

## Relationship Between the Media and Judiciary Under the Perspective of China's National Conditions: An Analysis of "Media Trial"

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### Abstract

The media is increasingly affecting modern society in which democracy is promoted. The media is even considered as the "fourth power" outside of the "three powers" (legislation, administration, and judiciary), and they wander among the other "three powers" to play an oversight role. However, at the same time, they might bring negative effects. Especially in modern judicial process, the negative effects from the media on the independence and justice of judiciary's operation are indisputable facts.

**Key words:** Media trial; Judicial justice; Independence

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### INTRODUCTION

The word "media trial" came from the judicial practice of the United States. It originally means the behavior that the media report pending cases to form public opinion pressure and arise subjectively bad effects on the jury members, leading unjustified decision from the judge, prejudicing and affecting judicial justice and independence. In China, though there is no jury system, "media trial" events still happen occasionally.

On December 17 of 2007, the *New Express* reported a piece of news "A Man Taking Advantage of ATM Errors

to Withdraw Money for 171 Times Sentenced to Life" and it immediately triggered a strong response of the whole society. With the continuously heating up of the public opinions on this event, Xu Ting's case was remanded to the High Court of Guangdong Province. Later, Xu Ting was sentenced to 5 years imprisonment for theft. The High Court of Guangdong Province maintained the second trial on May 22. On May 20 of 2009, He Bin was sentenced to three years in prison for committing the crime of causing traffic casualties. After the verdict of the case, voices of doubt constantly appeared. First, the final compensation payments of this case was up to 1.13 million, which made people doubt Hu Bin was using money to reduce punishment. Second, in the trial of Hu Bin's case, people even doubted Hu Bin's identity. Rumors that Hu Bin used a "substitute" spread in major sites and some even came up with photos as evidence. During that period of time, rumors spread heatedly, which seriously affected the trial of the case and threatened the authority of the court.

On September 7 of 2010, when Wu drove a BMW reversing in some neighborhood, the car ran over a boy repeatedly for four times, causing the boy death on the spot. Later, when the police was still investigating the event, before the court gave any trial, banners like "unscrupulous BMW" and "hit to hurt is worse than hit to death" became the most popular headlines in newspapers and in sites, causing a heavy load of suspicion and condemnation. Although Wu did cause the death of the boy, whether it was intentional or negligent should be investigated by the police and tried by laws. That the suspect is eventually convicted as a criminal requires strict legal procedures. In the stage of the case's investigation, the media reported the case from the perspective of "presumption of guilty" and it aroused the public's compassion to the boy and his family, and hatred of the rich, which added pressure to the trial. A judge once frankly expressed: "Once a case draws the public's attention, it will be difficult for the judge to keep the independence."

## 1. NEGATIVE EFFECTS OF “MEDIA TRIAL”

The phenomena of the open alienation of media’s supervision and trial often appear in judicial practice. “Media trial” has a huge destructive effect on judicial independence and justice.

First, “media trial” destroys the authority of laws. According to the requirement of modern rule of law, “it cannot be convicted as a crime if it is not listed in laws; one cannot be punished without a clear statement in the law”; therefore the conviction and sentencing must be strictly in accordance with the facts of a crime and the criterion of laws. Constituting a crime is an evaluation of the facts, rather than an evaluation of values or a moral evaluation. Public compassion and public anger don’t belong to conviction facts, nor sentencing facts; therefore, they cannot be bases of conviction or sentencing. Once public compassion and anger are considered in convicting or sentencing a case, it will endanger the modern rule of criminal law and affect criminal judicial justice.

Second, “media trial” treats the suspect with subjective emotions, causing unfairness in the case. In the process of actual conviction and sentencing, the judge is also a “human being” whose emotional factors are inevitable; therefore, both public anger and public compassion can bring negative effects on conviction and sentencing and cause emotional justice. The so-called emotional justice refers to a conviction or sentencing in which the judge has put too many emotional factors.

Third, the public influence made by “media trial” affects the authorities’ interference in judicial activities. Thoughts like “the ways of the world”, “face” and “image” etc. root deeply, especial in China. When the media’s report directly influences the image of the government, the authorities have to take measures. There is a saying “a fart at upper side, an out-of-breath-running at the lower sides”. The right outside of judicial rights takes charge of judicial rights. Usually a phone call can change a case’s development and then interfere in the activity of conviction and sentencing.

Finally, when “media trial” happens, the media fails to fulfill their supervisory responsibilities; meanwhile, in the aspect of facts, “media trial” reports are usually one-sided, exaggerate and even untrue because of economic and other factors, causing misjudged and unjust cases. The language of “media trial” is usually sensational, trying to arouse the public’s emotions like hatred or compassion to the litigant. They even take “hype” approach sometimes, i.e., combining a lot of media together to conduct one-dimensional propaganda, intentionally or unintentionally, to suppress the contrary opinions.

## 2. POSITIVE EFFECTS OF “MEDIA TRIAL”

However, media supervision and open trial have natural inherent fit. That is to say, “media trial”, as a “double-edged sword”, can also “cut down” the shortcomings in the judicial process.

First, the media, just like judiciary, is an important force in maintaining social fairness and justice in the rule of law process in our country. China’s current judicial system and various laws and regulations are not perfect. They need the media to play its unique functional role. Through judicial reports, the media can receive public’s feedback on the field of judiciary at any time, convey the public’s concerns of judiciary to the judicial authorities, help the judicial authorities get to know different voices from the society in time, and promote the reform and progress of the judicial authorities.

Second, media supervision can also promote open trial. To make the case’s trial procedure and trial result public helps judicial transparency, promotes the further improvement of judiciary, and ensures social fairness and justice. The media’s involvement helps reduce the interference of power factor, money factor, and other factors with judiciary and avoid black transactions. Media supervision is essential in the fight against judicial corruption and judicial injustice and in maintaining a fair trial.

## 3. SOLUTIONS

To limit media’s report is the most common and basic way that is used in all the countries. Although many countries have claimed to be a free and democratic country, in fact they have restrictions to media’s report on some news. Generally speaking, countries take approaches like ex ante regulations, afterwards punishment, legislative and judicial ways and so on to restrict violations of suspect’s human rights from reports on crimes under investigation.

The United States, where the value of speech and press freedom is better protected, usually restricts all parties of the case to make tendentious statements to the media through the approach of the issuance of “judicial restricting speech”. For reports on criminal news violating judicial restrictions, they will be punished according to civil or criminal responsibilities.

The European countries lay emphasis on the protection of the suspect and they do not have a high tolerance in prejudicial reports. In order to avoid pre-trial reports’ negative impacts on judicial justice, the fourth rule of Article 8 in “1980 British Security Court Law” stipulates: for the committal proceedings of a case, the media can only report 9 items of contents including the name of the

pre-trial court, the name of the pre-trial judge, the name, address, occupation of the relevant parties and witnesses, the age of the accused and witnesses, the alleged offense or summary of the offense, the name of the defense counsel, the decision on whether to submit to trial, and the name of the trial court. Unless the court permits, the media has to wait until the end of the trial to make detailed reports. Otherwise, they will be punished for contempt of the court.

The first rule of Article 12 of "Journalism Standards" (enacted in 1994 and amended in 1997), made by Germany's Press Council and the Press Association, makes clear requirements on crime reporting: "media's reports on pending criminal cases or cases under further trial cannot infer preconceptions; therefore, before or during the trial process of a case, the media should avoid comments which might be interpreted with partisan or other bias in the headline or text." That is to say, before the conviction of laws, they cannot describe the suspect as the guilty party.

In France, Article 11 of the Criminal Procedure Law allows prosecutor to make some objective facts of the procedure public according to his right or pre-trial court or the parties' application, but these objective facts cannot include "comments on the legal basis for the suspect's allegation", nor the identification of the person involved (such as the content of ethanol), and they can only be factual descriptions.

As a matter of fact, China's criminal news reports are much more rigorous in thought and content compared with that of the West. Especially in recent years with the in-depth discussion of news' ethical issues, news media basically can follow the self-discipline. Media's reports or documentary films, TV dramas, and documentary literature based on the police's investigation process of criminal cases should be in moderation. They should be cautious when reporting criminals of social news which has significant negative impacts, such as robbery and murder, theft, pickpocketing, taking drugs, drug trafficking, kidnapping, extortion, extramarital affairs, engaging in mistresses, and domestic violence and so on.

"Everything contains the seeds which can destroy themselves." The purification of news media is indeed able to avoid some negative impacts, but media restriction can also cause a series of problems. Preventing "media trial" is an approach to reshape the harmonious relationship between the media and the judiciary. The cooperation and interaction between the media and the judicial department should be enhanced. The spokesman system at all levels of public security organs, procuratorates, and courts should

be improved to seek a win-win situation. We should also establish a review mechanism of news reports on criminal cases, and enhance news coverage of criminal cases for "diverse reports on one event". We can also postpone the trial, conduct the trial after the public opinions go away or decrease, thus the pressure of the judge will be reduced.

Besides, the media should take up the role in judicial reports. Plato raised the points in more than 2000 years ago that everyone should do his part in his position, divide labors harmoniously and cooperate with one another. Although his opinions represent the interests of the ruling class and have some limitations, to some extent they have positive significance. The judge should be independent and not be influenced by rumors. He should respect the truth more than the public's feelings. The media should take their government supervision duty and conduct true reports. The public should keep calm and not engage in idle speculations. The judge has his duty; the media have their integrity; the public have their wisdom. Everyone does his part, and thus a coveted beautiful and harmonious society lies before us.

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