

Xu Zhiyong

A Beautiful China

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The Mission of a Law Practitioner

My Role as a Defense Counsel

I am not a practicing lawyer; I represent cases as an ordinary citizen. There are two main differences between representing criminal cases as a citizen and as a lawyer: I cannot charge fees, and meeting a detained client requires approval from the authorities handling the case. Of course, the rules have become increasingly stringent over time. I have been involved in a number of cases, but it's rare for me to actually represent them in court. Most of the time, I go over the cases with my lawyer friends as a helper.

As a defense counsel, my standard in selecting cases is based on which ones are likely to be the most socially impactful, that is, cases of extreme injustice. For example, the case of Chen Guoqing (陈国清), Zhu Yanqiang (朱彦强), and two others involved in a robbery in Chengde, where innocent individuals were sentenced to death four times and endured more than twenty years of wrongful imprisonment; or cases with numerous victims, such as the melamine-tainted milk powder incident affecting hundreds of thousands of infants, which warranted our three years of effort. By striving for justice in individual cases, we also aim to promote social progress.

Some of the cases I've represented include those of Sun Dawu (孙大午), the *Southern Metropolis Daily*, the Sanlu melamine-tainted milk powder scandal, the Huang Yong (黄勇) [illegal assembly and demonstration case](#), and the Chen Guangcheng (陈光诚) case (where, to prevent me from appearing in court, the local police detained me on the ridiculous charge of being a petty thief). There were also some administrative litigation and appeal cases that did not make it to litigation, such as the administrative compensation case for the victims of illegal brick kilns, the wrongful conviction case of Cheng Fagen (程发根) and three others in Leping of Jiangxi Province, and so on.

The procedures involved in the Sun Dawu and *Southern Metropolis Daily* cases were relatively comprehensive. In both cases, public opinion played a major role. Justice in China is often inseparable from public opinion; a lawyer's public expressions are often more effective than what he or she may argue in court.

The outcomes of these two cases were relatively satisfactory, with Sun Dawu being released on probation and Yu Huafeng's (喻华峰) second trial resulting in a reduced sentence. Many times, getting involved in a case does not change the outcome, such as in the trials of certain political prisoners. However, aiding their legal defense still holds value in spreading the stories of these heroes and garnering more support, which lends more meaning to their sacrifice.

The Story of a Private Enterprise and Its 'Illegal' Survival

On a night in March 2003, the North Lecture Hall of Peking University Library was packed to capacity. I squeezed into the aisle to listen to a bold private entrepreneur tell the story of "eight police and one farmer." A farmer's wife took a basket of boiled eggs to sell on the street. To meet all the requirements of the relevant government departments, she would need to get forty official seals in order for her business to be legal. Various market regulations created serious obstacles for the rural economy, the entrepreneur said, lamenting that what the countryside lacked was not funding or labor, but the space for free development.

That entrepreneur was Sun Dawu. His speech spread widely online, which brought him trouble, but also support.

In the following days, public attention turned to the Iraq War and SARS. At noon on April 9, CCTV military "experts" were still talking about how strong the Iraqi Republican Guard was, but I saw footage of Baghdad residents moving computers, desks, and chairs out of the presidential palace. The end of fear meant the end of dictatorship, and Saddam Hussein's regime collapsed. I wrote on BBS that this would be a day forever remembered by the Iraqi people. Later, the Sun Zhigang incident occurred, and efforts were focused on [combating the unjust custody and repatriation law](#).

Then on May 29, I saw the news of Sun Dawu's detention on the campus BBS. On July 5, Sun Dawu was formally arrested. The authorities announced that his Dawu Group was suspected of "accumulating 181.167 million yuan in public deposits" and other alleged charges, such as tax evasion and illegal possession of firearms and ammunition.

Set on investigating the circumstances, lawyer Zhang Xingshui (张星水) and I paid a visit to Dawu Group in Hebei Province. We went to surrounding villages and stopped to chat with people randomly. Except for one village cadre who remained silent, the villagers all said that Sun Dawu was a good person. They trusted him and had no regrets about lending money to Dawu Group. Some people angrily said, "What else can we do? The money was taken away by the government."

We sought the villagers' opinions because moral support was crucial to the success or failure of this case. Some said that authoritarian systems have no conscience or bottom line, especially during the peak of authoritarianism. But in the post-authoritarian era, the system is composed of individuals, each of whom has his or her moral conscience. Whether or not we could earn the respect of our opponents would have a decisive effect on the outcome of the case.

We promised Dawu Group CEO Liu Ping (刘平) that we would represent the case. Together with lawyer Zhu Jiuhu (朱久虎), who had gotten on the case earlier, we determined the defense strategy: first, we would tell the story of Dawu Group's hard-won growth as a private enterprise facing the challenges of refusing to play by illicit rules; at the same time, we would make the case less sensitive by downplaying its undesirable political connotations, which would turn it into an inoffensive matter of legal problems in the course of the country's systemic economic reform. Finally, we would use the Dawu case to reveal the flaws of the financial system and the steep challenges facing China's private enterprises in their struggle for survival and development. In a specific case such as this one, our aim was not to confront authoritarianism directly, but to rescue our client.

On July 24th, I published an investigative report online titled "The 'Illegal' Survival of a Private Enterprise: A Study of the Dawu Group's Growth." The text spread widely on the internet. At a time when rumors ran rampant and people veered toward skepticism, the truth was particularly needed. The report played a crucial role in desensitizing the issues at hand, making them known, and framing them as broadly relevant for China as a whole.

The conclusions of the report were as follows: If measured against today's various administrative regulations, the Dawu Group was indeed guilty of numerous "illegal" aspects from the very beginning of its entrepreneurship, including its startup capital, hygiene conditions, land use, taxes, and so on. However, this "illegal" survival is precisely the reality faced by many small and medium-sized private enterprises trying to eke it out in China today. If such a strong-willed entrepreneur could not escape his fate, it would truly be a tragedy with Chinese characteristics.

Sun's story is representative. In the forty years of reform and opening up, authoritarian rule distorted the market economy, state-owned enterprises grew stronger while private enterprises remained fragile, and property rights were flimsy. Many outstanding Chinese people have found ways to transfer their assets overseas. The ruling party was bent on its communist ideology, and private enterprises have always been treading on thin ice.

Knowing how to tell stories is an important part of representing such criminal cases with Chinese characteristics. In countries with freedom of the press, these stories are usually told by the media, but in China, some major cases that the media dare not report can only be told by lawyers and spread online. Broadly speaking, excellent defense arguments are a form of storytelling. They are a way of telling society that my client has done something just, yet is paying the price for it, and that this deserves our attention. To tell a story is to awaken the conscience and dispel fear.

Later, when I took part in the case of Cai Zhuohua (蔡卓华), I wrote "Prayers on the Hillside Village," telling the story of a group of Christian families near a Central Party School and their faith. In the case concerning a private oil company in northern Shaanxi, I wrote an investigative report titled "In the Name of the State: An Investigation Into the Shaanxi Private Oil Case." In the case of Chen Guangcheng, I wrote "A Government's War Against a Blind Man" to spread the truth and mobilize public opinion. Even if we cannot obtain a desirable outcome for every case, we can

make sure the efforts of the people we are representing do not completely go to waste.

Dictators also tell their stories. When the public censures them for arresting activists, they spread rumors purporting to be from insiders, claiming that the detainees took foreign money, sought to overthrow the regime, had chaotic personal lives, and so on, all with the intention of smearing them and instilling fear in others. We must respond, but more importantly, we must proactively tell our own stories from the beginning.

Depoliticization and Politicization

The aim of “depoliticization” is to eliminate fear and maximize the interests of the client we represent. While we may have clear political ideals, our client may not necessarily share them. Even if they do, we try to secure space for them before they are explicitly labeled as political opponents of the regime. The democratic forces in China are multi-layered, with some leading the charge and others providing support behind the lines. All are equally important.

One approach to depoliticization is “legalization.” Sometimes, though both sides may be aware of the political undertones of the case, neither side mentions it, so we avoid bringing them up as well.

In the Dawu Group case, we analyzed the relevant provisions of the Criminal Law and submitted a "Proposal on Interpreting Article 176 of the Criminal Law" to the Standing Committee of the National People's Congress and the Supreme People's Court. First, State Council Order No. 247 interprets the object of illegal absorption of public deposits as "to the general public," but it does not clearly define what constitutes the "general public." Second, even if the Dawu Group violated State Council Order No. 247, it does not necessarily mean a violation of Article 176 of the Criminal Law.

We not only rigorously interpret the existing legal provisions but also defend the rule of law in a broad sense. We argue against violations of superior laws by lesser laws. In a country where the rule of law is far from robust, many legal cases could actually be categorized as constitutional litigation. Lawyers are craftsmen, not just in applying laws, but also in constructing the rule of law itself.

Another approach to depoliticization is to reframe a sensitive political case — like those involving religious belief or free speech — as a less sensitive political issue related to systemic economic reforms, local bureaucratic practices, or the like. Responsibility is attributed to specific departments or local authorities, which helps isolate specific actors from the top echelons of power, and in turn mobilizes more people to participate in the case without fear.

We contacted the Tianze Economic Research Institute (天则经济研究所) and convened a seminar. Attendees included legal scholars such as Jiang Ping (江平), Li Shuguang (李曙光), and Zhou Zhenxiang (周振想), economists such as Mao Yushi (茅于軾), Sheng Hong (盛洪), Zhang Shuguang (张曙光), and Chen Ping (陈平), as well as business leaders like Bao Yujun (保育钧) and Hua Yifang (华怡方). Nearly twenty media outlets were invited to the seminar.

Prior to the seminar, I posted the article "Why We Defend Sun Dawu" online: In it, I wrote,

“We are well aware that making a not guilty plea for Sun Dawu is difficult. Even if the court convicts him based on vague legal provisions, it may not be considered wrong. However, by persisting in our not-guilty defense, we want to tell the public: If Sun Dawu is found guilty, it's not his fault, but rather a problem with the law. We are not only helping Mr. Sun, but also striving for a better environment for the survival and development of private enterprises in our country, and for the continued deepening of reform. We are willing to make efforts as legal volunteers to promote social change.”

Over the past forty years of reform and opening up, from the "crime of speculation and profiteering" of the 1980s, to the credit card fraud of the Nan De Group (南德集团), and then to the alleged illegal absorption of public deposits by the Dawu Group, private entrepreneurs have often operated in an atmosphere of unease. The status of private enterprises is often the topic of public discussion. Some say that private enterprise in China is tainted with an original sin. In reality, the true original sin lies with authoritarian power.

Sometimes, when the authorities depoliticize a case, we politicize it. In the case of Cai Zhuohua, who was charged with illegal business operations for printing Bibles. This is a typical religious freedom case, with the charge of economic crime serving as a fig leaf for persecution. The defendants simply believe in God and serve society, so why should they be suppressed? Our approach in this case was to tell the truth about the suppression of religious freedom.

Be it depoliticization or politicization, both are aimed at desensitizing the issues involved in a legal case, as well as garnering support from the public.

Legal Competency

As legal professionals, solid legal expertise is the foundation of defense. Regardless of whether the opposing party accepts it, we must ensure that our evidence is solid, our logic clear, and our argumentation anchored in reason. We can only argue based on reason, and this is our advantage.

On September 12, the case was brought to court. The indictment included two charges: illegal receipt of public deposits and illegal possession of ammunition. The illegal receipt of public deposits amounted to 150 million yuan, with a remaining balance of over 35 million yuan. If convicted on both counts, Mr. Sun could face around 10 years in prison, with a focus on the “illegal” collection of deposits charge.

The prosecution's understanding of illegal receipt of public deposits was defined as "borrowing from the general public," whereby any funds from unspecified sources constitute borrowing from public lenders. The 150 million yuan and the 35 million yuan balance indicated in the charge included all loans taken out by Dawu Group as discovered in their electronic records. Among these was even a sum of 4,000 yuan that Sun had once borrowed from his parents. Was it “illegal receipt of public

deposits” for parents to lend money to their son?

Additionally, another 9 million yuan was borrowed from Dawu Group employees, their relatives, as well as villagers with whom the company frequently made transactions. All of these ought to have been considered specific lenders, and therefore the transactions constituted legitimate private lending.

Therefore, our evidence collection work focused on the social relationships between the lenders and Dawu Group. We had to differentiate between employees, their relatives, customers, and other individuals with specific social relationships among the over 3,000 lenders relevant to the case, so as to at least demonstrate that they were not "unspecified members of the general public."

An advantage that lawyers have is their meticulousness; they ensure that each piece of evidence is complete in form. However, the amount needed for this case was overwhelming, there were over 3,000 pieces of evidence that had to be verified. Even six lawyers working together only managed to collect 49 pieces in three days. Given the situation, I came up with a plan: we could have company employees go to each village to collect evidence from the resident lenders. Initially, progress was slow. So, I designed a template "evidence" form that lenders could fill out to indicate which relationship category they belonged to; all they had to do was fill in the blanks and sign.

Liu Ping convened a board meeting, and I conveyed the evidence collection plan to the directors, explaining how to distribute the evidence forms and give the villagers instructions. In the evening, I, along with Liu Ping and Sun Meng (孙萌, Sun Dawu's son), would visit company representatives in each village — the heads of the company's village offices. Since the elder Sun's arrest, their situation was very unstable, and due to the chaotic situation with the company's finances, they had yet to receive their salaries for May. I suggested that Liu Ping quickly arrange for the company to give out the paychecks, so as to reassure the staff.

Some tasks went beyond the lawyer's normal call of duty. At that time, Sun Dawu and his two brothers had been arrested, and both Liu Ping and Sun Meng were in their twenties. Being a lawyer is first and foremost about being a decent person; a good lawyer's relationship with the client is not that of adversaries but of friends, giving his or her all for the latter's success.

From the evening of September 22 to the next afternoon, our evidence collection work began in earnest. The directors led the employees to distribute certificate forms door-to-door in each village, which were then collected after being filled out. Sun Meng and Liu Ping visited each deputy agent in the villages to explain the situation and mobilize their assistance. Zhu Jiuhu and I randomly interviewed villagers in each village, explaining the law and distributing newspaper reports about the Dawu case to help villagers understand the truth and rebuild their confidence.

During this round of evidence collection, over 650 pieces of evidence were obtained in just a day and a half, and nearly 10 million yuan was accounted for. Later, in the second indictment filed by the procuratorate, the amounts borrowed from these "specific social relationships" were omitted, and the amount of "illegal absorption of

public deposits" was reduced from 150 million to just over 14 million yuan.

Compromise

After mid-September, the situation changed. The initial indictment brought to the court was terrifying. However, a few days later, the prosecutor withdrew the case. In an authoritarian state, where judicial independence is non-existent, decisions are made by the power behind the scenes. Influencing those powers was also the focus of our efforts.

On October 11, I and two others on the defense met with Sun Dawu in the detention center. He was in good spirits and talked about many recent events. Officials had approached him multiple times in hopes that he would agree to make a confession. On October 21, I returned to Xushui again, this time with Liu Ping, to persuade Mr. Sun to compromise. He was willing to sacrifice himself to challenge unreasonable regulations and said he was ready to go to jail. But we were concerned that if this happened, it would lead to the company's collapse in the long run.

On the afternoon of October 24, Sun Meng, Liu Ping, and I were invited to the detention center, accompanied by officials from the Political and Legal Affairs Commission (PLAC). I explained to Sun how everyone involved hoped he could give a confession. Liu Ping and Sun Meng were both in tears. The elder Sun held his head in his hands for a long time. Finally he said, "I agree."

The trial began on October 30. In the afternoon, the presiding judge announced a "four-year suspended sentence." I gently patted Liu Ping's shoulder, and we shared a smile, but a part of me was ready to cry. The verdict was unfair, but it was the best result we could achieve given the reality.

In individual cases, we often have to compromise. First and foremost, we respect the choices of the client. Advocating for their interests is paramount, which is the duty of a lawyer carrying out his professional ethics. We strive to find a balance between maximizing justice in individual cases and advancing our democratic ideals.

Pride of the South

My connections with the Southern Media Group began in 1997. I was in my third year of graduate school at Lanzhou University. Near graduation, I recalled my high school dream of becoming a righteous journalist.

I submitted several articles and a self-introduction to *Southern Weekend*, one of the publications of the Group. In early December, after completing the civil service exam in Beijing, I received a call from their office. Editor-in-chief Jiang Yiping (江艺平) was passing by and wanted to meet for a chat. That evening, we met at a hotel near the *People's Daily* building. Jiang Yiping was like an elder sister, approachable and gentle. I talked about my dream. She said, "Let's start with an internship." The next day, I went to Guangzhou.

1997 was the golden age of print media. *Southern Weekend* had a tremendous influence, making it a dream destination for many journalists.

It was also from that time onwards that one round of persecution after another battered this banner of idealism. After 2000, we entered the internet era. From BBS to blogs to Weibo and then to WeChat, technological progress has been challenging authoritarianism at every step.

Not long after I arrived at *Southern Weekend*, Jiang Yiping showed me an article by Professor He Weifang (贺卫方) titled "After Leaving the Military, Veterans Are Donning Judges' Robes" and asked for my opinion on it. I said the article was worth running.

In a dictatorship, the military and the judiciary are both tools of the regime. For years it had been natural for veterans to transition to positions in the courts. But He Weifang raised the issue of judicial professionalism. He said judges were like doctors, requiring strong professional expertise. Letting people become judges without professional knowledge would be akin to letting an untrained person become a doctor, putting lives in jeopardy.

After He's article was published, *Southern Weekend* came under pressure and ran a rebuttal article written by a member of the military. As a pillar of the regime, the military cannot be criticized. However, the debate was beneficial, bringing the issue of judicial professionalism into public awareness. That was basically the start of China's effort to professionalize the judicial system, and from then on, fewer and fewer veterans became judges right out of the military.

Back then, *Southern Weekend* often featured major public events on its front page, and I learned about the case of Zhang Jinzhu (张金柱). A police officer in Zhengzhou who was about to assume a new post, Zhang drove while drunk into head-on traffic on a pedestrian sidewalk, causing the death and injury of a father and his son. Public outrage over the incident surged after *Southern Weekend's* front-page report, and the office corridors were filled with condemnations posted by angry readers.

In early January 1998, I went to Xi'an to investigate the election of delegates to the National People's Congress and made a visit back to Lanzhou University. A group of democratic activists in Xi'an participated in the election, and I hoped to write about it in a depoliticized manner to help them gain public attention. Jiang Yiping probably knew what I had in mind, but still allowed me to go.

On the day I departed for the northwest, the former Editor-in-Chief Zuo Fang (左方) summoned me for a talk. For the entire afternoon, four hours, I listened to him recount the tragic history of press freedom in twentieth-century China, the helplessness of their generation, and the dreams and responsibilities of the new generation of journalists.

I was deeply moved by the ideals and sense of duty that motivated the older generation.

Countless outstanding journalists have struggled under authoritarianism, giving the best years of their youth. In an era where everyone danced in shackles, some have been striving tirelessly for freedom.

Several tumultuous years later, I found myself in the Southern Media Group building once again. It was in February 2004, and the paper was in the midst of a crisis. Yang Bin (杨斌), deputy editor-in-chief of *The Beijing News*, found me and we solemnly discussed the case of *Southern Metropolis Daily* and its bleak situation.

The Southern Media Group truly deserves to be called the "Whampoa Military Academy" for journalists. Since 1998, [Southern Weekend has faced continuous suppression and crackdown](#), and *Southern Metropolis Daily* had taken up the banner of idealism. In March 2003, they were among the first to report on the SARS epidemic. On April 25, they reported on the death of Sun Zhigang. Their actions advanced social progress but offended the conservative forces.

In July 2003, Guangzhou public security launched a full-scale investigation into *Southern Metropolis Daily*, bent on continuing until they found a problem with the publication. Almost all of the paper's advertising clients were targeted. Eventually, they found some issues regarding a bonus distribution three years prior. On January 14, 2004, the general manager, Yu Huafeng (喻华峰), was arrested, with his trial set for March 4.

This newspaper, which once represented the conscience of the Chinese mediascape and the direction of reform, faced a huge crisis. Yang Bin asked if I was willing to represent this case, and I said yes, for the sake of freedom of speech.

Anxiety in the First-instance Defense

I partnered with Lawyer Wang Bo (王波). He mainly handled the legal aspects, while I focused on publicity of the case.

On March 4, the first hearing commenced. Both the prosecution and defense engaged in intense debates, and the trial lasted the entire day. Regarding the charge of embezzlement, the basic fact was that *Southern Metropolis Daily* and the Southern Daily Group had signed a contract that included performance bonuses for key management members. However, it was difficult to assess the business performance of the editorial staff. Therefore, the editorial board decided to return some of the bonuses, totaling 1.56 million yuan, to the overall staff, along with the annual completion bonuses for meeting contracted tasks, as year-end bonuses.

The editorial board decided to distribute the bonuses to all staff members first, then to mid-level and above management personnel, and finally, 580,000 yuan was allocated to the nine members of the highest management-level editorial board. There were resolutions and signed receipts for the distribution. Yu Huafeng and Cheng Yizhong (程益中) each received 100,000 yuan.

The prosecutor vehemently accused Yu Huafeng of receiving high bonuses without "exposure to the public," alleging it was "private appropriation" of state property.

Regarding the charge of bribery, the prosecution was burdened with proving the "solicitation of undue benefits," which is a necessary condition for charging someone

with the crime of bribery. The prosecutor accused Yu Huafeng of giving money to Li Minying (李民英), a member of the group's editorial board, "to obtain more bonuses." After this claim was refuted by evidence to the contrary, the prosecutor changed the accusation to Yu Huafeng "prematurely receiving bonuses," but there was no evidence to suggest that "prematurely receiving bonuses" had any significance for Yu Huafeng.

Our basic defense argument was as follows: Regarding the charge of embezzlement, the 1.56 million yuan was in fact part of the bonus that *Southern Metropolis Daily* staff rightfully deserved, and the source of the funds was transparent. In distributing this bonus, the editorial board was exercising its legitimate authority.

As to the charge of bribery, there was no evidence to suggest that Yu Huafeng attempted to seek any undue benefits, nor did he have any motive for offering a large bribe to Li Minying. On the contrary, this 970,000 yuan was a reward from *Southern Metropolis Daily* to Li Minying for her outstanding contributions.

In court, Yu Huafeng delivered a poignant closing statement:

“Over twenty years ago, eighteen farmers in Xiaogang Village, Anhui Province, took the daring initiative to experiment with household contracting of arable land under the risk of severe punishment under the prevailing system. Fortunately, they were not punished, and China entered a new era of reform and opening up.

“Today, as state-owned enterprises, the media industry requires innovation in its management system. It is against the backdrop of this era of reform and opening up that we embarked on a new exploration at Southern Metropolis Daily. In just a few years, Southern Metropolis Daily has risen rapidly, with advertising revenue exceeding 1.2 billion yuan last year and profits reaching 160 million yuan, mainly because we have found an effective incentive mechanism. Of course, in the process of exploration, we have encountered some obstacles from the traditional establishment, and we have adopted some flexibility in our approach. How should we view these approaches? Are they transgressions or crimes? History tells us that we should make such judgments carefully. A cold and SARS may both share the symptoms of fever and coughing, but treating a cold with the methods used to treat SARS will lead to disastrous results. I believe that the purpose of the law is not punishment, but to bring about justice and social progress. I hope that this new exploration, like farmers’ household contracting of the arable land in the past, can avoid coming to a tragic end.”

Legally, we did our best, but Yu Huafeng was still under the threat of a lengthy prison term. How the case was to be decided lay with the powers behind the scenes, and a force that could influence those powers was public opinion. If we had conducted the defense with a discussion on commercial reform of the media industry from the very beginning, the public may have followed suit and joined the discussion. But as things

developed, there was little chance that the media would dare report on the case.

Turning a matter of free expression into a topic of market-economic reform was a characteristic defense strategy in China. In that year, senior leaders in charge of propaganda openly talked about the reforms to commercialize the media industry. By using a topic that the media can report on to raise the public profile of the case, it put pressure on the extralegal forces behind the scenes, and allowed the judiciary a degree of independence and dignity. This was the defense strategy adopted in many sensitive cases.

The leadership of the Southern Media Group hoped to handle things quietly, fearing that being too high-profile would bring them even more trouble. This was a phenomenon we often encountered. After all, many people are not used to such repression, and faced with tremendous pressure from the authorities, they believe that compromising quietly can lead to a better outcome.

On March 19, the moment we all feared finally arrived. Cheng Yizhong (程益中) was arrested by the Guangzhou police in Damba County, Sichuan, at three in the morning. Yu Huafeng was sentenced to 10 years and 6 months for embezzlement, 2 years for bribery, with a total of 12 years to be served consecutively.

A Battle for Truth

The verdict directly implicated Cheng Yizhong as the mastermind of the alleged embezzlement. Cheng Yizhong's proposal to distribute the bonuses and his signing of documents to receive the bonuses were considered as acts of the primary offender, opening him up to the possibility of even heavier punishment.

In the afternoon, news came that Cheng Yizhong's home was searched, and Mr. Fan Yijin (范以锦), president of the Southern Media Group, was summoned for questioning, possibly being forced to resign.

I immediately rushed to Cheng Yizhong's home to ascertain what had happened during the search and review the list of confiscated items. I wasn't just representing Yu Huafeng's case; my concern wasn't solely focused on him. We were fighting to defend freedom of speech.

The list of confiscated items could be categorized into two main types: Art films containing nudity on their covers and banned political books. Despite the charge being that of embezzlement, items such as films and banned books, which had no relevance to the charges, were seized. There was only one explanation: hoping to report something to their superiors, they intended to portray Cheng Yizhong as a corrupt and morally decadent individual with consistently reactionary thoughts.

That evening, I released an article titled "The March 19 Ordeals of Yu Huafeng and Cheng Yizhong," exposing the conspiracy of the prosecution and further confirming that they had been persecuted for freedom of speech.

In the post-totalitarian era, conscience carries power. When reactionary forces report political opponents as villains to higher authorities, they suppress them without any psychological qualms. By exposing the facts and denying them the possibility of demonizing their political opponents, we undermine their credibility and work to gain support from conscientious individuals within higher echelons in the establishment. In every specific battle, isolating the opponent from within the system was our basic strategy.

I contacted my friends in Beijing and asked them to arrange a press conference two days later. At this time, apart from a subtle voice from the *Caijing* magazine, there were hardly any domestic media reports on the subject. We had to rely on the internet and overseas media.

In many cases, such as those of Sun Zhigang and Sun Dawu, our most powerful weapon was the light of day.

Lawyers speaking in court may not be heard or paid any attention by those with the power to make decisions. However, when they speak to the media or online, they are more likely to make ripples. The more people who know the truth, the more the invisible decision makers behind the scenes care.

On March 21, 2004, at a café in Beijing, we held a "Briefing on the *Southern Metropolis Daily* Case," attended by dozens of acquaintances from legal and media backgrounds. I presented the case, and everyone asked questions or made comments.

In the following week, we held three gatherings for netizens, where we disclosed the details of the case and urged them to spread the truth. During the last two gatherings, plainclothes officers were stationed at the door. This was the first time we directly faced pressure from the stability maintenance system.

Many people were concerned about this case and urgently needed to know the truth, and at this time, I was almost the sole source of information. There were risks and pressures, but someone must step forward to speak the truth.

Ideally, this role should be taken on by the family members. However, many times, family members are intimidated and lack experience. In public interest cases, it is crucial for the parties to fight for justice, and it's important for family members to openly support the struggle. Even if the accused chooses to compromise, it's their own decision, and public advocacy by family members will not harm them.

Authorities sometimes try to prevent family members from speaking out by intimidating them or even detaining them. As long as family members are not directly involved in the work of the accused, they have nothing to fear. The families affected by the 709 Crackdown have set a great example. They fear nothing and present themselves positively and optimistically to the public during their struggle.

As a righteous lawyer working to promote social progress, legal expertise is certainly important, but courage is even more crucial.

Comrades in Arms

Many righteous individuals working for the common good have worked together to promote social progress in numerous high-profile public incidents.

On March 21, 2004, Chen Feng (陈峰) wrote an open letter to the Guangzhou Municipal Party Committee, Municipal Government, Procuratorate, and Court. On March 29, a group of well-known media figures including Zhan Jiang (展江), Wang Keqin (王克勤), and Zhao Mu (赵牧) issued an "Appeal Regarding the Southern Metropolis Daily Issue," initiating an online signature campaign among the media and intellectual circles.

Signing petitions and rallying public support are essential components of the rights defense movement. Public expressions exert pressure on the reactionary forces and boost our own confidence.

On April 1, the "Sunshine Constitutionalism Project" (阳光宪政, later the "Open Constitution Initiative") held a seminar on the Yu Huafeng case in Beijing, where a group of renowned Chinese legal experts — including Jiang Ping (江平), Chen Xingliang (陈兴良), Chu Huaizhi (储槐植), and Fan Chongyi (樊崇义) — expressed opinions unanimously concluding that Yu Huafeng had not committed bribery or corruption.

On April 5, Sunshine Constitutionalism Project and the Tianze Institute of Economics organized a joint seminar on public property issues, where He Weifang, Zhang Sizhi (张思之), Sheng Hong (盛洪), and other scholars expressed their views on the *Southern Metropolis Daily* case.

On April 8, under public pressure, the relevant authorities finally responded by publishing an article titled "Dongshan District Court of Guangzhou City Answers Reporters' Questions" on the *Southern Daily* website defending the first-instance judgment in the Yu Huafeng case. The article claimed that there were no issues of bias in the verdict and that the arrest of Cheng Yizhong was "lawful."

This gave us an opportunity. Previously, no matter how much we shouted, the other side remained silent, which was discouraging. But now, the other side had stepped forward to respond. I wrote two consecutive commentaries and posted them on the Sunshine Constitutionalism website, widely disseminated on major forums. At the same time, we systematically compiled and published the opinions of renowned legal experts online.

On April 10, Li Jian (李健), Shen Haobo (沈皓波), Yin Lichuan (尹丽川), and others in the intellectual community launched a massive second wave of petitions, which continued until May, gaining over 600 signatories.

In mid-April, former Secretary of the Guangdong Provincial Party Committee Ren Zhongyi (任仲夷) and Provincial Party Secretary Wu Nansheng (吴南生) jointly wrote a letter to Zhang Dejiang (张德江), a member of the Politburo of the

Communist Party of China and Secretary of the Guangdong Provincial Party Committee.

In their letter, the two senior officials expressed the following points:

- 1) The Communist Party's crackdown on corruption has always been applauded and warmly welcomed by the masses. Even when there are dissenting voices, they are usually confined to a small scope. However, the corruption case concerning *Southern Metropolis Daily* has sparked significant dissent among the masses, which is worthy of reflection.
- 2) We have noticed that besides the general public, many legal and economic experts have expressed their opinions on this case. We believe that their opinions are objective, rational, and fair, and deserve our attention.
- 3) Guangdong is at the forefront of China's reform and opening up, as well as the forefront of the media industry nationwide. How to deal with the new problems arising in the process of reform and opening-up in the media industry is worth pondering.

Zhang Dejiang gave instructions to the effect that the opinions of Ren and Wu were very important, and that the case must be handled fairly, in light of its impact and the need to maintain social stability.

We had provided ammunition to the old reformists within the system. With strong public pressure from both inside and outside the system, Zhang Dejiang took the opportunity to change course. The Southern Metropolis Daily case saw a turning point.

On June 7, the retrial of the Yu Huafeng case was held in the Guangzhou Intermediate People's Court. The court acknowledged that the Editorial Board had the authority to distribute bonuses but did not have the authority to allocate the 580,000 yuan bonus, as this bonus had been "improperly" transferred by Yu Huafeng from the bonuses of operational personnel. This logic excluded the suspicion of corruption for the other several members of the Editorial Board, leaving Yu as the only one whose conviction was retained.

On June 15, the new verdict was announced, and Yu Huafeng's sentence was reduced to 8 years. In July, Deng Haiyan (邓海燕), deputy editor-in-chief of the *Southern Metropolis Daily*, was released, as the Guangzhou prosecutor's office made a decision not to prosecute. On August 27, Cheng Yizhong was released. With this, the sword hanging over the Southern Daily Group had mostly dissipated.

Did We Interfere in the Independence of the Judiciary?

Lawyers or their family members labor to disclose the truth, and people from all walks of life, including netizens, journalists, and legal experts, work together in support. The pressure of public opinion forces the hidden hands behind the scenes to loosen their grip, and the judiciary moves closer to fairness in small increments. The model demonstrated by the *Southern Metropolis Daily* case is also the model for

many cases relevant to the defense of civil justice.

Some criticize us for mobilizing public opinion to interfere with the independence of the judiciary. This criticism ignores the situation in China.

Under the post-totalitarian system, judges play insignificant roles in a vast bureaucratic establishment. They dare not be loyal to the law or their conscience. They are only loyal to their superiors and their own rice bowls. One phone call from a higher-level leader can decide the verdict. In cases of significant impact, the decision is not made by the judges, but by the Communist Party secretaries at various levels.

The public expression of lawyers not only has the value of freedom of speech but also the value of saving the dignity of the judiciary. Without the sunlight of public opinion, power can arbitrarily intervene in judgments. With it, the hidden hands manipulating the judiciary are somewhat restrained, making a show of respecting the judiciary, which restores some independence and dignity to the judiciary.

Under these circumstances, turning to public opinion is not interfering with judicial independence, but helping to uphold it.

For public opinion to be afforded free expression, and for the government authorities to respect this freedom are basic requirements. However, there is a decisive link between public opinion and court judgments — the interference of power in the judiciary. Under an authoritarian regime, what public opinion is up against is often not an independent judiciary, but one that has already been subject to interference and manipulation by the powers-that-be.

The Sun Dawu case went through a cycle: the authorities manipulated the judiciary to crack down on Sun, the public voiced support for him, the regime made concessions, and finally, a court judgment was achieved that was closer to one that would have been made had the judiciary been operating independently. By speaking the truth, we won public support, but the demands of the public were, from the very beginning, not directed at the court or an independent judicial system, but at the forces behind the interference and manipulation of the court in this case.

Similarly, in the *Southern Metropolis Daily* case, public outrage was never directed at the judiciary as an independent institution. The role of public opinion is like sunlight, peeling back the shroud of behind-the-scenes interference and manipulation.

We did not and could not have interfered with judicial independence. What our efforts aimed at were those dark forces that are already interfering with and manipulating the judiciary. What we often face is a question not of whether public opinion interferes with the judiciary, but what we can do when judicial independence has already been subject to interference and manipulation by the authorities. We cannot stand idly by, nor can we naively insist on not interfering with the independent judiciary — that is essentially allowing the judicial system to be subjected to interference and manipulation. We cannot use "not interfering with judicial independence" as an excuse to shirk our responsibility.

The Mission of Legal Practitioners

The rule of law should be a matter of consensus across the political spectrum. With the rule of law, everyone is secure. With the rule of law, the transformation of political civilization will incur minimal upheavals. However, genuine rule of law is impossible without democracy.

The National Flag Law clearly stipulates that the national flag [of the PRC] should lead when displayed with other flags. However, during the National Day military parade, the Communist Party flag was blatantly flown ahead of the national flag, openly violating the law in front of 1.4 billion people. Yet, who cares? Under one-party rule, authoritarianism flagrantly tramples the rule of law. Who would believe in the rule of law?

For the past decade, we have strived to promote the rule of law through legal means. However, instead of seeing substantive progress, we see the regime becoming more arbitrary and the judiciary becoming more subservient to it, reduced to mere "executioners." Democracy must be realized and political power must be restrained for there to be judicial independence and genuine rule of law.

Our generation of legal professionals are not merely craftsmen working with the law. We have a great mission, that is, to build a modern civilized China with democracy and freedom.

In the 1980s, it was mainly intellectuals in literature, history, and philosophy who drove social progress. They cried out for change and enlightenment. Since 2003, more and more legal professionals have stepped forward, with righteous lawyers defending the rule of law and promoting awareness of civil rights and democracy. Many lawyers have been disbarred and persecuted as a result, but this is the responsibility and honor of China's legal practitioners.

In democratic countries, a large proportion of politicians come from legal backgrounds. Lawyers played important roles in the democratic transitions in Taiwan, South Korea, and other countries. China's righteous lawyers, the future politicians, are rising despite repeated suppression. They are familiar with the law, resolute in their independence, and committed to the rule of law; they possess the wisdom to resist. They are playing an increasingly important role in the transformation of political civilization. A group of legal professionals who understand and use the rules to promote the development of political civilization, leading the country's future, is the blessing of the Chinese nation.

Chinese original: 许志永 [《美好中国之六：法律人的使命》](#)