

## 十八世紀清政府修訂〈教唆詞訟〉 律例下的查拿訟師事件

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本文分析十八世紀清代中央政府立法加強取締訟師的過程與內容，並以汪輝祖任官湖南查拿訟師的經過，檢視地方官在奉命加強查緝並嚴懲訟師過程中的一種特殊心態。地方官員確實感受到十八世紀中央政府要求嚴拿訟師的壓力，而訟師也在查拿訟師的外部壓力下變得更加需要謹言慎行；但是，因為某些特殊的制度，地方官查拿訟師時，也自知最好不要超越某條無形界線，這是地方官與訟師處於「外張內弛」狀態的一種恐怖平衡。在上控、京控等司法制度運作背景下，以及民眾可檢舉官員稅務徵收失當等考核壓力下，一些深識此中利害與關鍵的訟師，乃得以具備某種「挾制」官員的能力，從而使地方官不願也不敢對訟師逼壓過甚。即使是中央政府，在維繫「伸雪冤枉」法律核心價值觀的作用下，也很難因為需要查拿訟師而縮小京控、馳審中訟師可能介入的司法空間。這是一個特殊的制度框架，在此框架中，中央政府、地方政府與訟師，各有其份所當為之事，也各有其適宜遵守之界線，這可謂是清代中期查拿訟師事件的底層結構。

關鍵詞：訟師 官代書 京控 司法場域 清代法律制度

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## Regulating Litigation Masters in Eighteenth-Century China

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In the 18<sup>th</sup> century, a series of regulations were issued aiming at prohibiting unruly persons, mainly litigation masters (*songsī*), from instigating litigation or fabricating false accusations against ordinary people. These sub-statutes focused on two aspects: to increase the extent and degree of penalties against litigation masters who intervened in any lawsuit, and to stress the essential role of the official agency in writing documents (*guandaishu*) in order to reduce the litigation masters' interference. However, attempts to enforce these regulations encountered a series of obstacles. Local officials were reluctant to impose the regulations because litigation masters had influence over institutional procedures such as capital appeal and evaluations of officials to counterbalance the power of local officials. The central government also had to consider the possibility that some litigation masters might not simply manipulate the legal system but indeed functioned as the judicial representatives of the civilians who cried out for justice. As a result, the central government, local officials and litigation masters maintained a balance, and the sub-statutes were probably rarely enforced.

**Keywords:** litigation master (*songsī*), legal amanuensis (*guandaishu*), capital appeal, juridical field, Qing legal system