

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JANE DOE I, JANE DOE II, HELENE PETIT,)
MARTIN LARSSON, LEESHAI LEMISH, and)
ROLAND ODAR)

Plaintiffs,

v.

LIU QI, and DOES 1-5, inclusive)
Defendants.)

Civil Action No. **C 02 0672 CW EMC**

DECLARATION OF ANDREW J. NATHAN

I, Andrew J. Nathan, declare as follows:

1. I am a Professor of Political Science at Columbia University, and have been researching, writing, and teaching about the politics and culture of the People’s Republic of China (“China”) for over 30 years. I am the author of numerous books and articles on China. My publications include, among others: *Chinese Democracy* (New York: Alfred A. Knopf, 1985); *Human Rights in Contemporary China*, with R. Randle Edwards and Louis Henkin (New York: Columbia University Press, 1986); *China's Crisis* (New York: Columbia University Press, 1990); *The Great Wall and the Empty Fortress: China's Search for Security*, with Robert S. Ross (New

1 York: W. W. Norton, 1997); *China's Transition* (New York: Columbia University Press, 1997);
2 *The Tiananmen Papers*, edited with Perry Link (New York: PublicAffairs, 2001); *Negotiating*
3 *Culture and Human Rights: Beyond Universalism and Relativism* co-edited with Lynda S. Bell and
4 Ilan Peleg (New York: Columbia University Press, 2001); and *China's New Rulers*, with Bruce
5 Gilley (New York: New York Review Books, 2002).

7 2. I am a member of the editorial boards of the *Journal of Democracy*, *The China*
8 *Quarterly*, *The Journal of Contemporary China*, and *China Information*, among other journals, and
9 a member of the Council on Foreign Relations, the National Committee on U.S.-China Relations,
10 the Association for Asian Studies, and the American Political Science Association. I served as
11 chair of the Advisory Committee of Human Rights Watch, Asia, from 1995-2000, and continue to
12 serve on this committee and on the board of Human Rights in China. I conduct frequent interviews
13 for the print and electronic media, have advised on several film documentaries on China, and have
14 consulted for business and government.

16 3. At the 16th Congress of the Chinese Communist Party ("CPC") in November 2002,
17 Beijing Mayor Liu Qi was appointed as the Secretary of the CPC Beijing Municipal Committee,
18 and as a member of the Political Bureau of the CPC Central Committee. I am informed and
19 believe that a new Beijing mayor will be appointed to replace Mayor Liu in mid-January, 2003,
20 when the Beijing Municipal People's Congress will convene to elect delegates to the 10th National
21 People's Congress. At the latest, the new appointment is expected to occur by the end of March
22 2003, since the new Beijing mayor will be confirmed by the National People's Congress, which
23 meets some time during that month (the date has not yet been publicly announced). It would be
24 very unusual for someone holding Liu Qi's new positions with the CPC to also hold a substantive
25 position in government. Therefore, I would not expect that Liu Qi would be appointed to any other
26 government position upon leaving the mayor's post.
27
28

1 4. Although the Communist Party continues to control Chinese politics and
2 government, the Party and government are nevertheless constitutionally and organizationally
3 distinct. Government officials may or may not hold posts within the CPC, and vice versa.
4 However, a CPC member is not a “government official” by virtue of his or her position in the
5 Party, and should not be considered a “government official” absent a government position.

6 5. The distinction between party officials and government officials can be seen in a
7 number of ways. Initially, the Chinese constitution recognizes the distinction between party and
8 government. Although the constitution’s preamble refers generally to the CPC’s leadership, it does
9 not provide any specific role for the Party in government. It also makes political parties subject to
10 the constitution and laws: “All state organs, the armed forces, *all political parties* and public
11 organizations . . . must abide by the Constitution and the law.” (Emphasis added). The CPC is not
12 the only political party in China. Even acknowledging the CPC’s tight control over government,
13 eight minority parties also are recognized and function.

14 6. The Party’s authority over government is based primarily on its *de facto* authority
15 over appointments and promotions of government officials, and its *de facto* authority to set general
16 policy for the government. However, national or local legislative bodies legally must implement
17 the Party’s decisions regarding appointments and major policies. The government executes state
18 policy and administers the country.

19 7. Additionally, the United States, in its official dealings with China, clearly
20 distinguishes between Party and State. The United States treats the Party as Party, and government
21 as government, and establishes counterpart relationships with Chinese officials based on their
22 positions in government, and not based on their status in the Party.

23 8. In light of the above, upon Liu Qi’s anticipated departure from his mayoral position,
24 I would consider him to be a “party” rather than a “government official.” He is not a government
25
26
27
28

1 official by virtue of his new positions as Secretary of the CPC Beijing Municipal Committee or
2 with the Political Bureau of the CPC Central Committee.

3
4 *I declare under penalty of perjury under the laws of the United States that the foregoing is*
5 *true and correct.*

6 Executed on this _____ day of _____, 2002, in _____,
7
8 New York.

9 s/Andrew J. Nathan
10 Andrew J. Nathan

1 **ATTESTATION REGARDING SIGNATURE**

2 I, Joshua Sondheimer, declare under penalty of perjury under the Laws of the United States
3 that affirmation as to the contents of the foregoing Declaration of Andrew J. Nathan, and
4 concurrence in the filing of this document, has been obtained from the above-named signatory.
5

6 Dated: December 30, 2002

7 s/Joshua Sondheimer
8 JOSHUA SONDEIMER (SBN 152000)
9 The Center for Justice & Accountability
10 870 Market Street, Suite 684
11 San Francisco, CA 94102
12 Tel: (415) 544-0444
13 Fax: (415) 544-0456
14 Email: jsond@cja.org