

## Siding With The Dragon

BY EMMA SCHWARTZ

For years the United States sponsored a resolution at the United Nations to condemn China for human rights violations. Though the measure always failed, U.S. officials heralded it as an important attempt to push the world's largest nation toward democracy.

But when it comes to legal challenges to those violations, the United States has taken a different tack. Instead of blasting the Chinese government, the State Department is urging U.S. District Judge Richard Leon to drop a lawsuit accusing a top Chinese official of systematic human rights abuses against the Falun Gong, a religious group China banned in 1999.

The U.S. posture in the case against Bo Xilai, the Chinese minister of commerce and former governor of the Liao Ning province, serves as an illustration of the precarious, if not contradictory, position of the U.S. government when it comes to diplomacy with China.

On the one hand, the State Department's annual human rights reports routinely condemn China's treatment of minorities, including the Falun Gong. Yet the exigencies of commercial and geopolitical relationships with China have forced the U.S. government to take a position at odds with its public statements.

"As these cases have been brought against bigger countries—countries we have significant ties or commercial interests in—the government has proved to have a double standard," says Dinah Shelton, a human rights professor at George Washington University Law School. "It's one thing to bring an action against Ethiopia; it's another to bring them against the Chinese."

Last month the Justice Department filed a statement of interest in the U.S. District Court for the District of Columbia, asking Leon to drop the case, arguing that Bo has diplomatic immunity.

Though the immunity question makes the Bo case a long shot, it is likely to have an impact on the larger effort by members of the Falun Gong to seek justice for China's human rights abuses. The



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**TOUGH ROAD:** Falun Gong's lawyers, Morton Sklar (left) and Terri Marsh, are fighting the DOJ's attempts to have their case against a Chinese official dismissed.

case is one of more than a dozen similar actions against high-level Chinese officials filed in courts across the country, which D.C. lawyers Terri Marsh and Morton Sklar are coordinating. According to a tally on the Web site of Justice for Falun Gong, more than 60 suits have been filed across the globe, where they have, at times, evoked similar diplomatic trouble.

It is not unheard of for the government to come out in favor of foreign governments, the most prominent example being the Justice Department's intervention in a case brought against Iraq by former American soldiers who were captured and allegedly tortured by Saddam Hussein's regime in the first Gulf War. In 2003 the U.S. Court of Appeals for the D.C. Circuit sided with the government and threw out the nearly \$1 billion default judgment.

But the State Department's involvement "is itself a very, very significant event" because it indicates interest from the highest levels of government, says Stuart Newberger, a Crowell & Moring partner who has filed suits against Iran and Libya for acts of terrorism. The State Department declined to comment.

### FINDING FALUN GONG

A slight woman with frizzy brown hair, Terri Marsh hardly fits

the profile of a rabble-rouser against China. For one, the 56-year-old D.C. lawyer has never been to China and doesn't speak a word of Chinese.

But Marsh, a New York-born Jew who began practicing Falun Gong six years ago, is at the center of a broader effort to fight the human rights abuses against the group. "Bo is just a part of a larger campaign to bring high-ranking Chinese officials who participated in torture and human rights abuses against the Falun Gong to justice," Marsh says.

Ground zero is Marsh's office, a one-room enclave on the third floor of a dank building near the Chinatown district in Washington. Marsh speaks in slow, soft syllables. Her office barely fits a desk and two bookshelves, stuffed with legal books and loose papers. But from this perch, Marsh leads an effort with lawyers across the globe to file human rights cases for the Falun Gong.

The Falun Gong is a relatively new religious movement with a base in traditional Chinese religious practices, including Buddhism and Taoism, and draws heavily on the book of its founder, Li Hongzhi. The group boomed over the past two decades, but in 1999 the Chinese government banned the Falun Gong, labeling it an "evil cult." Since then, the State Department and other human rights organizations have documented numerous allegations of torture. Though some have criticized Hongzhi's grip on his followers, academics who have studied the group say his hold, while potentially harmful, does not rise to the level associated with cults.

To Marsh, the treatment of the Falun Gong is another sort of holocaust. She points to the plaintiffs in the Bo case, who include Li Weixun, a 47-year-old woman who, according to court filings, was allegedly beaten by the police with "boots and with a one-inch diameter steel pipe while suspended by handcuffs around her wrists till she bled" after being arrested Jan. 13, 2002, for printing and distributing material in support of the Falun Gong.

Verifiable numbers on the abuses are hard to come by, but the Falun Gong estimates that more than 100,000 of its practitioners have been detained or arrested in China and 20,000 have been sent to prison labor camps. Most recently, a study co-authored by a former member of the Canadian Parliament, David Kilgore, detailed how Chinese officials harvest organs from Falun Gong members for medical use. Marsh has filed a separate complaint over these allegations as well with the U.S. Attorney's Office in Massachusetts.

The Falun Gong has not sat on the sidelines. With a significant membership of expatriate Chinese, the group began its legal pushback in 2001, when Marsh got a call from fellow practitioners who asked her to spearhead the effort. Until then, she had mostly defended juveniles in D.C. Superior Court, so she boned up on human rights law and filed her first Falun Gong case, against the head of the public security bureau for the Hubei province, in 2001, in the U.S. District Court for the Southern District of New York.

Filing human rights cases was a far cry from two decades before, when, in 1979, Marsh got a doctorate in ancient political thought. She spent a decade teaching classics, but as she watched the televised crackdown on activists at Tiananmen Square in 1989, she began to wonder how the world could let that happen. Intent on doing something to make international law work, she headed to New York University School of Law.

Now, Marsh is fully immersed in the Falun Gong cases, on which she works with a cadre of attorneys. In the Bo case, Sklar of the World Organization Against Torture USA is taking the lead.

## THE IMMUNITY QUESTION

Falun Gong's toughest adversary in the U.S. courts has not been China but the U.S. government. In 2003 a judge threw out a suit filed against President Jiang Zemin in the U.S. District Court for the Northern District of Illinois, agreeing with the Justice Department, which said he had immunity as a head of state.

Marsh and her team are hopeful that a 2004 Falun Gong case in the U.S. District Court of the Northern District of California has set a better precedent for their cases. The Justice Department also intervened in that case, filed against the then-deputy governor of the Beijing province, Xia Deren. Yet Judge Claudia Wilken issued a default judgment in favor of the plaintiffs, although she declined to issue monetary damages.

The Bo case has been a diplomatic nuisance for the United States since it was filed in Washington's federal court in April 2004.

That month, while Bo was in Washington for the annual meeting of the U.S.-China Joint Commission on Commerce and Trade, Falun Gong served him with the complaint as he was heading to a dinner at the Fairmont Hotel. Days later, embassy officials wrote a letter to the State Department, calling the incident "a criminal assault."

Bo ignored the complaint, and in July 2004 the clerk of the District's federal court issued a default. Last fall, Leon, an appointee of President George W. Bush, held a hearing on the Falun Gong's motion for a judgment. Then, in February, he solicited the State Department's views on the case.

One month later, Li Zhaoxing, China's minister of foreign affairs, wrote a letter to Secretary of State Condoleezza Rice, stating that "if Falun Gong should succeed in its frame up lawsuit, China-U.S. relations, especially our economic and trade ties . . . will be adversely affected."

In a July 24 letter, John Bellinger, legal adviser for the State Department, told Leon that continuing the suit would leave foreign officials open to harassment while on diplomatic missions and would deprive the president of an "essential foreign policy tool." Falun Gong says it will respond to the DOJ's filing by Aug. 23.

Heads of state are routinely granted immunity, but lower-level officials have not always been immune, as was the situation for Deren. But Bo's case looks murkier because he was in the country on official government business, which the Justice Department argues should qualify him for immunity. Marsh and Sklar argue that because Bo was not an official diplomat, he does not deserve immunity.

Even if the case passes the immunity test, the government has objected to the very nature of the suit. "Any lawsuit that challenges the policies and action of foreign authorities in their own territory concerning their own citizens has an inherent potential to cause friction in foreign relations," the DOJ wrote in its brief.

Heading off government intervention in foreign-policy cases, Crowell's Newberger says, is extremely difficult because the court "will take deference to views of the president to properly weigh the foreign-policy implications."

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