on Sīkē lawyers stem from new regulations. Since 2016, the Ministry of Justice ("MOJ"), the Supreme People's Court ("SPC"), the Supreme People's Procuratorate ("SPP"), and the All-China Lawyers Association ("ACLA") have jointly or separately issued a series of regulations on lawyers. They outlaw Sīkē methods, especially extrajudicial advocacy.<sup>96</sup> These regulations restrict lawyers from participating in disruptive public activities or influencing cases improperly, including organizing protests, publicizing cases, or exerting undue public pressure on legal proceedings.<sup>97</sup>

In 2016, the SPC revised the court rules for the first time in thirty-six years, strengthening judges' control over trial proceedings.<sup>98</sup> The new rules authorize judges to enforce measures like item seizure, ejection, fines, and detention.<sup>99</sup> Judges have become more resolute in disciplining lawyers, particularly when they are perceived as overly aggressive and disruptive. While some courts may allow lawyers ample time to present and might accommodate procedural requests, they are less influenced by lawyers' arguments, leading to more stringent court decisions.<sup>100</sup> Thus, Sīkē lawyers face greater challenges in effectively defending and influencing the outcome of their cases.

## II. THE RESILIENCE OF THE SĪKĒ LAWYERS' MOVEMENT

Despite numerous obstacles, most Sīkē lawyers have "survived" the crack-down, meaning they have withstood intense scrutiny, retained their legal status, and continued advocating for criminal justice from 2015 to 2022. This "survival" includes maintaining their professional roles, adapting strategies under heightened scrutiny, and navigating a restrictive political landscape without abandoning their commitment to criminal justice. Despite risks such as surveillance and intimidation, these lawyers remain resilient and active. Although they may be less visible online, their struggle has not diminished

94. Fu & Zhu, *supra* note 26, at 1139.

95. *Gagging the Lawyers*, *supra* note 21; see also Nick Cumming-Bruce, *China's Rights Crack-down Is Called 'Most Severe' Since Tiananmen Square*, N.Y. TIMES (Sept. 5, 2017), <https://www.nytimes.com/2017/09/05/world/asia/china-human-rights-united-nations.html?searchResultPosition=9> [https://perma.cc/2DM8-4L5E].

96. See e.g., Administrative Measures for the Practice of Law by Lawyers, arts. 37–39 (2016 amend); Court Rules of the People's Courts of the People's Republic of China (2016 amend); Measures for the Administration of Law Firms, art. 50 (2016 amend); Administrative Measures for the Practice of Law by Lawyers, arts. 37–38 (2016 amend); Notice of the Ministry of Justice and the All China Lawyers Association on Further Strengthening Lawyer Disciplinary Work (2017); Notice of the All-China Lawyers' Association on Issuing the Rules on the Handling of Criminal Cases by Lawyers (2017).

97. Administrative Measures for the Practice of Law by Lawyers, *supra* note 96, arts. 37–38.

98. Decision of the Supreme People's Court on Amending the Court Rules of the People's Courts (2016).

99. Court Rules of the People's Courts of the People's Republic of China, arts. 19–21 (2016 amend).

100. Interviews #1, #2, #3, #4, #5, #6, #7, #13, #17, #18, #19 & #33 (on file with author).

in practice. The continuity of the Sīkē lawyers' movement is reflected in the stability of Sīkē spirits and the adaptability of Sīkē methods. It includes not only the persistence of the pioneers of the movement but also the impact they have had on the new generation of Sīkē lawyers. Leading Sīkē lawyers attracted followers and built their own small groups. Lawyers' collective action deepens further in certain individual cases.

### A. *The Survival of Sīkē Lawyers*

All Sīkē lawyers have "survived" the 2015 crackdown, and most of them continued to fight for criminal justice in individual cases. Following the "709 crackdown," several human rights lawyers were arrested, charged, and found guilty successively.<sup>101</sup> Most of them have represented cases related to Falun Gong. They were convicted of subversion of state power and received sentences ranging from two to seven years in prison, including probation.<sup>102</sup> Fortunately, none of the Sīkē lawyers have been detained, charged, or subjected to criminal punishment.<sup>103</sup>

Nevertheless, Sīkē lawyers are not unscathed. They face warnings and professional discipline. Many Sīkē lawyers have been summoned to have a conversation with officials from the local branch of the MOJ or the ACLA. Some lawyers, including several leading Sīkē lawyers, were disciplined. For instance, Yang Jinzhu was disbarred in June 2018.<sup>104</sup> Li Jinxing was disbarred in August 2019.<sup>105</sup> In January 2021, Zhou Ze was suspended from practicing for

101. See *supra* note 2 and accompanying text.

102. See, e.g., Javier C. Hernández, *China Frees Wang Yu, Human Rights Lawyer, After Videotaped Confession*, N.Y. TIMES (Aug. 1, 2016), <https://www.nytimes.com/2016/08/02/world/asia/human-rights-lawyer-is-released-in-china-after-videotaped-confession.html> [<https://perma.cc/T85Q-PSGB>] (reporting that Wang Yu was arrested in 2015 and given a suspended 2-year sentence in 2016 on charges of subversion of state power); Javier C. Hernández, *Zhou Shifeng, Chinese Lawyer, Is Sentenced to 7 Years for Subversion*, N.Y. TIMES (Aug. 4, 2016), <https://www.nytimes.com/2016/08/05/world/asia/china-zhou-shifeng-sentence.html> [<https://perma.cc/Y7WC-PHKX>] (reporting that Zhou Shifeng was sentenced to 7 years in prison on charges of SUBVERSION of state power); Alan Wong, *Chinese Rights Lawyer, Li Heping, Gets Suspended Prison Sentence*, N.Y. TIMES (Apr. 28, 2017), <https://www.nytimes.com/2017/04/28/world/asia/chinese-rights-lawyer-li-heping-sentence.html> [<https://perma.cc/NF6J-UGF4>] (reporting that Li Heping was given a suspended 3-year sentence on charges of "subversion of state power"); Chris Buckley, *Activist Confesses to Subversion in Chinese Show Trial*, N.Y. TIMES (Aug. 22, 2017), <https://www.nytimes.com/2017/08/22/world/asia/jian-tianyong-trial-china-activist-human-rights.html?searchResultPosition=2> [<https://perma.cc/BBS4-THFM>] (reporting that Jiang Tianyong plead guilty and was sentenced to 2 years in prison on charges of "inciting subversion of state power"); Chris Buckley, *China Holds Secret Trial for Rights Lawyer After 3 Years in Detention*, N.Y. TIMES (Dec. 26, 2018), <https://www.nytimes.com/2018/12/26/world/asia/china-wang-quanzhang-lawyer-trial.html?searchResultPosition=6> [<https://perma.cc/8Q99-LYSJ>] (reporting that Wang Quanzhang was arrested in 2015 and sentenced to 4.5 years in prison in 2018 on charges of "subversion of state power").

103. This conclusion is based on interviews with Sīkē lawyers (on file with author) and a comprehensive comparison with media reports.

104. Hunan Provincial Department of Justice Administrative Penalty Decision, No. 8 (June 7, 2018).

105. Sifa Xingzheng Jiguan Xingzheng Chufa Juedingshu (司法行政机关行政处罚决定书) [Administrative Penalty Decision], SHANDONG PROVINCIAL DEP'T OF JUSTICE (Aug. 6, 2019) (China); see also Zhang Qianfan (张千帆), *Bie Rang Bang Ren Pingyuan De Lishi Ziji Mengyuan* (别让帮人平冤的律师自己蒙冤) [*Don't Let the Lawyers Who Redress Injustice Be Wronged*], CN.NYTIMES.COM (Aug. 6,

one year.<sup>106</sup> All three of them were sanctioned for attempting to influence the handling of criminal cases improperly. Other than that, the vast majority of Sīkē lawyers are still practicing criminal law as usual.<sup>107</sup>

### B. *The Continuity of Sīkē-style Advocacy*

With stricter regulation of lawyers, the risks of engaging in Sīkē-style advocacy escalated.<sup>108</sup> There was a short period of silence after the “709 crackdown.” Some Sīkē lawyers became very cautious and refrained from using social media. Some other Sīkē lawyers continued to publicize their cases extensively while also criticizing the unlawful behaviors of judicial officials.<sup>109</sup> Several Sīkē lawyers actively supported the arrested lawyers by representing them or signing a joint open letter.<sup>110</sup> Nonetheless, most Sīkē lawyers continue to fight in a low-profile manner.

For instance, in 2018, Xie Liuqing and over sixty other individuals were accused of committing fraud. A total of 108 lawyers from across the country formed a large defense team to defend the defendants in this case. The media exposed the doubts and uncertainties surrounding the case. The second trial of Xie Liuqing’s case lasted for nearly sixty days, setting a record for the longest trial duration in Anhui Province.<sup>111</sup> On February 3, 2021, Xie Liuqing was convicted of fraud by the court and sentenced to thirteen years in prison, along with a fine of ten million yuan. Nineteen other defendants, including Liu Yanfang, were sentenced to varying prison terms ranging from eleven years to three years for fraud. The remaining forty-two defendants were declared innocent according to the law.<sup>112</sup>

2019), <https://cn.nytimes.com/opinion/20190806/too-easy-to-lose-a-law-license-in-china/> [https://perma.cc/K5VF-NPZM].

106. Beijing Chaoyang District Bureau of Justice Administrative Penalty Decision, No. 1 (Jan. 7, 2021).

107. Based on interviews (#8 to #43) (on file with author), the author’s identification of the core group of Sīkē lawyers, and observations of their activity on social media platforms like Weibo and WeChat. It is also worth noting the close-knit connections among these lawyers: if one faces serious disciplinary action—such as a warning, disbarment, or prosecution—news quickly circulates within their community. By combining information from these interviews with insights into this informal communication network, the author’s observations are further substantiated.

108. Rules for Punishment of Lawyers’ Association Members’ Violations, § 7 (2017).

109. Interviews #1, #2, #3, #4, #5, #6, #7, #13, #17, #18, #19 & #33 (on file with author).

110. See, e.g., Xin Lin (忻霖), *Zhou Shifeng An Bianburen Yang Jinzhu Jiu Bianbuquan Shengtao Sijabu Ji Lixie* (周世锋案辩护人杨金柱就辩护权声讨司法部及律协) [Defender Yang Jinzhu in the Zhou Shifeng case Denounces the Ministry of Justice and the Lawyers Association for His Right to Defense], RADIO FREE ASIA (July 19, 2016), <https://www.rfa.org/mandarin/yataibaodao/renquanfazhi/xl3-07192016102137.html> [https://perma.cc/S2PE-53JS] (noting that the leading Sīkē lawyers Yang Jinzhu represented Zhou Shifeng, and Chen Youxi represented Wang Quanzhang).

111. See *Xie Liuqing An 106 Wei Lushi Zucheng Lushi Tiantuan Zhengde 42 Ren Xuangao Wuzui Gou Libai* (谢留卿案: 106位律师组成律师天团, 争得42人宣告无罪, 够厉害) [Xie Liuqing Case: 106 Lawyers Team and 42 Acquittals, Impressive Achievements], [TENCENT NEWS] (Feb. 6, 2021), <https://weibo.com/2259545143/K15BcaUw> [https://perma.cc/HVF7-DFGC].

112. See *Wubu Pangting Ji: Jibian Tingqian Huiyi Baogao Lushi Jianyi Zhongzhi Shenli Cengbao Quanguo Renda* (芜湖旁听记: 激辩庭前会议报告, 律师建议中止审理, 层报全国人大) [Wubu Audience Note: Report on the Pre-Trial Conference, Lawyers Suggest Suspending the Trial, Report to the National People’s Congress],

Sīkē-style advocacy persists in numerous high-profile cases, often involving collective actions by defense lawyers. There are over one-hundred lawyers who worked together in the Xie Liuqin case in 2018, more than thirty-eight lawyers in the Banmeila case in 2019,<sup>113</sup> around fifty-six lawyers in the Sun Dawu case in 2020,<sup>114</sup> a group of fourteen lawyers in the Chen Jianlin case in 2021,<sup>115</sup> around fifty lawyers in the Zhanjiang case in 2022, and nearly twenty lawyers in the Yiyang case in 2022.<sup>116</sup> Many Sīkē methods were used in these cases, including publicity, accusation, and collective actions.

The continuous fighting of Sīkē lawyers is embodied in two battlefields: visible and invisible. On the visible battlefield, the first generation of Sīkē lawyers and their followers play an important role, and they also bear more pressure and risks. On the invisible battlefield, some lawyers from all over the country may cooperate with Sīkē lawyers in individual cases and even use Sīkē methods to defend their clients on their own in specific cases. The invisible team of Sīkē lawyers is the part of the iceberg buried underwater, and its potential power should not be underestimated.

### C. *The Essence and Persistence of Sīkē Spirits*

The Sīkē spirits embody the professional ethos and characteristics distilled by leading Sīkē lawyers for effective Sīkē-style advocacy, including seriousness, bravery, diligence, and optimism. This article does not intend to examine whether all Sīkē lawyers act according to Sīkē spirits, but the leading Sīkē lawyers have demonstrated these traits. Furthermore, the challenges faced in practice indirectly highlight the importance of Sīkē spirits. As a leading Sīkē lawyer said, “Sīkē spirits, before the rule of law is realized, I am afraid it will exist for a long time.”<sup>117</sup>

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SINA WEIBO (Dec. 13, 2021), <https://weibo.com/ttarticle/p/show?id=2309634714274932261502> [https://perma.cc/FY2C-3BU5].

113. See Yulin Ban Meila An Bianbu Lushi Zai Xingdong (玉林斑美拉案 辩护律师在行动) [Yulin Ban Meila Case Defense Lawyers in Action], CIVIL RIGHTS & LIVELIHOOD WATCH (Sept. 24, 2020), <https://msguancha.com/a/lanmu13/2020/0924/20210.html> [https://perma.cc/H5RN-S73K].

114. See Zhou Manqing (周缙卿), Sun Dawu Yisben Huoxing 18 Nian Lushi Cheng Zhengzai Shangs (孙大午一审获刑18年, 律师称正在上诉) [Sun Dawu Sentenced to 18 Years after the First Instance of Trial, Lawyer Says He is Appealing], SINA WEIBO (Aug. 3, 2021), <https://weibo.com/ttarticle/p/show?id=2309634666193767432207> [https://perma.cc/EAS9-7QQE].

115. See Xi Xiangdong (袭祥栋), Guizhou Chen Jianlin Pangting Ji Renzui Renfa Beigaoren Danting Fangong (贵州陈建麟案旁听记 认罪认罚被告人当场翻供) [Guizhou Chen Jianlin Case: The Defendant Pleaded Guilty and Pleaded Guilty and Retracted His Confession on the Spot], SINA WEIBO (July 16, 2021), <https://weibo.com/1190356417/Kp9qUsqya> [https://perma.cc/JM55-R8EP].

116. See Yiyang “414” An Hengyang Kaiting Di Sishi Tian Queshi de Tongbu Luyinluxiang (益阳“414”案衡阳开庭四十天: 缺失的同步录音录像) [Yiyang “414” Case Hengyang Forty Days: The Missing Synchronized Audio and Video Recordings], SINA WEIBO (Aug. 14, 2022), <https://weibo.com/ttarticle/p/show?id=2309404673843561365578> [https://perma.cc/M4QJ-PN2P].

117. See Si Weijiang (斯伟江), Guize Gaibian Xiaobe An Huigu (GAME CHANGING, 规则改变: 小河案回顾) [Rule Change: Small River Case Review], LONG AN LAW FIRM (Sept. 5, 2014), <http://www.longanlaw.com/legals/6239.html/> [https://perma.cc/95YB-TEV2].

### 1. *The Essences of the Sīkē Spirits*

*Brave.* The key feature of Sīkē spirits is the courage to challenge authority. Standing against government officials is a daunting task due to the significant power imbalance.<sup>118</sup> Choosing Sīkē-style advocacy means lawyers must confront immense pressure and risks, including reprimands, ejection from courtrooms, suspension, disbarment, or even criminal conviction. The fact that they chose the path of resistance despite being aware of these risks is a sign of bravery.

*Serious.* Yang Xuelin believes that seriousness is a fundamental quality for lawyers.<sup>119</sup> Sīkē lawyers maintain that they should base their arguments on precise laws and facts. They approach the law with rigor, citing specific articles instead of vaguely referring to “relevant laws.” Understanding the potential consequences of factual errors, they meticulously review case files, communicate with clients, investigate, gather evidence, and diligently prepare case documents.<sup>120</sup>

*Persistent.* Dealing with criminal cases is stressful, and many problems can only be solved by persevering in the fight. For example, lawyers often encounter difficulties in court or when visiting detention centers, especially in complex cases. Sīkē lawyers emphasize the importance of persistence: “When you are struggling until you are about to collapse, your opponent may have fallen. For lawyers handling criminal cases, persistent and dauntless are very important.”<sup>121</sup>

*Diligent.* Sīkē lawyers are expected to demonstrate “outrageous diligence,” a commitment that goes beyond the usual tasks of reviewing files, meeting clients, investigating and collecting evidence, or preparing for arguments. Their diligence also encompasses publicizing the injustice of charges and actively seeking dialogues with prosecutors and judges. “Embracing Sīkē means a lawyer needs to invest five times more effort and ten times of risks in handling the same case.”<sup>122</sup> For instance, in the Small River case, the lawyers not only participated in daily trials but also devoted their evenings to writing comments and articles, resulting in months of minimal sleep.<sup>123</sup>

*Optimistic.* Many Sīkē lawyers are optimistic, believing that their persistent protests may compel judicial officials to reconsider their arguments.

118. He, *supra* note 91.

119. See Yang Xuelin (杨学林), *Wo shi Rube Bianwei Sike Lusbi de?* (我是如何变为死磕律师的) [*How I Became a Sīkē Lawyer*] (July 19, 2015), [https://www.sohu.com/a/23343222\\_118779](https://www.sohu.com/a/23343222_118779) [https://perma.cc/ET8H-Q3AZ].

120. Zhou Ze (周泽), *Yige Xingbian Lusbi de Tanbai* (一个刑辩律师的坦白) [*Confessions of a Criminal Defense Lawyer*], WEIXIN (微信) [WECHAT], <https://mp.weixin.qq.com/s/tVM12LKIVcGxT28Dtx-I3Rg> [https://perma.cc/U3CH-9FPW].

121. See He Bing (何兵), *Chenwen yu Jianyi Xingbian Lüsbi de Liangge Jiben Pinzhi* (沉稳与坚毅, 刑辩律师的两个基本品格) [*The Two Basic Qualities of a Criminal Defense Lawyer: Calmness and Perseverance*], WEIXIN (微信) [WECHAT], [https://mp.weixin.qq.com/s/oOHjF6Gem\\_wclv7CKWMIJg](https://mp.weixin.qq.com/s/oOHjF6Gem_wclv7CKWMIJg) [https://perma.cc/VP9A-7GG8].

122. Yang Xuelin, *supra* note 9.

123. Qing Shi, *supra* note 62.



A prevalent belief among these lawyers is that adhering strictly to the law will help them navigate potential risks.<sup>124</sup> They are not easily disheartened or prone to losing confidence.<sup>125</sup> Despite often facing the dismissal or rejection of their arguments, they steadfastly hold their ground, continually striving for progress.<sup>126</sup>

## 2. *Stability of Personality and Path Dependence*

Sīkē spirit is inseparable from the characteristics of Sīkē lawyers. These character traits usually have considerable stability. Therefore, the spiritual drive of Sīkē lawyers has always existed, and even if there is a brief period of restraint, it will never disappear. They are like a temporarily dormant fire, and there is a possibility that a single spark can start a prairie fire again. What's more, those who still choose to persist after the "709 crackdowns" will be considered more courageous and thus gain the respect of their peers. The lawyers can also see their real comrades through this event, draw lessons from experience, and establish a more reliable and solid team. A campaign strike will indeed easily scare away some fake Sīkē lawyers, and it will deter some people who are already swinging, but it will not extinguish those real Sīkē lawyers.<sup>127</sup>

Part of the reason why Sīkē lawyers insist on continuing to fight is that some Sīkē methods have become a habit, and there is a certain path dependence. Especially when lawyers clearly know that there is a problem with the case, but the moderate resistance is obviously ineffective, they will naturally choose to use the Sīkē methods and vigorous resistance. The more common reliance on some Sīkē approach is to exert pressure on the courts through efforts outside the courtroom, including publicizing the disputes of the case or writing a complaint letter.

Path dependence is not only reflected in the habitual choice of methods by lawyers but also in the expectations of some clients. For example, in some cases, the parties and their family members believe they have been wronged. They will choose Sīkē lawyers and expect those lawyers to engage in Sīkē-style advocacy.<sup>128</sup> Lacking confidence in the administration of justice, they hope to seek support from public opinion by publicizing the grievances of their cases on the Internet.

124. Interviews #1, #2, #3, #4, #5, #6, #7, #21, #22, #29, #30 & #31 (on file with author).

125. Yang Xuelin, *supra* note 9.

126. Qian Yang, *supra* note 63.

127. See VOA *Lianxian Chen Youxi Fawen Piping Sike Liusbi Daodi Shuigai Fansi Le* (VOA连线: 陈有西发文批评“死磕律师”到底谁该反思了?) [VOA Connections: Who Should Reflect on Chen Youxi's Article Criticizing Sike Lawyers?], VOA NEWS (Aug. 2, 2017), <https://www.voachinese.com/a/voaweishi-20170802-connect1-china-lawyer/3969157.html> [<https://perma.cc/VUK6-LF6Q>]; see also Hu Yu (胡育) *Wieshenme Piping Chen Youxi Er Bushi Si Weijiang* (为什么批评陈有西, 而不是斯伟江?) [Why Criticize Chen Youxi and Not Si Weijiang?], WEIXIN (微信) [WECHAT] (June 4, 2020), <https://mp.weixin.qq.com/s/9Bcul2VYaUq4ugjjQyAqOg> [<https://perma.cc/6RQP-3LSE>].

128. Interviews #31 & #40 (on file with author).

#### D. *The Old Icons and New Blood of Sīkē Lawyers*

The continuity of the Sīkē lawyers' movement is not only reflected in the persistence of the "Old Icons" but also in the joining of the "New Blood" of Sīkē lawyers. The leading Sīkē lawyers have cultivated some young lawyers who follow them. From 2009 to 2022, there have been at least three generations of Sīkē lawyers. Most of these young lawyers have obtained good legal education and solid legal knowledge, which has improved the professionalism of the Sīkē lawyers' movement. What's more, under the influence of Sīkē lawyers, three new types of Sīkē lawyers emerged.

##### 1. *The Old Icons of Sīkē Lawyers*

Most leading lawyers openly said that they are Sīkē lawyers, and they are proud of it.<sup>129</sup> After the "709 crackdown," many lawyers became cautious about calling themselves Sīkē lawyers. However, the "Old Icons" of Sīkē lawyers keep fighting. As one leading Sīkē lawyer said,

Although many Sīkē methods are now prohibited or restricted, we are still fighting. For example, when I post the disputes of a case online, it may get censored or deleted. But I will keep making new posts. If we are not allowed to write an open letter, then we will write a complaint letter and send it directly to the relevant authorities.<sup>130</sup>

Many leading Sīkē lawyers fight the same battle with different labels. Before the crackdown, although there were some controversies around the term "Sīkē lawyers," it was generally an honorable nametag. But with the criticism of Sīkē lawyers by the state media right after the crackdown, the negative aspect of the term increased. Most lawyers give up this term for self-protection. During this period, some alternative terms have been used by people to refer to Sīkē lawyers, such as "Serious Lawyers (较真派/较真律师)" "Genuine Defense (真辩律师)" and "Lawyers Who Dare to Speak Up (敢说话的律师)."<sup>131</sup> However, none of the alternatives have the explosive effect of "Sīkē lawyers." Many lawyers still use this term in private settings. Meanwhile, the sensitivity of this term appears to have declined over time. Since 2017, some Sīkē lawyers have begun to pick up the term again and try to restore its original meaning.

Meanwhile, many Sīkē lawyers still fight the same fight in a low-profile way.<sup>132</sup> They still protest, express criticism, and publish relevant information online during their practice. They still fiercely object to judicial officials when the latter disobey the law. For example, Zhou Ze has never stopped posting

129. See Li Meng (李蒙), *Sīkē Shi Yige Paibie Haishi Yige Fangfa* (死磕是一个派别还是一种方法) [*Is Sīkē a Faction or a Method?*], 17 MINZHU YU FAZHİ (民主与法制) [DEMOCRACY & LEGAL SYSTEM] 10, 15 (2014).

130. Interview #26 (on file with author).

131. Yang Jinzhu claimed to be the founder of the Serious Faction lawyers.

132. Interviews #8 to #43 (on file with author), also based on the author's online observations of these lawyers' Weibo accounts.

on Sina Weibo about issues in criminal cases. Many lawyers consider him a benchmark for the boundaries of lawyers' extrajudicial speech.<sup>133</sup> However, on March 19, 2019, his Weibo account was banned.<sup>134</sup> This appears to be an implicit warning to lawyers from the authority. It triggered a group of lawyers to show solidarity with Zhou and protest the ban. Zhou expressed his insistence on speaking up by registering a new account immediately. He also keeps on writing comments on criminal cases.<sup>135</sup> However, the incident indeed led him to heighten the self-censorship of his speech consciously and even unconsciously.<sup>136</sup> It also has a chilling effect on other lawyers.

## 2. Three Generations of *Sikē* Lawyers

*Sikē* lawyers have evolved over at least three generations since the rise in 2010. This categorization is based on the development of *Sikē* lawyers and significant events along the way. The first generation of *Sikē* lawyers promoted the rise of *Sikē* lawyers. They have been active since 2010–2012 and mainly participated in the Li Zhuang case, the North Sea case, the Changshu case, and the Small River case.<sup>137</sup> They are quite experienced defense lawyers, and almost all have been practicing law for at least 10–20 years.<sup>138</sup> Several lawyers owned private law firms. With their accumulated knowledge and experience in criminal cases, these lawyers developed the ability to make well-informed judgments and employ skillful legal tactics. They had a clear understanding of which types of cases were likely to involve injustices and which strategies would be effective—or ineffective—in addressing them. They are the souls of *Sikē* lawyers, and they still play an important role in idols and guidance to this day.<sup>139</sup>

The second generation of lawyers started *Sikē* from 2013 to 2015 after the Small River case and participated in subsequent lawsuits and a series of cases. Most of these lawyers already have more practice experience. They were inspired by the first generation of *Sikē* lawyers and gradually joined

133. Interviews #21, #22, #23, #24 & #40 (on file with author).

134. Online observations of these lawyers' Weibo accounts.

135. See Beizhi "Buzhengdang" Yingxiang Anjian Banli Zhiming Lushi Zhou Ze Ni Bei Tingye Yinian (被指"不正当"影响案件办理, 知名刑事辩护律师周泽拟被停业一年) [Allegedly to Have "Improperly" Influenced the Handling of Cases, Well-known Criminal Defense Lawyer Zhou Ze to be Suspended from Practicing Law for One Year] (Jan. 6, 2021), [https://view.inews.qq.com/k/20210106A0CCSA00?web\\_channel=wap&openApp=false](https://view.inews.qq.com/k/20210106A0CCSA00?web_channel=wap&openApp=false) [<https://perma.cc/E33B-KD54>] (mentioning that Lawyer Zhou posted relevant information on Weibo during the handling of the case and was subsequently punished with a one-year suspension from practice).

136. Interviews #31 & #40 (on file with author).

137. Interviews #1, #2, #3, #5, #7, #34, #37, #38 & #40 (on file with author); Li Meng, *supra* note 55, at 17–19.

138. This general conclusion is based on the public information of the leading lawyers.

139. Li Meng, *supra* note 129, 15 (where Si Weijiang emphasizes that *Sikē* is a spirit—and one that will endure); Wang Haochen (王昊宸), *Zebuo Suo, Wode San Wei Laoshi* (泽博所, 我的三位老师) [*Zebuo Law Firm: My Three Teachers*] (July 4, 2022), [https://mp.weixin.qq.com/s/gwMNCpyuUy9UX0At\\_6xMQ](https://mp.weixin.qq.com/s/gwMNCpyuUy9UX0At_6xMQ) [<https://perma.cc/AJ6H-8LEB>] (a young criminal defense lawyer shared the experiences about how several core figures of the *Sikē* lawyer group have inspired, influenced, and guided him).

the Sīkē-style advocacy.<sup>140</sup> There are already some representatives of the new generation.<sup>141</sup> For instance, Wang Fei has been regarded as a rising star of the second generation of Sīkē lawyers. He came to the stage of Sīkē in the Leping case in 2015. In that case, to fight for the right to read case files, a group of lawyers held a banner in front of the court for 19 days.<sup>142</sup>

The third generation of lawyers started Sīkē after 2016 by following Sīkē lawyers, joining the team of Sīkē lawyers, or cooperating with Sīkē lawyers in specific cases.<sup>143</sup> Most of the third generation Sīkē lawyers are relatively young. Some of them joined the criminal defense practice immediately after graduating from law school. They follow some of the leading Sīkē lawyers and are heavily influenced by Sīkē lawyers in their style of defense. In 2019, the Chen Jianlin case brought together a number of leading Sīkē lawyers from the first, second, and third generations.<sup>144</sup> These lawyers worked together for over a month in the defense of an organized crime case.<sup>145</sup>

### 3. *Three New Types of Sīkē Lawyers*

The stories of Sīkē lawyers are widely known and inspire legal professionals. Notably, in the evolution or transformation of Sīkē lawyers, three new types have emerged: part-time lawyers who are academics who began to adopt Sīkē methods in certain cases and collaborate with Sīkē lawyers, some judges or prosecutors who resigned to become lawyers and adopt Sīkē-style advocacy, and some journalists who once interviewed Sīkē lawyers who transitioned into criminal defense attorneys.<sup>146</sup>

The first is the scholar-type Sīkē lawyers. It is not a new phenomenon that law professors act part-time in criminal cases. However, it is indeed a very rare phenomenon for professors to conduct Sīkē-style advocacy. For example, several professors have actively supported lawyers by speaking on online

140. Interviews #18 & #30 (on file with author).

141. Interviews #8, #9, #10, #15, #16, #20, #27, #30, #31 & #34 (on file with author).

142. See Jiang Jue, *Legal and Political Rights Advocacy in Wrongful Conviction Death Penalty Cases in China: A Study of the Leping Case of Injustice*, 29 COLUM. J. ASIAN L. 96, 127 (2016); see also *Leping Yuanan Shensu Lusbituan Zanli Jiangxi Gaoyuan Mengqian de Shengming* (乐平冤案申诉律师团暂离江西高院门前的声明) [Le Ping Injustice Appeals Lawyer Group Temporarily Leaving the Gate of Jiangxi High People's Court], XINLANG BOKE (新浪博客) [SINA BLOG] (June 10, 2015), [http://www.rclsw.net/2015/chenggon-ganli\\_0610/81.html](http://www.rclsw.net/2015/chenggon-ganli_0610/81.html) [<https://perma.cc/ZH32-EQKC>].

143. Interviews #11, #12, #14, #21, #22, #23 & #25 (on file with author).

144. See *Guizhou Chen Jianlin An Beipian Jukuan de Qiyejia Fan Bei Bancheng Zhaopianfan* (贵州陈建麟案: 被骗巨款的企业家反被办成“诈骗犯”) [Guizhou's Chen Jianlin Case: Entrepreneur Defrauded of Huge Sums of Money Is Turned into a “Fraudster”] WEIXIN (微信) [WECHAT] (June 2, 2021), [https://mp.weixin.qq.com/s/\\_ajK7Tr5SKluFJU\\_vl2c7A](https://mp.weixin.qq.com/s/_ajK7Tr5SKluFJU_vl2c7A) [<https://perma.cc/E4EG-4S63>].

145. Interviews #26, #27, #28, #29, #30, #31 & #33 (on file with author). The daily trial proceedings for the case were documented by attendees and publicly shared on the WeChat platform, [https://mp.weixin.qq.com/s/EvMjkOJDm5nyHD8\\_eRjYlw](https://mp.weixin.qq.com/s/EvMjkOJDm5nyHD8_eRjYlw) [<https://perma.cc/AM4J-ZERP>]. The author has verified the authenticity of these trial notes with the defense lawyers.

146. Interviews #1, #2, #3, #5, #7, #34, #37, #38 & #40 (on file with author) (noting that more scholars specializing in criminal law or criminal procedure law at universities are engaging in part-time criminal defense work).

platforms since the rise of Sīkē lawyers.<sup>147</sup> Soon, two professors began to represent criminal cases more frequently and adopted Sīkē methods, including out-of-court defense, posting on Weibo, collective action, and so on. These two scholar-types Sīkē lawyers have had an important influence on a national scale. First, their status as renowned scholars provides them with additional protection. Second, professors often take their students to participate in cases or observe their handling of cases, which affects some law students. Third, a good relationship is maintained between scholar-type law professors and full-time lawyers, which strengthens the bond between lawyers and scholars and enhances the collaboration among lawyers and scholars.

The second type is the Sīkē lawyers who are former judicial officials. In practice, many lawyers who once worked in the government were inclined to rely on their relations with the judicial departments; their lawyering style was criticized as judicial brokers or political embeddedness.<sup>148</sup> However, under the influence of Sīkē lawyers, some people who resigned from government positions and are dissatisfied with the judicial system are more willing to choose the Sīkē method when they engage in criminal advocacy. Their experience working within the system has given them a clearer understanding of the dark corners of the judicial system. The inside perspective allows them to be more targeted in the case-handling process, and their objections are more powerful when opposing judicial officials.

The third type is the former journalist-type Sīkē lawyers. Lawyers who once worked as journalists usually have interviewed and reported criminal cases many times during their careers as reporters and gradually developed the idea of engaging in the legal practice.<sup>149</sup> This type of Sīkē lawyer is good at communication, expression, and publicity. Not only do they have strong skills in publicizing relevant disputes of the case, but they maintain good relationships with the media. They promote the use of publicity methods and media channels by Sīkē lawyers.

### III. THE CORE STRATEGY: DEPOLITICIZATION AND POLITICIZATION

Based on the observations of this research, the most salient feature of Sīkē lawyers is their pragmatic political approach, which embodies a combination of depoliticization and politicization. On the one hand, Sīkē lawyers try to get rid of politically sensitive areas through “depoliticization,” and on the other hand,

147. Interviews #1, #2, #3, #5, #7, #10, #29, #34 & #40 (on file with author) (for example, there are several professors like Jiang Ping, He Weifang, He Bing, Xu Xin, and Tong Zhiwei).

148. See Zhu Suli (朱苏力), *FaLü Ren Geng Keneng Zai Zhongguo Shehui Chengwei Yige Qianke* (法律人更可能在中国社会成为一个捐客) [*Lawyers are More Likely to Become Brokers in Chinese Society*], SOHU (搜狐) [SOHU], (Dec. 12, 2015) [http://m.sohu.com/n/431011137/?wscrid=32576\\_2](http://m.sohu.com/n/431011137/?wscrid=32576_2) [https://perma.cc/X8HB-4HKR]; see also Liu & Halliday, *supra* note 11; Michelson, *supra* note 44.

149. Interviews #2, #9, #24 & #29 (on file with author) (many journalists who used to report on criminal cases started working as criminal defense lawyers).

they use “political tension” to help the defense of a case.<sup>150</sup> They see politics as a means, not an end. This almost runs counter to the strategy of human rights activists, who always hope to use cases to achieve political goals.<sup>151</sup> With this core strategy in mind, Sīkē lawyers have developed a range of Sīkē methods dedicated to achieving a balance between their own safety and maximizing the rights of the accused. Most Sīkē methods are adaptable, remaining resilient in an increasingly restrictive regulatory environment for lawyers’ conduct. These strategies ensure the Sīkē lawyers’ movement maintains robust sustainability and ongoing potential for growth.

#### A. *Depoliticization as a Strategy for Survival*

Learning from the painful lessons of Chinese human rights lawyers, rights-protection lawyers, and activists, Sīkē lawyers pay great attention to depoliticization. Human rights lawyers are largely caught in the center of a politically sensitive whirlpool because of their political appeals. In their evolution, rights-protection lawyers did not manage to depoliticize, directly challenging political authority and increasingly falling into politically sensitive areas. The vast majority of Sīkē lawyers are on high alert for political sensitivities. A leading Sīkē lawyer said, “I will carefully weigh the political risk of each case and generally do not accept sensitive cases. For example, the case of Zhou Yongkang’s son was too sensitive. Their family members approached me several times, but I still rejected the case.”<sup>152</sup>

The strategy of depoliticization is to carefully prevent oneself from slipping into politically sensitive areas. The basis of depoliticization is recognizing where the boundaries of political sensitivity lie for effective navigation. In China’s legal sphere, while the core of political sensitivity remains relatively stable, the perimeters are often blurred, complicating the establishment of a definitive sensitive zone. For the majority of Chinese legal professionals, the primary sensitive areas—controversial historical events, ethnic minority issues, religious affairs, and political ideology—are fairly identifiable.<sup>153</sup> However, the fringes around these stable cores are variable and fluid. Individual officials have significant latitude in interpreting what constitutes a sensitive area, potentially broadening the scope due to caution or politicizing non-sensitive matters for other motives. Consequently, those outside the system or lacking in political

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150. This strategy shares some similarities with the “de-politicized politics,” but the difference is that Sīkē lawyers refrain from entering the political thicket, and they may confront the judicial officials fiercely. See Ho Peter, *Self-imposed Censorship and De-politicized Politics in China: Green Activism or A Color Revolution?*, in *CHINA’S EMBEDDED ACTIVISM* 38–61 (Ho Peter & Richard Edmonds eds., 2007) (discussing that China’s restrictive political environment prompts social movements to be almost invisible, which they achieve through self-imposed censorship and a conscious de-politicization of environmental politics; activists need to adopt a non-confrontational strategy).

151. See Biao Teng, *Rights Defense and New Citizen’s Movement*, in *HANDBOOK ON HUMAN RIGHTS IN CHINA*, 605–630 (Sarah Biddulph & Joshua Rosenzweig eds., 2019).

152. Interview #1 (on file with author) (noting that Zhou Yongkang, a former senior leader of the CPC, was convicted of corruption and sentenced to life imprisonment in 2014).

153. For example, the Tiananmen Square incident, the Tibet issue, the Xinjiang issue, the Falun Gong issue, etc.



acumen may struggle to accurately identify these boundaries, risking an interpretation that is either too inclusive or too restrictive, thereby increasing their own vulnerability to potential risks.

The first generation of leading Sīkē lawyers generally have more than ten to twenty years of practice experience and have developed a keen understanding of the various risks. Criminal defense lawyers work in the shadows of political sensitivity rather than being mere outside observers. They possess extensive practical knowledge about navigating sensitive realms, derived from a combination of personal observation and reflection abilities, professional experience, peer exchange, and communication with officials, among other sources. In China, a person can become politically sensitive because of his words or actions, and this sensitivity is irreversible and almost impossible to eliminate.<sup>154</sup> Potential sensitivities in criminal cases include certain crimes, certain persons,<sup>155</sup> and certain ways of defending rights.<sup>156</sup> Drawing on their extensive experience, they recognize that politically sensitive cases frequently encompass issues such as subversion of state power, incitement to overthrow the government, spreading false information, unlawful assembly and protest, illegal religious activities, using religion to undermine national security, unauthorized publication of religious materials, and causing disturbances or provoking trouble.<sup>157</sup> Thus, Sīkē lawyers have adopted a range of methods to achieve and maintain “depoliticization.”

First, Sīkē lawyers focus on criminal cases and don’t intentionally pick up politically sensitive cases. If the case involves issues such as high-level political struggles, confrontation with the government, or local mass incidents, they will cautiously shy away from the related cases. In contrast, human rights lawyers deal with various rights violations, especially those that are politically sensitive or prohibited. Rights-protection lawyers focus on moderately sensitive cases, including LGBT rights, labor rights, forced demolition, and environmental issues.<sup>158</sup>

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154. Biao Teng, *supra* note 151, at 618–619 (saying that line between public interest cases and political sensitive cases blurred, making democratic advocacy an inevitable part of the rights defense movement).

155. Interview #33 (on file with author) (“Some lawyers are more politically sensitive than others, depending on the nature and scope of their activism and advocacy.”); Interview #42 (on file with author) (“Lawyers who regularly represent sensitive cases, who have been arrested, prosecuted, or subject to more official restrictions are often considered politically sensitive. Those with whom they communicate and engage may also invite heightened political sensitivities.”).

156. Interview #40 (on file with author) (mentioning that politically sensitive methods include writing public joint letters, protesting with placards, hunger strikes, sit-ins, using foreign media to publicize the case, accepting foreign funding, and similar activities).

157. Interview #13, #15, #18, #19, #29, #31 & #40 (on file with author) (revealing that prosecutions based on the following provisions of the *Criminal Law of the People's Republic of China* tend to involve politically sensitive cases: Subversion of state power (art. 105); Incitement to overthrow the government (art. 104); Dissemination of false information (art. 291); Illegal Assembly, procession, demonstration (art. 291); Picking quarrels and stirring up trouble (art. 293); Illegal religious activities (art. 300); Using religion to undermine national security (art. 306); Illegally distributing religious materials (art. 307); Illegally publishing religious materials (art. 308)).

158. Li Kege, *supra* note 3, at 143; Biao Teng, *supra* note 151, at 622; *see also* Hualing Fu & Richard Cullen, *Climbing the Weiquan Ladder: A Radicalizing Process for Rights-Protection Lawyers*, 205 CHINA Q. 40, 41 (2011).

Second, some Sīkē lawyers publicly express their loyalty to the country, the people, and even the ruling party, clarifying that they do not stand against the state authority. They rarely publicly speak about political demands. Some lawyers quoted the speeches of the top leaders, the party constitution, and the party documents during the trial.<sup>159</sup> This approach aims to ensure their political correctness in the realm of ideology, avoiding the risk of falling victim to malicious political attacks. The sincerity of such political views is not important, as the freedom of thought is beyond scrutiny and cannot be compelled. The mere act of expression already fulfills its function.

Third, the goal of Sīkē lawyers is to achieve criminal justice on a case-by-case basis rather than advocating for systematical judicial or political reforms. Their dedication lies in seeking justice for individual cases and incrementally enhancing the judicial system through their legal practice. By focusing narrowly on legal outcomes in specific instances, they distinguish themselves from proponents of broader political change. Many of them realize that passion for political causes entails personal risks; thus, they consciously choose to concentrate their efforts on the legal domain of individual cases.<sup>160</sup>

Fourth, Sīkē lawyers protest the illegal actions of judicial officials in specific cases rather than attacking the entire government. This is consistent with the logic that misconduct only reflects problems with certain officials rather than flaws in the central government. They hope that the higher-level judges will correct the misconduct of the lower-level judges through supervision to ensure the justice of individual cases and enhance the judiciary's credibility.<sup>161</sup>

Fifth, Sīkē lawyers fight for basic criminal procedural rights, not rights beyond the law. They fight against violations of procedural rights and seek remedies already provided by law rather than seeking to extend rights beyond existing laws.<sup>162</sup> In this sense, they try to close the gap between law and judicial practice, which has strong legitimacy and less political risk.

Sixth, Sīkē lawyers carefully stay away from foreign forces, including foreign media, funds, and NGOs.<sup>163</sup> The Chinese government has strictly guarded

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159. Interview #19 (on file with author).

160. Interview #17 (on file with author).

161. Li Meng, *supra* note 72, at 24 (discusses how Sīkē lawyers use blogs and Weibo to share trial updates and write open letters to higher political officials and judicial leaders, boosting public attention and supervision of judges).

162. Ye Zhusheng, *supra* note 4, at 83 (Yang Xuelin argues that “many people misunderstand the Sīkē lawyers, thinking we’re just causing trouble or making a scene. But everything we do is strictly based on the Criminal Procedure Law—word for word. We’re simply asking the courts to follow the law. If they did, there would be no need for Sīkē at all.”); Yang Xuelin, *supra* note 9 (emphasizing that Sīkē lawyers resort to confrontation primarily because their clients’ litigation rights—or their own rights as defense lawyers—have been infringed upon by state power; moreover, the act of Sīkē remains confined to the scope of safeguarding their clients’ lawful rights).

163. Hualing Fu, *supra* note 3, at 563 (discussing the key differences between Sīkē and weiquan approaches to extra-legal mobilization; Sīkē lawyers generally maintain a professional identity, avoiding politically sensitive groups and foreign contacts—unlike weiquan lawyers); see also JAMIE J. GRUFFYDD-JONES, *HOSTILE FORCES: HOW THE CHINESE COMMUNIST PARTY RESISTS INTERNATIONAL PRESSURE ON HUMAN RIGHTS* 150 (2022) (examining how foreign forces are portrayed as hostile forces by Chinese state media in the context of human rights issues).

against foreign influences to preempt any risk of “color revolutions.”<sup>164</sup> Disclosing information to foreign reports may be seen as “handing a knife to the enemy (给敌人递刀子),” damaging the country’s image rather than solving the problem. Human rights activists have a deep connection with foreign support.<sup>165</sup> Engaging with foreign forces can easily make these lawyers be regarded as enemies of the country.<sup>166</sup> In contrast, Sīkē lawyers only rely on domestic media. They also keep a distance from human rights activists.

### B. Politicization as a Strategy of Struggle

While depoliticization is a survival strategy, politicization is a struggle strategy. In fact, most lawyers prefer to manage cases within legal boundaries and resist politicization. Thus, it is crucial to note that “politicization,” as referenced in this article, carries a specific meaning. It refers to understanding the political orientation involved in the cases and leveraging the tensions created by political power dynamics to promote justice in individual cases.

Politicization here is different from political embedding. Unlike broker lawyers who rely on their relationship with officials for their benefit, Sīkē lawyers exploit tensions between authorities to advance justice in individual cases. First, there are tensions between judicial power, politics, and populism. In the context of China, the goal of judicial justice includes three essential aspects: legal effect, social effect, and political effect.<sup>167</sup> The court must consider the public opinion and political impact of a case.<sup>168</sup> The second is the tension between different judicial departments, such as public security, procuratorates, and courts. Third, there are tensions between different individual officials.

164. See Titus C. Chen, *China's Reaction to the Color Revolutions: Adaptive Authoritarianism in Full Swing*, 34 ASIAN PERSP. 5, 7 (2010) (discussing the response of the Chinese government to the “Color Revolutions,” a series of political protests and movements in in the Ukraine, Kyrgyzstan, and Georgia; government specialists pointed out three interrelated sources of political instability accounted for the Color Revolutions: domestic popular grievances, a networked protest movement, and overt and covert interventions of Western powers).

165. See Christopher Walker, *The Authoritarian Threat: The Hijacking of “Soft Power”*, 27 J. DEMOCRACY 49, 54 (2016) (“China has likewise devoted considerable attention to the concept of color revolutions. On 13 June 2015, for example, the *People's Daily*, a CCP mouthpiece, published five scholarly articles exploring the roots of color revolutions and what China might learn from the experience of the affected nations. The CCP believes that the United States had a hand in these protest movements and that NGOs helped to foment them.”).

166. Interview #17 (on file with author) (noting that some lawyers reveals their experiences of oppression to foreign media, which serves as the foundation for their request for political asylum); see Ping Fan (平凡), *Guojia Anquan: “Jingwai Shili” be Zhongguo Tese* (国家安全: “境外势力”和中国特色) [National Security: “Foreign Force” and Chinese Characteristics], DUIHUA YUANZHU XIEHUI (对华援助协会) [CHINA AID] (Aug. 18, 2022), [https://www.chinaaid.net/2022/08/blog-post\\_81.html](https://www.chinaaid.net/2022/08/blog-post_81.html) [https://perma.cc/9WVY-E3V5].

167. See Hu HuaJun (胡华军), “Sanxiao Tongyi”: Xinsbidai Renmin Fayuan Ying Baoyou De Gongzhen-guan (“三效统一”: 新时代人民法院应保有的公正观) [“Three-effect Unification”: The Concept of Justice that the People's Courts Should Maintain in the New Era], RENMIN FAYUAN BAO (人民法院报) [PEOPLE'S CT. DAILY] (June 22, 2020).

168. Interviews #61, #62, #63, #64, #65, #66, #67, #68 & #69 (on file with author) (confirming the importance of thinking about politics).

They may belong to the superior-subordinate relationship within the same department or in different departments or jurisdictions. Fourth, potential conflicts exist between higher and lower levels within the same type of judiciary, which is similar to the central-local tensions.

Based on real-time observation of these tensions, Sīkē lawyers put pressure on judges by posting disputes in the case online to seek public support.<sup>169</sup> When a dispute arouses public attention, senior leaders will conduct special supervision of the case. If a case involves corruption in the grassroots judiciary, Sīkē lawyers will write letters to high-level officials to request their supervision.<sup>170</sup> If a case involves improper interference by a senior leader, Sīkē lawyers will spare no effort to encourage lower-level judges to adjudicate the case independently. Meanwhile, they are always seeking the supervision of the case by the highest judicial authority.<sup>171</sup> They also incorporate political policy arguments in specific cases. For example, in cases where private entrepreneurs are accused of committing crimes, lawyers will emphasize the State's policy of protecting enterprises.<sup>172</sup>

At first glance, the strategy of politicization appears twisted, as lawyers try to use public opinion and politics to influence case decisions. In essence, it is a special form of zealous advocacy adapted to the context of the Chinese judicial system, where the political shadow is long, the gap between law and practice is huge, and the inquisitorial legacy is strong. A leading Sīkē lawyer who used to work as a reporter and is regarded as a benchmark for extrajudicial advocacy said,

The aim of criminal defense is to oversee judicial power. If judicial officials handle cases impartially, there is no need for lawyers to defend the accused. The role of the defense is to oversee and compel judicial officials to deal fairly with the case. Exposing case disputes through the media is to stimulate public supervision. Complaining and reporting to higher judicial organs is also to activate supervision.<sup>173</sup>

When Sīkē lawyers decide whether to politicize a case, they carefully weigh the pros and cons. There are three types of cases that are considered most easily arouse public attention and sympathy: infringement of lawyers' rights,<sup>174</sup> extortion of confessions by torture,<sup>175</sup> and wrongful cases that got redressed due to

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169. Lu Yufeng, *supra* note 8, 4.

170. Interviews #1, #2, #3, #4, #5, #11, #17 & #31 (on file with author).

171. Interviews #17, #29, #30 & #31 (on file with author).

172. Interviews #37, #38, #39 & #40 (on file with author).

173. Interview #26 (on file with author) (noting that in the process of representing cases, this lawyer uses media reports more frequently than others).

174. See, e.g., Li Zhuang Case, *supra* note 5; Beihai An, *supra* note 6.

175. See, e.g., Yang Xuelin, *supra* note 9 (discussing the Xiaohe and Beihai cases); Zhu Mingyong, *supra* note 88 (discussing the Zhou Wenbin case, in which the defendant claimed he was tortured into confessing); BBC News Chinese, *infra* note 208 (discussing the Meng Rongzhan case, in which the defendant also alleged torture-induced confession).

the efforts of lawyers.<sup>176</sup> The rights of lawyers are the cornerstone of the legal profession. Torture seriously damages fundamental human rights and violates the Criminal Procedure Law. Correcting unjust and wrongly decided cases can not only expose the problems in the judiciary but also highlight the value of lawyers. These cases are in line with the value of political propaganda, which will create political pressure and public opinion pressure on judges.

While public advocacy is a crucial *Sikē* method, its effectiveness fundamentally depends on political factors, including political power dynamics, tensions, and performance assessments. This “depoliticization and politicization” approach adds a new model to existing research on the relationship between Chinese defense lawyers and politics. According to the theoretical framework established by Liu and Halliday, *Sikē* lawyers could not perfectly fit into any of the five types of defense lawyers in China.<sup>177</sup> *Sikē* lawyers are not pragmatic brokers or progressive elites. Even though most *Sikē* lawyers are liberals, they do not focus on political aims. It would be inaccurate to categorize them as political liberals. The depoliticization of *Sikē* lawyers makes them not fall into the notable or grassroots activists category.

### C. *The Necessity and Adaptivity of Sikē Methods*

There are at least eight types of important *Sikē* methods. *Sikē* lawyers may have different styles and focus on different aspects of these methods.<sup>178</sup> It was precisely because of the uniqueness of *Sikē* methods that *Sikē* lawyers initially attracted public attention. The *Sikē* method has proven its effectiveness in many cases but is also subject to increasingly stringent regulation. The following analysis delves into the core *Sikē* methods, examining their flexibility and adaptability in practice. It also explores the potential value and applicability of these strategies in similar authoritarian contexts or restrictive contexts, underscoring their importance as a valuable toolkit for legal actors confronting similar challenges globally.

#### 1. *Four Essential Sikē Methods*

*Take Laws Seriously.* Taking the law seriously, on the one hand, provides *Sikē* lawyers with offensive weapons, and on the other, it gives them defensive armor. Although the Criminal Procedure Law (“CPL”) stipulates a series of rights for defendants, the law is not well implemented. However, *Sikē* lawyers

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176. See, e.g., *Wu Changlong, et al. Bombing Case*, *supra* note 88; *Nian Bin Poisoning Case*, *supra* note 88; Jiang Jue, *supra* note 88 (discussing the Leping Case); Michael Forsythe, *supra* note 88 (discussing the Nie Shubin Case).

177. See Liu & Halliday, *supra* note 11.

178. See Zhu Mingyong (朱明勇), *Wo Weishenme Sici Bei Ganchu Zhou Wenbin An Yisben Fating* (我为什么四次被赶出周文斌案一审法院) [Why I Was Thrown Out of Zhou Wenbin's First Trial Court Four Times] (July 31, 2019), <https://www.ishuo.cn/doc/fxefmjqf.html> [https://perma.cc/NME7-7RDM] (the lawyer depicted the conflicts with judge and confused by being convicted from the court vividly).

take laws seriously, emphasizing that judicial officials should abide by the law. It is necessary to point out the illegality of the agency and officials to make the Sīkē effective. It requires an extraordinary level of familiarity with the law. Before the trial or negotiating with officials, Sīkē lawyers will find out the laws that may be involved in advance and make notes. The practice of Sīkē lawyers is to take out the statutes and point to the black letter law to the officials clearly. For example, in the Small River case, all the lawyers received a phone call notification of the time of the court hearing. Most lawyers accepted the notice. However, Si Weijiang rejected the notification by pointing out that the CPL requires the court to send the written notice to lawyers. He asked the court to deliver the written notice strictly in accordance with the CPL. Under this pressure, judicial officials had to take flights overnight to Beijing, Shanghai, and other provinces to deliver the notice to attorneys one by one.<sup>179</sup> This kind of situation has never happened before. After this case, most courts became more cautious in procedural issues.

*Activate Procedural Rights.* The Constitution and the CPL provide the accused with a series of procedural rights, but most of these rights have yet to be activated in practice.<sup>180</sup> The reason partly lies in the defendants' lack of legal knowledge and primarily in the lawyers' perfunctory performance. However, if Sīkē lawyers believe their client is innocent, they will grasp any chance to challenge the case. In this way, Sīkē lawyers have activated lots of procedural rights. There is a saying that the three critical skills of Sīkē lawyers are "challeng[ing] the jurisdiction, request[ing] the recusal of judges, [and the] exclusion of illegally obtained evidence (管辖,回避,排非)."<sup>181</sup> In addition, Sīkē lawyers activate other procedural rights, such as the right to apply for an appraisal and reappraisal, to have witnesses and victims testify in court. Non-Sīkē lawyers may also raise some procedural issues in the case, but they give up easily when the judge denies their application. Sīkē lawyers, however, will repeatedly raise objections. If officials persist in denying their reasonable and lawful request, they may post the dispute online and draw public attention to it.

*Extrajudicial Advocacy.* Sīkē lawyers make extensive use of extrajudicial advocacy. To attract public attention as an oversight power was quite popular during the rise of Sīkē lawyers with the famous slogan that "[w]atching is a kind of power too (围观也是一种力量)."<sup>182</sup> With the development of social media, especially Weibo, more and more discussions about people's "watching power" were triggered around 2013. Social media has constructed a virtual

179. Si Weijiang, *supra* note 117.

180. For examples of these procedural rights, see Criminal Procedure Law of the People's Republic of China, arts. 11, 14, and 29.

181. Li Meng, *supra* note 129.

182. See Li Yan (李妍), *Weibo Fanfu Weiguan Jiusi Liliang* (微博反腐: 围观就是力量) [*Microblogging Against Corruption: Watching is Power*], *ZHONGGUO JINGJI ZHOUKAN* (中国经济周刊) [*CHINA ECONOMIC WEEKLY*] (Dec. 15, 2012), <http://style.sina.com.cn/news/p/2012-12-15/0751111712.shtml> [<https://perma.cc/TP93-SS5U>].



public sphere of free expression for the public.<sup>183</sup> Through free speech and interactive expression on the platform, a new form of political participation has emerged: onlooker participation. When the topic has attracted intense attention and controversy, it is easy to generate an extreme “onlooker force,” which may trigger the interaction of traditional media and affect judicial decision-making.<sup>184</sup>

When there are apparent procedural violations or torture in the case, if judicial officials refuse to admit the problems, Sīkē lawyers will publish the issues on the Internet, hoping to gain public support. The Sīkē method used to attract public attention during the first wave is widely known as “Hold a banner, Sit-in, Sign an Open Letter (举牌, 静坐, 公开信).”<sup>185</sup> As social media evolves and transforms, these methods are constantly being adapted to the most popular platforms. The second wave of methods is “Weibo, WeChat, Official Account (微博, 微信, 公众号).”<sup>186</sup> Afterward, the third wave of methods is “Douyin, Snack Video, Short Video (抖音, 快手, 小视频).”<sup>187</sup> As a result of the publicity, more pressure has been placed on the judicial officers in charge of the case. To stop the scandal from spreading, some officials began taking the case more seriously, usually when they saw their names or pictures posted on the internet.<sup>188</sup> Even if the officials in charge of the case still refuse to correct it, broadcasts from the lawyers could leave higher authorities feeling embarrassed, and they may instruct subordinates to correct their mistakes.<sup>189</sup>

*Collective Action.* A notable aspect of the early Sīkē lawyers was their unprecedented collective action. Understanding the limitations of individual power, they found that unity not only offered mutual protection but also amplified their influence. The most important collective action is “Defense Lawyers Group (律师辩护团).” The first influential lawyers’ group was formed in the North Sea case with twenty lawyers in 2011.<sup>190</sup> Later, the Changshu

183. See generally Jacques deLisle, Avery Goldstein, & Guobin Yang, *Introduction*, in *THE INTERNET, SOCIAL MEDIA, AND A CHANGING CHINA 1* (Jacques deLisle, Avery Goldstein, & Guobin Yang, eds. 2016).

184. See Cai Zhiguo (蔡之国) & Yu Mengyang (余梦阳), *Wengguanshi Zhengzhi Canyu Duihua de Xin Xingshi* (围观式政治参与: 对话的新形式) [*Onlooker Political Participation: A New Form of Dialogue*], *WANGLUO CHUANBO* (网络传播) [NETWORK COMMUNICATIONS] (Aug. 13, 2014), <http://media.people.com.cn/n/2014/0813/c387594-25460346.html> [<https://perma.cc/YSC6-56FH>].

185. Interviews #29 & #40 (on file with author) (the two leading figures of the first generation of Sīkē lawyers traced the evolution of Sīkē methods).

186. Interviews #1, #2, #3, #4, #5, #11, #31 & #40 (on file with author).

187. Interviews #40 (on file with author), combined with online observation of criminal cases on social media platforms.

188. Yang Jinzhu, *supra* note 41 (It notes that when judicial officials engage in misconduct and refuse to correct it after being called out by lawyers, Sīkē lawyers respond by immediately exposing the issue on Weibo in hopes of gaining public support. The result of such exposure is that some officials, upon seeing their names or images circulated online, become unwilling to let their misconduct spread further and are compelled to return to lawful procedures.).

189. Yang Jinzhu, *supra* note 41 (It notes that even if the individual officials refuses to correct their actions, the fact that the lawyer may live-stream developments at any time can put pressure on their superiors. Concerned about public image or avoiding complications that could jeopardize their careers, higher-level authorities may then instruct subordinates to rectify the situation.).

190. Yang Jinzhu, *supra* note 41.

case (twelve lawyers),<sup>191</sup> the Small River case (over eighty-eight lawyers),<sup>192</sup> the Liu Yibai case (fourty-eight lawyers),<sup>193</sup> the Xie Liuqing case (108 lawyers),<sup>194</sup> and the Ban Meila case (twenty-five lawyers)<sup>195</sup> all involved collective action by lawyers. Uniting lawyers to defend a case could bolster their collective advocacy, even though such collaboration may include certain disagreements. Moreover, the Small River case expanded the collective action in building “Lawyers Observation Group(律师观察团).”<sup>196</sup> As in this case, more than 200 lawyers contacted Zhou Ze to offer help. But one defendant can only appoint up to two lawyers. The lawyers’ observation group was organized to gather support, which also served as a backup. They wrote professional comments on the case and amplified the voice of the lawyers.

The Sīkē lawyers’ movement involves collective action that goes beyond the lawyers’ community to include other groups, such as jurists and journalists. Sīkē lawyers may invite experts, professors, and scholars to form an “Expert Advisory Group(专家顾问团).”<sup>197</sup> These experts are professional and famous. Their support enhances the legitimacy and influence of lawyers’ protests. Besides, lawyers and journalists have developed good relationships and collaboration. Their cooperation is based on mutual trust and win-win results.

191. Li Jing, *supra* note 15 (a total of 12 lawyers formed the legal team; 10 lawyers were present during the trial, and two lawyers were replaced by another pair after a few days due to scheduling conflicts).

192. See Zhou Ze (周泽), *Li Qinghong An Jingxian Shishang Zui Qiangda Bianhu Lüshi Zherong* (黎庆洪案“惊现史上最强大辩护律师阵容”) [*Li Qinghong’s Case Marks the Most Powerful Defense Team in History*], SINA BLOG (Nov. 24, 2011) (Zhou Ze issued an open letter through the internet, mobilizing lawyers nationwide to support the defense in the case. The open letter received enthusiastic support from lawyers across the country, with nearly 200 lawyers expressing their willingness to participate in the defense free of charge.); see also Shang Haizhan (尚海战), 2012 *Xiaobe Dasben Luomu* (2012 小河大审落幕) [*The ‘Xiaobe Grand Trial’ Comes to an End*], NANDU ZHOUKAN (南都周刊)[SOUTHERN METROPOLIS WEEKLY] (Aug. 13, 2012), <http://defenselawyer.cn/Article/lawnews/201208/22353.html> [https://perma.cc/3GWS-6QDW] (mentioning that there were 88 defense lawyers in the case).

193. See Editorial, *Xinhuazhege Cengjing de “Hei Laoda” Weile Tuozui, Qingle 48 Ge Da Lvshi* (新化这个曾经的“黑老大”为了脱罪，请了48个大律师) [*This Former ‘Black Boss’ from Xinhua Hired 48 Top Lawyers to Escape Conviction*], SOHU WANG (搜狐网) (Dec. 16, 2018), [https://www.sohu.com/a/282344717\\_120065168](https://www.sohu.com/a/282344717_120065168) [https://perma.cc/JGN3-2XTD] (mentioning that there were 48 defense lawyers in the case).

194. See Shengsu Zhi Men (胜诉之门), *Wubu Pangting Ji 4: 108 Wei Lvshi Qianglie Yaoqiu Wuzheng Daoting, Fandui Jianfang Yinni Zhenju* (芜湖旁听记4: 108位律师强烈要求物证到庭，反对检方隐匿证据) [*Wubu Trial Observations Part 4: 108 Lawyers Strongly Demand Physical Evidence to be Presented in Court, Oppose Prosecution’s Concealment of Evidence*] (Dec. 5, 2021), <https://mp.weixin.qq.com/s/eHNBQ0P0D30V-4ZLL2HYqXw> [https://perma.cc/BF7S-3HLC].

195. See Yulin Wanbao (玉林晚报) [Yulin Evening News], *She’an Jine 43 Yi—“Ban Meila” Tedaxing Chuanxiao An Yisben Xuanpan*, 19 Ming Beigao Huoxing (涉案金额43亿—“斑美拉”特大传销案一审宣判，19名被告获刑) [*43 Billion Yuan Involved—First-Instance Verdict in the Major “Ban Meila” Pyramid Scheme Case, 19 Defendants Sentenced*] (Aug. 7, 2020), <https://baijiahao.baidu.com/s?id=16743800589870616&wfr=spider&for=pc> [https://perma.cc/D6N5-ADE5] (mentioning that the case involved 19 defendants, with 25 defense lawyers participating in the trial).

196. Interviews #19, #26, #29, #38 & #40 (on file with author) (saying that the lawyer’s group mode started in the Xiaobe/Small River case in 2012 and was widely used in other cases).

197. It started in the Li Zhuang case in 2010 and was widely used in other cases. See Jiang Ping (江平) et al., *Guizhang Li Qinghong An Zhuangjia Guwentuan Guanyu Li An de Wudian Shengming* (贵阳黎庆洪案法律专家顾问团关于黎案现状的五点声明) [*Five Statements by the Legal Expert Advisory Group on the Guizhang Li Qinghong Case*] (July 12, 2012), <http://www.defenselawyer.cn/Article/lawnews/201207/22247.html> [https://perma.cc/RJ4-9ETE].

The cases handled by lawyers provide material for reporters. The reports expand the influence of the cases and activate the supervision power of public opinion. Some lawyers and journalists founded the “Law and Media Union.”<sup>198</sup> Furthermore, some other people may form an “Other Observation Group.”<sup>199</sup> This kind of observation group is usually composed of friends of lawyers, interns, or law students.

## 2. Four Supplementary Sīkē Methods

*Case Seminar.* Another technique employed by Sīkē lawyers is to organize case seminars, inviting prominent legal scholars for discussion.<sup>200</sup> This not only allows them to learn and typically secure support from these experts, enhancing their confidence in the case but also involves inviting the media. By doing so, they broadcast the controversy of the case and the insights of the experts, potentially attracting public interest and fostering a sense of oversight.

*Accusation.* Accusing officials of misconduct is a constitutional right for citizens, one that Sīkē lawyers commonly leverage to advocate for the correction of judicial errors.<sup>201</sup> In the digital age, numerous government entities have introduced complaint hotlines and websites to bolster services and facilitate public monitoring.<sup>202</sup> Moreover, lawyers frequently escalate concerns to superior authorities, up to the highest legislative and judicial institutions, the CPC, and its inspection teams.<sup>203</sup>

*Performance Art.* Some innovative Sīkē lawyers have turned to performance art to capture public attention. For example, a lawyer performed somersaults

198. See *Lǐmèi zhī Yē Haide Bùyào Bùyào de* (律媒百人会声明) [Statement of the Legal Media 100 People's Club] (Dec. 24, 2018), [https://www.sohu.com/a/284079601\\_120056197?qq-pf-to=pcqq\\_group](https://www.sohu.com/a/284079601_120056197?qq-pf-to=pcqq_group) [https://perma.cc/S7ER-D72J].

199. It started in the Small River case in 2012 and was widely used in other cases. See, e.g., *Jiangxi Guisong An Shengbian Dangting Zhikong Surong Caozong Sifa* (陈宝成案组成豪华法律专家顾问团及律师观察团) [Chen Baocheng Case Forms Luxury Legal Expert Advisory Group and Lawyer Observation Group], (观察者) [GUANCHAZHE OBSERVER] (Aug. 9, 2013), [https://www.guancha.cn/politics/2013\\_08\\_19\\_166683.shtml](https://www.guancha.cn/politics/2013_08_19_166683.shtml) [https://perma.cc/3RU5-TKEX].

200. See Li Zhongwei (李仲伟), *Xiaobe An Liangzibounian Yantaobui Zongshu* (小河案两周年研讨会综述) [Overview of the Seminar on the Second Anniversary of the Small River Case], <https://mp.weixin.qq.com/s/tl2lJC68DI5F80lynKKL5g> [https://perma.cc/W327-TXVS]; see also Zhou Ze (周泽), *Xiaobe An Sanzibounian Yantaobui Tonbao* (小河案三周年研讨会通报), [https://cmcn.org/archives/23494?ak\\_action=reject\\_mobile](https://cmcn.org/archives/23494?ak_action=reject_mobile) [https://perma.cc/QW8S-LJ46].

201. See Zhang Lei (张磊), *Zhang Lei Lusbi Guiyangji Xu Qi Konggao Konggao* (张磊律师: 贵阳记续五) [Lawyer Zhang Lei: Guiyang Record Sequel V] (Aug. 15, 2012) (on file with author) (Defense lawyers formally submitted an accusation report to the Guiyang People's Procuratorate, accusing Judge Huang Min and others involved in the Li Qinghong case of suspected abuse of power and obstruction of testimony. The report was also copied to the provincial and central-level procuratorates, supervisory commissions, disciplinary inspection bodies, the Standing Committee of the People's Congress, and the courts.).

202. For example, 12380 is a national reporting hotline launched by the Central Organization Department on March 29, 2004; it was voted one of the “Top Ten Anti-Corruption News Stories” by readers and tens of thousands of People.cn users. The 12345 Hotline is a public platform set up by municipal governments to handle public inquiries and complaints through phone, SMS, apps, Weibo, WeChat, and other channels. It offers 24/7 live support. As of July 2024, 349 prefecture-level cities in China had launched both phone and online access to the 12345 hotlines.

203. Interview #3, #4, #5, #19, #29, #30 & #31 (on file with author).

outside the courthouse as a protest. In another instance, lawyers delivered sweet potatoes to judges to voice their complaints. On January 25, 2022, two Sīkē lawyers carried sweet potatoes and walked back and forth in front of the High People's Court of Fujian Province.<sup>204</sup> The whole scenes were broadcast live on Weibo, which attracted significant attention. Afterward, the lawyers were invited into the courthouse. On May 3, their clients were acquitted.<sup>205</sup> It is believed that the “performance art” was the turning point in this case,<sup>206</sup> as there was a famous saying that “[i]f an official does not pursue justice or serve the people, he should go home and sell sweet potatoes (当官不为民作主，不如回家卖红薯).”<sup>207</sup> Such mischievous tactics draw public attention, pressuring judicial officials to rectify errors, but can also tarnish the professional image of lawyers.

*Protest.* Several radical Sīkē lawyers have turned to protests as a last resort to advocate for their clients, typically after all other methods have failed. These protests against judicial misconduct vary and may include signing joint open letters, staging sit-ins with placards or banners, or undertaking hunger strikes. Distinguished from performance art, these protests are not pranks; they are serious acts of defiance, often carrying a deeply tragic tone.<sup>208</sup> When protesting in the ways described above, lawyers have no control over the potential consequences of these actions. These protests are often sensitive and may be used to frame lawyers, putting them at greater risk.

204. Wu Changlong, et al. *Bombing Case*, *supra* note 88; see also Yang Jinzhu (杨金柱), *Jiu Wu Changlong Yi An Gei Fujiansheng Gaoyuan Ma Xinlan Yuanzhang de Diyifeng Gongkaixin* (就吴昌龙一案给福建省高院马新岚院长的第一封公开信) [First Open Letter to President Ma Xinlan of Fujian Provincial High People's Court regarding Wu Changlong Case] (Jan. 4, 2013), [http://45.35.61.42/hero/201301/wumei/22\\_1.shtml](http://45.35.61.42/hero/201301/wumei/22_1.shtml).

205. See Guo Xianzhong (郭现中), *Wu Changlong Eyun Piaofu Luozaì Wo Shenshang Le* (吴昌龙: 厄运飘浮, 落在我身上了) [Wu Changlong: Bad Luck Floats and Falls on Me] (Aug. 27, 2014), <http://photo.sina.com.cn/info/2014-08-27/1956282.shtml> [<https://perma.cc/N8D9-UXKT>].

206. Yang Jinzhu, *supra* note 41; Wang Changhe (王长河) & Wu Si (吴思), *Gen Shei Sike* (跟谁死磕) [Sike with Whom], 25 MINZHU YU FAZHI (民主与法制) [DEMOCRACY AND LEGAL SYS.] (2014).

207. Tongquetai Mengying (铜雀台梦影), *Dangguan Bu Wei Min Zuozhu, Buru Huijia Mai Hongshu* (当官不为民作主，不如回家卖红薯) [If an Official Does Not Serve the People, He Might as Well Go Home and Sell Sweet Potatoes], Feb. 28, 2025, at 10:39, available at <https://baijiahao.baidu.com/s?id=1825267106993733840&wfr=spider&for=pc> [<https://perma.cc/4C2J-ZKLF>] (It discusses the popular saying “If an official does not serve the people, he might as well go home and sell sweet potatoes.” This plain yet powerful saying captures the essence of an official's duty and mission. It was first attributed to Wei Xiangting, the prefect of Nanyang, Henan, during the Qianlong reign of the Qing Dynasty. Later, it gained widespread popularity through a famous line sung by the protagonist Tang Cheng in the Henan opera *The Seventh-Rank Sesame Official*. In the play, Tang Cheng delivers this line with humor and determination, vividly portraying a grassroots official's unwavering commitment to speaking up for the people. The reference to “selling sweet potatoes” underscores the idea that if an official cannot fulfill the responsibility of serving the people, he would be better off returning to farm work—at least then, he would not betray the public's trust and expectations.)

208. See Interviews #2, #4, #5, #6, #13, #18, #19, #29 & #40 (on file with author); Wu Changlong, et al. *Bombing Case*, *supra* note 88; Liangming Weiquan Lüshi Zai Guangxi Beibai Fayuan wai Jueshi (两名维权律师在广西北海法院外绝食) [Two Rights-protection Lawyers Go on Hunger Strike outside the Court in North Sea in Guangxi], BBC NEWS CHINESE (May 22, 2012), [https://www.bbc.com/zhongwen/simp/china/2013/05/130522\\_china\\_lawyers\\_protest](https://www.bbc.com/zhongwen/simp/china/2013/05/130522_china_lawyers_protest) [<https://perma.cc/9S4R-68KM>] (discussing the “Meng Rongzhan Case (孟荣展案),” in which two lawyers went on hunger strike).

### 3. *The Adaptivity of Sīkē Methods*

As regulations have become increasingly strict, Sīkē methods have shown remarkable adaptability. This adaptability stems from a continual quest for new methods driven by Sīkē spirits. Sīkē lawyers consistently explore alternative publicity methods, adjusting their approaches through multi-platform operations, switching channels, and changing authors, among other tactics.<sup>209</sup> For instance, when censorship intensified on Weibo, leading to quicker post deletions, some lawyers shifted to the emerging WeChat platform. As WeChat's censorship technology tightened, they moved to new short video platforms. Moreover, those publicizing disputes have shifted from lawyers to non-lawyers. With lawyers facing greater speech restrictions outside court, journalists have assumed a larger role in reporting cases. As media restrictions also increased, observers began writing impressions and comments about trials and cases. Defendants and their families have started voicing their grievances themselves to draw public attention to their cases.

A more cohesive and stable model of team collaboration has been established among Sīkē lawyers. During the rise of Sīkē lawyers, collective actions were often organized by a few, or even a single lawyer, announcing their cause on the internet, with participating lawyers loosely connected only by specific cases. However, as networking among lawyers has intensified, their connections have grown closer and more robust. Leading Sīkē lawyers have formed relatively stable teams that collaborate more effectively during collective actions for certain cases.<sup>210</sup> These small groups also flexibly cooperate with each other on major, high-profile cases. Additionally, these established groups are open to incorporating new partners for specific cases, thereby expanding their collective capability.

Lawyers have started to refine and enhance the effectiveness of these less risky Sīkē methods. While publicity was once the core of all Sīkē tactics, there is now a growing trend toward using complaints, accusations, and case seminars more frequently. For instance, as the practice of writing open letters is explicitly prohibited, lawyers have shifted to crafting more focused complaint letters, directing them to relevant government units and their higher authorities.<sup>211</sup>

The strategies and approaches of the Sīkē method offer valuable insights for legal actors worldwide, particularly in restrictive and authoritarian regimes where direct advocacy often faces high resistance and risk. The Sīkē method's emphasis on balancing depoliticization with strategic advocacy demonstrates how lawyers can effectively navigate politically sensitive issues by prioritizing individual case justice while subtly advancing broader reforms. This approach shows that tactics successful in high-stakes criminal cases—such as building flexible alliances, using public awareness strategically, and relying on a deep

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209. See Interviews #24, #29, #38, #40 & #42 (on file with author).

210. See Interviews #25, #26, #30 & #42 (on file with author).

211. See Interviews #31, #40 & #42 (on file with author).

knowledge of legal procedures—can also apply effectively to other challenging legal fields, like environmental public interest litigation, labor rights, and anti-corruption efforts. The adaptability of the *Sikē* method underscores its relevance across diverse legal and political landscapes, proving that it can inspire and equip legal actors to challenge injustices incrementally and sustainably, even in hostile environments. By exploring and generalizing these techniques, the *Sikē* approach contributes to a globally applicable toolkit for legal mobilization under repressive conditions, emphasizing resilience, strategic adaptability, and persistence as foundational elements for achieving impactful change.

#### IV. THE FLUID SPACE: INJUSTICE, LAW, AND TOLERANCE

The resilience of the *Sikē* lawyers' movement suggests the existence of a space for legal mobilization in China. This space is the result of the interaction of various factors. This Article focuses on three core elements: the established legal system (as a basis, anchor, and instrument of struggle), the phenomenon of judicial injustice (as a trigger, cause of resistance, and direction of attack), and governmental toleration (active inclusiveness or passive tolerance, as a security shield). Uncovering this space requires an ongoing process of interactive struggle. Although the *Sikē* lawyers have explored this space in the process of fighting for criminal justice, navigating this space is still risky and requires a wealth of practical wisdom and experience.

The tricky part is that this space is fuzzy and fluid. While the text of the law is clear, there is room for interpretation and selective enforcement. While judicial injustices exist, it can be difficult to prove them. In particular, governmental tolerance is notoriously changeable and may be influenced by a number of factors, such as the personal preferences of officials or political climate. Thus, while this space exists, it lacks clear boundaries or directions, making it difficult to navigate. The first two elements are relatively clear and easy to comprehend in order to understand the existence and mobility of this space. What is more challenging to understand and grasp is the government's tolerance, which will be at the heart of this section's argument.

##### A. *Judicial Injustice*

The most direct reason for *Sikē*'s lawyers to persist in their struggle is the persistence of violations of the law by judicial officials.<sup>212</sup> These violations have become more apparent in the campaign-style enforcement of recent years, including the anti-corruption campaign, the special campaign against gangsters and evil from 2018 to 2021, and the normalized campaign against gangsters

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212. See Zhang Qingsong (张青松), *Lüshi Weisbenme Yao Sikē* (律师为什么要死磕) [Why Lawyers Must *Sikē*] (July 23, 2021), <https://mp.weixin.qq.com/s/qV7cxZqQaAVBVvfdIJbf3Q> [https://perma.cc/X38Y-L4GL] (It discusses when a lawyer's rights or those of their client are violated, and all procedural remedies have been exhausted without achieving substantive relief, the lawyer is left with only one option: to *sikē*. This means resolutely within the limits of the law and employing every possible legal means to assert their rights or seek redress.).



and evil. Specialized law enforcement campaigns are often accompanied by assessment indicators involving different justice institutions. In order to fulfill the assessment indicator, some judicial officials tend to handle cases quickly and strictly and may violate the basic rights of the defendants in the pursuit of efficiency.

The judicial officials targeted by Sīkē lawyers include the police officers, the procuratorates, and the judges. The law violations include violent investigations, torture to extract confessions, or failure to follow statutory procedures. Lawyers' right to read the file and to meet clients may be restricted or violated in various ways.<sup>213</sup> For example, the violation of the right to read case files is often reflected in the delay of the time for permission through various pretexts, adding obstacles to marking copies of certain evidence. Some case files are only allowed to be viewed in the offices of the judicial branches, and copying is not permitted. For example, in August 2022, a lawyer posted online that her right to read the case files in the Sanpan case had been violated.<sup>214</sup> One of the first generation of Sīkē lawyers, Zhou Lixin, filed an accusation online to fight for his right to read specific case files.<sup>215</sup> According to statistics from the Rights Protection Center of the ACLA, in 2018, it received 642 complaints. The center accepted 595 cases, including 283 cases involving the infringement of lawyers' right to meet with the clients, accounting for 44.08%.<sup>216</sup>

What's worse, the extorting of confession by torture still exists. Sīkē lawyers are often very firm in applying for the exclusion of illegal evidence in cases involving torture. However, courts, in many cases, are no longer willing to apply the exclusionary rule. For example, in the Yiyang case in 2022, lawyers provided detailed clues about the defendants being tortured. Still, the court insisted on rejecting to initiate an investigation of the evidence obtained illegally. To protest, more than twenty lawyers stood up in court to express their objections. The judge shouted: "Lawyers, please obey the court order!" The lawyers collectively replied, "Presiding judge, please obey the law!"<sup>217</sup> In the deadlock, the judge ignored the lawyers' objection and moved the trial to

213. Liu Shuo & Chen Fei (刘硕, 陈菲), *Po Jie Lusbi Yuejuan Nan, Huijian Nan: Jiancha Jiguan Qu Nian Gong Chasbi Xiangguan Anjian 1200 Yu Jian* (破解律师阅卷难、会见难 检察机关去年共查实相关案件1200余件) [Overcoming Lawyers' Difficulties in Accessing Case Files and Meeting Clients: Prosecutors Verified Over 1,200 Related Cases Last Year], XINHUA NEWS AGENCY (新华社) (Feb. 5, 2021), [http://www.xinhuanet.com/politics/2021-02/05/c\\_1127069552.htm](http://www.xinhuanet.com/politics/2021-02/05/c_1127069552.htm) [https://perma.cc/U6CY-SBXL].

214. See He Zhijuan (何志娟), *Henan Ningling Faguan Dangzhong Qugan Lusbi* (河南宁陵法官当众驱赶律师) [Henan Ningling Judges Kick Lawyers Out], [SOHU] (July 21, 2022), [https://www.sohu.com/a/569934692\\_121123868](https://www.sohu.com/a/569934692_121123868) [https://perma.cc/H6HG-FEPS].

215. Onsite observation (Aug. 2022).

216. ACLA Statistics, *Quangup Lu Xie Fabu 2018 Nian Shang Bannian Lusbi Xiehui Weiquan Gangzuo Shuju Tongji Yu Fenxi* (全国律协发布2018年上半年律师协会维权工作数据统计与分析) [The All-China Lawyers Association released statistics and analysis of the lawyers association's rights protection work in the first half of 2018] (Sept. 03, 2018), <https://www.hnlawyer.org/news/137.html> [https://perma.cc/LH5R-S9CH].

217. Onsite observation (Aug. 2022); see also Yiyang "414" An Hengyang Kaiting Di Sisbi Tian Queshi de Tongbu Luyinluxiang (益阳"414"案衡阳开庭第四十天: 缺失的同步录音录像) [Yiyang "414" Case Hengyang Forty Days: The Missing Synchronized Audio and Video Recordings] (Aug. 14, 2022), WEIBO <https://weibo.com/ttarticle/p/show?id=2309404673843561365578> [https://perma.cc/HKJ9-RRMD].

the next stage, requiring the prosecutor to bring evidence. More than twenty defense lawyers collectively withdrew from the court to continue to protest. Later, the prosecutor took the initiative to exclude some evidence questioned by torture. However, the court never initiated the exclusion procedure.

### B. *Legal Basis*

The Sīkē lawyers' movement draws its strength and legitimacy from the foundational legal rights enshrined in China's Constitution and Criminal Procedure Law ("CPL"). These laws endow defendants and defense lawyers with a series of rights, forming the cornerstone of Sīkē lawyers' advocacy.<sup>218</sup> These rights that empower lawyers in their practice, such as the right to meet with clients, access case files, and represent clients in court, are crucial. These rights ensure that lawyers can perform their duties effectively. Sīkē lawyers enthusiastically defend the procedural rights of defendants, which are vital to ensuring fair legal proceedings. These include the right to a fair trial, the right to legal representation, the right to confrontation, and the right against self-incrimination. They also focus on the enforcement of the exclusionary rule, particularly in cases involving illegal evidence or torture, which serves to maintain the integrity of the judicial process.

The law serves not just as a shield in their struggle but also as a method and goal. Each of these legal rights serves as both a sword and a shield.<sup>219</sup> For example, when these rights are violated or ignored, Sīkē lawyers mobilize to defend them, citing the laws that are supposed to protect them as their justification. They use the law to push back against injustices and violations of rights. They not only seek to rectify individual cases of injustice but also aim to effect systemic change. In the process of their struggle, these laws guide their tactics and reinforce their positions.

Moreover, the evolving ideology of the rule of law in China has gradually shifted the focus from purely substantive justice to a balanced emphasis on both substantive and procedural justice.<sup>220</sup> This shift has expanded and increased the legitimacy of Sīkē lawyers' fight. By advocating for both the enforcement of existing rights and the reform towards more comprehensive legal protections, Sīkē lawyers are not only utilizing the law in their struggle but are also striving for its evolution.<sup>221</sup> Their goal is a more just legal system where the rule of law is paramount and the rights of all individuals, especially

218. See, e.g., Xianfa (宪法) [Constitution], art. 130 (2018), (China) (reintroduced since 1982) (right to assistance of counsel); Criminal Procedure Law of the People's Republic of China (2018), arts. 11, 33, 38, 39 (11 and 33: right to assistance of counsel, reintroduced since 1979; 38: rights of defense counsel during investigation, adopted since 2012; 39: rights of the defense to meet and communicate with the defendants, adopted since 1996).

219. See Sida Liu, Ching-Fang Hsu and Terence C. Halliday, *Law as a Sword, Law as a Shield*, 2019-1 CHINA PERSP. (Mar. 19, 2020), <http://journals.openedition.org/chinaperspectives/8798> [<https://perma.cc/BV4N-MLZR>].

220. Opinions on Advancing the Reform of the Trial-Centered Criminal Procedure System (2016).

221. Interview #1, #2, #3, #4, #5, #9, #10, #18, #29 & #31 (on file with author).

the defendants, are protected. Their fight, deeply embedded in legal principles, continues to challenge and inspire changes in the criminal justice landscape.

### C. Government Tolerance

The government's tolerance towards Sīkē lawyers primarily arises from four considerations: 1) the nature of the state, under two prevailing assumptions, obliges the Chinese government to adhere to existing laws to a certain degree; 2) the depoliticized nature of Sīkē lawyers aligns them with the category of "contradictions among the people," based on the two types of contradictions framework; 3) the inherent complexity of Sīkē lawyers' roles; and 4) the fluctuating official stance towards Sīkē lawyers, which reflects the internal conflicts and fragmented nature of authority.

#### 1. Two Types of Presumptions of Government

Two fundamental assumptions underlie the relationship between the government and citizens. One is that the government inherently tends toward abusing its power and suppressing dissent. The other view posits that the government's role is to protect and serve its citizens. Post-Enlightenment, especially in Western democracies, governments have often been perceived as antithetical to the individual, with citizens' rights particularly vulnerable to state authority. Thus, the cornerstone of Western constitutionalism has been to explicitly enumerate the fundamental rights of citizens and curtail governmental power.<sup>222</sup> This includes protecting the public's freedom of speech. Without people's protests and vigilance, governments are unlikely to self-correct. This democratic narrative is rooted in an adversarial relationship between the government and the people.

In the Chinese context, the relationship between the government and the people is often analogized to that of a family, which diminishes the antagonistic nature typically seen between state and citizens by promoting a narrative of unity.<sup>223</sup> Within this framework, there are two types of governments: the corrupt, usually associated with tyrannical, fallen regimes of the past, and those that claim to serve the people, usually the current governing body. Instances of state power infringing upon individual rights are frequently attributed to

222. See generally Bruce Ackerman, *The Rise of World Constitutionalism*, 83 VA. L. REV. 771 (1997); M.J.C. VILE, *CONSTITUTIONALISM AND THE SEPARATION OF POWERS* (2nd ed. 1998).

223. See Shen Yaxin (申亚欣), *Sanjubua Dudong Xi Jinping de Jiaguo Qingbua* (三句话读懂习近平的家国情怀) [*Three Sentences to Understand Xi Jinping's Family and Country Feelings*], 人民网 [PEOPLE.CN] (Oct. 6, 2015), <http://politics.people.com.cn/n/2015/1006/c1001-27664791.html> [<https://perma.cc/WXL8-2ETG>]; see generally SUSAN L. GLOSSER, *CHINESE VISIONS OF FAMILY AND STATE, 1915–1953* (Univ. of Cal. Press 2003); Hans Steinmüller, *Father Mao and the Country-Family: Mixed Feelings for Fathers, Officials, and Leaders in China*, in *AFFECTIVE STATES: ENTANGLEMENTS, SUSPENSIONS, SUSPICIONS* 83, 83–100 (Mateusz Laszczkowski & Madeleine Reeves eds., 2017); YUE DU, *STATE AND FAMILY IN CHINA* (Cambridge Univ. Press 2021); Yinli Wang, *On Augustinian Studies in China: A Chinese and Western Discourse on a Family-State Relationship*, 14 RELIGIONS 1438 (2023).

the misconduct of a few corrupt officials rather than to a systemic failure of the government.<sup>224</sup> The ruling power asserts its wisdom, suggesting that its governance can be refined through self-criticism and the incorporation of public feedback. While the public is allowed to address the government through official channels, direct confrontation is discouraged. Nevertheless, the government remains sensitive to public opinion and strives to demonstrate consistency with this narrative, even if superficially.

The familial-state narrative still predominates in contemporary China. To uphold the legitimacy of governance and the coherence of this narrative, the government recognizes the impracticality of completely silencing dissent. Particularly when lawyers highlight the misconduct of judicial personnel, such incidents are treated as instances of individual corruption rather than systemic failure. By addressing these issues and disciplining the implicated officials, the government reaffirms its commitment to self-correction and serving the people. Consequently, rather than quashing all dissent, the state may allow for a circumscribed public discourse. Furthermore, ensuring the stability of the nation involves standardizing judicial procedures and effectively overseeing officials, which are key to cultivating public trust. A deeper understanding of this nuanced issue requires an analysis of the distinct contradictions in China.

## 2. *Two Types of Social Contradictions in China*

From a broader perspective, the Chinese government maintains a tradition of distinguishing between two types of contradictions in domestic affairs, a practice dating back to Mao Zedong's 1957 article "On the Correct Handling of Contradictions Among the People."<sup>225</sup> Mao differentiated two types of contradictions: antagonistic ones between the people and their enemies, requiring confrontational resolution, and non-antagonistic ones among the people themselves, resolvable through mutual cooperation, reflecting shared fundamental interests.<sup>226</sup> The crucial distinction between the two lies in differentiating between the people and the enemy. Mao highlighted that during the stage of building socialism, the classes and social groups favoring and supporting socialist construction were considered part of the people. Conversely, those forces resisting socialist revolution and undermining socialist construction are

224. See Xin Ming (辛鸣), *Jinri Zhongguo Fanfubai de Sange Zixin* (今日中国反腐败的“三个自信”) [*The “Three Confidences” of China’s Anti-Corruption Efforts Today*], (中国青年报) [CHINA YOUTH DAILY] (Jan. 28, 2015), <http://theory.people.com.cn/n/2014/0818/c40531-25484065.html> [https://perma.cc/X7DB-M2RP].

225. On the Correct Handling of Contradictions Among the People (Chinese: 关于正确处理人民内部矛盾的问题) is a 1957 essay by the Chinese Communist revolutionary Mao Zedong published during the Eleventh Session of the Supreme State Conference. See Mao Zedong, “On the Correct Handling of Contradictions Among the Chinese People,” (1957), <http://academics.wellesley.edu/Polisci/wj/China/mao24.html> [https://perma.cc/ML4F-3J8P].

226. *Id.*

deemed enemies of the people.<sup>227</sup> The two types of contradictions must be resolved by different methods. Mao pointed out,

The only way to settle questions of an ideological nature or controversial issues among the people is by the democratic method, the method of discussion, criticism, persuasion, and education, and not by the method of coercion or repression. This democratic method of resolving contradictions among the people was epitomized in 1942 in the formula ‘unity - criticism - unity’ (团结-批评-团结). To elaborate, it starts from the desire for unity, resolving contradictions through criticism or struggle, and arriving at a new unity on a new basis.<sup>228</sup>

The issues raised by Sīkē lawyers are primarily categorized as internal conflicts among the people, largely due to their depoliticized nature. These lawyers don’t represent a conflict between the enemy and the people. During the rise of Sīkē lawyers, authorities acknowledged their contributions, suggesting the importance of engaging with this group and thus extending greater leniency towards them. Conversely, Chinese human rights lawyers often find themselves embroiled in enemy-people conflicts due to their strong political stances, challenges to the ruling party, and involvement in politically sensitive subjects. This approach starkly contrasts with the more cautious and case-focused strategy of Sīkē lawyers. For example, in 2022, during the trial of a high-profile case represented by a group of Sīkē lawyers, the Beijing Bureau of Justice dispatched two officials to observe. After the lawyers collectively protested against the judges’ conduct and withdrew from the case, these officials facilitated a meeting by inviting the lawyers and the judges to dinner to discuss a resolution. One of the officials addressed the lawyers, saying, “I hope that you can cooperate in handling the case. We fully understand the problems in this case. I hope that lawyers understand our difficulties, too. I hope that you will fully demonstrate your professionalism. Don’t hype up the case.”<sup>229</sup>

Depoliticization is central to the survival and continued practice of Sīkē lawyers. Deviating from this approach by adopting radical tactics may lead them into dangerous situations, as in the case of the challenges faced by human rights lawyers. Once labeled as “enemies” of the people and the state, this puts them at greater risk of coercive or repressive action by the government and can lead to an irreversible loss of political trust. As noted by Teng Biao, even many human rights lawyers and activists who pursued moderate, non-confrontational, and depoliticized tactics have faced arrest or charges of inciting subversion of state power.<sup>230</sup> Thus, staying out of the political thicket is an important part of the survival strategies of Sīkē lawyers.

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227. *Id.* Mao also admitted that these two types of contradictions are sometimes easily confused.

228. *Id.*

229. Participant observation (Aug. 2022).

230. Biao Teng, *supra* note 151, at 619.

### 3. *The Complex Combination of Sīkē Lawyers*

The term “Sīkē lawyers” is controversial, but it once embodied mainly positive connotations that prompted officials to treat these lawyers with caution. Even some prominent Sīkē lawyers have acknowledged that the label can lead to misunderstandings.<sup>231</sup> In order to minimize possible misunderstandings, some lawyers have made efforts to clarify the public perception of the term. “Many people have misunderstandings about Sīkē; it seems that it’s just messing around and messing around. In fact, we strictly abide by the CPL, and we demand that the courts act in accordance with the law. If it’s not based on law, Sīkē won’t work.”<sup>232</sup>

The “group” of Sīkē lawyers is not a formal organization with a fixed membership. Identifying a Sīkē lawyer is challenging since there are no definitive members or a precise count.<sup>233</sup> This complexity in composition makes the supervision and regulation of Sīkē lawyers more difficult. The group includes not just radicals but also centrists and conservatives, contributing to the diversity in their approaches and behaviors. While these lawyers predominantly handle criminal cases, the nature of these cases varies. For instance, in most routine cases, many lawyers might adhere strictly to the law, but in certain instances, they aggressively challenge the unlawful actions of judicial personnel. This behavior, termed temporary Sīkē, is unpredictable and hard to preempt. Additionally, Sīkē methods are not applied uniformly across all cases. Consequently, the government faces challenges in implementing unified control or regulation over all Sīkē lawyers. It is crucial to individually analyze each lawyer’s actions based on the specific case.

Furthermore, many first-generation Sīkē lawyers are prominent individuals with substantial social influence and recognition.<sup>234</sup> They possess extensive networks and command high respect within the legal community.<sup>235</sup> These personal attributes afford them a form of intangible protection. While this protection may be somewhat tenuous, it often shields them from undue suppression, provided they adhere strictly to legal norms. Officials lack justification for punitive actions in such cases. However, should any lawyer engage in overtly excessive behavior or breach legal boundaries, they may face disciplinary actions by the bar associations and the Ministry of Justice.<sup>236</sup>

231. Li Meng, *supra* note 129, at 12.

232. Yang Xuelin, *supra* note 9. This opinion has also been confirmed by other lawyers and interviews.

233. *Id.*

234. JINGHUA ZHOUKAN, *supra* note 15 (For example, the “leader” of the Beihai Lawyers Group, Chen Guangwu, has nearly 30 years of experience in criminal defense and has gained a certain level of recognition. He maintains good relationships with local courts and procuratorates, works in close coordination with officials, and in some cases, judges even take the initiative to call him for his opinion on cases he is handling).

235. See Interviews #18, #19 & #42 (on file with author).

236. See Chen Guangwu (陈光武), “Baomu An” Yang Dang Zhi Zheng (《保姆案》杨党之争) [The “Nanny Case” and the Yang-Dang Dispute], Baozhu (抱柱) (Jan. 25, 2018), at 13:57, available at <https://baijiahao.baidu.com/s?id=1590542799650652653&wfr=spider&for=pc> [https://perma.cc/



#### 4. *Internal Conflicts over the Authority's Attitude Toward Sīkē Lawyers*

Governmental attitudes were initially ambiguous about Sīkē lawyers and then evolved from support and acknowledgment to attempts at unity, followed by warnings, meticulous supervision, and eventually standardized regulation. This shift is largely attributed to changing political currents and the desire to control ideology. The evolving attitudes also subtly indicate potential discord or internal disagreements among authorities, manifesting as varied personal viewpoints among judicial officials, differing priorities across judicial branches, and distinct approaches between central and local judicial departments.<sup>237</sup> Particularly, the police exhibit the most hostility towards Sīkē lawyers due to their outspoken criticism of police conduct. Similarly, procurators and judges often find themselves at odds with Sīkē lawyers, who frequently challenge them. Conversely, the Ministry of Justice, which is responsible for overseeing lawyers, has shown considerable support. Furthermore, attitudes can vary significantly between the Supreme People's Court and local courts, contributing to the nuanced and somewhat tolerant approach towards Sīkē lawyers. Despite these tensions, it is noteworthy that there has never been widespread repression of Sīkē lawyers.

Some officials showed wariness and hostility towards Sīkē lawyers from the very beginning. A notable instance occurred on May 19, 2012, when a vice president of the Supreme People's Court ("SPC") accused certain Sīkē lawyers of undermining judicial credibility.

In more cases, due to the lack of fairness in the procedure, or what should be done is not done, including some injustices to lawyers, which leads to the hype by lawyers. The situation caused very few unscrupulous lawyers to sue the court and seriously violated the order of the trial. After it was announced, no one believed the judge, nor the court, but only believed the nonsense of those lawyers.<sup>238</sup>

This justice specifically criticized some Sīkē lawyers for "disturbing the court (闹庭)" in three cases: the North Sea case, the Changshu case, and the Small River case. These cases, seen as milestones by Sīkē lawyers, became a source of pride. However, following the media's coverage of these remarks, a wave of strong criticism emerged from the legal community.<sup>239</sup> Professor He,

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WSC8-UBGA] (Chen stated that he was suspended from practicing law for six months as a disciplinary measure after publicly sharing disputed case information online while representing Nie Shubin).

237. See Wang Juan & Liu Sida, *Ordering Power under the Party: A Relational Approach to Law and Politics in China*, 6 ASIAN J. L. & SOC'Y 1, 8–10 (2019); Andrew Mertha, *Fragmented authoritarianism 2.0: Political pluralization in the Chinese Policy Process*, 200 CHINA Q. 995, 1012 (2009).

238. Shen Nianzu, *supra* note 91.

239. They launched a tit-for-tat debate on social media. See Yang Jinzhu (杨金柱), *Qingwen Zuigao yuan Zhangjun Fu yuanzhang Daodi Shi Shui zai Hushuobadao* (请问最高院张军副院长:到底是谁在胡说八道) [Questions to Zhang Jun, Vice President of the Supreme People's Court: Who Is Talking Nonsense] (May 19, 2012), <https://chinadigitaltimes.net/chinese/category/archived-categories/blogs/page/2969> [https://perma.cc/JFW9-NKMV].

in solidarity, published an article defending the lawyers.<sup>240</sup> The situation took a more concerning turn when, in February 2017, this same judge was appointed as the Minister of Justice, a position overseeing the lawyers. His appointment raised concerns that his personal attitudes could influence the imposition of stricter regulations on defense lawyers.<sup>241</sup>

Contrary to some hostile attitudes, the rise of Sīkē lawyers also saw explicit support from certain officials. For instance, in June 2013, the then-deputy director of the Beijing Municipal Bureau of Justice, Wu Qingbao, published an article advocating for judges to proactively consider lawyers' opinions.<sup>242</sup> Later, in July, Wu penned another article, asserting that "the motivation of Sīkē lawyers is good and should be accepted by relevant policymakers and law enforcement agencies."<sup>243</sup> Furthermore, Wu suggested that officials should actively collaborate with Sīkē lawyers, involving them as advisors in decision-making processes. Wu's articles not only reflected his personal stance but possibly also indicated support from the Beijing Bureau of Justice.

Additionally, in 2015, the president of the Supreme People's Court openly criticized the hostility some judges exhibit towards lawyers. This critique underscored the varying attitudes among officials and highlighted the disparity between the central and local judiciary's stance. In January 2015, Zhou Qiang, the then-Chief Justice of the SPC, expressed his concerns at the National Conference of High Court Presidents, stating: "Frankly speaking, I can't understand why judges keep kicking lawyers out of the courtroom. The court should focus on the trial and permit lawyers to fully express their opinions. Wouldn't it be beneficial to consider a broader range of viewpoints?"<sup>244</sup>

This statement reflects a push towards a more open and inclusive judicial process. Another indication of official backing for Sīkē lawyers is evident in articles from state media. For instance, in April 2015, the People's Daily, a publication overseen by the CPC, released an article asserting, "One unfair trial causes more harm than ten crimes. The existence of lawyers acts as the stirring catfish, keeping everyone alert to the facts and encouraging respect for

240. He Weifang, *supra* note 91.

241. See Wang Feng (王峰), *Zhongjiwei Fushuji Zhang Jun Ren Sifa Buzhang Wu Aiying Zhibang 12 Nian Hou Xieren* (中纪委副书记张军任司法部长 吴爱英执掌12年后卸任) [*Deputy Secretary of the Central Commission for Discipline Inspection of the CCP Zhang Jun Appointed Minister of Justice, Wu Aiyang Steps Down After 12 Years in Office*], 21 SHIJI JINGJI BAODAO (21世纪经济报道) [21ST CENTURY BUSINESS HERALD] (Feb. 24, 2017), [http://m.21jingji.com/article/20170224/herald/5a04e64623ec7811a7c02d1a60f9e736\\_zaker.html](http://m.21jingji.com/article/20170224/herald/5a04e64623ec7811a7c02d1a60f9e736_zaker.html) [<https://perma.cc/CXE9-J63G>].

242. Wu Qingbao, *supra* note 16.

243. See Wu Qingbao (吴庆宝), *Sikepai Lvshi Gengyao Weihu Fzhi Shehui* (死磕派律师更要维护法治社会) [*Sike Lawyers Are More Required to Safeguard the Rule of Law Society*], HUANQIU SHIBAO (环球时报) [GLOBAL TIMES] (July 24, 2013), <https://news.sina.com.cn/pl/2013-07-24/072127754843.shtml> [<https://perma.cc/9QMU-XLCX>].

244. See Zhou Qiang (周强), *Guifan Tingshen Dujue Ba Lvshi Ganchu Fating Xianxiang* (规范庭审 杜绝“把律师赶出法庭”现象) [*Standardization of court hearings Put an end to the phenomenon of “driving lawyers out of the courtroom”*], <https://www.hnlawyer.org/news/1942.html> [<https://perma.cc/FC48-XUL6>].

human rights and the law.”<sup>245</sup> This article signifies recognition of the crucial role lawyers play in the courtroom.

Following the 709 crackdowns, official media turned to sharply criticized Sīkē lawyers. In July 2015, the Global Times published an article specifically targeting Sīkē lawyers.

The Sīkē spirit embodies positive meaning and is closely related to the rule of law. However, a minority of Sīkē lawyers diverted their focus away from the courtroom and shifted their focus to public opinion. They leverage the force of public sentiment to influence the direction of cases and may even organize on-site protests.<sup>246</sup>

In August 2016, Xinhua News Agency published an article criticizing Sīkē lawyers for their public confrontations with judges both in the courtroom and online. The article accused them of creating disturbances and leveraging sensitive cases to generate publicity, leading to adverse impacts.<sup>247</sup> The term “Sīkē lawyers” has become sensitive and taken on a negative meaning.

In the aftermath of the 709 crackdowns, mainstream Sīkē lawyers were not severely impacted. However, the real constriction came from judicial interpretations and legal provisions subsequently issued by the MOJ, the ACLA, the SPC, and the SPP. These bodies significantly tightened restrictions on lawyers’ speech and behavior.<sup>248</sup> The introduction or revision of these regulations effectively tightened the reins on Sīkē lawyers.

The evolving official attitude towards Sīkē lawyers, marked by changes and internal conflicts, exemplifies the analytical framework of two types of contradictions. It indicates that the control over Sīkē lawyers is intended to be exerted through legal means, albeit the law often appears merely as a tool for control. Moreover, despite the official media’s public criticism of Sīkē lawyers, it inadvertently acknowledges their positive contributions. These reports often highlight that only a “few” Sīkē lawyers are problematic, not the majority. In comparison to the severe restrictions faced by Chinese human rights lawyers, Sīkē lawyers have generally experienced greater tolerance from the government. This tolerance arises not just from the self-imposed limitations and subtle constraints in the official narrative but also from the strategic

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245. See Yi Ran (—然), *Renmin Ribao Lunzheng: Pingshenme Ba Lusbi Ganchu Fating* (让律师说话, 让法律更有尊严) [Let Lawyers Speak, Make the Law More Dignified], RENMIN RIBAO (人民日报) [PEOPLE’S DAILY] (Apr. 29, 2015), <http://opinion.people.com.cn/n/2015/0429/c1003-26923339.html> [https://perma.cc/S2TE-J38G].

246. See *Sheping Shaoshu Sikepai Lusbi Zaigentou Shi Biran de* (社评: 少数“死磕派”律师栽跟头是必然的) [Editorial: A Few “Sike” Lawyers Are bound to Fall], HUANQIU SHIBAO (环球时报) [GLOBAL TIMES] <http://opinion.huanqiu.com/editorial/2015-07/6975906.html> [https://perma.cc/D343-MFFR] (noting that despite the positive role of Sīkē Lawyers, a few Sīkē Lawyers did not concentrate on defense during trial but put most of their energies on influencing public opinion, causing troubles to themselves).

247. See *Qidi Zhou Shifeng An: Yige Dianfu Guojia Zhengquan Fanzui Jituan Toumu de Anran Shouchang* (起底周世锋案: 一个颠覆国家政权犯罪集团头目的黯然收场) [Zhou Shifeng Case: A Gloomy End for the Leader of a Criminal Group Subverting State Power], HUANQIU SHIBAO (环球时报) [GLOBAL TIMES] (Aug. 4, 2016), <https://china.huanqiu.com/article/9CaKrnJWSZb> [https://perma.cc/ZY4Q-Q6WB].

248. See *supra* note 96 and associated text.

approaches of the Sīkē lawyers themselves. Furthermore, it is influenced by the constraints within the existing legal framework, which govern and shape these interactions.

## CONCLUSION

This Article has explored how the Sīkē lawyers' movement exemplifies a distinctive path for legal mobilization in China. Despite the "709 crackdown," the Sīkē lawyers' movement did not disappear but evolved, becoming more strategic and rational from 2015 to 2022. The resilience of Sīkē lawyers comes from a combination of internal resolve and an external legal environment that, while restrictive, still allows some room for advocacy. The enduring presence of injustices, such as forced confessions, continues to fuel their commitment. Notably, the movement's spirit extends beyond its initial members to influence a broader circle of legal professionals in China, indicating that the Sīkē methods—characterized by adaptability and flexibility—are valuable tools for navigating an ever-shifting landscape. By focusing on the unique strategies and resilience of Sīkē lawyers, this Article illustrates that targeted legal advocacy can lead to significant impacts even under restrictive political conditions.

A key takeaway is the unique combination of depoliticization and politicization, avoidance of foreign influences, and profound respect for the law that represents the core strategies of Sīkē lawyers. These strategies reflect not only a deep understanding of China's local legal and political environment but also an adaptation of the experiences and lessons learned from other human rights lawyers. By observing and internalizing these insights, Sīkē lawyers have crafted an approach tailored to the unique challenges they face, demonstrating a sophisticated synthesis of local context and external influences in their pursuit of justice and reform. They not only fight for the rights of defendants but also advocate for the rights of lawyers themselves, thereby fortifying their position within the legal system. This dual focus ensures they can continue representing clients effectively while promoting broader legal reforms. Before their rise to prominence, the image of Chinese criminal lawyers was marginalized. The Sīkē lawyers have redefined this image to some degree through vigorous and sincere defense, earning respect from peers, clients, and scholars. Although diverse in their approaches, the mainstream of Sīkē lawyers is dedicated to zealous advocacy rather than colluding with corrupt officials. Their commitment to rights, law, and principles—even in the face of adversity—underscores the movement's resilience.

The government's relative tolerance of Sīkē lawyers suggests an understanding of their role within the larger societal context. Authorities treat their actions as internal contradictions to be addressed democratically and legally, rather than as threats requiring outright repression. This nuanced stance provides Sīkē lawyers with a degree of maneuverability and space for their activities. It reflects that within the Chinese government's own logic, there exists space for legal mobilization—though different from those in Western democratic countries.

The logical foundation of this system lies in distinguishing between enemies and internal contradictions, with greater tolerance shown toward internal contradictions. Besides, divergences within the government itself regarding attitudes toward lawyers create additional opportunities for Sīkē lawyers. These internal differences offer them further space to continue their work and advocate for legal reform. Furthermore, the need for authorities to align with official narratives and existing laws constrains their responses, allowing lawyers some room to operate.

The resilience of the Sīkē lawyers' movement following the "709 crack-down" reveals a distinct form of legal mobilization characterized by a continuously evolving and fluid space for action. They utilize the system's own tools—statutes, principles, and procedural protections—to combat its shortcomings. Their methods, marked by flexibility and innovation, enable them to continue their advocacy amid shifting political and legal conditions. The fact that the Sīkē lawyers' movement has adapted, survived, and made an impact within an authoritarian context speaks to their legal and strategic acumen. They represent more than a collective of legal professionals; they embody a constant quest for justice and legal integrity, navigating a complex and restrictive legal landscape with savvy, determination, and a deep commitment to the rule of law. This journey has not only reshaped perceptions of Chinese defense lawyers, legal mobilization, and criminal justice but has also provided a fresh blueprint for legal activism in similar contexts.

For the international community—particularly legal scholars, practitioners, and attorneys operating in similar contexts—the Sīkē lawyers provide concrete lessons. 1) *Balancing Depoliticization and Politicization*: Sīkē lawyers treat political engagement as a means to achieve criminal justice, not as an end in itself. By balancing depoliticization with strategic advocacy, they sustain their work without triggering excessive backlash. This approach allows legal actors elsewhere to adapt and maintain momentum in politically sensitive cases. 2) *Leveraging the Legal System's Own Tools*: They employ the legal system's statutes, principles, and procedural safeguards to highlight judicial shortcomings and injustices. This tactic builds their credibility while exposing flaws from within. International legal actors can similarly harness existing laws and procedural norms to challenge injustices, even in restrictive regimes. 3) *Navigating Ambiguous Spaces for Action*: The government's nuanced stance—viewing the Sīkē lawyers' actions as "internal contradictions" to be addressed legally rather than suppressed—has afforded them a degree of maneuverability. By tactfully operating within these ambiguous spaces, Sīkē lawyers demonstrate that targeted advocacy can persist in constrained environments. Legal practitioners in similar contexts might find ways to engage constructively within these "gray zones" to maximize their impact. 4) *Building Flexible and Decentralized Alliances*: Rather than relying on fixed organizations, Sīkē lawyers form alliances around specific cases. This fluid structure makes the movement resilient to external pressures and harder to suppress entirely. Such decentralized networks offer legal actors in authoritarian contexts a model for building adaptable and

resilient advocacy groups. 5) *Raising Public Awareness to Strengthen Advocacy*: By sharing case information through social media, Sīkē lawyers raise public awareness and create subtle pressure on the legal system. This strategy can inspire legal actors elsewhere to use digital tools to engage and inform the public, even where traditional media is controlled.

Furthermore, this Article underscores the importance of localized observation in understanding legal activism across different political systems. It illustrates that legal mobilization in authoritarian contexts—shaped by unique legal and political landscapes—may differ in form, evolution, and strategy from that in democratic environments. This insight highlights the need for a theoretical framework that emphasizes the interplay between legal actors, institutional spaces, and the political environment, recognizing the role of indigenous legal resources and contextual constraints. While illustrating the dynamics of Chinese defense lawyers' movement, this study advances a theoretical approach for examining how legal actors adapt strategies and explore pathways that align with the institutional logic of bureaucratic systems, ultimately offering a model for understanding the unique trajectories and capacities for legal reform in other restrictive regimes.



