

# My Appeal

Zhang Haitao (张海涛), the appellant, raises the following points of dissent against the decision of the municipal intermediate court.

1. Perjury, illegally-obtained evidence, and evidence that does not adhere to common sense should be excluded.

The testimony of Yu Xinyong (于新永) is perjured, either fabricated by those handling the case or falsely asserted by Yu Xinyong himself. Evidence that is obtained by the violation of the right to silence and privacy of the defendant, and confession obtained through torture, is not admissible.

The testimony of internet users with whom I've only had fleeting contact cannot reasonably be used as evidence of anything.

2. Absurd logic, errors in legal applicability

[The verdict has] ubiquitous logic problem where, for example, Chinese Communist Party = China; opposition = subversion; dissenting opinions = rumor mongering and slander; peaceful expression = severe harm.

Laws that delimit what information can and cannot be made public are applicable to state organs and civil servants. It is an error in the application of the law to charge an ordinary citizen with “illegal spying” and “leaking intelligence” for publishing written accounts online of things he has seen and heard in public. The judgement is therefore unreasonable and ridiculous.

3. The judgement is full of Cultural Revolution-style thinking and language

The websites and media organizations through which I published my views are privately run, and do not belong to any government or governmental organization. Yet they were labeled “hostile,” “reactionary,” “anti-China,” and “collaborators.” When Chinese leaders speak readily of the age-old ties of friendship between the people of the two countries, how could interactions between the people of those countries become such serious political crimes?

Appellant: Zhang Haitao  
January 2016

**[Zhang Haitao's 11-point rebuttal:]**

1. Opposing the Party and subverting the state regime have been equated with one another, as though the Party and country are indivisible. Are we in the era of a Party-state?

Opposition is a peaceful expression — subversion is violent change. Equating opposition with subversion is inverting black and white.

2. Being punished for insulting and slandering a political party

The terrorists who killed cartoonists at “Charlie Hebdo” subscribed to the following logic: Islam is a belief held by over one billion people; Muhammed is the prophet of the Islamic religion; “Charlie Hebdo” has engaged in long running insult and mockery of the prophet, and should thus be punished.

The prosecutors have used my long running insults and attacks on the Communist Party online as evidence of crime, and thus seek to punish me. Is there any difference between this logic and that of the terrorists?

Xinjiang is an area with regular outbreaks of violence — so I hope that the prosecutors don't extend this extreme logic to the protection of people's rights and the rule of law here. You are inviting the public to make connections between your behaviors and the violence in Xinjiang.

3. The Communist Party is a social organization, and whether or not it holds power, it enjoys no special privileges. Opposing it is the right of citizens, and forbidding opposition is the character of a fascist political party.

4. Regarding the accusation of “publishing and republishing large numbers of essays and photographs spreading rumors and slander against the state regime and the socialist system,” and “spreading rumors and misrepresentations about the stability maintenance system”:

I am not the kind of person who simply makes things up, I haven't plucked a single fact from thin air, and I have never been subjected to administrative or legal sanction for doing so.

What I've published are only things that I have personally experienced, seen, or heard, my own thoughts and commentaries, and my opinions and understandings. That they differ from the thoughts of other people does not make them rumors and distortions!

It's normal to recognize differences between the appearance of a thing and its essence — it's common sense, and you cannot force me to accept the one-sided propaganda that everything is what it appears.

For instance, the question of whether the Chinese Communist Party is “great, glorious, and correct.” I believe that in essence the CCP is not great, not glorious, and not correct. Is that spreading rumors and distortions? When I read out “Long live Chairman Mao” in the first class of elementary school, was that spreading rumors?

I also believe that power in China is ordered from top to bottom, yet at the trial of first instance the prosecutors claimed that the fact that there are elections in China demonstrated that I was “spreading rumors.”

As for corruption, state media always claims that the reason officials are corrupt is due to the slackening of their personal moral standards and self-discipline — but I think it's because they're not subject to any supervision and accountability by the public. Thieves and burglars, cheats and criminals, they also lack moral virtue — but why don't they steal from the public purse? Because they can't. The folk saying in China that “there's no official who's not corrupt” is exactly what I think about corruption — is this spreading rumors and slander?

As for how to understand the numerous violent outbursts in Xinjiang: whenever such an incident takes place, the authorities always quickly define it as terrorism, and say that the attack was caused by the long-term influence of extreme religious ideology. I think this is just a one-sided story by official media, it lacks specifics, and there were no terrorist organizations that announced they were behind the incidents in question (state media always claims that such attacks are due to collusion with foreign forces) — I don't have to go along with what everyone else says. I've lived in Xinjiang for many years, and have traveled across the province: the education system, propaganda system, media, and internet aren't controlled by an extremist religious organization, so how did those involved in these incidents get exposed to long-term extremist religious ideology? Is my questioning of this claim spreading rumors and distortions?

As for discerning whether the essence of a thing is identical with its appearance, people arrive at different determinations. I think that part of it is simply due to an individual's level of discernment — but more importantly, foremost consideration is given to the environment people live in and their personal interests at stake. This explains the behavior of the adults and officials in the story “The Emperor's New Clothes.” I'm just the kid, saying what I really think. Even if I'm not as accurate as that child, it's certainly not because I'm spreading rumors and distortions!

5. Regarding the prosecutor's accusation that I was “hired as a journalist for a foreign website”:

In 2010 when I had just become acquainted with the functions of Boxun (博讯网), I found the user registration button at the top of the website. A few minutes after I registered I received an email saying “Congratulations on becoming a special correspondent for Boxun.” There was no contract of employment; I didn't receive a cent; no one from the website contacted me; no one assigned me any tasks; no one gave me any instructions. What is the difference between this and setting up a user account on any other website?

The prosecutor's claim is a language game. It's as though, if I had named my son “president,” the prosecutor would somehow think that he was the actual president.

6. Some of the terms used by the prosecutors include: “foreign website,” “collusion with foreign organizations,” “reactionary,” “hostile forces,” and so on. In my view, the internet doesn't have national boundaries. When I go online, I'm interested in the websites I visit, not where their servers happen to be located or where the webmasters are. It's similar to when shoppers go to a supermarket — they won't necessarily pay attention to whether the goods they're buying are produced domestically or imported, or who manufactured them. Calling what I write on these websites “collusion with reactionary hostile forces” is a foul thing for a politician to say of the free speech of a citizen. This sort of claim should never have made it to the courtroom. Holding a different opinion does not make one a reactionary.

The principle that “everything which is not forbidden is allowed” is every citizen's fundamental legal protection. Which of the websites and media organizations on which I've expressed my opinions — what the prosecutors have termed “foreign organizations” and “foreign websites” — are legally defined as “reactionary” or

“hostile,” and which citizens are prohibited from accessing and expressing themselves on? My writings are a peaceful expression — they don’t spread violence, they don’t discriminate against racial, ethnic, or geographic groups. Anyone can disagree with me or criticize me. The law, however, should protect my right to speak.

7. The question of my book collection on my computer: My computer is my personal library, and I store all sorts of books on it, including a large number of books criticizing Mao Zedong and the Communist Party. Are these books banned by law? Even if they are, is there a crime in personally storing them?

I cannot live my life simply accepting one viewpoint. No one can deprive me of the freedom to access and consider alternate viewpoints.

8. Regarding the accusation of “on sensitive dates, actively gathering information about deployments of police:”

I need to live life normally every day — I don’t want to have my life marked by frequent “sensitive days.” In 2010, after I had my personal and property rights violently infringed upon by police, and elected to lodge an appeal for my own rights, I became a “sensitive person” in the eyes of the authorities. On June 4, July 5 [the date of riots in Urumqi], during the China-Eurasia Expo, and other sensitive dates, security agents put me under tight surveillance.

In the time leading up to the China-Eurasia Expo in 2010, as soon as I left my apartment I was bailed up by a local policeman and forced back inside. For a week, a police vehicle parked downstairs, and stability maintenance officials used old sofas to barricade my front door. The officers worked in shifts every day, guarding me 24/7, stopping me from leaving the house. One time, after they hadn’t heard any sounds in the apartment for a while, they smashed through the peephole in the door to look inside and see what was going on inside.

On every so-called sensitive date, whenever I went outside I was followed closely behind by unidentified individuals in plainclothes. They’d either walk right behind me, deliberately stepping on the heels of my shoes, or walking in front, hemming me in by walking as slow as ants, blocking my path. Even though there were many security agents, cars and sentries around, and I asked for their help on multiple occasions, they didn’t bat an eyelid at the harassment happening to me in front of

their eyes. They said that they'd only intervene if there was a sudden mass incident.

There were also some strange moments when the stability maintenance personnel would seek me out and ensure that I was at home, and ask what I was doing. Only later did I figure out that these were occasions when violent attacks had just taken place.

It's you people who are constantly reminding me of what the "sensitive" dates are; it's you who are forcing onto me the news about these stability maintenance and police activities — so do I even need to go and pry into and collect information about these things?

The mainland China of today is a society that has been through 30 years of economic reform and development, it's a focal point for the international press, and the stability maintenance and anti-corruption campaigns are the hottest topics. During the 18th Party Congress, or during the Jasmine Revolution and other events, there were numerous detailed reports about the disposition of stability maintenance security forces in public spaces. So when I publish online what I've seen with my own eyes about police movements, this somehow becomes the crime of "spying for foreign forces and illegally providing situation reports"? Is it that the foreigners are enjoying extraterritorial privileges, or that Chinese don't deserve to have human rights under the rule of law?

During the trial of first instance, the prosecution and defense homed in on one point: they each cited different legal documents in an attempt to establish whether certain information should or should not be made public. I was of the belief that the applicable subject of the two laws should be state officials and civil servants — that they did not apply to individual citizens. If it becomes illegal for citizens to discuss among themselves things they've seen and heard out in public, it's then an undisguised literary inquisition.

9. Issues with witnesses and testimony. As the judgement says: "Witness Yu Xinyong testifies and confirms that defendant Zhang Haitao often slandered the Party's policies during daily gatherings with other people."

Yu Xinyong and I have not even met. We've merely spoken on the phone two or three times for a few minutes — I simply asked whether he's in Shandong now, whether he'd met up with Deng Qijin or knows what happened to him, and nothing else. I do not know where this witness testimony came from. The various other

witnesses and testimonies are mostly from 2011 and 2012 from a few gatherings with netizens. It's a long time ago, the purpose of these gatherings was to acquaint and have chat with each other, and these people should be excluded as witnesses.

10. In order to know whether **Voice of America** or other overseas media are hostile foreign forces, prosecutors would have had to make an enquiry with the relevant organs; as ordinary citizens would see it, these must be agencies dealing with national security and state secrets. If one were to directly attempt to find out, that would be considered illegal prying; yet not looking means that one could fall into the enemy's snares anywhere online, or step on a reactionary landmine — how could citizens handle that? Given that they're hostile forces, why has **Voice of America** been operating an office with journalists in Beijing for so long?

11. I did not commit any crime that harmed anyone; nor have I been involved in economic crimes that involved a single cent. In this information age, I'm a citizen journalist, an independent commentator, and I record online the things I see and experience in my daily life. Me sharing my own true thoughts and feelings and communicating with the vast body of internet users is not for personal or economic benefit, nor is it in the service of any organization.

Your equation of opposition to the Party with subversion of the state is Party-statism; your allowance of basic freedoms for Westerners then depriving them from the Chinese people is treason; your equation of criticism of Party and government policies with endangering state security and interests, and using this as a pretext for stripping citizens of their liberty, is classic fascism. You're a disgrace to the nation, and you're fighting against the current of history. [China's] path to North Korea is forged with the silence of the citizenry. I use my keyboard and computer mouse to express my own voice, and I have no qualms about having lived up to what the times require of us.

The pursuit of liberty has setbacks, but never does it fail.

## 上诉状

上诉人张海涛对市中院的判决书如下异议：

一、伪证、非法证据、不合常理证据应予排除。

于新永证言系伪证。是办案人员炮制或于新永的虚假陈述。

侵犯本人沉默权、隐私权。刑讯逼供、诱供得到的本人供述系非法证据。

一些一面或数面之交，没什么了解的网友证言是不合常理证据。

二、逻辑荒谬，法律适用对象错误。

中共=中国，反对=颠覆，异议=造谣、诽谤，和平表达=严重违法……如此逻辑比比皆是，不一而足。

界定什么需公开，什么不能公开的法规，适用对象是国家机关和公职人员，公民发牢骚在网上发表一些公共场合经历见闻的文字，被认定为非法刺探、提供情报、犯罪，是法律适用对象的错误，更是不合常理的荒诞行为判决。

三、充满斗争思维，文革大字报式的政治批判。

我发表言论的这些网站、媒体都是民营的，不属于任何政府及政府组织，何以却被冠以敌对、反动、反华、勾结之辞。政客们把两国人民友谊源远流长的口号挂在嘴边，而民间的这种互动交流何以成为如此严重的政治罪行。

上诉人：张海涛

2017.1.

年 月 日

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新华网

1. 反对党与颠覆国家政权，把二者等同起来，属党同不分。现在还是党同时代吗？

反对是和平表达，颠覆是暴力改变，把反对等同于颠覆是颠倒黑白的行为。

2. 辱骂诽谤党与受刑罚。

制造《查理周刊》事件的恐怖分子的逻辑是，伊斯兰教是十多个穆斯林的信仰，穆罕默德是伊斯兰教的先知，《查理周刊》长期辱骂、调侃先知穆罕默德，所以应该受到惩罚。

检方以我长期在网上发表辱骂、诽谤党的言论作为罪证，欲刑罚于我，这和恐怖分子的逻辑有何区别？！

新疆是个暴力事件频发的地方，检方不要把这种极端的思想逻辑带到保护公众权利的法治中，舆论也会思考你们的行为与新疆暴力事件的关系。

3. 党是社会团体，无论执政与否均无特权。反对是公民权利，禁止反对是法西斯性质的政党。

4. 关于“发表、转发大量造谣、诽谤国家政权、社会主义制度的文章和照片”、“造谣歪曲维稳形势”的指控：

本人从不无中生有、凭空编造任何东西，更没因此受到过行政和法律处罚。

本人发表的只是个人经历见闻、个人思想评论、观点见解。与

年 月 日

第 1 页共

博讯

Boxun.com  
新闻网

他人不同的思想观点不是造谣歪曲！

对事物事件表面现象与本质的认识问题，存在存在不一致是科学的，是基本常识，不能强迫我接受事物事件都是表里如一的单方宣传。

例如中共伟光正的问题，我认为中共本质上不伟大，不光荣也不正确，这算造谣歪曲吗！

中共自身也从几十年一赞伟光正的宣传中，改口称犯过严重的历史错误，这是造谣歪曲吗！

我认为共运从理论上被绝大多数国家抛弃，从实践上也形将被国际发展潮流淘汰，这是造谣诽谤吗！我读小学第一课“毛主席万岁”这是不是造谣！

政府各级官员权力来源问题，我认为自上而下授权，检方在一审时以产生于选举为由认定我造谣。

对反腐问题，官媒总是声称官员腐败是因为放松了自身道德品质修养。我认为其拥有不受公众监督的权力。各类抢劫盗窃、诈骗犯罪分子，他们也放松了道德修养，为什么不去贪腐，因为他们没有这种权力。民间流传无官不贪

的说法和我对腐败问题的认识是一致的，这是造谣诽谤吗？

对新疆发生多起暴力事件的认识问题，官方总能迅速定性为恐怖袭击，并公布事发原因在于袭击者长期受宗教极端思想影响。我认为只有官媒一家之言，缺乏具体描述，没有

组织声明负责(官媒总是称此类事件是境内外勾结)等等,没有人云亦云的附和。

我长期生活在新疆,去过新疆很多地方,这里的教育、宣传媒体、网络并没有控制在极端组织手中,当事人是如何长期受其思想影响的?我质疑是造谣歪曲吗!

对事物事件表象与本质是否一致的认识问题,我认为有人的认识水平因素,但更多的是所处环境和对自身利害关系考虑等因素。如《皇帝的新装》里那些大臣、大人。我只是那个小孩,表达了自己真实的看法。即使没有那个小孩正确,但决不是什么造谣歪曲!

5. 关于检方指控“受聘担任境外网站记者”一说

本人2010年刚开始接触博讯网时,浏览网站各项功能菜单,上面有个注册区,注册几分钟后收到网站自动下发的电子邮件“恭喜你成为博讯网特约记者”。没有聘书,不拿一分钱,网站没有任何人和我联系,网站不给任何任务,不受任何人指使,这和其他网站注册一个帐号发言有何区别?!

检方指控是在玩文字游戏。如我给儿子取名叫总统,检方把名字是总统曲解为工作职位是总统。

检方的一些名词: 境外网站, 境外组织, 勾结, 反动, 敌对势力等

年 月 日

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博讯 Boxun.com  
新闻网

我认为，互联网没有国界，我上网关注的是网站本身，没必要关注其服务器在什么地方，网站管理者在什么地方，就象顾客去超市购物，没必要关心是国货洋货，谁造的。把我在上面的发言称之为勾结、反动、敌对势力，是政客对公民的泼污语言，这不应该出现在法庭，不同的声音不是反动。

法无明禁即可行是法治对公民的保护，我发表言论的这些网站和媒体，检方所谓的境外组织、境外网站，哪一家是法律界定为反动的、敌对的、禁止公民访问发言的！我的言论是和平表达，不宣扬暴力，没有种族、民族、地域歧视观点，任何人可以不赞同、反驳、批评我的言论，但法律要捍卫我说话的权利。

7. 电脑藏书问题。电脑是我个人图书馆，我收藏了各类书籍，其中包括大量批毛批共书籍，法律有界定这些书是禁书吗？即使是禁书，私人收藏何罪之有！

我不能一生只接受一种主张观点，任何人不能剥夺我了解、接触其他主张观点的自由。

关于“在多个敏感节点，积极搜集街面维稳警情在情”的指控。

我需要每天如一日平常化的生活，不希望隔三岔五的在敏感中度日

我是2010年被警察暴力侵犯人身权财产权后，主张申诉自己权利时成为当局敏感人物的。在六四、七五、亚博会等许多敏感日子里，受到了维稳人员无微不至的关照。

2011年亚博会前，我一出小区即被片警艾塔洪绑架回家，此后一个多星期里，警车停在我楼下，维稳人员在外面用废沙发紧堵着我家门，每天几班倒，二十四小时守候着不让我出门。在一段时间听不到屋内动静后，还砸掉了防盗门上的猫眼向里面观察。

在一些所谓敏感节点的日子里，出门被便衣人员跟踪骚扰，要么走在后面不断踩我鞋后跟，要么走在我前面，缓慢如蚁行，灵活如蛇行般地阻挡我走路。虽然路边维稳人员、车辆尚多，虽然我也多次向他们求助，但他们对发生在眼前的这些行为，不是置之不理，就是表示他们只能处理一些突发性、聚集性事件。

还有一些莫名其妙的時候，突然受到维稳人员的关照，了解一下我在不在家，在做什么。事后才知道，这些时候，往往是刚刚发生了暴力事件。

是你们随时在提醒我所谓的敏感节点，是你们把这些所谓的维稳警情在情强加于我，我需要刺探，需要和极搜集吗！今天的中国大陆社会，是改革开放三十多年后的社会，国际媒体记者云集，反腐和维稳是最受关注的热点，在18大、茉莉花革命

年 月 日

第 5 页共 博苑网 boxun.com  
新闻网

等期间,都有大量对公共场合维稳情况的详细报道,我个人把公共场合维稳情况的经历见闻评论发在网上,就成了“为境外刺探、非法提供情况报”的罪证!是洋人们享有法外特权,还是国人不配享有法治下的自由人权!

一审时控辩双方的一个争论焦点:分别援引不同的法规<sup>律文件</sup>争论哪一些信息该不该公开。我认为这两个法规的适用对象都是国家机关及公职人员,不适用于公民个人。公民谈论一下在公共场合的见闻也违法,是赤裸裸的文字狱。

9. 一些证人证言的问题:如判决书称:“证人于新永证言,证实被告人张海涛在日常聚会中,经常发表诬蔑我党政策的言论。”

我和于新永根本就没见过面,只打过两三次电话短短几分钟时间,就是问一下他在山东有没有见到过邓启金,现在下落,除此无其它话题。不知这份证人证言从何而来,由此,其它多份证人证言,大多来自2011、2012年的几次网友聚会,过<sup>时</sup>时间长,人员也不固定,主要就是互相认识~~一~~、清谈,这些证人证言也应该排除。

审判机关也需要发函才能确认美国之音等系境外敌对、反动网站,对于公民个人来说,这也应属于关系到国家安全利益的机密或情况了,公民发函查询是非法刺探,不查询,上网处处都可能踏进敌对的陷阱,踩上反动的地雷,这让

公民何以遵从。另既然是敌对的，美国之责在北京挂牌的  
记者站却长期运作。

11. 我不是危害到任何人的刑事犯罪，也不是涉及到一分钱利益  
的经济犯罪。\* 在这个信息时代，我是公民记者，是独立评论  
人，在网上记录自己生活中的经历见闻，发表自己内心真实的  
思想感受，与广大网友沟通交流分享，不为任何经济利益也  
不为任何组织服务，我无愧于生活的这个时代。  
你们把反对党等同于颠覆国家是党国主义，  
把这片土地上洋人都享有的基本自由，从国人身上剥夺是卖国主义，  
把批评党和政府政策视为危害国家安全和利益，以危害国家  
安全和利益为由，剥夺公民自由，是典型的法西斯主义。  
你们是国家的耻辱，时代的逆流。

通往朝鲜的道路，沉默铸就，我用键盘和鼠标，发出了  
自己的声音，我无愧于这个时代。

对自由的追求中，有挫折，但决不会失败。