

Public sentiment can play a dangerous role in mainland justice, write **Jerome A. Cohen** and **Oliver Zhong**

The people's will

Interaction among courts, the media and public opinion is complex in every free country. The internet magnifies the complexity. Even mainland China, despite strict government controls, cannot escape it, as last summer's famous Deng Yujiao case demonstrated. Months after she fatally stabbed a government official, and a trial that roiled the nation, this young cause célèbre now lives an anonymous life far from home. Once seen by a wildly supportive public as a hapless folk heroine who resisted outrageous abuse, Deng now hopes to be forgotten.

Yet, for the mainland's legal reform, it is too soon to turn the page. Recently revealed details of the case illuminate how justice was meted out.

On the night of May 10, in a hotel massage parlour in Badong county, Hubei province (湖北省), two officials scuffled with Deng, who worked there. She stabbed both men with a fruit knife, killing one.

The case initially seemed to be an ordinary local tragedy. Within days, however, it turned into a nationwide phenomenon, once internet reports

against Deng's abusers, any thought of treating the matter as intentional homicide had long since vanished. Yet the idea of a not-guilty verdict on the grounds of self-defence, in a case where an official had been killed, was apparently intolerable to party leaders, who found it difficult enough to persuade the deceased's family to withdraw its claim for damages against the defendant. Traditional sympathy for a woman protecting her virtue had to be vindicated, but killing of an official had to be condemned.

The party soon engineered a typical mainland judicial compromise. Deng was convicted for excessive self-defence constituting aggravated assault resulting in death. But the court spared her from any punishment, even a suspended sentence. It attributed its leniency to three mitigating factors. Deng had "voluntarily" surrendered, she had been provoked by the victims' misconduct, and she was suffering from psychiatrically verified mental illness.

The online community hailed the decision as a victory for "the people's will". Yet, late last month, in a detailed investigative report, Guangzhou's reformist *Southern Metropolitan Daily* raised serious questions about whether public opinion had been misled and allowed to distort handling of this case. Hadn't the victims only demanded a "bath", rather than sexual intercourse, and wasn't the "sofa" actually a seat too small for pinning Deng down? Weren't the alleged mitigating factors insufficient to justify her freedom? How could her use of deadly force go unpunished?

When asked about these doubts, a local judge reportedly confided that the decision was made at a very high level and the court was merely there to "read it out". Not surprisingly, this confirmed not only the lack of independence of mainland judges in non-routine cases but also the readiness of party leaders to base their instructions, at least in part, on their perception of public opinion.

Yet, in high-profile cases that reach the trial stage, these factors usually operate against the defendant. In the recent Akmal Shaikh drug-smuggling case and in the notorious Yang Jia cop-killer case, for example, popular demands for execution



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suggested that the men had demanded "special services" from Deng, hit her face with wads of cash and pinned her down on a sofa. An area TV station broadcast incendiary video footage of Deng claiming to have been beaten. By the time Deng's publicity minded Beijing lawyer made teary-eyed public appeals for justice, most Chinese internet users seemed convinced she had acted in self-defence and should not be prosecuted.

Seeking to prevent this media-driven scandal from stimulating mass protests, the authorities cut off all road and water travel to Badong and scoured hotels in the area for out-of-town journalists. Top Hubei officials took over all public communications and, after official pressure, Deng's mother dismissed her bold, media-savvy lawyer. The case had become what the all-powerful Communist Party Central Political-Legal Committee later called a "pan-political incident".

Amid continuing popular outrage

overwhelmed voices opposing official refusals to give obviously disturbed defendants the thorough psychiatric examination Deng received. In the infamous Liu Yong case, the Shenyang (瀋陽) gang leader was sent to his death by popular demand even though his conviction was, importantly, based on a confession admittedly extracted through torture.

In Deng's case, by contrast, popular outcry forced the hand of a leadership obsessed with "stability" to free someone, illustrating that, as a social safety valve, the party must also respond to public pressures for leniency.

Ad hoc political responsiveness to mass demands for justice is a dangerous game, and surely inconsistent with the rule of law. In criminal cases, democratic countries –

most recently Japan – reconcile popular views with the rule of law through juries and other forms of citizen participation in an independent judicial process.

In mainland courts, restrictions on both the long-standing use of "people's assessors" and recent efforts to consult informal "juries" inhibit popular trust in criminal justice. Moreover, manipulation of the media and internet, whether by the government or the defence, often makes it difficult even to identify the authentic will of the people.

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