

FOR WHOSE EYES ONLY?

China's Journalistic Internal Reference and Its Legal and Political Implications

Yong Tang

ABSTRACT

Journalistic internal reference is a highly secretive system that allows reporters in China to submit investigative journalism exclusively to party and government leaders. The article explores how the system was established and how it operates in today's communication, legal, and political environments. In particular, the article investigates the method's legal and political implications, with a special focus on examining the conflicts the concept and practice of journalistic internal reports may have with China's first freedom of information law, and the unfairness secretive journalism may bring to enforcement of libel law. Furthermore, the article identifies news media internal reports' failure to hold party and government accountable and its inappropriate role as think tank for senior party and government leaders. Despite recent party and government efforts to revitalize the system, the article proposes an eventual elimination of the century-long practice of sealing newsworthy information. The article argues that phasing out journalistic internal reference would create a better international image for the Chinese state, ensure more transparent and accountable governance, facilitate freer flow of information, guarantee better exercise of people's right to know, and help to establish more credible media institutions.

Keywords: journalistic internal reference, internal report, freedom of information law, OGI Regulations, China

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The original version of this article was presented at the annual AEJMC Southeast Colloquium Law and Policy Division, the University of South Florida, Tampa, Florida, February 28 to March 2, 2013. Thanks to the conference and journal reviewers for their insightful comments and wonderful suggestions for revisions. Although the reviewers are anonymous, they deserve acknowledgement here for their role in making this article possible.



JOURNAL OF INFORMATION POLICY, Volume 7, 2017

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Introduction

Nearly 10 years ago, China adopted its first national freedom of information (FOI) law—Regulations of the People’s Republic of China on Open Government Information (*OGI Regulations*).¹ Like most FOI laws in Western and non-Western countries, the Chinese law compels government agencies at all levels to proactively and reactively disseminate records and files that are not exempt. China enforces the law by establishing FOI request mechanisms and creating information distribution channels for agencies. Agencies and officials responsible for improper handling of FOI requests and withholding of accessible information will be subject to penalties, either administrative or judicial. Improving China’s image in the world is definitely one of the goals for the FOI law. The passage of the law is, however, more than merely window dressing. The law itself has many major flaws;² however, it has been implemented rather effectively since 2008, despite widespread suspicion among Western scholars and numerous setbacks and challenges.³

Like most FOI laws in the world, China’s FOI law deems national security as one of the most important and prominent exemptions, although the country’s exemption is more vague and expansive than many of its national counterparts. Article 8 provides that governmental agencies may not release information disclosure of which may endanger “state security, public security, economic security, and social stability.”⁴ Article 14 stipulates that administrative agencies must not disclose governmental information that involves state secrets, commercial secrets, or individual privacy. Prior to disclosing governmental information, administrative agencies must

1. The *OGI Regulations* were adopted on April 5, 2007, and came into force on May 1, 2008. Zhonghua renmin gongheguo zhengfu xinxi gongkai tiaoli [中华人民共和国政府信息公开条例]. The Chinese language version of the law was retrieved at http://www.gov.cn/zwgk/2007-04/24/content_592937.htm (accessed November 2, 2016). The Chinese government does not publish an official English translation of the law. This article relies upon the Chinese version and the English translation by Yale University Law School. The English translation of the law was retrieved at http://www.law.yale.edu/documents/pdf/Intellectual_Life/Ch_OGI_Regulations_Eng_Final_051607.pdf (accessed November 2, 2016).

2. According to the Global Right to Information Rating, China is ranked 80th in the world for the quality of its FOI law. The ranking includes 111 countries/regions with similar right to information legislation. The ranking does not take enforcement of FOI laws into consideration. See “Country Data.”

3. Tang.

4. *OGI Regulations* 2007. Art. 8.

examine the information to make sure that disclosure does not constitute violations of the *Law on Guarding State Secrets 1988*.⁵

Journalistic internal reference⁶ is a system that the former USSR once adopted and that many communist countries including China still have today. The mechanism allows and even encourages sensitive and controversial information gathered by journalists to be compiled in secretive volumes and consumed by various levels of party and governmental leaders. This kind of information, classified as state secrets according to the *Law on Guarding State Secrets 1988*, is off limits to the general public. Release of such information without authorization would result in serious legal consequences for the perpetrator.

The purpose of this article is to explore how China has established the journalistic internal reference system and examine its legal and political implications. In particular, the article attempts to see if this unique arrangement between news media and state continues to achieve goals it has claimed to achieve in today's media, legal, and political environment. First, the project will examine possible conflicts the system may have with the FOI law and possible unfairness it may bring to enforcement of libel law. Second, the article will identify if the system is able to hold party and government figures accountable as it proclaims and if the system's self-claimed think-tank role is fitting. In addition, the article will analyze how the digital age and market-oriented media reforms are reshaping the landscape of information flow on which the approach was built, and if the system itself is free from corruption.

Journalistic internal reference plays a significant role in restricting the free flow of information between the Chinese state and its citizens. A number of English-language scholarly articles and books, to varying degrees, relate to the internal reference system in China.⁷ Legal scholar Benjamin Liebman improved the Western understanding of the Chinese system of journalistic internal reference through his research of Chinese laws and media.⁸ However, the research focused only on the legal implications of internal references when nationwide FOI law was still nonexistent in

5. *Ibid.*, Art. 14.

6. This article uses other terms, such as internal publication, internal report, internal periodical, internally circulated news-related material, internally circulated publication, internal reporting, and *neican*, interchangeably.

7. For relevant English-language scholarly articles and books, see Liebman; Hsiao and Cheek; Bandurski and Hala, 121; Yan and Zhao, 75; Grant, 53.

8. Liebman.

China. Communications scholars Jennifer Grant, Huai Yan, and Suisheng Zhao are Western researchers who produced articles exclusively focusing on the role of internal reference in China. However, Jennifer Grant published studies nearly 30 years ago and the other two scholars published their research more than 20 years ago.⁹ In the last 20 years, China's media and mass communication landscape has changed rapidly with the rise of digital media and social media. China's legal landscape has changed tremendously as well with the advent of FOI law and other newly passed laws pertaining to flow of information. As a whole, research of journalistic internal reference in Western academia is generally lacking in freshness, depth, scope, and comprehensiveness. Few have discussed how the system was established and how it works. Chinese-language scholarly publications on internal reference abound,¹⁰ but database searches indicate that none of the articles examined the internal reference system from the legal perspective. This article aims to fill some of those gaps.

Due to the sensitivity of the subject, obtaining copies of journalistic internal reference materials is both illegal and difficult. For the same reason, it is also hard to obtain interviews with former leading journalists who were involved in the newsgathering and dissemination of internal reference materials. It is equally hard to get a conversation with former high-level officials on their experiences of receiving, reading, and acting upon internal reference reports. As such, this study relies heavily on secondary sources such as Chinese-language articles retrieved from the China Academic Journals (CAJ) database. Those secondary sources have their limitations, but their value should not be ignored. Published in Chinese-language newspapers, magazines, and books, many articles relate vivid stories of writing internal reference or *neican*, leaders' reviews, and *neicans*' influence on official decision-making. In other words, many such articles are memoirs by (former) leading journalists who had experiences of "making a difference" via the internal references, and memoirs by former high-level officials on their experiences of receiving, reading, and acting upon internal reference reports. Such stories became public either because the authors had long retired as journalists/officials, or because the materials are no longer confidential. Additionally, some Chinese-language articles are instructions from scholars and news practitioners intended for young journalists to improve their reporting and writing skills in *neican*. Academic journal

9. Grant, 53; Yan and Zhao, 75.

10. See Shang, "Research on Mechanism"; Cheng and Peng, 41.

articles written by Chinese scholars were retrieved for this study. They provide additional insight into the world of internal reports, although those scholarly pieces are generally lacking in analysis and scope. All information from internal reference materials, on which this study relies, comes from secondary sources such as media reports via Google, CAJ, and other research databases accessible to all.

The first section of this article examines the historical origins of the journalistic internal reference system. The second section explores how the system operates, namely who produces internal reference materials, what kind of content appears in those materials, and how those materials are distributed among political elites. The third section examines the privileges enjoyed by people who write journalistic internal reference materials and the legal implications of such privileges. The fourth section identifies all kinds of contradictions and conflicts between the internal reference system and China's FOI law and party objectives.

The fifth and sixth sections examine how the journalistic reference system fails to function as a watchdog for the public and why the think-tank role proclaimed by internal report journalists and their employers is not proper for the journalism profession. The seventh section discusses how the rise of the Internet and market-oriented media reforms are becoming disincentives for making journalistic internal reference. The eighth section identifies how the internal reference system itself is becoming a breeding ground for corruption.

The article concludes by proposing the gradual elimination of the journalistic internal reference system to ensure better exercise of people's right to know and fulfillment of the party's goal of establishing a more transparent and accountable government and creating more credible media outlets.

Historical Roots of the Journalistic Internal Reference System

The establishment of the journalistic internal reference system occurred in the 1930s, when Chinese communists were guerrilla forces and Chiang Kai-shek was the legitimate ruler of China. The Chinese Communist Party (CCP) broke Chiang's military encirclement and created a Soviet-style regime in Ruijin, Jiangxi Province.¹¹

11. Saich and Yang, 509.

The CCP created two distinct communication systems in Ruijin. One is the “top-down” mode of communication, which disseminated officially sanctioned information “from the leadership to the general public” via regular publications. Another was the “bottom-up” mode of communication, in which information accumulated at grass roots levels moved “upwards into the bureaucratic hierarchy” via internal reference.¹²

Reference News (*Cankao Xiaoxi*) is one publication originally designed to facilitate this “bottom-up” mode of communication. It is the first journalistic, internal periodical in modern Chinese history. From its beginning, the system was conceived as part of the revolutionary machine. When the newspaper was founded in 1931 by Xinhua News Agency, the intended audience for *Reference News* was not general readers but communist leaders above a certain level. Xinhua selected articles from the world’s major news agencies and journals and translated them into Chinese.¹³

During the civil war and especially after the founding of the People’s Republic of China (PRC), the functions of the internal reference system were broadened from merely being intelligence on the world outside of the Communist “Revolutionary Base” to “inform/educate” the mass Party members of various levels of the Party, government, and military hierarchy. The decision in 1956 to have *Cankao Xiaoxi* mass circulated is a clear indication. Today, *Cankao Xiaoxi* is no longer an internal publication; instead, it is China’s leading newspaper with a daily circulation of 3.2 million.¹⁴ Another indication is the separation of mass-circulated *Cankao Xiaoxi* as a means of mass propaganda and *Cankao Ziliao* (*Da Cankao*) as intelligence and analysis for decision-making.

Many party and governmental organizations in China today have the tradition of producing internal reports as well.¹⁵ For example, The CCP Central Propaganda Department publishes *Propaganda Trend* (*Xuanchuan dongtai*) on a weekly basis. The CCP Central Organization Department issues *Party Construction Research Internal Reference* (*Dangjian yanjiu neican*). Each institute at the China Academy of Social Sciences, a prestigious official think tank, produces various types of internal reference materials. Even some big libraries in China also publish internal reference materials. For example, Sun Yat-Sen Library of Guangdong Province

12. Hung, 139.

13. Rudolph.

14. “Reference News.”

15. Zhao, *Media, Market, and Democracy*; Shambaugh; Hamrin and Zhao.

issues *Decision-Making Neican* (*Juece neican*) intended for political elites in Guangdong.¹⁶ Even some films and books were internally circulated only among the political elite during Chairman Mao Zedong's era, although such practice has faded into oblivion since the late 1970s, when China began to adopt the policy of reform and open up to the outside world.¹⁷ As such, internal references were not limited to the journalistic reports in that they were written and submitted only or primarily by journalists. The journalistic ones were a part, albeit a major and clearly unique part, of the internal information gathering and analyzing system of the communist political machine (after 1949, the state).

The system of journalistic internal reference is not unique to China. The former Soviet Union used a similar system to gather information for party and government leaders.¹⁸ Bulgarian journalists served the government as intelligence agents when the country was under communist rule.¹⁹ Communist Poland had an elaborate system of internal bulletins that were prepared by the Polish Press Agency and Polish Radio and read exclusively by party and government leaders.²⁰ It was widely believed that China imported its internal reference system from the Soviet Union. For example, historian of Chinese journalism Stephen Mackinnon stated in one study, "[T]he wholesale importation into the PRC in the 1950s of the Soviet practice of 'internal' (*neibu*) publications [is] a uniquely diabolical method of combining censorship and propaganda in media control."²¹ Another scholar of Chinese communication, Anne Brady, said that the dual role of Chinese mass media propagandizing party positions and policies and preparing internal reports for the party was established "under the influence of the Soviet Union."²²

Seeking additional factors to explain adoption of journalistic internal reference in China is worthwhile. One source could be Chinese communists' obtaining inspiration from the country's long history.²³ Internal publications

16. Information Department, Sun Yat-Sen Library of Guangdong Province.

17. Paul Theroux, author of many train travel classics, mentioned a lot about how foreign books, including George Orwell's novel 1984, were classified as *neican* in China. See Theroux.

18. Dzirkals, Gustafson, and Johnson.

19. Ognianova.

20. Curry.

21. Mackinnon, 15.

22. Brady, 12; Chinese Communist Party Central Propaganda Department Office, 65.

23. See Liebman; also see generally Wu.

such as *Dibao*²⁴ circulated in ancient China may inspire Chinese communists' creation of their internal reference system because only the emperor, his ministers, and a very small number of local officials across the country had privileged access to this particular publication. Future research may gather evidence to support this assumption.

Journalistic Internal Reference Materials' Publication and Circulation

The journalistic internal reference system established by Chinese communists in Ruijin, Jiangxi Province, was small and primitive. Communist leaders had an opportunity to upgrade that system after Mao Zedong and his comrades exiled Chiang Kai-shek to Taiwan and established the PRC in 1949.

Based on the Soviet media system, Chinese communist leaders have created a unique media model, according to which all media organizations are extensions of the party and governmental apparatus, each having its corresponding administrative rank. All news organizations need to report to the national, provincial, or local CCP propaganda departments.²⁵ Propaganda departments at various levels of the party committees have power for appointment, promotion, demotion, and dismissal of heads of news organizations. Propaganda departments are also charged with the task of censoring media content and penalizing journalists who fail to follow party propaganda rules. As the "ears, eyes and tongue" (*ermu houshe*) of the party state, official news media organizations not only publicize party policies and directives but also gather and report intelligence on domestic and foreign affairs to party and government leaders. Such dual responsibilities apply to all mainstream state-run news media organizations in China, regardless of their administrative rank or political prestige. However, in practice, traditional party and government-run news media outlets at the central level such as the Xinhua News Agency, the *People's Daily*, and China Central Television (CCTV) prepare most internal reports; commercialized

24. *Dibao* is widely regarded as the oldest newspaper in China. Some scholars claim that *Dibao* first appeared in the Tang dynasty. Others disagree, contending that *Dibao* first appeared in the Han dynasty, which preceded the Tang dynasty. See Mittler.

25. For a detailed analysis of China's propaganda system, see Brady; Zhao, *Media, Market, and Democracy, Communication in China*.

media “rarely, if ever, prepare internal reports.”²⁶ Among traditional party and official news outlets, Xinhua is the largest and most influential producer of internally circulated news-related materials.²⁷

No clear-cut standards exist for what can appear in internal reports. Usually, people assigned to write for *neican* are professionally capable and politically loyal investigative journalists. They are neither spies nor intelligence officers posing as journalists. Their training includes recognition of news appropriate for public release and those for internal references. In general, any information deemed too sensitive for the public to see but too important for officials to ignore becomes journalistic internal references. Such information includes, but is not limited to, local corruption, official misconduct, social unrest, major natural disasters, and public health incidents.²⁸ Central and local policy experiments considered by officials too premature for publicizing also appear in internal periodicals.

Depending on the publication or program,²⁹ internal reports, usually magazine-like,³⁰ appear either on a regular schedule or only when issues of special importance arise. The administrative rank of the news organization and other factors determine recipients of internal publications based on party and officials’ levels. For example, internal reports from the *People’s Daily*, CCTV, and Xinhua News agency have general circulation to the party’s central level and state leaders. Internal reports from provincial party papers and electronic media generally circulate to provincial level leaders. News media affiliated with municipal party committees prepare internal reports circulated to municipal leaders.³¹ The sensitivity of the issue involved and the degree of confidentiality are also determining factors.

Unlike most regular newspapers and magazines circulated by state-run postal offices or private circulation companies, journalistic internal reference materials use secure and confidential channels for delivery.³²

26. Liebman, 23.

27. Chen, “Demystify *Neican*.”

28. Liebman, 22.

29. Loc. cit.

30. Certain investigative programs on CCTV prepare internal reports in the form of video stories. However, radio stations and some local television stations prepare internal reports, most often in written form. Liebman, 23.

31. For example, Xinhua News Agency publishes a wide range of internal reports, with each circulated to officials with different leadership ranks. Chen, “Demystify *Neican*.”

32. News media organizations use a system of couriers to deliver internal reports securely. Hsiao and Cheek, 82.

When leading party and governmental officials receive internal reports, they read them carefully. Actually, the first thing many Chinese party and governmental leaders do when they arrive in their offices early in the morning is to read internal reports prepared by Xinhua.³³ Officials write opinions in the margins of the internal publications if warranted. Having written suggestions, recommendations, or instructions, officials immediately forward copies of the annotated reports to lower level officials responsible for the issues.³⁴ Often, prompt investigation of exposed problems ensues.

Legal Implications: Privileges of Journalistic Internal Reference

Compared to regular publications, it was found that internal reference materials in China enjoy special legal privileges. All internal materials have protection from the *Law on Guarding State Secrets 1988*.³⁵ Information included in internally circulated publications represents three categories: top secret, highly secret, and secret.³⁶ According to the state secrets law, divulging of top-secret information results in extremely serious harm to state security and national interests; divulging highly secret information causes serious harm to state security and national interests; and exposing secret information causes harm to state security and national interests.³⁷ Internal journalistic information dubbed “top secret” has protection for a maximum of 30 years, beginning on the date of creation. Internal materials designated “highly secret” are classified for 20 years, and internal reference materials designated “secret” are prohibited from public view for up to 10 years.³⁸ A state secret automatically loses its classification when the proscribed time for guarding it expires.³⁹

Under the *Law on Guarding State Secrets 1988*, anyone violating the provisions of this state secrecy law receives punishment; if the violation con-

33. Chen, “Demystify *Neican*.”

34. Yibo Bo, a former senior leader in the Chinese Communist Party, had the habit of reading *neican* very carefully and writing voluminous opinions in the margins of *neican* articles. Yan.

35. *Law on Guarding State Secrets*.

36. *Ibid.*, Art. 10.

37. *Loc. cit.*

38. *Ibid.*, Art. 15.

39. *Ibid.*, Art. 19.

stitutes a crime, prosecution of the individual for criminal responsibility ensues.⁴⁰ An example is Shanghai lawyer Enchong Zheng, who was in 2003 arrested and sentenced to three years in prison in a high-profile case for allegedly telefaxing a Xinhua internal reference article⁴¹ to a nonprofit human rights organization in the United States.⁴² The Shanghai Second Intermediate Court ruled that Zheng violated the state secrets law by leaking the protected journalistic internal reference to an overseas organization.⁴³

The state secrets protection law does not always entail forceful enforcement. Reporters who leaked classified internal materials avoid punishment if the consequences of releasing the secrets are minimal, if wrongdoers have powerful connections in the party/government, if act has authorization, or if the situation is a combination of these factors. Lin Xia is an example: As the then deputy editor-in-chief of Xinhua News Agency, Xia revealed many shocking and unknown stories from internal reference publications when he lectured at Tianjin Foreign Studies University in May 2010.⁴⁴ According to Xia, Liwei Yang, the first man sent into space by the Chinese space program, emerged from the Shenzhou spacecraft cabin with his face covered in fresh blood, unlike what Chinese audiences later saw on television. In order to make him look better before the television cameras, “Workers had cleaned blood from Mr. Yang’s face before closing and reopening the capsule.”⁴⁵ Xia also disclosed that Xinhua News Agency purposefully discounted the seriousness of the ethnic riots that erupted in Xinjiang in July 2009 in order to avoid escalation of the conflict.⁴⁶ However, after reading the unadulterated internal report from Xinhua, the then Chinese President Hu Jintao shortened his overseas trip and returned

40. *Ibid.*, Art. 44.

41. On April 30, 2003, a Xinhua journalist published an article in an internal report. The article concerned a forced housing demolition incident in which a journalist on the spot was besieged. On May 28, 2003, the lawyer, Enchong Zheng, telefaxed a copy of the article to Human Rights in China, a nonprofit organization based in New York. Both the local and national state secrets protection agencies certified that the transmitted article was, indeed, “secret” and protected by the *Law on Guarding State Secrets 1988*. Deng, “How Did Lawyer.”

42. Cody.

43. Bandurski and Hala, 144.

44. Lin; “Chinese Whispers.”

45. Jacobs.

46. *Ibid.*

home to deal with the crisis.⁴⁷ Media reports show that Xia held the same position at Xinhua until 2015. Clearly, Xia has received no punishment for his aggressive leaking of classified information carried in Xinhua internal reference publications. The government's gesture of ignoring Xia's breach of regulations might lead to an interpretation indicating the party's and the government's gradual relaxing restrictions on internal reference materials to allow public accessibility and to declassify less sensitive information in a timelier manner.

In addition to the law protecting journalistic internal materials as state secrets, another legal privilege of the internal reference system concerns libel. In 1998, the Supreme Court issued a judicial interpretation of defamation, stating that, unlike other forms of news reporting, internal reports produced by reporters and intended for political leaders are "immune from liability for defamation."⁴⁸ The legal interpretation, prompted by a high-profile 1989 case in Sichuan Province, involved Haideng, a famous monk at Shaolin Temple in Henan Province, who sued a *Sichuan Daily* reporter for libel and failed. The court ruled in favor of the defendant on the grounds that the allegedly libelous article appeared in a Xinhua internal periodical. Ultimately, Haideng won the case on other grounds.⁴⁹

Reporters have no fears of libel suits when preparing internal reports for the party's or governmental leaders. However, caution is advisable when quoting from internal reports for public consumption. The CCP Central Propaganda Department and the State Administration of Press and Publication issued a joint notice in 1998, prohibiting all news organizations in China from quoting Xinhua internal reference materials for regular publications.⁵⁰ Requirements insist that news organizations file written applications to Xinhua for declassification when seeking to publish any information from Xinhua internal references.⁵¹ With this legal restriction, news media intending to cite or publish internal reference materials must weigh many variables. The relative position of a news organization in the official media hierarchy is one. "While a national level newspaper might

47. Ibid.

48. "Interpretation of the Supreme People's Court." Liebman, 102.

49. Yi.

50. The Notice of the Chinese Communist Party.

51. Ibid.

opt to use a provincial level *neican*—not lightly, to be sure—a provincial newspaper would be tempting fate to do so.”⁵²

Legal Implications: Governmental Agencies May Use National Security Exemption to Withhold Information from Journalistic Internal Reference

Scholars may argue that China’s journalistic internal reference system and the propaganda system as a whole constitute a breach of “freedom of speech, publication and assembly” stipulated in the country’s constitution.⁵³ It is true that the internal reference system has trampled upon people’s freedom of speech and of the press in many ways. Given that the existence of constitutional review in China is still controversial,⁵⁴ however, this article will not focus on the constitutionality of the internal reference system. Instead, the article will mainly examine the conflict between the system and China’s first FOI law.

China enacted *OGI Regulations* in 2007, as the first nationwide legislation for FOI and as a statutory obligation for agencies to disclose information proactively. The law also allows any citizen, any legal person, and any other organization in China to apply for the disclosure of government-held information. Upon rejection of an OGI application by governmental agencies, the requester has the right to pursue administrative and judicial remedies.⁵⁵

China’s entry into the global FOI community indicates strongly that China seeks to establish a more open, accessible, and transparent government. Although the FOI law does not include statutory language expressly supporting people’s access rights, the law itself sends a strong signal to the world that the Party is serious about people’s right to know. Such a right, although an American concept, has been repeatedly emphasized by

52. Bandurski and Hala, 144.

53. Chinese Constitution 1982, Art. 35. (“Citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.”) Chapter II The Fundamental Rights and Duties of Citizens, Constitution of the People’s Republic of China (Full text after amendment on March 14, 2004), The National People’s Congress of the People’s Republic of China, http://www.npc.gov.cn/englishnpc/Constitution/2007_11/15/content_1372964.htm (accessed January 16, 2017).

54. Zhu.

55. *Regulations on Open Government Information*.

various mainstream publications, party documents, and directives.⁵⁶ The internal reference system, however, clearly counters the concept of governmental transparency and people's right to know. It poses significant public relations and legal challenges to the party who is determined, at least rhetorically, to move toward rule of law instead of rule of man. The practice of classifying newsworthy information as state secrets is definitely not a public relations success story for the party.

Disclosure of government information becomes difficult because of the existence of China's journalistic internal reference system. Under the current media system, news organizations gather a large volume of information about government activities. A part of that information is printed or broadcasted for public consumption because that part is about positive stories and the party wants everyone to see them. Unfortunately, most information that concerns government misconduct, man-made disasters, or scandals goes to journalistic internal reference. In other words, media organizations compile that information for the exclusive consumption of party and government officials only. The people's right to know is thus harmed. When government agencies receive journalistic internal reference materials from news organizations, those materials become government-held records and files. Government agencies would not proactively disseminate those records because those records are state secrets, thus enjoying exemption from *OGI Regulations*. Government units would not reactively release those records for the same reason. It is clear that the people's right to know is thus harmed again.

Previous studies have found that government agencies in China already used working secrets/internal working documents as a reason to shield official information from disclosure when they were asked to release such documents.⁵⁷ It is highly likely that agencies may shield journalistic internal reference materials from public view in the same manner, given the vagueness of the term "state secrets" in Chinese laws and the widespread nondisclosure mentality among FOI stakeholders such as court judges and officials in charge of OGI affairs. So far, this study has not identified any media reports about government agencies proactively

56. "The People's Right to Know"; Chen, "The 17th Party Congress Report."

57. FOI scholar Weixing Xiao, in a study of freedom of information in China, found that agencies once rejected OGI requests because those petitions for instructions, research reports, leading officials' views, meeting minutes, and information on the processes of individual petitions are working secrets/internal working documents. Xiao, 108–109.

releasing information from journalistic internal reference. Likewise, this study has not found a single case in which government agencies released journalistic internal reference materials upon request. Indeed, the study has found that no one in China has submitted OGI requests for information from internal reference publications, classified or declassified. If such an application occurs in the future, it is highly likely that agencies and courts may use the state secrets exemption in *OGI Regulations* to withhold information.

The second issue that is hard to tackle is the legal status of news organizations under China's current FOI law. Under the law, entities with responsibilities fulfilling administrative obligations and/or managing public affairs have an obligation to release information.⁵⁸ News organizations as institutions directly under the party, the court, the Procuratorate, the People's Congress, and the political consultative conference (e.g., People's Daily and People's Court Daily) do not have an obligation to follow *OGI Regulations* because their supervisors are not official agencies defined by law. News organizations directly under the jurisdiction of the people's government, however, may have an obligation to follow *OGI Regulations* like governmental agencies because they are still government-run entities having various kinds of responsibilities fulfilling administrative obligations and/or managing public affairs.

Unlike private news media in Western countries, most traditional news media in China are institutions affiliated with the party's and state's bureaucracies, and all have corresponding administrative ranks. The party and the government have an ambitious plan to reshape the media landscape by delinking most party-run or government-run news organizations from their original supervisors and restructuring them into market-oriented, state-owned, Western-style media conglomerates. However, the basic media management structure remains unchanged today due to the sensitivity and complexity of reform.⁵⁹ For example, Xinhua News Agency, the largest producer of internal reference materials in China, is still an institution directly under the State Council. There are many other institutions

58. Article 36 provides that *OGI Regulations* apply to opening official information activities of organizations authorized by laws or regulations to exercise functions for managing public affairs. *OGI Regulations*, Art. 36.

59. Shang, "Reform of Press."

directly under the State Council.⁶⁰ Most of these institutions are mandated by the State Council to follow *OGI Regulations*.⁶¹ Why should Xinhua News Agency become an exception?

One blogger affirmed the need for disclosure of Xinhua internal reference materials to the public similar to any other official information identified by *OGI Regulations*.⁶² The blogger's view is valid, at least from the perspective of Xinhua's special status. As the country's official news agency, authorized by the State Council to supervise and certify information gathering and dissemination of foreign news agencies in China,⁶³ Xinhua News Agency falls into the category of quasi-official agencies having responsibility for disclosing information under Article 36 of *OGI Regulations*.⁶⁴

CCTV, China National Radio, and China Radio International face similar legal challenges regarding whether they are governmental agencies that are subject to *OGI Regulations*. These three electronic media giants remain institutions directly controlled by the State Administration of Press, Publication, Radio, Film, and Television.⁶⁵ Compared to Xinhua, whether these three electronic media giants are OGI-designated quasi-agencies authorized to manage public affairs⁶⁶ or OGI-stipulated institutions

60. They are Chinese Academy of Sciences, Chinese Academy of Social Sciences, Chinese Academy of Engineering, Development Research Center of the State Council, China National School of Administration, China Earthquake Administration, China Meteorological Administration, China Banking Regulatory Commission, China Securities Regulatory Commission, China Insurance Regulatory Commission, State Electricity Regulatory Commission, National Council for Social Security Fund, National Natural Science Foundation, Taiwan Affairs Office of the State Council, Information Office of the State Council, and State Archives Administration. The Organizational Structure of the State Council, retrieved at <http://english.gov.cn/links.htm> (last visited November 2, 2016).

61. For example, China Securities Regulatory Commission has promulgated rules to release information under *OGI Regulations*. Guidelines Regarding Information Disclosure of China Securities Regulatory Commission, retrieved at http://www.csrc.gov.cn/pub/zjhpublicofxz/?channel= ./newsite/xgxx/200907/t20090713_118560.htm (last visited November 2, 2016).

62. "Yi hai long."

63. Measures for Administration of Release of News and Information.

64. Article 36 provides that *OGI Regulations* apply to opening official information activities of organizations authorized by laws or regulations to exercise functions for managing public affairs. *OGI Regulations*, Art. 36.

65. The official website of the State Administration of Press, Publication, Radio, Film and Television, retrieved at <http://www.sarft.gov.cn/> (last visited November 2, 2016).

66. *OGI Regulations*, Art. 36.

providing basic public services⁶⁷ is less certain due to a lack of definitions for “public affairs” and “public services.” An expansive interpretation of the public affairs and public services clauses in *OGI Regulations*⁶⁸ would likely include CCTV, China National Radio, and China Radio International as public institutions having a legal obligation to publicize information made or obtained in the process of performing their duties. A similar legal analysis is possible to examine the applicability of *OGI Regulations* to news organizations at provincial and local levels. If it is finally decided that news organizations really have a legal obligation to be more transparent under the requirements of *OGI Regulations*, no one could answer what kind of information they should release. News organizations would say that journalistic internal reference materials are definitely off-limits to the public because they are “state secrets.”

The third issue that deserves attention is giving writers of journalistic internal reference materials immunity from defamation lawsuits⁶⁹ and prohibiting such materials from being cited or republished for public consumption.⁷⁰ The immunity from defamation charges seems media-friendly at first glance because various studies find that reporters in China lose defamation cases most of the time. This legal privilege, however, may create unfairness in enforcement of libel law for journalists whose assignments are for regular reporting and journalists whose assignments are for internal reporting. People may question why the latter deserve more legal protection than the former. The current system of prohibiting journalists from quoting and/or republishing journalistic internal reference materials for public consumption is also problematic. This policy deprives internal reports journalists of the opportunity to have their work consumed by more people. This policy also penalizes news organizations that use internal reference materials to report on sensitive and controversial issues and events for public readership. The general public becomes the last victim because their right to know what is going on locally, nationally, or even internationally has been harmed as a result of their consuming media content lacking depth, freshness, and context that materials from internal reports could add to regular

67. Article 37 provides that *OGI Regulations* apply to institutions and public enterprises that provide public services closely related to the people's interests. *OGI Regulations*, Art. 37.

68. *OGI Regulations*, Art. 36, 37.

69. “Interpretation of the Supreme People's Court.” Liebman, 102.

70. The Notice of the Chinese Communist Party.

reports. Working together with the state secret laws, the policy aims to restrict freer flow of information.

Although most of the issues mentioned previously have not yet been tested because of the lack of administrative cases, court cases, and other developments, those issues are real and significant. Sooner or later, law and media reformers will have to think about how to address them.

“Watchdog” Role of Journalistic Internal References in Chinese Politics

The contribution of the internal reference system to China’s political process is largely ignored in Western academia. To Western scholars and China observers, positive stories of official activities frequently occupy front pages of regular Chinese newspapers and constantly fill prime-time television hours. The scenario creates the impression that China does not have aggressive Western-style investigative journalism.

The impression is misguided. China has two channels for investigative journalism. One is the visible side of Chinese journalism that everyone in the country can watch, hear, and read. Although it is highly restricted, investigative journalism originated in China in the late 1970s, reached its peak in the mid-1990s, and declined in 2003. Media outlets, whether state-run or market-oriented, occasionally expose government scandals and bring them to attention of millions of Chinese readers/viewers. *Caixin’s* in-depth coverage of Zhou Yongkang and his falling from grace epitomizes the most recent effort of Chinese journalists in investigative journalism.⁷¹ Another channel for investigative journalism is the internal reference system, the invisible side of Chinese journalism.⁷² The greater latitude for internal references’ covering newsworthy and sensitive events, issues, and people has contributed to the vibrancy of investigative journalism, albeit accessible to a limited population in China. Internal reports frequently expose problems and corrupt officials from across the country, criticize official misconduct, and voice the suffering and grievances of ordinary people.

To many media and party leaders, the journalistic internal reference system serves the party and government as a watchdog. For example, the

71. Wang and Lee; Tong and Sparks; Bandurski and Hala; Haitao et al.

72. Wang and Lee; Tong and Sparks; Bandurski and Hala.

2007 arrest of Zhiye Wang, the deputy party secretary of Zhenzhou City in Henan Province, was made possible by a Xinhua internal report exposing his corruption.⁷³ The 2004 execution of Zhongrui Wan, the party secretary of Nandan County in Guangxi Province, resulted from covering up a major mine incident and employing thugs to threaten journalists attempting to report the incident. Two reporters from *People's Daily* exposed the wrongdoing in internal reports.⁷⁴ Internal reference contributed to the strengthened *Production Safety Law*, passed six months later.⁷⁵ Examples of such “watchdog journalism” are numerous.⁷⁶

The list of Western-style investigative journalism could go on and on. It is important to note, however, that such watchdog journalism differs sharply from watchdog journalism in the West. In Western democracies such as the United States, the press serves as the public’s watchdog on the government. It “barks” to inform the public about government wrongdoing when it sees something wrong in the government. China implements a media system under the so-called authoritarian regime that is different than liberal democratic countries. The roles of Chinese media and journalists are thus different than those of Anglo-American journalists. In China, the function of the internal reference system is not only to act as a watchdog for the public but to act as a watchdog for the party and government. The journalistic internal reference system is meant to serve the senior CCP and government leaders in their policy making and governance, provide information and advice, and enhance the legitimacy of the party. The system is not designed to make senior party and government leaders look bad. News organizations “bark” all the time to inform the public about

73. “Zhiye Wang’s Wife.”

74. Liang; “China Cover-up Official Executed.”

75. Liang.

76. Such examples include but are not limited to the following: Xinhua internal references once exposed corrupt referees in Chinese football. They also exposed Qinghai Provincial Higher People’s Court judges in 1985 for shielding a murderer. The imprisonment of Junfeng Bai, the deputy party secretary of Zhanjiang City in Guangdong Province in the late 1970s, followed the internal report to his supervisor from *Nanfang Daily*, detailing Bai’s willful misconduct, rape, and corruption. A Xinhua journalist described in his 1978 internal report articles the shocking poverty in Yan’an, a Shanxi city that once served as the capital of Chinese communists. Zhigang Sun, a 27-year-old graphic designer, detained in March 2003 by Guangzhou police, died from torture due to mistaken identification as one of the “three withouts”—a person without identification papers, without a normal residence permit, and without proof of income. Xinhua internal periodicals, sent to leaders, covered the Zhigang Sun incident. In June 2003, the infamous *Regulations on Custody and Repatriation of Homeless Beggars 1982* were repealed. “Xinhua *Neican* Exposes Black Whistle”; “Chinese Football Fans Riot”; Deng, “A Big Case”; Liang; Jia.

government accomplishments, but most of the time, bury the bones of trouble they dig up in internal reference reports that *only* certain levels of party and government officials are entitled to see.

One cannot expect such an internal watchdog to “bark” when it learns about wrongdoings by “tigers” or high-ranking officials. Normally, no journalist would dare to use internal reports to expose bad things made by officials above provincial/ministerial levels unless authorized by people at the pinnacle of the bureaucracy. Misconduct by officials at the very pinnacle of the Chinese political hierarchy would definitely be taboo for internal reports. Expecting *neican* to break a scandal of a similar magnitude to Watergate is a futile exercise in China.⁷⁷

Another area almost untouchable by internal reports is the People’s Liberation Army (PLA). The military plays an extremely important role in Chinese politics. Without the full support of soldiers, the party would have difficulty maintaining power and protecting national security/defense.⁷⁸ The party, at times, would willingly ignore misdeeds despite knowing that military corruption was no less rampant than in civil governments.⁷⁹ The civilian authorities just “don’t dare to use the media, civil or military, as a watchdog to monitor the PLA the way they do over local governments.”⁸⁰ It looks like things are changing as the new leadership of the party takes the reins. As many high-ranking military leaders have been arrested and charged with corruption since Xi Jinping and his colleagues launched the massive anticorruption campaign in the military, it would be interesting to see what kind of role internal reports played in bringing down those military officials.

Journalists writing internal reports can exert influence on political and governmental leaders, but reporters are vulnerable to manipulation by those leaders. In China, journalistic internal reference production is a part of the internal intelligence gathering and analysis system of the Communist Party-state. The very practice of producing and submitting internal references by journalists (and at times others with some other official capacity) is an exercise of the political power. Journalists who pro-

77. China’s journalism often receives ridicule from the public as “only targeting flies” (low-ranking officials and low-level corruption) and “dead tigers” (high-level corruption that the state has already determined to eliminate) but rarely “unrestrained tigers” (high-ranking corrupt officials still in power). This finding applies to regular publications and also to internal publications, although to a lesser degree for the latter. See Yu, *Media and Cultural Transformation*, 94–95.

78. See Finkelstein and Gunness.

79. Magnier; Mulvenon.

80. Shirk, 31–32.

duce such internal reports via means analogous to investigative journalism often have the explicit backing or acquiescence of, or even instruction from, higher ranking officials. At least in the first 30 years of the PRC, producing internal references and persecuting journalists who produced such reports have both been parts of the internal political power struggle. This is another fundamental difference from investigative journalism in the West.

For example, during the Cultural Revolution, a large number of *neican* reporters were investigated and even jailed after they were considered to be espousing Mao's political rivals.⁸¹ Among such journalists were Gongran Xia, who was the director of the Xinhua Internal Reference Department, and Feng Jin, who was an influential *People's Daily* journalist. Xia was purged for writing "politically incorrect" internal reports and standing with Liu Shaoqi, a top leader Mao wanted to purge.⁸² After his arrest, Jin received a sentence of five years in prison for writing three internal reports exposing the dark side of Chinese air forces and Central Cultural Revolution Small Group.⁸³ The power struggle between Deng Xiaoping and his political opponents Hu Yaobang and Zhao Zhiyang in the late 1980s student demonstrations in China's major cities also led to the downfall of several prestigious *neican* journalists. Editors at *World Economic Herald* in Shanghai were purged in 1989 for its support of student demonstrators, although its internal report once went directly to Deng Xiaoping and other senior party leaders.⁸⁴ Binyan Liu, a *People's Daily* journalist who once sent internal reports personally to the then CCP General Secretary, Hu Yaobang, was also purged and died in exile in the United States.⁸⁵

"Think-Tank" Role of Journalistic Internal References in Chinese Politics

In addition to the "internal watchdog" role that media and party leaders are proud of, another role in which *neican* reporters in China take pride is advising the party and government on a wide range of political, economic, social, and other issues to help the state make more informed decisions. Cases exemplifying such "think-tank" role are numerous. For instance,

81. Zhao, *Media, Market, and Democracy*, 30.

82. Xia and Xia, "Cultural Revolution."

83. Jin.

84. Guo, 69.

85. Grant, 62. For Binyan Liu's life and death, see Barboza.

Hongqi, one of China's oldest upscale car brands, restored its production in the 1950s after an *Economic Daily* journalist recommended doing so in an internal report prepared for top leaders.⁸⁶ In four internal reports, a *People's Daily* journalist, Yunshan Lian, recommended creation of a special economic zone in Shenzhen, which is adjacent to Hong Kong. The reports prompted Deng Xiaoping to create the Shenzhen Special Economic Zone in 1980.⁸⁷ The resumption of *Gaokao*, the National College Entrance Examination in China, was made possible when a *People's Daily* journalist sent a *neican* article to Deng Xiaoping in 1977 when the Cultural Revolution had just ended.⁸⁸ Some Xinhua *neican* articles saved the life of Jinrun Chen, one of the most famous mathematicians in China, and helped the party adjust its policy toward intellectuals.⁸⁹ Internal reports helped the party establish the farmer household responsibility system in China's countryside in the early 1980s.⁹⁰ Zhongguancun, China's Silicon Valley, was created as a result of recommendations from *neican* articles.⁹¹ The infamous agriculture taxation was completely abolished in 2006 after several *neican* articles reported the death of many poor farmers who were forced by violence to pay tax.⁹² On the 100th day of the 2010 World Expo in Shanghai, Xinhua reporters filed 101 internal reference reports to leaders. A veteran Xinhua reporter said proudly, "We are like a think tank for the government."⁹³

The task of producing internal references for policy making is not limited to journalists. Today, it has become a basis for the proliferation of various Chinese research centers/institutes that are competing to be "think tanks" and evaluate the effectiveness of their work by whether they receive favorable written comments from higher-up officials. By 2014, just one year after Xi Jinping unveiled a plan to create "think tanks with Chinese characteristics," China had become a country with the second largest number of think tanks in the world, second only to the United States.⁹⁴ Among those hundreds of thousands of think tanks are ones affiliated with major news

86. Zhao, "Wrote *Neican*."

87. Su.

88. Yu, "One *Neican* Article." "Two Estimations" was the theoretical basis for suspending the national college entrance exam system. The argument was made by the Gang of Four, claiming that education in China has been controlled by the bourgeoisie and most Chinese intellectuals have a bourgeois worldview. Huang, "Memories of Yang Mu."

89. Gu.

90. Xu; Xia and Xia, "How *Neican* Covers Farmer Household."

91. Xia.

92. Chen, "Demystify *Neican*."

93. Liang.

94. Meng and Ye.

media organizations, such as the *People's Daily*, Xinhua News Agency, and CCTV.⁹⁵ The media think tanks' major goal is to advise the party and government on various issues relating to media, propaganda, and communication. If we say that, in the past, the phrase "think tank" was just a figure of speech for media's role, then today it is no longer a literary term, at least for the Chinese media. The media has become a think tank for the Chinese bureaucracy, at least judging from what the media often claims.

Someone may argue that Chinese journalists writing internal reports contribute to the political policy-making process, similar to the role enjoyed by think tanks in the West. Intelligence gathered by journalists may indicate that a policy implemented in the past was inappropriate, thereby influencing political leaders to abolish the policy. Internal reports might expose "inadequacies and flaws" within a policy and convince policymakers to reform or revise the policy. Journalists writing internal reports might raise questions or issues previously unconsidered by decision makers, leading to formulation of new policies.⁹⁶

The reason that the party and the government in China designate journalists as unofficial advisors for governmental policy making is fourfold: first, journalists have advantages in collecting information. They travel widely and have a wide range of contacts. They have easy access to high-level leaders and prestigious scholars, but at the same time, they can converse with ordinary people without restraint. Second, investigative reporters are usually insightful and accustomed to meeting deadlines, so their reports are usually fresh and timely. Third, decision makers can combine internal reports with information acquired through routine bureaucratic channels to better understand a situation. Last, internal reports provided by news organizations are especially valuable when regular communication channels within the bureaucracy are blocked "for bureaucratic and political reasons."⁹⁷

With all of this being said, the so-called "think-tank" role has huge problems. First, advising the government like think tanks is an inappropriate role for newspapers, TV stations, and other mass media outlets. News media organizations are not think tanks at all. "Jack of all trades and master of none" is something encouraged in journalism. Journalists thus cannot compete with think tanks in terms of depth of thought and feasibility of policy recommendations because think-tank scholars normally have PhD degrees, many years of academic experience, and expertise on specific

95. Huang, "Think Tanks."

96. Grant, 57.

97. *Ibid.*, 61.

areas or issues. Most importantly, think-tank scholars in the West often have much experience working in the government so they know exactly what kind of policy recommendation would most likely be accepted by the administration. The best think tanks in America and other developed countries are often independent from government and receive funding from private donors. Their independence enables them to formulate unbiased and more effective policy recommendations. Journalists and news organizations in China have none of these qualities.

Second, even if the think-tank role is legitimate, media organizations could do a better job of helping the party and government if they were to publish or broadcast internal reports, because the general public would not know that the party and government is doing something great if problems are exposed and solved secretly.

Third, criticizing and advising officials behind closed doors but remaining silent when controversial and newsworthy events happen creates unfavorable impressions among readers and viewers. The public would perceive news media organizations as being deceitful and having no real concern for the masses. This perception crisis would happen as soon as internal reports are publicized when the national security protection term expires.

Fourth, internal reports will accomplish nothing if the supreme leader in the party/government refuses to accept recommendations proposed by such reports. Although Chairman Mao Zedong received a significant number of fake reports from local officials glorifying the achievements of the Great Leap Forward Movement in 1958, Mao actually knew, clearly, the gravity of the economic situation at that time. Mao had sufficient information about the real economic situation from daily journalistic internal references he had received from various leading media organizations;⁹⁸ however, he did not modify the disastrous economic policies those reports suggested.

Internet and Market-Oriented Media Reforms Are Disincentives for Journalistic Internal Reference

Another challenge that the journalistic internal reference system is facing now is the increasing pervasiveness of the Internet in all aspects of Chinese people's daily lives. Compared to traditional media, the Internet enjoys clear advantages for gathering, producing, and delivering information to

98. Hsiao and Cheek, 82.

the widest audiences possible. For instance, in the last ten years, internal reports by *Liberation Daily*, the official newspaper of the CCP Shanghai Committee, are coming less and less from contributing writers and more and more from staff writers. The percentage of contributing articles dropped from 30 percent to 5 percent. Most contributing writers no longer send articles to *Liberation Daily Internal Report*; instead, contributors submit stories on the Internet for timely publication and greater social impact.⁹⁹

Market-oriented media reforms have also created financial, reputational, and other disincentives for journalistic internal reference. Chinese media organizations have become increasingly commercial in recent years,¹⁰⁰ and as a result, market-oriented media outlets have proliferated in China. Most such media outlets as *Caijing* in Beijing and *Southern Weekend* in Guangzhou are metropolitan magazines and newspapers¹⁰¹ that receive no funding from the government and survive independently. In order to gain credibility and compete successfully in the market, market-oriented media entities are more eager than traditional party and government news organizations to air and publish sensitive and controversial news stories. Perhaps the parent newspapers¹⁰² may require their affiliated media outlets to write *neican* in some cases, but generally, those market-oriented publications “rarely, if ever, prepare internal reports.”¹⁰³ This situation contributes to many news stories appearing on front pages of metropolitan publications, which newsstands sell almost everywhere in any major Chinese city. In the past, those stories would have appeared on desks of high-ranking officials in the form of journalistic internal reference.

The party’s traditional news outlets prepare most internal reports for leaders, confronting the pressure of commercialization. Most of the party’s traditional news organizations face reduced subsidies from the government.¹⁰⁴ In order to gain credibility, and increase circulation and advertising revenues, even traditional party outlets tend to publish more and more stories that would otherwise have been printed in internal periodicals in the past.

99. Wang, “Examination of Internal Reference.”

100. See Zhao, *Media, Market, and Democracy*, 52–71.

101. See Zhao, *Communication in China*.

102. In China, most market-oriented metropolitan newspapers and magazines are affiliated with party newspapers.

103. Liebman, 23.

104. China announced in 2003 that they were ending subsidies to all newspapers in the country, except some major ones like the *People’s Daily*. The announcement directed all publications to suspend ties to official departments and cease mandatory subscriptions. Yin.

Commercialization also contributes to the decreasing number of staff reporters willing to be unknown heroes. If the byline of an investigative journalist appears frequently on the front pages of a prestigious, regular publication, fame ensues among tens of millions of readers. However, even if the byline appears on the front page of an internal publication with the same frequency, no notoriety results outside the realm of political and governmental leaders. For this reason, some reporters prefer writing for regular publications than for internal ones. Binyan Liu, the renowned former journalist of the *People's Daily*, expressed such disenchantment with internal reports in a semi-fictional story, "The Inside News of the Newspaper."¹⁰⁵

Journalistic Internal Reference: Breeding Ground for Corruption

The journalistic internal reference system was designed, at least partially, by Chinese leaders to catch corruption. The system itself, however, is becoming a breeding ground for corruption. This is because the power of deciding what appears in public media and what appears in journalistic internal reference is too huge and the potential for abuse of such power is tremendous. Normally, it is up to journalists and their news organizations to decide what goes where, with constant guidance from party and government censors. Since no clear-cut standards exist for what can appear in internal reports, anyone who has the duty of gatekeeping could classify reports on a newsworthy event as state secrets as long as he or she desires. People are thus motivated to use the power of classifying news to seek personal gain.

It is thus not surprising for some journalists to write for internal publications with ulterior motives. Some reporters threaten to write negative pieces and internal reference materials to obtain "publicity fees" from businesses.¹⁰⁶ Some journalists promise to write positive pieces for officials who want to be covered in internal reference materials because appearing in a positive internal reference story is an effective way for local officials to get the attention of top leaders. Regardless of their motives, producing journalistic internal reference is becoming a huge power that is largely left unchecked. The mass production of fake internal reference materials has

105. In that piece, Liu described vividly a young journalist's dissatisfaction with internal reports. "For a long time now, her reports had been classified as inside information. They were typed, printed, and distributed to the offices concerned, or used as reference materials for guest authors writing articles." Grant, 58–59.

106. Zhao, *Media, Market, and Democracy*, 79.

even become a thriving industry in Beijing.¹⁰⁷ Kui Feng, a young journalist from the *People's Daily* bureau in Liaoning Province, was arrested and jailed for accepting bribes from a corrupt mayor of Shenyang City. After taking the bribes, Feng submitted two internally circulated articles to central leaders in Beijing to whitewash the official.¹⁰⁸ Some Xinhua journalists were expelled for using the power of *neican* to blackmail a local coalmine owner in Shanxi Province. The mine exploded due to negligent security. After accepting payoffs in cash and gold ingots from mine owners, the Xinhua journalists remained silent on the accident. Ironically enough, a reporter from *China Youth Daily* exposed this journalistic scandal in his internal reference articles that caught the attention of a CCP politburo member.¹⁰⁹ Those incidents are just the tip of the iceberg, reaffirming the eternal truth that any power corrupts if it is left in the dark without public oversight.

Summary and Conclusion

This article examines the journalistic internal reference system in China and its legal and political implications with a particular focus on conflicts, inconsistencies, and discrepancies between this special kind of information privilege and relevant laws such as *OGI Regulations*, state secrets laws, libel laws, and relevant party policies and directives. The journalistic internal reference system, established by Chinese communists in the 1930s, incorporates influences from journalism in the Soviet Union with probably ancient Chinese practices of publishing certain categories of government information in internally circulated newspaper-like publications. Today, journalists from mainstream Party and official media outlets in China prepare most internal reference materials. Journalistic internal reference materials cover a wide range of topics and issues. Most importantly, they cover sensitive and controversial issues, such as official misconduct and corruption, that most of regular publications would not dare to expose. The intent is that internal reference documents are beyond the public's purview, and for transmission exclusively to leading political and governmental officials at various levels.

The article finds that, although journalistic internal reports may expose some official corruption and misdeeds, the system faces many problems and

107. Zhang.

108. Jin and Zhou.

109. Bandurski and Hala, 121.

challenges in today's legal, media, and political environment. The concept and practice of sealing newsworthy information for government leaders' consumption only runs counter to the presumption of government openness embodied in China's FOI law.¹¹⁰ Government agencies and courts already used working secrets/internal working documents to shield official information from disclosure.¹¹¹ We still don't know how government agencies and courts are going to handle cases involving request for journalistic internal reference because this study has not found actual cases involving request of journalistic internal reference under OGI. Given the vagueness and expansiveness of the term "state secret" in both the FOI law and the secret secrets law, and the presumption of non-openness widely adopted by agencies and courts in China when coming to OGI affairs, it is highly likely that agencies and courts will shield journalistic internal reference materials from public view in the same manner as they do for working secrets/internal working documents. Justification for such rejection would be according to the grounds that the information sought coincides with the state secret exemption in *OGI Regulations*. Of course, in the future, it will be interesting to see how government agencies and courts in China will respond when they face such actual cases.

This study also found that the current law prohibiting reporters from quoting journalistic internal reference materials is problematic, as it restricts freer flow of information about important social issues and events. The law giving journalistic internal reference immunity from defamation lawsuits creates potential unfairness in enforcement of libel law, as we could generate two different classes of journalists, one with immunity and another without immunity. The argument that journalistic internal reference plays the role of watchdogs and think tanks is far-fetched as well. Internal reference does not have the power to hold top leaders accountable and is not well equipped to advise the government effectively like Western-style think tanks. The rise of Internet and social media and market-oriented media reforms are also discouraging journalists from pursuing careers in internal reference. Last but not least, journalistic internal reference is becoming a source of corruption. All these

110. In theory, disclosure is the norm and nondisclosure is the exception. In practice, however, nondisclosure is the norm.

111. FOI scholar Weixing Xiao, in a study of freedom of information in China, found that agencies once rejected OGI requests on the grounds that those petitions for instructions, research reports, leading officials' views, meeting minutes, and information on the processes of individual petitions are working secrets/internal working documents. Xiao, 108–109.

factors mentioned earlier contribute to tarnished party and government image and decreased credibility of media.

One may wonder if the journalistic internal reference system should continue. Someone may propose to keep the journalistic internal reference with decreased quantity and improved quality. In other words, people may argue that the scope for internally circulated materials should be narrowed down. There should be a clear-cut standard for what comes into limited-circulation publications and what becomes the subject of public coverage. This standard would allow and also force news organizations to determine more fairly what news should be accessible to all and what news should be restricted to a few. Only truly secret information should have classification as internal reference. Such a proposal is undesirable because it does not solve the fundamental problems. It is hard to create and enforce such a standard. The standard would leave room for corruption. A reasonable assumption for ordinary citizens is that a wealth of data in journalistic internal reference does not comprise state secrets. Instead, most information represents newsworthy stories comprehensible by the public.

Some Chinese communication scholars recommend that the party eliminate the journalistic internal reference system completely, whereas other scholars argue for the system's continued viability.¹¹² Given all the problems associated with the journalistic internal reference system discussed in this article, this study proposes gradual elimination of the practice of journalistic internal reports. Saying goodbye to journalistic internal reports may not be acceptable to some political elites at this point, but doing so would be a great blessing in the long term for the media, the party, the government, the public, and the whole country. Above all, sunshine is the best disinfectant. A few arguments can be made to support the end of journalistic internal reports.

First, Chinese history repeatedly proves that freer flow of information benefits not only the governed but also the governor. The Qin dynasty was among the most short-lived dynasties partly because the emperors were too ruthless in restricting what people could talk and write.¹¹³ On the other hand, the Tang and Song dynasties were among the most politically stable,

112. For example, Jiang Zhan and Yuezhi Zhao agree with elimination of the system. Guoming Yu disagrees. Chen, "Demystify *Neican*"; Liang.

113. According to *Records of the Grand Historian*, under the Qin dynasty law, anyone who criticized the emperor or the government would see his or her entire family exterminated and anyone who participated in public conversations with others would face execution in public [史记·高祖本纪: "诽谤者族, 偶语者弃市"].

economically prosperous, and culturally rich dynasties partly because the rulers were more tolerant toward criticism and commoners enjoyed greater freedom of expression.

Second, according to Article 19 of the Universal Declaration of Human Rights, “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹¹⁴ The practice of classifying newsworthy information as state secrets clearly infringes on people’s rights to receive and disseminate information. Getting rid of the nearly century-long journalistic internal reference tradition would demonstrate China’s firm commitment to promote and protect freedom of expression, a fundamental human right acknowledged and upheld by the United Nations.

Third, the CCP is trying to create a cleaner, more transparent and accountable party/government and more credible media organizations. Gradually eliminating journalistic internal reports and allowing more and more classified news to be published for everyone to see would in some ways help the party achieve this goal. If the party allows news organizations to publish materials that would otherwise end up appearing in internal reports, the state-run media would instantly become more popular in the eyes of readers and viewers. This would earn the Chinese media credibility, something the party always wants its media apparatus to have in the face of severe competition from Western media conglomerates. At the same time, the party’s anticorruption campaign would become more effective because of the participation of the media and public. This is exactly what the Central Commission for Discipline Inspection (CCDI) is doing. Its official website publishes so many high-profile corruption cases in such a timely, authoritative, and detailed manner that it has become one of the most visited websites in China.¹¹⁵ In many ways, the CCDI website is making journalistic internal reference obsolete and irrelevant.

Some people may fear that allowing media to publish so much bad news would create social instability or even chaos. This kind of fear is unwarranted. Since Xi Jinping took office in 2012 as the party’s general secretary, Chinese media organizations have exposed all kinds of high-level corruption and official misdeeds with vivid details (of course

114. The Universal Declaration of Human Rights, Art. 19.

115. “Chinese Government Launches Anti-Corruption Mobile App.”

with prior party approval).¹¹⁶ No massive social chaos is happening as a result of massive media exposure of corruption. On the contrary, Xi and his party are gaining increasing public support from at home and abroad. A Harvard Kennedy School study indicates that Xi is becoming the world's most popular leader.¹¹⁷ A Pew Research Center survey shows that 95 percent of Chinese citizens report being pleased with Xi's leadership.¹¹⁸ Indeed, the party's image has improved greatly partly because of efforts to publicize Xi's anticorruption campaigns. Such achievements would be unthinkable for the party if all corruption cases had been sealed for journalistic internal reports only.

Fourth, when journalistic internal reference disappears from history, other forms of internal reference will continue to stay. As previously mentioned, in addition to internal reports prepared by journalists, party organizations, governmental agencies, and other non-media entities produce internally circulated journals dealing with sensitive and controversial issues and events. The disappearance of journalistic internal reports would not make party and government leaders less informed if they read those non-journalistic internal reports carefully and if they follow news diligently.

One must see that journalistic internal reports will continue to be viable and needed in China's political system in the near future. The reasons are at least threefold. First, journalistic internal reports are timely and fresh. Internal reports by news organizations are often produced quickly and sent to leaders quickly. This is very important for leaders who want to find and solve problems before it is too late. Second, media organizations have a unique position in the party-state structure. Although they are a part of the party-state apparatus, just like any other party and government entity such as the Department of Agriculture, the Department of Transportation, and the Department of Propaganda, media entities often do not have a stake in an area/region's development/prosperity, and are thus more likely to provide senior leaders with unfiltered versions of facts and events. When communication channels in the bureaucracy are cut off for political or other reasons, internal

116. The *Caixin* magazine is a good example. The publication, led by aggressive editor Hu Shuli, has covered high-ranking corruption with timeliness, authoritativeness, and vivid details. Before Xi Jinping took office as China's number one leader, such materials would be taboo for any domestic media or probably publishable for journalistic internal reference only. Here is the website of the magazine: <http://english.caixin.com>.

117. Roberts.

118. Wall Street Journal Real Time Report.

reports from news media organizations would become vital sources of information for senior leaders.

Third, the fate of journalistic internal reference would be gloomy if China were to move toward more political liberalization. This is clearly not the case. Many Western media reports and scholars believe that Chinese politics are becoming more and more conservative.¹¹⁹ This does not bode well for the dismantlement of the journalistic internal reference system. The party's new emphasis on the concept of "party-control of media" or "the media's Party nature" (*Meiti Xing Dang*)¹²⁰ seems to be contrary to the Western expectation that the information will go freer and the government will be more open and transparent. Given the current situation in China, the possibility and feasibility of the Chinese government getting rid of the journalistic reference system and reforming the media system to align with the FOI law is slim.

Various initiatives led by the Party indicate that the country is trying hard to revitalize the journalistic internal reference system despite its declining influence and flaws discussed in previous sections of this article. The *People's Daily* created its Internal Reports Department a few years ago.¹²¹ Xinhua News Agency has increased the quantity of its internal reports.¹²² When visiting Xinhua headquarters in Beijing in February 2016, Chinese President Xi Jinping said to journalists, "[Journalistic] internal reports are very important. I attached great importance to them when I worked as a local and provincial leader. I have attached greater importance to them when I came to work in Beijing as a central leader. Keep up your good work!"¹²³

119. Simpson; "China's Strongman Rule"; Lam, 5–15.

120. "China's Xi Underscores CPC's Leadership"; Wang, "Op-ed."

121. "A List of Editorial Staff at the People's Daily."

122. According to Xinhua statistics compiled to measure the impact of its works, at the Party's five-yearly congress in 2007, Xinhua issued more than twice as many *neican* reports as it had at the 2002 event. In 2003, the number of comments written by leaders in the margins of *Reference Materials Proof* rose by 88 percent compared with the year before. Six were written by the then Chinese President Hu Jintao. *Reference Proofs* (Supplementary Sheets), published more than three times as many reports in 2003 as in 2002. In 2007, Xinhua's yearbook reported a 15 percent growth in the number of *Proofs of Domestic Trends* (A Digest of Online Public Sentiment) and a 50 percent increase in leaders' comments on them. "Chinese Whispers."

123. Huo and Li.

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