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## THE AFTERMATH OF *PENG YU*: RESTORING HELPING BEHAVIOR IN CHINA

Melody W. Young<sup>†</sup>

*Abstract:* Can money motivate heroic deeds? China believes so. After *Xu XX v. Peng Yu* developed a poor judicial precedent that lowered the evidentiary bar for plaintiffs in a personal injury claim, the media's focus on the controversial reasoning of the case created public fear of civil liability. High-profile media attention on similar events that followed reinforced the fears that the Peng Yu case engendered and chilled helping behavior in China. Yet, a tragic hit-and-run accident involving a two-year-old child in Foshan, China reinvigorated the discourse on the restoration of helping behavior in China. Guangdong Province proposed new legislation to counteract the moral apathy prevalent in its cities. This legislation, however, is insufficient in changing social behavior, as it only offers monetary coverage for property damaged in the act of rescue. The regulation fails to address the deficiencies of the judicial system in reaching a true and fair decision. This comment analyzes the impact of the Peng Yu case in causing China's declining helping behavior. In order to reestablish and encourage helping behavior in China, this comment argues that the government should protect the public from civil liability and restore the public's lost faith in the justice system.

### I. INTRODUCTION

A series of high-profile incidents severely impacted the sense of civic consciousness in China. The seminal case, *Xu XX v. Peng Yu*, successfully chilled helping behavior<sup>1</sup> tendencies within members of the general public.<sup>2</sup>

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<sup>1</sup> The author has elected to use the psychology term "helping behavior" as a neutral, connotation-free alternative to Good Samaritan behavior. While "courageous behavior" is how the author has translated the behavioral pattern in the attached translation, it makes more sense contextually to use helping behavior for the purposes of this comment. Thus, the term "helping behavior" is used in all instances except in quotes and titles that use the term "courageous behavior."

<sup>2</sup> See generally Nanzi Chengfu Shuidao Laotai Fan Beigao Beipan Pei 4 Wan (男子称扶摔倒老太反被告 被判赔4万) [*Man Helps Fallen Elderly Woman, Becomes Defendant, to Pay Compensation of 40,000 RMB*], NANFANG WANG (南方网), Sept. 5, 2007, available at <http://news.163.com/07/0906/05/3NMDBNR600011229.html> [hereinafter *Man Helps Fallen Elderly Woman*] (describing the court's reasoning in *Xu XX v. Peng Yu*, criticizing the award of 40,000 RMB despite determining that neither party was at fault); Du Juan (杜鹃), Xiaohuo jietou fu laotai bei zhi zhuangren muji zhe ceng han "bu gan fu" (小伙街头扶老太被指撞人 目击者曾喊“不敢扶”) [*Young Man Helps Elderly Woman On Street is Accused as Tortfeasor, Witnesses Cried that They "Dared Not Help"*], RENMIN WANG (人民网), June 20, 2008, available at <http://news.163.com/08/0620/08/4ESC3TIK00011229.html>; Yuan Qi (袁祺), Nanjing pengyu an houyizheng liudu shenguang 8 xun laoweng daodi wuren ganfu (南京彭宇案后遗症流毒甚广 8旬老翁倒地无人敢扶) [*Consequences of the Nanjing Pengyu Case Spread Like Poison, 80 Year-old Gentleman Falls With No One Willing to Help*], WEN HUIBAO (文汇报), Oct. 12, 2009, available at <http://www.chinanews.com/sh/news/2009/10-12/1905090.shtml>; Zhu Hongjun (朱宏俊), Laohan diedao

In November 20, 2006, Peng Yu, an alleged Good Samaritan,<sup>3</sup> helped an elderly woman who fell while coming off a bus.<sup>4</sup> With arguably good intentions, Peng sent the senior to the hospital and offered 200 RMB to help

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wuren gan dajiu dahan “shiwu ziji diede” (老汉跌倒无人敢搭救 大喊“是我自己跌的”) [*Old man falls with no one willing to help, cries out “It’s my own fault I fell”*], XINHUA BAOYE WANG (新华报业网), available at Feb. 23, 2009, <http://news.163.com/09/0223/09/52R1IPPI00011229.html>; *Laoren hundao zai dilu ren bugan fu, danwu shiji siwang* (老人昏倒在地路人不敢扶 耽误时机死亡) [*Senior Faints on Street With No One Willing to Help, Delay Results in Death*], ZHEJIANG ZAIXIAN (浙江在线), Dec. 8, 2009, available at <http://news.163.com/09/1208/09/5Q01023N000120GU.html> [hereinafter *Senior Faints on Street*]; *Chu er xuesheng fuqi shuaidao laitai bei dang zhaoshizhe gao dao fayuan* (初二学生扶起摔倒老太被当肇事者告到法院) [*Eighth Grader Helps Fallen Elderly Woman, Is Accused as Tortfeasor and Sued in Court*], SINA.COM.CN, Nov. 15, 2010, available at <http://news.sina.com.cn/s/2010-11-15/020621470098.shtml> [hereinafter *Eighth Grader Helps Fallen Elderly Woman*]; *Qingdao Shimin Zuozheng Fanban “Pengyu An” Cheng Haoxin Chezhu Bei Yuanwang* (青岛市民作证翻版“彭宇案”称好心车主被冤枉) [*Qingdao Citizen Witnesses a Copy of the “Peng Yu Case,” Claims Nice Car Owner Was Falsely Accused*], CHENGSHI XINBAO (城市信报), Feb. 24, 2010, available at <http://news.iqilu.com/shandong/kejiaoshehui/20100224/186686.shtml> [hereinafter *Qingdao Citizen Witnesses a Copy of the “Peng Yu Case”*]; Tian Enxiang (田恩祥), Zhong Chuanfang (钟传芳), & Zhou Song (周松), *Laoren Yuzhong Shuaidao Lubian I Xiaoshi Jiran Siqu, Wuren Gan Bangmang* (老人雨中摔倒路边1小时寂然死去 无人敢帮忙) [*Senior Slips in the Rain on the Street Silently Dies in an Hour, No One Was Willing to Help*], YANGCHENG WANBAO (羊城晚报), Aug. 13, 2010, available at <http://news.qq.com/a/20100813/001653.htm>; Ye Nengjun (叶能军), *Guangdong Gaoming Yi Laoren Diedao Lubian Hou Siqu Luren Lengmo* (广东高明一老人跌倒路边后死去 路人冷漠) [*Guangdong’s Brilliant Senior Falls at the Side of the Road and Dies, Passersby Were Indifferent*], SOUTHERN DAILY (南方日报), Oct. 21, 2011, available at [http://news.southcn.com/d/2011-10/21/content\\_31806782.htm](http://news.southcn.com/d/2011-10/21/content_31806782.htm); Li Zhihong (李志宏), *Wang Peijun: Fuqi Laotai Jingzao Lianhuan Ju E Suopei Wuli Yingdui Fudu Zisha* (王培军：扶起老太竟遭连环巨额索赔 无力应对服毒自杀) [*Wang Peijun Helps Elderly Woman Who Unexpectedly Dies and Was to Pay a Large Sum in Damage Claims, Unable to Pay, Wang Commits Suicides by Poison*], HONG WANG (红网), Aug. 9, 2012, available at <http://character.worker.cn/c/2012/08/09/120809151009299709382.html>; *Gedi Fanban “Peng Yu An” Da Pandian* (各地翻版“彭宇案”大盘点) [*An Inventory of the Various Places that Replicated the “Peng Yu Case”*], DUOWEI XINWEN (多维新闻), Aug. 22, 2011, available at <http://china.dwnews.com/news/2011-08-22/58037407.html>.

<sup>3</sup> For the purposes of this comment, the author refers to *jianyi yongwei ren yuan* (见义勇为人员) [persons of courageous behavior] as Good Samaritans for ease of clarity in the English language. While it may be more accurate to say “persons of courageous behavior,” the meanings of the two respective terms are fairly interchangeable in the Chinese language. It is worth noting that there is a subtle difference in the meaning of these two terms, where Good Samaritan refers to altruistic behavior out of the goodness of one’s heart, whereas *jianyi yongwei* (见义勇为) [courageous behavior] refers to a similar response to aid but out of the justness or righteousness of one’s person. See generally CONFUCIUS, THE ANALECTS (LUN YU) (D.C. Lau trans., Penguin Books 1979); see also HANDIAN (汉典) [A DICTIONARY OF HAN CHINESE], *Ciyu jieshi: jianyi yongwei* (词语解释：见义勇为 (见义勇爲)) [Explanation of the Expression “Jianyi Yongwei”], available at <http://www.zdic.net/cd/ci/4/ZdicE8ZdicA7Zdic81339096.htm> (citing to the origin of the term *jian yi yong wei* (见义勇为) in chapter 24 of THE ANALECTS, which states “*jianyi buwei, wuyong ye*” (“见义勇为, 无勇也”)). See Luke 10:25-37 (King James) (the biblical origins of the Good Samaritan).

<sup>4</sup> Liu Shinan, *Controversial Verdict Has Damaged Society*, CHINA DAILY, Sept. 7, 2011, available at [http://www.chinadaily.com.cn/opinion/2011-09/07/content\\_13636204.htm](http://www.chinadaily.com.cn/opinion/2011-09/07/content_13636204.htm).

cover the cost of hospital fees.<sup>5</sup> Ms. Xu, the injured senior, returned this kindness by suing Peng for personal injury compensation, claiming he caused her fall.<sup>6</sup> Despite the plaintiff's lack of evidence proving Peng had caused her injuries, the Nanjing court found that "experience from everyday life" sufficiently proves that no one would in good conscience help someone unless they felt guilty.<sup>7</sup> The court held Peng liable for damages and awarded Ms. Xu 45,876.36 RMB<sup>8</sup> (approximately \$6,076 USD)<sup>9</sup> as compensation. This verdict received widespread media coverage, engendering public outcry over the controversial decision.<sup>10</sup> The most criticized portion of the decision was the judge's reasoning that Peng Yu should bear 40% of the victim's loss even though no fault was determined in the collision.<sup>11</sup>

Peng Yu and the cases that followed set a precedent in China, holding that performing an act of assistance does not make one a Good Samaritan. Subsequently, an increase in incidents involving elderly individuals falsely accusing helpful bystanders grew as a trend in the media's reports.<sup>12</sup> This caused widespread hesitancy to render aid to others in need.<sup>13</sup> Media attention to the injustice of these incidents reinforced reluctance to engage in helping behavior because of the potential legal consequences created by

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<sup>5</sup> Xu XX Su Peng Yu Renshen Sun Hai Peichang Jiufen An (徐 XX 诉彭宇人身损害赔偿纠纷案) [Xu XX v. Peng Yu, Personal Injury Compensation Dispute], PKULAW.CN (Nanjing Mun. Gulou Dist. People's Ct. Sept. 3, 2007) (China) [hereinafter Xu XX v. Peng Yu]; see also Bob Chen, *China: Senior Sues would-be Samaritan*, ENGLISH GLOBAL VOICES, Sept. 11, 2007, <http://globalvoicesonline.org/2007/09/11/china-senior-sues-would-be-samaritan/> (last visited May 9, 2013).

<sup>6</sup> Xu XX v. Peng Yu, *supra* note 5.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Chen, *supra* note 5.

<sup>10</sup> See generally *Man Helps Fallen Elderly Woman*, *supra* note 2; *Furen Que Bei Pan Zhuangren Nanjing Xiaohuo Hao Xin Mei Hao Bao* (扶人却被判撞人 南京小伙好心没好报) [*Helping a Person but Found as Tortfeasor, Nanjing Fellow Good-Heartedness Is Not Recompensed*], CHENGDU RI BAO (成都日报), Sept. 7, 2007, available at <http://view.news.qq.com/a/20070910/000007.htm>; Song Xin (宋鑫) & Wang Yuping (王玉平), *Li Yuanchao Tan Peng Yu An* (李源潮谈彭宇案) [*Li Yuanchao Talks About the Peng Yu Case*], ZHONGGUO XINWEN WANG (中国新闻网) [CHINA ONLINE NEWS], Oct. 16, 2007, <http://big5.chinanews.com.cn:89/gate/big5/www.chinanews.com/shipin/2007-10-16/news1531.html> (last visited May 9, 2013); Wang Honglian (黄洪连) & Chen Wen (陈闻), *Nanjing "Peng Yu An" Xu: Panjue Yinfu San Da Zhenglun Jiaodian* (南京“彭宇案”续：判决引发三大争论焦点) [*Nanjing Peng Yu Case Continued: Judgment Causes Three Major Areas of Controversy*], NANJING CHENBAO (南京晨报) [NANJING MORNING REPORTER], Sept. 6, 2007, available at <http://news.qq.com/a/20070906/003168.htm>; "Peng Yu An" Ni Gao Qingchu Le Meiyou ("彭宇案"你搞清楚了没有) [*"Peng Yu Case": Do you have the facts straight?*], SICHUAN ZAIXIAN (四川在线), Sept. 10, 2007, <http://view.news.qq.com/a/20070910/000006.htm> [hereinafter "Peng Yu Case": *Do you have the facts straight?*].

<sup>11</sup> Wang & Chen, *supra* note 10.

<sup>12</sup> See *supra* note 2.

<sup>13</sup> *Id.*

these cases.<sup>14</sup> Baseless claims found success in local courts applying the Peng Yu standard.<sup>15</sup> Even though China is a civil law country, some courts followed the rationale in Peng Yu and produced similarly unfair verdicts.<sup>16</sup> In the case of Wang Xiuzhi v. Xu Yunhe, the plaintiff's failure to produce conclusive evidence establishing that Xu caused her fall did not bar her from seeking damages.<sup>17</sup> Xu was ultimately held liable for 100,000 RMB (approximately \$15,654 USD) in spite of the lack of evidence.<sup>18</sup> The injustice of these cases disincentivized the public from helping others.

In 2011, the highly publicized hit-and-run accident involving a two-year-old child in Foshan reinvigorated the discourse on the state of civic consciousness in China.<sup>19</sup> Security footage captured two vans that ran over a two-year old child nicknamed Yueyue (悦悦).<sup>20</sup> The drivers drove off without stopping to investigate.<sup>21</sup> Eighteen bystanders walked by without

<sup>14</sup> *Id.*; see also Zhuren beiwu, wuxianzhe ying yifa zhuize (助人被诬, 诬陷者应依法追责) [*Helper Falsely Accused, the Framer Should Bear Responsibility According to the Law*], DALIAN WANBAO (大连晚报), Sept. 1, 2011, available at [http://szb.dlxww.com/dlwb/html/2011-09/01/content\\_531718.htm](http://szb.dlxww.com/dlwb/html/2011-09/01/content_531718.htm); "Peng Yu Case": Do you have the facts straight?, *supra* note 10; Huang Yaohui (黄耀辉) & Yang Yongxin (杨永新), Zhao Qing Qingnian Fu Qixun Laotai Zao Wuxian Zhuangren Yushi Daodi Fu Bu Fu (肇庆青年扶七旬老太遭诬陷撞人 遇事到底扶不扶) [*Youth Zhao Qing Helps Seventy Year-old Woman, Is Sued as Tortfeasor, When Encountering Such Situations to Help or Not to Help*], ZHONGGUO XINWEN WANG (中国新闻网), Sept. 9, 2011, available at <http://gd.qq.com/a/20110910/000033.htm>; Li, *supra* note 2.

<sup>15</sup> Wang Xiuzhi Su Xu Yunhe Daolu Jiaotong Shigu Renshen Sunhai Peichang Jiufen An (王秀芝诉许云鹤道路交通事故人身损害赔偿纠纷案) [Wang Xiuzhi v. Xu Yunhe, Traffic Accident Personal Injury Compensation Dispute], PKULAW.CN (Tianjin Mun. Hongqiao Dist. People's Ct. June 16, 2011) (China) [hereinafter Wang Xiuzhi v. Xu Yunhe].

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., *The Drivers who Shamed China: Two Arrested in Death of Two-Year-Old Yue Yue—Who Was Run Over TWICE As Dozens of People Ignored Her Lying in the Road*, MAIL ONLINE, Oct. 24, 2011, <http://www.dailymail.co.uk/news/article-2052632/Yue-Yue-dead-2-arrested-death-Chinese-girl-run-TWICE.html> (last visited May 9, 2013) [hereinafter *The Drivers who Shamed China*]; see also XIAO YUEYUE SHIJIAN (小悦悦事件) [*THE TIME OF XIAO YUEYUE*] (TVS television broadcast Oct. 14, 2011), available at [http://v.youku.com/v\\_show/id\\_XMzEzODMzNmM2.html](http://v.youku.com/v_show/id_XMzEzODMzNmM2.html) [hereinafter *Xiao Yueyue Shijian*]; see also CAN LITTLE YUE YUE AWAKEN CHINESE PEOPLE? (小悦悦能否唤醒中国人的良知?) (New Tang Dynasty Television broadcast Oct. 25, 2011), available at <http://www.youtube.com/watch?v=uXUSaBk1Fdo>. See also, Angela Köckritz, *Yueyues Tod: Ein Kleinkind wird überfahren, 18 Chinesen gehen achtlos vorüber. Nun streitet ein tief erschüttertes Land über seine Werte*, ZEIT ONLINE, Oct. 31, 2011, <http://www.zeit.de/2011/44/China> (last visited May 9, 2013). See also Michael S. James, Karson Yiu, & Kevin Dolak, *YueYue, Chinese Toddler Run Over in Street and Ignored, Dies*, ABC NEWS, Oct. 20, 2011, <http://abcnews.go.com/blogs/headlines/2011/10/yueyue-chinese-toddler-run-over-in-street-and-ignored-dies> (last visited May 9, 2013); see also الصين في طفلة تدهس سيارات رحمة بدون فيديو [Cars Run over a Child in China without Mercy—Video], RHAFA NEWS, Dec. 8, 2011, <http://www.rafha-news.com/news-action-show-id-7925.htm> (last visited May 9, 2013).

<sup>20</sup> CAN LITTLE YUE YUE AWAKEN CHINESE PEOPLE?, *supra* note 19.

<sup>21</sup> *Id.*

stopping to help her; she died of severe blood loss and internal injuries.<sup>22</sup> The media amplified the drama of the tragedy and sent a signal to society that created political pressure for reform.<sup>23</sup> In response, the People's Congress of Guangdong Province enacted the Regulation to Reward and Protect Persons of Courageous Behavior on November 29, 2012, which came into effect January 1, 2013.<sup>24</sup> However, the public responded negatively. The public criticized the reward for “distorting people's values” and claimed that the government “lacks morals and talent,” because the regulation relied on monetary rewards to alter social behavior.<sup>25</sup> This public

<sup>22</sup> *The Drivers Who Shamed China*, *supra* note 19.

<sup>23</sup> *Xiao YueYue Shijian*, *supra* note 19; see also Huang Liang (黄亮), *Foshan nitong xiao Yueyue bei nianya Guangdong jinming kaizhan jianyi yongwei da taolun* (佛山女童小悦悦被碾压 广东今明开展见义勇为大讨论) [*Foshan Little Girl Yueyue Rolled over by Cars, Guangdong Launched into Discussion Today over Courageousness Legislation*], YANGCHENG WANBAO (羊城晚报), Oct. 19, 2011, available at <http://politics.people.com.cn/GB/14562/15949900.html>; Ye Xiaozhong (叶小钟), *Xiao yueyue shijian zheshe daode qieshi jianyi yongwei shifou lifa yin reyi* (小悦悦事件折射道德缺失 见义勇为是否立法引热议) [*The Yueyue Incident Reflects Moral Deficiency, Whether to Enact Legislation on Courageous Behavior Becomes an Issue of Hot Discussion*], GONGREN RIBAO (工人日报), Oct. 20, 2011, available at <http://www.chinanews.com/fz/2011/10-20/3400951.shtml>; *Guangdong Jianyi Yongwei Yicixing Jianli Quanguo Zuigao Renda Lifa Zhangxian “Yiren Weiben”* (广东见义勇为为一次性奖励全国最高 人大立法彰显“以人为本”) [*Guangdong One-Time Reward for Courageous Behavior Is the Nation's Highest, People's Congress Legislation to Manifest the Concept of “To Make an Example of Others”*], NANFANG WANG (南方网), Dec. 25, 2012, available at [http://news.southcn.com/g/2012-12/25/content\\_60855469.htm](http://news.southcn.com/g/2012-12/25/content_60855469.htm); see also Justine Toh, *Chinese Good Samaritan Gives Hope Amid Indifference to Dying Toddler*, ABC RELIGION & ETHICS, Oct. 25, 2011, <http://www.abc.net.au/religion/articles/2011/10/25/3347286.htm> (last visited May 9, 2013); Josh Chin, *Would Good Samaritan Law in China Have Helped Little Girl?*, WALL ST. J., Oct. 18, 2011, available at <http://blogs.wsj.com/chinarealtime/2011/10/18/would-good-samaritan-law-have-helped-little-girl/tab/print/>; *Shenzhen proposes Good Samaritan laws*, WANT CHINA TIMES, Nov. 3, 2011, available at <http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20111103000074&cid=1103>.

<sup>24</sup> *Guangdong Sheng JianYi Yongwei Renyuan Jiangli He Baozhang Tiaoli Queren Yiju You Shixiao* (广东省见义勇为人员奖励和保障条例 确认义举有时效) [*Guangdong Regulation to Reward and Protect Persons of Courageous Behavior Confirmed and in Effect*], XINWEN ZHONGXIN (新闻中心), Dec. 12, 2012, [http://news.china.com.cn/live/2012-12/12/content\\_17634486.htm](http://news.china.com.cn/live/2012-12/12/content_17634486.htm) (last visited January 2, 2013). See also, *Guangdong Sheng Jianyi Yongwei Renyuan Jiangli He Baozhang Tiaoli* (广东省见义勇为人员奖励和保障条例) [*Guangdong Regulation to Reward and Protect Persons of Courageous Behavior*] (promulgated by the 11th Standing Comm. People's Cong. of Guangdong Province, Nov. 29, 2012, effective Jan. 1, 2013) (China), available at [http://law.lawtime.cn/d693207698301\\_2\\_p1.html](http://law.lawtime.cn/d693207698301_2_p1.html) [hereinafter *Guangdong Regulation*].

<sup>25</sup> Wang Liangzong (王量宗), *Guangdong jianyi yongwei xishengzhe 100 wan minzhong yipian feiyi* (广东见义勇为为牺牲者奖 100 万 民众一片非议) [*Guangdong Province Awards 1,000,000 RMB to Persons Who Sacrifice Themselves to Save Another, The Masses Respond with Censure*], EPOCH TIMES (大纪元), Dec. 3, 2012, available at <http://www.epochtimes.com/gb/12/12/3/n3743874.htm%E5%B9%BF%E4%B8%9C%E8%A7%81%E4%B9%89%E5%8B%87%E4%B8%BA%E7%89%BA%E7%89%B2%E8%80%85%E5%A5%96100%E4%B8%87--%E6%B0%91%E4%BC%97%E4%B8%80%E7%89%87%E9%9D%9E%E8%AE%AE.html?p=all> (citing to original text, which states: “民众：扭曲人们的价值观” and “很多人抨击政府无德无才，’就剩下钱了”)。

outray threatens the likelihood that the Guangdong regulation<sup>26</sup> or a derivative statute will be effective in encouraging helping behavior.<sup>27</sup> Judging from its response to the new regulation, the public does not appear to believe in its efficacy.<sup>28</sup> The new legislation and the media coverage of it demonstrated that the government cared enough to respond, yet the regulation falls short of the public's expectations because it only offers monetary rewards and not security of mind.<sup>29</sup>

The heart of the problem is that the government has failed in its response to an ever-present fear that Peng Yu created: the public's vulnerability to civil liability in emergency situations.<sup>30</sup> While the newly enacted regulation provides social security, offering monetary incentives and honorary titles to Good Samaritans who are injured or die in the course of rescue, it ultimately neglects to protect individuals from civil liability.<sup>31</sup> This comment therefore analyzes the consequences of Peng Yu, and argues that the government should protect the public from civil liability to restore helping behavior and the public's trust of the justice system.

<sup>26</sup> *Guangdong Regulation*, *supra* note 24.

<sup>27</sup> See Anhui Sheng Jian Yi Yongwei Renyuan Jiangli He Baohu Tiaoli (安徽省见义勇为人员奖励和保护条例) [Anhui Province Regulation to Reward and Protect Persons of Courageous Behavior] (promulgated by 11<sup>th</sup> Standing Comm. People's Cong. of Anhui Province, Apr. 22, 2011, effective July 1, 2011) (China), available at <http://www.ahrd.gov.cn/npcweb/web/info.jsp?strId=1304380015796069>; Shandong Sheng Jianyi Yongwei Jianli He Baohu Tiaoli (山东省见义勇为人员奖励和保护条例) [Shandong Province Regulation to Reward and Protect Persons of Courageous Behavior] (promulgated by the 11th Standing Comm. People's Cong. of Shandong Province, Sept. 27 2012, effective Dec. 1, 2012) (China), available at <http://www.sdrdlf.gov.cn/html/fgcx/2147.html>; Heilongjiang Sheng Jianyi Yongwei Renyuan Jiangli He Baohu Guiding (黑龙江省见义勇为人员奖励和保护规定) [Heilongjiang Province Regulation to Reward and Protect Persons of Courageous Behavior] (promulgated by the People's Cong. of Heilongjiang Province Standing Comm., Sept. 19, 2007, effective Jan. 1, 2008) (China), available at [http://www.gov.cn/ziliao/flfg/2007-11/27/content\\_817271.htm](http://www.gov.cn/ziliao/flfg/2007-11/27/content_817271.htm); Sichuan Sheng Baohu He Jiang Li Jianyi Yongwei Tiaoli (四川省保护和奖励见义勇为条例) [Sichuan Province Regulation to Protect and Reward Courageous Behavior] (promulgated by the 9<sup>th</sup> Standing Comm. People's Cong. of Sichuan Province, May 9, 2000, effective Oct. 1, 2000) (China), available at <http://www.law-lib.com/lawhtml/2000/35603.htm>; Fujian Sheng Jiangli He Baohu Jianyi Yongwei Renyuan Tiaoli (福建省奖励和保护见义勇为人员条例) [Fujian Province Regulation to Reward and Protect Persons of Courageous Behavior] (promulgated by the 11<sup>th</sup> Standing Comm. People's Cong. of Fujian Province, July 28, 2011, effective Sept. 1, 2011) (China), available at [http://www.law-lib.com/law/law\\_view.asp?id=357524](http://www.law-lib.com/law/law_view.asp?id=357524); Beijing Shi Jianyi Yongwei Renyuan Jiangli He Baohu Tiaoli (北京市见义勇为人员奖励和保护条例) [Beijing Municipal Regulation to Reward and Protect Persons of Courageous Behavior] (promulgated by the Beijing Municipal's Cong. Standing Comm., Apr. 21, 2000, effective Aug. 1, 2000) (China), available at <http://210.75.193.121/wcm/WCMV6/biaodan/zcfg/detail.jsp?id=889>.

<sup>28</sup> Wang, *supra* note 25.

<sup>29</sup> See *Guangdong Jianyi Yongwei Yicixing Jianli Quanguo Zuigao Renda Lifa Zhangxian "Yiren Weiben"*, *supra* note 23.

<sup>30</sup> *Guangdong Regulation*, *supra* note 24 (Article 29 of the regulation fails to create civil protections for persons of courageous behavior, and merely offers legal aid in such situations. However, the regulation does not guarantee that the rescuer will not suffer financial loss for simply rendering aid).

<sup>31</sup> *Id.*

Part II analyzes the judicial opinions that received great media attention. Part III examines the resulting decline in helping behavior post-Peng Yu. Part IV addresses issues raised by Peng Yu in the newly enacted Guangdong Regulation to Reward and Protect Persons of Courageous Behavior [广东省见义勇为人员奖励和保障条例] and assesses whether it will effectively reverse the decline in helping behavior. Part V offers suggestions to strengthen the development of civic consciousness in China. The section also attempts to address the fears generated by Peng Yu through a strategy that incorporates a multifaceted approach instead of trying to resolve the problem only with regulation.

## II. ANALYZING THE CONTROVERSIAL JUDICIAL OPINION THAT SHAPED PUBLIC BEHAVIOR

In Peng Yu, the plaintiff, Mrs. Xu fell while coming off a bus in Nanjing, China.<sup>32</sup> Peng helped her up, sending her to the hospital with two-hundred RMB for treatment.<sup>33</sup> Xu however filed a claim against Peng in court, alleging Peng caused her fall.<sup>34</sup> In spite of a lack of evidence produced on Xu's part, the judge upheld the validity of her claim, which lowered the evidentiary standard for personal injury claims.<sup>35</sup>

### A. *Peng Yu Placed an Undue Burden on the Defendant to Prove His Innocence*

Peng Yu had the effect of lowering the evidentiary bar for a plaintiff raising a personal injury claim.<sup>36</sup> The judge in Peng Yu explained that the defendant failed to provide evidence contrary to the plaintiff's claim.<sup>37</sup> Even though Peng provided a witness that testified to his helping the plaintiff up from her fall, the judge found the evidence insufficient because the witness failed to see who caused Xu's fall in the first place.<sup>38</sup> Xu herself did not provide evidence indicating that Peng caused her fall.<sup>39</sup> Contrary to legal norms, the judge accepted Xu's lack of evidence, and raised the defendant's burden to present evidence of his innocence, thereby lowering the standard

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<sup>32</sup> Chen, *supra* note 5.

<sup>33</sup> Xu XX v. Peng Yu, *supra* note 5.

<sup>34</sup> Chen, *supra* note 5.

<sup>35</sup> *Id.*

<sup>36</sup> Xu XX v. Peng Yu, *supra* note 5.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

for a plaintiff to file a personal injury claim. The court awarded Xu 45,876.36 RMB (approximately \$6,076 USD) in damages.<sup>40</sup>

*B. Improper Use of Personal Experience as Evidence of Culpability*

The court used personal experience as evidence of culpability in the respective tort actions.<sup>41</sup> In Peng Yu, the court explained that Peng paying 200 RMB to cover Xu's medical expenses was indicative of guilt.<sup>42</sup> The court improperly relied on personal experience as proof of culpability. This case turned on a question of fact. Where there was an absence of evidence to indicate culpability, the court offered its own experience as hard proof that Peng committed the alleged harm. The court reasoned that:

According to experience from everyday life, considering that the plaintiff and defendant are unacquainted with another, an average person would not lend money to another out of the blue. Even if it is as the defendant claims as simply an act of lending funds, he would not do so unless he was undertaking responsibility for the accident. He should have asked for a disinterested party on the bus platform to witness the transaction or asked the plaintiff's relatives to put into writing the exact conditions for the loan after figuring out the details.<sup>43</sup>

Instead of simply casting doubt on Peng's version of the incident, the court found that Peng's altruism was evidence of his culpability. According to the court, experience tells us that a stranger would only accompany the plaintiff to the hospital and offer to pay for her medical expenses if he felt responsible for her injuries.<sup>44</sup> While a judge is permitted to use common sense to construct a "reasonable person" standard, that reasoning alone should not be the sole evidence of culpability. The court therefore improperly used personal experience in Peng Yu.

This short paragraph in the Peng Yu opinion lowered the bar for social behavior, and the public responded in kind. Rather than helping an injured

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<sup>40</sup> Xu XX v. Peng Yu, *supra* note 5.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Xu XX v. Peng Yu, *supra* note 5 (citing original text, which indicates "根据日常生活经验, 原告、被告素不认识, 一般不会贸然借款, 即便如被告所称借款, 在有承担事故责任之虞时, 也应请公交站台上无利害关系的其他人证明, 或者向原告亲属说明情况后索取借条(或说明)等书面材料" (translation by the author)).

<sup>44</sup> *Id.*

person out of good will or kindness, the Chinese were now cautioned that a helping act could imply culpability and lead to financial responsibility.

C. *Other Courts Followed the Lower Standard in Peng Yu, Permitting the Abuse of the Judicial System*

The court<sup>45</sup> in *Wang Xiuzhi v. Xu Yunhe* followed the *Peng Yu* precedent<sup>46</sup> and placed the burden of proof on the defendant to provide contrary evidence in the liability claim.<sup>47</sup> In 2009, Mrs. Wang was injured while illegally climbing over a roadside railing in Tianjin.<sup>48</sup> Mr. Xu Yunhe, a driver passing by saw her fall, and stopped to help her, “bandaging her up and calling first-aid.”<sup>49</sup> Wang later sued Xu in Tianjin Municipal Court.<sup>50</sup>

Unlike the plaintiff in *Peng Yu*, the plaintiff in the instant case offered photos of Xu’s license plate and scratched leather on the car bumper as proof that Xu collided with her.<sup>51</sup> Wang offered no other supporting evidence though.<sup>52</sup> The defendant, Xu, requested an analysis of the tire marks at the scene, but the report was inconclusive.<sup>53</sup> Xu claimed his car bumper was damaged earlier on the highway.<sup>54</sup> There was reasonable evidence that indicated Xu’s car never made contact with Wang. Still, with equally insufficient evidence and Xu carrying the burden of proof, the court found Xu liable for Wang’s injuries. The decision in *Xu Yunhe* affirmed the *Peng Yu* precedent that a defendant in liability litigation using the Good Samaritan defense is required to demonstrate her innocence.

The court in *Xu Yunhe* explained that even though Wang violated traffic laws and climbed over the median railing, based on “logic,” she would not have fallen but for being scared by Xu’s oncoming car.<sup>55</sup> In spite of a lack of witnesses proffered by both parties and the determination that there was no way to ascertain whose version of the incident was true, the

<sup>45</sup> In the Chinese legal system, judges have more discretion than in other courts systems. For the purposes of this comment, the author will refer to the judges’ actions as those of the courts.

<sup>46</sup> Even though China does not operate on the common law system, its judiciary appears to follow the logic of other courts in its decision making process if it finds the reasoning persuasive. For the purposes of this comment, the author refers to such logic as the “precedent.”

<sup>47</sup> *Wang Xiuzhi v. Xu Yunhe*, *supra* note 15.

<sup>48</sup> Feng Yiran, *To Help or Not to Help, a Dilemma in China*, EPOCH TIMES ENGLISH ED., Sept. 19, 2011, available at <http://www.theepochtimes.com/n2/china-news/to-help-or-not-to-help-a-dilemma-in-china-61733.html>.

<sup>49</sup> *Id.*

<sup>50</sup> *Wang Xiuzhi v. Xu Yunhe*, *supra* note 15.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Wang Xiuzhi v. Xu Yunhe*, *supra* note 15.

judge still found in favor of the plaintiff.<sup>56</sup> The judge awarded Wang 108,606.34 RMB (approximately \$17,435.88 USD) in compensatory damages for contributory negligence.<sup>57</sup>

The suspect reasoning in Peng Yu and Xu Yunhe combined with the increased level of proof required to use the Good Samaritan defense caused the public to question the reliability of the judicial system.<sup>58</sup> The public lost faith in the system's ability to reach a just verdict based on the proffered evidence.<sup>59</sup> Furthermore, the media continued to portray the justice system as unreliable and lacking sound judgment, which increased hesitancy to help in emergency situations.<sup>60</sup>

### III. ASSESSING THE CONSEQUENCES OF PENG YU AND THE DECLINE IN HELPING BEHAVIOR

The media sensationalized Peng Yu and capitalized on reporting incidents of a similar nature.<sup>61</sup> The proliferation of these reports reinforced fear of being caught up in a system of lies and resulted in a decline in helping behavior.<sup>62</sup> Consequently, seniors who genuinely required help were denied aid.<sup>63</sup> This section considers the effect the media played in limiting civic consciousness.

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> See generally Zhou Lei (周蕾), *Wuhan 88 Sui Laoren Shuaidao Wuren Ganfu Zhixi Shenwang Lijia Budao 100 Mi* (武汉 88 岁老人摔倒无人敢扶窒息身亡 离家不到 100 米) [*Eighty-Eight Year-Old Man Fell on the Streets of Wuhan, No One Dared Help Him, Suffocates to Death, But Less than 100 Meters from his Home*], CHUTIAN DUSHI BAO (楚天都市报), Sept. 3, 2011, available at [http://news.ifeng.com/society/2/detail\\_2011\\_09/03/8914667\\_0.shtml](http://news.ifeng.com/society/2/detail_2011_09/03/8914667_0.shtml) (describing the public response to the lacking reliability of the judicial system, where citizens refrain from helping others for fear of liability).

<sup>59</sup> See generally "Peng Yu Case": *Do you have the facts straight?*, *supra* note 10.

<sup>60</sup> Wang Yongduan (王永端), *Nanjing Peng Yu An Yuangao Banjia Pengyu Cizhi Zhushen Faguan Bei Diaoli* (南京彭宇案原告搬家彭宇辞职 主审法官被调离) [*The Nanjing Peng Yu Case: Plaintiff Moved, Peng Yu Resigns, and Main Judge Leaves under Orders*], BANDAOWANG-CHENGSHI XINBAO (半岛网-城市信报), Sept. 28, 2011, available at <http://news.sina.com.cn/c/2011-09-28/152223232015.shtml>.  
*Peng Yu An Zhenxiang Zai Diaocha* (彭宇案真相再调查) [*The Truth of the Peng Yu Case Investigated Again*], GANSU RIBAO (甘肃日报), Jan. 18, 2012, available at <http://news.163.com/12/0118/03/7017ENEJ00014AED.html>.

<sup>61</sup> See *supra* note 2.

<sup>62</sup> *Id.*

<sup>63</sup> See, e.g., Yuan, *supra* note 2 (eighty year-old man falls but no one is willing to help).

A. *Increase in Incidents Involving Elderly Individuals Falsely Accusing Helpful Bystanders*

The widespread attention the media paid to Peng Yu affected normative behavior in emergency situations.<sup>64</sup> The case engendered fear of litigation and potential financial loss, which discouraged bystanders from helping when others fell, particularly the elderly.<sup>65</sup> Starting in late 2006, a series of incidents with dissuading outcomes frequented headlines.<sup>66</sup> Most of the incidents involved a fallen elderly person aged sixty or older who sued her helper as the tortfeasor after he stopped to assist.<sup>67</sup>

Why Peng Yu led to a pattern of elderly persons falsely accusing others remains unknown. Perhaps the court's practice of ruling in favor of the elderly in situations similar to the plaintiff in Peng Yu emboldened some to chance litigation in order to cover medical costs for their injuries.<sup>68</sup> Or, as some observers suggest, this phenomenon may be due to the lack of social welfare programs in China.<sup>69</sup> Still, the direct cause of the increase in false accusations remains largely speculative. Whatever the reason, either desperation or the possibility of success in litigation seniors felt compelled to allege liability for their injuries at the expense of others.<sup>70</sup>

Peng Yu not only made direct helping behavior rarer, it also decreased the willingness of witnesses to testify because they feared being swept up in the ensuing litigation. On June 16, 2008, Zhang Heng (age twenty-six) saw an old woman on the ground and approached to help her up.<sup>71</sup> The woman subsequently wrapped her arms around him and accused him of hitting her

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<sup>64</sup> See *supra* note 2.

<sup>65</sup> See Zhu, *supra* note 2.

<sup>66</sup> See *supra* note 2.

<sup>67</sup> *Id.*

<sup>68</sup> Feng, *supra* note 48.

<sup>69</sup> One possible reason behind the rise in the number of seniors who falsely accuse others as tortfeasors is due to the lack of senior care in China. As of mid-January 2012, China's National Bureau of Statistics estimated some "185 million people over the age of 60," of which the government only funds "1.6 percent of seniors in need of care." Benjamin Shobert, *Senior Care in China: Challenges and Opportunities*, 39 CHINA BUS. REV. 38, 39 (Apr.–June 2012). This is notably below the World Bank's standard of 8% coverage for developed nations. *Id.* There is an increasing demand for caregiving options among the elderly. Given this social condition and the fact that seniors generally are more susceptible to serious injuries in a simple fall, the inability to pay high medical costs may mean delayed or even no medical attention. See generally H. Naci Mocan, Erdal Tekin, & Jeffery S. Zax, *The Demand for Medical Care in Urban China*, 32 WORLD DEV. 289 (2004), available at <http://www.sciencedirect.com/science/article/pii/S0305750X03002213>. See also Andrew Browne, *Chinese Doctors Tell Patients to Pay Upfront, or No Treatment*, WALL ST. J., Dec. 5, 2005, available at <http://online.wsj.com/article/SB113373075798913517.html>. Desperation may have compelled some seniors to do what they could to protect themselves, even if it meant at the expense of others. See Li, *supra* note 2.

<sup>70</sup> Li, *supra* note 2.

<sup>71</sup> Du, *supra* note 2.

when he reversed his car.<sup>72</sup> Though a number of witnesses were present at the scene, none were willing to come forward to provide a written statement.<sup>73</sup> Only in anonymity did one witness offer his testimony.<sup>74</sup> Bystanders explained that they “did not dare help her up.”<sup>75</sup>

In November 2009, an eighth grader in Chongqing on his way home from school stopped to help a seventy-seven year-old woman who fell.<sup>76</sup> She in turn grabbed him and accused the student of causing her injury, and they began to argue.<sup>77</sup> The student’s mother was setting up a stall down the street.<sup>78</sup> Hearing the news of their argument, she came to the scene and sent the old woman to a nearby hospital, paying 65 RMB for her treatment.<sup>79</sup> The old woman still sued the family for 30,485.5 RMB (approximately \$4,894.75 USD).<sup>80</sup> In March of 2010, the Wanzhou District People’s court held a public hearing for the case, where numerous villagers came to testify on the student’s behalf.<sup>81</sup> The case was ultimately dismissed, though the incident has affected the student emotionally.<sup>82</sup>

The trend continued with a bus driver in Jiangsu Province the following year. In August 2011, a bus driver, Hong Hin, helped an eighty-one year-old when he noticed her by her overturned tricycle.<sup>83</sup> She later told the police that the bus driver hit her. “Equipped with a video camera,” however, Hong managed to protect himself from civil liability when the police discovered that she was lying.<sup>84</sup>

In 2012, the abuse of this system pushed a Good Samaritan to take his life when he could not pay for the damages.<sup>85</sup> A local vegetable market seller, Wang Peijun while delivering goods on his tricycle scraped against another woman’s delivery bike.<sup>86</sup> The other woman leapt from her bike to avoid falling and landed on an eighty-three year-old woman, Ms. Yuan.<sup>87</sup> Wang immediately rushed to help Yuan up, and Yuan subsequently demanded compensation from both Wang and the other woman for injuring

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Eighth Grader Helps Fallen Elderly Woman, supra* note 2.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Liu, *supra* note 4; Feng, *supra* note 48.

<sup>84</sup> Liu, *supra* note 4; Feng, *supra* note 48.

<sup>85</sup> Li, *supra* note 2.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

her.<sup>88</sup> The two parties split the costs for her hospital fees.<sup>89</sup> Acknowledging his contributory negligence, Wang covered the cost of treatment.<sup>90</sup> Yuan continued to ask for compensation, demanding 200,000 RMB before she would settle.<sup>91</sup> Unable to come up with the settlement amount, Wang committed suicide by drinking pesticide.<sup>92</sup>

These fraudulent claims draw media attention and keep the potential for civil liability squarely within the public consciousness. It appears highly likely that one could be held civilly liable, despite compelling evidence to the contrary, while the chances for successful defense remain unlikely.<sup>93</sup> Consequently, as the media reports, helping behavior in China has decreased substantially.<sup>94</sup> The following section addresses the implications of fearing civil liability.

### B. *Explaining the Hesitancy to Help Fallen Elderly in Public*

Since Peng Yu, several incidents have occurred where bystanders ignored injured senior citizens, some of whom died as a result of delayed medical attention. On February 23, 2009, a seventy-five year old man fell while exiting the backdoor of a bus.<sup>95</sup> No one moved forward to help him until he yelled, “I fell on my own. You don’t have to worry about it.”<sup>96</sup> He fell unconscious and then passengers finally approached to get him help.<sup>97</sup> Similarly, in 2009, a seventy year-old man fainted in Nanjing and started foaming in the mouth for twenty minutes.<sup>98</sup> A crowd surrounded him but no one came to his aid.<sup>99</sup> The police arrived at the scene and called an ambulance. Similar incidents occurred in Chongqing<sup>100</sup> and in Hangzhou in the same year.<sup>101</sup>

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Liu, *supra* note 4; Feng, *supra* note 48.

<sup>94</sup> *See supra* note 2.

<sup>95</sup> Zhu, *supra* note 2.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> He Ming (何明), Yu Ping (于萍), & Li Beichao (李蓓超), *Qixun Laoren yundao Nanjing jietou 20 fenzhong wu yi ren gan shen chu yuanshou* (七旬老人晕倒南京街头 20 分钟 无一人敢伸出援手) [Seventy Year-Old Faints on Nanjing Street for 20 Minutes, No One Dared to Lend a Helping Hand], HUANQIU SHIBAO (BEIJING) (环球时报 (北京)), June 4, 2009, available at <http://news.163.com/09/0604/08/5AUTLPPS00011229.html>.

<sup>99</sup> *Id.*

<sup>100</sup> Yuan, *supra* note 2.

<sup>101</sup> *Senior Faints on Street, supra* note 2.

On August 13, 2010, an old man slipped and fell in the rain in Guangzhou.<sup>102</sup> Nearby stall owners observed his fall, but none went to assist him.<sup>103</sup> Bystanders reported witnessing a spasm in his body as he tried to get up but failed.<sup>104</sup> He lay in the rain for an hour.<sup>105</sup> By the time someone finally called an ambulance, he had already passed away.<sup>106</sup>

In September of the same year, a seventy-four year-old woman was hit by a car.<sup>107</sup> She tried to stop more than ten cars but none would stop to help her, until a bus driver ultimately stopped to take her to the hospital.<sup>108</sup>

In September 2011, Mr. Li, an eighty-eight year-old man in Wuhan, Hubei Province died “less than 100 meters from his home” in a slip-and-fall accident.<sup>109</sup> He ultimately suffocated from the resulting nosebleed when no one helped him.<sup>110</sup>

The populace feels torn “between wanting to help, and having fear of being taken advantage of for their kindness.”<sup>111</sup> To address this sentiment, China’s Ministry of Health issued guidelines about the medical consequences of a fall to the elderly.<sup>112</sup> The Ministry issued these guidelines in a first attempt post-Peng Yu at educating the populace about the associated health risks regarding this social behavior. However, a poll taken after these guidelines by Sina Weibo, author of one of the most popular Chinese microblogging websites,<sup>113</sup> revealed that despite knowing the potential harms, 43% of respondents still would not assist an injured person in public.<sup>114</sup> Thirty-eight percent were unsure, while only 20% indicated their willingness to help.<sup>115</sup> These responses do not indicate apathy. Rather, they reflect an overall distrust in the fairness of the Chinese legal system.<sup>116</sup> One respondent commented: “I dare not help, but I’ll run to a public phone

<sup>102</sup> Tian, Zhong, & Zhou, *supra* note 2.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> GuYuansen (顾元森), *Nanjing Laotai Waichu Bei Zhuangshang Lianlan 10 Duo Liang Che Wu yi Ting* (南京老太外出被撞伤 连拦 10 多辆车无一停) [*An Old Lady Was Injured by a Car, Tried Stopping Over 10 Cars for Help, None Stopped*], XIANDAI KUAIBAO (现代快报), Sept. 24, 2010, available at <http://news.163.com/10/0924/05/6HATDBVS00011229.html>.

<sup>108</sup> *Id.*

<sup>109</sup> Feng, *supra* note 48; Zhou, *supra* note 58.

<sup>110</sup> Feng, *supra* note 48; Zhou, *supra* note 58.

<sup>111</sup> Feng, *supra* note 48.

<sup>112</sup> *Id.*

<sup>113</sup> Steven Millward, *China’s Forgotten 3rd Twitter Clone Hits 260 Million Users*, TECHINASIA, Oct. 22, 2012, available at <http://www.techinasia.com/netease-weibo-260-million-users-numbers>.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> “Peng Yu Case”: *Do you have the facts straight?*, *supra* note 10.

booth to call 120 (the emergency number in China) and ask for an ambulance.”<sup>117</sup>

### C. *The Media Played a Crucial Role in Shaping Public Behavior*

The media played an essential role in shaping the public's lack of faith in the judicial system and the subsequent decline in helping behavior.<sup>118</sup> The media sensationalized incidents relating to the risks of civil liability when helping elderly people who fall in the streets.<sup>119</sup> These reports reinforced the image of the judicial system as faulty and unpredictable.<sup>120</sup> There is a strong connection between mass media and resulting public opinion. Media campaigns can “directly affect recipients by invoking cognitive or emotional responses.”<sup>121</sup> News media has the power to increase the visibility of particular issues and alter social behavior.<sup>122</sup> The numerous tragedies evoke an emotional response that “strengthens intentions to alter and increase the likelihood of achieving new behaviours.”<sup>123</sup> The Yueyue incident<sup>124</sup> strengthened the public's intention to improve civic consciousness and increase helping behaviors.<sup>125</sup> Similarly, the injustice in Peng Yu invokes both a cognitive and emotional response that suggests changes in behaviors are necessary for self-protection.<sup>126</sup> The Yueyue incident resulted in such a demand for social change, and the provincial governments attempted to regulate the change exclusively through legislation.

<sup>117</sup> Feng, *supra* note 48.

<sup>118</sup> Yin Hong (殷泓) & Wang Yiyin (王逸吟), *Zhuanjia Tan Pengyu An Chilai Zhenxiang: Meiti Bu Ying Guodu Jieru Sifa* (专家谈彭宇案迟来真相：媒体不应过度介入司法) [*Expert Discusses Pengyu Case and the Late Revelation of Truth: Media Should not Get Too Involved in the Administration of Justice*], GUANGMING RIBAO (光明日报), Jan. 18, 2012, available at <http://sn.people.com.cn/n/2012/0118/c229725-16690299.html>.

<sup>119</sup> See *Qingdao Citizen Witnesses a Copy of the “Peng Yu Case,” supra* note 2.

<sup>120</sup> Compare Wang Xiuzhi v. Xu Yunhe, *supra* note 15, with *Eighth Grader Helps Fallen Elderly Woman, supra* note 2.

<sup>121</sup> Melanie A. Wakefield, Barbara Loken, & Robert C. Hornik, *Use of Mass Media Campaigns to Change Health Behavior*, 376 LANCET 1261, 1262 (Oct. 7, 2010), available at [http://www.union-imdp.org/files/Use\\_of\\_Mass\\_Media\\_Campaigns\\_to\\_Change\\_Health\\_Behaviour.pdf](http://www.union-imdp.org/files/Use_of_Mass_Media_Campaigns_to_Change_Health_Behaviour.pdf).

<sup>122</sup> See e.g., Matthew A. Baum & Philip B.K. Potter, *The Relationships Between Mass Media, Public Opinion, and Foreign Policy: Toward a Theoretical Synthesis*, 11 ANNU. REV. POLIT. SCI. 39 (2008), available at <http://www.annualreviews.org/doi/pdf/10.1146/annurev.polisci.11.060406.214132> (referring to the mass media's influence in shaping public attitudes on foreign policy); see also Wakefield, Loken, & Hornik, *supra* note 121 (mass media campaigns are widely used to expose high proportions of large populations to messages through routine uses of existing media, such as television, radio, and newspapers)

<sup>123</sup> See Baum & Potter, *supra* note 122.

<sup>124</sup> The highly publicized hit and run incident involving two-year-old girl, Yueyue, occurred in 2011.

<sup>125</sup> See *Guangdong Regulation, supra* note 23.

<sup>126</sup> See Tian, Zhong, & Zhou, *supra* note 2.

#### IV. GUANGDONG PROVINCE'S NEW REGULATION ATTEMPTS TO ADDRESS CONCERNS REGARDING CIVIL LIABILITY BUT MAY NOT BE SUFFICIENT

The Yueyue incident resulted in public outrage, sparking fierce discussions on internet forums that “questioned how such callousness could occur.”<sup>127</sup> Guangdong’s citizens called on the government to introduce new law that would rectify the progressive “moral” decline of their society.<sup>128</sup> In response to the public’s newfound commitment to strengthen helping behaviors, the People’s Congress of Guangdong Province recently enacted the Regulation to Reward and Protect Persons of Courageous Behavior. Specifically, Article 29 of the Regulation attempts to address civil liability. Article 29 provides, “[i]f in the course of rescue, the person of courageous behavior causes damage to the property of others, and in accordance with the law he should be liable for compensation, the special fund shall give appropriate financial aid.”<sup>129</sup> This provision functions like insurance by covering the cost of damage caused to property during a rescue.<sup>130</sup> However, the Guangdong Regulation is not sufficient to stem fear of civil liability or restore trust in the judicial system because it lacks a provision that guarantees or even increases the likelihood of a successful Good Samaritan defense in court.

The Guangdong Regulation and its progeny cannot reverse the Peng Yu precedent or the damage done by media coverage and increase helping behavior on their own. The following are suggestions for reversing the negative social behavior and returning China to a culture where bystanders are not afraid to help the injured. Currently, no national law exists pertaining to Good Samaritans or helping behavior. While amending existing provincial regulations may temporarily address the problem, this is only patchwork that cannot affect social behaviors as efficiently as national policy. The Chinese government should consider implementing more expansive legislation and use the news media to increase knowledge of emergency response techniques and encourage citizens to use them despite the possibility of litigation.

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<sup>127</sup> *The Drivers Who Shamed China*, *supra* note 19.

<sup>128</sup> *Id.*

<sup>129</sup> See Guangdong Province Regulation to Reward and Protect Persons of Courageous Behavior, translated by Annamarie C. Larson & Melody W. Young, at 23 PAC. RIM L. & POL’Y J. 675 (2013).

<sup>130</sup> See *Guangdong Regulation*, *supra* note 24.

V. SUGGESTIONS TO ENCOURAGE HELPING BEHAVIORS IN CHINA

A. *China Should Implement Legal Reform that Addresses Citizens' Fear of Civil Liability When Rendering Emergency Aid*

The People's Congress of China should consider implementing a national law that relieves citizens of civil liability when rendering emergency aid. The annual incidents that followed the Peng Yu decision, some of which resulted in preventable deaths, demonstrate that the fear of being found responsible for an injury restrains people from taking action when they witness an emergency.<sup>131</sup> Relieving the public of civil liability, short of gross negligence, is one way to address this fear.<sup>132</sup> In addition, the court could reconsider the allocation of the burden of proof for the Good Samaritan defense.<sup>133</sup> The courts should definitively establish that the plaintiff bears the burden of demonstrating the defendant's culpability in a personal injury case. These approaches would address public concern over civil liability.<sup>134</sup>

B. *China Should Use the Media to Raise Civic Consciousness*

The media should support the restoration of the image of justice in the legal system by shaping public opinion and reporting on appeals that ruled in favor of Good Samaritans. One scholar believes that the "dynamics of consciousness raising" is the process of targeting audiences, raising expectations, naming injustice, and claiming rights.<sup>135</sup> The author believes that these elements can be applied in China's social context. The first step to influencing attitudes towards the judicial system is for the media to target public reservations about the system.<sup>136</sup> Once captivated, the media must raise public expectations.<sup>137</sup> The Chinese public currently suspects that the judicial system will fail to render a just decision when presented with a

<sup>131</sup> See Zhu, *supra* note 2.

<sup>132</sup> See e.g., Immunity from liability for certain types of medical care, WASH. REV. CODE § 4.24.300(1) (2004) (citing to language used in Washington State's Good Samaritan Law); see also OR. REV. STAT. § 30.800(2) (1997) (stating similar language: "No person may maintain an action for damages for injury, death or loss that results from acts or omissions of a person while rendering emergency medical assistance unless it is alleged and proved by the complaining party that the person was grossly negligent in rendering the emergency medical assistance").

<sup>133</sup> See Xu XX v. Peng Yu, *supra* note 5; Wang Xiuzhi v. Xu Yunhe, *supra* note 15.

<sup>134</sup> See Xu XX v. Peng Yu, *supra* note 5; Wang Xiuzhi v. Xu Yunhe, *supra* note 15.

<sup>135</sup> MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION 63-68 (1994).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

falsely accused Good Samaritan.<sup>138</sup> To raise public expectations, news media must alter its own expectations first by demanding a reversal of the presumption of guilt and a change in the proof requirements for the Good Samaritan defense. In time, the public will be persuaded to emulate this discourse and drive either a legislative or judicial transformation built on the idea that the judiciary is fundamentally sound, but made bad precedent in Peng Yu.

Next, according to the scholar, the injustice must be named.<sup>139</sup> As of this writing, Xu is appealing the decision made by the trial court that ruled in favor of Wang.<sup>140</sup> By raising the profile of this case, and encouraging a just verdict, the media can name the injustice that occurred during the previous trial—presumption of guilt. Ideally, once named, the court will have no choice but to overturn the lower court decision.<sup>141</sup> In 2011, the media successfully influenced the courts post-Peng Yu, where due to public pressure and the revelation of Peng Yu's confession of having contrived the case, the principal judge, Wang Hao, was sanctioned by forced resignation.<sup>142</sup> To ensure a similar result, news coverage of Xu's case should be promulgated during the *huangjin shidian* (黄金时段) [Golden Time] primetime television slot, which would guarantee visibility and could correct perceptions of the judicial system.

### C. *China Should Implement Life Supporting First Aid (“LSFA”) Training to Equip and Encourage Helping Behavior in Emergency Situations*

While restoring faith in the legal system is important, the law may not be the only way to encourage helping behavior in China. Part of addressing the psychological inhibitions<sup>143</sup> in emergency aid situations is to train the public to respond to the need.<sup>144</sup> What is described as the initial psychological shock in an emergency situation can be mitigated through

<sup>138</sup> See Wang Xiuzhi v. Xu Yunhe, *supra* note 15.

<sup>139</sup> See MCCANN, *supra* note 135.

<sup>140</sup> *Tianjin: Xu Yunhe Yu Wang Xiuzhi Jiufen An Ershen Zaici Kaiting* (天津：许云鹤与王秀芝纠纷案二审再次开庭) [*Tianjin: Xun Yunhe vs. Wang Xiuzhi Dispute Reconvenes for a Second Trial*], ZHONGGUO XINWEN (中国新闻), Jan. 7, 2012, <http://v.ku6.com/show/GS4pTNJhRD89o4M9IT28qQ.html>.

<sup>141</sup> *Id.*

<sup>142</sup> See Wang, *supra* note 60 (noting that former Judge Wang has since entered private practice after his embarrassing removal from the court).

<sup>143</sup> The author is namely referring to the bystander effect and its impact on negating public response in emergency situations. See Bibb Latané & John M. Darley, *Group Inhibition of Bystander Intervention in Emergencies*, 10 J. OF PERSONALITY AND SOC. PSYCHOL. 215, 215 (1968).

<sup>144</sup> Sheila M. Eldred, *Why We're Not Always Good Samaritans*, DISCOVERY, Dec. 5, 2012, <http://news.discovery.com/human/brief-why-were-not-always-good-samaritans-121205.htm>.

training.<sup>145</sup> A recent study in Shanghai, China, concluded that “there is an urgent need to educate [community] members regarding first aid practices and the various risk factors relating to specific injuries.”<sup>146</sup> American studies on emergency preparedness consistently recommend Life Supporting First Aid (“LSFA”) as a necessary part of basic health education.<sup>147</sup> Brazil likewise has recommended LSFA training by using television spots as an effective means to train the public on first aid preparedness.<sup>148</sup> A 2010 American Heart Association and American Red Cross study reached an international consensus on first aid science.<sup>149</sup> This 2010 study indicated that while there is lacking general international scholarship on the science of LSFA, international consensus exists on the utility of first aid in saving lives.<sup>150</sup> In a study on recommended LSFA training for the public in the United States, the researchers indicated that “LSFA must include but not limit itself to external CPR-BLS (cardiopulmonary resuscitation basic life support).”<sup>151</sup> Researchers indicated the importance of diversifying LSFA training beyond the single technical skill of CPR so that the public would be trained in different techniques in response to any emergency situation, be it a heart attack or a broken leg. The study also noted that “*motivating* people to acquire LSFA skills can and should be combined with motivating them *to act* in an actual emergency.”<sup>152</sup> LSFA skills can be taught at an early age, and should be implemented at the primary school level with children, educators and staff in China.<sup>153</sup> Given that not every child may receive

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<sup>145</sup> *Id.*

<sup>146</sup> Feng Li, et al., *Pediatric First Aid Knowledge and Attitudes Among Staff in the Preschools of Shanghai, China*, 12 BMC PEDIATRICS 1 (2012), available at <http://www.biomedcentral.com/1471-2431/12/121>.

<sup>147</sup> Philip Eisenburger & Peter Safar, *Life supporting first aid training of the public—review and recommendations*, 41 ELSEVIER RESUSCITATION 3, 3 (1999), available at [http://ac.els-cdn.com/S0300957299000349/1-s2.0-S0300957299000349-main.pdf?\\_tid=2faa53d4-660e-11e2-8583-00000aab0f6b&acdnat=1359022369\\_ce4a60eae8370ce291350a14fe772e9](http://ac.els-cdn.com/S0300957299000349/1-s2.0-S0300957299000349-main.pdf?_tid=2faa53d4-660e-11e2-8583-00000aab0f6b&acdnat=1359022369_ce4a60eae8370ce291350a14fe772e9).

<sup>148</sup> Priscilla L. Capone, et al., *Life supporting first aid (LSFA) teaching to Brazilians by television spots*, 47 Elsevier Resuscitation 259 (May 23, 2000), available at [http://ac.els-cdn.com/S0300957200002306/1-s2.0-S0300957200002306-main.pdf?\\_tid=df201ed0-660d-11e2-9ccd-00000aacb35d&acdnat=1359022234\\_e0efcf01b41ebfea007425dcc5e8ae74](http://ac.els-cdn.com/S0300957200002306/1-s2.0-S0300957200002306-main.pdf?_tid=df201ed0-660d-11e2-9ccd-00000aacb35d&acdnat=1359022234_e0efcf01b41ebfea007425dcc5e8ae74).

<sup>149</sup> David Markenson, et al., *Part 13. First Aid: 2010 American Heart Association and American Red Cross International Consensus on First Aid Science With Treatment Recommendations*, CIRCULATION J. OF AM. HEART ASS’N S582, Dec. 2, 2010, available at [http://circ.ahajournals.org/content/122/16\\_suppl\\_2/S582.full](http://circ.ahajournals.org/content/122/16_suppl_2/S582.full).

<sup>150</sup> *Id.*

<sup>151</sup> Eisenburger & Safar, *supra* note 147, at 3 (referring to cardiopulmonary resuscitation basic life support (CPR-BLS)).

<sup>152</sup> *Id.* at 11.

<sup>153</sup> Thomas Uray, et al., *Feasibility of Life-Supporting First Aid (LSFA) Training As Mandatory Subject in Primary Schools*, 59 ELSEVIER 211, 211 (2003), available at [http://ac.els-cdn.com/S0300957203002338/1-s2.0-S0300957203002338-main.pdf?\\_tid=01abc3fa-660e-11e2-bf35-00000aab0f02&acdnat=1359022291\\_626d12d64c5002f0d9e43c67c1897f4e](http://ac.els-cdn.com/S0300957203002338/1-s2.0-S0300957203002338-main.pdf?_tid=01abc3fa-660e-11e2-bf35-00000aab0f02&acdnat=1359022291_626d12d64c5002f0d9e43c67c1897f4e).

higher education, early exposure in primary schools may help reinforce first aid skills in the general populace.<sup>154</sup>

Increased first aid education can substantially improve public health. A study by Philip Eisenburger and Peter Safar showed that “[p]rior to training, only eight pupils (17%), (the youngest of which were just six years old,) were able to place in the correct sequence a series of pictures illustrating the various stages of the procedure of semi-automatic defibrillation. After training that figure rose to twenty-four (51%).”<sup>155</sup> Additionally, in a comparative study conducted in Shanghai on cost-effective LSFA training, even something as minimal as video instruction showed a 79.4% passage rate “in accordance with the American Academy of Pediatrics examination guidelines” for the group.<sup>156</sup> The cost for training each student in the group was only 41 RMB (approximately \$6.59 USD);<sup>157</sup> but, even something as simple as disseminating CPR self-training materials (“STS”) can increase skill performance in emergency resuscitation simulations.<sup>158</sup> STS “proved as effective as instructor-coached training, and superior to repetitive film viewing only; repetitive film viewing alone, however, was superior to no training.”<sup>159</sup>

In this digital age, the government could develop a free smartphone application and mobile website on first aid care. Research in Germany has shown that the use of an “expert system with a mobile multimedia device” has provided “better quality bystander first aid” and has “increased the performance of untrained helpers supplying emergency care significantly.”<sup>160</sup> Access to this mobile app could be advertised on the news during China’s “Golden Time” (China’s primetime broadcasting period). Any combination of these methods in increased LSFA training could make

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<sup>154</sup> See generally Tania Branigan, *Millions of Chinese Rural Migrants Denied Education For Their Children*, GUARDIAN, Mar. 14, 2010, available at <http://www.guardian.co.uk/world/2010/mar/15/china-migrant-workers-children-education>.

<sup>155</sup> *Id.*

<sup>156</sup> Feng Li, et al., *Cost-Effective Assessment of 3 Different Pediatric First-Aid Training Models for Caregivers and Teachers in Shanghai*, 27 PEDIATRIC EMERGENCY CARE 357, 357-358 (2011). To the author’s knowledge there is no similar institution in China, and so the standards used in this study relied on an American institution’s standards. In theory, health standards and expectations should be equivocal in both the United States and China.

<sup>157</sup> *Id.* (conversion rates are current as of Jan. 24, 2013).

<sup>158</sup> Peter Safar, et al., *Education research on life-supporting first aid (LSFA) and CPR self-training systems (STS)*, 9 CRITICAL CARE MED. 403, 403 (1981), available at [http://ql3dq7xx6q.scholar.serialssolutions.com/?sid=google&auinit=PSAP&aualast=AR&atitle=Education+research+on+life-supporting+first+aid+\(LSFA\)+and+CPR+self-training+systems+\(STS\)&title=Critical+care+medicine&volume=9&issue=5&date=1981&spage=403&issn=0090-3493](http://ql3dq7xx6q.scholar.serialssolutions.com/?sid=google&auinit=PSAP&aualast=AR&atitle=Education+research+on+life-supporting+first+aid+(LSFA)+and+CPR+self-training+systems+(STS)&title=Critical+care+medicine&volume=9&issue=5&date=1981&spage=403&issn=0090-3493).

<sup>159</sup> *Id.*

<sup>160</sup> Lorenz Ertl & Frank Christ, *Significant Improvement of the Quality of Bystander First Aid Using an Expert System With a Mobile Multimedia Device*, 74 ELSEVIER RESUSCITATION 286, 286 (2007).

substantial improvements in the outcome of injured victims, and would give the Chinese populace the knowledge and confidence to respond with emergency first aid care.

## VI. CONCLUSION

In the wake of Peng Yu, the local People's Congresses of China sought to develop legal changes that encouraged and safeguarded the acts of Good Samaritans. However, these regulations failed to respond to the key consequence of the Peng Yu precedent—the loss of trust in the judicial system. Because the Congresses neglected the civil liability issue, the public remained skeptical of the likelihood that justice would prevail when a helpful bystander asserted a Good Samaritan defense. In order to reverse the disconcerting trend of preventable death while bystanders witness the injured calling for emergency aid, China should consider a more dynamic approach to public awareness. The national strategy should utilize the media, LSFA training, and digital engagement to encourage and prepare the public to take action in emergency situations. Additionally, the news media can help restore confidence in the judicial system by demanding justice in the Xu case. Peng Yu created widespread fear and encouraged dismissive behaviors, but if China reverses its precedent with a comprehensive treatment of the problem, it will be on the path to restoring its sense of civic consciousness again.