

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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CHEN GANG, ET AL,      :
                        : No. 3:04CV1146 (RNC)
                        :
      Plaintiffs,      :
                        :
      vs                :
                        :
ZHAO ZHIZHEN, ET AL,  :
                        :
      Defendants.     : HARTFORD, CONNECTICUT
                        : MARCH 15, 2012
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ORAL ARGUMENT

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

APPEARANCES:

FOR THE PLAINTIFFS:

HUMAN RIGHTS LAW PROJECT
717 D Street NW
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Washington, DC 20004
BY: TERRI MARSH, ESQ.

FOR THE DEFENDANTS:

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BY: BRUCE S. ROSEN, ESQ.

Darlene A. Warner, RDR-CRR
Official Court Reporter

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10:00 A.M.

THE COURT: Good morning. Welcome back. Would you please state your appearances for the record.

MR. ROSEN: For the defendant. Bruce Rosen and Alicyn Craig.

THE COURT: Good morning.

MS. MARSH: For the plaintiffs, Terri Marsh, here for the motion to dismiss. Good morning, Your Honor.

THE COURT: Good morning. I've read your papers and I'm interested in hearing whatever additional presentations you would like to make this morning.

MR. ROSEN: Thank you, Your Honor.

THE COURT: You're welcome to proceed from there if that's more convenient for you.

MR. ROSEN: Just so my compadre can slip me notes if I need it, that's all.

May it please the Court, I would think that this has been briefed ad infinitum. I would try to focus on a few things we've raised and reserve some time to address Ms. Marsh's comments.

We've laid the reasons why we believe this case should be dismissed with prejudice. The pleading is insufficient under Twombly and Iqbal.

1 It fails to establish a nexus between the
2 defendant and the wrongs alleged.

3 It fails to establish a violation of
4 international law, especially where a target of the
5 lawsuit involves the type of non-cited statements that
6 Congress had exempted from foreign conventions on torture.

7 This complaint extends the right of private
8 action well beyond Sosa.

9 It attempts to punish non-cited speech in
10 violation of public policy.

11 It attempts to bypass this by an attack on hate
12 speech by classifying Mr. Zhao's actions as part of a
13 conspiracy where he aided and abetted torture through his
14 speech.

15 It's a direct attack on Chinese laws that
16 provide for reeducation of law breakers.

17 Truth is that the practice of Falun Gong is,
18 whether we agree with it or not in the United States,
19 illegal in China. To follow through with the logic of
20 this complaint, it would impinge on U.S. foreign policy
21 and the prerogatives of the other branches.

22 As I said many years ago and I'll say again, and
23 the materials are in there, just briefly about my client.
24 He is a science journalist. He has written and produced
25 thousands of presentations about all sorts of scientific

1 phenomena and all sorts of -- written about things from
2 the Chinese Olympics to pollution throughout China. This
3 is his life, this is what he's been doing. Nearly 70
4 years old.

5 Shortly before this lawsuit was filed, he was
6 the head of Wuhan Television. It's clearly -- he
7 considered himself an independent journalist, but the
8 state -- the media in China is state controlled. There's
9 no dispute about that. And he was free to pursue stories
10 within certain parameters, and he usually, as he said in
11 his certification many years ago, didn't need because he
12 was dealing with science, usually he was free to do
13 whatever he wanted to do.

14 He received a letter from some persons who were
15 critical of Li Hongzhi, I believe is his pronunciation,
16 but I'm going to say Li Hongzhi because it's spelled that
17 way. In 2004 and 2003, received some notes saying that he
18 was a fraud.

19 He sent a film crew out to his hometown. The
20 film crew came back with interviews of various people
21 saying that, I went to school with him, I did this with
22 him, I grew up with him. He's a fraud.

23 He put those on a shelf and, you know, a few
24 months later the Chinese government decided to make Falun
25 Gong illegal. And they took that film footage and created

1 a 30 -- approximately 30-minute presentation which we
2 presented to the Court called Li Hongzhi, A Man and His
3 Deeds. It's available on You Tube with the translation,
4 and I think the Court can see that it is nothing more than
5 sarcastic and it's something that you might see on a 60
6 Minutes, a Dateline, Primetime, any kind of a show like
7 that where the media is trying to expose something that it
8 believes to be fraudulent. And the Court can read for
9 itself. We provided the transcript in 2005. We will
10 provide the transcript again.

11 With all due respect, the belief system espoused
12 by Mr. Li, in China at least, can raise some skepticism
13 and Mr. Zhao is very skeptical.

14 And while it was caustic in its criticism of
15 Mr. Li and not of individual Falun Gong adherence, it was
16 nothing worse than what you would see on television. And
17 Mr. Zhao followed that up with some writings and he did --
18 he was one of the many, many, many founders of the Chinese
19 Anti-Cult Association, CACA, many, many founders. So many
20 founders that, as we point out in a footnote in the reply
21 to the surreply, I just was flipping through our papers
22 2005, and I see a Falun Gong website that points out all
23 of the important leaders of the CACA and he wasn't even
24 there.

25 But he wrote these handful of articles and he

1 participated to some degree in the Anti-Cult Association
2 including inviting them to use the Wuhan Television
3 website as their server and advised them. There's no
4 dispute, he said, bring everything in here, these people
5 are dangerous, let's share all the information about them,
6 it's important.

7 His personal articles referred to the Falun Gong
8 as a cult and advocated for treating cult members as the
9 government would do with addicts. There's no mention of
10 water boarding, no mention of sleep deprivation, electric
11 batons, arbitrary arrest, detention or any other method of
12 torture in anything that Mr. Zhao wrote or produced.

13 The plaintiffs allege a large-scale torturing of
14 Falun Gong adherence in Chinese prison. We're not here to
15 prove the truth or untruth of this. There's many reports
16 from independent outside agencies that say what they say.
17 What we're here for is to determine whether Mr. Zhao can
18 be held accountable for any of this.

19 The plaintiffs describe transformation
20 practices. Even the showing of a film such as A Man and
21 His Deeds, as torture. Even displaying this film and
22 forcing people to watch it is seen by them as torture.
23 It's seen as part of a deprivation of liberty, of
24 religious liberty.

25 The Chinese law and the Chinese Constitution

1 provide for reeducation for lawbreakers, for detention, a
2 kind of detention where they're exposed to a contrary
3 view. We don't accept or condone these type or kinds of
4 intrusions on personal liberties and religious freedoms in
5 the United States, but these are the laws of a sovereign
6 nation.

7 At bottom, the plaintiffs' complaint is with the
8 Chinese government and with its efforts to reeducate it
9 here it's through what is called a torture through
10 transformation. They essentially seek, and this is what
11 we've been saying since 2005, an adjudication that the
12 actions to the Chinese state are punishable in the United
13 States under the ATS.

14 I'd just like to look for a second at these --
15 what the plaintiffs are saying and go through the few
16 paragraphs in the complaint.

17 And paragraph 32 discusses that Mr. Zhao
18 instigated and disseminated anti-Falun Gong propaganda,
19 that he worked through various organizations to direct
20 that Falun Gong adherence be subject to transformation
21 practices. However, the complaint never defines what
22 those practices were by Mr. Zhao. It describes things
23 that they say happened to the plaintiffs, but it doesn't
24 say that Mr. Zhao tortured, doesn't say that Mr. Zhao
25 detained. What it says is that Mr. Zhao put out hate

1 speech.

2 We've referred to, many times in various briefs,
3 to a European sensibility. Doesn't make it a wrong
4 sensibility, it's just not our sensibility in the United
5 States. It's a sensibility that certain things should not
6 be said, and that is the kind of liability that they're
7 looking for here.

8 He created a climate of hate speech. There are
9 thousands and thousands of people creating climates of
10 hate speech throughout the United States. These are not
11 norms of international law. You're free to hate here, for
12 better or worse.

13 And this complaint never connects Mr. Zhao with
14 directing the specific torture that they're complaining
15 of, except that it says that Mr. Zhao provided these
16 broadcasts. It doesn't say that they handed the
17 broadcasts over. They're available from the television,
18 they're available from the website. He provided these
19 broadcasts as a tool that then could be used by the
20 jailers to use as a form of torture by showing these
21 videos over and over again.

22 Paragraph 49, he instigated security forces to
23 utilize the illegal practices of violence and torture.
24 Again, the violence and torture stem from the propaganda.

25 Paragraph 50, the transformation torture

1 practices are based on an ideological mandate to utilize
2 brutal illegal methods to force individuals to relinquish
3 beliefs. The propaganda was required to denigrate the
4 target's preexisting beliefs.

5 Again, the -- all of these written publications
6 or television production publications were made available
7 through either the website in a general way to anyone that
8 wanted to look at it, or the television, again in a
9 general way to anybody that wanted to look at it.

10 The most interesting thing to me is where the
11 plaintiffs have an opportunity to really come down and
12 come up with specifics is in paragraph 92 where there's
13 this allegation that Mr. Zhao was so connected with the
14 CACA that he basically ran it and that had direct line to
15 the low level security officials in this conspiracy that
16 somehow flew under the radar of the Chinese government
17 between the defendant and the -- who worked for state
18 media, and the low level security officials who were
19 torturing the plaintiffs in this case.

20 Paragraph 92 says that the website provided
21 handbooks and manuals to its members as well as officers
22 at labor camps and prisons. One of these handbooks is
23 titled Anti-Cult Work, Theory and Practice.

24 Now, you'd think, they found it, eureka, that's
25 it. Anti-Cult Work, Theory and Practice. There it is.

1 You have to keep people awake, you have to deprive them
2 of -- you have to put them in solitary confinement, you
3 have to use electric batons.

4 No, no, no.

5 The book includes, among other things, a list of
6 key points to make note of in the transformation process
7 and major difficulties and breakthrough solutions in
8 conducting transformation work. Other books teach
9 officers in prisons and labor camps how to make effective
10 counter-arguments against the Falun Gong practitioners
11 discussing the perceived absurdity of Falun Gong's
12 teachings. These materials are routinely distributed by
13 the CACA to prisons and labor camps across China in
14 collaboration with the Chinese Communist party and prison
15 and labor camp officials.

16 My question is -- to raise a media saying from
17 20 years ago -- Where's the meat?

18 Paragraph 95 and 96, under approval -- it then
19 states that it wasn't the national CACA, they were local
20 anti-cult associations that collaborated with the labor
21 camps that provided materials, and it really doesn't say
22 how Mr. Zhao was involved in these local associations.
23 And again they're saying the torture is forcing viewings
24 of anti-Falun Gong propaganda.

25 Paragraph 98, about Li Hongzhi inciting

1 anti-Falun Gong hostility and prosecution.

2 Distilling these allegations which we've said
3 over and over again are conclusory, plaintiffs allege that
4 Mr. Zhao produced at least one television report that's
5 about Li Hongzhi. We've never seen anything from the
6 others of the Tienanmen Square massacre, you could see
7 bits and pieces of those things on You Tube, but I've
8 never seen anything presented to the Court. We don't have
9 any copies of anything like that.

10 Numerous writings and was involved in the CACA
11 website. Together these publications literally -- if you
12 believe the plaintiff -- incited thousands of low level
13 security officials to violate Chinese law, to risk their
14 own arrest and the loss of their jobs.

15 They would have to do this by reading specific
16 instructions to imminently torture into two or three code
17 words that the plaintiffs cite causing almost a Pavlovian
18 reaction that somehow was never reported to the Chinese
19 press, never resulted in any arrests and never had any
20 other consequences. This is a completely implausible
21 argument from the outset.

22 Add to this that plaintiffs' own assertions that
23 the Chinese media is state controlled and there's no other
24 conclusion that their allegations that the state itself
25 was inciting this action, if anything was inciting.

1 THE COURT: Question.

2 If one were to credit the plaintiffs' version of
3 what occurred and accept for purposes of the motion that
4 these code words did amount to incitement that, as you put
5 it, they were understood to mean go out and torture now --

6 MR. ROSEN: It would have to mean that, because
7 if they didn't mean that or something stronger than that,
8 they have no effect of incitement that would reach any
9 sort of international law that -- about aiding and
10 abetting.

11 THE COURT: I understand your point. My
12 question is: Am I bound to assume that this is what
13 happened? That indeed these are code words and they
14 carried the very message that you describe? Go out and
15 torture now? And if so, if I'm bound to assume that, then
16 what are we to do?

17 MR. ROSEN: Your Honor, I don't believe that
18 you're bound to assume that.

19 First of all, they have never actually said
20 that. What they say is that this is a cultural revolution
21 style rhetoric that's reminiscent of the cultural
22 revolution.

23 Their own expert, which I don't know how you
24 submit an expert affidavit in a motion to dismiss, but
25 even accepting that, it's produced. Their own expert says

1 this would be more likely to be understood by persons over
2 50.

3 I went to a demographics book and found that the
4 number of persons in China over 50 are less than
5 25 percent. So then you have that 25 percent and you have
6 what percentage of that really think that.

7 And then you have to look at two other things:
8 One is, how many times have these words been used and
9 where were they used? And look at the context of how they
10 were used, even if they mean that.

11 In Li Hongzhi, which is the centerpiece and has
12 been the centerpiece since 2005, those words were used
13 twice in the last paragraph. We reprinted the last
14 paragraph in our last brief. Even if you replace "go out
15 and torture" into there, put it into context, but they
16 don't say "go out and torture." What they're saying is
17 something much more amorphous. It's like these are code
18 words for a political action. We need to take action.
19 Maybe Chairman Mao or one of his compadres would use this,
20 we need to do this, and then what would follow would be a
21 purge, or what would follow would be torture or jailing
22 hundreds and hundreds of people. I don't know. I mean, I
23 was a kid when all this happened.

24 But what I do know is nothing here is exact
25 enough to meet Twombly and Iqbal. Because if you're

1 taking your purpose from these words, you need to look at
2 everything. You need to look at the fraudulent nature of
3 these teachings or at least his version of events that
4 presents a fraudulent nature.

5 Even assuming that he put these things together,
6 which he didn't, but assuming for the purposes of the
7 motion that he did do the entire Li Hongzhi, that he did
8 have something to do with every word in it, even though
9 he's not reading those words or he didn't write those
10 words, you have to look at the context of it.

11 The purpose was exposing a fraud. That is the
12 story of his life. He exposed a fraud about a magnetic
13 hill. He exposed a fraud about flash cures. He exposes
14 frauds. That is what his job is. You know, in his own
15 way, I'm trying to think of someone these days, Geraldo
16 Rivera, or something like that.

17 But even worse than that, to even allow a
18 complaint to move forward that seeks damages for speech
19 that is legal in the United States, is present in the
20 United States, and is clearly contrary to public policy,
21 because even the incitement they say, it's unclear. You
22 would have to look into the minds of those persons over 50
23 to determine what they pulled out of it.

24 Are we to assume that every Chinese guard and
25 security person is over 50? I would say not. I would say

1 very few guards are that old. They're usually a lot
2 younger, but that's only my anecdotal experience.

3 It's supposition over supposition over
4 conclusion over conclusion. But to rest this on those
5 words which were not present at all in 2005, is the
6 biggest red herring of this case.

7 Even if these words are true, there's no
8 substantial effect to -- or even if these words did mean
9 you need to go out and do something like torture, because
10 you have to read so much into those words to get to where
11 they are, and even if you take all their explanations in
12 their briefs, you're really left with, I don't know
13 exactly what they mean. I know they were bad in the
14 1960's, but I don't really know what those words mean
15 except that they -- they mean strong action.

16 Even in criminal cases where defendants are
17 liable for their speech such as Rice or these tax cases,
18 there were specific instruction manuals for violation of
19 the law. Nothing like that exists in this case. We're
20 forced to read tea leaves. We're forced to look at
21 statements that were pulled out and thought about six
22 years after the first complaint was written and given a
23 new significance that somehow escaped plaintiffs the first
24 time around.

25 Finally, just to reiterate, this Court should

1 look at these -- at this complaint carefully. And the
2 explanation that's in the surreply, their explanations
3 don't even give water to what's in the complaint.

4 The complaint -- the allegations against
5 Mr. Zhao in the complaint are that you created hate
6 speech, you created a climate for these things to happen
7 and you did it purposefully in a matter that allowed all
8 these other people that you were conspiring with to
9 torture people.

10 As we pointed out, the truth is that there was a
11 constructive meaning behind these things. It was meant to
12 expose a fraud and it was meant to expose a movement that
13 espoused separation from family, that -- not honoring
14 elders, not going to doctors, but being healed by Mr. Li
15 or through prayer or whatever. And it espoused values
16 that were contrary to the state which the state did not
17 like.

18 Mr. Zhao said nothing other than what the
19 chairman of the communist party said in 2002 when he
20 called for a douzheng. He used that word. If you believe
21 he actually wrote these things, he used that word two
22 times at the end of one television production, and he used
23 jiepi another time and maybe douzheng another time. You
24 take these handful of statements and where is -- I mean,
25 how are people going to get those code words?

1 I mean, you have those two statements and the
2 only thing that went through mass media was the Chinese
3 Central Television's television special on Falun Gong and
4 the other things were all individual publications that
5 were in magazines or in newspapers. And you're assuming
6 that everyone reads these things and that these code words
7 got through to a cadres of individuals who then took from
8 them and didn't think them through at all and just ran
9 with it.

10 I'd like to reserve some time to respond.

11 THE COURT: With regard to the meaning of these
12 words, the other side has suggested that an evidentiary
13 hearing would be necessary unless I am to adopt their
14 interpretation. Do you have a comment on the advisability
15 of an evidentiary hearing?

16 MR. ROSEN: Judge, you have a dictionary or you
17 can refer to the standard dictionary. The standard
18 dictionary meanings are all over and acknowledged by their
19 own expert.

20 What will happen if we have a hearing, they will
21 bring in four or five people to say it means this, you
22 know, we will bring in people to say it means that, but I
23 would urge the Court before the Court goes there, to look
24 at exactly what they say it means, whether it passes the
25 Brandenburg test, whether it's actually incitement. Look

1 at the context of it to see whether it's said enough or if
2 it's even implausible that this happened. Because I don't
3 think you get there. I don't think you get here.

4 And besides that, the meanings are irrelevant
5 because of all the other reasons I started this argument
6 with about establishing the nexus and going past Sosa and,
7 you know, it's -- to pull three or four words out of large
8 scale publications and to put meanings into them that even
9 if they had those meanings, you have to -- the Court must
10 look at the context of these things and look at -- these
11 words are commonplace words in Chinese society. And I
12 think that any expert would have to admit that.

13 THE COURT: Am I right that you previously told
14 me that no attempt should be made to solicit input from
15 the State Department?

16 MR. ROSEN: We had that discussion in July and
17 we did not feel the State Department was in a soliciting
18 mood from looking at past cases and that, you know, I --
19 you know, while the Court's free to do whatever it likes,
20 I just did not feel that this is something -- certainly
21 would take many, many months and did not feel that the
22 State Department has been -- had a big interest in this.
23 And they too may be waiting for Kiober. I don't know what
24 the impact of that case will be.

25 I mean, there's -- one view is that it will

1 narrow the ATS, which would take care of this case
2 altogether. I'm sure Ms. Marsh would tell you that it's
3 going to be much more narrow than that.

4 But in any case we're many, many, many months
5 away from even an argument. An argument wouldn't happen
6 until the fall, and then a decision could be many months
7 after that.

8 So it's a little problematic as reading those
9 tea leaves.

10 THE COURT: Okay.

11 And finally, you point out the difficulty that
12 we would encounter if I exercised jurisdiction and we
13 tried to conduct a trial of this case in Connecticut. Is
14 there an alternative forum?

15 MR. ROSEN: I don't know whether there's a forum
16 of China for this. I do know what we've said and what
17 we've continued to say is that what this would become
18 would be the plaintiffs coming and talking about what
19 happened to them, their experts talking about what
20 happened in the media, because no security officials are
21 going to come to testify. No one's going to be able to be
22 cross-examined in that way. And you know, it would be
23 whoever my client could get over there, and if he came and
24 said that's not what I meant here, you know, and this
25 guy's a fraud, a charlatan, and that was my job, that's

1 what I do when it comes to science.

2 And you could look at, you know, this dedication
3 to science is a dedication to a believing in science.
4 It's almost like an evolution. There are those who
5 believe that, you know, God should be the center of any
6 analysis of how humans developed or those in science that
7 say science should be there.

8 I mean, my client is from the science school and
9 so this religion or, I don't even know that it's a
10 religion, but this belief system in particular just cut
11 across every grain because of the claims of Mr. Li. And
12 the claims were largely pulled from references to his
13 original writings that were contained in a book published
14 by Columbia University Press by David Palmer called Qigong
15 Fever. But the Court can find them and I don't think
16 there's been any dispute in any of the briefs that these
17 indeed were -- these beliefs that were in the footnotes we
18 presented were his teachings.

19 Finally, even if there is no other forum, that
20 does not make this the correct forum. That does not mean
21 that this case can actually be adjudicated here.

22 If you look at the history of these cases -- and
23 there's many, many Falun Gong cases, and the most that
24 one's ever reached is a declaratory judgment by a
25 magistrate after a default. This is the first time that I

1 know of that a defendant has actually showed up and said,
2 you know, I have to put my foot down. I used to be able
3 to Google myself and I'd see that I won this prize in
4 Italy and this prize in France, and I'm a renown
5 television writer and now I'm Goebbels and it's horrible
6 and I can't go to my grave not fighting those kind of
7 allegations.

8 Judge, as I said in 2005, this is a glorified
9 liable case using the ATS because you can't use liable at
10 the ATS. The history of Mr. Li and the Falun Gong is that
11 they attack anyone that defames them. That is the history
12 that Mr. Palmer points out in his book.

13 And if you read anything about the Falun Gong,
14 in China, when they were permitted in China, they would
15 gather, whenever a newspaper, even a western newspaper,
16 would publish anything about them, they would gather and
17 demonstrate. Especially, so here, they've switched gear
18 of the ATS and any Chinese official that comes into the
19 United States, they will attempt to serve with an ATS
20 lawsuit. And this is sort of the last of a line, I
21 believe.

22 Thank you very much.

23 THE COURT: Thank you.

24 MS. MARSH: Thank you, Your Honor. I'm just
25 wondering if I could sit just because of my car accident.

1 THE COURT: Yes.

2 MS. MARSH: And also I just wanted to say if you
3 wanted to begin with questions, that's fine, or if you
4 wanted me to speak, whichever.

5 THE COURT: I'm interested to hear what you have
6 to say.

7 MS. MARSH: Thank you.

8 THE COURT: And please make yourself
9 comfortable.

10 MS. MARSH: Thank you very much.

11 So much to say, it's hard to know where to
12 begin. So let me just begin with the question of the
13 euphemisms or the code words or the language.

14 It seems from my study of history that those who
15 have perpetrated these abuses, whether it was during the
16 Holocaust or in Rwanda use code words or euphemisms.

17 For example, in the Stryker case, which is a
18 case in the Holocaust, propaganda case where Stryker was
19 found guilty of crimes against humanity for doing pretty
20 much what we're alleging that Zhao did.

21 The word -- the German word for final solution
22 meant extermination, so much so that when we hear the word
23 final solution now, we know what it means. The word for
24 special treatment meant murder.

25 In the Rwanda cases similarly, the courts'

1 verdicts relied on the expert testimony of witnesses who
2 parsed out the meaning of the words used within the
3 context in which they were used in order to find Nahimana
4 guilty for acts that again are very similar to the acts
5 alleged here.

6 When Nahimana said on the radio "kill the
7 cockroaches," what the experts explained was that the
8 cockroaches were referring to the Tutsis.

9 In both of those cases, just an aside, in both
10 of those cases, the defendants were found guilty because
11 they -- their language was specifically tailored to call
12 for the persecution or murder or extermination or injuries
13 of the victims. It was accompanied by hate speech
14 vilification which the defendant repeatedly tries to
15 narrow this case down to.

16 So in other words, there were direct,
17 specifically tailored language for the crimes in
18 conjunction with hate speech.

19 Hate speech is obviously not a good thing. When
20 you say that people, Falun Gong, are ulcers and pestilence
21 and devils and demons and garbage, that the believers are
22 all these things because they belong to a group, that's
23 hate speech. That's not a good thing, but that's not what
24 this case is based on.

25 This case is based on the connection between the

1 hate speech and the calls to violence. But let me just
2 backtrack back to the Nuremberg Nahimana cases.

3 So in those cases, there was a call to -- there
4 was specific calls to murder, injure, exterminate. In
5 conjunction with vilifications -- and the vilifications,
6 by the way, in the Nazi era are almost identical to those
7 disseminated by Zhao directly or through his
8 organizations.

9 But what was the key and what the judges in both
10 of these cases say was the key was that this speech was
11 disseminated during an ongoing persecution.

12 I mean, in the Stryker case, the judge says
13 specifically, or the justice, that he vilified the Jewish
14 population, he called for their extermination while the
15 Jews were being put in camps in Auschwitz and Dochow and
16 so on and so forth.

17 So too, in Nahimana that the speech was uttered
18 during the ongoing prosecution of the Tutsis. And so too
19 in this case, the speech is being disseminated while Falun
20 Gong believers are being subjected as the State
21 Department, the United Nations and so many third parties
22 and hundreds of clients that I've spoken to are being
23 subjected to torture, torture methods that I don't share
24 with people because they're so -- they're difficult.
25 They're difficult to even envision or imagine.

1 The same is true in China or in this case. The
2 words that were used by the defendant in his own speeches
3 and in his scripts, and it's far more than two
4 occurrences, and on the CACA website which he founded and
5 managed and controlled along with other members of the
6 standing committee of the leadership council of the CACA,
7 and in the WTV television programs, and in the Lightened
8 Science series that he produced and directed, those words
9 have special meanings.

10 And what He Qinglian said in her affidavit,
11 which I submitted simply to provide some more
12 clarification, is that these words are -- the meaning of
13 these words are understood by the speaker and the listener
14 that douzheng means it is imperative to go outside the law
15 and persecute this person, to go outside the law and
16 persecute this person, and that that is understood by the
17 speaker and the audience, the audience especially
18 including Chinese security.

19 And she did not have not say that one had to be
20 over 50 to understand the meaning of the term. She just
21 pointed out that people that lived through the cultural
22 revolution, and that includes Zhao, because his father was
23 a target of the cultural revolution, would be especially
24 familiar with these words.

25 And so it's other words, zhuanhua designates the

1 process that forces the person to give up his or her
2 beliefs through methods including torture and
3 imprisonment.

4 And now, I know a lot more about how this works
5 than I have put in the complaint, and I have a lot more
6 evidence than I have submitted in the complaint, because
7 it was just a complaint. Every single allegation in that
8 complaint is supported by evidence, and I have the
9 evidence.

10 In fact, I brought with me to the Court, which
11 is one of these binders here that I have -- I have a huge
12 binder here on the table, CACA evidence, with evidence to
13 support every single allegation in -- and I'm serious,
14 every single allegation in that complaint.

15 I don't want to jump around too much, but we
16 have evidence that reports that CACA local branch security
17 went to the labor camps themselves with the training
18 manuals, with the instruction manuals, to tell the
19 security how to transform Falun Gong, and that's that word
20 zhuanhua, and in one report it actually says that the CACA
21 did the transformation themselves.

22 I think that this case to the extent that it's
23 difficult is certainly difficult because of the meanings
24 of the terms because the difference between speech in the
25 United States and speech in China.

1 You know, we all grew up with the First
2 Amendment. I respect the First Amendment enormously. I
3 just can't imagine living in a world in which one could
4 not say, hey, you know what, I practice Falun Gong and I
5 believe in the tenets, or I'm a lawyer in China and I'm
6 representing, you know, labor groups and I'm doing that
7 because it's in the Constitution. Or you know what? The
8 Constitution doesn't say that there can be these
9 reeducation camps that people get sent to without trial.

10 These things can't be said in China. Nobody in
11 China can stand up and say, hey, this is what I think.

12 We have a Chinese lawyer sitting here, right
13 here, who was representing Falun Gong in China, and I'm
14 now working to get him asylum here because he was being
15 subjected to persecution.

16 One of the lawyers that I worked with directly
17 on these cases -- and it's interesting because how I got
18 to do these cases -- I did a few cases and then the
19 Chinese defense lawyers and civil rights lawyers met with
20 me in secret and the idea was for me to give them the
21 information so that they could represent Falun Gong. And
22 so I downloaded the UN reports, I downloaded the special
23 repertoire reports, the Department of State reports, I
24 gave them copies of the Declaration of the Human Rights.
25 I gave them everything I could. I gave them copies of

1 Laozi because I had just finished that case and I learned
2 how to create a CD for the first time in my life actually
3 it was so important to me.

4 And so the idea was that they would do the cases
5 and I would go back to the criminal defense work that I
6 was doing and that I actually value. But what happened
7 was, very hard to tell, because then they were arrested
8 and persecuted. And so Gao Zhizheng, who worked with me
9 on one of my cases, he's disappeared and I know what he's
10 going through. I mean, I know what they're doing to him
11 because I know almost too much.

12 And so it is impossible to do these cases in
13 China, which is I think what all of us want. I mean,
14 it's -- and I just wanted to add that the plaintiffs are
15 different in these cases. They're not the same. And one
16 of the things that the Chinese lawyers taught me -- I mean
17 the plaintiffs in the different Falun Gong cases. One of
18 the lessons that the Chinese lawyers gave to me was that
19 they said that almost every single Falun Gong believer
20 who's in jail or in a detention center is there only
21 because they were protesting the jailing and persecution
22 of another Falun Gong.

23 It started with a few Falun Gong in China
24 protesting some of the reports about Falun Gong as being
25 something other than a religion based on compassion and so

1 on. And so those people were jailed, and so you had a
2 peaceful protest at Zhongnanhai and those people were
3 jailed.

4 So what the Chinese lawyers explained to me is
5 that everybody who is in jail has been either saying, hey,
6 Falun Gong is good. We believe in compassion, we believe
7 in truthfulness, we're peaceful, or they're simply going
8 to the appeal office and protesting the fact that other
9 people are in jail and now they're in jail.

10 That was very interesting to me because when he
11 was 11 years old the Freedom Riders stayed at my home on
12 their way to the south. My mother was supposed to go with
13 them, but something came up. And so I spent, as an 11
14 year old, an evening finding out from these people why
15 they were going down south on buses and risking going to
16 jail, because why would you risk going to jail for other
17 people. And they explained it to me, and I remember that
18 they were put in this horrible jail in Mississippi and
19 that all of these other Freedom Riders from around the
20 United States went down and joined them in jail.

21 That's what Falun Gong are doing in China,
22 except in China you can't say that. You can't explain
23 that. Because in China there is a one voice censorship
24 system. There is no dissent about sensitive topics.
25 Anybody who tries to say anything about a sensitive topic

1 that is at odds with the party line is jailed. And so you
2 have the Nobel Peace Prize winner who was a journalist who
3 was in jail because he posted articles on the web.

4 I mean, for example, even if there were a
5 hearing or a trial in this case, there really are experts
6 who know how the propaganda works in China, what the words
7 mean. I mean, there's books about the meaning of these
8 terms.

9 In fact, Ryan Mitchell, a third year law student
10 at Harvard is writing a law review article about 95 pages
11 under his adviser, who was the chief China expert in the
12 country, about the history of these words. And I'm not
13 making this up. The words mean what we're saying they
14 mean. There's documents to show that.

15 We filed a complaint with allegations, and I
16 feel like I'm being asked on the one hand to prove the
17 case in the complaint and on the other hand I'm being told
18 you can't have a trial because it's worthless. There's no
19 reason for a trial. My client doesn't want to come to
20 court for a trial. That doesn't seem like due process to
21 me.

22 THE COURT: Counsel mentioned that Mr. Zhao is
23 distressed to be depicted as Goebbels. Is that your
24 intention to depict him in that way?

25 MS. MARSH: I have compared the defendant's acts

1 to other propagandas who have disseminated or specifically
2 tailored their language to call for persecutory
3 activities. The use of douzheng, which he uses quite
4 often. The use of zhuanhua, which he uses quite often.

5 In the video about Li Hongzhi, it specifically
6 calls for the douzheng of the Falun Gong. He specifically
7 said that he created the video in order to -- for it to be
8 a central reference point for the chuli and jiepi of Falun
9 Gong. The chuli is like the German word. Special
10 treatment. It's kind of like violence, disposal all the
11 way up to final solution. It's not a kind word. Jiepi is
12 the vilification of a group frequently done by taking
13 somebody, putting them on a stage and having everybody in
14 the room throw things at them, somebody on the stage is
15 beating them and insulting them and telling them that what
16 they believe is wrong, and it's defined again in the
17 expert affidavit.

18 So what I'm saying is that the defendant in his
19 organizations used the same tactics to further and
20 instigate the torture and persecution of Falun Gong in
21 China that was used by Stryker who was found guilty by
22 Nahimana, Goebbels committed suicide. But I'm not saying
23 he's playing the role of Goebbels in China per se. I
24 would say that that's probably a role that might be be
25 playing by some other person.

1 THE COURT: In that regard, it would be helpful
2 to me if you could tell me more about what is going on.

3 You depict this defendant as an influential
4 party official who is instrumental in supporting and
5 furthering a campaign of persecution, and I'm wondering if
6 there are others who are involved in this kind of activity
7 or whether you view him as a central figure?

8 MS. MARSH: I view him as a central figure
9 without a doubt, but he collaborated with other media, he
10 collaborated with other members of the communist parties
11 as alleged in the complaint and he collaborated with
12 public security, but the propaganda that he uses
13 specifically calls for douzheng chuli and zhuanhua of
14 Falun Gong, that is calling for their zhuanhua, torture
15 through transformation. He reiterates the importance of
16 the zhuanhua. The transformation through torture of Falun
17 Gong. Its on the website. He defines his video as in
18 order to further the chuli and jiepi of Falun Gong.

19 He vilifies Falun Gong himself. He calls them
20 garbage and demons and all sorts of characters that are
21 also used during the Nazi era.

22 I mean, I have like a 12 page chart which I
23 don't think you really want to see, in which I go through
24 the characterizations of the Jewish people during the
25 Holocaust, and I'm Jewish so that has a lot of effect on

1 me when I look at that. And the characterizations of
2 Falun Gong. And they're almost identical.

3 The Jews would murder the first Christian born
4 and drink their blood on the 15th day of every month. The
5 Jews had ritualized cannibalistic murderings of Christian
6 children. You know, they're enemies that will overturn
7 Germany if they're not, you know, destroyed. They're
8 cockroaches. They're insects. They're bugs. They're
9 virulent ulcers and pestilence.

10 It's the exact same depictions and
11 characterizations as are used by Stryker during the
12 Holocaust, and I think his role is very similar to
13 Stryker's. Stryker owned a newspaper and he published
14 characterizations of the Jews, vilified them. He called
15 for their murder and extermination, and he did this while
16 this was going on. And Zhao did the same thing himself
17 through his speeches, through his script about Li Hongzhi,
18 through the CACA especially.

19 The CACA is the central depository of all the
20 information about Falun Gong and he specifically developed
21 and designed the CACA to douzheng and zhuanhua Falun Gong,
22 and it's in Exhibit I with Section 4, it's at the -- it's
23 what's called the CACA Working Report.

24 When he had the meeting with the CACA in 2000, I
25 think it was January, suggesting a website, he gave

1 reasons for that website, and one of the reasons was to
2 douzheng Falun Gong, to conduct a spear to spear campaign
3 on the internet to further the douzheng of Falun Gong.

4 Another reason was to develop and disseminate
5 anti-cult strategies. And the major anti-cult strategy in
6 China is zhuanhua, the transformation through torture of
7 Falun Gong.

8 The propaganda activities that are carried out
9 by his agents or subordinates over the CACA website, also
10 were directed -- the language was specifically tailored to
11 persecute douzheng, vilify and expose jiepi and zhuanhua
12 torture through -- transform through torture and
13 imprisonment.

14 And they carried out his objectives within the
15 scope of their employment, and I think that's important,
16 because if we look at the actual torture manuals and the
17 videos, they are connected to Zhao.

18 Zhao himself identified the major purpose of the
19 website to include the transformation through torture.
20 The transformation manuals were provided to Chinese
21 security through a variety of channels. For example, the
22 website that he founded and controlled featured torture
23 related training manuals, reports and books in addition to
24 845 entries of Chinese security detailing specifically how
25 they effectively transform Falun Gong believers.

1 The CACA website staff or CACA staff actually
2 went to -- not the website -- but the CACA staff actually
3 went to the camps and gave them the methods, gave them the
4 manuals and the reports. The CACA hosted conferences
5 focusing on this transformation through torture.

6 At a 2004 CACA conference, the agenda was: What
7 are we going to focus on this year? And one of the five
8 agenda items was the transformation through torture, let's
9 do more, let's do a better job.

10 THE COURT: In your view, he would be
11 accountable for these actions by other people?

12 MS. MARSH: Superior respondeat. That these
13 people were furthering his objectives or that he was
14 actually giving them orders, and if he was giving them
15 orders, I would need some discovery, and I would also like
16 to be able to file some interrogatories and get some
17 answers to some questions.

18 But, yeah, the theory is that these people were
19 operating to further his objectives, which are, he's
20 stated them clearly, to the point of the CACA website is
21 to further the zhuanhua of Falun Gong. The point of CACA
22 itself, if you look at the bylaws, which I didn't submit
23 to the Court, but the bylaws say that there are specific
24 activities that CACA is involved in, and one of them is
25 the douzheng of Falun Gong and another one is the zhuanhua

1 of Falun Gong.

2 So I don't think it matters whether the manuals
3 were -- hold on a second.

4 (Pause)

5 MS. MARSH: Yeah, this was given to me in answer
6 to another question you asked. Let me just go off for a
7 second.

8 That we allege in the complaint that he used his
9 CCP stature and influence to help construct the
10 ideological framework for Falun Gong's persecution,
11 paragraph 46.

12 He had a longstanding role in assisting the CCP
13 elite and insuring adherence to and preservation of CCP
14 control.

15 There was a symbiotic relationship between the
16 defendant and the security officials.

17 I mean, there are lots of allegations in the
18 complaint about his specific stature within the party that
19 he would not have been included in the CACA, he would not
20 have been asked to create the video documentary about Li
21 Hongzhi, which was shown, the documentary was shown at the
22 June 19 special meeting of the politbureau which started
23 the persecution. And it's touted on the CACA website as
24 having not only enormous effect in terms of explaining to
25 the Chinese people what's wrong with Falun Gong, but it's

1 actually touted on the website as the most effective --
2 the forced viewing of Li Hongzhi is touted as the most
3 effective method of transformation, period. And the
4 website also recommends the viewing, the forced viewing of
5 it.

6 But to get back to what I was talking about,
7 the -- providing of the torture manuals to the Chinese
8 security through all these different mechanisms, whether
9 it's the CACA website, the CACA conferences, the visits to
10 the camps, they were done by CACA subordinates and they
11 were done to further objectives that are the objectives of
12 the CACA website and the CACA association. And the
13 defendant is part of the standing committee of the
14 leadership council. He's not just part of the leadership
15 council, which is what runs the organization, but he's
16 part of the standing committee. It's like being part of
17 the standing committee of the politbureau, that's like
18 nine people, it's a very elite group which runs the
19 organization which we allege.

20 As part of the standing committee of the
21 leadership council, he sets policy, he initiates and
22 terminates projects, he supervises activities, including
23 these activities that we're talking about here, he selects
24 and removes and appoints staff.

25 THE COURT: When you speak of torture manuals,

1 can you be more specific, please?

2 MS. MARSH: Yes, okay.

3 So we -- the manuals that are on the website are
4 given titles, so we put the titles in the complaint. They
5 include, as was stated, methods -- these are the methods
6 you could use if you want to zhuanhua, transform, Falun
7 Gong.

8 And then another section is use force -- you
9 know, forced views of Li Hongzhi. Very effective.

10 Key points to take note of in the transformation
11 process.

12 Major difficulties and breakthroughs.

13 Now, I haven't read all these books and
14 everything, but I did have one example translated for me
15 so that I could understand how it works, and it was
16 actually in connection to the Cisco case, not this case,
17 to be honest, because I was work on something else. But
18 it turned out that the source of the information was the
19 CACA.

20 And basically what -- and I don't know if I'm
21 going to remember it all -- but what I do remember is that
22 what it said was, okay, learn everything you can about
23 each of these believers, everything. And this information
24 has to go into a database. That's where Cisco gets
25 involved. And the information that was --

1 MR. ROSEN: Excuse me. This is not part of the
2 complaint, Judge, I don't know how this gets in there.

3 MS. MARSH: I was just answering the question,
4 I'm sorry. It's not in the complaint.

5 THE COURT: I asked for a clearer description of
6 the torture manuals so that I would understand what the
7 reference means and counsel was responding to that
8 question.

9 MR. ROSEN: Sorry, Judge.

10 MS. MARSH: So the information that they
11 especially want are specifics about family. And I know
12 this also from talking to a lot of my clients.

13 Is your father on -- you know, is the person's
14 father on dialysis treatment? And does he need, you know,
15 the state benefits? Is your son in a particular kind of
16 school? What are your financial arrangements? What sort
17 of finances do you have or need? What is your
18 relationship with your colleagues at work? What is your
19 psychology? What are your pressure points? What do you
20 really care about? What are you afraid of? What have you
21 done in the past? Have any of your friends been put on
22 the stage and been subjected to this jiepi so you would
23 want to protect them. Anything you can find out about
24 this person.

25 And these people -- and they're not called

1 people, by the way, just point it out, but they are people
2 that we're talking about. And so what I saw, because
3 of -- because of something that I was doing in Cisco that
4 had to do with mental torture, it was an example of the
5 mental torture.

6 Because what they do is, okay, one of my
7 plaintiffs in the Cisco case, she was in a detention
8 center, rather a police station, and what they said to her
9 was: Do you want us to bring your son here? Sign this
10 confession. She refused to sign it. Well, they brought
11 her son. They brought her son and they tortured her in
12 front of her son and her son still is under the effect of
13 that, according to her, and when she tells me this story
14 she just bursts out crying.

15 If the father is on dialysis and you don't sign
16 the confession, well, the father's subsidies are gone.

17 Or if your parents or grandparents are in
18 special housing, or if you have a job, you don't have it
19 anymore. Or your house, you don't have it anymore.

20 So it's deprivation of liberty, you know, for
21 the person themselves but it's also bringing in their
22 entire circle of friends such that most people sign. Most
23 people sign confessions saying "I do not believe in the
24 principles of Falun Gong." Because they can't take it.
25 They just can't take it anymore.

1 And we have thousands upon thousands of people
2 who practice Falun Gong in this country, many of them in
3 this courtroom. They're professors at prestigious
4 universities. We have a Ph.D., Princeton graduate who I
5 think he -- I don't know if he developed it or found this
6 some kind of matter energy configuration in the fifth
7 dimension and he's really famous.

8 We have Lord Thurlow who is a peer who taught at
9 Cambridge and provided one of the declarations about why
10 he practices Falun Gong.

11 There are people at Yale Law School, Harvard Law
12 School, former classics professor, and there's also people
13 who are waitresses and so on and so forth.

14 People practice Falun Gong because they believe
15 in the principles of Falun Gong, and that's the only thing
16 they have in common, is they believe in Falun Gong. Just
17 like Jewish people, we're not all the same, we just happen
18 to believe in the same religious principles.

19 So the reminder that I actually got from the
20 Chinese lawyers when they left, and I remember this real
21 clearly, was thank you, they said to me, for helping
22 Chinese citizens. They didn't say Falun Gong, they just
23 said Chinese citizens. And I thought yes.

24 THE COURT: To my knowledge there is no case
25 under the alien tort statute that holds propaganda alone

1 to be a sufficient basis for liability. In that context,
2 what is it about this case that would justify this Court
3 establishing such a precedent?

4 MS. MARSH: That's a good question. I thought
5 about that myself and, you know, I purposely filed this
6 case after the New York Times article about the Nahimana
7 cases because I was so struck with the similarity and I
8 was very aware that the precedence or Stryker in the
9 Holocaust case, and the Nahimana and the media cases, and
10 there's quite a few other cases under international law,
11 but the fact that there's no specific case doesn't make
12 this unlike other ATS cases.

13 The legal standard of aiding and abetting
14 requires substantial assistance, and I think -- and I was
15 going to talk about that, but we've gotten off track --
16 but I think that the allegations clearly support
17 substantial assistance through the propaganda itself, the
18 calls to -- calls to torture and persecute, the
19 vilification, that's the propaganda, in addition to the
20 torture manuals and the indoctrination videos, which I can
21 also connect very closely to him, that he did
22 substantially assist. And I think his purpose, we devote
23 a number of paragraphs in the complaint, and I think
24 that's pretty clear.

25 And so I think that he used speech to aid and

1 abet these crimes, that's all. Just like somebody might
2 have used guns to aid and abet. That's not a gun. I'm
3 not saying it's a gun, but somebody used other tools, that
4 similarly can aid and abet.

5 So I think that the question is: Did he aid and
6 abet these crimes through speech or whatever? And
7 propaganda is not a Sosa norm, we've never alleged it as a
8 Sosa norm. We've only said that the speech was used to
9 aid and abet these crimes. And also that he operated with
10 others in a conspiracy to further these crimes. That's
11 what I think is really before the Court.

12 And the fact that people use speech to do
13 terrible things, you know, what can I say? History is not
14 pleasant.

15 THE COURT: All right.

16 MS. MARSH: Did you want me to -- I can connect
17 him to the indoctrination videos more.

18 THE COURT: I would be interested to hear from
19 you on that.

20 MS. MARSH: So the purpose of the website
21 according to Zhao is to zhuanhua Falun Gong, so we have
22 that.

23 The major activities of the CACA that Zhao
24 founded and controls to a large extent is also to douzheng
25 and also to zhuanhua Falun Gong.

1 The major activities of the CACA focus on the
2 zhuanhua of Falun Gong. The defendant reiterates the
3 importance of this process, this transformation process,
4 and reports on the website.

5 The forced viewing of this video is touted on
6 the website as one of the most effective forms of
7 transformation through torture, something that is an
8 objective of the defendants'. The forced viewing is
9 highly recommended as a form of transformation on the
10 website.

11 CACA staff provided the indoctrination material
12 to the Chinese security at the labor camps. And we also
13 allege his collaboration with Chinese security throughout
14 the complaint.

15 In addition to all his other acts, I mean, his
16 obviously anti-Falun Gong acts, I think that that allows
17 the Court to make a reasonable inference that either he
18 himself intended that the videos be used in this manner or
19 that his subordinates facilitated the forced viewing --
20 directly facilitated the forced viewing of these videos in
21 furtherance of his objectives. And I really do think that
22 that's clear from the allegations in the complaint.

23 I stand firmly on the complaint and I would
24 happily provide any evidence to the other side or to the
25 Court about any allegation in support thereof.

1 And I don't think the First Amendment applies to
2 this case for lots of reasons, one of which is that the
3 First Amendment is to protect speech that discriminates
4 against minority groups and that Falun Gong in China is a
5 minority group that can't speak out. They're not allowed
6 to speak out, there's no dissent. It's all censored.

7 The free speech system in this country is
8 diametrically opposed to the free speech in China where
9 there's one voice. Speech in China about sensitive issues
10 is kind of like the Orwellian -- the voice in Orwell's Big
11 Brother. It speaks, nobody can say anything different.
12 The party decides what you can say and what you can't say
13 about particular topics and what topics can and cannot be
14 discussed. And so it's diametrically opposed to the
15 principles that animate the First Amendment that all of us
16 obviously care enormously about. And as I've done this
17 case, I care all the more about the First Amendment.

18 In addition to that, the speech that aids and
19 abets, it's not protected by the First Amendment. And the
20 difference being that if you look at Brandenburg, it talks
21 about speech that advocates something, but aiding and
22 abetting is carrying something out, it's doing something
23 that results in certain actions. It's not just advocating
24 it.

25 So if the speech aids and abets, if the Court

1 finds that the speech aids and abets, then it's not
2 protected by Brandenburg. Even if one were to apply
3 Brandenburg, under this case Rubin, and I think the facts
4 are very similar, that his speech does meet the
5 Brandenburg requirements.

6 I would say, you know, that -- this is just my
7 opinion -- that if this case goes to trial, there would be
8 expert testimony as to the meaning of these terms by
9 people who the Court could credit, because I know who
10 these people would be. And if there was any issue about
11 freedom of speech at all, it would have to do with speech
12 under international law, not U.S. law, because I don't
13 think the First Amendment applies here.

14 However, it's exactly the same. Because under
15 international law, if you look at Stryker and Nahimana,
16 the reason that the first -- sorry, the reason that the
17 free speech principles did not protect their acts was
18 because of the combination of the calls, the direct calls
19 to murder, exterminate, persecute, coupled with the
20 vilification that went on during an ongoing persecution
21 while the Jews were being persecuted.

22 Those were the three factors that were
23 determinative in the Court's findings of guilt in those
24 cases and not finding guilt in other cases, by the way.
25 And so that could be an issue.

1 And, you know, one of our witnesses would
2 probably be the lawyer who did the Nahimana case.

3 So, yeah.

4 THE COURT: Thank you.

5 MS. MARSH: Thank you.

6 MR. ROSEN: Can I start with the last statement,
7 which to me it certainly cuts across the grain of
8 everything we've written and I think it cuts across the
9 law.

10 There's a big difference between international
11 law and United States law when it comes to incitement or
12 free speech. The First Amendment standards are far
13 different than just about any place in the world and it's
14 been written about time and time again. The cases we
15 talked about with foreign judgments are just the perfect
16 example.

17 And what we argued in our brief was that
18 using -- attempting to use this international standard
19 cannot happen because our First Amendment operates on a
20 higher plateau.

21 In the Rwanda case, the judges purposefully had
22 to apply -- applied a law, it was a criminal law, by the
23 way, not -- and please, I would refer the Court to pages
24 21, 22, 23, 24, of our original brief which discusses the
25 Rwanda case in particular. And the South African

1 Apartheid judge saying that you can't apply these foreign
2 conventions in U.S. courts and they -- there's no private
3 liability under the treaties in the United States courts.
4 It follows that no liability based upon any alleged
5 violation of these norms could form an adequate predicate
6 for jurisdiction under the elite tort statute, ATCA.

7 But let's look at what else Ms. Marsh said when
8 she actually tried to define -- forgive my
9 pronunciation -- douzheng, and she said that it means it's
10 imperative to go outside the law and persecute this
11 person. And then I turned the Court to *Wilson v. Midway*
12 *games*, which is a Connecticut case from 2002.

13 Even with all the inferences drawn in
14 plaintiff's favor, the complaint alleges conduct by
15 defendant that at worst, quote, amounted to nothing more
16 than advocacy of a legal action at some indefinite future
17 time which is not sufficient.

18 To find someone liable for words that require an
19 expert testimony to define or as defined by counsel here
20 today, which clearly doesn't meet an incitement standard,
21 is anathema to constitutional standards and it would be
22 against public policy to pursue that. That goes exactly
23 to Your Honor's comment, which is very well taken, that
24 this is *sui generis*, this -- attempting to use propaganda
25 for aiding and abetting has never been -- it's never been

1 applied before and it's very, very dangerous.

2 It's dangerous not only because of foreign
3 policy, because this whole process of transformation --
4 and it's -- transformation doesn't come with the words
5 "with torture" in Chinese law or in any of these
6 publications. It might say transformation or it would be
7 translated to say transformation. That's part of Chinese
8 law.

9 This Court has no business in Chinese law, or
10 questioning Chinese law is an act of state. It certainly
11 interferes with relations if this Court were to declare
12 that forced viewings of a television special that declares
13 someone who's an enemy of the state or is illegal, his
14 activities are illegal, for this Court to say that that
15 publication can subject someone to liability in the United
16 States is -- would be a first and it would certainly
17 interfere with relations. Because China believes, whether
18 it's true or not, that Li Hongzhi's dangerous, his
19 teachings are dangerous.

20 I urge the Court to read over everything that my
21 adversaries project onto Mr. Zhao, even though he didn't
22 write most of it, and look them and look at what they say.
23 Sure they'll call these people -- they'll call -- not
24 these people -- they'll call Mr. Li every name in the book
25 because they believe his practices are dangerous.

1 There is a purpose behind it, a constructive
2 purpose in their mind, that he is dangerous, that his
3 teachings are dangerous. And this is key.

4 The cases in the United States that deal with
5 substantial assistance or deal with liability for speech
6 require very, very specific activities. Paladin you have
7 an instruction manual, the hit manual, it's step-by-step
8 how you kill somebody. Here this Court would have to put
9 itself in the minds of the defendant and many, many, many
10 other people, and say it means X.

11 But even saying that, let's just take what my
12 adversary said as what the meaning was. Go outside the
13 law and do this. It doesn't say go outside and do this
14 now. It doesn't say kill now. Do it now. And it
15 requires such -- it's three words. It's not what happened
16 to Stryker or Goebbels or anything like that. A newspaper
17 with, you know, day in and day out, and actually calls for
18 extermination, you know, its references are far, far, far
19 more vague in just the reading, but they're also based
20 upon actual arguments that these people are dangerous for
21 these following reasons.

22 Now, I'm Jewish too. I take exception to
23 comparing Mr. Zhao to anything that happened in Nazi
24 Germany and I do it for an objective reason aside from my
25 subjective reasons.

1 Look at the body of work. Look at exactly what
2 he is saying. Because it doesn't say what they say he
3 says.

4 We had to translate these materials. We were
5 happy to do that. We brought that television special to
6 you. Forced views are not a violation of international
7 law. And if that's the issue here, we could brief that.
8 But making someone watch a television program that shows
9 them that what they're doing is wrong or against the law
10 is not against the law.

11 I mean, I would say forced viewings, the jurors
12 could claim that they were tortured watching "How to be a
13 Good Juror." Those silly movies that they show at many
14 courts.

15 This is a -- this all goes back to that same
16 question you asked, Your Honor, about this is the first
17 time. And it's the first time for a reason. Because it
18 crosses the line and it is a anathema to the way we think.
19 And the ATS shouldn't be used in an extraterritorial
20 manner to applying law that is anathema to what we
21 practice here and that is the center stone of our legal
22 system.

23 THE COURT: Thank you.

24 Thank you for all the work you've done. The
25 effort that you made is appreciated.

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MS. MARSH: Thank you.

THE COURT: Thank you for being here today.

MS. MARSH: Thank you very much, Your Honor.

(Proceedings adjourned at 11:30 a.m.)

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C E R T I F I C A T E

In Re: GANG vs. ZHIZHEN

I, Darlene A. Warner, RDR-CRR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/s/ _____

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