Asian Journal of Law and Society, 3 (2016), pp. 377–397
doi:10.1017/als.2016.33

First published online 26 July 2016

From "Access to Justice" to "Barrier to Justice"? An Empirical Examination of Chinese Court-Annexed Mediation

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Abstract
The literature on Alternative Dispute Resolution (ADR) has argued for the general advantages of courts' providing mediation services. However, courts' involvement in mediation cannot always be justified by those advantages, unless (1) the mediation process is a consensual procedure based on party autonomy and (2) where the initiation is mandatory, the courts' allocation of cases is justified both by the public interest and a case selection system. In this context, this article empirically tests whether the established arguments from ADR theory can be applied to justify all Chinese court-annexed mediation practices. This study provides a negative answer, owing to the fact that some Chinese court-annexed mediation practices found in the fieldwork aim mainly at clearing dockets and achieving case management for the courts' organizational interests. Offsetting the advantages, those Chinese court-annexed mediation practices prevent disputants from gaining access to the official adjudication procedure.

Keywords: ADR, court-annexed mediation, Chinese case-filing mediation, Chinese court

1. INTRODUCTION

Since the Pound Conference, held in the US in 1976, a series of studies on Alternative Dispute Resolution have supported the general advantages of courts' providing annexed mediation services (this body of literature is hereafter referred to as "ADR theory").[1] According to the prevailing consensus view in the English-language literature, mediation and

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1. Sanders (1979); Menkel-Meadow (1991); David (1994); Nolan-Haley (1996); Woolf (1996); McAdoo & Welsh (2004); Menkel-Meadow (2006); Alexander (2006); Department of Justice, Government of the Hong Kong Special Administrative Region (2010); Sourdin (2011); Welsh (2012).

adjudication processes are separate, and ADR supports the courts' function of dispute resolution. The support does not undermine the court's duty of functioning as an adjudicator; mediation provides disputants with greater choices in dispute resolution without, at the same time, hindering access to justice. ADR theory has gained global attention, particularly in China.

This paper aims at empirically examining the Chinese courts' role in case-filing mediation, in light of the theoretical framework established by ADR theory. It answers the question of whether ADR theory can be applied to justify observed Chinese court-annexed mediation practices.

During the last decade, both the Supreme People's Court (hereafter referred to as "the SPC") of China and certain well-known Chinese researchers have borrowed ADR theory to justify and explain Chinese courts' role in promoting contemporary Chinese court mediation practices.[2] The promotion of "case-filing mediation (*Li'an tiaojie,* 立案調解)" in China is an example of such an effort. The promotion of case-filing mediation pre-empts criticisms traditionally levelled against Chinese judicial mediation (*Susong tiaojie,* 訴訟調解), namely the inappropriateness of trial judges mediating the same case they will later try. Judicial mediation has been widely criticized for being only superficially consistent with global trends in mediation; in fact, it is argued that mediation is a threat to the role of courts in guarding law and justice under the rule of law, and that it ultimately undermines the certainty of legal norms and formal Chinese legal institutions.[3] However, case-filing mediation has a different complexion. Case-filing mediation refers to a collection of mediation activities conducted by court officials (mostly in-courthouse-people's mediators and judicial assistants, but also judicial clerks, judges, and other court staff) after disputants bring cases to the courthouses, but before the litigation processes begin. The regulations and theory published on "case-filing mediation" strongly resembles "court-annexed mediation,"[4] as both approaches refer cases to independent mediation before moving to the process of formal litigation. Since the mediation procedure is independent from the trial process, most existing studies omit Chinese case-filing mediation from their criticisms of judicial mediation, but evaluate it positively.[5]

On the surface, the advantages of courts' providing annexed mediation services, namely "private justice" and "party autonomy" in ADR theory, may be cited to justify the Chinese practice as well. However, the realities of the Chinese court-annexed mediation practice remain opaque. Currently, Chinese empirical studies often use official statistics to show how effectively case-filing mediation functions. However, the fact that the majority of reports are written by judges and scholars serving in the courts, which are the subject of these studies, debases the value of such reports.[6] Additionally, there is little empirical evidence showing

2. Fan (2008); Fan (2009); Office of the Leading Group for Judicial Reform (2012). In this article, it is not proposed that Chinese literature is using Western ideas to justify mediation, but that it adopts Western ideas to justify the courts' role in mediation. The justification of widespread mediation in society is explained by culture and society. See Cohen (1966); Lubman (1967).

3. Liebman (2011); Fu & Cullen (2011), pp. 27–35; Minzner (2011), p. 936; Waye & Xiong (2011); Ng & He (2014).

4. Brown & Marriot (2011), p. 84. (The term "court-attached" mediation (sometimes also referred to as "court-annexed," "court-related," or "court referral" mediation) is used to describe the process in which the court incorporates mediation as part of its procedural system and/or makes the arrangements for the appointment of the mediator and/or provides its premises for the mediation.)

5. Halegua (2005); Hu (2011); Ali (2013); Hu & Zeng (2015).

6. Yu (2011).

https://doi.org/10.1017/als.2016.33 Published online by Cambridge University Press

exactly how case-filing mediation functions—either with respect to the judiciary's role in the referral process, or to its function in the mediation process. For instance, existing studies do not show how mediation sessions are initiated or how mediators mediate disputes.

This paper examines the courts' roles and activities in the context of court-annexed mediation, from the moment disputants step into the courthouse until the cases go to trial. However, this paper refrains from either answering normative questions concerning court-annexed mediation—such as whether courts should be involved in annexed mediation—or addressing practical considerations—such as when, how, and in what circumstances cases should be settled.

The next section reviews existing ADR theory regarding the role of the court in promoting mediation and summarizes key prerequisites for the application of ADR theory to court-annexed mediation. Following the methodology section, Sections 4 and 5 depict the mediation referral procedure and mediators' activities, pulling from original data. Section 6 tests both the consistency of ADR theory and whether it is capable of being invoked to justify Chinese mediation practices. Section 7 sets forth the conclusion.

2. A THEORETICAL OVERVIEW: WHY SHOULD COURTS PROVIDE ANNEXED-ADR SERVICES?

This section provides an overview of how ADR theory supports the courts in mediation, in preparation to examine whether two of its assumptions are corroborated by empirical results from Chinese practices.

To begin, mediation is, by nature, a consensual procedure, wherein *disputants' consent* is one of the critical elements.[7] The procedure gains legitimacy from a consensual outcome. However, court-annexed mediation differs from commercial mediation, which is paid by disputants. The current ADR trend in courts—entailing a redefinition of dispute resolution approaches—started with the institutionalization of mediation, which resulted from the involvement of courts in the process. In practice, the judiciary and legal profession occupy an influential position in processes of mediation referral, as they recommend and sometimes even mandate mediation, pursuant to statute or local rule.[8] Mandatory mediation is introduced for two reasons: first, a lack of voluntary mediation; second, the growing public interest in courts closing cases through mediation rather than adjudication.

From the side of disputants, mediation is mandatory because most disputants do not use mediation unless required to do so. For example, in the Netherlands, only 15% of the judges refer to mediation because the parties requested it.[9] Even though coercion during the process of mediation is strictly forbidden, the initiation of mediation may be coerced.[10] There is a trend in the US and UK to weaken consent, in terms of mediation initiation. For example, in the UK, a litigation fee will be levied on disputants for an unreasonable refusal to mediate.[11] In line with the opinions of courts, many scholars argue that the cautious use of courts'

7. Nolan-Haley, *supra* note 1, p. 56.

8. Ryan (1999).

9. Jagtenberg & Klijn (2011), pp. 37–8.

10. In the US, mandatory mediation has become an acceptable feature of the civil justice landscape, despite collateral problems inherent in these referral schemes. Nolan-Haley (2009), p. 1254.

11. *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA (Civ) 576.

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powers to mandate ADR is necessary, both to maintain public support and to ensure compatibility with the objectives of ADR.[12]

From the side of courts, mediation is mandatory because, when courts are faced with limited judicial resources, piling dockets, and prolonged procedures, the disputants' autonomy does not necessarily prevail over the urge to manage the cases. The encouragement of courts to mediate is justified by case management needs, which serve public interests. Goldberg refers to the public interest as follows: "If the dispute is one in which a trial is likely to be lengthy, and so consume precious court time, there may be a public interest in referring the dispute to some form of ADR."[13] Proponents of mediation use this principles to address the tension between party autonomy and public interests: only when the public interest is better served by a court decision than by a private settlement (e.g. because it involves a complicated legal issue) will there be a need to call for public adjudication.[14] The availability of a mediation option enables courts to devote their time and energy to cases that truly deserve public attention and resources. In other circumstances, mediation is a better method of dispute resolution. Whether these conditions are met should be tested through a delicately designed case selection system (whether based on regulations or a case management strategy).

The introduction of mandatory mediation challenges both the assertions that mediation preserves party autonomy and that courts *unquestionably* respect disputants' wishes. Courts' decisions to coerce disputants *into* mediation is an example of the courts' case management strategy, whereas coercion *during* mediation militates against the notion of privatized mediation. In fact, courts go beyond merely talking disputants *into* mediation. Courts actively promote resolving disputes via mechanisms other than litigation, including referral and filtering procedures, financial incentives, education about the process, and promotion of the benefits of mediation.[15]

In short, court-annexed mediation attracts vigorous proponents in Western jurisdictions, and its perceived necessity is based on two assumptions:

1. It is a consensual procedure based on party autonomy, and, by default, initiation of mediation should be a consensual choice.

2. Where the initiation is mandatory, the courts' allocation of cases to mediation is justified by public interest; therefore, a case selection system is inevitable.

The fieldwork tests the extent to which these two assumptions are corroborated by empirical data.

3. METHODOLOGY

This study adopts a qualitative case-study method. It does not purport to contribute primarily to quantitative assessment, producing numbers for what happens in which types of circumstances (as statistical generalization is not the appropriate method for this type of study).

12. Ingleby (1993); Sherman (1992).

13. Goldberg et al. (2003), p. 336 ("When a process selection is made from a public perspective, the public interest may also be considered.").

14. *Ibid.*

15. Sourdin (2006).

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This paper does not claim that the data accurately "represent" the Chinese situation—even in only two courts, the author found great variation—but it does, nonetheless, reflect a cross section of the population.

The original fieldwork was undertaken in two basic-level courts—M and P—in the years 2011 and 2013, respectively. It was before the SPC adopted the Case Filing Registration System (li'an dengjizhi,立案登記制).[16] The study concentrated on labour disputes, even though data on other disputes were also collected (family disputes, traffic accidents, and medical cases). The author learned from the 2011 pilot study that having a focus group of cases is important, since different civil divisions in the courts (*minshishenpan ting,*民事審判庭) specialize in specific types of disputes. Focusing on the type of dispute that a particular division dealt with was, therefore, necessary. Therefore, in order to properly conduct the research, one type of civil dispute had to be chosen. The author chose labour disputes, since these can be both routine and collective cases, and thus were the most likely to exemplify the roles of *most* courts in organizing case-filing mediation.

The study aimed at finding diversified practices in case-filing mediation. Consequently, the researcher chose two courts that were both active in organizing case-filing mediation, but which had different backgrounds.

Court M is located in the Yangzi River Delta, whereas Court P is in the Pearl River Delta. Cities M and P have become urbanized and industrialized, and many factories are located in their municipalities. As county-level courts, labour disputes occupy a significant percentage of the cases in both courts. The courts have a very heavy case-load and are operated by a staff of between 150 and 160. Courts M and P received about 17,000 and 32,000 cases, respectively, in 2009.

Despite similarities, the two courts have distinctive characteristics. As a near neighbour of Hong Kong and Macau, Court P is a proponent of multiple dispute resolution mechanisms. It places stress on referral mediation and mediation in the case-filing division. Moreover, with more than 90% of it judges having bachelors' degrees or higher, and more than 70% of it judges under the age of 35,[17] it is viewed as a vanguard of legal reform. Court M, by contrast, is not as visionary. Although 85% of its judges possess bachelors' degrees or higher, in general, the court is not distinctively influenced by a Western conception of dispute resolution. The idea of how to promote mediation remains obscure and orthodox.

The author gathered information in three ways: (1) examination of docket sheets and computerized docket records; (2) observation of mediation sessions; and (3) semi-structured interviews. Most information came from mediation sessions, prior to which the author read the case files and sought permission from disputants to join the sessions. After each observed session, the author further discussed the mediation process with the disputants, lawyers, judges, or mediators.

The author observed 49 court-annexed mediation sessions, and conducted 113 interviews regarding case-filing mediation. Twenty-five interviews were with judges or mediators, 25 interviews with workers, 47 with lawyers, and 16 with company representatives. Interviews took place immediately after the mediation sessions. If the parties changed their minds and

16. The SPC, *Provisions of the Supreme People's Court on Several Issues concerning the Registration and Docketing of Cases by People's Courts* (2015).

17. Annual report of Court P.

https://doi.org/10.1017/als.2016.33 Published online by Cambridge University Press

reached an agreement between themselves, the author would conduct a follow-up interview. The time of the interviews varied according to those being interviewed: with judges, interviews lasted, on average, two hours or longer. On occasions, the author conducted several interviews with one person; with lawyers, interviews were shorter, but still took about 40 minutes. For the workers and company representatives, the interviews lasted approximately 15 minutes.

4. THE MEDIATION REFERRAL PROCEDURE IN REALITY: A CASE MANAGEMENT STRATEGY

4.1 The Procedure for Dispute Resolution in the Case-Filing Division

Courts become involved in disputes after disputants bring cases to the courthouse and are ready to file the case to the court. Before the SPC adopted the Case Filing Registration System on 1 May 2015, regulations left local courts with a considerable degree of discretion in deciding when to officially accept a case. Article 122 of the Civil Procedure Law states that "wherever appropriate, mediation shall be adopted for civil disputes before they are brought to the people's court, unless the parties thereto *refuse* mediation" (emphasis in original). From this perspective, the test is not whether disputants proactively choose mediation, but that they not *refuse* it. In determining whether disputants have refused mediation before the official acceptance of cases, two options appear. If disputants opt for mediation before official case-acceptance, then mediation occurs before official case-acceptance. If, however, disputants reject mediation, the cases should first go through an official case-acceptance procedure, whereby the disputants can decide consecutively if they want mediation before trial.

The official case-filing procedure is significant for the *adjudication* work of courts, as it is the threshold for the litigation process; it is only after completion of this step that cases will be sent to trial judges. Following official case-acceptance, courts are required to follow adjudication rules under civil procedure law; in the absence of official case-acceptance, the dispute resolution process is not obliged to follow these rules. However, for *mediation*, official case-acceptance is not necessary, and courts may participate in the dispute with or without such acceptance. Simple as all this may sound, in practice, official case-filing carries unexpected stories.

4.2 Finding I: The Appearance of Ghost Cases

In Court M, the author observed a large number of cases handled through the case-filing mediation procedure, which had not been officially accepted. In other words, Court M channelled cases through mediators before the official case-filing procedure was complete. Cases were only officially accepted after mediation failed.

For 49 cases, the author calculated the time interval between courts' accepting disputes, beginning to solve them, and official case-filing; this was done by reading the case files (24 cases from Court M and 25 cases from Court P). The law states that official case-filing must occur within seven days of courts' accepting the disputes and beginning to solve them. Court P took 0.56 weeks (around two days) before official case-acceptance. The cases in Court P followed the legal framework quite closely. Court M, on the other hand, appeared to deviate widely from regulation. The amount of time for Court M's 24 cases was

https://doi.org/10.1017/als.2016.33 Published online by Cambridge University Press

extraordinary: on average, it took 6.125 weeks for the cases to be officially accepted, which was 11 times longer than Court P. In some cases, it took as long as 20 weeks. This shows that, in Court M, many cases remained "invisible" to the courts' procedural machinery for much longer than the seven-day period stipulated by law.

Why did the disputants not choose to file their cases before being granted official acceptance? This question exaggerates the power of disputants. Based on the author's observations in Court M, officers at the case-filing window did not tell the disputants that they could choose between mediation and official case-acceptance, which would lead to litigation. Furthermore, in dealing with disputants, officers did not clarify the difference between "courts accepting the disputes" and "official case-acceptance." This means that disputants were never given a chance to refuse mediation. On the contrary, in practice, most disputants followed the courts' lead and treated mediation as a part of the court's due process. Thus, the question as to the route through which the cases were channelled depended largely on the courts and how they guided disputants.

With respect to case-filing mediation, as the cases were not officially accepted in accordance with the prescribed litigation procedure, they were not registered with an official case number[18]; thus, they could not be traced through the court's accountability system. Owing to their invisibility within the accountability system, this study calls cases of this type "ghost cases."

4.3 Finding II: The Uniformity of Case Allocation

In the literature on ADR, the mediation referral process is important as it should search for the most suitable ways to resolve cases.[19] However, this was largely unconfirmed in the fieldwork. The mediation referral process should be undertaken by the File-Receiving Window (*li'an chuangkou*, 立案窗口). However, the staff there knows little, if anything, about mediation. The main job of the File-Receiving Window is to receive the indictment files from disputants, and to ensure the submitted case files meet official case-filing standards. In neither court did disputants play a role in the selection; nor could they choose their mediators, despite the fact that the referral processes of both courts show some differences in this regard. Court M applies an indiscriminate approach to the selection of mediators, whereas Court P assigns a judge to carry out the selection.

In Court M, all civil cases go through longer or shorter mediation processes. There are different mediators—two are people's mediators and nine are former judicial clerks. One people's mediator (male, around 60 years old) specializes mainly in labour cases, whereas the other (female, around 50 years old) focuses on family disputes. Both work as full-time mediators. The former judicial clerks are mainly in charge of other case-filing division obligations (such as handling pre-trial procedures) and provide mediation services for "more complicated" cases (such as tort, contract law, etc.). When the cases have been taken from the File-Receiving Window, a court official brings the files to the mediator who specializes in the type of dispute under consideration. From that moment on, the case has been effectively transferred to the real mediation process itself.

18. They have internal case numbers within the court, but these records are not open to the public.
19. Pel (2004), p. 19.

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In Court P, the procedure is similar, except that Court P arranges for an experienced judge to decide on which mediator to assign the case. The selection process follows the same pattern. All labour cases go to a people's mediator (female, 30 years of age), all family and some traffic accident cases go to a second people's mediator (female, 30 years of age), whereas the remainder go to another people's mediator (male, 25 years of age). The judge is allowed to redistribute the cases but rarely does so. He uses his experience to decide whether a case should go through mediation or straight to trial—a choice that depends on the chances of a successful settlement, although "almost every case goes to mediation in the case-filing division before going to the trial process."[20]

4.4 Finding III: Disputants' Arbitrariness in Joining the Mediation Sessions

Although the case files go to the mediators, and both courts try to persuade disputants to join the mediation sessions, disputants are not obliged to participate. After the people's mediators have accepted the cases, the mediators contact the disputants and ask them to join the mediation sessions. The two courts have different ways of contacting disputants.

Court M sends out a subpoena to the defendant,[21] which notes the time and location of the mediation session, both predetermined by the court. This mediation subpoena does not have legal significance and differs from a subpoena for trial. It sends a signal to the defendant that the person has an "obligation" to join the mediation session, notwithstanding the fact that this "obligation" is legally groundless. However, without any background information, disputants might mistakenly equate the mediation with a trial subpoena, thus feeling obliged to participate in mediation. In this regard, despite the lack of clarity, there is no punishment for not participating in mediation.

However, sending a subpoena is a one-way method of communication; if the defendant neither responds to the subpoena nor contacts the court, then the mediator does not know whether the defendant will be present. The author observed many instances in which the plaintiff was the only party who showed up to the mediation session on time. The mediator would then contact the other party, and it sometimes required a phone call to determine whether the other party was coming or not.[22] Thus, one party might end up waiting a long time for the other party, who never planned on attending. For example, in one case, the defendant did not show up, but the plaintiff's lawyer and two workers waited in the mediation room for 45 minutes.[23] If one or both parties do not show up, then the mediator contacts them within the amount of time before the possibility of mediation expires, and then transfers the case to the litigation process.

In Court P, the mediator calls both parties and determines their willingness to mediate, setting a time according to the disputants' preferences.[24] If both parties can join the session

20. Interview X20130909.

21. The plaintiffs are often more willing to join in the mediation as they want to solve the problem as soon as possible. Mediators often merely make a phone call to them. Interview D20130527.

22. For example, Case 19.

23. Case 13. Another example is Case 23 (defendant did not show up, plaintiff waited for one hour).

24. The calling process. Note 20130815.
"M: Hello! I'm XXX from the court. Worker XXX has filed the case to the court. Are you willing to mediate (here, mediate means "try to settle the case" in Chinese)? If you are, let's find a time so that you can come to the court. Does tomorrow suit you?"
Then the mediator called the worker's lawyer and told him that the factory was willing to mediate.
"M: Does next Friday suit you?

https://doi.org/10.1017/als.2016.33 Published online by Cambridge University Press

before the time limit for mediation expires, then the mediation session is held; if not, then the case is transferred to the litigation process. With this approach, there are fewer occurrences of just the plaintiff being present at mediation.

For disputants, participation in mediation does not mean that they truly understand the meaning of mediation. When asked about their reasons for joining the mediation sessions, they often told the author that they did so at the request of the court. Sometimes, mediators made mediation seem mandatory; for example, a disputant said:

> When I got the subpoena, I called the mediator. He then asked me if I had received the subpoena. I told him yes, and I would definitely come to the mediation. At that time, I told him that the dispute should have gone through the labour arbitration procedure first. But he said, "You come here for mediation, don't need to think about it."[25]

Sometimes, mediators made mediation seem like a precondition of litigation. For example, a disputant said:

> The court initially contacted me, but I thought it was the trial judge …. The mediator said he was a mediator, and I needed to come to court. If two parties can reach an agreement, the dispute will be ended when we sign the agreement. But the other party had already clearly rejected mediation. [Y. Li: If you knew that the other party would not agree to the settlement, why did you still decide to come to court in the first place?] The mediator says that if I don't come to mediation, the procedure cannot proceed. Is there a mandatory case-filing mediation in civil procedural law? I don't think so. That's why I didn't accept that.[26]

Sometimes, mediators gave disputants hope that a settlement could be reached. For example, a disputant said:

> The mediator called me, and said that the case went to court. He asked me to come to the court on the 27th. Then I told him that it's impossible that the company agreed to settle the dispute through mediation. But the mediator said that he had contacted the company, so I didn't say anything more. I was thinking: on the one hand, the mediator mentioned that the subpoena had been sent to the other party; on the other hand, the mediator said he had made a deal with the defendant that he would come. So I came to the courthouse today. That's all I know.[27]

Another disputant said: "They [mediators] asked me to come here. They said we should come to the courthouse to make an agreement, the employer told me to come here, saying somebody will write an agreement."[28]

None of the disputants the author interviewed was informed about their obligations or rights in the mediation process.[29] Nevertheless, some people did know their rights via other channels, such as a document they had come across.[30]

(F'note continued)

> …
> M: What about next Monday, Tuesday?
> …
> M: Yes, Tuesday will be fine.
> …
> So let's meet at 10:00am next Tuesday."

25. Case 3 (F).
26. Case 5 (W).
27. Case 8 (W).
28. Case 47 (W).
29. For example, Case 6 (W); Case 19 (W); Case 31 (W); Case 47 (W).
30. "I knew it. [Y. Li: Did anyone tell you?] No, the court didn't inform me, but it's written in books." Case 1(W).

https://doi.org/10.1017/als.2016.33 Published online by Cambridge University Press

4.5 The Realization of Courts' Organizational Interests through the Mediation Referral Procedure

The time between the "court receiving the files" and "official case-acceptance" leads to a vacuum in the responsibility and accountability courts as official adjudicators. Many advantages result from this unaccountability, which is one of the main reasons Court M would delay the official case-filing process. Only when courts have officially accepted cases under civil procedural law do they need to follow applicable adjudication rules and take responsibility for the case.

For example, the amount of time courts spend on adjudicating cases is one of the indices of the Case Quality Assessment System—a complex court performance evaluation system containing 31 indices. The amount of time courts spend adjudicating cases is called "adjudication time limitation (*shenliqixian,*审理期限, also known as *shenxian,*审限)." This is a Chinese legal term, referring to a time limit within which the court is required to complete the adjudication process. This time limit is regulated by Chinese Civil Procedural Law. Article 149 establishes an ordinary procedure:

> A people's court shall complete the adjudication of a case to which ordinary procedure is applied within six months after the case is accepted. Where an extension of the term is necessary for special circumstances, a six-month extension may be given upon the approval of the president of the court. Any further extension shall be reported to the people's court at a higher level for approval.

And Article 161 is for a summary procedure: "The people's court shall complete the adjudication of a case to which the summary procedure is applied within three months after the case is accepted."

Calculation of adjudication time begins when the official case-acceptance is issued. As long as the case has not yet been officially accepted, the three-month time limit does not apply. Thus, to gain more time, courts choose to postpone official case-acceptance.

In fact, during the fieldwork in 2011, Court P adopted the same approach as Court M, requiring every case to go through mediation before official case-filing. This strategy has since been abandoned by Court P, yet a senior judge told the author that the old system is occasionally reinstated during times of heavy caseloads.[31] The courts use case-filing mediation as a strategic case management plan, which prevents cases from flooding the litigation process. This motivation is also supported by the fact that, after the adoption of the Case Filing Registration System, through the end of September 2015, all first instance cases increased by 31.9% nationally, among which civil cases were up 22.9%.[32]

Disputants were often confused about the time between their indictment and the court's official acceptance. This confusion is not difficult to understand. From the disputants' perspective, the cases had been *de facto* accepted by the courts, as they were required to hand in the same indictment materials as in official case-filing. For example, the courts would not mediate cases where there was no legal relationship between the disputants, or where the view had been taken that the disputes should be arbitrated instead of adjudicated. The case material acceptance standard was not based on mediation standards, but on the case

31. Interview 20130911C.

32. The SPC (2015).

https://doi.org/10.1017/als.2016.33 Published online by Cambridge University Press

indictments, so it is not surprising that disputants expected cases to be treated as officially accepted cases. Lawyers also believe disputants cannot distinguish the difference.[33]

Here comes the conundrum. From the court's perspective, the case has *not* been through the official case-acceptance procedure, and the officials do *not*, therefore, treat the stages before official case-filing as a formal court procedure. As a result, after receiving the files, the courts cannot provide any official documents confirming they have received the case materials other than a *receipt for litigation costs*. For disputants and lawyers, such cases seem to enter a black box, without official case-filing, so they cannot be externally traced. They thus find it difficult to know what to expect. This confusion leads to considerable backlash.[34] In petitioning (*Xinfang*) the office that receives petitions from disputants, the author observed disputants complaining about their cases remaining in mediation for a long time without reaching litigation. In one case, disputant C came to the court and complained that his dispute with a technology company had been in case-filing mediation for too long, and asked for a trial immediately. After checking the data, the senior judge found that the case had been sent to trial judge P, so he urged judge P to have a trial as soon as possible. The senior judge receiving those complaints would immediately inform the case-filing office and ask it to officially accept the case immediately.[35]

In short, official case-acceptance is important as it connects disputants coming to court for resolution to the litigation stage, which is a precondition of the judiciary's assuming a role in the litigation process. If the court deliberately uses mediation to hinder official case-filing, then this prevents people gaining access to official adjudication. In the short run, it, indeed, stopped cases from flooding the trial division but, in the long run, this extended procedure provoked complaints from disputants.

5. THE MEDIATION PROCESS: THE DANGER OF BECOMING A PROCESS OF WINDOW-DRESSING

5.1 Typology of Mediators' Roles in the Process

Despite the different mediation skills displayed in the mediation sessions, through observation of 50 cases, this study makes a typology of cases based on different types of roles mediators took.

The first and the most common role was for mediators to act as facilitative go-betweens (Cases 6, 27, 50, etc.). Here, mediators simply assisted or played an insignificant role in the process. There are three characteristics of this role.

33. Case 11(L) ("Disputants cannot tell. They often feel the case stays too long in court."). Case 17(L) ("They don't know. They don't know the time for mediation either. They might ask us how long it takes before the first trial. Since the court doesn't always follow the procedure rules, so I cannot tell them the exact time."). Case 27(L) ("No, they cannot. Only the professional people like us do.").

34. In Court P, the problem of delay did not seem to provoke aversion among either lawyers or disputants. There were a few complaints about the delay in case-filing, but it was not comparable to Court M, in terms of the length of the delay. For case 40 (L) (this case turned out to be a difficult case for the court), the disputants said: "In this case, I came to the court on Monday, but the officials waited until today to make the final case-filing. If you cannot successfully mediate the case, then they need to go through the case-filing. Then the date of official case-filing was three days behind. It's hard for you to imagine the feelings. I think the court has a good heart and tries to mediate, but it doesn't mean that any case can be mediated. In this sense, if the mediation procedure keeps going on, it can lead to the delay of the litigation process."

35. Observation note 20111018.

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First, when disputants wanted to hear the mediators' opinions, they often refused to provide any. For example, in Case 37, a factory representative said: "As a manager of the company, it's the first time that we come to the court …. We want to hear about how the court deals with the dispute. Mediator, how will the court deal with the dispute, please?" The mediator replied: "As a mediator, I cannot give any comments, even though I hope that you two will reach an agreement. But it should be based on the voluntariness of both parties."[36] In another case (Case 42), the worker asked: "I don't really care about the case going to trial. It doesn't matter if I lose or win. But may I ask what are the chances of the company winning the case?" The mediator answered: "I'm not in a position to give opinions."[37]

Second, the mediators often confined the discussion to the dispute in litigation per se. This was especially true in Court M.[38] The mediator often limited the topic to the case itself (or how much money the plaintiff would accept and the defendant would offer) shortly after the start of the mediation session. For example, in one case, the mediator said:

> Today, both parties are here, let's sit down, negotiate, and see if both parties can reach an agreement. If this is possible, then we have a mediation agreement; if not, we will have a hearing, which is complicated. The plaintiffs have five claims in the suit. They have all been arbitrated by the labour arbitration committee. The key is the first three. Let's start to negotiate. I don't separate your claims; just treat them as a whole. In other words, how much in total would you like to pay or accept? I mean the total amount, regardless of the compensation or overtime work payment. Three workers, how much would you like to receive per person?[39]

In another case, after the opening of the mediation session, the mediator said: "End the dispute once and for all. How much do you want, salary and compensation, all together?"[40]

When disputants began talking about other grievances, rather than the case itself, the mediators would often stop them. For example, in Case 17, the worker said: "If I get less than 80,000 yuan, what about my future medical treatment costs, that will be a large sum of money, I need living costs as well." Then the mediator stopped him by saying: "Save those words, we are discussing if the problem can be solved once and for all, how much you would like to accept."[41]

Third, in many cases in Court M, mediators only uttered a few words during the sessions, letting the disputants discuss the matter themselves. For example, in Case 4, the mediator uttered only one sentence: "What is the first defendant's opinion on the issue?" After the first defendant revealed his offer for settlement, the mediator said: "Then this is it, you cannot reach an agreement. Let's end this mediation session."[42] Another example is Case 20, where the mediator was filling out a document without talking to either disputant, leaving them to negotiate by themselves.[43]

36. Case 37 (O).

37. Case 42 (O).

38. In Court P, mediators did not confine the topics of discussion in mediation to the litigation issue itself. Disputants often proactively come back to this issue.

39. Case 24 (O).

40. Case 1(O); Case 7 (O) (M: "Today we are here for mediation. Both parties are here. Plaintiff has three claims, 1,2,3 … Labour arbitral award only grants you 900yuan. Why is there a huge gap between what you claim and the arbitral award?"); Case 17 (O) (M: "So, if both parties solve the dispute once and for all, how much would you like to pay?").

41. Case 17 (O).

42. Case 4 (O).

43. Case 20 (O).

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The second role mediators adopt is an evaluative one, which was apparent in seven cases. In this type of role, mediators gave evaluative opinions to disputants, ranging from vague opinions to assertive statements. Most of the evaluative opinions concerned litigation-related issues; for example, the mediator challenged the existing labour arbitration award.[44] Some gave opinions regarding evidence, such as: "Now you have several points that may be hard to be legally supported, there are several points that are without evidence. You two can make a compromise, and the dispute can be solved once and for all."[45] Other opinions concerned court procedural issues: "I'm afraid that the claim for those costs will be groundless."[46] In another case, the mediator explained that the case's "time limit expired. In law, it's not like, as long as you want to get compensation, then you will."[47] One mediator provided an expert opinion on medical issues.[48] There was another extreme case (Case 38) in which the mediator said:

> Since you are only worrying about the identity of the defendant before reaching a compromise, I can solve it for you now. I have talked to the judge beforehand, and his opinion is the same as mine. You don't need to worry much.[49]

There were many features of this evaluative role. First, the evaluative statements were not about the case itself or the "rightness or wrongness" of the same case, but often concerned secondary issues. These evaluative statements were often legal common sense, such as informing disputants that they needed to submit evidence to support their claims. For example, in one case, the mediator said:

> Having litigation means that you need to submit evidence, it's not like in this mediation session, I will listen to what you say. If the procedure goes on, then there will be other procedural issues. For example, in the indictment, you only sued one of the three people who beat you. But court probably wants you to add the other two as defendants as well. I know that it's difficult to understand, but I'm explaining it to you.[50]

Second, some parts of the mediation session involved evaluative methods, whereas most parts employed facilitative methods. The evaluative part was unlikely to exceed five sentences. Third, the mediators did not often contact judges for information on how the case would be adjudicated. However, if they did, then they were likely to provide such information to disputants.[51]

The third type of role was "mediation without both parties being present."[52] This often happened when one or both parties failed to show up for the mediation sessions. Sometimes, neither disputant intended to join in the mediation sessions in the first place. For example, in Case 16, the mediator called the disputants and the disputants did not show up, both claiming they did not want to settle. The disputants asked whether the mediator would be adjudicating

44. Case 32 (O).

45. Case 34 (O).

46. Case 35 (O).

47. Case 48 (O).

48. Case 46 (O) (The doctor said that the hospital definitely needed to pay, on the other hand, he said the plaintiff's claim of 600,000yuan was unrealistic.).

49. Case 38 (O).

50. Case 41 (O).

51. Case 38 (O).

52. Those sessions did not have a mediation procedure, yet this study considers them mediation because (1) in Chinese, judges, mediators, disputants, and lawyers have no other words than mediation (*tiaojie*) to describe such discourse; (2) this scenario occurs in the official mediation procedure.

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the case later, and the mediator denied this.[53] Sometimes, only one disputant came to the mediation session. For example, in Case 10, the defendant made it clear that he would not accept any compromise, so he did not show up. After waiting in the mediation room for 30 minutes, the mediator called the plaintiff. During the call, the mediator told the plaintiff that the defendant had challenged the jurisdiction and refused to settle. The plaintiff said she did not get the subpoena for mediation. The mediator replied: "After I sign the procedure form for you, the case goes to trial." In another example (Case 8), after waiting for the defendant for 20 minutes, the mediator asked the worker to sign the form and sent him away. There are many other examples of this type. In total, I observed three cases without any party present, and eight cases with only one party present.[54]

The last type is disputants' settlement. In this type of role, disputants had already reached an agreement before the mediation session, and they were coming to court to sign the official mediation agreements or receive judicial confirmation; in these circumstances, the court simply legalized the settlement. Case 44 is an example of this. The mediator told the author that the disputants reached an agreement after the labour arbitration procedure; therefore, no mediation session was held on that day.

Judicial confirmation also falls under this category. Cases 31, 45, 47, and 49 were all judicial confirmation cases, whereby compromises were reached by mediators outside the courthouse. For example, Case 31 involved a girl who died while visiting her father at his place of work. The girl's father asked his employer for 140,000 yuan in compensation. The people's mediation committee in the village mediated the case, and they reached an agreement for payment of 60,000 yuan. During the judicial confirmation process, the mediator read the People's Mediation Agreement and brought it to the judge. The judge complained about how the mediation agreement was written, especially the clause that stated that "the two parties are even now, and will not take any legal actions against each other." The judge complained that the clause was too vague and difficult to implement. He said that he had trained the people's mediators in the village to write the mediation record properly on several occasions, but they did not listen. Then he checked the original documents and evidence, and the judicial clerk began to redraft the documents that legalized the mediation agreement.[55] There was another case concluded with a People's Mediation Agreement by in-courthouse mediators, and later the case went through the judicial confirmation process.[56]

53. Case 16 (O).

54. Case 5 (O) (When I came to the mediation room, the mediator said, the plaintiff's lawyer is still outside city M, and he cannot come back for mediation. Then the defendant's lawyer came to the mediation room. He said: "The company is going to indict too. So we don't agree to settle the case now."). Case 13 (O) (The workers waited for nearly one hour. During that time, the mediators tried to call the defendant, but the person who picked up the phone said that this was a wrong number. Then the mediators asked the workers and lawyer about the conditions at the company. After waiting there for half an hour, the lawyer asked: "... it seems the company won't show up, shall we leave then?"). Case 19 (O) (After the worker came to the mediation room, the mediator asked him to sign his name on the mediation sheet. The mediator told the worker: "The defendant's attorney said he couldn't tell for certain what the exact amount of the compensation would be."). Case 28 (O) (On the day of mediation, the factory's representative was busy, and he failed to notify the court, so he did not show up.). Case 29 (O) (Both parties turned up separately, and the mediator talked to them separately as well.). Case 23(O) (The worker waited for a long time in the mediation room. The mediator could not contact the defendant; later the mediator told the worker that he would transfer the case and asked the worker to go back and wait at home.). Case 30 (O) (The mediator called both parties on July 29, and settled the date of mediation at 10am. The company's lawyer arrived on time, but waited for the worker's lawyer for an hour and a half.).

55. Case 47 was a work-related injury case. Case 49 was a personal injury case.

56. Case 45 (The two parties came to an agreement by themselves, and the mediator initiated the judicial confirmation procedure in court.).

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5.2 *A Comparison: Court-Annexed Mediation Observed and Western Practices*

In Chinese case-filing mediation, many mediation strategies are used in mediation sessions, on which mediators rely for authority and manipulation. Chinese mediators often lack training, so it is not surprising that they adopt practical approaches to mediation, such as caucuses and bluffing. However, this is not uniquely Chinese. In Western countries, based on American empirical studies, similar strategies are often used in the mediation process. One article summarizes these as (1) trashing, (2) bashing, and (3) hashing it out.[57] Other scholars have developed two "ideal types," representing what they call the "bargaining" and "therapeutic" styles.[58]

This study does not intend to judge the strategies mediators used, since the focus of the study does not concern when, how, and in what circumstances cases should be settled. However, the uniqueness of observed Chinese court-annexed mediation should be noted.

First, the mediation sessions were relatively short. In the US, mediation sessions normally take two to three hours.[59] In the Netherlands, a mediation officer spends, on average, 4.6 hours on a case referred to mediation, and a staff member of the mediation administration office spends an average of 4.1 hours per case.[60] Where the number of contact hours between mediators and the parties has been taken into account, court-referred mediation processes in the Netherlands involve an average of six contact hours, whereas civil mediations takes an average of almost seven contact hours, and mediation in administrative cases requires an average of slightly more than four hours. Among the cases observed in China, however, 22 out of 29 sessions took less than 30 minutes, five sessions took between 30 and 60 minutes, and two sessions took between one and two hours.[61] Mediators explained that they spent 10–60 minutes studying the case prior to the contact hours, depending on the case.[62] Therefore, the observed Chinese practices could be described as "brief," if not superficial.

Second, mediation can be initiated even if one of the parties is absent. "Mediation without both parties being present" and "mediation without a mediation procedure" occurred in 11 of 50 observed cases. In these instances, the mediation sessions continued despite the absence of one of the parties. The disputants present often waited for a long time without seeing the other party. In some cases, in Court M, the disputants did not even know whether the other party intended to come.

Third, few legal norms were observed in the mediation processes. "Activation" of norms and values is another common strategy used by successful mediators.[63] A greater number of evaluative terms is expected from the Chinese communist ideology of educating disputants, yet they were barely observed in the fieldwork. There were significantly fewer evaluative than facilitative or go-between strategies. As mentioned above, the mediators avoided giving

57. Alfini (1991).

58. Silbey & Merry (1986).

59. *Ibid.* ("Six of the eleven mediators estimated the average length of their sessions to be two-and-a-half hours, two estimated three hours, two estimated one-and-a-half hours, and one mediator estimated that fifty percent of his cases settle within one hour. These estimates of session lengths tended to be confirmed by the attorneys, all of whom placed the average length at between one and three hours.")

60. Jagtenberg & Klijn, *supra* note 9.

61. These statistics are based on the mediation sessions in which both parties showed up.

62. Interview D20130527; Interview L20130719; Interview D20130731; Interview M20130807.

63. Silbey & Merry, *supra* note 58, pp. 18–19.

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evaluative comments when asked, provided commonsense legal information, or clarified very obvious misunderstandings among the disputants.

Fourth, mediators confined discussion between the two parties to a limited scope. ADR scholars identify detailed tactics such as broadening, selecting, concretizing, and postponing issues; their purpose is to identify a formulation of the nature of a dispute on which the parties could agree. This allows the mediator to help the parties separate issues that seem potentially resolvable, on which a settlement could be agreed, versus those on which the disputants are hopelessly deadlocked.[64] However, in the observed practice, mediators hardly proactively broadened the topic; they also stopped the disputants from deviating from the litigation issues ("How much do you want to solve the dispute once and for all?"). This approach is quite different from those used in therapeutic mediation styles.

6. FAILURE OF ADR THEORY TO JUSTIFY THE OBSERVED CASE-FILING MEDIATION

On the surface, the observed case-filing mediation approach is similar to the approach depicted by ADR theory: even if mandatory mediation exists, reaching an agreement is voluntary. However, upon closer examination, there are some nuances.

According to ADR theory, the referral and mediation processes constitute two steps. By contrast, the observed Chinese court referral procedure and the mediator's role in the process involve three steps: cases being assigned to the mediator (compulsory); disputants deciding to join the mediation sessions (voluntary); and the mediation process (result voluntary). In short, while Western practices combine the first two steps, these were distinct in the observed Chinese practices.

With this separation, the mediation process can be seen as a predetermined procedure rather than a party autonomy process. This means that the time duration for mediation is mandatory, but participating in the sessions depends on the disputants; reaching an agreement also depends on the disputants. This implies that mediators will not devote much effort to the mediation. This has two different effects, on the courts and disputants: from the courts' perspective, mediation has become a precondition to litigation; for the disputants, mediation functions as an inevitable procedure prior to litigation. Even if the mediation procedure has been initiated, no further effort is required from the disputants (they do not even need to attend the mediation sessions). Only when disputants are willing to mediate does the procedure work for them. In the absence of such willingness, it can become a barrier to their litigation rights.

Keeping these findings in mind, let us look again at the two previously mentioned assumptions regarding the application of ADR theory:

1. The mediation process is a consensual procedure involving party autonomy and, by default, the initiation of the mediation process should be consensual.

2. Where initiation is mandatory, the courts' allocation of cases to mediation is justified by the public interest; therefore, a case selection system is inevitable.

64. *Ibid.*, p. 15.

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The degree of party autonomy in the referral and mediation stages of the case-filing mediation process will be discussed. Party autonomy does not exist in the referral process. The judiciary plays an important role in assigning cases to mediation as part of its case management strategy; therefore, the referral process is compulsory (even though disputants are not forced to join the mediation sessions). In the mediation process, there also seems to be little party autonomy. Mediators often control the time, methods, and procedure. One example of this was the limited scope of topics discussed during the mediation sessions. Mediators were either superficially involved in mediation (leaving the disputants to negotiate between themselves) or evince a tendency to turn the discussion to the final settlement offer. This was confirmed by an interview with a mediator in Court M: "The disputants should cooperate with me so that we can reach an agreement. If they don't cooperate, how can I help them?"[65] Even if mediators appreciate the importance of party autonomy in the results of mediation, mediators still dominate the process of mediation.[66]

Therefore, ADR's first assumption does not hold of the instances observed in China, since only the mediation results involved true party autonomy, whereas neither initiation of nor the mediation process itself evidenced party autonomy.

The second assumption to be tested was whether reassigning cases to mediation could be justified in terms of "public interest." This study found that, even where disputants were not coerced into mediation and were, therefore, at liberty to refuse to join in mediation, it was difficult to invoke the notion of public interest to justify the Chinese case-filing mediation practices observed in the fieldwork. There were three reasons for this.

First, at a regulatory level, Chinese regulations consider mediation a default dispute resolution process, with only a few types of cases as exceptions. Those exceptions include *special procedures, procedure of supervision and urge*, *procedure of public summons for exhortation*, *procedure of bankruptcy*, *confirmation of marriage or status relations*, *and other cases that cannot be mediated according to law*.[67] However, Chinese regulations prevent neither disputants nor courts from abusing the mediation *procedure*. In particular, the admonition against *courts* misusing mediation is non-existent in Chinese regulations. Compared with China, Hong Kong, for example, is vigilant in preventing not only disputants but also courts from abusing the mediation *procedure*. Disputants cannot use mediation as a tactic to either discover the weaknesses of the other party or delay the case; courts cannot use mediation to avoid their obligations of testing and establishing principles and procedures.[68]

65. Interview D20130527.

66. Court P was different from Court M. Disputants enjoyed more autonomy in Court P's mediation sessions. Mediators in Court P paid more attention to party autonomy than those in Court M. For example, when asked about the disputants' role in mediation, one mediator answered: "It's very important. They will lead the mediation sessions. And the mediators are assisting the negotiation" (Interview M20130730). Similar answers were given by other mediators: "I promote mediation, never lead. In mediation, I'm not sure that I will control the process" (Interview D20130731). "I wouldn't force the disputants into mediation. It depends heavily on their willingness" (Interview M20130807). "I think they (disputants) should be the guiding force and lead the mediation. We are cooperating with them. As mediators, we cannot say more than the disputants. We guide, and they decide their way of dealing with the dispute" (Interview L20130719).

67. Provisions of the Supreme People's Court about Several Issues Concerning the Civil Mediation Work of the People's Court, Art. 2.

68. In Hong Kong, for example, the Interim Report of the Hong Kong Chief Justice's Working Party on Civil Justice Reform suggests the formulation of rules to make mediation mandatory in defined classes of cases, unless exempted by court order. ADR (which includes mediation) is regarded as inappropriate for specified cases: (1) raising constitutional issues; (2) where rights are being tested, establishing principles and procedures; (3) where successful invocation of ADR

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Second, at the level of court management, in the absence of a regulatory filter, the author observed limited case selection. Since mediation operates as a *de facto* precondition imposed by the court, knowing the court's motivations for such a condition is crucial. One Chinese managerial judge used a metaphor:

> The court case management system works like a layered riddle. When the disputes come to court, the case-filing division stops some from moving forward; at a later stage, trial judge mediation halts some further cases; finally, when all means fail, the cases come before the trial judges. That is the last resort.[69]

A judge from Court P responsible for case allocation in the case-filing division said: "I allocate the cases based on what cases the mediators deal with most."[70] These statements show the key difference between this approach and an ideal public-interest approach. The latter balances interests first, and then decides which route to take, whereas the former is closer to gambling on the likelihood of disputants forgoing the next step, trying to prevent disputants from moving forward. This mentality was revealed in a metaphor used by another judge in 2011:

> Now the court is using case-filing mediation to function like a storage dam. They hold all water in the reservoir as long as possible until some has to rush the dam. The case-filing division is like the reservoir, and the mediators are like the dams.[71]

This statement precisely explains why, regardless of whether the cases are suitable for mediation, Court M sends out subpoenas to demand that disputants participate in mediation. The institution of case-filing mediation in courts, such as Court M, is a system based on case management rather than party autonomy.

Third, mediators at the two courts adopted similarly practical attitudes to the mediation procedure, despite other differences between the two courts. The mediators do not need to decide whether cases should go to trial immediately or stay in mediation; nor do they have the knowledge to make such decisions. Even if they use the lengths of time and efforts of court procedures to persuade disputants to settle, some cases would not, in fact, take as long as mediators claim. Mediation does not always prevail over adjudication, especially when weaker parties do not have enough information to make fully informed decisions. For example, in one case, a mediator said it would take a long time and asked the worker to give up a large amount of money. However, the first and second trials only took a year in total, and the worker almost gave up one-third of his deserved compensation. If anything is either unclear or unfair, mediators will not necessarily try to explain this to disputants.[72] This is probably due to the fact that mediators in Court M view their job as preventing cases

(F'note continued)
requires the parties to arrive at a contractual settlement but where one of the parties lacks the legal capacity to contract (e.g. being a minor or a patient); (4) where the power imbalance between the parties is such that no fair agreement can be expected to result from the process; and (5) where a party shows through its conduct that ADR is being abused to the prejudice of the other party (e.g. where ADR is being used as a fishing tactic to discover weaknesses in the other side's case or as a tactic of delay, without a real interest in resolving the dispute). Hong Kong Special Administrative Region People's Republic of China (2002), p. 36.

69. Interview F20130328.

70. Interview X20130731.

71. Interview T20111027.

72. Case 6 (O).

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from flooding litigation. They care more about completing the procedure than fixing the disputants' relationships or maintaining fairness in the mediation process.[73]

Therefore, it is unclear that public interest is being considered in either the current regulatory framework or practice. Public interest aims at decreasing time spent on easy cases that come to courthouses, whereas the observed case-filing mediation practices increase the time spent on all cases, since they all go through the mediation process. Admittedly, some simple cases are quickly solved with mediation and do not proceed to litigation. Some scholars argue that the time and resources saved under the current mediation system serve public interest, but this study shows that the time saved on the simple cases cannot justify a system if *every single case* has to go through mediation. In some ways, the practices found in the fieldwork resemble the old Chinese "people's reception office" practices in the 1950s, which aimed mainly at clearing dockets and case management.

7. CONCLUDING REMARKS

Instead of exemplifying the virtues of ADR practices, the classic criticisms of court-promoted mediation, as they appear in the Western literature, apply to the cases described in the fieldwork, as case-filing mediation is used as an obstacle to justice. Based on the empirical data, this happens in two specific ways: courts' preference for hoarding cases aggravates the powerful party's advantage in the mediation process, and case-filing mediation risks becoming merely a window-dressing process. This study attributes the cause of this phenomenon to a lack of party autonomy and the rise of courts'/judges' interests in the case-filing mediation process.

Delays and difficulties in the case-filing process, depicted in this article, have already caught the attention of the SPC. The adoption of the Case Filing Registration System on 1 May 2015 is a way to address these problems.[74] The Case Filing Registration System seeks to eliminate "ghost cases," and shift the case-filing procedure from one that serves as a "barrier to justice" to one that facilitates "access to justice." Given this new regulation, we need more in-depth empirical studies to determine the extent and nature of the change this policy brings to the Chinese case-filing procedure and mediation.

This paper does not deny the value of Chinese court mediation practices. On the contrary, many courts, such as Court P, have been trying to bring party autonomy to mediation and eliminate malpractices within the case-filing procedure. However, malpractices such as those depicted in this study remind both judges and scholars that mediation is not a panacea, and

73. However, mediators in Court P placed greater emphasis on the restorative side of the disputants' relationship. For example, one mediator said: "I have never encountered disputants who have absolutely no knowledge about mediation. I think mediation provides a platform for the disputant to know the other party's standing point and we will also take the opportunity to teach them how to litigate. After mediation, he probably would know how to submit the evidence. I find that there are lawyers who would proactively ask for mediation" (Interview L20130719).

74. The Case Filing Registration System aims at making every case that disputants bring to the courthouse traceable and accountable in the judicial system. Before its implementation, many cases were intentionally kept outside the civil procedure, even though they satisfied all the requirements of indictment. Sometimes, it took a long time for these cases to be officially filed pursuant to the civil procedure law. For example, as this study shows, some cases were stopped from officially entering the civil litigation procedure for the sake of mediation. However, after the adoption of this new policy, all eligible cases should be accepted on-site, which means the court should immediately handle cases according to the civil litigation procedure.

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we should pay attention to practices that occur in the name of mediation, bringing the value of mediation back into the picture.

The findings of this article also shed light on debates about court mediation practices outside of China. First, when promoting ADR projects in developing legal systems, ADR proponents should be aware of activities that actually occur under the umbrella of mediation, which could hinder justice. Second, even in developed legal systems, developments within mediation should be monitored for interests embedded in the mediation process other than those that favour the disputants. This vigilance should prevent mediation from being used for the courts'/judges' own interests, which are detrimental to courts' functioning with regard to dispute resolution and adjudication.

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