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**THE GARBAGE SMUGGLING CASE: JUDGMENT OF
DIVISION ONE OF THE SHANGHAI MUNICIPAL
INTERMEDIATE LEVEL PEOPLE'S COURT
JANUARY 13, 1997**

Translated by Janice Wingo[†]

Abstract: The American press has reported on the arrest¹ and trial of William Ping Chen for the importation of garbage into China, alleging that he is a pawn in Sino-American relations. Whatever the political background, the decision of the Shanghai Municipal Intermediate Level People's Court shows that this case was decided according to established rules of law.²

Public Prosecution Organ

Shanghai Municipal People's Procuracy, Division One

Defendant: William Ping Chen, also called Chen Pingyi, male, born February 20, 1940, United States of America nationality, college level education. Former Chairman of the Board of the Sino-American Joint Venture, Shanghai United Paper Industries Company, Limited. Resides at 910 Eighty-ninth Street, Oakland, California, United States of America. In

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¹ See Seth Faison, *China, on Eve of Trade Talks, Holds American as Smuggler*, N.Y. TIMES, June 6, 1996, at A14.

² Albert H.Y. Chen, *An Introduction to the Legal System of the People's Republic of China*, 114 (1992):

The typical judgment of a Chinese court is short and does not set out lines or steps of legal reasoning and logical analysis in a way as detailed as in the judgments in common law courts. Relevant statutory provisions may be referred to, but the precise relationship between them in their application to the case will not usually be discussed at length. As there is no established doctrine of precedent, case law will seldom be referred to in the judgment. Lawyers' submissions are not usually responded to in the judgment. Dissenting judgments are not allowed.

Footnotes are those of the editor given to help common-law trained readers better understand the civil law process.

this case, he was taken into criminal detention³ by the Shanghai Municipal Public Security Bureau on June 3, 1996. On the 13th of the same month he was arrested according to law.⁴ Presently he is in custody in the Shanghai Municipal Detention Center.

Defense counsel: Pan Feng, Yuan Jiyu, attorneys at law, Jingjian Law Firm, Shanghai.⁵

According to Division One of the Shanghai Municipal People's Procuracy, Defendant, William Ping Chen, committed the crime of smuggling. [The prosecutor] filed an indictment with this court.⁶ This court

³ ZHONGHUA RENMIN GONGHEGUO XINGSHI SUSONG FA [CRIMINAL PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA] [XINGSHI SUSONG FA], art. 41, states:

Public security organs may initially detain an active criminal deserving arrest or a major suspect under any of the following conditions:

- (1) if he is preparing to commit a crime, is in the process of committing a crime or is discovered immediately after committing a crime;
- (2) if he is identified as having committed a crime by a victim or an eyewitness;
- (3) if criminal evidence is found on his body or at his residence;
- (4) if he attempts to commit suicide or escape after committing the crime or he is a fugitive;
- (5) if there is a likelihood of his destroying or falsifying evidence or colluding with others to give false statements;
- (6) if his identity is unknown and he is strongly suspected of committing crimes going from one place to another; and
- (7) if he is engaged in "beating, smashing and looting" and is seriously undermining work, production and public order.

Furthermore, "[t]he time limit for holding a defendant in custody during investigation shall not exceed two months." XINGSHI SUSONG FA, art. 92.

⁴ XINGSHI SUSONG FA, art. 39, states: "Arrests must be approved by a people's procuracy or decided by a people's court and must be carried out by a public security organ."

⁵ XINGSHI SUSONG FA, art. 26, states: "In addition to exercising the right to defend himself, the defendant may entrust the following persons to defend him:

(1) lawyers;"

⁶ XINGSHI SUSONG FA, art. 100, states:

accepted the case on October 28, 1996, and on December 2nd of the same year, according to law, opened a public⁷ session of a collegiate panel⁸ to hear this case.⁹

Procurator Zhu Yunbin and Acting Procurator Zhuang Wenhao of the Shanghai Municipal People's Procuracy, Division One, appeared in court to prosecute the case. Defendant William Ping Chen and defense counsel, Pan Feng and Yuan Jiyu, came to court to participate in the defense.¹⁰

When a people's procuracy considers that the facts of a defendant's crime have been ascertained, that the evidence is reliable and sufficient and that criminal responsibility should be investigated according to law, it shall make a decision to initiate prosecution and shall, in accordance with the provisions for trial jurisdiction, initiate a public prosecution in a people's court.

⁷ ZHONGHUA RENMIN GONGHEGUO XIANFA (1982) [CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA] art.125 states: "Except in special circumstances as specified by law, all cases in the people's courts are to be heard in public." *The New York Times New Service* reported that U.S. Consular Officer, Richard Adams, attended the trial. Seth Faison, *Garbage Smuggler Caught Up in the Bad Odor of U.S.-Chinese Ties*, INT'L HERALD TRIB., Jan. 14, 1997, at 6.

⁸ Sometimes this body is referred to as a "collegiate bench."

⁹ XINGSHI SUSONG FA, art. 105, para. 2, states: "Trials of cases of first instance in the higher people's courts or the Supreme People's Court shall be conducted by a collegiate panel composed of one to three judges and two to four people's assessors."

See also CHEN, *supra* note 1, 159:

The formal trial of a case consists of five stages. First the chief adjudicator (of the collegiate bench) opens the trial and makes certain announcements, and the procurator reads out the indictment. Second, the adjudicators interrogate the defendant. With the permission of the chief adjudicator, the procurator, defender and victim of the crime may also question the defendant. After interrogation of the defendant, witnesses will be questioned by the adjudicators and the procurator, and, with the permission of the chief adjudicator, also by the defendant and her defender.

The third stage of the trial is the 'court debate.' This consists of speeches by the procurator, the victim, the defendant and the defender. Fourth, after the chief adjudicator announces that the court debate is closed, the defendant has the right to make a final submission. This is followed by the fifth stage, when the court adjourns, deliberates on the case and then announces the judgment (either delivered on the same day as the trial or reserved) in public.

¹⁰ XINGSHI SUSONG FA, art. 28, states:

The responsibility of a defender shall be to present, according to the facts and the law, materials and opinions proving the innocence of the defendant, the pettiness of his crime and the need for a mitigated punishment or exemption from criminal responsibility, thus safeguarding the lawful rights and interests of the defendant.

Following the assessment of the collegiate panel, the case was sent to the adjudicative committee¹¹ to be decided. The trying of the case has now come to an end.

The Shanghai Municipal People's Procuracy, Division One, charged the defendant with evading customs inspection on 238 tons of garbage transported from the U. S. to Shanghai from July to December of 1995, constituting the crime of smuggling. He should be punished according to law. Defendant William Ping Chen, after having been accused of the facts, made a confession in court.¹² Defense counsel did not object [to the charge] that the defendant's acts constituted a crime. However, [counsel] argued that defendant acted on behalf of Shanghai United Paper Industries Company, Limited, and that the transported garbage had not yet given rise to pollution in China's environment. [Counsel] suggested that the defendant be punished leniently.

Upon investigation and examination [the court] finds that the defendant, William Ping Chen, disregarding the numerous objections of the Chinese manager of Shanghai United Paper Industries Company, Limited, and against China's customs laws and regulations and environmental protection-related regulations, and with the purpose of seeking profits, from July to December 1995, in the names of the China Export Commodity Base

¹¹ XINGSHI SUSONG FA art. 149 states: "If the president of a people's court at any level finds some definite error in a legally effective judgment or order of his court as to the determination of facts or application of law, he shall refer the matter to the judicial committee for handling." RENMIN FAYUAN ZUZHIFA [ORGANIC LAW OF THE PEOPLE'S COURTS] art. 11, beginning with para. 2 states:

Members of the judicial committee of the local people's courts at various levels shall be appointed and removed by the standing committees of the people's congresses at the corresponding levels, upon the recommendation of the presidents of those courts. . . . The presidents of the people's courts shall preside over meetings of the judicial committees of the people's courts at all levels.

See CHEN, *supra* note 1, 110-12.

¹² XINGSHI SUSONG FA, art. 36, states:

The testimony of a witness may be used as a basis in deciding a case only after the witness has been questioned and cross-examined in the courtroom by both sides, that is, the public prosecutor and the victim as well as the defendant and defenders, and after the testimonies of the witnesses on all sides have been heard and verified.

See also CHEN, *supra* note 1, 163: "It is noteworthy that the Law of Criminal Procedure expressly provides that a defendant may not be convicted solely on the basis of his confession in the absence of any other evidence."

Construction Anhui Company and the Zhejiang Province Livestock Production Import-Export Company in order to import without authorization 238 tons of U.S.-produced solid garbage packed in sixteen containers. He falsely reported it was wastepaper or mixed paper. [The garbage] was illegally transported to the Wusong Port Area and Waigaoqiao Port Area, in Shanghai, China, on the Tuohe, freight-steamer V165; the President Roosevelt, freight-steamer V112 and V113; the President Washington, freight-steamer V126; and the President Lincoln, freight-steamer V130. Upon inspection, it is decided that China prohibits the import of all of the above-mentioned 238 tons of garbage.

The above-mentioned facts are proved by the following evidence: discovery and seizure of 238 tons of garbage in sixteen separately loaded containers; the "Inspection Report" and the "Opinion Regarding Inspection of Garbage in 16 Containers" by the People's Republic of China Shanghai Import-Export Commodity Inspection Department and the Shanghai Municipal Environmental Protection Department concerning the garbage in the above-mentioned containers, all categories of which China prohibits import; documentary evidence seized from the defendant, such as bills of lading and related invoices, container packing certificates, bills of carriage, etc. for the above-mentioned containers; written evidence supplied to Shanghai Customs by the Shanghai Office of American President Lines (China) Company, Limited, [proving] that defendant is the agent of the U.S. shipping company [that transported] the above-mentioned containers; the statement of the China Export Commodity Base Construction Anhui Company and the Zhejiang Province Livestock Production Import-Export Company that they never commissioned William Ping Chen to import sixteen containers of garbage; documentary evidence that the defendant wrote, in his own handwriting, in January and May of 1996, to the two above-mentioned companies admitting that he, himself, had used without authorization the names of the two companies in order to import the above-mentioned sixteen containers of garbage; the related "Handwriting Appraisal Document;" and other related evidence. The evidence is reliable and sufficient.

This court finds that the defendant, William Ping Chen, with the purpose of seeking profit, used without authorization the names of China's foreign trade companies, falsely reported commodity names in violation of customs regulations, evaded customs inspection, and illegally imported into China 238 tons of garbage, the import of which is prohibited. His acts

constitute the crime of smuggling and he, therefore, should be punished according to law. The facts of this case indicate that these acts of the defendant were purely his individual acts and, moreover, are obviously harmful to society. Accordingly, the opinions of defense counsel are not accepted. In order to safeguard the order of China's customs inspection administration and protect China's ecological environment, according to the provisions of articles 3¹³ and 30¹⁴ of the "Criminal Code of the People's Republic of China," and of article 4, section 1, paragraph 1, of the "Supplementary Provisions Concerning the Punishment of the Crime of Smuggling"¹⁵ of the Standing Committee of the National People's Congress, the judgment is as follows:

Defendant William Ping Chen committed the crime of smuggling, and is sentenced to ten years' imprisonment, a criminal fine of 500,000 renminbi, and a supplementary sentence of expulsion from the country.¹⁶

Division One of the Shanghai Municipal Intermediate Level People's Court

¹³ ZHONGHUA RENMIN GONGHEGUO XINGFA [CRIMINAL LAW OF THE PEOPLE'S REPUBLIC OF CHINA] [XINGFA], art. 3, states: "This Law is applicable to anyone who commits a crime within the territory of the People's Republic of China."

¹⁴ XINGFA, art. 30, states: "Deportation may be imposed independently or supplementarily to a foreigner who commits a crime."

¹⁵ GUANYU CHENGZHI ZOUSIFA DE BUCHONG GUIDING [Supplementary Provisions of the Standing Committee of the National People's Congress Concerning the Punishment of the Crimes of Smuggling], art. 4, sect. 1, para. 1, states:

Those who smuggle goods and articles not specified in articles 1-3 of the present provisions shall, in the light of the seriousness of the circumstances, be punished in accordance with the following provisions:

- (1) whoever smuggles goods and articles valued at not less than 150,000 yuan and less than 500,000 yuan shall be sentenced to fixed-term imprisonment of not less than ten years or life imprisonment, and shall concurrently be sentenced to a fine or confiscation of property.

¹⁶ According to article 27 of the Criminal Law, punishments are divided into principal and supplementary punishments. XINGFA, art. 27. "The principle punishments are as follows: (1) public surveillance; (2) criminal detention; (3) fixed-term imprisonment; (4) life imprisonment; and (5) the death penalty." XINGFA, art. 28. "The supplementary punishments are as follows: (1) fines; (2) deprivation of political rights; and (3) confiscation of property." XINGFA, art. 29. The American press has reported that, while Mr. Chen was sentenced to ten years imprisonment, "his expulsion makes that term irrelevant." Seth Faison, *China Convicts American as Trash Smuggler*, N.Y. TIMES, Jan. 14, 1997, at A3. This is not in line with the court's ruling. However, the *New York Times* adds, "It was not immediately clear when Mr. Chen would be deported." *Id.*