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PUBLIC OPINION SUPERVISION: A CASE STUDY OF MEDIA FREEDOM IN CHINA

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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

I. INTRODUCTION

Since the late 1970s, the People's Republic of China has experienced a rise of investigative journalism along with economic liberalization.² Scholars contend 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 highlight a unique phenomenon known as *yulun jian du* (舆论监督),⁵ or "public opinion supervision," where citizen awareness of an issue is mobilized to act as a check against the state, to influence court decisions, or to push for legislative or policy reforms. The media plays a critical role in this process. Many perceive the media as a positive force in China through which the public can be heard, and some equate public opinion supervision to a form of media monitoring,

¹ 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, with 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 卢跃刚, 大国寡民 [LU YUEGANG, BIG COUNTRY, SMALL CITIZENS] (1998) and 曾华锋, 调查记者 [ZENG HUAFENG, THE INVESTIGATIVE REPORTER] (2004). A notable example of investigative reporting in contemporary China is the television documentary series, 焦点访谈 [Focus], which attracts a daily audience of up to 350 million. See Hugo de Burgh, *Kings without Crowns? The Re-Emergence of Investigative Journalism in China*, 25 MEDIA, CULTURE & SOC'Y 801, 802 (2003).

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

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

⁵ See, e.g., Li Ying, *China's Public Opinion on Internet and Impartial Judgment* (June 19-20, 2004) (paper presented in Beijing at the Conference on China-U.S. Public Opinion and Law, Centre for International Communication Studies of Tsinghua University, Tsinghua Law School and Yale Law School). The term was originally coined by then-Premier Zhao Ziyang in the 13th Central Committee of the Communist Party (CCCP) of China in 1987. See *infra* Part II.B.

where the media serves as an independent watchdog monitoring the government.⁶

The Chinese media significantly influences the legal system. This influence is evidenced in cases where judicial decisions and the fate of individuals are changed after media exposure of events. The media can play a powerful role in instances where the courts have failed to live up to their duty to administer justice. Indeed, Benjamin Liebman, Director of the Center for Chinese Legal Studies at Columbia Law School, recognizes the Chinese media as one of the most influential actors in the legal system over the last decade.⁷ Other scholars regard the media as a key legal actor in the battle for access to justice.⁸

Despite such positive appraisals, media freedom in China has suffered severe setbacks since 2004 with the prosecution and imprisonment of outspoken editors,⁹ the forced restructuring of editorial boards,¹⁰ and the suspension of liberal papers.¹¹ Thus, it is tempting to dismiss the proposition that public opinion supervision may become China's own "fourth estate" as mere wishful thinking in a communist state.

However, drawing on the literature of both communication and legal studies, I argue that public opinion supervision was never meant to be a form of media monitoring as its name might have suggested. The government has never groomed the Chinese media to be barking watchdogs. In fact, the official meaning of public opinion supervision, as stated in the *Study Guide of the Chinese Communist Party*, refers to supervision by the masses, exercised through the media, under the

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

⁷ Benjamin Liebman, *Watchdog or Demagogue? The Media in the Chinese Legal System*, 105 COLUM. L. REV. 1 (2005).

⁸ NEIL J. DIAMANT, STANLEY LUBMAN & 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* were sentenced to eight and six years' imprisonment respectively for alleged corruption in the distribution of editorial bonuses. Many regarded this as revenge for the paper's coverage of the SARS crisis and the Sun Zhigang case in 2003. See *infra* note 23. More than 2000 journalists petitioned for their release, and one of them was released in 2005. See Jonathan Watts, *Print and be Damned – China's Paper Tigers Fight On*, THE GUARDIAN, July 1, 2005, at 17.

¹⁰ The chief editor of *Beijing News* and his deputies were removed from their positions. The move was believed to be a consequence of 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.

¹¹ Publication of *China Youth Daily* was suspended for one month after printing an article by an academic criticizing the official version of the cause of the invasion of China during the two World Wars. When the paper resumed publishing in February 2006, the chief editor was replaced. See Editorial, *Cracks in the Great Wall*, ASIAN WALL ST. J., Feb. 17-19, 2006, at 10.

leadership of the Chinese Communist Party, with the Party playing a paramount role.¹²

Regardless of the definition one adopts, inherent in the concept of public opinion supervision are the conflicting and difficult relationships between the public, the media and the state. Theoretically, the Party is subject to the scrutiny of the public and the media, while simultaneously the public and the media are subject to the guidance of the Party. Attempts by the media and the Party to articulate the exact contours of this relationship have led to a variety of interpretations of what "public opinion" means in the Chinese context.¹³ Hence, public opinion supervision is 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.

Realistically, the media in China may not be expected to be the "fourth estate" or a ferocious watchdog of the government. To shed light on the media's role, the metaphor of a "guard dog media"¹⁴ is used 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 on pressing public issues. "Conflict is reported but in a constrained way and only on certain issues and under certain structural conditions."¹⁶

To describe the delicate power game of public opinion supervision and the complex relationship between the Party and the Chinese media, this article examines the news coverage of a housing development and relocation scandal in Hunan province.¹⁷ Though relocation projects are common in China, few cases develop into widely reported social and legal issues which enjoy a "celebrity status."¹⁸

¹² 学习手册：中国共产党党内监督条例（试行）中国共产党纪律处分条例[STUDY HANDBOOK ON THE (TENTATIVE) REGULATIONS OF INTERNAL SUPERVISION OF THE CHINESE COMMUNIST PARTY] 75 (2004).

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

¹⁴ See generally George A. Donohue, Phillip J. Tichenor & Clarice N. Olien, *A Guard Dog Perspective on the Role of Media*, J. COMMUNICATION, June 1995, at 115.

¹⁵ *Id.* at 120.

¹⁶ *Id.* at 116.

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

¹⁸ Stephen Hilgartner & Charles Bosk, *The Rise and Fall of Social Problems: A Public Arenas Model*, 94 AM. J. SOCIOLOGY 57 (1988).

Coverage of such cases is often sensitive as they involve urban planning and local government policies. The reporting of the Hunan province case was significant because it shed light on an issue that had affected well over a million people throughout the country.¹⁹ Coverage of the issue captured the public's imagination and mobilized public opinion, facilitating supervision by the public and the media. In the battle of public opinion supervision, the media joined legal actors to generate favorable public exposure and to build moral authority on all fronts.²⁰

Rather than depicting the event as another media crusade successfully yielding a particular legal result, I contend that the Hunan coverage demonstrates how the media and the law are interlocked in a relationship of complementary interdependence. Throughout the process, the media was an advocate mobilizing public opinion and fighting for the recognition of legal order. The Hunan story exemplifies both the tacit coordination between different media groups toward a common goal, 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 work. The media and the legal actors worked within their constraints and acknowledged that their victory was only partial. Thus, this case study offers an insight into the power and limitations of the Chinese media, the evolving relationship between the media and the state, and the interplay of media coverage and legal regulation.

II. PUBLIC OPINION SUPERVISION – BUT WHO IS THE SUPERVISOR?

The public, reporters and academics often view public opinion supervision as a refreshing and positive force in China's media landscape,²¹ even though, as recent cases have shown, condemnation in the media may bias trials and undermine the independence of legal proceedings.²² Nonetheless, China's investigative reporting has

¹⁹ It was reported that, in the past fifteen years, 1.25 million people have been compulsorily moved from their homes to distant suburbs. See Mark O'Neill, *China: Media Censorship Alive and Well*, BBC MONITORING, Mar. 9, 2006.

²⁰ Legal actors in this case included lawyers, legal scholars and individual parties directly involved in litigation. They were in the media limelight when the scandal was covered. These actors used the views of legal scholars and lawyers to influence other stakeholders as events progressed.

²¹ For a general discussion of this unprecedented freedom felt by many inside and outside China, see Zhao, *supra* note 6. For a discussion of Chinese reporters' points of view, see de Burgh, *supra* note 2.

²² In one notorious case, a defendant who was sentenced to death by the court remarked bitterly that he was in fact sentenced and "executed" by the media. The defendant, Zhang Jinzhu, a local public security official in Hunan's Zhengzhou county, knocked down a pedestrian while driving under the influence of alcohol in 1997. Without stopping, he dragged the victim with his car for

contributed positively to exposing official corruption and social problems. Public opinion supervision has become increasingly important since the late twentieth century. Landmark reports include the Sun Zhigang investigation,²³ the BMW case²⁴ and the Liu Yong trial.²⁵

“Public opinion supervision” is a fluid and malleable term, with multi-layered meanings in the Chinese context. If public opinion refers to the simple aggregation of individual opinion,²⁶ the supervision that it generates could be seen as a form of consensus on social or political problems. However, public opinion 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 [of] 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.”²⁷ The logical extension of “public opinion supervision,” then would seem

about 1500 meters and hit another pedestrian in the process. The first victim was killed and the second suffered serious injury. Zhang was sentenced to death in 1998. He appealed, but the sentence was upheld. As he had been portrayed in the media as an evil monster, Zhang argued that the sentence was too heavy and that he in fact had been condemned by the media before the court’s sentence. See 鄢烈山, 谁杀了公安张金柱 [Yan Lieshan, *Who Killed Police Officer Zhang Jinzhu?*], Apr. 8, 2005, <http://news.163.com/05/0408/20/1GRFCV300001120T.html>; Liebman, *supra* note 7, at 69-70.

²³ Sun Zhigang was a 27-year-old graphic designer who was beaten to death on March 17, 2003 in a Guangzhou detention centre for migrants when he failed to produce a temporary residence permit. The incident was not reported by the media until more than a month after the event when the outspoken *Southern Metropolis Daily* reported the death on April 25. Discussion spread like wildfire on the Internet and the *Beijing Youth Daily* picked up the story. Because of the coverage, the government set up an investigation team. As a result, on June 20, Premier Wen Jiabao abolished China’s Custody and Repatriation system. See Dingjian Cai, *The Development of Constitutionalism in the Transition of Chinese Society*, 19 COLUM. J. ASIAN L. 1, 11 n.33 (2005).

²⁴ The BMW case occurred at the end of 2003. Su Xiuwen fatally struck a peasant in Harbin while driving a BMW. 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 Su and higher officials in the region. On appeal, the court upheld the trial judge’s 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. See 刘鉴强, “宝马案”疑云 [Liu Jianqiang, “BMW Case” Suspicions], 南方周末 [S. WEEKEND], Jan. 8, 2004, at A5.

²⁵ Liu Yong, a triad leader in Liaoning province, was sentenced to death on April 17, 2002. On appeal, his sentence 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 over the Internet and in the print media. The Supreme People’s Court intervened in December 2003 and reinstated the death sentence. Liu was executed within hours of the Court’s announcement. See Liebman, *supra* note 7, at 82-91.

²⁶ SPLICAL, *supra* note 13, at 28.

²⁷ DAVID LYNCH, *AFTER THE PROPAGANDA STATE* 24 (1999).

to be supervision by this force to prevent and redress various injustices in society. The role of the media is to reflect, channel and mobilize this opinion into a voice, turning public problems into salient public issues and affecting the outcomes of decisions. The media becomes representatives and trustees of the public, translating raw public opinion into a collective, supervisory role. In this view, public opinion supervision could act as a powerful critique of state power because the media offers an entertaining spectacle, a chance to participate in this collective decision making process. However, one needs to note that this understanding of public opinion supervision is very different from the Communist Party's official definition.

The CCP has always claimed to be the true voice of the public, meaning that any public opinion supervision must ultimately take place under the principle of social stability with CCP leadership. In other words, "public opinion supervision" is a misnomer because the ultimate source of supervision remains with China's political leaders.

In tension with the CCP's oversight, the media strives to monitor the government by channeling public opinion to contest the boundaries set by the ruling regime. Though public opinion in China rarely takes the form of scientific opinion polls or empirical surveys, many media outlets are eager to expose malfeasance. The media makes controversial issues salient and provides a space for the appropriate expression of public sentiments and opinions, exerting pressure upon public officials to resolve contentious social issues. Each round of coverage of a controversial breaking story is a subtle attempt to expand the scope of media freedom – and of societal freedom in general.

This section outlines the rise and meaning of public opinion supervision to provide an analytical framework for the Hunan case study that follows.

A. *Mouth and Throat, Ear and Nose, and the Media's Next Role*

Under Maoist rule, China's media was a revolutionary instrument, better known as the CCP's "mouth and throat." Li Xiguang, Professor and Executive Dean of the Tsinghua School of Journalism and Communication, remarked that in those days, negative reporting was non-existent: "good news is news, bad news is not news."²⁸ The media was entrusted with the task of preserving social stability and promoting specific policies, and, while this conception of the media sits uneasily with many Western observers, the Chinese government unabashedly used the term "propaganda" to describe the media's role in society.²⁹ Until

²⁸ Li, *supra* note 4, at 391. Professor Li is the Director of the Center for International Communications Studies at Tsinghua University, Beijing.

²⁹ Timothy Cheek, *Redefining Propaganda: Debates on the Role of Journalism in Post-Mao*

the late 1990s, the Central Publicity Department was known as the Central Propaganda Department (CPD),³⁰ an organ of the CCP rather than a governmental department.³¹ In Communist China, 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.³²

Historically, the media were also the “eyes and ears” of the Party. Journalists were expected to gather information and to report on grassroots problems and grievances in publications with limited circulation within the government.³³ Judy Polumbaum, Professor of the School of Journalism and Communication at the University of Iowa, characterized the role of China’s media as a form of both “hegemonic” and “petitionary” communication, in which the governors address the governed and the governed address the governors.³⁴ Thus, the media were the bridge between the Party and the people but not a mediator between them. It was understood under this system that the media and the masses lacked the ability to check state power.

However, China’s media experienced drastic structural and functional changes after 1978. In 1979, the media were allowed to accept advertising for the first time.³⁵ In 1983, the broadcasting system was decentralized, leaving only China Central Television (CCTV) under central Party supervision.³⁶ In 1992, after Deng Xiaoping’s famed visit to the southern regions of the country, the State Press and Publications Administration required that all major newspapers, apart from a few

Mainland China, ISSUES & STUD., No. 2, 1989, at 47, 51.

³⁰ The Central Propaganda Department eventually abandoned the term “propaganda” as a translation for *xuanchuan* (宣传), and opted for the words “publicity” and “information.” When the head of the 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, & Jan Michiel Otto eds., 2002). In Chinese, the word “propaganda” is still used, and the CPD is still known as *Zhong Xuan Bu* (中宣部).

³¹ Its responsibility is to oversee media outlets, set Party media policy and supervise the work of the provincial party propaganda bureaus. Keller, *supra* note 30.

³² Cheek, *supra* note 29, at 55.

³³ These were known as 内部文件 [internal articles]. See Marlowe Hood, *The Use and Abuse of Mass Media by Chinese Leaders During the 1980s*, in CHINA’S MEDIA, MEDIA’S CHINA 37, 39-40 (Chin-Chuan Lee ed., 1994).

³⁴ Judy Polumbaum, *The Tribulations of China’s Journalists after a Decade of Reform*, in VOICES OF CHINA: THE INTERPLAY OF POLITICS AND JOURNALISM 33, 34 (Chin-Chuan Lee ed., 1990).

³⁵ Roya Akhavan-Majid, *Mass Media Reform in China: Toward a New Analytical Framework*, 66 GAZETTE 553, 557 (2004).

³⁶ See Yu Huang, *Peaceful Evolution: the Case of Television Reform in Post-Mao China*, 16 MEDIA, CULTURE & SOC’Y 217 (1994).

central Party organs, become financially self sufficient by 1994.³⁷ In 1996, the Ministry of Propaganda sanctioned the first newspaper conglomerate.³⁸ In July 2003, the CPD abolished the requirement that forced Party and state entities to subscribe to CCP newspapers.³⁹ In essence, the Party has given clear signals to media institutions that they are to become financially independent and profitable entities. These various reforms triggered changes in the structure and business models of media outlets.

Despite these reforms, strictly speaking, there remains no independent press in China. On a practical level, individually owned or civilian organized newspapers are not allowed.⁴⁰ Rather, China's print media is largely divided into Party and non-Party organs.⁴¹ The leading newspapers are the Party papers, directly controlled by and responsible to the CCP, and each province has its own Party paper.⁴² The leading Party paper is the *People's Daily* and the Party's central television mouthpiece is CCTV.⁴³ 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.⁴⁴ Each

³⁷ Zhao, *supra* note 3, at 6. Deng's trip to the south in 1992 had special meaning in light of the 1989 Tiananmen student crackdown. In the aftermath of the crackdown, it was believed that China would slow down its economic and legal reform. However, Deng's trip "reignited the reform engines." See RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW 58 (2002).

³⁸ The first was the Guangzhou Daily conglomerate, a municipal paper with the authority 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 & Myung-Jin Park eds., 2000).

³⁹ 中央办公厅, 国务院办公厅关于进一步治理党政部门报刊散滥和利用职权发行, 减轻基层和农民负担的通知(中办发[2003]19号) [Central Propaganda Department, State Council, Doc. No. 19] (2003), quoted in 中宣部国务院纠风办新闻办新闻出版总署发出通知 - 进一步规范党政部门报刊征订工作 [Notification on Further Regulation on Compulsory Subscription by Government Departments], 人民日报 [PEOPLE'S DAILY], July 26, 2004, available at <http://www.people.com.cn/BIG5/shizheng/1027/2664432.html>.

⁴⁰ Though this is not expressly stated in the law, the elaborate licensing system and framework have rendered private ownership almost impossible. For a discussion of the background, see Perry Keller, *Privilege and Punishment: Press Governance in China*, 21 CARDOZO ARTS & ENT. L.J. 87, 100-101 (2003). See 中华人民共和国新闻出版总署, 报纸出版管理规定第32号 [Provisions on the Administration of Newspaper Publication, Order No. 32] (promulgated by the General Admin. Of Press & Pub., Sept. 20, 2005, effective Dec.1, 2005), available at http://www.gov.cn/gongbao/content/2006/content_375808.htm.

⁴¹ Keller, *supra* note 40, at 99.

⁴² *Id.* at 98.

⁴³ *Id.* at 97.

⁴⁴ Chengju Huang, *China's State-Run Tabloids: The Rise of "City Newspapers,"* 63 GAZETTE 435 (2001).

ministry or ministry-level department runs its own newspaper; for example, the *Legal Daily* belongs to the Ministry of Justice,⁴⁵ and the famous *Beijing Youth Daily* is an unofficial paper belonging to the Beijing Communist Youth League.⁴⁶ Each newspaper has a rank, depending on its position on the administrative ladder.⁴⁷ Within the above framework, an increasing numbers of variations has arisen, caused largely by the urgent need to be financially independent; city newspapers,⁴⁸ evening papers, weekend editions, press conglomerates, joint-venture papers and a press system involving contract work⁴⁹ have blossomed quickly as outlets have struggled to hit upon financially sustainable business models.

To attract readers and advertisers, these new entities have to be bold, aggressive and reader-oriented, directly contributing to the rise of a “semi-independent press,” a “semi-official Chinese media that enjoy independence in editorial, personnel and financial matters but are without any independent legal status.”⁵⁰ In the midst of these structural changes, investigative reporting has become 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. *Investigative Journalism or Public Opinion Supervision?*

The push and pull of market forces have changed the role of the Chinese media. The media now has to serve two masters and thus has two goals: to avoid offending the Party and to please the market. Chin-Chuan Lee, Professor Emeritus of the School of Journalism and Mass Communication at the University of Minnesota, writes that China's

⁴⁵ See 法制日报社简介 [*An Introduction to the Legal Daily Newspaper*], 法制日报 [LEGAL DAILY], <http://www.legaldaily.com.cn/aboutus/aboutus.htm>.

⁴⁶ See 新闻冲击波: 北京青年报现象扫描 [NEWS WAVE: A STUDY OF BEIJING YOUTH DAILY] (郑兴东主编 [Zheng Xingdong ed.], 1994).

⁴⁷ This ranges from *bu* (部) (ministry), *ju* (局) (bureau), *chu* (处) (branch) to *ke* (科) (section). See Pan Zhongdang, *Spatial Configuration in Institutional Change: A Case of China's Journalism Reforms*, 1 JOURNALISM 253, 258 (2000).

⁴⁸ 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. These city newspapers are often in the form of evening news. See Huang, *supra* note 44, at 435.

⁴⁹ Regardless of whether a newspaper is officially registered in the name of, and supervised by, a government department, its sub-unit, or a semi-official organization, it can contract work out to individuals or groups who enjoy editorial, personnel and financial independence provided the license-holder pays a fixed sum. For example, the *Beijing Youth Daily* 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 avant-garde liberal newspaper.

⁵⁰ 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 STUD. 649, 650 (2000).

“‘schizophrenic market-oriented media’ has a capitalistic body that wears ‘a socialist face.’”⁵¹ Having to dance “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.”⁵² This formula is required for the survival of all of China’s commercialized media. Lee cynically describes China’s media as having changed from being a Party mouthpiece to a Party publicity corporation.⁵³ Rather than brainwashing people, the media is now assigned tasks to resolve social conflict, to promote Party legitimacy and to check rising corruption at the lower levels of the government.

It would, however, be too quick to equate the Chinese style of investigative exposé to a form of investigative journalism or a pure form of media monitoring as understood in Western liberal studies. Hugo de Burgh defines investigative journalism as a form of “extensive research by one or more journalists 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 unaware.”⁵⁴ Its tenor is adversarial, representing a critical, liberating tradition appealing to commonly held values.⁵⁵ In China, the attempt to adopt this muckraking, revelatory style of reporting can be traced to the late 1970s and the famous reporter Liu Binyan.⁵⁶ However, 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 “public opinion supervision” was coined by then Premier Zhao Ziyang in the 13th Central Committee of the Communist Party 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.”⁵⁷ In the address, he did not mention the mouthpiece role

⁵¹ Chin Chuan Lee, *Servants of the State or the Market? Media and Journalists in China*, in *MEDIA OCCUPATIONS AND PROFESSIONS: A READER* 241, 246 (Jeremy Tunstall ed., 2001) (quoting Zhou He, *Chinese Communist Party Press in a Tug of War: A Political Economy Analysis of the Shenzhen Special Zone Daily*, in *MONEY, POWER AND MEDIA: COMMUNICATION PATTERNS AND BUREAUCRATIC CONTROL IN CULTURAL CHINA* (Chin-Chuan Lee ed., 2000)).

⁵² Zhao, *supra* note 37, at 10-11.

⁵³ Lee, *supra* note 51, at 246.

⁵⁴ de Burgh, *supra* note 2, at 806.

⁵⁵ *Id.*

⁵⁶ Zhao, *supra* note 6, at 578.

⁵⁷ 赵紫阳在中国共产党第十三次全国代表大会上的报告 [Zhao Ziyang, Report Delivered at the 13th National Congress of the Communist Party of China] (Oct. 25, 1987), *available at*

of the press but highlighted three principles of the media: the press should exercise oversight over the work and conduct of public officials, inform the public of important events and reflect public debate on important issues.⁵⁸ These principles were echoed by the subsequent Party Secretary Jiang Zemin in CCCP meetings in 1992,⁵⁹ 1996⁶⁰ and 1997.⁶¹

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.⁶² Despite this rosy image, "public opinion supervision" was formally defined under the *Regulations of Internal Supervision of the Chinese Communist Party (Tentative)* in 2003.⁶³ Section Five states that internal supervision within the Party must go hand in hand with external supervision, the latter including supervision by the media. Under Section Thirty Three, 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 Thirty Four, the media is required to adhere to Party principles and media professional ethics, to direct public opinion on the right course and to be aware of the social impact of public opinion supervision. The term "public opinion supervision" is not defined in the Regulations but is understood to mean supervision by the masses, exercised through the media.⁶⁴ However, it is explicitly stated in the *Study Guide* that public opinion supervision can only take place under the leadership of the Party,⁶⁵ a clear reminder to the media 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

<http://cpc.people.com.cn/GB/64162/64168/64566/65447/4526369.html>.

⁵⁸ See Polumbaum, *supra* note 34, at 42.

⁵⁹ 江泽民在中国共产党第十四次全国代表大会上的报告 [Jiang Zemin, Report Delivered at the 14th National Congress of the Communist Party of China] (Oct. 12, 1992), available at <http://www.people.com.cn/GB/shizheng/252/5089/5106/20010430/456648.html>.

⁶⁰ 江泽民, 中共中央关于加强社会主义精神文明建设若干重要问题的决议 [Jiang Zemin, On Resolving Serious Questions Regarding Strengthening the Construction of Socialist Spirit and Culture, Report Delivered at the 16th National Congress of the Communist Party of China] (Oct. 10, 1996), available at <http://www.people.com.cn/GB/shizheng/252/5089/5106/20010430/456601.html>.

⁶¹ 江泽民在中国共产党第十五次全国代表大会上的报告 [Jiang Zemin, Report Delivered at the 15th National Congress of the Communist Party of China], (Sept. 12, 1997), available at <http://xibu.tjfsu.edu.cn/elearning/lk/15c.htm>.

⁶² See Zhao, *supra* note 6, at 581.

⁶³ 中国共产党党内监督条例 (试行) [Regulations of Internal Supervision of the Communist Party of China (Tentative)] (promulgated by the Central Committee of CCP, Dec. 31, 2003, effective Feb. 17, 2004), available at http://news.xinhuanet.com/newscenter/2005-01/16/content_2467829.htm.

⁶⁴ STUDY HANDBOOK, *supra* note 12, at 75.

⁶⁵ 任铁缨, 认真对待和正确开展新闻舆论监督 [Ren Tiesing, *Treating Public Opinion Supervision Seriously and Correctly*], in STUDY HANDBOOK, *supra* note 12, at 268.

the Party and the people,⁶⁶ and should not model themselves on the Western media.⁶⁷ Most of all, the Party should never be put into an adversarial position with the media.⁶⁸ Other than exposing social problems, the media should help to solve conflicts and problems in society.⁶⁹ The prime concern is always the maintenance of “social stability,”⁷⁰ to assist the state rather than adding to its burden.⁷¹ The above legal rhetoric was affirmed in various policy directions in 2005,⁷² and has been implemented in various ways by local officials. It was reported that local governments recruited Internet commentators in 2005 to redirect public opinion to the “right course” on the Internet,⁷³ with their duties to counterbalance any pessimistic views and to explain the government’s stance. Of note is that these commentators were recruited to express their opinions in their capacities as ordinary citizens, rather than as government spokespeople.

Clearly, in light of the above legislative and policy directions, the Party is calling for media restraint, and 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 stop the liberating force of the market. A semi-independent press is forming, and the passion of public opinion has already been inflamed. The relationship between the media, the Party and the public thus has entered a fluid state of uncertainty and possibility.

III. UNLEASHING THE GUARD DOG

While the guard dog media has been awakened from its slumber, it is still under the firm discipline of the Party. The following case analysis illustrates the interplay between political and media power in the coverage of a scandal, and the alliance of the media and legal justice in the face of oppressive political power.

⁶⁶ *Id.* at 270.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 270-271.

⁷⁰ *Id.* at 278.

⁷¹ *Id.* at 281.

⁷² See 广电总局印发关于切实加强和改进广播电视舆论监督工作的要求的通知 [Notice on Strengthening and Improving Public Opinion Supervision], 国家广播电影电视总局 [State Administration of Radio, Film and Television] (May 10, 2005), available at <http://www.sarft.gov.cn/manage/publishfile/35/2926.html>.

⁷³ 曹筠武, 宿迁: 引导网络舆论实践 [Cao Yunwu, Su Qian: Directing the Implementation of Public Opinion Supervision], 南方周末 [SOUTHERN WEEKEND], May 19, 2005, at A5. It was reported that Nanjing, Wushi and various cities in Jiangsu province had hired teams of online commentators to direct public opinion.

A. *Cultural Revolution Revisited*

A land development project in the county seat of Jiahe, under the jurisdiction of Hunan's Chenzhou municipal government, gave rise to intense media scrutiny, and offers insight into the interplay of interests described above. In China today, land development, relocation and expropriation of real property, are common by-products of China's rapid urban development and modernization. They frequently give rise to grievances when people are forced to leave their homes which, in many cases, are associated with family histories, traditional values and fond memories.⁷⁴ An aggravating factor in this process is that, in many cases, houses are expropriated without reasonable compensation.⁷⁵

The case in dispute involved a 120,000 square meter land project in the downtown 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, and existing houses on the land, most of which were built within the previous fifteen years, were slated for demolition. The project would have affected approximately one fifth of residents in the county seat.⁷⁶ Other than the fact that the compensation rate was unreasonable, what was most striking in this case was the direct interference of the local government through drastic administrative orders. Throughout 2003, residents' attempts to resolve issues through administrative channels and legal means were to no avail. As a last resort, the residents contacted media outlets, and as a result, over the course of a month, a media phenomenon began, drawing public attention to the residents' arguments.

⁷⁴ See Ian Johnson's account of disputes surrounding development and disputes in Beijing. IAN JOHNSON, *WILD GRASS: CHINA'S REVOLUTION FROM BELOW*, 87-182 (2005).

⁷⁵ For a comprehensive account of legal disputes and regulations surrounding forced evictions, see 王才亮, 房屋拆迁纠纷焦点释疑 [WANG CAILIANG, DISPUTES FOCUSING ON FORCED EVICTIONS] (2004). In an attempt to facilitate the process of relocation and warn those opposed to development efforts, the Jiahe county government hung banners on December 14, 2003, reading 谁影响嘉禾发展一阵子, 我影响他一辈子 [Whoever affects Jiahe for a while, I will affect for life]; 谁不顾嘉禾的面子, 谁就被摘帽子 [Whoever does not care about the honor of Jiahe will have their hat plucked off]; and 谁工作同不开面子, 谁就要换位子 [Whoever does not cooperate will be replaced]. See also 罗昌平, 湖南嘉禾县拆迁引发一对姐妹同日离婚 [Luo Changping, *Demolition Project in Hunan's Jiahe County Caused Sisters to Petition for Divorce on the Same Day*], 新京报 [BEIJING NEWS], May 8, 2004, available at <http://news.qq.com/a/2004508/000033.htm>.

⁷⁶ 1100 households, 7000 residents, 20 units and organizations out of the county seat population of 30,000 would have been affected. See 社会记录: 拆迁之痛 [Social Record: The Pain of Demolition] (CCTV television broadcast May 26, 2004), available at <http://www.cctv.com/news/society/20040526/100912.shtml>.

On August 7, 2003, the county government initiated an administrative order, the “Four Guarantees and Two Stops.”⁷⁷ The order was directed not at the residents who lived in the affected area, but at any civil servants who had blood ties with the affected residents. The order called upon these civil servants to guarantee that their family members or relatives would (a) finish all assessments regarding compensation for the appropriated property within the designated time frame; (b) sign all related documents; (c) vacate the property and submit documents relating to compensation and relocation; (d) refrain from filing appeals, petitions, or any proceeding that would bring the case to the attention of the central authorities.⁷⁸ In addition, the civil servants were to report daily to the

⁷⁷ The “四保两停 [Four Guarantees and Two Stops]” order was introduced in 嘉办字 [2003] 136 号文 [Jiahe County Document No. 136 of 2003] (Aug. 7, 2003).

⁷⁸ *Id.* For a compilation of news items, see 湖南嘉禾拆迁事件 [Hunan Jiahe Forced Eviction Incident], Sina 新闻中心 [SINA NEWS CENTER], at <http://news.sina.com.cn/z/hnjiahe/index.shtml>.

⁷⁹ The media later criticized the county government for invoking an imperial style of punishment under which one’s criminal culpability could extend to nine clans. See 嘉禾拆迁调查之一: “株连九族” [Investigation of the Jiahe Demolition Project I: Extending Responsibility to Nine Clans], 时空连线 [ORIENTAL HORIZON] (CCTV television broadcast, May 13, 2004), available at www.cctv.com/news/society/20040513/101129.shtml.

⁸⁰ The practice had its roots in the Qin Dynasty (221-206 B.C.) and was formally abolished as part of legal reform in the last years of the Qing Dynasty. 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 & R. Kent Guy eds., 2000). For a further discussion of imperial China’s efforts to create a self-policing gentry by punishing family members, see 张建国, 帝制时代的中国法 [ZHANG JIANGUO, CHINESE LAW IN IMPERIAL AGE] 129-159 (1999).

⁸¹ Interview with Luo Changping, reporter for Beijing News, who covered the Jiahe scandal, Beijing (June 26, 2004).

⁸² 中华人民共和国刑法 (97 修订) [Criminal Law of the PRC (1997 revision)], Art. 277 (promulgated by Nat’l People’s Cong. Standing Comm., Mar. 14, 1997, effective Mar. 14, 1997): “Whoever by means of violence or threat, obstructs a functionary of a State organ from carrying out his functions according to law shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, or public surveillance or be fined. . . . Whoever intentionally obstructs officers of a State security organ or a public security organ from maintaining State security in accordance with law and causes serious consequences, though without resort to violence or threat, shall be punished in accordance with the provisions of the [preceding passage].” Eventually, these three were released and paid compensation for their detention after a team of lawyers from Tsinghua University intervened on their behalf. *Gov’t Pays Residents For Wrong Arrest*, PEOPLE’S DAILY ONLINE, June 3, 2004, at http://english.people.com.cn/200406/03/eng20040603_145262.html.

⁸³ Luo Changping, 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 西部时报 [WEST TIMES], 中国建设报 [CHINA CONSTRUCTION NEWS] and 南方财经报 [SOUTHERN ECON. NEWS]. However, when they sent their drafts to the county government for comments, their stories were banned and the journalists’ sources in Jiahe were harassed. Interview with Luo, *supra* note 81.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Nailene Chou Wiest, *China: New Beijing Paper Product of Cross-Regional Cooperation*, S. CHINA MORNING POST, Oct. 28, 2003.

county government, upon penalty of having their salaries frozen, their jobs suspended or terminated, or their positions transferred 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.⁷⁹ Such systems of collective responsibility are meant to create a self-policing network that compels people's submission to authority, and may be traced back to the imperial style of governing in the Qin dynasty.⁸⁰

Facing such oppressive measures, four residents from the affected area went to Beijing to petition the Ministry of Construction, to no avail.⁸¹ By April 21, 2004, the county government and the developer had run out of patience. The County's People's Court sent two hundred police officers to remove uncooperative residents. Three residents who protested the evictions were detained for interfering with public affairs.⁸²

B. *Soft News on Hard Life*

Until that point, the event had not attracted significant media attention, not because the media were unaware of the disputes, but rather because local newspapers dared not cover the story.⁸³ Local media outlets encounter significant challenges in flexing their muscles in their own territories. *Beijing News* covered the story only after one Jiahe resident, 68-year-old Lu Shuide, went to Beijing to petition the newspaper for help.⁸⁴ 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 Changping had family in Hunan, and was on leave in the late spring of 2004. His editor asked him to cover the Jiahe story while he was back in Hunan visiting relatives, specifically instructing him to "concentrate on the social impact" of the story. Luo began research in Jiahe on April 28, but found that most residents were hostile to him – residents had suffered retaliation for speaking to the limited number of reporters who had previously covered events in Jiahe. Local officials refused interview requests and threatened to lock him up if he continued to take photos. When he finally secured an interview with Zhou Xianyong, the County Party Secretary of Political and Legal Affairs, Luo was snubbed because his newspaper was unknown in the area. Zhou simply displayed the official documents in front of Luo but admitted there was no public tender for the land project.⁸⁵

What Zhou failed to realize was that *Beijing News* was a new press group established in Beijing in 2003. It is China's first cross-geographical press entity, under the joint control of the *Guangming Daily* and the *Southern Daily News Group*.⁸⁶ The former is a paper under the direct supervision of the CCP based in Beijing, and the latter

owns the well-known liberal paper *Southern Weekend* in Guangzhou. *Beijing News* is, therefore, a rare liberal voice in public discourse blessed with powerful backing. In short order, *Beijing News* became a profitable news outlet, sharing significant mass popularity with *Beijing Youth Daily*.⁸⁷

The county official's chilly reception only served to hasten the publication of the scandal on May 8, 2004.⁸⁸ It would have been politically sensitive to directly expose the marked irregularity of the administrative order and the unfairness of the local edict, so the story ostensibly took a different approach. It investigated the reasons behind a sudden rise in Jiahe's divorce rate, featuring a story of two sisters divorcing their husbands on the same day.⁸⁹ 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.

The newspaper story quickly caught the attention of editors at CCTV's *Oriental Horizon*, and they sent a team of journalists to the county to investigate. Being the Party's main electronic media outlet as well as a TV station, the CCTV news team had access to residents and local officials that Luo did not enjoy when researching his piece. The CCTV features focused sharply and directly on the local government's collusion with business interests. In contrast to *Beijing News*, CCTV attacked the validity of the government's administrative policy and the legitimacy of the entire redevelopment project.⁹⁰

In the course of interviewing Professor Zhang Guoqing, a leading academic in political science and public administration at Peking University, the program condemned the abuses of power and law in Jiahe. Professor Zhang questioned the legitimacy of the "Four Guarantees and Two Stops" policy, characterizing it as a direct violation of China's Administrative Supervision Law,⁹¹ the CCP Party Rules⁹² and Article

⁸⁷ By early 2005, the daily circulation of *Beijing News* had reached 400,000 and advertising revenue had reached more than RMB450 million. 新京报改版升级: 好的更需要改变 [*Achievement After Structural Changes: Good Performance Calls For Change*], 新京报 [BEIJING NEWS], Mar. 29, 2005, available at <http://blog.oeeee.com/xingrui/archive/2006/02/19/9261.html>.

⁸⁸ Luo, *supra* note 75.

⁸⁹ *Id.*

⁹⁰ *Investigation I*, *supra* note 79. The first series started with a story about a nurse named Li Jing whose mother lived in the affected area, and who refused to sign the agreement with the developer. Li was removed from her position and her salary was suspended. Concerned about the impact the controversy may have on her husband, she applied for divorce but was refused by the government. During the ten-month period following the "Four Guarantees and Two Stops" announcement, people were relocated from work units, divorce rates increased, and family disputes became prevalent. At least four employees divorced their spouses, six got demoted or dismissed and four were relocated due to the policy.

⁹¹ 中华人民共和国行政监察法 [Administrative Supervision Law of the PRC] (promulgated by

Twenty Seven of China's Constitution.⁹³ In the second installment of the series, the program interviewed local officials of Jiahe and a legal expert.⁹⁴ This further exposed the legal improprieties involved in the local government's machinations. The program revealed that no public funds had been set aside for the project of compensating displaced residents; the developer had started the project before receiving the necessary development permit; and the county government had exempted the developer from taxes and planning fees. Both the government and the developer had violated the terms of Article Seven of the Regulations on the Dismantlement of Urban Houses⁹⁵ and Article Twelve of the Law on Urban Real Estate Administration.⁹⁶ After taking into account the abuses of process designed to benefit the developer, analysts estimated that the land had only cost the developer RMB30 per square meter, 3.7% of the market value of RMB800 to 1200.

In exposing this marked malfeasance, CCTV seemed to be winning the battle against corrupt local cadres. However, it remained an uphill fight. While the *Oriental Horizon* team was still in Hunan, they went to the Chenzhou municipal planning bureau to transmit film clips back to Beijing, only to find that their request had been blocked by the municipal government.⁹⁷ The team was forced to make a four-hour rush trip to Guangdong to make the transmission; the clips arrived safely just in time for the first broadcast at 7:15 on the morning of May 12, 2004. Timing was critical; officials from Jiahe and Chenzhou arrived in Beijing at 8:00 on the same day in hopes of stopping 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.⁹⁸ Moreover, the subsequent installments in the series would

the Nat'l People's Cong. & effective May 9, 1997).

⁹² 中国共产党章程 [The Rules of the Chinese Communist Party] (Nov. 18, 2004), available at http://news.xinhuanet.com/ziliao/2002-11/18/content_633225.htm.

⁹³ "All state organs and functionaries must rely on the support of the people, keep in close touch with them, heed their opinions and suggestions, accept their supervision and work hard to serve them." 宪法 [Constitution], Art. 27 (1982).

⁹⁴ 嘉禾拆迁调查之二：拆迁疑云 [Investigation of the Jiahe Demolition Project II: Forced Eviction Suspicions] 时空连线 [ORIENTAL HORIZON] (CCTV television broadcast, May 14, 2004), available at <http://www.cctv.com/news/society/20040514/100638.shtml>.

⁹⁵ 城市房屋拆迁管理条例 [Regulations on the Dismantlement of Urban Houses] (promulgated by the State Council June 6, 2001, effective Nov. 1, 2001). Article Seven requires, *inter alia*, that developers receive authorizing permits before proceeding with evictions.

⁹⁶ 中华人民共和国城市房地产管理法 [Urban Real Estate Administration Law of the PRC] (promulgated by the Nat'l People's Cong. Standing Comm., July 5, 1994, effective Jan. 1, 1995). Article Twelve requires that land be leased on the open market whenever possible, and that lease prices of land be at least at the state-decreed mandatory minimum.

⁹⁷ Interview with Yan Xinyu, Director of Oriental Horizon, CCTV, Beijing (June 24, 2004).

⁹⁸ Documentary programs on CCTV are often repeatedly broadcast three to four times a week.

be suspended and further investigation stopped for the time being. Yan received no further explanation.

In the meantime, forced demolition continued. In this apparently bleak situation, a media relay began. Shortly after the media blackout within the walls of CCTV, a reporter from the *Beijing Youth Daily* went to Jiahe to follow up on the story. The *Beijing Youth Daily* is affiliated with the Beijing Communist Youth League, but is a semi-independent paper and is staffed by contractors rather than Party insiders. It has built a reputation of being aggressive, ambitious and energetic.⁹⁹ When Zeng Pengyu, a *Beijing Youth Daily* reporter, 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 consequently no newspaper could match them.¹⁰⁰

After the CCTV broadcast, the local residents' confidence in the media had been restored, and they warmly welcomed Zeng. Through them, Zeng learned that the administrative policy of "Four Guarantees and Two Stops" had not stopped at all. In addition, he learned that the officials' explanation to CCTV to justify the commercial project – that it was critically important to raise funds to avert the flooding problem – was patently false.¹⁰¹ In the meantime, the three residents who had been detained were formally arrested for obstructing officials who were carrying out their duties.¹⁰² When he reported these recent events in the *Beijing Youth Daily*, Zeng also boldly mentioned that the second series of *Oriental Horizon* was suddenly cut off, clearly implying that a back-door deal between government bodies had been struck.¹⁰³

As time passed, events in Jiahe drew the attention of an increasing number of media groups. Other documentary groups within CCTV, ostensibly rivals to *Oriental Horizon*, went to the county to start their own investigations.¹⁰⁴ *Beijing News* and *Beijing Youth Daily* had managed to

⁹⁹ NEWS WAVE, *supra* note 46.

¹⁰⁰ Interview with Zeng Pengyu, reporter for Beijing Youth Daily, Beijing (June 29, 2004).

¹⁰¹ In the second installation of the CCTV program, Jiahe's official acknowledged that the policy might be too radical, and that it would be reassessed. The official explained that the redevelopment project was necessary to avert flooding in the area, and it was crucial to attracting investment to the city. However, Zeng found out that the greatest risk of flooding was in an entirely different part of the county.

¹⁰² See Criminal Law, *supra* note 82.

¹⁰³ 曾鹏宇, 嘉禾强制拆迁仍在进行 “四包两停” 根本未停 [Zeng Pengyu, *Demolition at Jiahe Continues: "Four Guarantees and Two Stops" Have In Fact Never Stopped*], 北京青年报 [BEIJING YOUTH DAILY], May 19, 2004, available at <http://news.qq.com/a/20040519/000130.htm>; 曾鹏宇, 嘉禾拆迁谁在撒谎: 县领导边悔过边逮捕拆迁户 [Zeng Pengyu, *Who is Lying in Jiahe's Demolition: County Officials Repenting and Arresting Locals at the Same Time*], 北京青年报 [BEIJING YOUTH DAILY], May 22, 2004, available at <http://news.qq.com/a/20040522/000172.htm>.

¹⁰⁴ *Social Record* covered the story, see *supra* note 76, as did *Focus*, see *supra* note 2. See also 一场“摆平”与“反摆平”的较量 [A Weighing of Strategies and Counter-Strategies] 瞭望东方周

keep the story alive and on their readers' radar screens. By that time, the story had been circulating widely on the Internet and had garnered a remarkable amount of attention: high-traffic websites carrying news of the developments had a hit rate of five million and attracted forty thousand discussion posts per day by mid-May of 2004.¹⁰⁵

Meanwhile, Yan, the director of *Oriental Horizon*, finally got approval on May 28 to continue to broadcast the fruits of his investigation. The third and the fourth installments in the series were broadcast on May 28 and May 31. By that time, matters had improved dramatically: the three people who had been arrested 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 superiors within the government that, because of the proximity of the anniversary of the Tiananmen Square crackdowns in 1989, the investigation would go no further. The final commentary was offered on June 4 when Premier Wen Jiabao condemned the local cadres' conduct during the Jiahe scandal.¹⁰⁶

The final words on the media investigation went to *Oriental Outlook*, a magazine affiliated with the Xinhua News Group. Far from criticizing the improper use of political power in the case, it viewed the story as a dedicated CCP leader in Jiahe who had inadvertently caused suffering to the people by poor execution of a well-intentioned plan.¹⁰⁷ At the same time, it also had a special issue praising the reporters who had covered the scandal.¹⁰⁸ Tang Hua, a senior editor of Xinhua News, explained that each piece of reporting called for a balance to be struck, and that it was important to let local officials explain the motivations behind their actions at times of controversy.¹⁰⁹ This commentary on the importance of professionalism in the media is valid in the abstract, but coming so closely in the wake of the Jiahe controversy, the tone that *Oriental Outlook* struck was markedly sympathetic to the local officials.

Luo, Yan and Zeng remained dissatisfied with the outcome, and with the mediating role assumed by *Oriental Outlook*. They suspected that corruption or inside dealings were involved, but they did not have enough evidence and could dig no further.

刊 [ORIENTAL OUTLOOK], July 8, 2004, at 41.

¹⁰⁵ *Weighing of Strategies*, *supra* note 104, at 42.

¹⁰⁶ 温家宝主持国务院会议 同意嘉禾拆迁事件的处理 [Wen Jiabao, Presiding Over State Council Meeting, Agrees on the Handling of the Jiahe Demolition Incident], 新华网 [XINHUANET], June 4, 2004, available at <http://news.qq.com/a/20040604/000568.htm>.

¹⁰⁷ 于磊焰等, “最好”的县委书记和最失败的共产党员 [Yu Leiyan et al., “The Best” County Party Secretary and A Failed Communist Party Member], 瞭望东方周刊 [ORIENTAL OUTLOOK], JULY 1, 2004, at 38-47.

¹⁰⁸ *Weighing of Strategies*, *supra* note 104.

¹⁰⁹ Interview with Tang Hua, Senior Editor of Xinhua News Agency and Deputy Editor-in-Chief of *Oriental Outlook*, Beijing (July 12, 2004).

C. “*Shall We Hire a Lawyer or a Journalist?*”

The media is like “the beam of a searchlight that moves restlessly about, bringing one episode and then another out of darkness into vision,”¹¹⁰ but society must rely upon more than the illumination of this single beam as it progresses. Mere exposure of episodes, incidents and eruptions is an insufficient – but perhaps necessary – condition of good governance.

In addition to media attention, the case of the three detained residents caught the attention of the Constitutional and Human Rights Center of Beijing’s Tshinghua University, who invited lawyers to help. One of them, Xiao Taifu, worked for the release of the three arrested demonstrators.¹¹¹ This attention might explain why, on May 24, an investigative team was formed composed of representatives from the central, provincial and municipal levels of government,¹¹² eventually breaking the deadlock in reporting.

As the three residents were detained and arrested for obstructing officials from carrying out duties,¹¹³ the lawyers’ challenge focused on the definition of “obstruction” under the law. The first paragraph of the law itself specifically requires the threat of violent force or violence, but the three detainees were arrested for acts of civil disobedience; Xiao argued that sitting on a building’s rooftop did not meet the standard required under the law. The court agreed. Not only were the three released, but Xiao and his colleagues also launched an administrative action on behalf of the three detainees, demanding compensation for their unlawful detention. In the end, each of the detainees received approximately RMB1700 compensation.¹¹⁴ The intervention of the legal team had yielded quick and positive results: the team arrived in Jiahe on May 27 and the three detainees 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 more than a month, then-68-year-old Lu Shuide, recalled that,

¹¹⁰ WALTER LIPPMANN, PUBLIC OPINION 229 (Free Press Paperback 1965) (1922).

¹¹¹ Interview with Xiao Taifu, lawyer, Beijing (July 7, 2004).

¹¹² The Undersecretary of the Ministry of Construction, Liu Zhifeng, led an investigatory team to Jiahe to break the deadlock. On the following day, Undersecretary Liu was joined by officials from the Supervisory Bureau, the Provincial Procuratorate, and the Land and Natural Resources Bureau. 嘉禾拆迁调查之三：渐露真相 [*Investigation on Jiahe’s Demolition III: The Truth Gradually Emerges*], 时空连线 [ORIENTAL HORIZON] (CCTV television broadcast, May 28, 2004), available at <http://www.cctv/news/china/20040528/101269.shtml>.

¹¹³ See Criminal Law, *supra* note 82.

¹¹⁴ See Gov’t Pays Residents for Wrong Arrest, *supra* note 82.

during his detention, the Jiahe Political and Legal Committee representative told him that he had committed serious misdeeds under the Criminal Law and that the heaviest form of penalty – three years in prison – would be imposed upon him. In addition, the official told Lu that a RMB5000 fine would be deducted from his demolition compensation, and RMB50,000 would be levied against him for property that he had “illegally obtained.”¹¹⁵ In the immediate aftermath of their release, the Jiahe Public Security Bureau defended the arrest as procedurally appropriate but had adopted a more conciliatory position by the time that compensation was paid.¹¹⁶

At the same time, the nurse Li Jing, the first civil servant to be punished by the administrative policy, was reinstated at her original work unit and received back pay for the six months that her salary had been suspended.¹¹⁷ The two sisters who were divorced reinstated their marriages with their spouses.¹¹⁸

Finally, the central government closed the case with a dose of heavy legal commentary. *The People's Daily*, representing the Party directly, condemned outright the officials at Jiahe for collectively abusing administrative power and the use of administrative decrees. In no uncertain terms, it declared that demolition projects in villages or towns were bound to abide by the law.¹¹⁹ In response to the Jiahe controversy, the State Council issued an order on June 6, 2004 calling for officials to carry out their duties within the confines of the law.¹²⁰

The media played a definitive role in exposing the grave misdeeds of local officials at Jiahe. The Tsinghua lawyers played a complementary role in vindicating the rights of the citizens. The interplay of law and media as events progressed offers an illustration of how actors in each discipline tested the restraints under which they work. In CCTV's initial coverage of the story, it was careful to introduce a legal voice into the public discourse. Wang Cailiang, an expert on the legal

¹¹⁵ *Weighing of Strategies*, *supra* note 104, at 41.

¹¹⁶ 曾鹏宇, 嘉禾强制拆迁事件追踪: 被捕拆迁户获得赔偿 [Zeng Pengyu, *Follow Up on Jiahe's Forced Demolition: Arrested Residents Compensated*], 北京青年报 [BEIJING YOUTH DAILY], June 2, 2005, available at <http://news.qq.com/a/20040602/000115.htm>; see also *Gov't Pays Residents For Wrong Arrest*, *supra* note 82.

¹¹⁷ *Investigation III*, *supra* note 112.

¹¹⁸ 嘉禾拆迁调查之四: 纠错问责 [*Investigation on Jiahe's Demolition IV: Correcting Wrongs and Accounting for Responsibility*], 时空连线 [ORIENTAL HORIZON] (CCTV television broadcast, May 31, 2004), available at <http://www.cctv.com/news/china/20040531/100664.shtml>.

¹¹⁹ 评论, 决不能用损害群众利益的方式搞建设 [Editorial, *Development Should Never Be Against Public Interest*], 人民网 [PEOPLE'S DAILY ONLINE], June 5, 2004, at <http://www.people.com.cn/GB/shizheng/1026/2547927.html>.

¹²⁰ 国办发 [2004] 46 号: 国务院办公厅关于控制城镇房屋拆迁规模严格拆迁管理的通知 [State Council Notification No. 46: Regarding the Control of the Scale of Forced Evictions at the City and County Level] (June 6, 2004).

aspects of demolition and relocation, had outlined the framework of Chinese law for the audience.¹²¹ Not knowing the will of higher authorities, he nevertheless condemned the county officials' legal and administrative abuses. Moreover, Wang became invested in the case, traveling to Jiahe to seek access to legal and official documents.¹²²

The interplay of the media and legal professionals illustrates their interdependence: in the absence of media exposure, it is highly doubtful whether a legal proceeding would have been of any use. The local residents had lost an early action before the municipal court challenging the demolition and relocation order.¹²³ This adverse ruling had a chilling effect on lawyers from the local region, who dared not take further administrative action to challenge the redevelopment plan and the "Four Guarantees and Two Stops" order.¹²⁴ Without the media's magnification of 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 for the residents. As noted by one academic, media exposure of state-sanctioned injustice often requires a ceremonial close to the scandal, and legal proceedings meet that need.¹²⁵ In the present case, the media redirected the entire debate into a legal discourse. In the end, the interplay of media and legal professionals restored social equilibrium through the prism of the law.

IV. MEDIA FREEDOMS AS TUG OF WAR

The story seemingly has a happy ending. Corrupt officials were exposed, victims were compensated and heroes were praised. However, the victory is only a partial one. All three journalists who played major roles in the coverage of events lamented that the full truth surrounding the Jiahe incident remains unknown. Luo upbraids the central government for never stating clearly who among Jiahe's local officials should be held accountable.¹²⁶ Yan and Zeng suspect corruption at higher levels of the government.¹²⁷ Both remark that the most culpable character in the drama received an inordinately light punishment. Of the county officials, Zhou Xiangyong slighted Luo, refused to see Zeng, and lied on camera. He proclaimed that he would reflect on the incident and correct

¹²¹ *Investigation II*, *supra* note 94.

¹²² Interview with Wang Cailiang, Beijing (July 16, 2004).

¹²³ *Id.*

¹²⁴ Interview with Xiao Taifu, *supra* note 111.

¹²⁵ Li, *supra* note 5.

¹²⁶ Interview with Luo, *supra* note 81.

¹²⁷ Interview with Yan, *supra* note 97; interview with Zeng, *supra* note 100.

wrongs,¹²⁸ but then rebuked and threatened the residents.¹²⁹ While his colleagues were removed from their positions, Zhou was suspended from his post for a year.¹³⁰

In a sense, the case is a typical example of the limitations of the media's power in a country where the provision of news is an explicit tool of Party policy.¹³¹ In another sense, it is an atypical example that illustrates how media professionals push the boundaries of the freedom granted to them by the Party.

Moreover, the Jiahe case shows that low-level cadres may no longer simply disregard the media as a harmless gadfly. A unique feature of this case is that, at the initial stage, government officials simply dismissed the small press. Facing CCTV, they lied and stalled. This initial arrogant attitude and the underestimation of media influence only served to prove the powerful potential of the media in China.

The interplay of print, broadcast and online media outlets that one sees in the Jiahe coverage is being played out in markets around the world, but is complicated in China by the presence of the Party. The semi-independent newspapers *Beijing Youth Daily* and *Beijing News* are mavericks, yet the power that they wield is different from that of CCTV. They face challenges in getting interviews with officials, and their reporters lack the protection of official Party sanction. In this environment, as exemplified by Luo's editor reminding him to cover the story from a softer social angle, media professionals must constantly bear in mind the possible reaction of its most powerful reader, the CCP. Zeng Pengyu, reporter for *Beijing Youth Daily*, recounted how he always tested the water first in reporting, and, for highly sensitive stories, he would choose to publish it online.¹³²

Close association with the Party is a guarantee of authority and official sanction, but it comes at the cost of independence and a certain degree of investigative initiative. Though CCTV could adopt a direct and confrontational style, it is also subordinate to higher authorities. Yan Xinyu, director of *Oriental Horizon*, explained that Xinhua News Agency sets the ultimate tone for news reporting; because once Xinhua intervenes, even CCTV has to succumb to its editorial dictates. In the Jiahe case, in which *Oriental Horizon*, the magazine belonging to Xinhua News Agency, intervened as a mediator, the other news institutions took it as a signal that they would no longer play the role of advocate.

In addition, the freedom and power that CCTV enjoys are dependent upon the will of governing bodies. When county officials

¹²⁸ *Investigation II*, *supra* note 94.

¹²⁹ *Investigation IV*, *supra* note 117.

¹³⁰ *Id.*

¹³¹ For an itemization of these limitations, see Zhao, *supra* note 6, at 589.

¹³² Interview with Zeng, *supra* note 100.

arrived in Beijing in an attempt to intervene with CCTV's broadcast – an effort in which they were temporarily successful – it signaled that the county officials had most likely exercised influence with officials in the State Administration on Radio, Film and Television (SARFT). When the ban on broadcasting was finally lifted, media professionals speculated that SARFT's decision had been overridden by the Central Publicity Department, the Party organ directly governing all media outlets. As is so often the case with political machinations in the PRC, these maneuverings may only be guessed at because of the lack of transparency at all levels of the Chinese government. Other times, Party interference is much more explicit and direct; Yan and another director of CCTV admitted that sometimes their stories were never broadcast or that re-broadcasts were never shown.¹³³

Ultimately, Party affiliation brings access and power, but at the price of autonomy. On the opposite end of this spectrum lies the online community. Online bulletin boards, that area of public discourse arguably farthest removed from Party influence, may enjoy the largest scope for free expression but its grassroots contributors simply do not enjoy the resources or degree of access available to a reporter for a Party news source.

The Jiahe coverage also exemplifies the phenomenon of cross-territorial supervision, a distinct feature of the Chinese media. Hunan's local and regional newspapers failed to publish the Jiahe story. When *Beijing News* ran its coverage, county officials called the newspaper's office and asked Luo to explain why drafts of the reports were not sent to them.¹³⁴ They blamed Luo, a local from Hunan, for bringing humiliation to the province. As an organ of the central government, CCTV's jurisdictional power ostensibly has no boundaries within China, but CCTV directors and editors know that, somewhat ironically, the two cities that remain forbidden territories are Beijing and Shanghai. Reporters enjoy the freedom to expose corruption at the local level in interior provinces, but until recently, a moratorium was in place on exposing corruption in the country's political and financial capitals. One CCTV director pointed out that, between 1984 and 2004, Shanghai had seen only one major official scandal break in the press.¹³⁵

The Jiahe case also shows a similar phenomenon in the legal profession. As mentioned earlier, local lawyers were not willing to take up legal cases which involved confronting an oppressive local government. Furthermore, this may be viewed as another case of "hitting flies" rather than "hunting tigers," where county officials were

¹³³ Interview with Yan, *supra* note 97; interview with a director of the CCTV who preferred to remain anonymous, Beijing (June 25, 2004).

¹³⁴ Interview with Luo, *supra* note 83.

¹³⁵ Interview with anonymous director, *supra* note 133.

called to account for wrongdoings, criticized openly and removed swiftly. It remains an open question whether, if officials higher up the administrative ladder had committed similar transgressions, the media would have played a similar watchdog role. Observers argue that the Party has used the media to achieve social control, calling upon it to expose cases of low-level corruption and malfeasance as a control mechanism over local officials; however, the degree to which this role extends to officials in the higher echelons of government remains a gray area.¹³⁶ By using the media in this capacity, the Party also has a social safety valve to release pent up social tensions and grievances, while simultaneously maintaining its own legitimacy as champions of the people.¹³⁷ In essence, public opinion supervision in China is a controlled and extended form of supervision by the central authorities, rarely reaching those occupying the higher rungs of the political ladder. The media watchdog, then, can only watch over those the Party allows it to supervise.

Moreover, it remains forbidden to report on issues addressing social stability or criticism of the Party. An inordinate amount of negative reporting and exposure may backfire, as seems to have been the case with the television program *Focus*.¹³⁸ According to one director, the program's popularity has waned recently because new internal guidelines call upon the program to increase its proportion of positive reporting.¹³⁹ The ratings of another popular investigative program, *News Probe* (新闻调查), have also suffered as a result of the guidelines specifying that critical reporting may comprise no more than 50% of its programming.¹⁴⁰

This indicates that "media freedom depends precariously on the benevolence and patronage of 'enlightened leaders.'"¹⁴¹ At Jiahe, it was the intervention of officials from the Ministry of Construction, a central body, that marked the watershed in the battle. Professor Judy Polumbaum has commented that successful crusading journalism in China often requires either political backing or benign neglect from the authorities.¹⁴² Without such tacit approval, the chemistry of this media experiment would be quite different, of course: media exposure and legal intervention would fail to serve as the catalysts of justice, and the construction deal would have remained a misery that Jiahe residents

¹³⁶ Keller, *supra* note 40; Liebman, *supra* note 7.

¹³⁷ *Id.*; Li, *supra* note 4, at 400.

¹³⁸ See *Focus*, *supra* note 2.

¹³⁹ Interview with anonymous director, *supra* note 133.

¹⁴⁰ *Id.*

¹⁴¹ Chin-Chuan Lee, *China's Journalism: the Emancipatory Potential of Social Theory*, 1 JOURNALISM STUD. 559, 563 (2000).

¹⁴² Polumbaum, *supra* note 34, at 56.

would have been forced to tolerate. Undeniably, the media plays an important role in the administration of justice in cases of corruption under the color of state authority. Officials in China, it is argued, do not fear being criticized by their supervisors, nor do they fear going to court. They only fear media exposure.¹⁴³

Journalists in China are known to be skillful in the game of “playing edge balls” (擦边球). The phrase refers to the risky and difficult table tennis strategy of “aiming for the very edge of the ping-pong table where a ball is almost out of bounds but remains a fair hit.”¹⁴⁴ In the media game, facing unpredictable rules, journalists venture to the edge of the permissible. Zeng Pengyu, reporter with the *Beijing Youth Daily*, states that he would never run a big controversial story without first having a sense of the political climate, no matter how newsworthy it was; instead, he would test the waters by running a mild version of the story initially, and follow it up with increasingly hard hitting coverage.¹⁴⁵ During the SARS epidemic, the media were not allowed to report on the spread of the illness in Beijing, so the newspaper instead ran a story noting that masks had sold out in Beijing in a single afternoon. While covering the transmission of HIV in China, Zeng wrote a piece about two wealthy businessmen who had contracted AIDS through prostitutes, only hinting at the politically explosive issue of the government’s role in the black market for blood. Eventually, more details of the story made their way into the press. At *Beijing News*, Luo Changping adopted a similar tack, introducing the story of Jiahe first from a social, rather than political angle.

Ultimately, the story of Jiahe took on a momentum of its own, spilling over into television broadcasts and Internet bulletin boards. Yan Xinyu said that when he got the notification that his investigation report would not be rebroadcast, he understood that this ban extended to the transcript of the program. Nevertheless, his team posted the entire story online, supplementing coverage of the Jiahe’s incident with a program on the general issue of forced relocation in China. This kept the issue alive and maintained a critical voice in the public sphere.¹⁴⁶

Local residents also joined the fight. Though their attitudes toward reporters were lukewarm before CCTV broadcast its program, they became quite supportive afterwards. After the report by *Oriental Horizon* was suspended, citizens secretly taped the procedures of a town

¹⁴³ *Id.* at 59.

¹⁴⁴ Lee, *supra* note 51, at 244. This metaphor has been attributed to Qin Benli, former editor of Shanghai’s *World Economic Herald*. Judy Polumbaum, *Striving for Predictability: The Bureaucratization of Media Management in China*, in *CHINA’S MEDIA, MEDIA’S CHINA* 113, 116 (Chin-Chuan Lee ed., 1994).

¹⁴⁵ Interview with Zeng, *supra* note 100.

¹⁴⁶ Interview with Yan, *supra* note 97.

hall meeting on May 15, 2004, recording how party officials reprimanded and threatened local residents. This tape was passed on to reporters and broadcast on *Oriental Horizon*, a reflection of how people are beginning to use the media by tipping off reporters and contributing to the “emergence of a nascent discourse of rights.”¹⁴⁷

Ultimately, the battle for media freedom remains a tug of war between the media and those in political power. The media occasionally recruits help from the legal sector and from grassroots forces, but the battle for media independence is not easily won.

V. CONCLUSION

In one respect, the Jiahe story is an example of a variety of schools of thought contending with one another. An intense competition to frame the dispute commenced as the respective players jockeyed for control. The unofficial press initially framed the story of Jiahe as an unusual social phenomenon, a sudden rise of the divorce rate in a small county. The Party media subsequently framed it squarely as a quest for legal justice. From still another perspective, Party authorities at one point framed it as a case of well-intentioned cadres who erred in their pursuit of legitimate goals. Ultimately, among the countless cases of forced relocation throughout the country, the media managed to transform the Jiahe story from a typical story in the chaotic world of urban redevelopment into a case of grave legal misdeeds. In the process, the media worked in concert with the legal sector, illustrating that, in time, effective coordination among aggrieved citizens, media outlets, and legal professionals may lead to true public opinion supervision within China.

Furthermore, the Jiahe story illustrates that the media may function as the Party has always intended, as a form of public opinion supervision, while simultaneously serving its own interests. Investigative reporting occurs under the shadow of political guidance, certainly, but it simultaneously operates in a manner consistent with the forces of market liberalization, and in an environment of a growing awareness of legal rights among China's citizens. Consequently, the liberalizing force of the market has triggered a quiet media revolution, and has opened up a new breathing space for the general public. China's media outlets are no longer faithful lapdogs, a mere conduit of propaganda from the Party to the people, but are instead assuming a significant new role in China's political and social discourse.

¹⁴⁷ DE BURGH, *supra* note 2, at 807.