

State Prosecutions
OF
Speech
IN THE
People's Republic
OF China

Cases Illustrating the Application of
National Security and Public Order Laws to
Political and Religious Expression

Volume I
Cases in Translation

William A. Farris

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中華人民共和國政府

對言論的訴追

有關國家安全及公共秩序相關法律適用於
政治及宗教言論的
案例彙編

第一卷

英文版

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DEDICATION

This volume is dedicated to my parents

Alice and Bill

for a lifetime of love and support.

Preface

This volume contains unofficial translations of over 100 documents produced by agencies of the government of the People's Republic of China between 1998 and 2020. The original Chinese language versions of these documents are available in volume two of this series. These documents provide a glimpse into how judicial and law enforcement authorities investigated, prosecuted, punished, and (occasionally) acquitted individuals who engaged in political and religious speech-related activities during that period.

The documents selected include reeducation through labor decisions, police administrative punishment decisions, trial transcripts, prosecutorial indictments, judge's case summaries, and administrative, criminal, and civil court judgments.

All of the documents were obtained from publicly available sources, including books such as the "Reference to Criminal Trial: Model Cases on the 40th Anniversary of Reform and Opening Up" published by the Supreme People's Court, as well as online sources, including unofficial websites both inside and outside of China, as well as official government websites and social media accounts, and the government-established China Judgments Online database.

In addition, this casebook also contains appendices with translated excerpts from the laws and regulations commonly cited in the aforementioned documents, as well as a Chinese-English glossary of the terms commonly used therein.

The materials in this casebook were selected, compiled, and translated by William A. Faris, who has worked as a lawyer and in-house legal advisor in Beijing, Hong Kong, San Francisco, and Taipei. It was prepared by him in his personal capacity, and it does not necessarily reflect the views of his employers – past, present, or future – and their endorsement is not implied and may not be inferred.

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- 9.8. Guo Qizhen – Inciting Subversion – 2007.....365
Translator's Summary: The appeals court upheld the lower court's judgment finding Guo guilty on the grounds that he "distributed a large number of articles on the 'Democracy Forum' website, attacked and cursed the State government, and disseminated speech that damaged the State regime, the socialist system, and the judicial system." The lower court cited articles such as "Announcement Regarding Participating in Gao Zhisheng's Hunger Strike" and "Hunger Strike Diary." The appeals court explicitly rejected Guo's defense that "writing articles criticizing the Party, the government, or their leaders is an exercise of constitutional rights."
- 9.9. Zhang Jianhong – Inciting Subversion – 2007.....370
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- 9.10. Hu Jia – Inciting Subversion – 2008.....374
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- 9.11. Lü Gengsong – Inciting Subversion – 2008.....381
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- 9.12. Liu Xiaobo – Inciting Subversion – 2009.....386
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- 9.13. Jin Andi, Lü Jiaping & Yu Junyi – Inciting Subversion – 2011.....395
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<i>Translator's Summary: The court found that police did not violate Guo's rights when it subjected him to administrative detention for reposting statements to friends on WeChat that insulted State leaders. The court provided no examples of what Guo posted, and it did not address Guo's defense that his actions were an exercise of his right to freedom of speech granted under China's Constitution.</i>	
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- 10.13. Yao Yongsheng – Disturbing the Peace by ReTweeting the US Embassy (Criminal) – 2020.....472
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- 10.14. Yang Tianqiao – Disturbing the Peace by Criticizing Mao Zedong (Administrative) – 2020.....476
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- 11.2. Ilham Tohti – Separatism by a Professor – 2014.....485
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- 11.3. Pu Zhiqiang – Inciting Ethnic Hatred and Disturbing the Peace by a Lawyer– 2015..489
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- 11.4. Tian Weiguo – Inciting Ethnic Hatred by Posting About Xinjiang – 2016.....492
Translator's Summary: The court found Tian guilty on the grounds that he "used foreign websites to disseminate fake information with content that incited ethnic hatred, sowed discord between the ethnicities, and undermined ethnic unity." Cited examples of his posts included: "Xinjiang Shache Uyghurs have been massacred," and "The Shache massacre has been tweeted about for so long, the time has come for someone to call for the United Nations to send an investigation team."
- 11.5. Huang Shike – Providing Religious Instruction Online – 2017.....495
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12.1. Zhu Ruixiang – Inciting Subversion by Sharing the Tiananmen Papers – 2001.....499

Translator's Summary: The court found Zhu guilty on the grounds that he emailed content from "Big Reference" to 12 friends and shared 15 pages of excerpts from "The Tiananmen Papers" with one friend. The court accepted the police's determination that the former was "a hostile publication, and that an enemy organization uses this publication to do such things as attack the leadership of our Communist Party and socialist system, slander Party and State leaders, and conspire to carry out subversion of China's government," and the government's determination that the latter "severely interfered with the overall situation of China's reform and opening up, jeopardized social stability, and its content had serious political problems."

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Translator's Summary: A committee ordered Zhang to undergo 18 months of reeducation through labor for "making commemorative June Fourth culture shirts," publishing an article on Boxun.com with the statement "Commemorating June Fourth is a great thing, and if no one takes to the streets to commemorate then people will look down on the democratists," and posting statements on QQ chats such as "I advocate for a social movement, but I oppose violence."

12.3. Tan Zuoren – Inciting Subversion by Commemorating June Fourth – 2010.....506

Translator's Summary: The court found Tan guilty on the grounds that he conspired with others to hold a blood drive to commemorate the "Tiananmen Incident," published an article on the Internet - "1989 - A Witness to the Last Beauty: An Eyewitness' Tiananmen Square Diary" - that "distorted, smeared, and denigrated the government's disposition of the "Tiananmen Incident,"" and accepted interviews from foreign media regarding the "Great Wenchuan Earthquake" that "severely denigrated the image of the Party and the government."

12.4. Zhang Changhong – Disturbing the Peace with Big Character Posters (Criminal) – 2018.....510

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Translator's Summary: The court found Dong and Yuan guilty on the grounds that Dong "wore a T-shirt with sensitive markings on it and took photos in Tiananmen Square and posted the photos online" and Dong and Yuan "interviewed foreigners in Tiananmen Square and made inquiries into sensitive topics."

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1. INTRODUCTION AND ACKNOWLEDGMENTS

1.1. Why Compile a Casebook?

I began collecting and translating court judgments and other materials relating to prosecutions of speech activities in the People's Republic of China (the "PRC") in the early 2000's, as part of my work at the Congressional-Executive Commission on China. After leaving the Commission, I continued translating in my spare time, and started posting the materials on my personal blog.¹ At a certain point it occurred to me that I had enough translations to compile them into a book. With the advent of restrictions on travel and socializing that accompanied the COVID pandemic, I found myself with the time to actually do that.

One of my goals in preparing the translations and compiling them into a casebook was to provide a single source for simple answers to my own questions about what is and is not constitutionally protected speech in the PRC. My questions included whether a person could be punished under PRC law for conduct such as:

- Using a VPN to browse websites like Facebook, Twitter, and Wikipedia?²
- Using a VPN to play foreign video games?³
- Watching violent (non-pornographic) videos (without sharing them)?⁴
- Making a single social media post using insulting language to refer to the police?⁵
- Making a single social media post insulting the Communist Party of China's leaders?⁶
- Saying bad things about a former PRC leader, like Mao Zedong, on social media?⁷
- Saying bad things about the PRC's current leader, Xi Jinping, on social media?⁸
- Publishing books without government permission?⁹
- Using the Internet to teach people how to worship?¹⁰
- Making social media posts on platforms that are blocked by the Great Firewall?¹¹
- Making social media posts on platforms that are blocked by the Great Firewall while outside of China?¹²
- Attempting to register a political party?¹³

1 <https://blog.feichangdao.com>.

2 *See* Sections 16.5 Zhang Liping – Illegally Accessing Twitter with a VPN – 2020 and 16.6 Zhang Tao – Illegally Accessing Wikipedia with a VPN – 2020.

3 *See* Section 16.4 Yao Zenglei – Illegally Accessing Foreign Games with a VPN – 2019.

4 *See* Section 16.2 Duan Zheng – Possessing Extremist Videos – 2017.

5 *See* Chapter 20 Appendix III: Individuals Jailed for Insulting the Police.

6 *See* Section 10.1 Cheng Huaishan – Defaming the Politburo (Administrative) – 2014.

7 *See* Section 10.14 Yang Tianqiao – Disturbing the Peace by Criticizing Mao Zedong (Administrative) – 2020.

8 *See* Section 10.3 Yu Doe – Defaming Xi Jinping (Criminal) – 2017.

9 *See* Chapter 4 Prior Restraints.

10 *See* Section 11.5 Huang Shike – Providing Religious Instruction Online – 2017.

11 *See* Chapter 19 Appendix II: Individuals Imprisoned for Posting on Twitter.

12 *See* Section 10.5 Luo Daiqing – Disturbing the Peace by Ridiculing the Image of the State (Administrative and Criminal) – 2019.

13 *See* Chapter 5 Associations: The China Democracy Party.

1.1. Why Compile a Casebook?

- Advocating changing China's political system through non-violence?¹⁴

It turned out that the answer to all of these questions was: "Yes;" people have been punished for engaging in each of these activities.

In addition to answering these questions, the cases in this casebook also address more complex speech-related issues that do not have binary answers. For example:

- What kinds of speech does China's Constitution actually protect?¹⁵
- What offenses are commonly used to prosecute speech related activities?¹⁶
- Under what circumstances will a court find someone not guilty of a speech-related offense?¹⁷
- Do courts apply different standards to journalists versus non-journalists? State sponsored journalism versus private activities by journalists?¹⁸
- Do courts apply different standards to offline speech and online speech?¹⁹
- How do courts apply the concept of "attempt" to national security offenses, such as subversion or disclosing state secrets?²⁰

Those interested in areas of criminal law other than speech-related offenses may also find this casebook useful when considering broader questions such as:

- Under what circumstances are courts inclined to grant leniency?²¹

14 See Section 15.7 Tang Jingling, Yuan Chaoyang & Wang Qingying – Inciting Subversion by Sharing Political Books – 2016.

15 Compare Section 3.5 Wang Doe – Disrupting Public Order by Posting About Xinjiang (Administrative) – 2020 and Section 11.4 Tian Weiguo – Inciting Ethnic Hatred by Posting About Xinjiang – 2016. The former was found not guilty on the grounds that "the subjective purpose of the plaintiff's posting of the aforementioned statements was to persuade Internet users in the same chat group [to support the government's policies], not to disseminate rumors."

16 See Section 18.1 The Six Most Commonly Prosecuted Speech Offenses and, more generally, Chapter 24 Appendix VII: Table of Cases by Offense.

17 In addition to the cases included in Chapter 3 *Mens Rea*, other cases in this casebook involved defendants who were not found guilty of an offense. See Sections 9.1 Huang Qi – Inciting Subversion – 2003 and 11.1 Ze Ge & Luorang Danzhen – Inciting Separatism by Sharing a Book by the Dalai Lama – 2000.

18 Compare Section 3.4 Yuan Jianmeng – Defamation by a Journalist (Administrative) – 2020 (a journalist posting about a Communist Party cadre on his personal social media accounts) with Sections 17.1 Chen Jiangang v. Procuratorate Daily Publishing – Civil Defamation – 2014 (state sponsored media posting about a lawyer on its social media account) and 17.2 Kong Qingdong v. Nanjing Radio & Television Group – Civil Defamation – 2015 (state sponsored media broadcasting about a university professor).

19 Compare Section 3.3 Lü Yunxuan – Disturbing the Peace by Hanging Banners (Administrative) – 2019, with Sections 10.4 Feng Zhouguan – Disturbing the Peace by Berating Xi Jinping (Administrative) – 2018 and 10.12 Zhang Zhixiang – Disturbing the Peace by Vilifying the Communist Party of China (Administrative) – 2020.

20 See Wu Gan – Subversion – 2017 p. 228, and Zheng Enchong – Disclosing a Secret Xinhua News Report – 2003 p. 569.

21 For example, Section 13.1 Li Doe – Disturbing the Peace (Criminal) – 2020, is a case that involved a defendant who was found guilty, but who was granted leniency based in part on his diminished capacity. Other cases involving leniency can be found by searching this casebook for terms such as "lighter punishment," "heavier punishment," and "reduced punishment."

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- Under what circumstances does a court reject the offense the procuratorate set forth in an indictment and impose punishment under a different offense?²²
- Under what circumstances does a court reject a lower court's determination of an offense, and impose punishment under a different offense on appeal?²³

A close reading of these cases can also provide insights into areas of PRC government policy that are not directly related to criminal law. For example:

- The following books have been deemed to be "illegal" in the PRC: "River Elegy,"²⁴ "The 100 Bible Events That Influenced the World," "Night: A Memoir of a Nazi Concentration Camp," and "Team of Rivals: The Political Genius of Abraham Lincoln."²⁵
- The PRC government issues orders to media outlets regarding what they can and cannot publish which are deemed "state secrets."²⁶
- The Xinhua News Agency provides classified reports of public events to the government which are deemed "state secrets."²⁷

These translations may also serve as a resource for those who are interested in developing a more in-depth and nuanced understanding of how the rule of law developed in the PRC during the first two decades of 21st century, but who have found their research hindered by an inability either to read Chinese or to otherwise conveniently access relevant primary source materials.

Finally, a word of caution about what this casebook is *not* useful for: readers should not use this casebook to draw any conclusions regarding the frequency of prosecutions for certain crimes. For reasons discussed in greater detail below, this casebook is not a complete collection, and is therefore not suited to be used as a basis for empirical analysis.

1.2. About the Title

Finding a suitable title for this casebook was almost as challenging as translating the case materials for the casebook itself. As the casebook took shape, however, I was reminded of "A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors," a multi-volume work that was first published in the 18th century. I had happened upon *State Trials* while following the breadcrumbs of citations in U.S. defamation jurisprudence: from *Sullivan to Zenger*,²⁸ and from *Zenger* to the *Seven Bishops* and *Tutchin*.²⁹

22 See Section 5.5 Hu Mingjun & Wang Sen – Subversion – 2002, where the original charge was inciting subversion.

23 See Section 11.5 Huang Shike – Providing Religious Instruction Online – 2017, where the lower court found the defendant guilty of gathering a crowd to disrupt social order, but the appellate court found him guilty of illegal use of information networks.

24 See Section 8.2 Cai Lujun and the China Freedom & Democracy Alliance – Inciting Subversion – 2003.

25 See Section 16.1 Yuan Yulai – Purchasing Illegal Books – 2016.

26 See Section 15.4 Shi Tao – Disclosing Government Orders to News Outlets – 2005.

27 See Section 15.2 Zheng Enchong – Disclosing a Secret Xinhua News Report – 2003.

28 *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), 301: "The American Colonists were not willing, nor should we be, to take the risk that '[m]en who injure and oppress the people under their administration [and] provoke them to cry out and complain' will also be empowered to 'make that very complaint the foundation for new oppressions and prosecutions.' The Trial of John Peter Zenger." Justice Black, concurring.

29 "The Tryal of John Peter Zenger, of New York, Printer, Who was Lately Try'd and Acquitted for Printing

1.2. About the Title

Beyond the texts of the cases in *State Trials* and their influence on United States law, I was struck by the fact that three centuries ago people had thought to record the cases in the first place. I was particularly impressed with their explanations for why they believed doing so was a worthwhile endeavor. For example, the preface to the first edition reads in part:

SINCE 'tis observable that the best and bravest of mankind are far from being exempted from Criminal Prosecutions, and that potent malice, or prevailing faction, have too often attempted the most consummate merit; that Learning which shews how life, honour, and innocence are to be defended, when they shall happen to be injuriously attack'd, will not, 'tis presum'd, be thought inferior to that, which instructs us how to defend our less important rights. — And as the Common Law is nothing else but immemorial Custom, and the custom and methods of Trial, and bringing offenders to Punishment, is no inconsiderable branch of that law; and since these, as other Customs, are only to be collected from former Precedents, 'tis something strange, that amongst the numerous Authors of Reports and Institutes, not one has hitherto thought fit to make any considerable Collection of this kind, or thorowly to methodize or digest this sort of Learning.

. . . .

As to any Partiality in this Undertaking, it seems almost needless to disclaim it; for the Reader has the Evidence and Arguments entire, without any alteration or diminution. It is true, as it falls out in History, so it will do here: the farther we search into Antiquity, and the higher we go, the less perfect will our Accounts be; the same exactness cannot be expected there as in Trials of a more modern date; but thus much may be said for the more ancient Trials, that they are the most perfect and compleat that could possibly be procur'd.³⁰

Similarly, this from the preface to the second edition:

The Professors and Students of the Law will not be the only persons, who may receive benefit from this Work: here will be matter also of Instruction and Entertainment to all who are delighted with History, or inquisitive after the transactions of the former or present times; many parts of History will here be illustrated and set in a true light; the Reader may here see, as it were, with his own eyes, not needing to trust to the representations of others, which are often full of partiality or prejudice, according to the party and disposition of the Historians.³¹

Inspired by these thoughts, I decided to model the title of this casebook after *State Trials*, and I hope that, like that work, it too will prove useful to academics, students, legal practitioners and, eventually, historians.

and Publishing a Libel Against the Government," Fourth Edition, 1738, pp. 5, 15, 22-23.

30 "A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors From the Earliest Period to the Year 1783," T.B. Howell, T.C. Hansard Edition, 1816, Mr. Salmon's Preface to the First Edition, 1719.

31 *Id.*, Mr. Emlyn's Preface to the Second Edition, 1730.

1.3. Case Selection

Although I wish it were otherwise, unlike the compilers of *State Trials*, I cannot claim that this is a "complete collection." The sheer volume of state prosecutions of offenses involving speech in the PRC would make assembling a complete collection of translations impossible for an individual such as myself. Indeed, it would seem that a dedicated researcher could fill at least one volume solely with cases involving individuals subjected to administrative detention for referring to police as "dogs."³² By my estimation, based on a brief review of the documents in my archives, there are dozens of additional court judgments that meet the criteria discussed below, but which I lack the time and resources to translate. For example, this casebook already includes full translations of several cases where people were imprisoned solely for the content of their Twitter postings.³³ But these are just a fraction of the prosecutions for Twitter postings in 2019 alone.³⁴

The main reason this could not be a "complete collection," however, is that as of the publication of this casebook the PRC government is no longer making court judgments relating to prosecutions of political and religious speech available through its online database. More on that below.

Given that this cannot be a "complete collection," I cannot disclaim "any partiality in this undertaking." Instead, I have tried to apply three criteria for inclusion in this casebook. My first criterion was to consider whether or not the conduct for which an individual was prosecuted was exclusively or primarily "speech," where "speech" is defined broadly to include conduct such as publishing social media posts, essays, and books, as well as encouraging people to engage in "speech plus" conduct such as joining associations and protesting in public venues. Often the decision to include a case under this criterion was simple because there was a complete lack of any physical act other than online publication, such as those where an individual was prosecuted solely for statements on social media that "disturbed the peace" or that defamed leaders of either the PRC government or the Communist Party of China. In other cases the justification for inclusion may not be so obvious, such as where the "speech" in question involved the publication of hundreds of thousands of books without a government license, or erecting banners in public venues. In those latter cases, I decided that I would include prosecutions where the physical acts cited by the prosecution were traditionally those associated with communicative conduct (for example, operating a printing press, pamphleteering, forming associations, non-violent protesting, etc.).

My second criterion was to exclude cases where the speech being prosecuted did not relate to political or religious issues and actors. I therefore excluded cases where individuals were prosecuted for speech activities such as obscenity.

My final criterion was to favor for inclusion those cases which I believed would have had a different outcome under U.S. "constitutionalism,"³⁵ and to exclude cases where I believed a

32 See "Appendix III: Individuals Jailed for Insulting the Police" for some examples.

33 See, e.g., Sections 10.8 Jiang Kun – Disturbing the Peace by Vilifying the Party (Criminal) – 2019, and 10.5 Luo Daiqing – Disturbing the Peace by Ridiculing the Image of the State (Administrative and Criminal) – 2019.

34 See Appendix II: Individuals Imprisoned for Posting on Twitter, where I have partially translated several of these court judgments.

35 On August 24, 2018, Xi Jinping, speaking in his capacity as General Secretary of the Central Committee of the Communist Party of China to the first meeting of the "Central Committee Commission on Comprehensively Governing the Country with the Law, said: "Taking China's national conditions and reality as our

U.S. court might have found the conduct in question to be both illegal and not protected under the First Amendment of the U.S. Constitution.³⁶ For example, U.S. courts have been consistent in holding that prior restraints, such as requiring an author or publisher to get a license from the government prior to publishing, violate the First Amendment.³⁷ Therefore, the cases in Chapter 4 "Prior Restraints," where individuals were prosecuted for publishing books without a license from the PRC government's "press and publications" regulator, clearly meet this third criterion. Similarly, it is likely that the cases in Chapters 10 "Seditious Libel on Social Media," 19 "Appendix II: Individuals Imprisoned for Posting on Twitter," and 20 "Appendix III: Individuals Jailed for Insulting the Police," where individuals were punished for posting statements on social media critical of a political party, the government, their officials, or their policies, would have had very different outcomes under U.S. Supreme Court precedents.³⁸

As with the first criterion, there are situations where my decision to include a prosecution in this casebook may be open to debate. For example, the U.S. Supreme Court has acknowledged the government's power to declare certain information a state secret, and has recognized that certain "time-place-manner" restrictions can be imposed on public gatherings.³⁹ I have included several cases implicating these issues, and invite readers to make their own comparisons and draw their own conclusions.

While not a specific criterion, where possible I have tried to include case materials related to incidents and individuals of public interest. For example:

- **The 2003 SARS Outbreak:** According to the PRC's state sponsored media, the PRC government attempted to cover up the scope of Severe Acute Respiratory Syndrome infections during the 2003 outbreak.⁴⁰ On May 3, 2003, police in Beijing detained Huang Qunwei for posting articles on the Internet between April 25-27 with titles

starting point, we must walk the path of rule of law that is suited to us. We absolutely cannot copy the models and practices of other countries, and absolutely cannot take the road of Western 'constitutionalism,' 'separation of powers,' and 'judicial independence.'" "Strengthen the Party's Leadership Over Comprehensively Governing the Country with the Law" (加强党对全面依法治国的领导), Seeking Truth, 2019, Vol. 4, "要从中国国情和实际出发,走适合自己的法治道路,决不能照搬别国模式和做法,决不能走西方'宪政'、'三权鼎立'、'司法独立'的路子." http://www.qstheory.cn/dukan/qs/2019-02/15/c_1124114454.htm, February 15, 2019.

- 36 An example of a case that I excluded under this criterion would be the Chen Jianping Reeducation Through Labor Decision (程建萍劳动教养决定书, 新劳决字(2010)第186号), where Cheng was punished for reposting on Twitter "Smash the Japan Pavilion at the World Expo Park" and "Angry youths, go! Go and smash." Depending upon the circumstances, it seems possible that a U.S. court could find that these statements constituted advocacy "directed to inciting or producing imminent lawless action" that was not protected under the First Amendment. *See* *Brandenburg v. Ohio*, 395 U.S. 444 (1969), p. 750.
- 37 *See, e.g.*, Section 22.3, Prior Restraints, p.739 - 741 in Appendix V: Further Readings.
- 38 As part of this assessment, I would assume that the targets of the critical statements would be the U.S.-equivalents of "a political party, the government, their officials, or their policies." So that if, for example, I was considering a case where a PRC court jailed someone for a statement comparing Mao Zedong to Hitler (*see* Wang Doe – Endangering State Interests and Defaming Mao Zedong – 2019, p. 715), I would ask whether today's U.S. Supreme Court would uphold a lower court's (or jury's) finding an individual guilty of an offense for comparing George Washington to Hitler.
- 39 *See* *United States v. Reynolds*, 345 U.S. 1 (1953) and *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), respectively.
- 40 *See, e.g.*, "A Chinese Doctor's Extraordinary April in 2003," *Sanlian Life Weekly*, No. 23, translated by China.org.cn staff, June 13, 2003, <http://www.china.org.cn/english/2003/Jun/66953.htm>: "On April 11, Beijing was designated as an infected area. However, the Ministry of Health didn't publish the news. Instead, it maintained the previous day's optimistic statement, saying, 'The published epidemic information that day included all diagnosed cases in local and army hospitals.'"

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such as "Absolutely Reliable News, Shanghai Concealed a Large Number of SARS Cases" and "China has Officially Entered an Economic Crisis Due to SARS."

- **The Yahoo! Prosecutions:** Wang Xiaoning and the journalist Shi Tao were convicted in 2003 and 2005, respectively, and the court judgments cited evidence provided by a PRC subsidiary of Yahoo!. In 2007, they sued Yahoo! for violations of U.S. federal and state law. They alleged that Yahoo! had abetted Wang's and Shi's imprisonment by turning over their Yahoo! account information to the PRC government, which used the information to prosecute them.⁴¹ Yahoo! was called to testify before the U.S. Congress regarding the Shi Tao case in 2006, and again in 2007 to address allegations regarding their prior testimony.⁴²
- **The 2008 Beijing Summer Olympics:** In September 2007, Hu Jia and the civil rights lawyer Teng Biao published an open letter that criticized the PRC's human rights record and concluded saying "Without dignity and rights, there can be no true Olympics."⁴³ In November, Hu Jia said in a conference call with the European Parliament's Subcommittee on Human Rights, that 2008, the year of the Beijing Olympics, should be the year of human rights in China.⁴⁴ The following month Hu Jia was detained on suspicion of inciting subversion of state power. In 2008, Hu Jia was awarded the Sakharov Prize for Freedom of Thought.⁴⁵
- **The Wenchuan Earthquake:** Following an 8.0 magnitude earthquake in Sichuan in 2008, people alleged that shoddy construction, enabled by government corruption, caused several schools to collapse. Prior to his arrest, Tan Zuoren had attempted to investigate the collapse of school buildings in the quake and the number of schoolchildren killed.⁴⁶
- **Infants Poisoned by Milk Powder:** In 2008, tainted baby milk powder was found to have caused the deaths of at least six children and sickened more than 300,000 others. The industrial chemical melamine had been added to milk to make it appear higher in protein content. The PRC government executed two people for their involvement. Zhao Lianhai founded the website "Home for the Kidney Stone Babies" to collect and provide information for the parents of affected children.⁴⁷

41 Wang Xiaoning, Yu Ling and Shi Tao v. Yahoo! Inc. and Yahoo! Holdings (Hong Kong), Ltd., N.D. Cal., Case No. C07-02151 CW/JCS, April 18, 2007, <https://dockets.justia.com/docket/california/candce/4:2007cv02151/191339>. See also, He Depu, et. al., v. Yahoo! Inc., Et. Al., U.S. Court of Appeals, Case No. 1:17-cv-00635, February 28, 2020, [https://www.cadc.uscourts.gov/internet/opinions.nsf/6055E9116A194D8A8525851C0054A0DB/\\$file/18-7161-1830758.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/6055E9116A194D8A8525851C0054A0DB/$file/18-7161-1830758.pdf).

42 "Yahoo! Inc.'s Provision of False Information to Congress," Hearing before the Committee on Foreign Affairs, November 6, 2007, <https://www.govinfo.gov/content/pkg/CHRG-110hrg38820/pdf/CHRG-110hrg38820.pdf>.

43 "没有人的尊严和权利,就没有真正的奥运," Teng Biao and Hu Jia (滕彪,胡佳), "The Reality of China Before the Olympics" (奥运前的中国真相), September 10, 2007, <https://tengbiao.wordpress.com/2011/04/30/oyqdzgzs/>.

44 European Parliament, Sakharov Prize, <https://www.europarl.europa.eu/sakharovprize/en/hu-jia-2008-china/products-details/20200331CAN54194>.

45 Ibid.

46 "Activist on Trial for Subversion," China Daily, August 13, 2009, https://www.chinadaily.com.cn/china/2009-08/13/content_8563471.htm.

47 "Two Executed for Being Involved in Contaminated Milk Scandal," Global Times, November 25, 2009, <https://www.globaltimes.cn/content/487518.shtml>, "Advocate for Sanlu Victims Held," Global Times, November 16, 2009, <https://www.globaltimes.cn/content/485365.shtml>.

1.3. Case Selection

- **Petitioner Raped in Government Custody in "Black Hotel":** In August 2008, a woman who had traveled to Beijing to petition the government about discrimination from teachers and students because of her age was intercepted by government agents from her hometown and held in a Beijing hotel. A guard at that hotel raped her. Zhao Lianhai took up her case.⁴⁸
- **Charter '08:** Liu Xiaobo was awarded the Nobel Peace Prize in 2010 "for his long and non-violent struggle for fundamental human rights in China." The year before, a PRC court sentenced him to 11 years imprisonment for his participation in drafting and circulating "Charter '08," a manifesto which advocated "the gradual shifting of China's political and legal system in the direction of democracy."⁴⁹
- **The "Jasmine Revolution" Crackdown:** Following a large public gathering in Beijing's Wangfujing district that had been organized online in February 2011, the government detained several activists.⁵⁰ Chen Wei and Chen Xi (no relation) were two of those who were ultimately arrested and imprisoned.
- **Ai Weiwei's 2011 Detention:** Despite having been detained for over 80 days and publicly accused by the PRC's state run media and Ministry of Foreign Affairs of committing "economic crimes," Ai was never indicted. A company that he was associated with, Beijing FaKe, was fined for tax evasion.⁵¹
- **Document No. 9:** In 2013, the General Office of the Communist Party of China issued the "Communiqué on the Current State of the Ideological Sphere," also known as "Document No. 9." The document discussed seven political "perils," including constitutionalism, civil society, historical nihilism, and universal values. Although the document was discussed openly online in China,⁵² Gao Yu was convicted on state secrets charges for disclosing it to a media outlet in Hong Kong.
- **Singer's Online Joke Lands Her in Jail:** On July 23, 2013, singer Wu Hongfei (吴虹飞) was detained after posting on Sina Weibo: "The places I want to bomb include the residential committee of the Beijing Personnel Exchange Center, and the housing commission."⁵³ Her lawyer was Chen Jiangang, who unsuccessfully sued the PRC's state run media for publishing false reports about her case.
- **The 2013 Crackdown on Online Opinion Influencers:** On August 16, 2013, the President of the Communist Party of China's flagship magazine, Seeking Truth, published an editorial saying: "Enemy forces at home and abroad are wreaking havoc in China, and there has been no change in the schemes to Westernize and divide China.

48 "Raped Petitioner Seeking Justice," China Daily, April 9, 2010, https://www.chinadaily.com.cn/cndy/2010-04/09/content_9705381.htm.

49 "Liu Xiaobo – Facts," NobelPrize.org. Nobel Media AB 2021, <https://www.nobelprize.org/prizes/peace/2010/xiaobo/facts/>.

50 "Chinese Police Snuff Out Planned Arab-Inspired Protests," Reuters, February 20, 2011, <https://www.reuters.com/article/oukwd-uk-china-protests-idAFTRE71J0U220110220>.

51 "Ai Weiwei Speaks," Global Times, August 9, 2011, <https://www.globaltimes.cn/content/670150.shtml>. The company's name consists of the two Chinese characters "Fa" (发) and "Ke" (课).

52 See, e.g., "Our Institute Earnestly Implements the 'Communiqué on the Current State of the Ideological Sphere'" (我院认真贯彻落实"关于当前意识形态领域情况的通报"), Hunan Academy of Social Sciences, May 21, 2013, <http://www.hnass.cn/item-5957.html> (archived at <https://archive.li/WtyDf>).

53 "Blurring Lines of Legality Lead to Strange Types of Criminal," Global Times, August 1, 2013, <https://www.globaltimes.cn/content/800848.shtml>, "Singer's Fake Bomb Threat Sparks Debate," China Daily, August 3, 2013, https://usa.chinadaily.com.cn/china/2013-08/03/content_16868024.htm.

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Given this situation, if left alone to become excessively open, public opinion will inevitably bring about dire consequences."⁵⁴ On August 19, 2013, Xi Jinping gave a speech to the National Propaganda and Ideology Work Conference during which he reportedly said: "Mobilize all agencies to work together, and more closely integrate propaganda and ideological work with the management of the administration, enterprises, and society."⁵⁵ That same day Qin Zhihui was detained for "disturbing the peace" for spreading disinformation on social media about the Ministry of Railways, and for defaming the naval officer Luo Yuan (罗援), the state sponsored television host Yang Lan (杨澜), the lawyer Lan He (兰和), and Zhang Haidi (张海迪), who at the time was the chairwoman of China Administration of Sports for Persons with Disabilities. According to the Supreme People's Court, this was the first case to be published following the issuance of the "Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Specific Application of Law in the Handling of Defamation Through Information Networks and Other Criminal Cases," and is a "model" case that serves as a "warning" to Internet users that they must "consciously regulate" their words.⁵⁶

- **New Citizen Movement Members Arrested While Advocating for Migrant Workers' Rights:** In July 2013, civil rights lawyers Ding Jiayi and Xu Zhiyong were arrested for their roles in small demonstrations calling for equal social and educational benefits for migrant workers in Beijing.⁵⁷
- **The "7.09" Crackdown on Lawyers and Law Firm Employees:** According to a statement posted by the PRC Ministry of Public Security on July 11, 2015, it had "directed law enforcement agencies in Beijing and elsewhere in a coordinated action to smash a major criminal gang that used the Beijing Fengrui Law Firm as a platform to organize, plot, and sensationalize over 40 sensitive incidents and severely disturb social order."⁵⁸ Wang Yu, Wu Gan, Zhou Shifeng, Wang Quanzhang, Hu Shigen, and Zhai Yanmin were among those arrested in that crackdown. Yu Wensheng acted as defense counsel for Wang Quanzhang.
- **Violence in Xinjiang:** Wang Doe was jailed for online posts that implicated violence in Xinjiang, but a court overturned his punishment on the grounds that his posts were

54 "境内外敌对势力搞乱中国、西化分化中国的图谋始终没有改变.在这样的情况下,如果放任舆论环境过度开放,将不可避免地带来严重后果," "Take Up the Cause of Insisting on a Marxist Approach to News" (自觉坚持马克思主义新闻观), Li Baoshan (李宝善), Seeking Truth, 2013, Vol. 16, https://web.archive.org/web/20130816112135/http://www.qstheory.cn/zxdk/2013/201316/201308/t20130813_259118.htm.

55 "动员各条战线各个部门一起来做,把宣传思想工作同各个领域的行政管理、行业管理、社会管理更加紧密地结合起来," "Xi Jinping: Ideological Work is a Top Priority for the Party" (习近平:意识形态工作是党的一项极端重要的工作), Xinhua, August 20, 2013, http://www.xinhuanet.com/politics/2013-08/20/c_117021464_3.htm.

56 "Reference to Criminal Trial: Model Cases on the 40th Anniversary of Reform and Opening Up" (刑事审判参考:改革开放四十周年典型案例), Vol. 119 (总第 119 集), 2019, Supreme People's Court of the People's Republic of China (中华人民共和国最高人民法院), p. 147.

57 "Law is No Threat to Citizen Movement," Global Times, January 23, 2014, <https://www.globaltimes.cn/content/838923.shtml>.

58 "Ministry of Public Security Uncovers 'Rights Defense' Plot" (公安部揭开"维权"事件黑幕), Ministry of Public Security official verified Sina Weibo, July 11, 2015, <https://weibo.com/2328516855/CqFqi8xtC>. One of the incidents they allegedly "sensationalized" was the police shooting of a man attempting to travel to petition. "Shooting of Petitioner Needs Investigating," China Daily, May 11, 2015, https://www.chinadaily.com.cn/opinion/2015-05/11/content_20677201.htm.

"patriotic" and were actually expressing support for the PRC government's actions there. Ilham Tohti, Pu Zhiqiang, and Tian Weiguo were convicted of different crimes, in each case partially based on online postings they made relating to the PRC government's responsibility for the violence in Xinjiang. Ilham Tohti was awarded the 2014 PEN/Barbara Goldsmith Freedom to Write Award, the 2016 Martin Ennals Award for Human Rights Defenders, the 2017 Liberal International Prize for Freedom, and the 2019 Sakharov Prize for Freedom of Thought.⁵⁹ Pu Zhiqiang was a civil rights lawyer whose activism dated back to the 1989 demonstrations in Tiananmen Square.⁶⁰

- **The 2019 Hong Kong Demonstrations:** In February 2019, the government of the Hong Kong Special Administrative Region introduced a bill that would establish a mechanism for transfers of fugitives from jurisdictions that were not covered by existing laws. A series of public demonstrations expressing opposition to the proposed amendments took place in Hong Kong in June, July, and August 2019.⁶¹ Individuals who posted messages expressing support for the demonstrations on social media, such as Li Doe and Xue Doe, were jailed.
- **The 2019 Wuhan COVID Outbreak:** Dr. Li Wenliang was a physician in Wuhan who sent a message to his alumni WeChat group in which he claimed there were SARS cases, and as a result "authorities asked Dr. Li to come to a police station for questioning, and issued him a letter of reprimand."⁶² Zhang Zhan traveled to Wuhan at the beginning of the outbreak and posted her personal impressions online.

Finally, in order to keep this casebook to a manageable length, I have left out some judgments where the facts and legal issues raised were otherwise covered by translations that are already included in this casebook.⁶³

1.4. Types of Documents

Recognizing that the title of this casebook is "State Prosecutions," and the focus is on public prosecutions of speech by a People's Procurator in a trial in a People's Court, I have nevertheless elected to include several other types of official documents. For example, I have included several police administrative punishment decisions. In the PRC the police can impose

59 European Parliament, Sakharov Prize, <https://www.europarl.europa.eu/sakharovprize/en/ilham-tohti-2019-china/products-details/20200615CAN55802>.

60 "'June Fourth' Seventeen Years Later: How I Kept a Promise," New York Review of Books, August 10, 2006, <https://www.nybooks.com/articles/2006/08/10/june-fourth-seventeen-years-later-how-i-kept-a-pro/>.

61 Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 to amend the Fugitive Offenders Ordinance (Cap. 503).

62 "What's False and What's True on China-related Human Rights Matters," Permanent Mission of the People's Republic Of China to the United Nations Office at Geneva And Other International Organizations In Switzerland, July 3, 2020, <https://www.fmprc.gov.cn/ce/cegv/eng/dbtyw/rqsw/t1794578.htm>. In that statement the PRC government also said: "In China, no one gets punished or penalized simply because of making remarks. . . . A handful of people, out of their hidden agenda, purport to have been convicted for speaking out in China. Their claim has no factual basis." Chinese version: "在中国,任何人不可能因为仅仅发表言论就受到处罚或刑罚," "关于涉华人权问题的各种谬论及事实真相," <https://www.fmprc.gov.cn/web/zyxw/t1794112.shtml>. Archived at <https://archive.li/O5uZo> and <https://web.archive.org/web/20210827162400/https://www.fmprc.gov.cn/ce/cegv/eng/dbtyw/rqsw/t1794578.htm>.

63 For example, I did not include a translation of the court judgment finding Ding Jiayi and Li Wei guilty of gathering crowds to disrupt public order (丁家喜,李蔚, (2013)海刑初字第2974号) because the facts and issues in that case were substantially similar to those in the Xu Zhiyong judgment (*see* Section 8.5, Xu Zhiyong and the New Citizens Movement – Gathering Crowds by a Lawyer – 2014).

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formal punishments, including ordering individuals to serve time in detention, without a trial before a judge. The legal basis for this is provided by the "Public Security Administrative Punishments Law."⁶⁴ That law states that if an act "disrupts public order, hampers public security, infringes upon the rights of persons and property, or hampers social administration" but is not serious enough to warrant criminal punishment, public security authorities can impose punishments including warnings, fines, revocations of licenses, and "administrative detention." These punishments are meted out directly by the police. Defendants have no right to a trial, but can appeal the punishments to a court.⁶⁵ In addition, individuals can be subjected to administrative detention and then subsequently imprisoned under criminal law for the same offense.⁶⁶ Police regularly apply administrative punishments to online speech that they deem "inappropriate," which over time has come to include speech that insults the people of another province,⁶⁷ or the police themselves.⁶⁸

In addition to imposing administrative punishments on individuals whose speech they deem inappropriate, police in the PRC have another tool to punish critics: private prosecutions for defamation. Article 210 of the "Criminal Procedure Law of the People's Republic of China" creates a private right of action "where the victim has evidence proving that the defendant's conduct in violation of his personnel or property rights should be pursued for criminal responsibility, but the public security agency or the people's procuratorate do not pursue the defendant's criminal responsibility."⁶⁹ Police have used this to successfully prosecute and imprison individuals for defaming them under the PRC Criminal Law.⁷⁰

I have also included several civil judgments that I thought could serve as useful points of comparison to, and contrast with, the criminal judgments:

- The Chen Jiangang case involved a state actor (the People's Procuratorate Publishing House) that falsely reported on Sina Weibo that Chen, a lawyer, had requested his client (the well-known singer Wu Hongfei) have her criminal detention be converted

64 中华人民共和国治安管理处罚法。

65 Article 2 (扰乱公共秩序,妨害公共安全,侵犯人身权利、财产权利,妨害社会管理). This system has been criticized by PRC scholars. *See, e.g.,* Liu Renwen (刘仁文), "Considerations for Bringing Administrative Detention Within the Criminal Law System in China" (我国行政拘留纳入刑法体系构想), *Law and Social Development (法制与社会发展)*, Issue No. 5, 2021: "The power to make decisions on administrative detention in China being exercised by the public security authorities is increasingly incompatible with the need for human rights protection in the development of the rule of law in China." (我国行政拘留的决定权由公安机关行使,这越来越不适应我国日益发展的法治需求侧对人权保障的需求)。

66 *See* Sections 10.5: Luo Daiqing – Disturbing the Peace by Ridiculing the Image of the State (Administrative and Criminal) – 2019 and 10.7: Li Doe – Disturbing the Peace by Harming the Image of the State (Administrative and Criminal) – 2019.

67 *See* "Many People Are Punished by Public Security Authorities for Posting Inappropriate Statements and Causing a Deleterious Social Impact" (多人因发布不当言论造成不良社会影响被公安机关处罚), *Xinhua*, February 12, 2020, http://www.xinhuanet.com/2020-02/12/c_1125561516.htm: "A man in Shenzhen publicly posted on the Internet cursing Hubei people, which created an offensive social influence. A broad swath of Internet users expressed extreme indignation. Based on an investigation and verification, the poster of the malicious berating statements about Hubei people was a man surnamed Long. On February 4, the Shenzhen Guangming police imposed a public security punishment on Long for his illegal acts that disturbed the peace." (深圳一男子公然在网络上发布咒骂湖北人的言论,造成了恶劣的社会影响,广大网友对此表示极度愤慨.经查证,恶意辱骂湖北籍人士言论的发布者龙某,2月4日,深圳光明警方对龙某涉寻衅滋事的违法行为处以治安处罚)。

68 *See* Appendix III: Individuals Jailed for Insulting the Police.

69 中华人民共和国刑事诉讼法: "被害人有权证明对被告人侵犯自己人身、财产权利的行为应当依法追究刑事责任,而公安机关或者人民检察院不予追究被告人刑事责任的案件。"

70 *See* Section 17.5: Chen Guangping – Private Prosecution for Criminal Defamation – 2020.

to administrative detention. The court held the state actor was not liable because Chen could not substantiate that the content was inaccurate (notwithstanding he was the subject of the report), nor could he substantiate how the Weibo content harmed his reputation. Readers may find it useful to contrast the judgment in this case with the judgment in Section 3.4, "Yuan Jianmeng – Defamation by a Journalist (Administrative) – 2020."

- The Kong Qingdong case also involved a state actor (an employee of a state run media outlet) referring to a private individual (a professor at Beijing University) as a "beast" and stating that his reputation was "based entirely upon cursing others." The court held that the state actor was not guilty of defamation, and discussed in great detail the importance of the role of the press and the need for public figures (such as Professor Kong) to be tolerant of criticism. Readers may find it useful to contrast the judgment in this case with the judgment in Section 10.4, "Feng Zhouguan – Disturbing the Peace by Berating Xi Jinping (Administrative) – 2018."
- In the Huang Zhong & Hong Zhenkuai case the defamation claim was based on the following statement that the defendant made in a Sina Weibo post: "Oppose historical nihilism, if nothing is done about this gang of sons of bitches it's a joke!" In finding for the defendant, the court not only emphasized the need for the plaintiffs to be tolerant of criticism, it also held that the defendant's post "neither mentioned anyone by name nor carried the implication that it was directed at Huang Zhong or Hong Zhenkuai." Readers may find it useful to contrast the judgment in this case with the judgment in Section 10.1, "Cheng Huaishan – Defaming the Politburo (Administrative) – 2014."

1.5. Casebook Organization

I had originally planned to simply order cases chronologically. I also considered organizing the cases based on the offense under which a defendant was charged or convicted. I received feedback, however, that the former was not particularly useful, and the latter could be addressed through a "Table of Cases" (which I have included at the end of this casebook – see Appendix VII: Table of Cases by Offense).

I ultimately decided to employ a topic-based organization, acknowledging that this has its own shortcomings. The first being that often cases could have fallen under more than one heading, for example:

- Several cases not included in Chapter 12, "The 1989 Tiananmen Square Demonstrations," included facts relating to that event. For examples, the Huang Qi (p. 325), Zhang Jianhong (p. 370), and Yuan Yulai (p. 421) cases.
- Several cases in Chapter 16, "Accessing Information," involved an offense where a defendant's *actus reus* was circumventing the Great Firewall of China (see Liu Bingyang, p. 637, Yao Zenglei, p. 641, Zhang Liping, p. 642, and Zhang Tao, p. 643). But several other cases involved defendants whose use of "Wall-Climbing Software" was cited as evidence of their guilt in relation to other offenses. For examples, see the Tian Weiguo (p. 492), Jiang Kun (p. 446), and Lai Liangping (p. 450) cases.

Another disadvantage to this approach is that readers may find my categorizations arbitrary (at best) or biased (at worst). For example, I have included many cases where individu-

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als were prosecuted for defamation and disturbing the peace under a heading labeled "Seditious Libel on Social Media," notwithstanding the fact that PRC law does not have any offense that could reasonably be translated as "seditious libel." Indeed, the only offense that comes close is "inciting subversion of state power," but I have placed cases involving prosecutions of that offense under other headings, such as "Associations" and "Political Speech." The label "Seditious Libel" is therefore an admittedly subjective one, based on my personal assessment that the common principle underlying those prosecutions would most easily be understood by my target audience (readers familiar with U.S. and British jurisprudence) as being comparable to the concept of seditious libel.⁷¹

1.6. Casebook Appendices

In addition to case translations, this casebook also includes the following supplementary materials:

- Appendix I: Selected Laws, Regulations & Judicial Interpretations – These are English translations from various third party sources of some of the statutes most commonly cited in the judgments translated in this casebook.
- Appendix II: Individuals Imprisoned for Posting on Twitter – These are partial translations of court judgments where the defendant was jailed for liking, posting, and re-posting content on Twitter. I have elected not to provide full translations in the interests of saving space and because the untranslated portions do not address any novel legal issues that were not reflected in other cases.
- Appendix III: Individuals Jailed for Insulting the Police – Most administrative punishment decisions are not published online except as news reports or social media posts, so I have included some here for context.
- Appendix IV: Examples of Criminalized Speech – Space considerations meant I have not included in this volume translations of the original texts for which individuals were prosecuted. I received feedback, however, that it would be helpful to provide some samples so that readers could have some context as to the kinds of speech that PRC courts have deemed to have incited subversion, incited ethnic hatred, and disturbed the peace. I have therefore included examples of each of these in this appendix.
- Appendix V: Further Readings – This is a selection of quotations from various historical and legal sources which I hope might provide useful context for those interested in reading further about the issues raised by the judgments in this casebook.
- Appendix VI: Translation Conventions – I have included this to show how I have translated certain commonly appearing terms.
- Appendix VII: Table of Cases by Offense – Here I have organized the cases based on the offense under which individuals were prosecuted and/or convicted.

71 See Wendell Bird, "The Revolution in Freedoms of Press and Speech: From Blackstone to the First Amendment and Fox's Libel Act," Oxford University Press, 2020, p. 77: "The common law crimes of seditious libel and seditious speech arose in England to criminalize dissent against the king or government officials that could not successfully be suppressed as treason. Part of nontreasonous speech had been criminalized since 1275 as *scandalum magnatum*, which was 'to tell or publish any false news or tales, whereby discord or occasion of discord or slander may grow between the King and his people or the great men of the realm.'"

1.7. Case Sources

Since I first began translating PRC court judgments almost 20 years ago, I have found myself in a predicament similar to that described in a preface to *State Trials*, namely: "the farther we search into Antiquity, and the higher we go, the less perfect will our Accounts be." In the case of PRC court judgments, "antiquity" is pretty much anything before 2013, when the PRC Supreme People's Court launched its "China Judgments Online" database⁷² and issued a notice requiring courts at all levels to publish their judgments on the Internet.⁷³ For documents that I have been unable to locate in that database, I have relied on documents posted publicly online from non-official sources. Those online versions were often created either by scanning in hard copies or by running low-quality images through optical character recognition software. The inevitable result is that some of the documents in volume two of this casebook will contain errors: sometimes single characters, and sometimes entire phrases. Where I have been able to identify those errors I have based my translation on what I believed would have been the correct Chinese character or phrase.

Take for example the text of the Tan Zuoren judgment. That judgment is available on several websites,⁷⁴ but the texts contain identical errors which indicate their common origin was most likely a series of postings on Twitter by Ai Weiwei in 2010 which contained the same errors. For example, on February 9, 2010 Ai Weiwei posted a tweet quoting Tan's judgment which used the character "再" (again) instead of "在" (at).⁷⁵ These characters are rendered the same in pinyin romanization, and it is common to see this kind of typographical error. That error was replicated in other online sources.

Some judgments rendered after 2013 could not be located in the "China Judgments Online" database. For example, I was unable to locate the judgments in any of the "7.09" prosecutions, or in the Pu Zhiqiang inciting ethnic hatred and disturbing the peace case, despite the judgments having been discussed widely in the PRC State sponsored media.⁷⁶ In those cases I have instead included translations from other official sources, such as prosecutorial indictments, trial transcripts, and judicial summaries.

In addition, it had been well documented for several years that judgments implicating politically sensitive matters, such as prosecutions for online speech, would appear in the China Judgments Online database, only to disappear after drawing the attention of commentators. For example, the Luo Daiqing judgment was originally posted on China Judgments Online on December 19, 2019. That case first began being discussed online in late January 2020, but it was no longer available on the China Judgments Online database as of January 23, 2020.⁷⁷

72 裁判文书网, <https://wenshu.court.gov.cn>.

73 "Supreme People's Court Provisions on People's Courts' Publishing Judgment Documents on the Internet" (最高人民法院关于人民法院在互联网公布裁判文书的规定), issued November 21, 2013, effective January 1, 2014. See also "Number of Judgments on China Judgments Online Exceeds 100m," Supreme People's Court, September 1, 2020, http://english.court.gov.cn/2020-09/01/content_37539302.htm: "On Aug 30, 2016, the SPC released a revised version of the regulation first released in 2013, requiring courts to enhance the judgments' publicity."

74 See, e.g., <https://zh.wikisource.org/wiki/四川省成都市中级人民法院（2009）成刑初字第273号刑事判决书>.

75 <https://twitter.com/aiww/status/8842325223>.

76 See, e.g., "Lawyer or Not, Pu Zhiqiang Broke the Law," China Daily, May 23, 2015, http://www.chinadaily.com.cn/china/2015-12/23/content_22782476.htm, and "Pu Zhiqiang Reunites With Family, Won't Appeal," Global Times, May 23, 2015, <http://www.globaltimes.cn/content/960093.shtml>.

77 See, e.g., Donald Clarke, "Chinese Student at University of Minnesota Jailed for Tweets Made While in the US: A Legal Analysis," January 23, 2020, <https://thechinacollection.org/chinese-student-university->

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Therefore, the text I based my translation on was from a posting on a Beijing University online forum.⁷⁸

Furthermore, in the first half of 2021 it became clear that, rather than engage in piecemeal deletions, the China Judgments Online database had been purged of entire categories of judgments – including cases that had been prosecuted under Articles 102-113 of the Criminal Law, which includes the offenses of subversion and inciting subversion.⁷⁹ Similarly, all of the cases summarized in "Appendix II: Individuals Imprisoned for Posting on Twitter" were originally available in that database, but by the end of 2021 they could no longer be found there. Fortunately, in the process of preparing my translations, I retained copies of the cases that I thought might be worth including in this casebook, and their texts can still be found in volume 2 of this casebook.

The China Judgments Online database is not the only source used in this casebook where case information was available one day and missing the next. Another example is the Administrative Punishment Outcomes Open Information database on the website of the People's Government of Zhejiang.⁸⁰ In September 2020 a search for the term "信道" ("Channels") returned 111 search results, and the first page was all results for cases involving "Illegal Use of Non-Statutory Networking Channels" (擅自建立、使用非法定信道进行国际联网). By November 2020, however, the same search only returned 12 results, none of which related to cases involving "Illegal Use of Non-Statutory Networking Channels."

1.8. Translation and Formatting Conventions

For pronouns where the gender of the subject is unclear, I have tried to use the third person plural (e.g., "they/them/their") wherever possible.

minnesota-jailed-tweets-made-us/.

78 <https://bbs.pku.edu.cn/v2/mobile/post-read.php?bid=251&threadid=17489051>.

79 "Why is Judicial Openness Showing Signs of Retreat?" (司法公开为何出现倒退的迹象?), Wu Laosi (吴老丝), Weixin, July 11, 2021: "Some judgments that were online have even been withdrawn, and the reasons for withdrawal are either state secrets or 'other circumstances that people's courts think are not suitable for publication on the Internet.' Going back to some cases that caused heated public discussion, one now finds the judgments have magically disappeared, as if they had never appeared in the first place." (一些已经上网的判决书,甚至还出现撤回的现象,而撤回的理由不是涉及国家机密就是"人民法院认为不宜在互联网公布的其他情形".一些曾引起舆论热议的案件,现在回头再去找判决书,发现竟然也神奇地消失了,仿佛从未出现过一样). This article was originally published on Tencent's Weixin, but within days it had been replaced with a notice saying: "Unable to view this content because it violates regulations 此内容违反'互联网用户公众账号信息服务管理规定.'" It was archived at <https://web.archive.org/web/20210711095802/https://mp.weixin.qq.com/s/Iw2sPM-cQSAxBQ0szX3HhA>. See also "All State Security Judgments Purged from Supreme Court Site," Dui Hua Foundation, July 26, 2021, <https://www.duihuajournal.org/2021/07/china-all-state-security-judgments.html>. See also "He Tried to Commemorate Erased History. China Detained Him, Then Erased That Too," Los Angeles Times, Alice Su, June 24, 2021: "The Times verified the judgment, which was documented in a public archive of court rulings kept by the Supreme People's Court online. Last month, he contacted The Times again: The record of his arrest had vanished. . . ." referring to the Dong Zehua and Yuan Shuai court judgment (p. 513). See also "Verdicts from China's Courts Used to Be Accessible Online. Now They're Disappearing," ChinaFile, February 1, 2022: "[A] search for picking quarrels cases we conducted in May 2020 yielded tens of thousands of cases. Today, a similar search yields none." <https://www.chinafile.com/reporting-opinion/view-point/verdicts-chinas-courts-used-be-accessible-online-now-theyre-disappearing>.

80 See the Yao Zenglei (p. 641), Zhang Liping (p. 642), and Zhang Tao (p. 643) cases, which were originally retrieved from that database here: 浙江政务服务网, 行政处罚结果信息公开, <http://www.zjzfw.gov.cn/zjzw/punish/frontpunish/showadmins.do?webId=2>.

1.8. Translation and Formatting Conventions

I have changed punctuation and added paragraph breaks to make the texts conform more closely to English conventions and improve readability.

In my translations I have elected to remove certain personally identifying information where it was not critical to understanding the judgment. I have indicated these omissions with "[INTENTIONALLY DELETED IN THIS CASEBOOK]." Where material was omitted in the original Chinese language text I have generally retained whatever obfuscation methods the court employed (often indicated by "*" or "x").

In addition to using "*" and "x," PRC courts often anonymize individuals' names by including the Chinese character "Mou" (某) for each character after the surname. For example, in one judgment "Jiang Zemin" was anonymized by the court as "Moumoumou."⁸¹ In this casebook I have adopted the English convention of using "Doe" to indicate where a name has been anonymized, and thus "Jiang Zemin" appears as "Doe Doedoe." I have provided the full name of public figures in cases where their identity is obvious from public reporting or other sources.

I have translated "我国" as "our country," notwithstanding it is common for other sources to translate it as "China."

I have translated "微信" as "WeChat," notwithstanding that technically Tencent's "WeChat" is distinct from Tencent's "Weixin."⁸²

I have not followed the PRC Foreign Ministry's practice of translating "言论" as "remarks."⁸³ Instead, I have generally translated "言论" as "statements," and occasionally as "speech."

Several judgments in this casebook refer to "wall-climbing" (翻墙) software. I have translated this term literally, but it is well-understood to refer to Internet users using virtual private networks ("VPNs"), proxies, and other technologies to circumvent the "Great Firewall of China," a term used to refer to the technical measures that the PRC government has adopted to prevent people in the PRC from accessing Internet services outside of the country.⁸⁴

Internet slang presented some unique translation challenges. "Internet friend(s)" (网友) is a term commonly used to refer to the concept of the global community of people who engage with each other online. I have translated it as "Internet users," though admittedly this does not adequately capture the Chinese language nuance that it is an identifiable group with some common interests (whatever they may be). Another example of Internet slang is "human flesh searches" (人肉搜索), which refers to online vigilantism where people search for an individual's personal information and repost it online, usually with the goal of holding the individual

81 PRC courts appear to believe that they are compelled to obscure the names of the leaders of the Communist Party of China in certain circumstances. *See, e.g.*, Sections 8.6 "Qin Yongmin and China Human Rights Watch – Subversion – 2018," 9.13 "Jin Andi, Lü Jiaping & Yu Junyi – Inciting Subversion – 2011," and 10.13 "Yao Yongsheng – Disturbing the Peace by ReTweeting the US Embassy (Criminal) – 2020."

82 *See* "Tencent Draws a Line Between WeChat and Weixin, Telling Users to Choose as China's Strict New Data Laws Come Into Effect," South China Morning Post, September 7, 2021, <https://www.scmp.com/tech/big-tech/article/3147880/tencent-draws-line-between-wechat-and-weixin-telling-users-choose>.

83 *See* "What's False and What's True on China-related Human Rights Matters," *supra* note 62.

84 *See, e.g.*, "Our Great Firewall: Expression and Governance in the Age of the Internet," (我们的防火墙:网络时代的表达与监管), Li Yonggang, Guangxi Normal University Press, 2009: "It mainly refers to a system composed of software and hardware such as computers and network equipment by which the State conducts automatic censorship, filtering, and monitoring of Internet content." (它主要是指国家对互联网内容进行自动审查和过滤监控、由计算机与网络设备等软硬件所构成的系统.)

accountable for something. I've translated that term as "doxxing," even though that does not necessarily capture the implied viciousness of the original Chinese.

1.9. Translating PRC Legal Terminology

In translating words that appear in the Public Security Administrative Punishments Law and the Criminal Law I have prioritized consistent and literal translations over style and, in some cases, readability. Specifically:

- I have tried to translate every term. For example, "公共场所秩序严重混乱" is five words – "public," "space/place/venue," "order," "serious/severe," and "chaos/disorder." Some sources omit one or more of these words from their translations.⁸⁵ I have translated each word, even though it may seem redundant or awkward, so that "公共场所秩序严重混乱" is rendered in this casebook as "severe chaos in public venue order."
- I have tried to ensure that each term is mapped to a unique English translation. For example, there are several words that can all be correctly translated as "threaten" (扬言, 恐吓, 威胁), but I have chosen to translate them as separate terms.⁸⁶ Similarly, whereas other sources that translate "危害国家安全" as "endanger state security" have translated "危害" as "harm" or "undermine" when it appears in other contexts, I always translated "危害" as "endanger," regardless of context.⁸⁷

I made some noteworthy departures from these guidelines, such as:

- Other sources have translated "国家政权" variously as "the political power of the state" and "state power."⁸⁸ In this casebook, where this term is used in the phrase "颠覆国家政权" I have consistently translated it as "subversion of state power." Where it appears anywhere else, I have translated it as "the State regime."

85 See, e.g., "The Supreme People's Court and Supreme People's Procuratorate's Interpretation on Several Issues Regarding the Applicable Law in Criminal Cases of Provocation and Causing Disturbances," China Law Translate, <https://www.chinalawtranslate.com/en/spc-and-spp-interpretation-on-causing-disturbances/>; "serious disorder in the public venue." Other translators do not even translate "public" in this phrase, see "Criminal Law," Article 292(4), Supreme People's Court, http://english.court.gov.cn/2015-12/01/content_22595464_27.htm; "serious disorder in such place."

86 So while I translate "扬言实施放火" from Article 25(3) of the "Public Security Administrative Punishments Law" as "declaring an intent to use fire," the Peking University Center for Legal Information's Chinalawinfo service (北大法宝) translates the same phrase as "threat to set fire." I translate "写恐吓信或者以其他方法威胁他人人身安全" from Article 42(1) of the "Public Security Administrative Punishments Law," as "Writing intimidating letters or threatening the personal safety of another party by other means," whereas Chinalawinfo translates the same phrase as "Threatening the personal safety of any other person by writing threat letters or by any other means."

87 For example, "危害社会秩序和国家利益" in Article 246 of the "Criminal Law" is translated as "serious harm is done to public order or to the interests of the State" or "seriously undermine social order or the state's interests" by the Supreme People's Court and the Ministry of Foreign Affairs (http://english.court.gov.cn/2015-12/01/content_22595464_24.htm, <https://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm>) respectively. I have translated it as "social order and State interests are severely endangered."

88 See Ministry of Foreign Affairs and the Supreme People's Court's translations of "Criminal Law" Article 105, <https://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm> and http://english.court.gov.cn/2015-12/01/content_22595464_8.htm, respectively.

1.9. Translating PRC Legal Terminology

- With respect to conclusions by a court, I have generally translated "认为" as "finds" or "found." In all other cases (e.g. procuratorates, defense counsels) I have translated it as "believed."

The area where I feel I have employed the most license was deciding how to translate terms describing "bad speech." Chinese, like English, has a plethora of these kinds of words, and they presented varying degrees of challenges. The two terms relating to "bad speech" that appear most often in the Public Security Administrative Punishments Law and the Criminal Law are "侮辱"⁸⁹ and "诽谤."⁹⁰ In the former case, other translators have used "belittle," "humiliate," and "insult." I have elected to use "insult" in this casebook, as that was the term chosen by two of the four sources I consulted, and it seemed appropriate in all the contexts in which it appeared. In the latter case, while PRC government translators have generally opted for "slander,"⁹¹ I wanted to avoid using "libel" or "slander" in this casebook, as those terms have specific meanings in U.S. jurisprudence that are not found in PRC statutory or case law. I have therefore used the more general term "defamation."

The term "辱骂" appears in Article 293 of the Criminal Law, and does not have a commonly accepted translation. It appears in the phrase "追逐、拦截、辱骂、恐吓他人." The first two terms describe physical acts, and have been translated by others as "chasing/intercepting," and in this casebook as "pursuing/obstructing." The final term could be either physical or verbal, and can be translated as "threaten/menace/intimidate." I have used the latter. Given that context, it would be reasonable to translate "辱骂" in a manner that conveys both a physical and verbal aspect. Here are some of the choices other translators have made:

- "Berate" – China Law Translate
- "Hurling insults" – Supreme People's Court
- "Cursing" – Ministry of Foreign Affairs

In my view, "berate" is certainly the best of these three: not only are "insult" and "cursing" better reserved as translations for other terms ("侮辱" and "谩骂"), "berate" also somewhat captures both the verbal and the physical nuance of the Chinese term that are implied by the context of Article 293. But when one looks at how the term is used in court decisions, one might be inclined to doubt whether "berate" is indeed a suitable translation. Here are examples of speech that PRC courts described as "辱骂":

- "Teenagers use the name Big Xi, and little kids use the name Grandpa Xi. My names are fat pig, steamed bun, and spendthrift."⁹²

89 "Public Security Administrative Punishments Law" Article 42(2), (4), and (5), "Criminal Law" Articles 246, "National Anthem Law" Article 15, and "Protection of Heroes and Martyrs Law" Articles 22, 23, and 26.

90 "Public Security Administrative Punishments Law" Article 42(2) and (4), "Criminal Law" Articles 105 and 246, and "Protection of Heroes and Martyrs Law" Articles 22, 23, and 26.

91 See the Supreme People's Court and Ministry of Foreign Affairs translations of the "Public Security Administrative Punishments Law" Article 42(2) and "Criminal Law" Article 105, http://english.court.gov.cn/2016-04/15/content_24562825.htm, http://english.court.gov.cn/2015-12/01/content_22595464_8.htm, and <https://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm>.

92 See Section 10.4: Feng Zhouguan – Disturbing the Peace by Berating Xi Jinping (Administrative) – 2018.

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- "I heard that the dead firefighter was a native of Tongzhou, Beijing? Well, they deserve it, Beijingers deserve to die! I heard that a Beijing family of five died in the Hualien earthquake in Taiwan? Well, even more deserved . . ." ⁹³
- "It's my obligatory duty to anger the people of the capital. If you are Mr. Fireman or if you're from some other place, I absolutely respect you. But if you're a Beijinger, don't blame me for gloating. Just take a look at what people from your home town are saying, ha ha." ⁹⁴

These statements do not come across as "angry" or "vehement." ⁹⁵ More importantly, "berating" presumably requires some awareness on the part of the person being berated, and the leader of China was unlikely to feel "berated" by the first statement, given it was posted in a private WeChat group. And while the latter two statements were publicly posted on Sina Weibo, the deceased firefighter was simply not susceptible to feeling berated. Given this, perhaps something milder and less directed, like "mocking" or "deriding," would be a better translation for "辱骂."

So one is then left to ask: should a term be translated solely based on the context in which it appears in the law (in which case "berate" may not be strong enough), or should it also take into account the context in which it is applied by the courts (in which case "berate" may be too strong)? Other reasonable alternatives ("disparage" or "verbally abuse") have their own drawbacks (the former does not capture the "physical" nuance, and the latter is too broad, in addition to being two words, which I have tried to avoid). In the end, I decided to follow China Law Translate, and have used "berate."

While some terms like "辱骂" are difficult to translate because there is no obvious English equivalent, other terms present the opposite problem, as it is often difficult to discern the nuanced differences between two given words, in either language. For example, while people can probably agree that there is a difference of degree between "vilify" and "belittle," is there a meaningful difference in degree between "vilify" and "malign," or "belittle" and "smear"? Therefore, for those "bad speech" terms that do not commonly appear in PRC laws, I have chosen translations that, to my ear, seemed to sound best in most contexts in this casebook. Readers are cautioned not to take these translations too literally.

Finally, there is the term "恶劣," which appears in Article 293 of the Criminal Law in the phrase "情节恶劣的." Others have translated this term in this context as "bad," "heinous," or "vile" circumstances or "to a flagrant extent." I ruled out the latter because I have already chosen to translate "公然" as "flagrant." "Bad" seems too mild, as well being unhelpful given that actions warranting punishments are presumably inherently "bad," while "heinous" and "vile" carry moral overtones that did not seem appropriate for a legal provision (though perhaps that nuance was precisely what the drafters of Article 293 intended to capture). If the term had appeared only in this context I probably would have preferred to translate it as "aggravated circumstances." The term often appears, however, modifying the phrase "social influence," and in that case "aggravated" seemed confusing. I therefore settled on "offensive" which, admittedly, presents its own issues.

93 See Section 14.3: Xu Chang – Defaming a Martyred Firefighter – 2018.

94 Ibid.

95 "Berate" is variously defined as "to scold or condemn vehemently and at length" (Merriam-Webster) and "to criticize or speak in an angry manner to someone" (Cambridge).

1.9. Translating PRC Legal Terminology

The legal translation question I struggled with the most was how to translate the offense of "寻衅滋事" (xúnxìn zīshì), which appears in Article 293 of the Criminal Law and Article 26(iv) of the Public Security Administrative Punishments Law. Before discussing why I chose to translate it as "disturbing the peace," it might be helpful to understand how a crime that "was essentially formulated to handle real-life small-time gangsters,"⁹⁶ came to be used to punish online speech. Here is how it was summarized by two academics at the Guangzhou University Institute for Human Rights:

In September 2013, the Supreme People's Court and the Supreme People's Procuratorate issued the "Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Specific Application of Law in the Handling of Defamation through Information Networks and Other Criminal Cases" (Judicial (2013) No. 21), in which paragraphs 1 and 2 of Article 5 both deal with improper words and deeds on the Internet which, after reaching a certain level, will be investigated for criminal responsibility as a crime of xúnxìn zīshì.

....
In the Judicial Interpretation of the crime of xúnxìn zīshì the provision "Where fake information is fabricated, or where information is clearly known to be fabricated and fake, and it is disseminated on information networks, or persons are organized and incited to disseminate it on the Internet, to create a disturbance and cause severe chaos in public order" can be compared with this provision of Article 293 of the Criminal Law: "Creating a disturbance in a public venue, causing severe chaos in public venue order." The Judicial Interpretation redefined public venues, and thereby brought the new subject matter of online public opinion within the scope of the criminal law."⁹⁷

One dictionary translated "寻衅滋事" as "pick quarrels and stir up trouble; stir up fights and cause trouble."⁹⁸ PRC government sources offer at least three different translations:

- Picking quarrels and provoking troubles;⁹⁹

96 "2013年9月最高人民法院、最高人民检察院发布《关于办理利用信息网络实施诽谤等刑事案件适用法律若干问题的解释》(法释(2013)21号),其中第5条第1款和第2款都把网络上的不当言行,在达到"一定程度"后以寻衅滋事罪追究刑事责任...寻衅滋事罪的司法解释中"编造虚假信息,或者明知是编造的虚假信息,在信息网络上散布,或者组织知识人员在信息网络上散布、起哄闹事,造成公共秩序严重混乱的",与刑法293条规定的:"在公共场所起哄闹事,造成公共场所严重混乱的"的情况对比,司法解释属于重新定义了公共场所,把网络舆论这一新事物纳入了刑法的规制范围." Liu Zhiqiang (刘志强) and Song Haichao (宋海超), "Three Characteristics of the 'Judicial Interpretation of the Crime of Disturbing the Peace.'" (寻衅滋事罪司法解释"三性"审视), *Academics (学术界)*, Issue No. 5, May, 2020. This text was taken from the version of that article published at <https://mp.weixin.qq.com/s/kbCrJJfkLJ-PL7PBmjwQ0YA> (subsequently deleted by the poster).

97 Ibid. Liu and Song also noted in their article: "Most of those in domestic academic circles have either resolutely opposed, or hold a very negative attitude toward, the crime of disturbing the peace. Many scholars in criminal law circles have published papers discussing the flaws associated with determining what constitutes the crime of disturbing the peace, including determining the standard for the offense, the difficulty of judicial application, and generally focusing on opposing the existence of the crime of disturbing the peace and restricting the scope of application of the crime." (国内学界对寻衅滋事罪的态度大多都持坚决反对或者十分消极的态度,刑法学界很多学者都曾发表论文论述寻衅滋事罪的犯罪构成缺陷、罪名认定标准、司法适用困境,总体上以反对寻衅滋事罪的存在和限制该罪名适用范围两方面为主).

98 English-Chinese – Chinese-English Two-Way Law Dictionary, China University of Political Science and Law Publishing, 1998.

99 "Report on the Work of the Supreme People's Court (2014)," <http://english.court.gov.cn/2015-07/15/con->

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- Creating disturbances;¹⁰⁰ and
- Provocative acts.¹⁰¹

Although each of these is an acceptable translation, I have translated "寻衅滋事" as "disturbing the peace," for three reasons. First, I have already used "creating a disturbance" as my translation of "起哄闹事." Second, while I believe "provocative acts" best captures the spirit of the offense, it is too vague and does not accurately represent the terms "寻衅" and "滋事." Third, while "picking quarrels and provoking troubles" is a literal translation, in the context of how the offense is applied to pure speech conduct in the PRC, I feel it fails to capture the government's position (as demonstrated by several judgments in this casebook) that online remarks can disturb the "peace" of the State, even when they are only published on websites that the government has blocked using the Great Firewall, with no showing that anyone in the PRC actually viewed the remarks, much less could have been provoked by the remarks to undertake such overt acts as "quarrels." Rather, the offense is any conduct that, while falling short of inciting subversion through defamation, rumors, or other means, nevertheless disturbs "peace" as an abstract concept – whatever the current leadership defines that to be.¹⁰²

1.10. Acquiring, Using, and Sharing This Casebook

I have made this casebook available at no cost and with no digital rights management under a Creative Commons Attribution 4.0 License, which I hope will make it easier for others to build on, learn from, and share these materials. The full license is included at the end of this volume, but basically it allows you to do whatever you want with my translations and summaries of the documents in this casebook, in whole or in part, as long as you provide attribution and do not violate any rights of other parties, imply my endorsement, or try to impose any additional legal or technical restrictions on the text. So feel free to download, excerpt, cut, copy, paste, share, revise, reorder, and redistribute.

Unless, of course, you are in the PRC. Because, although all of the rights granted under a Creative Commons Attribution 4.0 License apply to those in that jurisdiction, no effort has

[tent_21289242.htm](#) ("The people's courts at various levels concluded 303,000 criminal cases of property violations and convicted 398,000 criminals in total. It released judicial interpretations on handling criminal cases of picking quarrels and provoking troubles . . .") and "Gazette of the Supreme People's Court No. 209, (2014)3 GPTSPCPRC [T209], http://english.court.gov.cn/2016-04/05/content_24298057_3.htm ("Supreme People's Court Supreme People's Procuratorate Interpretation on Issues concerning the Application of Law for Criminal Cases of Picking Quarrels and Provoking Troubles").

100 "Criminal Law of the People's Republic of China," Article 293: "Whoever commits any of the following acts of creating disturbances, thus disrupting public order . . ." http://english.court.gov.cn/2015-12/01/content_22595464_27.htm.

101 "Law of the People's Republic of China on Penalties for Administration of Public Security," Article 26: "A person who commits one of the following acts . . . (4) other provocative acts." http://english.court.gov.cn/2016-04/15/content_24562825.htm.

102 As of the publication of this casebook, maintaining the government's peace is defined as maintaining the ruling position of the Communist Party of China: "The most fundamental matter for maintaining political security is to maintain the leadership and ruling position of the Communist Party of China and the socialist system with Chinese characteristics. Only by unswervingly maintaining political security can we better ensure the interests of the State and achieve governance by the Party over the long-term." (维护政治安全最根本的就是维护中国共产党的领导和执政地位、维护中国特色社会主义制度.只有坚定不移地维护政治安全,才能更好地保障国家利益,实现党长期执政.), "The Cornerstone of the Great Undertaking of 1,000 Years (Xi Jinping's New Era of Socialism with Chinese Characteristics Q&A (42)) (千秋伟业强基石(习近平新时代中国特色社会主义思想学习问答(42))), People's Daily, September 14, 2021, p. 5.

1.10. Acquiring, Using, and Sharing This Casebook

been made to distribute this casebook in the PRC and comply with the PRC's prior restraints regime.¹⁰³ As one PRC court put it in one of the cases translated in this casebook: "Publishing and printing must be authorized by publishing agencies pursuant to a signed Book and Periodical Printing Commission and in accordance with strict registration procedures." Therefore, anyone in the PRC considering sharing this casebook is encouraged to first review the cases in Chapter 4 "Prior Restraints," and consult a PRC qualified lawyer.

1.11. Chinese Language Texts

The original Chinese language texts on which my translations are based are available separately in "State Prosecutions of Speech in the People's Republic of China, Volume II: Cases in the Original Chinese." That volume also includes the full texts of the partially translated judgments in Appendix II: Individuals Imprisoned for Posting on Twitter.

1.12. Feedback and Contributions

I would be very happy to hear from anyone who:

- Can offer any corrections or improvements to the translations in this casebook;
- Has any suggestions for how this casebook can be improved; and
- Would like to suggest the inclusion of a new document or provide a translation of one for future editions of this casebook, provided they are willing to (a) offer it under the same, or broader, license as the other translations in this casebook and (b) allow me to edit and format the translation to make it consistent with the translation and style conventions used for the other translations in this casebook.

1.13. Acknowledgments

I would like to thank Donald Clarke, Hilary K Josephs, Carl Minzner, and Kurtis MacFerin for looking at drafts of this casebook and offering valuable advice and feedback.

I would like to thank David Cowhig for allowing me to use his translation of the Liu Xiaobo judgment as the basis for my own translation.

1.14. About the Translator

My first experience in China was in 1989, when I took a year off from college to study Mandarin in Nanjing and Taipei. I received my Bachelor of Arts degree in Chinese Studies from Grinnell College in 1992, after which I spent a year studying at the Inter-University Program for Chinese Language Studies at National Taiwan University. I received my Juris Doctor degree from Stanford University Law School in 1998 and was admitted to the California Bar the same year. I was an associate at the law firm of Latham & Watkins in San Francisco and Hong Kong from 1998 to 2002. From 2002 to 2007, I was a staff member at the Congress-

¹⁰³ Translator's Note: In fact, as of the date of publication, three different tests indicated that the website where this casebook is first being made available (www.feichangdao.com) is not accessible in the PRC, presumably because it is blocked by the Great Firewall.

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sional – Executive Commission on China. From 2007 to 2021, I was an in-house legal advisor for Google based in Beijing and Taipei.

Unlike the compilers of *State Trials*, I lack many of the qualifications that would benefit someone assembling a casebook such as this one. I studied Chinese language, history, and literature in an American college, and law in an American law school, and I have spent much of my career doing work that required me to read and understand Chinese language legal documents. But I hold no qualifications in PRC law. What legal training I do have is in a common law jurisdiction, while the PRC is a civil law jurisdiction. In addition, I have no formal training in translation. Therefore, while the translations in this casebook represent my best efforts, readers should keep in mind that I am a lay-person in the fields of PRC law and Chinese-English legal translation.