

The Losing Media? An Empirical Study of Defamation Litigation in China

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Abstract

Following a well-established research tradition on court decisions, this study analyses 524 defamation cases in China from 1993 to 2013, explores the media's success possibilities, and investigates the role of party capacity, political influence and the medium effect. Contrary to the existing assertions, we find that the media are not necessarily losing. On average, from 1993 to 2013, the success rate of news media in Chinese defamation courts was 42 per cent, and this rate has been increasing since 2005. We also find that government officials and Party organs had consistent advantages in court, while ordinary plaintiffs, magazines and websites had less success. The medium of the media (i.e. print, broadcast, internet) makes a difference, as do the government policies governing the media. In addition, local protectionism exists, but it is less rampant than expected. These findings compel us to rethink the dynamics among the media, the courts and the state, and their implications on China's institutional resilience.

Keywords: defamation; libel; freedom of press; media–court relations; institutional resilience; China

Defamation litigation is not just about reputation. As demonstrated in *New York Times vs Sullivan*, freedom of speech is at stake in this type of litigation. In modern democracies, the rhetorical label “chilling effect” has been used by both legal scholars and journalists to address the impact of court decisions on the media.¹ How to strike a balance between individuals' reputations and the constitutional rights of freedom of speech usually defines the role of the courts and the media.

The situation only becomes more complicated in authoritarian and transitional countries, since the regimes there tend to repress freedom of speech and control the media through defamation litigation.² Inevitably, the courts, the media and those usually powerful plaintiffs are entangled in this type of case. This is

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1 Barendt et al. 1997; Bezanson, Cranberg and Soloski 1987; Dent and Kenyon 2004; Franklin 1986; Schauer 1978; Tushnet 2014.

2 Goodroad 1998; Zahraiddin-Aravena 1998.

especially true for China, where the media and society have undergone a rapid transformation. As Benjamin Liebman states, “The development of defamation litigation ... illustrates the complex and evolving roles of courts, media, and civil litigation in China.”³ Ever since the enactment of the General Principles of Civil Law in 1987, China has witnessed a rising amount of defamation litigation involving news media. There were 200 personal rights cases against the press in 1988; this number skyrocketed to more than 4,000 in 2000.⁴ In a 2009 survey, more than 50 per cent of news outlets in China had experienced litigation.⁵ Media–court relations in China have thus attracted wide scholarly attention.⁶

How do the plaintiffs and defendants fare in these cases and what are the trends in the media–court relationship? The existing empirical studies offer inconsistent or even contradictory results. The first empirical attempt was made by Zhiwu Chen.⁷ Drawing on 210 cases collected from the internet, a private database on legal cases and a national database on legal statutes, he found that in 63 per cent of cases the media lost, whereas that figure is only 9 per cent in the US.⁸ Examining 223 defamation cases from news reports filed between 1995 and 2004, Liebman finds that the media lost the overwhelming majority, regardless of whether the plaintiffs were powerful politicians or ordinary citizens.⁹ When the media lost a lawsuit, their pecuniary penalty was, on average, five times higher than those libel cases involving other entities.¹⁰ Excessive defamation litigation and the media’s high failure rates, many argue, could pose a chilling effect on freedom of expression and political speech concerning the discussion of public matters.¹¹

But, some have cast doubt on the above findings. Xiaoyan Chen and Peng Hwa Ang, based on an analysis of all 145 defamation cases in Chengdu courts, found that media/author defendants prevailed 35.9 per cent of the time, while the plaintiffs prevailed in 44.8 per cent of cases.¹² They argue that the authorities have not used defamation laws as a weapon to suppress the media nor have the media felt their freedom of expression to be threatened. They suggest that the success rate for plaintiffs depended more on the changing policies towards the media.

The differing data sources on which the existing studies rely may explain the above discrepancies. The data reported by the media are supposedly biased

3 Liebman 2006, 34.

4 Accurate statistics on defamation lawsuits were not available, and researchers reported different numbers (e.g. see Chen and Ang 2008; Du 2011; Xu 2009). However, all studies indicate that defamation lawsuits have increased in China.

5 Du 2011; Xu 2009.

6 Chen, Zhiwu 2004; Hao and Zhang 1996; Liebman 2006; Lin 2012; Stockmann 2013; Stockmann and Gallagher 2011.

7 Chen, Zhiwu 2004.

8 Ibid.

9 Liebman 2006.

10 Xu 2009.

11 Yan 2011.

12 Chen, Xiaoyan, and Ang 2008, 65.

because they merely report newsworthy cases, or those which have the potential to attract public sympathy. To avoid this problem, Chen and Ang examined the dockets of all Chengdu courts from 1987 to 2005, which could explain why their results differ from previous ones. But, at the time when they conducted their research, systematic data at the national level were not available. Based on cases from Chengdu alone, their study may not be able to capture geographic variations and the national trend. Political influence in defamation cases, for example, may be stronger in Beijing, China's capital, while the advantages of the commercialized media might make more difference in Shanghai, China's largest city.

To that end, a great opportunity has opened up. Along with private legal databases, many courts across China have begun to release their documents of adjudication decisions (*caipan wenshu* 裁判文书, hereafter DADs) to the public. The DADs form a relatively systematic data source. As demonstrated by Xin He and Yang Su, the DADs are able to reveal the inner logic of court decisions and provide a neutral lens through which to observe how societal and political forces penetrate the courts.¹³ If He and Su have outlined the general pattern of court decisions, later studies shall elaborate the details surrounding each category of case.

This article utilizes court DADs to explore media–court relations in China. We searched defamation cases from the DAD databases in order to include those cases not sensational enough to circulate in the media. By consolidating cases from different sources, we collected 524 defamation cases in which news media were the defendants. Different from previous studies which merely describe features of plaintiffs and defendants, our statistical analysis not only estimates the media's success probability but also investigates how different factors shape their success rate. We also address the temporal variations of media-related defamation. Based on the most recent data, our analysis uncovers the trends that might not be evident in earlier research, much of which was conducted a decade or more ago. Furthermore, for the first time, the findings offer a solid reference point for comparative studies on defamation. They also allow us to broadly address both media–court relations and the tension between individual reputation and freedom of speech in the context of authoritarian regimes.

Defamation Litigation in China

Civil remedies for defamation first became available in 1987. Article 101 of the General Principles stipulates that citizens and legal persons have the right to reputation, that respect for individuals' personal dignity is to be protected, and that insult or slander is prohibited. Article 120 stipulates that when reputation is harmed, citizens may demand the cessation of the tort, restoration of reputation, elimination of defamatory effects, an apology, or compensation. Two

13 He and Su 2013.

subsequent interpretive documents by the Supreme People's Court (SPC) have detailed the stipulations of the General Principles. The 1993 Explanation stipulates that although the truth of a media report may be a defence to harm to reputation, truth is not a defence where the alleged defamation results from insulting words or from the revelation of personal details. Providing a framework for defamation cases, the three documents nonetheless leave courts with significant discretion. For example, courts generally place the burden of proof on the media, requiring them to prove that even small details in their reports were accurate.¹⁴

China has since experienced waves of lawsuits against journalists and the media.¹⁵ Quoting unofficial estimates, Hualin Fu and Richard Cullen reported that nearly 1,000 civil defamation cases had been heard by courts during the first half of 1988.¹⁶ The *China Law Yearbook* reports that defamation cases rose from just over 3,000 in 1993 to more than 7,000 in 2001, and then dropped to 5,000 in 2004.¹⁷

The growth in defamation litigation reflects the recent development of the Chinese news media. The Chinese media have undergone rapid commercialization, with the number of publications increasing dramatically. As a result, many in the media are engaged in fierce competition. The media, however, remain linked to the party-state, with virtually all commercialized media being offshoots or subsidiaries of the traditional Party media.¹⁸ Nonetheless, commercialized offshoots of official Party publications enjoy greater autonomy over content than do their parent publications. At times, they have been more willing to stretch the boundaries of permissible content, creating the battlefields of defamation cases.

Defamation cases have increased because of the development of communication technology.¹⁹ Through mobile-phone messaging, online forums, blogs and social media, netizens often post their criticisms of local policies and government officials. Despite the common perception that the Chinese internet is under the strict control of the authorities, a vast and unregulated terrain of online activity has created challenges in the form of defamatory postings and harassment claims.²⁰

The development of defamation cases is further intertwined with evolving media–court relations. Both the media and the courts serve as part and parcel of the state apparatus; both media and legal reforms were initiated and controlled by the state. Over the years, the courts have shifted from being political instruments (in the 1980s) to being rights-based justice providers. Under the auspices of the state, the courts have developed the capacity to handle a large volume

14 Chen 2004; Liebman 2006.

15 Xu 2002.

16 Fu and Cullen 1998.

17 See Liebman 2006.

18 Chan 1993; Lee, Zhou and Huang 2006; Zhao 1998; Zhou 2000.

19 Yan 2011.

20 Cheung 2009.

of routine cases. In this process, the courts have been regarded as a safety valve for a widening range of popular complaints, including demands to protect reputations. However, tension has grown between the media and the courts. The courts have been deployed as a means of controlling the aggressive media, as shown in the growing number of regulations and litigation.²¹ Journalists often feel bitter about defamation accusations and the way the courts handle them. Consequently, along with increasing individual legal awareness is “a concomitant sense of disappointment and frustration about the inequalities and dysfunctional aspects of China’s developing legal system.”²²

Factors Shaping Outcomes

The widespread use of defamation law and the intricate media–court relations set the parameters for media-related defamation cases in China. The existing studies suggest several factors that may shape the media’s success rate in court.

First, *party capacity*. Marc Galanter suggests that despite the institutional arrangements in place to guard against particularism, private power and inequality, the “haves” have better odds of success than the “have-nots.”²³ This point has been verified empirically worldwide,²⁴ including in China.²⁵ Defamation litigation is unlikely to be an exception to this general pattern. Defamation laws have long been perceived as an instrument of “the rich and the powerful,” and “used by people who have sought power, fame or money in the public arena to attack their motives or performance.”²⁶ Specifically for defamation cases in China, Liebman finds that “plaintiffs in each of four categories prevailed in more than sixty percent of the cases, with official and corporate plaintiffs most likely to succeed.”²⁷ Chen and Ang also found that the plaintiff success rates increased from 33.8 per cent for ordinary persons to 83.3 per cent for the relatives of the deceased, usually famous persons.²⁸ Thus, we hypothesize that plaintiffs with more resources are more likely to win in the courts.

Second, *the media’s political influence*. The media’s political influences on journalistic behaviour are well documented;²⁹ however, it remains empirically untested if, or to what extent, such political influences might tilt court decisions. Existing empirical studies on defamation cases have only revealed ambiguous patterns. For example, Chen and Ang found that commercial media won more cases than they lost, but Party media surprisingly lost more than they won.³⁰

21 Fu and Cullen 1998; Lin 2012.

22 Gallagher 2006, 786.

23 Galanter 1974.

24 Atkins 1991; Songer, Kuersten and Kaheny 2000; Wheeler et al. 1987.

25 He and Su 2013.

26 Pullan 1994, 21.

27 Liebman 2006, 49.

28 Chen, Xiaoyan, and Ang 2008, 70.

29 Chan 1993; Lee, Zhou and Huang 2006; Lin, Chang and Zhang 2015; Zhao 1998.

30 Chen, Xiaoyan, and Ang 2008.

They attribute such results to the commercial media's professionalism, their open attitude towards settlements, and their increasing power. However, Liebman found that commercial newspapers only won 34 per cent. Among official newspapers, both central-level (63 per cent) and local-level newspapers (60 per cent) won more cases than provincial-level newspapers (29 per cent).³¹ Can their findings be reconciled?

Third, *medium*. Rapidly evolving communication technology has stoked defamation disputes. The internet has made defamation easier; defamation litigation has been regarded as an effective tool for ensuring that online information is free from malicious falsehoods and distortions in the new media environment.³² The underlining mechanisms used by the state and society to cope with the information revolution may differ from those in the traditional media. According to a survey on criminal libel cases in Wisconsin, none of the cases before 1999 involved the internet and 45 per cent of cases from 1999 to 2007 were internet-related.³³ In China, among defamation cases involving the new media, 70 per cent were publicly prosecuted, much higher than the 38 per cent in the traditional media. The role of the police was also more influential in new media cases. In more than 50 per cent of new media cases, the accused was detained by the police, while the accused was detained in only 10 per cent of traditional media cases. In addition, a higher percentage of new media cases involved local government officials and private individuals than in traditional media.³⁴ Thus, we hypothesize a difference in success rates between traditional and new media.

Fourth, *local protectionism*. Local litigation parties are often favoured, and this has been identified as a chronic problem in China's legal system.³⁵ This is primarily because until recently, local governments have controlled court budgets and the appointment of senior court officials. The existing literature suggests the jurisdiction influences court decisions on media-related defamation. However, it offers inconsistent interpretations on local protectionism. Both Zhiwu Chen and Liebman find that local litigation parties lose less.³⁶ Chen, for example, contends that non-local media lose 78 per cent of the time, while local media only lose 54 per cent of the time. Liebman asserts that even for the cases in which local media lose, the court tends to mitigate the magnitude of the damage. He nonetheless argues that "understanding defamation as a manifestation of local protectionism is misguided," because there "are examples where courts rule for either non-local plaintiffs or non-local media defendants."³⁷ Chen and Ang suggest a more tempered result: local media's success rate was 36.25 per cent,

31 Liebman 2006.

32 Brenner 2007; Pritchard 2009.

33 Pritchard 2009.

34 Yan 2011.

35 He 2009; 2011; Lubman 1999; Peerenboom 2001.

36 Chen, Zhiwu 2004; Liebman 2006.

37 Liebman 2006, 53.

compared to the non-local media's success rate, which ranged from 28.6 per cent to 30 per cent.³⁸ More importantly, they argue that the higher success rate for local media stems from the reliance of the media on freelance and indirect reporting of non-local issues. This is because "Chinese media are not allowed to station correspondents outside their corresponding administrative level."³⁹ Thus, there is a need to re-examine the extent of local protectionism.

In addition, we will explore the temporal and regional variations of the media's success rates in defamation cases. The development of the media is related to the policies governing the media sector. Consequently, it is likely that defamation litigation is also affected by the general political environment and the specific policies for the sector. For example, Chen and Ang find that the success rate of the media varies across different periods of the media's development.⁴⁰ Will this assertion hold across China and over time?

Data and Methods

Our databases on defamation cases come from four sources. The first consists of two private national DAD databases. Since DADs began to appear in the public domain, many research institutes and private companies have constructed user-friendly DAD databases. A DAD usually lists the litigation parties, the representatives of the parties, if any, the institutions with which the individual litigants are affiliated, the disputes at issue, the parties' arguments, the court's position on the disputes, and the case outcome. We collected information from two databases used by previous studies.⁴¹ One is the Lawyee Database (*Beida fayi* 北大法意), which was developed by Lawyee Technology Development Co. Ltd. It includes more than 20 million judicial cases.⁴² The other is the PKU Law Database (*Beida fabao* 北大法宝), established by Peking University Law School in 1985 and developed by the Peking University Legal Information Center and Chinalawinfo Co. Ltd. It contains judicial decisions approved and published by the Supreme People's Court and the Supreme People's Procuratorate in the areas of administrative disputes, civil disputes, criminal offences, economic disputes, maritime disputes, and intellectual property law. As of 14 April 2014, 2,037,584 DADs were included in the database.⁴³

Similar to several other studies, we only focused on the first instance defamation cases with news media organizations as defendants.⁴⁴ We included cases suing organizations only, and cases suing journalists and news organizations. We excluded cases suing individual journalists only for two reasons. First,

38 Chen, Xiaoyan, and Ang 2008.

39 Ibid., 66.

40 Ibid.

41 Chen, Zhiwu 2004; Zhu and Yang 2012.

42 http://www.lawyee.net/product_service/db_case.asp. Accessed 25 May 2014.

43 <http://www.pkulaw.cn/help/index.html?item=BLAJ>. Accessed 25 May 2014.

44 Chen, Zhiwu 2004; Liebman 2006; Chen, Xiaoyan, and Ang 2008; Zhu and Yang 2012.

focusing on cases against news organizations serves our research purpose. Once media organizations were sued, journalists' behaviour was no longer individual behaviour but became institutional behaviour. Exploring media organizations' winning rate in defamation courts thus allows us to uncover the dynamics among the media, the court and the state. Second, given the structure of databases and websites, it is too time-consuming, thus impractical, to focus on cases against individual journalists only. Neither databases nor websites classify the occupations of the defendants. Among the 5,678 cases we searched using "cause of action," we were unable to tell whether or not an individual defendant was a journalist without reading the content of the decisions. However, it was possible to tell if an organization was a news organization from the title of the DAD files. Thus, in this project, we focused on cases suing news organizations. By searching defamation and libel (*feibang* 诽谤, *mingyu qinquan* 名誉侵权, *rongyu qinquan* 荣誉侵权) as "cause of action" (*anyou* 案由) in the two private databases, we collected 294 relevant cases.

The second source of DADs is the court websites. In an effort to improve the transparency of the judicial process, the SPC, in its Three Five-Year Reform Outlines, has encouraged courts across the country to publicize DADs. At the time of writing, the Judicial Opinion of China claims that it has put up more than 17.6 million DADs. Some provincial high courts, such as the Henan High Court, claimed that all the DADs for all three levels of court would be on the web.⁴⁵ According to the Henan High court, "all" documents means everything other than those documents involving state secrets, business secrets, privacy issues, and adolescent criminals. If one of the litigation parties involved opposes publication, then publication must be approved by the court director. Nonetheless, since some sensational cases are conspicuously missing from the web, few believe that the courts will genuinely make all cases available. There must be some kind of screening. We searched defamation cases on two national websites: www.chinacourt.org (*Zhongguo fayuan wang* 中国法院网),⁴⁶ and the Judicial Opinion of China at www.court.gov.cn/zgcpwsw/ (*Zhongguo caipan wenshu wang* 中国裁判文书网). In addition to the cases from the above two private databases, we added 30 cases from these websites.⁴⁷

The third source is the news coverage of the cases from the PKU Law Database. We searched the keyword "defamation" in the news reports and added 21 cases not available from the DAD databases mentioned above.

The fourth source comes from the previous studies. The existing literature contains 179 cases not covered by the first three sources. Most of them occurred in the early 1990s before the first three sources began their coverage. As reported in Table 1, altogether we collected 524 defamation cases from these four sources.

45 China Youth Online 2009.

46 http://old.chinacourt.org/cpws/more.php?cat2_id=1.0300&foreign=0. Accessed 25 May 2014.

47 Since we finished this project, both websites have been restructured. The website Judicial Opinion of China has been renamed China Judgments Online. Our search results were based on the old versions of these websites.

Table 1: Defamation Involving Media Organizations

	Data sources	Search method (keywords)	Search results	Involving news organizations
Private databases	PKULaw 北大法宝	in “cause of action”	1,784	253
	Lawyee 法意	in “cause of action”	2,023	+41
	News Report媒体案例	in “cause of action”	1,080	+21
Courts’ websites*	Judicial Opinion 中国裁判文书网	in “cause of action”	202	+17
	China Courts 中国法院网	in “title”	589	+13
Previous research	Liebman 2006	(media + courts)	223 (1995–2004)	+179
	Chen, Zhiwu 2004	(Lawyee)	212 (1993–2003)	
	Xu 2009	(media and survey)	800+ (including IP cases)	
	Yan 2011	(media)	60 (criminal defamation)	
	Zhu and Yang 2012	(databases + media + survey + others)	800 (including all media tort cases)	
Total				524

Source:

Authors.

Notes:

*China Courts: <http://www.chinacourt.org/>; Judicial Opinions of China: <http://www.court.gov.cn/zgcpwsw/>.

We then developed a coding scheme and trained two independent coders for content analysis. We coded the following measurements.

1) Court decisions on winning and losing. A defamation case usually involves both monetary and non-monetary remedies. For monetary remedies, we used plaintiffs’ awarded amount to decide who was victorious: plaintiffs win if they are awarded with the full or partial claimed amount. Defendants win if plaintiffs are not awarded any claimed amount. This is because the defendant will not be asked to compensate the plaintiff unless he/she is somehow held responsible. While the court may not support the full amount claimed by the plaintiff, its decision that the defendant shall pay clearly indicates that the lawsuit has legal basis. For non-monetary remedies, the criteria are whether defendants were ordered to offer a formal apology, to cease the defamatory information, to eliminate the damages, or to provide any other non-pecuniary compensation. Apology is also a clear indication that the defendant is at fault, since in defamation cases, reputation is regarded as honour and dignity.⁴⁸ Indeed, in some cases the

48 Post 1986.

plaintiffs only sue for apologies. The inter-coder reliability, measured by Cohen's Kappa, was 0.82.

We also calculated the percentage of the litigation fees for which a judge decided the plaintiff should be responsible. According to the Measures of Litigation Fees in China, the losing party shall bear all litigation fees, and courts have discretion on allocating fees in situations of lost cases.⁴⁹ However, the real situations are often fraught with complications. According to interviews conducted with judges, some “exercise their discretion to disconnect [the] litigation fee and the claimed amount, and assign litigation fees to each party that reflect the judge's sense of who wins the case by how much.”⁵⁰ In some cases in which the litigation fees are fixed or small, judges may ask only the richer party to pay, regardless of the results. Hence, we only used litigation fees to judge the court's decisions if there was not enough information on either awarded amount or non-pecuniary compensation.

2) Characteristics of news media organizations. We coded three types of characteristics of a news organization: administrative rank, medium type, and Party organ or not. The inter-coder reliability measured by Cohen's Kappa for these three variables were 0.78, 0.98, and 0.92, respectively. Existing empirical studies have found that these characteristics are key factors in shaping Chinese media behaviour.⁵¹

3) Characteristics of plaintiffs. We coded the number as well as the structure of the plaintiffs: if the case involved individual plaintiffs only, organizational plaintiffs only, or both individual and organizational plaintiffs. Following Liebman, and Chen and Ang, we also identified four categories of plaintiffs: government organizations and officials, corporate and businessmen, the famous/professional, and the ordinary/unknown.⁵² The Cohen's Kappa for these two variables were 0.90 and 0.80, respectively.

4) Jurisdiction. We coded the locations of plaintiffs, of defendants, and of courts. We then classified jurisdiction into four types: home of plaintiffs only, home of defendants only, home of both plaintiffs and defendants, and neither or unknown. The Cohen's Kappa was 0.81.

We also coded the number of defendants, types of co-defendants if any, time period, and regions.

Findings and Analysis

Overview

Of the 524 defamation cases that we collected from 1993 to 2013, 99 cases occurred in the 1990s, 322 cases in the 2000s, and 103 cases between 2010 and

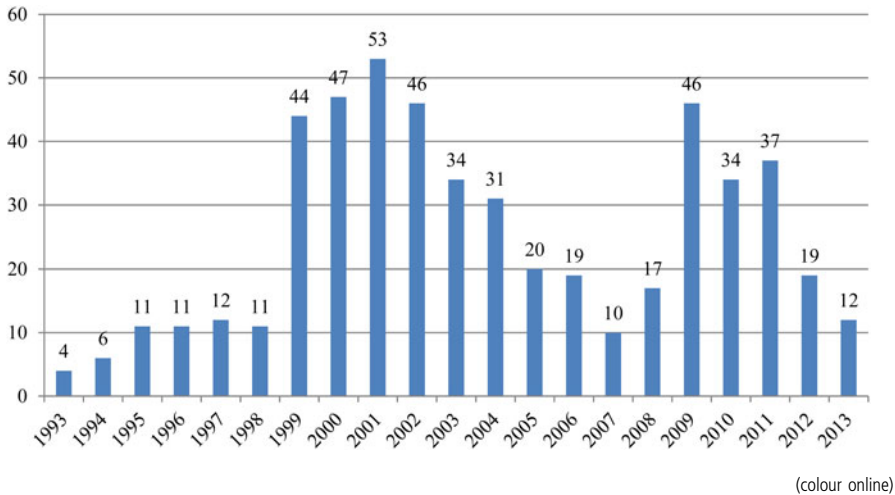
49 Measures of Litigation Fees 2007, Art. 29.

50 He and Su 2013, 128–29.

51 Lin, Chang and Zhang 2015.

52 Liebman 2006; Chen, Xiaoyan, and Ang 2008.

Figure 1: Defamation Litigation Involving News Media Organizations by Year, 1993–2013



2013. Illustrating the trend over the years, Figure 1 shows two peaks: 53 cases in 2001 and 46 cases in 2009.⁵³ With regard to the plaintiffs, 400 (76 per cent) of all collected cases involved individuals only, 114 (22 per cent) involved organizations only, 2 per cent involved both individuals and organizations, and 14 per cent involved multiple plaintiffs. Ordinary people were the biggest category (40 per cent), followed by corporate and businessmen (27 per cent), the famous or professional (23 per cent), and government officials and organizations (14 per cent).

Previous research has classified the temporal development of defamation into four waves: media sued by the ordinary, the famous, businessmen and corporate, and government and officials, respectively.⁵⁴ Such characterization was based primarily on media reports on defamation. Our data reveal no significant temporal variation in the number of lawsuits filed by either the famous/professional (chi-square = 0.61, $p > 0.05$) or by ordinary citizens (chi-square = 3.23, $p > 0.05$). However, the number of lawsuits filed by government officials and organizations (chi-square = 33.45, $p < 0.05$) has plummeted. From 1993 to 1997, 30 per cent of defamation cases were filed by government officials and organizations. The proportion decreased to 19 per cent between 1998 and 2004, and then down to 4 per cent after 2005. In addition, the trend of corporate and businessmen plaintiffs fluctuated (chi-square = 6.62, $p < 0.05$): 32 per cent of lawsuits involved corporate and businessmen in the period 1993–1997; that proportion dropped to 22 per cent in 1998–2004, and then bounced up to 32 per cent in 2005–2013.

53 The small number of defamation cases in the early 1990s is in part because no databases or websites covered all the cases at the time.

54 Xu 2002.

We classify the time period into three date ranges – 1993–1997, 1998–2004 and 2005–2013 – for two reasons. First, as we will show, the media’s success rate suggests the year 2005 to be a turning point. Second, this is consistent with previous studies: Chen used 2003,⁵⁵ Liebman used 2004,⁵⁶ and Chen and Ang used 2005 as their turning points.⁵⁷

In terms of defendants, newspapers were the majority (63 per cent), followed by magazines and books (15 per cent), websites (13 per cent), and broadcast media (12 per cent). The dominance of newspapers is consistent with trends in other countries. For example, the percentage of newspapers was 62 per cent in the US (1977–1980) according to Marc Franklin,⁵⁸ and 54.3 per cent according to the Media Law Resource Center’s 2014 report (1980–2013), 58.5 per cent in Australia (1979–1981),⁵⁹ and 44 per cent in New Zealand (1998–2001).⁶⁰

Newspapers also experienced significant temporal variation. They constituted 77 per cent of defendants from 1993 to 1997, and 73 per cent from 1998 to 2004, which is consistent with the findings of Liebman and Chen and Ang.⁶¹ From 2005 to 2013, this figure dropped to 49 per cent (chi-square = 32.19, $p < 0.05$), whilst the percentage of defendants coming from the broadcast media (chi-square = 13.65, $p < 0.05$) and websites (chi-square = 54.79, $p < 0.05$) soared. In the early 1990s, none of the websites and only 5 per cent of the broadcast media were sued. Between 2005 and 2013, 26 per cent of lawsuits targeted websites and 18 per cent involved broadcast media. Such a trend echoes the development of new communication technology.

Regarding the administrative ranks of news media, 51 per cent were at the provincial level, 11 per cent were at central level and 30 per cent were at the municipal or lower level; 156 cases (30 per cent) involved Party organs.

In terms of jurisdiction, 51 per cent of the cases occurred in the locality of both plaintiffs and defendants, 31 per cent in the locality of plaintiffs only, 12 per cent in the locality of defendants, and 6 per cent were in the locality of neither (or missing information). Half of the cases occurred in east China, where the economy, the media and the legal system are more developed than in both central (36 per cent) and west China (14 per cent).

Regarding the monetary remedies, since some plaintiffs might over-claim, on average, the plaintiff claimed 3,566,667 yuan, including both economic losses and mental hardship, while the median claim was 80,000 yuan. The average plaintiff’s awarded amount, however, was 91,098 yuan, and the median awarded amount was 1,500 yuan. Non-monetary compensation was awarded to 48 per cent of the plaintiffs.

55 Chen, Zhiwu 2004.

56 Liebman 2006.

57 Chen, Xiaoyan, and Ang 2008.

58 Franklin 1981.

59 Newcity 1991.

60 Cheer 2008.

61 Liebman 2006; Chen, Xiaoyan, and Ang 2008.

Table 2: **Types of Plaintiffs and Defendants in Defamation Cases in China, 1993–2013**

		Frequency	%	Variation over time (chi-square)
Plaintiffs				
Structure	Individuals only	400	76.34	3.44
	Organizations only	114	21.76	
	Both individuals and organizations	10	1.91	
Type	Government and officials	71	13.55	33.45***
	Corporate and businessmen	142	27.10	6.62**
	The famous/professional	120	22.90	0.61
	The ordinary/unknown	211	40.27	3.23
Number	Single plaintiff	451	86.07	1.53
Defendants				
Medium	Newspapers	332	63.36	32.19***
	Magazines/books	81	15.46	12.11***
	TV, radio and film	63	12.03	13.65***
	Websites	67	12.79	54.79***
Highest rank				25.68***
	Central	59	11.26	
	Provincial	266	50.76	
	Municipal or lower	158	30.15	
	No rank (commercial)	41	7.82	
Party organ	Yes	156	29.77	1.79
Co-defendants	Individual defendants	129	24.62	0.63
	Government organization	21	4.01	1.37
	Corporate	28	5.34	5.78*
Jurisdiction	Locality of plaintiffs only	162	30.92	29.62***
	Locality of defendants only	64	12.21	
	Locality of both	268	51.15	
	Locality of neither/not clear	30	5.73	
Region	East	263	50.19	10.04**
	Central	189	36.07	
	West	72	13.74	
Period	1993–1997	44	8.40	
	1998–2004	266	50.76	
	2005–2013	214	40.84	
Total		524^a	100%	

Sources:

Authors.

Notes:

^a The sum is more than 524 because there are cases involving multiple plaintiffs and defendants. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

The success rate of the media

From 1993 to 2013, media defendants won 42 per cent of their cases. Such a success rate should be interpreted against the characteristics of both plaintiffs and defendants (Table 3). Previous studies have emphasized the advantage of organizations. As repeat players, organizations often have more experience

Table 3: **Success Rates of Defendant Media in Defamation Litigation (%)**

	Plaintiff win (media loss)	Defendant win (media win)	Cases	Chi-square
Plaintiff				
Individuals only	58.75%	41.25%	400 (100%)	3.44
Organizations only	56.14%	43.86%	114 (100%)	
Both individuals and organizations	30.00%	70.00%	10 (100%)	
Government and officials	73.24%	26.76%	71 (100%)	8.19***
Corporate and businessmen	54.23%	45.77%	142 (100%)	0.93
The famous/professionals	64.17%	35.83%	120 (100%)	2.72*
The ordinary/unknown	53.08%	46.92%	211 (100%)	3.00*
Single plaintiff	58.31%	41.69%	451 (100%)	0.61
Defendant				
Medium				
Newspapers	58.43%	41.57%	332 (100%)	0.24
Magazines/books	72.84%	27.16%	81 (100%)	9.07***
TV, radio and film	36.51%	63.49%	63 (100%)	13.09***
Websites	61.19%	38.81%	67 (100%)	0.40
Highest rank				
Central	61.02%	38.98%	59 (100%)	
Provincial	57.52%	42.48%	266 (100%)	
Municipal or lower	55.06%	44.94%	158 (100%)	
Commercial	63.41%	36.59%	41 (100%)	
Party organ	46.79%	53.21%	156 (100%)	10.69***
Co-defendants with:				
Individual defendants	57.36%	42.64%	129 (100%)	0.01
Government organizations	52.38%	47.62%	21 (100%)	0.25
Corporate	53.57%	46.43%	28 (100%)	0.20
Jurisdiction				
Locality of plaintiffs only	65.43%	34.57%	162 (100%)	
Locality of defendants only	65.63%	34.38%	64 (100%)	
Locality of both	50.00%	50.00%	268 (100%)	
Locality of neither/not clear	66.67%	33.33%	30 (100%)	
Region				
East	50.95%	49.05%	263 (100%)	
Central	62.96%	37.04%	189 (100%)	
West	68.06%	31.94%	72 (100%)	
Period				
1993–1997	72.73%	27.27%	44 (100%)	
1998–2004	66.54%	33.46%	266 (100%)	
2005–2013	43.46%	56.54%	214 (100%)	
Total	302 (57.63%)	222 (42.37%)	524 (100%)	30.36***

Source:

Authors.

Notes:

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

and resources.⁶² However, our data show that, when sued by individuals only, media defendants won 41 per cent of the time; when sued by organizations only, media won 44 per cent of the time; and when sued by individuals and organizations together, media won 70 per cent of the time. The difference is not significant (chi-square = 3.44, $p > 0.05$) if the plaintiff is an individual or an organization. Nor is there a significant difference found in the success rate of the media when the lawsuits involved either single or multiple plaintiffs (chi-square = 0.61, $p > 0.05$).

Consistent with previous studies, our data showed the significant advantages of government and officials when suing media: the media only won 23 per cent of their cases (chi-square = 8.19, $p < 0.05$), the lowest among the four types of plaintiffs. The media won 46 per cent when sued by corporate and businessmen (chi-square = 0.93, $p > 0.05$), 36 per cent when sued by the famous and professional (chi-square = 2.72, $p > 0.05$), and 47 per cent when sued by the ordinary (chi-square = 3.00, $p > 0.05$). Of these three types of plaintiffs, none presented a significant difference in the media's success rate.

The media's success rate also varied by medium. Magazines and books had the lowest success rate (28 per cent) while broadcast media had the highest (63 per cent), followed by newspapers (42 per cent) and websites (39 per cent).

We found no significant variations across the administrative ranks of news media (chi-square = 1.27, $p > 0.05$). However, Party organs had significantly higher success rates (53 per cent, chi-square = 10.69, $p < 0.05$) than non-Party organs.

The media's success rate varied significantly across jurisdictions (chi-square = 13.11, $p < 0.05$). When the litigation occurred in the locality of both plaintiffs and defendants, the media had the highest success rate (50 per cent). For the three other types of jurisdiction, the media's success rates were similar: 35 per cent for locality of plaintiffs only, 34 per cent for locality of defendants only, and 33 per cent for neither (or an unknown situation).

Which factors count?

In addition to the descriptive statistics, we conducted a logistic regression to evaluate how the above factors shape media's success rates, as reported in [Table 4](#).⁶³

The plaintiffs' capacity affected the media's success rate. Other conditions being equal, the media's odds of success would be reduced by 76 per cent if

62 Galanter 1974; He and Su 2013.

63 This model estimated the media's success rate to be 42.37%, and the Hosmer-Lemeshow test indicated a good fit with our model (Hosmer-Lemeshow chi-square=4.53, $p=0.81$). The logistic regression assumes the logit of the media's success rate is a linear combination of all independent variables. Our model did not show any specification error. In addition, no variables had large VIF, indicating no multi-collinearity problems.

Table 4: **Logistic Regression on Media's Success Rate (Odds Ratio)**

Plaintiffs' capacity		Odds ratio (s.e.)
Types of plaintiffs	Government officials and organizations	0.24 (0.17)**
	Corporate and businessmen	0.29 (0.21)*
	The famous/professional	0.28 (0.20)**
	The ordinary/unknown	0.33 (0.23)
Structure of plaintiffs	Individuals only	0.83 (0.36)
	Both individuals and organizations	6.74 (6.51)**
	Organizations only (as reference)	
Number of plaintiffs	Single plaintiff	0.76 (0.24)
Political influence		
Administrative rank	Central level	1.43 (0.72)
	Provincial level	0.97 (0.40)
	Municipal level	0.95 (0.42)
	Commercial (no rank as reference)	
Party organ		1.79 (0.42)**
Medium	Newspapers	0.34 (0.22)
	Magazines/publishers	0.24 (0.16)**
	Broadcasting media	0.55 (0.39)
	Websites	0.25 (0.17)**
Jurisdiction	Locality of plaintiffs only (as reference)	
	Locality of defendants only	1.08 (0.37)
	Both defendants and plaintiffs	1.59 (0.38)**
	Neither or N/A	1.42 (0.63)
Defendants' features		
Number of defendants	Single defendant	0.70 (0.22)
Co-defendants with:	Individuals	0.84 (0.28)
	Government organizations	0.83 (0.44)
	Corporate	0.74 (0.34)
Period	1993–1997 (reference)	
	1998–2004	1.59 (0.62)
	2005–2013	3.86 (1.58)***
Region	East (as reference)	
	Central	0.60 (0.13)**
	West	0.46 (0.15)**
Constant		5.71 (6.98)
Cases		524
Log likelihood		-315.44
Pseudo R2		11.66%

Source:

Authors.

Notes:

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

they were sued by the government and officials, comparing with the odds when they were sued by non-government officials or non-government organizations (odds ratio = 0.24, $p < 0.05$). As reported in Table 5a, when sued by the government and officials, the media's average success rate was 23 per cent less than their average rate when sued by non-government officials and organizations (chi-square = 6.33, $p < 0.05$). Being a celebrity or professional also provided a significant advantage. When sued by celebrities or professionals, the media's odds of

Table 5a: Media's Estimated Average Success Rate (%)

Contrast	Average probability	Chi-square
Government officials and organizations (yes vs no)	-23.27%	6.33**
Corporate and businessmen (yes vs no)	-22.25%	4.48**
The famous/professional (yes vs no)	-24.13%	4.76**
The ordinary/unknown (yes vs no)	-20.59%	3.49*
Organizations only vs individuals only	4.00%	0.20
Both individuals and organizations vs individuals only	40.14%	9.03***
Central level vs commercial	7.47%	0.52
Provincial level vs commercial	-0.68 %	0.01
Municipal level or lower vs commercial	-1.11%	0.52
Party organs (yes vs no)	12.42%	6.14**
Broadcast media (yes vs no)	-11.50%	0.86
Newspapers (yes vs no)	-21.92%	3.28*
Magazines/publishers (yes vs no)	-26.38%	6.68***
Websites (yes vs no)	-25.11%	6.45**
Locality of defendants only vs locality of plaintiffs only	1.51%	0.05
Locality of both vs locality of plaintiffs only	9.76%	3.77**
Locality of neither/NA vs locality of plaintiffs only	7.24%	0.59
Central vs east	-10.89%	5.50**
West vs east	-15.87%	6.57**
1998–2004 vs 1993–1997	8.91%	1.60
2005–2013 vs 1993–1997	28.39%	13.91***

Source:

Authors.

Note:

This table reports the average rate of success, measured by marginal probability.

success were reduced by 72 per cent (odds ratio = 0.28, $p < 0.05$). In other words, the media's average success rate was 24 per cent less when sued by celebrities/professionals, as opposed to non-celebrities/non-professionals (Table 5a). At the same time, neither the corporate and businessmen (odds ratio = 0.29, $p > 0.05$ ⁶⁴) nor the ordinary/unknown plaintiffs (odds ratio = 0.33, $p > 0.05$) had any significant advantage.

Such patterns resonate with Chen and Ang's observation: "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."⁶⁵ While our findings are consistent with Liebman in that the media lost the majority of cases when sued by government officials and organizations, they cast doubt on Liebman's conclusion that the media lost the majority of their cases when sued by the ordinary.⁶⁶ Even though the media lost 53 per cent of cases when sued by the ordinary (see Table 3), the

64 If taking 10% as the significance level, the corporate and businessmen only had a marginal advantage (odds ratio = 0.29, $p < 0.10$).

65 Chen, Xiaoyan, and Ang 2008, 71.

66 Liebman 2006.

plaintiff being ordinary/unknown was not a significant factor shaping the court decisions (odds ratio = 0.33, $p > 0.05$).

Additionally, the media's political influence was significant when exerted through Party organs. Party organs' success rates were 1.79 times higher than those of non-Party organs (odds ratio = 1.79, $p < 0.05$). In terms of probability, the average success rate of Party organs was 12 per cent higher than non-Party organs. The advantage of Party organs can be attributed to both the contents of Party organs and their political influence. As the mouthpiece of the Party, Party organs are more conservative in their reporting than commercial media. This explains only 30 per cent of cases in which Party organs were sued (see [Table 2](#)). The advantage held by Party organs reflects the nature of the media and the courts in China: as part of the state apparatus, both are supposed to uphold the reputation of the party-state. To prevent the Party organs from losing in court is an important step in protecting the party-state's reputation.

However, our data showed that the administrative ranks of media organizations did not have significant effects. Even though the administrative hierarchy affects the media's behaviour, such a hierarchy has not been translated into an advantage in defamation cases. While the line between the Party and the government is often blurry, our results verify that the Chinese media are more controlled by the Party than by the government.

One might wonder then if the administrative ranks of the courts (district, intermediate, high and supreme) intervene in the effects of administrative ranks of the media. In 269 cases with information on the administrative ranks of courts, no significant correlation was found between the administrative ranks of the media and those of the courts (chi-square = 10.01, $p = 0.124$). Nor were significant correlations found between the administrative ranks of the media and their success rates at each level of court.

Furthermore, the media's medium made a difference. Of the four types of media, the magazines/publishers and websites were less likely to win, compared with the newspapers and broadcast media. Being a magazine or a book publisher reduced the odds of success by 76 per cent (odds ratio = 0.24, $p < 0.05$). The odds ratio of websites winning was only 25 per cent of the odds of non-websites (odds ratio = 0.25, $p < 0.05$). Also shown in [Table 5b](#), other conditions being equal and set at their mean values, the success rates of the newspapers and broadcast media were consistently higher than those of magazines and websites across all categories of plaintiffs. One reason underlying these variations may be the contents of those media. As we know, objectivity is the fundamental professional rule for news media. Both print and broadcast media have more restrictive gatekeeping procedures than websites. Another reason is that courts have more experience in handling cases involving print media than in those involving websites. The website defamation cases are new: the first such case only appeared in the 2000s, while the first defamation cases against print media, magazines in particular, date back to 1985. The rules regulating defamation issues on websites remain unsettled. As a result, courts are less experienced and, for self-protection, are

Table 5b: Media's Estimated Success Rate (%)

	Government organizations/ officials	Corporate/ businessmen	The famous/ professional	The ordinary/ unknown
Administrative rank				
Central	46.04	50.54	49.49	53.79
Provincial	36.60	40.88	39.86	44.05
Municipal	36.12	40.38	39.36	43.54
Party organ				
Yes	47.51	52.02	50.97	55.26
No	33.56	37.70	36.71	40.80
Medium				
Newspaper	28.71	32.54	31.62	35.46
Magazine and book	15.40	17.90	17.29	19.90
TV, radio and film	26.27	29.91	29.03	32.71
Website	15.16	17.63	17.02	19.59
Jurisdiction				
Locality of plaintiff only	31.52	31.28	30.38	34.14
Locality of defendant only	33.15	37.26	36.28	40.35
Locality of both	42.29	46.74	45.69	49.99
Locality of neither/NA	39.45	43.83	42.80	47.06
Period				
1993–1997	21.48	24.68	23.90	27.18
1998–2004	30.31	34.25	33.31	37.24
2005–2013	51.37	55.85	54.81	59.03

Source:

Authors.

Note:

The estimated probability is the defendant media's success rate when all other conditions have been set at the mean values.

more conservative in handling cases involving websites, in order to prevent the internet from becoming a “Wild West.”⁶⁷

In addition, jurisdiction mattered. Compared with the cases tried in the localities of plaintiffs only, jurisdiction in the locality of the defendants (odds ratio = 1.08, $p > 0.05$) and jurisdiction in the locality of neither (odds ratio = 1.42, $p > 0.05$) did not have significant impact on the media's success rate. However, jurisdiction in the locality of both plaintiffs and defendants elevated the media's odds of success by 59 per cent (odds ratio = 1.59, $p < 0.05$). Such patterns deepen our understanding of local protectionism in three respects.

First, only in some types of cases did the local media hold the advantage in local courts. In these cases, they had the edge over the local plaintiffs, but not the non-local plaintiffs. In terms of success rates, when the trials were held in the locality of both the plaintiffs and defendants, the media's success rate increased by 9.76 per cent over those occurring in the locality of plaintiffs only

67 Cheung 2009; Grant 2002; Pritchard 2009.

Table 6: Media's Success Rate by Jurisdiction, Period and Region (%)

	Locality of plaintiffs only	Locality of defendants only	Locality of both	Locality of neither	Chi-square
Medium					
Newspapers	33.66	34.21	48.84	33.33	7.77**
Magazines/ books	25.00	27.78	30.00	20.00	0.32
TV, radios and films	30.00	100.00	69.39	50.00	6.88*
Websites	48.39	22.22	34.78	25.00	2.72
Periods					
1993–1997	27.27	33.33	27.27	20.00	0.24
1998–2004	29.03	25.71	38.60	37.50	3.29
2005–2013 ^a	44.82	47.83	63.64	0.00	7.96**
Regions					
East	42.70	41.38	58.33	15.38	12.57***
Central	24.49	26.67	44.79	50.00	8.18**
West	25.00	40.00	35.00	33.33	0.86

Source:

Authors.

Notes:

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

(Table 5a). Thus, echoing Liebman's argument, local protectionism did not manifest itself in all types of defamation litigation.⁶⁸

Second, Liebman then proposed a power story to explain his results.⁶⁹ However, our data found this story to be incomplete. In our model, jurisdiction was significant after the types of plaintiffs were controlled. That is, assuming the power of plaintiffs and the power of media defendants were equal, jurisdiction mattered. When both plaintiffs and media defendants were in the same location, the media's chances of success increased. As shown in Table 5b, jurisdiction in the locality of both plaintiffs and defendants increased the media's success rate across all types of plaintiffs. In other words, local protectionism remains, but is limited.

Third, the professional routine, as Chen and Ang suggested, does explain why the media have higher success rates when sued by local plaintiffs: the local media usually rely on more professional in-house journalists, instead of freelancers, to report local issues.⁷⁰ Thus, they tend to be more accurate in their coverage of local issues than they are with non-local issues. Professionalism also helps to explain why the impact of jurisdiction varied by medium (Table 6). In the news production process, newspapers often rely on freelancers or indirect reporting for non-local issues. Consequently, the impact of jurisdiction on the media's success rates is significant in print media.

68 Liebman 2006.

69 Ibid.; see also Chen, Zhiwu 2004.

70 Chen, Xiaoyan, and Ang 2008.

Finally, time period mattered. While there was no significant difference between the time periods 1993–1997 and 1998–2004, the odds of media winning cases from 2005 to 2013 was 3.86 times higher than from 1993 to 1997 (odds ratio = 3.86, $p < 0.05$). In terms of probability, as shown in [Table 5a](#), the media's average probability of winning jumped 28 per cent after 2005. If setting all other conditions at their mean values, when the media were sued by an ordinary citizen between 1993 and 1997, the media would have had a 14 per cent chance of winning. From 2005–2013, the chances soared to 39 per cent, as reported in [Table 5b](#). Such temporal variations reflect the development of the media sector. First, with increasing lawsuits, the media have enhanced their legal consciousness. Journalists have realized the importance of keeping interview evidence as a means of self-protection, which has become a part of their professional routine. Second, and more important, even though the Party has always controlled the media, such control was formally legalized in 2005. According to Decisions of the State Council on the Entry of the Non-publicly Owned Capital into the Cultural Industry (*Guowuyuan guanyu fei gongyou ziben jinru wenhua chanye de ruogan jue ding* 国务院关于非公有资本进入文化产业的若干决定), the state's ownership over the media has been legalized, entrenching the policy that “citizens have the freedom, the media belong to the state” (*gongmin you ziyou, meiti gui guojia* 公民有自由, 媒体归国家).⁷¹ In this sense, the media's increasing success rate over ordinary plaintiffs after 2005 reflects the tug-of-war between individual freedom and the state.

Are the Media Losing?

Is the media's overall success rate of 42 per cent high or low? Is there a chilling effect? Answers to these questions become meaningful only when the numbers are compared ([Table 7](#)). Liebman reported a 32 per cent media success rate (1995–2004), and concluded that the media lose the overwhelming majority of cases.⁷² Based on a media success rate of 37 per cent (1987–2003), Chen asserted that such a low rate hints at a threat to the freedom of the press in China.⁷³ Chen and Ang's study also reported a similar rate of 37.2 per cent.⁷⁴ Covering longer periods however, our data indicated a trend of increasing success for the media in court. From 1993 to 1997, the media won 27 per cent of their cases. The rate climbed to 33 per cent for the period 1998–2004, similar to the previous reporting. From 2005 to 2013, however, the media's success rate jumped to 57 per cent ([Figure 2](#)). From 1993 to 1997, the discrepancy between the media's success rate (27 per cent) and failure rate (73 per cent) was 46 per cent. From 1998 to 2004, the gap narrowed to 34 per cent. By 2005–2013, not only had the gap dropped to

71 Wei 2008.

72 Liebman 2006.

73 Chen, Zhiwu 2004.

74 Chen, Xiaoyan, and Ang 2008.

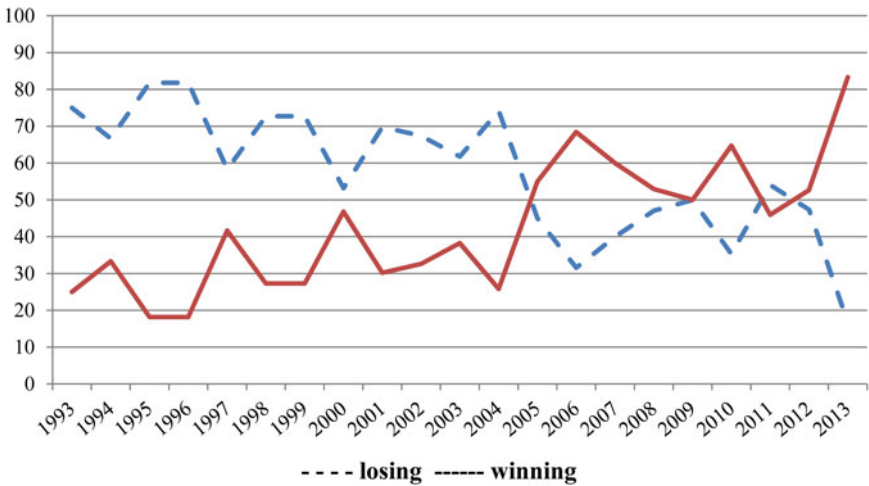
Table 7: Media’s Success Rates in Defamation Litigation across Countries

Sources	Country	Period	Success rate	Cases
Our study	China	1993–2013	42.37%	524
Chen, Zhiwu 2004	China	1987–2003	37%	210
Liebman 2006	China	1995–2004	32%	223
Chen, Xiaoyan, and Ang 2008	China (Chengdu)	1987–2005	35.9%	145
Zhu and Yang 2012	China	1985–2009	43.19% ^a	100 ^b
Franklin 1981	USA	1977–1980	93%	291
Bezanson 1986 (Iowa Project)	USA	1974–1984	86%	164
Media Law Resource Center 2014	USA	1980–2013	41.50%	597
Kitajima 2012	Japan	2000–2009	28.90%	232
Youm 1992	Korea	1981–1991	27%	48
Cheer 2008	New Zealand	1998–2001	54%	33
Newcity 1991	Australia	1979–1981	40.50%	298 ^c

Notes:

^aAuthors reported defendants won 263 out of 609 defamation cases; ^bauthors reported 609 total cases including both media defamation and non-media defamation, but 43.19% was calculated from 100 cases sampled from the 609; ^ctotal number of cases in this study was 435, 68.5% of which were against media.

Figure 2: The Success Rate of Media Organizations in Defamation Cases



(colour online)

14 per cent but the trend had also reversed. For the first time, the media’s success rate was higher than its failure rate. The year 2005 was the turning point. This pattern suggests that the time period 2005–2013 might have been the “fifth wave” of media defamation litigation in China. Indeed, our rate is consistent with the figure (43.19 per cent) reported by Li Zhu and Huizhen Yang who studied media defamation from 1985 to 2009.⁷⁵

75 Zhu and Yang 2012.

Internationally, the trend in China is opposite to that in the US. In his study on defamation in the US from 1977 to 1980, Franklin reported the success rate of the media to be as high as 93 per cent.⁷⁶ The Iowa Project reported a success rate of 86 per cent between 1974 and 1984. They laid the foundation of the “chilling effect” discourse in the US context. However, the most recent report by the Media Law Resource Center has found that the average success rate of the media has slumped to 41.5 per cent when taking into consideration all 597 cases from 1980 to 2013.⁷⁷ From our data and analysis, the trend in China appears to be opposite: the media’s success rate has increased since 2005.

It is thus too early to assert that in China the media are losing. In the early stages of legal and media reforms (i.e. before 2005), this might have been true. However, the defamation laws were merely promulgated. The courts seemed enthusiastic in protecting individual rights. From 1989 to 1994, the SPC issued nine interpretations, and between 1988 and 1994, the defamation issue was emphasized in the Annual Working Reports of the SPC.⁷⁸ The courts thus might have taken a more liberal position on the defamation cases. On the other hand, the media were freest and most vibrant during this period.⁷⁹ Both aggressive and sensational reporting were common. Taken together, it is natural that the media had a low success rate during this early period.

It is unlikely this trend will continue. The media, and especially those under the direct control of the Party, constitute a pillar of the regime. The regime relies heavily on the media to maintain and boost its legitimacy. In a way, the official media *are* the regime. Losing in court will nonetheless tarnish the regime’s reputation. At the same time, the judiciary has also become more conservative in the 2000s. This is why the Party organs’ failure rate has hit a new low.

Moreover, the media are generally resourceful. They are repeat players, which places them in an advantageous position, especially when confronted by weak individuals.⁸⁰ As our data show, government officials and organizations, who are resourceful and powerful, have consistently had the edge over the media, while the cases against ordinary plaintiffs are a different story.⁸¹

Furthermore, local protectionism is also a complicated issue. While it appears to be widespread in judicial decisions,⁸² our data suggest that its presence is limited. For example, the non-local plaintiffs seem to have better chances of winning cases in the local courts. It is plausible that a non-local plaintiff is more powerful. But, the issue is further complicated by the journalistic working model in which non-local coverage is less controllable.

76 Franklin 1981.

77 Media Law Resource Center 2014.

78 Chen, Xiaoyan, and Ang 2008.

79 Ibid.

80 Galanter 1974.

81 He and Su 2013.

82 He 2009; 2011; Peerenboom 2001.

Conclusions and Implications

Based on a more comprehensive set of data, we have explored how various factors have shaped the media's success rate and have identified the trend in defamation cases over the course of China's reform period. We suggest that it is too early to assert that the media are losing. Indeed, the media's success rate has increased since 2005. While many factors may have contributed to this reversal, the powers and connections of Chinese media seem to have played a significant role. In particular, Party organs often come out ahead. As the mouthpiece of the ruling party, Party organs can impact court decisions in many ways. Allowing a Party organ to lose would undermine the legitimacy of the regime – the last thing the regime wants to see.

From 2005 to 2013, news media-involved defamation cases indicate more sophisticated dynamics among the media, the court and the state. Our analysis does not deny the “chilling effect” found by previous studies, but we offer a nuanced understanding of the mechanisms of “chilling effects.” The media seem to have become more sophisticated in litigation, and the state may also exert tighter oversight over the sector. Growing professionalism, characteristics of the medium, political power and local protectionism all play a role in shaping the trend in the relationship between the media and the court. For example, the administrative ranks of media do not have a significant impact on decisions. The medium of the media also makes a difference, as does the policy governing the media sector. Local protectionism still exists, but its presence is limited to a few types of cases; the professional working model of the media may affect case outcome. Thus, while our analysis verifies that China's judiciary is susceptible to extra-legal forces, it provides a more nuanced understanding of judicial independence, or the lack thereof, in China.⁸³

Our empirical analysis further helps to understand the nature of media–court relations and their impact on Chinese authoritarian resilience. Previous studies view the development of defamation litigation as a dual process: the state uses the courts to control the aggressive media, and thus creates a chilling effect among the media. At the same time, ordinary citizens employ the legal system to challenge the authorities.⁸⁴ Our study offers more subtle interpretations of such dual dynamics. When the media enter the defamation court, the story is complicated. It is more of a tug-of-war, as a story of political censorship. Of course, the state deploys the courts to control the media; however, defamation litigation might not be the best way to exert such control. For journalists, being sued for “leaking national secrets” or for corruption is more dreadful than defamation. To further control the information flowing through the new media, in September 2013 the government implemented The Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Specific Application of Law in the Handling of

83 Su and He 2010; He 2012; He and Su 2013; Peerenboom 2009.

84 Liebman 2006; 2011.

Defamation through Information Networks and Other Criminal Cases (*Zuigao renmin fayuan, zuigao rein jianchayuan guanyu banli liyong xinxi wangluo shishi feibang deng xingshi anjian shiyong falü ruogan wenti de jieshi* 最高人民法院、最高人民检察院关于办理利用信息网络实施诽谤等刑事案件适用法律若干问题的解释). According to the Interpretation, if “defamatory information is actually clicked or browsed for more than 5,000 times or is forwarded and for more than 500 times,” it is a “serious circumstance” of defaming another person through an information network, to which Article 246 of the Criminal Law can be applied.⁸⁵ In addition, a “chilling atmosphere” is often created by the “special actions” organized by the state such as the “special action against rumours” (*daji yaoyan zhuanxiang xingdong* 打击谣言专项行动).⁸⁶ All these serve as alternative mechanisms which the party-state can use to control the media, journalists and individuals. In other words, for most politically insensitive defamation disputes, the role of the courts is more administrative than it is political; the courts administer those conflicts emerging from the new information era and maintain the regime’s legitimacy. These functions are fulfilled when dissenting opinions are repressed both in and outside the courts. In this sense, the handling of defamation cases thus contributes to the resilience of the Chinese regime.

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Biographical notes

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85 <http://lawinfochina.com/display.aspx?id=16184&lib=law>. Accessed 31 May 2016.

86 http://epaper.y.net.com/html/2013-09/10/content_9300.htm?div=0. Accessed 31 May 2016.

communication in authoritarian regimes, social and cultural change in China, and state–media relations and their impact on collective action.

摘要: 延续既有的法庭研究传统, 本文研究 1993 年至 2013 年间 524 起控告媒体的名誉侵权案件, 探讨媒体胜诉概率, 并分析媒体的资源、政治影响和媒介效应对其胜率的影响。与现有看法相反, 我们发现媒体胜率不低。从 1993 年至 2013 年, 新闻媒体在中国名誉侵权案中的平均胜率是 42%, 且该比率从 2005 年起逐渐提高。在起诉媒体时, 政府官员和党政机关在法庭审判中一直占有优势。而普通原告、杂志和网站则处于相对劣势。不同的媒介 (如报刊、广播、网络) 和政府的媒介管理政策也对媒体的胜诉率产生影响。此外, 在此类案件中, 地方保护主义虽然存在, 但是没有预期中显著。这些实证数据启发我们重新思考媒体、法院和政府之间的动态关系, 及其对中国体制弹性的影响。

关键词: 名誉侵权; 诽谤诉讼; 新闻自由; 媒体与法院关系; 体制弹性; 中国

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