

**Public Opinion Supervision -
A Case Study of Media Freedom in China**

“We insist on ‘one hundred flowers blooming and one hundred schools of thought contending.’ China’s news has freedom. But this freedom must obey and serve the interest of protecting the state and the public.”

- Jiang Zemin¹

Parallel to economic liberalization, the People’s Republic of China (China) has witnessed a rise of investigative journalism with heroic accounts being trumpeted across the nation since the late 1970s.² It was believed that with the introduction of capitalism and the consequent relaxation of media control,³ a degree of real press freedom has crept into China’s society.⁴

In particular, scholars have highlighted a unique phenomenon known as “yulun jiandu.”⁵ Literally, this means public opinion supervision, whereby the opinions from the mass are mobilized to act as a check against the state, to influence court decisions and to push for legislative or policy reforms. In the process, the media often plays a

¹ Expressed by Jiang Zemin, former State Chairman and Party General Secretary of the People’s Republic of China, to CBS reporter Mike Wallace on August 15, 2000. Quoted in, CHINA’S CENTURY: THE AWAKENING OF THE NEXT ECONOMIC POWERHOUSE 367 (Laurence J. Brahm, ed., 2001). Chinese names in this article are cited in their Chinese name order, family names first. The exception is that if the authors themselves write in English and refer to their own names in a different order, the above rule is not followed.

² Famous works include LU YUE GANG, BIG COUNTRY, SMALL CITIZENS [Da Guo Gua Min] (1998) and ZENG HUA FENG, THE INVESTIGATIVE REPORTER [Diao Cha Ji Zhe], 2004. Another notable example is the television documentary, *Focus*, which attracts a daily audience up to 350 million. See Hugo De Burgh, *Kings without Crowns? The Re-emergence of Investigative Journalism in China*, 25 MEDIA, CULTURE & SOCIETY 801 at 802 (2003).

³ State subsidies were cut tremendously and in 1981, the ban on advertisement was lifted. The State Press and Publications Administration required all major newspapers with the exception of party newspapers to achieve independence by 1994. See Yuezhi Zhao, *From Commercialization to Conglomeration: The Transformation of the Chinese Press within the Orbit of the Party State*, JOURNAL OF COMMUNICATION 3 (2000).

⁴ Li Xiguang, *Creeping Freedoms in China’s Press*, in CHINA’S CENTURY, *supra* note 1 at 386.

⁵ See Conference on China-U.S. Public Opinion and Law 2004, jointly held by Centre for International Communication Studies of Tsinghua University, Tsinghua Law School and Yale Law School, June 19-20, 2004, Tsinghua University, Beijing.

critical role such that many perceive it as a positive force and some may simply equate it to be a form of media monitoring.⁶

The power of the media is not only recognized in communication studies. Its impact is also felt in the legal arena. This is evidenced in cases in which the outcome of judicial decisions is altered and the fate of individuals is rewritten after media exposure of the event. Thus, the media can play a powerful role in a justice system which the court has failed to live up to. Indeed, Benjamin Liebman praises the Chinese media as one of the most influential actors in the legal system over the last decade.⁷ Neil J. Daimant et al. regard the media as a key legal actor in the battle for access to justice.⁸

Despite the above positive appraisal, the sad reality is that media freedom has suffered severe setbacks since 2004 with prosecution and imprisonment of editors,⁹ forced restructuring¹⁰ and suspension of liberal papers.¹¹ It is difficult for one not to

⁶ See discussion in Yuezhi Zhao, *Watchdogs on Party Leashes? Contexts and Implications of Investigative Journalism in Post-Deng China*, 1 (2) JOURNALISM STUDIES, 577 at 594 (2000).

⁷ Benjamin Liebman, "Watchdog or Demagogue? The Media in the Chinese Legal System," 105 COLUMBIA LAW REVIEW 1 (2005).

⁸ NEIL J. DIAMANT, STANLEY LUBMAN AND KEVIN J. O'BRIEN, ENGAGING THE LAW IN CHINA 10 (2005).

⁹ In June 2004, the general manager and the vice president of the outspoken *Southern Metropolis Daily* (*Nanfang Doushi Bao*), were sentenced to eight and six years' imprisonment for alleged corruption in the distribution of editorial bonuses. Many regarded this as a revenge for the paper's coverage of the SARS report and the Sun Zhigang case in 2003. More than 2000 journalists petitioned for their release which one of them was released in 2005. See Jonathan Watts, *Print and be Damned – China's Paper Tigers Fight On: Beijing's Iron Grip on News is Under Attack as this Week 2000 Journalists Urged the Release of Jailed Colleagues*, THE GUARDIAN, July 1, 2005 at 17.

¹⁰ The chief editor and his deputies of *Beijing News* (*Xin Jing Bao*) were removed. The move was believed to be the newspaper's outspoken stance and sustained coverage of official corruption and social problems. See *Press Freedom Takes Step Back under China's Current Leaders*, BBC MONITORING, Jan. 2, 2006 at 1.

¹¹ *China Youth Daily* (*Zhongguo Qingnian Bao*) was suspended for one month after printing an article

sink into a pessimistic mood and dismiss the power of public opinion supervision to be mere wishful thinking in a communist state.

Drawing on the literature of both communication and legal studies, I will argue, however, that public opinion supervision was never meant to be a form of media monitoring as its name might have suggested. In stark contrast to its literal meaning and common perception, the official meaning of public opinion supervision, as stated in the *Study Guide of the China's Communist Party (CCP)*, refers to supervision by the mass, exercised through the media, under the leadership of the CCP, which the latter plays a paramount role.¹²

Regardless which definition one adopts, inherent in the concept of public opinion supervision is the conflicting and difficult relations between the public, the media and the state. Theoretically, the Party is subject to the scrutiny of the public and the media yet the latter are under the guidance of the Party. This conundrum has resulted in different interpretations, negotiations and manipulation of the content of “public opinion”¹³ under different conditions by the media and the Party. The dynamics involve a sophisticated process taking place within the set boundaries of the political

by an academic criticizing the official version of the cause for foreign invasion into China in the two World Wars. When the paper was resumed in February 2006, the chief editor was replaced. *See* Editorial, *Cracks in the Great Wall*, ASIAN WALL STREET JOURNAL, Feb. 17-19, 2006 at 10.

¹² STUDY HANDBOOK ON THE (TENTATIVE) REGULATIONS OF INTERNAL SUPERVISION OF THE CHINA'S COMMUNIST PARTY (hereinafter STUDY HANDBOOK) [Zhong Guo Gong Chan Dang Dang Nei Jian Dui Tiao Li (Shi Xing) Zhong Guo Gong Chan Dang Ji Lu Chu Fen Tiao Li Xue Xi Shou Ce] at 75 (2004).

¹³ For the ambiguity of the term “public opinion,” see discussion in SLAVKO SPLICHAL, PUBLIC OPINION 1-52 (1999).

order. Hence, I would argue that public opinion supervision should be seen as a dynamic, interactive process involving the CCP, the media and the public to define the substantive wrong in social problems, to frame pressing issues and to have the final say in directing the course of social, legal or political development.

Palpably, it is fundamentally unrealistic to expect that media in China could be the fourth estate or a ferocious watchdog in this battle. To shed light on its role, I like to draw on the metaphor of a “guard dog media”¹⁴ to analyze the intricate relationship between the Chinese media and the authorities. The guard dog conception is “different from the lapdog version in that it does assume a conflict role of media, one that would not necessarily produce abject subservience.”¹⁵ The guard dog occasionally sounds the alarm. “Conflict is reported but in a constrained way and only on certain issues and under certain structural conditions.”¹⁶

To capture the delicate power game of public opinion supervision, and the complex irony of dependency and autonomy of the Chinese media, this paper examines the news coverage of a particular housing development and relocation scandal in Hunan province.¹⁷ Though relocation projects are common in China, extremely few disgruntled cases develop into social and legal problems that enjoy

¹⁴ George A. Donohue et al, *A Guard Dog Perspective on the Role of Media*, 45 J OF COMMUNICATION 115-132 (1995).

¹⁵ *Id.* at 120.

¹⁶ *Id.* at 116.

¹⁷ In my study, I interviewed the journalists, and lawyers that were directly involved in the case, and sought the views of other journalists and academics in media studies. In total, I had conducted interviews with nine journalists, two lawyers and three leading academics.

“celebrity status” that are widely reported.¹⁸ Coverage of such cases is often sensitive as it involves urban planning and policies of the local government.¹⁹ The significance of reporting this case is that many could easily identify with the fate of the immediate victims. Public imagination could be promptly captured and public opinion could be readily aroused, facilitating supervision by the public and the media. In the battle of public opinion supervision, the media teamed up with legal actors to sustain public opinion and to build moral authority on all fronts.

Rather than perceiving the event merely as another media crusade successfully yielding a particular legal result, I contend that the media and the law are interlocked in a relationship of complementary interdependence. Without either one of them, the result would have been different. Throughout the process, the media is an advocate mobilizing public opinion and fighting for the recognition of legal order. The story has been chosen to exemplify both the tacit coordination within the media sector and the joint effort between the media and the relevant legal institutions to achieve a just result as part of the uphill battle of making public opinion supervision works. Underneath the seeming victory, the media and the legal actors knew their constraints. They had to humbly acknowledge that it was not a total victory. Thus, the chosen case

¹⁸ Stephen Hilgartner and Charles Bosk, *The Rise and Fall of Social Problems: A Public Arenas Model*, 94(1) THE AMERICAN JOURNAL OF SOCIOLOGY 57 (1988).

¹⁹ It was reported that 1.25 million people have been compulsorily moved in the past 15 years to areas in distant suburbs. See Mark O’Neill, *China: Media Censorship Alive and Well*, BBC MONITORING, Mar. 9, 2006 at 1.

study also enables us to understand the power and limitations of the media; the evolving relationship between the media and the state; and the relationship between the media and legal regulation.

I. PUBLIC OPINION SUPERVISION BUT WHO IS THE SUPERVISOR?

Public opinion supervision is often seen as a refreshing and positive force in China's media landscape, though public opinion may run out of control triggering a media trial.²⁰ Nonetheless, China's investigative reporting has contributed positively to exposing official corruption and social problems. Public opinion supervision has become increasingly important since the late 20th century. Landmark reports include the Sun Zhigang investigation, the BMW case and the Liu Yong trial.²¹

²⁰ In one case, a defendant who was sentenced to the death penalty by the court, remarked bitterly that he was in fact sentenced and "executed" by the media, rather than by the court. This was the notorious case of Zhang Jin Zhu, a local public security official in Zheng Zhou County of Hunan province who knocked down a pedestrian while driving under the influence of alcohol in 1997. Without stopping, he dragged the victim with his car for about 1500 meters, and knocked down another passer-by. The first victim was killed and the second suffered serious injury. In the trial, Zhang was sentenced to death in 1998. He appealed but the sentence remained. As Zhang was widely portrayed by the media as an evil monster, Zhang argued that the sentence was too heavy and he in fact had been condemned by the media before the court's sentence. See Yan Lei Shan, *Who Killed Police Officer Zhang Jin Zhu?* [Shei Shai Le Gong An Zhang Jin Zhu?], April 8, 2005 at <http://news.163.com/05/0408/20/1GRFCV300001120T.html>; and Liebman, *supra* note 7 at 69-70.

²¹ Sun Zhigang was a 27 year graphic designer who was beaten to death by police officers in a detention centre for migrants in Guangzhou city when he failed to produce a temporary residence permit. This happened on March 17, 2003. The incident was not reported by the media until more than a month passed, the outspoken *Southern Metropolis Daily* covered the news on April 25. Discussion spread like fire on the Internet. *Beijing Youth Daily* picked up the story. Because of the coverage, an investigation team was set up by the Government. On June 20, the China's Custody and Repatriation system was abolished by Premier Wen Jiabao (State Council Decree No. 381). The BMW case took place at the end of 2003. Sun Xiuwen drove a BMW and hit fatally a peasant in Hariban. The issue was whether this was a case of intentional murder. In the trial, the Court ruled that it was an accident. The media covered the case widely and questioned the links between Sun and higher officials in the region. On appeal, the court upheld the trial judge decision. Public opinion did not change the decision but discussion on the Internet was so heated that Party officials had to ban reporting of the case and ordered websites to remove coverage and discussions of the case. The last case was about Liu Yong, a triad leader in Liaoning province. Liu was sentenced to death on April 17, 2002. On appeal, his

On a closer look, “public opinion supervision” is a fluid and malleable term, carrying multi-layered meanings in the Chinese context. If public opinion refers to the simple aggregation of individual opinion,²² the supervision that generated from this force could be seen as a form of public acclamation on social or political problems. However, this form may be dispersed, loosely organized and not widely heard. David Lynch points out that public opinion is composed not of “ aggregates of individuals secretly holding to their thoughts, but instead as people recognizing a problem, producing conflicting ideas about what to do, considering those alternatives, and trying to resolve the matter by building consensus for a line of action.”²³ The logical extension of “public opinion supervision” would seem to be supervision by the above named force to halt various injustices in society. The role of the media is to reflect, channel and mobilize this opinion into an expressed voice, turning public problems into salient public issues, affecting outcomes of decisions. The media becomes representatives and trustees of the public, translating raw public opinion into a collective, supervising role. In this second sense, public opinion supervision could act as a powerful critique of state power because the media offers a vision of spectacle and a chance for participation to affect collective decision. However, one needs to

sentenced was reduced to life imprisonment. The media questioned whether this was a fair decision and hinted at the personal connections between Liu and local officials. Waves of criticism came pouring in on the Internet and the print media. The Supreme People’s Court had to intervene in December 2003 and reinstated the death sentence and Liu was executed within hours of the Court’s announcement. For details of the case, *see* discussion Liebman, *supra* note **Error! Bookmark not defined.**, at 82-91.

²² Splichal, *supra* note 13 at 28.

²³ DAVID LYNCH, *AFTER THE PROPAGANDA STATE* 24 (1999).

note the above understanding is very different from the official definition.

Later discussion will show that the CCP has always claimed to be the true spokesman of the “public.” This means that any supervision must ultimately take place within the realm of social stability under the CCP leadership. In other words, “public opinion supervision” is a misnomer because the ultimate source of supervision remains to be China’s political leaders. Despite this, the media strives to exercise genuine media monitoring by channeling public opinion to contest the boundaries set by the ruling regime. Though public opinion rarely takes the form of scientific opinion polls or empirical surveys in China, the media is eager to expose malfeasance so that individuals can express their opinions on public events. Often, what the media is doing is making controversial issues more salient and appropriate for the expression of public sentiments and opinions so that pressure can be exerted to resolve some of the most contentious social issues. Each round of covering a ground breaking story is an attempt to negotiate and expand the scope for freedom in society at large.

This part of the paper will outline the background of the rise of public opinion supervision and explore its meaning so as to lay out the analytical framework for the upcoming case study.

A. Mouth and Throat, Ear and Nose, and the Next?

Under Maoist rule, China's media performed an entirely different role. It was a revolutionary instrument, better known as the CCP's "mouth and throat." Li Xiguang remarked that in those days, negative reporting was non-existent for "good news is news, bad news is not news."²⁴ The media was entrusted with the task of preserving social stability and promoting specific policies. Despite the fact that propaganda is a "dirty" word in Western social science studies, conjuring shrewd manipulation and thought control, there is nothing shameful about this term in China.²⁵ Until the late 1990s, the Central Publicity Department was known as the Central Propaganda Department (CPD),²⁶ an organ of the CCP rather than a governmental department.²⁷ It has always been the responsibility of the media to spread state propaganda, to educate the public, to uphold Party policy, and to help the masses under Party guidance.²⁸

On the other side, the media were also instructed to be the "eyes and ears" of the party. Journalists were expected to gather information and to reflect grassroots

²⁴ Li, *supra* note 4 at 391.

²⁵ Timothy Cheek, *Redefining Propaganda: Debates on the Role of Journalism in Post-Mao Mainland China*, 25 *ISSUES & STUDIES* 47 at 51 (1989).

²⁶ The Central Propaganda Department abandoned the sensitive word "propaganda" as a translation for *xuanchuan* and opted for the word "publicity" and "information" for different official purposes. When the head of CPD travels abroad on official visits, he is sometimes introduced as the Minister of Information. See Perry Keller, *Media Ownership & Regulation in China*, in *IMPLEMENTATION OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA* 286 n. 38 (Jianfu Chen, Yuwen Li, and Jan Michael Otto, eds., 2002). In Chinese, the word "propaganda" is still used. CPD in Chinese is still known as *Zhong Xuan Bu*.

²⁷ Its responsibility is to overlook the media industry, set Party media policy and supervise the work of the provincial level party propaganda bureaus. Keller, *id.*

²⁸ Cheek, *supra* note 25 at 55.

problems and grievances for limited circulation within the government.²⁹ Judy Polumbaum has characterized China's media to be both a form of hegemonic and petitionary communication in which the governors address the governed and the governed address the governors.³⁰ Thus, the media were the bridge between the Party and the people but not a mediator between them. Ostensibly, what was absent was the checking of state power by the media and the mass.

However, China's media experienced drastic structural and functional changes after 1978. In 1979, for the first time the media were allowed to accept advertising.³¹ In 1983, the broadcasting system was decentralized, leaving only China Central Television (CCTV) under central Party supervision.³² In 1992, after Deng Xiaoping's visit to the South, the State Press and Publications Administration required all major newspapers, apart from a few central party organs, to become financially self-sufficient by 1994.³³ In 1996, the Ministry of Propaganda sanctioned the first newspaper conglomerate.³⁴ In July 2003, the CPD abolished the requirement that

²⁹ These were known to be "internal references" [neibu wenjian]. See Marlowe Hood, *The Use and Abuse of Mass Media by Chinese Leaders During the 1980s*, in CHINA'S MEDIA, MEDIA'S CHINA 23 at 39 (Chin Chuan Lee, ed., 1994).

³⁰ Judy Polumbaum, *The Tribulations of China's Journalists after a Decade of Reform*, IN VOICES OF CHINA: THE INTERPLAY OF POLITICS AND JOURNALISM 33 (Chin Chuan Lee, ed., 1990).

³¹ Roya Akhavan-Majid, *Mass Media Reform in China: Toward a New Analytical Framework*, 66 (6) GAZETTE 553 at 557 (2004).

³² See Yu Huang, *Peaceful Evolution: the Case of Television Reform in Post-Mao China*, 16 MEDIA, CULTURE & SOCIETY 217-241 (1994).

³³ Zhao, *supra* note 3 at 6.

³⁴ The first one is the Guangzhou Daily conglomerate, a municipal paper which is allowed to invest in stock and property markets, to set up newspaper kiosks, to publish a series of minor papers and to manage a series of profitable media and non-media enterprises. See Eric Kit-wai Ma, *Rethinking Media Studies: The Case of China*, in DE-WESTERNIZING MEDIA STUDIES 22 (James Curran and Myung-Jin Park eds., 2000).

forced party and state entities to subscribe to CCP newspapers.³⁵ In essence, the Party gave clear signals to media institutions that they had to become financially independent and profit earning entities. These various important reforms triggered changes in the media structure and outlook.

Strictly speaking, there is no independent press in China. Privately owned or civilian organized owned newspapers are not allowed. Rather, China's printed media is largely divided into Party and non-Party organs. The leading newspapers are the Party papers, directly controlled and responsible to the CCP and each province has its own party paper. The leading Party paper is the *People's Daily* and the party central television mouthpiece is CCTV. Non-party media belong to and are supervised by major party organs, government departments or their sub-units or semi-official organizations such as women's associations or trade unions.³⁶ Each ministry or ministry level department runs its own newspaper. For example, *the Legal Daily* belongs to the Ministry of Justice. The famous *Beijing Youth Daily* is an unofficial paper belonging to the Beijing Communist Youth League. In sum, each newspaper has its own rank, depending on its position on the administrative ladder.³⁷ Within the

³⁵ Document 19 of Central Propaganda Department, issued in July 2003, quoted in "Notification on Further Regulation on Compulsory Subscription by Government Department," [Zhong Xuan Bu Guo Wu Yuan Jiu Feng Ban Xin Wen Whu Ban Shu Fa Chu Tong Zhi—Jin Yi Bu Gui Fan Dang Zheng Bu Men Bao Kan Zheng Ding Gong Zuo], PEOPLE'S DAILY, July 26, 2004 at <http://www.people.com.cn/BIG5/shizheng/1027/2664432.html>

³⁶ Chengju Huang, *China's State-Run Tabloids: The Rise of "City Newspapers,"* 63 GAZETTE (5), 435 (2001).

³⁷ This ranges from a ministry (bu), a bureau (jug), a branch (chu) to a section (key). See discussion in Pan Zhongdang, *Spatial Configuration in Institutional Change: A Case of China's Journalism Reforms,*

above framework, there are increasing numbers of variations caused largely by the urgent need to be financially independent: city newspapers,³⁸ evening papers, weekend editions, press conglomerates, joint-venture papers and a contracting out press system³⁹ have blossomed quickly.

To attract readers and advertisers, these new entities have to be bold, aggressive and reader-oriented. This reality has directly contributed to the rise of a “semi-independent press,” characterized to be “semi-official Chinese media that enjoy independence in editorial, personnel and financial matters but are without any independent legal status.”⁴⁰ In the midst of structural changes, investigative reporting becomes a popular form of news coverage. Thus, the economic reforms since the 1980s have gradually but effectively transferred a degree of media control from the Party to the market and indirectly expanded the scope of media freedom.

B. Publicity Company, Investigative Journalism or Public Opinion Supervision?

The push and pull of market forces have landed the China media on a new

1:3 JOURNALISM, 253 at 258 (2000).

³⁸ Since the mid-1990s, major provincial press organs have established a large number of highly commercialized and urban-reader oriented daily newspapers to attract readership. They are known as city newspapers, often in the form of evening news. See Huang, *supra* note 36 at 435.

³⁹ Regardless of whether a newspaper is officially registered in the name of, and supervised by, government departments or their sub-units or semi-official organizations, it can contract out to individuals or groups who enjoy editorial, personnel and financial independence provided the license-holder pays a fixed sum. Take the *Beijing Youth Daily*, it is under the governance of the Beijing Communist Youth League but has been contracted out to its staff and enjoys the reputation of being an avante-garde liberal newspaper in the nation.

⁴⁰ Chengju Huang, *The Development of a Semi-Independent Press in Post-Mao China: An Overview and A Case Study of Chengdu Business News*, 1 JOURNALISM STUDIES (no. 4) 649 at 650 (2000).

plateau. It now has to serve two masters – not to offend the Party and to please the market. Chin Chuan Lee writes that China’s “schizophrenic market-orientated media” has a capitalist body but wears a socialist face.⁴¹ Summed up succinctly by Zhao Yuezhi, the media has to “[dance] skillfully between the party line and the bottom line, these papers seek a middle road between traditional party organs and marginal lifestyle and crime tabloids and create a propagandist-commercial model of journalism that pleases the leaders and the ordinary readers at the same time.”⁴²

In fact, the above is a survival and winning formula for all China’s commercialized media. Lee cynically describes China’s media as having changed from being a Party mouthpiece to a Party publicity corporation.⁴³ Rather than brainwashing people, the media is now assigned tasks to resolve social conflict, to promote Party legitimacy and to help halting rising corruption at the lower levels of the government.

How should one then characterize the nature of investigative journalism in China? Before answering this question, one should perhaps pause to clarify the meaning of investigative journalism. Hugo de Burgh defines it as a form of “extensive research by one or more journalist to uncover matters which affect the citizenry of the society in which the journalist lives and of which the society generally does not approve but is

⁴¹ Chin Chuan Lee, *Servants of the State or the Market?: Media and Journalists in China*, in MEDIA OCCUPATIONS AND PROFESSIONS: A READER 241 at 246 (Jeremy Tunstall, ed., 2001).

⁴² Zhao, *supra* note 33 at 10-11.

⁴³ Lee, *supra* note 41 at 246.

unaware.”⁴⁴ Its flavour is adversarial, representing a critical, emancipatory tradition appealing to universal values.⁴⁵ In China, the attempt to adopt this muck-raking, revelatory style of reporting can be traced to the late 1970s, with the famous reporter Liu Binyan being a brave voice.⁴⁶ The passion is still alive in contemporary times.

It would, however, be too quick to equate the Chinese style of investigative expose to a form of investigative journalism or a pure form of media monitoring as understood in liberal studies. As indicated earlier, it is important to remember that China’s media is still an arm of the state and public opinion supervision must take place under the larger umbrella of Party supervision and guidance. Chinese leaders are careful to direct the rising passion and power of investigative journalism into a specific form of “public opinion supervision.”

The term was coined by the then Premier Zhao Ziyang in the 13th Central Committee of the Communist Party (CCCP) of China in 1987, where he urged the media to report on political and Party affairs so as to achieve the purpose of “public opinion supervision.”⁴⁷ In the address, he did not mention the mouthpiece role of the press but highlighted three principles of news work: the press should exercise oversight over the work and conduct of public officials, should inform the public of

⁴⁴ De Burgh, *supra* note 2 at 806.

⁴⁵ *Id.*

⁴⁶ Zhao, *supra* note 6 at 578.

⁴⁷ Report Delivered at the 13th National Congress of the Communist Party of China on October 25, 1987 at <http://redweb.tsinghua.edu.cn/shiwuda/1-15/cf13.htm>.

important events and it should reflect public debate on important issues.⁴⁸ This was echoed by the subsequent Party Secretary Jiang Zemin in the CCCP meetings in 1992,⁴⁹ 1996⁵⁰ and 1997⁵¹ respectively.

In 1997, Xiao Yang, President of China's Supreme People's Court called upon all courts to put themselves under the scrutiny of the media.⁵² Despite this rosy image, "public opinion supervision" was formally stipulated under *the (Tentative) Regulations of Internal Supervision of the China's Communist Party* in 2003.⁵³ Under section 5, it stipulates specifically that internal supervision within the Party must go hand in hand with external supervision. The latter includes supervision by the media. Under section 33, media supervision must take place under the guidance of the Party so as to achieve an optimal and ideal form of public opinion supervision. Immediately following, in section 34, the media is required to adhere to Party principles, media professional ethics, to direct public opinion to the right course and be aware of the social impact of public opinion supervision. The term "public opinion supervision" is not defined in the Regulations but understood to mean supervision by the mass,

⁴⁸ See discussion in Polunbaum, *supra* note 30 at 42.

⁴⁹ Report Delivered at the 14th National Congress of the Communist Party of China on October 12, 1992 at <http://www.people.com.cn/GB/shizheng/252/5089/5106/20010430/456648.html>.

⁵⁰ Report Delivered at the 16th National Congress of the Communist Party of China on October 10, 1996 at <http://www.people.com.cn/GB/shizheng/252/5089/5106/20010430/456601.html>.

⁵¹ Characteristics Into the 21st Century-- Report Delivered at the 15th National Congress of the Communist Party of China on September 12, 1997 at <http://xibu.tjfsu.edu.cn/elearning/lk/15c.htm>

⁵² Zhao, *supra* note 6 at 581.

⁵³ Promulgated by the Central Committee of the China's Communist Party on Dec. 31, 2003.

exercised through the media.⁵⁴ It is explicitly stated in the *Study Guide* that public opinion supervision can only take place under the leadership of the Party.⁵⁵ The media are warned that they are not the fourth estate but part of the Party. They are reminded once again that they are the mouth and throat, ear and eyes of the Party and the people.⁵⁶ They should not model themselves on the Western media.⁵⁷ Most of all, the Party should never be put into an oppositional position with the media.⁵⁸ Other than exposing social problems, the media should help to solve conflicts and problems in society.⁵⁹ The prime concern is always the maintenance of “social stability,”⁶⁰ to assist the state rather than adding to its burden (*yao bang mang bu yao tian luan*).⁶¹ The above legal rhetoric is affirmed in various policy directions in 2005,⁶² and it has also been implemented in different ways by local officials. It was reported that internet commentators have also been recruited by local governments in 2005 to redirect public opinion to the “right course” of discussion on the internet.⁶³ Their

⁵⁴ STUDY HANDBOOK, *supra* note 12 at 75.

⁵⁵ Ren Tian Ying, *Treating Public Opinion Supervision Seriously and Correctly*[Ren Zhen Dui Dai He Zheng Que Kai Zhan Xin Wen Yu Lun Jian Du in Zhong Guo Gong Chan Dang Dang Nei Jian Du Tiao Li], in THE STUDY GUIDE, *supra* note 12 at 268.

⁵⁶ *Id.* at 270.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 270-271.

⁶⁰ 278

⁶¹ 281.

⁶² See Notice on the Strengthening and Improving Public Opinion Supervision by the State Administration of Radio, Film and Television [Guang Dian Zong Ju Yin Fa Guan Yu Qie Shi Jia Qiang He Gai Jin Guang Bo Dian Shi Yu Lun Gong Zuo De Yao Qiu De Tong Zhi], issued on May 10, 2005 at <http://www.sarft.gov.cn/manage/publishfile/35/2926.html>

⁶³ Cao Yun Wu, *Su Qian: Directing the Implementation of Public Opinion Supervision* [*Su Qian: Yin Dao Wang Luo Yu Lun Shi Jian*], SOUTHERN WEEKEND [Nanfang Zhaomou], May 19, 2005 at A5. It was reported that at least Nanjing, Wu Shi and various cities in Jiansu province have hired their teams of online commentators to direct public opinion.

duties are to counter-balance any pessimistic views and to explain the government stance. What is important to note is that these commentators still express their opinions in their capacities as ordinary citizens, rather than government spokesmen.

Clearly, in view of the above legislative and policy directions, the Party is calling for media restraint. It is determined to retain its established role as the helmsman of social reform. The pressing issue then becomes whether the Party's current insistence on exerting control over the media can halt the liberating force that has been unleashed by the market for more than two decades. A semi-independent press is forming and the passion of public opinion has already been inflamed. The relationship of the media with the Party and with the public has, thus, entered into a fluid state of uncertainty and possibility.

II. UNLEASHING THE GUARD DOG

We have seen while this guard dog has been awakened from its slumber, it is still under the firm discipline of the Party. The following case analysis will illustrate the interplay between political and media power in the coverage of a scandal. One can also witness the alliance between the media and legal justice in the face of oppressive political power.

A. Cultural Revolution Relived

The case reviewed here concerned a land development project in the county seat of Jiahe, under the jurisdiction of Chen Zhou Municipal government in Hunan Province. Land development, relocation of properties and expropriation of proprieties are by-products of China's rapid urban development and modernization. They are not necessarily seen as social evils because residents may have a chance to get a sizable amount of compensation or a new residential unit. It is equally true that there are many grievances when people are forced to leave homes which are associated with their family histories, values and fond memories.⁶⁴ In some cases, houses are expropriated without reasonable compensation.⁶⁵

The case in dispute involved a 120,000 square meter land project in the down-town area of Jiahe, affecting 1100 households and 7000 people.. The county government had sold the land to a developer in July 2003 to construct a commercial area. Existing houses on the land which were mostly built after 1990 or even after 2000 had to be demolished. The whole project would have affected approximately one

⁶⁴ See Ian Johnson's account of the redevelopment and disputes in Beijing. IAN JOHNSON, *WILD GRASS: CHINA'S REVOLUTION FROM BELOW*, 87-182 (2005).

⁶⁵ For a comprehensive account of legal disputes and regulations, see Wang CAILIANG, *DISPUTES ON DEMOLITION OF HOUSES* [FANG WU CHAI QIAN JIU FEN JIAO DIAN SHI YI] (2004). The county government had also hung out banners with imperative orders written on them. The slogans read "Who Affected Jiahe for a while, I will affect him for Life." [Shui Ying Xiang Jia He Fa Zhan Yi Zhen Zi, Wo Ying Xiang Ta Yi Bei Zi]; "Who Does not Care about the honour of Jiahe, whose hat will be taken off" [Shui Bu Gu Jia He De Mian Zi, Shui Jiu Bei Zhai Mao Zi], and "Who does not co-operate, he will be replaced [Shui Gong Zuo Tong Bu Kai Mian Zi, Shui Jiu Yao Huan Wei Zi]. The banners were hung on December 14, 2003, see reports by Luo Chang Ping, *Demolition Project in Hunan Caused Sisters to Petition for Divorce on the Same Day* [Hu Nan Jia He Xian Chai Qian Yin Fa Yi Dui Jie Mei Tong Ri Li Hun], *BEIJING NEWS*, May 8, 2004 at <http://news.qq.com/a/2004508/000033.htm>.

fifth of residents in the county seat.⁶⁶ Other than the fact that the compensation rate was unreasonable, what was most striking and outrageous in this case was the direct interference of the local government through drastic and barbaric administrative orders. Throughout the year of 2003, despite attempts by residents to solve the problems through administrative channels and legal means, this was of no avail. As a last resort, the residents sought help from the media as a result of which, in the short period of one month in 2004, a media relay commenced, turning the tide of events

On August 7, 2003, the county government initiated an administrative order, entitled ‘Four Guarantees and Two Stops’ (Si Bao Liang Ting).⁶⁷ The order was not directed at the residents who lived in the affected area, but any civil servants who had blood ties with the affected residents. They had to guarantee that their family members or relatives would (a) finish assessment of property compensation within the said time frame; (b) sign any related documents; (c) vacate the property and handed in the compensation and vacation document; (d) and promise not to appeal and not to bring the case to the attention of the Central authorities if they were not satisfied with the agreement. On top of this, this group of civil servants had to report daily to the county government, otherwise their salaries would be frozen and their jobs would be

⁶⁶ 1100 households, 7000 residents, 20 units and organizations out of the county seat population of 30,000 would be affected. *See* SOCIAL RECORD, THE PAIN OF DEMOLITION [Shehui Ji Lu –Chai Qian Zhi Tong], (CCTV television broadcast May 26, 2004) available at <http://www.cctv.com/news/society/20040526/100912.shtml>.

⁶⁷ Jiahe County Document No. 136 of 2003[Zhu Quan Shang Mao Cheng Che Qian Hu “Si Bao” Ze Ren Gong Zuo Tong Zhi].

suspended with the possibility of being dismissed or relocated to far off districts. In the first phase of relocation, 300 households and 160 civil servants were caught under the new order. These oppressive measures were reminiscent of the Cultural Revolution, where sons and daughters of landlords, entrepreneurs or intellectuals were punished solely for their family background.⁶⁸ Such systems of collective responsibility are meant to create a self-policing network that compels people's submission to authority. They can be traced to imperial style of governing in the Qin dynasty.⁶⁹ Facing such oppressive measures, four residents from the affected area went to Beijing to petition the Ministry of Construction but to no avail.⁷⁰ By the time of April 21, 2004, the patience of the county government and the developer had run out. The County's People's Court sent out two hundred police to remove uncooperative residents. Three residents who stayed on the roof-top as a sign of protest, were detained for obstructing officials from carrying out their duties.

⁶⁸ The county government was later criticized by the media for invoking an imperial style of punishment under which one's criminal culpability could extend to nine clans. See *Oriental Horizon* [Shi Kong Lian Xian], *Investigation of Demolition Project in Jiahe I: Extending Responsibility to Nine Clans* [Jiahe Chai Qian Diao Cha Zhi Yi: "Zhu Lian Jiu Zu"] (CCTV television broadcast, May 13, 2004), available at www.cctv.com/news/society/20040513/101129.shtml.

⁶⁹ The practice had its roots in the Qin dynasty (221-206 B.C.) and was formally abolished as part of the Qing law reforms in 1905. For details, see Joanna Waley-Cohen, *Collective Responsibility in Qing Criminal Law*, in *THE LIMITS OF THE RULE OF LAW IN CHINA* 112 (Karen G. Turner, James V. Feinerman and R. Kent Guy, eds., 2000). The extent of members that would fall within the nine clans is a topic of controversy. Generally, it would include members of one's father's, mother's, spouse's, siblings' sons' and daughters' families. For discussion, see Zhang Jian Guo, *CHINESE LAW IN IMPERIAL AGE* [DI ZHI SHI DAI DE ZHONG GUO FA], 129-159 (1999).

⁷⁰ From interview with Luo Chang Ping, reporter of Beijing News, who covered the Jiahe scandal. The interview took place on June 26, 2004, Beijing.

B. Soft News on Hard Life

Up to that point, the event was not covered by any media. It was not because the media were ignorant of the dispute and confrontation. Rather, local newspapers dared not publish the story.⁷¹ Local media have great difficulty in flexing their muscles in their own territories. The reason that *Beijing News* went to cover the story was that one resident at Jiahe, Lu Shui De who was over 70 years old, went all the way to Beijing to beg the newspaper for help.⁷² Lu was one of the residents who petitioned the Ministry of Construction in Beijing and who was later detained in the forced demolition process.

Reporter Luo Chang Ping was from Hunan himself and was on leave at that time. On his way home, his editor asked him to pick up the story with the specific instruction to “concentrate on the social impact.” Immediately, Luo went to Jiahe on April 28, 2004 and started the investigation but most residents were hostile to him as other reporters had got them into trouble. The local officials were not responsive and even threatened to lock him up if he continued to take photos. When he finally secured an interview with Zhou Xian Yong, the County Party Secretary of Political and Legal Affairs, Luo was snubbed for his newspaper was unknown in the area.

⁷¹ Luo Chang Ping, the reporter of *Beijing News* (*Xin Jing Bao*), who was the first to break the news to the rest of the nation, stated that three local and regional newspapers went to cover the stories. They were *West Times* [*Xi Bu Shi Bao*], *China's Construction News* [*Zhong Guo Jian She Bao*] and *Southern Economic News* [*Nanfang Cai Jing Bao*]. However, when they sent their drafts to the county government for comments, their stories were banned and they even got the residents into trouble. Interview with Luo, *id.*

⁷² Interview with Luo, *id.*

Zhou simply paraded the official documents in front of Luo and admitted there was no public tender for the land project.

What Zhou did not realize was that *Beijing News* was a newly established press group in Beijing in 2003. It is China's first cross-geographical press entity, under the joint control of *Guangming Daily* and *Southern Daily News Group (Nanfang Ri Bao)*.⁷³ The former is a Party paper based in Beijing and the latter owns the well-known liberal paper, *Southern Weekend*, in Guangzhou. *Beijing News* is, therefore, a rare liberal breed blessed with powerful backing. This press group has quickly risen to fame,⁷⁴ sharing significant mass popularity with *Beijing Youth Daily*.

The lack of alertness of the county official only served to hasten the publication of the scandal on May 8, 2004.⁷⁵ Rather than focusing on the marked irregularity of the administrative order and the unfair deal, the story probed into the reasons behind a sudden rise of divorce in the small county of Jiahe, featuring a story of two sisters divorcing their husbands on the same day. It was an indirect but piercing criticism of the "Four Guarantees and Two Stops" policy in which families were forced to break up so that their members would not be affected.

⁷³ BBC Monitoring, *China: New Beijing Paper Product of Cross-Regional Cooperation*, Oct. 28, 2003 at 1.

⁷⁴ As of March 29, 2005, the daily circulation of *Beijing News* was 400,000 and revenue from advertisement has reached more than RMB\$450 million. *Beijing News, Achievement after Structural Changes*, [Xin Jing Bao Gai Ban Sheng Ji: Hao De Geng Xu Yao Gai Bian] March 29, 2005 (pamphlet).

⁷⁵ Luo Chang Ping, *Demolition Project in Hunan Caused Sisters to Petition for Divorce on the Same Day* [Hu Nan Jia He Xian Chai Qian Yin Fa Yi Dui Jie Mei Tong Ri Li Hun], *BEIJING NEWS*, May 8, 2004 at <http://news.qq.com/a/2004508/000033.htm>.

The newspaper story was quickly spotted by *Oriental Horizon* of CCTV and its team of journalists went to the county to investigate. Being the Party's main electronic media outlet and a TV station, the news team had access to residents and local officials but this did not mean they could exercise their policing power so easily. When they arrived in Jiahe on May 9, they found local officials were waiting for them at the hotel. Their counter-strategy was to break the news team into two groups to start their investigation and interviews. In their programmes, they focused sharply and directly onto the problems. In contrast with *Beijing News*, CCTV attacked the administrative policy and the legitimacy of the entire redevelopment project.⁷⁶ It fought for the "extension of reportable truth" on the legal front.⁷⁷

In the course of interviewing Professor Zhang Guo Qing, a leading academic in political science and public administration at Peking University, the programme condemned the abuse of power and law. The legitimacy of the "Four Guarantees and Two Stops Policy" was questioned by Professor Zhang, who denounced it as in direct contradiction of *the Law of the People's Republic of China on Administrative Supervision*,⁷⁸ as against Party Rules of the CCP⁷⁹ and article 27 of the China's

⁷⁶ *Oriental Horizon*, *supra* note 68. The first series started with a story about a nurse called Li Jing whose mother lived in the affected area and who refused to sign the agreement with the developer. Li was removed from her hospital and her salary was suspended. Frightened of the affect on her husband, she applied for divorce but was refused by the government. During the 10 month period, people were relocated from work units, divorce rates increased, family disputes became prevalent. At least four couples got divorced, six got demoted or dismissed and four were relocated due to the policy.

⁷⁷ WALTER LIPPMANN, PUBLIC OPINION 228 (1965).

⁷⁸ *The Law of the People's Republic of China on Administrative Supervision*, adopted at the 25th Meeting of the Standing Committee of the Eighth National People's Congress of the People's Republic

Constitution which stipulates that all state organs must accept supervision by the people. In its second series, the programme interviewed a legal expert and local officials of Jiahe.⁸⁰ This further exposed the legal atrocities involved in the deal. It was revealed that there was no public tender for the project; the developer had managed to start the project before getting the development permit, and, what was more, the county government had exempted the developer from tax payments, the planning fee and even reimbursed part of the development fee to the developer. Both the government and the developer would have had violated article 7 of *the Administration of the Demolition and Removal of Urban Housing Regulations*,⁸¹ and article 12 of *the Law of the People's Republic of China on Urban Real Estate Administration*.⁸² After taking into account the abuse of process designed to benefit the developer, it became clear that the land had only cost the developer RMB\$30 per square meter, 3.7% of the market value of RMB\$800 to \$1200.

In exposing this marked malfeasance, CCTV seemed to be winning the battle.

of China on May 9, 1997. Article 6 of the Regulations entitles every citizen to bring the attention of a supervisory body to any maladministration of government bodies.

⁷⁹ *The Rules of the Chinese Communist Party* [Zhong Guo Gong Chan Dang Zhang Cheng] 2002.11.14 at <http://www.bjdj.gov.cn/bjdj>.

⁸⁰ *Oriental Horizon, Investigation of Jiahe's Demolition Project I I: Suspicion on Demolition* [Shi Kong Lian Xian, Jia He Chai Qian Diao Cha Zhi Er: Chai Qian Yi Yun], (CCTV television broadcast, May 14, 2004), available at www.cctv.com/news/society/20040514/100638.shtml.

⁸¹ *Administration of the Demolition and Removal of Urban Housing Regulations* [Cheng Shi Chai Qian Guan Li Tiao Li] Promulgated by the State Council on June 6, 2001, announced by State Council Document No. 305 on June 13, 2001, effective on November 1, 2001.

⁸² *Law of the People's Republic of China on Urban Real Estate Administration* [Zhong Hua Ren Min Gong He Guo Cheng Shi Fang Di Chan Guan Li Fa] Promulgated by the Standing Committee of the 8th National People's Congress on July 5, 1994, President Decree No. 29 on July 5, 1994; Effective on January 1, 1995.

However, that was an uphill fight. When the *Oriental Horizon* team was still in Hunan, they went to Chen Zhou municipal planning to transmit its film clips back to Beijing.⁸³ To their disappointment, their request was blocked by the municipal government. The team was forced to make a four-hour trip rushing to Guangdong to make the transmission. The clips arrived safely and just made it for the first broadcast at 7:15 in the morning on May 12, 2004. Timing was critical as officials from Jiahe and Chen Zhou arrived in Beijing shortly afterwards at 8:00 on the same day, attempting to stop the broadcast. After the second series was broadcast for the first time, Yan Xinyu, the director of *Oriental Horizon*, was notified that re-broadcast of the series would be cancelled.⁸⁴ In addition, the subsequent series would have to be suspended and further investigation had to be stopped for the time being. Yan did not receive any explanation. Facing uncertainty and the unknown, it seemed that the media had lost their battle. Worse still, back in Jiahe, the local officials held a town hall meeting ferociously rebuking the residents for speaking to reporters. The three who were detained were formally arrested on May 15.

Forced demolition continued. In this seemingly bleak situation, a media relay started. A reporter from *Beijing Youth Daily* went to Jiahe to follow up the story. The paper is affiliated with the Beijing Communist Youth League but is a

⁸³ Interview with Yan Xin Yu, Director of *Oriental Horizon*, CCTV, on June 24, 2004, in Beijing.

⁸⁴ Documentary programmes on CCTV are often repeatedly broadcast three to four times in a week.

semi-independent paper as it has been contracted out to its staff. It has built a reputation of being aggressive, ambitious and energetic.⁸⁵ When Zeng Pangu, a reporter from *Beijing Youth Daily*, went to Jiahe, he could not secure any interviews with the officials. According to Zeng's interpretation, the officials simply dismissed him, thinking that they had successfully beaten CCTV and no newspaper could match them.⁸⁶ After the CCTV broadcast, the local residents had high hopes of the media and warmly welcomed Zeng, passing him various pieces of information. Zeng found out that the administrative policy of "Four Guarantees Two Stops" had not stopped at all, the explanation of the officials to CCTV was that the commercial project was critically important to raising funds to avert the flooding problem. This was a lie.⁸⁷ The three residents detained had been formally arrested for obstructing officials from carrying out their duties. In his report, Zeng boldly mentioned that the second series of *Oriental Horizon* was suddenly cut off.⁸⁸

In the meantime, different media groups joined the battle. Other documentary groups in CCTV, who are supposed to be rivals to *Oriental Horizon*, also went to the

⁸⁵ ZHENG XINGDONG, NEWS WAVE: A STUDY OF *BEIJING YOUTH DAILY* [XIN WEN CHONG JI BO: BEIJING QING NIAN BAO XIAN XIANG SAO MIAO] (1994).

⁸⁶ Interview with Zeng Pengyu, reporter of *Beijing Youth Daily*, June 29, 2004, Beijing.

⁸⁷ In the second series of the CCTV program, Jiahe's official humbly confessed their policy might be too radical and they would re-assess the policy. The official explained that the redevelopment project was necessary to avert flooding in that area and it was crucial to attract investment. However, Zeng found out that flooding took place in an entirely different part of the county.

⁸⁸ Zeng Pengyu, *Demolition at Jiahe Continues: "4 Guarantees and 2 Stops" Have In Fact Never Stops*, [Jia He Qiang Zhi Chai Qian Reng Zai Jin Xing, Si Bao Liang Ting"Gen Ben Wei Ting"] BEIJING YOUTH DAILY, May 19, 2004 at <http://news.qq.com/a/20040519/000130.htm>; and Zeng Pengyu, *Who is Lying in Jiahe's Demolition: County Officials Repenting and Arresting Locals at the Same Time*, [Jia He Chai Qian Shui Zai Sa Huang: Xian Ling Dao Bian Chan Hui Bian Dai Bu Chai Qian Hu] BEIJING YOUTH DAILY, May 22, 2004 at <http://news.qq.com/a/20040522/000172.htm>.

county to start their investigation.⁸⁹ *Beijing News* and *Beijing Youth Daily* had managed to keep the story alive and on the radar screen of their readers. By that time, the story had been widely circulated in the Internet and public opinion had been successfully stirred up, with a hit rate of five million and attracting 40,000 discussion messages per day by mid May of 2004.⁹⁰

Meanwhile, Yan, the director of *Oriental Horizon*, finally got a green signal on May 28 to continue to broadcast the fruits of his investigation. The third and the fourth series were broadcast on May 28 and May 31. By that time, matters had suddenly improved. The three arrested persons were released and local officials were removed. *Beijing Youth Daily* covered the last episode on June 2, 2004. But Yan and Zeng got signals from their leaders that this was the furthest that investigation could go as it was near June 4, the sensitive date that the students' movement and suppression took place in 1989. All reporters are bound by the golden rule of maintaining stability. The closing remark was delivered on June 4 when Premier Wen Jiabao condemned the Jiahe scandal.⁹¹

The final words on the media investigation were not uttered by any of the media

⁸⁹ Social Record covered the story, *see supra* note 66. Other teams include Economic Investigation in Half an Hour and Focus, which also reported the story. *See* Xiao Shan, *A Weighing of Strategies and Counter-strategies* ["Bai Ping" Yu "Fan Bai Ping" De Jiao Liang] 34 *ORIENTAL OUTLOOK* (Liao Wang Dong Fang Zhou Kan), July 8, 2004 at 41.

⁹⁰ Xiao Shan, *supra* note 89 at 42.

⁹¹ *Wen Jia Bao Presiding the State Council Meeting, Agrees How Jiahe Demolition Incident Should be Handled* [Wen Jiabao Zhu Chi Guo Wu Yuan Hui Yi ,Tong Yi Jia He Chai Qian Shi Jian De Chu Li], June 4, 2004, Xinhua News, reported at <http://news.qq.com/a/20040604/000568.htm>.

institutions mentioned above, but instead came from *Oriental Outlook*, a magazine run by Xinhua News Group (the New China News Agency). Rather than criticizing the legal wrongs in the case, it viewed the story as a dedicated CCP leader in Jiahe county who had caused suffering to the people out of good intentions but poor implementation.⁹² At the same time, it also had a special issue praising the reporters who covered the scandal.⁹³ Tang Hua, a senior editor of Xinhua News, stated that a balance had to be struck with each piece of reporting and it was also important to let the local officials explain.⁹⁴ While this might be a valid comment, in general about media professionalism, the tone that *Oriental Outlook* struck was markedly sympathetic to the local officials.

Luo, Yan and Zeng were not satisfied with the outcome and with the mediator role played by *Oriental Outlook*. They suspected that corruption or inside dealings were involved but they did not have enough evidence and could not dig further.

C. Shall We Hire a Lawyer or a Journalist?

If the media is like the beam of searchlight that moves restlessly to bring episodes out of darkness into vision, society cannot be governed merely by the

⁹² Yu Lei Yan et al., “*The Best*” County Party Secretary and A Failed Communist Party Member [“Zui Hao” De Xian Wei Shu Ji He Zui Shi Bai De Gong Chan Dang Yuan], 33 *ORIENTAL OUTLOOK*, 38-47 (July 1, 2004).

⁹³ Xiao Shan, *supra* note 89.

⁹⁴ Interview with Tang Hua, Senior Editor of Xinhua News Agency and Deputy Editor-in-Chief of *Oriental Outlook*, July 12, 2004 in Beijing.

exposure of episodes, incidents and eruptions.⁹⁵ The remedy must lie where the cause is.

Apart from securing media attention, the case caught the attention of the Constitutional and Human Rights Centre of Beijing Tsinghua University, who invited lawyers to help. One of them, Xiao Tai Fu, worked hard for the release of the three arrested.⁹⁶ This might have explained why an investigation team was formed from the Central, the provincial and the municipal levels on May 24,⁹⁷ breaking the deadlock in reporting.

As the three residents were detained and arrested under s. 227 of the Criminal Code for obstructing officials from carrying out duties, the challenge was about on the legal concept of obstruction. The Code itself specifically requires the threat of violent force or violence but the three detainees were merely sitting passively on the roof tops of their houses, Xiao argued that it would hardly constitute violence or the threat of using violent means. This was accepted by the court. Not only were the three released but Xiao and his colleagues also launched an administrative action on behalf of the three arrested and ask for compensation during their unlawful detention. In the end,

⁹⁵ Lippmann, *supra* note 77 at 229.

⁹⁶ Interview with Xiao Tai Fu, a Beijing lawyer, on July 7, 2004 in Beijing.

⁹⁷ The Undersecretary of the Ministry of Construction, Liu Zhi Feng, led an investigation team to Jiahe to break the deadlock. On the following day, officials from the Supervisory Bureau, the Provincial Procuratorate, and the Land and Natural Resources Bureau arrived and Oriental Horizon, *Investigation on Jiahe's Demolition III: The Truth Gradually Emerges*, [Jiahe Chai Qian Diao Cha Zhi San: Jian Lou Zhen Xiang], (CCTV television broadcast, May 28, 2004) available at <http://www.cctv/news/china/20040528/101269.shtml>.

each of them got approximately RMB\$1700 compensation. The intervention of the legal team had yielded quick and positive results. The team went to Jiahe on May 27 and the three were released on May 28. The administrative action was launched on May 31 and compensation was paid on June 1.

The arrested persons were certainly relieved. After being detained for one month and three days, Lu Shui De, the old man who actively resisted the demolition, was pleasantly surprised. He recalled that during his detention, the Political and Legal Committee member from Jiahe had told him that he had committed serious misdeeds against the Criminal Code and the heaviest form of penalty would be imposed on him. This would mean three years in prison. In addition, the official said that RMB\$5000 had to be deducted from his demolition compensation, and RMB\$50,000 had to be levied on him for what he had “illegally obtained.”⁹⁸ As a result, it was beyond his wildest dreams that he would be released in such a relatively short time, let alone receive compensation. When the three were released, the Public Security Bureau at Jiahe still defended the arrest as procedurally lawful but by the time that compensation was paid, their attitude had become apologetic.⁹⁹

At the same time, Li Jing, the nurse who was the first civil servant to be punished by the administrative policy was re-instated in her original unit. She got back payment

⁹⁸ Xiao Shan, *supra* note 89 at 41.

⁹⁹ Zeng Peng Yu, *Follow up on Jiahe's Forced Demolition: Arrested Residents Got Compensation*, [Jia He Chai Qian Shi Jian Zhui Zong: Bei Bu Chai Qian Hu Huo De Pei Chang], BEIJING YOUTH DAILY, June 2, 2005 at <http://news.qq.com/a/20040602/000115.htm>

for the six months that her salary had been suspended.¹⁰⁰ The two sisters who were divorced registered their marriages to their original spouses.¹⁰¹ The civil servants who were adversely affected had their grievances addressed and were re-instated in their work units.

Finally, the Central Government closed the case with some heavy legal commentary. *The People's Daily*, representing the Party directly, condemned outright the officials at Jiahe for abusing administrative power collectively, and abusing the use of administrative decrees. It stated clearly that any demolition project in villages or towns must abide by the law.¹⁰² The State Council quickly issued an order, stipulating that officials should always carry out their duties according to law.¹⁰³ They should never have participated in the demolition project, and compensation must be fairly and independently assessed.

The media's contribution in exposing the grave misdeed was definitive. Equally, credit to the lawyers was undeniable. The scandal, in itself, was a case heavily laden with legal complexities. In the initial stage, when CCTV covered the story, a legal voice was carefully introduced into the public arena. Wang Cai Liang, a legal expert

¹⁰⁰ Oriental Horizon, *supra* note 97.

¹⁰¹ Oriental Horizon, *Investigation on Jiahe's Demolition IV: Correcting Wrongs and Accounting for Responsibility*, [Jiahe Chai Qian Diao Cha Zhi Si: Jiu Cuo Wen Ze], CCTV television broadcast, May 31, 2004, available at <http://www.cctv.com/news/china/20040531/100664.shtml>.

¹⁰² People's Daily, *Development Should Never Be Against Public Interest* [Jue Bu Neng Yong Sun Hai Qun Zhong Li Yi De Fang Shi Gao Jian She], June 5, 2004 at <http://newes.qq.com/a/2004-604/000589.htm>.

¹⁰³ State Council Notification, No. 46, [Guo Wu Yuan Ban Gong Ting Guan Yu Kong Zhi Cheng Zhen Fang Wu Chai Qian Gui Mo Yan Ge Chai Qian Guan Li De Tong Zhi] June 6, 2004 at <http://law.chinalawinfo.com>.

in demolition and relocation, had outlined the legal framework, explaining the legal rules to the audience.¹⁰⁴ Not knowing the will of higher authorities, he was brave enough to condemn the legal and administrative abuse committed by the county officials. In fact, Wang himself went to Jiahe to gain a better understanding of the case and to seek access to various legal and official documents.¹⁰⁵ At a later stage, lawyers working on a pro bono basis entered the fighting arena.

Having said that, without media exposure, it is highly doubtful whether a legal case could have been successfully brought. The local residents had previously brought an action before the municipal court to challenge the demolition and relocation order and then lost.¹⁰⁶ Following this, lawyers from the local region dared not take further administrative action to challenge the redevelopment plan and the “Four Guarantees, Two Stops” Order.”¹⁰⁷ Sadly, one has to admit that without the media magnifying the scandal, the law would have been ineffective. Yet relying on the media alone, a remedy short of legal redress would hardly have been satisfactory and meaningful to the residents. As noted by one academic, if there is no trial when something unfair has taken place, the media would stir up public opinion, attract public attention, thus making such a trial happen.¹⁰⁸ In the present case, one of the media’s most significant

¹⁰⁴ ORIENTAL HORIZON, *supra* note 80.

¹⁰⁵ Interview with Wang Cailiang, a lawyer, July 16, 2004, Beijing.

¹⁰⁶ *Id.*

¹⁰⁷ Interview with Xiao Tai Fu, *supra* note 96.

¹⁰⁸ Li Ying, China’s *Public Opinion on Internet and Impartial Judgment*, paper presented in Conference on China-U.S. Public Opinion and Law 2004, jointly held by Centre for International

contributions was to re-direct the entire debate into a legal discourse. In the end, the alliance between media and law helped to restore both social and legal justice.

III. MEDIA FREEDOM AS TUG OF WAR

The story seemingly has a happy ending. Scoundrels were ousted, victims got redressed and heroes were praised. In spite of this, this is not a full victory. All three journalists who played a major role in the battle lamented that they did not know the truth. Luo asserted that the Central Government had never stated clearly who should be accountable in the whole process.¹⁰⁹ Yan and Zeng suspected corruption was involved.¹¹⁰ Both of them remarked that the case was suspicious in the sense that the most “evil” character got the least punishment. Of the county officials, Zhou Xiang Yong was the one who slighted Luo; refused to see Zeng; lied in front of the camera saying that he would reflect on the incident and amended the wrongs,¹¹¹ but then rebuked and threatened the residents.¹¹² The punishment for him was suspension from office for one year, while his colleagues were removed from office.

All in all, public opinion supervision has its limitations. In one sense, the case is a

Communication Studies of Tsinghua University, Tsinghua Law School and Yale Law School, June 19-20, 2004, Tsinghua University, Beijing.

¹⁰⁹ Interview with Luo, *supra* note 70.

¹¹⁰ Interview with Yan, *supra* note 83; interview with Zeng, *supra* note 86.

¹¹¹ Oriental Horizon, *supra* note 80.

¹¹² Oriental Horizon, *supra* note 100.

typical example proving the limitations of the power of the media.¹¹³ In another sense, it also serves as an atypical example that shows how the boundaries of media freedom can be stretched.

The case confirms also that there are many constraints which bind journalists in China. First, the power in the media industry is divided according to the forms of communication. The power of newspapers is not as powerful as that of television stations. This is partly due to the impact that television programmes have and partly due to the fact that CCTV is a Party mouthpiece. Discussion on the Web may enjoy the largest scope for free expression but it is not as influential as television.

Second, the scope of media freedom that an institution enjoys is hierarchical. *Beijing Youth Daily* and *Beijing News* are semi-independent newspapers. They are audacious cowboys, yet the power that they wield is different from CCTV. It is difficult for them to get interviews with officials and reporters have to be very careful in positioning themselves. For example, as mentioned earlier, Luo's editor reminded him to cover the story from a softer social angle. Zeng also confessed he always tested the water first in reporting. For highly sensitive stories, he would put it on the Web. Though CCTV could adopt a style that is more direct and confrontational, it is also subordinate to higher authorities. Yan explained that Xinhua News Agency sets the

¹¹³ The limitations have been listed in Yuezhi Zhao, *supra* note 6 at 589.

ultimate tone for news reporting because once it intervenes, even CCTV has to succumb to its reporting style. In the case, in which *Oriental Outlook*, belonging to Xinhua News Agency, intervened as a mediator, the other news institutions knew that they could no longer play the role of an advocate or the moral police. The news frame could be altered completely by Xinhua. In addition, the freedom and the power that CCTV enjoys are dependent and conditional on the will of governing bodies. When county officials arrived in Beijing in an attempt to intervene with CCTV's broadcast freedom and in which they succeeded temporarily, one journalist deduced that the county officials must have exercised their influence with high officials in the State Administration on Radio, Film and Television (SARFT). The latter is a governing body to which CCTV is subject. When the ban on broadcasting was finally lifted, one could not help but speculate whether SARFT's decision had been overridden by the Central Publicity Department, the direct Party organ governing all media outlets. All these are unspoken but understood rules, and not all rounds of confrontation could secure the help or approval of the Central Publicity Department. Yan and another director of CCTV admitted that sometimes their stories were never broadcast or that re-broadcasts were never shown.

Third, cross-territorial supervision is a distinct feature. One may recall in our case, local and regional newspapers failed to publish the story. When *Beijing News*

successfully published the story, county officials called its office and asked for Luo to explain why drafts of reports were not sent to them.¹¹⁴ They blamed Luo, a local from Hunan, for causing humiliation to the province. Luo simply ignored the county officials with the help and support of his editors. Being a national body, CCTV's jurisdictional power seems to suggest that it has no boundaries within China. Nevertheless, directors inside CCTV know that Beijing and Shanghai were risky terrains. One CCTV director, who wished to remain anonymous, pointed out that in the last 20 years only one official scandal has broken about Shanghai by 2004.¹¹⁵ International news, including reporting on issues related to Taiwan, Hong Kong, Tibet or Xinjiang, belong to the exclusive jurisdiction of the official Xinhua News Agency. Other than cross-territorial supervision by the media, our case also shows evidence of a similar phenomenon in legal supervision. As mentioned earlier, local lawyers were not willing to take up legal cases which involved confronting an oppressive local government.

Furthermore, this is arguably another case of “hitting flies” rather than “hunting tigers” where county officials were called upon to account, they were criticized openly and removed swiftly. It remains uncertain whether, if similar transgressions had been committed by officials higher up the administrative ladder, the media could

¹¹⁴ Interview with Luo, *supra* note 71.

¹¹⁵ Interview with anonymous director, *supra* note 118.

have simulated the story of David against Goliath. Academics have argued that the media have been used by the Party to achieve social control. Exposure of corruption cases and other wrongdoings are used to embarrass or intimidate local officials but not those high in power.¹¹⁶ In doing so, the Party also uses the media as a social safety valve to release pent up tension and grievances in society and to regain legitimacy for the Party.¹¹⁷ In essence, public opinion supervision in China is a controlled and extended form of supervision from the Central authorities, which rarely reaches those further up the political ladder. Bearing in mind that the media are part of the Party, it can only watch over those the Party allows it to supervise.

Also it is absolutely forbidden to report issues touching on social stability or criticism of the Party. Too much negative reporting and exposure may backfire on the media institution. It is believed that the television programme, *Focus*, is not as popular as before because, according to new internal guidelines, only 17% of its programmes can be critical as compared to 40-50% in the past.¹¹⁸ Another popular investigative programme called *News Probe (Xin Wen Diao Cha)* also has to abide by the guideline that 50% of its programmes can be critical but 50% must be positive.¹¹⁹

This would mean that media freedom depends precariously on the benevolence

¹¹⁶ Perry Keller, "Privilege and Punishment: Press Governance in China," 21 *Cardozo Arts and Entertainment Law Journal* 87 (2003).

¹¹⁷ Li, *supra* note 4 at 400.

¹¹⁸ Interview with a director of the CCTV on June 25, 2004 in Beijing who preferred to remain anonymous.

¹¹⁹ *Id.*

and patronage of “enlightened leaders.”¹²⁰ As evidenced in the case, it was the intervention of officials from the Ministry of Construction, a central body, that marked the watershed in the battle. Polumbaum commented that the accomplishment of crusading journalism in China often required either political backing or benign neglect from the authorities.¹²¹ Without such, the chemistry of this media experiment might be very different. Media exposure and legal intervention might fail to serve as the right catalysts to bring justice. The scandal would have remained a misery that many in China have to live with. It might have been the case that some would lament, “even thunder would not be able to strike a blow” (*lei ye da bu dong*).

The result is that Chinese journalists remain shackled by political edicts and unspoken commands. Despite the above, it is important not to belittle the heroic efforts of many Chinese journalists and the powerful impact of public opinion. The magic power of the media is admired and very well recognized. It has been said that “Thirteen minutes of TV could have addressed 10 years of grievances.” Officials in China, it is argued, do not fear being told off by their supervisors, nor do they fear going to court. They only fear getting into the newspapers.¹²²

The above apparently verifies the notion that media freedom in China can only survive within defined boundaries and limits. One might even conclude that media

¹²⁰ Chin-chuan Lee, *China's Journalism: the Emancipatory Potential of Social Theory*, 1:4 JOURNALISM STUDIES 559 at 563 (2000).

¹²¹ Polumbaum, *supra* note 30 at 36.

¹²² Polumbaum, *supra* note 30 at 59.

freedom is a form of sophisticated social control by the Party. In spite of that, it would be too early to end on this cynical and pessimistic note. Even “hitting flies” in China is a risky yet noble task. With a population of 1.3 billion of which nearly 60% are living in rural areas,¹²³ it is the unrestrained authority of local party chiefs that is most oppressive to hundreds of millions of ordinary Chinese. A study reveals that in 1998, more than two thirds of 40,000 officials investigated in corruption charges were indicted in cases in which more than U.S. \$534 million was involved.¹²⁴ Media exposure of corruption, even at a lower level of political hierarchy, has a definite positive impact on the livelihood of ordinary people.

In addition, one should not overlook that the Jiahe case serves as an interesting paradox to illustrate the push and pull in the tug of war to gain media freedom. A unique feature of this case is that local officials never took the media seriously. At the initial stage, government officials simply dismissed the small press. Facing CCTV, they lied. This initial arrogant attitude and the underestimation of media influence only served to prove the powerful potential of the young guard dog in China. The neglect of the local officials gave much leeway for the media to test the water.

Journalists in China are known to be skilful in the game of “playing edge balls” (*cha bian qiu*). It refers to the risky and difficult table tennis strategy of aiming the

¹²³ National Bureau of Statistics of China, 2004 China Statistical Yearbook at <http://www.stats.gov.cn/english/statisticdata/yearlydata/yb.2004-e/indexeh.htm> (last accessed on June 9, 2005).

¹²⁴ Li, *supra* note 4 at 400.

ball so that it barely nicks the far edge of the opponent's side, almost out of bounds but remains a fair hit.¹²⁵ In the media game, facing unpredictable rules, journalists venture to the edge of the permissible. As stated by Zeng of *Beijing Youth Daily*, he would never drop a bomb no matter how newsworthy the story was. He would test the water by giving his story a 10% go in the first release.¹²⁶ He gave the example that during the SARS epidemic, the media were not allowed to report the event. Their newspaper just mentioned that masks were sold out in Beijing in one single afternoon. On the coverage of AIDS in China, a taboo topic several years ago, Zeng wrote a story about two wealthy guys who contracted AIDS through prostitutes. It was not a direct report on people selling blood and contracting AIDS but once Zeng's story got public attention, the news just rolled on. Luo of *Beijing News* abided faithfully to the rule that his first story must be tackled from a social, rather than political angle. Only in this way could stories be published

Fortunately, the story of Jiahe did "roll on" onto television and onto the Web. Yan said that when he got the notification that his investigation report would not be re-broadcast, he knew that strictly speaking, the transcript of the programme should not be put on the Web which they used to do. However, his team deliberately broke the rule and posted the entire story on the Web. Rather than merely focusing on the

¹²⁵ Lee, *supra* note 41 at 244 and Judy Polumbaum, *Striving for Predictability: The Bureaucratization of Media Management in China*, in *CHINA'S MEDIA, MEDIA'S CHINA* 113 at 116 (Chin-Chuan Lee, ed., 1994).

¹²⁶ Interview with Zeng, *supra* note 86.

Jiahe's incident, their team also did a programme on the general problem of demolition in China. This was to keep the issue alive and to keep a critical voice in the public sphere.

Despite the red light hoisted by the officials mid way in the battle, the three major players had also mustered the support of others in the media industry. Rival teams inside CCTV turned out to be comrades. Reporting and discussion on the web was influential and crucial.

Local residents also joined the fight. Though their attitudes to reporters were lukewarm before CCTV broadcast its programme, they were very supportive afterwards. After the report by *Oriental Horizon* was suspended, citizens secretly taped the procedures in a town hall meeting on May 15, 2004, which recorded how party officials reprimanded and threatened local residents. This tape was handed to reporters later and broadcast on *Oriental Horizon*. This is a reflection of how people are learning to use the media by tipping off reporters and contributing to the “emergence of a nascent discourse of rights.”¹²⁷

In order to contest the boundaries set by the ruling regime, the media are armed with legal principles. Though the media and law are often seen as instruments of the Party, the alliance between them has played out a powerful duet that can not be

¹²⁷ DE BURGH, *supra* note 2 at 807.

ignored. With growing awareness of the significance of law, the legitimacy of official conduct will be questioned, if not in the courts, under the spotlight of the media.

Thus, the battle for media freedom is a tug of war between the media and those in political power. The media could recruit help from the legal sector and from the grassroots to be on its side but it is not an easily won battle. In fact, the rules and outcome of each round are unknown. It is a game of social management from the perspective of the ruler and the media, depending on the dynamics of forces and countervailing forces at any one particular time.

CONCLUSION

The story of Jiahe reveals that the Chinese media is not as independent as one would like to see. In the attempt to circumvent official public opinion supervision, an intense competition to frame the dispute commenced. The unofficial press framed it as an unusual social phenomenon of a sudden rise of the divorce rate in a small county. The Party media framed it firmly as a quest for legal justice. In stark contrast, the Party authorities at one level framed it as a case of mere misunderstandings created by local officials, who were otherwise basically well intentioned.

Putting the above variations aside, to the media, the central question is always to make “the invisible visible”¹²⁸ so as to confront the ruling regime but within safe

¹²⁸ Lippmann, *supra* note 77 at 241.

boundaries. It fights to transform a grievance into a social event and is eager to summon the “Court of Public Opinion.”¹²⁹ Amidst the numerous cases of relocation, the media managed to transform the Jiahe story from a day-to-day story in the chaotic world of urban redevelopment into a case of grave legal misdeeds. In this process, China’s media has formed a closed coalition with the legal sector. Together, they have nurtured a close-knit network with the mass, fostering a culture of participation and openness. Despite the fact that the Jiahe story is an ad hoc attempt to secure property rights, the solidarity that they have built has given a voice to the aggrieved parties for the attainment of legal justice.

In this given context, public opinion supervision can be a form of genuine media supervision, representing a unique discourse in China. It takes place under the shadow of political guidance, but with market liberalization, growing awareness of legal rights, and mass support. The media is forming a coalition with other forces in society. It is negotiating its position in the arena of public opinion and generating a form of media monitoring of Chinese society, especially for local politics. The critical issue is to attain the careful and delicate balance between dependency and autonomy within the power hierarchy. This is indeed a dangerous game. The media is powerful and vulnerable at the same time. In fact, *Beijing News*, one of the principal actors in

¹²⁹ Lippmann, *supra* note 77 at 229.

the Jiahe story got itself into trouble after the events described here.¹³⁰

Despite a note of caution and reservation, what is certain is that the liberalizing force of the market has triggered a quiet revolution in the media sector and has opened up a new breathing space for the general public. China's media are no longer faithful lapdogs, nor a mere propaganda conduit between the Party and the people. The voice from the media is gradually gaining its own steady momentum. It is on its way to providing a form of genuine media supervision of society. Journalists have been pushing for changes and accountability. Politics, corruption, the abuse of power, and people's livelihoods have been put firmly on the media agenda.

Therefore, rather than seeing media freedom as an outcome of social control, it is more the product of social management. In the attempt to gather and align with the public, the media are gaining the clout to influence authorities with different allies. Winning for the media may mean slowing down at times but never abandoning their course. The guard dog may defer but not submit to the authorities.

¹³⁰ BBC Monitoring, *supra* note 10.