Readings on
THE CRIMINAL PROCESS
IN CHINA

Compiled by Jerome A. Cohen
and
Ping Yu
for the course “LAW AND SOCIETY IN CHINA”
Spring 2004

Printed privately for the exclusive use of students in the course “Law and Society in China,” Spring 2004, at the New York University School of Law.
The course will begin Tuesday, January 13 with the collaboration of Mr. Ping Yu, a well-known Chinese expert in the subject and Senior Research Fellow at NYU Law School. Please see the attached Tentative Class Schedule, and read the material assigned for the first class.

Students may either write one analytical research paper (a minimum of twenty typed double-spaced pages) that is due April 9 or a ten page typed, double-spaced 48-hour “take-home” exam to be completed during exam period.

Paper topics must be related to the subject of the course and approved in advance by me after review of an outline of the proposed paper. Each topic should call for original research and analysis, not a rehash of published work. Students are encouraged to do research using Asian or other foreign languages if that is possible, although there is a good deal of material relating to Chinese law in English. I also welcome papers on selected aspects of the criminal process in countries other than China, including the United States, especially since “9-11”. Outlines must be approved no later than February 27. Papers by J.D. candidates may qualify for “A” and “B” credit if requirements are otherwise met, and it is each student’s responsibility to make sure to comply with procedures.

The “take-home” exam will consist of an essay question that will allow you to demonstrate that you have understood the class material and discussions and have thought about them in a comparative way.

I enjoy meeting students and, beginning January 15, will usually be readily available if you make a date with my very efficient secretary, Ms. Abigail Taylor (abigail.taylor@nyu.edu 998-6261), 5th floor Vanderbilt. My office is 410 Vanderbilt (998-6169) but it is more efficient to book through Ms. Taylor than to look for me without appointment. You may also email me at cohenj@juris.law.nyu.edu. Be sure to give me your phone number.
Teaching materials will be available at least one week in advance in Suite 500. The Library has set up a shelf for relevant books.

Please be sure to reserve the evening of April 9 for a tour of the Chinese section of the Metropolitan Museum of Art led by my wife, Joan Lebold Cohen, a specialist on Asian art, followed by a party at our nearby apartment.

I will try to bring in relevant guests from time to time. On January 20, Ms. Amy Gadsden, recently a State Department Special Advisor on China in the Bureau of Democracy, Human Rights and Labor and currently writing a Ph.D. dissertation on the late Qing/Republican legal modernization, will join us. Judge Ling Lan of the Hangzhou City Gongshu Basic Court will be our guest expert for the classes of February 3 and February 6. Prof. Jaw-Peng Wang of National Taiwan University and Judge Hui-Fang Huang of the Taiwan High Court will join in our classes of February 24 and March 2. Jared Genser, Esq., President of Freedom Now (a non-profit organization dedicated to freeing prisoners of conscience) and a Washington lawyer, will be our guest at the final class.

I look forward to our discussions.

Jerome A. Cohen
NYU School of Law – Tentative Class Schedule

LAW AND SOCIETY IN CHINA: THE CRIMINAL PROCESS

Professor Jerome A. Cohen
With the Collaboration of Mr. Ping Yu

Spring 2004
Thursday 4:05 – 5:55 pm
Furman Hall, Room 316

January 13
b) What Can (or should) Foreigners Do About Perceived Injustice in China’s Criminal Process?
c) The Great Tradition – Millennial Ideology and Criminal Process Under the Qing, the last of the Dynasties (1644-1911)

January 20
Pre-Communist Modernization – Late Qing and Republican Efforts
Guest Speaker: Ms. Amy Gadsden

January 27
Overview of the Contemporary Legal System – 1949 - 2004

February 3
Structure, Organization and Personnel of PRC Courts, and Training, Incentives and Sanctions for PRC Judges
Guest Speaker: Judge Ling Lan

February 6
An Ordinary Criminal Trial
Guest Speaker: Judge Ling Lan
(Friday)

February 10
No Class (makeup Feb. 6)

February 17
No Class – Legislative Monday

February 24
a) What conduct is “Criminal”? 
b) The Range of Punishments, Including the Death Penalty

March 2

March 9
The Formal Process: Detention, Search and Seizure, Arrest and Investigation

March 16
Spring Recess – No Class
March 23  The Formal Process: Indictment, “Trial” and Judgment

March 30  Evidence Rules in Ferment: Silence, Presumption of Innocence, Self-incrimination, Torture, Cross-Examination and Other Problems

April 6  The Limited Role of Defense Counsel: Pre-trial and During Trial

April 13  Appeal, Post-Conviction Remedies and Prison Conditions

April 20  Judging the Courts: Scope, Professionalism, Independence, Honesty, Local Protectionism, “Guanxi” and Other Ethical Problems

April 27  What Can/Should Foreigners Do About Perceived Injustice in China’s Criminal Process?
   a) Why?
   b) What are the Prospects for Serious Criminal Justice Reforms in China? For example, is a process similar to Habeas Corpus feasible?
      Guest Speaker: Jared Genser, Esq.