

ARTICLE

WATCHDOG OR DEMAGOGUE? THE MEDIA IN THE CHINESE LEGAL SYSTEM

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Over the past decade, the Chinese media have emerged as among the most influential actors in the Chinese legal system. As media commercialization and increased editorial discretion have combined with growing attention to social and legal problems, the media have gained incentives to expand their traditional mouthpiece roles in new directions. As a result, the media have emerged as one of the most effective and important avenues of citizen redress. Their role in the legal system, however, has also brought them increasingly into conflict with China's courts.

This Article examines the implications of the media's roles in the Chinese legal system for China's legal development. It shows how media commercialization has resulted in incentives for the media to expand the scope of

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critical reporting, to challenge propaganda department content regulations, and to influence court decisionmaking. This Article details four distinct mechanisms by which the media influence China’s courts, demonstrating that the media’s effectiveness and influence stem from a combination of their continued position as an arm of the Party-state and their ability to reflect and create public opinion.

Media commercialization may be reinforcing traditional norms of Party-state interference in the courts, while at the same time media scrutiny increasingly highlights problems in the Chinese justice system. Despite significant reforms and increasing caseloads, the authority of China’s courts remains limited. Yet the media’s ability to enjoy significant autonomy within the confines of Party supervision also suggests that a similar model of autonomy may be possible, and is perhaps already emerging, for China’s courts.

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INTRODUCTION

“Ten years of complaints are not as good as one wave of interviews.”
—Popular saying in China¹

“Over the past year . . . we have given special emphasis to working closely and communicating with the news media, doing an enormous amount of work to control and reduce negative exposés that harm the image of courts and judges. Looking at the entire province’s courts over the past year, there have basically not appeared any major negative exposés, and the number of negative articles has clearly decreased”

—Propaganda and Education Department, Shaanxi Province High People’s Court, November 2002²

Sui Xiang had China’s most powerful legal authority on her side. In 1988, when she was seven, Sui lost both arms when she came into contact with an electric transformer that the local electric bureau had installed on her family’s vegetable patch in violation of national safety standards. Nine years of complaints and lawsuits failed to bring compensation. Then, on March 25, 1998, *Jiaodian Fangtan*, or *Focus*, a nightly news and commentary program on China Central Television (“CCTV”), aired a report on her case titled, “A Case That Cannot Be Understood After Ten

1. Zhang Ying, Yulun Jiandu Yu Xinwen Gongzuozhe De Falü Yishi [Popular Opinion Supervision and the Legal Consciousness of News Workers], 2001 Xinwen Zhanxian [News Frontline] No. 10, available at <http://www.people.com.cn/GB/paper79/4505/505080.html> (on file with the *Columbia Law Review*).

2. Shaanxi Sheng Gaoji Renmin Fayuan [Shaanxi Province High People’s Court], Wei “Gongzheng Yu Xiaolü” Yinhang Gaoge—2002 Nian Quansheng Fayuan Sixiang Xuanchuan Gongzuo Quede Xin De Chengji [Singing Out Lustily for “Fairness and Efficiency”—The Entire Province’s Courts Achieve New Accomplishments in Thought Propaganda Work in 2002] (Nov. 10, 2002) (on file with the *Columbia Law Review*).

Years.”³ The program asked how such a straightforward case could take so long to resolve. On the very next day the Yichun Intermediate People’s Court awarded Sui 1.16 million yuan in damages, at the time the largest award for bodily harm in Chinese history.⁴

For Du Shugui, the deputy chief of a local police station, media coverage had a far different outcome: a death sentence. On June 4, 2000, Du shot dead another driver during a traffic dispute. Du originally claimed that his gun had gone off by mistake and that he had acted in self-defense.⁵ Friends and family of the deceased, however, contended that Du intentionally shot the victim because he was angry that the victim failed to yield and allow Du onto a highway. Four days after the accident, the victim’s mother contacted a number of media outlets in Beijing to protest her son’s killing and its handling by local authorities who backed Du’s account.⁶ One of the earliest reports on the case was in the *Beijing*

3. Fang Hua, Cangtian You Yan—Sifa Fubai Minyuan Fei Teng [There Are Eyes in Heaven—The People Are Boiling with Resentment at Judicial Corruption] ch. 3, at <http://www.shuku.net:8080/novels/baogaowenxue/sfbcctymyft/ctyy03.html> (last visited July 2, 2003) (on file with the *Columbia Law Review*). The case first came to national attention a month earlier, in February 1998, when the *Legal Daily* newspaper carried a report on Sui’s plight, resulting in attention from top officials at the Supreme People’s Court. *Id.*; see also Xue Lian, Xi “Jizhe Bi Faguan Guanyong” Xianxiang [Analyzing the Phenomenon of “Reporters Are More Useful Than Judges”], *Guangming Ribao* [Guangming Daily], Sept. 16, 1998 (on file with the *Columbia Law Review*) (discussing the case); Zhang Shidi, “Jizhe Bi Faguan Youyong” Xianxiang Zhi Wo Jian [On the Phenomenon of “A Journalist Is More Useful than a Judge”], 2000 *Xiandai Faxue* [Modern Legal Studies] No. 2, at 142, 142 (on file with the *Columbia Law Review*) [hereinafter Zhang, Phenomenon] (discussing case and role of media).

4. 1998 Nian Shida Fazhi Xinwen [The Ten Biggest Legal News Items in 1998], *Fazhi Ribao* [Legal Daily], Dec. 31, 1998, available at <http://www.people.com.cn/item/98huimou/newfiles/a1110.html> (on file with the *Columbia Law Review*). The Supreme People’s Court had apparently instructed the court to resolve the case immediately and to guarantee that Sui received adequate compensation. Fang, *supra* note 3. The television report may have been coordinated with the court decision, but the knowledge that the program was investigating the case appears to have pressured the court to act. For a critical discussion of the case, suggesting that the court manufactured new legal concepts in response to media pressure, see “Tianping” Zai Qingxie—Jieguan Nongdian Zichan Mianlin De Falü Wenti Diaocha Yu Sikao [“The Scales” Are Slanted—An Investigation and Thoughts on the Legal Problems Encountered by Taking Over Rural Electric Assets], 2002 *Zhongguo Dianye* [China Electric Industry] No. 1, available at <http://www.zdxw.com.cn/zgdy200201/ndtd/200201250111.htm> (on file with the *Columbia Law Review*).

5. Guoqu Tufei Zai Shenshan, Gongchan Tufei Zai Gongan [In the Past Bandits Were in the Mountains, Communist Bandits Are Now in the Police Bureau] (on file with the *Columbia Law Review*) [hereinafter *Bandits Are in the Police Bureau*].

6. *Id.*; Wu Zhaohui & Zhang Jun, Qi Xia Bazhou: “‘Bazhou Qiangji An’ Zhuizong Baodao” Caifang Shouji [Seven Visits to Bazhou: Written Notes on the Writing of a “Series of Reports on ‘The Murder with a Gun Case in Bazhou’”], *Renmin Ribao Wangluoban* [People’s Daily Internet Edition], Aug. 21, 2000 (on file with the *Columbia Law Review*). She claimed that local authorities had accepted Du’s version of events, and that the local police report on the incident said that Du had acted heroically to protect public security. *Bandits Are in the Police Bureau*, *supra* note 5.

Evening News, whose headline declared, “If You Don’t Yield to Me When Told, I Will Kill You with One Shot.”⁷

Nationwide media repeated the story, resulting in “strong reaction” from “readers all over the nation.”⁸ Nine days after the incident came to light, senior officials of the Ministry of Public Security gave interviews in which they referred to Du as “cruel” and “terrible.”⁹ Du, they stated, must be “quickly dealt with in a serious way” so as to teach a lesson to all police nationwide.¹⁰ Municipal and provincial officials also issued written instructions to local authorities regarding the handling of the case.¹¹ The following week, on June 30, the Lanfang Intermediate Court in Hebei Province convicted Du and sentenced him to death.¹² More than one hundred journalists attended the trial, resulting in an atmosphere in which, according to one critic of the trial, the court was unable to control the proceedings and both Du and his lawyer were barely permitted to

7. Xin Hong, Jiao Ni Bu Rang Lu Yi Qiang Da Si: Hebei Bazhou Fasheng Paichusuo Fusuozhang Dang Jie Kaiqiang Sha Ren Exing Shijian [If You Don’t Yield to Me When Told, I Will Kill You with One Shot: Malignant Incident in Bazhou, Hebei as Deputy Chief of Police Station Opens Fire and Kills Man on the Street], Yang Cheng Wanbao [Yang Cheng Evening News], June 12, 2000, available at <http://www.ycwb.com/history/gb/2000/06/12/ycwb/gnxw/2.html> (on file with the *Columbia Law Review*) [hereinafter Xin, If You Don’t Yield to Me When Told] (reprinting original *Beijing Evening News* story); see also Sun Baoye, Dui Anjian Xinwen Baodao Zhong Yulun Daoxiang Wenti De Sikao [Thoughts on the Question of the Direction of Public Opinion in News Reports on Cases], Guangzhou Jindun Wang [Guangzhou Public Security Bureau Network], Nov. 13, 2001 (on file with the *Columbia Law Review*) [hereinafter Sun, Thoughts] (criticizing the media’s role in the case). According to media reports, the dispute began after Du forced the other vehicle, a truck belonging to the local electric bureau, to stop. Xin, If You Don’t Yield to Me When Told, *supra*; see also Du Shugui Yi Shen Bei Pan Sixing: Du De Erzi Bei Pan 7 Nian Tuxing, Du De Qizi Bei Pan 5 Nian Tuxing [Du Shugui Sentenced to the Death Penalty in First Instance Trial: Son Gets 7 Years in Prison, Wife Gets 5], Beijing Wanbao [Beijing Evening News], July 1, 2000 (on file with the *Columbia Law Review*) [hereinafter Du Shugui Sentenced to the Death Penalty].

8. Du Shugui Sentenced to the Death Penalty, *supra* note 7; see also Du Shugui Yu 2000.6.19 Ri Bei Tiqi Gongsu [Public Prosecution Commenced Against Du Shugui on June 19, 2000], at <http://past.hongen.com/proedu/flxy/zjft/zhuizong/bazhou/jc062404.htm> (last visited Sept. 7, 2004) (on file with the *Columbia Law Review*) (stating that case resulted in widespread attention).

9. Gonganbu Lingdao Zhishi Chedi Qingchu Hai Qun Zhi Ma Du Shugui [Public Security Bureau Leaders Order Thorough Elimination of Rotten Apple Du Shugui], Shenghuo Shibao [Shenghuo Times], July 1, 2000 (on file with the *Columbia Law Review*). The interviewed officials were the Vice Minister and the Deputy Head of Communist Party Discipline of the Ministry of Public Security. *Id.*

10. *Id.*

11. Public Prosecution Commenced Against Du Shugui on June 19, 2000, *supra* note 8; Bandits Are in the Police Bureau, *supra* note 5; see also Wu & Zhang, *supra* note 6 (stating that case attracted concern of high-ranking national officials).

12. Du Shugui Sentenced to the Death Penalty, *supra* note 7. Du’s wife and son, who had been with him at the time of the incident, were sentenced to five and seven years’ imprisonment for assisting Du in attempting to conceal his crime. See *id.*

speak.¹³ Five weeks later, on August 1, Du was executed after the Hebei Province High People's Court rejected his appeal.¹⁴

Sui and Du are not alone in benefiting, or suffering, from media scrutiny of their cases: In numerous other cases, media coverage has had a significant effect on outcomes. More importantly, these decisions illustrate the complex relationships that exist among Party officials, the courts, and the media in contemporary China. To understand such relationships, it is crucial to recognize that both China's media and the courts have long played roles as arms of the Chinese Party-state.¹⁵ Yet their roles have been very different: The media have played a vital role, serving as both a mouthpiece and an information gatherer. In China, the term "media" refers to organizations that engage in a range of activity that is broader than their Western counterparts—not just preparing public articles and programs, but also writing confidential reports for Party-state leaders, vetting citizen complaints, and referring such complaints to other Party or government departments. In contrast to the important role of the media, China's courts have long been weak institutions, subject to extensive external influence and lacking in both authority and competence.

Over the past decade, media commercialization and increased media editorial discretion have combined with a rising attention to social and legal problems. This results in powerful incentives for the media to expand their traditional roles. China's media have become increasingly critical in their news coverage, exposing alleged wrongdoing, criticizing officials for failure to address injustice, and influencing both the outcome of individual disputes and the interpretation of existing legislation. Concurrently, a dramatic growth in litigation and state emphasis on strengthening the courts have begun to increase the importance of China's courts. The judiciary continues to suffer from numerous weaknesses, however, including both lack of autonomy and lack of public confidence. Courts have thus been ill prepared to resist expanded media pressure.

13. Sun, Thoughts, *supra* note 7.

14. Lu Guoqing, Xinhua, Bazhou Qiangji An Zhufan Du Shugui Bei Zhixing Sixing [Du Shugui, Prime Culprit of the Case of Murder with a Gun in Bazhou, Is Executed] (Aug. 1, 2000) (on file with the *Columbia Law Review*); Du Shugui Sixing Xianchang Muji Shilu [An On-the-Spot Report of the Execution of Du Shugui], Zhongguo Sixing Guancha [China Death Penalty Watch] (on file with the *Columbia Law Review*).

15. I use the term "Party-state" in this Article to refer to both the Communist Party and the various levels of the Chinese government. There are at times significant differences in interests between the Party and the government, and the Party itself is far from unified in its views. In the context of the media, as in many other areas, the Party-state is often viewed as acting as one. In particular, at the provincial and municipal level, journalists and editors comment that there is little difference between Party and government actors and actions that oversee the media.

Many in China insist that the media are the single most important and effective avenue for citizen redress.¹⁶ Lawyers comment that having the media on one's side is often crucial to winning a case.¹⁷ Others note, only partly in jest, the importance of "hiring a journalist," rather than a lawyer, in order to influence the outcome of cases.¹⁸ Commentators speak of *Focus*, the program that came to Sui Xiang's assistance, as "China's most authoritative court."¹⁹

But the media's increasing role in exposing malfeasance or injustice, or in pressuring courts to decide cases in a particular way, does not necessarily come as an unalloyed good. Judges bemoan media influence, arguing that, far from being a force for fairness, the media often act on behalf of one party to a case and that journalists are frequently ignorant of the law.²⁰ Legal academics contend that the media are interested in popular morality, not in ensuring impartial application of legal standards.²¹ And both journalists and observers alike complain of the restricted sphere of "media supervision," or oversight, noting that the media's critical reporting rarely extends to wrongdoing above the county or municipal level of the Party-state: They "hit flies, not tigers."²²

This Article examines the media's role in the Chinese legal system and the implications of media influence for China's legal development, in particular for the development of China's courts. Media roles are varied, ranging from carrying out state legal education campaigns, to exposing official wrongdoing or inaction, to demanding that alleged criminals be arrested or punished harshly, to writing confidential internal reports on unfairly decided cases to Party-state leaders, to referring popular complaints to government actors. As this Article shows, one theme increasingly links these varied roles: A loosening of state control over the media has facilitated the media's ability to engage in problem solving and to influence dispute resolution. As this Article also demonstrates, the effectiveness of the media in these roles still stems primarily from the media's

16. See, e.g., Li Jinsheng, Baoguang De Quanwei [The Authority in Exposure], Jiancha Ribao [Procuratorate Daily], Oct. 10, 1998, at <http://www.jcrb.com/zyw/n127/ca70064.htm> (on file with the *Columbia Law Review*) (stating that media can "collect the public's opinions, express the public's thoughts, and offer comments and criticisms of social phenomena").

17. See, e.g., Interview 2003-108.

18. Interview 2003-46.

19. See, e.g., Xu Xun, Zhongguo Meiti Yu Sifa Guanxi Xianzhuang Pingxi [Analyzing the Current Circumstances of Media-Judicial Relations in China], 6 Faxue Yanjiu [Legal Studies Research] 149, 151 (2001) (on file with the *Columbia Law Review*) [hereinafter Xu, Media-Judicial Relations].

20. Interview 2003-20; Interview 2003-53.

21. See Interview 2003-21 (detailing criticism of the media); Interview 2003-163.

22. Interview 2003-3; Shi Tao, Canying He Laohu, Yuer He Zixingche [Flies and Tigers, Fish and Bicycles], Minzhu Luntan [Democratic Forum], Nov. 23, 2002, at <http://www.asiademo.org/gb/2002/11/20021123b.htm> (on file with the *Columbia Law Review*) [hereinafter Shi, Flies and Tigers] (stating that "hitting flies, not tigers" is a "commandment" of China's media).

continued position as an arm of the Party-state. But media commercialization is dissolving the traditional pattern of media-state relations by enhancing the media's ability to appeal directly to, and create, "popular opinion."

Presently, China's media are not external actors, a Fourth Estate; they are one of many competing Party-state institutions seeking to solve problems, expand influence, and force action by others. The media's traditional close links to the Communist Party, combined with financial incentives brought on by commercialization and increased attempts to satisfy viewer and reader demands, make them particularly able to influence courts and other official actors. Increasingly, the media are able to rely on both their Party position and their popular market appeal.

Thus, despite resemblances to the Western media, the Chinese media continue to play a very different role in the legal system. The Chinese media at times come closer to playing the role of an official (albeit often sensational) ombudsman than to playing the role of a media watchdog. The media's position within the Party-state also means that they come into direct institutional conflict with other government actors much more than their Western counterparts because often they are competing with other institutions to influence the views of Party-state leaders.

These developments have large implications for Chinese law. Understanding the role of the media is crucial to understanding the development of law and legal institutions in China. Growing conflicts between China's 200,000 judges and more than 500,000 reporters reflect the rapid development of both courts and the media within a system in which institutional positions are fluid.²³ Tensions between courts and the media stem in part from the fact that China's media act not simply to influence official decisionmaking; in many cases, the media's views are determinative because media "findings" are taken as fact by other official actors. Such conflicts are also the product of a system in which the rules of the game, and the boundaries of both authority and permissible conduct, are heavily influenced by Party policy, and in which Party oversight of the courts and media continues to be legitimate. Yet the conflicts between courts and media also suggest the possibility that both institutions may be enjoying expanded areas of autonomy and that the goals of individual

23. He Caiqing, *Woguo Xinwen Shiye Wushi Nian Bianhua Juda Chengjiu Xiren* [The News Industry of Our Country Is Transformed and Achieves Great Success in the Past 50 Years], *Guangming Ribao* [Guangming Daily], Sept. 22, 1999 (on file with the *Columbia Law Review*) (discussing the number of journalists). The numbers of judges and journalists are rough approximations. The number of journalists likely includes many employees of media organs who technically have reporter's licenses, but who do not engage in reporting. At the same time, the number likely omits the significant number of journalists who now report without official licenses. *Id.* Similarly, estimates of the number of judges in China vary widely depending on who is counted as a judge. See Donald C. Clarke, *Empirical Research into the Chinese Judicial System*, in *Beyond Common Knowledge* 164, 173–75 (Erik G. Jensen & Thomas C. Heller eds., 2003).

judges and journalists may therefore be important factors in shaping both institutions.

Understanding the role of the media in the Chinese legal system also has important implications for comparative understanding of institutional development. This Article shows that the commercialization of the Chinese media is not necessarily pushing the media toward an inexorable separation from the Party-state or toward assuming a role as an independent watchdog. Given the multifaceted roles that the Chinese media play, extrapolating solutions to problems in the courts or the media from Western experience may be counterproductive.

China's experience challenges models of institutional development that assume that a competitive media environment will necessarily increase transparency and result in improvements to the legal system, or that China is necessarily moving toward Western-style legal and media institutions. The vocabulary used to describe the recent development of the media and the courts in China may be the same as that in the West, but the terms carry meanings and roles that reflect the very different underlying political dynamics in China. Reliance on assumptions regarding how Western institutions function risks confusing the actual functioning of the Chinese system with aspirations derived from experiences elsewhere. The effect of the Chinese media also demonstrates the degree to which marketization may be a mixed blessing for the Chinese legal system, and that media development will not necessarily help resolve the broad range of problems the legal system now confronts. China's recent experiences further reveal potential risks in popularizing law in the absence of institutions capable of resisting populist pressures.

This Article proceeds in three parts. Part I argues that commercialization of the media has led to a loosening of control over media content, resulting in media that report on a widening range of topics, including legal matters. Commercialization has thus provided the media with incentives to engage in a greater range of critical reporting on injustice and official wrongdoing, generally referred to in Chinese as *yulun jian du*, or "popular opinion supervision," and to challenge the extensive content restrictions that remain in place. But the media's ability to engage in critical reporting also stems from the historical roles and structural position of the media as an arm of the Party-state.

Part I also shows that the norms governing the media's ability to engage in popular opinion supervision derive from a range of formal and informal sources, including national laws and regulations, written and oral Party policies, local regulations, defamation litigation, and overt threats and intimidation. But increasingly that system does not operate in a uniform manner. In addition, new technologies, most notably the growth of internet news portals, are presenting strong challenges to propaganda authorities' current attempts to control the media.

Part II describes four distinct mechanisms by which the media affect courts: public reports on cases, confidential internal reports on cases

prepared for Party-state leaders, referral of readers' complaints to other Party-state institutions, and informal intervention by journalists. All four mechanisms facilitate the media's ability to affect, and sometimes dictate, outcomes. Part II also examines recent judicial efforts to combat and manage media coverage, demonstrating both courts' sensitivity to increased scrutiny as well as the difficulties journalists face when seeking to report on the courts.

Part III discusses the implications of the empirical analysis in Parts I and II for our understanding of China's legal development. It argues that the media's effectiveness stems from two primary factors: the media's ability to influence Party-state leaders, and the media's ability to reflect and create public opinion. This Article then suggests that media supervision should be understood as part of a broader central policy of encouraging supervision of wrongdoing by a wide range of Party-state actors. The need for increased transparency is acknowledged in order to curb official abuses, but it is also viewed with trepidation.

Turning to the implications of the media's role for the legal system, this Article then argues that the media's influence and official role have important repercussions for our understanding of the place and role of China's courts. The media's impact demonstrates that increased caseloads do not equate with increased judicial authority. The media reinforce norms of Party-state control over, and influence in, the courts at the same time as they serve as checks on egregious cases.

Part III concludes by suggesting some initial steps toward theorizing judicial independence in China. Recognizing the media's role in the Chinese legal system reveals the need for a deeper understanding of the range of actors and mechanisms that affect court decisionmaking. The courts' reactions to media coverage, however, also demonstrate that courts may increasingly be able to use their existing powers in new ways. The media's ability to enjoy significant spheres of autonomy despite the Party's media-control system suggests that a similar model may be possible, and already emerging, for China's courts. Understanding the media's impact on the legal system may thus help to map a strategy for enhancing the autonomy of China's courts.

* * *

Discussion of the media's effect on China's legal development and dispute resolution has largely been absent from Western scholarship on Chinese law. The most important recent works on Chinese law make only passing reference to the role of the media, generally in the context of the media's role in propagating state legal norms²⁴ or in serving state goals of

24. See, e.g., Stanley B. Lubman, *Bird in a Cage* 133 (1999) (discussing use of media to serve Party propaganda goals in law).

boosting knowledge of and respect for law.²⁵ Insightful scholarship has examined the complex legal framework that regulates the media²⁶ and has described the important role the media play in propagating legal norms and carrying out legal education, both by announcing formal laws and regulations and by emphasizing certain areas of the law.²⁷ Western scholars have written extensively on the roles and evolution of courts, the procuracy, the legal profession, mediation institutions, people's congresses, and China's administrative state, and have long recognized that China's courts are one of many mechanisms capable of resolving disputes. Nevertheless, prior scholarship has documented neither the media's impact on these institutions, nor the role of the media as players in the legal system.

There is a significant volume of English-language scholarship, primarily in the fields of communication studies and political science, on the development of the Chinese media, including an increasing volume of scholarship examining the commercialization of the media.²⁸ Very little recent scholarship has touched upon the role of the media as a problem solver; nor has it examined how the media affect decisionmaking by other Party-state actors, through either public reports or internal reports prepared for Party leadership. None has directly addressed the media's interface with courts and other legal institutions.

The relationship of the media to the courts has engendered extensive discussion in the Chinese media and among Chinese legal and media studies academics. A number of leading Chinese scholars have written on the topic.²⁹ Although many have discussed the media's impact on the

25. See, e.g., Randall Peerenboom, *China's Long March Toward Rule of Law* 7 (2002) [hereinafter Peerenboom, *China's Long March*].

26. See generally Perry Keller, *Media Ownership and Regulation in China*, in *Implementation of Law in the People's Republic of China* 277, 286–304 (Jianfu Chen et al. eds., 2002) [hereinafter Keller, *Media Ownership*] (analyzing Chinese media law); Perry Keller, *Privilege and Punishment: Press Governance in China*, 21 *Cardozo Arts & Ent. L.J.* 87, 88–89 (2003) [hereinafter Keller, *Privilege and Punishment*] (analyzing underlying incentives of state and media actors).

27. See, e.g., Mechthild Exner, *The Convergence of Ideology and the Law: The Functions of the Legal Education Campaign in Building a Chinese Legal System*, *Issues & Studies*, Aug. 1995, at 68, 76–91 (discussing legal education campaigns); Tahirih V. Lee, *The Media and the Legal Bureaucracy of the People's Republic of China*, in *Power, Money, and Media* 208, 236–38 (Chin-Chuan Lee ed., 2000) (“The state-run media are vehicles for informing the population of China about official interpretations of the law Judging from the size of the enterprise, the lawmaking bureaucracy of China heavily depends upon the media to do its job.”).

28. Much of the most insightful work on the Chinese media is collected in four volumes edited by Chin-Chuan Lee. See *China's Media, Media's China* (Chin-Chuan Lee ed., 1994); *Chinese Media, Global Contexts* (Chin-Chuan Lee ed., 2003); *Power, Money, and Media*, supra note 27; *Voices of China: The Interplay of Politics and Journalism* (Chin-Chuan Lee ed., 1990) [hereinafter *Voices of China*].

29. See, e.g., He Weifang, *Faguan Yu Dazhong Chuanmei* [Judges and the Mass Media], *Nanfang Zhoumo* [Southern Weekend], Jan. 9, 1998, available at <http://www.jc.gov.cn/personal/ysxs/fnsx3/fnsx2039.htm> (on file with the *Columbia Law Review*)

courts, much of the scholarship and commentary has focused on the relatively narrow question of the appropriate balance between media coverage and respect for court procedures, and on the relative merits, or lack thereof, of limiting media coverage. Commentators have not generally sought to understand the media in terms of their importance in the legal system, or to explore the link between media influence and Party influence on the courts. Indeed, most Chinese academic writing on the impact of the media has treated the question separately from increasingly prevalent discussions of court reform and judicial independence.

This Article seeks to contribute to the existing literature in both the West and in China on the role of the Chinese media, and in so doing to further the understanding of institutional development more generally. Although its focus is on the media's role in law and dispute resolution, the Article also contributes to understanding the media's role in exposing wrongdoing, content regulation of the media, the importance of internet news providers, the role of confidential internal reports, and the role the media play in receiving public grievances. China now has a lively commercialized press that openly reports on a wide range of formerly taboo topics, talk shows that field complaints about daily lives, journalists willing to risk both monetary and physical hardship to expose wrongdoing, and internet news sites that spread word of the latest scandal nationwide within hours. This Article demonstrates, however, that the term "media" in China continues to refer to institutions whose roles and authority extend beyond such public reporting to include a range of official and unofficial roles that influence Party-state decisionmaking.

This Article is based on a combination of written sources and interviews with approximately 150 judges, journalists, lawyers, and academics, primarily in China. I conducted interviews in Beijing, Shanghai, Chengdu, and, in a few cases, New York. I interviewed approximately twenty-five judges, sixty-nine journalists, forty-nine legal or media studies academics (many of whom also have practical experience in either the media or law), seven procurators or procuratorate officials, thirteen non-academic lawyers, and thirteen "others"—businesspeople, employees of internet websites, and government officials. I interviewed journalists and judges affiliated with national, provincial, and local courts or media outlets.³⁰ All interviewees were promised anonymity. Reflecting the sensitiv-

[hereinafter He, Judges]; Xu Xun, Meijie De Zeren: Jiang Baodao Yu Pinglun Fenkai—Jianyi Baodao Ji Pinglun Anjian De Xinwen Guize [The Responsibility of the Media: Separate Out Reports and Commentary—A Suggestion Regarding News Regulations on Reports and Commentary on Cases], 1998 Renmin Sifa [People's Judiciary] No. 10 (on file with the *Columbia Law Review*) [hereinafter Xu, Responsibility of the Media].

30. Of the journalists, twenty-four worked for newspapers or news agencies with a central Party or government rank; nine for central television or radio; six for central magazines; three for provincial television; nine for newspapers or magazines with a provincial rank; ten for municipal papers; and eight for magazines or newspapers with only loose Party-state affiliation. I discuss the concept of administrative rank of the news media in Part I.B. Of the judges, three worked for the Supreme People's Court; nine worked for

ity of the subject matter, many of the interviewees requested that I not name their employer, and in some cases the city in which the interview took place. Accordingly, in this Article I cite to interviews based on the year in which they occurred and an interview number, but in order to protect the anonymity of sources I do not otherwise identify interviewees.

Detailed information regarding the relationship of the Chinese media to the legal system is simultaneously extremely easy and extremely difficult to obtain. The growth of the Chinese media, and in particular the internet, makes written materials on the topic widely accessible. A Google search in the Chinese language for the terms “media” and “courts” resulted in 203,000 hits; the term “media supervision” yielded 93,900. At the same time, other documentary sources—ranging from court opinions, to propaganda department notices, to internal reports—are difficult, and in some cases illegal, to obtain. The media-content-control system remains relatively secretive; questions of media regulation continue to touch upon core questions of Party authority. Although courts and judges are increasingly open, many still view their relationship to the press as a sensitive topic. Accordingly, although I was able to meet with a wide range of journalists, judges, lawyers, and academics, others I attempted to interview, both in the media and in the courts, were unwilling to meet with me.

Virtually every person with whom I met in connection with this research was introduced to me by friends or personal contacts. Despite the selection biases inherent in relying on such contacts, reliance on personal introductions remains essential for empirical research on the Chinese legal system, in particular when research may touch on politically sensitive topics. One result is that the judges and journalists with whom I met are most likely better educated than many of their peers. Many also support and advocate reforms of their respective institutions. The large majority of journalists and judges I interviewed work in courts or media outlets in major cities. Their views thus may not reflect journalists and judges in rural areas, and the cases they encounter are only a small slice of those nationwide. Judges involved in particularly sensitive or high-profile cases were generally not willing to meet with me. In other cases, interviewees were willing to share information regarding particular cases but requested that I not publish such information. Thus in some cases I have omitted information that might be relevant to my empirical analysis. Nevertheless, my interviewees provide insights into both the courts and the media that are crucial to understanding the evolution of both institutions. The often sharply divergent views that journalists and judges hold on their roles also demonstrate that my sources were far from uniform in their views or experiences.

provincial high courts or the high courts of municipalities with a provincial rank; four worked for intermediate courts; and nine worked for county or district courts.

A number of my interviewees, in particular many of the journalists and academics, are active participants in current debates in China concerning the future of court-media relations. Accordingly, the information I obtained may also reflect their particular interests and goals. In addition, the fact that court-media relations are increasingly drawing the attention of observers outside China has been used as an argument to support the need for further attention to the issue within China.³¹

The documentary sources I rely upon range from scholarly articles to newspaper and magazine reports and commentaries, to web postings and, in a few cases, web chatroom discussions. My heavy reliance on newspaper accounts in an article that studies the impact of the media also raises methodological questions. Yet media reports are far from uniform in their views regarding media impact; many of the media's strongest critics are themselves journalists and editors. In addition, many newspapers, and in particular specialist legal papers, print a wide range of commentary on legal issues by legal professionals and scholars. Media reports themselves also often provide the only publicly available accounts of court decisions. Other sources on which I rely appeared only on the internet, reflecting the degree to which the internet itself has become a forum for public debate in China. Because there are potential problems with the reliability of some of my sources—including interviewees, the official media, and online postings—I have principally relied on information that is corroborated by multiple sources.

I. HISTORICAL AND REGULATORY BACKGROUND: COMMERCIALIZING MOUTHPIECES

A. *Historical Roles*

The media have served as an arm of China's Party-state since before the founding of the People's Republic in 1949.³² The Communist Party's

31. A December 2003 report in *China Newsweek*, which was subsequently posted to the website of the official Xinhua News Agency, cited this Article and seminars held in Beijing to discuss an earlier draft of this Article as evidence of growing international attention to court-media relations in China. The *China Newsweek* article included a summary of some of my key arguments. Xu Xun, Meiti Pandian 2003 Niandu Meiti Sifa Zhijian De Chongtu He Pingheng [The Media Checks Its Conflicts and Balance with Judicial Organs in the Year of 2003], *Xinwen Zhoukan* [China Newsweek], Dec. 17, 2003, available at http://news.xinhuanet.com/legal/2003-12/17/content_1235847.htm (on file with the *Columbia Law Review*) [hereinafter Xu, Checks].

32. For a discussion of control of the press in the early years of the Communist Party and the PRC, see Yuezhi Zhao, *Media, Market, and Democracy in China* 14–17 (1998) [hereinafter Zhao, *Media, Market, and Democracy*], and Franklin W. Houn, *Chinese Communist Control of the Press*, 22 *Pub. Opinion Q.* 435 (1958). See also Li Li & Du Chenghui, *Banbao Shi Dang De Yizhong Zhongyao Gongzuo Fangshi—Mao Zedong Xinwen Xuanchuan Sixiang Xuexi Zhaji* [Running Newspapers Is a Form of Important Working Method of the Party—A Review of Mao Zedong's News Propaganda Theory], 29 *Hubei Daxue Xuebao* (Zhhexue Shehui Kexue Ban) [Journal of Hubei University (Philosophy and Social Science Edition)] 20, 20 (2002) (on file with the *Columbia Law*

early leaders recognized the importance of the media for informing and instructing China's population, and for asserting political control.³³ China's media traditionally have been "an integral part of the government or of the Communist party,"³⁴ controlled by the Party and used by the leadership to rally support, to transmit and implement policies, and to carry out political mobilization.³⁵

The term "media" in China refers not only to state-controlled news outlets but also to institutions whose roles include carrying out official Party-state functions. In addition to disseminating official or approved news publicly, China's media have served as a mechanism for informing Party leadership of developments at the local level, including both public grievances and wrongdoing by Party-state officials.³⁶ The media have thus provided a route for leadership at each level of the Party-state to obtain information that might not be available through other channels.³⁷

Review) (discussing Mao's recognition of the importance of media control). For an examination of the press in Republican China (1911 to 1949), including a description of the commercialization of the press and of the Republican press's role in advocating liberalization, see Stephen R. MacKinnon, *Toward a History of the Chinese Press in the Republican Period*, 23 *Mod. China* 3 (1997). See also Daniel C. Lynch, *After the Propaganda State 19–20* (1999) (discussing efforts to control media at end of Qing Dynasty and government control of media during Republican period); Andrew J. Nathan, *Chinese Democracy* 133–51 (1985) (discussing creation and evolution of China's popular press in late nineteenth and early twentieth century); William P. Alford, *Of Arsenic and Old Laws: Looking Anew at Criminal Justice in Late Imperial China*, 72 *Cal. L. Rev.* 1180, 1211 (1984) (discussing critical media coverage of legal proceedings in one 19th century case).

33. Houn, *supra* note 32, at 435, 438–39, 445, 448.

34. *Id.* at 435–36.

35. See Nathan, *supra* note 32, at 154–56; see also Kenneth Lieberthal, *Governing China* 198 (1995) (discussing media's role in political mobilization); Patricia Stranahan, *Molding the Medium* 3 (1990) (commenting that during the 1940s, the Communist Party Central Committee's official newspaper, *Liberation Daily*, "was the medium through which Party leaders gave direction to cadres who organized and implemented the Party's political line among the masses"). This is not to suggest that the media have always spoken with a uniform voice. The media have also been an area of significant factional conflict within the Communist Party, with various media outlets, especially in the print media, being associated with particular Party factions. See, e.g., Timothy Cheek, *Propaganda and Culture in Mao's China* 172–87 (1997) (discussing role of *People's Daily* in factional conflicts during 1950s); Merle Goldman, *The Role of the Press in Post-Mao Political Struggles*, in *China's Media, Media's China*, *supra* note 28, at 23, 23–24 (discussing role of the press during 1989 Tiananmen movement); Chin-Chuan Lee, *Ambiguities and Contradictions: Issues in China's Changing Political Communication*, in *China's Media, Media's China*, *supra* note 28, at 3, 8–9 (noting that the mass media have also served as "a site of struggle among power elites," in part due to the importance of media control in establishing political legitimacy).

36. See Victor H. Li, *Law Without Lawyers* 76 (1977) [hereinafter Li, *Law Without Lawyers*] ("[O]ne of the functions of a Chinese newspaper is to act as a channel for complaints by the public against particular actions.").

37. Nathan, *supra* note 32, at 154–55; see also Marlowe Hood, *The Use and Abuse of Mass Media by Chinese Leaders During the 1980s*, in *China's Media, Media's China*, *supra* note 28, at 37, 39 ("The media are not only the 'mouth and tongue' of the Party, but also its eyes and ears."); He Chuan, "Neican"—Tongzhizhe De Ermu ["Internal Reports"—The

The evolution of the media into information providers was crucial in a system in which lower-level officials often had significant incentives to overstate positive developments and underreport negative news. This information was, and continues to be, provided through a system of internal publications, generally published by key Party newspapers or news agencies but circulated to persons only of a particular rank.³⁸

From its earliest days, the claim to represent public opinion has been an important component of Party assertions of legitimacy. The Party's "mass line" doctrine was based on the idea that only by fully understanding the views of the populace could the Party push forward with its revolutionary goals.³⁹ The use of the term "public opinion supervision" to describe media oversight reflects the media's role as a bridge between the Party and the people, as well as the Party's claim that the interests of the public are the same as the interests of the Party. This role has been underscored by the media's role in serving as a government complaints office. Since the 1950s, "mass work" departments at most major papers and magazines have served as government complaints offices. These departments receive and vet popular grievances; worthy complaints are referred to relevant government or Party departments, selected for publication in internal or public editions, or forwarded to journalists for further investigation.⁴⁰

In the 1950s and early 1960s, the Chinese media, including both general publications and specialist legal journals, contained significant discussion of legal issues and the relationship of law to Party leadership.⁴¹

Eyes and Ears of Those in Power], Suidao [Tunnel], Feb. 28, 1998, available at <http://www.geocities.com/SiliconValley/Bay/5598/98/Sd9802e.txt> (on file with the *Columbia Law Review*) [hereinafter He, Internal Reports] (arguing that senior officials trust media more than other arms of government because they view media as comparatively neutral). The development of such alternative sources of information to inform Party leadership of developments at the local level was not a complete innovation. During imperial times, China's emperors relied on complex systems of communication, including secret reporting concerning local conditions or popular opinion, to keep themselves informed. See generally Silas H.L. Wu, *Communication and Imperial Control in China* (1970).

38. See *infra* Part I.B.2. The media, even in their internal reports, often failed to report negative developments accurately, most notably during the Great Leap Forward, see Nathan, *supra* note 32, at 182, but nevertheless did provide leaders with information not available through other channels.

39. Lieberthal, *supra* note 35, at 64 (discussing the "mass line").

40. See Nathan, *supra* note 32, at 156–57 (discussing mass work departments).

41. This was particularly the case during 1956 and 1957, at the time of the Hundred Flowers campaign, when the Chinese media gave voice to official views praising legal regularity. Lubman, *supra* note 24, at 79; see also Cai Dingjian, Lishi Yu Bian Ge—Xin Zhongguo Xianfa Zhi Jianshe De Licheng [The Transformation of History—The Course of Development of the Construction of the Constitutional System of New China] 40–42 (1999) (discussing propaganda regarding law, including through media, in 1950s); Jerome Alan Cohen, *The Criminal Process in the People's Republic of China 1949–1963*, at 8 (1968) (noting attention to legal issues in Chinese newspapers in 1950s); Lubman, *supra* note 24, at 80 (discussing "emphasis on class warfare" in media coverage of law in early 1960s). For a discussion of legal periodicals and legal coverage in nonspecialist journals

As legal institutions came under attack during the Cultural Revolution, the media began to assume a more direct role not only of conveying Party-state norms, but also of implementing policies and making key decisions.⁴² The weakness of other government institutions during the Cultural Revolution meant that “the press acted as the most important institutional connector between citizens and the state.”⁴³ Media served as instruments of factional struggle, and reports became effectively determinations of fact,⁴⁴ particularly in cases of alleged wrongdoing. In the absence of a functioning legal system during the Cultural Revolution, newspapers frequently assumed the role of directly assigning and announcing Party determinations of guilt.

B. *The Continuing Roles of the Party Press*

China’s media have undergone both rapid growth and significant commercialization over the twenty-seven years since China began its reform process in 1978.⁴⁵ The total number of newspapers in China grew from sixty-nine in 1979 to a few hundred in the early 1980s to more than two thousand in 1997; as of mid-2003 there were 2,035 newspapers in China.⁴⁶ Likewise, the number of national, provincial, and local televi-

during this period, see Tao-tai Hsia, *Chinese Legal Publications: An Appraisal*, in *Contemporary Chinese Law: Research Problems and Perspectives* 20, 47–50 (Jerome Alan Cohen ed., 1970); see also Cohen, *supra*, *passim* (translating materials from Chinese media in 1950s and 1960s).

42. Describing the Chinese legal system in 1978, Victor Li observed that “a very large proportion of the social norms in China are articulated and communicated through newspapers, magazines, radio, and the like. . . . [T]he law speaks directly to the general public through the mass media.” Li, *Law Without Lawyers*, *supra* note 36, at 41–42.

43. Nathan, *supra* note 32, at 152; see also Zhao, *Media, Market, and Democracy*, *supra* note 32, at 32–33 (describing media during Cultural Revolution).

44. Wei Yongzheng, *Xinwen Chuanbofa Jiaocheng* [Journalism and Communication Law Teaching Materials] 113 (2002) [hereinafter *Wei, Journalism and Communication Law*]. Wei Yongzheng notes that “media adjudication” of disputes can be said to have “reached the height of perfection” during the Cultural Revolution. *Id.*; see also Sun Xupei, *An Orchestra of Voices* 5–6 (2001) [hereinafter *Sun, Voices*] (noting that “the media were instrumental in proliferating the disastrous excesses of the Cultural Revolution” and that “[l]ies and inflammatory editorials filled the newspapers”); Huang Jianming, *Fazhi Shidai Huhuan Xin De Yulun Jiandu Moshi* [The Need for a New Model of Public Opinion Supervision in an Age of Rule of Law], *Xinhua Wang Hunan Pindao* [Xinhua Network Hunan Channel], Apr. 5, 2001, at <http://www.hn.xinhua.org/news/2001-4-5/0145184042.htm> (on file with the *Columbia Law Review*) [hereinafter *Huang, New Model*] (arguing that reform-era media reporting has been influenced by media’s role during Cultural Revolution of determining guilt).

45. See Eric Kit-wai Ma, *Rethinking Media Studies: The Case of China*, in *De-Westernizing Media Studies* 21, 21 (James Curran & Myung-Jin Park eds., 2000) (“The most distinguishable characteristic of the Chinese media in the 1990s is the tension between rapid commercialization and continued ideological control.”). On the development and growth of advertising after 1979, see Junhao Hong, *The Resurrection of Advertising in China: Developments, Problems, and Trends*, 34 *Asian Survey* 326 (1994).

46. Interview 2003-121; Guoguang Wu, *One Head, Many Mouths: Diversifying Press Structures in Reform China*, in *Power, Money, and Media*, *supra* note 27, at 3, 12–13

sion stations has grown to approximately one thousand in recent years.⁴⁷ The past ten years have also seen significant expansion in various forms of new media, including talk radio⁴⁸ and the internet.⁴⁹ Despite this rapid growth, virtually all major print, television, and radio outlets in China formally continue to be linked to the Party-state and are required to obey Party directives.⁵⁰ In addition, many continue to serve as information-gathering institutions for the Party-state.

1. *Public Reporting.* — Since the 1950s, the Propaganda Department of the Central Committee of the Communist Party (Central Propaganda Department, or CPD) has been responsible for overall management of culture, including the mass media.⁵¹ Most major papers are formally linked to the Communist Party, and many central Party organizations publish their own newspapers or magazines.⁵² The Chinese Communist Party Central Committee, for example, publishes *People's Daily*,⁵³ the Communist Party Youth League publishes *China Youth Daily*, and *Legal Daily* is under the direct supervision of the Party's Central Political-Legal

[hereinafter Wu, Many Mouths]. The 1979 figure does not include newspapers at the subprovincial level, which grew rapidly in the early years of the reform era; the later figures do. *Id.*

47. Interview 2003-121. Figures on the total number of television stations in China vary widely. For example, one observer estimates that there are approximately 300 television stations in China, Li Xiaoping, "Focus" (Jiaodian Fangtan) and the Changes in the Chinese Television Industry, 11 *J. Contemp. China* 17, 18 (2002) [hereinafter Li, Focus], while another observer reports that there are 980 terrestrial stations in China, see Michael Keane, As a Hundred Television Formats Bloom, a Thousand Television Stations Contend, 11 *J. Contemp. China* 5, 8 (2002). See also Zhang Li, Zhengque Chuli Difang Dianshi Tai De Sanda Maodun [Accurately Solve Three Large Contradictions of Local Television Stations], 2002 Shengping Shijie [Sound and Screen World] No. 9, at 39 (on file with the *Columbia Law Review*) [hereinafter Zhang, Contradictions] (stating that there are more than 2,000 local television stations in China). The discrepancy stems in part from questions regarding how to measure numerous local television stations that are local relay stations for national or provincial networks, and thus are not technically permitted to provide their own content (although nevertheless they sometimes do so).

48. See Lynch, *supra* note 32, at 101-04 (discussing growth of radio call-in shows in China); Zhao, Media, Market, and Democracy, *supra* note 32, at 104-10 (discussing talk radio in Shanghai).

49. See *infra* Part I.F (discussing various incentives that lead to expansion of the media, including internet growth).

50. For a discussion of the media's obligations to follow the Party's leadership, see Keller, Privilege and Punishment, *supra* note 26, at 89-90. Some internet news portals have less direct ties to the Party-state and may receive Party directives less frequently than do traditional media, but they are still subject to propaganda department oversight. See *infra* Part I.F.2.

51. See Nathan, *supra* note 32, at 152-53 (discussing role of CPD).

52. Interview 2002-10.

53. Zhongguo Jigou Ji Lingdao Ren Ziliao Ku [Databank on China's Institutions and Leaders], Renmin Wang [People's Daily Online] (n.d.), at <http://www.peopledaily.com.cn/GB/shizheng/252/9667/9670/20021127/875830.html> (on file with the *Columbia Law Review*).

Committee.⁵⁴ This model is replicated at the provincial and local levels, such that most major provincial-level papers are affiliated with their respective provincial-level Party Committee. Thus *Southern Daily* is linked to the Guangdong Province Communist Party Committee; the Shanghai-based *Liberation Daily* is the official paper of the Shanghai Municipal Communist Party Committee;⁵⁵ and *Beijing Legal Times* is the official paper of the Beijing Municipal Political-Legal Committee.⁵⁶ All provincial and many municipal and county Party committees likewise publish their own newspapers.

Numerous government departments and institutions also publish their own newspapers and magazines.⁵⁷ For example, the Supreme People's Court publishes *People's Court News*, while the Supreme People's Procuratorate publishes *Procuratorate Daily*. In addition to direct supervision by their parent government department or institution, these publications are also subject to overall regulation by the propaganda department.

Reforms announced in mid-2003 may both reduce the total number of newspapers and also lessen ties between the printed press and Party or government departments or organizations.⁵⁸ Under the reforms, newspapers and magazines are no longer permitted to rely on mandatory subscriptions for support, and eventually all but a few of China's newspapers and magazines will lose state subsidies. The reforms resulted in 677 publications being ordered to close by the end of 2003.⁵⁹ All but nine of the

54. Interview 2002-3. Prior to 2001, *Legal Daily* was formally linked to the Ministry of Justice. Id.

55. For an online introduction to *Liberation Daily*, see Jiefang Ribao Jituan Wangzhan Jianjie [Brief Introduction to the Webpage of the Liberation Daily Group], at <http://www.jfdaily.com.cn/jfdaily/jianjie/index.htm> (last visited Sept. 8, 2004) (on file with the *Columbia Law Review*) [hereinafter *Liberation Daily Brief Introduction*].

56. Interview 2003-109.

57. See Lynch, *supra* note 32, at 41. Many provinces also have specialist legal publications along with official Party papers. Thus, for example, the *Sichuan Legal News* is attached to the Sichuan Province Communist Party Political-Legal Committee. Interview 2003-22.

58. Interview 2003-112.

59. See Qu Zhihong, 677 Zhong Tingban Baokan Gongzhi Yu Zhong, Zuichi Chuban Zhi Jinnian Niandi [677 Periodicals to Be Closed Are Announced to the Public, Must Cease by Year End], Renmin Ribao [People's Daily], Nov. 28, 2003, available at <http://bkdy.people.com.cn/dispnews.php?id=463> (on file with the *Columbia Law Review*); Nailene Chou Wiest, Ban on Forced Paper-Buying Bolstered, S. China Morning Post, July 25, 2003, at 6; Xinhua, Zhongguo Baoye Yinru "Shengsi Jizhi," Guanfang Biaoshi Rang Quanli Tuichu [China's Newspaper Industry Introduces the "Life and Death Mechanism," the Authorities Say Power Should Retreat], Aug. 17, 2003, available at <http://dynamic.sohu.com/template/news/print.jsp?ENTITYID=212234909&Dyn> (on file with the *Columbia Law Review*) [hereinafter *China's Newspaper Industry Introduces the "Life and Death Mechanism"*]; Xinhua, Print Media Reform Stops Mandatory Subscription, Nov. 27, 2003 (on file with the *Columbia Law Review*); see also Quanguo Tingban Baokan Mingdan [List of Closed Newspapers and Magazines Nationwide], Renmin Ribao [People's Daily], Nov. 28, 2003, available at <http://www.peopledaily.com.cn/GB/14677/14737/22036/>

closed publications were of provincial rank or below;⁶⁰ seventeen were legal publications.⁶¹ The reforms are primarily designed to reduce the burden on farmers and ordinary citizens;⁶² in many cases local and specialized provincial papers previously survived only by generating revenue through mandatory subscriptions by individuals and organizations. The reforms may also reduce direct links between the media and the state by reducing financial ties with government or Party departments or institutions. The reforms are not designed, however, to address or reduce oversight by the CPD.

Most major nonspecialized newspapers at each level of the Party-state are still linked to the respective-level Party organization. Television and radio stations are generally linked to a government entity: either to the State Administration of Radio, Film, and Television (SARFT), or to the corresponding provincial radio, film, and television bureau.⁶³ Nonetheless, television and radio stations remain subject to CPD oversight and instructions, and television and radio remain subject to a degree of CPD regulation and oversight equivalent to, if not higher than, the print media.⁶⁴

Media outlets also have administrative ranks corresponding to the administrative rank of the department or Party organization with responsibility for the publication or station.⁶⁵ In general, higher-ranking media are more influential than lower-ranking media, both due to the likelihood that their audience will include higher-ranking officials, and thus result in the intervention of such officials, and due to the significant autonomy to report critically on lower-ranking officials that such media generally enjoy. For example, *People's Daily's* administrative rank derives from its link to the Central Party Committee. Ministry-linked papers have a lower rank, as do papers linked to provincial Party organizations. Provincial papers, however, rank above those linked to municipal or county Party organizations.

Yet administrative rank alone does not explain the influence of a particular media outlet. Although CCTV and *People's Daily* technically

2216409.html (on file with the *Columbia Law Review*) (listing 677 closed papers and magazines).

60. List of Closed Newspapers and Magazines Nationwide, *supra* note 59; see also China's Newspaper Industry Introduces the "Life and Death Mechanism," *supra* note 59 (describing the requirement that publications become financially independent of their superior government and Party departments).

61. See List of Closed Newspapers and Magazines Nationwide, *supra* note 59.

62. Interview 2003-121.

63. CCTV is subordinate to SARFT at the national level, while provincial radio, film, and television bureaus oversee provincial stations. On regulation of television and radio, see Lynch, *supra* note 32, at 34, 143-47.

64. Interview 2003-13. Television journalists and academic observers say that the higher potential impact of their medium means that they are under more pressure from propaganda authorities than are journalists in the print media. Interview 2003-57; Interview 2003-79.

65. See H.L. Fu & Richard Cullen, *Media Law in the PRC* 27 (1996).

share a roughly equivalent central Party-state administrative rank, a critical report on *Focus* is far more influential and likely to result in resolving the problem than is a critical report in *People's Daily*.⁶⁶ At least part of this difference in power stems from public impact and popularity. *Focus*, which airs immediately after the 7 p.m. national news on CCTV 1, is reportedly the most watched program in China and a crucial mechanism by which the Party disseminates news nationwide. *Focus* reaches an audience far greater than that of *People's Daily*. In addition, the differential makeup of the audience appears significant: Although many officials watch *Focus*, the viewership is largely made up of ordinary people.⁶⁷ In contrast, *People's Daily's* readership largely comprises officials; few ordinary people read the paper.⁶⁸ The influence of *Focus* appears to stem from a combination of the program's ability to attract the attention of officials and its ability to draw viewers from the public as well; public knowledge of and attention to matters reported on *Focus* makes it difficult for officials, especially those at the local level, to ignore such reports.

2. *Internal Reports*. — Party media also continue to serve as important information-gathering mechanisms for Party-state leadership. In addition to their public editions or broadcasts, most major Party newspapers, and some magazines, produce “internal reference” publications, or *neican*.⁶⁹ Internal publications often include material deemed by the relevant publication to be inappropriate for public dissemination, most often because of the sensitivity of the content,⁷⁰ although some internal publications also include educational or policy materials aimed at local officials.

Distribution of internal reports varies depending on both the rank of the publication producing the internal report and the subject matter. Circulation of internal reports can range from only a handful of copies being circulated to central Party-state leaders in the case of the most sensitive and high-ranking publications, to tens of thousands for internal reports intended to inform local officials of policies and trends.⁷¹ For example, *Legal Daily's* internal edition is generally circulated to officials of a

66. Interview 2003-114; Interview 2003-117.

67. Interview 2003-114.

68. *Id.*

69. See Hood, *supra* note 37, at 40–41; He, *Internal Reports*, *supra* note 37. For additional discussion of the role of internal reports, see *infra* Part II.B.

70. In some cases newspapers publish news in an internal publication to bring a matter to the attention of officials prior to, or to clear the way for, public publication. In other cases, papers may report simultaneously on a matter in public and internal reports, with the internal report including additional information not contained in the public report.

71. See Interview 2003-14 (stating that there are wide range of internal reports, with circulation being determined by administrative rank of report); Interview 2003-81 (describing internal report on rural issues that is circulated to tens of thousands of county-level officials nationwide); see also Hood, *supra* note 37, at 40 (stating that circulation can range from millions to just a handful of top leaders, depending on nature of publication). For a discussion of the types of and authorized audiences for various internal publications, see generally He, *Internal Reports*, *supra* note 37.

certain rank in the Ministry of Justice and at the Party's Central Political-Legal Committee, as well as to other senior officials with a particular interest in, or responsibility for, legal matters. In addition, individual issues are sent to officials with particular interest in, or responsibility for, topics covered in that edition.⁷² The *Workers Daily* internal report is sent to approximately 150 persons on a regular basis, including central government ministry heads and the Party secretaries of each province, as well as to persons who may have competence in the subject matter of a particular report.⁷³

Internal publications operate in a clear hierarchy. The internal publications of Xinhua News Agency and *People's Daily* are the most influential, with copies being circulated to the Communist Party politburo.⁷⁴ Internal reports of provincial Party papers are circulated to provincial Party-state leaders,⁷⁵ although in some cases copies may also be sent to officials in the central government and Party.⁷⁶ Additionally, articles may be reprinted in the internal reports published for central government and

Depending on the publication or program, internal publications may be published either on a regular schedule or only when issues of special importance arise. Interview 2003-3. Some papers have regular editions, with reporters dedicated to or primarily writing for the internal publications. He, Internal Reports, *supra* note 37.

72. Interview 2002-7. The *Legal Daily* internal publication is published whenever there is content that the paper deems appropriate for inclusion. Interview 2002-7. Topics include important new developments and pending cases. In addition, *Legal Daily* publishes a second internal edition, which is circulated to officials of a certain rank in county and municipal governments nationwide. This version generally serves to inform officials regarding legal policies and developments; the more restricted version focuses on major or sensitive problems. Interview 2003-73. Other specialist legal publications, including *Prosecutorate Daily* and *People's Court News*, also publish internal reports.

73. Interview 2003-4. *Workers Daily* is attached to the official All-China Federation of Trade Unions. See Quanzong Zhishu Danwei [Organizations Directly Under the All-China Federation of Trade Unions] (n.d.) (on file with the *Columbia Law Review*).

74. Xinhua publishes a range of internal reports with different classifications. The most sensitive are circulated to the politburo, while less sensitive versions are circulated more broadly. For a discussion of the various types of internal documents that Xinhua publishes, see Huai Yan & Suisheng Zhao, Notes on China's Confidential Documents, 2 *J. Contemp. China* 75, 85-87 (1993).

75. Interview 2003-23.

76. Interview 2002-10; He, Internal Reports, *supra* note 37. In Hebei Province, for example, the *Hebei Daily* publishes four different forms of internal reference papers, each with different circulations. The ordinary internal reference publications are circulated to provincial officials above the provincial department level and to the heads of government and Party secretaries of municipalities directly administered by the province. In 1998, the *Hebei Daily* issued a total of 207 editions of internal reference reports, with a total of 465 articles. "Neican" Fahui Ermu Zuoyong ["Internal Reference" Develops Use as Eyes and Ears], Hebei Ribao [Hebei Daily], at <http://www.hebnet.net/mag10/n1/colart10893.htm> (last visited Sept. 10, 2004) (on file with the *Columbia Law Review*) [hereinafter Internal Reference Develops Use as Eyes and Ears]; see also Xinhua She Hubei Fenshe Jianjie [A Brief Introduction to the Hubei Branch of Xinhua News Agency], at <http://www.hb.xinhuanet.com/fsjc/fsjc.htm> (last visited Sept. 10, 2004) (on file with the *Columbia Law Review*) (listing internal publications that Hubei branch of Xinhua News Agency publishes).

Party leaders by *People's Daily* or Xinhua.⁷⁷ Likewise, newspapers linked to municipal Party committees prepare internal reports that are circulated to municipal leaders.⁷⁸

Newspapers, magazines, or the two major official news agencies, Xinhua and China News Agency, prepare most internal reports. Certain programs on CCTV, most notably the investigative program *Focus* and the daily legal show, *Legal Report*, also prepare internal reports, usually videos of stories that the programs' editors deem too sensitive to broadcast publicly.⁷⁹ Likewise, radio stations and some local television stations prepare internal reports, most often in written form.⁸⁰ Although internal reports continue to play an important role, traditional Party news outlets prepare most such reports; most commercialized media rarely, if ever, prepare internal reports.⁸¹

C. *Controlled Commercialization*

Commercialization of the Chinese media began with the reintroduction of advertising in the late 1970s⁸² amid government efforts to restart many publications and printing facilities that had shut down during the Cultural Revolution.⁸³ Commercialization served to reduce the need for state resources to support the media; concurrently, expanding the media served state interests in economic development. This commercialization continued and accelerated in the 1990s, with many media outlets becoming, or attempting to become, financially self-sufficient as the state cut subsidies to the media. The new emphasis on profitability appears to have been at least a partial success, as many newspapers with national

77. See Internal Reference Develops Use as Eyes and Ears, *supra* note 76 (reporting that hundreds of articles from *Hebei Daily's* internal reports have been reprinted in the internal publications of *People's Daily* or Xinhua); Wang Xin, Neican Ruhe Banchu Tese [How to Make Internal Reports Play a Special Role] (n.d.) (on file with the *Columbia Law Review*) [hereinafter Wang, Special Role] (stating that in 2000, fifty-four of *Hubei Daily's* internal reports were reprinted in internal reports of Xinhua or *People's Daily*, and that five such reports resulted in instructions from top national leaders).

78. Interview 2003-24; He, Internal Reports, *supra* note 37.

79. Interview 2003-5; Interview 2003-83; Interview 2003-86; Interview 2003-166.

80. Interview 2003-5; Interview 2003-39; Interview 2003-57; Interview 2003-60; Interview 2003-65.

81. Although the commercial offshoots of Party papers, see *infra* Part I.C, may have the power to issue internal reports—and in some cases may be required to do so by their parent papers—they do so infrequently. See Interview 2003-38; Interview 2003-39; Interview 2003-52; Interview 2003-56; Interview 2003-66; Interview 2003-93; Interview 2003-108. Internal reports by commercialized papers are generally included as part of the internal reports prepared by their parent papers. Interview 2003-66; Interview 2003-80; Interview 2003-110.

82. Lynch, *supra* note 32, at 54–55. Advertising was banned during the Cultural Revolution. On the commercialization of the Chinese media, see Wu, Many Mouths, *supra* note 46, at 57–60 (“Commercialization makes most media . . . rely essentially on market competition for their survival and prosperity . . .”).

83. Keller, Privilege and Punishment, *supra* note 26, at 92.

audiences now operate without government subsidy,⁸⁴ and many more appear poised to become self-sufficient following recent reforms.⁸⁵

One manifestation of this push toward self-sufficiency has been the transformation of a number of leading media outlets into state-owned corporate media groups with a wide range of commercial interests,⁸⁶ generally including both a major Party newspaper and other, more commercially focused, subsidiary newspapers and publications.⁸⁷ In some cases, such as the official *Guangzhou Daily*, Party-mouthpiece papers have themselves become heavily commercialized. Such reorganizations have meant that media outlets that formerly directly answered to a particular government ministry or Party organization are now corporate entities, although still linked indirectly to the same department or organization.⁸⁸ One result may be that such organizations or ministries exert less direct influence over the content of affiliated publications, although the reorganization may also be facilitating greater CPD oversight.⁸⁹

The emphasis on advertising and financial self-reliance has increased the importance of attracting readers or viewers,⁹⁰ and has redirected the focus of many media outlets from delivering and gathering information on behalf of the Party-state to meeting audience demands. The print media now range along a spectrum in their commercial focus. At one end are official Party papers and magazines, which continue to serve as mouthpieces and where a significant percentage of content consists of material that the publication is instructed to include. Although sensitive to market pressures, most of the direct income of these official papers and magazines comes from government and Party department subscriptions. In the middle of the spectrum are Party publications that are partly commercialized, relying more heavily on their ability to generate reve-

84. Keller, *Media Ownership*, supra note 26, at 277. Subsidies continue, however, for certain outlets, in particular radio, Lynch, supra note 32, at 72–73, and for certain major Party publications such as *People's Daily*, Interview 2003-13.

85. See supra Part I.B.

86. See, e.g., Chin-Chuan Lee, *Chinese Communication: Prisms, Trajectories, and Modes of Understanding*, in *Power, Money, and Media*, supra note 27, at 3, 12–13 (discussing press “conglomeration”); Ma, supra note 45, at 22 (discussing *Guangzhou Daily* conglomerate).

87. Keller, *Media Ownership*, supra note 26, at 293; Keller, *Privilege and Punishment*, supra note 26, at 93.

88. The media technically remain classified as public service enterprises, or *shiyi*, rather than commercial enterprises, or *qiyi*—a reflection of the continuing link to the Party-state. Keller, *Privilege and Punishment*, supra note 26, at 94.

89. Journalists at some media organizations comment that they formerly did not see themselves as linked to the Party. After reorganization into corporate press groups, however, they find their employers are more clearly tied to the Party. Interview 2002-2. From the perspective of journalists and editors, however, this shift may not be entirely negative: In the case of the national *Legal Daily*, for example, which was shifted from being under the direct supervision of the Ministry of Justice to being under the direct supervision of the Party's powerful Central Political-Legal Committee, it may actually increase the influence of the paper. Interview 2002-5.

90. Lynch, supra note 32, at 42–43.

nue, but still with significant Party influence over content. These intermediate publications depend on both public and Party-state subscriptions for revenue. At the other end of the spectrum are commercialized papers and magazines. Subject to the formal and informal norms that dictate permissible subject matter, they make their own determinations regarding content. Income to support such papers comes from advertising and public sales.⁹¹

The expansion of the print media in recent years has come from the growth of commercialized papers and magazines, and in particular from new publications that official Party papers and media groups have launched. Such publications range from daily urban newspapers, to weekly papers with more in-depth reporting, to a wide range of magazines focused on topics such as fashion, computers, or automobiles. These publications have proved to be crucial sources of income for the official papers and media groups, in particular as readership of traditional Party papers has declined.⁹² Thus, for example, the Southern Daily Group, whose flagship *Southern Daily* is the official paper of the Guangdong Province Communist Party Committee, also publishes the mass-market *Southern Metropolitan Daily* and a weekly paper, *Southern Weekend*, that is widely regarded as one of China's most forthright and outspoken papers. The Sichuan Daily Group, which includes *Sichuan Daily*, the Party paper for Sichuan Province, publishes *West China Municipal News*, a mass-market daily. At the national level, the Central Party's flagship paper, *People's Daily*, publishes a total of twenty newspapers and magazines.⁹³ Profits from commercialized, mass-market subsidiaries, such as *Huanqiu Shibao* and *Securities Times*, help to underwrite the cost of publishing *People's Daily*.⁹⁴ Significant differentiation has also developed, with some papers and magazines targeting a broader readership with oftentimes sensational reporting, and other papers and magazines focusing on attracting well-educated members of China's emerging middle class.

Media outlets, in particular newspapers, and journalists⁹⁵ are now engaged in fierce competition as they struggle to attract readers and

91. Interview 2003-4.

92. Keller, Privilege and Punishment, supra note 26, at 88; see also Interview 2003-3 (commenting that profits are vital to this third category of publications, in part because they are needed to support parent publications).

93. See Renmin Ribao she Baoxi Baokan [Newspapers and Magazines of the People's Daily Publishing Syndicate], at <http://www.people.com.cn/GB/21596/index.html> (last visited July 2, 2003) (on file with the *Columbia Law Review*).

94. Interview 2003-67; Interview 2003-110; see also Liberation Daily Brief Introduction, supra note 55 (listing nine newspapers and three magazines that Liberation Daily Group publishes).

95. Journalists are compensated not only based on how much they write, but also on their ability to generate prominent news stories. Interview 2002-1; Interview 2002-5; see also Ma, supra note 45, at 23 (discussing competition among journalists); Zhou He, Chinese Communist Party Press in a Tug-of-War, in *Power, Money, and Media*, supra note 27, at 112, 121-22 (discussing compensation system at *Shenzhen Special Zone Daily*, which

thereby revenue.⁹⁶ In most cases this competition is between rival Party media groups. For example, in Chengdu, the capital of Sichuan Province, five daily papers compete for the city's nearly two million readers. All five are linked to either the municipal or the provincial Party committee. The two leading daily newspapers, *Chengdu Commercial News* and *West China Municipal News*, are attached to the Chengdu Municipal Party Committee and Sichuan Province Party Committee, respectively.⁹⁷ In Guangzhou, the two major daily newspapers, *Guangzhou Daily* and *Southern Metropolitan Daily*, are attached to media groups of the Guangzhou Municipal Party Committee and the Guangdong Province Party Committee, respectively.⁹⁸ Likewise, many papers formally linked to provincial-level Party media groups, such as the *Beijing Youth News*, *Southern Weekend*, and *21st Century Economic Herald*, are widely available outside of the paper's home province, and in many areas national media compete directly with media attached to the provincial or local Party-state.⁹⁹

requires journalists to produce "star stories" each month and rewards journalists for additional stories).

96. Li, Focus, *supra* note 47, at 18–20 (discussing commercialization and competition in China's television industry resulting from increased dependence on advertising revenue and arguing that China's television stations must "steer a middle course between the pressure from economic competition and political directives"); Elisabeth Rosenthal, Beijing in a Rear-Guard Battle Against a Newly Spirited Press, *N.Y. Times*, Sept. 15, 2002, at A1 (discussing proliferation of "aggressive" newspapers, magazines, and television stations competing by targeting readers' tastes).

Central government controls on the media as well as protectionist local policies, however, mean that the media also benefit from significant limits on competition, in particular restrictions on new entrants. See Interview 2003-13; Keller, Privilege and Punishment, *supra* note 26, at 95. Regulations also limit access to, and thus competition from, foreign media. Keller, Privilege and Punishment, *supra* note 26, at 113.

97. Interview 2003-23; Interview 2003-24. *Chengdu Commercial News*, which focuses on Chengdu news, has a dominant market position in Chengdu, while its rival, *West China Municipal News*, which is circulated province-wide, is strongest in areas of Sichuan outside of Chengdu. Interview 2003-23; Interview 2003-24.

Too much financial success may have unintended effects: In Sichuan, the *Chengdu Commercial News* originally was largely privately funded and run, although it was attached in name to the Chengdu Communist Party's Commerce and Trade Committee. Interview 2003-39. The paper later was brought under direct control of the Chengdu Party Committee, apparently in part so that the paper's financial success could be used to subsidize other local Party papers. Interview 2003-38; Interview 2003-46. *Chengdu Commercial News* subsidizes both *Chengdu Daily* and the *Chengdu Evening News*, which are in the same media group. Interview 2003-39; Interview 2003-44.

98. Interview 2003-46. Competition may also come from local papers owned by central Party papers; in Beijing, one of the mass-market daily papers, *Jinghua Shibao*, is a subsidiary of *People's Daily*. Newspapers and Magazines of the People's Daily Publishing Syndicate, *supra* note 93. Affiliation with *People's Daily* in some cases gives the paper more flexibility in its choice of stories than some of its rivals that are affiliated with the Beijing Municipal Party Committee. Interview 2003-110.

99. Interview 2002-2. The degree of competition varies significantly depending on location. Cities such as Chengdu, Nanjing, and Shenyang are known for having vibrant, competitive newspaper markets, while the Shanghai market is generally seen as

Media commercialization has also permitted the emergence of a small number of publications with only indirect ties to the Party-state. Often these publications are technically linked to quasi-official societies or associations and are subject to propaganda department oversight but are increasingly autonomous.¹⁰⁰ *Caijing*, a leading magazine focusing on finance and business, is technically registered as a publication under the Securities Market Research Association, a quasi-government entity, but is largely privately owned and operates with significant autonomy over content.¹⁰¹ Likewise, *Economic Observer*, a Beijing-based weekly paper focusing on in-depth economic news, is owned by a commercial enterprise with links to the Shandong Province government.¹⁰²

Commercialization has also encouraged increased media coverage of law. In addition to specialist legal media such as *Legal Daily*, *People's Court News*, and *Procuratorate Daily*, a number of more commercially oriented legal periodicals have emerged. *Legal Daily* publishes two market-oriented subsidiary papers, one aimed at legal practitioners and the other aimed at the mass market, as well as a commercial monthly magazine.¹⁰³ *Democracy and Law*, published by the official China Society for Legal Studies,¹⁰⁴ has been transformed into a market-oriented magazine, carrying reports of cases and legal developments. Nonlegal publications also increasingly cover legal matters. The magazine *Women of China* publishes a monthly legal edition, focusing on issues of concern to women; the magazine is largely funded by individual subscriptions. Likewise, *China Reform*

uncompetitive, in part reflecting stricter political controls over the media in the city. Interview 2003-26; Interview 2003-46; Interview 2003-48.

Competition is most apparent in the print media, but there are also signs of increased competition among television stations. Many provincial stations are available outside their home provinces through cable television, thus increasing incentives to compete for viewers. Most notable among these stations has been *Hunan Television*, which has become well known for its interesting, and in some cases aggressive, reporting, as well as for its commercial success. See Pei Yiyuan, Qiantan Shi, Xian Gonggong Pingdao De Jingying Celüe [A Brief Discussion of the Strategy of Operating Municipal and County Public Stations], 2002 Shengping Shijie [Sound and Screen World] No. 11, at 51, 51-52 (on file with the *Columbia Law Review*); Zeng Fan'an, Chuanmei Chanye, Zhongzai Zuoqiang [Broadcast Media Industry, Emphasis on Strengthening], 2002 Xinwen Zhanxian [News Frontline] No. 5, at 66 (on file with the *Columbia Law Review*); see also Pan Qingshan, Dianshi Zhibo Gaige Daodi Gai Zenyang Zuo? [In the End How Should Television Broadcast Reforms be Carried Out?], 2002 Shengping Shijie [Sound and Screen World] No. 9, at 12, 13 (on file with the *Columbia Law Review*) (discussing Chinese television reform in general).

100. Wu, Many Mouths, *supra* note 46, at 55.

101. Interview 2003-17.

102. The paper is formally registered in Shandong Province, and is owned by a commercial enterprise. The enterprise obtained the right to publish a newspaper by purchasing the Jinan Academy of Social Sciences, which itself ran a newspaper and thus was in possession of a publication license. Interview 2003-95.

103. Interview 2003-73. Revenue from these three publications subsidizes *Legal Daily*. *Id.*

104. Guanyu Faxue Hui—Jigou Bianzhi [About China Law Society—Its Organization] (n.d.) (on file with the *Columbia Law Review*).

magazine, which is published twice a month, dedicates one issue every month to discussing problems of concern to people in rural areas, with a particular emphasis on legal matters.

Numerous television and radio programs at both the national and provincial levels also focus on legal issues. Such programs reflect a state policy to raise awareness of legal issues, generally referred to as increasing “legal consciousness” among the populace, so as to increase reliance on legal norms and to boost confidence in the law, and thus in the state itself. Many such programs are commercially successful.¹⁰⁵ For example, CCTV’s nationwide *Legal Report* intersperses programs designed to raise legal knowledge with occasional critical reports of local court decisions.¹⁰⁶ In Shanghai, a daily television show on law is primarily dedicated to raising awareness of legal issues.¹⁰⁷ In addition, a daily half-hour radio program on Shanghai Radio focuses on legal matters, primarily by responding to legal questions from callers.¹⁰⁸ Numerous other provincial and local television stations and radio stations likewise have launched law-related programs.¹⁰⁹

105. Liu Changyan, Dianshi Fazhi Jiemu You Nanti [There Are Difficulties in Television Programs on the Legal System], 2002 Shengping Shijie [Sound and Screen World] No. 6, at 27 (on file with the *Columbia Law Review*) [hereinafter Liu, Television Programs] (noting increasing number of viewers that law-related television programs are attracting); see also Interview 2003-60. Both the national legal television program, *Legal Report*, and the Shanghai legal program, *Lawsuit Focus*, have high viewer ratings. Interview 2003-60; Interview 2003-83. Three legal programs rank among the top ten most-watched programs on Shanghai television. Shoushilü Paihangbang [Viewership Rankings], at <http://www.stv.sh.cn/schedule/mon/dsj.htm> (last visited June 7, 2004) (on file with the *Columbia Law Review*).

106. Interview 2003-86.

107. Interview 2003-60.

108. Interview 2003-99.

109. Interview 2003-87; Interview 2003-99; see, e.g., Song Weicai, “Paian Shuofa”—Yici Chenggong De Tuwei [“Shooting Cases to Discuss Law”—A Successful Breakthrough], 2002 Dianshi Yanjiu [Television Research] No. 3 (on file with the *Columbia Law Review*) (discussing legal program on Chongqing television). For a discussion of the obstacles local legal programs face, see Liu, Television Programs, *supra* note 105.

Commercialization has also encouraged an increasingly diverse range of individuals to become journalists. More people are choosing to become journalists, reflecting both the growth of the media and relatively minimal requirements for those seeking to become journalists. Although the low quality and ethical standards of some journalists have attracted attention, the growth of the media has also attracted significant numbers of highly educated persons. In addition, growing competition within the media has put a greater premium on the ability of individual journalists, with successful journalists commanding significant financial bonuses or being hired away to work for other papers or programs. Rather than being products of an administrative system, journalists now compete for positions and frequently shift from one job to another.

Increased specialization has been another effect of commercialization, with the news media segmented into a range of fields. In law, for example, many municipal papers have reporters who specialize in legal reporting, and an increasing number of people with legal training are becoming journalists. Some journalism departments and programs have begun to offer specialized training in particular subject areas, such as financial news.

D. Investigative Reporting and “Public Opinion Supervision”

The commercialization of the media has paralleled significant growth in investigative journalism. Such investigative journalism, often taking the form of critical reporting on misdeeds or unfair actions by officials or on social problems, is generally referred to as “media supervision,” or “popular opinion supervision.”¹¹⁰ The term “supervision” in China has generally referred to the actions of a higher-level organ supervising a lower-ranking organization.¹¹¹ Both government policy and commercialization of the media, which has provided the media with incentives to report on an expanding range of topics, have fueled the growth of such media oversight.

Party documents in the early years of the PRC stressed the importance of media criticism of government actions,¹¹² and China’s media

The relationship of individual journalists to the subjects of their reports is also changing. Although journalists for major Party media outlets continue to enjoy privileges afforded to government officials, journalists for many of the commercial media are “outside the system” and lack such privileges. Thus despite continued Party-state oversight of the media, some have argued that journalists are increasingly operating as employees of media outlets rather than the Party-state officials they were in the past. Journalists’ interests and goals are also increasingly diverse, and depend both on the individual journalist and the particular outlet for which the journalist works.

110. The most commonly used term to describe “supervision” by the media is *yulun jian du*, literally “popular opinion supervision.” This terminology is based on the media’s traditional position in the PRC as the mouthpiece both of the Party and “the people.” Although not a literal translation, *yulun jian du* almost always refers to reporting by the mass media, and thus I use the terms “popular opinion supervision” and “media supervision” interchangeably. Cf. Keller, *Privilege and Punishment*, supra note 26, at 109 n.94 (discussing definition of *yulun jian du*); Guo Zhenzhi, *Yulun Jian du Yu Xifang Xinwen Gongzuo zhe De Zhuanye Zhuyi* [Popular Opinion Supervision and Western News Workers’ Specialization], 1999 *Guoji Xinwenjie* [International News Industry] No. 5, at 32 (on file with the *Columbia Law Review*) [hereinafter Guo, *Western News Workers’ Specialization*] (stating that in China, “public opinion” refers to views that have been selected by media or other official organs).

As Lowell Dittmer has explained, the term *yulun* has generally referred to “leadership views as reflected in the official media which the masses are expected to share,” as distinct from *renmin qunzhong de yijian*, or “opinions of the masses,” which reflects more spontaneous views of various members of society. Lowell Dittmer, *The Politics of Publicity in Reform China*, in *China’s Media, Media’s China*, supra note 28, at 89, 90.

111. See Cai Dingjian, *Constitutional Supervision and Interpretation in the People’s Republic of China*, 9 *J. Chinese L.* 219, 219 n.3 (1995) (noting that “[i]n Chinese, the word ‘supervision’ has historically expressed a vertical power relationship where a master exerts strong power over underlings”).

112. See Li Baojin, *Yi Falü Jian du Yu Yulun Jian du Hudong*, Tuijin Fan Fubai [Use Legal Supervision and Popular Opinion Supervision Together to Fight Corruption], Shenzhen Shi Renmin Jianchayuan Yangguang Wang [Shenzhen Municipality People’s Procuratorate Sunshine Network], July 26, 2001 (on file with the *Columbia Law Review*) [hereinafter Li, *Fight Corruption*] (discussing early Party references to importance of media supervision). A 1950 Communist Party decision regarding reform of newspapers, which apparently remains in force, stated that the media should criticize Party-state errors and shortcomings. Zhongguo Gongchandang Zhongyang Weiyuan Hui Guanyu Zai Baozhi Kanwu Shang Zhankai Piping He Ziwo Piping De Jueding [Decision of the Central

have historically had quasi-official rights to conduct investigations, with results being reported either in public or in internal publications.¹¹³ In the 1950s, such reporting included critical reports on the legal system.¹¹⁴ The term popular opinion supervision did not come to prominence until the 1980s, when the Chinese media began to engage in an increased amount of investigative journalism.¹¹⁵ Party Secretary Zhao Ziyang explicitly endorsed public opinion supervision in 1987, leading to a wave of reporting on official dereliction of duty and malfeasance.¹¹⁶

The 1989 Tiananmen movement led to a lull in investigative reporting, as at least some in power blamed overly aggressive media for inciting the protests.¹¹⁷ Reporting on official malfeasance and social problems

Committee of the Communist Party of China Regarding Carrying Out Criticism and Self-Criticism in Newspapers and Magazines] (Apr. 19, 1950), reprinted in 1979 Xinwen Zhanxian [News Frontline] No. 6, at 2 (on file with the *Columbia Law Review*).

113. Nathan, *supra* note 32, at 156. For discussions of the role of the media in voicing criticism in the 1950s, and in particular in exposing corruption, see Mo Hongwei & Zhang Chengjie, Jianguo Qianhou Zhonggong Fangfu Fanfu Lun [A Discussion of the Prevention of and Opposition to Corruption by the Chinese Communist Party in the Early Years After the Establishment of the Nation], 67 Guizhou Minzu Xueyuan Xuebao [Journal of Guizhou Minorities College] 68 (2001) (on file with the *Columbia Law Review*); Pei Xiansheng, Lüelun Mao Zedong De Xinwen Sixiang [A Brief Discussion of Mao Zedong's Thoughts on the Media], 21 Henan Shifan Daxue Xuebao [Journal of Henan Normal University] 8 (1994) (on file with the *Columbia Law Review*).

114. See, e.g., Li, *Law Without Lawyers*, *supra* note 36, at 77–81 (discussing critical media coverage of unfair cases in courts in 1950s).

115. See, e.g., Liu Binyan, A Higher Kind of Loyalty 155–65, 181–90 (1990) (discussing critical reporting in years immediately after Cultural Revolution and popular resort to journalists to seek redress); see also Won Ho Chang, Mass Media in China 47–50 (1989) (discussing reemergence of critical reporting, “seldom seen since 1957,” in early 1980s). The early years of the reform period also witnessed the reemergence of reportage, which mixed journalism with literature, often reflecting social ills. See generally Liu Binyan, *People or Monsters?: And Other Stories and Reportage from China After Mao* (Perry Link ed., 1983) (collecting works by Liu Binyan, reporter made famous by his 1979 story about corruption of a commune in northeastern China).

116. Zhao Ziyang, Yanzhe You Zhongguo Tese De Shehui Zhuyi Daolu Qianjin (2)—Zai Zhongguo Gongchandang Di Shisan Ci Quanguo Daibiao Dahui Shang De Baogao [Going Forward Strictly in Accordance with the Path of Socialism with Special Chinese Characteristics (2)—Report at the 13th National Party Congress of the Chinese Communist Party] (Oct. 25, 1987) (on file with the *Columbia Law Review*); see also Hood, *supra* note 37, at 50–51 (describing how “provincial Party dailies and national papers” were “suddenly chockfull of revealing examples of official malfeasance”); Judy Polunbaum, *The Tribulations of China's Journalists After a Decade of Reform*, in *Voices of China*, *supra* note 28, at 33, 42–43 (describing journalistic reform that followed Secretary Zhao's report). This wave of investigative reporting challenged the traditional rules, under which the press reported on official malfeasance only after the Party had investigated a case. Hood, *supra* note 37, at 50–51.

117. Sun Xupei, Yulun Jiandu De Biyaoxing He Kexingxing [The Necessity and Feasibility of Popular Opinion Supervision] (Sept. 11, 2001) (on file with the *Columbia Law Review*) [hereinafter Sun, *Necessity and Feasibility*] (noting that although achieving modest popularity in 1980s, number of investigative reports fell after 1989 when some in power argued excessive critical reports incited the protests).

resumed and expanded during the 1990s.¹¹⁸ In recent years, China's media have played important roles in exposing corruption and other criminal activity, in reporting on disasters that local officials conceal, and in revealing corporate financial irregularities.¹¹⁹ Much reporting on improper official action or inaction and illegal conduct focuses on misdeeds committed by low-ranking officials or those with close relationships with officials.¹²⁰ In many cases such reports highlight the use of official positions or connections to obtain financial advantage.¹²¹ In other cases, critical reporting highlights the inability of ordinary people to obtain redress through formal channels, often because of obstruction from local officials.¹²²

Media supervision includes a significant volume of reporting about the courts and other legal institutions. This rise in reporting on law also comes against the backdrop of increased media attention to legal matters in general, reflecting governmental efforts to boost legal consciousness

118. See Rosenthal, *supra* note 96 (discussing reporting on social problems).

119. In early 2002, the vice chair of China's National Production Safety Commission stated that corruption lies behind most major accidents, and often it is the media that first brings such incidents to light. Yue Jianguo, You Liangxin Guanyuan Yao Guli Meiti Yulun Jiandu [In Order to Have Officials of Good Conscience, Media Popular Opinion Supervision Should Be Encouraged] (Apr. 2, 2002) (on file with the *Columbia Law Review*); see also Zhengjian Hui Shouxi Guwen Cheng Yulun Jiandu Hen Zhongyao [Chief Advisor to the Securities Commission States That Popular Opinion Supervision Is Very Important], Renmin Wang [People's Daily Online], July 14, 2001, at <http://www.people.com.cn/GB/jinji/20010714/511584.html> (on file with the *Columbia Law Review*) (discussing the importance of media supervision in ensuring proper corporate disclosure); Li, Fight Corruption, *supra* note 112 (discussing media's role in exposing governmental corruption).

120. Such reports often concern the failure of local officials to address known problems: As one media commentator noted, local governments frequently forward complaints from individuals regarding official misdeeds to the person at whom the complaint is directed. Peng Jiajin & Jiao Yang, Xinhua, Jinjing Shangfang Renyuan Jinnianlai Weihe Lüzeng Bujian? [Why Have Visitors to Beijing Increased Rather than Decreased in Recent Years?], available at http://news.xinhuanet.com/focus/2004-04/09/content_1408703.htm (last visited Aug. 26, 2004) (on file with the *Columbia Law Review*).

121. See, e.g., Zhao Beibei & Wang Weixiang, Yulun Jiandu Jiannan Qianxing [Popular Opinion Supervision Moves Forward with Difficulty], Renmin Ribao [People's Daily], Nov. 20, 2001, available at <http://www.people.com.cn/GB/news/6056/20011102/596557.html> (on file with the *Columbia Law Review*) (discussing media reports exposing corruption, including use of official positions to obtain financial advantage). Some journalists strategically balance critical reports with neutral or favorable reports. See, e.g., Liang Jianzeng, "Du, Jiadian Fangtan" Chenggong De Linjie Dian [Degree, the Crucial Point Behind the Success of "Focus"], 2000 Dianshi Yanjiu [Television Research] No. 1, at 50 (on file with the *Columbia Law Review*) [hereinafter Liang, Degree] (discussing media supervision role of show *Focus* with its use of critical reporting).

122. See, e.g., Fang, *supra* note 3 (discussing difficulty of obtaining redress through formal channels); Zheng Shengfeng et al., Bu Wang Dangbao Jizhe De Zhize He Shiming [Don't Forget the Duty and Mission of Reporters for Party Papers], 2002 Xinwen Zhanxian [News Frontline] No. 3, available at <http://www.snweb.com/gb/xw/2002/03/a0301008.htm> (on file with the *Columbia Law Review*) (discussing how investigative reporting of Nandan mining accident led to government inquiry into incident).

and emphasize the importance of improving the legal system.¹²³ The increase in media oversight is justified in part by the seriousness of a range of problems that undermine the day-to-day effectiveness of government at all levels, including the courts. Thus one commentator, writing in the national *Procuratorate Daily*, explained that when an administrative official violates rules and the department responsible for investigating such misdeeds does nothing, the media must assume the role of investigator. Likewise, “when judges . . . take the lead in trampling on justice, the media must step in to protect justice.”¹²⁴

A range of Chinese media outlets, from CCTV to tabloid-style local papers, engage in investigative journalism. A small number of programs and publications have become well known for reporting on social issues and for exposing injustice and wrongdoing. Chief among these is *Focus*, the daily news and commentary program on CCTV.¹²⁵ Launched in 1994, it is widely regarded as the most influential media voice in China. Reports of problems or injustices on the program frequently result in intervention by high-ranking Party-state officials demanding resolution of such matters. Having one’s grievances aired on the show is viewed by many as the single most effective avenue of redress available in China today.¹²⁶

The popular success of *Focus* has encouraged others to follow suit. After the launch of *Focus* in 1994, other central media outlets, including China Central Radio and a number of national newspapers, began pro-

123. See, e.g., Interview 2003-39 (stating that a goal of local reports on legal matters is to raise legal consciousness). Supreme People’s Court President Xiao Yang has welcomed media supervision of the courts, describing it as essential to increase transparency and boost confidence in the legal system. Xiao Yang Zhichu Yao Tebie Baohu Xinwen Danwei Zhengdang De Yulun Jiandu Quan [Xiao Yang Points Out the Need for Special Protection of the Rights of Media Outlets to Carry Out Ordinary Public Opinion Supervision], *Fazhi Ribao* [Legal Daily], Jan. 18, 2002, available at http://www.legaldaily.com.cn/gb/content/2002-01/18/content_30651.htm (on file with the *Columbia Law Review*) [hereinafter Xiao Yang Points Out Need].

124. Xiao Chun, Yulun Jiandu Keyuliao De Yu Nanbawo De [What Can Be Predicted and What Cannot Be Guaranteed in Popular Opinion Supervision], *Zhengyi Wang* [Justice Web], Aug. 8, 2001 (on file with the *Columbia Law Review*) [hereinafter Xiao, What Can Be Predicted].

125. For a detailed study of the content of *Focus*, see Alex Chan, From Propaganda to Hegemony: *Jiaodian Fangtan* and China’s Media Policy, 11 *J. Contemp. China* 35 (2002). For an introduction to the program, see CCTV.com Xinwen [CCTV.com News], Jiemu Jieshao [Program Introduction], at <http://www.cctv.com/program/jdft/02/index.shtml> (last visited Oct. 7, 2004) (on file with the *Columbia Law Review*).

126. Li, *Focus*, supra note 47, at 26–27 (noting popular saying that “13 minutes of television broadcast redresses 10 years of grievance” and that “mass media in China may bear the unusual burden of functioning as a quasi-judicial system as well as a news-reporting organization”); accord Xu, Media-Judicial Relations, supra note 19 (noting references to *Focus* as “the most authoritative ‘tribunal’ in China”). The program is not limited to critical reporting, and propaganda authorities have pressured the program to balance critical or negative reports with positive reports. See infra note 196 (discussing balance between critical reports and positive reports).

grams or columns focusing on media supervision.¹²⁷ Numerous local and provincial papers have also established special sections to report on “hot topics,”¹²⁸ to engage in investigative journalism,¹²⁹ or to solve problems.¹³⁰ In Shanghai, for example, a nightly program, *Xinwen Zhuijiu*, focuses on solving problems for local citizens.¹³¹

The effect of critical reports is closely linked to the status of the paper or station engaging in such reporting. The ability of *Focus* to highlight and force resolution of issues stems from a range of factors, including the program’s Party-state ties and administrative rank, its high viewership, its ability to generate revenue for CCTV, and the emphasis top Party-state leaders place on the program’s reports. Other national media, including *People’s Daily* and Xinhua News Agency, are likewise perceived to be more effective in forcing resolution of problems or grievances than their lower-ranking or more commercialized counterparts, primarily because such media are most likely to be noticed by national leaders.¹³² Journalists at central Party-state media, for example, comment that national leaders are most likely to issue written instructions ordering that problems exposed in the media be solved when such problems have

127. Chan, *supra* note 125, at 39.

128. See, e.g., Lu Zhifan, Zouchu Yulun Jiandu De Wuqu [Escape from Misunderstandings Regarding Popular Opinion Supervision], 1995 *Xinwen Zhanxian* [News Frontline] No. 17 (on file with the *Columbia Law Review*) [hereinafter Lu, Escape] (noting that, as of 1995, thirty-one provincial-level Communist Party papers had established “focus” or “hot issue” sections, and there were more than sixty news television programs at provincial or national level engaged in investigative reporting or public opinion supervision).

129. Chan, *supra* note 125, at 39. Newspaper airing of popular grievances comes not only in the form of investigative journalism, but also through publication of letters from readers. See *infra* text accompanying note 489.

130. See, e.g., Zhang Shusheng, Dianshi Xinwen Pingmin Shijiao De Chenggong Tansuo—Jianping Shanxi Dianshi Tai “Dushi Kuaibao” Lanmu [A Discussion of a Successful Case of Television News from the Perspective of Ordinary People—A Brief Discussion of the “Municipal Express” Program of Shanxi Television Station], 2002 *Xinwen Zhishi* [News Knowledge] No. 8, at 43 (on file with the *Columbia Law Review*) (discussing Shanxi Television Station program that focuses on solving “ordinary life problems”).

131. Interview 2003-57.

132. See, e.g., Chan, *supra* note 125, at 35 (describing former President Jiang Zemin’s intervention in case after watching report on *Focus*); Jaime A. FlorCruz, Chinese Media in Flux, *in* *Covering China* 35, 36 (Robert Giles et al. eds., 2001) (same); Interview 2003-3 (stating that even national media outlets find it difficult to exert influence through critical reporting because local officials are only concerned about *Focus* or *People’s Daily*); Interview 2003-67 (commenting that top leaders watch *Focus* daily). *Focus* reportedly owes its survival and much of its success to the fact that former Premier Zhu Rongji was a fan of the program. Interview 2003-117.

Observers comment that ninety-nine percent of all critical reports on *Focus* have the desired effect, frequently virtually immediately, with the Provincial Party Committee in the province that is the subject of the report often holding an emergency meeting on the same night the report airs. Interview 2003-3; see also Interview 2003-19; Interview 2003-166. Even if such claims are unverifiable or overstate the program’s effectiveness, *Focus*’s influence does appear to be substantial.

been revealed by national Party media. Party-state officials are much less likely to respond to reports in commercialized papers, such as *Southern Weekend*.¹³³ But even reports from the national media often have limited targets. *Focus*, for example, mostly exposes wrongdoing by county and township officials.¹³⁴ Moreover, although the media often claim credit for exposing wrongdoing and pursuing justice, national papers also bemoan the fact that their reports are sometimes ignored by local officials.¹³⁵

Provincial, municipal, and county media are generally less aggressive than their national counterparts. As one report in a national paper described the situation, “many local media simply report on the activities of local leaders, seeking to please such leaders, and ‘continue old forms of propaganda reporting.’”¹³⁶ Investigative reporting on local problems is

133. Interview 2002-3; Interview 2003-3; Interview 2003-19. Targets of critical reports in commercial papers are often not worried by such reports, believing that only “common people,” not Party-state leaders, will read them. Interview 2003-3. The high profile of *Southern Weekend*, and its international reputation for being willing to push the limits of what is permissible, may mean that its reports receive more attention than do reports of other commercialized papers. Indeed, the paper is reported to be read by some of China’s top leaders. Interview 2003-19.

Journalists complain that local officials ignore critical reports from the local press and only respond when they are “exposed” by the national press. For example, a *Legal Daily* article in early 2002 described the role of the media in exposing the illegal construction of an apartment building in Wuhan, which resulted in significant financial losses to prospective purchasers of units in the building. The *Legal Daily* report complained that local media initially reported the matter but were then pressured to write that the matter had been solved. Only later, when *Focus* reported on the story, was the issue resolved. This, said the *Legal Daily* writer, was not a victory for media supervision; it was a victory for CCTV. Ai Jun, Yulun Jiandu “Ji Zhuanwan” [Popular Opinion Supervision Makes an “Emergency Turn”], *Fazhi Ribao* [Legal Daily], Mar. 4, 2002, at 5, available at http://www.legaldaily.com.cn/gb/content/2002-03/04/content_32965.htm (on file with the *Columbia Law Review*) [hereinafter Ai, Emergency Turn].

134. See Liu Binlu, “Jiaodian Fangtan” Weihe Dou Pai Cangying Shao Da Hu [Why Does *Focus* Hit More Flies and Fewer Tigers?], *Xin Jing Bao* [New Beijing Post], Apr. 15, 2004, available at http://news.163.com/2004w04/12523/2004w04_1082000574374.html (on file with the *Columbia Law Review*) (noting that *Focus* largely criticizes low-level officials).

135. See, e.g., Huang Dongli, Yulun Jiandu, Bu Zhishi “Baoguang” Eryi [Popular Opinion Supervision, It Is Not Just “Exposing”], *Fazhi Ribao* [Legal Daily], Oct. 30, 2000, available at http://www.legaldaily.com.cn/gb/content/2000-10/31/content_7606.htm (on file with the *Columbia Law Review*) [hereinafter Huang, Popular Opinion Supervision] (discussing cases in which reports in *Legal Daily* have been ignored by targeted government officials and noting that effectiveness of media in exposing problems depends on rank of news organization); Zhao Lin, Yulun Jiandu Zhihou, Weicun Gaibian De Ren He Shi [Things and People That Cannot Be Changed After Popular Opinion Supervision], *Jiancha Ribao* [Procuratorate Daily], Aug. 8, 2001, available at <http://www.zzhf.com/detail.asp?id=218> (on file with the *Columbia Law Review*) (discussing cases of injustice or wrongdoing covered by *Procuratorate Daily* that have not been remedied).

136. Mei Sangyu, Yulun Jiandu De Liliang [Power of Popular Opinion Supervision], *Zhongguo Qingnian Bao* [China Youth Daily], Dec. 3, 1998 (on file with the *Columbia Law Review*); see also Interview 2003-39 (stating that local paper rarely runs critical reports); Ai,

left to the national media or to media from other provinces.¹³⁷ Local journalists comment that they necessarily cooperate with local authorities in order to solve problems, often either agreeing with local authorities to highlight certain problems or making such authorities aware of critical reports before they are broadcast.¹³⁸ Nevertheless, market demands mean that they must engage in some critical reporting if they are to maintain or expand market share.¹³⁹ Local media must choose their targets carefully, and they generally leave reporting on major cases of official malfeasance or corruption to higher-ranking media or media from elsewhere, but they are increasingly willing to highlight local problems, in particular local government failures to respond to citizens' complaints.

China's journalists have tried to position themselves as voices of the people, fighting injustice and wrongdoing. Commentators note, for example, that "the right of reporters to investigate is essentially the right of the public to know,"¹⁴⁰ and that the media are "an important means of expressing the views of the people."¹⁴¹ Some argue that the media are increasingly independent and contend that the media should become an

Emergency Turn, *supra* note 133 (describing impediments to local reporters exposing local problems).

137. There are exceptions, however, to the general rule that local media avoid reporting on local problems or controversies. See, e.g., Wei Hongkang & Zhao Fei, Yulun Jiandu Jingtong Zuozheng [Public Opinion Supervision, the Camera Lens Serves as Evidence], 2001 Shiting Tiandi [Video and Audio World] No. 5, available at <http://www.xjbs.com.cn/sht/gj/62gj/15.htm> (on file with the *Columbia Law Review*) (discussing investigative reporting by television and radio stations in Xinjiang); Zhang Xinguo, Yulun Jiandu Bixu You Falü Baguan [Media Supervision Must Be Guarded by the Law], Xin Chuanbo Zixun Wang [New Broadcasting Information Web], Nov. 23, 2001 (on file with the *Columbia Law Review*) [hereinafter Zhang, Guarded] (discussing reports by *Wenzhou Daily*).

138. See, e.g., Interview 2003-23.

139. *Id.*; see also Wang Bin, Fahui Yulun Jiandu Youshi, Yingdui Baoye Shichang Jingzheng [Developing the Advantage of Popular Opinion Supervision, Meeting Market Competition in the Newspaper Industry], 2002 Hunan Shehui Kexue [Hunan Social Sciences] No. 3 (on file with the *Columbia Law Review*) [hereinafter Wang, Advantage] (discussing the importance of engaging in popular opinion supervision to maintaining market share, but criticizing papers for using such reports to boost circulation).

140. Zhao Ling, Huhuan Yulun Jiandu De Qingkong [Calling Out for the Clear Blue Sky of Public Opinion Supervision], Jiancha Ribao [Procuratorate Daily], Jan. 17, 2002, available at <http://www.sc.cninfo.net/tanfo/dssh/law/block/html/2002011700614.html> (on file with the *Columbia Law Review*) [hereinafter Zhao, Calling Out].

141. Lang Jingsong, Qiantan Yulun Jianduquan Jiqi Falü Baohu [A Brief Discussion of Legal Protection for Popular Opinion Supervision], 2000 Xinwen Zhanxian [News Frontline] No. 11, at <http://www.people.com.cn/GB/paper79/1980/318188.html> (on file with the *Columbia Law Review*). Advocates of media supervision also justify the media's role by reference to the PRC Constitution. The constitution guarantees the right of citizens to criticize and make suggestions to government, Xianfa art. 41 (1982), available at <http://www.fdi.gov.cn/resupload/epdf/e03378.pdf> (on file with the *Columbia Law Review*), as well as freedom of speech and of the press, *id.* art. 35. Other provisions that directly impact the media include article 38, which bans libel, and article 53, which imposes obligations on all citizens to protect state secrets. See also, e.g., Lang, *supra* (basing arguments for media supervision on constitution). Counterarguments can also be found in the constitution: If

external check on Party-state action.¹⁴² Yet China's media are also careful to position themselves in line with Party policy. Numerous commentators argue that popular opinion supervision by the media furthers goals of the Party-state¹⁴³ and that the media remain the "mouthpiece of the people and the Party."¹⁴⁴ Serving the goals of the Party includes assisting in revealing wrongdoing at the local level, but also extends to serving Party goals of stability and economic development.¹⁴⁵ Commentators in

the media are viewed as administrative actors, they would lack power under the constitution to supervise the courts. Xu, *Media-Judicial Relations*, *supra* note 19.

142. There has been significant criticism in China of the media's continued close ties to the Party-state. See, e.g., Chen Yuru, *Jinyou Caifang Quan Shi Bugou De* [Just Having the Right to Report Is Not Enough], *Fazhi Ribao* *Wangluo Ban* [Legal Daily Online], May 14, 2001, at http://www.legaldaily.com.cn/gb/content/2001-05/14/content_17551.htm (on file with the *Columbia Law Review*) [hereinafter Chen, Not Enough] (contending that media have grown from being exclusively propaganda instruments to organizations having range of roles in society); see also Huang Hu, *Cong You Yige "20 Wan" Shuqi* [Discussing from Another "200,000"], *Nanfang Tiyu* [Southern Sports], Nov. 9, 2001, available at <http://www.sportsonline.com.cn/GB/channel21/549/1555/20011109/45843.html> (on file with the *Columbia Law Review*) [hereinafter Huang, Another 200,000] (noting that in the past, few dared to offend media because they were instruments of Party).

143. See, e.g., Ji Dianlu & Gu Feng, *Nüli Tigao Yulun Jiandu De Xiaoguo* [Work Hard to Raise the Effect of Popular Opinion Supervision], 2001 *Xinwen Zhanxian* [News Frontline] No. 9, available at <http://www.people.com.cn/GB/paper79/4307/493945.html> (on file with the *Columbia Law Review*) (stating that media supervision is mechanism for implementing supervision by Party and masses, that news workers are spokespeople for Party and masses, and that it is mistaken to view media as playing supervisory role); Wang Ruicheng, *Yulun Jiandu Yao Bawo Haodu* [Popular Opinion Supervision Should Ensure Good Quality], 2001 *Shiting Tiandi* [Video and Audio World] No. 4, available at <http://www.xjbs.com.cn/sht/gj/9.htm> (on file with the *Columbia Law Review*) (stating that media supervision must serve socialism and that many news reporters lack sufficient political focus).

144. Wang Bixue, *Jizhe Hefa Quanyi Burong Qinfan* [Reporter's Legal Rights Are Not Easy to Infringe], *Renmin Ribao* [People's Daily], Nov. 7, 2001, at 11, available at <http://www.people.com.cn/GB/shizheng/19/20011107/599673.html> (on file with the *Columbia Law Review*) [hereinafter Wang, Legal Rights]; see also Guo, *Western News Workers' Specialization*, *supra* note 110 (stating that China's media are mouthpiece of government and Party); Xu Guangchun, *Guanyu Yulun Jiandu De Jidian Sikao* [A Few Thoughts on Popular Opinion Supervision], 2004 *Xinhua Wengao* [Xinhua Digest] 4, at http://www.ccyl.org.cn/study_think/file/think000911.htm (on file with the *Columbia Law Review*) (emphasizing media's obligations to Party); Xilie Meiti *Jianjie Zhiyi—Nanfang Ribao* [A Series of Short Explanations of the Media—Southern Daily], at <http://www.nanfangdaily.com.cn/culture/nfsl.htm> (last visited Dec. 18, 2002) (on file with the *Columbia Law Review*) (describing *Southern Daily*, official paper of Communist Party in Guangdong Province, and stating that paper's role is to conscientiously carry out propaganda of Party line, direction, and policy); cf. Sun, *Voices*, *supra* note 44, at 7 ("Socialist freedom of the press means that the media should be subject to supervision by the people, by the Party, and by law.").

145. Lu, *Escape*, *supra* note 128 (arguing that media supervision should not be "absolutely independent"); see also Lang, *supra* note 141 (stating that media supervision should follow discipline standards of propaganda departments and work for benefit of Party and government); Li, *Fight Corruption*, *supra* note 112 (stating that media are an important part of the Party's strategy to fight corruption). But see Yulun Jiandu *Zaoyu* "Wending" *Gongzuo Huiyi* [Public Opinion Supervision Runs into "Stability" Work

official publications argue that Party newspapers should examine issues of concern to the Party, targeting problems with “representative characteristics,”¹⁴⁶ that media supervision by Party papers should aim to “firm up and strengthen the ruling Party’s position,”¹⁴⁷ and that newspapers should seek the views of Party leaders regarding important critical reports prior to publication.¹⁴⁸

In seeking to curb official wrongdoing, the media not only are acting to uphold the goals of the Party-state; they also act as arms of the Party-state. The media’s expanded role in engaging in “popular opinion supervision” is a continuation of one of the media’s traditional roles—that of reflecting popular opinion for the Party leadership.¹⁴⁹ “Supervision” by the media also encompasses supervision carried out through internal publications prepared for the leadership¹⁵⁰ and explicit cooperation with

Meeting] (Oct. 10, 2001) (on file with the *Columbia Law Review*) [hereinafter Supervision Runs into Stability Work] (mocking arguments that rely on appeals to stability to restrict media). Reporters are not unique in their attempts to position their activities as consistent with Party policy. Legal aid lawyers have made similar arguments. See Benjamin L. Liebman, Legal Aid and Public Interest Law in China, 34 *Tex. Int’l L.J.* 211, 272, 282–85 (1999) (describing how legal aid lawyers in China argue that greater accessibility to the law will facilitate Party’s policy of increasing enforcement of the law).

146. Wang Songmiao, Yulun Jiandu Gai Jiandu Shenme? [What Should Popular Opinion Supervision Supervise?], Zhengyi Wang [Justice Web], Dec. 31, 2001 (on file with the *Columbia Law Review*) [hereinafter Wang, Supervise]. The same commentator noted, however, that “what the center and the people are concerned about is basically the same thing.” *Id.*

147. Wu Quanheng, Gaijin He Jiaqiang Dangbao Yulun Jiandu Gongzuo [Correct, Improve, and Strengthen Party Paper Public Opinion Supervision Work], 2001 *Xinwen Zhanxian* [News Frontline] No. 11, available at <http://www.people.com.cn/GB/paper79/4743/519216.html>; see also Huang Ping & Wang Shaohua, *Xinwen Yulun Jiandu De Xin Tansuo* [New Thoughts on Media Popular Opinion Supervision], 2000 *Xinwen Zhanxian* [News Frontline] No. 6, available at <http://www.people.com.cn/GB/paper79/1364/214441.html> (on file with the *Columbia Law Review*) (noting that Party paper in Hainan Province “exposes” problems that provincial government and Party committee want resolved); Zhang, Contradictions, *supra* note 47 (stating that local television stations should engage in propaganda work for local government).

148. See Huang & Wang, *supra* note 147; see also Yun Xincui, Piping Yao Jiang Zhengzhi [Criticism Must Discuss Politics], 1998 *Xinwen Zhanxian* [News Frontline] No. 7, available at <http://202.99.23.245/newline/9807/newfiles/a1270.html> (on file with the *Columbia Law Review*) (stating that critical reporting should have specific political goals and that it should boost unity and avoid causing chaos).

149. Claims by the media to speak on behalf of the disadvantaged, and especially those wronged by official misconduct, also resonate with age-old traditions in China of remonstrating against official injustice.

150. See, e.g., Huang & Wang, *supra* note 147 (describing various forms of media popular opinion supervision, including internal reports); Zhu Ruifu, Lun Gongkai Baodao Yu Neican De Youji Jiehe [Discussing Opportunities for Cooperation Between Public Reports and Internal Reports], 1999 *Xinwen Zhanxian* [News Frontline] No. 2, available at <http://202.99.23.246/newline/199902/990201011011.html> (on file with the *Columbia Law Review*) [hereinafter Zhu, Discussing Opportunities] (arguing that it is mistaken to view media supervision as limited only to public reporting, and stating that use of internal publications can help make supervision by media more effective). See generally Zhou Ze, Yulun Jiandu Guanghuanxia De Meiti Diwei Fansi [Thoughts on the Position of the Press

other arms of the Party-state, in particular the police, the procuratorate, and Party discipline authorities.¹⁵¹ For example, in 2000 the Beijing procuratorate announced plans to improve cooperation with local media, including the exchange of information and leads in cases and the coordination of propaganda work.¹⁵² The formal link to the Party-state is underscored by linkages between media supervision and other forms of “supervision,” including supervision by the Party, by government, by courts, and by procuratorates.¹⁵³ Indeed, in many cases provincial, municipal, or county authorities take reports from the national media as conclusive and neglect to carry out their own investigations.¹⁵⁴ Reports on *Focus* are said to force the Party committee of the target province or municipality to

Under Popular Opinion Supervision], Fazhi Ribao Wangluo Ban [Legal Daily Internet Edition], Apr. 22, 2002, at http://www.legaldaily.com.cn/gb/content/2002-04/22/content_35721.htm (on file with the *Columbia Law Review*) (stating that officials are only concerned with views of officials senior to them, and that if problems are noticed by higher-ranking officials they are solved quickly).

151. See, e.g., Lin Han & Tong Bing, Qianghua Yulun Jiandu De Youli Jucuo—Guanyu Hainan Sheng Xinwen Yulun Jiandu Zhongxin De Diaocha Baogao [Strengthen the Effective Actions of Popular Opinion Supervision—Report on Investigation into the Hainan Province News Popular Opinion Supervision Center] (Apr. 10, 2001) (on file with the *Columbia Law Review*) (discussing coordination in Hainan Province).

152. Beijing: Falü Jiandu Yu Yulun Jiandu Lianshou Yufang Zhiwu Fanzui [Beijing: Supervision by Law and Supervision by Public Opinion Go Hand in Hand to Prevent Crimes by Those Acting in Official Capacity], Zhongguo Fazhi Wang [China Legal System Network], at <http://www.sinolaw.net.cn/fffy/zufj/11/zu28.htm> (last visited Oct. 11, 2004) (on file with the *Columbia Law Review*); see also Falü Jiandu Yu Yulun Jiandu Liandong Zouxiao [Legal Supervision and Popular Opinion Supervision Prove Effective Together], Jiancha Ribao [Procuratorate Daily], July 20, 2001, available at <http://library.sx.zj.cn/xxttd07/wjks/7-12.htm> (on file with the *Columbia Law Review*) (reporting how in one district in Shaoxing, Zhejiang Province, media provided clues to procuratorate in more than twenty cases in one year, and describing an agreement among local media and procuratorate to cooperate in carrying out supervision work); Wang, Advantage, *supra* note 139 (referring to cooperation between government and the media with respect to supervision work). Journalists at local papers elsewhere likewise work closely with local authorities, particularly while investigating criminal cases. Interview 2003-39.

153. See, e.g., Han Meng, Lengyan Zhiji Yuanhua An [Taking a Cold Hard Look at the Yuanhua Case], Huaxia Jingwei Wang [Huaxia Jingwei Online], May 25, 2002; Huang, Popular Opinion Supervision, *supra* note 135 (noting that “news media supervision is an important means to carry out public opinion supervision,” and that many well-known exposés by news media have drawn attention of relevant authorities and officials).

154. Interview 2003-13; see, e.g., Wei Yongzheng, Shixian Yulun Jiandu He Baohu Mingyiquan De Pingheng, Wei Hu Yanlun Ziyou He Mingyiquan De Pingheng Shi Guoji Zhunze [Implementing a Balance Between Popular Opinion Supervision and the Protection of Reputation Rights, Protecting the Balance Between Freedom of Speech and Reputation Rights Is the International Standard], Zhejiang Zaixian [Zhejiang Online], Jan. 9, 2001, at <http://www.zjonline.com.cn/node2/node26108/node30205/node30212/node30213/userobject7ai1689.html> (on file with the *Columbia Law Review*) (discussing how an official was fired the day after critical report ran in national paper, with no investigation carried out by local officials). In cases involving wrongdoing by high-ranking officials, however, the process operates in reverse, with the media only running news articles after a decision has been reached by Party discipline authorities and the media not carrying out independent investigations themselves. Interview 2003-13.

punish immediately the persons exposed, or to solve the problems covered.¹⁵⁵ Newspapers have described how their reports produce rapid decisions by local or provincial officials that are consistent with such reports.¹⁵⁶ In many of these cases, the media findings appear to be taken as conclusive evidence of wrongdoing, and facts are presented so as to compel action by higher-ranking Party-state officials.¹⁵⁷

Media links to various Party-state departments and entities also highlight the fact that the media in China are not monolithic. Just as a range of factors determines the influence of a particular media outlet or report, diverse interests and motives influence media decisions over content. Such interests include the financial interests of the media and the interests of the government or Party entities to which the media are attached.¹⁵⁸ Critical media reports may also be manifestations of internal turf battles between rival agencies or institutions.

Additionally, the interests of individual editors and journalists also influence media decisions to carry certain critical reports. Corruption permeates China's media.¹⁵⁹ Reporters often receive offers of cash, or offers to have their travel expenses paid by one party in a dispute, to report on a particular matter.¹⁶⁰ The phenomenon of reporters "reporting for payment," or writing (or threatening to write) biased stories in

155. See, e.g., Tang Tanfeng, "Guanyang Shijian" Zhendong Zhongnanhai [The "Guanyang Matter" Shakes Zhongnanhai], 2000 Shanqu Kaifa [Mountain District Development] No. 8 (on file with the *Columbia Law Review*) (describing how report on *Focus* exposing local cadres who had forced peasants to grow tobacco resulted in emergency meeting of Chongqing Municipal Party Committee day after broadcast, and issuance by Party Committee of five decisions regarding matter).

156. See *supra* note 132.

157. Interview 2003-9 (stating that Party discipline authorities generally take media reports to be the truth, and that their decisions do not vary from conclusions of media). Nevertheless, the frequent media complaint that their reports go unheeded suggests that the media are not always able to compel action.

158. See, e.g., *infra* note 206 (discussing *People's Court News*).

159. For a discussion of corruption in the Chinese media, see generally Zhao, *Media, Market, and Democracy*, *supra* note 32, at 72-93.

160. Interview 2002-3 (stating that reporters are often paid by lawyers for travel costs and may receive cash in exchange for reporting on cases).

New standards and a new regulatory framework for reporters announced in 2002, see *infra* note 175, appear designed to address low ethical standards among journalists, cf. 2003 Nian Qi Jizhe Ye Yao Kao "Zige" [In 2003 Journalists Will Also Need "Qualifications"], Beijing Qingnian Bao [Beijing Youth News], Dec. 9, 2002, available at <http://www.people.com.cn/GB/news/6056/20030109/904318.html> (on file with the *Columbia Law Review*) (stating that one purpose of new regulations is to ensure that reporters "receive supervision"). The new rules also appear to be directed toward reasserting government control over the media. Having made journalists and the media financially independent, authorities may be seeking to use enhanced regulation to ensure that the media do not stray too far. For a discussion of similar developments in regulation of the legal profession via the imposition of requirements that lawyers perform government assigned legal aid work, see Liebman, *supra* note 145, at 261-64.

return for payments by concerned parties, is common.¹⁶¹ The media are not unique in this regard. Reports of corruption among the media, in particular among journalists covering the courts or reporting on official misdeeds, reflect the financial incentives and corruption in the legal system more generally, but there is no evidence to suggest that the media are any less corrupt than other actors.¹⁶²

Short of outright bribery, commercial pressures also play a role in determining the targets of media reporting. Partial marketization of the media has created powerful financial incentives for the media to skew their reports, or to report or remain silent on particular topics.¹⁶³ Attempts to please advertisers, as well as government officials, may affect reporting.¹⁶⁴ Similarly, journalists may act to assist friends or contacts.

161. See, e.g., Lu, *Escape*, supra note 128 (criticizing effect economic interests have on media reporting); Zhao Zhigang, *Yulun Jiandu De Yihua Yu Meiti Zilü* [The Alienation of Media Supervision and Media Self-Regulation], *Jiancha Ribao* [Procuratorate Daily], Dec. 19, 2001 (on file with the *Columbia Law Review*) [hereinafter Zhao, *Alienation of Media Supervision*] (discussing corruption in media and stating that it is common for reporters to receive phone calls from interested parties offering to pay their travel expenses or offering money to report on particular case). Reporters may also be paid for attending a press conference. Interview 2002-5; see also Interview 2003-111 (noting that many journalists are wealthy, and questioning how journalists make so much money); Jianying Zha, *China Pop* 117–21 (1995) (discussing corruption in Chinese media); Lynch, supra note 32, at 61–64 (discussing paid news); Ma, supra note 45, at 23 (discussing payments to journalists for reporting on particular stories); Zhao, *Alienation of Media Supervision*, supra (reporting that National Reporters Association received 1200 complaints regarding “for-fee” reporting between 1997 and 2001).

162. See, e.g., *Xinwen Jiandu Nengfou Cujin Sifa Gongzheng* [Can Media Supervision Push Forward Judicial Fairness?], 1998 *Zhongguo Lüshi* [Chinese Lawyer] No. 12, at 8 (on file with the *Columbia Law Review*) (commenting that it is common to read articles about media supervision but rare to read articles on media corruption, and discussing attempts by media to manipulate court outcomes). One journalist commented that the only reason journalists are less corrupt than actors in other state institutions is that their position outside the formal legal system gives them fewer opportunities to make money. Interview 2003-4.

Corruption in the media reflects the fact that the media are participants in a legal system that is increasingly driven by financial incentives. Increased legal fees and the expanded use of contingency fees have resulted in lawyers being increasingly willing both to take on a wide range of cases and to challenge powerful persons or entities, at least at the local level. See *infra* Part I.F.2 (discussing parallels between lawyers and journalists). Judges likewise face increased financial incentives, from both corruption and from compensation systems that punish judges for deciding cases incorrectly and reward judges for generating positive press coverage of court activities. Penalties for deciding cases incorrectly may take the form of administrative demerits or a reduction of the annual bonus paid to judges; in serious cases judges may lose their positions. Interview 2003-20; Interview 2003-45.

163. See, e.g., Lu, *Escape*, supra note 128 (criticizing practice of journalists being compensated for reporting on certain issues); Zhao, *Calling Out*, supra note 140 (arguing for reduced role of commercial interests in determining media coverage).

164. Cheng Xi, *Meiti Dui Qiye De Xinwen Yulun Jiandu—Anran He Yingguangxia Shijian De Qishi* [Media Supervision over the Enterprises—Enlightenment from the Enron and Yingguangxia Incidents] (May 13, 2002), at <http://www.cddc.net/fagui/76.htm> (on file with the *Columbia Law Review*) [hereinafter Cheng, *Supervision*]; see also Interview

Thus certain disputes go unreported, and others are covered, in order to protect a wide range of interests of both media outlets and individual journalists.¹⁶⁵ Such pressures may be exacerbated in a system recently transformed from heavy reliance on state subsidies to near-complete financial autonomy, and in which the media lack a tradition of objective neutrality and are without norms of professional behavior for journalists.

E. *Content Regulation; Controlling the Boundaries*

China's media operate subject to a web of formal and informal regulations that inform, and in some cases dictate, how and what the media report. China's media-content-control system has traditionally relied on a combination of policy statements and instructions from Communist Party propaganda authorities,¹⁶⁶ a system of editor responsibility for content,¹⁶⁷ and postpublication sanctions for those who violate explicit or implicit limits.¹⁶⁸ This system continues today.

Party policy statements are only one factor influencing editorial decisions regarding content. Four sources of primary norms inform such decisions: (1) government laws and regulations; (2) Party documents and instructions; (3) informal content regulations and self-censorship; and (4) local restrictions and impediments to reporting, often in the form of direct intimidation of journalists or through defamation litigation. Although this system imposes significant constraints on reporting, and in particular on critical reports regarding government activities, the system's often unclear boundaries permit journalists space to innovate and experiment within permissible limits.

A system of postpublication sanctions punishes those who violate laws, Party directives, or informal norms. Party ideological workers review

2003-48. Journalists themselves are often responsible for generating advertising revenue. Zhongdang Pan, *Improvising Reform Activities: The Changing Reality of Journalistic Practice in China*, in *Power, Money, and Media*, supra note 27, at 68, 86-87.

165. China's media are not different from Western media in this respect. See James Curran, *Rethinking Media and Democracy*, in *Mass Media and Society* 120, 124 (James Curran & Michael Gurevitch eds., 3d ed. 2000) (noting, in discussion of media in Western countries, that "the market can give rise not to independent watchdogs serving the public interest but to corporate mercenaries that adjust their critical scrutiny to suit their private purpose").

166. See Keller, *Privilege and Punishment*, supra note 26, at 136 ("The substantive legal rules concerning press content are simply not stated in sufficient detail to give practical guidance to anyone who lacks access to CPD documents and official guidance.").

167. Lynch, supra note 32, at 160-61 (quoting Polumbaum, supra note 116, at 52-53).

168. See Dittmer, supra note 110, at 96 (noting that "[a]t least until the late 1980s the media prided themselves on their lack of prepublication censorship"). Although prepublication review by propaganda department officials is sometimes required, prepublication review is generally not key to overall Party management of the media.

the media postpublication for transgressions.¹⁶⁹ Journalists or editors who breach norms or who misjudge the prevailing political winds may suffer loss of their positions,¹⁷⁰ the closing of publications, or imprisonment.¹⁷¹ In less serious cases, responsible editors are summoned for meetings with, or called by, the propaganda department and warned to be more careful in the future.¹⁷² Offending editions may also be barred from sale after publication.¹⁷³

1. *Formal Laws and Regulations.* — A range of formal government—as opposed to Party—laws and rules provide formal content regulations in certain areas and govern requirements for participation in the media industry. A strict government licensing system permits only approved publications to publish news and limits access to China’s airwaves.¹⁷⁴ Government regulations also determine who may participate in news gathering and threaten license revocation for anyone who breaches regulations or Party discipline rules.¹⁷⁵ Laws and regulations also impose content re-

169. Zhao, *Media, Market, and Democracy*, supra note 32, at 21. Propaganda department review is sometimes part of a regularized system of review; in other cases it is in response to specific complaints made regarding a publication or broadcast.

170. Interview 2003-39; see, e.g., *China Paper Fires Reporter over Story, Quill*, Oct. 2001, at 37, 37 (describing journalist fired for reporting about local court scheme to sell organs of executed prisoners).

171. Rosenthal, supra note 96; Interview 2003-26; see also Keller, *Privilege and Punishment*, supra note 26, at 97–98 (discussing punishment of editors and papers); *Media Freedom in China: Roundtable Before the Cong.-Exec. Comm’n on China*, 107th Cong. 8, 11 (2002) (statement of Kavita Menon, Committee to Protect Journalists), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f81228.pdf (on file with the *Columbia Law Review*) [hereinafter *Media Freedom Roundtable*] (reporting demotions and firings at *Southern Weekend* after paper published unflattering description of criminal activities in Hunan Province).

172. Interview 2003-38; Interview 2003-48. In the case of critical reports on other jurisdictions, propaganda authorities in the target jurisdiction may telephone the propaganda department responsible for the publication, which in turn will pass along the complaint to the paper. Interview 2003-48; Interview 2003-58.

173. Jonathan Ansfield, *Reuters, China Stifles Curb-Defying Magazine*, June 23, 2003 (on file with the *Columbia Law Review*) (reporting that propaganda authorities barred sale of issue of *Caijing* and discussing closure of Beijing tabloid).

174. A licensing system likewise regulates other forms of media, including publishing and film production. The General Administration of Press and Publications oversees this system for the print, publishing, audiovisual, and electronic media sectors, while the State Administration of Radio, Film, and Television regulates the broadcast media. For a detailed discussion of this system, including related regulations, see Keller, *Media Ownership*, supra note 26, at 279–86; Keller, *Privilege and Punishment*, supra note 26, at 100–01.

175. The General Administration of Press and Publications also regulates reporters. Under new regulations announced at the end of 2002, all reporters are required to take a national examination and obtain a license in order to be employed by the media. In 2003 *Journalists Will Also Need “Qualifications,”* supra note 160. The new system will be phased in over a five-year period. Prior regulations had also regulated reporters, but had not required a formal licensing exam. See generally Fu & Cullen, supra note 65, 97–108 (discussing regulations on reporters). Journalists, however, say that they do not expect the

strictions regarding such subjects as national security and state secrets,¹⁷⁶ and govern certain forms of media, such as the internet.¹⁷⁷ Regulations governing newspapers, for example, ban material that opposes the Party's leadership, undermines social stability, or subverts the socialist system. Also, the regulations oblige newspapers to uphold socialism and carry out propaganda work on behalf of the Party and government.¹⁷⁸ These formal laws and regulations play an important role in limiting new entrants to the industry and in defining sanctions in certain cases, but in day-to-day editorial decisions they are less important than are Party policy pronouncements.

2. *Propaganda Department Instructions.* — Formal and informal Communist Party policy pronouncements and regulations set the overall tone for the press and provide detailed provisions regarding both required and impermissible content of public reports. The CPD, which has primary responsibility for China's media policies, provides overall guidance, and the propaganda bureaus of provincial and local Party branches are responsible for implementing such policies at their respective levels.¹⁷⁹ Party instructions may be formal or informal. Formal Party policy is set forth via directives, which are issued internally through the propaganda department hierarchy to media organizations and are discussed in meetings of journalists and editors.¹⁸⁰ Less formal mechanisms include telephone calls to media editors, speeches by Party officials, and regular meetings with journalists and editors.¹⁸¹ Party guidance, at all levels, ranges from details regarding how to cover major news stories, to requirements that media use only officially prepared texts for certain stories, to instructions to the media to focus, or remain silent, on particular is-

new system to have significant impact, primarily because there is little new content to the exam requirement. See Interview 2003-3; Interview 2003-48.

176. See, e.g., Baoshou Guojia Mimi Fa [Law on Guarding State Secrets] art. 20 (1998) (stating that media publications and broadcasts shall not reveal state secrets); *Zhonghua Renmin Gongheguo Xingfa* [Criminal Law of the People's Republic of China] art. 398 (1997) (barring divulgence of state secrets); see also Fu & Cullen, *supra* note 65, 109–35 (discussing regulations on state secrets and national security); Keller, *Privilege and Punishment*, *supra* note 26, at 121–23 (discussing laws and regulations imposing content regulations on China's print media and noting vagueness of such standards).

177. Keller, *Media Ownership*, *supra* note 26, at 280.

178. Baokan Guanli Zhanxing Guiding [Interim Rules on the Administration of Newspapers] arts. 7, 8 (1990).

179. Party influence also includes the ability to approve senior editors and other employees of major media outlets. Keller, *Privilege and Punishment*, *supra* note 26, at 116.

180. *Id.* at 97.

181. Interview 2003-13; Interview 2003-74; see also Media Freedom Roundtable, *supra* note 171, at 6, 6–8 (statement of He Qinglian, Journalist, Princeton Univ.) (describing content control system). In addition, the career paths of propaganda officials and editors often overlap, with individuals shifting between editorial jobs at official media and positions within propaganda departments over the courses of their careers.

sues.¹⁸² Thus, for example, in July 2003 the CPD instructed media nationwide to refrain from critical public reports on the police, procuratorates, and courts for a period of two months.¹⁸³

Propaganda departments generally issue directives weekly, although they may also issue instructions more frequently with regard to particular topics, such as major international or domestic news items.¹⁸⁴ Reporters comment that most propaganda department directives are instructions not to report on certain issues, or to handle sensitive matters in a particular way.¹⁸⁵ If media do not receive instructions regarding a particular subject, they generally are free to report on the topic.¹⁸⁶

Each propaganda department has the authority to issue directives, which causes media to face different degrees of regulation depending on their administrative rank and the particular propaganda department with direct authority over the publication or station. Media with national rank must obey directives of the CPD; provincial media must obey the CPD instructions as well as those of their respective provincial propaganda departments; and municipal-level media must obey central, provincial, and municipal propaganda directives. In areas such as Chengdu and Guangzhou where there is competition between provincial party newspapers and those attached to municipal party committees, this may result in certain newspapers being permitted to report on topics that are off limits to their lower-ranking competitors.¹⁸⁷ Likewise, content barred in one

182. Interview 2002-3; see also John Pomfret, *China Closes Beijing Newspaper in Media Crackdown*, Wash. Post, June 20, 2003, at A19 (discussing CPD notice that banned reporting on range of sensitive cases); Rosenthal, *supra* note 96 (discussing CPD circular to media editors specifying “do’s and don’ts” of topics). For an argument that the Party-state “guides the media only on significant political issues, and those related to national security,” see Li, *Focus*, *supra* note 47, at 29.

Instructions to the print media requiring that certain topics be covered are rare, but propaganda authorities often dictate the topics to be covered on *Focus*. Interview 2003-118. Indeed, most positive reports that the program airs are the direct result of propaganda department instructions. *Id.*

183. Interview 2003-113; Interview 2003-160. The ban followed an increase in critical media reports on the police and legal authorities during and after the SARS epidemic. Interview 2003-160.

184. Interview 2003-4.

185. *Id.*; Interview 2003-73.

186. Interview 2003-4; Interview 2003-39; Interview 2003-73. Most prohibitions are never lifted. Thus reporters say that after a period of time has passed since a directive was issued, they may experiment by reporting on a formerly forbidden topic to see if the propaganda authorities will respond. See, e.g., Interview 2003-4; Interview 2003-46; see also Li, *Focus*, *supra* note 47, at 30 (quoting a leading television journalist as stating that “[n]o one ever tells you that there is a field you can now report which was not allowed previously”).

In cases in which domestic reporting is off limits, foreign media coverage may help to highlight an issue. In some cases, journalists who are unable to report on certain matters may either pass on such stories to foreign journalists or suggest that those with grievances raise them with members of the foreign media.

187. Interview 2003-39; Interview 2003-93. For example, the municipal propaganda department barred municipal-level media in Chengdu from reporting on a Chengdu

area may be permitted elsewhere. Central media may feel greater compulsion to adhere to CPD instructions than do papers of lower rank, where scrutiny by central authorities is less likely. Local propaganda authorities may also differ in the degree to which they enforce CPD instructions.

Guidance may also include instructions to use only Xinhua News Agency reports regarding certain sensitive matters. Thus local newspapers have significant discretion in reporting on local news but may be required to use only Xinhua materials for national and international reports.¹⁸⁸ During the SARS outbreak, for example, the media were initially barred from reporting on it. After the government acknowledged the severity of the outbreak on April 20, 2003, media were permitted more discretion but still relied on Xinhua dispatches for much of their news. One reporter for a local Beijing newspaper stated that the paper ran approximately fifty percent of their own stories on SARS and fifty percent of stories prepared by Xinhua.¹⁸⁹ At the local level, however, local propaganda departments may sometimes require official Party papers to send reports on major local news items to the department for approval prior to publication.¹⁹⁰

Nonetheless, the flow of information between the Party and the media is not unidirectional. Reporters also play a role in influencing the range of permissible topics, such as by choosing to bring an item to the attention of Party authorities through an article in an internal publication. In some cases, doing so results in explicit instruction from the prop-

deputy mayor who gambled while on a visit to Las Vegas; provincial-level papers carried the story. Interview 2003-39. Papers with municipal rank may face additional restrictions in the form of provincial propaganda authorities restricting their ability to report on matters outside their locality. Interview 2003-39; see also Wang, Advantage, supra note 139 (discussing competitive advantages of provincial-level paper in Hunan compared to municipal paper due to its ability to engage in greater range of popular opinion supervision). Provincial authorities may also restrict local papers by limiting the number of pages they are permitted to publish each day. Interview 2003-39.

Papers with a national rank, likewise, may have advantages over those with a lower rank. In Beijing, the daily *Jinghua Shibao* is owned in part by *People's Daily* and is not under the jurisdiction of the Beijing Propaganda Department. Interview 2003-108. If Beijing propaganda authorities are unhappy about the content of the paper, they must raise their concerns with CPD officials, who then may pass along such criticism to *People's Daily*. Interview 2003-110.

188. Interview 2003-38; Interview 2003-44. When bombs exploded in cafeterias at Beijing University and Qinghua University in February 2003, for example, the CPD instructed papers and television stations nationwide that they could use only the Xinhua dispatch on the incident and told newspapers that they were not permitted to run the story on the front page. Interview 2003-44; Interview 2003-65.

189. Interview 2003-109; see also Interview 2003-110 (stating that papers in Beijing were initially required to use only Xinhua reports on SARS but were later permitted more discretion in using their own reports).

190. Interview 2003-44.

aganda department to focus on such issues in public coverage.¹⁹¹ In other cases, reporters from central media outlets may agree jointly to cover a story without first clearing it with the CPD,¹⁹² thus likely making future coverage by others easier.

Propaganda department control of content is not consistent and tends toward extremes. Media may be subject to high degrees of scrutiny, with certain topics off limits entirely, during particularly sensitive periods. Thus *Focus* ran few critical reports during the first half of 2003—the result of heightened CPD oversight of the program leading up to and during the National People’s Congress meeting in March, at which new government leaders were formally announced, and during the SARS crisis.¹⁹³ In other cases, media coverage of a topic is largely unregulated until it reaches a certain point when all further public reporting on the topic is banned. Again, the SARS outbreak presents a clear example: After an initial ban on reports was lifted, many in the media were extremely aggressive in reporting on the outbreak. Once the outbreak was under control, however, the CPD banned the media from reports reflecting on the outbreak, and the media were instructed to use only Xinhua reports.¹⁹⁴ Once the CPD issues an explicit ban on reports on a subject, most editors and journalists comply.

3. *Informal Norms.* — Informal, unwritten norms also set boundaries on the topics on which the media may and may not report, in particular with regard to coverage of alleged official misconduct, unfair official decisions, or other potentially sensitive topics. Reporters comment that these informal rules are the most important source of guidance as to the limits within which they must operate when they are engaged in investigative journalism.¹⁹⁵ The boundaries of what may and may not be reported are fluid, and depend not only on the target of the report and status of the news organ carrying the story, but also on the program or page on which the item will air or be published.¹⁹⁶

191. Interview 2002-3; cf. Li, *Focus*, supra note 47, at 24 (arguing that *Focus* has also at times “set the government agenda for policymaking and reform”).

192. Interview 2002-3; Interview 2002-10.

193. Interview 2003-117.

194. Interview 2003-110.

195. Interview 2002-1; see also Interview 2002-2 (stating that journalists know what can and cannot be published, just as they know what lead stories should be each day, and that reporters who fall afoul of such restrictions are usually young and inexperienced); Interview 2003-13 (commenting that internal norms have come to be more important than law or Party instructions). For a summary of these informal rules, explained in terms of the difficulties the press faces in reporting on official misconduct, see Lin Xiang, Yulun Jiandu Nanzai Hechu [Where Are the Difficulties in Popular Opinion Supervision], *Remmin Jiancha* [People’s Procuracy], Aug. 27, 2000 (on file with the *Columbia Law Review*) [hereinafter Lin, *Difficulties*]. Such rules are not entirely distinct from CPD pronouncements; rather, such informal rules are informed by often unclear Party statements and notices.

196. Interview 2002-2. Magazines have somewhat more flexibility than newspapers with regard to content. Magazines are generally regulated by the publishing division of

The most important informal rules concern the targets and subject matter of reports. Most critical reports expose low-ranking officials, in particular officials at the county level and below.¹⁹⁷ In addition, critical media reports generally expose misdeeds either at a lower administrative rank than or in a jurisdiction other than that in which the report will be published or aired.¹⁹⁸ It is rare for papers to target problems at the same level of government as the paper itself.¹⁹⁹ As one local television journalist explained, reports on problems with the local government are possible

propaganda departments, rather than the stricter news division that oversees newspapers. Interview 2003-14; Interview 2003-18. Individual media outlets also must balance critical reporting with positive reports. For example, *Focus* is reported to have explicit rules requiring that the program air two positive stories for every critical report. According to studies and reports by CCTV journalists, approximately twenty to forty percent of the reports on *Focus* consist of “popular opinion supervision.” Sun Zhengyi & Liu Tingting, 2003 Nian Zhongguo Xinwenye Huiwang: San Yue [Review of China’s Journalism in 2003: The First Quarter], Renmin Wang [People’s Daily Online], Dec. 30, 2003, at <http://www.xici.net/main.asp?doc=33595470> (on file with the *Columbia Law Review*); see also Chan, *supra* note 125, at 41–43 (noting that 91 of 340 episodes of *Focus* in 1999 were critical reports and describing how program often broadcasts reports clearly designed to serve Party propaganda goals); Liang, Degree, *supra* note 121 (stating that approximately one-third of all reports on *Focus* are critical). At *Legal Report*, journalists must balance critical reports, which are often popular with viewers, with other programs; in general “supervision” work makes up only one quarter of the program’s reports. Interview 2003-87.

197. Interview 2003-75; Lin, Difficulties, *supra* note 195. Propaganda department notices have explicitly told the media that critical reports should limit their targets to county-level and lower-ranking officials, although some national media journalists state that they are also able to criticize some municipal leaders, including deputy mayors and municipal bureau heads. Interview 2003-4. *Legal Report* criticizes decisions by intermediate courts or municipal governments but has never run a program critical of a decision by a provincial high court. Interview 2003-83. The size and relative national importance of the municipality will also inform decisions on whether to run critical reports. Interview 2003-87. At times, however, the media may challenge these norms and criticize provincial governments. See, e.g., *infra* text accompanying notes 399–404 (discussing Liu Yong case).

A posting on the China News Research Center website noted that the news media do not hesitate to report the names of ordinary people but rarely report the names, or even localities, of corrupt officials. Generally, the media target only low-ranking officials, following a policy of “getting the sesame seed but losing the watermelon,” and not pursuing high-ranking officials until they have already been punished by other authorities. Chen Junyou, Yulun Jiandu De Bugong [The Unfairness of Popular Opinion Supervision], Zhongguo Xinwenren Wenhua Wang [China News Culture Web], May 19, 2002 (on file with the *Columbia Law Review*) [hereinafter Chen, Unfairness]; see also Chan, *supra* note 125, at 44 (discussing targets of critical reports on *Focus*).

198. Interview 2002-7.

199. Interview 2003-44. Thus, for example, local papers rarely carry critical reports about local governments. Interview 2003-80. A journalist at a local paper linked to the local municipal Party committee commented that the newspaper not only finds it difficult to report on problems in the local municipal government, but also avoids criticizing the district government of the municipal district in which the paper’s offices are located. Interview 2003-24. In general, such rules do not apply to internal reports. For example, *Legal Report* will run criticism of provincial authorities in its internal reports, even though the program never criticizes such officials on-air. Interview 2003-87. At the local level, however, reporters may eschew criticism even in internal reports, or may show such internal reports to the targets of criticism prior to submitting them. Interview 2003-44.

only if they target general problems, not particular officials, or wrongdoers with relatively low rank. Thus, for example, when seeking to expose problems with major local hospitals, the journalist instead prepared a report that exposed problems in a minor hospital that had a low profile.²⁰⁰

Critical reports regarding the politically important cities of Beijing and Shanghai by any media outlet are rare,²⁰¹ as is criticism of the central government or national ministries.²⁰² Critical reports regarding provincial governments are also infrequent, and when they do occur they come largely from media with a central government or Party rank.²⁰³ Thus, for example, a provincial-level newspaper may report on county-level problems, but will rarely carry reports critical of the provincial government.²⁰⁴ *Economic Observer*, a weekly paper known for its probing commentary on economic and social issues, avoids critical reports on issues in Shandong, as the paper is formally registered in Shandong and thus is subject to regulation by the Shandong Province Propaganda Department.²⁰⁵ Non-local media—most often media from other provinces—find it easier to report on misconduct in a province or area than do local media.²⁰⁶ Indeed, *Southern Weekend*, regarded by many as China's most

For a discussion of difficulties faced by television journalists producing legal-themed programming at the local level, see Liu, Television Programs, *supra* note 105. In Shanghai, some critical reports are tolerated so long as the targets are not too powerful, but the media must also run follow-up articles describing how local authorities solved problems the media exposed. Interview 2003-56; see also Interview 2003-108 (commenting that any critical reports in one mass-market Beijing daily paper focus on small problems or on ways to improve government services).

200. Interview 2003-65.

201. Interview 2003-117; Interview 2003-160.

202. CPD rules explicitly ban media from reporting on crimes committed by any officials at or above the rank of deputy minister; in such cases, the media are only permitted to use reports prepared by Xinhua or *People's Daily*. Interview 2003-75.

203. Interview 2002-5.

204. Interview 2003-22 (stating that provincial paper will never criticize provincial government and that most criticism is of low-level problems).

205. Interview 2003-48; Interview 2003-95.

206. Interview 2003-39; Interview 2003-51. Similar norms apply to media tied to a particular department or organization: It is easier for a newspaper to report on wrongdoing outside its relevant bureaucratic area than it is to report on wrongdoing within such area. See Lin, Difficulties, *supra* note 195; Interview 2002-2. For example, *Legal Daily*—tied to the Ministry of Justice and the Party's Central Political-Legal Committee—is more likely to be critical of the courts than is *People's Court News*. See Interview 2003-73 (stating that *People's Court News* avoids criticism of courts); Interview 2003-158 (same); see also Dangqian Fayuan De Xuanchuan Ying Bawo Liangge Zhongdian [Two Important Points That Should Be Grasped in Court Propaganda at Present], Renmin Fayuan Bao [People's Court News], at <http://www.gzcourt.org.cn/zfxw/zfxw.jsp?lsh=10> (last visited June 30, 2003) (on file with the *Columbia Law Review*) (stating that primary role of *People's Court News* is to “improve the image of courts,” and to carry out propaganda work on court decisions and activities).

courageous newspaper over much of the past decade, rarely reports on wrongdoing in its home province of Guangdong.²⁰⁷

Media affiliated with the central government, ranging from CCTV, the central television network, to newspapers such as *People's Daily*, *China Youth Daily*, and *Legal Daily*, have significantly more flexibility to publish critical reports than do provincial or local media.²⁰⁸ As a result, such media are both the recipients of a significant volume of complaints from aggrieved individuals and are likely to be most feared by local officials. Yet even the national press often shrinks from covering scandals above the local level.²⁰⁹ Journalists comment that it is comparatively rare for them to run critical reports regarding officials above the county level, a practice known as "hitting flies, not tigers,"²¹⁰ although some central media outlets appear increasingly willing to criticize implicitly the policies of some central government ministries and departments.

Informal norms also govern subject matter, making some topics easier to report on than others. Journalists comment that they must look not only to the rank of the target of a critical report, but also to any potential ideological sensitivity of the topic concerned.²¹¹ For example, the media enjoy more leeway to report on wrongdoing in the financial sector than in many other areas.²¹² Propaganda authorities likewise permit the media broader freedom in reporting on scandals in sports and the arts.²¹³ Certain topics are also very clearly off limits, including re-

207. Interview 2002-2. When the paper does include critical reports on Guangdong, the paper's targets are usually low-ranking officials. Interview 2003-46.

208. Interview 2002-1.

209. Interview 2002-2; see also Sun, Necessity and Feasibility, *supra* note 117 (discussing study of *People's Daily* critical reports between 1993 and 1997 finding that majority of such reports did not name a specific person, that only 8.5% of critical reports in the paper were targeted at officials, and that virtually all of these were reports on low-level officials).

210. Shi, Flies and Tigers, *supra* note 22; Interview 2003-3.

211. A reporter for *China Youth Daily* summarized the three issues reporters must consider before deciding to report: the status or government level of the subject of the report; the nature of the case and whether it affects a "phenomenon" (which would make the matter more sensitive); and the ideological sensitivity of the case. Guanyu Sifa Yu Chuanmei De Taolun [A Discussion on the Media and the Judicial System], Nanfang Zhoumou [Southern Weekend], Apr. 16, 1999, available at <http://jc.gov.cn/personal/ysxs/fnsx1/fnsx87.htm> (on file with the *Columbia Law Review*) (quoting *China Youth Daily* reporter Lu Yaogang).

212. Interview 2003-17; Interview 2003-48; Interview 2003-93; Interview 2003-95; see also Susan V. Lawrence, An Investigative Financial Magazine Is Sued by an Angry Target: A Trial for China's Media, *Far E. Econ. Rev.*, May 9, 2002, at 29, 29 ("China's Communist Party Propaganda Department gives financial publications more rein than most other news organizations."); Robert L. Keatley, Nat'l Comm. on U.S.-China Relations, The Role of the Media in a Market Economy, *China Pol'y Series*, Feb. 2003, at 1, 1, available at http://www.ncuscr.org/Publications/media_report-web.pdf (on file with the *Columbia Law Review*) (stating that "[i]t is probably no coincidence that the greatest increase of press freedom can be found in the field of economic journalism").

213. Interview 2003-75; Interview 2003-93. Explanations for why certain areas are less restricted than others vary. Thus, while reports on soccer or the arts may be of less political

ports about national leadership, criticism of the military, and reports that suggest problems with China's family planning policies.²¹⁴

The editorial system of each publication or station enforces these informal rules, with each news article or program subject to at least three levels of editorial review.²¹⁵ Occasionally editors may seek guidance from propaganda authorities regarding whether a particular item is appropriate for the public,²¹⁶ and at times certain sensitive publications or programs are explicitly required to do so.²¹⁷ In general, however, if editors need to ask whether a particular item may run or broadcast, then they already know the answer is no.²¹⁸

4. *Local Regulations and Impediments: Defamation Litigation.* — Local rules and regulations, threats of local reprisals, and fear of defamation litigation also constrain the media. The difficulties reporters encounter at the local level illustrate both the potential impact of critical reports—hence the fear journalists arouse amongst targets of investigations—and the degree to which even journalists from powerful central media outlets must consider the potential responses of local officials to their reports.²¹⁹

Some local governments have responded to increased critical media coverage by passing regulations requiring reporters to obtain permission

concern than reports on other topics, observers attribute the relative freedom that the media enjoy in financial reporting in part to the lack of propaganda department competence in such matters: It is difficult to restrict such reports if those doing the censoring do not understand the subject matter. Interview 2003-17. Moreover, propaganda department officials are primarily concerned with ideology, and reports on the financial sector are seen as relatively nonideological. Interview 2003-18. Critical reports on corporate misconduct are also consistent with government efforts to crack down on market irregularities. Yet even in areas in which the media enjoy relatively more leeway, some subjects may be off limits. Thus, for example, although the media generally have significant latitude to criticize companies and enterprises, criticism of certain high-profile national brands is off limits. See, e.g., Interview 2003-65 (describing use of internal report in place of criticism of high-profile national brand).

214. Interview 2003-4; Interview 2003-10; Interview 2003-60.

215. Interview 2003-13; Interview 2003-39. For a discussion of internal controls at newspapers, see Fu & Cullen, *supra* note 65, at 33.

216. Interview 2003-13.

217. Some particularly important media programs, most notably *Focus*, are at times subject to prebroadcast review by CPD officials. During certain periods, all topics covered by *Focus* are cleared in advance, ensuring, some say, that the government is not only aware of the problems covered before they are "exposed," but also that the government is confident it will be able to solve such problems quickly after the program airs. Interview 2003-79; Interview 2003-82. Other programs, including *Legal Report*, similarly are subject to preclearance by the CPD during particularly sensitive periods, such as during the annual meeting of the National People's Congress. Interview 2003-83.

218. Interview 2002-2.

219. Another result of tight local regulation is that local media often actively protect local interests, especially those of the local Party-state. See, e.g., Cheng, *Supervision*, *supra* note 164 (noting that local interests, personal interests, and personal relations all affect media coverage); Lu, *Escape*, *supra* note 128 (criticizing media that protect local interests).

in advance of publishing critical reports²²⁰ or prior to conducting interviews;²²¹ some regulations go so far as to forbid the publication of bad news altogether.²²² Other local governments have responded to negative

220. See Zhang Weibo & Li Jinyuan, Gansu Dunhuang Zhengfu Fa Wenjian Dui Xinwen Caifang Shezhi Zhang'ai [Gansu Dunhuang Government Issues Document, Imposes Obstructions to News Reporting], Zhongguo Qingnian Bao [China Youth Daily], Jan. 14, 2002, available at <http://www.yifannet.com/xinwen/guonei/2002/01/14/3285873828792.html> (on file with the *Columbia Law Review*) (noting that after critical local story, city introduced new regulations requiring permits and preapproval for all local stories); see also Pan Duola, Yulun Jiandu Jidai Lifa [Media Supervision Urgently Awaits Laws Being Drafted], Nanfang Ribao Jituan [Nanfang Daily Group Website], Mar. 7, 2002, at <http://www.nanfangdaily.com.cn/zt/zt/015lian/200203070013.asp> (on file with the *Columbia Law Review*) (noting calls for such laws to be abolished, but also stating that in many cases officials find it easier to rely on informal channels to block publication of negative reports).

221. Interview 2003-75; Liu Weidong, Tamen De Ti'an: Yu Yulun Jiandu Youguan [Their Draft Proposals: Related to Popular Opinion Supervision], Nanfang Zhoumou [Southern Weekend], Mar. 3, 2003, available at <http://61.177.149.152/handbook/law/wenji/fzhm/fzhm171.htm> (on file with the *Columbia Law Review*) [hereinafter Liu, Draft Proposals]; Wang Songmiao, Falü, Caishi Yulun Jiandu De Jianshi Kaoshan [Only Law Is the Strong Patron of Popular Opinion Supervision], Zhengyi Wang [Justice Web], Mar. 23, 2001 (on file with the *Columbia Law Review*) [hereinafter Wang, Only Law]. Courts have also relied on such provisions to resist media coverage. See Interview 2003-75 (stating that in certain provinces, courts require journalists to obtain permission to report on courts from provincial high court); Interview 2003-86 (same); see also Wang, Only Law, supra (reporting on directive of Guangdong High People's Court that requires approval from court's news office prior to conducting interview with court official in Guangdong Province).

222. Liu, Draft Proposals, supra note 221; see also Supervision Runs into Stability Work, supra note 145 (reporting on local government officials who called for reduction in number of "hotlines" for citizens' complaints and blamed press for causing chaos and undermining stability); Wang Songmiao, Ai! Yulun Jiandu [Ai! Popular Opinion Supervision], Zhengyi Wang [Justice Web], Nov. 8, 2001 (on file with the *Columbia Law Review*) (discussing need to obtain permission, and noting comments that provisions in PRC Constitution regarding freedom of speech and right to criticize are "not worth a sentence by a township boss").

Not all local governments are so outwardly hostile to the media. In 2001, a local Party committee in Changzhi, Shanxi Province, issued an invitation to all national and local media outlets to carry out supervision work in the city. You Zheyang Yige Shiwei Shuji (Er) [There Is This Kind of Municipal Party Secretary (2)], Shijiazhuang Ribao [Shijiazhuang Daily], May 9, 2002, available at <http://www.sjzdaily.com.cn/jpdb/20020509/gb/jpdb%5E115%5E3%5EA0603001.htm> (on file with the *Columbia Law Review*); see also Zhongguo Xinwenshe [China News Agency], Jilin Guiding, Xingzheng Jiguan Bude Zuai Xinwen Yulun Jiandu [Jilin Regulation, Administrative Organs May Not Block News Media Popular Opinion Supervision] (Dec. 6, 2000), at <http://www.unn.com.cn/GB/channel2/2196/2197/200106/20/73328.html> (on file with the *Columbia Law Review*) (discussing regulations in Jilin Province barring government officials from obstructing media supervision and requiring the media immediately to reveal any illegal conduct by enterprises); Wang Qiming, Xinwen Baoguang Ruhe Caineng You Xiawen? [How Can Revelations in the News Have Outcomes?], Renmin Wang [People's Daily Online], May 12, 2000, at <http://www.people.com.cn/GB/guandian/183/6103/6104/20020203/661586.html> (on file with the *Columbia Law Review*) (describing regulations in Anhui Province requiring officials to accept media supervision and requiring that government investigations be initiated where media reveal illegal or non-ordinary actions).

coverage with extralegal measures. Numerous press reports describe abuses journalists have suffered, including beatings at the hands of local police,²²³ losing their jobs for reporting too aggressively on local government activities,²²⁴ or being falsely convicted of crimes.²²⁵ In other cases,

223. See, e.g., “Da Bupa” De Jizhe Xuyao Jianqiang Houdun [“Not Afraid of Beatings” Reporters Need Strong Support], *Jinghua Shibao* [Jinghua Times], Mar. 30, 2002, at 6, available at <http://www.people.com.cn/GB/paper1787/5851/588784.html> (on file with the *Columbia Law Review*) (reporting three hundred complaints by journalists of harm suffered between 1998 and 2002); Zhao, Calling Out, *supra* note 140 (reporting academic comments condemning police for verbal and physical abuses of reporters, criticizing local officials for abusing their powers by obstructing journalists, and stating that local restrictions on reporting should not be imposed so as to protect interests of local officials); see also Sheying Jizhe De Falū Kunjing [The Difficult Legal Surroundings of Photojournalists], at <http://newsphoto.myetang.com/pinlun9.htm> (last visited Jan. 7, 2003) (on file with the *Columbia Law Review*) (stating that photojournalists are often beaten and listing cases in which reporters have been abused); Qu Lanyun, Yulun Jiandu Huhuan Falū Baohu [Popular Opinion Supervision Calls Out for Legal Protection], *Jiancha Ribao* [Procuratorate Daily], Apr. 7, 2002 (on file with the *Columbia Law Review*) (describing violence against journalists); Wang Xia, Jizhe Wei Shenme Zong Aida? [Why Are Reporters Always Beaten?], *Zhongguo Xinwen Wang* [China News Web], May 15, 2000, at <http://www.chinanews.com.cn/shidian/200004/new/7.html> (on file with the *Columbia Law Review*) [hereinafter Wang, Beaten] (discussing violence against journalists); Wu Xianghan & Li Jingying, Jizhe Wanzai Caifang Youzao Cubao Ganshe, Lūshi Fabiao Kanfa [Reporters Going to Interview in Wanzai Again Run into Violent Interference, Lawyers Express Viewpoints], *Zhongguo Qingnian Bao* [China Youth Daily], Jan. 6, 2002, available at <http://www.people.com.cn/GB/shehui/47/20020106/642010.html> (on file with the *Columbia Law Review*); Wu Xianghan & Li Jingying, Jiangxi Wanzai Baozha Shigu Zhong Kan “Fengsuo” Yu “Fan Fengsuo” Xinwen Zhan [Viewing the News Battle Between “Sealing off” and “Opposing Sealing Off” in the Explosion Accident in Wanzai, Jiangxi], *Zhongguo Xinwen Wang* [China News Web], Jan. 5, 2002, at <http://www.chinanews.com.cn/2002-01-05/26/152001.html> (on file with the *Columbia Law Review*) [hereinafter Wu & Li, Sealing Off] (explaining verbal abuse directed at reporters); Yang Wenxue & Zhou Huagong, Zhuanjia Pingshuo Yulun Jiandu [Experts Comment on Popular Opinion Supervision], *Jinghua Shibao* [Jinghua Times], Mar. 27, 2002, at 6, available at <http://www.people.com.cn/GB/shehui/46/20020327/695703.html> (on file with the *Columbia Law Review*) (complaining that physical attack on one of paper’s journalists should be treated as attack on public, not just as a tort); Zhou, *supra* note 150 (stating that in many cases, officials respond to media coverage by taking revenge against reporter); Zhu Daqiang, Xiao Yang Biaoshi Fayuan Jiang Yifa Baohu Xinwen Caifang Quan He Yulun Jiandu Quan [Xiao Yang States that Courts Will Protect Media Interview Rights and Popular Opinion Supervision Rights According to Law], *Zhongguo Xinwen Wang* [China News Web], Jan. 28, 2003, at <http://www.chinanews.com.cn/n/2003-01-27/26/267980.html> (on file with the *Columbia Law Review*) [hereinafter Zhu, Courts Will Protect] (quoting president of Supreme People’s Court as arguing for increased protections of reporters’ rights and stating that courts themselves must not interfere with or obstruct reporters).

Even journalists from powerful central media, including *Focus*, have been detained and beaten. Interview 2003-114.

224. Chen, Not Enough, *supra* note 142; Cheng Kejie Cong Jujue Jiandu Zouxiang Huimie [Cheng Kejie Goes from Rejecting Supervision Toward Extermination] (Aug. 22, 2000), at http://www.cctv.com/zhuanti/chengke/main/ckj0822_02.html (on file with the *Columbia Law Review*).

225. See Chen, Not Enough, *supra* note 142 (reporting on cases in which reporters have been convicted of accepting bribes, soliciting prostitution, or cheating after

newspapers carrying critical reports disappear or are destroyed before they can be sold in the area covered in a critical report.²²⁶

Even where local governments do not use force or threats, journalists may find that critical reports are blocked.²²⁷ Targets may rely on connections to a higher level of government to intervene, may directly contact the propaganda department with authority over the publication or station,²²⁸ or may telephone an editor at the publication or program.²²⁹ Reports also describe how local officials have relied on connections, often appealing to higher-ranking officials or engaging in bribery in order to block critical reports.²³⁰ The degree of effort used to block such reports appears to increase with the importance of the publication or program.

publishing reports that angered local officials, and criticizing practice of arresting reporters and then finding a crime with which to charge them); Ding Dong, Xinhua, Cong Jizhe Chi Guansi Tanqi [Discussing from Reporters Being Sued] (Apr. 23, 2001), at <http://www.hn.xinhua.org/news/2001-4-23/01423171505.htm> (on file with the *Columbia Law Review*) (reporting on journalist jailed for twelve years after reporting on misuse of funds by a local official); see also Cao Ruilin, Qiantan Jizhe Zai Yulun Jianduzhong De Renshenquan Baohu [A Brief Discussion on the Protection of the Physical Safety of Reporters in Popular Opinion Supervision], 2001 Xinwen Zhanxian [News Frontline] No. 7, available at <http://www.people.com.cn/GB/paper79/3848/464331.html> (on file with the *Columbia Law Review*) (arguing that increased protections in China's criminal laws are needed to protect reporters); cf. Stephen R. MacKinnon, Press Freedom and the Chinese Revolution in the 1930s, in *Media and Revolution* 174, 177 (Jeremy D. Popkin ed., 1995) (commenting, in discussion of journalism during the Chinese revolution, that "[j]ournalism in China has always been a risky business because the journalist ipso facto became a political figure").

226. See, e.g., Lin, Difficulties, supra note 195 (discussing how edition of *Southern Weekend* covering illegal pyramid sales was not available after purchase of all copies by someone); see also Xu Xun, Zhongguo Xinwen Qinquan Jiufen Disici Liangchao [The Fourth Wave of China's News Tort Disputes] 19-33 (2002) (on file with the *Columbia Law Review*) [hereinafter Xu, Fourth Wave] (discussing newspapers disappearing or being burnt); Guo Songmin, *Renmin Ribao* Ruhe Wei Ziji Tao Shuofa [How *People's Daily* Seeks Justice for Itself], *Zhongguo Qingnian Bao* [China Youth Daily], Sept. 22, 2003, available at http://news.163.com/editor/030922/030922_802003.html (on file with the *Columbia Law Review*) [hereinafter Guo, How *People's Daily* Seeks Justice for Itself] (reporting on confiscation of a *People's Daily* edition in county that was target of critical report); Liu, Draft Proposals, supra note 221 (describing cases in which editions of *Southern Weekend* have disappeared); Interview 2002-2 (stating that *Southern Weekend* has repeatedly faced problem with newspapers disappearing in certain areas).

227. See, e.g., Cai Enze, Huhuan Yulun Jiandu De Chuntian [Calling Out for the Spring of Popular Opinion Supervision], *Renmin Fayuan Bao* [People's Court News], May 23, 2002, available at <http://www.hubce.edu.cn/jwc/jwc5/messages/6580.html> (on file with the *Columbia Law Review*) [hereinafter Cai, Calling Out] (reporting on a line at CCTV of persons seeking to block coverage by *Focus*); Lin, Difficulties, supra note 195 (stating that number of reports prepared for *Focus* have been blocked prior to being broadcast, and discussing similar activities at local level); Peng & Jiao, supra note 120 (stating that existence of two lines outside CCTV offices shows that "in a materialistic society, the media can also be purchased"); Wang, Legal Rights, supra note 144 (same).

228. Interview 2003-15; Interview 2003-18; Interview 2003-39; Interview 2003-80; Interview 2003-85; Interview 2003-93.

229. Interview 2003-39; Interview 2003-87.

230. Xu, Fourth Wave, supra note 226, at 19-33.

Approximately one-third of the critical reports that journalists at *Focus* prepare are never aired, often because of intervention by interested parties.²³¹ Similarly, at *Legal Report*, journalists prepare critical reports in secret because, generally, if the targets of the reports become aware of the reports in advance, they will seek to block the broadcast and the program will not be able to run the report.²³²

Critical media coverage has also spawned a significant volume of defamation litigation, much of it apparently intended to silence the media.²³³ Editors and journalists comment that economic risks arising from critical reporting, in the form of potential defamation lawsuits, are now as significant as the risk of sanction by propaganda departments,²³⁴ and potential defamation litigation is a significant concern of journalists.²³⁵ The vagueness of existing law on defamation is one reason.²³⁶ Local officials and locally powerful persons, including judges, also appear to be using defamation litigation to intimidate reporters and to seek retribution against those who have engaged in critical reporting.²³⁷

231. Interview 2003-117.

232. Interview 2003-83.

233. See, e.g., Wei Yongzheng, Guanyu Yulun Jiandu Yu Xinwen Fazhi Wenti De Fangtan [An Interview Regarding Popular Opinion Supervision and News Rule of Law], 2000 Xinwen Jizhi [News Reporter] No. 2, at <http://www.zjonline.com.cn/node2/node26108/node30205/node30212/node30215/userobject7ai1886.html> (on file with the *Columbia Law Review*) [hereinafter Wei, Popular Opinion Supervision] (stating that defamation lawsuits are being used to “resist media supervision”). There is, moreover, a significant volume of litigation concerning infringements of privacy and factually inaccurate reporting. Some commentators argue that the media have brought the defamation litigation upon themselves by neglecting basic ethical standards and rushing to publish sensational stories without checking the facts. See, e.g., Wei Yongzheng, Xunqiu Xinwen Yu Falü De Gongshi [Seeking Consensus Between News and Law], 1999 Zhongguo Jizhe [China Reporter] No. 6, available at <http://www.zjonline.com.cn/node2/node26108/node30205/node30212/node30213/userobject7ai1691.html> (on file with the *Columbia Law Review*) (arguing that media should serve Party and nation and “should not serve as a peeping tom on private matters”). I plan to address this phenomenon in a future article.

234. Interview 2003-15. Nevertheless, it appears unlikely that a single defamation lawsuit could threaten a publication’s existence; in contrast, political mistakes can be “life threatening.” *Id.*

235. See, e.g., Huang, Another 200,000, *supra* note 142 (stating that, due to threat of defamation litigation, some reporters are afraid of using their power to supervise); Liu Lili, Dangbao Zhankai Yulun Jiandu De Nandian Ji Duice [Difficulties and Strategies for Opening up Popular Opinion Supervision by Party Papers], 2001 Neibu Wengao [Internal Reports] No. 4, at 26 (on file with the *Columbia Law Review*) [hereinafter Liu, Difficulties] (describing litigation as a significant barrier to effective supervision by Party papers).

236. See, e.g., Huang, Another 200,000, *supra* note 142 (arguing that defamation law is biased in favor of rights of individuals due to lack of legal provisions protecting journalists’ rights).

237. For a general discussion of this phenomenon, see Wei Yongzheng, Yulun Jiandu He “Gongzhong Renwu” [Popular Opinion Supervision and “Public Persons”], 2000 Guoji Xinwenjie [International News Industry] No. 3, available at <http://www.zjonline.com.cn/node2/node38/node58/node60/node76/userobject7ai1661.html> (on file with the *Columbia Law Review*) (discussing need to address use of lawsuits to seek revenge against

Much of the media commentary regarding these problems argues that a “media law” or “news law” is needed to protect reporters and establish the rights of reporters to report without obstruction from local officials.²³⁸ Local governments have experimented with regulations protecting media supervision, including prohibiting targets of media criticism from reviewing manuscripts prior to publication and banning interference in publication.²³⁹ Yet the problems the media face may also be the result of the media’s own power. Local authorities’ attempts to silence the media, whether by regulation, force, or litigation, are a direct result

journalists); see also Guo, *How People’s Daily Seeks Justice for Itself*, supra note 226 (discussing use of lawsuits by targets of media supervision).

238. See, e.g., Chen, Not Enough, supra note 142 (asserting that lack of protections for right of reporters to investigate is one reason why reporters often suffer harm while reporting); Cheng, Supervision, supra note 164 (arguing that law is needed to describe the relationship of media to government, and to make clear that media are independent of government); Lang, supra note 141 (observing significant restrictions on reporters, including provisions regarding state secrets and national security, but absence of significant legal protections for media); Qin Jie & Shen Lutao, Xinhua, Renda Daibiao Zaici Jianyi: Jiakuai Yulun Jiandu Lifa Bufa [People’s Congress Representatives Once Again Suggest: Speed Up the Pace of Legislating Regarding Public Opinion Supervision] (Mar. 14, 2001), available at <http://zgrdxw.peopledaily.com.cn/gb/paper7/7/class000700002/hwz102620.htm> (on file with the *Columbia Law Review*) (reporting on demands from delegates to the 2001 meeting of the National People’s Congress for legislation regarding public opinion supervision); Wang, Only Law, supra note 221 (calling for “News Law” to protect reporters’ rights to investigate and report news); Wei, supra note 154 (calling for “supervision law” that would protect media and facilitate media supervision). Yet not all advocates of a media law view it as protecting the rights of reporters; some argue that a law is needed to impose legal consequences on reporters for misdeeds. Cf. Sun, Voices, supra note 44, at 7 (arguing that primary function of press law would be to deter unethical conduct by journalists); Zhao, Calling Out, supra note 140 (presenting various arguments for media law that protects right to report).

Drafting of a media law began in 1987, largely as an effort to ensure press autonomy and improve government transparency, but it was abandoned after the 1989 Tiananmen crackdown. Chin-Chuan Lee, Ambiguities and Contradictions: Issues in China’s Changing Political Communication, in *China’s Media, Media’s China*, supra note 28, at 3, 7; Liu, Draft Proposals, supra note 221. A number of drafts have apparently been prepared, however, and discussion of the law revived from time to time in the 1990s. *Id.* See generally Keller, Privilege and Punishment, supra note 26, at 106–10 (discussing drafting and potential impact of a “press law”). In late 2002, the deputy director of the General Administration of Press and Publications announced that a news law would not be forthcoming in the next few years, due to the lack of “maturity” of China’s news industry. “Xinwenfa” Jinqi Buhui Chutai, Waizi Niandi Jinru Baokan Faxing [“Media Law” Will Not Appear in the Short Term, Foreign Investment Will Enter Newspaper Distribution at the End of the Year], *Zhongguo Xinwen Wang* [China News Web], Nov. 16, 2002, at <http://www.chinanews.com.cn/2002-11-16/26/244229.html> (on file with the *Columbia Law Review*). Others, including some delegates to the National People’s Congress, have argued for a “news openness law” that would make official documents and news public. Chen, Not Enough, supra note 142.

239. Qu, supra note 223 (describing provisions regarding media supervision in Zhoushan Municipality of Zhejiang Province); Xiao, What Can Be Predicted, supra note 124 (discussing regulations in Zhuhai).

of the perception that media coverage will produce results, often in the form of intervention from higher-ranking Party-state officials.

China's media-control system is dynamic, and thus many of the rules and norms discussed in this section are from time to time challenged or ignored. Editors' decisions to carry particular reports reflect a range of internal and external considerations, including their understanding of the prevailing political winds, their own ability to challenge limits, personal relationships with propaganda authorities, the financial interests of the media outlet and its parent, and the perceived influence of the target of the potentially critical report. The degree of autonomy that particular media outlets enjoy thus may vary dramatically both over time and depending on the content of particular reports.

Although central media generally have more discretion to engage in critical reporting than do local media, in some cases commercialized media may find it easier to publish critical reports.²⁴⁰ Because the targets of such reports are less concerned with the effects of reports in the commercial press, they are less likely to seek to block such reports. In contrast, although reports in *People's Daily* and on *Focus* are more likely to produce desired effects than are local media reports, targets of central Party media criticism are more likely to endeavor to block publication.²⁴¹ The dynamic nature of both regulation and editorial discretion precludes broad conclusions regarding the relative level of autonomy—or freedom—of central or local media.

F. *Challenging Boundaries; Incentives and the Internet*

1. *Financial Incentives.* — Despite the continued overlay of informal and formal regulation, China's media are enjoying significantly greater discretion over content than at virtually any time since 1949.²⁴² This loosening of the reins results in significant part from financial and practical necessity. Increased competition, especially in light of efforts to make the media financially self-sufficient, has led editors to push the limits of what they are allowed to print.²⁴³ Journalists at commercialized papers, in particular those at the local level, say that their papers would not survive if

240. Interview 2003-26.

241. Interview 2003-3.

242. The amount of Party-dictated content varies from paper to paper. Nevertheless, it does appear that the print media have discretion over a significant portion of content. For example, one journalist for a national paper linked to the Party stated that despite the paper's official status, it has discretion with regard to approximately sixty percent of its content. *Id.*

243. Interview 2003-26; Interview 2003-80. Commercial pressures are not entirely in the direction of more aggressive reporting, especially when it comes to reporting on areas in the same jurisdiction as the media outlet. Increased reliance on advertising revenue may also make the media less likely to report on certain topics or government entities. Liu, *Difficulties*, *supra* note 235. Likewise, commercialization is also blamed for encouraging the media to fabricate or exaggerate news. See, e.g., Huang, *New Model*, *supra* note 44.

they strictly observed all propaganda department rules.²⁴⁴ Competition thus is encouraging the media to cover topics previously absent from the Chinese media and to bring an increasingly wide range of popular grievances to light.

This loosening of control is also linked to the direct financial interests many provincial or local Party organizations have in the financial success of the media via Party-owned media groups. Such interests stem primarily from the use of profits from commercial papers to underwrite unprofitable official Party media.²⁴⁵ For example, *Southern Weekend* contributes a portion of its revenue to its parent, the Southern Daily Media Group, and therefore, at least indirectly, to the Guangdong Province Party Committee.²⁴⁶ As one journalist for a paper linked to a municipal Party committee commented, “As long as we are successful, we have more room.”²⁴⁷

The desire to attract increased numbers of viewers or readers is only one factor that informs a program or paper’s editorial choices,²⁴⁸ and an important aspect of commercial success is the ability to identify permissible boundaries. Even absent formal sanctions, programs or papers that go too far may invite increased propaganda department monitoring, which in turn leads to a dampening of content—and potential loss of market share. Journalists at CCTV, for example, report that *Focus* has lost viewers in recent years. Aggressive coverage by the program resulted in increased CPD scrutiny, which in turn resulted in less aggressive reporting and a drop in ratings.²⁴⁹

In the past, media autonomy generally derived from CPD loosening of controls: When the media enjoyed periods of greater discretion, it was because the CPD chose not to monitor the media closely, not because it lacked the ability to do so. This is changing, as propaganda authorities appear to be facing difficulties monitoring an expanding number of media outlets and an increasing volume of news topics.²⁵⁰ Journalists de-

244. See, e.g., Interview 2003-46.

245. See, e.g., Interview 2003-24 (discussing how profits from commercial paper go to parent Party paper); Interview 2003-52 (same).

246. Interview 2003-18; Interview 2003-46. Similarly, *21st Century Economic Herald*, a biweekly paper that is also part of the Southern Daily Media Group, contributes a certain percentage of its profit to the group. Interview 2003-52.

247. Interview 2003-38.

248. Interview 2003-86.

249. Interview 2003-82; Interview 2003-83; Interview 2003-117; Interview 2003-160. The CPD also from time to time instructs *Focus* to refrain from criticizing certain provinces or from discussing certain topics. Interview 2003-117. The ratings decline, however, may also reflect the growth of programs modeled on *Focus*; the program is now one of many that engage in investigative reporting.

250. Journalists comment that propaganda authorities are increasingly unable to keep up with the media, particularly newspapers. Interview 2003-39. This is especially true in a system that generally relies on the ability of authorities to mark certain topics as off limits: Propaganda authorities increasingly find it difficult to list everything that is off limits. Interview 2003-67; Interview 2003-95.

scribe themselves as often trying to keep one step ahead of propaganda officials, in some cases going so far as to prepare backup programming in the event the authorities intervene to block a broadcast at the last minute.²⁵¹ Because journalists say that they generally are not sanctioned unless they report on topics that propaganda departments have explicitly marked as off limits,²⁵² journalists and editors who succeed in pushing the limits of permissible content are often those who are able to publish stories quickly, before the authorities can act. Even at *Focus*, the ability of journalists to report on issues quickly, before interested parties are either aware of the program or have had an opportunity to raise concerns with the CPD, often determines whether a critical report may be aired.²⁵³

The Chinese media are best understood not as increasingly independent, but as commercialized government mouthpieces, where increased editorial discretion is permitted in order to ensure financial self-sufficiency (and, in some cases, return of profits to the Party-state itself) and to provide incentives to serve Party-state interests in curbing abuses at the local level.²⁵⁴ Market incentives are used not only to reduce reliance on subsidies, but also to finance the delivery of Party-state messages.²⁵⁵ Yet

251. Interview 2003-65.

252. *Id.*

253. Interview 2003-117.

254. The observation that commercialization does not necessarily result in media that pursue liberal democratic values is not unique to China. As Curran has argued, the market can be used to rationalize authoritarian rule, and in many cases investigative journalism is actually part of media management by those in power. See Curran, *supra* note 165, at 124, 133–34 (noting role of privately owned media in supporting authoritarian governments in Latin America and Taiwan, and describing how ruling elites may develop systems of clientist patronage with media); see also Anne S.Y. Cheung, *Self-Censorship and the Struggle for Press Freedom in Hong Kong* 138–47, 159–76 (2003); Chin-Chuan Lee, *State, Capital and Media: The Case of Taiwan*, in *De-Westernizing Media Studies*, *supra* note 45, at 124, 124–26 (discussing “patron-client relationship” between ruling Nationalist Party and media under authoritarian rule in Taiwan, a system under which media were “politically subservient but had considerable autonomy in nonpolitical areas”); Zaharom Nain, *Globalized Theories and National Controls: The State, the Market, and the Malaysian Media*, in *De-Westernizing Media Studies*, *supra* note 45, at 139, 139, 145 (arguing that “rapid expansion of the media [in Malaysia] needs to be located at least within the larger framework of increasing commercialization and ongoing state control” and that “ownership and control of the media are in the hands of a few who are closely aligned to the government and who wish to profit from the situation”). Barriers to and costs of market entry may likewise undermine the ability of free markets to guarantee media independence. See Curran, *supra* note 165, at 128–29 (noting four specific barriers to media independence in free market system).

255. For case studies suggesting the degree to which commercialization may enhance the delivery of Party propaganda, see Yong Zhong, *The Other Edge of Commercialization: Enhancing CCTV’s Propaganda*, *Media Int’l Austl.*, Aug. 2001, at 167; cf. Monroe E. Price & Peter Krug, *The Enabling Environment for Free and Independent Media: Contribution to Transparent and Accountable Governance 7* (U.S. Agency for Int’l Dev., Occasional Papers Series No. PN-ACM-006, 2002), available at http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacm006.pdf (on file with the *Columbia Law Review*) (comparing U.S. model of mass media development, where public service broadcasting is “designed to compensate for perceived market failure,” with European

the granting of both discretion and incentives has resulted in media that increasingly seek to appeal to the public in ways that pressure the Party-state to respond to popular views. Such views may be of particular importance in a system in which there are few other mechanisms for channeling popular interests and opinions.

2. *The Internet: Technological Challenge?* — The degree to which propaganda departments may be finding it increasingly difficult to monitor the media is illustrated by the growth of internet news sources. Significant Western attention has focused on the ability of Chinese authorities to block access to overseas websites,²⁵⁶ and authorities are devoting significant resources to monitoring and restricting web postings.²⁵⁷ Domestic internet news sites, however, also challenge a media-control system that relies on the ability of propaganda authorities to issue directives dictating either that certain news items should not be reported, or how certain items should be covered.²⁵⁸

Internet news reporting is leading to more rapid dissemination of news, including news regarding official wrongdoing. In December 2001, for example, the internet edition of *People's Daily* reported on an official in Ningxia who had neglected to rescue a drowning girl; within twenty days of the story being posted on the website, the official was forced from office. Media reports praised the case as the fastest punishment of official misconduct in China's history.²⁵⁹ *People's Daily* noted the important role that the internet had played in the case, commenting that, without it, the local Party discipline authorities might never have dealt with the matter.²⁶⁰

broadcasting, where "public service broadcasting has been the base, and the private sector evolved to provide effective competition and opportunities for new and different voices (not the least of them commercial ones)").

256. See, e.g., Jonathan Zittrain & Benjamin Edelman, Internet Filtering in China, *IEEE Internet Computing*, Mar./Apr. 2003, at 70, 70–75.

257. See, e.g., Jin Wangluo Mingan Yanlun, Jishi Tongxun Gongju QQ Bei Jiankong [Forbidding Sensitive Discussion on the Internet, Instant Messaging Tool QQ Is Monitored], *Yazhou Shibao* [Asia Times], June 27, 2003 (on file with the *Columbia Law Review*) (discussing monitoring of instant messaging). Propaganda authorities have also emphasized the ways in which the internet may be used to further state propaganda goals. See, e.g., Xinhua, Li Changchun: Chongfen Fahui Hulianwang Deng Xinxing Meiti Qianli He Youshi [Li Changchun: Fully Bring into Play the Potential and Advantage of Newly Emerged Media Such as the Internet] (Jan. 19, 2004), available at <http://news.sohu.com/2004/01/19/00/news218700015.shtml> (on file with the *Columbia Law Review*) (discussing Guangdong Party Secretary Li Changchun's encouragement of greater use of emerging media, such as the internet, to improve news propaganda).

258. Interview 2003-26 (stating that propaganda authorities are finding regulating the internet difficult).

259. See, e.g., Wang Songmiao, Shuangjian Hebi: Kuanfu Zhengyi De Shidai Huhuan (1) [Two Swords Combine Harmoniously: The Call of an Age of Pursuing Justice (1)], *Jiancha Ribao* [Procuratorate Daily], Jan. 17, 2002 (on file with the *Columbia Law Review*) [hereinafter Wang, Two Swords].

260. Jian Da, Renmin Shiping: Yulun Jiandu De Shengli [People's Opinion: A Victory for Popular Opinion Supervision], *Renmin Wang* [People's Daily Online], Dec. 8,

Journalists comment that internet news providers, in particular the three major official internet news services, *Xinhua Wang*, *Renmin Wang*, and *Zhongxin Wang*, are able to publish more than they could in their respective print editions. The reasons these internet news services are able to do so appear to stem from relaxed editorial oversight of web news by their own institutions, and also from the fact that they are able to react to news reports quickly.²⁶¹ The websites of such official media outlets are also more heavily commercialized than are their parent papers or news services. Thus it appears that *Renmin Wang*, the web version of *People's Daily*, has a much greater financial stake in attracting readers than does its parent. Yet the fact that the websites are attached to Party mouthpieces also provides cover to others in the media: Once a news item has run on one of these services it is easier for others to report on such topics.²⁶²

Internet sites such as *Xinhua Wang*, *Renmin Wang*, and *Zhongxin Wang* are permitted to create their own online news content.²⁶³ Some other sites, including regional sites such as the *Qianlong* network in Beijing,²⁶⁴ are also licensed to provide original news content online. Internet sites

2001, at <http://www.people.com.cn/GB/guandian/20011208/622095.html> (on file with the *Columbia Law Review*); see also Wei Wenbiao, Kuse De Shengli [Agonizing Victory], Fazhi Ribao [Legal Daily], Jan. 13, 2002, at 2 (on file with the *Columbia Law Review*) (praising media's role in resolving case). Online reports from the web edition of *People's Daily* likewise played a role in exposing the Nandan disaster in 2001, when local officials initially concealed the deaths of three hundred people in a mine. Guangxi Nandan Zhongda Shigu Liangzhong Diaocha Jieguo-1 [Two Types of Results from the Investigation into the Nandan Major Accident], Zhihuicheng [Wisdom City], at <http://www.zhchina.com/html/Cat26/1871-1.html> (last visited Oct. 13, 2004) (on file with the *Columbia Law Review*); see also Min Dahong, 2001 Nian Huigu: Zhongguo De Wangluo Meiti [Looking Back at 2001: China's Internet Media], Tianji Wang [Chinabyte.com] (Dec. 18, 2001), at <http://it.sohu.com/72/65/article15746572.shtml> (on file with the *Columbia Law Review*) (discussing media supervision via the internet and noting that problems regarding China's railways raised in online forum were addressed immediately after they were discussed online); China Paper Fires Reporter over Story, *supra* note 170, at 37 (recounting controversial story on organ-harvesting that ran on *People's Daily* website).

The fact that some journalists in China appear to be using the internet to push the boundaries of permissible reporting is not inconsistent with China's attempts to control access to overseas internet content. Nevertheless, it does suggest that internet usage by Chinese media may be developing in ways more complex than outside observers who focus on attempts to control access to foreign content assume. Cf. Barb Palser, The Great Online Wall, *Am. Journalism Rev.*, Nov. 2001, at 74, 74 ("No one can publish hard news inside China without the government's permission (at least, not for long), and many sites are legally limited to electronic versions of print or broadcast reports.").

261. Interview 2003-108; Interview 2003-148.

262. Interview 2002-5; Interview 2003-67.

263. Interview 2003-108; Interview 2003-148.

264. Beijing Shi Huode Dengzai Xinwen Yewu Zige De Zonghexing Fei Xinwen Danwei Wangzhan [Comprehensive Websites in Beijing That Are Authorized to Publish and Disseminate News but That Do Not Belong to a News Work-Unit], Beijing Xinwen Wang [Beijing News Web], at <http://www.beijing.org.cn/beijing/zhxwz.htm> (last visited Feb. 2, 2004) (on file with the *Columbia Law Review*) (listing "non-news" organizations in Beijing that are permitted to post news articles).

not linked to traditional Party media are not allowed to create their own news content and are not technically permitted to employ reporters.²⁶⁵

Despite such restrictions, these sites are increasingly important providers of news. The past few years have also seen the growth of commercial internet portals not directly linked to any major newspaper or agency. The two leading portals, *Sina* and *Sohu*, both provide a wide variety of news.²⁶⁶ Neither portal has the right to write its own news reports or employ its own reporters;²⁶⁷ instead, both post articles from other sources, generally local and national newspapers, television stations, and news agencies.²⁶⁸ Working through contracts with such newspapers, the portals post as many as five thousand stories a day to their respective websites.²⁶⁹

Internet portals exercise significant discretion over which articles receive the highest profile by placing certain articles on the site or news homepages.²⁷⁰ This discretion can result in local stories that might otherwise go unnoticed receiving national attention. In some cases, the portals do so with the explicit aim of highlighting a problem or issue, one that might otherwise be ignored.²⁷¹ The speed with which news is posted to the sites—often concurrently with publication in the original source,

265. See Guowuyuan Xinwen Bangongshi, Xinxi Chanye Bu [Information Office of the State Council, Ministry of Information Technology], Guanyu Hulianwangzhan Congshi Dengzai Xinwen Yewu Guanli Zanzing Guiding [Interim Regulations on the Publishing and Transmitting of News on Internet Websites] art. 7 (Nov. 6, 2000) (on file with the *Columbia Law Review*) (stating that websites established by non-news organizations may post and disseminate news prepared by media with provincial rank or higher, but may not post or create news on their own or prepared by other sources); see also Min Dahong, Xinwen Meiti Wangzhan De Yingxiangli Cong He Er Lai? [Where Does the Influence of News Media Websites Come From?], Renmin Wang [People's Daily Online], Mar. 19, 2003, at <http://www.people.com.cn/GB/14677/22100/26515/26516/1752150.html> (on file with the *Columbia Law Review*) (same); Xiao Yuheng, Weishenme Buneng Shouyu Xinwen Wangzhan Caifangquan? [Why News Websites Cannot Be Given the Right to Cover News?], Xinlang Wang [Sina Online], Mar. 21, 2003, available at <http://cul.Sina.com.cn/s/2003-03-21/31224.html> (on file with the *Columbia Law Review*) [hereinafter Xiao, Why News Websites] (noting that only small number of websites are permitted to create their own news content, and criticizing such restrictions).

266. The web address for the *Sina* news homepage is <http://news.sina.com.cn>. The web address for the *Sohu* news homepage is <http://news.sohu.com.cn>.

267. The two are permitted to employ reporters and to write their own stories on science and the arts, but are not allowed to report on "news." Interview 2003-108; Interview 2003-148; see also Guanfang Zhichu Shangye Wangzhan Bu Jubei Caifangquan [Authorities Point Out That Commercial Websites Do Not Have the Right to Cover News], Jisuanji Shijie Ribao [Computer World Daily], Feb. 5, 2000, available at <http://www.zaobao.com/special/newspapers/2000/pages3/computer020500.html> (on file with the *Columbia Law Review*).

268. Sina Corp., Form 10-K: Annual Report 8 (Mar. 31, 2003); Sohu.com Inc., Form 10-K: Annual Report 4 (Mar. 28, 2003).

269. Interview 2003-148.

270. Id.

271. Id.; see also Xiao, Why News Websites, *supra* note 265 (discussing impact of commercial portals).

or, in the case of major breaking stories, in frequent updates throughout the day—means that news may spread nationally before local authorities are even aware of the article being published. The portals are subject to propaganda department oversight; in the case of *Sohu*, for example, representatives from the portal have regular meetings with Beijing Propaganda Department officials.²⁷² Propaganda officials from time to time also order the portals to remove stories from their websites.²⁷³ In general, however, the portals are able to rely on the fact that the news they are reporting has appeared in official publications elsewhere as a shield.

China's media-control system has traditionally relied on the ability to silence reports on disfavored topics. In particular, in cases in which the media overstep the boundaries, propaganda authorities have issued instructions warning other newspapers not to reprint such stories, or not to report on certain topics. Such a system faces increased challenges, though, especially where news reports are often posted to numerous websites within hours of their first being published.²⁷⁴ For example, in June 2003 internet portals reprinted media reports regarding the theft of university entrance examinations in Sichuan's Nanbu County.²⁷⁵ In order to prevent persons outside the county from learning of the questions in advance, officials cut all fixed telephone lines to the county and announced that they would monitor all cellular phone calls. Internet portals that posted the story were told to remove the article from their sites, but this did not occur before news had spread to numerous other sites as well. Similarly, in December 2003 and January 2004, *Sina*, *Sohu*, and other websites gave extensive coverage to the public outcry that followed news from

272. Interview 2003-148.

273. *Id.*

274. There are similarities between the CPD's approach to regulating internet content and its regulation of traditional media. Propaganda authorities set guidelines for permissible content but rely on individual publications or providers to enforce such guidelines. Internet portals such as *Sohu* and *Sina* monitor postings in online chatrooms, for example, and remove postings deemed to overstep the bounds of permissible content; they risk sanction if they fail to do so. Authorities have targeted a number of individual "cyber dissidents" for punishment, thus sending a message that those who overstep boundaries will be punished. See Mark Magnier, Chinese Authorities Battle Hard to Tighten the Web, *L.A. Times*, Jan. 13, 2004, at A1 (describing one-year imprisonment of student and internet essayist Liu Di, known online as "Stainless Steel Mouse"); Robert Marquand, The "Mouse" That Caused an Uproar in China, *Christian Sci. Monitor*, Nov. 6, 2003, at 1 (reporting arrest of Liu Di as part of larger effort to control online media).

275. Gao Kaoshijuan Bei Dao Quan Xian Tongxun Xianzhi Sichuan Nanbu Xian Jingfang Zhuajin Poan [Limited Communication Throughout County As a Result of Stolen University Entrance Examination Papers, Sichuan Nanbu Police Firmly Grasp Breaking the Case], *Qingdao Xinwen Wang* [Qingdao News Web], June 12, 2003, at http://www.qingdaonews.com/content/2003-06/12/content_1536988.htm (on file with the *Columbia Law Review*); Sichuan Nanbu Xian Gao Kaoshijuan Bei Dao Gonganbu Jiaoyubu Lianhe Poan [University Entrance Examination Papers in Nanbu County, Sichuan, Are Stolen, Public Security and Education Bureaus Unite to Break Case], *Zhongguo Qingnian Bao* [China Youth Daily], June 13, 2003, available at <http://www.china-school.net/news/200361283523.htm> (on file with the *Columbia Law Review*).

Harbin that a woman driving a BMW had run over and killed a farmer, yet did not receive any jail time.²⁷⁶ The killing in the BMW case followed an argument regarding a minor traffic accident. Internet reports on the case led to tens of thousands of postings to web chatrooms, many expressing outrage that the woman had not received a jail sentence and suggesting that she had received special treatment because of connections to local authorities.²⁷⁷ As pressure on Party leaders to intervene in the case mounted, the CPD instructed the sites to remove coverage of the story and shut down all internet chatroom discussion of the case.²⁷⁸ Nevertheless, reports on the case were widely available online even after the CPD ordered discussion curtailed.²⁷⁹

The use of the internet to highlight popular grievances is the outgrowth of a policy of encouraging critical reporting. The loosening of control, in particular with regard to reporting on official malfeasance, reflects an apparent Party-state decision to encourage a variety of actors to support state goals of addressing social problems by bringing popular grievances into official channels. The development of China's media thus parallels the development of the legal system more generally in important respects, in particular in the granting of incentives to those who challenge local authorities.

In the legal system, government authorization of contingency fees and class actions has encouraged lawyers to bring a broadening array of lawsuits, often on behalf of the victims of wrongdoing by officials or by enterprises with strong Party-state ties.²⁸⁰ Likewise, the 1989 passage of the Administrative Litigation Law has encouraged individuals to use liti-

276. Wang Jipeng, Wangluo Meiti: Yingxiangli Shidai De Lailin [Internet Media: The Coming of Its Age of Influence] (Jan. 11, 2004), at <http://www.blogchina.com/new/display/20935.html> (on file with the *Columbia Law Review*) [hereinafter Wang, Internet Media] (discussing coverage of case and chatroom postings).

277. Xinhua, "Baoma" Zhuangren An Wangshang Dianjilü Weiju Diyi, Chaoguo Feidian [Hit Rate on the Web for the "BMW" Case Ranks First, Exceeds SARS] (Jan. 8, 2004), at http://news.xinhuanet.com/legal/2004-01/08/content_1266893.htm (on file with the *Columbia Law Review*) (discussing large volume of postings regarding case).

278. Liang Jianzeng, Qianheng Fengsha Jingwai Zhongwen Wangzhan, Zhongguo Dangju Meiri Shantie Shang Baiwan [Tyrannically Blocking Overseas Chinese-Language Websites, the Chinese Government Every Day Removes More Than a Million Postings], *Renminbao* [Renmin News], Mar. 12, 2004, at <http://www.renminbao.com/rmb/articles/2004/3/12/30286.html> (on file with the *Columbia Law Review*) (discussing, on dissident website, removal of website postings); Robert Marquand, China Mutes Online News, *Christian Sci. Monitor*, Mar. 10, 2004, at 7 (stating that authorities banned reporting on case and ordered removal of web postings on case); Jim Yardley, Chinese Go Online in Search of Justice Against Elite Class, *N.Y. Times*, Jan. 16, 2004, at A1 (same).

279. Yardley, *supra* note 278.

280. I discuss this phenomenon in greater detail elsewhere. See Note, Class Action Litigation in China, 111 *Harv. L. Rev.* 1523, 1536–39 (1998) (arguing that rise of class action suits in China has expanded kinds of suits brought despite procedural obstacles). For further discussion, see also Kevin J. O'Brien & Lianjiang Li, Campaign Nostalgia in the Chinese Countryside, 39 *Asian Survey* 375, 381–82 (1999) (discussing role of popular complaints in fighting corruption).

gation to challenge government action, and in so doing has pursued Party-state goals of curbing administrative wrongdoing. Although those pursuing administrative litigation continue to face numerous obstacles, tens of thousands of such cases are brought every year.

Similarly, the Party-state is encouraging the media to bring popular grievances to light. Airing such grievances—whether in court, in the media, or both—serves the twin goals of allowing the substantive concerns raised to be addressed and of ensuring that the disputes are raised, and resolved, via formal channels, and thus not on the streets. As with lawyers, some journalists air grievances in order to pursue profit. Others may act for different reasons, including the interests of their employers or supervising Party-state departments, and their own consciences and desire to redress wrongdoing.

China's journalists appear to be particularly adept at taking advantage of the space created by the central Party-state's attempts to rein in wayward officials. Indeed, part of the art of being an investigative journalist in China, as with being an effective cause lawyer, is to be skilled at reading both market demand and the frequently shifting boundaries between encouraged and discouraged conduct. Journalists comment that once a particular topic, such as fighting local corruption, becomes a focus of the Party, reporters have extensive discretion to cover such issues.²⁸¹ Journalists also collaborate to evade content restrictions. Journalists forbidden from writing on a particular topic by local propaganda authorities, for example, may send articles to friends at newspapers in other provinces.²⁸² Likewise journalists at national media organizations say that

281. See, e.g., Interview 2002-3. One interviewee commented that when the media face restrictions, they are very tightly restricted. When the media are free to report on a particular topic, however, the absence of professional or ethical norms means that, in many cases, they are as uninhibited as the media anywhere in the world, and thus their reports tend to run to extremes. Interview 2002-1.

Government officials have repeatedly praised the role of the media in aiding the government's fight against corruption. See, e.g., Li, *Fight Corruption*, supra note 112 (collecting cases in which media played important role by exposing criminal activities by government officials); see also Zenyang Kandai Yulun Jiandu [How to View Popular Opinion Supervision], *Nanfang Zhoumo* [Southern Weekend], Apr. 16, 1999 (on file with the *Columbia Law Review*) (quoting Ministry of Justice official as stating that media are most effective tool in fighting corruption); Xu Yunping et al., *Jiaqiang Yulun Jiandu, Tuijin Gongzheng Zhifa* [Strengthen Popular Opinion Supervision, Push Forward Just Implementation of Law], *Fazhi Ribao Wangluo Ban* [Legal Daily Online], Sept. 30, 2000, at http://www.legaldaily.com.cn/gb/content/2000-09/30/content_6134.htm (on file with the *Columbia Law Review*) (reporting on Sichuan provincial Party deputy secretary praising role of media in law implementation); Zhou Yiming, *Guizhou: Jianchazhang Zhongshi Yulun Jiandu Chuan Jiahua* [Guizhou Procuratorate Chief Passes Along an Anecdote Emphasizing Media Supervision], *Zhengyi Wang* [Justice Web], June 10, 2001 (on file with the *Columbia Law Review*) (reporting on officials in Guizhou procuratorate being instructed to resolve cases that have been covered in media).

282. Interview 2003-39; Interview 2003-109. Competitive pressures may also lead rival papers to complain to the propaganda authorities that their rivals have exceeded the boundaries of permissible content. Interview 2003-39; see also Shi Tao, *Bangmang*,

they sometimes receive information about cases from local journalists who have been unable to run their reports in local media.²⁸³ In addition, media reports that are blocked from print media are from time to time posted on the internet.²⁸⁴ In other cases, newspapers circumvent prohibitions on critical reports regarding municipal governments by printing general complaints in the form of letters from readers that discuss a problem without explicitly blaming the local government.²⁸⁵ Additionally, journalists at national papers who have articles blocked may seek to publish their articles elsewhere, in papers or magazines with lower profiles.²⁸⁶

Parallels to China's experience of legal reform suggest that the development of the media—like the development of the legal system—cannot be understood solely in terms of independence from the state, or editorial or professional freedom. In both areas, bubbles of discontent—be they in critical online news reports and postings, or in administrative suits or class actions against local governments—are permitted. But they are tolerated in part because rooting out local problems—and insulating the center from similar criticism—further Party-state goals of economic development, social stability, and control. Journalists and lawyers are adroit at maneuvering and pursuing their own interests within this system, and in identifying ways in which their own interests may be packaged as being consistent with those of the state.

II. MEDIA AND DISPUTE RESOLUTION

The media's role as a Party-state institution and their ability to appeal directly to the public give the media particular ability to influence China's weak courts. This Part examines the four mechanisms by which the media affect the courts and other Party-state actors. Focusing on four high-profile cases and the phenomenon of "media adjudication," subpart A examines the impact of public reports. Subpart B describes the influence of internal reports. Subpart C describes the media's role in formally referring complaints from readers or viewers to other state actors. Subpart D explores journalists' use of informal channels to affect disputes, often through telephone calls, letters, or meetings carrying the implicit threat of media scrutiny if a matter is not resolved to journalists' satisfaction. These four categories are not mutually exclusive; journalists use a

Bangxian Yu Bangxiong [Helpers, Hacks, and Accomplices], Minzhu Luntan [Democratic Forum], May 23, 2001, at <http://www.asiademo.org/gb/2001/05/20010523b.htm> (on file with the *Columbia Law Review*) (discussing practice of reporting competitors' transgressions to propaganda departments).

283. Interview 2003-87.

284. Interview 2003-46; see also John Pomfret, *China Confronts Child's Death*, *Asian Wall St. J.*, July 4, 2003, at A8 (discussing article posted to web after Chengdu Propaganda Department officials banned publication).

285. Interview 2003-75.

286. Interview 2003-81.

combination of mechanisms to apply pressure and solve problems (and in some cases may employ all four mechanisms), and distinctions between formal and informal mechanisms are at times unclear. Influence is not one-sided, however, and thus subpart E discusses the mechanisms by which courts control and manage media coverage.

Distinctions between “legal” institutions and other government and Party actors are ambiguous in China, where the courts have limited power over other institutions and are subject to significant Party-state oversight. Although this Part focuses on the courts, it also discusses the impact of media coverage on other official actors. The discussion also demonstrates that the media should be understood as one such institution. The media are one of many official institutions with the competence both to resolve disputes and to pressure other actors. Yet the combination of the media’s traditional roles and of recent commercialization give the media particular influence and power.

China’s courts have undergone significant reforms in recent years, with particular attention to boosting the legal training of judges, reducing corruption, and formalizing legal procedures. The reforms reflect central government commitments to improving the quality of courts and to raising the profile of the formal legal system. The reforms have coincided with a sharp increase in the number of cases in China’s courts: China’s courts heard 5.93 million cases in 2001, more than double the number heard a decade earlier.²⁸⁷ The growth in litigation reflects both increased legal awareness and central government efforts to steer disputes into the formal legal system. The growth also appears to stem in part from the greater volume of law on the books.²⁸⁸ The rapid growth of litigation has coincided with decreased reliance on other forms of dispute resolution, most notably mediation. This increased volume of litigation and greater relevance of law have made courts more significant institutional players.

Still, China’s judiciary continues to suffer from numerous weaknesses and limitations. Although new judges are required to pass the national bar exam, many older judges still lack legal training.²⁸⁹ Emphasis on pro-

287. See Zuigao Renmin Fayuan Gongzuo Baogao [Work Report of the Supreme People’s Court] (Mar. 11, 2002); Zuigao Renmin Fayuan Gongzuo Baogao [Work Report of the Supreme People’s Court] (Mar. 28, 1992).

288. See Zhongshi Guoji [CCTV International Channel], Jiujiu Renda Lifa Tedian [The Characteristics of the Legislation of the Ninth Session of the National People’s Congress] (Feb. 20, 2003), available at <http://www.lianghui.org.cn/chinese/zhuanti/283105.htm> (on file with the *Columbia Law Review*) (describing recent emphasis on lawmaking); The Development of Contemporary Chinese Legislation (Sept. 28, 2003), at <http://www.china.org.cn/english/kuaixun/76336.htm> (on file with the *Columbia Law Review*) (describing rapid increase in volume of legislation during reform period).

289. See Feng Jianhua, Ball Now in Trained Judges’ Court, *Beijing Rev.*, Jan. 8, 2004, at 20, 20–21, available at [http://www.bjreview.com.cn/200402/Nation-200402\(A\).htm](http://www.bjreview.com.cn/200402/Nation-200402(A).htm) (on file with the *Columbia Law Review*); Feng Jianhua, Why Judges Are Getting a Bad Rap, *Beijing Rev.*, Jan. 8, 2004, at 22, 22–23, available at <http://www.bjreview.com.cn/200402/>

cedural law remains weak.²⁹⁰ Local governments and Party committees also control court finances and appointments,²⁹¹ so courts are often reluctant to rule against either local authorities or those with connections to such authorities.²⁹² Courts' formal powers are also limited: They lack power to invalidate legislation and administrative rules and regulations, and their powers to interpret laws and regulations are extremely circumscribed.²⁹³ Often courts find themselves in conflict with other administrative actors. Even in areas where they have formal authority, courts still lack the power to enforce decisions, particularly when such decisions are contrary to the interests of locally powerful individuals, entities, or other government administrative departments.²⁹⁴

Local Communist Party political-legal committees also have the authority to intervene in individual cases, as do Party officials. Higher-level officials exert pressure on individual judges and courts by both informal and formal routes.²⁹⁵ Officials may make it known, often via phone calls or informal notes, that they are aware of, and have a particular interest in, a case.²⁹⁶ Sometimes, however, pressure comes from written instructions, or *pishi*, regarding the handling of cases.²⁹⁷ In such cases, courts have

Nation-200402(B).htm (on file with the *Columbia Law Review*) (interview with Zheng Chengliang, senior judge and President of National Judges College); Xu Lai, Wei Tongguo Guojia Sifa Kaoshi Huo Bu Jubei Dazhuan Wenhua Chengduduzhe Buneng Dang Faguan [Those Who Do Not Pass the National Bar Exam or Who Do Not Have the Equivalent Cultural Level of a Junior College Degree Are Not Permitted to Be Judges], *Fazhi Ribao* [Legal Daily], July 18, 2001, at 1, available at http://www.legaldaily.com.cn/gb/content/2001-07/19/content_21125.htm (on file with the *Columbia Law Review*).

290. See Zhang Jieqin & Xiang Yang, Qiantan Chaoqi Jiya De Yuanyin He Duice [Thoughts on the Reason and Solution to Illegal Prolonged Detention] (Nov. 25, 2003), at <http://www.law.cn/news/xrcq/yczpxz/20031127115041.htm> (on file with the *Columbia Law Review*).

291. See Lubman, *supra* note 24, at 256 (discussing appointment of judges).

292. See, e.g., Note, *supra* note 280, at 1525 (discussing local authorities' control of court finances).

293. See, e.g., Randall Peerenboom, Out of the Pan and into the Fire: Well-Intentioned but Misguided Recommendations to Eliminate All Forms of Administrative Detention in China, 98 *Nw. U. L. Rev.* 991, 1069 (2004) (discussing lack of judicial review to resolve legislative inconsistency).

294. See generally Donald C. Clarke, Power and Politics in the Chinese Court System: The Enforcement of Civil Judgments, 10 *Colum. J. Asian L.* 1 (1996) [hereinafter Clarke, Power and Politics] (discussing obstacles to enforcement of civil judgments and suggesting ways in which problems can be overcome).

295. The fact that officials intervene does not necessarily mean that these cases are politically sensitive or touch on core Party ideological concerns. Interference is often on behalf of individuals or Party-linked enterprises, and is often aimed at protecting economic interests. As one journalist commented, influence is as often about personal relationships as it is about politics. Interview 2003-73.

296. Media reports are not the only mechanism for bringing cases to the attention of Party-state officials. Officials also issue instructions based on information received from other sources, including personal contacts and complaints from other government departments. Interview 2003-45.

297. See He Weifang, Xinwen Yu Sifa Erti [Two Questions on News and the Judicial System], *Zhongguo Gaige Bao* [China Reform News], Feb. 20, 1998, available at <http://>

little choice but to resolve the matter quickly in accordance with the instructions.²⁹⁸ As He Weifang wryly stated, such a practice suggests that the Chinese legal system is best described as “rule by instruction,” rather than “rule by law.”²⁹⁹ Judges complain that instructions are often opaque, stating only that the case should be “resolved” or “emphasized.” Judges are left to guess at the meaning of the instruction—and thus the appropriate resolution of the case—while assuming responsibility if this guess is later deemed incorrect.³⁰⁰ Where public reports result in instructions, media opinions that led to the instruction are likely to be clear. In the case of internal reports, however, judges comment that they may not be given a copy of the report and that they may need to seek out the author to obtain a better understanding of her concerns. In certain cases, judges feel compelled to show the court’s opinion to the journalist prior to formally issuing the decision, to ensure that the reporter (and thus the official who has issued the instruction) is satisfied with the decision before it is issued.³⁰¹

These problems notwithstanding, some judges report positive developments. Judges say that courts are gradually removing judges who lack legal training, and that the frequency with which higher courts or Party officials intervene in pending cases, or with which lower courts seek the opinions of superior courts before issuing decisions, is decreasing.³⁰² The greater relevance of law has also reduced the frequency with which Party-state leaders issue instructions that explicitly order courts to reach

www.jc.gov.cn/personal/ysxs/fnsx3/fnsx2038.htm (on file with the *Columbia Law Review*) [hereinafter He, Two Questions] (discussing influence of written instructions from Party officials on judges); Interview 2003-49 (stating that reporters need articles to result in written instruction regarding article’s subject matter from a Party-state leader in order to be effective). Commentators note that media reports often result in the local Party committee or a higher-ranking court taking notice of the case; courts then are required to report directly to the Party committee or to the higher court regarding handling of the case. Interview 2003-19; Interview 2003-78.

298. He, Two Questions, *supra* note 297; see also Interview 2003-3 (stating that media apply pressure by appealing to power, not by appealing to law); Interview 2003-45 (stating that media simply substitute their views of right and wrong for those of courts).

299. He Weifang, He Weifang: Cong Sun Zhigang Shijian Kan Zhongguo Fazhi Fazhan [He Weifang: Viewing the Development of Rule of Law in China from the Sun Zhigang Incident], Renmin Wang [People’s Daily Online], June 10, 2003, at <http://www.people.com.cn/GB/shehui/46/20030610/1013342.html> (on file with the *Columbia Law Review*) [hereinafter He, Viewing the Development].

300. Interview 2003-45; Interview 2003-78.

301. Interview 2003-45. The media often report on Party leaders issuing instructions in particular matters, see *infra* Part II.A.4 (discussing the *Sun Zhigang* case), generally as examples of successful resolution of cases. The media also occasionally carry reports critical of local officials who issue instructions for illegitimate reasons, suggesting that media scrutiny may help to reduce the illegitimate use of instructions. Although media scrutiny of the role of instructions may lead to calls for reduced use of instructions, the media may also have an interest in preserving the system and thus their own influence.

302. Interview 2003-32; Interview 2003-63; Interview 2003-156; see also Interview 2003-7; Interview 2003-20.

certain outcomes in individual cases; increasingly, such instructions order courts to “handle the case according to law.”³⁰³ At the same time, the increased relevance of law has facilitated media oversight. The growth of law has provided standards for journalists to point to in criticizing illegal behavior and has transformed legal issues into topics of mainstream public discussion.³⁰⁴ The existence of more written law is making it easier for journalists to highlight wrongdoing, in particular when law and popular morality align with each other.³⁰⁵

A. *Public Coverage of Cases*

Legal news sells in China, and the growth in litigation has coincided with expanded coverage of court cases. Although much critical reporting on the courts seeks to highlight problems that plague the courts, sensational and heavily moralistic coverage has led to charges that the media have become adjudicators, forcing courts to follow the media’s demands. Yet media coverage of individual cases is also an important route for highlighting broader social problems, and in some cases serves as a mechanism for pressing for changes to the legal system.

This section examines four cases that highlight the impact of media coverage on court decisionmaking. The limited availability of information regarding how courts handled each of these cases impedes drawing firm conclusions regarding the impact of the media. Nevertheless, public news reports, internet commentaries, and interviews suggest that, in each case, public media coverage resulted in pressure on Party-state leaders or institutions to intervene. The cases described below may not be representative of cases in China’s courts; most cases in China are not covered in the media. The cases I discuss have been selected because they emphasize the roles the media may play when they choose to intervene, and also the tension that has emerged between the media and the courts.³⁰⁶

1. *Executed by the Media? The Zhang Jinzhu Phenomenon.* — Du Shugui, the deputy police chief discussed at the beginning of this article, was not the first public security official to find that media coverage of an alleged misdeed led quickly to the death penalty. On August 24, 1997, Zhang Jinzhu, a local public security official in Zhengzhou, the capital of Henan Province, was driving when he hit a man and boy on a bicycle. Zhang, who had been drinking, did not stop after he ran them down. Instead, he continued driving for another 1500 meters, dragging the man and his bicycle under his car.

A local paper, the *Dahe News*, carried an initial report on the accident the next day, noting that the car involved was a luxury Crown Toyota

303. Interview 2003-164; see also Interview 2003-118.

304. Interview 2003-118.

305. *Id.*

306. I do not discuss the potential of foreign media to influence cases in China’s courts. Foreign media involvement is most likely to have an effect in cases that are off limits to the Chinese media, particularly in politically sensitive cases.

vehicle.³⁰⁷ The reference to the vehicle suggested that the driver might have been a government official, but the article provided few other details. Reporters at the paper became aware of Zhang's identity a day after the incident but refrained from publishing his name, apparently under pressure from the local police.³⁰⁸ The *Dahe News* continued to report on the case, noting both the facts of the case and the public outrage that the initial reports generated, reflected by the thousands of telephone calls the paper received. Two days after the accident, having read about the case in the *Dahe News*, the Henan Province Party Secretary telephoned and issued written instructions to Party officials in Zhengzhou demanding the case be solved.³⁰⁹ Local officials then arrested Zhang,³¹⁰ and the *Dahe News* proceeded to publish his name.³¹¹

Despite the arrest, little happened until October 13, when *Focus* carried a report on the case.³¹² The report vilified Zhang and heaped scorn on his claim that he had not been aware that he hit the two victims.³¹³ Other media joined in, and Zhang became a symbol of officials across China who take advantage of their positions. Under media pressure, the local procuratorate soon brought formal charges against him.³¹⁴ In a trial held in December 1997, the court convicted Zhang of causing a traffic disorder and intentionally causing harm, sentencing him to death.³¹⁵ In its decision, the court stated that Zhang's actions were "especially

307. See Chen Zhong, *Diyi Zhong Weixian—Zhang Jinzhu Exing Jiaotong Zhaoshi An Zhenxiang Diaocha* [The First Kind of Danger—A Truthful Investigation into the Terrible Zhang Jinzhu Traffic Accident] ch. 1, at <http://www.shuku.net:8080/novels/baogaowenxue/dyzwx/dyzwx01.html> (last visited Oct. 17, 2004) (on file with the *Columbia Law Review*) [hereinafter Chen, First Kind of Danger] (chapter entitled Zhengzhou Xue An [The Murder Case in Zhengzhou]).

308. *Id.* ch. 6, at <http://www.shuku.net:8080/novels/baogaowenxue/dyzwx/dyzwx06.html> (last visited Oct. 17, 2004) (on file with the *Columbia Law Review*) (chapter entitled Xuanhua Yu Saodong [Hubbub and Ferment]).

309. See Hu Zhenjie, Guanyu "Zhang Jinzhu Jiaotong Shigu Taomian An" De Leng Sikao [Cold Thoughts Regarding the "Zhang Jinzhu Traffic Accident Flight Case"], 1998 Zhongguo Lushi [Chinese Lawyer] No. 5, at 51.

310. Chen, First Kind of Danger, *supra* note 307, ch. 6. On the role of the Party secretary, see Tang Qing, Cong Zhang Jinzhu Beipan Sixing Tan Yulun Jiandu [Discussing Popular Opinion Supervision Based on Zhang Jinzhu Being Sentenced to Death], Xueshu Luntan [Academic Forum] 89 (Supp. 1999) [hereinafter Tang, Discussing Popular Opinion Supervision]; see also Hu, *supra* note 309 (describing the case).

311. Chen, First Kind of Danger, *supra* note 307, ch. 6.

312. See Liang Jianzeng, "Jiaodian Fangtan" Hongpishu (18) [The Red Book of "Focus" (18)], Jiangnan Dushi Bao [Jiangnan Metropolitan Daily], available at <http://jxnews.cc/n496/ca300981.htm> (last visited Jan. 25, 2004) (on file with the *Columbia Law Review*) [hereinafter Liang, The Red Book of "Focus"] (stating that coverage by *Focus* was turning point in case).

313. This point was crucial because Zhang's failure to stop after hitting the pair was the basis for the charge of intentionally causing harm, which carries a maximum sentence of death.

314. Chen, First Kind of Danger, *supra* note 307, ch. 6.

315. See Yi Jie, Shale Yige Zhang Jinzhu [One Zhang Jinzhu Has Been Killed], Zhongguo Qingnian Bao [China Youth Daily], May 12, 1998, available at <http://>

cruel” and had a negative effect on society. The court concluded that if Zhang were not executed, “it would not be enough to assuage popular rage.”³¹⁶

Zhang made further headlines when, upon being sentenced to death, he blamed his sentence on the media, in particular CCTV.³¹⁷ He was executed in February 1998, six months after the original incident.³¹⁸ Some in the media appeared to agree with Zhang’s assessment of the media’s role: An account of the actions of the *Dahe News* that ran a few months after Zhang’s execution was titled “Journalist Sends Zhang Jinzhu to the Guillotine.”³¹⁹

Although the *Dahe News* had apparently taken significant risks in exposing wrongdoing by a local official, its role in the case also greatly enhanced its position in the Zhengzhou newspaper market.³²⁰ Indeed, the

www.ciol.net/cyd/zqb/jpwk/qsp/9235%5EQ223.htm (on file with the *Columbia Law Review*).

316. Jiang Xiao, “Fankui” Zhong De Fazhi Guannian [Legal Concepts in “Feedback”], 2000 Xinwen Zhanxian [News Frontline] No. 7, available at <http://www.people.com.cn/GB/paper79/1367/214571.html> (on file with the *Columbia Law Review*) [hereinafter Jiang, Legal Concepts]. Use of the phrase “it would not be enough to assuage popular rage” in capital cases was common in China prior to the 1997 revision of the Criminal Law. The 1979 Criminal Law stated that the death penalty could be imposed only for people who “committed the most heinous crimes.” Zhonghua Renmin Gongheguo Xingfa [Criminal Law of the People’s Republic of China] art. 43 (1979). Many courts apparently looked to factors such as “popular rage” to determine whether conduct qualified as heinous. The 1997 Criminal Law—which became effective after Zhang hit the man and child—states that the death penalty should be used only where crimes are “extremely serious.” Zhonghua Renmin Gongheguo Xingfa [Criminal Law of the People’s Republic of China] art. 48 (1997). The removal of reference to whether a crime is “heinous” was apparently designed to remove consideration of popular opinion from determinations of whether the death penalty is applicable. The phrase continues to be common in media descriptions of criminal cases, however, and courts continue to use the phrase “guilty of the most heinous crimes” in sentencing defendants to death. See, e.g., Niu Wen & Wan Jinlong, Zuida Eji: Liu Da Duxiao Jinri Jiangbei Qiangjie [Guilty of the Most Heinous Crimes: Six Fierce Drug Traffickers Are to Be Executed Today], Sichuan Zaixian [Sichuan Online], June 26, 2003 (on file with the *Columbia Law Review*) (using phrase “guilty of the most heinous crimes” in report of decision by Sichuan High People’s Court).

317. Chi Yuzhou, Zhengzhou Jingmeng [Awaken from the Zhengzhou Dream], available at <http://dahecun.nease.net/wdix/jxyh/zjzm.htm> (last visited Oct. 7, 2004) (on file with the *Columbia Law Review*); see also Liang, The Red Book of “Focus,” supra note 312 (“These reporters want to push me until I am dead!” (quoting Zhang Jinzhu)).

318. Jiang Hua, Jizhe Ba Zhang Jinzhu Songshang Duantou Tai [Journalist Sends Zhang Jinzhu to the Guillotine] (on file with the *Columbia Law Review*).

319. Id.; see also Hu, supra note 309 (implying that Zhang would not have been sentenced to death without media involvement); Zhang, Phenomenon, supra note 3 (describing Zhang’s execution as “a bullet for justice”).

320. Feng Xiaohong & Wan Shitong, “Dahe” Dongliu: Ji Zouxiang Shichang De Dahe Bao [“The Great River” Soars: The Market Oriented “Great River Daily”], 1998 Xinwen Zhanxian [News Frontline] No. 9, available at <http://202.99.23.245/newsline/199809/980901011007.html> (on file with the *Columbia Law Review*) (noting that *Dahe News* became famous as result of case, and that its conduct was praised by provincial authorities); Zhengzhou Baoye Longhu Dou [The Fierce Competition in the Newspaper Industry in Zhengzhou], Zhongguo Jingying Bao [China Management Daily], Oct. 5, 2002, available at

fact that it was trying to improve its market share in Zhengzhou, where the *Zhengzhou Evening News* dominated the local news market, likely played a role in *Dahe News's* coverage of the case. The paper also handled the case carefully, initially reporting only the accident and then waiting until Party officials had ordered Zhang's arrest before publishing his name.

Reports of similar cases suggest that the Zhang Jinzhu "phenomenon" was not an isolated incident. In Hunan Province, for example, the trial of Jiang Yanping, an official at a state-owned construction enterprise, for economic crimes attracted more than one hundred reporters and was broadcast live by Changsha Television.³²¹ Prior to and during the trial, the news media referred to the defendant as a "criminal," and at least one paper ran a headline stating that "execution will be too light a punishment."³²² Jiang's lawyer issued a statement condemning media coverage, arguing that such reports had infringed on her human rights and consti-

<http://sory.myrice.com/baoshejingying/w/3.htm> (on file with the *Columbia Law Review*) (noting that the paper became more famous and dominated market after case).

321. Changsha Zhongyuan Shouci Xianshi Tingshen Xinwen Paishe Yifang Meiti Chaozuo [Changsha Intermediate People's Court Limits the Time for News Filming in Court in Order to Prevent the Media from Stirring Up News], Hong Wang [Rednet Online] (May 24, 2002), at <http://news.rednet.com.cn/Articles/2002/05/341568.htm> (on file with the *Columbia Law Review*); Wang Hui, Guanyu Yulun Jiandu Keguan Bu Keguan Zenme Kan? [How Should We Look at Objectivity and Subjectivity of Popular Opinion Supervision?], Fazhi Ribao Wangluo Ban [Legal Daily Online], Apr. 23, 2001, at http://www.legaldaily.com.cn/gb/content/2001-04/23/content_16774.htm (on file with the *Columbia Law Review*) [hereinafter Wang, Objectivity and Subjectivity].

322. Wang, Objectivity and Subjectivity, *supra* note 321. Another paper wrote in a headline that "we certainly must see the corrupt female official come to her end." Sun, Thoughts, *supra* note 7; see also Wei, Journalism and Communication Law, *supra* note 44, at 116 (noting that media coverage of case had stated that there was public rage at Jiang's crimes); Wu Xianghan, Xinhua, Meiti "Hongzha" Jiang Yanping Yinfa Falüjie Reshi Youlü [Media "Bombing" of Jiang Yanping Results in Concern Amongst Persons in the Legal World], Zhongguo Qiannian Bao [China Youth Daily] (Apr. 5, 2001), at <http://www.hn.xinhua.org/news/2001-4-5/0145174000.htm> (on file with the *Columbia Law Review*) [hereinafter Wu, Media Bombing] (detailing media's implied presumption of guilt in their coverage). Commentators stated that the media grossly inflated the sum involved in the case, claiming that Jiang had embezzled ten million yuan, when in fact she was only accused of stealing 700,000 yuan. See Sun, Thoughts, *supra* note 7; Wu, Media Bombing, *supra*. In addition, although the procuratorate did not charge Jiang with offering bribes, newspapers reported that she had "given" both money and sex. Wu, *supra*; see also Kang Duhua, Xinhua, "Xiwen Fa" Queshi Dailai De Ganga [Awkwardness Brought on by the "News Law"] (Apr. 5, 2001), at <http://www.hn.xinhua.org/news/2001-4-5/0145184000.htm> (on file with the *Columbia Law Review*) (contending that Jiang was tried by media, arguing that media influenced outcome of case, and stating that legal restrictions on the press are needed). For an example of coverage during the trial that stated that Jiang had committed a "terrible crime," had traded sex for power, and was "corrupt beyond measure," see Ou Dongyong, Renzheng Wuzheng Juzai, Roudan Jiang Yanping Zhongyu Renzui [Both Physical and Personal Evidence Exists, Vixen Jiang Yanping in the End Admits Her Crime], Nanfang Dushi Bao [Southern Metropolitan Daily], Mar. 24, 2001, available at <http://news.sohu.com/24/70/news144407024.shtml> (on file with the *Columbia Law Review*).

tuted illegal interference with the judicial process. The lawyer noted that China's revised Criminal Procedure Law, which came into effect in 1997, bars anyone from assigning guilt prior to a determination of guilt by the court, thus suggesting that media coverage of the case violated the law.³²³ Jiang subsequently received a death sentence.³²⁴ Likewise, in the case of Zhang Jun, who was accused of robbery and multiple counts of murder,³²⁵ newspaper reports prior to trial declared that the defendant should be "sliced into a thousand pieces," and wondered why a three-day trial was even necessary.³²⁶

2. *Black Whistles: Media Impact on Decisions to Prosecute.* — In early 2002, media reports stated that an anonymous soccer referee had mailed 40,000 yuan and a confession to a professional soccer club. The revelation came after nearly a year of speculation in the media regarding "black whistles"—referees who accept money to affect the outcome of matches. The charges were further amplified when a Shanghai television program

323. Wu, *Media Bombing*, supra note 322. The declaration was largely ignored by the media. *Id.*; see also Cai Dingjian, Meiti Shenpan Yinggai Jiangwen—Cong Jiang Yanping An Tanqi [Media Adjudication Should Lower Its Temperature—A Discussion Based on the Jiang Yanping Case], *Fazhi Ribao* [Legal Daily], Apr. 15, 2001, available at <http://www.jc.gov.cn/personal/ysxs/fnsx3/fnsx2763.htm> (on file with the *Columbia Law Review*) [hereinafter Cai, *Media Adjudication*] (criticizing media coverage of case, and arguing that media was mostly interested because case involved sex and violence); Huang, *New Model*, supra note 44 (stating that much of what media reported in case was later shown to have been unfair).

324. Zang Wenli, *Hunan Zuida Nü Tanguan Jiang Yanping An Ershen Weichi Sixing Yuanpan* [Appeals Court Upholds Original Sentence of Death in Hunan's Biggest Case of a Corrupt Female Official], *Renmin Wang* [People's Daily Online], Mar. 30, 2002, at <http://www.people.com.cn/GB/shizheng/19/20020330/698331.html> (on file with the *Columbia Law Review*).

325. Li Zejun Deng 4 Beigao Shangsu Changde Daan Jiang Jinru Ershen [The Appeal of Li Zejun and Four Other Defendants in the Big Changde Case Will Enter the Second Instance Court], *Hunan Baye Wang* [Hunan Newspaper Web] (Apr. 26, 2001), available at <http://www.hnby.com.cn/20010426/document/77948.htm> (on file with the *Columbia Law Review*); *Xinhua*, *Zhang Jun An Yishen Xuanpan*, 14 Ming Zuifan Bei Pan Sixing [Verdict Is Announced in the Zhang Jun Case in the First Instance Court, 14 Criminals Are Sentenced to Death] (Apr. 23, 2001), available at <http://www.hnby.com.cn/20010423/document/75819.htm> (on file with the *Columbia Law Review*).

326. Wei, *Journalism and Communication Law*, supra note 44, at 116; see also Jiache Zhuangsiren Hou Taoyi, *Fujian Jingguan Zheng Hui Zhaoshi 4 Nian Hou Zhongbei Pan Sixing* [Fleeing After Driving a Vehicle and Killing a Person, After Four Years Fujian Police Official Zheng Hui Is Finally Sentenced to Death for the Trouble He Caused], *Qingdao Xinwen Wang* [Qingdao News Web], Jan. 4, 2002, available at http://www.qingdaonews.com/content/2002-01/04/content_527122.htm (on file with the *Columbia Law Review*) (reporting on official in Fujian Province sentenced to death for killing two people in drunk driving accident; official was originally sentenced to fifteen years in prison, but case was retried twice, apparently after media coverage arguing that initial sentence was too lenient, and defendant was sentenced to death for crime of harming public order). See generally He, *Two Questions*, supra note 297 (noting that media often report charges filed by procuratorate as facts, and that in such cases it is difficult for courts not to be influenced).

declared that it had a list of the names of eight alleged black whistles.³²⁷ Referee Gong Jianping quickly became the center of media attention, with some suggesting that he had anonymously returned 40,000 yuan that he had received in bribes.³²⁸

Continuing media reports expressed frustration at inaction by legal authorities.³²⁹ Crucial to the controversy, and apparently to initial reluctance by the police and the procuratorate to become involved, was uncertainty over whether the referee's actions were illegal under China's Criminal Law, and, if so, with which crime Gong and the other black whistles should be charged. In particular, there was significant disagreement regarding whether referees could be tried as state workers, in which case they would face a maximum punishment of death if they were guilty of corruption.³³⁰ This in turn led to a general discussion of the appropriate steps to be taken when the law is unclear, especially in light of the provision in China's recently revised criminal law stating that criminal charges may be brought only where the law clearly defines acts as being criminal.³³¹ Commentators contended that this meant any ambiguity must be

327. Interview 2003-5; see also Cao Zhulin, Xinhua, Yulun Jiandu Yingfang Youzhibing [Popular Opinion Supervision Should Avoid Childish Illnesses] (Apr. 11, 2002), at <http://www.hn.xinhua.org/news/2002-4-11/2002411103915.htm> (on file with the *Columbia Law Review*); Cong Zibai Shu Dao Gongkai Shenpan—"Heishao" Gong Jianping An Yinian Dashi Ji [From the Confession to the Open Trial—A Record of a Year in the Case of "Black Whistle" Gong Jianping], Renmin Wang [People's Daily Online], Jan. 29, 2003, at <http://www.sportsonline.com.cn/GB/channel2/507/3076/20030129/135503.html> (on file with the *Columbia Law Review*).

328. See From the Confession to the Open Trial—A Record of a Year in the Case of "Black Whistle" Gong Jianping, *supra* note 327.

329. See, e.g., Peng Qing, 50 Wan Maixia Zuxie Fuzhuxi, Liu Yingfu Baolu Zhongguo Zuqiu Heidong [500,000 Bought the Deputy Chairman of the Soccer Association, Liu Yingfu Reveals the Black Hole of Chinese Soccer], Tiyu Zhoubao [Sports Weekly], July 26, 2001, at <http://sports.lycos.com.cn/arts/spgn/spgnqt/66617.html> (on file with the *Columbia Law Review*); see also Interview 2003-73 (arguing that media coverage forced procuratorate to bring charges).

330. Zhonghua Renmin Gongheguo Xingfa [Criminal Law of the People's Republic of China] arts. 382, 383 (1997). In contrast, under article 163 of the criminal law, the maximum punishment for commercial corruption is fifteen years imprisonment. *Id.* art. 163. See generally Hu Songqing, Falü Guan Buliao Zuxie Guanyuan Shouhui? Wang Bing Tan Heishao An Jinzhan [Can Law Not Address Soccer Association Officials Who Take Bribes? Wang Bing Discusses the Progress of the Black Whistle Case], Sichuan Zaixian [Sichuan Online], Apr. 3, 2002, at <http://sports.scol.com.cn/gf/football/20020403/20024394923.htm> (on file with the *Columbia Law Review*) (noting difference in punishment that would result depending on whether the referees were classified as state workers or as employees of a commercial enterprise); Peng, *supra* note 329 (describing evolution of controversy and discussing arguments against trying Gong as a state worker); Tao Lan et al., Zuqiu Heishao Sifa Nengfou Jieru [Can Judicial Organs Get Involved with Soccer's Black Whistles], Renmin Wang [People's Daily Online], Jan. 15, 2002, at <http://www.people.com.cn/GB/shehui/46/20020115/648384.html> (on file with the *Columbia Law Review*) (reporting on arguments over how to define alleged crime).

331. See Zhonghua Renmin Gongheguo Xingfa [Criminal Law of the People's Republic of China] art. 3.

resolved in favor of the defendant.³³² The media, while covering the legal debate, also demanded action. As one Xinhua News Agency reporter contended, “it makes no sense” to argue against involving judicial organs on the grounds that the law is unclear; such an explanation “is not something that society can accept.”³³³

In February, after extensive media coverage of the scandal, the Supreme People’s Procuratorate issued a nationwide notice to procuratorates saying cases could and should proceed against corrupt soccer referees.³³⁴ The Procuratorate’s notice, which was drafted in consultation with officials at the National People’s Congress,³³⁵ referenced the public controversy, stating that the matter was an important and sensitive issue with potentially harmful social effects. The notice instructed that the cases should be handled in accordance with a policy of sanctioning a small number of people in order to educate many, and explicitly stated that the cases could be brought under article 163 of the criminal law, which governs the acceptance of bribes by employees of companies or commercial enterprises.³³⁶ The Supreme People’s Procuratorate initially did not release the notice publicly. A few weeks after issuing the notice, however, a procuratorate official revealed its existence during the annual meeting of China’s National People’s Congress, apparently in re-

332. Although some scholars and officials contended that all that was needed was a reasonable interpretation by the Supreme People’s Court or Supreme People’s Procuratorate of what it means to be a state employee, others contended that the lack of clarity precluded resort to an interpretation. See Tao Lan et al., *supra* note 330 (quoting Deng Zibin, Beijing University criminal law expert, as being “against using criminal law to punish behaviors . . . not explicitly forbidden by any legal provision”).

333. *Id.*

334. Interview 2002-3 (arguing that media pressure led to the Supreme People’s Procuratorate Interpretation); Interview 2003-73 (stating that media pressure resulted in the interpretation). The Supreme People’s Procuratorate issued the notice on February 25, 2002. Xinhua, Gaojian Fa Tongzhi Yaoqiu Jiancha Jiguan Yifa Yansu Chuli “Hei Shao” [Supreme People’s Procuratorate Issues Notice Requiring the Serious Treatment of “Black Whistles” in Accordance with Law], Mar. 14, 2002, at http://news.xinhuanet.com/newscenter/2002-03/14/content_316014.htm (on file with the *Columbia Law Review*) [hereinafter SPP February 25 Notice]; see also Shexian Shangye Shouhui Zui, Gong Jianping Zhengshi Bei Jiancha Yuan Pibu [Suspected of Receiving Bribes in a Commercial Context, Gong Jianping Is Formally Detained by the Procuratorate] (Apr. 17, 2002), at http://sports.sohu.com/05/51/sports_news164335105.shtml (on file with the *Columbia Law Review*) [hereinafter Gong Jianping Is Formally Detained].

335. Interview 2003-13. Given the high profile of the case, it appears likely that the contents of the notice were also discussed with other central government and Party departments. Interview 2003-116.

336. Gong Jianping Is Formally Detained, *supra* note 334. The notice further stated that procuratorates at each level of government should treat the cases seriously and should address the problem from the perspective of maintaining social stability and ruling the country by law. *Id.* Critics of the notice argued that the procuratorate had caved in to media pressure and that the reliance on article 163 was unjustified because China’s soccer association is not a commercial enterprise. Others, however, argued that the notice was unnecessary because the criminal law already made clear that the conduct could be sanctioned. Interview 2003-73.

sponse both to a specific question from deputies to the congress and to general criticism from deputies that the Procuratorate was failing to take enough action to fight corruption.³³⁷

Subsequent to the Supreme People's Procuratorate's notice, police in Beijing detained Gong, a senior referee, leading to media speculation regarding the nature of the charges against him.³³⁸ Commentators noted that the Procuratorate's decision was not binding on China's courts and questioned whether the courts would reach a similar decision;³³⁹ although other observers doubted that China's courts would disagree in such a high-profile case.³⁴⁰ Once again, academics criticized the media for violating the criminal law's principle that courts should determine guilt and contended that the media had forced legal authorities to become involved in the case.³⁴¹ Yet most media were supportive of the Procuratorate's decision, with CCTV-5, the national sports network, airing a program that largely supported the Procuratorate.³⁴² At the same

337. Interview 2003-116; Interview 2003-133.

338. See, e.g., Heishao? Heishao! [Black Whistle? Black Whistle!], Qianlong Xinwen Wang [Qianlong News Web], Apr. 22, 2002, available at <http://www.qianlong.com/3050/2002-4-29/42@213943.htm> (on file with the *Columbia Law Review*); Gong Jianping Is Formally Detained, *supra* note 334. Reports claimed that police originally informed Gong's family that he was being charged with commercial bribery, but that the local procuratorate changed the classification of the suspected crime after doubts were raised regarding whether an individual could be charged pursuant to article 163. Black Whistle? Black Whistle!, *supra*; Zhao Liaoliao, Gong Jianping Shexian Zuiming Qiaoding, Nanyi "Zhongfa" Yingshe Falü Loudong [Gong Jianping's Suspected Crime Is Fixed, the Difficulty of "Heavily Punishing" Exposes a Hole in the Law], *Zhongguo Zuqiu Bao* [China Soccer News], Apr. 4, 2002, available at <http://dailynews.tyfo.com/news/sports/insoccer/block/html/2002040400259.html> (on file with the *Columbia Law Review*) [hereinafter Zhao, Gong Jianping's Suspected Crime Is Fixed].

339. See, e.g., Black Whistle? Black Whistle!, *supra* note 338; Tao Lan, Qi Wen Zhongguo Zuqiu De "Heishao" Neng Ding Shenme Zui [Seven Questions Regarding the Difficulty of Fixing the Crime for the "Black Whistles" of Chinese Soccer], *Beijing Qingnian Bao* [Beijing Youth Daily], Apr. 9, 2002, at <http://www.qianlong.com/3050/2002-4-9/98@194172.htm> (on file with the *Columbia Law Review*); Zhao, Gong Jianping's Suspected Crime Is Fixed, *supra* note 338.

340. See Tao, *supra* note 339 (noting that observers commented that if procuratorate brought charges against referee, odds were remote that court would find that no crime existed).

341. *Id.* Much of the speculation and discussion regarding how the referee would be charged took place after his detention but prior to the procuratorate bringing formal charges. See, e.g., *id.* (discussing what steps procuratorate should take); Gong Jianping 15 Tianhou Huizai Naer? Bei Jiancha Yuan Pibu Kenengxing Zuida [Where Will Gong Jianping Be in 15 Days? The Chances Are Greatest That He Will Have Been Detained by the Procuratorate], *Beijing Zuqiu Bao* [Beijing Soccer News], Apr. 8, 2002, available at <http://www.sportsonline.com.cn/GB/channel2/507/3076/3077/20020408/76043.html> (on file with the *Columbia Law Review*) (noting that police had detained Gong for twenty days and speculating as to likely next steps by procuratorate); Zhao, Gong Jianping's Suspected Crime Is Fixed, *supra* note 338 (speculating as to likely charges after police detained Gong).

342. Interview 2003-133.

time, some in the media questioned why no one had been charged with paying bribes to Gong.³⁴³

In December 2002, after months of media speculation first as to whether the police would turn the case over to the procuratorate, and then as to whether the procuratorate would act on the recommendation of the police, the procuratorate in Beijing's Xuanwu District filed suit against Gong, charging him with accepting bribes in a commercial enterprise, a violation of Criminal Law article 163.³⁴⁴ Significant secrecy surrounded the decision, however, with Gong's lawyer telling the media that he only learned of the charges after the procuratorate leaked the news to a reporter.³⁴⁵

In January 2003, the Xuanwu District Court in Beijing held a four-hour trial and, in an oral decision issued at the conclusion of the trial, found Gong guilty of accepting bribes in violation of articles 93, 383, 385, and 386 of the Criminal Law, sentencing him to ten years in prison.³⁴⁶ The court found Gong guilty of corruption by a state official—a more serious offense than that with which he had been charged by the procuratorate—and in so doing implicitly rejected the procuratorate's interpretation of the criminal law. The court made no mention of article

343. See, e.g., Gong Jianping Dingxing Lüshi Wei Jueding Shangsu, Chen Peide Song Weiping Buyu Biaotai [Gong Jianping's Crime Is Fixed, Lawyer Has Not Yet Decided Whether to Appeal, Chen Peide and Song Weiping Are Not to Be Found], Beijing Yule Xinbao [Beijing Star Daily], Jan. 30, 2002, available at <http://www.sportsonline.com.cn/GB/channel2/507/3076/3077/20030130/135576.html> (on file with the *Columbia Law Review*) (reporting journalist's attempts to contact alleged bribing party after Gong decision).

344. Li Ge, Wang Bing Sanjian Gong Jianping, Beijing Xuanwu Jiancha Yuan Jieshou Gong An [Wang Bing Sees Gong Jianping Three Times, Beijing Xuanwu Procuratorate Accepts Gong Case], Zhongguo Xinwen Wang [China News Web], Dec. 13, 2002, at <http://www.sportsonline.com.cn/GB/channel2/507/3076/3077/20021213/128455.html> (on file with the *Columbia Law Review*); Xinhua, "Heishao" Gong Jianping Bei Tiqi Gongsu, Shexian 9 Bi Shouhui Leiji 38 Wan Yuan [Charges Are Brought Against "Black Whistle" Gong Jianping, Suspected of 9 Bribes Totaling 380,000 Yuan] (Dec. 27, 2002), at http://news.xinhuanet.com/nsports/2002-12/26/content_671412.htm (on file with the *Columbia Law Review*).

345. Zhao Liaoliao, Gong Jianping An Xian Falü Zhenkong, Lüshi Wucong Dezhi Anjian Jincheng [Gong Jianping Case Sinks into Legal Emptiness, Lawyer Is Unable to Obtain Any Information on Progress], Zhongguo Zuqiu Bao [China Soccer News], Dec. 30, 2002, at <http://www.sportsonline.com.cn/GB/channel2/507/3076/20021230/130945.html> (on file with the *Columbia Law Review*). The court was reported to have established a special propaganda team to handle the case. Sifa Jiguan Quebao Wanwu Yishi, Liutao Renma "Shihou" Gong Jianping [Judicial Organs to Guarantee Nothing Goes Wrong, Establish Six Groups "Waiting For" Gong Jianping], Renmin Wang [People's Daily Online], Jan. 9, 2003, at <http://www.sportsonline.com.cn/GB/channel2/507/3076/20030109/132620.html> (on file with the *Columbia Law Review*).

346. Interview 2003-116; see also Gong Jianping's Crime Is Fixed, Lawyer Has Not Yet Decided Whether to Appeal, Chen Peide and Song Weiping Are Not to Be Found, *supra* note 343; Tian Yu, Xinhua, Xuanwu Renmin Fayuan Yishen Panchu Gong Jianping Youqi Tuxing Shinian [Xuanwu People's Court in First Instance Trial Sentences Gong Jianping to Ten Years] (Jan. 29, 2003) (on file with the *Columbia Law Review*).

163 in its decision, even though much of the debate at trial focused on the applicability of article 163, and articles 383, 385, and 386 were not even discussed.³⁴⁷

The court permitted only two journalists—one from CCTV and one from Xinhua—to attend the trial, apparently in an attempt to manage coverage of the case.³⁴⁸ Reports on the case from CCTV and Xinhua were identical, and neither discussed the details of the court argument or pointed out the discrepancy between the charges filed against Gong and the court's decision.³⁴⁹ Other media carried the Xinhua report verbatim; there was virtually no media commentary on the case once the court announced its decision, strongly suggesting that propaganda authorities had barred the media from reporting further on the case other than by reprinting the Xinhua report.³⁵⁰

Although recognizing that China's courts have the power to find a defendant guilty of an offense not alleged by the procuratorate, including one more serious than the charged offense, Gong's appeal focused on the lack of discussion or debate at trial regarding the more serious offense. This, he contended, violated his right to defend himself in court: How could he be sentenced to ten years in prison for an offense that was

347. Interview 2003-116. Courts in China are authorized to find a defendant guilty of a crime different from that charged by the procuratorate. See Zuigao Renmin Fayuan Guanyu Zhixing Zhonghua Renmin Gongheguo Xingshi Susong Fa Ruogan Wenti De Jieshi [Interpretation of the Supreme People's Court on Some Questions Concerning the Implementation of the Criminal Procedure Law of People's Republic of China] art. 176 (Sept. 8, 1998); Li Shuming, Gaojian Gaofa Sifa Jiehsi Dajia, "Heishao" Gong Jianping Panxing Taizhong [The Judicial Interpretations from the Supreme People's Court and Supreme People's Procuratorate Are in Conflict with Each Other, the "Black Whistle" Gong Jianping Was Sentenced Too Heavily], Waitan Huabao [Bund Pictorial], Feb. 19, 2003, available at <http://cul.Sina.com.cn/s/2003-02-19/28818.html> (on file with the *Columbia Law Review*) [hereinafter Li, Judicial Interpretations]. The broad discretion courts in China have to make such changes, and the absence of specified provisions regarding procedures courts should follow when finding defendants guilty of a more serious crime, has drawn criticism from some academic and media observers. See, e.g., Li, Judicial Interpretations, *supra* (stating in commentary on Gong case that court "should go through certain procedures" and provide both parties with time to prepare, and comparing procedures in China to those in Japan). The court may, however, have taken account of the controversy over Gong's status when it assigned him a relatively light sentence; given the size of the alleged bribes, 370,000 yuan, Gong could have been sentenced to death.

Although the Supreme People's Procuratorate consulted the Supreme People's Court before issuing the original interpretation, the court apparently later came to the view that it was preferable to find that Gong was a state official than to find that he had accepted bribes in a commercial enterprise. Interview 2003-133.

348. Zhongguo Diyi "Heishao" Jin Shang Fating, Fayuan Zheng Kaiting Gongkai Shenli [China's First "Black Whistle" Goes to Court Today, Court Will Hear the Case in Public], Renmin Wang [People's Daily Online], Jan. 29, 2003, at <http://www.sportsonline.com.cn/GB/channel2/507/3076/20030129/135533.html> (on file with the *Columbia Law Review*).

349. Interview 2003-116.

350. *Id.*

not alleged by the prosecution and that was not discussed at trial?³⁵¹ The appeal was rejected without a hearing. Once again, the media carried only very short reports stating that the Beijing Intermediate Court had affirmed the Xuanwu court's decision.

There is general consensus—from the media and from legal observers—that media pressure played a major role in forcing the procuratorate to act against Gong, and in Gong's eventual sentence.³⁵² Observers also argued that media attention resulted in more severe punishment than would have otherwise been meted.³⁵³ Yet in one crucial respect the media's demands for action went unheeded: Despite Gong's conviction, no one was charged with paying him bribes.³⁵⁴

For Gong, however, it appears that media influence resulted not only from coverage of his case, but also from the lack of coverage. The media were relatively free to report on the case while charges were pending, including speculating on possible punishments for Gong and describing his alleged crimes in detail. Although most of this coverage was critical of Gong, as the trial approached some media began to question the procuratorate's handling of the case, highlighting, for example, Gong's lack of access to his lawyer. At trial, however, and in particular following Gong's trial, media coverage was terminated. Hence the media were free to "supervise" Gong and other referees, but they were not permitted to supervise the court proceedings.³⁵⁵

351. *Id.*

352. See Interview 2003-4; Interview 2003-5; Interview 2003-7; Interview 2003-14; Interview 2003-15. The media may have succeeded in applying pressure in two distinct ways: pressuring the procuratorate to bring charges, and then demonstrating the weakness of the charges the procuratorate filed.

Numerous other reports suggest how the media have impacted decisions to bring charges, or have brought criminal activity to the attention of the relevant authorities. For example, media reports described how local newspaper articles in Wenzhou forced prosecutors to bring charges of abuse against the son of an elderly woman, despite an initial reluctance because some saw the case as simply a moral—not legal—dispute. Zhang, *Guarded*, *supra* note 137. One Hangzhou newspaper claimed that it had gone a step further, helping ten criminal suspects surrender to the authorities in the course of a single year. In one such case, the relationship between the media and legal authorities became further muddled when a reporter for the paper defended one of the suspects in court. The paper claimed that as a result of such advocacy, the defendant received a lighter sentence than he would otherwise have received. Lao Yue, *Yizhang Baozhi Yinian Duncu 10 Ming Fanzui Xianyiren Zishou, Yulun Jiandu Zhangxian Fazhi Weili* [One Paper Causes 10 Criminal Suspects to Surrender in One Year, Popular Opinion Supervision Makes Clear the Strength of Rule of Law], *Fazhi Pinglun Zhoukan* [Legal System Commentary Weekly], Nov. 28, 2001 (on file with the *Columbia Law Review*). A reporter for the paper cited the case as an example of the media and law enforcement agencies successfully working together. *Id.*

353. Interview 2003-59.

354. *Id.*

355. Gong's subsequent death in prison from cancer in July 2004 resulted in another wave of reports on his case, many of them sympathetic to him. For a collection of articles, see <http://sports.sina.com.cn/z/gjppqs/> (last visited Oct. 14, 2004) (website devoted to Gong Jianping); see also Wen Ye & Tang Lei, *Gong Jianping Meiyou Daizou De Yiwen*

This case reflects a characteristic of many cases in China that receive extensive media coverage. Extensive publicity, in particular when combined with widespread internet discussion, can transform a case that is not politically sensitive into one of concern to Party officials. The widespread publicity surrounding Gong's case transformed it from one in which the media enjoyed broad freedom to report into a case in which Party officials barred further media discussion. The change may have resulted partially from a desire to protect the procuratorate and court from criticism of their handling of the case, but the fact that the case received so much attention, and generated strong feelings in the media and online, also appears to have played a role in the decision to ban additional reporting.

3. *Who Has the Right to "Beat a Rat"?* — Not all claims of media influence come in criminal cases; numerous civil and administrative cases likewise have attracted widespread media attention. In 1995, the Sichuan Province Technical Supervision Bureau found that the Jiajiang County Color Printing Factory was producing counterfeit trademarks; among the alleged forgeries were copies of copyrighted packaging for mosquito-killing tablets produced by another Sichuan company, Caihong Electrics Group.³⁵⁶ The Technical Supervision Bureau fined the factory, seized its equipment and products, and closed the factory.³⁵⁷ Although there was little dispute that the factory had been producing counterfeit products, the factory brought suit against the bureau pursuant to China's Administrative Litigation Law claiming that the bureau lacked jurisdiction to impose administrative penalties for the production of fake trademarks.³⁵⁸ Although most academic observers argued that the law was clear and the supervision bureau lacked jurisdiction,³⁵⁹ others noted

[Doubts That Gong Jianping Did Not Take with Him], *Xinwen Zhoukan* [China Newsweek], July 22, 2004, available at <http://sports.sina.com.cn/c/p/2004-07-22/18451016823.shtml> (on file with the *Columbia Law Review*) (complaining that Gong was prosecuted while others involved in scandal were never punished).

356. *Benbao Qunian 8 Yue Zai Quanguo Shuaixian Baodao De "Jiajiang Dajia An" Zuori Youle Jieguo* [There Was an Outcome Yesterday in the "Jiajiang Fighting Fakes Case" That This Newspaper Was the First Paper Nationwide to Report on in August of Last Year], *Chengdu Shangbao* [Chengdu Commercial News], Apr. 9, 1996, available at <http://www.rainbow-china.com/cn-version/news/mtbd9.html> (on file with the *Columbia Law Review*).

357. Liang Zhiping, *Shuzhai Yu Shehui Zhijian* [Between the Study and Society] 275 (1998) [hereinafter Liang, *Study and Society*].

358. Wei, *Journalism and Communication Law*, *supra* note 44, at 115 (citing article from *Xinwen Jizhe* [Shanghai Journalism Review]); Ye Shan Xian Shui, *Fa De Gongzhengxing Bu Yin Meiguangdeng Er Fangshe Guangmang* [The Fairness of Law Does Not Radiate Light Because of the Magnesium Light], *Zhongguo Faguan Wang* [China Judge Web], Nov. 15, 1998, at <http://www.jc.gov.cn/personal/ysxs/spzj/spzj6.htm> (on file with the *Columbia Law Review*) [hereinafter Ye, *Fairness*] (web posting).

359. See, e.g., Xu Xun, *Fating Xinwen De Jiazhi Quxiang* [Trends in the Values of Courtroom News], 1998 *Xiandai Chuanbo* [Contemporary Broadcasting] No. 1, at 78 (stating that it was "clear beyond dispute" that the supervision bureau lacked jurisdiction).

that any fake product by definition fails to meet national quality standards.³⁶⁰

The local court accepted the case, rejecting arguments from the defendant agency that the court should not permit the case to be filed. Prior to a decision by the trial court, representatives to the Sichuan Provincial People's Congress, one of whom was also the chairman of the board of Caihong, intervened.³⁶¹ The representatives were furious that the court had accepted the case and demanded that the provincial people's congress investigate. The congress subsequently passed a resolution requesting information from the Sichuan Province High People's Court.³⁶² The people's congress deputies were reportedly outraged that "black and white" had been reversed in the case. How, they asked, could a counterfeiter use the law to fight against an agency fighting counterfeiters—how could the law enforcers become defendants?³⁶³

The media soon joined in, with commentators suggesting that it was beyond comprehension how a producer of fake goods could use the law to argue that it was being unfairly punished. *Focus* entered the fray, running a program on the case titled, "The Person Fighting Fakes Becomes the Defendant." At the same time, other media reports questioned how a person who was guilty of producing fake products could dare to bring a suit against the government and argued that the court should not have accepted the case.³⁶⁴ As one paper declared, producers of counterfeit goods were like rats crossing the street—they could be beaten by anybody.³⁶⁵

The Sichuan High People's Court requested guidance from the Supreme People's Court regarding how the case should be handled.³⁶⁶ The Supreme People's Court considered the matter and concluded that the supervision bureau had the authority to punish the factory.³⁶⁷ Yet the Supreme People's Court did not issue a formal interpretation or reply to the lower court; instead, it acted via a telephone call to the Sichuan High People's Court.³⁶⁸ The Sichuan High Court then issued a decision finding that the technical supervision bureau acted correctly, and the media declared victory.³⁶⁹ Although there was disagreement over the merits of the underlying legal issue, there was little dispute that the media, com-

360. See, e.g., Interview 2002-2 (stating that fake products by definition fail to meet national quality standards).

361. Liang, *Study and Society*, supra note 357, at 275.

362. *Id.*

363. Ye, *Fairness*, supra note 358.

364. *How to View Popular Opinion Supervision*, supra note 281.

365. Wei, *Journalism and Communication Law*, supra note 44, at 115 (citing article from *Xinwen Jizhe* [Shanghai Journalism Review]).

366. Interview 2002-13.

367. Interview 2002-1.

368. Interview 2002-2; Interview 2002-13.

369. Wei, *Journalism and Communication Law*, supra note 44, at 115 (citing another article from *Xinwen Jizhe* [Shanghai Journalism Review]).

bined with the intervention of the local people's congress, played a crucial role in the case. As one commentator noted, media pressure meant that it was impossible for the court "to issue a decision that followed the law."³⁷⁰

4. *Sun Zhigang: Popular Opinion and the Internet*. — On March 17, 2003, Sun Zhigang, a 27-year-old graphic designer, was detained by police in Guangzhou when he failed to produce a temporary residence permit. Three days later Sun was dead, apparently beaten to death by fellow inmates in a detention center for migrants. Sun's death would have gone unnoticed, and those responsible for his death unpunished, had it not been for his family's appeals to the media for help. On April 25, *Southern Metropolitan Daily*, a paper owned largely by the Guangdong Province Communist Party Committee, ran an extended report on the case.³⁷¹ The *Southern Metropolitan Daily* report was posted to internet portals on the same day, ensuring that news of the Sun case spread nationwide.³⁷² Web chatrooms soon filled with indignation.³⁷³

370. Liang, Study and Society, *supra* note 357, at 277 (arguing that the media was one-sided and decided the case based on morality, not law, turning the judge into the defendant and the media into the adjudicator); see also How to View Popular Opinion Supervision, *supra* note 281 (commenting that media supervision "interferes with the court's independence"). One academic familiar with the case stated that a majority of the judges in the Supreme People's Court Administrative Law Division were of the view that the defendant agency did not have the jurisdiction over the matter. Interview 2003-162.

371. Geng Fen et al., *Zhi Que Yi Zhang Zanzhuzheng Yi Daxue Biyesheng Jing Zao Duda Zhisu* [Only Missing a Temporary Residence Permit, College Graduate Is Beaten to Death], *Nanfang Dushi Bao* [Southern Metropolitan News], Apr. 25, 2003 (on file with the *Columbia Law Review*). The paper apparently faced significant obstacles in printing the report. Later accounts said that the paper had "overcome all sorts of difficulties" in order to publish the article. See *Guangdong Sun Zhigang An Dashi Ji* [Chronicle of Events in the Guangdong Case of Sun Zhigang], *Dongfang Wang* [Dongfang Online], June 9, 2003 (on file with the *Columbia Law Review*) [hereinafter *Chronicle of Events*]. For an overview of the entire case, see *id.* For a discussion of Sun's father's efforts to bring the case to light, see Dai Hongbing & Wan Qin, *Sun Zhigang Guhui Zuo Huijia, Qi Mu Huozhi Zhenxiang Tongbuyusheng* [Ashes of Sun Zhigang's Bones Return Home, Mother Deeply Grieves When Told the Truth], *Wuhan Wanbao* [Wuhan Evening News], June 13, 2003, available at <http://news.sina.com.cn/c/2003-06-13/14431167415.shtml> (on file with *Columbia Law Review*).

372. See *Chronicle of Events*, *supra* note 371; Zi Yue, *Shei Wei Yige Gongmin De Fei Zhengchang Siwang Fuze* [Who Will Take Responsibility for the Abnormal Death of a Citizen?], *Nanfang Dushi Bao* [Southern Metropolitan Daily], Apr. 25, 2003, available at <http://past.people.com.cn/GB/shehui/212/10857/10859/> (on file with the *Columbia Law Review*); see also Zhang Conxing, *Caifang Sun Zhigang An Chi Bimengeng, Zhongguo Jizhe Lianming Piping Fayuan* [Denied Access When Covering the Sun Zhigang Case, Chinese Journalists Jointly Criticize the Court], *Lianhe Zaobao* [United Morning News], June 11, 2003, available at <http://www.zaobao.com/special/china/others/pages/sunzhigang070603.html> (on file with the *Columbia Law Review*) [hereinafter *Zhang, Denied Access*] (noting that "waves of protest swamped the web" after article appeared).

373. *Renmin Wang De Yi Da Tese* [A Big Special Characteristic of People's Daily Online], *Sohu* [Sohu] (Sept. 28, 2003), at <http://news.sohu.com/12/44/news213794412.shtml> (on file with the *Columbia Law Review*); see, e.g., Jin Xiuwen, *Sun Zhigang An: Shi Shei Zai "Zhuanglongzuoya"?* [Sun Zhigang's Case: Who Is Pretending

The Guangdong Province Communist Party Propaganda Department banned reporting on the case following the *Southern Metropolitan Daily* article and an accompanying editorial. Reports continued to circulate, however, including numerous stories that were posted to the official Xinhua and *People's Daily* websites.³⁷⁴ Although there was a lull in reporting on the matter by national papers, in part due to the SARS outbreak that was dominating news in China, reports on the case continued to circulate. On May 13, Xinhua and other news outlets announced that, following the intervention of a number of provincial and national Party leaders, authorities had detained thirteen suspects.³⁷⁵

to Be Both Deaf and Dumb?], Renmin Wang [People's Daily Online], May 4, 2003, at <http://www.people.com.cn/GB/guandian/30/20030504/984197.html> (on file with the *Columbia Law Review*); Mo Ke, Sun Zhigang Zhi Si De "Houxu Baodao" Huibuhui Buliaoliaozhi? [Will the "Follow-Up Report" on the Death of Sun Zhigang End Without an Ending?], Renmin Wang [People's Daily Online], Apr. 30, 2003, at <http://past.people.com.cn/GB/shehui/212/10857/10859/> (on file with the *Columbia Law Review*); Pan Fengliang, Bu Jinjin Yao Huan Sizhe Yige Qingbai [Not Only Should the Innocence of the Dead Be Re-Established], Renmin Wang [People's Daily Online], Apr. 30, 2003, at <http://past.people.com.cn/GB/shehui/212/10857/10859> (on file with the *Columbia Law Review*); Shi Fei, Huan Baixing "Heise Shuzi" De Zhiqingquan [Return the Right to Know the Truth About the "Black Data" to the People], Renmin Wang [People's Daily Online], Apr. 30, 2003, at <http://past.people.com.cn/GB/shehui/212/10857/10859/> (on file with the *Columbia Law Review*).

374. See, e.g., Renmin Wang Wenzhang Huyu Chengli Duli Diaochazu Diaocha Sun Zhigang Feizhengchang Siwang [Article on People's Daily Online Asks for Independent Investigation into the Abnormal Death of Sun Zhigang], Boxun Wang [Boxun Online], May 10, 2003, available at <http://www.peacehall.com/news/gb/china/2003/05/200305101152.shtml> (on file with the *Columbia Law Review*); Daxuesheng Ming Sang Shourong Suo Houxu: Jiashu Zhuiwen Siyin Lian Zao Pengbi [Follow-Up Report on the Death of a College Graduate in a Detention Center: Relatives Run into Blocks in Seeking the Cause of the Death], Beijing Qingnian Bao [Beijing Youth Daily], Apr. 28, 2003 (on file with the *Columbia Law Review*); Renming Wang Qiche Pindao Zhubian Wang Yisan: Wangluo Meiti De Fazhan Li Bu Kai Chuangxin [People's Daily Online Auto Channel Editor Wang Yisan: The Development of Internet Media Cannot Be Separated from Creative Work] (Dec. 18, 2003), at <http://auto.sohu.com/2003/12/18/50/article217075061.shtml> (on file with the *Columbia Law Review*).

375. Chronicle of Events, *supra* note 371; Deng Xinjian, Sun Zhigang An 13 Ming Xianfan Bei Jipu [13 Suspects in the Sun Zhigang Case Are Detained], Fazhi Ribao [Legal Daily], May 14, 2003, available at http://www.legaldaily.com.cn/gb/misc/2003-05/14/content_27220.htm (on file with the *Columbia Law Review*); Shen Xuan, Jianjue Chaqing Sun Zhigang Bei Guiyi Shanghai Zhisi An [Make a Thorough Investigation into the Case of Intentional Harm to Sun Zhigang], Nanfang Ribao [Southern Daily], May 13, 2003 (on file with the *Columbia Law Review*). For accounts noting the intervention in the case by top Party leaders, see, e.g., Sun Zhigang An Zuori Kaishen, Yangshi Yaoqing Falü Zhuanjia Tanta Anjian [Court Session for Sun Zhigang Case Begun Yesterday, CCTV Invites Legal Experts to Discuss the Case], Nanfang Dushi Bao [Southern Metropolitan Daily], June 6, 2003, available at <http://www.southcn.com/news/gdnews/gdtodayimportant/200306060118.htm> (on file with the *Columbia Law Review*); Lin Wei, Sun Zhigang An 13 Ming Yifan Bei Daipu [13 Suspects in the Sun Zhigang Case Are Arrested], Zhongguo Qingnian Bao [China Youth Daily], May 14, 2003, available at http://www.cyol.com/qzb/gb/qzb/2003-05/14/content_662528.htm (on file with the *Columbia Law Review*); Shen, *supra*; Sun Zhengyi & Liu Tingting, 2003 Nian Zhongguo Xinwen Ye Huiwang [A Review

News of the arrests might have resulted in the case receding from the spotlight had it not been for the coordinated efforts of reporters at central media outlets and a number of legal experts and lawyers. One day after the arrests, on May 14, three young law professors filed a petition with the National People's Congress charging that the regulations governing the "custody and repatriation" system for detaining migrant workers and sending them back to their home provinces violated the constitution and requesting that the Congress investigate.³⁷⁶ At least three major central papers—*China Youth Daily*, *Workers Daily*, and *Legal Daily*—covered the petition in detail, and again news spread nationwide via the internet. The *China Youth Daily* article, which ran on a Thursday, was followed on Monday morning by an article in *Legal Daily*. Reporters and lawyers involved in the case viewed the timing as crucial, as they perceived a need for the story of the challenge to the regulations to be "stirred up" before propaganda authorities returned to work from the weekend.³⁷⁷ In addition, print journalists worked together with internet news providers to highlight the case,³⁷⁸ ensuring that newspaper reports were posted to the internet news portals almost immediately after publication. At the same time, participants in internet chatrooms continued to discuss the case.

Once the three national papers reported on the case, the press nationwide soon joined in, not only continuing to demand justice for Sun but also highlighting similar abuses at detention centers elsewhere.³⁷⁹ A

of China's News Industry in 2003], *Zhonghua Xinwen Bao* [China News Journal], Jan. 7, 2004 (on file with the *Columbia Law Review*); Tang Jianguang, Sun Zhigang Siwang Zhenxiang [The Truth of the Death of Sun Zhigang], *Xinwen Zhoukan* [China Newsweek], June 12, 2003 (on file with the *Columbia Law Review*) [hereinafter Tang, Truth of the Death]; see also A Big Special Characteristic of People's Daily Online, *supra* note 373 (stating that opinion expressed on the internet forced the authorities to act); Lin Chufang & Zhao Ling, Renmin Wang Wenzhang Zengjia Le Zhenpo Sun Zhigang An De Juexin [Article Published on People.com Increases the Resolve to Solve the Sun Zhigang Case], *Nanfang Zhoumo* [Southern Weekend], June 5, 2003, available at <http://www.people.com.cn/GB/news/8410/20030606/1010138.html> (on file with the *Columbia Law Review*) (same).

376. Yu Jiang et al., Guanyu Shencha "Chengshi Liulang Qitao Renyuan Shourong Qiansong Banfa" De Jianyishu [Proposal to Examine the "Measures for the Custody and Repatriation of Vagrants and Beggars in Cities"], Falü Sixiang Wang [Legal Thought Web], May 14, 2003, available at <http://www.law-thinker.com/show.asp?id=1959> (on file with the *Columbia Law Review*); see also Chronicle of Events, *supra* note 371; Cui Li et al., Toushi Sun Zhigang Zhi Si Yinfa "Gongmin Shangshu" Shijian [See Through the Incident of "Citizens Submit a Written Appeal" as a Result of Sun Zhigang's Death], *Wen Cui* [News Digest], May 26, 2003, available at http://news.hnol.net/gb/content/2003-05/26/content_1989937.htm (on file with the *Columbia Law Review*).

377. Interview 2003-118.

378. Interview 2003-149.

379. See Yin Guoan, Sun Zhigang An Weihe Yizhi Pa Jian Yangguang? [Why Is the Sun Zhigang Case Continually Afraid of Sunshine?] (June 8, 2003) (on file with the *Columbia Law Review*) (stating that "only the rage of the entire nation's media" caused central authorities to pay attention to Sun's death).

second petition filed by a different group of law professors the following week ensured that the matter stayed in the news.³⁸⁰ The focus on the custody and repatriation system for detaining migrant workers appeared to preempt any attempts by authorities to argue that Sun's killing was an isolated case.³⁸¹

Qiao Yanqin, a nurse at the medical clinic of the detention center where Sun Zhigang died, and seventeen others were charged in connection with Sun's death.³⁸² As the trial approached, reports circulated in the print media and on the internet challenging the prosecution's case, and a *People's Daily* article criticized the lack of information regarding crucial facts.³⁸³ Critical reports of the trial itself were rarer—the result of CPD instructions that ordered the media to use only Xinhua reports on the trial proceedings.³⁸⁴ In addition, although hundreds of journalists sought to cover the story, the three Guangzhou courts that heard the cases permitted reporters from only five media outlets to attend the trials. The courts also banned recording and notetaking by the few journalists who were allowed to observe.³⁸⁵

380. He Weifang et al., *Tiqing Quan Guo Renda Changweihui Jiu Sun Zhigang An Ji Shourong Qiansong Zhidu Shishi Zhuangkuang Qidong Tebie Diaocha Chengxu De Jianyishu* [Proposal Submitted to the Standing Committee of the National People's Congress on Initiating Procedures for a Special Investigation into the Sun Zhigang Case and the Implementation of the Custody and Repatriation System] (May 22, 2003) (on file with the *Columbia Law Review*); see also *Chronicle of Events*, supra note 371.

381. At least ten other detainees had been killed in the same detention center in the prior three months, with no compensation paid to the victims' families. Interview 2003-118; see also Tang, *Truth of the Death*, supra note 375 (reporting that fifty-eight people died in same detention center during four-month period in late 2002 and early 2003, and that three others died in detention center during four days surrounding Sun's death).

382. Si Erqi, *Sun Zhigang An Yizhufan Bei Pan Sixing Qita 11 Ming Anfan Fenbie Pan Xing* [Prime Culprit in Sun Zhigang Case Sentenced to Death, Other 11 Accomplices Are Separately Sentenced], Dayang Wang [Dayang Online], June 10, 2003, at <http://news.sina.com.cn/c/2003-06-10/02341153232.shtml> (on file with the *Columbia Law Review*). In addition, a total of twenty-three officials received administrative sanctions as a result of the case. *Sun Zhigang An Sheji De 23 Ming Guangzhou Zhengfu Guanyuan Shou Chufen* (Mingdan) [23 Guangzhou Government Officials Involved in the Sun Zhigang Case Receive Disciplinary Action (Name List)], Yangcheng Wanbao [Yangcheng Evening News], June 9, 2003, at <http://news.tom.com/Archive/1002/2003/6/8-53712.html> (on file with the *Columbia Law Review*).

383. Hao Hong, *Sun Zhigang An Hai Neng Zou Duo Yuan?* [How Much Further Can Sun Zhigang's Case Proceed?], Renmin Ribao—Huadong Xinwen [People's Daily—East China News], May 30, 2003 (on file with the *Columbia Law Review*). The article also noted that the case received special treatment from the authorities, and wondered whether it would result in significant changes to the way in which cases outside media scrutiny are handled. *Id.*

384. Interview 2003-133; Interview 2003-136; Interview 2003-138.

385. *Chronicle of Events*, supra note 371 (reporting that there was media criticism of courts for failing to allow journalists to attend trials); He, *Viewing the Development*, supra note 299 (criticizing courts for failing to allow journalists to attend trials); Ruhe Qu Shixian Fading De Quanli? [How to Implement Rights Fixed by Law?] (June 8, 2003) (on file with the *Columbia Law Review*) (same); Yin, supra note 379 (arguing that the restrictions on the media violated Chinese law, which provides that trials should generally

Most reports following the trial appeared to observe the ban, but the media were not fully compliant. Websites protested the ban on reporting, with reporters from five central media outlets signing an online open letter criticizing the restrictions.³⁸⁶ Some reports published after the trial openly questioned the evidence at trial, arguing that Sun's injuries could not have been inflicted solely by the defendants' fists, as the procuratorate charged, suggesting that Sun had already been beaten by the police before he arrived at the detention center.³⁸⁷ Likewise, online media wondered why a videotape of the beatings that was said to exist was never produced as evidence.³⁸⁸

Qiao, who allegedly instructed the other detainees to beat Sun, was sentenced to death in June, less than three months after the initial incident.³⁸⁹ Another defendant—who argued that he had been detained just hours before Sun and that he participated in the beating of Sun because he was told he would be killed if he did not do so—was sentenced to fifteen years in prison.³⁹⁰ Academics and journalists sought to question whether Qiao's punishment was excessive and the result of media influence, but they were stymied by the CPD ban.³⁹¹

Following the trial, China's State Council announced that it was rescinding the regulations governing custody and repatriation. Although

be public, and noting that the media were instructed only to use officially prepared accounts of the trials). The courts tried the eighteen defendants simultaneously, in three separate trials.

386. Chronicle of Events, *supra* note 371; see also Zhang, Denied Access, *supra* note 372 (discussing protest and noting that such direct criticism of national authorities is rare).

387. Interview 2003-133.

388. See, e.g., Sun Zhigang Shengming De Zuihou 72 Xiaoshi [Sun Zhigang's Last 72 Hours], Sanlian Shenghuo Zhoukan [Sanlian Life Week], June 16, 2003, available at <http://www.lifeweek.com.cn/2003-06-18/000015706.shtml> (on file with the *Columbia Law Review*); Tang, Truth of the Death, *supra* note 375. The implication of the reports was clearly that Sun had been beaten before arriving at the detention center, and others either participated in the beating or had ordered it. A number of the defendants argued that they were told they would be killed if they did not beat Sun. See Sun Zhigang's Last 72 Hours, *supra*; Tang, Truth of the Death, *supra* note 375.

389. Xinhua, Twelve People Sentenced for Beating Death of a Young Man (June 10, 2003), at <http://www.china.org.cn/english/government/66584.htm> (on file with the *Columbia Law Review*). A second defendant, who was accused of leading the beating, was sentenced to a suspended death sentence, while sixteen other defendants received sentences ranging from three years to life in prison for their roles in the beating or for dereliction of duty. *Id.*

390. Interview 2003-162.

391. Interview 2003-104. Prior to the court decision, commentators had suggested that a death sentence would be excessive. See, e.g., Wuyu Rensheng, Yulun Daiti Falü? Sun Zhigang An De Yixie Mangdian! [Did Popular Opinion Take the Place of Law? A Few Blind Spots Regarding the Sun Zhigang Case!] (on file with the *Columbia Law Review*) (stating, in Netease chatroom posting, that if media pressure resulted in death sentence, it will be sign that "our people's courts have once again put on another clumsy show"); He, Viewing the Development, *supra* note 299 (warning of risk of media pressure leading to excessive punishment); see also Pomfret, *supra* note 182 (reporting on ban on coverage of Sun Zhigang case).

government statements noted the change was being made to reflect developments in China since the regulations were originally promulgated, the link to the Sun case was clear. Under new regulations, which went into effect on August 1, 2003, the custody and repatriation system was replaced by the Measures on the Administration of Aid to Indigent Vagrants and Beggars. The new rules were designed to shift local authorities' focus from punitive detention of migrant workers to providing assistance to those in need of support.³⁹² Pressure for the change resulted not merely from media coverage, but also from the coordinated effort by lawyers, academics, and journalists to expose problems in the system, with the explicit goal of forcing changes to the regulations. The role of the internet was also important: One person involved in the case noted that the case would never have resulted in such a rapid official response had not it been for the popular rage that was expressed on the internet, in particular in internet chatrooms.³⁹³

Although certain crucial officials in the central government were likely predisposed toward altering the custody and repatriation system, media pressure—in particular internet news and chatroom discussions—propelled the issue to the forefront of public and Party-state attention.³⁹⁴ Many academic observers agree that media pressure played an important role in causing changes to the regulations, noting that it was the first case in which the media could clearly be said to have forced a change to China's legal system.³⁹⁵ The success of the media's reports also reflected the ability of lawyers, academics, and the media to frame their concerns as consistent with leadership goals—in particular those of newly appointed President Hu Jintao—of protecting migrant workers, strengthening the legal system, and reducing official abuses.³⁹⁶

392. People's Republic of China State Council, Chengshi Shenghuo Wuzhuo De Liulang Qitao Renyuan Jiuzhu Guanli Banfa [Rules for the Help and Management of Vagrants and Beggars in Urban Areas] art. 3 (Aug. 1, 2003); see Xinhua, Wen Jiabao Qian Guowuyuan Ling Chengshi Liulang Qitao Renyuan Jiuzhu Banfa Gongbu [Wen Jiabao Signs State Council Decree Announcing Measures to Assist Urban Vagrants] (June 22, 2003) (on file with the *Columbia Law Review*).

393. Interview 2003-148; see also Wang, Internet Media, *supra* note 276 (stating that without coordinated efforts of online media, Sun's death would have gone largely unnoticed); Wang Yi, 2003 Nian Wangluo Yulun De Jiazhi [The Value of Internet Public Opinion in 2003], NST Xueshu Luntan [NST Academic Forum], Jan. 22, 2004, at <http://phorum.nst.pku.edu.cn/showthread.php?threadid=652> (on file with the *Columbia Law Review*) (discussing coordinated efforts of print and online media).

394. See Interview 2003-162 (stating that media benefited from existing desire within government to address problems in custody and repatriation system); Interview 2003-168 (stating that change would not have occurred had it not been supported by central Party-state officials).

395. See, e.g., Interview 2003-133.

396. See Keith Hand, Narrative of the Sun Zhigang Incident 3-4 (n.d.) (unpublished manuscript, on file with the *Columbia Law Review*) (noting how arguments were framed as consistent with goals of the leadership).

Yet the media's ability to push for policy changes in the Sun Zhigang case may also have been the product of an unusual and isolated period. The SARS outbreak facilitated the media's ability to influence the case. The papers involved were able to take advantage of the fact that, at the height of the outbreak, the CPD stopped issuing regular instructions on topics other than SARS; the department was entirely focused on managing reporting of the SARS crisis.³⁹⁷ In addition, for much of the period the CPD was operating with a limited staff, a factor that made it more difficult to monitor the media.

Central authority discomfort with the role of the media—and public opinion—in the Sun Zhigang case was demonstrated by the imposition of a three-month ban on critical reporting on the courts, police, and procuratorates. The CPD imposed the ban in early July 2003, shortly after the Sun case. The media's actions in the Sun case were not the sole factor; the media's criticism of the police in May and June also played a role.³⁹⁸ Nevertheless, the widespread media attention on the Sun case appears to have been an important determinant. The existence of subsequent reports suggested that either the CPD chose to overlook transgressions, or it faced difficulties enforcing the ban. Discussion on the Sun case continued, although criticism of the handling of the case was muted. But critical reports about the legal system and police persisted.³⁹⁹

397. Interview 2003-137; see also Interview 2003-151 (stating that reporting on Sun Zhigang case was the product of a "special time" resulting from SARS outbreak); Interview 2003-160 (commenting that critical reports in media increased during and just after SARS outbreak).

398. Interview 2003-160.

399. In July 2003, for example, *Southern Weekend* ran a story asking the question, "How Many More Times Will They Be Sentenced to Death?," highlighting the plight of defendants who had been tried and sentenced to death four times by the same court. Following each of the first three trials, the Hebei Province High People's Court reversed the convictions. In describing the case, the article implicitly criticized the fact that legal procedures were not followed in the case, as well as criminal procedures in general that result in cases being sent back for retrial, instead of being dismissed, when a higher court finds insufficient evidence to support a conviction. The paper apparently skirted the temporary ban on criticism of the courts by praising the Hebei Province High People's Court, which had sent the case back for retrial three times and which had held a fair and open hearing on the fourth appeal. See Guo Guosong, Sancu Sixing Sancu Daoxia Liuren [Three Death Sentences, Three Times Saved from Below the Knife], *Nanfeng Zhoumo* [Southern Weekend], Aug. 10, 2000, available at <http://www.chinamonitor.org/article/case/33.htm> (on file with the *Columbia Law Review*). Similarly, in July and August 2003, a coordinated effort by lawyers, academics, and the media—many of whom had worked together on the Sun Zhigang case—publicized the case of Sun Dawu, a rural entrepreneur accused of violating the criminal law by borrowing funds from his company's employees after local banks refused to grant the company loans. Sun was released from detention following the media outcry. See, e.g., He Xiang, Sun Dawu Beibu Zhi Hou [After the Arrest of Sun Dawu], *Xinwen Zhoukan* [China Newsweek], July 21, 2003, available at <http://www.chinanewsweek.com.cn/2003-07-25/1/1889.html> (on file with the *Columbia Law Review*) (noting difficulties that Sun Dawu's lawyer encountered attempting to see his client).

Although the biggest immediate effect of the Sun case was the change to the regulations, the case may also represent a watershed in the development of the internet's influence on both the courts and governance. The case suggests the possible emergence of the internet as a force distinct from traditional media. Both the speed with which news spread and the influence of online discussion of the case went beyond what would have been possible in traditional media alone.

Subsequent cases have replicated the role of online media and internet chatrooms in the Sun Zhigang case. In August 2003, the *Bund Pictorial*, a new Shanghai paper, highlighted the decision of the Liaoning Province High People's Court to change the sentence of a well-connected local gangster, Liu Yong, from death to life imprisonment. The report referred to the decision as a "dangerous precedent" and hinted that the reduction in his sentence stemmed from Liu's connections to local officials.⁴⁰⁰ The article led to a wave of reporting on the case, in both the print media and online, including widespread speculation regarding why the sentence was reduced, as well as media attacks on legal experts who had accepted payments in exchange for legal opinions on Liu's behalf.⁴⁰¹ Once again China's internet chatrooms filled with expressions of outrage regarding the court's handling of the case, and many demanded Liu's execution.⁴⁰² *China Youth Daily* declared that the provincial high court

400. Li Shuming, Dui Shenyang Heibang Toumu Liu Yong Gaipan Sihuan De Zhiyi [Questioning the Change from Death Sentence to Suspended Death Sentence for Liu Yong, Boss of Shenyang's Underground Society], Waitan Huabao [Bund Pictorial], Dec. 18, 2003, available at <http://gb.chinabroadcast.cn/41/2003/12/18/116@25100.htm> (on file with the *Columbia Law Review*); see also Meiti Zhiyi "Liu Yong Gaipan" An Shi Yulun Guannian De Yida Tupo [Media's Questioning of Liu Yong's Amended Sentence Is a Breakthrough in the Concept of Public Opinion], Renmin Wang [People's Daily Online], Aug. 29, 2003, available at <http://news.tom.com/1002/2003829-406657.html> (on file with the *Columbia Law Review*) (discussing the initial report). Liu's sentence was technically changed to death with a two-year reprieve. In practice, such a sentence is almost always equivalent to life in prison.

401. See Lin Chufang, Shenyang Liuyong An Gaipan Diaocha, Lijie Gongzhong De Zhiyi [Investigation on the Amendment of the Judgment in Liu Yong's Case in Shenyang, He Understands the Questioning of the Public], Nanfang Zhoumo [Southern Weekend], Aug. 28, 2003, available at <http://cn.news.yahoo.com/030828/55/lrtk6.html> (on file with the *Columbia Law Review*); Shenyang Hei Shehui Laoda Liu Yong Mei Si [Liu Yong, the Godfather of Shenyang's Black Society, Did Not Die], at <http://news.sohu.com/76/77/news212297776.shtml> (last visited Aug. 25, 2003) (on file with the *Columbia Law Review*); Media's Questioning of Liu Yong's Amended Sentence Is a Breakthrough in the Concept of Public Opinion, *supra* note 400; Jiekai "Liu Yong" An Zhenxiang [Uncover the Truth of Liu Yong's Case], Qianlong Wang [Qianglong Online], Dec. 18, 2003, available at http://www.qianlong.com/2955/2003/12/18/183@1771342_1.htm (on file with the *Columbia Law Review*); Liu Yong An Gaipan Lingyou Bieqing? [Were There Special Reasons for the Amended Sentence in Liu Yong's Case?], Xinwen Zhoukan [China Newsweek], Sept. 4, 2003, available at <http://news.tom.com/1002/200394-410775.html> (on file with the *Columbia Law Review*).

402. See, e.g., Liu Yong, the Godfather of Shenyang's Black Society, Did Not Die, *supra* note 401.

should be required to explain the reasons for its decision.⁴⁰³ The media coverage led to written instructions from Party leaders, apparently directed to the Supreme People's Court.⁴⁰⁴ In December 2003 the Supreme People's Court intervened, deciding to retry the case itself pursuant to provisions in China's criminal procedure law that permit a retrial when the Supreme People's Court finds an error in a lower court decision.⁴⁰⁵ The court reinstated the death sentence, and Liu was executed within hours of the Court's announcement.

Similarly, extensive coverage of the BMW case⁴⁰⁶ led to expressions of outrage in the print media and on the internet.⁴⁰⁷ Reports stated that internet postings regarding the case had reached record numbers. *Sina*, for example, reported that it had received more than 200,000 web postings on the case, exceeding even the number received regarding the SARS crisis.⁴⁰⁸ In January 2004, Party officials announced that the case was being investigated,⁴⁰⁹ banned further reporting on the case, and ordered websites to remove coverage and discussions of the case.⁴¹⁰ In contrast to the Liu Yong and Sun Zhigang cases, however, an investigation by the Heilongjiang Province Communist Party Political-Legal Committee into the BMW case upheld the original verdict.⁴¹¹ In rejecting widespread public demands for the driver, Su Xiuwen, to be resentenced, the

403. Media's Questioning of Liu Yong's Amended Sentence Is a Breakthrough in the Concept of Public Opinion, *supra* note 400; see also Wang, Internet Media, *supra* note 276 (discussing impact of online media and web chatrooms in case).

404. Chen Jieren, Shenyang Heishehui Liuyong An Mingri Chongshen [The Case of Liu Yong, from Shenyang's Underground World, Is to Be Retried Tomorrow], *Jianghuai Chenbao* [Jianghuai Morning News], Dec. 17, 2003, available at <http://news.Sina.com.cn/c/2003-12-17/01571357363s.shtml> (on file with the *Columbia Law Review*); Yu Zhou, Chongshen Liu Yong Yu Lingdao Pishi [The Retrial of Liu Yong and the Leaders' Written Instructions], *Hong Wang* [Rednet.com], Dec. 21, 2003, available at <http://news.rednet.com.cn/Articles/2003/12/502434.htm> (on file with the *Columbia Law Review*).

405. *Zhongguo Renmin Gongheguo Xingshi Susong Fa* [Criminal Procedure Law of the People's Republic of China] art. 205 (1996).

406. See *supra* Part I.F.2.

407. See, e.g., Chen Pokong: Quan Zhongguo Dou Rang Baoma Gei Zhuang Le [Chen Pokong: All of China Was Hit by a BMW], Boxun Wang [Boxun Online], Jan. 17, 2004, available at <http://www.peacehall.com/news/gb/yuanqing/2004/01/200401170833.shtml> (on file with the *Columbia Law Review*) (noting that case would not have come to light without the internet).

408. Hit Rate on the Web for the "BMW" Case Ranks First, Exceeds SARS, *supra* note 277.

409. Harbin: Reinvestigation into BMW Traffic Offense, *People's Daily Online*, Jan. 14, 2004, at http://www.chinadaily.com.cn/en/doc/2004-01/14/content_298769.htm (on file with the *Columbia Law Review*).

410. Mark Magnier, China Clamps Down on Web News Discussion, *L.A. Times*, Feb. 26, 2004, at A4.

411. See "BMW Case" Verdict Upheld, *China Daily*, Mar. 29, 2004, at <http://www1.china.org.cn/english/China/91593.htm> (on file with the *Columbia Law Review*); see also Baoma Zhuangren An Fucha Jieshu [The Review of the BMW Case Is Concluded], *Xiaoxiang Chengbao* [Xiaoxiang Morning], Mar. 29, 2004, at <http://xxcb.rednet.com.cn/>

panel appeared to send a message that popular opinion would not always be able to dictate the outcome of criminal cases.

5. *Stirring Justice.* — Media declarations of their influence may be self-serving, but judges and legal academics support media claims that coverage of court cases has significant effect, in particular in criminal cases. Most cases go unreported in the media,⁴¹² so the total number of cases in which the media exerts some impact is probably small compared to the total number of cases in China. Nevertheless, the impact of the media does appear to extend beyond a handful of high-profile cases.

Judges and academic observers confirm that public media coverage of criminal cases may produce heavier sentences—including, in some instances, death—than otherwise would be assigned.⁴¹³ A Beijing district court judge attending a conference at Beijing University commented that there are many cases in which media involvement influences outcomes and that media coverage often has a negative effect on the fairness of proceedings.⁴¹⁴ Judges note that they are more likely to pay close attention to a case,⁴¹⁵ and in some cases are more likely to assign a heavy sentence,⁴¹⁶ if a case is the subject of media coverage. Judges also comment that, where there has been public reporting of a case, they must take account of public opinion.⁴¹⁷

Defense lawyers likewise say media coverage of criminal cases generally harms defendants. According to defense lawyers, press coverage

Articles/04/03/29/445609.htm (on file with the *Columbia Law Review*) (noting that the investigation was carried out by the provincial political-legal committee).

412. Interview 2002-13.

413. See Interview 2002-6; Interview 2003-64; Interview 2003-70. The effect is likely to be particularly significant where media coverage results in a written instruction from Party-state superiors. Interview 2003-70. The sentence assigned is vitally important in China, where virtually all cases brought to trial result in convictions. The impact of the media in this regard may, to a limited degree, be akin to that of lawyers. Although provision of lawyers in the criminal process may not result in an increased number of acquittals, there is limited evidence that lawyer participation results in lighter sentences. See Liebman, *supra* note 145, at 253 (discussing effect of lawyers in criminal cases).

414. Zan Aizong, *Xinwen Jiandu Yu Sifa Gongzheng* [News Supervision and Judicial Fairness], *Guangming Ribao Wang* [Guangming Daily Online], Apr. 10, 2000 (on file with the *Columbia Law Review*).

415. See Interview 2003-36; Interview 2003-43; Interview 2003-45; Interview 2003-78; Interview 2003-157.

416. One judge, who explained that judges are more likely to give heavier sentences, also emphasized that judges would still follow the law in doing so. Interview 2002-12; see also Interview 2002-13 (stating that, although media generally have little influence on civil cases, public reporting can result in court paying more attention to a case). Additionally, judges confirm that the administrative rank of the media carrying the report makes a difference: One judge on a provincial court said that judges were much more likely to pay attention to a report in a central government paper than in a provincial paper, and that a local paper report would have little influence. Interview 2002-12. Judges comment that they believe the media are most able to influence courts at the local level, and are less able to influence higher-ranking courts. See, e.g., Interview 2002-12.

417. Interview 2002-12.

often leads to heavier sentences, as courts attempt to “manage the emotions of society.”⁴¹⁸ Defense lawyers accordingly almost always attempt to avoid media coverage of pending cases.⁴¹⁹ Similar trends are apparent in the procuratorate, where media coverage may affect whether or not to bring a case.⁴²⁰

Media impact in civil and administrative cases is less pronounced but appears significant nonetheless. Judges draw a distinction between media influence in criminal and civil cases, noting the influence is likely to be more significant in criminal cases, where public opinion may affect how the court views the defendant’s “dangerousness”⁴²¹ and where emotional media reports have greater potential to produce public outrage. Party leaders may also be more likely to intervene and pressure judges in criminal cases as a result of a perception that such cases are more likely to affect the Party’s concern for social stability. Still, numerous reports describe how the media affected outcomes in civil and administrative cases.⁴²² Such reports often involve cases in which individual media outlets have claimed success in winning justice for aggrieved individuals, frequently after allegedly unfair decisions in courts of first instance. For example, Sui Xiang received compensation for the loss of her two hands after reports on *Focus* and in *Legal Daily*, and her award of 1.67 million yuan was exactly the same amount that *Focus* had reported as her loss.⁴²³

Difficulties in obtaining court decisions, sparse reasoning in available opinions, and frequent lack of media follow up to original claims of injustice make it difficult to measure the correlation between media reports and actual outcomes.⁴²⁴ This is particularly true in cases in which initial

418. Interview 2003-72; see also Interview 2003-25.

419. Interview 2003-25. In rare cases, however, media coverage may help to reduce sentences, in particular where media coverage portrays a particularly sympathetic view of the defendant. See, e.g., Interview 2003-72 (discussing case in which mother killed her violent son, and contending that media coverage clearly led court to order suspended death sentence, rather than death, for mother); Interview 2003-74 (describing case in which son who murdered his parents was not given death sentence after sympathetic media coverage).

420. Interview 2003-68; Interview 2003-75. Defendants with media connections may, however, be able to use such ties to their advantage. For example, defendants who bring reporters to court with them have succeeded in pressuring the procuratorate to compromise regarding the charges against the defendant. Interview 2003-101.

421. Interview 2002-12; Interview 2002-41.

422. See, e.g., Zhong Yuanlin, Sanji Jianchayuan Jianzhi Kangsu, Cuxin Yisheng Zhong Pan You Zui [Three Levels of the Procuratorate Persist in Filing an Objection to Suit; Hard-Hearted Doctor in the End is Found Guilty of a Crime], 1999 Xin Yixue [New Medical Studies] No. 9, at 541 (discussing impact of *Focus* in medical malpractice case).

423. Jiang, *Legal Concepts*, supra note 316. The exact match between Sui Xiang’s award and the *Focus* report may also have been due to *Focus* learning of the award in advance of the court’s announcement. Nevertheless, the attention the case received from both *Legal Daily* and *Focus* appears to have resulted in the rapid resolution of the case.

424. The media may be more likely to carry follow-up reports in cases in which coverage has had an effect, and are less likely to pursue a matter where they have run into significant opposition or have been told to stop reporting on the issue. Interview 2002-1.

media coverage results in a ban on further discussion of the case. Additionally, it may be difficult to distinguish cause and effect. In the black whistle case, for example, initial media coverage of the scandal apparently stemmed largely from the media itself, but as the case progressed, the one-sided nature of the coverage may also have been the result of official management of the media. Attempts by at least some in the media to argue on behalf of the referee, Gong Jianping, were stymied by editors who were concerned that doing so would offend the procuratorate and Xinhua.

Nonetheless, anecdotal evidence strongly suggests that the phenomenon of media impact on judges and courts extends to a wide range of cases.⁴²⁵ This impression is supported by lawyers who actively seek media assistance. Lawyers state that in civil cases media presence plays a positive role in forcing judges to comply with the law and legal procedures, or in compelling courts to accept cases that they would otherwise avoid.⁴²⁶ Lawyers also comment that maintaining good relations with the media is important, particularly when representing weak or disadvantaged clients who are in disputes with locally influential persons or individuals,⁴²⁷ and journalists and lawyers both state that lawyers often seek out journalists to assist with cases.⁴²⁸

The media's effect also depends on the type of coverage it uses. Although there is extensive coverage of legal cases in local papers, most reports are factual; local judges say that local media are generally more interested in obtaining news than in affecting outcomes.⁴²⁹ Local media coverage in "routine" cases often has little effect.⁴³⁰ Local journalists state that they generally avoid editorializing and instead report only on the arguments in, and facts of, pending cases.⁴³¹ Nevertheless, some local judges complain that local journalists clearly try to influence the out-

425. See Zhao, *Alienation of Media Supervision*, *supra* note 161 (arguing that media reports, in particular those using emotional language, are hard for courts to ignore, especially because of their influence on officials, and that courts sometimes have no option but to listen to media).

426. See, e.g., Interview 2003-72 (discussing case in which media scrutiny resulted in courts strictly following legal procedures).

427. See, e.g., Interview 2003-25 (describing cooperation with media to help disadvantaged parties to litigation); Interview 2003-50 (discussing use of media to highlight claims prior to filing suit); see also Zhang Dong & Guo Weiqun, Tingshang Hao Fengcai, Gongfu Zai Tingwai—Tan Jingji Anjian De Caozuo [Good Demeanor in Court, Hard Work Is Outside the Courtroom—Discussing the Stirring Up of Economic Cases], 2000 *Zhongguo Lüshi* [Chinese Lawyer] No. 11, at 58 (describing how news media can be effective way to "solve problems through public opinion supervision").

428. Interview 2003-24; Interview 2003-62; Interview 2003-72. In addition, lawyers assist the media by providing informal legal advice to journalists regarding potential stories, in part in order to maintain good relationships with the media. Interview 2003-72.

429. Interview 2003-20. Local journalists say that the need to maintain good working relationships with the courts prevents them from engaging in critical reports. See *infra* Part II.E (discussing court management of media coverage).

430. Interview 2003-20.

431. Interview 2003-23.

come of pending cases, in particular when a news organization itself is a party.⁴³²

Media influence has drawn heavy criticism, in particular from legal academics and judges. Critics comment that in many cases the media *chao*, or “stir up,” public opinion, creating a sensation in order to increase their effect and boost sales. Commentators have condemned “media adjudication,”⁴³³ accusing the media of being one sided in many cases on which they report.⁴³⁴ Critics state that although media coverage may resolve matters, its effectiveness demonstrates that “the rule of man remains more powerful than the rule of law.”⁴³⁵ Rather than signaling a new role for public opinion in ensuring court fairness, the media are continuing to play the extrajudicial roles that they have played since 1949. Critics either blame the traditional role of the media in Chinese society since 1949 for popular views that the media have the power to decide cases,⁴³⁶ or contend that China’s media are returning to Cultural Revolution-style adjudication.⁴³⁷

432. Interview 2003-20.

433. Wei, Popular Opinion Supervision, *supra* note 233; Yu Leiyan, Jingti Ling Yizhong Baquan [Be on the Alert for Another Type of Hegemony], Xinhua Wang Hunan Pindao [Xinhua Web Hunan Channel], Apr. 5, 2001, at <http://www.hn.xinhua.org/news/2001-4-5/0145183801.htm> (on file with the *Columbia Law Review*) [hereinafter Yu, Be on the Alert]; see also Liu, Draft Proposals, *supra* note 221 (summarizing criticism of excessive media involvement); Wang, Objectivity and Subjectivity, *supra* note 321 (summarizing academic criticism of media interference in pending cases). One online report stated that although the media in Hunan Province played an important role in exposing corruption, in many cases the media issued “decisions” before a person was actually tried, violating the principle in the revised Criminal Procedure Law that a defendant is presumed innocent prior to trial. Liu Hui, Meiti Shenpan Beihou De Renzhi Laoyin [The Stamp or Rule by Man Behind Adjudication by the Press], Xinhua Wang Hunan Pindao [Xinhua Web Hunan Channel], Apr. 5, 2001, at <http://www.hn.xinhua.org/news/2001-4-5/0145183907.htm> (on file with the *Columbia Law Review*); see also Fan Tingliao et al., Yulun Jiandu Yu Falü Yishi [Popular Opinion Supervision and Legal Consciousness], Xin Chuanbo Zixun Wang [New Broadcasting Information Web], June 5, 2001 (on file with the *Columbia Law Review*) (suggesting that media’s own lack of legal consciousness is responsible for view that the press is an adjudicator); Yu, Be on the Alert, *supra* (stating that behind media adjudication is “media hegemony” and criticizing the media for condemning suspects as guilty before trial).

434. Cai, Media Adjudication, *supra* note 323; Huang, New Model, *supra* note 44; Ye, Fairness, *supra* note 358; see also Cheng, Supervision, *supra* note 164 (stating that media tend to “blindly follow the prevailing wind” in reporting); Yu, Be on the Alert, *supra* note 433 (stating that media, in their drive to expand their audiences, often simply echo what others are stating).

435. Ye, Fairness, *supra* note 358 (accusing *Focus* of also using “popular logic” to influence case); see also Liang, Study and Society, *supra* note 357, at 277 (stating that media substituted morality for law in the Jiajiang Color Factory case).

436. See Chen, Not Enough, *supra* note 142 (stating that the public must recognize that the media are neither decisionmakers nor administrative bodies).

437. See Cai, Media Adjudication, *supra* note 323 (comparing current media coverage of criminal cases to media’s role in Cultural Revolution); Huang, New Model, *supra* note 44 (arguing that some in Chinese media continue to operate as they did during Cultural Revolution, using words in media to determine guilt); see also Wei, Journalism

In the Zhang Jinzhu case, critics agreed with Zhang's assessment that he was executed by the media.⁴³⁸ They contended that the facts showed that Zhang was not intentionally seeking to harm his victims and thus should not have been sentenced to death.⁴³⁹ Additionally, a report by a Guangzhou public security bureau official argued that media coverage of criminal cases, including the Du Shugui case, has often been unfair and biased against defendants, in particular in prosecutions of police wrongdoing.⁴⁴⁰ In the Jiajiang Color Factory case, academics criticized the behavior of the courts and the press. Critics noted the necessity of permitting wrongdoers to use the legal system to protect their rights⁴⁴¹ and argued that the media, in particular *Focus*, had turned a complex legal question into a "simple question of moral right and wrong."⁴⁴²

Judges often protest that media reports are generally concerned only with ethics or morality, not with law, and that it can be very difficult for a court to issue a decision contrary to media views.⁴⁴³ They note that media influence on judges is most pronounced at the local level.⁴⁴⁴ Judges comment that even when they desire to resist media pressure, they are unable to do so. "Every time courts try to resist, they lose," noted one judge;⁴⁴⁵ when the media have a different view of the truth from the courts, the media's view wins.⁴⁴⁶ Party leaders are likely to pressure courts, either indirectly or directly through written instructions, to resolve the case in line with the media's view.⁴⁴⁷ Although acknowledging

and Communication Law, *supra* note 44, at 114 (arguing that recent phenomenon of media adjudication may have its roots in Cultural Revolution era class struggle); Tong Dahuan, Yulun Jiandu De Beizhuang Liliang [The Solemn and Stirring Force of Popular Opinion Supervision], Nanfang Dushi Bao [Southern Metropolitan Daily], Apr. 11, 2002, available at <http://www.people.com.cn/GB/paper1787/6216/615428.html> (on file with the *Columbia Law Review*) (equating media supervision, in particular criticism of individuals, to Cultural Revolution era "big character posters").

438. See Zha Qingjiu, Anhui "Yanjiusheng Yuhai An" Yinfa Zhenglun, Meiti Shi Jiandu Haishi "Chaozuo" [Anhui "Case of Graduate Student Running into Harm" Results in Debate, Is the Media Supervising or Is It "Stirring"?], Fazhi Ribao [Legal Daily], Feb. 22, 2001, available at <http://www.people.com.cn/GB/shehui/46/20010222/401624.html> (on file with the *Columbia Law Review*).

439. See Wang, Objectivity and Subjectivity, *supra* note 321; see also Yang Shuwen, Falü Zhongyu Minfen [Law Is Stronger than Popular Rage], Nanfang Zhoumo [Southern Weekend], Mar. 24, 2000, available at <http://www.jc.gov.cn/personal/ysxs/fnsx1/fnsx721.htm> (on file with the *Columbia Law Review*) (criticizing media influence in criminal trials and arguing that crimes should be fixed by law, not media).

440. Sun, Thoughts, *supra* note 7.

441. Ye, Fairness, *supra* note 358.

442. He, Two Questions, *supra* note 297; see also Interview 2003-45 (arguing that in covering cases, media simply substitutes their view of right and wrong for that of the court); Yu, Be on the Alert, *supra* note 433 (criticizing media for appealing to ethics, not law).

443. Interview 2003-45.

444. See Interview 2003-33; Interview 2003-43.

445. Interview 2003-19.

446. *Id.*

447. Interview 2003-45; Interview 2003-70.

problems in the courts, judges argue that the media are just as corrupt as those in the courts and that journalists are often ignorant of the law.⁴⁴⁸

Some in the media have not taken kindly to such criticism, arguing, for example, that it is laughable to state that the media have the power to convict. If reporters had such power, they argue, “this would be a much cleaner country,” with no corruption or injustice.⁴⁴⁹ Journalists involved in the Zhang Jinzhu case argued that they had simply reflected “popular rage” and in doing so acted primarily to make Party-state leaders aware of the case. As one journalist who covered the case commented, although Zhang’s sentence may have been heavy, media coverage was accurate, and thus “if the court was influenced, that was up to them.”⁴⁵⁰ Others paint heroic pictures of the journalists who reported on the case, noting that they persisted in the face of death threats; journalists, they proclaim, must be “utterly fearless” in order to fight corruption.⁴⁵¹ Journalists claim that they are less corrupt, better educated, and more concerned with fairness than are courts.⁴⁵² Accordingly, they believe journalists are actually more likely to evaluate cases correctly. Journalists also blame courts for failing to cooperate with the media or allow open coverage of court activities.⁴⁵³ They argue that media supervision is essential to maintaining any semblance of fairness in the legal system. In a system in which courts are often closely linked to local political and economic interests, it may be exceedingly difficult for ordinary people to win lawsuits against such interests: As one journalist commented, “if people rely on ordinary judicial paths, they can’t win.”⁴⁵⁴

Observing the impact of public reports in individual cases is far easier than demonstrating the media’s impact on court development across a range of cases. Some in the media have argued that numerous cases nearly identical to those they report on go unresolved, or result in unfair decisions, because absent media coverage courts feel little pressure to follow the law. Nevertheless, media coverage of egregious cases may play a role in pressing for changes to the courts—and to the legal system more generally—even if at the same time the media’s influence may be leading courts to block media coverage.⁴⁵⁵

448. Interview 2003-55; see also Interview 2003-45 (stating that media coverage often forces judges to ignore the law).

449. Chi, *supra* note 317; see also How to View Popular Opinion Supervision, *supra* note 281 (quoting procuratorate official as stating that media supervision is “weak supervision” that only has limited impact on court independence).

450. Interview 2003-160.

451. Tang, *Discussing Popular Opinion Supervision*, *supra* note 310.

452. Interview 2003-4; Interview 2003-22; Interview 2003-48; Interview 2003-52; see also Interview 2003-73 (arguing that there are few limits on power of courts in China); Interview 2003-136 (commenting that difference between commercialized media and courts is that “if you privatized the courts, all the judges would be unemployed”).

453. See Lao, *supra* note 352.

454. Interview 2003-46.

455. See *infra* Part II.E (discussing restrictions on journalists’ ability to cover court proceedings).

Recent examples demonstrate that media coverage, although damaging to many defendants, may boost legal awareness and apply public pressure for reform that extends beyond a single case. In the Sun Zhigang case, extensive media coverage resulted in orchestrated trials in which the defendants had little chance of being acquitted, but coverage also demonstrated that channeled public opinion can be a factor leading to changes in the legal system. The Sun Zhigang case also marked the first instance of significant public discussion of mechanisms for reviewing unconstitutional laws and regulations. Similarly, media outcry in late 2002 over a case in which a married couple was detained for watching pornographic videos in their home led to extensive media discussion of privacy rights, as well as to punishment of the police officials responsible for raiding the couple's home.⁴⁵⁶

B. *Internal Publications*

Public news reports are just one of the weapons in the arsenal of journalists seeking to affect judicial outcomes. Internal publications are another weapon. As Part I discussed, most major Party papers in China publish internal editions, confidential reports circulated to officials of a certain rank. This section discusses in greater detail the importance of these internal editions in bringing potentially sensitive matters to the attention of Chinese officials, and in particular the use of internal editions to affect court cases.

Internal publications are an important tool for supervision by traditional Party media. The media use such accounts to report on matters that cannot be published or broadcast publicly as a result of the subject matter's sensitivity, because of media fears of reprisals by targets of coverage, or because such reports have been blocked by interested parties.⁴⁵⁷

456. The same paper that broke the story regarding the couple, the *Huashang News* in Xi'an, similarly touched off national discussion regarding the role of defense lawyers when it ran an article describing how a Shaanxi lawyer had won a stay of execution for a client by seeking out in person a judge of the Supreme People's Court. Interview 2003-13.

457. Interview 2002-10; Interview 2003-75; see Chen Jie, Neican Yinqi Zhongyang Guanzhu [Internal Reports Attract the Attention of the Center], Renmin Wang [People's Daily Online], Jan. 28, 2002 (on file with the *Columbia Law Review*) [hereinafter Chen, Internal Reports] (recounting that journalist covering a story of needle stabbings in Tianjin first wrote article in internal report and deferred writing public report until suspect had been arrested so as to avoid causing public panic); Chu Aizhong, Huyu Xinwen Lifa, Baozhang Yulun Jiandu Quanli [Calling Out for News Legislation, Protect the Rights of Popular Opinion Supervision], Renmin Wang [People's Daily Online], Mar. 6, 2002, at <http://www.people.com.cn/GB/shizheng/7501/7516/20020306/680521.html> (on file with the *Columbia Law Review*) (stating that internal reports are used where the media cannot immediately expose a matter); Zhu, *Discussing Opportunities*, supra note 150 (arguing that internal reports should be used to obtain the views of government leaders in certain cases); Interview 2003-117 (commenting that eighty percent of all reports blocked from broadcast on *Focus* are submitted as internal reports).

Hebei Daily, the Party paper for Hebei Province, states on its website that the purpose of its internal publications is to provide information to government and Party leaders

Internal reports are of particular importance in informing Party-state leaders of alleged misconduct by officials above county rank or where the subjects of potentially critical reports possess significant power.⁴⁵⁸ The media also use internal reports to highlight new problems, to avoid reporting excessively negative news in their public editions or broadcasts, or to highlight the failure of government actors to respond to complaints from both individuals and the media themselves.⁴⁵⁹

There is no rigid division between topics suitable for public reports and those appropriate for internal reports. In some cases, journalists simultaneously write articles for public and internal reports, and the two may feed off each other to put pressure on Party officials to intervene in a case. For example, during the black whistle scandal, the Xinhua reporter who covered the story supplemented public articles with internal reports.⁴⁶⁰ During May 2003, Xinhua issued internal reports regarding the Sun Zhigang case.⁴⁶¹ Internal reports may pave the way for public reporting by making relevant officials aware of an issue in advance of public broadcast or publication, thereby allowing officials the opportunity to inform the media if they do not approve of broadcast or publication.⁴⁶² Thus public media coverage of a local government cover-up of the 2001 Nandan mining disaster⁴⁶³—widely regarded as a successful example of the media exposing official malfeasance—was preceded the day before by an internal report regarding the incident.⁴⁶⁴

regarding new circumstances, new problems, important news, problems in implementing Party policies, the views and demands of the masses, and the general trend of thought in society. Internal Reference Develops Use as Eyes and Ears, *supra* note 76.

Not all information in internal reports is sensitive; in many cases, internal reports are filled with information that the media either feel compelled to provide or believe leaders want them to provide, regardless of the sensitivity of the content. Interview 2003-168.

458. Interview 2002-10; Interview 2003-75; see, e.g., He, Internal Reports, *supra* note 37 (commenting that lower-ranking officials fear public reports, while higher-ranking officials fear internal reports).

459. Interview 2003-4; Zhu, Discussing Opportunities, *supra* note 150 (arguing that internal reports should be used to avoid too many negative or critical reports in public media and to maintain “overall direction” of propaganda).

460. Tao et al., *supra* note 330; see Yang Ming, Hei Shao [Black Whistle] 1 (2002).

461. See Interview 2003-170 (stating that Xinhua issued internal report in Sun case); Dai & Wan, *supra* note 371 (quoting Sun Zhigang’s father as thanking central media that issued internal reports in case).

462. Interview 2003-4; see also Internal Reference Develops Use as Eyes and Ears, *supra* note 76 (stating that one purpose of *Hebei Daily*’s internal report is to obtain views of leaders when paper is not sure how to proceed in covering story).

463. See *supra* note 260.

464. The reporters who broke the story publicly by posting an article on the *People’s Daily* website, *Renmin Wang*, filed an internal report to the central government on the incident one day before publishing the story online. Zheng et al., *supra* note 122; Interview 2003-3; Interview 2003-10. Although the reaction to the internal report was unclear, it appears likely that the internal report paved the way for the public reports. See Chen, Internal Reports, *supra* note 457 (stating that internal reports can help expand the space for public opinion supervision by the media); Zhu, Discussing Opportunities, *supra* note 150 (arguing that internal reports should be used before publishing critical reports in

Some observers and journalists comment that internal reports are not as effective as public reports, despite the more sensitive content of internal reports. Party officials can respond only to a small portion of the written internal reports, and only the highest-ranking publications or programs can be sure that their internal reports will reach central Party leaders. Party officials, like the public, have more information sources than they did a few years ago and may rely less on internal reports than they did in the past. Moreover, officials may feel greater pressure to respond where a publication or broadcast has placed the issue in the public domain. Targets of internal reports may use connections within the Party-state hierarchy to resist pressure from internal reports and to dissuade higher-level government officials from acting.⁴⁶⁵ By contrast, where an issue has already become public it may be more difficult for higher-level officials to ignore the matter.⁴⁶⁶ Thus, journalists at both *People's Daily* and CCTV comment that critical public reports are significantly more influential than their internal reports.⁴⁶⁷ At *Focus*, for example, while nearly all problems raised in public reports are solved, most issues raised in the program's internal reports are never addressed.⁴⁶⁸

Others disagree, however, commenting that internal reports continue to be the most important route for the news media to inform and affect decisions by Party-state leaders.⁴⁶⁹ In contrast to public reports, internal reports appeal directly to Party leaders: While only a fraction of all internal reports are likely to grab the attention of leaders, when they do so, results are often immediate. Internal reports may also transform otherwise minor cases or disputes into items of major concern for Party officials.

the public media, so as to allow the relevant authorities time to carry out an investigation); Hunan Ribao Qungong Bu [*Hunan Daily* Mass Work Department], Fahui Dangbao Yulun Jiandu Youshi, Lewei Qunzhong Paiyou Jienan [Develop the Strength of Party Papers in Popular Opinion Supervision, Happily Eliminate Worries and Solve Difficulties for the Masses] (Mar. 1996) (on file with the *Columbia Law Review*) [hereinafter *Hunan Daily* Mass Work Department] (describing how *Hunan Daily* first published an internal publication regarding complaint from reader who had lost his job in local government after being involved in fight, and then, after municipal leaders confirmed that contents of complaint were correct but failed to resolve problem, published complaint as letter in public edition of newspaper).

465. In general, if the target of a critical report blocks coverage by appealing to Party-state officials or to editors, the publication concerned will not be able to publish either a public report or an internal report. Interview 2003-3.

466. See Interview 2002-7.

467. Interview 2003-114; Interview 2003-117.

468. Interview 2003-117.

469. See Interview 2003-67; see also Wang, Special Role, *supra* note 77 (discussing the continued importance of internal reports despite the increased availability of public information). The effectiveness of internal reports may also depend on the individual journalist writing the report. Well-connected or well-known journalists at key Party media outlets may be able to ensure that their internal reports reach specific Party leaders; other journalists may find it difficult to ensure that their reports are even included in their publication's internal reports.

Internal reports are an important mechanism for informing leadership at each level of the Party-state of sensitive cases and for affecting individual case outcomes.⁴⁷⁰ At certain legal periodicals, most internal reports are concerned with pending cases.⁴⁷¹ Internal reports for non-specialist publications or programs also concern court cases.⁴⁷² Although the frequency with which such reports are issued varies depending on the media outlet, internal reports appear to be at least as important a route for influencing cases as public reports.⁴⁷³ Indeed, these reports may be more effective: In some cases, newspapers that do not generally report publicly on pending cases will report internally on pending cases they view as problematic.⁴⁷⁴

The media send internal reports on pending cases to local or national leaders, depending on the nature of the case and the media outlet responsible for the internal report. For example, some Xinhua internal reports are sent directly to the very highest level of the Party-state.⁴⁷⁵ Internal reports from *Legal Daily* are circulated to the top officials of the Ministry of Justice and the Party's Central Political-Legal Committee. Internal reports of *Democracy and Law*, a national legal magazine, are forwarded to the Central Political-Legal Committee and also to the political-legal committee of the province concerned.⁴⁷⁶ Provincial media internal reports on cases are sent to provincial leaders and officials responsible for legal matters. Internal reports attracting Party-state officials' interest often result in written instructions from such officials, either directing that the case be handled in a certain way or simply stating that the case should be "emphasized."⁴⁷⁷

470. Interview 2003-3.

471. *Id.*; Interview 2003-73. Although media reports describing the use of internal reports to affect outcomes in court cases are scarce, there are occasional discussions of the use of such reports. See, e.g., Zhang Huiwen & Zhu Xiaofeng, *Qingnian Huajia Gaodao Zhongguo Meixie* [Young Painter Sues China Fine Arts Association], 1997 *Zhongguo Lushi* [Chinese Lawyer] No. 10, at 5 (describing internal report by *Guangming Daily* in case by artist against China Fine Arts Association).

472. Preparing internal reports on pending cases is also an important aspect of the work of journalists stationed at the local level for Xinhua and the China News Agency, the two national news agencies. See Interview 2003-31.

473. See Interview 2003-3 (stating that internal reports are important mechanism for affecting cases); Interview 2003-14 (commenting that internal reports, including influential internal reports of Xinhua and *People's Daily*, frequently discuss individual cases); Interview 2003-26 (stating that internal reports remain extremely effective).

474. For example, *People's Daily* generally only reports publicly on cases after courts have issued a decision; if the paper wishes to highlight a problem with a pending case, it does so via an internal report. Interview 2003-67.

475. Interview 2003-3.

476. *Id.*

477. Interview 2003-45; Interview 2003-97. The fact that an internal report is distributed does not guarantee success. The volume of such reports makes it impossible for all to receive attention from leadership; as one observer commented, there are too many problems for leaders to issue instructions regarding every problematic case.

Journalists most often write internal reports about cases where a first instance court has issued an opinion that the journalist believes is unfair. Most reports are thus written with a particular outcome or goal in mind. In many instances, journalists learn of the case from the aggrieved party. Generally in such cases, the journalist's aim in writing an internal report is to pressure the appellate court to reverse or alter the decision, or to make the Supreme People's Court aware of the case in the hope that the court will review or intervene in the case.⁴⁷⁸ When such reports are effective, often the case is retried.⁴⁷⁹ In other cases, journalists may use internal reports to report on cases that have been filed but that have languished without court action. The media also use internal reports to report on pending cases they deem particularly important, where they are concerned that the court handling the case may not do so fairly or where initial public reporting on the case has failed to have the desired effect.⁴⁸⁰

Judges and lawyers comment that internal reports can be extremely influential.⁴⁸¹ Judges explain that internal reports are often more effective than public reports because they are more likely to be read by, and result in instructions from, Party officials.⁴⁸² Judges receiving such an instruction are under enormous pressure to resolve the case as instructed.⁴⁸³ Although journalists argue that they use internal reports to force courts to decide cases fairly, judges contend that internal reports often are a mechanism for parties with connections or relationships to journalists to influence outcomes.⁴⁸⁴

The media also use internal reports to address inaction by procuratorates. For example, when the *Procuratorate Daily* first learned of alleged criminal activities by the head of the public security bureau in a municipality in Shanxi Province, it reported on the case in its internal edition. As a result, the official was arrested. The case was subsequently reported in the public version of the paper.⁴⁸⁵ Internal reports may also

Interview 2003-3; see also Interview 2003-166 (stating that in 1997 CCTV reports resulted in seventy-three written instructions from members of Politburo).

478. Interview 2003-3.

479. *Id.*

480. Interview 2003-4; Interview 2003-31. In other cases, journalists may publish internal reports on pending cases first, then follow up such reports with public reports.

481. Interview 2003-20; Interview 2003-33; Interview 2003-45; Interview 2003-65; Interview 2003-72.

482. Interview 2003-20; Interview 2003-89.

483. Interview 2003-3. Whether or not an internal report generates an instruction depends in part on the media outlet that has produced the report, with reports by *People's Daily* and *Xinhua* most likely to result in intervention by Party-state leaders. At *People's Daily*, for example, approximately half of all internal reports result in instructions from senior officials. Interview 2003-67; see also Internal Reference Develops Use as Eyes and Ears, *supra* note 76 (noting that 22 of 465 articles published in internal reports of *Hebei Daily* in 1998 resulted in "important instructions" from central or provincial leaders).

484. Interview 2003-20; Interview 2003-45.

485. Wang, *Supervise*, *supra* note 146.

influence lawmaking. Reporters state that one goal of what they write in internal reports is to bring certain issues to the attention of leadership and to suggest legal or policy changes.

Internal reports have one additional advantage over public reports for journalists, in particular those engaging in critical reporting: A 1998 Supreme People's Court interpretation regarding defamation states that, unlike other forms of news reporting, internal reports prepared for "leaders" are immune from liability for defamation.⁴⁸⁶ Journalists comment that they use internal reports to write more detailed analyses of cases than they can in public reports, or where they do not have sufficient evidence to back up the claims in their reports.⁴⁸⁷ Thus internal reports may provide both legal and political cover to journalists.

C. Formal Referral Mechanisms: Mass Work Departments

The importance of internal reports reflects the persistence of the media's close ties to the Party-state despite commercialization and expanded editorial autonomy. The role of many media outlets in receiving popular complaints and referring them to other government actors further underscores the media's position as a Party-state institution. Commercialization has altered and, in some cases, weakened this role, but for many media outlets, especially newspapers, receiving and forwarding complaints remains an important corollary to public and internal reporting. Even at outlets where formal referrals have lessened in importance, the system has facilitated other forms of media influence.

At the national, provincial, and local levels, most major Party newspapers and many Party magazines have departments responsible for receiving and addressing citizens' complaints, known as mass work departments, or *qunzhong gongzuo bu*.⁴⁸⁸ Akin to the letters and visits offices, or

486. Zuigao Fayuan Guanyu Shenli Mingyuquan Anjian Ruogan Wenti De Jieshi [Interpretation of the Supreme People's Court on the Trial of Cases Concerning the Right of Reputation] (Sept. 15, 1998); Shiping: Neican Jingcheng Zhengju? [View: Can Internal Reports Be Evidence?], Renmin Ribao [People's Daily], Mar. 28, 2002, available at <http://www.hotlong.com/news2/2002-03-28/2/260012.html> (on file with the *Columbia Law Review*) (criticizing company for suing for defamation when reporter issued internal report stating that banks should refrain from issuing loans to the company due to its poor financial conditions).

Another aspect of internal reports may also shield reporters from retribution by local officials: In the case of most internal publications by national media, local government officials will not be of high enough rank to view the reports. Interview 2003-4.

487. Interview 2003-4; Interview 2003-15.

488. Many television and radio stations have similar departments, although with different names: At Chinese Central Radio, for example, the department is known as the "listeners' work department." Interview 2003-5. For a discussion of the working of the mass work department at one local radio station, see Datong Shi Guangbo Diantai [Dadong Municipality Radio Station], Fahui Houshe Zuoyong, Jiaqi Dangqun Qiaoliang [Develop Use as a Mouthpiece, Strengthen the Bridge Between Party and People], at <http://www.dtzc.gov.cn/szdh16.htm> (last visited June 16, 2003) (on file with the *Columbia Law Review*). Commercialized or mass-market publications generally do not have mass

xinfang,⁴⁸⁹ that exist to receive and process complaints at most levels of the Party-state and at most central government and Party departments, mass work departments handle both letters and visits from individuals.⁴⁹⁰ Traditionally, mass work departments manage relations between the media and readers. Mass work departments both serve as an official ombudsman and help to inform Party-state leaders of trends in popular opinion, particularly popular grievances. Although they lack legally pre-

work departments, Interview 2003-26; Interview 2003-46; Interview 2003-52; Interview 2003-80, although they may have other mechanisms, such as telephone hotlines, for fielding complaints and receiving news tips from readers.

489. Work of the mass work departments is considered to be a form of letters and visits work, and in many areas is directly coordinated with the local letters and visits offices and committees of the government and Party, with representatives of media mass work departments serving as members of the local Party letters and visits committee. For example, a report on the activities of the *Hunan Daily* Mass Work Department in 1995 described how, in addition to working on certain articles for the paper, most members of the department were engaged in “letters and visits work.” *Hunan Daily* Mass Work Department, *supra* note 464; see also Fu Changbo, Qingting Duzhe Husheng, Weihu Duzhe Quanyi—2002 Nian Benbao Qunzhong Gongzuobu Laixin Laifang Chuli Gongzuo Zongshu [Listen to the Readers’ Voices, Uphold Readers’ Interest—Summarizing This Newspaper’s Mass Work Department’s Handling of Letters and Visits in 2002], *Renmin Ribao* [People’s Daily], Jan. 9, 2003, at <http://www.people.com.cn/GB/paper464/8203/774307.html> (on file with the *Columbia Law Review*) (discussing “letters and visits” work of *People’s Daily* Mass Work Department). For a discussion of the role of letters and visits offices, see Thomas P. Bernstein & Xiaobo Lu, Taxation Without Representation in Contemporary Rural China 177–86 (2003) (discussing letters and visits offices, including mass work departments); Tianjian Shi, Political Participation in Beijing 107 (1992) [hereinafter Shi, Political Participation] (discussing letters and visits offices in Beijing). For a discussion of the lodging of complaints in rural areas, see generally Kevin J. O’Brien & Lianjiang Li, The Politics of Lodging Complaints in Rural China, 1995 *China Q.* 756 (discussing strategies for pursuing complaints in rural areas). Visiting media offices, especially those in Beijing, is often part of a strategy of visiting the letters and visits offices of various state entities. See, e.g., Zhao Zhigang & Zhao Lin, Yongyi Zhisi Nūjiaoshi, Zhongshen Panjue Shuo Wuzui, Shizhe Changyi Yi, Jiuquan Ke Mingmu? [Medical Treatment Kills a Female Teacher, Final Judgment Says There Is No Crime, It Is Too Late for the One Who Had Died, Can She Close Her Eyes in the Netherworld?], *Zhuozhuo Huafa Wang* [Zhuozhuo Huafa Web], at <http://www.zzhf.com/detail.asp?id=219> (last visited June 17, 2003) (on file with the *Columbia Law Review*) (describing how complainant sought redress from various government departments and media outlets before attracting attention of *Procuratorate Daily*).

490. Mass work sections have existed at major newspapers since the 1950s and may be among the largest departments at major newspapers. See Nathan, *supra* note 32, at 156–57. Mass work sections closed during the Cultural Revolution, and were reopened in the early 1980s as part of efforts to renew the press’s role as an investigative arm of the Party-state. *Id.* at 183; see also Won Ho Chang, Mass Media in China 106–08 (1989) (discussing *People’s Daily*’s Mass Work Department and its practice of referring readers’ letters to government and Party departments in 1980s); Shi, Political Participation, *supra* note 489, at 111–15 (discussing role of mass work departments as forum for citizen complaints). Mass work departments were particularly active immediately after the Cultural Revolution, in particular in handling appeals and claims by those who had suffered during the Cultural Revolution. Interview 2003-114; Interview 2003-170. Discussion of mass work departments has been largely absent from recent English-language scholarship on the Chinese media.

scribed roles, the mass work offices, in some respects, serve in a position similar to a state ombudsman in other nations—in particular in Scandinavia—with broad powers to investigate citizens' complaints.⁴⁹¹

The number of complaints that media outlets receive can be massive, with high-ranking media receiving the largest number of letters and visits.⁴⁹² The large volume of such appeals reflects the view of many that an appeal to the media is an effective route to having a grievance addressed. Indeed, some in the media complain that their readers or viewers have excessively high hopes with respect to the media's ability to provide assistance; the result is that the media receive far more appeals for assistance than they can handle.⁴⁹³ Specialist publications often receive complaints relating to areas of perceived expertise—in particular complaints regarding topics on which they previously reported. For example, after *Democracy and Law* published a report exposing excessive detention by police and the procuratorate, others with similar grievances inundated the magazine with complaints.⁴⁹⁴

The precise ways in which mass work departments operate vary from publication to publication. In general, complaints received are first vet-

491. Cf. Walter Gellhorn, *Ombudsmen and Others* (1966) (discussing role of ombudsmen in nine countries); 1 William Wade et al., *Administrative Law: The Problem of Justice*, 353–60 (1991) (discussing role of ombudsman in Sweden).

492. See, e.g., Interview 2003-3 (stating that *People's Daily* receives hundreds of letters a day); Interview 2003-4 (reporting that *Workers Daily* receives up to 1,000 letters a day); Interview 2003-108 (stating that many people bring complaints to *Jinghua Shibao*, even though it lacks mass work department, because the paper is subsidiary of *People's Daily* and is perceived to be influential); Chan, *supra* note 125, at 38 (noting that *Focus* receives more than one thousand letters a day, many of which are complaints about local wrongdoing); Fu, *supra* note 489 (stating that *People's Daily* received 102,300 letters and 1,432 in-person visits in 2002, with seventy percent of the letters and ninety-five percent of the visits coming from persons carrying out “popular opinion supervision” or seeking assistance); Gengduo Xuanfa Qunzhong Laixin [Select and Send out More Letters from the Masses], Hebei Ribao [Hebei Daily], at <http://www.hebnet.net/mag10/n1/colart10885.html> (last visited June 16, 2003) (on file with the *Columbia Law Review*) (stating that *Hebei Daily* on average receives 2,100 letters and more than 800 visits a year); *Hunan Daily* Mass Work Department, *supra* note 464 (stating that in 1995 the *Hunan Daily* mass work department received more than 11,000 letters and 900 visits, and solved more than 300 problems). Reliance on letters, and the large volume of letters received, is not a new phenomenon. *People's Daily* received some 30,000 to 50,000 letters a month during the 1980s. The paper published a selection of letters in a daily eight-page internal publication; many of these made complaints against government policy or highlighted alleged illegal conduct. Hood, *supra* note 37, at 41.

493. See Cai, *Calling Out*, *supra* note 227 (reporting comments by host of show on national radio that far more people come to station every day with complaints than can possibly be addressed); Sheng Cheng, Ganga De Bu Jin Shi Meiti [It Is Not Only the Media Who Are Awkward], *Zhongguo Qingnian Bao* [China Youth Daily], July 4, 1998, at 6, available at <http://www.cyd.com.cn/cyd/zqb/jpwk/qsp/9238^QQ204.htm> (on file with the *Columbia Law Review*) (reporter for *China Youth Daily* stating that people come long distances to file complaints with paper and that many ordinary people trust only media, not other departments).

494. Interview 2003-3.

ted, and then, if deemed appropriate for further action, handled in one of three ways.⁴⁹⁵ First, a very small number of popular complaints are deemed appropriate for further investigation and potential coverage as a news item either internally or in a public edition. In these cases, complaints are referred to reporters for further investigation.⁴⁹⁶ Second, a few letters may be selected for publication, either in the public edition or in an internal publication.⁴⁹⁷ Third, the mass work department may refer the matter directly to a responsible government or Party actor, with a request that such authority look into the matter and take appropriate steps to address the complaint.⁴⁹⁸

Complaint referrals are the most significant aspect of the work of mass work departments, and they highlight the degree to which reporters may be able to use their position to influence Party-state actors even absent publication. The frequency with which the media forward complaints and their effectiveness in doing so varies from publication to publication and from journalist to journalist. Some national papers select

495. These are rough categories, and are not necessarily mutually exclusive. At *People's Daily*, for example, a report on the mass work department noted that complaints may be published as letters, may be referred for publication in the paper's internal report, or may lead to reports in the public edition of the paper. See Zhao & Wang, *supra* note 121 (summarizing work of *People's Daily* mass work department during the first half of 2001).

496. Interview 2003-3; Interview 2003-4; Interview 2003-5; Interview 2003-114; Interview 2003-170; Hood, *supra* note 37, at 41. At *Legal Daily*, the mass work department in some cases refers complaints to lawyers for comment prior to deciding on whether the paper should undertake further investigation. Interview 2002-5.

497. Interview 2003-3 (commenting that certain letters are collected and published in internal report); Interview 2003-4 (same); Interview 2003-114 (same); see also *Hunan Daily* Mass Work Department, *supra* note 464 (stating that, in 1995, 109 letters out of 11,000 received were selected for publication in newspaper, while small number that reflected particularly serious questions not appropriate for publication were collected and forwarded to relevant Party-state leaders); Fu, *supra* note 489 (reporting that *People's Daily* Mass Work Department published 327 internal reports in 2002 and published 31 public articles based on complaints received); Select and Send Out More Letters from the Masses, *supra* note 492 (describing selection of letters by *Hebei Daily* for publication in internal report).

498. Interview 2002-5; Interview 2002-10; Interview 2003-41; Interview 2003-97; Interview 2003-109; Interview 2003-114. Such referrals are more common than either of the first two mechanisms for handling complaints. At *People's Daily*, for example, the mass work department refers approximately twenty percent of all letters received to other Party-state actors; the remainder are generally discarded. Interview 2003-170; see also Fu, *supra* note 489 (describing handling of complaints by *People's Daily* Mass Work department); *Hunan Daily* Mass Work Department, *supra* note 464 (stating that in case of problems that can be solved locally, letters are sent directly to local authorities). Media with expertise in particular areas, such as law, are likely to have greatest effect when referring matters that relate to their expertise. Interview 2002-5. The mechanism by which the mass work departments handle complaints appears largely similar to that in place in the 1980s, although the frequency with which complaints are forwarded appears to have decreased. Cf. Nathan, *supra* note 32, at 156–57 (describing mass work sections of newspapers in early 1980s, and noting that “[a]ll letters are supposed to be either answered or passed on to relevant party or government offices for action”).

complaints they believe should be addressed and forward these to local authorities with a cover letter requesting a reply within twenty or thirty days.⁴⁹⁹ Provincial papers may forward reader complaints to the relevant government departments along with a request for a timely response.⁵⁰⁰ In some cases the cover letter explicitly states that the paper will publicly report on the matter if no reply is received;⁵⁰¹ in other cases the threat of publication is implicit. Papers may also refer complaints directly to Party-state leaders⁵⁰² or may refer criminal matters to the relevant authorities.⁵⁰³

At many papers, decisions regarding whether to forward complaints are left to individual journalists. Reporters state that they do this in some cases where they have no intention of reporting; indeed, journalists use referrals most often when they believe a complaint is serious and should be addressed, but they do not view publication as likely, often because the matter is not newsworthy.⁵⁰⁴ The fact that a matter is referred does not mean that the problem detailed in the complaint is solved. Recipients frequently ignore referrals, but in some cases they either reply in writing or visit the paper to discuss the matter.⁵⁰⁵ Response rates vary depending on the media outlet forwarding the complaint. At *Workers Daily*, for example, about twenty-five percent of forwarded complaints are answered,⁵⁰⁶ and at *People's Daily*, approximately forty percent.⁵⁰⁷ Where

499. Interview 2003-4; Interview 2003-97; Fu, *supra* note 489 (reporting that *People's Daily* Mass Work Department referred 251 complaints to local or central government, or Party departments, and referred additional 700 complaints to letters and visits departments at other government or Party departments in 2002).

500. Interview 2003-22.

501. Interview 2003-5.

502. Zhu, *Discussing Opportunities*, *supra* note 150.

503. See *Legal Supervision and Popular Opinion Supervision Prove Effective Together*, *supra* note 152 (recounting that media in Shaoxing refer any information relating to crimes turned up through their letters and visits offices to local procuratorate).

504. Interview 2003-4; Interview 2003-73.

505. Interview 2003-4.

506. Interview 2003-165. A response does not mean that the problem has been solved; in many cases, the response may state that the relevant authority will look into the matter. *Id.*

507. Interview 2003-170; see also Fu, *supra* note 489 (reporting that fifty percent of the referrals from the *People's Daily* Mass Work Department during 2002 received responses by the end of the year). The percentage of referrals that result in replies has declined in recent years. Compare *id.* (reporting a fifty percent response rate in 2002), with Wang Baoyuan, Bixu Zhongshi Due Zhongdian Laixin De Diaocha Chuli—1994 Nian Benbao Qunzhong Gongzuo Bu Fahan HuiFu Qingkuang Fenxi [Attention Must Be Paid to the Investigation of Important Letters—The Analysis of Responses to Inquiries Made by the Mass Work Department of This Newspaper], *Renmin Ribao* [People's Daily], Aug. 14, 1995 (on file with the *Columbia Law Review*) (reporting seventy-eight percent response rate in 1994), and Wang Baoyuan, Yue Lu Gui Jing E Min Dengdi Zhongshi Xinfang Gongzuo (Binzhoubai Toutiao Jingsai) [Guangdong, Shandong, Guangxi, Beijing, Hubei, Fujian, Etc., Emphasize Letters and Visits Work (Binzhou Cup Headline Contest)], *Renmin Ribao* [People's Daily], Nov. 5, 2000, at <http://www.people.com.cn/GB/paper464/1865/>

reporters believe a complaint is particularly worthy of attention, they may follow up with a telephone call if the initial referral is not answered.⁵⁰⁸

Although television stations often do not have formal “mass work departments,” many undertake similar roles via telephone complaint lines linked to specific television programs. For example, a television journalist for an investigative news program on a local television station commented that the program’s main goal is to solve problems raised by viewers, regardless of whether the program does so through a segment on the show or informally.⁵⁰⁹ Because the station does not have a mass work department or a formal letters and visits office, most viewers’ grievances are transferred to the program. In many cases the program attempts to solve problems even when airing a segment on the matter is unlikely, often by calling the government department responsible for the matter in a deliberate attempt to frighten relevant officials with the prospect of the problem being exposed on television.⁵¹⁰ Problem-solving television shows, the journalist said, are a new form of letters and visits work: Whereas in the past citizens with grievances would have raised them to letters and visits offices, they increasingly turn directly to the media for assistance.⁵¹¹ Similarly, at CCTV, journalists may forward viewer complaints to local authorities, although the journalists themselves are unlikely to follow up unless they intend to broadcast a story on the item.⁵¹²

Not all media refer complaints to government actors,⁵¹³ and those that do so may employ different strategies. Journalists at local papers transfer letters to other branches of local government, but they may lack the formal power to request responses.⁵¹⁴ Publications with a particular focus refer complaints to affiliated departments. For example, both the newspaper *China Women’s News* and the affiliated magazine *Women of China* refer complaints to the letters and visits offices of national or local women’s associations.⁵¹⁵

A range of interests appear to inform decisions to refer cases to other government actors. Papers may believe that continuing to refer letters helps to preserve market share, as readers may be attracted to papers that refer letters. Some journalists may do so to address what they perceive to

300328.html (on file with the *Columbia Law Review*) (reporting eighty-seven percent response rate in 1999).

508. Interview 2003-22.

509. *Id.*

510. Interview 2003-65. The program also transfers some written complaints to government departments, although doing so is generally ineffective. *Id.*

511. *Legal Report* forwards many of the letters it receives to relevant central government departments, although the program rarely receives responses. Interview 2003-83; Interview 2003-86.

512. Interview 2003-166.

513. See, e.g., Interview 2003-3 (stating that national legal magazine generally does not forward complaints to other government departments).

514. Interview 2003-24.

515. Interview 2003-10.

be genuine grievances. In other cases, papers or individual journalists may refer cases for much more bureaucratic reasons. Papers may keep track of referrals because they consider them to be an important part of their role as a Party institution.⁵¹⁶ Journalists may also forward complaints primarily in an effort to assuage complainants, especially those who visit in person, with little expectation that doing so will have significant effect.⁵¹⁷

Specialist legal publications, as well as national papers such as *People's Daily*, refer complaints to courts,⁵¹⁸ but judges do not perceive media referrals as a major source of pressure.⁵¹⁹ This may be due to the fact that the primary effect of referrals appears to be to put pressure on authorities to address or solve problems and resolve disputes that have not yet entered formal legal procedures. In addition, many such referrals relate to relatively minor complaints; major complaints are dealt with via internal or public reports. But the lack of pressure on judges may also reflect the fact that law-related referrals are more likely to go directly to local government leaders, or to the local Party political-legal committee, rather than to the courts.

Mass work departments appear to be declining in importance, with some papers eliminating or changing the names of such departments to deemphasize their role as a complaints bureau.⁵²⁰ Some journalists comment that the volume of complaints received is decreasing;⁵²¹ at *People's Daily*, for example, the number of complaints has fallen by nearly half in recent years.⁵²² At the same time, journalists are less likely to attempt to

516. See, e.g., Fu, *supra* note 489 (describing work of the *People's Daily* Mass Work Department as an effective means of implementing Jiang Zemin's theory of "three represents").

517. Interview 2003-3; Interview 2003-83; Interview 2003-101. In some cases, government department letters and visits offices refer complainants to the media, perhaps reflecting the belief that the media may be more effective in addressing problems, Interview 2003-81, or perhaps in an attempt to shift the burden of responding to the complaint elsewhere. In particular, letters and visits offices of various government entities refer complaints to media affiliated with that department or institution. Interview 2003-10.

518. Interview 2002-5; Interview 2003-170. At *People's Daily*, all complaints regarding courts in a particular province are forwarded to the relevant provincial high court approximately once a month. Interview 2003-170.

519. Interview 2003-20.

520. Interview 2003-26; Interview 2003-39; Interview 2003-44; Interview 2003-170. At *Workers Daily*, for example, the department has been renamed the "Law Department," and it increasingly focuses on legal reporting instead of referral of complaints. Interview 2003-4.

521. Interview 2003-67; Interview 2003-73.

522. Interview 2003-114; see also Fu, *supra* note 489 (reporting that number of complaints *People's Daily* Mass Work Department received in 2002 was lower than in previous year). Compare *id.* (reporting 102,300 letters received in 2002), with Renmin Ribao Qungongbu [*People's Daily* Mass Work Department], Zaixian Zhencheng—'97 Zhi Duzhe [Present Sincerity Again—Dedication to Readers in '97], Renmin Ribao [*People's Daily*], Jan. 6, 1997 (on file with the *Columbia Law Review*) (reporting that *People's Daily* received more than 200,000 letters in 1996).

mandate responses, and recipients of transferred complaints appear increasingly willing to ignore such letters.⁵²³ The decreasing influence of mass work departments may stem from the recognition by targets of referrals that the media rarely follow up on referred complaints; absent a public or internal report, referrals are likely to produce little additional pressure on the target.

Some in the Chinese media argue that mass work offices are a relic of the past, and that the media should not serve as government complaints offices.⁵²⁴ The decrease in complaints may also reflect increasing use of the courts by those with grievances.⁵²⁵ Some journalists say that they increasingly find themselves not only referring complaints to other actors, but also providing legal advice to persons who visit their offices.⁵²⁶ The media, including official Party papers, may also be placing less emphasis on referrals as they face increased financial pressures: Forwarding hundreds or thousands of complaints may be less crucial to maintaining market share than writing a few public reports. The decline in appeals to mass work departments might also be a result of the widening range of media outlets. It is possible that individuals are focusing their appeals on new media, in particular television and commercialized media, because they perceive them to be as or more effective than the traditional Party print media. Additionally, commercialization is encouraging new mechanisms for receiving and handling complaints, most notably through telephone hotlines, which may not be as conducive to formal referrals.⁵²⁷

The decline of mass work departments may reflect a system that is gradually moving toward more formalized methods of dispute resolution. Nevertheless, some commentators argue that mass work departments

523. Interview 2003-26; Interview 2003-67; Interview 2003-170.

524. See, e.g., Cai, *Calling Out*, supra note 227 (stating that media are not letters and visits offices, and “are certainly not” Party discipline offices or government inspection departments).

525. See Interview 2003-114.

526. See, e.g., Interview 2003-3; Interview 2003-39; see also Zhou Hanxiang, Tisheng Shehui Xinwen Fuwuxing De Youxiao Tujing [An Effective Route for Increasing the Service Quality of News About Society], 2002 *Xinwen Zhanxian* [News Frontline] No. 12, available at <http://www.people.com.cn/GB/paper79/8079/765030.html> (on file with the *Columbia Law Review*) (describing *Wenzhou Daily*'s role in providing “legal aid” to readers). At *Women of China*, for example, journalists respond to each of the more than seven hundred letters they receive every year; many of these responses include specific advice regarding how to resolve the complaint. Interview 2003-10.

Other journalists refer complaints directly to lawyers, rather than to government departments. See Interview 2003-50; Interview 2003-60 (commenting that Shanghai television station does not have mass work department, but that its daily law program has telephone hotline that answers legal questions and in some cases refers callers to local legal aid center); see also Zhou, supra (describing referral of readers' complaints to lawyers). At Shanghai Radio, for example, complaints from listeners are referred directly to law firms. Interview 2003-99. Likewise, journalists at mass-market papers in Sichuan have worked with local law firms to highlight the problems of migrant workers from Sichuan outside the province. See Interview 2003-24.

527. See Interview 2003-24; Interview 2003-44; Interview 2003-108.

continue to play an important role in the overall functioning of the media, contending that such work helps maintain public confidence in the media and is an integral part of their supervision work,⁵²⁸ or that solving reader complaints helps to sell papers and boosts popular trust.⁵²⁹ The continued use of referral mechanisms also demonstrates the degree to which the media are able to use their position as an arm of the Party-state to boost sales at the same time as they resolve grievances.

The commercialized media's role, in particular in investigative television shows and viewer and reader complaint hotlines, increasingly resembles the role Western media play in highlighting viewer and reader complaints. China's media, nevertheless, remain distinct from their Western counterparts in important respects. The Chinese media's longstanding role as an official check on other arms of the Party-state, the continued financial and editorial links to the Party-state, and the continued reliance leadership places on the media mean that investigations by or referrals from the media carry official weight. China's media have both institutional and financial interests in continuing to serve as government complaints bureaus, and their historical role and continued existence have facilitated their ability to appeal directly to public views.

D. *Informal Influence: Journalists as Problem Solvers*

In addition to reporting in public or internal publications, or referring complaints through mass work departments, reporters also act to influence disputes and solve problems informally—meaning without the explicit authority of their publication or program. Journalists seek to use their positions to apply pressure, even when they have no intention of writing a story or referring a complaint through formal channels. Reporters who do so may be using their positions to assist friends and acquaintances, or in return for payments by interested parties. But some journalists also assume more activist roles, seeking to influence outcomes and resolve problems. For these journalists—in particular for the relatively small number of journalists specializing in legal reporting and working at media outlets with a central Party-state rank—obtaining redress and solving problems is an important goal, independent of the news value of particular cases or disputes. For journalists specializing in legal reporting or those assisting friends or contacts, informal mechanisms may be more effective than referrals through mass work departments or public or internal reports.

Reporters sometimes act to influence outcomes even when they see no news value in a matter, or where they have no intention of writing a report.⁵³⁰ A phone call from a journalist to a court inquiring into the status of a particular case may help resolve longstanding delays, in partic-

528. See Zhu, *Discussing Opportunities*, *supra* note 150.

529. See Interview 2003-22.

530. See Interview 2003-5; Interview 2003-87; Interview 2003-117.

ular where local interests have resulted in a case not being brought to trial for an extended period. Sometimes journalists contact courts because doing so is the most effective means of influencing them; in other cases they do so because they do not have time to write articles about all worthy complaints.⁵³¹

Examples of the media acting to solve problems and pressuring government actors by threatening coverage are widespread. Programs such as *Legal Report* telephone local courts to inquire about cases, with such calls carrying an implicit threat of coverage of the case on the program.⁵³² Commercialized papers such as *Southern Weekend* likewise forward complaints they receive, along with an attached request for an interview, even when the likelihood of actually writing a story is remote.⁵³³ In Shanghai, reporters for the Shanghai Television Station forward letters or telephone complaints to government offices in an attempt to apply pressure to government actors to address concerns.⁵³⁴

The importance many lawyers place on maintaining good relations with journalists underscores the role that reporters can play in affecting outcomes when acting informally. As one academic commented, a lawyer who lacks media contacts cannot be an effective lawyer.⁵³⁵ Lawyers state that they seek out journalists, in particular those from powerful central media, to intervene informally. Thus, for example, a legal aid lawyer faced with an intransigent local court sought assistance from a reporter at *Focus*; a letter from the reporter enquiring about the status of the case resulted in the long-delayed case coming to trial and victory for the lawyer's client.⁵³⁶ Another legal aid lawyer commented that those representing the disadvantaged "must use the media" if they are to obtain results favorable for their clients.⁵³⁷ In some cases the media need not become directly involved in order to have an effect: In one case, a party won a favorable outcome simply by displaying an envelope from *People's Daily* to the court.⁵³⁸

In many cases journalists intervene on behalf of personal contacts.⁵³⁹ Yet these efforts are not attempts simply to affect outcomes on behalf of friends; journalists also intervene when they become aware of particularly egregious cases.⁵⁴⁰ These journalists argue that their only motivation is

531. See Interview 2002-3.

532. Interview 2003-87.

533. Interview 2003-46.

534. See Interview 2003-60.

535. Interview 2002-1.

536. Interview 2002-4. In other cases, lawyers may simply take their clients to CCTV's offices, in the hope of attracting the interest of *Focus*. See Interview 2003-12.

537. Interview 2003-107.

538. Interview 2003-115. The court had allegedly accepted a case over which it lacked jurisdiction in order to assist a local party. *Id.*

539. See Interview 2003-3; Interview 2003-9; Interview 2003-83; Interview 2003-87.

540. See, e.g., Interview 2003-87.

their own conscience.⁵⁴¹ Many journalists, and in particular reporters who frequently cover legal issues for national media, see their role as being that of problem solvers.⁵⁴² Their aim is to resolve problems, regardless of whether doing so results in an article for publication or a program for broadcast.⁵⁴³ Thus journalists comment that in many cases they will first seek to resolve the problem without publication by contacting relevant local officials. Although it is rare for such informal discussions to be effective, when problems are resolved journalists will usually agree not to report on the matter.⁵⁴⁴

Journalists also informally collaborate to apply pressure in difficult cases. They do this where they perceive a significant threat of obstruction or retaliation from the targets of their investigations or where they believe a phone call alone will be ineffective. Groups of journalists, especially from national papers, travel in teams, delivering an amplified threat of exposure. In cases where such threats go unheeded, multiple journalists may agree to publish critical reports on the same subject on the same day.⁵⁴⁵

The existence of activist journalists who use their roles to pursue their own vision of social justice is not an entirely new phenomenon. Such activism is an outgrowth of a system in which journalists have long played investigatory roles separate from their positions as news gatherers or disseminators; it is no coincidence that such journalists are largely found at traditional central media, such as *Workers Daily*, *Legal Daily*, and *China Youth Daily*. Journalists at more commercialized papers may explicitly disavow such activism; one journalist commented that reporters at *Southern Weekend* “are real journalists,” because they focus only on covering news.⁵⁴⁶ Yet these roles are not unique to the media. Such activist journalism parallels the expansion of activist lawyering, in particular by a

541. See, e.g., Interview 2003-136 (arguing that “conscience” of reporters is significant factor in many cases in which media exposes wrongdoing or injustice).

542. See Interview 2003-4; Interview 2003-83.

543. See, e.g., Interview 2003-39; Interview 2003-73; Interview 2003-75; Interview 2003-83. One journalist commented that reporters are not concerned with potential loss of income due to loss of fees for individual articles because solving problems is an important aspect of their job. Interview 2003-3.

544. Interview 2003-3; Interview 2003-4. Major Party media are more likely to discuss disputes with their targets before publication, in part because they face less financial pressure to generate news. Commercialized papers are unlikely to consult with the targets of negative reports prior to publication, and journalists at such papers are less likely to view themselves as problem solvers. Interview 2003-3.

545. Interview 2003-3; see also Interview 2003-22 (describing similar activities by journalists at provincial papers). Journalists from provincial papers also cooperate in applying pressure with journalists from national papers, in particular when cases are being appealed to national authorities. Interview 2003-22.

546. Interview 2003-3.

small number of legal aid clinics, and of activism by government-linked NGOs.⁵⁴⁷

Journalists, however, appear to have greater influence than others who take risks to seek redress for individuals or to highlight social problems. Journalists' ability to act informally is the product of their status: It is the potential impact of media coverage that gives weight to their exposure threats. This is particularly true for journalists from media with central Party-state rank; when such journalists visit local areas, local officials perceive the journalists to be central government officials.⁵⁴⁸ Although media links to the Party-state make such influence possible, they also explain why journalists choose to act informally. A telephone call may be less effective than publishing a public article or writing an internal report, but it may also be easier in a system in which journalists encounter numerous obstacles prior to publication. Thus journalists sometimes use informal channels when they know that the sensitivity of a subject will block any attempt to write about the matter.⁵⁴⁹ Media links to the Party-state facilitate informal influence by journalists; such links may also necessitate informal routes for those journalists seeking to apply pressure in difficult cases.

E. *Court Management of the Media*

In addition to general obstacles that the media encounter at the local level, reporters have increasingly faced restrictions on their ability to cover courtroom proceedings.⁵⁵⁰ Court regulations state that most trials should be open to the public and the media,⁵⁵¹ but the regulations also include a list of exceptions, ranging from cases involving state secrets to cases involving the privacy of individual litigants.⁵⁵² The regulations declare that the media may attend trials that are open to the public but add that journalists wishing to report on court cases must obtain the permission of the court hearing the case. No further details regarding the reasons a court may or may not deny such permission are provided.⁵⁵³ In practice, the provisions give courts broad discretion to deny reporters access to trials and force many journalists to seek approval from courts before reporting on a particular case. The increase in defamation litiga-

547. See generally Liebman, *supra* note 145, at 277–80 (explaining that expansion of China's legal profession and rights embodied in its substantive law has allowed some lawyers to use their experiences representing clients as basis for advocacy).

548. Interview 2003-155.

549. Interview 2003-24.

550. See Xu, *Media-Judicial Relations*, *supra* note 19.

551. Zui Gao Renmin Fayuan Guanyu Yangge Zhixing Gongkai Shenpan Shizhu De Ruogan Guiding (No. Fa Fa 1999-3) [Regulations of the Supreme People's Court on Strictly Implementing the System of Public Trials (No. Fa Fa 1999-3)] art. 1 (1999) (on file with the *Columbia Law Review*).

552. Other exceptions include cases concerning juveniles, commercial secrets, and in some cases divorce. *Id.* art. 2.

553. *Id.* art. 11.

tion over the past decade has also included a small but noteworthy phenomenon in which courts and individual judges sue members of the media for critical reports.⁵⁵⁴

As media attention to legal matters has increased, courts have become more sophisticated in media relations. One judge summarized the situation by explaining that courts originally had no interest in the media. Once coverage grew, courts sought ways to avoid coverage. Today, courts pay more attention to directing coverage, in part to avoid excessive media influence on pending cases.⁵⁵⁵

Local courts often have close working relationships with local papers. Judges know the media will seek to report on cases. Thus in many cases courts prefer to provide journalists with information rather than allowing them to seek information on their own.⁵⁵⁶ Local courts frequently contact local journalists regarding cases they believe are noteworthy or that they want to publicize.⁵⁵⁷ Yet in cases where judges believe the media's views of the case are incorrect, they may seek to prevent the media from reporting.⁵⁵⁸ Some courts bar reporters—in particular nonlocal journalists—from attending court proceedings, sometimes by requiring “permits” that are difficult or impossible to obtain or by requiring that the journalists obtain written permission from higher courts; others attempt to keep hearing times secret.⁵⁵⁹ Journalists from influential central media, including CCTV, explain that some local courts refuse to allow them to cover cases or interview court personnel without approval from the Supreme People's Court.⁵⁶⁰ Those journalists who are allowed to attend

554. Xu, *Media-Judicial Relations*, *supra* note 19.

555. Interview 2003-20; see also Interview 2003-63 (commenting that courts are paying increasing attention to managing media coverage); Xu, *Responsibility of the Media*, *supra* note 29 (stating that only two reactions courts have to media coverage are anger and fear). Other government departments have likewise emphasized the importance of maintaining good relations with the media. See, e.g., Feng Lin, *Yunnan Shengzhang: Bu Dongde Yu Meiti Jianhao Guanxi Bushi Hege Zhengfu* [Governor of Yunnan: A Government That Cannot Establish Good Relations with the Media Is Not a Qualified Government], *Zhongguo Xinwen Wang* [China News Web], Jan. 14, 2003, available at <http://news.sohu.com/2004/01/14/81/news218548147.shtml> (on file with the *Columbia Law Review*) (discussing emphasis on media relations by governor of Yunnan Province); He Zhanjun & Cao Zhiheng, *Xinhua, Xinjiang Gongan Jiguan Jianli Xinwen Fayanren Zhidu, Meiyue Juxing Yici* [Xinjiang Police Establishes a Media Spokesperson System, Press Conferences Will Be Held Once a Month] (Jan. 15, 2004), available at http://news.xinhuanet.com/legal/2004-01/15/content_1278118.htm (on file with the *Columbia Law Review*) (discussing police plans to have monthly press conferences).

556. Interview 2003-20.

557. *Id.* Some local courts have propaganda departments; in other courts media relations are handled by the court's research office.

558. *Id.*

559. Interview 2003-140; Interview 2003-143.

560. Interview 2003-160. Such permission is rarely given, and journalists have been told that they may not report on the existence of such impediments. *Id.*

court proceedings may be forbidden from writing notes during the proceedings.⁵⁶¹

Journalists agree that courts have become more concerned with managing the flow of information to the media,⁵⁶² and some journalists comment that they are increasingly wary of offending or upsetting judges by writing critical reports.⁵⁶³ As one journalist at a central paper noted, “If we are going to overturn a court decision, we must be very careful.”⁵⁶⁴ In some local courts, for example, journalists are not permitted to contact judges directly—formerly a common practice—but must instead go through the court’s research office.⁵⁶⁵ Journalists comment that if they report negatively on a local court, the court will retaliate by denying them leads regarding future cases.⁵⁶⁶ The media’s reliance on the courts for information makes local media less likely to supervise, or report critically on, local courts.⁵⁶⁷ Reporters complain that courts rely increasingly on arguments of judicial independence to prevent reporters from covering cases, and that the courts are restricting the media while at the same time issuing statements welcoming popular opinion supervision.⁵⁶⁸

Courts may also require officials to screen articles. In some areas, courts require that all local reports on cases be reviewed by court officials prior to publication.⁵⁶⁹ Although courts may not have the formal power to demand review of reports prior to publication, their ability to deny access to the courts is a significant incentive for journalists to cooperate. Journalists may also be concerned that failure to heed such requirements will result in complaints to the local propaganda department. Even when they are not formally required to do so, journalists may send articles on major cases to the courts for review in advance of publication.⁵⁷⁰ In ma-

561. Interview 2003-129; Interview 2003-140.

562. Management of media coverage of court proceedings is not new; propaganda authorities have long managed media coverage of individual cases to deliver particular messages. Increased media coverage of cases, however, does appear to be making media management of legal coverage more important.

563. See, e.g., Interview 2003-109.

564. Interview 2003-114.

565. Interview 2003-23. Journalists do not perceive such restrictions as attempts to reduce *ex parte* contacts but rather as attempts to insulate judges from scrutiny. Increased difficulty obtaining information from courts has led some journalists to rely more heavily on lawyers for leads and information regarding interesting cases. *Id.*

566. Interview 2003-24; Interview 2003-39. The threat of such reprisals can result in significant financial pressure on journalists, who are paid based on the number and prominence of articles they write, and who may be fined or have their bonuses reduced if they fail to report on a story covered by a rival paper. Interview 2003-24; Interview 2003-39.

567. See Interview 2003-20; Interview 2003-39; Interview 2003-80; Interview 2003-109.

568. Interview 2003-48; Interview 2003-160; Interview 2003-164.

569. Interview 2003-30; Interview 2003-36; Interview 2003-49; see also Interview 2003-65 (stating that judge will ask to review articles if judge is aware of them in advance).

570. Interview 2003-39.

for cases courts also frequently provide local papers with the text of the article to be run.⁵⁷¹

Some courts may forbid local media from writing on court decisions until after the courts have issued decisions⁵⁷² or may require the media to publish articles on certain cases. Thus, for example, under rules announced shortly after the Sun Zhigang case by the Guangdong Province Propaganda Department and the Guangdong Province High People's Court, the news media are banned from reporting on a case prior to the court announcing its decision. The media are permitted to report on publicly decided cases, but they are forbidden from writing opinions that differ from the views of the court.⁵⁷³

Many law-oriented television programs and television news items on legal matters are prepared in cooperation with courts, police, or procuratorates.⁵⁷⁴ Courts may also use publications to boost their own profile or defend courts from criticism. For example, ninety percent of articles in the daily *People's Court News* are written by judges.⁵⁷⁵ During the Sun Zhigang case, the paper carried an article on the topic of public trials, largely aimed at rebutting criticism of the courts for not permitting the media to attend the trial.⁵⁷⁶

A desire to maintain and improve judges' images, as well as to avoid excessive media influence, motivates court management of media coverage. As one judge commented, increased media impact on public perceptions of the courts has resulted in increased emphasis on court propaganda.⁵⁷⁷ Courts not only attempt to affect media coverage; they also explicitly require judges to engage in "propaganda work" designed to improve the image of the court. Judges in many courts must engage in a certain volume of "propaganda work" each year, work designed to boost the court's reputation, and therefore the reputation of the court's leaders.⁵⁷⁸ Such work can take the form of written summaries of cases for the

571. Interview 2003-49; Interview 2003-93. Likewise, articles in the national legal press may actually be written by government entities, including the courts. Interview 2003-73.

572. Interview 2003-36; Interview 2003-80; Interview 2003-93.

573. Xu, Checks, *supra* note 31. Journalists have criticized the rules as violating their freedom of speech. *Id.*

574. Interview 2003-49; Interview 2003-57.

575. Interview 2003-158.

576. *Id.*

577. Interview 2003-20. In Shanghai, for example, courts now have official spokespeople to handle interactions with the media and propaganda departments that oversee media coverage of the courts. Interview 2003-63.

578. Interview 2003-78; see also Zheng Fa, Ji Shanghai Shi Gaoji Renmin Fayuan Fazhi Xuanchuan Gongzuo [Reporting on the Legal System Propaganda Work of Shanghai Municipality High People's Court], *Fazhi Ribao* [Legal Daily], Dec. 19, 2001, at 2, available at http://www.legaldaily.com.cn/gb/content/2001-12/19/content_29164.htm (on file with the *Columbia Law Review*) (noting requirement that each court in Shanghai engage in positive propaganda work, and describing steps taken to increase media understanding of court work). The Supreme People's Court also requires lower courts to publicize their

court's research department or of articles about cases for the media. Judges receive credit for positive articles about their cases that run in the media and may receive cash bonuses for writing articles in academic journals or for generating positive coverage of the court in major papers.⁵⁷⁹ Judges also have incentives to seek positive coverage of their cases in order to improve their own chances of promotion⁵⁸⁰ and thus may also seek to develop relationships with individual journalists in order to receive favorable coverage of their cases.⁵⁸¹

work, Interview 2003-89, and intermediate courts collect and review press reports on lower courts in their jurisdiction in order to evaluate lower courts' propaganda work. Interview 2003-20; see also Hao Lili, Xiao Yang Zhixin Quanguo Fayuan Xinwen Xuanchuan Gongzuo Zuotan Hui Zhichu [Xiao Yang Sends Letter to Give Direction to National Court News Propaganda Work Meeting], Renmin Fayuan Bao [People's Court News], Aug. 8, 2002, available at <http://www.law.com.cn/pg/newsShow.php?Id=2052> (on file with the *Columbia Law Review*) (reporting on written comments from Supreme People's Court President Xiao Yang stating that propaganda work is important aspect of court work that cannot be separated from adjudication work, and that courts should work together with media and strictly implement regulations regarding reporting on the courts in order to increase respect for, and trust in, the law).

579. Interview 2003-78; Interview 2003-85.

580. Interview 2003-78.

581. Interview 2003-111. The report of the Propaganda and Education Department of the Shaanxi High People's Court quoted at the start of this Article provides an example of the degree of emphasis courts place on managing media coverage. See *supra* text accompanying note 2. The report noted that the courts themselves had published more than four hundred articles in a variety of newspapers and news services in the first ten months of 2002. Shaanxi Province High People's Court, *supra* note 2. The report also provided statistics on television news, broken down by the administrative rank of the broadcasting station. *Id.* The Propaganda and Education Department added that it had succeeded in "improving leadership and management of coverage of major cases;" that there had been no negative exposés in the media regarding major cases; and that the total number of negative reports on the Shaanxi courts had decreased by seventy percent compared to the previous year. *Id.* The department attributed this decrease to their efforts in working and communicating with the media to avoid negative reporting, noting that the department had either managed or "entrusted others to manage" sixteen potential negative reports by media ranging from CCTV and Xinhua to a variety of provincial media. In so doing, they succeeded in "protecting the reputation and image" of both the courts and the judges. *Id.* The report also noted that the department had issued thirteen different notices and regulations on "court propaganda work," had improved the system of news spokespersons for, and news conferences by, courts, and had improved management of reporters seeking to interview court personnel. Likewise, by "strictly inspecting reporters' drafts," the department succeeded in "avoiding false news and malicious stirring-up [of stories]." *Id.*; see also Chen Haifa & Ji Tianfu, Henan Fayuan Dui Xinwen Xuanchuan Gongzuo Tichu Yaoqiu [Henan Court Raises Requirements for Media Propaganda Work], Henan Fayuan Wang [Henan Court Online], Apr. 4, 2003, at <http://hnfy.chinacourt.org/public/detail.php?id=847> (on file with the *Columbia Law Review*) (discussing court propaganda work in Henan Province, and noting need for courts to cooperate with media to create "positive public opinion environment," increase respect for and trust in law and courts, maintain good image of courts, and reduce number of negative reports); Fayuan Sixiang Xuanchuan Gongzuo Huiyi Zai Zhuhai Zhaokai [Court Thought Propaganda Work Meeting Opens in Zhuhai], Dayang Xinwen [Dayoo News], Aug. 13, 2001, at http://dailynews.dayoo.com/content/2001-08/13/content_189779.htm (on file with the *Columbia Law Review*) (reporting on national meeting of court propaganda

Media management of news coverage is most significant in first instance courts. This is due both to local media being primarily interested in cases in local courts and to the fact that there is less potential for critical reporting on higher-ranking courts. As with other targets of media criticism, at least some in China's courts are demonstrating that they are adept at resisting scrutiny. Regardless of whether doing so serves the interests of judicial fairness or is merely an attempt to protect vested local or institutional interests, the ability of courts to manage media coverage demonstrates that media coverage of the courts is not a one-way street and that increased media scrutiny may also lead to reduced court transparency.

III. INFLUENCE, INSTITUTIONAL COMPETITION, AND IMPACT ON COURT EVOLUTION

Lack of transparency makes assessing the impact of increased media scrutiny of the courts difficult. Nevertheless, there is strong evidence that China's media have become an important force in the Chinese legal system: Each of the four mechanisms that Part II examines demonstrates that media influence can be extremely effective, an impression that is backed up by courts' emphasis on managing media coverage. When media outlets, particularly those of a high administrative rank, decide to cover a story, coverage often has a significant impact on other institutions, including the courts.⁵⁸²

As Parts I and II show, three primary factors explain the media's increased ability both to influence other decisionmakers, including the courts, and to resolve problems. First, the media's traditional function as both the mouthpiece and the eyes and ears of the Party-state provides it with a direct route to influence Party-state officials. The historical reliance of Chinese officialdom on the press at each level meant that as conflicts between the media and the courts began to emerge in the 1990s, the media started from a position of strength. The four mechanisms discussed in Part II share a common characteristic: Media pressure stems in significant part from the media's ability to affect the opinion of leaders at the relevant level of the Party-state.⁵⁸³ Judges comment that the most

workers and noting that the meeting emphasized the importance of maintaining the primacy of positive news); Li Xiaojing, Shi Zhongyuan Zhaokai Quanshi Fayuan Xinwen Xuanchuan Gongzuo Huiyi [Municipal Intermediate Court Holds Citywide Meeting on Court News Propaganda Work], at http://www.gzcourt.org.cn/court_info_detail.jsp?type=2&code=29 (last visited June 30, 2003) (on file with the *Columbia Law Review*) (discussing cooperation between courts and media in Guangzhou).

582. Few journalists or legal professionals dispute this claim, although some journalists protest that they are ineffective, and that their ineffectiveness and the obstructions they face in reporting demonstrate the need for legislation granting journalists legal powers and protections that would make it easier to expose wrongdoing.

583. See *Can Media Supervision Push Forward Judicial Fairness?*, supra note 162, at 12 (arguing that views in newspapers are understood as being views of Party); Jiang, *Legal Concepts*, supra note 316 (stating media have big effect in part because they speak with an

noteworthy effect of media coverage is to bring particular cases to the attention of higher-ups, who in turn exert influence on courts.⁵⁸⁴ Judges do not fear seeing their names in print; rather, they fear their “leaders” seeing their names, or the names of their courts, in print. Commentators note that if a news report does not attract the attention of the relevant leaders, be they local or national, the report is unlikely to produce results.⁵⁸⁵ Thus the *Dahe News* coverage in the Zhang Jinzhu case led to instructions from the provincial party secretary; media coverage resulted in the Supreme People’s Court intervening in the Jiajiang Color Factory case; and Sui Xiang, the eight-year-old girl who lost both hands, won her case after officials at the Supreme People’s Court took notice. Similarly, internal reports are effective because they are read by high-ranking officials—authorities made arrests in the Sun Zhigang case only after receiving written instructions from Party leaders⁵⁸⁶—and both formal referral

official voice). As one journalist commented, all forms of pressure are the same at the end of the day because in all cases courts “fear their leaders.” Interview 2003-3. Some in China have also explicitly linked increased media supervision of the courts to increased Party supervision over the courts. See, e.g., Li Fujin, Shenpan Fangshi Gaige Zhong Yingdang Chuli Hao Jiandu De Sigé Guanxi [Four Supervision Relationships That Should Be Handled Well in the Course of Trial Method Reform], Dongfang Fayan [Eastern Legal View], at <http://www.dffy.com/faxuejieti/ss/200311/20031118145746.htm> (last visited June 6, 2004) [hereinafter Li, Four Supervision Relationships] (on file with the *Columbia Law Review*) (arguing that media supervision should join with supervision by Party and people’s congresses to report to Party committees, people’s congresses and other government departments on criticism regarding courts).

584. See Interview 2003-20; Interview 2003-63; see also Wei, Popular Opinion Supervision, supra note 233 (noting that important function of media is to make leaders aware of issues in society, so that they may adjust their policies); Zhao, Alienation of Media Supervision, supra note 161 (noting that one effect of media coverage is to bring issues to attention of high-ranking “leaders”).

585. See Interview 2003-26; see also A Discussion on the Media and the Judicial System, supra note 211 (stating that media have power to resolve issues because media are an arm of government); Huang, Popular Opinion Supervision, supra note 135 (stating that matters are resolved when media bring issues to attention of government leaders); Tong, supra note 437 (stating that media supervision is effective only when stories attract the attention of government leaders); Ye, Fairness, supra note 358 (quoting *Focus* director as stating that program operates under special conditions, because it receives the support of government leaders); Zan, supra note 414 (quoting editor of *China Economic Times* as stating that *Focus* is effective because central government leaders pay attention to it). One commentator, writing on the trial of Jiang Yanping in Hunan, argued that media coverage has two types of influence. First, media reports influence Party-state leaders and cause them to “emphasize” a case or issue. Second, such reports directly affect judges, who feel compelled to satisfy public opinion in high-profile cases. Ai Yezi, Xinhua, Xinwen Meiti Ying Yifa Jinxing Yulun Jiandu [News Media Should Carry Out Supervision in Accordance with Law] (Apr. 5, 2001), at <http://www.hn.xinhua.org/news/2001-4-5/0145184114.htm> (on file with the *Columbia Law Review*).

586. See Liu Wujun, Sun Zhigang De Xuezhe Shangshu Yu Lingdao Pishi [The Scholars’ Appeal and the Leaders’ Written Instructions in the Sun Zhigang Case] (June 20, 2003), at <http://www.house2008.com/article.asp?articleid=4106> (on file with the *Columbia Law Review*) (questioning whether case ever would have been resolved without instructions from Party leaders).

of cases and informal routes of influence may succeed because of the implied threat that the media will make others aware of the subject matter.

The Chinese press is not unique in fielding complaints from readers or viewers, or in its ability to exert influence by bringing particular cases or problems to the attention of officials. Yet in China the media's role as an information gatherer for the state amplifies this influence. The media's authority is also strengthened by a system in which courts, like other administrative actors, continue to be subject to direction from Party-state authorities regarding the handling of particular cases or matters. Although judges comment that the frequency with which local, provincial, or national Party-state leaders intervene in individual cases has decreased in recent years, such intervention continues to be an important route of influence, and its continuing existence underscores the media's power to affect disputes by bringing them to the attention of higher-ranking officials. The influence of individual Party-state leaders also contributes to the media's power: In a system in which a written instruction from a provincial Party secretary or deputy secretary can force courts to reach a particular outcome, the media need only attract the attention of one well-placed Party-state official to have an effect.

Second, media commercialization has amplified the media's role in both generating and reflecting public opinion. There appears to be increasing room for views of the public in media "public opinion." The broader range of topics, increased volume of available news, and loosening of content control has meant that the media are increasingly airing popular views in public. Popular complaints that in the past might have been aired in internal reports, or not aired at all, are now exposed in public editions; Party-state leaders continue to learn of such matters from the media but increasingly do so at the same time as other readers. The media's influence as a Party-state actor does not render public opinion irrelevant; rather, the media's ability to generate public opinion, their ability to reach a large portion of the population directly, and their claim to represent popular views strengthen their ability to exert influence within the Party-state. Market pressures lead the media to reflect public opinion, as papers find that venting public anger at corruption and other social problems helps to boost market share. At the same time, commercialization may lead to a greater media role in generating, or "stirring-up," public opinion.⁵⁸⁷

587. Ding Xiaolu, Wang Lijun Bei Gaoshang Fating Zuixin Neimu [Most Recent Inside News Regarding the Suit Against Wang Lijin], 2000 Renmin Gongan [People's Public Security] No. 1, at 14; cf. Sun, Thoughts, *supra* note 7 (discussing influence of media on popular views and increased media choice in subjects of reports). In both the Sun Zhigang case and the black whistle case, it was not simply the facts of the incident, but rather a combination of the facts and the resulting popular outcry that resulted in leadership intervention.

Increased attention to public opinion is not, however, only a product of commercialization. Greater coverage of popular grievances is also consistent with attempts by the Party-state to derive legitimacy from responding to popular grievances. Popular outrage over a particular case may pressure authorities to act, but responding quickly also furthers state interests in appearing to be responsive to popular concerns. In addition, the media continue to play important roles in creating public support for Party decisions. The media are a mechanism both for affecting Party decisionmaking⁵⁸⁸ and for justifying such decisions *ex post facto*. In law, the media and individual journalists manifest these roles by attempting to draw attention to cases or problems in addition to the Party's use of the media to deliver messages regarding particular cases after decisions have been reached.⁵⁸⁹

Measuring public opinion in China is difficult; the media's claims to speak for the public must be viewed with skepticism. In cases in which the media claim to reflect popular views, the media may in fact reflect the views of educated elites, of the media outlet itself, or of particular Party-state individuals or institutions. It appears, however, that there is more substance to the media's claims to reflect "public opinion" today than in the past, and a significant portion of the media's influence on leadership does appear to stem from their ability to reflect public views, or at least from the perception that they do so.⁵⁹⁰

Third, incentives to individual journalists augment these first two factors, suggesting that the roles, and in some cases ideals, of journalists also partially explain media influence. A significant volume of critical reporting appears to be the work of idealistic journalists, or journalists "with conscience." Observers and journalists note the importance of journalists who pursue stories because of their desire to redress injustice, often skirting permissible limits and risking harm.⁵⁹¹ Even assuming that journalists will overstate the degree to which idealism plays a role, it does appear that in many cases journalists are pursuing nonfinancial goals. In doing so, they are continuing a tradition, stemming back at least to the early

588. For a similar argument that social organizations, often with close links to the Party-state, may increasingly be affecting state policy, see generally Tony Saich, *Negotiating the State: The Development of Social Organizations in China*, 2000 *China Q.* 124 (noting state-linked social organizations "can have considerable impact on the policy-making process, indeed more than if they were to try to create an organization with complete operational autonomy").

589. The role of the media in both creating and reflecting popular views in criminal cases also demonstrates that it would be a mistake to see these views as inherently counter to the interests of the Party. Both the public and the Party appear to have an interest in seeing corrupt local officials punished, even where doing so may be in tension with legal standards or procedures.

590. See Interview 2003-131 (commenting that media are an important route for influencing public views, but also that media exert influence by reflecting public views).

591. See, e.g., Interview 2003-136; Interview 2003-141; Interview 2003-142.

1980s, of journalists using their positions to pursue political or social objectives.⁵⁹²

The journalists interviewed for this Article are not representative of journalists nationwide; those willing to speak to a foreign academic about their roles are likely to be better educated and politically more liberal than many of their colleagues and to portray themselves as idealists. Nevertheless, the expansion of a class of journalists consciously using their positions to pursue ideals or goals, and in some cases to push for social or legal change, is noteworthy and demonstrates that the increase in critical reporting does not stem solely from commercialization.⁵⁹³

This Part examines the implications of the media's role for our understanding of law and dispute resolution in China. It begins with an analysis of the relationship between the media's role and trends in Party-state governance. Against this institutional backdrop, this Part then turns to an evaluation of the implications of the media's role for the development of China's courts; debates regarding whether media reporting on the courts should be restricted; and the possibility that courts, like the media, may be developing expanded areas of autonomy, relatively free of direct Party interference.

The Chinese media may be a force for transparency, but media supervision also reinforces Party influence on court decisionmaking. The media are increasingly able to stir up and reflect public opinion, at times in ways that affect Party decisionmaking, but propaganda authorities continue to be able to restrict public debate, limiting the impact of individual cases. Media scrutiny reflects increased relevance of courts and law in China, but media influence also suggests that an increase in the volume of litigation has not necessarily been mirrored by an increase in the authority of the courts. The media's success in asserting their newfound autonomy may, however, be an important model for the courts.

A. Competition Among Institutions: Supervising the Party and the Public

The media's reliance on official links to exert influence demonstrates that court-media relations must be understood against the background of broader institutional structures. This section argues that the media's role in exposing wrongdoing reflects a central policy of encouraging various Party-state institutions to "supervise" wrongdoing by other Party-state actors. Thus the media's role in public opinion supervision is one element of broader trends toward controlled supervision, wherein Party-state institutions are encouraged to address wrongdoing and popular grievances, but in which the Party maintains the ability to shut off excessive criticism. Although the Party-state has long encouraged vertical supervision, where central and provincial authorities supervise and pun-

592. See *supra* note 115 and accompanying text.

593. A range of financial and personal interests may also affect incentives to report on particular matters. See *supra* Part I.D.

ish abuses at lower levels of the Party-state, in particular within the same administrative hierarchy, the media's role reflects the expansion of horizontal supervision by Party-state institutions. Institutions of the same rank are increasingly seeking to expand their oversight over each other. In addition, the growth of media supervision shows that oversight is no longer simply a question of curbing local abuses.

1. *Centralized Competition.* — Tensions between the courts and the media reflect rival claims to being fair arbiters of disputes. Although some justify the media's right to cover court proceedings on the need for transparency,⁵⁹⁴ journalists also frequently contend that they are more likely to report and resolve disputes than the courts.⁵⁹⁵ In this regard, friction between the media and the courts is one aspect of more general competition among official actors in the Chinese political and legal system, where numerous institutions now assert their right to "supervise" other actors.⁵⁹⁶ Thus China's media engage in public opinion supervision, people's congresses argue for expanded "people's congress supervision," including the right to investigate and supervise individual court decisions,⁵⁹⁷ courts and the procuratorates argue for "judicial supervision," and the Party's discipline commissions engage in "supervision by the Party."

594. See, e.g., Li, Four Supervision Relationships, *supra* note 583 (noting role of media supervision in improving transparency); Wang, Two Swords, *supra* note 259 (noting that popular opinion supervision not only ensures transparency, but also guarantees free speech and "right-to-know" rights of individuals); Xiao Yang Points Out Need, *supra* note 123 (noting comments by Supreme People's Court president regarding role of popular opinion supervision in ensuring transparency).

595. For example, one journalist commented that it is impossible to obtain a fair result in local courts without media assistance. Interview 2003-73. Another stated that judges who understand law will not be affected by the media—but that many courts fail to understand law. Interview 2003-86.

596. The courts are not alone in complaining of excessive media influence. Advocates of a greater role for people's congresses in supervisory work complain that the media are often ineffective, but nevertheless attract much more attention from the public than does the (presumably) more effective supervision work conducted by people's congresses. See Lu Qifen, Fahui Yulun Jiandu Zuoyong Tigao Pingyi Gongzuo Shixiao [Increase the Supervision Work of the Media, Enhance the Effect of Appraisal Work], at <http://www.jxrenda.gov.cn/jxrd/jxrd/0103/3.htm> (last visited Jan. 18, 2003) (on file with the *Columbia Law Review*) (stating that supervision by people's congresses is "the highest form of supervision" and stating that supervision by media often fails to go into depth); Zheng Xiang, Ganyu "Jiandu," Haiyao Ganyu Xuanchuan "Jiandu" [Dare to "Supervise," but Also Dare to Publicize "Supervision"], *Zhongguo Renda Xinwen* [China NPC News], Jan. 31, 2002, at <http://www.npcnews.com.cn/gb/paper7/13/class000700005/hwz197664.htm> (on file with the *Columbia Law Review*) (complaining that people often bring complaints to media instead of to relevant-level people's congress, and blaming this phenomenon on lack of understanding people's congresses' role, and failure of people's congresses to publicize their supervision work).

597. Judges and lawyers complain about the increasing frequency with which local people's congresses intervene in cases, often to help private parties who have connections to individual representatives. See Interview 2003-20; Interview 2003-40.

The emergence of a range of institutions engaging in (and sometimes competing to engage in) “supervision” reflects both an acknowledgement of the need to crack down on corruption and wrongdoing, especially by official actors, and uncertainty over the proper mechanism for doing so without undermining confidence in Party rule. The various departments or institutions exposing malfeasance all justify their actions by the need to address problems elsewhere. Implicit in these claims appears to be general agreement that the system is rotting but that others are to blame. Yet problems permeate all of these supervisors, including the media. Indeed, it is the media’s links to the Party-state that make them vulnerable to many of the same problems as the actors they supervise.⁵⁹⁸ The media justify their role in part based on the perceived need for an external actor free of the problems plaguing China’s government. In reality, the media suffer from many of the same problems that undermine the effectiveness of law and governance in China: corruption, lack of ethical standards, rapid commercialization, lack of legal knowledge, and lack of oversight.

In addition, the media are often affiliated with sectoral, institutional, or local interests. Hence the *People’s Court News* eschews critical reporting on the courts, and from time to time responds on behalf of the courts to critical reports in other publications. Papers affiliated with local governments, central government departments, or the military routinely publish articles advancing the interests of their supervising departments or institutions. Thus it would be a mistake to view the media as distinct from other institutions. Although the media may be developing an institutional identity, in many cases their interests are closely linked to those of the government or Party institutions or departments with which they are affiliated. In such cases, court-media tensions may reflect tensions between the courts and the institutional interests that the media represent.

Exposing wrongdoing and punishing malfeasance may be an appropriate role for each of the competing Party-state institutions, but doing so may also reflect an attempt by each institution to enlarge its influence and role. Increasingly, governance in China is characterized by competition among a range of actors and institutions for authority and influence within the constraints of Party rule.⁵⁹⁹ This story of institutions competing for power, including the power to supervise each other, is not surprising in a system where institutional positions are fluid. The formal legal system itself can be viewed as a forum for such conflicts. Litigants, law-

598. See Liu, Draft Proposals, *supra* note 221 (noting that media often defend interests of industries or localities with which they are affiliated, and in some cases even as defenders of corruption).

599. Cf. Wu Xiaoliang, Xin Yilun Sifa Gaige Quanmian Qidong [A New Round of Judicial Reform Gets Started], *Caijing* [Caijing Magazine], Jan. 8, 2004, available at <http://www.chinajudicialreform.com/info/newsdetail.php?newsid=910&PHPSESSID=ef8948f78076defa4b1b1038f3777e15> (on file with the *Columbia Law Review*) [hereinafter Wu, New Round] (noting that external supervision of courts often resembles administrative interference).

yers, the media, judges, procuratorates, and people's congresses all seek to influence the outcome of individual cases, and a significant degree of ambiguity exists over which institution has the final authority to resolve cases.

Institutional competition appears to be part of a central Party-state strategy to grant both authority and, in the case of the media and lawyers, financial incentives to various actors to reveal and punish wrongdoing. Even if each of the institutions is flawed, the goal appears to be to tolerate and encourage a certain amount of exposure of wrongdoing by and within each institution, at least at the local level. In a system in which many participants lack competence and in which corruption and institutional protectionism undermine the legitimacy and effectiveness of the Party-state, encouraging a range of actors and institutions—the courts, the procuratorates, people's congresses, Party disciplinary organs, lawyers, and the media—to “supervise” each other may be the most effective way of addressing problems that undermine the system while at the same time mitigating development of external checks. Thus the media's problems of malfeasance, corruption, and lack of ethical standards do not necessarily undermine their effectiveness in influencing other actors.

Recognizing that numerous Party-linked organizations and institutions compete within the political-legal system demonstrates that media oversight is not solely a mechanism for Party interference in law. Party influence permeates all of the institutions competing for position in the Chinese system, and the press is one of many Party institutions. Moreover, the Party is not monolithic, and the media's views do not necessarily represent those of the Party; the media may serve a range of interests.

The Party continues to play a significant role in overseeing and limiting the actions of all Party-state institutions, and it defines the contours of the playing field on which other institutions compete. The growth of media supervision, and in particular of internet news, suggests that the Party is facing increasing difficulties in controlling criticism. Yet even if excessive public criticism cannot be preempted, it can generally be silenced. The same is true of Party relationships to other institutions: Criminal or Party disciplinary investigations can be cancelled, courts can be ordered to decide cases in particular ways, and people's congresses can be limited in their ability to carry out investigations. The fact that the Party propaganda authorities permit criticism does not mean that such authorities cannot stop criticism; the Party continues to routinely intervene once a matter has percolated for a certain period. Yet the diversity of Party views and goals may also explain the inconsistent application of Party policy.

China, or at least the central Party-state, appears to be striving to establish a system of controlled transparency. This approach is perhaps best reflected in the central authorities' reaction to the SARS outbreak: Central authorities both called for greater transparency and issued instructions to China's media regarding how the outbreak should, and

should not, be reported.⁶⁰⁰ The need for greater openness is acknowledged, but it is also viewed with trepidation.

2. *Local-Center Dynamics*. — The media's role also reflects the dynamics, and perhaps evolution, of local-center relations in China. The media's ability to expose and criticize wrongdoing at the local level reflects a policy of permitting wrongdoing to be exposed and of blaming most wrongdoing on abuses at the local level. Media criticism of local abuses, in the courts and elsewhere, supports the myth that problems of corruption and wrongdoing are largely confined to the local level. Likewise, the greater ability of higher-ranking media to report on abuses at the local level, and of local media to criticize wrongdoing outside their local jurisdictions, reflect the degree to which administrative rank and institutional power continue to determine both the targets of criticism and the person or institution who does the criticizing.

Yet the media's role, and in particular the media's interaction with courts, suggests new complexities in local-center relations in three respects. First, some in the media have shown an increased willingness to target systemic failings—thus suggesting that problems are not simply due to wayward local officials. For example, in the Sun Zhigang case the media highlighted problems in, and indirectly challenged the legality of, the national system of custody and repatriation. Likewise, *Southern Weekend's* critique of procedures that permitted a defendant to be sentenced to death in four consecutive trials—with the judgments in the first three reversed on appeal—called into question nationwide procedures regarding the handling of capital cases. Increasingly, media of provincial or local rank have been willing to criticize provincial-level authorities in other provinces. Although not critical of central authorities, the broadening range of criticism suggests that the media may increasingly play a role in exposing systemic problems.

Second, court reactions to media coverage suggest that some courts may be beginning to challenge the presumption that all local actions that protect local interests are examples of illegitimate local protectionism. As Liao Fan has written, the term "local protectionism" is uniformly taken to be pejorative in China; where local interests conflict with those of the center, it is presumed that the center is correct.⁶⁰¹ The ability of courts to respond to media coverage, in particular by blocking or impeding reporting, and to justify such actions based on the need to protect the fair-

600. Cf. Amartya Sen, *Development as Freedom* 186–88 (1999) (noting role of open politics, democracy, and a free press in preventing famine).

601. Liao Fan refers to this as "the hegemony . . . of the center's ethical standards." Liao Fan, *Tizhinei De Boyi* [Playing Go Within the System] (Aug. 25, 2003), at http://article.chinalawinfo.com/article/user/article_display.asp?ArticleID=23833 (on file with the *Columbia Law Review*) (critiquing draft of this Article). Allegations of local protectionism refer not only to cases in which local authorities or courts ignore national laws or policies, but also arise in instances where local authorities are legitimately protecting local interests.

ness of legal proceedings, suggests that local interests may become more assertive in responding to accusations of local protectionism, and may be beginning to contest the presumption that the center (including central media) is always correct.

Third, the media's role suggests the growing importance of horizontal supervision, wherein Party and government institutions expose problems in and malfeasance by other Party-state institutions and actors. Such developments reflect recognition that blaming problems on malfeasance at the local level or on isolated wayward officials may not be sufficient and that top-down supervision is of limited effect, in particular when supervision is carried out by administrative superiors. Both the Sun Zhigang case and the BMW case generated strong popular responses because they identified problems that resonated beyond the individual cases.

The rhetoric of popular opinion supervision may at times resemble descriptions of the Western media's "checking value." But China is seeking to develop a system in which misuses of official power are checked by other official powers, both horizontally and vertically, rather than by countervailing nonstate forces in society,⁶⁰² and in which such checks are aimed at lower-level officialdom, not the central Party-state. Commercial incentives do appear to encourage some Chinese media to challenge political boundaries and may lead the media to become a force for increased transparency within and for fundamental changes to the existing system. That many of the new roles undertaken by the media are consistent with the goals of the Party-state demonstrates that this is not inevitable. Similarly, the fact that courts are increasingly asserting their institutional interests, often in the form of claims that other Party-state actors are infringing on courts' independence, does not necessarily mean that courts are becoming increasingly independent or powerful.

B. *Media Coverage and Court Evolution*

Increased caseloads have augmented the importance of China's courts. The media's impact on law and dispute resolution, however, suggests that greater use of the courts does not necessarily mean courts have become more authoritative. This section examines the implications of the media's role in the legal system for the development of China's courts. The media's role in both pressing for transparency and, at times, undermining the fairness of individual proceedings is not unique to China. Commentators on both transitional and Western democratic systems have recognized that the media may threaten fairness at the same time as they play a role in ensuring transparency and justice.⁶⁰³ Yet the

602. Cf. Vincent Blasi, *The Checking Value in First Amendment Theory*, 1977 *Am. B. Found. Res. J.* 521, 523–28 (describing importance of checking value as justification for First Amendment protections in United States).

603. See, e.g., Edwin Rekosh, *Emerging Lessons from Reform Efforts in Eastern Europe and Eurasia*, in *Office of Democracy and Governance*, U.S. Agency for Int'l Dev.,

Chinese media do not fit easily into Western frameworks describing the media's relationship to the courts. The growing relevance of law has facilitated media coverage of the courts, but courts continue to be undermined both by lack of authority and by external interference. Media oversight of the courts, while increasing transparency, also reinforces traditional norms of Party interference.

1. *Competing to Resolve Disputes.* — Despite the increased profile of China's courts, the role of the media in the legal system demonstrates that courts remain only one of many institutions capable of resolving disputes. Popular reliance on the media suggests both lack of confidence in the courts, in significant part due to the belief that courts are corrupt or controlled by local governments, and also popular recognition that courts may not be effective or efficient. Thus, in the Sun Zhigang case, Sun's family brought the incident to the attention of the media shortly after his death. In the Jiayang Color Factory case, the concerned local people's congress representatives appealed to the media in an attempt to prevent action by the court as soon as they were aware that the factory had filed suit.

China is not unusual in having multiple mechanisms for dispute resolution, but China's media are unusual in using their position as an arm of the Party-state to undertake this function. The role of the media may thus reflect both a cause and an effect of the weakness of the courts since 1949. In a system in which courts historically played a minor role, those seeking redress were likely to appeal to other Party-state institutions. The continuation of appeals to such institutions, particularly the media, undermines efforts to increase the authority of courts.

The importance of the media in dispute resolution echoes the media's traditional role as a government complaints office; in fact, the Chinese media have to varying degrees since 1949 served that function. This tradition of serving as a forum for popular complaints partly explains the frequency with which complaints are brought directly to the media.⁶⁰⁴ The institutional importance of mass work departments may be decreasing, but journalists continue to play many of the same roles. Although some argue that popular views of the media as a government department responsible for problem solving are mistaken,⁶⁰⁵ the influence of the me-

Guidance for Promoting Judicial Independence and Impartiality 53, 71 (rev. ed. 2002), available at http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacm007.pdf (on file with the *Columbia Law Review*) (discussing impact of media in Eastern Europe).

604. The importance, and effectiveness, of the media in resolving complaints from viewers and readers is certainly not unique to China. Nevertheless, evidence suggests that the volume of complaints received by the media in China continues to be extremely high and is at least partially dependent on popular perceptions that the media are an effective route to redress.

605. See Wang, *Legal Rights*, *supra* note 144 (noting that reporters cannot carry out duty of supervision on behalf of government without additional legal protections).

dia in disputes suggests otherwise.⁶⁰⁶ Appeals to the media also resonate with traditional avenues of redress in China. Efforts to attract media attention, in particular from powerful national media, reflect the hope that the attention of a powerful individual will help win redress for individual complainants. The importance of intervention by officials also reflects a traditional concern, both pre- and post-1949, with substantive justice.⁶⁰⁷

The roles the media play also reflect the multiple avenues of redress that those with grievances pursue.⁶⁰⁸ China's media often portray themselves as a last resort, coming to the rescue in the face of manifest injustice and official inaction. The media do, in certain cases, assume this role. But in other cases they are an avenue of first resort, or part of a strategy that involves appeals to a variety of state actors, including individual Party officials, government administrative departments, and the courts.

Despite rapid increases in the volume of litigation, media involvement in disputes reflects the continuation of the tradition of popular appeals to various arms of the Party-state, and to the central government in particular, to address perceived wrongdoings.⁶⁰⁹ China's courts were re-

606. Cf. Chen Lidan, *Lüelun Yulun Jiandu Yu Sifa Gongzheng* [Discussing Media Supervision and Judicial Fairness], *Heilongjiang Ribao* [Heilongjiang Daily], Mar. 7, 2002, available at http://www.hljdaily.com.cn/gb/content/2002-03/07/content_40869.htm (on file with the *Columbia Law Review*) (arguing that phenomenon of aggrieved parties seeking help from the media reflects lack of popular confidence in courts); Ding, *supra* note 225 (arguing that lack of fairness of courts, and particularly phenomenon of local protectionism, drives many to seek help from media); Jiang, *Legal Concepts*, *supra* note 316 (stating that people with legal problems often pursue their cases in media instead of in court, and that media compound the situation by assigning themselves the role of problem solver).

607. See Yuanyuan Shen, *Conceptions and Receptions of Legality: Understanding the Complexity of Law Reform in Modern China*, in *The Limits of the Rule of Law in China* 20, 30–35 (Karen G. Turner et al. eds., 2000).

608. As Martin Shapiro has observed, most conflicts are resolved outside of the courts in most legal systems. Martin Shapiro, *Courts: A Comparative and Political Analysis* 10 (1981). Still, China was, prior to the reform era, unusual in the extremely limited role of courts. See Lubman, *supra* note 24, at 251 (noting that “[f]or the first thirty years of the People’s Republic, Chinese courts essentially existed in form but not in substance”).

609. See, e.g., Lubman, *supra* note 24, at 217–49 (discussing mediation, arbitration, and adjudication, and noting that despite the increase in litigation, “persistent and formidable political forces constrain the authority of the courts”); see also Donald C. Clarke, *Dispute Resolution in China*, 5 *J. Chinese L.* 245, 268–86 (1991) (discussing range of dispute resolution institutions and actors in China in addition to the courts, including People’s Mediation Committees and administrative organs); Jerome Alan Cohen, *The Chinese Communist Party and “Judicial Independence”: 1949–1959*, 82 *Harv. L. Rev.* 967, 1003 (1969) [hereinafter Cohen, *Judicial Independence*] (noting that “the law enforcement apparatus prior to the Cultural Revolution should be viewed as a single administrative system comprised of four distinctive yet integrated departments rather than as the Party and three separate institutions, one of which is the judiciary”); Gaibian Ganbu Yi Quan Dai Fa, *Qunzhong Bu Dong Fa He Sifa Bu Gong Zhuangkuang*, *Yindao Nongmin Zuo Chu Zhi Xin “Fang” Bu Xin “Fa” Wu Qu* [Changing Cadres’ Use of Power in Place of Law, the Condition of the Masses Not Understanding Law, and the Condition of an Unfair Judiciary Leading Peasants Erroneously to Believe in “Visits” and Not “Law”], *Renmin*

constituted in the reform era, but they were largely reinserted as part of an existing Party-state bureaucracy. As a result, the courts remain one of a number of actors that may—but do not necessarily—possess the power to resolve a particular dispute. Those with grievances also may not distinguish between the courts and other official actors; all may be perceived as representing the Party-state. Lack of confidence in the courts, and the high cost of litigation, including court fees, legal fees, and time,⁶¹⁰ also lead some to seek out assistance from the media.⁶¹¹

The most attractive characteristic of the media to those seeking redress, however, is their ability to force others to act in ways that the courts (as well as letters and visits offices) cannot. As discussed above, in the judicial context, the media's effectiveness often can be traced to their ability to appeal to high-ranking Party-state officials. Growing leadership responsiveness to some public grievances may augment pressure on courts to follow the views of the media. The media influence courts by utilizing mechanisms that commentators in China and abroad have long identified as undermining the authority of China's courts. Increased success of the media, albeit in many cases in exposing cases of injustice and wrongdoing, also reinforces the importance of Party and government influence in and oversight of the courts, as well as popular lack of confidence in the courts as either autonomous or fair decisionmakers.⁶¹²

2. *Popularizing Law or Popular Justice?* — The media undermine court authority not only by appealing to Party-state officials to intervene in cases, but also by appealing to the public. China's courts are not alone in facing populist pressures to treat criminals harshly or to reach decisions that conform to popular conceptions of right and wrong. But such pressures are amplified in a system in which they are combined with Party-state oversight; lack of alternative media voices and an absence of other mechanisms for venting popular opinion; and in which courts lack either

Ribao [People's Daily], July 10, 2003 (on file with the *Columbia Law Review*) (discussing reasons that rural residents do not trust law and courts and instead appeal to government officials).

610. Interview 2002-7; Interview 2003-26. Media coverage is not necessarily free of financial costs. See *supra* text accompanying note 161 (discussing payments to journalists to persuade them to write stories).

611. See Interview 2003-3 (commenting that popular confidence in media stems in part from courts' lack of power); Interview 2003-9 (stating that media are trusted more than other arms of Party-state); Interview 2003-26 (stating that reliance on media reflects lack of confidence in the law). On corruption in the courts, see, e.g., Can Media Supervision Push Forward Judicial Fairness?, *supra* note 162, at 10 (quoting Beijing lawyer as stating that it is difficult to win cases without some level of corruption).

612. A number of commentators in China have noted that media coverage of the courts may be undermining confidence in the courts. See, e.g., Cai, *Media Adjudication*, *supra* note 323; Liu, *Television Programs*, *supra* note 105. Likewise, court officials have suggested concern that the media may also be undermining popular confidence in the courts by reporting critically on them. See, e.g., Zhu, *Courts Will Protect*, *supra* note 223 (quoting Supreme People's Court president Xiao Yang as stating that media coverage should benefit the image of judicial organs).

a traditionally powerful position in the Party-state or the ability to claim to speak or act on behalf of the public.

China's recent experience contrasts with many Western countries where the development of judicial systems predated the emergence of a commercialized popular press.⁶¹³ In China, courts have developed concurrently with media commercialization, and they have developed more slowly than the media. China's courts have confronted commercialized media that in many cases reflect and market popular conceptions of justice without having previously developed institutional authority or popular trust.

Although journalists sometimes use legal standards to highlight wrongdoing, the media also often exert influence on the courts by appealing to popular conceptions of morality, as they did in the Jiajiang Color Factory case. China's media are not unusual in using such populist appeals; nor are China's courts alone in being influenced. Yet these pleas appear to carry particular weight in a system in which courts are institutionally weak and frequently lack procedural norms governing the handling of cases; judges risk sanction if their treatment of a case is viewed as erroneous by their superiors; and there is traditional emphasis on substantive justice. Likewise, in a system in which public debate over pending legislation is generally muted,⁶¹⁴ the media's role in voicing public concerns regarding individual cases—whether generated by or reflected in the media—may be of particular importance. If legislation lacks popular legitimacy, claims by the media to represent the public may have increased potency and may make it particularly difficult for courts to rely on legal norms to resist such pressure.

Populist appeals may be further amplified in a system in which laws are often vague, but in which views of law are often formalistic.⁶¹⁵ Laws and regulations often fail to provide judges with clear guidelines for adjudicating disputes.⁶¹⁶ At the same time, the continuation of state-centered formalistic conceptions of law and discomfort with legal indeterminacy mean that a correct answer to cases is presumed to exist. Judges may look to the views of the media for guidance as to whether their decisions will be perceived as correct. Yet even in the absence of uncertainty regarding the appropriate legal outcome, media coverage reinforces judges' beliefs

613. Although transitional countries in Eastern Europe and elsewhere may face similar challenges, China's experience contrasts with that of the United States and the United Kingdom, where courts were well established prior to the emergence of a commercialized popular press at the end of the eighteenth and beginning of the nineteenth centuries.

614. See generally William Alford & Yuanyuan Shen, *Have You Eaten? Have you Divorced? Debating the Meaning of Freedom in Marriage in China*, in *Realms of Freedom in Modern China* 234 (William C. Kirby ed., 2004).

615. See Pittman B. Potter, *The Chinese Legal System: Globalization and Local Legal Culture* 12, 29, 31 (2001) (discussing role of formalism in Chinese legal system).

616. Cf. Interview 2003-46 (arguing that flexibility of legal standards facilitated decision in Zhang Jinzhu case).

that they will be evaluated based on whether their superiors consider their decisions to be in line with popular or leadership opinions—even in situations when these views are in tension with legal standards.

The media's role in popularizing law also has positive effects on court development. Dissemination of legal information and knowledge by the media, in particular the specialized legal media, has played an important role in educating judges. Media attention to law may also be raising legal knowledge more generally, thus placing pressure on the judiciary to follow legal standards. The increased role of law may also provide courts grounds to resist external pressure by providing standards judges can point to in order to resist such pressure. In some cases, courts are now ignoring instructions from leaders;⁶¹⁷ over time, the greater acceptance of legal rules and procedures may make it easier for them to do so. But the popularization of law over the past decade has also arguably undermined courts' already weak claims to have unique authority to interpret and apply the law. Legal education campaigns have resulted in greater legal consciousness and greater attention to law in the popular media.⁶¹⁸ At the same time, however, such campaigns may also reinforce views that courts have no better claim to be applying the law correctly than do other institutions.⁶¹⁹ Combined with widespread coverage of court malfeasance, such efforts may be undermining attempts to distinguish courts from other actors, or to establish courts' claims to be the appropriate forum for resolving legal questions.

3. *Expanding Relevance and Expanding Authority?* — Media coverage usually has treated the courts as one of many state actors. Media coverage of the courts often resembles coverage of other government or Party entities: The media complain about unjust actions by the police, by local government departments, or by local party officials, just as they protest the failure of courts to behave fairly.⁶²⁰ In the case of the courts, however, there is now significant debate regarding the proper boundaries of media coverage. This change suggests the possibility that courts are beginning to distinguish themselves from other Party-state actors, and that other Party-state actors are becoming increasingly respectful of legal procedures.

Some in the Chinese media have begun to demonstrate increased sensitivities toward reporting on courts.⁶²¹ Reporters comment that they have become reluctant to predict the outcomes of cases, and they avoid

617. Interview 2003-164.

618. For an overview of state legal education campaigns, see *Publicity and Rule of Law in China*, China L., Aug. 2003, at 54, 54–59.

619. Liao, *supra* note 601.

620. See, e.g., Interview 2003-4 (stating that newspapers, like public, view courts as just another government entity).

621. The existence of established procedures in the courts may facilitate media coverage: As one journalist noted, difficulties reporters face in covering the courts are not as significant as those they face when reporting on other state actors. *Id.*

referring to defendants in criminal cases as “criminals” prior to trial.⁶²² Journalists contend that reporting on active cases has become more fact based. Media are increasingly careful to base their reports on proceedings in court, to include arguments from all parties, and to avoid bias in favor of one party.⁶²³ Some journalists say they now wait until a court of first instance decision before they report on a case.⁶²⁴ Others add that they view coverage of courts as distinct from coverage of other government entities, and they are more careful to avoid attempting to influence outcomes when they are covering the courts.⁶²⁵

Yet increased media sensitivity to legal procedures does not necessarily reflect recognition that courts deserve more respect than other government actors, or that court procedures are fundamentally different from those of other institutions.⁶²⁶ Although there is less discussion of media interference with other government actors than with the courts, there is debate as to whether the media should wait for other entities—including Party discipline commissions responsible for investigating wrongdoings by Party officials, procuratorates, or administrative departments—to act before publishing critical reports or exposing wrongdoing.⁶²⁷ Granting the courts an initial opportunity to adjudicate disputes may merely be one aspect of a more general concern with reducing the volume of bad news and maintaining popular confidence in the Party-state.

Moreover, deference to courts derives in significant part from increased court attention to media management. Many who protest against excessive media interference seem more concerned with protecting the interests of the courts than with the fairness of court proceedings. As Part II.E shows, China’s courts have become attentive to their public images, and have placed increased emphasis on controlling the flow of information to the media. Such reactions by the courts appear primarily to be responses to perceived infringements on courts’ power. Courts do not appear to be claiming that media coverage violates principles of how the legal system should function, or threatens fairness to individual litigants. This shift may also reflect increased sensitivities of propaganda authorities to legal coverage. In Shanghai, for example, local propaganda

622. Interview 2003-46; Interview 2003-101; Interview 2003-102; see also Xu, Checks, supra note 31 (discussing debates on whether restrictions on media are needed).

623. At *Legal Daily*, for example, internal rules state that the paper is not permitted to write opinionated articles after a case enters judicial proceedings, although this rule may be ignored when the paper desires to highlight unfairness in the courts. Interview 2003-73.

624. Interview 2003-10; Interview 2003-46; Interview 2003-52; Interview 2003-60.

625. Interview 2003-23; Interview 2003-39.

626. Cf. Lubman, supra note 24, at 292–93 (discussing role of Chinese courts as “bureaucratic institutions”).

627. See supra Part II.D.

department rules bar the Shanghai media from covering cases from the time they are filed until a decision is issued.⁶²⁸

The rise in defamation litigation is also influencing media coverage of the courts. In addition to a small number of suits courts or judges have brought against the media, the media have faced numerous defamation suits for alleged inaccuracies in reporting on legal cases. These range from overstating the crimes of convicted criminals, to misstating the facts in tort suits, to repeating allegations raised in court. Economic self-interest increasingly affects coverage of legal matters.⁶²⁹ In addition, criminal sanctions that local courts have imposed on journalists have made some wary of being too outspoken or critical.

Judges and courts are not alone in using their powers to obstruct or limit media coverage; other government actors routinely seek to block negative coverage or intimidate reporters. But courts may be unusual in their use of formal legal mechanisms—most notably defamation litigation and restrictions on coverage of cases—to do so. If increased media cautiousness in reporting on the courts is the product of courts' attempts to impede or deter media coverage, then recent media emphasis on not prejudging cases may be a reaction to the threat of retribution rather than an indication of greater respect. Courts' ability to exert control over the media may derive from courts using their existing powers and authority over courtroom procedure and litigation in new ways, rather than from an increase in the authority of the courts.

Courts are increasingly relevant in China, but the degree to which this reflects increased authority is ambiguous. Court relevance is reflected not only by rising caseloads, but by the perceived need to obtain court validation for many Party decisions, in particular Party disciplinary actions against corrupt officials. Indeed, it appears that in most cases in which Party authorities take action against official wrongdoing, cases are eventually turned over to the courts for the application of criminal sanctions.⁶³⁰

The fact that courts announce decisions, however, does not mean that courts have the power either to make such decisions or to enforce them. The acts of deciding cases, announcing decisions, and enforcing

628. Interview 2003-50; Interview 2003-60; see also Xu, Checks, *supra* note 31 (discussing similar restrictions in Guangdong Province).

629. Interview 2003-72 (stating that fear of defamation lawsuits is primary motivation for general policy of avoiding opinionated coverage of pending cases). Individual journalists are frequently required to bear part of the cost of any award against their employer.

630. Interview 2003-118. The importance of judicial validation, or at least the existence of courts, to Party legitimacy is not new. As Jerome Cohen noted in writing on the development of courts in the 1950s, the inclusion of a provision regarding judicial independence in the 1954 constitution in part "reflected the belief that acceptance as a legitimate sovereign, at home and abroad, required not merely that major sanctions be dispensed by courts, but also that the courts appear to be acting independently." Cohen, *Judicial Independence*, *supra* note 609, at 1003.

judgments remain distinct. Courts may have the power to decide and announce decisions but may lack the power to enforce them. Or courts may be responsible for announcing decisions but may lack the power either to decide cases or to enforce such decisions. Thus, for example, in cases of official wrongdoing, courts announce criminal sanctions, but such decisions generally have been made by Party discipline commissions or senior Party officials; in many civil cases, courts have the power to hear and decide cases, but lack the authority to enforce their decisions.⁶³¹ In cases of concern to Party leaders, the courts are neither the primary factfinder nor the final decisionmaker. Hence in the BMW case, the court's verdict was investigated and "affirmed" by the provincial Party political-legal committee.

The growth of caseloads may yet turn out to be a significant factor in increasing the authority of China's courts, both by increasing the stature of the courts within the Party-state and by making external interference more difficult. Despite the expansion of caseloads, however, China's experience continues to be distinct from many other countries that have experienced an expansion of judicial power.⁶³² For example, in Argentina, the media play a significant role in highlighting injustices and forcing resolution of long-pending matters, but judicial resolution of media investigations remains important and requires courts to exercise their own power to examine and decide cases.⁶³³

The fact that courts remain one of many legitimate avenues for dispute resolution in China,⁶³⁴ and may lack the authority to enforce the decisions they make, is important in assessing China's attempts to define

631. See generally Clarke, *Power and Politics*, supra note 294 (discussing low enforcement rate of Chinese civil judgments).

632. See C. Neal Tate, *Why the Expansion of Judicial Power?*, in *The Global Expansion of Judicial Power* 27, 28–33 (C. Neal Tate & Torbjörn Vallinder eds., 1995) (discussing political conditions that explain the expansion of judicial power and noting importance of democracy as characteristic of states experiencing judicialization of politics); C. Neal Tate & Torbjörn Vallinder, *The Global Expansion of Judicial Power: The Judicialization of Politics*, in *The Global Expansion of Judicial Power*, supra, at 1, 1–5 (discussing expansion of judicial power in number of democracies).

633. Catalina Smulovitz, *The Discovery of Law: Political Consequences in the Argentine Case*, in *Global Prescriptions* 249, 265 (Yves Dezalay & Bryant G. Garth eds., 2002) ("[A]lthough claims made through the media imply a certain distrust of the judicial institution's ability to perform its task, it is worth noting that to be effective, the claims of the media seem to require judicial validation.").

634. Some observers in China believe that courts should be viewed as fundamentally different from other government actors, as is reflected by expressions of outrage over the media's assumption of the role of adjudicator. See supra Part II.A.5. Such a view presumes that courts are playing a particular role in the system that in fact remains aspirational, and that might require a fundamental realignment of institutional structures. Such views may also suggest a belief in an ideal type of court that does not exist anywhere. See Shapiro, supra note 608, at 1 (contending that "if we examine what we generally call courts across the full range of contemporary and historical societies, the prototype [of independent judges applying preexisting legal norms after adversary proceedings to achieve a dichotomous decision] fits almost none of them").

the appropriate relationship between courts and the media. The role of courts as one dispute resolver among many may undermine court claims to special treatment from the media. For example, the European Court of Human Rights has held that restrictions may be imposed on media coverage of pending cases in order to uphold the “authority of the judiciary,” defined as “the notion that the courts are, and are accepted by the public at large as being, the proper forum for the ascertainment of legal rights and obligations and the settlement of disputes.”⁶³⁵ If China’s courts lack the ability to make such a claim—both in actual practice and in public perception, for in many cases courts’ claims to be the proper forum for establishing guilt and resolving disputes appear no stronger than those of other Party or government departments—it may be difficult for courts to justify restrictions on media coverage based on either the premise that courts are different or that doing so is consistent with international practice.

4. *Reinforced Interference.* — The discussion above does not suggest that the changes underway in China’s courts or the growth of litigation are insignificant. Courts are playing new roles in the Chinese legal system, increasingly asserting their power over disputes and growing in relevance to ordinary people. These changes appear, at least in part, to stem from increased legal coverage in the media and awareness of law. The growth of legal knowledge and increased relevance of courts may be important steps in China’s legal development.⁶³⁶ But it is unclear whether these changes are distinct from developments in state-citizen relations more generally, where evidence suggests that a greater number of complaints are being raised, and there is an increased state emphasis on highlighting the ability of official entities to resolve problems, in part to boost confidence in the Party-state.⁶³⁷

China’s recent experience with media coverage of the courts suggests that increased media oversight will not necessarily lead to improvements in the legal system. The status of the Chinese media as significant actors in the legal system suggests that the media may be both supporting and subverting law and the courts. The media’s impact in exposing unfairness and corruption may force greater compliance with law by the

635. *Sunday Times v. United Kingdom*, 2 Eur. Ct. H.R. 245, 274 (1979). Nevertheless, limits are permissible only insofar as they are necessary, and the court also recognized the important role the media play in providing information to the public on court proceedings. *Id.* at 280.

636. Excessive negative coverage of the courts could, of course, also discourage use of the courts. See, e.g., *Can Media Supervision Push Forward Judicial Fairness?*, *supra* note 162, at 10 (arguing that excessive negative media coverage of courts is undermining courts’ authority, and that openness alone will not solve all problems in courts).

637. For example, Xi Chen has found both an increase in collective complaints to letters and visits offices in the 1990s, and a strong emphasis on the ability of letters and visits offices to resolve received complaints. Xi Chen, *The Waning Party-State System and Rising Popular Claims to Citizenship Rights in China 1977–2002*, at 5, 9–11 (unpublished manuscript, on file with the *Columbia Law Review*).

courts, and general attention to legal matters may strengthen legal consciousness and increase use of the courts. Yet the ability of the media to affect and determine outcomes demonstrates that the media are not pushing the Chinese system away from established patterns of Party oversight.

The media are more vibrant and enjoy more editorial discretion than many in the West assume. In the judicial context, however, the media's continued use of their formal position as an arm of the Party-state to influence courts may offset benefits from expanded coverage of injustice and increased transparency. In doing so, however, the media are not overstepping the bounds of permissible or appropriate behavior; they are acting in line with established norms of governance, against the backdrop of a lack of legal or ethical norms that dictate the appropriate roles of many actors in the system. Media involvement may be understood as impeding the development of the courts, but only if the goal of current court development is a system in which courts play a fundamentally different role than they do today.

C. *Legislating Against Transparency? Restricting Media Coverage*

Chinese academics and commentators have looked to the West for examples of how to address court-media relations. Many have responded to the influence of the press by arguing for restrictions on the media.⁶³⁸ Reliance on Western examples has played a role in transforming court-media relations into an issue of general concern in both legal circles and in the media by highlighting the possible positive and negative effects of greater media coverage of the courts. Yet such comparisons overlook crucial factors that underlie the media's impact and role in China and the very different roles the Chinese media play from their Western counterparts. Restricting media coverage without addressing the range of influences that affects courts is likely to result in reduced transparency without reducing interference in court decisionmaking or increasing fairness to litigants.

Debate in China resembles discussions elsewhere regarding the proper relationship between the courts and the media. Comparisons to the West are not surprising: China is not the only country to experience a period of weak courts and powerful media, or in which media critics assail the press for attempting to influence court outcomes.⁶³⁹ Commen-

638. See, e.g., Kang, *supra* note 322 (arguing for legal restriction on media to avoid "media adjudication"); Wang, *Objectivity and Subjectivity*, *supra* note 321 (reporting on scholars' calls for protection of judicial system from media). Such views are not universal: Others have stated that the courts must be willing to ignore the media if they are to avoid being controlled by it, He, *Judges*, *supra* note 29, or have criticized steps taken to restrict the ability of the media to cover court proceedings, Xu, *Fourth Wave*, *supra* note 226.

639. For discussions of media-influenced criminal trials in the United States, see Andie Tucher, Froth & Scum *passim* (1994) (examining emergence and role of the penny press in nineteenth century U.S. criminal trials); J. Anthony Lukas, *Big Trouble: Celebrity*

tators on Western systems have recognized the potential for a range of political, commercial, and other interests to influence media coverage of the courts. Media demands for vengeance or harsh treatment of criminal suspects are not unique to China, nor are criticisms of the media for sensationalism and excessive interference.⁶⁴⁰ Judges in China are also not unusual in attempting to manage their media images and maintain a positive working relationship with members of the press.⁶⁴¹

Recent experiences in China also resemble developments in transitional nations of Eastern Europe and South America. Edwin Rekosh has noted the tension in Eastern Europe between the role journalists may play in exposing corruption and official wrongdoing and the possibility that, with such reports, the “media can contribute to an erosion of public confidence by perpetuating stereotypes of an ineffectual judiciary.”⁶⁴² Discussing the media in post-Soviet Russia, Frances Foster has noted that extensive critical reporting “eroded rather than fostered public confidence in the postsocialist Russian leadership and evolving norms, rules, institutions, and procedures.”⁶⁴³ Similarly, in Argentina, the media have emerged as an alternative route of redress, albeit an often imperfect one.⁶⁴⁴

Trials and the Good Old Days That Never Were, 12 *Media Stud. J.* 46, 47 (1998) (discussing sensational media coverage of trials in nineteenth century); see also Richard L. Fox & Robert W. Van Sickle, *Tabloid Justice: Criminal Justice in an Age of Media Frenzy* 53–54 (2001) (discussing high profile criminal cases in United States during twentieth century, including the Lindbergh baby case and Sam Sheppard trial).

640. See, e.g., Am. Bar Ass’n, *An Independent Judiciary: Report of the ABA Commission on Separation of Powers and Judicial Independence, Overview* (1997), at <http://www.abanet.org/govaffairs/judiciary/rover.html> (on file with the *Columbia Law Review*) (noting that “bashing judges has a long and distinguished tradition” in United States).

Sensationalism in coverage of legal matters is also not new to China. The Chinese media’s role in sensationalizing “outrageous cases” dates back to the late nineteenth century, when newspapers and other forms of public communication included discussions of such cases. “These outrageous cases reveal the power of scandalous events to shape entire categories of law.” Melissa Macauley, *Social Power and Legal Culture: Litigation Masters in Late Imperial China* 329–30 (1998).

641. See, e.g., John Seigenthaler & Robert W. Snyder, Interview with Judge Richard S. Arnold and Judge Gilbert S. Merrit, 12 *Media Stud. J.* 80, 85, 90 (1998) (discussing how some U.S. judges manage interactions with media); see also Robert W. Snyder, Interview with Linda Fairstein, Chief of the Sex Crimes Prosecution Unit in the District Attorney’s Office of N.Y. County, 12 *Media Stud. J.* 92, 99 (1998) (discussing need for prosecutors to maintain working relationships with members of press, and use of journalists to obtain information regarding cases).

642. Rekosh, *supra* note 603, at 71.

643. Frances H. Foster, *Izvestiia as a Mirror of Russian Legal Reform: Press, Law, and Crisis in the Post-Soviet Era*, in *Russian Media Law and Policy in the Yeltsin Decade* 60, 86 (Monroe E. Price et al. eds., 2002).

644. Smulovitz, *supra* note 633, at 252–53. As in China, judges in Argentina have used the media to promote themselves and their positions, *id.* at 252, and “some journalists . . . became public prosecutors and defenders of the public interest,” *id.* at 259.

There has been a significant amount of discussion in China, both in legal academia and in the print media, regarding the appropriate relationship between the courts and the media. Commentators have discussed legislation or regulations that would either restrict the media's ability to report on pending legal proceedings or limit the ability of the media to issue commentaries or opinions on pending cases.⁶⁴⁵ Although some acknowledge the difficulty of legislating media coverage of the courts at a time when the relative positions of the courts and the media are in flux⁶⁴⁶—and while propaganda departments remain responsible for regulating the media—much discussion has assumed that legislation can solve, or at least ameliorate, problems resulting from expanded media involvement in disputes.

Attention to legislative solutions appears at least in part to derive from examples of foreign legal systems. Most countries regulate media coverage of the courts. Although some Chinese commentators have looked to the United States as an example of a system in which there are relatively few limits on media coverage of court proceedings,⁶⁴⁷ the United States stands virtually alone in its approach. Indeed, given the plethora of restrictions on media coverage of the courts in other countries,⁶⁴⁸ it is logical that Chinese commentators look to those precedents for guidance.

China may yet determine that legal regulation⁶⁴⁹ of media coverage of the courts is appropriate. For those who believe that current media

645. See, e.g., Wei, *Journalism and Communication Law*, *supra* note 44, at 119 (discussing restrictions on commentaries on pending cases); Xu, *Media-Judicial Relations*, *supra* note 19 (reporting on survey of attitudes of judges, reporters, and lawyers regarding when media reports should be permitted).

646. See *supra* note 238 and accompanying text (discussing debate concerning "media law").

647. Although comparisons to the United States may at times seem strained, they are frequently made by scholars, journalists, and judges in China. Indeed, in one case, the Vice Governor of Jiangxi, who was executed for corruption, is reported to have commented shortly before his death that his case would have had a different outcome if the Chinese press were as free as that in the United States. Chen, *Unfairness*, *supra* note 197.

648. See, e.g., Ian Cram, *A Virtue Less Cloistered: Courts, Speech and Constitutions* 13 (2002) (discussing restrictions in Britain); Geoffrey Robertson & Andrew Nicol, *Media Law* 423–52 (4th ed. 2002) (same); see also Cram, *supra*, at 204–07 (discussing Spanish jurisprudence on media coverage of trials).

649. The lack of legal regulation reflects the fact that to date most regulation of media content has come in the form of Party, as opposed to legal, regulation. Debate over whether there should be legal provisions regarding media coverage is thus intertwined with questions regarding whether law should be used to regulate the media. This may explain the lack of regulation to date. Some who argue in favor of a delay in passing a media law contend that any law would merely serve to restrict the media and would lock restrictive Party-state oversight in place, thus reducing the flexibility of the media to challenge limits regarding permissible content. See Interview 2003-14; Interview 2003-56; Interview 2003-70; Interview 2003-79. Others argue that any legal regulation would be better than the often arbitrary system by which propaganda departments currently regulate the media because it would at least permit all participants to know the rules under which

influence on the courts is excessive, however, there should be more fundamental questions. To the degree that examples from Western legal systems are appropriate, questions regarding the mechanisms by which courts and individual judges develop the institutional ability to resist external pressures may be more relevant.⁶⁵⁰ How have judges and courts elsewhere developed the ability to resist external pressures, including pressure from the media? How have norms developed that regulate relations between courts and other actors? What gives courts the ability to resist popular or government pressures? China's judges have very strong incentives to decide cases in ways consistent with media opinion.⁶⁵¹ In contrast, judges have few incentives to resist such pressures and little protection if their decisions are viewed as incorrect by their superiors.⁶⁵² It is unlikely that a judge would be punished for following a written instruction from a higher-ranking official to handle a case in a particular way, even where the instruction is contrary to written law. Legislation restricting media coverage of the courts will not alter such incentives.

Uncertainty regarding the relationship of the media to the courts may also reflect ambiguity, or debate, regarding the goals of the Chinese legal system. In Western countries, much discussion regarding regulation of media coverage of the courts focuses on the need to balance a variety of interests, including fairness of individual proceedings, transparency, and freedom of speech.⁶⁵³ In the United States, balancing these interests is carried out against the backdrop of an overarching belief in democracy.⁶⁵⁴ Western discussions of the role of media coverage in criminal

they operate and might reduce Party oversight. See Interview 2003-3; Interview 2003-26; Interview 2003-103.

650. I do not mean to suggest that Chinese commentators have ignored such questions entirely. There is a significant discussion of court reform, and in particular institutional reform, in legal academia in China. But there do not appear to have been significant efforts to link such discussions to those regarding media coverage of the courts. Although there have been suggestions that courts might be strengthened by altering their institutional positions, there has been relatively little discussion of how courts or judges might develop the ability to resist external pressures within the current institutional structure.

651. See *supra* note 162 (discussing sanctions against judges for incorrect decisions); cf. Wei, *Journalism and Communication Law*, *supra* note 44, at 115 (arguing that it is naïve to argue that courts should simply ignore media pressure).

652. Similar arguments exist with regard to corruption, where commentators have observed that judges may have few incentives to reject such outside influence. See, e.g., He, *Two Questions*, *supra* note 297 (arguing that courts must be assured that they will not suffer if they reject corruption).

653. See, e.g., Marc A. Franklin et al., *Mass Media Law* 779 (2000) (noting range of interests involved in evaluating appropriate restrictions on media coverage of cases); Price & Krug, *supra* note 255, at 27, 37–40 (discussing rival interests that must be balanced in determining whether to close judicial proceedings to media); see also Cram, *supra* note 648, at 1 (noting that common law jurisdictions have often justified restrictions on media by highlighting the need to “safeguard the fairness of individual proceedings”).

654. See Cram, *supra* note 648, at 23 (noting importance of arguments based on democracy to support relative lack of restrictions on media coverage of courts in U.S.).

trials, in both common and civil law systems, also focus on the rights of criminal defendants.⁶⁵⁵

There are many calls in China for courts to ensure fairness,⁶⁵⁶ but the goals being weighed may be different. It is far from clear that fairness, in particular fairness toward criminal defendants, has become a dominant value in the Chinese legal system.⁶⁵⁷ If the legal system is intended both to provide fair resolution of disputes for litigants and to further Party interests in maintaining stability, legitimacy, and control, then media that in some cases undermine the fairness of individual proceedings are not in conflict with the goals, or norms, of the system. Media that assume the role of adjudicators are in fact furthering state interests in curbing abuses at the local level in a system in which curbing such abuses is more important than using legal mechanisms to do so. Media influence may also be less of a concern in a system in which there remains significant uncertainty, at least from the Party-state's perspective, regarding the value of public debate on legal issues.⁶⁵⁸ Thus it may not be in

system); see also Foster, *supra* note 643, at 86–87 (noting destabilizing role Russian media played in immediate post-Soviet era raised question of whether democracy and law are preconditions for press freedom); Bruce W. Sanford, No Contest: The Trumped-Up Conflict Between Freedom of the Press and the Right to a Fair Trial, 12 *Media Stud. J.* 2, 3 (1998) (“[I]f one overarching theme is discernible from the [United States Supreme Court’s] pronouncements of the past 40 years, it is, quite simply, that judges need a vigorous, probing, enterprising media to ensure both a criminal defendant’s rights and public confidence in our system of justice.”); Price & Krug, *supra* note 255, at 3 (noting that “most tie the claim . . . for unencumbered media to their role in reinforcing or fostering democracy”).

655. Cf. George P. Fletcher, With Justice for Some: Victims’ Rights in Criminal Trials 149–50 (1995) (discussing focus in European Convention on Human Rights on “fair and public hearing[s],” and noting that “[n]o basic charter of any modern society requires the just punishment of all criminals” and that “[t]he law demands not a just outcome but a fair procedure”); *id.* at 156 (contrasting common law emphasis on fair procedures with civil law system’s commitment to “the search for truth”); Richard Nobles & David Schiff, Understanding Miscarriages of Justice: Law, the Media, and the Inevitability of Crisis 16–17 (2000) (discussing perceived miscarriages of justice in United Kingdom, and noting that “the general conception of miscarriage of justice . . . is not injustice *per se*, but wrongful conviction”).

656. See, e.g., How to View Popular Opinion Supervision, *supra* note 281 (describing media’s role in encouraging fairness in court); Zhang Zetao, Tingshen Yinggai Yunxu You Xuanzhexing De Zhibo [Voluntary Live Broadcasting of Court Proceedings Should Be Permitted], 2000 Faxue [Legal Studies] No. 4, available at <http://www.jc.gov.cn/personal/yxsx/fnsx1/fnsx928.htm> (on file with the *Columbia Law Review*) (arguing that live broadcasting of court proceedings will help ensure that courts operate fairly).

657. The emphasis of criminal defense lawyers in China on avoiding media coverage highlights the limited role the media play in protecting the rights of defendants in China. Compare *supra* Part II.A.5 (arguing that media coverage of criminal cases in China is generally harmful to defendants), with Roscoe C. Howard, Jr., The Media, Attorneys, and Fair Criminal Trials, 4 *Kan. J.L. & Pub. Pol’y* 61, 63 (1995) (noting that use of the media has often been viewed as a “weapon in the arsenal” of U.S. defense attorneys).

658. Western scholars have noted that media coverage of courts encourages informed public debate. See, e.g., Cram, *supra* note 648, at 10–15 (discussing such arguments). In China, although discussion and debate of legal issues are widespread in academic and

the interests of China's leaders to alter fundamentally the roles of either the media or the courts.

Although the Chinese media's increasingly active role may appear to be in tension with recent efforts to boost the position of courts, this may be a false perspective. Challenges to court authority to resolve disputes are problematic only to the degree that courts are viewed as the legitimate forum for resolving disputes. In a system in which Party influence and oversight over court decisionmaking continues to be both significant and legitimate,⁶⁵⁹ there may be less concern with media influence. Protecting courts from media influence may also be unnecessary in a system in which there are concerns regarding the capacity of courts to act fairly or competently.⁶⁶⁰ Likewise, intervention that leads courts to such decisions may not be problematic if the Chinese legal system is primarily concerned with the substantive correctness of decisions, as opposed to the procedures used to arrive at such decisions.⁶⁶¹

This discussion does not suggest that the goals underlying Western systems' approaches to court-media relations would be inappropriate for the Chinese system.⁶⁶² Rather, it suggests that ambiguity over the objectives of the system—and the fact that such objectives are increasingly contested—may partially explain the difficulty in determining the appropriate roles of courts and the media, in particular in a system in which both are arms of the Party-state that are undergoing rapid development. For

specialist publications, there remains unease regarding public debate on legal issues in the popular press, and in particular on television. Interview 2003-87. This is due in part to the belief that encouraging too much debate on legal matters would undermine confidence in law by suggesting that law is uncertain, or that law is easily manipulated. *Id.*

659. Commentators and participants in the system object to and are seeking to change such norms, but such objections have not yet led to fundamental changes in how the legal system is structured or operates.

660. Zhu Suli has made a similar point with regard to the role of adjudication committees in local courts, contending that review of cases by such committees, which often results in cases being decided by a committee of judges who have not heard the case, may be beneficial in the context of China's current situation and legal traditions and should not immediately be dismissed as violating principles of "judicial independence." Zhu Suli, *Songfa Xiaxiang [Sending Law to the Countryside]* 110-14 (2000) [hereinafter *Zhu, Sending Law*] (discussing positive roles of court adjudication committees).

661. Media concern with perceived substantive correctness is not unique to developing legal systems. See, e.g., Nobles & Schiff, *supra* note 655, at 11 ("[T]he media have a dominant understanding of miscarriage [of justice in the United Kingdom] that prioritizes truth over due process . . ."). But in a system with little emphasis on procedural law, the impact of such views on court decisionmaking may be more pronounced.

662. Nor is this discussion intended to suggest that the goals of the Chinese legal system are determined only from the top down. One significant effect of increased discussion of legal issues and increased autonomy regarding the content of such discussions is to encourage new uses of law and the courts, and thus greater development of the system from the bottom up. Likewise, ambiguity over the goals of the system may also be permitting greater experimentation by courts, lawyers, and the media, and may be encouraging various actors in the Chinese legal system to use law to serve an increasingly varied range of interests.

example, if fairness is understood in terms of a need to constrain judges and officials from abusing their power, and if miscarriages of justice are viewed primarily as incidents in which wrongdoers go unpunished, the current roles of the Chinese media may be furthering these goals. In contrast, if one goal of current legal reform is to develop the courts into the primary forum for dispute resolution and also one that operates autonomously, the media's role may be more problematic.

Understanding media intervention as a political and institutional influence demonstrates that the media's role cannot be divorced from broader questions regarding the direction of the Chinese legal system. This is not to fault those in China who have looked to the West for guidance in determining whether and how to regulate the relationship between the media and the courts, but rather highlights the need to extend such enquiry beyond technical questions such as when reporting is and is not permitted, or whether reporters are allowed into the courtroom.

The link to broader structural questions also highlights risks in restricting media coverage of China's courts. If the ability of courts to resist media pressure is understood as merely one aspect of courts' ability to resist powerful interests, then restricting media coverage absent consideration of the mechanisms of influence may have little effect. Indeed, one benefit of media oversight is that in many cases it is relatively transparent: Judges are able to ascertain who is seeking to exert her influence and claims. Although restrictions might reduce the ability of and incentives to the media to stir up public opinion in order to pressure courts, restricting public media coverage may encourage wider use of internal publications, phone calls, and other less transparent mechanisms of intervention.

Restricting media coverage would also undercut modest efforts underway to increase transparency in China's courts. Despite recent proclamations regarding the importance of transparency, most court decisions remain inaccessible except to the parties directly involved in the case, and the media often find access to courtroom proceedings blocked by court officials.⁶⁶³ Formalizing restrictions on the media would lend support to those seeking to block media access.

663. See He, *Viewing the Development*, *supra* note 299. As He Weifang has argued, however, simply permitting media coverage of courtroom proceedings may result in little added transparency. He notes that, were China's media simply to report on what they see in court, they would have little of substance to report, given the limited role courtroom hearings play in deciding most cases. He Weifang, *Dui Dianshi Zhibo Tingshen Guocheng De Yiyi* [Differing Thoughts Regarding Live Broadcast of the Court Proceedings], 1998 *Zhongguo Lushi* [Chinese Lawyer] No. 8, available at <http://www.jc.gov.cn/personal/ysxs/fnsx3/fnsx2037.htm> (on file with the *Columbia Law Review*); see also Zan, *supra* note 414.

Russia has similarly confronted questions regarding whether the media should be restricted so as to prevent biased coverage of criminal proceedings. See Igor Yeregin, *On the Application of the Principle of Presumption of Innocence in Journalists' Activity* (Dec. 24, 1997), reprinted in *Russian Media Law and Policy in the Yeltsin Decade*, *supra* note

The strongest argument in favor of regulating media coverage of the courts comes from those who argue that imposing restrictions will result, in time, in greater freedom for the media.⁶⁶⁴ According to this analysis, the lack of media self-regulation is largely to blame for the problems they confront. Excessive media intervention and sensationalism have resulted in courts either blocking the media from covering cases or appealing to propaganda authorities to restrict the media. Imposing limits on media coverage would make courts feel less threatened and thus would increase the transparency of courts by reducing their need to block media reports. Implicit in this argument is the hope that using laws or regulations would also reduce the role of propaganda departments; the lack of clear ground rules today results in propaganda department discretion.⁶⁶⁵

There are three reasons to be skeptical that restricting the media will over time lead to greater openness. First, there is little reason to believe that increased restrictions on the media would fundamentally shift the role of propaganda departments. Party oversight of the media is not based on law or regulation (defined as laws or regulations enacted by the National People's Congress or the State Council), and new regulations or legislation regarding the media are likely to be used to limit the media without replacing the role of propaganda departments. Indeed, one complaint of journalists is that many of the existing rules that protect their right to report are ignored by local authorities or subverted by propaganda department instructions.⁶⁶⁶

Second, such arguments are based on the belief that court restrictions on media coverage stem from a desire to protect the fairness of proceedings. If court restrictions are largely derived from court self-interest in not being exposed to outside scrutiny, or from a culture of court secrecy, restricting the media is unlikely to result in further openness. Current regulations requiring courts to be open to the public are often ignored; lack of implementation to date appears to stem more from courts' failure to see openness as in their self-interest than from concerns that such openness will jeopardize the fairness of proceedings.

Third, such arguments may mistake the causal relationship between the lack of ethical standards or self-regulation and media freedom. The lack of self-regulation and tendency of the media to pursue extremes—either not reporting on a subject at all or reporting on a subject without

643, at 358, 358–59 (notice from Russian Judicial Chamber for Information Disputes stating that media reports regarding criminal conduct cannot be found to violate presumption of innocence in Russian constitution, and that doing so would be an unjustified attempt to restrict freedom of expression).

664. Cf. Xu, Checks, *supra* note 31 (discussing arguments for restrictions on media coverage of courts).

665. Interview 2003-164.

666. See, e.g., Wang, Only Law, *supra* note 221 (noting onerous obligations and restrictions imposed on reporters); Wang, Beaten, *supra* note 223 (discussing violence against journalists); Wu & Li, Sealing Off, *supra* note 223 (discussing use of police, procuratorate, and propaganda department to obstruct reporting).

limits—may be a direct consequence of the significant controls the media face. Weak professional standards and absence of self-regulation reflect a system in which journalists often do not conceive of themselves as members of an independent profession, have loyalties to a range of personal and institutional interests, and have obligations to the Party-state. As with the legal profession, top-down imposition of such standards is unlikely to result in greater professionalism in the short term. Developing professionalism will be a long-term project, one that requires both a longer period of development in the media and the further separation of the media from the state.

Whether media coverage of the courts should be subject to restrictions is not solely a question of balancing interests in transparency with interests in protecting the authority of courts or the fairness of individual proceedings. Permitting the media to evolve without additional restrictions to protect courts may be more important than any benefits derived from restricting media coverage of the courts. Commercialization has brought the media greater autonomy, but such autonomy is fragile. Competition remains limited to Party-approved publications and is limited to certain topics. In many cases in which the media are said to exert excessive influence, the problem may be too little media coverage. In the black whistle scandal, for example, the media's one-sided effect stemmed in part from the fact that, as the trial approached, the media were apparently ordered to stop reporting on the case.⁶⁶⁷

One-sided media reports are a manifestation of a media-control system that permits reports on an increasingly wide range of topics but remains suspicious of the value of public debate or the existence of alternative voices. Traditionally, "popular opinion" in China has referred to the portion of public views that the Party has acknowledged, and propaganda authorities maintain the right to regulate which public views the media voice. The range of public views that the Party is willing to permit to be acknowledged has expanded, and the public views that the media reflect or create may now include views distinct from those of the Party. Nevertheless, Party propaganda authorities continue to maintain the power to shut down debate in the press, as they did in the black whistle case and the Sun Zhigang case, and to prevent the media from reflecting or stirring-up public opinion on certain topics.

The central Party-state seeks some of the checking value on official misdeeds that comes from lively media, without allowing the free speech that is generally regarded as being important to making these checks effective in the West.⁶⁶⁸ As a result, although public opinion is increasingly

667. See *supra* Part II.A.2.

668. See Blasi, *supra* note 602, at 527. Experiences in other countries suggest that loosening of control over the media may indeed lead to political challenges. See, e.g., Sallie Hughes, *From the Inside Out: How Institutional Entrepreneurs Transformed Mexican Journalism*, 8 *Harv. Int'l J. Press/Pol.* 87, 88 (2003) (noting that in Mexico, the development of "[c]ivic-oriented newspapers" legitimized opposition to authoritarian

finding voice, it is carefully managed. The media are not, and do not generally claim to be, neutral observers. As one scholar commented, “In China, we fear disagreement, and we do not trust common people to use their own judgment.”⁶⁶⁹ Thus although there is widespread debate regarding legal matters in specialist publications and newspapers and on the internet, there is virtually none on popular television programs such as *Law Today* and *Focus*. The discomfort with alternative voices is not merely a question of political control; as discussed above, it also reflects Party-state concern that permitting debate might undermine confidence both in legal institutions and in law itself. The expanding autonomy China’s media enjoy does not represent a shift in the state’s instrumentalist view of the media: Media autonomy is valued for the role it serves in furthering state interests, be it economic development, the checking of abuses, or regime legitimization, but not for any intrinsic value of media autonomy.⁶⁷⁰ In this respect, the development of the media parallels the growth of civil society. China has permitted, and at times encouraged, a range of NGOs to emerge. But NGO development has largely been limited to groups pursuing policy goals consistent with those of the central Party-state, which remains wary of such developments even as it encourages them.⁶⁷¹

If lack of—and lack of comfort with—alternative voices partly explains both media restrictions and the tendency of media coverage of cases to be one sided, then the value of increased transparency is not merely in exposing malfeasance and wrongdoing. Media coverage, even given the limits in place, may facilitate greater comfort with rival views, in particular regarding law and the legal system. Protecting the limited areas of freedom enjoyed by China’s media is, over the long run, more important than protecting China’s courts from media pressure. The risk of formalizing restrictions on the media is not just that such restrictions will be used for a pretext for greater control of the media; it is that the resulting decrease in reports will also reduce discussion and debate regarding law and legal institutions more generally. China’s media may be one sided in much of their coverage, but they have in many instances transformed individual cases into issues of popular concern. In doing so, they may also legitimize discussions by those seeking reform. Thus, in the

rule); Silvio Waisbord, *The Narrative of Exposés in South American Journalism*, 59 *Gazette* 3, at 189, 190 (1997) (discussing role of media exposés in political change in Central and South America).

669. Interview 2003-130.

670. Cf. Blasi, *supra* note 602, at 528, 545 (stating that in the United States, “checking value” of free speech is a “supplement to, not a substitute for,” other values).

671. See Elizabeth C. Economy, *The River Runs Black: The Environmental Challenge to China’s Future* 131–34 (2004) (discussing state encouragement of environmental NGOs to fill government roles, but also continued state vigilance about restricting range of NGO activity); Zhang Ye, *China’s Emerging Civil Society* 19–20 (June 2003), available at <http://www.brookings.edu/fp/cnaps/papers/ye2003.pdf> (on file with the *Columbia Law Review*) (discussing NGO evolution and noting Party-state ambivalence about role of NGOs).

black whistle scandal, media coverage of the case was restricted, but the case itself resulted in renewed attention by legal scholars to the question of whether courts may find defendants guilty of crimes not charged by the procuratorate. Likewise, the Sun Zhigang case contributed to the elimination of the custody and repatriation detention system, and also renewed debate regarding the legality of the reeducation through labor system of administrative detention.⁶⁷²

There are steps that may effectively strengthen the courts and lessen media influence without curtailing the media's ability to report on legal matters. Eliminating the ability of Party officials to issue written instructions, for example, would more effectively reduce pressure on courts to comply with media views than would banning coverage. Reforming compensation systems that punish judges for issuing decisions viewed as incorrect by their superiors would reduce pressure on courts to align their decisions with popular and leadership views of substantive justice. Reducing the role of local governments in court appointments would similarly reduce the influence of local Party officials. Greater transparency in the courts may also, over time, boost confidence in the courts and thus court legitimacy. Courts have sought to promote themselves through positive media coverage, but more significant steps toward transparency are necessary if courts are significantly to increase popular confidence. Increasing the popular legitimacy of the courts may do more to reduce external influences on court decisionmaking than restricting media coverage.

Excessive media influence in China primarily stems not from lack of media accountability, but from weak courts and a system that imposes a range of external pressures on court decisionmaking. Restricting media coverage of the courts without addressing the range of influences that affect court decisions is likely to do little to strengthen the position of the courts or the fairness of proceedings. Yet it is not surprising that debates regarding media coverage of the courts exist in isolation from discussions regarding Party-state influence on the courts or realignment of institutional positions. Although discussions regarding the Party's role in the legal system have become increasingly widespread in recent years, it remains easier to discuss media influence than Party influence.⁶⁷³ Similarly, courts resist media influence because they can do so more easily than they can other forms of pressure. Increasing court power, or insulating courts from external influence, touches more directly on core questions of political reform than does commercializing the media.

Arguments in favor of protecting the courts from media scrutiny may reflect a hope that courts will one day assume a position that deserves

672. Although propaganda authorities quieted an initial wave of discussion of reforms to the reeducation through labor system, discussion of such reforms resurfaced in early 2004. See, e.g., Wu, *New Round*, *supra* note 599.

673. The existence of tension between the courts and the media, and the prevalence of debate on the topic, is itself a manifestation of a loosening of Party control over both institutions.

special treatment and respect from the media, rather than a belief that they play such a role today. Similarly, arguments that restricting the media will strengthen the courts may presuppose that the Chinese media play roles akin to those played by Western media. Understanding that neither courts nor the media in China play such roles suggests both that addressing court-media tensions may require different solutions, and also that any such solution cannot be divorced from questions regarding the potential role for courts and the media within the current system.

D. *Supervised Independence*

Understanding that media supervision of the courts is intertwined with Party-state oversight of political and legal institutions reveals the difficulty of defining “judicial independence” in China. Media intervention is just one example of the many external pressures courts and judges face. At the same time, however, court-media interactions suggest the possibility that courts may develop, or may already be developing, spheres of autonomy and institutional identity that permit them to expand their own authority and to act largely free of external influence. The ability of courts to develop institutional identity and autonomy is likely to prove more important to court attempts to define a distinct role within the system—and perhaps to improve the fairness of courts—than are attempts to increase the profile or image of courts by restricting or manipulating media coverage.

There has been significant recent attention to judicial independence in China, both from academic commentators and from Party-state officials. Judicial independence has become a focus of many in China advocating reform, with some liberal academics expressly calling for courts to operate free of Party oversight.⁶⁷⁴ Likewise, Western commentators have pointed to the lack of such independence as a symbol of what is wrong in the Chinese system. Implicit in these discussions is the assumption that granting courts more formal powers, or insulating courts from external influences, will strengthen their ability to issue fair decisions.

There has been, however, relatively little discussion of what “independence” would mean in the Chinese context. This is not surprising; as Martin Shapiro noted in his comparative study of courts, the “notion of judicial independence is so ambiguous and misleading that it cannot serve as a touchstone of ‘courtiness.’”⁶⁷⁵ Likewise, Jerome Cohen, writing about China in the 1960s, observed that foreign commentators on China,

674. See, e.g., Dong Maoyun, *Sifa Duli: Sifa Gongzheng De Zhongyao Zhidu Baozheng* [Judicial Independence: An Important Institutional Guarantee for Justice], 2003 *Zhongguo Faxue* [China Legal Science] No. 1, at 9, 9–10 (arguing that courts should be free from interference from other Party-state institutions); Li Buyun & Liu Zhiwei, *Sifa Duli De Jige Wenti* [Several Issues on Judicial Independence], 2002 *Faxue Yanjiu* [Legal Studies Research] No. 3, at 9, 9–10 (stating that it is unconstitutional for Party committees to instruct courts on proper decision in cases).

675. Shapiro, *supra* note 608, at 125.

while often noting “the absence of ‘judicial independence,’ seldom, if ever, explain this talismanic phrase.”⁶⁷⁶ Judicial independence has many different meanings in China today. To some academic commentators in China, independence means a judiciary not just free of improper influence, but also staffed by well-trained judges who are formally invested with the power to invalidate acts of other branches of the Party-state. To central Party officials, independence means judging free of corruption and improper influence, but under the leadership of the Communist Party and with the Party defining the contours of improper influence. For some judges, “independence” has become a rhetorical weapon, used to defend courts from charges of local protectionism and to oppose influence that judges and courts see as counter to their own institutional or personal interests.

Separate from questions of definition, discussing independence is difficult in a system in which the goals of the formal legal system are ambiguous and questions of capacity, interference, and competence touch on issues of Party control. Discussions regarding judicial independence can easily become, or be construed as, demands for broader political change. Likewise, arguments for expanded judicial independence that do not recognize the connection to broader questions of political reform may avoid the most difficult problems that courts face. Nevertheless, understanding the media’s role in the Chinese legal system raises three questions that may give content to debates concerning the role of courts in China. These questions suggest steps that must be taken in order to develop a meaningful conception of judicial independence in China. They also suggest that courts, like the media, may be beginning to assert institutional autonomy in ways that challenge traditional assumptions regarding their position in the Chinese system.

First, can discussions of “independence” be extended to include the range of influences, and range of mechanisms for exerting such influences, that affect court decisions? This Article has argued that the Chinese media should be understood as one of a number of Party-state actors participating in the legal system. As a result, comparative inquiries that examine the evolving roles of the Chinese media in the context of Western court-media experiences without attention to how legal systems regulate interactions among various state actors fail fully to appreciate developments in China. Likewise, discussions of the potential for judicial independence must account for the range of actors and mechanisms that influence dispute resolution in China.⁶⁷⁷ Efforts to strengthen the role

676. Cohen, *Judicial Independence*, supra note 609, at 971. As Cohen noted, there was significant discussion and appreciation of “the virtues of functional specialization, professionalization, and judicial autonomy” in China in the 1950s. *Id.* at 1001, 1006.

677. The situation in China thus contrasts with other countries where the media’s external role may help to police judicial independence within the political system. Cf. Office of Democracy and Governance, supra note 603, at 35–36 (commenting that “[e]xternal monitoring of courts can be a powerful tool for enhancing the independence

of courts that do not take account of the range of influences on court decisionmaking are likely to fail.⁶⁷⁸ In China, distinctions between oversight and independence are even more blurred than in many liberal democratic systems: Attempting to insulate oneself from the scrutiny of other Party-state actors may also be an assertion of independence.

The array of factors and actors with the potential to influence China's courts is extensive, and includes superior courts, Party political-legal committees, individual Party officials, the media, procuratorates, party discipline committees, local governments, and corruption by parties to disputes. The legitimacy of such influence is contested; judges may see written instructions from Party officials concerning individual cases as interference, but the official who issues such an instruction is likely to perceive this as a proper function of his or her post. Identifying the range of interests and their legitimacy in the current system is a necessary first step to conceptualizing the appropriate and potential role of courts in China.

Second, do discussions regarding judicial independence presuppose that courts occupy a position different from that which they currently occupy? This Article has argued that criticism of the media's influence on the courts may presume that courts have assumed a role as a fundamental forum for dispute resolution, when in fact courts remain only one of a number of mechanisms for resolving disputes and often lack the power to decide or enforce matters brought before them. The growth of litigation may suggest a transformation of the role of the courts; research into explanations for China's litigation explosion is a promising avenue for future study. Nevertheless, there are reasons to be skeptical that such a shift is occurring. If so, discussions of independence based heavily on the presumption that courts differ fundamentally from other institutions may be undermined by their failure to take account of the actual role courts continue to play today.⁶⁷⁹

Similarly, discussions regarding the role of the courts may assume that courts have the competence to undertake expanded roles. In analyzing the role of court adjudication committees, Zhu Suli has suggested that oversight that interferes with the independence of individual judges may be justified in a system in which judges may lack legal competence and are subject to a range of external pressures, including corruption.⁶⁸⁰ China's judiciary has improved significantly in recent years; it may be that forms of oversight and influence on court decisionmaking that were justi-

of the judiciary," but noting also that efforts to rely on investigative journalism are not always successful).

678. This observation is, of course, not unique to China. See, e.g., J. Mark Ramseyer & Eric B. Rasmusen, *Measuring Judicial Independence: The Political Economy of Judging in Japan* 166 (2003) (noting that "judicial independence is not primarily a matter of constitutional text").

679. Discussions that blame the media for undermining popular confidence in the courts, see *supra* note 612, assume that courts deserve a higher level of popular confidence than they currently enjoy.

680. Zhu, *Sending Law*, *supra* note 660, at 110–14.

fiable in the past are no longer warranted. If so, such changes may provide important arguments in favor of greater judicial authority.

Third, are courts developing spheres of autonomy where they are able to make decisions relatively unencumbered by external Party-state influences? Despite this Article's emphasis on continued Party-state oversight of, and intervention in, the courts, there are also signs that this situation is evolving. Courts may increasingly be able to make decisions without being subject to significant pressure from other Party-state actors. Judges interviewed in the course of this study repeatedly emphasized that the frequency with which external persons or individuals intervene in individual cases is decreasing.⁶⁸¹

Parallels to the evolution of the Chinese media suggest multiple explanations for a reduction in interference. Decreasing interference in the courts may reflect Party-state commitment to strengthening the courts and making the legal system more efficient and effective. Yet judges may also be developing a more sophisticated understanding of the types of cases that are likely to be of interest to their superiors inside and outside the courts. As with the media, direct intervention by Party-state officials may not be necessary where the courts understand the parameters within which they operate. Likewise, increased court autonomy may reflect the rapid growth of litigation. An increased volume of cases may make it more difficult for connected institutions or individuals to intervene in every case that concerns them, just as propaganda department officials find it increasingly difficult to monitor the rapid proliferation of news stories appearing in increasingly diverse news media. Any evaluation of courts' independence will turn on whether independence is measured by the frequency of intervention, or by intervention in cases touching on core concerns to Party-state institutions or officials.⁶⁸²

The Chinese legal system may be developing toward an arrangement in which courts, like the media, enjoy areas of significant autonomy. Routine cases, or cases that do not affect powerful interests, may be left largely to the discretion of the courts. Cases that affect powerful interests may continue to be subject to significant oversight by other arms of the Party-state. Such a situation would be akin to other countries where courts are generally independent but where there are areas in which such independence disappears.⁶⁸³ Areas of nonintervention could be under-

681. Other Western academics report similar findings. Cf. Peerenboom, *China's Long March*, *supra* note 25, at 7 (noting that Party interference in court decisions is the "rare exception").

682. One's assessment of independence will turn on whether one views the ability to exert power over other state institutions or the ability to resist influence from such institutions as the primary component of independence.

683. See, e.g., Ramseyer & Rasmusen, *supra* note 678, at 126 (discussing political influence of judges in Japan); Shapiro, *supra* note 608, at 32 ("In a great many nations, judicial independence is conceived not in terms of a tripartite constitution with checks and balances but simply in terms of a professional judiciary sufficiently insulated from other governmental influences to operate within its own sphere under the law."); see also

stood as serving Party interests in developing a court system that serves the goal of delivering efficient justice. Cases in which court autonomy is curtailed are likely to be cases that directly impact on regime legitimacy, social control, or the economic interests of the Party-state.

Areas of Party-state concern in China are broad, however. They encompass not just matters that are politically sensitive, but also a range of cases touching on the economic interests of various levels of the Party-state as well as cases of importance to influential individuals or entities, for economic or personal reasons. The Party-state also intervenes in cases that attract popular attention, such as the BMW case and the Zhang Jinzhu case, as well as in cases that touch on questions of popular or official morality.⁶⁸⁴ In some cases, it appears that Party intervention is motivated by the fact that the case has resulted in popular attention, rather than the substance of the dispute. The Party is concerned with ensuring that the case is resolved in a way that comports with popular perceptions of justice. In these situations, Party intervention reflects both discomfort with courts resolving questions that have attracted popular attention and also a continuation of the imperial tradition of leaders serving as “father and mother officials” responsible for maintaining order and morality and preventing discontent.

Complaints that courts have excessive power also suggest that judicial autonomy may be increasing. Lawyers, academics, and journalists contend that in cases where other Party-state actors do not intervene, courts

Cohen, *Judicial Independence*, supra note 609, at 1006 (predicting, in 1969, the possibility for development of some form of “judicial independence” in China, noting that “a totalitarian Communist regime that operates at an advanced level is under pressure to make concessions to its judges’ occupational commitment to impartial decision making”). This argument also resembles discussions regarding the potential impact of WTO accession on China, and in particular whether WTO accession may encourage changes only to China’s economic laws or broader changes to the legal system. See WTO: Will China Keep Its Promises? Can It?: Hearing Before the Cong.-Exec. Comm’n on China, 107th Cong. 74 (2002) (statement of Donald C. Clarke) (on file with the *Columbia Law Review*) (noting that “there is no general obligation under the WTO agreements to have a fair and well functioning legal system” and that “[t]hat obligation applies only to specific actions in specific sectors”); Leila Choukroune, *Rule of Law Through Internationalisation: The Objective of the Reforms?*, *China Persp.*, Mar./Apr. 2002, at 7, 17–18 (noting that WTO accession is aimed at fostering “economic rule of law” and that “[t]he rationalization of business law or of economic law . . . does not . . . signify the installation of the rule of law”).

684. See, e.g., Sun Chaofang et al., *Yu Duo zhan 300 Wan Gongyou Caichan, Huaxin Zhangfu Niezao Juzhai Xiang Kenqi* [Licentious Husband Forges Huge Debts to Cheat His Wife in Order to Own Three Million in Jointly Held Assets], *Yangcheng Wanbao* [Yangcheng Evening News], Aug. 29, 2002, available at <http://news.sina.com.cn/s/2002-08-29/1013696195.html> (on file with the *Columbia Law Review*) (discussing instructions by Party officials regarding the handling of cases of individuals who take mistresses); “Bao Er Nai” *Anjian Ying Ruhe Chuli?* [How to Deal with the “Concubine” Cases?], at <http://www.hanjilawyer.com.cn/lilun/xingshu/xing1-3.htm> (last visited Sept. 18, 2003) (on file with the *Columbia Law Review*) (same).

often have broad power to decide cases.⁶⁸⁵ Indeed, some complain that courts are not subject to sufficient external supervision; like the media, courts have either very limited power or virtually unchecked discretion. In other cases, courts may be increasingly willing to challenge other institutions: Hence in the black whistle case, the court rejected the procuratorate's interpretation of the criminal law when it found Gong Jianping guilty of a more serious crime than that with which he had been charged. Courts appear to be pushing their autonomy outwards, gradually challenging other party and institutional interests, rather than waiting for systemic reforms to grant them more power. Increased discussion of judicial independence in China may be facilitating this gradual expansion of judicial power by legitimizing courts' efforts to resist pressures and expand their autonomy.

This possible bifurcation of court authority carries important implications for prescriptive steps to address court-media relations in China and highlights the difficulty of devising measures that govern the full range of court-media interactions. Media oversight of the courts may play a very different role in areas in which courts operate relatively free of external Party-state intervention⁶⁸⁶ than it does when the media are acting on behalf of Party-state interests. Regulation devised to limit external interference may undermine media attempts to monitor the courts in cases of less concern to powerful interests. Likewise, regulation aimed at ensuring that the media do not affect outcomes in cases in which the courts should operate autonomously might limit the ability of the media to affect outcomes in cases of particular concern to Party-state institutions.

While at times limiting courts' authority, the media may also provide courts with a model for institutional development. The media remain subject to significant and often shifting Party oversight. The media have, however, preserved and strengthened their position in the Chinese legal system by taking advantage of their historical importance, new legitimacy derived from commercialization and popular appeal, and the Party-state's interest in allowing greater media autonomy. By contrast, courts lack both the historical importance of the media and the ability to appeal directly for popular support. Yet they appear increasingly adept at using claims of independence and Party declarations of the importance of law to assert institutional identity and resist some forms of external pressure. Like the media, courts' abilities to use the autonomy they are permitted in innovative ways may prove an important mechanism for increasing their authority, and thus for strengthening their ability to resist a range of external pressures.

685. See, e.g., Interview 2003-49; Interview 2003-73; Interview 2003-168.

686. The existence of discrete zones of autonomy does not equate to zones of judicial fairness; courts may act unfairly even when their actions are not being dictated by external intervention.

CONCLUSION

The media's role in the legal system is the result of numerous factors rather than explicit design. Commercialization of the media, the media's links to the Communist Party, a growing attention to and interest in law, Party-state attempts to curb official corruption and malfeasance, the interests and ideals of individual journalists, and the weak institutional position of China's courts have combined to position the media as influential actors. The media have benefited from a system that provides significant incentives to explore new territory even as they continue to face extensive constraints. Some of the incentives granted to the media may have been unintended, but the Party-state tolerates these incentives so long as the media remain within certain boundaries and do not directly challenge fundamental norms.

Many of the same factors that have permitted the media to assert their influence may also be encouraging judicial development, and evolution of both the media and the courts. Indeed, the most important factor leading the media to be more circumspect in their coverage of the courts—in the view of some, to become more respectful of court procedures—has been the ability of courts to retaliate against the media. Whether such constraints are understood as a sign of legalization or merely as retribution, they suggest that courts are increasingly able to make use of their own institutional power and expanding range of competence.

There are also signs that courts are developing an institutional identity that distinguishes them from other state actors. Courts are increasingly adept at using both the rhetoric of "judicial independence" and their own powers to assert their own interests and to resist external influence. The degree to which such actions reflect judicial ability to assert and define autonomy from other state actors remains to be seen, but the growing judicial willingness to challenge media influence may be a sign that over time courts will become more willing to challenge the legitimacy of other forms of interference. As with the media, the ability of courts to assert their own role and make use of autonomy granted to them may be as important as decisions central authorities make regarding the parameters of court independence and authority.

The media may play a role in pushing courts toward becoming impartial, fair, and popularly legitimate institutions. Doing so, however, will require media that are both able and willing to criticize not only the courts, but also those who pressure the courts, as well as media that tolerate court decisions that do not comport with popular views of justice. Such evolution may also require changes in Party views of the courts, in particular greater trust of the courts by Party-state officials.

The media have expanded their influence not only by using their institutional roles in new ways, but also by relying on their ability to reflect and create public opinion—public opinion that is often beyond direct Party control. Influence on public opinion may not always equate

with increased autonomy, as the high degree of propaganda department scrutiny of popular programs such as *Focus* and *Law Today* demonstrates. But the ability of the media to assert legitimacy and influence based on public opinion also raises the question of whether courts may also be able to seek authority, legitimacy, and influence from sources other than their formal position in the Party-state.

The role of the media reflects the Party's twin goals of maintaining control and legitimacy by appearing to be responsive to popular views and grievances. Other Party-state institutions are also increasingly using claims to represent public opinion to pursue institutional interests. Rival claims to represent public opinion have come to characterize debates in the National People's Congress, for example, suggesting a loosening of the conceptual link between the Party and uniform popular opinion.⁶⁸⁷ Such developments underscore the growing salience of public opinion, of claims to represent public opinion, and of the degree to which Party-state rule has come to be largely reactive.

The continuing role of the Party in serving as a referee for the various Party and government actors suggests the need to be cautious in assuming that an increased role for public opinion, or increased willingness to tolerate criticism of official actions, necessarily represents a loosening of control. Public opinion may be a tool of competing Party interests as often as it is a check on abuses in the system. Likewise, recognizing that increasingly aggressive media may serve state interests shows the need to be cautious in assuming that limited marketization will lead the media to push China toward a liberal democratic system or to become independent of the state.⁶⁸⁸ Indeed, the encouragement of such new roles for the media suggests that measuring the Chinese media in terms of their independence of nonindependence from the state may present a false dichotomy.

This Article has shown that expanded media coverage of the courts does not necessarily equal increased transparency and may undermine court autonomy. Those looking to increased media scrutiny to result in dramatic improvements in the legal system are likely to be disappointed. Yet restricting the media may simply lead other state institutions to step

687. See William P. Alford & Benjamin L. Liebman, Clean Air, Clean Process? The Struggle over Air Pollution in the People's Republic of China, 52 *Hastings L.J.* 703, 742 (2001) (discussing use of claims to represent public opinion by advocates of stricter air pollution regulation).

688. Commentators on Western systems also challenge the relationship between marketized media and media that serve as effective checks on government. See, e.g., U.S. Office of Democracy and Governance, *Guidance for Promoting Judicial Independence and Impartiality* 35–36 (rev. ed. 2002) (noting that independence from government control does not necessarily ensure media autonomy, as owners, “with their own biases and connections, often control content”); Curran, *supra* note 165, at 120, 123–24 (arguing that traditional liberal theory holding that only a free market can guarantee media independence from government “fails to take into account . . . the way in which the market is now a source of corruption that can subdue critical oversight of government”).

into the media's role as "supervisor," and may undercut efforts to make courts fairer and more accessible. The media operate in tension with other state actors, not just the courts. Addressing media influence without examining, for example, the influence of people's congresses or individual Party officials may lead to both less transparency in the courts and greater interference in court decisionmaking. Media scrutiny, even that by Party-linked media, may be particularly necessary in a system in which numerous Party-state entities seek to influence court decisionmaking. Strengthening the courts requires both reducing and delegitimizing the range of external pressures that the courts confront.

Tolerance of media coverage that at times exerts excessive influence on courts thus may be one cost of accepting media that will expose, or threaten to expose, cases of corruption or injustice. Acceptance of continued media links to the Party may be, at least in the short term, a cost of encouraging media to play this role. Although media with fewer Party-state links might be subject to reduced Party oversight, such media might also be less willing or able to report, less trusted by Party officials, and thus less effective in assisting individuals seeking redress. Whether such a model of institutional checks on misbehavior is sustainable over the long term remains to be determined. Institutional positions are not static, and they will continue to be influenced by the range of incentives and factors that inform day-to-day interactions among actors. Some of these are apparent; others may be little noticed. Such institutions are likely to continue to play roles that differ in important respects from their Western counterparts, and the outcome of such institutional development thus remains difficult to predict.

Oversight of some form is crucial to addressing the numerous problems that currently undermine the effectiveness of law and governance in China. The central Party-state is relying on a model that uses a range of state institutions, including the media, to serve as checks on abuses. This approach reflects the fact that such institutions, and in particular the media, play roles that differ significantly from those played by similarly named institutions in the West. One legacy of these differences is that such institutions are unlikely to serve as solutions to these problems in ways that experiences elsewhere, or Western models of institutional development, might suggest.

Increasing media autonomy is unlikely to be a panacea for the Chinese legal system's problems. One reason that media effectiveness in bringing systemic change may not match media influence in individual cases is that the media continue to be subject to numerous constraints. But the lesson from recent court-media interactions in China is deeper: Evaluating the media and the courts primarily in terms of their independence from the Party-state risks missing much of the complexity that explains institutional development in China today. As this Article has shown, increasing the autonomy of the courts and the media may serve Party-state goals in important ways. Moreover, it is increasingly difficult

to speak of uniform Party-state goals. The media and the courts are both Party-state institutions, attempting to assert and redefine themselves on a rapidly evolving playing field.

It is not surprising that the media's role as a significant institution in the evolution of law and dispute resolution in China has been largely overlooked. We lack a basis for answering many fundamental questions regarding the functioning of the Chinese legal system, including the reasoning behind court decisions, the range and importance of Party oversight, the makeup of court dockets and causes behind the growth of litigation, and the role and impact of the range of actors participating in the system. Greater attention to legal issues in China suggests that answers to many of these questions may be found in the Chinese media. The expanded role of the media means that understanding their role is crucial to understanding the evolution of the Chinese legal and political systems.