

The Ten Most Influential Cases for 2011

Southern Weekend Editorial Board, translated by Timothy Partelow, Thomas Villalón & Dr. Lawrence C. Foster*

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I. THE CASE OF THE BEIHAI CIVIL RIGHTS LAWYERS

A. *Details of the Case*

YANG Zaixin and three other lawyers represented four defendants charged in a 2009 homicide case in Beihai City, Guangxi Province. When these lawyers questioned the prosecutors about the allegations against their clients, the lawyers were accused of falsifying evidence and were "totally annihilated." Lawyers from all around the country formed the Beihai Lawyers Group to offer legal assistance to the lawyers. However, when they were subjected to organized attacks, the All China Lawyers Association spoke out, strongly requesting the local judicial organs to protect a lawyer's right to practice their profession. As of the time of writing, this case is unresolved.

B. *The Influence of the Case: Professionals Must Rescue Themselves*

It was unique for lawyers to come to the rescue of other lawyers on their own initiative, and it momentarily livened up Beihai. Such collective actions by lawyers groups then also appeared in other places such as Changshu, Chengdu, and Guiyang. As one of Shakespeare's characters once said, "kill all the lawyers." But, most probably, this case really shows the lovable side of lawyers: they put themselves in harm's way to take on

the work of protecting the civil rights of others. After the Beihai case, if cases where lawyers are suspected of violating the elements of Article 306 of the Criminal Law¹ should be tried in other places, it is quite probable that people will still need lawyers.

II. THE CASE OF JINSHAN, LTD. SUING ZHOU HONGYI FOR DAMAGING ITS REPUTATION BY POSTING ITEMS ON WEIBO²

A. *Details of the Case*

ZHOU Hongyi, the head of 360 [a large internet company], posted a series of dozens of posts on Weibo [China's version of Twitter] directed at Jinshan [another internet company]. Jinshan then sued ZHOU Hongyi alleging "the defendant seriously injured plaintiff's brand and commercial reputation" and asking the court to order ZHOU Hongyi to retract the relevant Weibo posts. The court of first instance supported part of plaintiff's claims, ordering ZHOU to delete twenty of the Weibo posts, make a public apology, and pay RMB 80,000 [roughly USD 12,700] in damages. However, the court also pointed out that speech on the internet had "immunity."

The court of second instance ruled that ZHOU Hongyi only needed to delete two of the posts, saying that the other posts did not rise to the level of infringing on plaintiff's reputation. The court also only assessed RMB 50,000 [roughly USD 7,900] in damages. The decision said "[p]ersonal Weibo accounts are a space for individuals to speak freely They are a platform to realize the freedom of speech protected by our country's Constitution." At the same time, "[c]ontent which involves criticism also leads to the positive function of public supervision [of government]." The judge in the court of second instance said the decision in this case "is aimed at establishing rules to protect the people's right to freedom of speech."

B. *The Influence of the Case: Freedom of Speech Goes from the Constitution to a Decision in a Civil Case*

The three words "freedom of speech" are as heavy as one thousand kilos. In a case involving infringing on another's reputation, even if the results of the two decisions are different, the judges in the two Beijing courts treasured freedom of speech so much and also raised freedom of speech from the level of the civil law to the level of the Constitution. This makes one joyful and relieved. Once Weibo becomes the most popular speech medium in the world and across China, protecting Weibo will be the means to protect the freedom of speech protected under the

¹ Translators' Note: Article 306 criminalizes such acts as perjury and falsifying evidence.

² Translators' Note: Weibo is often referred to as China's version of Twitter.

Constitution and to expand Weibo as the space where people may speak freely.

III. THE CASE OF YAO JIAXIN'S FATHER SUING ZHANG XIAN FOR LIBEL

A. *Details of the Case*

YAO Jiabin, a third-year student at the Xi'an School of Music, ran over a woman with his car and then repeatedly stabbed her to death. The lawyer representing the victim, ZHANG Xian, continuously posted on Weibo about the progress of YAO's trial and various kinds of other information he had about YAO. The internet was filled with shouts of "kill the murderer!"

After YAO Jiabin was executed for the murder, people discovered he was not a "son of a rich family" or "son of a general." That made the public sentiment turn from the turbulent calls on the internet of "down with YAO!" YAO's family finally broke their silence and spoke out.

YAO's father, YAO Qingwei, brought a lawsuit against ZHANG Xian in the Yanta District court in Xian City, claiming his reputation had been violated by ZHANG.

B. *The Influence of the Case: Speech has its Limits Inside and Outside of the Courtroom*

People who had followed the postings, even including those who waited for the final death penalty verdict, discovered that what this result brought about was mostly a sense of loss and introspection. YAO Jiabin seemed to have been killed by speech. As for ZHANG Xian, even though he was righteous at the outset, he was later seen as having been kidnapped by this righteous sentiment, which gradually evolved into a kind of out-of-control righteousness. The lawsuit filed by YAO Jiabin's father is a civil rights case, which also pushed the broad masses to be more introspective.

IV. "BLACK JAILS"³—THE CASE OF ILLEGALLY DETAINING AND INTENTIONALLY INJURING PETITIONERS FROM AROUND THE COUNTRY WHO CAME TO BEIJING TO SEEK REDRESS FROM LOCAL GOVERNMENT ACTION OR INACTION

A. *Details of the Case*

On August 11, 2011, the Beijing police mobilized scores of officers to shut down a black jail located in Qiligou in Changping District, where they rescued a number of petitioners who had been illegally detained. According to the investigation, this black jail had been set up by former employees of security services companies. They specialized in helping, for a fee, local governments intercept petitioners. One of these petitioners had been beaten to death. This case is already being prosecuted.

³ Translators' Note: Black jails is a term used in Chinese to describe a wide variety of illegal detention centers.

The Deputy Chief of the Beijing Municipal Public Security Bureau, ZHANG Bing, publicly announced this case and strictly prohibited public security services companies from participating in detaining people and illegally limiting people's personal freedom. After the 2010 "An Yuan Ding Incident"⁴ was exposed, Beijing carried out a campaign to clean up the private security industry.

B. *The Influence of the Case: A Rule of Law Country Does Not Permit Private Punishment*

The word "black" in black jails means the jail is not a jail in the normal sense. Here, there is no system, no restraints, and no recognition of basic respect for a person. Moreover, "black" refers to those jails' covert and mysterious nature. If you see a big courtyard with the front gate locked, we have no way to deduce whether it is a black jail. Who would still dare set up a black jail disregarding citizens' right to supervise [government] and petition?

V. THE CASE OF LI ZHUANG, SEASON II: UNCOVERED CRIMES

A. *Details of the Case*

LI Zhuang, a criminal defense attorney, was found guilty of suborning perjury. When he was close to finishing his sentence and being released from prison, the prosecutors in Chongqing again accused him of suborning testimony to get a client off in a 2008 criminal case in Shanghai. Following the first court session, LI Zhuang presented a recording from 2005, causing the Chongqing prosecutors to withdraw the charges. On June 11, 2011, LI Zhuang was released from prison.⁵

⁴ Translators' Note: This case made the top ten cases of 2010. See Shirley Lou, Bradley Sova, Thomas Villalón, Brian Mackintosh & Lawrence C. Foster, trans., *Announcing the Ten Most Influential Cases of 2010*, 13 ASIAN-PAC. L. & POL'Y J. 16 (2012), available at http://blog.hawaii.edu/aplpj/files/2012/05/APLPJ_13-2_Foster_2010.pdf.

The most recent sentencing of people involved in these Black Prisons was announced on February 5, 2013. Wang Heyan, *10 Punished for Running "Black Jails" in Capital*, CAIXIN ONLINE, (Feb. 6, 2013, 18:03), <http://english.caixin.com/2013-02-06/100490352.html>. See also Chen Baocheng & Wang Heyan, *Court Cases Raise Hopes Gov't Will Clean Up Black Jails*, CAIXIN ONLINE (Dec. 14, 2012, 19:30), <http://english.caixin.com/2012-12-14/100472895.html>.

⁵ Translators' Note: LI Zhuang, a famous criminal defense lawyer from Beijing, represented one of the many businessmen who were arrested in Chongqing during a major crackdown on organized crime in that city. In the course of that trial, LI Zhuang's client alleged that LI Zhuang had told him to provide false testimony. LI was arrested and then sentenced to prison for suborning perjury. After LI Zhuang's release, the businessman who told the court that LI Zhuang had told him to lie in court, later recanted his testimony, saying that the Chongqing police had tortured him until he agreed to falsely testify against LI Zhuang.

The charismatic mayor of Chongqing who led the campaign, BO Xilai, was

B. *The Influence of the Case: Criminal Defense Reaches a New Low, a Lawyer's Right to Practice Is Still Not Guaranteed*

The sequel is even more amazing than the original. After the Chongqing judiciary pursued the matter of previously-jailed lawyer, LI Zhuang's "uncovered crimes," the controversy was not only about jurisdiction [how could a court in Chongqing exercise jurisdiction over an alleged criminal matter that took place in another jurisdiction], but more about people's dissatisfaction with the provisions restricting lawyers and behavior by the police, prosecutors, and the courts. When the prosecution's evidence was found to be contradictory, they took the initiative to withdraw the charges, exhibiting a respect for the law. This is progress. Following this case, in the 2011 draft amendments to the Criminal Procedure Law, the provisions concerning the guarantee of professional rights of lawyers was a core issue. There is hope that this draft will be submitted to the national meetings of the National People's Congress and Chinese People's Political Consultative Conference in 2012, but it still needs to be actively promoted.⁶

arrested in 2012, along with his wife, for a number of crimes, including murder. One of the many accusations against BO Xilai was that he used the anti-crime campaign to bolster his own fast-rising political career. It was generally believed that many of the actions taken by the police and prosecutors during that campaign were blatant violations of Chinese law. BO Xilai's subsequent, very public fall from grace made the headlines in China and the West throughout much of 2012. The story was considered by most to be the most significant political story of the year, if not the decade. BO is expected to go on trial in spring 2013 for a host of serious crimes. In August 2012, his wife was given a life sentence for her confessed murder (by poison) of a foreign business partner.

⁶ The amended Criminal Procedure Law was enacted March 14, 2012, and its effective date was January 1, 2013. The amendments generated a good deal of commentary in China and in the west. *See, e.g., China's New Criminal Procedure Law: "Disappearance Clauses" Revisited*, HUM. RTS. J. (Mar. 19, 2012), <http://www.duihuahrjournal.org/2012/03/chinas-new-criminal-procedure-law.html>; Stanley Lubman, *China's Criminal Procedure Law: Good, Bad and Ugly*, WALL ST. J., Mar. 27, 2012, <http://blogs.wsj.com/chinarealtime/2012/03/21/chinas-criminal-procedure-law-good-bad-and-ugly/>; Elaine Duan, *Highlights of Criminal Procedure Law Revision*, CHINA.ORG.CN (Mar. 12, 2012), http://www.china.org.cn/china/NPC_CPPCC_2012/2012-03/12/content_24876541.htm.

VI. BEIJING'S BIGGEST CASE INVOLVING THE RE-SALE OF CITIZENS' PERSONAL INFORMATION⁷

A. *Details of the Case*

As many as twenty-three people were involved in this case. Seven of them, including FAN Huangwei, were staff from the country's top three domestic telecom operators: China Mobile, China Unicom, and China Telecom. They were found guilty of illegally selling citizens' personal information. Also, fourteen merchants were found guilty of illegally obtaining citizens' information.

B. *The Influence of the Case: The Relevant Institutions Must Bear the Responsibility to Protect Citizens' Personal Information*

Illegally providing, accessing, and selling communication information, candidates' information, patients' information, and other citizens' personal information has created an "emerging industry." Several of the perpetrators in this case came from China Mobile, China Unicom, and China Telecom. We must question how much of their budgets and sincere efforts should these large, lucrative, monopolistic, state-owned enterprises use to protect the security of consumers' personal information. Further, we would even more like to see a clear program—how can we control the institutions that hold massive amounts of citizens' information (such as banks, insurance companies, telecommunication companies, and large online portals); how can we supervise and urge them to protect citizens' information; and how can we make them liable for damages?

VII. CRIMINALIZATION OF OWING BACK WAGES TO MIGRANT WORKERS

A. *Details of the Case*

Mr. YANG Mou, a person in charge of a construction project in Huizhou City, Guangdong Province, absconded after being delinquent in paying the wages of twenty-five workers. The unpaid wages totaled RMB 10 million [roughly USD 1.6 million]. After the police arrested and brought him back, in accordance with the Amended Criminal Law (No. 8),⁸ the court sentenced YANG Mou to ten months in prison and fined him

⁷ Translators' Note: In February 2013, new regulations were issued to protect personal information. *See generally, New Guideline on Personal Information Protection Becomes Effective*, SQUIRE SANDERS, (Feb. 2013), [http://www.squiresanders.com/new-guideline-on-personal-information-protection-becomes-effective/?utm_source=SilverpopMailing&utm_medium=email&utm_campaign=Publication%20-%20New%20Guideline%20on%20Personal%20Information%20Protection%20Becomes%20Effective%20\(1\)&spMailingID=41010603&spUserID=MTQ2NTQ4NDgyMzgS1&spJobID=178127756&spReportId=MTc4MTI3NzU2S0](http://www.squiresanders.com/new-guideline-on-personal-information-protection-becomes-effective/?utm_source=SilverpopMailing&utm_medium=email&utm_campaign=Publication%20-%20New%20Guideline%20on%20Personal%20Information%20Protection%20Becomes%20Effective%20(1)&spMailingID=41010603&spUserID=MTQ2NTQ4NDgyMzgS1&spJobID=178127756&spReportId=MTc4MTI3NzU2S0).

⁸ This particular crime was added to Article 276 of the Criminal Law by the State Council on February 25, 2011 when it promulgated the Eighth Amended Criminal Law.

RMB 20,000 [roughly USD 3,000] for the crime of refusing to pay wages. This was the first criminal case of its kind in Guangdong and likely the first in the country.

B. *The Influence of the Case: Is this Criminalization Good? We Must Beware of the Side Effects of this “Strong Medicine”*

To a high degree, the rights of migrant workers have been repeatedly infringed. Migrant worker protection is poor, but because of the high cost of judicial enforcement, the effect of the practice of “criminalization” is not optimal. The role of the agencies in charge of supervision and mediation [of labor issues] should be emphasized. Additionally, we need to consider whether the criminalization of civil issues is reasonable. Is it that we have already exhausted all societal and civil means, and yet we have still not solved the problem, or have we not yet tested a possibly more effective method? For example, allowing migrant laborer groups to become advocacy groups.

VIII. THE CASE OF LI CHANGKUI’S HOMICIDE

A. *Details of the Case*

Yunnan farmer, LI Changkui, who raped and murdered a girl from his village and killed her three-year old brother, was sentenced to death at his first trial. Because he had turned himself in, the Yunnan Provincial Supreme Court commuted his death sentence to death with a two-year suspension of sentence, which led to heated debates: after YAO Jiaxin’s murder, why should LI Changkui live? The victims’ family vigorously appealed, and the Yunnan Provincial Supreme Court reheard the case. After hearing the case, the Court held that the facts behind the verdict from the first appeal were clear, the evidence was accurate and sufficient, the conviction was accurate, and the proceedings were legal; however, the sentencing was improper, and they should reinstate the trial court’s death penalty. LI Changkui was eventually executed in accordance with the law.

B. *The Influence of the Case: Death Penalty Reform Cannot Be Stopped*

After the first trial, the Yunnan Provincial Supreme Court appealed to the community to be more “reasonable,” stating, “we absolutely cannot use public fervor as the reason to sentence a man to death.” But, this “precedent” did not hold up, but rather plunged the issue into a maelstrom of public opinion. Being forced to once again amend a sentence, without any new facts or evidence, leads to doubts that can erode judicial credibility. As a country that enacts law [as opposed to a common law country which uses case precedent], where enacted law has not yet abolished the death penalty, creating a “precedential” case is, of course, inappropriate. But, how can we use a court decision to promote death penalty reform when what we need the most is higher levels of systemic design change? Some scholarly studies show that, after the LI Changkui

case, the number of death penalty decisions clearly increased. Obviously, courts were unwilling to put themselves in the situation of being a target of public criticism like the Yunnan Provincial Supreme Court. Therefore the courts chose to deviate from the principle of “reduce and carefully examine death penalties.”

IX. THE CASE OF CONOCOPHILLIPS’ OIL SPILL IN CHINA

A. *Details of the Case*

Due to operational errors by ConocoPhillips China Co. Ltd., an oil spill at a ConocoPhillips drilling platform in the Bohai Sea not only created a great danger for China’s marine ecosystem, but also to the fishermen and aquaculturists in the Bohai Sea area by causing enormous economic losses. China’s State Oceanic Administration, the agency with the legal right to bring suit, delayed in bringing a lawsuit for damages caused by the pollution to the environment as a result of ConocoPhillips’ actions. The lawsuits brought by the fishermen and aquaculturists were not accepted for filing by the courts.⁹ This continued until December 30, 2011, when, following a slow process of internal coordination and maneuvering, the Tianjin Court of Admiralty accepted twenty-nine claims for compensation brought by the aquaculturalists.

B. *The Influence of the Case: Environmental Protection’s Judicial Predicament*

This case reflects the judiciary’s “dilemma” in dealing with environmental protection. On the one hand, environmental pollution easily causes large-scale violations, with many plaintiffs with differing interests. Moreover, if handled improperly, these cases could create a great deal of pressure on social stability. On the other hand, the polluting party is frequently the target of government efforts to attract business investment because they are guarantors of economic development.

In considering how to adjust and coordinate the relationship between the two, one must invest a great deal of time and energy in balancing these issues. The People’s Courts don’t have enough judicial authority to independently resolve these disputes, and also lack the technical means to resolve these particular types of cases. It appears that all the courts can do is to hold out until they receive instructions from

⁹ Translators’ Note: In China, a lawsuit must first be “accepted” by the court before it can be filed, thus a common way for the courts to avoid unwanted litigation is to refuse to accept a lawsuit. Minshi Susong Fa, art. 108 (民事诉讼法) [Civil Procedure Law] (promulgated by Order No. 44 of the President of the People’s Republic of China, April 9, 1991, effective April 9, 1991) *translated in Civil Procedure Law of the People’s Republic of China*, THE SUPREME PEOPLE’S COURT OF THE PEOPLE’S REPUBLIC OF CHINA (June 3, 2003, 02:55 PM), <http://en.chinacourt.org/public/detail.php?id=2694>.

higher authority. In this context, whether class action litigation,¹⁰ public interest litigation, or other related methods can be brought in to solve this predicament, or whether the ConocoPhillips case will become a model for litigation is something many are looking forward to.

X. THE CASE OF THE ARREST OF THE NEGLIGENT DRIVER FOR CAUSING
LITTLE YUEYUE'S DEATH

A. *Details of the Case*

According to media reports, on October 13, 2011, after all medical treatment failed to save her, two-year-old WANG Yue (Little Yueyue) passed away in Foshan city, Guangdong Province, following two cars running over her. Eighteen passersby walked by, but no one acted to save her. In the end, medical care could not save Little Yueyue and she left this earth. The Foshan police arrested the negligent driver for negligently causing the death of the little girl. However, society focused on the eighteen passersby. Could it be said that those eighteen people, who just watched her lay there dying and did not act to save her, are also at fault?

B. *The Influence of the Case: What Can the Law Do for Morality?*

Following media reports, many people, from a morality standpoint, condemned those eighteen passersby and were pained by the changed cold and indifferent nature of society, and, at the same time, they wondered out loud whether there is a possibility of legislation that would punish cold and indifferent behavior. This requires some kind of delineation: isn't saving someone a noble, lofty act? If a passerby saves someone, the masses will say this person is noble; if a passerby does not save someone, the masses will say this person is immoral. Why is there no middle ground between noble and immoral? If saving someone is a noble act, even if the actor is not noble, then it is not illegal. What we really lack is a way to truly affirm, reward, and give thanks for noble acts.

¹⁰ Translators' Note: Currently, there is no provision for class action litigation in Chinese law. While China does not allow for class action lawsuits, "joint litigation" is possible. For a discussion of the difference between class action and joint litigation in China, see generally Benjamin Liebman, *Class Action Litigation in China*, 111 HARV. L. REV. 1523 (1998).