

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
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FOR THE DEFENDANTS:

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BY: BRUCE S. ROSEN, ESQ.

Darlene A. Warner, RDR-CRR
Official Court Reporter

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