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DEFAMATION LITIGATION AND THE PRESS IN CHINA

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DEFAMATION LITIGATION AND THE PRESS IN CHINA

Xiaoyan Chen and Peng Hwa Ang *

This paper analyses 145 defamation cases in the court dockets in Chengdu from January 1987 to July 2005. Chengdu, the fourth most populous city in China, was chosen because the city trailblazed a number of reforms in the media in China. Lawyers and staff handling legal matters for all the newspaper groups in Chengdu were interviewed. Also interviewed were administrative personnel of the newspapers and senior officials from Chengdu Municipality Propaganda Bureau. Analyses of the cases show a marked increase in the number of defamation suits since the law was changed, probably attributable to an increasing awareness and consciousness of individual rights. This study also found that the success rate for plaintiffs depended more on the climate of the period in question than on whether the government or private sector is the owner. The success rate could also be divided over three periods, corresponding to the development of the media in China. This study suggests that the authority have not used defamation laws as a weapon to suppress the media; neither do the media nor journalists regard defamation litigation and defamation law as a major threat to their freedom of expression. This is not to deny the element of power in defamation litigation: ordinary individuals had the hardest time in defamation. This paper argues that it is simplistic to try to attain greater media freedom and freedom of expression through a mere reshaping of defamation law.

I. INTRODUCTION

China's first civil law as embodied in the General Principles of the Civil Law of the People's Republic of China (hereafter the General Principles) was passed in 1987. The new law was widely welcomed. Among other things, it meant that Chinese people finally could turn to the courts for reputational damage. Though specific statistics of the increasing popularity of defamation lawsuits are not available, an analysis of the Chinese Legal Yearbook (1988-1994) found that during 1988-1992, courts all over China had handled 2,000 to 3,000 cases involving personal rights, including the right to reputation. In 1993, defamation cases alone totaled 2,922. In 1994, the court handled a total of 3,543 defamation cases.¹

Following the new legislation and people's heightened legal consciousness of personal rights, Chinese media find themselves increasingly the target of defamation suits.² Since the late 1980s, "suing the journalists" has focused attention on the tension between the protection of reputation and the media's right to report. As early as 1989, the Supreme People's Court (hereafter the SPC) showed great concern of the new trend: "In handling these cases, on one hand, the People's courts should do their best to protect citizen's legal rights; on the other hand, they must back up proper public opinion supervision (Yulun Jiandu)."³

* Part of this paper was presented at the 56th ICA conference at Dresden, Germany.

¹ Zhang Xinbao, *Minyuquan de Falv Baohu (Legal Protection of the Right to Reputation)*, 234, (1997).

² See generally Hao Xiaoming & Kewen Zhang, *The Chinese Press and Libel: Political and Legal Implications*, Gazette 55: 77-91 (1995); Sun Xupei, *An Orchestra of Voices: Making the Argument for Greater Speech and Press Freedom in the People's Republic of China*, 103-104 (2000). Both articles pointed out that libel suits against the media have increased rapidly since the enactment of the General Principles. See also H.L. Fu and Richard Cullen, *Defamation Law in the People's Republic of China*, 11 *Transnat'l Law. J.* 1 (1998), Fu and Cullen described the period after the General Principles as "a wave of suing the journalists".

³ *Work Report of the Supreme people's Court* (1989). Public opinion supervision (Yulun Jiandu) conventionally refers to the public's criticism of the government and its officials. In China, it is a widely used and more acceptable phrase for freedom of expression.

In practice, the proper balance between defamation and freedom of expression is difficult to strike. Critics believe that Chinese defamation law and the judicial system provide little protection to free speech. In proposing the reform of defamation law, the West, especially the American experience has been a constant referent. A recurring recommendation is that the *New York Times*' "actual malice rule" should be adopted in China.

A central element in the assessment of the argument and proposals ought to be an evaluation of whose interests are served and whose are injured by the current legal regime. However, so far, few empirical studies have been conducted to examine the sociology of defamation litigation in China.⁴ In addition, the few previous studies used as sample cases reported by the Chinese media. Generally speaking, the media will not cover all defamation cases brought to the court and will not cover the whole process of the litigation. To attract audience interest, the media tend to cover those newsworthy cases or only the most newsworthy parts of the cases, which are likely to be the sensational and controversial elements. As the media is also one party of the litigants, either directly involved in the litigation, or as an interest group being threatened by the litigation, the media may also want to selectively publish certain cases or certain process of the litigation to win over public sympathy in specific cases or cry for press freedom and free speech to make the overall atmosphere favorable. Therefore, it is highly likely that sample defamation litigation based exclusively on data drawn from news media may exclude large varieties of defamation issues and ignore vital stages of the litigation process. However, lacking a systematic case report system, Chinese court opinions are generally not available to the public.⁵ Considering the limits of previous studies and the unavailability of the nationwide data, the article chose Chengdu for the analysis of the press and libel lawsuits.

Chengdu is the capital city of Sichuan province. With more than 10 million people, it is the fourth largest city in China after Beijing, Shanghai and Chongqing. During the media transformation in China, Chengdu became the star in the newspaper market. From the middle of the 1990s to early 2000s, the newspaper market in Chengdu had been the forerunner of China's media market.⁶

The development of the newspaper in Chengdu may be said to represent the evolution of Chinese media. Before the 1990s, the newspaper market was dominated by party media essentially functioning as the propaganda instrument of the Party/government. Only two party newspapers existed: one was the *Sichuan Daily*, the official paper of Sichuan Province Communist Party Committee; the other was the *Chengdu Evening News*, the official newspaper of Chengdu Municipal Communist Party Committee.

In the 1990s, the government decided to develop the media market. It decided to give less financial support to the media, forcing them to compete in the market. In fending for themselves, the newspapers discovered that there was unprecedented profit in the market. The enormous

⁴Benjamin L. Liebman, *Innovation through intimidation: An empirical account of defamation litigation in China*, 47 Harv. Int'l LJ 33-177 (2006).

⁵In general, only parties to cases and their lawyers can access the files of the case. Traditionally, the Supreme People's Court selectively publishes some cases for the reference of courts all over China. Other courts selectively publish cases for their own reference or their subordinate courts. Though these cases when codified into published books or posted on the court's website can also be accessed by the general public, unpublished cases are not open to the public.

⁶See Youguohua, *Chengdu Diqu Shiminbao Yanjiu (On commercial newspaper in Chengdu)*, unpublished master thesis, Sichuan Academy of Social Sciences, 2001; Sun Yanjun, *Boye Zhongguo (Newspaper Industry in China)*, (2002).

profits lured entrants into the media market so that the number of newspapers in China increased from 178 in 1978 to more than 2,040 in 1993.⁷ In Chengdu, competition began with founding of the *West China Metropolis Daily*. Without government subsidy, the newspaper had to depend entirely on the market. The market-driven initiative and rapid development of the paper encouraged other newspapers to follow suit, which in turn sparked off the start of many other newspapers all over China.

The heyday of Chengdu newspaper market was from 1995 to 2001. Seven major daily newspapers competed in the same market⁸, together with the *Sichuan Daily* and about 40 other specialized newspapers. The fierce market competition was compared to “the seven kingdoms of the Warring States period” by the Chinese journalism community.⁹ Commentators contended that no other cities in China had witnessed a more competitive newspaper market.¹⁰

The increased number of non-party newspapers and fierce newspaper market competition began to worry the Party and the government. By the end of 1996, a three-year-plan of “rectifying” the newspaper industry was proposed by the General Administration of Press and Publication (GAPP). However, because of conflicts of interest between different departments and between the central and local governments,¹¹ the 1996 “rectifying” plan did not meet government expectations. The GAPP and the Central Propaganda Department (CPD) had to hand down directives in 1999 and 2003 to reiterate the rectification of the newspaper market. At the national level, the rectification was finally completed at the end of 2003. Non-party newspapers were either closed down or forced to affiliate with Party newspaper groups. In Chengdu, substantial rectification was carried out in 2001. *The Shu Daily* and the *Business Morning* were closed down. The *West China Metropolis Daily* and the *Tianfu Morning*, which had been started by the Sichuan Daily newspaper group, was folded back to the group to be under the direct control of the Sichuan province Party committee. The *Chengdu Business News* was ordered to group with the *Chengdu Daily* and the *Chengdu Evening News* to be under the Chengdu Daily newspaper group, under the direct control of the Chengdu Party Committee.

The rise and fall of the Chengdu newspaper is similar to what happened all over China except that Chengdu was the city that started it all. As most media defamation suits are launched against the newspaper,¹² studying the defamation suits in a trailblazing city should therefore be

⁷ Liang Heng, *Zhongguo baoye 50 nian (50 years of Chinese newspaper industry)*, Xinwen Chuanbao (Journalism and Communication), June 1996, 7-12

⁸ *The West China Metropolis News*, the *Chengdu Business News*, the *Chengdu Evening News*, the *Business Morning*, the *Shu Daily*, the *Tianfu Morning*, and the *Sichuan Youth Daily*.

⁹ The period of the Warring States (Zhanguo) refers to the era of about 475 BCE to 221 BCE when there was wars, often brutal, among the seven major states whose ambition was to conquer the rest.

¹⁰ Sun Yanjun, *Baoye Zhongguo (Newspaper Industry in China)* (2002)

¹¹ All newspapers must have supervising and sponsoring institutions. So at the heyday of Chinese newspaper market, nearly every ministerial and provincial department and governments from central to local also had their newspapers.

¹² Many empirical studies have found disproportionate number of newspaper defendants in defamation cases. E.g., in Liebman's study of 223 Chinese defamation cases, 157 cases were against newspaper (70.4%), supra 4. The same is true in other countries. Marc A. Franklin, *Suing Media for Libel: A Litigation Study*, 3 Am.B.Found.Res.J. 795 (1981) (finding that newspapers were defendants in 69.5% of suits against the media in U.S. Michael Newcity, *The Sociology of Defamation in Australia and the United States*, 26 Tex.Int'l L.J.1 (1991) (finding that 58.5% suits against the media were brought against newspapers in Australia). Ursula Cheer, *Myths and Realities about the chilling effect: The New Zealand media's experience of defamation law* 13 Torts Law Journal 259 (2005) (noting 44% of defamation cases against the media in New Zealand for the period of 1998-2000 were newspapers).

instructive as to the potential development of defamation in China. Of course given China's size and diversity, caution should be exercised when attempting to generalize from Chengdu. Yet, the Chengdu cases, combined with interviews and a general comparison with previous empirical studies, do yield observations into the current defamation issues faced by Chinese media. In addition, due to the difficulty of empirical legal studies in China and the paucity of such a study, the empirical data from Chengdu will add to the understanding in Chinese legal system in general and defamation law and media studies in particular.

This article is composed of eight parts. Part II discusses methodology and provides background information of the media environment of Chengdu. Part III to Party VIII analyses 145 defamation cases with media (author) defendants brought in Chengdu since the promulgation of the General Principles.

Part III begins with the overall trend of defamation cases during the two decades, showing that new legislation and media commercialization was the combined cause of the explosion of defamation litigation in China. Part III then examines the trend of the litigation in terms of outcomes. Plaintiff and defendant success rate reveals: (1) Chinese defamation law has developed from sole purpose of the protection of reputation to conscious balance of reputation and freedom of expression; (2) Chinese media is facing complex situation in defamation litigation. Generally they are treated more favorable at their home base than outside. (3) Media's success rate in defamation action is also highly correlated with the general atmosphere of media control and regulation.

Part IV examines the five categories of plaintiffs that comprise most of the litigations: ordinary person, business and corporations, government officials and government entities, professionals and relatives of the deceased. Ordinary person initiated the great majority of the cases, but their chance of prevalence is the lowest in the court. And the media prevail in more cases that they lose. Business and corporations, Professionals, government officials and government entities are all successfully in their lawsuits. Defamation of the dead is also actionable, and the near relatives of the deceased also have great chance of prevalence when confronting media (author) defendants.

Part V investigates the targets of defamation cases, revealing that although a vast number of cases are brought against commercialized print media, a considerable amount of lawsuits are initiated against party media. Furthermore, Party media are not more successful than their commercial counterpart in defamation disputes.

Part VI goes through the remedies for defamation. Four types of non-monetary compensation are commonly awarded for defamation: stoppage of infringement, rehabilitation of lost reputation, elimination of ill effects and apology. Monetary compensation though is not encouraged, it is widely allowed to successful plaintiffs. However, damages awarded usually stay at a moderate level.

Part VII examines the legal arguments for the courts to determine defamation cases. From an overall result perspective, truth is still the crucial defense in defamation cases. Though the courts were aware of the free speech issue in defamation cases, the constitutional right of freedom of expression was rarely raised as the major legal argument.

Part VIII places the empirical findings in a larger context, showing that generally the judiciary was willing to provide protection to the media and freedom of expression when the laws were clearly stipulated. However, constitutional argument for freedom of expression has by far not been established as a strong defense in defamation issues. And Chinese media's political

affiliation and fast commercialization largely defeat its argument for freedom of expression and press freedom in defamation cases.

II. SOURCE MATERIAL AND METHOD

In this study, the researchers examined data about defamation suits in the court dockets in Chengdu: five district courts (Jinjiang, Qingyang, Chenghua, Jinniu, and Wuhou), the Chengdu Intermediate Court and the Sichuan Province High Court. The data were collected in Chengdu in August 2005. Because the commencement of civil defamation suits in China can be traced to the General Principles of 1987, which incorporated the protection of reputation, data collection traced the dockets from January 1, 1987 to July 31, 2005. A total of 275 first instance defamation cases were docketed in the five district courts; among them 135 cases had the media or author as defendants. A total of 20 first instance cases were docketed in the Chengdu Intermediate Court, among them 10 were with media or author defendants. No first instance cases were found in the Sichuan Province High Court.

Based on the 295 first instance defamation cases from the five district courts and the Chengdu Intermediate Court, court opinions of a total of 145 cases with media or author defendants were collected and analyzed. For some cases, relevant court documents such as reports of the adjudication committee¹³ and reports to the higher court were also collected and analyzed. The court opinions and relevant court documents are on file with the author. In citation, the official file name and file number are provided.

In addition to cases retrieved from Chengdu, 14 defamation cases initiated outside Chengdu but involving Chengdu media defendants were also collected for analysis. These 14 cases were identified through interviews with staff from Chengdu's newspapers; six of the cases were provided by legal personnel at the newspapers, two were provided by newspaper lawyers, and eight were retrieved from the Internet from tip-offs during interviews.

The researchers also interviewed staff who were in charge of legal affairs in the existent major newspapers in Chengdu: the *Sichuan Daily*, the *West China Metropolis Daily*, the *Chengdu Business News*, the *Chengdu Daily*, and the *Chengdu Evening News*. Only the *Chengdu Business News* had a legal affairs department. Established in 2003, it had a law graduate as its sole staff at the time of the interview. The department was in charge of all legal affairs of the newspaper, including litigation. It also offered basic legal training courses for new journalists, submitting weekly legal affairs memo to the newspaper's editorial board and editing internal references on legal affairs for journalists. These internal references were short articles based on a recent case or dispute involving the newspaper. Sometimes, the internal references offered legal advice. They were uploaded onto the newspaper's intranet for access by the journalists.¹⁴

The other newspapers had no specific legal affairs departments. Staff handling legal affairs came from the general administrative office and had no special training in law. These four newspapers also hire lawyers for litigation and complex legal affairs. The *Chengdu Daily* and the

¹³Every court has its adjudication committee. It is usually made up of the president, vice presidents, and chief judges of the court. Committee members are nominated by the president of the court and appointed and removed by the standing committees of the people's congress at the corresponding level. The committee is tasked with summarizing trial experiences of the court, discussing and reviewing the handling of major and controversial cases in its jurisdiction.

¹⁴Internal references from 2003 to 2004 are on file with the researchers.

Chengdu Evening News share the same lawyer. The *Sichuan Daily* Newspaper Group engages a lawyer group with seven lawyers for all legal matters not only from the *Sichuan Daily* but also from other newspapers affiliating with Sichuan Daily Newspaper Group. However, the *West China Metropolis Daily*, which is owned by the Sichuan Daily Newspaper Group, has its own lawyer. Therefore, the researchers also interviewed lawyers serving these newspapers. For the law firm engaged by the Sichuan Daily Newspaper Group, the director of the group and two other lawyers who had handled most of the newspaper's defamation disputes were interviewed. The interview was conducted at the director's office with all three lawyers present together.

Besides these legal staff and media lawyers, the researchers also interviewed senior officials from the Chengdu Municipality Propaganda Bureau. Each interview lasted about one hour and handwritten notes were taken. During the analysis of the data and the writing of the paper, some judges, reporters and newspaper executives concerning specific cases were also contacted. Confidentiality was promised to all interviewees and informants; no further details of these interviewees and informants will be provided in citations and references.

III. OVERALL TREND

A. *The Coming of Defamation Litigation Against the Media*

In Chengdu, the first defamation case was brought in 1988, one year after the promulgation of the General Principles. A year after that, in 1989, the city witnessed its first media libel case. However, from an overall perspective, in the subsequent years of the General Principles, defamation cases, including media libel cases, were rare.

Of course, the rarity of litigation in the beginning years of a new legislation can be partly explained by the unfamiliarity of legal rights. The concept of legal protection of reputation was new and there was a general lack of public consciousness of civil rights¹⁵ so that the parties simply might not realize there had been such a legal right. In some instances even if they knew, they might have no idea on how to take such a case to court. For example, in a 1993 case, the Jinjiang District court told the plaintiff that he should first choose a court with jurisdiction and that he could only sue the newspaper or the author, not the editor of the article.¹⁶

Before commercial media spread in China in the mid of 1990s, plaintiffs might be frustrated with the idea of suing the media. As shown in Table 1, of the seven cases initiated from 1987 to 1990, no litigant was *de facto* unprivileged people: Two cases involved household names and influential celebrities, and both were once non-party democrats' members of the National Committee of the Chinese People's Political Consultative Conference (CPPCC).¹⁷ Of

¹⁵ See Xia Yong, ZOUXIANG QUANLI DE SHIDAI (AN ERA OF CIVIL RIGHTS)

¹⁶ See Chengdushi Jinjiangqu Renmin Fayuan Minshi Panjueshu, (1993) Jin Min Chu Zi Di 705 Hao [Chengdu Municipal Jinjiang District Court Civil Case Court Opinion, (1993) Jin Civil Initial No. 705]. Chinese defamation law does not grant the litigation against editors or others other than the person who authored the allegedly defamatory article or the media who published the article. See Zuigao Renmin Rayuan Guanyu Qin Hai Minyuquan Anjian Youguan Baokanshe Yingfou Liewei Beigao he Ruhe Shiyong Guanxia Wenti de Pifu, Fa Min Fu (1988) 11 Hao [Reply of the Supreme People's Court on Whether the Relevant Newspapers and Magazines Shall Be Listed as Defendants in the Case Concerning Infringement upon the Right to Reputation and the Jurisdiction Thereof, Legal Reply (1988) No.11]

¹⁷ The CPPCC is designed as an important instrument for socialist democracy promised by the CCP at the establishment of the PRC. The national committee of the CPPCC is made up of deputies from the CCP, eight democratic parties, non-party democrats and people's organizations, deputies from various minority nationalities and

the other cases, one involved a government official, one involved a training officer of a silk factory, and one involved a rich farmer, who was known as a "specialized household" (zhuanyehu)¹⁸ and was famous in his town, and two cases involved lawyers, who should be familiar with the law and the litigation.

TABLE 1: CASE PARTICULARS OF EARLIER DEFAMATION CASES AGAINST THE MEDIA (1987 TO 1990)

<i>Cases</i> ¹⁹	1	2	3	4	5	6	7
<i>Start Year of Litigation</i>	1989	1989	1989	1990	1990	1990	1990
<i>Identity of the Plaintiff</i>	Training officer of a factory	Film star	(On behalf of a deceased famous monk)	Government official	Specialized household	Lawyer	Lawyer

The lack of confidence to sue the official media was not only existed among ordinary people; the courts themselves were lack of confidence on how to handle the issues involving the party media and citizen's legal rights. From 1987 to 1990, all media defamation cases took an extremely long time to resolve (Table 2). However, defamation suits against non-media defendants were settled comparatively quickly (Table 3).

TABLE 2: LENGTH OF DEFAMATION LITIGATION AGAINST MEDIA DEFENDANT (1987 TO 1990)

<i>Cases</i> ²⁰	<i>First Instance</i>		<i>Appellate</i>		<i>Duration (Months)</i>
	<i>Date Started</i>	<i>Date of Decision</i>	<i>Date Started</i>	<i>Date of Decision</i>	
1	Sep 1989	Nov 1992			38
2	July 1989	June 1990			11
3	Aug 1989	May 1993	June 1993	Aug 1998	108
4	Oct 1990	March 1995			53

from all walks of life, and Taiwan, Hong Kong and Macao compatriots and returned overseas Chinese, as well as specially invited people.

Therefore, non CCP members in the CPPCC are to some extent sensitive in China as they symbolized the promised democracy under the policy of "long-term coexistence and mutual supervision" between the CCP and the democratic parties and non-party personages.

¹⁸ In the 1980s, with the economic reform, Chinese farmers were encouraged to develop individual businesses and some household then specialized in nonagricultural activities and became "specialized household" (zhuanyehu). These "specialized households" belonged to the group first to become rich and were usually commended by the local government as "model farmers" for other rural people.

¹⁹ Cases were listed in Appendix

²⁰ See Table 1; see also Appendix .

5	Nov 1990	June 1995	June 1995	March 1998	88
6	Sep 1990	May 1995			56
7	Oct 1990	Dec 1997	Jan 1997	Oct 1998	96

TABLE 3: LENGTH OF DEFAMATION LITIGATION AGAINST NON-MEDIA DEFENDANT (1987 TO 1990)

Cases ²¹	First instance		Duration	
	Date Started	Date of Decision	(Days)	(Months)
1	March 22, 1988	May 12, 1988	51	(1.7)
2	Nov 6, 1989	March 3, 1990	117	(3.9)
3	June 8, 1989	Nov 16, 1989	161	(5.3)

As shown in Table 2 and Table 3, the average period for defamation litigation with media defendants was 64 months: 49 months for first instance and 39 months for appellate procedure. However, the average period for litigation against non-media defendants was only 3.6 months, and there were no appeal cases.

During the adjudication of defamation cases against the media, the district courts not only paid special attention to these cases by discussing the cases with its own adjudication committee, which only meets to handle sensitive or difficult cases, but also submitted them to higher courts for guidance.²²

Having been accustomed to being unchallenged because they were government press, the Chinese media were uneasy with defamation suits filed by their readers. The media either arrogantly ignored the complaints and litigation or attempted to squelch the cases through extra-legal means such as appealing to higher officials or resorting to public opinion by publishing only a one-sided account of the case. For example, in the case involving Liang Tao and the *Chengdu Evening News*, four years after the case was filed, the Jinjiang District Court stated that though the court had attempted mediation between the parties, the *Chengdu Evening News* did not respond to the mediation.²³

Of the seven cases in Table 2, one was decided in favor of the media, two were settled through court mediation and three were decided against the media. In those three cases, the media appealed against the unfavorable verdicts. In contrast, there was no appeal among the non-media defendant cases.

²¹ Case 1: Xu Pengzhang v. Chengdu Wangjian Tomb Cultural Relic Reservation Institute (1988) Chengxi Fa Min Di 411 Hao [(1988) Chengxi Civil No 411]; Case 2: Lin Ou v. Ji Yan, (1989) Chengxi Fa Min Di 1118 Hao [(1989) Chengxi Civil No 1118]; Case 3: Zhang Yizhen v. Cao Zaolan (1989) Chengxi Fa Min Di 2039 Hao [(1989) Chengxi Civil No 2039]

²² For example, in the case of Fan Yinglian v. Jing Yongxiang, Sichuan Province High court and the Supreme People's Court issued a series of directives for the adjudication of the case.

²³ See Yuangao Liang Tao yu Beigao Chengdu Wanbaoshe Minyuquan Yian Qingkuang baogao (Report on Defamation Disputes Concerning Plaintiff Liang Tao and Defendant *Chengdu Evening News*) (1994).

On appeal, the higher courts reversed two cases in favor of the media and disallowed damages in the third case. Since the first instance courts had ruled these cases following instructions laid down by the higher courts (the appellate courts), therefore, the reversal was tantamount to a reversal of their previous decision, which suggests that the courts themselves are not confident with the handling of defamation cases involving media defendants in the initial years of the General Principles. The outcome also suggests that the media were *de facto* strong and powerful and still benefited from the legacy of the traditional official position in defamation litigation, especially when faced with relatively weaker parties.

Of the two cases reversed in the favor of the media on appeal, the plaintiffs were ordinary, unprivileged people. The only appellate case without a reversal of the plaintiff friendly verdict might due to the strong background of the parties involved and the controversial nature of the issues related.²⁴ In the case, the aggrieved party, Haideng Monk was a famous monk and a member of the Chinese People's Political Consultative Conference (CPPCC).²⁵ The author defendant was a reporter of the *Sichuan Daily*. Though the allegedly defamatory article was not published by the *Sichuan Daily*, the *Sichuan Daily* backed up the reporter by stating that he was an excellent reporter and an honest Party member. In the reply to the Chengdu Intermediate Court's (the first instance court of the case) query to the handling of the case, the Sichuan Province High Court explicitly demonstrated its concern that the case was highly controversial, and would have great impact on Buddhist, Wushu and journalism communities.²⁶ Later, in the reply to the query of the Sichuan Province High Court, the SPC recommended the court to try its best to settle the case through mediation.²⁷ As a result, the case dragged from 1989 to 1998. And in 1995, the Party's political-legal committee²⁸ of Sichuan province advised the Sichuan Province High Court to only affirm the non-monetary remedies of an open apology and stoppage of infringement, and to disallow monetary compensation.²⁹ However, the court still felt it difficult to satisfy all the parties. The reply of the Political-Legal Committee was dated March 28, 1995; till December 5, 1996, the adjudication committee of the Sichuan Province High Court decided to follow the suggestion, and after another two years, on August 7, 1998, the decision was finally pronounced as the court opinion.

²⁴ See Appendix , Case 3.

²⁵ Haideng Monk was dead, his adopted son sued on behalf of him.

²⁶ See (1991) Chuan Fa Minshi Zi Di 16 Hao [(1991) Chuan Legal Civil Interpretation No.16]

²⁷ See (1992) Min Ta Zi Di 23 Hao [(1992) Civil Miscellanies No.23]

²⁸ At each level of Chinese administrative hierarchy, the Party committee has a subsidiary organ known as a Political-Legal Committee (zhengfawei), which brings together the heads of the police, procuratorate, court, department of justice, state-security department, so that they can coordinate their work. Formally, the Political-Legal Committees are meant to "supervise" and "coordinate" the work of the various legal organs on "major and complex" cases. The courts can seek the committee's guidance in deciding important or difficult cases and the committee can intervene into specific cases under its own discretion.

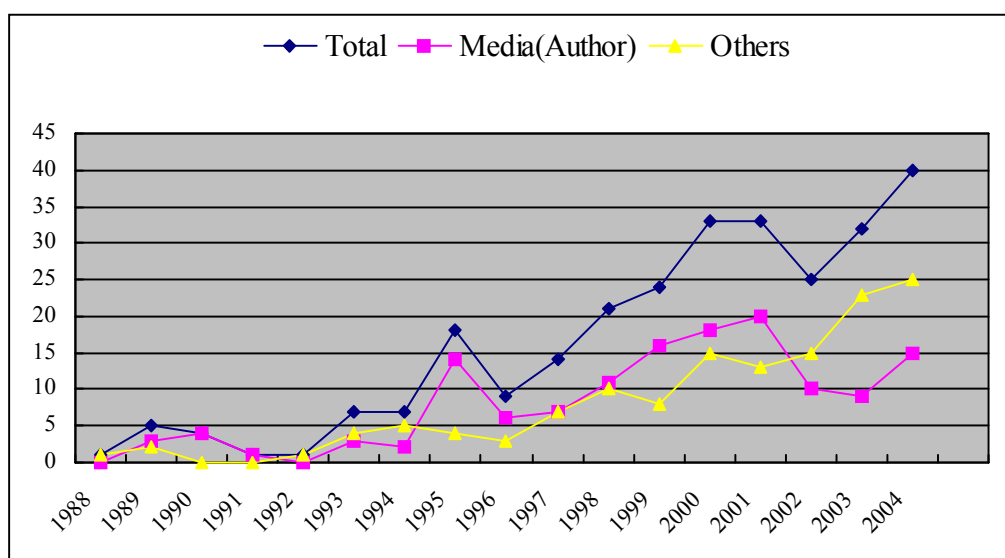
²⁹ Chuan Zhengfa Han (1995) 19 Hao [Chuan Political Legal Reply (1995) No.19]. The first instance court allowed 4000 yuan damages as well an open apology and stoppage of the infringement.

B. Explosion of Defamation Litigation Against the Media/Author

Defamation cases against the media/author developed with the explosion of general defamation cases. Of 295 defamation cases initiated from 1987 to 2005, 145 (49.2%) of them were brought against the media (author) defendant, constituting nearly half of the defamation suits.

Libel against media fluctuated with the development of the media market in Chengdu. As Figure 1 shows, from 1987 to 1994, few media organizations were sued for defamation.

FIGURE 1: DEFAMATION CASES BY TYPE OF DEFENDANTS (1987-2004)



In that period there were also few media organizations. Party media monopolized the media market and the major function of the media was to carry out the propaganda tasks handed down by the Party or the government. Thus, on the one hand, reports were largely regarded as the voice of the Party or the government and so few people dared to challenge them; on the other hand, the absence of competition meant less incentive for the media to cover controversial issues, which in turn reduced the chances of defamation.

The birth of the *West China Metropolis Daily* in 1995 sparked off the competition in Chengdu's newspaper market. As shown in Figure 1, the number of libel cases involving the media increased from two in 1994 to 13 in 1995, equaling in the total number of cases filed in the previous eight years from 1987 to 1994. Of the 13 cases, three were against the *West China Metropolis Daily*; two were against the *Shu Daily*; one against the *Chengdu Business News* and two against the *Chengdu Evening News*.

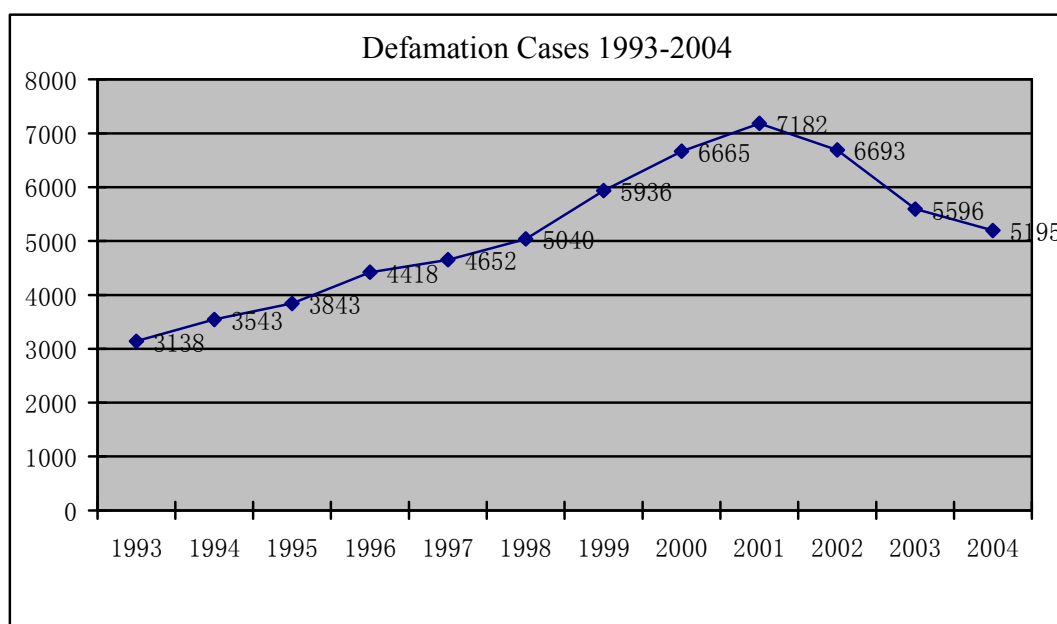
The period from 1998 to 2001 was the heyday of the Chengdu newspaper market with seven daily newspapers competing in the market. The fierce competition made Chengdu at the edge of the Chinese newspaper market. This period also saw most of the libel suits against the media. A total of 65 suits were brought against the media during these years, constituting 44.8% (65 out of 145) of the total number of defamation lawsuits against the media.

After the newspaper rectification in Chengdu in 2001, the number of defamation suits against the media dropped suddenly. As shown in figure 1, the number of cases against the media (author) defendant decreased in 2002 from a total of 20 cases of 2001 to 10 cases, and the drop

continued in 2003 and 2004. However, defamation cases against non-media defendants remained increasing trend.

The trend of increase and decrease of defamation cases against the media (author) were consistent with the outcome reflected in the national statistics of defamation cases. China Law Yearbook began to publish statistics of defamation cases since 1993. As shown in Figure 2, defamation cases generally increased from 1993 to 2001. The number of cases peaked in 2001 before dropping in 2002, 2003, and 2004.

FIGURE 2: TOTAL NUMBER OF DEFAMATION CASES (1993-2004)³⁰



Aside from media transition, the gradual awareness of legal rights parallels the economic reform. If Post's³¹ three concepts of reputation are right, the Chinese trend of defamation litigations confirms his contention that the concept of defamation as property was best understood in the market society. With the market economy process, traditional Chinese society fragmented and was gradually taken over by the market society.³² Without traditional identity bond and community ties of the acquaintance society (*shuren shehui*)³³, other channels for defamation redress became unavailable or more expensive or simply disappeared. Thus, the court becomes the most convenient forum for such complaints. Furthermore, as people are interacting more among strangers than acquaintances, they do not have to adopt an amicable approach to resolve disputes. And as the media are relatively impersonal and distant, suing the media

³⁰ Data are taken from the China Law Yearbooks from 1994 to 2004. The 2002 volume of the yearbook does not include detailed statistics on defamation cases; the total number of cases for 2002 is thus taken from an official news report of Chinese judiciary work of 2002 (*Zhongguo shenpan 2002 (Trial work in 2002)*). With the exception of the statistics on defamation cases, which was omitted from the Yearbook, other statistics in the news report are identical to those in the Yearbook for 2002, strongly suggesting that the data are from the same source.

³¹ Robert C. Post The social foundations of defamation law: Reputation and the constitution 74 Calif.L.Rev.691

³² Sun Liping, DUANLI: ERSHI SHIJI JIUSHI NIANDAI YILAI DE ZHONGGUO SHEHUI (CLEAVAGE: CHINESE SOCIETY AFTER 1990S).

³³ Fei Xiaotong, XIANGTU ZHONGGUO (VILLAGE CHINA)

imposes less embarrassment (or threat) than suing a person lives in the city. During interviews, lawyers and media practitioners confirmed that parties with long ties with the media usually prefer to resolve disputes out of court.

C. *The Outcome of Defamation Suits Against Media (Author) Defendants*

Observers of Chinese defamation litigation have argued that Chinese media organizations lose most of their cases.³⁴ The analysis in this paper, however, did not support the observation of a high percentage of plaintiff success. Of the 145 suits brought against the media (author), the media (author) defendants prevailed in 52 cases (35.9%) at first instance, while plaintiffs prevailed in 65, a success rate of 44.8%.³⁵

Investigations of defamation disputes settled by the media complied with the plaintiff success rate in the court. In 2004, the *Chengdu Evening News* handled 46 disputes arising from defamation complaints.³⁶ Of these complaints, 17 (40%) were settled in favor of the complainants.

Compared with the result of the analyses from Chen Zhiwu and Liebman, this rate is relatively low. As Chen's and Liebman's data are based on media reports, it is possible the media might have reported lost cases to win sympathy from the public and to justify greater institutional freedom. This suggests that data based on media reported cases might overrepresent cases lost by the media. In his study, Liebman himself expressed concern about the limitation of his data.

In addition, both Chen and Liebman found that media have a homeground advantage: they have more chance to win at their home base. As the majority of the litigations were handled in Chengdu and against Chengdu media, the media might be in a relatively favorable position. The media's outside of Chengdu litigation experiences and the outcome of defamation litigation against non-Chengdu media however, tallied with the hypothesis. Of the cases collected in the data concerning non-Chengdu media, the media prevailed in three of the ten cases (30%), while the plaintiff prevailed in six (60%), and voluntarily withdrew one.³⁷ And of 14 cases launched out of Chengdu against Chengdu media, the media only prevailed in four of them (28.6%).

³⁴See generally Zhou Ze, *Xinwen Guansi: Meiti Weihe Zong Hanyuan (Cases with Media Defendants: Why the Media Forever Complain)*, <http://rmfyb.chinacourt.org/public/detail.php?id=31759>; See also Chen Ziwu, *Media Defendants in the Chinese Courts*, <http://chinalaw.law.yale.edu/MediaJeopardy%20-%20Translation11.pdf> (with an investigation of 132 media libel cases, Chen Zhiwu found the plaintiff success rate was 69.23%); Liebman, *supra* 4, the plaintiff success rate was 67% in Liebman's data.

³⁵ 50 cases went the full trial. 13 were settled before trial. Among the 13 settled cases, seven were settled with court mediation, one was mediated by the Chengdu municipal political legal committee, one by the propaganda bureau of Chengdu municipal Communist Party Committee, and four cases reached voluntary agreements.

³⁶ A total of 50 disputes were handled, but four cases were related to other issues.

³⁷ Of the ten cases, two cases also involved Chengdu media as defendants, and one resulted in plaintiff success, one resulted in media success.

TABLE 4: MEDIA SUCCESS RATE BY JURISDICTION

	<i>Chengdu Media in Chengdu</i>	<i>Non-Chengdu Media in Chengdu</i>	<i>Chengdu Media Outside Chengdu</i>
Total	137	10	14
Cases of Plaintiff Success	60	6	10
Cases of Media Success	50	3	4
Cases of Unknown Outcome	27	1	0
Plaintiff Success Rate	43.5%	60%	71.4%
Media Success Rate	36.2%	30%	28.6%

Both Chen and Liebman had largely attributed the disparities of success rate at different jurisdiction to what might be called local protectionism. That is, the local court may consciously or subconsciously lean toward local interest in a defamation case involving a local party. This result is heightened by the fact that Chinese courts have close affiliation with the local government.³⁸ However, an investigation of the allegedly defamatory articles reveals another side of the story. As Chinese media are not allowed to station correspondents outside their corresponding administrative level, most of the local media do not have correspondents outside Chengdu.³⁹ The major newspapers in Chengdu, only the *Sichuan Daily* and the *West Metropolis Daily* have correspondents in other Sichuan cities other than Chengdu, but they have no correspondents outside Sichuan province. Other newspapers, such as the *Chengdu Business News*, the *Chengdu Daily*, the *Chengdu Evening News* and the *Tianfu Morning*, have no correspondents outside Chengdu. Therefore, for stories originated from other places, the media can either choose to dispatch their own reporters immediately to the spot or depend on other media and freelancers' feeds to fill their pages. For the sake of the cost and the immediacy of the news, the media are more willing to choose the latter. Of the cases initiated outside Chengdu with the Chengdu media, six involved republication of contents in other media. Of the cases initiated by plaintiffs in Chengdu against non-Chengdu media, in four cases the disputed articles were contributed by freelancers. Without first-hand investigation and with less attention to accuracy in quoting from others, it was understandable that the media might have less standing in the court. Moreover, litigation outside the media's home base may be relatively more difficult and costly to provide convincing evidence, and thus, can significantly lower the media's chance of winning. Nevertheless, for most local media, the great majority of defamation litigations they

³⁸ Chinese courts need to answer for the Congress and its standing committee at the corresponding level. The Party has established the Political Legal Committee at and above county levels to supervising and coordinating the function of the Court, the Procuratorate and the Public Security Bureau at its corresponding level. Local Party Committee and local government have the authority to decide the position of the officials and judges of the court and local court need to depend on the local government for financial support.

³⁹ The central media, such as the *People's Daily*, can station correspondents at provincial cities all over China, for provincial media, such as the *Sichuan Daily*, it can only station correspondents at prefectural cities within Sichuan province, for prefectural media, they are only allowed to station correspondents at county level cities within the prefecture's jurisdiction.

face do occur at their home base. Thus, the media's disadvantages in litigations are largely reduced.

Another point to notice is the proportion of defamation cases withdrawn by the plaintiff (26 out of 145, 17.9%). As most withdrawal cases were voluntarily initiated by the plaintiff because of a change of mind or a compromise with the media, these cases usually had little effect on the media. Most of the time, the media did not regard a withdrawal case as loss. During interviews, the media, journalists, media lawyers and legal affairs staff of the media generally showed little concern of the withdrawn cases. Some researchers in previous empirical studies of defamation litigation counted withdrawn or abandoned cases as cases with defendant's success, as in Cheer's (2005) study of the chilling effect of New Zealand's defamation law and defamation litigation. In counting these withdrawn cases as cases with an end favorable to the media (author) defendant, the plaintiff's chance of victory in suing the media is actually lower than it appears.

In addition, the plaintiffs' high chance of success only occurred in the earliest period of defamation litigation. For analysis, the years in questions were divided into three periods according to the development of Chengdu's media: 1987 to 1994 as the first period, 1995 to 2002 as the second period and the year of 2003 and after serves the third period (Table 5). During the first period, the average percentage was as high as 84.6%, while the media's success rate was only 7.7%.

TABLE 5: MEDIA AND PLAINTIFF SUCCESS RATE IN TERMS OF MEDIA DEVELOPMENT PERIOD (FIRST INSTANCE)

<i>Period</i>	1987-1994	1995-2002	2003-7/2005
<i>Total</i>	13	102	30
<i>Plaintiff Success Cases</i>	11	39	15
<i>Media (Author) Success Cases</i>	1	43	8
<i>Cases withdrawn</i>	1	18	7
<i>Mediated (No Clear Victor)</i>	0	2	0
<i>Plaintiff Success Rate</i>	84.6%	38.2%	50%
<i>Media (Author) Success Rate</i>	7.7%	42.2%	26.7%

Since 1995, the media and plaintiff success rate have become more balanced. The most interesting points were that during 1995 to 2002, the media received most favorable treatment from the court in terms of defamation litigations. The average media success at this period was 42.2%, the highest among the three periods, and the plaintiff success rate was 38.2%. It is also the only period that the media success rate outnumbered the plaintiff success rate.

In addition, during this period, appellate courts reversed more cases in the media's favor than any other period. As shown in Table 6, the reversal rate in appeals cases was very low; only eight out of the total of 45 appeals cases were ended with a reversed decision. Of the eight reversed cases, five were reversed in favor of the media and three were reversed in favor of the

plaintiff. Of the five cases reversed in the media (author) defendant's favor, three were reversed during the period of 1995 to 2002.

TABLE 6: OUTCOME OF APPELLATE CASES (1987-07/2005)

Year	Total (Trial Case)	Total (Appeals Cases)	Withdrew after Appeal	Reverse to		Remand (Success Unknown) ⁴⁰	Affirmed
				Media (Author) Success	Plaintiff Success		
1987- 07/2005	145	45	2	5	3	1	34

The high rate of plaintiff success during the first period can be partly explained by the attention paid to the protection of individual's right after the enactment of the General Principles in the judicial area. From 1988 to 1994, the SPC mentioned defamation issues every year in its Work Report. In 1989 and 1992, the reports also mentioned that in dealing with such cases, the People's Court should protect the right to reputation as well as uphold correct "public opinion supervision"; neither report though illustrated what was correct "public opinion supervision" and no further details of "public opinion supervision" could be elucidated from Chinese laws. Moreover, Gazettes of the SPC⁴¹ also published some defamation cases during these years.⁴² In all these published cases, the plaintiffs won. As China's courts tend to listen to higher courts' opinions, especially regarding relatively new legal issues and controversial issues, the court is more inclined to submit specific cases to higher court for instructions. Among the 13 cases from 1989 to 1994, at least five had been submitted to higher courts for opinions and followed the higher court's instructions in the final decision. Two of them were even submitted to the Supreme People's Court for instructions. At the national level, courts all over China shared the same diffidence in handling defamation cases during these years. From 1989 to 1994, the SPC issued a total of nine open interpretative replies⁴³ based on specific cases submitted by provincial high court. Excluding two replies about the procedural and jurisdictional problems, all other seven replies favored the opinion that the defendant violated the plaintiff's right to reputation.

If the speculation of the influence from the SPC is of rationale, then the increased media success and lower plaintiff success rate may also be partly due to the more liberal judicial

⁴⁰ From the court files, it can be seen the case was remanded for a retrial; however, no outcome of the retrial was available from the court documents.

⁴¹ Unlike common law countries, in China, precedents bear no influence on later similar cases. However, the Supreme People's Court publishes some cases in its Gazette as guidelines. Though these cases cannot be regarded as precedents, they do influence the court's judicial practice to some extent.

⁴² A total of six defamation cases from 1987 to 1994 were published, accessible from the database of Isinolaw. See *Gazette of the Supreme People's Court*, 1988, 1; 1989, 2; 1990, 2; 1990, 4; 1992, 2; 1993, 1.

⁴³ The Supreme People's Court is empowered to interpret laws concerning the specific judicial application. Besides issuing general interpretative documents concerning a specific law, the Court also issue detailed guidelines by answering specific questions raised by subordinate courts. The detailed guidelines can be made through phone calls, internal files, and fax or official documents. Sometimes, an official reply to a specific court will be made open as guidelines for all courts in handling similar cases. For more information on the SPC's open interpretative replies and the SPC's role in judicial interpretation, see generally Li Wei, *Judicial Interpretation in China*, 5 Willamette J. Int'l. & Dispute Res.87.

atmosphere since 1995. In the Work Report of the SPC, the court after mentioning defamation litigation as usual, also illustrated a case where the defendant won:

Recently, the Beijing Intermediate Court made final decision on the case of *Qiu Mantun v. Wang Chengxin and others*. The final verdict decided that defendants Wang Chengxin and the others did not infringe Qiu Mantun's reputational right by writing and publishing critical articles... Handling these cases impartially and reasonably by following the principle of seek truth from facts (shishi qiushi), [the People's Court] strengthened unification among the people, and advanced the construction of socialist spiritual civilization.⁴⁴

In the following years (from 1995-1999), the open replies made to specific cases all rejected the plaintiffs' allegations of defamation. Furthermore, in 1998, the Supreme people's Court issued a general interpretative document concerning the handling of defamation litigation that provided some free space for the media's report. For example, Article 6 states that reports based on documents made by government entities or activities were not actionable for defamation; Article 9 allowed criticism of products and services.⁴⁵

It also worth noticing that in retrospect, the period of 1995 to 2002 was the freest and most vibrant time for the media industry in Chengdu. Though it was believed at that period, the media had largely engaged in aggressive reporting, including sensational reporting and investigative reporting that were likely to provoke defamation allegations, the media nonetheless got away with more successes in the court (Table 5). However, after the government rectification, the plaintiff success rate rebounded. The average plaintiff success rate since 2003 increased to 50% and media success rate dropped to 26.7% (Table 5). The correlation with the change of media environment is so obvious that in 2002, the year that all media were grouped to the Party/government umbrella again, plaintiff success rate saw a sharp increase from 25% of 2001 to 40%.

This trend suggests that Chinese defamation issues can not be simply interpreted as legal issues. In Chinese context, the media, together with the court were still largely affiliated with and functioned for the Party/state. On this point, defamation litigation may be more or less influenced by the general political wane and power dynamics.

⁴⁴ *Gazette of the Supreme People's Court*, 1995(2). For more information about the case, see Beijingshi HaiDianqu Renmin Fayuan Minshi Panjueshu, (1999) Hai Min Chu Zi Di 2538 Hao [Beijing Municipality Haidian District Court Civil Case Court Opinion, (1999) Hai Civil Initial No. 2538](1999); Beijingshi Zhongji Renmin Fayuan Minshi Panjueshu, (1994) Zhong Min Zhong Zi Di 852 Hao [Beijing Intermediate Court Civil Case Court Opinion, (1994) Intermediate Civil Final No.852].

⁴⁵ Zuigao Renmin Fayuan Guanyu Shenli Minyuquan Anjian Ruogan Wenti de Jieshi, Fa Shi (1998) 26 Hao [Interpretation of the Supreme People's Court on the Trial of the Case Concerning the Right of Reputation, Judicial Interpretation (1998) No. 26] (hereafter the 1998 Interpretation).

IV. PLAINTIFFS

Plaintiffs were divided into six groups: ordinary person, professionals, famous person, relatives of the deceased, government officials and government entities, and corporate plaintiffs.

TABLE 7: PLAINTIFF SUCCESS RATE BY TYPE OF PLAINTIFFS⁴⁶

	<i>Total</i>	<i>Plaintiff Success</i>	<i>Media (author) Success</i>	<i>Outcome Unknown</i> ⁴⁷	<i>Plaintiff Success Rate</i>	<i>Media (author) Success Rate</i>
Ordinary Person	74	25	33	16	33.8%	44.6%
Corporate	46	20	15	11	43.5%	32.6%
Government Officials & Government Entities	8	4	2	2	50%	25%
Professionals	10	7	3	0	70%	30%
Relatives of the Deceased	6	5	1	0	83.3%	16.7%
Famous Person	1	1	0	0	100%	0%
Total	145	62	54	29	42.8%	37.2%

A. Ordinary Person

The vast majority of plaintiffs were ordinary people, constituting 51% (74 out of 145) of all defamation litigations launched against the media (Table 7). As plaintiffs categorized into this group are mainly workers, farmers, small businessman, retired people, unemployed and urban citizens, the findings suggest that common people have an increasing sense of legal rights in today's China and the Chinese court has become an important venue for the unprivileged in the society to redress their grievances. This may be more important than it seems as China's long history of authoritarian ruling and Chinese media's traditional official organ status may make it difficult for ordinary people to challenge the media.

However, free speech in Chinese media indicates boundaries. With these boundaries, the media cannot freely cover news. The only area where they have relative discretion is that relating to the real unprivileged. More coverage of this area is likely to invite more defamation disputes. And in the handling of these disputes, it is possible that the media may pay less attention to ordinary person plaintiffs' complaints. According to findings from the Iowa Libel Law Project, many plaintiffs in the United States actually had no intention to sue the media at the beginning, but the media's arrogance angered them to retaliate (Bezanson, 1985). In this sense, unattended

⁴⁶ The success calculated in the table was success at the final trial. That is, if a case was reversed, the reversed result was included instead of the result of the first trial.

⁴⁷ The outcome unknown cases included 26 withdrawal cases, two mediated cases but without information of the victor and one remand case. The remand case was ruled for the plaintiff in first instance.

or carelessly handled complaints are likely to aggravate the relations and push the individual to bring the disputes to the court.

Among all the plaintiffs, ordinary person plaintiffs prevailed least in their claims against the media. Among the 74 cases launched by ordinary persons, they only prevailed in 25 (33.8%). As shown in Table 7, other types of plaintiffs were much more successful in their defamation litigations. Of the 10 suits by professionals against the media, the plaintiffs won seven (70%). Of the six suits by the relatives of deceased people, the plaintiff won five (83.3%), government officials, famous persons and directors for business or corporations all fared better than ordinary plaintiffs in defamation cases against the media (author) defendant.

However, media (author) defendants fared much better in the category of cases initiated by ordinary plaintiffs. Of the 74 defamation cases initiated by ordinary persons, media (author) defendants prevailed in 33 cases (44.6%); it is the only category where media (author) defendants' success rate was higher than that of the plaintiffs (Table 7).

This rather complex outcome may be explained if ordinary persons are more litigious and less rational than other plaintiffs or if current law provides less protection to ordinary persons. Interviews with journalists and media lawyers, however, found to the contrary. According to their experience, though the General Principles and subsequent judicial interpretations have never imposed higher barriers on ordinary persons as plaintiffs, this category of plaintiffs is very careful about litigations. Compared with other types of plaintiffs, they are less willing to confront the media in the court. Also, generally, they possess less resource (such as money, time, etc.) to wage uncertain litigations. After all, the law privileges the media in reporting official documents and government proceedings⁴⁸ and in critical reporting of commercial products and services.⁴⁹ In fact, ordinary persons face fewer obstacles in defamation litigation against the media than government entities and corporate plaintiffs. Therefore, if ordinary persons are neither more litigious nor less legally protected, the only possible explanation left is that Chinese media are more powerful when confronting less privileged parties. But when faced with a more powerful party, the media (notwithstanding its argument for freedom of expression) has to step aside.

B. Corporate Plaintiffs

Corporate plaintiffs constituted the second largest group among all the plaintiffs. But compared with the number of defamation suits launched by ordinary people, the cases launched by corporate plaintiffs are nevertheless much less alarming.⁵⁰

However, this figure may not necessarily mean that corporate plaintiffs were less litigious. In the market economy, the media need to depend on corporations for advertisement. Thus, most of the time, the media will think carefully about critical report against a particular corporation. Media lawyers also admitted that when disputes arose, business and corporation are usually more willing to settle the matter out of court. In turn, most of the time, the media is more willing to compromise with a business or corporation than an individual person.

One editor-in-chief of a newspaper commented that corporations and the media are symbiotic in the market. The media depends on corporations for advertisement, and corporations

⁴⁸ The 1998 Interpretation, art.6

⁴⁹ The 1998 Interpretation, art.9

⁵⁰ Six cases were initiated by directors of business and corporations and 40 cases were initiated by business and corporations.

depend on the media for good publicity. Thus, when disputes arose between the media and corporations, both parties tend to pay great attention and neither wants to offend the other. During interviews with media staff handling legal affairs for the media, all said it was easier to reach an agreement with corporate plaintiffs. And businesses usually can agree with more flexible means of remedies, such as further positive reports, free advertisement, which the media may feel more acceptable than direct apologies and monetary compensation. However, for ordinary person plaintiffs, they may insist on an open apology, retraction or monetary compensation.

Legal affairs staff of the media explained that these flexible means were important for a compromise from the media as further reports and free advertisement were easier for the media to conduct, and usually could be conducted less embarrassingly and costly than an open apology or monetary compensation. Furthermore, monetary compensation would not only cause direct loss for the media but also would lead to unhappiness among employees. Of the newspapers interviewed, all had certain rules on obliging the relevant staff to share the damages paid. Usually, reporters, editors, as well as other relevant persons needed to pay 15% to 20% of the damages and legal fees if the investigating and publishing process found to be at fault. Since the relevant staff need to take money from their own pockets, cases with damages were likely to lead grumbles from the employees. For example, in the case of Huang Lu suing the *West China Metropolis Daily* for defamation and image right violation, the newspaper was ordered to pay the plaintiff damages of 60,360 yuan (approximately US\$7,545) and to shoulder the 10,198 yuan (approximately US\$1,274) court fees. The newspaper decided that the Feature division, which endorsed the publication of the defamatory story needed to reimburse 18,108 yuan (approximately US\$2,263) (15% of the total expense) to the newspaper. Of the 18,108 yuan (approximately US\$2,263), the chief editor needed to shoulder 9,054 yuan (approximately US\$1,132). The chief editor, also the head of the division, complained that the defamatory story was from freelancer, and he was at no fault. In the end, the editor-in-chief of the newspaper had to mediate and it was agreed that the editor only needed to reimburse the correction fee.⁵¹

Furthermore, it is easy for profit-making businesses and corporations to prove the actual loss after the publication, which makes it easier for them to win compared with ordinary persons. In the case concerning Chengdu Qinggong Shopping Mall and the *Business Morning*, the *Business Morning* published an article headlined “Qinggong shopping mall on bankrupt”. In the article, the newspaper alleged, “Qinggong shopping mall ... has been in swamp...Its turnover is as low as several hundred yuan per day. Since some suppliers stopped supplies, the shopping mall is on the brink of bankruptcy.” On the day of the publication of the article, dealers and suppliers of the mall began to offload their products and the Shopping Mall was forced to close down in the afternoon. Even with apologies and retractions from the newspaper on the next day and following days, the Shopping Mall was closed for two months before reopening.⁵²

As shown in Table 7, corporate plaintiffs' success rate was 43.5%, while the success rate of ordinary person plaintiffs was 33.8%. If lawsuits perform the effect of deterrence, lost of

⁵¹ Official documents of the reimbursement decision were on file with the author, the defamation case, Huang Lu v. the *West Metropolis Daily*, was included in this sample.

⁵² See Sichuansheng Chengdushi Zhongji Renmin Fayuan Minshi Panjueshu, (2000) Cheng Min Chu Zi Di 96 Hao [Sichuan Province Chengdu Intermediate Court Civil Case Court Opinion, (2000) Cheng Civil Initial No. 96]; Sichuansheng Gaoji Renmin Fayuan Minshi Panjueshu, (2000) Chuan Min Zhong Zi Di 168 Hao [Sichuan Province High Court Civil Case Court Opinion, (2000) Chuan Civil Final No. 168]

defamation suits may further reduce critical reports against business and corporations, and thus, reduce the number of defamation cases.

C. Public Officials and Government Entities

In recent years, many defamation cases involving government officials and government entities had high profiles in China. One Chinese media law scholar, Xuxun, even declared it as the fourth wave of defamation litigation against the media.⁵³ In her opinion, the first wave of defamation actions against the media was brought by ordinary person plaintiffs, the second was brought by celebrities, and the third was by business and corporations. However, in this study, public officials and government entities did not make up the majority of the plaintiffs. Of the 145 defamation cases, only three cases were started by government officials, and five were by government entities. Of those 14 cases from outside Chengdu against Chengdu media, only one was started by a former government official (a retired one); no case concerned government entities.

However, it is doubtful whether this data suggest that Chinese government officials and government entities are less litigious or more tolerant to critics. As media are not supposed to conduct news report openly and freely, the relative paucity of defamation cases by officials and government agencies partly suggests that media reports seldom went off the official track.

The positions and occupations of the official plaintiffs involved in defamation cases further strengthened the hypothesis. Analysis of the cases suggests that the litigant government officials and government entities occupied relatively inferior positions. For these three cases launched in Chengdu, one of the government officials was a division head of the Chengdu Industry and Commerce Bureau;⁵⁴ two others were the head of rural villages.⁵⁵ Of these three, two were against the *Chengdu Business News*, and one was against Sichuan TV station. And in the case occurred outside Chengdu, the official was the retired general secretary of the Party committee of Yichun, a small prefecture at Jiangxi province.⁵⁶ The case was initiated against the *China Youth Daily*, the *West China Metropolis Daily* and Nanfang Daily Newspaper Group. The

⁵³ See Xuxun, *Xinwen Qinquan Susong de Disici Langchao* (The Fourth Wave of Media Torts), in XINMEN QINQUAN SUSONG DE DISICI LANGCHOU-YIGE JIZHE YANZHONG DE XINWEN FAZHI YU LUNLI (THE FOURTH WAVE OF MEDIA TORTS-MEDIA LAW AND MEDIA ETHICS IN THE EYE OF A JOURNALIST), 122-130, (2002).

⁵⁴ See Liang Tao v. *Chengdu Business News* Chengdushi Jinjiangqu Renmin Fayuan Minshi Tiaojieshu, (1990) Jin Min Chu Zi Di 1586 Hao [Chengdu Municipality Jinjiang District Court Civil Case Court Mediation, (1990) Jin Civil Initial No. 1586]

⁵⁵ Zhou Keyun v. *Chengdu Business News*, Chengdushi Jinjiangqu Renmin Fayuan Minshi Tiaojieshu, (1999) Jin Min Chu Zi Di 233 Hao [Chengdu Municipality Jinjiang District Court Civil Case Court Mediation, (1999) Jin Civil Initial No.233]; Liu Dengyun v. Sichuan TV Station, Chengdushi Qingyangqu Renmin Fayuan Minshi Tiaojieshu, (2000) Qingyang Min Chu Zi Di 1713 Hao [Chengdu Municipality Qingyang District Court Civil Case Court Mediation, (2000) Qing Civil Initial No. 1713]; Chengdushi Zhongji Renmin Fayuan Minshi Tiaojieshu, (2000) Cheng Min Zhong Zi Di 903 Hao [Chengdu Intermediate Court Civil Case Court Mediation, (2000) Cheng Civil Final No.903]

It is hard to classify village head; officially, they are not belong to the public servant system and should not be classified as government officials. However, in China's context, they do belong to the administrative system and most of them are assigned by the government.

⁵⁶ See Jiangxisheng Nanchangshi Zhongji Renmin Fayuan Minshi Panjueshu, (2002) Hong Min Chu Zi Di 19 Hao [Jiangxi Province NanChang Intermediate Court Civil Case Court Opinion, (2002) Hong Min Civil Initial No.19]. The case was provided by legal staffs of the *West China Metropolis Daily*.

China Youth Daily was the original publisher, and the *West China Metropolis Daily* and a subsidiary newspaper of Nanfang Daily Newspaper Group reprinted the allegedly defamatory article.

The five government entities were a general office empowered with the administering of a wholesale market,⁵⁷ a county court,⁵⁸ the transportation office of a small county,⁵⁹ the cultural relic reservation institute of Santai (a small county of Sichuan Province)⁶⁰ and the Sichuan Petroleum administering Bureau.⁶¹ It can be seen that most defamation cases involved government officials and government entities were initiated by local officials, especially those from small towns and counties. Xu Xun's investigation also found that government officials and entities involved were from relatively small cities or was occupying inferior positions. She also found a considerable number of these suits were even from those being removed from their position because of malfeasance.⁶² And Liebman also found in his sample that no defamation cases were initiated by provincial or national officials and government entities.⁶³

As Chinese media are relatively free to criticize officials at lower levels, the occupational make-up of the government plaintiffs further suggest Chinese media's limited coverage scope. Of the cases, the great majority of cases involved media defendants of higher administrative levels than the plaintiffs. And in terms of political and commercial influence, these media defendants were also far more influential and powerful than the plaintiffs in general. Of the cases examined in the paper, only in the case of Sichuan Petroleum administering Bureau suing the *Sichuan Daily*, the plaintiff was of the same administrative level of the media defendant. And in the end, the case was withdrawn by the plaintiff.

In interviews, journalists and media lawyers said that officials and government entities usually do not need to stoop to the court for reputational loss. They have more convenient and efficient channels other than litigations to silence the media. One editor-in-chief illustrated the point by recounting a critical report on the construction work of a prefecture city. The local government of the city protested that the news report was false and defamatory and appealed to the Propaganda Bureaus of both Sichuan Province Communist Party committee and Chengdu Communist Party Committee. The local government also complained to the newspaper's parent

⁵⁷The case was initiated against *Sichuan Youth Daily*, the official newspaper of Sichuan Youth League. See Chengdushi Jinniuqu Renmin Fayuan Minshi Caidingshu, (1999) Qing Min Chu Zi di 1531Hao[Chengdu Municipality Jinniu District Court Civil Case Court Verdict, (1999) Jinniu Civil Initial No.1798].

⁵⁸ The case was initiated against the *Chengdu Business News*. See Chengdushi Qingyangqu Renmin Fayuan Minshi Tiaojieshu, (1995) Qingyang Min Chu Zi Di 1531 Hao [Chengdu Municipality Qingyang District Court Civil Case Court Mediation, (1995) Qing Civil Initial No. 1531]

⁵⁹ The case was initiated against the *Shu Daily*, the *China Youth Daily*, the *Sichuan Daily* and the author of the allegedly defamatory article. See Chengdushi Qingyangqu Renmin Fayuan Minshi Panjueshu, (1996) Jin Min Chu Zi Di 600 Hao [Chengdu Municipality Qingyang District Court Civil Case Court Opinion, (1996) Qing Civil Initial No. 600]; Sichuansheng Chengdushi Zhongji Renmin Fayuan Minshi Panjueshu, (1997) Cheng Min Zhong Zi Di 332 Hao [Sichuan Province Chengdu Intermediate Court Civil Case Court Opinion, (1997) Cheng Civil Final No.600]

⁶⁰The case was initiated against the *Chengdu Business News*. See Chengdushi Jinjiangqu Renmin Fayuan Minshi Panjueshu, (2000) Jin Min Chu Zi Di 260 Hao [Chengdu Municipality Jinjiang District Court Civil Case Court Opinion, (2000) Jin Civil Initial No. 260]

⁶¹ The case was initiated against the *Sichuan Daily*. See Sichuansheng Chengdushi Zhongji Renmin Fayuan Minshi Panjueshu, (1997) Cheng Min Chu Zi Di 127 Hao [Sichuan Province Chengdu Intermediate Court Civil Case Court Verdict, (1997) Cheng Civil Initial No.127]

⁶² See supra 53.

⁶³ See supra 4.

group. In the opinions from the parent group, the parent group stated that high officials from both provincial and municipal levels had showed their concern about the case, and hoped that the subsidiary newspaper could handle the issue carefully.⁶⁴ As a result, the newspaper had to agree to do a corrective report and remove the reporter from the city.⁶⁵

Incidents in other cities suggest that Chengdu's situation is not exceptional. In June 18, 2005, the *Nanchang Evening News* reported that the police director of Luohu (a district of Shenzhen) was imprisoned for bribery and other criminal conducts. However, the newspaper mistakenly published the picture of another female police director, Ren Changxia. As Ren was the good police model set up by the Ministry of Public Security, the mistake, if against any other ordinary person, just leading to a defamation suit, in this case, was defined as a major political error. The editor was fired and was forbidden to be hired within three years by any media in Jiangxi province; the office director of the editor-in-chief was also dismissed, the vice editor-in-chief was removed, and the editor-in-chief was disciplined with an administrative warning. The newspaper was closed for five days rectification.⁶⁶ Though this may be read as an extreme case, it does indicate the Party-state's sensitivity to government (official)'s dignity and its determination to punish those offenders.

The sensitivity to criticisms may come out of the common interest shared by the Chinese bureaucracy. Cases examined in the paper suggest that cases were more likely to expect extralegal intervention when the allegedly defamatory story pointed to the direct interest of the bureaucratic system (Chinese court is actually part of that system). For example, in the case of Liu Dengyun suing Sichuan TV Station for defamation, Liu was only an obscure rural village chief, and did make some mistakes in the management of the village's budget. However, in commenting the plaintiff's mistake, the host stated, "What makes the person go unpunished after the wasting of farmers' money and products? What makes the person so arrogant? Who is behind Liu Dengyun?" The direct boss of the plaintiff, the local government of the plaintiff's township immediately mobilized by issuing a report to protest that the TV program was false and baseless. The court adopted the report as evidence and ruled the TV host's comments were baseless and untrue, thus, having defamed the plaintiff.⁶⁷ And in the above discussed non-litigation disputes concerning a Chengdu newspaper and a local government, the editor-in-chief believed the local government did not think seriously of his newspaper's original report. But days later, the *Sichuan Daily* published an editorial based on the report and even commented that those relevant officials should be punished, which really worried the officials of the local government.

Therefore, when the bureaucracy believes that their own interests are under threat, they do not hesitate to mobilize various resources to repress the criticism. To appease all relevant sides, the court and the media had to make a concession. For example, in the case concerning Liang Tao and the *Chengdu Evening News*, the *Chengdu Evening News* published an article headlined "Cadre Liang Tao of Industry and Commerce maneuver hooligans into persecuting

⁶⁴ The official complaints to the newspaper group of the local government and an opinion from the parent group is on file with the author.

⁶⁵ At the time of writing in April 2006, the newspaper had not sent any reporter to the city. Such a move can be interpreted as a form of retaliation because local governments, especially those in relatively remote places, hunger for publicity to make their work known to higher officials and the outside world.

⁶⁶ See Jiangxi yanshu chachu 6.18 zhongda zhenzhixing shigu (6.18 big political mistake was punished in Jiangxi province) <http://politics.people.com.cn/GB/1026/3496406.html> (June 25, 2005).

⁶⁷ See *Supra* 55, Liu Dengyun v. Sichuan TV Station.

individual businesses". In court, it was revealed that the facts in the news reports were basically true; only the word "maneuver" was in dispute. However, as Chengdu Industry and Commerce Bureau intervened, the court agreed that the *Chengdu Evening News* should issue an official apology to Chengdu Industry and Commerce Bureau to acknowledge that the wording of the headline was inappropriate.⁶⁸

D. Relatives of the Deceased

The Chinese defamation law recognizes an action on defamation of the dead. In 1989, the Supreme People's Court issued an open reply to Tianjian Municipality High Court and explicitly stated that the reputation of the deceased people was still protected.⁶⁹ In a 1990 reply, the Supreme People Court reiterated that defamation of the dead was actionable.⁷⁰ In 1993 judicial interpretation on defamation suits handed down by the Supreme People Court, it further clarified "If the reputation of the deceased is infringed, his/her near relatives shall have right to file a lawsuit in the people's court",⁷¹ and according to the interpretation, near relatives include "the spouse, parents, children, brothers and sisters, grandparents, maternal grandparents, grandchildren and maternal grandchildren."⁷² In 2001, another judicial interpretation handed down by the Supreme people's Court pointed out that if defamation of the dead inflicted mental suffering on the near relatives of the deceased, the near relatives of the decedent have a right to claim damages for mental sufferings.⁷³

In the data collected at the courts in Chengdu, six cases involved defamation of the dead, and in the 14 cases initiated outside of Chengdu against Chengdu media, two were about defamation of the dead. Though cases regarding defamation of the dead were rare, the plaintiffs' chance of success in these cases was not rare at all. Of the six cases in Chengdu, the plaintiffs prevailed in five (83.3%), and of the two cases outside Chengdu, the plaintiffs won both.

The great majority of the deceased involved in defamation cases were not ordinary people,⁷⁴ they were either celebrities or former high officials.⁷⁵ In this sense, it seemed the

⁶⁸ Chengdushi Jinjiangqu Remin Fayuan (Chengdu Jinjiang District Court), Report on defamation litigation concerning the plaintiff Liang Tao and the defendant the *Chengdu Evening News* (September, 1994).

⁶⁹ The reply concerning a case involved a novel and a deceased artist. After the publication of the novel, the artist's mother sued the author and the newspaper that serialized the novel for defamation. The Supreme People's Court replied that though the artist was dead, her reputational right was still protected by the law and her mother could bring the defamation to the court. See Zuigao Renmin Fayuan Guanyu Siwangren Minyuquan Ying Shou Baohu de Han, (1988) Min Ta Zi Di 52 Hao (Reply of the Supreme People's Court on the deceased people's reputational right should be protected, (1988) Civil Miscellanies No. 52)

⁷⁰ See Zuigao Renmin Fayuan Guanyu Fan Yinglian Su Jing Yongxiang deng Qin Hai Haideng Fashi Minyuquan Yi'an Youguan Susong Chengxu Wenti de Fuhuan, (1990) Min Ta Zi Di 30 Hao (Reply of the Supreme people's Court on the procedural issues involving in the case of Fan Yinglian v. Jing Yongxiang, (1990) Civil Miscellanies No. 30). In the case, the plaintiff was the deceased adopted son; the Supreme people's court explained the adopted son also had the right to initiate the defamation suit.

⁷¹ See Zuigao Renmin Fayuan Guanyu Shenli Minyuquan Anjian Ruogan Wenti de Jieda, Fa Fa (1993) 15 Hao [Reply of the Supreme People's Court in the Trial of the Cases concerning the Right of Reputation, (1993) Judicial Issuance No. 15] Article 5.

⁷² Id

⁷³ Zuigao Renmin Fayuan Guanyu Queding Minshi qinquan Jingshen Sunhai Peichang Zeren Ruogan Wenti de Jieshi, Fa Shi (2001) No.7 [Interpretations of the Supreme People's Court on Some Issues of Determining Liability for Mental Suffering Caused by Tortuous Act, Judicial Interpretation (2001) No.7], Article 3.

⁷⁴ Of the cases arising from defamation of the dead, only one case was about ordinary people. The defamation litigation arose from an article in the *Tianfu Morning* alleging that the deceased killed herself because of one yuan in

weight of the posthumous reputation was not different from that of the privileged. What makes the situation more complex is that in adjudicating these cases, the court may go beyond the “official appraisal” of the deceased and touched on certain political issues. The most illustrative cases may be the case of Fan Yinglian v. Jing Yongxiang.⁷⁶ Jing Yongxiang, a reporter of the *Sichuan Daily*, doubted the myth of Haideng Monk. However, Haideng Monk was a former member of the national committee of the CPPCC and was officially publicized as the symbol of shaoli gongfu and a patriotic Buddhist. To judge whether the alleged defamation was true or not required the reevaluation of the whole official propaganda, which was beyond the court jurisdiction. Thus, in cases like this, the court may have no choice but rule against the author or the media.

It can hardly say that the court had no sympathy to the defendant or having no consciousness of the defendant’s right to speech. In the replies to the Sichuan Province High Court’s query on the handling of the case (there were several replies of the case), in the reply dated February 4, 1993, the SPC though upheld the favoring opinion to the plaintiff, it also suggested that the court should communicate with these two parties, and tried to settle the case through mediation.⁷⁷

An interesting point is that because not all countries allow lawsuits on defamation of the dead,⁷⁸ the plaintiff friendly attitude toward posthumous reputation provides forum shopping opportunities for foreigners to sue on behalf of the deceased in China. The case of Hong Ying and her novel was such a precedent. Hong Ying based her novel, *K: the Art of Love*, loosely on a real-life British poet and nephew of Virginal Woolf. In the novel, the poet met a Chinese woman, Lin and had a passionate affair with her. The plaintiff alleging that the character Lin was identifiable as her deceased mother. Though both the plaintiff and the author defendant were British citizens, the plaintiff nevertheless succeeded in the litigation by involving two Chinese media, the magazine *Chinese writer* and the newspaper *Sichuan Youth Daily*.⁷⁹

E. Professionals

Of the ten cases initiated by professionals, lawyers initiated five, doctors two, teachers two and scholars one. That lawyers initiated the most defamation litigation among professionals should not be surprising as they may be the person who knows best on how to resort to legal redress. Taking into Chinese tradition of despising and persecuting lawyers,⁸⁰ and the relatively

majiang playing. However, as the death was of a natural death instead of suicide, the relatives of the deceased brought defamation litigation against the newspaper and the court ordered the newspaper to apologize and pay 4000 yuan damages. See Chengdushi Jinjiangqu Renmin Fayuan Minshi Panjueshu, (2003) Jinjiang Min Chu Zi Di 1949 Hao [Chengdu Municipality Jinjiang District Court Civil Case Court Opinion, (2003) Jinjiang Civil Initial No.1949]

⁷⁵ Of the seven cases, two involved former high officials of Guomindang, but the government recognized them as positive examples; one involved a famous monk and the former member of the National Consultative Committee; the other four were a famous doctor, educationist, poet and writer.

⁷⁶ See Appendix, Case 2.

⁷⁷ (1992) Min Ta Zi Di 23 Hao [(1992) Civil Miscellanies No.23]

⁷⁸ For example, in the United States and England, no civil action lies for the defamation of the dead.

⁷⁹ see Kevin Toolis, China's Lady Chatterley stirs passions over censorship, the Guardian, <http://www.guardian.co.uk/china/story/0,7369,738475,00.html> (June 16, 2002); See also Novelist Loses out in Libel Case (China Daily December 9, 2002), <http://www.china.org.cn/english/culture/50686.htm>

⁸⁰ In imperial China, the profession of lawyers was not officially encouraged. Most of the time, they were persecuted as “habitual litigation hooligans” who “incited” innocent peasants into litigations or false accusations (Macauley, 1998).

negligence of lawyer's roles in Chinese court, this phenomena of the public attention to lawyers' work indicate that the profession is gaining its popularity in the society and the society has also acknowledged its high standard of professionalism.

Types of disputes involved in defamation cases further indicate the increasing importance put on professionalism. Of the ten cases, seven arose from allegations directly relating to the plaintiff's profession,⁸¹ either on professional performance, ethics and relationship with the clients. One case launched by a surgeon arose from the allegation that the plaintiff had taken money from the relatives of his patients and did not conduct a successful operation.⁸² One lawyer launched the litigation because the media reported that she was detained by the police while collecting illegal evidence,⁸³ another lawyer launched the case because of reports alleging that he was accused of sexual harassment,⁸⁴ a teacher's case also arose from allegations of sexual harassment of his students,⁸⁵ a scholar initiated the case because of an accusation of plagiarism and of unsubstantial scientific support of his findings.⁸⁶

Professionals were also extremely successful in their claims. Of the ten cases initiated by professionals, the plaintiffs prevailed in seven.⁸⁷ The high chance of professional success is in consistent with that of other countries.⁸⁸ However, the Chinese data may be more encouraging as professionals as lawyers had long been affiliated with the government and without develop their professional ethics and codes. The willingness of these groups of people to redress their reputation indicate that a high sense of professional ethics and independence are increasing in China and the court's willingness to protect such professional reputation in turn indicate the society as a whole began to appreciate the performance of independent professionals.

V. DEFENDANTS

It would appear that plaintiffs are more likely to sue for defamation if the offending party is newspapers. Of the 145 defamation cases against the media (author), 128 cases involved newspaper defendants, and a vast number of the litigation was against the major players in the market. As shown in Table 8, the major daily newspapers were defendants in 103 of the 145 cases against the media (author) (71%). Though commercial newspapers were more likely to be

⁸¹ Two were arisen from reports on the plaintiff's marital affairs. One was due to the disputed article alleging the plaintiff (a doctor) tried to harass the reporter's interview through threatening behavior and coarse languages. The doctor was named in reporting of a medical malfeasance occurred in the hospital.

⁸² See Chengdushi Jinjiangqu Renmin Fayuan Minshi panjueshu, (2003) Jinjiang Min Chu Zi di 1458 Hao [Chengdu Municipality Jinjiang district Court Civil Case Court Opinion, (2003) Jinjiang Civil Initial No.1458]

⁸³ See Chengdushi Jinjiangqu Renmin Fayuan Minshi panjueshu, (2003) Jinjiang Min Chu Zi di 1560 Hao [Chengdu Municipality Jinjiang district Court Civil Case Court Opinion, (2003) Jinjiang Civil Initial No.1560]

⁸⁴ Chengdushi Jinjiangqu Renmin Fayuan Minshi panjueshu, (2000) Jinjiang Min Chu Zi di 1106 Hao [Chengdu Municipality Jinjiang district Court Civil Case Court Opinion, (2000) Jinjiang Civil Initial No.1106]

⁸⁵ Chengdushi Jinjiangqu Renmin Fayuan Minshi panjueshu, (1997) Jin Min Chu Zi di 324 Hao [Chengdu Municipality Jinjiang district Court Civil Case Court Opinion, (1997) Jin Civil Initial No.1560]

⁸⁶ Chengdushi Wuhouqu Renmin Fayuan Minshi panjueshu, (2002) Wuhou Min Chu Zi di 1273 Hao [Chengdu Municipality Jinjiang district Court Civil Case Court Opinion, (2002) Jin Civil Initial No.1273]; Chengdushi Zhongji Renmin Fayuan Minshi Panjueshu, (2003) Cheng Min Zhong Zi Di 1115 Hao [Chengdu Intermediate Court Civil Case Court Opinion, (2003) Cheng Civil Final No. 1273]

⁸⁷ The plaintiffs prevailed in nine cases in first instance. And on appealing, the appellate courts reversed two cases to the favor of the media.

⁸⁸ For example, in Michael Newcity's study of defamation litigation in Australia, professionals prevailed in seven of the eight cases they launched (87.5%). *Supra* 12

sued, a considerable number of defamation cases were also against Party newspapers. As shown in Table 8, the *Sichuan Daily* and the *Chengdu Evening News* (after 2002, the *Chengdu Daily*)⁸⁹ accounted for a sizeable proportion of the suits. The outcome was consistent with Liebman's discovery that official party-state mouthpiece newspapers in China were also targets of defamation litigations.⁹⁰

TABLE 8: CASES AGAINST MAJOR DAILY NEWSPAPERS IN CHENGDU

<i>Newspapers</i>	<i>Total</i>	<i>Plaintiff Success</i>	<i>Defendant Success</i>	<i>Case Withdrew</i>	<i>Plaintiff Success Rate</i>	<i>Defendant Success Rate</i>
Sichuan Daily	9	2	5	2	22.2%	55.5%
Chengdu Evening News (Chengdu Daily since 2002)	16	8	3	5	50%	18.9%
West China Metropolis Daily	21	10	8	3	47.6%	38.1%
Chengdu Business News	23	7	11	5	30.4%	47.8%
Business Morning	9	4	1	4	44.4%	11.1%
Tianfu Morning	7	4	2	1	57.1%	28.6%
Shu Daily	10	2	5	3	20%	50%
Chengdu Evening News (since 2002)	8	3	5	0	37.5%	62.5%
Total	105-2 ⁹¹	43-1 ⁹²	39-1 ⁹³	23	40.8%	36.9%

Though this may further confirm Liebman's speculation that Chinese plaintiffs were not intimidated by the media's official position, a closer look at the Chengdu newspaper market and the content involved the litigation suggests the outcome did not end with the plaintiffs'

⁸⁹ In 2002, the former *Chengdu Evening News* changed its name into *Chengdu Daily* as the official newspaper for Chengdu Communist Committee. A new commercial newspaper was established in the same newspaper group to compete with Sichuan Newspaper group, mainly its *Tianfu Morning*. However, the new newspaper took the name of *Chengdu Evening News*.

⁹⁰ See supra 4.

⁹¹ Two cases involved both the *Sichuan Daily* and the *Shu Daily*, see Tao Hong su Shubaoshe, Sichuan Ribaoshe, Fazhi Ribaoshe, Sun Shanzhang, Chengdushi Qingyangqu Renmin Fayuan Minshi Panjueshu, (1995) Qing Ming Chu Zi Zi 508 Hao [Chengdu Municipality Qingyang District Court Civil Case Court Opinion, (1995) Qingyang Civil Initial No. 508]; see langzhongshi Jiaotong guanlisuo su Shubaoshe, Zhongguo Qingnian baoshe, Sichuan Ribaoshe, Zhouzuocheng, Chengdushi Qingyangqu Minshi Panjueshu, (1996) Qing Ming Chu Zi Di 600 Hao [Chengdu Municipality Qingyang District Court Civil Case Court Opinion, (1996) Qingyang Civil Initial No. 600].

⁹² One case resulted in plaintiff's success.

⁹³ One case resulted in defendant's success.

fearlessness to challenge the official media. During these years, official newspapers have been trying their best to take advantage of the market. At the very beginning, it was those official media who exploited the most of the market. In Chengdu, even before the establishment of the *West China Metropolis Daily*, the *Sichuan Daily* and the *Chengdu Evening News* had tailored their content to compete with each other for advertisers and readers. Notwithstanding their ideological role, they also competed aggressively. The birth of the *West China Metropolis Daily* was the direct result of this competition.⁹⁴ An overview of the content of the *Sichuan Daily* and the *Chengdu Evening News* during 1995 to 2001 found that investigative reporting, sensational news and other content to appeal to readers and advertisers were not alien to the two newspapers. To counter the fierce competition from the *West China Metropolis Daily* and the *Chengdu Business News*, the *Chengdu Evening News* even published its paper in the morning, making it the only evening news published in the morning. As if to underscore the intensity of competition, in 2005, the *Tianfu Morning* of Sichuan Daily newspaper group decided to publish its paper in the evening. Their actions, however, meant that the Party organs were behaving not so differently from the commercial newspapers, which, in turn, weakened their immunity from defamation suits.

In contrast to people's perception that party media are privileged in defamation cases against them, it seemed that the party newspapers did not necessarily benefit from their official positions in defamation disputes. As shown in Table 8, the official position of a newspaper did not necessarily immunize them from defamation suits, and being a commercial paper did not necessarily lead to a defeat.

In the case of the *Sichuan Daily*, it would appear that being a Party organ helped in defamation disputes. The paper won five of the nine cases against it; the plaintiffs won two, and withdrew two cases voluntarily. But for the *Chengdu Evening News* (now the *Chengdu Daily*), it seems the official position was of little help. The paper only won three of the 16 lawsuits (18.9%) brought against it, while plaintiffs won eight suits (50%). Liebman (2006) argues that the power hierarchy of the media can explain why central media such as the *People's Daily* faced fewer defamation suits and lost fewer cases. If so, that the *Chengdu Evening News* (now the *Chengdu Daily*) was less successful than the *Sichuan Daily* may also be explained by the power hierarchy of Chinese media.⁹⁵ If this argument is correct, then other commercial newspapers should fare worse in similar defamation suits because they are less privileged in the political hierarchy.

But that has not been the case. As shown in Table 8, commercial newspapers, such as the *West China Metropolis Daily*, the *Chengdu Business News*, the *Shu Daily* and the later *Chengdu Evening News*, have not fared worse in the courts compared with the official newspapers. The *West China Metropolis daily* won eight of the 21 cases against it during 1995 to 2005(38.1%), plaintiffs won ten cases (47.6%); the *Chengdu Business News* won 11 of the 23 lawsuits (47.8%), plaintiffs won five (30.4%); the *Shu Daily* prevailed in half of the cases against it (five out of ten) while plaintiffs won three (30%). The new commercial newspaper of the Chengdu Daily Newspaper Group won more than it lost: from its birth in 2002, it won five of the eight cases at the defendant bench (62.5%), and plaintiffs won in only three of eight (37.5%).

⁹⁴ Feeling the constraints in its ability to compete because of role as a Party organ, the *Sichuan Daily* established this subsidiary newspaper to compete directly with the *Chengdu Evening News*.

⁹⁵ The *Sichuan Daily* with its provincial affiliation undoubtedly is more influential and powerful than the municipally affiliated *Chengdu Evening News* (now *Chengdu Daily*) in terms of the political hierarchy.

Commercial media may win more cases than they lose and party media may lose more cases than they win suggest that the interpretation of Chinese defamation law as a suppression to the media, especially the newly commercialized media may be misguided.

A closer look at the operation of the media and the contentious reports that gave rise to defamation litigations suggests that the plaintiff and media success rate may have less to do with political positions but more to do with market position, media credibility and how they handled the defamation suits. Namely, it is highly likely that the commercial newspapers' higher success rate may have come from its greater professionalism, more care in the handling of defamation disputes and greater influence in the market.

First, commercial newspapers hire most of their reporters and editors based on their qualifications as journalists and evaluated them according to their professional performance.⁹⁶ Previously, journalists in the *Sichuan Daily* and the *Chengdu Evening News* (*Chengdu Daily*) were assigned by the authority with political reliability being the most important qualification. In contrast, journalists at commercial newspapers need to pay more attention to professionalism and credibility in the market context. Furthermore, the newspapers need professional performance to sustain in the market. That is why, though chaos seemingly reigns in the newspaper market during the most competitive period, critics such as Gao (2003) commented that commercialization of Chengdu's newspapers advanced the professionalism of Chengdu newspaper industry, and helped the professional development of Chinese media industry as a whole.

Second, commercial newspapers are accustomed to behaving commercially. In defamation disputes, they are more flexible to resolutions. And they are more reluctant to offend their potential audience or advertisers. Usually, they will listen to the complaints more willingly and respond quickly to make amends if mistakes were recognized. Thus, complaints can be settled before the court proceedings and those that do reach the court are less likely to stand.⁹⁷

Third, the trend of plaintiff and defendant success also suggests the shifting power of Chinese media. Commercial media have gradually taken away the market share of official media and have become more influential in terms of economic might and scope of readers. For example, the *West Metropolis Daily* and the *Chengdu Business News* have billions in annual revenue and boasted a circulation of half a million copies per day. On one hand, media profits makes the media significant players of local interests, on the other hand, the large circulations and popular public support of commercial newspapers impart them great social influence. If the legal system is susceptible to the powerful, it might also lean toward the economically and socially powerful commercial media. As shown in Table 8, not all commercial newspapers enjoyed greater success in the court. Less influential commercial newspapers also did not fare well in defamation litigation. The consistency of their success rate with those of the Party media strongly suggests that *de facto* influence on the market is almost as decisive as the Party-state affiliation. However, whether this indicates a diminution of the Party-state power is uncertain.

⁹⁶ These days, though the *Sichuan Daily* and the *Chengdu Evening News* (the *Chengdu Daily*) have more freedom in selecting reporters and editors, they still need to accept assigned people and observe rules on "political correctness". In addition, though the Party newspapers also contract their employees, they rarely fire them for their incompetence.

⁹⁷ In interviews, journalists, lawyers and staff handling legal affairs from commercial newspapers expressed the willingness to make amends when mistakes were recognized; for sensitive cases, lawyers are usually consulted during the investigation process and before the publication.

No media are out of the *de facto* control of the Party-state.⁹⁸ Further, to survive in the market, the commercial newspaper may be even more eager to win the Party-state's favor than the Party media. In launching the newspaper, the founding editor-in-chief of the *West China Metropolis Daily* declared that the principle of the newspaper was to please the Party as well as to please the audience (*ban dang he renmin dou manyi de baozhi*). And according to an investigation conducted by the propaganda bureau of Chengdu, the *Chengdu Business News* even covered more positive news than the official newspaper the *Chengdu Daily* and had the least negative reporting among the commercial newspapers.⁹⁹

VI. REMEDIES

A. Non-monetary Remedies

Cases examined in this paper further confirmed that much attention was put on non-monetary remedies in Chinese defamation law. Of the 62 cases decided conclusively for the plaintiff, the courts allowed non-monetary remedies in all cases but one. And the only case which the court overruled the plaintiff's claim for stoppage of defamation, apology, elimination of adverse effect and rehabilitation of lost reputation was not due to unreasonableness of the plaintiff's claim. In court opinion, the court ruled the defendant media had made sufficient measures to correct its fault, which could be regarded as the fulfilling of the liabilities of these remedies.

A total of 13 cases with the plaintiff's success were settled with non-monetary compensation only. Of the 13 cases, seven were with court verdict. Of the seven cases, one case was without damages claim on the plaintiff's side. In two cases the courts dismissed the claim for damages on the basis that the violation was minor, in one case the court ruled that the plaintiff was a nonprofit organization and had no economic interest, and in three cases the court disallowed damages because the plaintiffs provided no evidence of reputational loss. Of the other six cases, three ended with court mediation, one case was mediated by the Chengdu Propaganda Bureau, the plaintiffs, some football fans, withdrew the case after the Bureau's promise of a

⁹⁸ Of the commercial newspapers, the *Tianfu Morning* and the *West China Metropolis Daily* now belong to the Sichuan Daily newspaper group, which is under the direct control of the propaganda department of Sichuan Province Communist Party Committee. The *Chengdu Business News* and the *Chengdu Evening News* belong to Chengdu Daily group, under the propaganda department of Chengdu Municipality Communist party Committee. In interviews, officials from both Sichuan provincial and Chengdu municipal propaganda bureaus denied that commercial papers were out of the Party control and subject to less regulation. They commented that it could only be described as different ways of regulation.

⁹⁹ In 2005, the Propaganda Bureau of Chengdu Municipality Communist Party Committee started a project to monitor media's content through quantitative investigation. The Bureau commissioned two academic institutions to content analyzes the media's reports. The School of Communication of Sichuan University analyzed the major TV channels; the communication division of the Sichuan Academy of Social Sciences analyzed the major daily newspapers of Chengdu. Weekly reports of the monitoring of the TV broadcasts and monthly reports of the newspaper (on the coverage of local news) were submitted to the Bureau and then handed to the relevant media. The media that had covered inappropriate amount of negative news or had handled sensitive stories improperly would be warned and reprimanded and the media who had handled positive and negative coverage well would be commended (confidential interview, and sample reports (weekly reports for TV programs, No.52 and monthly report on the coverage of local news by major newspapers of April, May and June 2005 on file with the author)).

reprimand of the newspaper.¹⁰⁰ And two cases were withdrawn by the plaintiffs after the defendant media's publication of apologies.

In addition to the admission as sufficient remedies for defamation, if the defendant had voluntarily made the non-monetary remedies in appropriate time, it could serve as a defense or a mitigating factor in assessing liabilities. Of the cases examined in this paper, the media (author) defendants were immune from liability in three cases because of prior litigation corrections or apologies. In a case involved report alleging the plaintiff was arrested because of money fraud, the newspaper published the apology issued by the author when it revealed that the plaintiff was wrongly arrested. The court disallowed the plaintiff's claims on the basis that the defendant had already apologized immediately after the wrongful arrest was cleared. Thus, it could be regarded that the defendants had restored the plaintiff's reputation, eliminated the adverse effect and extended an apology.¹⁰¹ In another two cases, the court dismissed the plaintiff's defamation claim on the basis that the media had made corrections and thus eliminated the adverse effect of the untrue and defamatory report.¹⁰²

B. Monetary Compensation

Though monetary compensation was not encouraged, most of the cases still end with monetary compensation. As shown in Table 9, of the 62 cases prevailed by the plaintiff, 79% ended with pecuniary awards (49 out of 62). Among them, 41 ended with court ordered damages (83.7% of the total of trial verdict with the plaintiff success) and eight with mediated damages (57.1% of the total of mediated cases with the plaintiff success).

TABLE 9: DAMAGES AWARDED TO PLAINTIFFS (FINAL TRIAL/SETTLEMENT)

	Total cases of Plaintiff success	Cases of Plaintiff success ¹⁰³		Cases of damages awarded		Damages awarded (yuan)		Average damages (yuan)	
		Trial	Settled	Trial	Settled	Trial	Settled	Trial	Settled
Total	62	48	14	41	8	6,292,744.8	82,000	153,482	10,250

¹⁰⁰ See Shi guanghua deng su Chengdu Shangbao Chengdushi Jinjiangqu Renmin Dayuan Minshi Panjueshu, (1998) Qing Min Chu Zi Di 1Hao [Chengdu Municipality Jinjiang District Court Civil Case Court Mediation, (1998) Jin Civil Initial No. 1]

¹⁰¹ Li Min v. *The Chengdu Evening News*, see Chengdushi Jinjiangqu Fayuan Minshi Panjueshu, (1996) Jin Min Chu Zi Di 590 Hao [Chengdu Municipality Jinjiang District Court Civil Case Court Opinion, (1996) Jin Civil Initial No.590]

¹⁰² Guangzhou Hongye Trade Co. v. *the West China Metropolis Daily*, see Chengdushi Jinjiangqu Fayuan Minshi Panjueshu, (1995)Jin Min Chu Zi Di 634 Hao [Chengdu Municipality Jinjiang District Court Civil Case Court Opinion, (1995) Jin Civil Initial No.634]; Neimenggu Yili Industrial Co. Ltd. v. *the West China Metropolis Daily*, see Chengdushi Jinjiangqu Fayuan Minshi Panjueshu, (1998)Jin Min Chu Zi Di 842 Hao [Chengdu Municipality Jinjiang District Court Civil Case Court Opinion, (1998) Jin Civil Initial No.842]

¹⁰³ Plaintiff success cases include those cases with a favored verdict for the plaintiff and those settled cases, which required an apology, monetary compensation or other ways to compensate the plaintiff. Damages were valued in Chinese yuan. During the period covered by this Chapter, the exchange rate between the Chinese renbinmi (yuan) and the U.S. dollar was approximately US\$1 = 8 yuan.

However, damage awards to plaintiffs were modest. An average of 153,482 yuan (approximately U.S. \$19,185) for trial verdicts and 10,250 yuan (approximately U.S. \$1,281) for settled cases. Of the court ordered damages, four cases were awarded large sums of money. One was awarded 5 million yuan (approximately U.S. \$625,000), it is the largest damages awarded against the defamation defendant in China. One was awarded 660,000 yuan (approximately U.S. \$82,500),¹⁰⁴ one 110,000 yuan (approximately U.S. \$13,750), and one 100,000 yuan (approximately U.S. \$12,500). All these four cases were initiated by corporate plaintiffs, though the damages were large, they were all not excessive to the plaintiffs' actual economic loss suffering from the defamatory publication. If these four cases were excluded, then the average sum awarded by the court were 11,426 (approximately U.S. \$1,428), equaling damages agreed in mediation. Since damages settled for mediated cases were agreed by both sides of litigants, the consistence of court ordered damages and settled damages further indicates that the court tends to extend modest and acceptable damages in defamation cases.

Of cases with corporate plaintiffs, it seemed the court strictly followed the rule of the statutes and only granted damages for evidentiary economic loss. In the case of Chengdu Central Garden Homeowners Committee v. *Chengdu Business News*,¹⁰⁵ the newspaper alleged that the plaintiff was an illegal and unauthorized committee which charged unfounded fees from the homeowners. The plaintiff sued the newspaper for defamation and claimed 5,000 damages (approximately U.S. \$625). Dismissing the plaintiff's claim for damages, the court reasoned that the Committee was non-profit and thus suffered no material loss from the defamatory statement. Thus, the newspaper was only liable to publish an apology to clear the false imputation and help to restore the plaintiff's lost reputation.¹⁰⁶

In the case concerning Chengdu Qinggong Shopping Mall and the *Business Morning*,¹⁰⁷ The Shopping Mall demanded one million yuan (approximately U.S. \$125,000) for image damage and 3 million yuan (approximately U.S. \$375,000) for economic loss. In the verdict, the court found that the Shopping Mall's net income before the publication was 3,211.96 yuan (approximately U.S. \$401.49) per day. Then the court acknowledged 221,625.24 yuan (approximately U.S. \$27,703.15) for economic loss instead of the plaintiff's claim of 3 million yuan (approximately U.S. \$375,000).¹⁰⁸ Moreover, in assessing damages, the court also consciously balanced damages with the media's role to promote public interest. In this case, reasoning that "for public interest sake, the society needs to show some tolerance to the media's negligence", the court reduced damages to 110,000 (approximately U.S. \$13,750), only half the amount of the actual economic loss acknowledged by the court.¹⁰⁹

Of cases with individual plaintiffs, high damages for mental suffering were generally not encouraged. Of the cases examined, the highest damages for mental suffering demanded were 500,000 yuan (approximately U.S. \$62,500),¹¹⁰ however, the highest damages awarded

¹⁰⁴ This was against two newspaper defendants.

¹⁰⁵ Chengdushi Jinjiangqu Renmin Fayuan Minshi Panjueshu, (2000) Jinjiang Min Chu Zi Di 81 Hao [Chengdu Jinjiang District Court Civil Case Court Opinion, (2000) Jinjiang Civil Initial No.81]

¹⁰⁶ Id

¹⁰⁷ See supra 52.

¹⁰⁸ Id.

¹⁰⁹ Id.

¹¹⁰ See Chengdu Shi Jinjiang Qu Renmin Fayuan Minshi Panjue Shu, (2000) Jinjiang Min Chu Zi Di 675 Hao [Chengdu Jinjiang District Court Civil Case Court Opinion, (2000) Jinjiang Civil Initial No.675]. The plaintiff was awarded 15, 000 yuan (US\$1,875) for mental suffering.

were 50,000 yuan (approximately U.S. \$6,250),¹¹¹ and the lowest were only 900 yuan (approximately US\$112.5).¹¹² In the assessment of damages, it seemed the living standard of the local community was a significant factor. For example, in the case of Pan Zhenli v. the *Chengdu Business News*,¹¹³ Pan was an Italian and the defendant newspaper published a story falsely alleged that Pan had dodged 210,000 yuan (approximately U.S. \$26,250) income tax. Pan sued the *Chengdu Business News* for defamation and claimed 500,000 yuan (approximately U.S. \$62,500) for mental suffering (The largest demand for mental suffering in this sample). Though the court held that the story published by the newspaper was defamatory and damaged the plaintiff's reputation, the court reasoned that 500,000 yuan (approximately U.S. \$62,500) for mental suffering was excessive and was disproportional to the local living standard,¹¹⁴ and accorded only 15,000 yuan (approximately U.S. \$1,875) for mental suffering. Taken as a whole, average damages awarded were 8,515 yuan (approximately U.S. \$1,064), and an amount approximate to the average yearly income of the residents of the city.

It is worth noticing that most of the damages were not against individual persons but profitable commercial media. Of these cases, only in one case the court held that the author was liable for damages (the publisher was exempted from liabilities because of the publication was a fiction. The publisher had no reason to know it was based on real life person and had some defamatory statements).¹¹⁵ However, damages awarded were much lower than the average damages awarded against the media. The plaintiff claimed for 150,000 yuan (approximately U.S. \$18,750) and the court only awarded 900 yuan (approximately US\$112.5) against the author.¹¹⁶

The assumption that damages are not unbearable to the defendant can be illustrated from damages allowed against major newspapers of Chengdu. Altogether 103 cases were against the major newspapers, the plaintiff won 42 cases, the media defendants won 38 cases and 23 cases were withdrawn. Of the 42 cases won by the plaintiff, 34 cases were awarded with monetary compensation.

¹¹¹ See Chengdushi Zhongji Renmin Fayuan Minshi Panjue Shu, (2001) Cheng Min Chu Zi Di 173 Hao [Chengdu Intermediate Court Civil Case Court Opinion, (2001) Cheng Civil Initial No.173]; Sichuan Sheng Gaoji Renmin Fayuan Minshi Panjue Shu, (2002) Chuan Min Zhong Zi Di 115 Hao [Sichuan Province High Court Civil Case Court Opinion, (2002) Chuan Civil Final No.115]

¹¹² Sichuansheng Chengdushi Zhongji Renmin Fayuan Minshi Panjueshu, (1998) Cheng Min Chu Zi Di 106 Hao [Sichuan Province Chengdu Intermediate Court Civil Case Court Opinion, (1998) Cheng Civil Initial No.106]. The verdict was upheld on appeal to the Sichuan Province High Court. See Sichuansheng Gaoji Renmin Fayuan Minshi Panjueshu, (1999) Chuan Min Zhong Zi Di 1 Hao [Sichuan Province High Court Civil Case Court Opinion, (1999) Chuan Civil Final No.1].

¹¹³ See Zhang Shiguo v. the *Business Morning*, Chengdushi Jinjiangqu Renmin Fayuan Minshi Panjueshu, (2000) Jinjiang Min Chu Zi Di 1279 Hao [Chengdu Municipality Jinjiang District Court Civil Case Court Opinion, (2000) Jinjiang Civil Initial No.1279].

¹¹⁴ The case was settled in 2000 and in that year, the average yearly income for Chengdu residents was only 8,925 yuan (approximately U.S. \$1,116).

¹¹⁵ See Sichuansheng Chengdushi Zhongji Renmin Fayuan Minshi Panjueshu, (1998) Cheng Min Chu Zi Di 106 Hao [Sichuan Province Chengdu Intermediate Court Civil Case Court Opinion, (1998) Cheng Civil Initial No.106]. The verdict was upheld on appeal to the Sichuan Province High Court. See Sichuansheng Gaoji Renmin Fayuan Minshi Panjueshu, (1999) Chuan Min Zhong Zi Di 1 Hao [Sichuan Province High Court Civil Case Court Opinion, (1999) Chuan Civil Final No.1]

¹¹⁶ Id

As shown in Table 10, except one case of a relatively large sum of money,¹¹⁷ damages were restricted to several thousands of yuan (approximately below US\$1,000). During these decades, for most newspapers, the total damages paid for defamation did not surpass 100,000 yuan (approximately US\$12,500). To profitable commercial media, the sum is small compared with profits made every year.¹¹⁸

TABLE 11: DAMAGES AWARDED AGAINST MAJOR DAILY NEWSPAPERS¹¹⁹

Year	Sichuan Daily	Chengdu Evening News (Chengdu Daily since 2002)	West China Metropolis Daily	Chengdu Business News	Business Morning	Tianfu Morning	Shu Daily	Chengdu Evening News (since 2002)
1990		25,000						
1995				3,000				
1996	2,000						2,000	
1997			20,000	30,000				
1998		2,000						
1999			2,000	50,000	4,000		4,000	
2000			2,500+2,000 +22,000 +4,000	20,000	3,000 +110,000	6,000		
2002			8,000+8,000					
2003		10,000				2,000 +4,000		5,000 +6,000
2004	2,135.80	5,000 +2,000 +3,000	20,360			1,000		1,000
-July 2005				2,000				
Total	4,135.8	47,000	88,860	105,000	117,000	13,000	6,000	12,000

During interviews with media staff, no media complained against the pressure of defamation damages. Even for journalists, though all newspapers have the rule that corresponding journalists should pay part of the damages if they are at fault, most of them did not feel a chilling effect from the damages paid.

VII. DEFENSES

Truth and falsity were the basic legal arguments in defamation cases. Of the 62 cases decided conclusively for the plaintiff, the courts raised truth and falsity in 31 cases, 19 cases were decided on the falsity of the report and 12 were ruled for the plaintiff because of “serious inaccuracy” or “substantial falsity”. Of the 54 cases decided conclusively for the media (author) defendants, the courts raised “basically true” or “no serious inaccuracy” in 26 cases and “true” or “objective report” in six cases.

¹¹⁷ See supra 52.

¹¹⁸ The profitable commercial newspaper such as the advertising revenue of the *West China Metropolis Daily* and the *Chengdu Business News* can reach more than 100 million (approximately U.S. \$12.5 million) per year.

¹¹⁹ The sum listed were damages awarded to a single case. Damages were valued in Chinese yuan. During the period covered by this Chapter, the exchange rate between the Chinese renbinmi (yuan) and the U.S. dollar was approximately US\$1 = 8 yuan.

TABLE 12: GROUNDS FOR PLAINTIFF VICTORIES¹²⁰

<i>Grounds</i>	<i>Cases</i>
Falsity	19
Serious inaccuracy/substantial falsity	12
Unknown (mediated/settled cases)	9
Fault, failing the duty of checking	8
Baseless conclusion/comment	7
Insulting, derogatory words	4
Official report (mishandling/refuse to correct)	2
Identifiable to the plaintiff	1
Violation of privacy	1
False light	1

TABLE 13: GROUNDS FOR MEDIA (AUTHOR) VICTORIES¹²¹

<i>Grounds</i>	<i>Number of cases</i>
Basically true/No serious inaccuracy	26
Based on official report or government proceedings	8
True/Objective report	6
Not identifiable to the plaintiff	5
Privacy, but no defamation and no malice	5
Words of no insulting, derogatory meaning	4
Right to criticize commercial products and services	3
Correction, eliminated adverse effects, no damage	3
Media's duty of report	1
Tallying with the Party/government policy	1
Academic debate	1

In addition to direct reference to truth and falsity, the courts also indicated the legal basis of truth and falsity by holding the media (author) defendants at fault for failing to check with the fact particulars and different sides of opinions (eight cases) or by accusing the media of baseless conclusions and comments (seven cases). As the gravamen of these cases was also the argument of falsity, attributing the falsity to the media (author) defendants' fault further indicate the court tend to interpret the purpose of the defamation law as setting the record straight. Consistent with the rationale, in three cases with media (author) success, the disputed articles

¹²⁰ Multiple pleas were granted in two cases. In the case of *Jingwei Consulting Co. v. the Chengdu Evening News*, the court reasoned that factual particulars in the report were untrue and comments were of derogatory and insulting meaning. In the case of *Chengdu Enwei v. the Chengdu Business Daily*, the court granted the plaintiff's claim on the basis that the newspaper did not accurately report the official report and employed derogatory words in comments.

¹²¹ Multiple defenses were granted in nine cases. Three cases the court based the decision on truth and no insults arguments, in one case, the court raised basically true report and no insults. Two cases raised truth and official report privilege; three cases raised "basically true" and right to criticize argument.

were inaccurate and defamatory; however, the media made corrections after the recognition of the falsity and the court ruled therefore that the media was cleared of further liability.

Large number of cases due to false and careless report to some extent bells the alarm for professional journalism and media ethics. In interview, media lawyers, legal staff and media executives all expressed concerns about professionalism and admitted that unprofessional behaviors did cause the media many defamation disputes. An editor-in-chief of a newspaper even admitted once the newspaper was involved in a case where its own reporter fabricated a false report after fruitless seeking of an advertising contract from the plaintiff company. To reduce defamation disputes, the *Chengdu Daily* stipulated a regulation with six provisions.¹²² Article 1 of the regulation required the reporters to do their best to guarantee the truth of the news.¹²³ And article 6 stipulated that for defamation actions caused by false reports at the reporter or the editor's fault, the reporter and the editor needed to bear 20% of the monetary compensation.¹²⁴ And in August 2005, the newspaper held a seminar with the Jinjiang District Court; judges from the court were invited to give lectures on defamation liabilities and discuss defamation issues with the reporters and editors.¹²⁵

Besides "basically true/no serious inaccuracy" argument, the media (author) could also largely depend on official report privilege in covering governmental proceedings and official reports. In eight cases, "official report privilege" was raised to reject the plaintiffs' defamation claims.

If "basically true/no serious inaccuracy" argument and "official report privilege" only subtly reflected the courts' consciousness to free speech, the argument for "the right to criticize" and "academic debate" nevertheless suggested the courts' willingness in providing legal protection for freedom of expression. In three cases, the right to criticize was raised to allow reports on the quality of commercial products and services. And in the case where academic debate was allowed, the Chengdu Intermediate Court (the appellate court) held that "academic debate ... demonstrated the constitutionally protected academic freedom, freedom of science and freedom of expression"; "academic problems can only be resolved through academic debate and scientific experiment"; "the truth and falsity of academic debate cannot be judged by [legal evidence] of fact particulars".¹²⁶

The consciousness and willingness though were encouraging, in court opinions, it seemed that the courts generally were reluctant to raise the issue of free speech as direct legal arguments for courts' decisions. Of the 145 cases, freedom of expression and the constitutional protection of the freedom were only directly used in three cases. And in one case, the purpose of the

¹²² Chengdu Ribaoshe Xinwen Susong Guanli Zaxing Guiding (Provisional Regulation on News Torts Administration of Chengdu Daily) (2001)

¹²³ Id

¹²⁴ Id

¹²⁵ The official website of the Chengdu Intermediate Court covered the seminar and commented that judges gave a good legal publicity and education lecture to the journalists and the seminar was welcomed by the reporters and editors. See Jinjiang Fayuan jiu xinwen baodao qinfan minyuquan xiangguan wenti yu Chengdu Ribao lianhe juban zhuanti jiangzuo (Seminar concerning defamation with news report co-sponsored by the Jinjiang District Court and the Chengdu Daily). (2005, August 30). Retrieved September 14, 2005, from <http://cdfy.chinacourt.org/public/detail.php?id=2855>.

¹²⁶ See Chengdushi Wuhouqu Renmin Fayuan Minshi panjueshu, (2002) Wuhou Min Chu Zi di 1273 Hao [Chengdu Municipality Jinjiang district Court Civil Case Court Opinion, (2002) Jin Civil Initial No.1273]; Chengdushi Zhongji Renmin Fayuan Minshi Panjueshu, (2003) Cheng Min Zhong Zi Di 1115 Hao [Chengdu Intermediate Court Civil Case Court Opinion, (2003) Cheng Civil Final No. 1273]

discussion was to strike down that freedom of expression was not meant to damage other's reputation.¹²⁷ As the substitute for freedom of expression, public opinion supervision was raised in nine cases and media's right to report was raised in three cases. These arguments, even though positively employed, were basically used to supplement other legal arguments. Of the eight cases where "public opinion supervision" and "media's right to report" were granted as legitimate defenses, only in one case, did the court ground its favor to the media on the basis that the plaintiff's behavior was illegal and thus, the media was right to report.¹²⁸ Of the rest seven cases, in four cases, the gist of the argument was the "basically true" of the disputed statement, in two cases, the court ruled the allegedly defamatory statement was not identifiable to the plaintiffs, and in one case, the argument was official report privilege.

TABLE 14: FREEDOM OF EXPRESSION/PUBLIC OPINION SUPERVISION/MEDIA'S RIGHT TO REPORT

Issue raised	Num ber of cases	Media (author) success	Plain tiff success	Grant ed as defense
Freedom of expression	1	0	1	0
Public opinion supervision	9	5	4	5
Within Media's scope of report	3	3	0	3

VIII. CONCLUSION

Defamation litigation exploded in China after the enactment of the General Principles. In Chengdu, the first defamation case was initiated in 1988, and the first media libel case was initiated in 1989. However, at the initial years of the litigation, few cases were docketed in the courts and ordinary people were generally hesitant to sue the media; the media was uneasy with the defamation litigations by their readers and the courts were lack of confidence in the handling of cases against the media. Many of the litigations lasted unusually long time and expected out-of-court intervention.

With decades of development, data presented in the paper suggest great increase of legal consciousness in the society and great increase of judicial independence and power in the Chinese court.

Ordinary, unprivileged people are not feared of redressing their right against the media, including those party media. The media also pull down its extra legal privileges and begin to consider seriously as an equal party in the defamation disputes. In the data, all the major newspapers hired lawyers, legal affairs staff to handle people's defamation complaints and defamation litigations, and began to consciously advance professional performance.

¹²⁷ See Chengdushi Jinjiangqu Fayuan Minshi Panjueshu, (2002) Jin Min Chu Zi Di 1462 Hao [Chengdu Municipality Jinjiang District Court Civil Case Court Opinion, (2002) Jin Civil Initial No 1462]; Sichuansheng Chengdushi Zhongji Renmin Minshi Panjueshu, (2003) Cheng Min Zhong Zi Di 1832 Hao [Sichuan Province Chengdu Intermediate Court Civil Case Court Opinion, (2003) Cheng Civil Final No. 1832]

¹²⁸ Chengdu Ruixing Co. Ltd. v. the *Sichuan Youth Daily*, Chengdushi Jinniuqu Fayuan Minshi Panjueshu, (2001) Jinniu Min Chu Zi Di 1443 Hao [Chengdu Municipality Jinniu District Court Civil Case Court Opinion, (2001) Jinniu Civil Initial No. 1443]

In the handling of these cases, the courts rarely seek advice from the higher courts and higher courts and other institutions rarely intervene into the decision of the verdict except the beginning years of the litigation. Consistent with legislative principles and the ideal of the judiciary, actual judicial practice generally balanced the right to reputation with freedom of expression. Neither the plaintiff success rate nor the damages awarded reflected excessive chilling effect on the media or an instrumental use of the defamation law to suppress the media. Interviews with the media also showed that defamation law and defamation litigation was by far not the major threat to the media and freedom of expression.

As defamation litigation parallels with the development of the media and the overall transformation of the society, media environment and the government media policy largely influenced the evolution of defamation litigation.

Before the coming of commercial newspapers in 1995, party media monopolized the market and functioned as mere propaganda tool for the party and the government, the media invited few defamation cases. With the activation of the media market, competition and diversity of contents appeared in the media; accordingly, more defamation cases were initiated. However, after the government rectifying the market and imposing stricter control on the media, defamation litigation immediately decreased. Besides the increase and decrease of the number of defamation cases, the overall trend of the defamation litigation also revealed a correlation of media success with the political dynamics. During the free times, media underwent more fierce competition and exploited more aggressive reporting; however, more tolerance was rendered to the media. Conversely, under stricter control and closer affiliation with the Party and the government; though the media generally restrained itself from chaos competition and controversial coverage, the media prevailed in fewer cases. In this sense, Chinese defamation law and defamation litigation could hardly be understand as mere legal issues, power dynamics might have significant implications on the evolution as well.

In addition to the subtle influence of the power, the data suggest that the courts and the media all easily succumbed to the powerful. Ordinary people's litigation was less likely to succeed, claims by government officials and government entities were generally attended and large sum of damages might also awarded to big corporations. Driven by self-interest, the media was reluctant to offend the political and economic power. Commercial newspapers, such as the *Chengdu Business News* devoted more spaces to positive reports and in the handling of defamation disputes, all media lawyers and legal affairs staff of the major newspapers admitted meticulousness in dealing with disputes involving corporations and businesses.

IX. APPENDIX - MEDIA LIBEL CASES (1987-1990)*Case 1:*

Zhang Baofu v. Xu Zhenhua, See Chengdushi Jinjiangqu Renmin fayuan Minshi Panjueshu (1989) Jin Fa Min Zi Di 1448 Hao [Chengdu Municipal Jinjiang District Court Civil Case Court Opinion, (1989) Jin Court Civil No. 1448]

Case 2:

Fan yinglian v. Jing Yongxiang, See Sichuansheng Chengdushi Zhongji Renmin Fayuan Minshi Panjueshu (1989) Cheng Fa Min Yi Zi Di 9 Hao [Sichuan province Chengdu Intermediate Court Civil Case Court Opinion, (1989) Cheng Court Civil Court 1 Civil No.9]; Sichuansheng Gaoji Renmin Fayuan Minshi Panjueshu, (1993) Chuan Min Zhong Zi Di 6 Hao [Sichuan High People's Court Civil Case Court Opinion, (1993) Chuan Civil Final No. 6]

Case 3:

liang Tao v. Chengdu Evening News, See Chengdushi Jinjiangqu Renmin Fayuan Minshi Tiaojieshu, (1990) Jin Min Chu Zi Di 1586 Hao [Chengdu Municipal Jinjiang District Court Civil Case Court Settlement Opinion, (1990) Jin Civil Initial No. 1586]

Case 4:

Peng Linquan v. Sichuan Radio, Sichuan Daily, Gu Bailiang, See Chengdushi Jinjiangqu Renmin Fayuan Minshi Panjueshu, (1990) Jin Min Chu Zi Di 1682 Hao [Chengdu Municipal Jinjiang District Court Civil Case Court Opinion, (1990) Jin Civil Initial No. 1682]; Chengdushi Zhongji Renmin Fayuan Minshi Panjueshu, (1995) Cheng Min Zhong Zi Di 505 Hao [Chengdu Intermediate Court Civil Case Court Opinion, (1995) Cheng Civil Final No.505]

Case 5:

Yang Jianmin v. Chengdu Evening News, See Chengdushi Jianjiangqu Renmin Fayuan Minshi Tiaojieshu, (1990) Jin Min Chu Zi Di 1375 Hao [Chengdu Municipal Jinjiang District Court civil Case Court Settle Opinion, (1990) Jin Civil Initial No. 1375]

Case 6:

Yang Jianmin v. Fenyoun Magazine, See Chengdushi Qingyangqu Renmin Fayuan Minshi Panjueshu, (1990) Qing Min Chu Zi Di 1927 Hao [Chengdu Municipal Qingyang District Court Civil Case Court Opinion, (1990) Qing Civil Initial No. 1927]; Sichuansheng Chengdushi Zhongji Renmin Fayuan Minshi Panjueshu, (1998) Cheng Min Zhong Zi Di 511 Hao [Sichuan Province Chengdu Intermediate Court Civil Case Court Opinion, (1998) Cheng Civil Final No.511]

Case 7:

Liu Xiaoqing v. Yang Huiming Chengdu Shi Zhongji Renmin Fayuan Minshi Diaojie Shu (1989) Cheng Fa Min Yi Zi 6 Hao [Chengdu Intermediate Court Civil Case Court mediation, (1989) Cheng Civil NO. 6]