

THE CASE OF *WANG ZONG XIAO V. RENO*: THE INTERNATIONAL IMPLICATIONS OF PROSECUTORIAL MISCONDUCT

I. FACTUAL BACKGROUND

At 2:00 P.M. on March 12, 1988, government officials of the People's Republic of China (PRC) arrested Wang Zong Xiao for his role in transporting heroin in what has come to be known as the "Goldfish case."¹ The arrest marked the beginning of the first-ever cooperative effort between PRC officials and the United States in a drug prosecution.² The arrest also marked the beginning of a potentially serious problem in U.S.-China foreign relations, mainly due to rather gross misconduct by the prosecution team.³ This paper will examine the foreign policy implications of the prosecution of the Goldfish case, and in particular, the problems created by bringing Wang into the United States to testify.

Upon his arrest, Wang was kicked by four policemen, dragged into a waiting automobile, blindfolded, and kicked again.⁴ During the course of the next month, Wang was interrogated relentlessly by PRC officials interested in implicating Leung Tak Lun, the purported "mastermind" of the

¹ Wang Zong Xiao v. Reno, 837 F. Supp. 1506 (N.D. Cal. 1993). The heroin prosecution was known as the "Goldfish case" because the heroin Wang and others attempted to distribute in the United States was stuffed into condoms, which were then stuffed into dead goldfish. *Id.* at 1513. The arrest took place on the streets of Shanghai. *Id.*

² Harriet Chiang, *Trial Witness Afraid to Return to China*, S.F. CHRON., Feb. 7, 1990, at A20. This fact alone illustrates the importance of the case. China's reluctance to cooperate with U.S. authorities is mainly due to the distrust with which Chinese law enforcement views the American criminal system and its insistence on vindicating the rights of individuals. *See also Judge Declares Mistrial In U.S.-Chinese Drug Smuggling Case*, REUTERS, Feb. 14, 1990, available in LEXIS, News Library, Reuters file.

³ Harriet Chiang, *China Assails US for Allowing Drug Witness to Seek Asylum*, S.F. CHRON., Feb. 9, 1990, at A30. Wang's journey into the American legal system resulted in his being granted asylum in the United States. This was insulting to the Chinese officials in charge of his case, who "sharply criticized" Judge William Orrick's decision allowing Wang to seek asylum. *Id.* The PRC officials called the decision "a wanton violation of China's judicial sovereignty." *Id.* *See also* Harriet Chiang, *Officials Tied to Drug Case Return To China*, S.F. CHRON., Feb. 13, 1990, at A2.

⁴ Wang, *supra* note 1, at 1512.

heroin delivery.⁵ After initially denying that Leung took part in the transaction, Wang eventually placed Leung at the scene of the purchase and the "breaking up" of the heroin.⁶ This confession was to become the cornerstone of the case against Leung brought in the United States, and was also to be its eventual downfall.

U.S. Drug Enforcement Administration (DEA) officials learned of Wang's arrest and arranged for a "controlled delivery" of the shipment of heroin under authorization from the U.S. Attorney's office in San Francisco.⁷ Soon thereafter, Assistant U.S. Attorney Eric Swenson and DEA agent Tommy Aiu traveled to China, interviewed Wang, and gained the approval of PRC officials to bring Wang to the United States to testify at Leung's trial.⁸ Both Aiu and Swenson knew of the change in Wang's account of the original transaction from the interrogation minutes they had received and reviewed earlier. Neither asked Wang about possible mistreatment. Aiu and Swenson also failed to warn PRC officials that the defense would attempt to exclude Wang's testimony based on the involuntariness of his confession, or at least try to impeach Wang on the inconsistency.⁹

When Swenson travelled to Hong Kong to speak to Hong Kong prosecu-

⁵ *Id.* at 1512-1513. The findings of fact in this case show that Wang was beaten, threatened with death, and shocked with a cattle prod until he gave the account of the heroin transaction which the PRC officials desired. During the interrogations, Wang was reminded that if he cooperated, he would receive leniency, but if he did not cooperate, he would be dealt with harshly. *Id.*

⁶ *Id.* at 1513. Although it is not clear exactly when Wang changed his account of the events leading to the arrest, it is clear that PRC officials interrogated Wang more than 30 times between March 12 and April 21.

⁷ *Id.* at 1514. Authorization was granted by Assistant U.S. Attorney Eric Swenson, who prosecuted the case against Leung and two other American defendants.

⁸ *Id.* at 1520-1521.

⁹ *Id.* at 1522. The importance of this omission cannot be understated. By placing emphasis on the voluntariness of confessions, the American system of criminal procedure differs markedly from the Chinese system, which encourages confessions as a way to cooperate with the State and receive more lenient treatment at sentencing. *See infra* note 68 and accompanying text. At the trial of Wang's lawsuit against the United States, expert testimony was introduced which showed that criminal trials in China are basically forums designed to vindicate the policy of the State and are largely unconcerned with questions of guilt or innocence. There is no right to cross examination, no presumption of innocence, and no discovery for defendants. Dr. Ross Terrill testified that since " 'the task of the law is to uphold socialism, the State cannot be wrong on any major matter.' " *Id.* at 1541.

tors, he learned why they were not proceeding with a trial against Leung.¹⁰ Inter-office memoranda from the Crown Counsel ("McNair Memorandum") and Deputy Crown Counsel ("Chandler Memorandum")¹¹ explained very clearly why the Hong Kong prosecutors would not pursue prosecuting Leung. In the McNair Memorandum, R.B. McNair stated, "[It] seems to me . . . that the likelihood of conviction is small . . . the whole of our case rests on the confessions of Wang to PRC police officers."¹² The Chandler Memorandum asserted, "[T]he fact that he is an uncorroborated accomplice [who] would be testifying as a result of the greatest possible inducement would almost inevitably lead to an acquittal."¹³ In addition, the McNair Memorandum referred to a videotape in which Wang confessed to his role in the crime and placed Leung at the scene of the purchase of heroin.¹⁴ The videotape showed at least some evidence of physical coercion.¹⁵ Swenson never asked to view the tape, nor did he ever question Wang or the PRC authorities about possible mistreatment of Wang.¹⁶ More importantly, when the memoranda came to the attention of defense counsel at Leung's trial, Swenson testified that he knew that he should not have kept the memoranda and that he did not believe there was any exculpatory information contained in them.¹⁷

In December 1989, the Chinese authorities sent Wang to the United States to testify.¹⁸ Leung's defense counsel interviewed Wang on his arrival, and he told Leung's counsel that he had been treated fairly.¹⁹ However,

¹⁰ *Id.* at 1528. This meeting in Hong Kong proved to be Swenson's undoing. It occurred on March 10, 1989.

¹¹ The McNair memorandum was the most important of the documents. Even though Swenson knew at the time that inter-office memoranda normally should not be taken out of the Crown Counsel's office, he took them back to San Francisco with him and buried the memoranda in his files. No one else ever saw the memoranda until depositions prior to Wang's lawsuit. *Id.* at 1528.

¹² *Id.* at 1528 (quoting McNair Memorandum).

¹³ *Id.* at 1529 (quoting Chandler Memorandum).

¹⁴ *Id.* at 1529-30.

¹⁵ *Id.* at 1529. The tape showed "a most peculiar posture was adopted by [Wang] throughout the confession, whereby the whole of his left side and left arm was hidden from the camera, as if his left arm and side may have suffered some injury." *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 1530.

¹⁸ *Id.* at 1534. PRC police told Wang not to talk to anyone except the American prosecutor, and, if asked about his confession, to say that it was voluntary. *Id.*

¹⁹ *Id.*

Swenson had previously informed him that he did not have to answer their questions.²⁰ While in custody prior to testifying, Wang was visited by PRC officials who told him that he needed to testify in accordance with his confessions placing Leung at the scene of the heroin transaction, and to testify that his confession was voluntary.²¹

Wang was called to testify on January 30, 1990.²² Shortly after the beginning of Swenson's direct examination, Wang asked to speak with U.S. District Judge William Orrick.²³ On the basis of that conversation, Judge Orrick asked Wang whether or not he wanted a lawyer, and Wang replied that he did.²⁴ Wang returned to the witness stand two days later and testified that Leung had been at the scene of the heroin transaction.²⁵

After testifying that Leung was present at the heroin transaction, Wang moved for a preliminary injunction barring his return to the PRC.²⁶ About a week later, Wang repudiated his prior testimony and stated that Leung was in fact *not* at the scene of the transaction.²⁷ Meanwhile, Wang had applied for asylum with the U.S. Immigration and Naturalization Service (INS).²⁸

²⁰ *Id.* at 1531, 1535. When asked about his interrogation, however, Wang told of many interrogation sessions and informed the defense that notes were taken at each session. Defense counsel rightly suspected that the PRC officials had not provided complete documentation of Wang's interrogation. Eventually, PRC officials sent Swenson more interrogation minutes (after the Leung trial was underway). These minutes show rather obvious psychological coercion. For example, one PRC official told Wang, "Heed the advices [sic] given by the government workers and give a detail [sic] and total account of what actually happened. This concerns your future with life and death significance." *Id.* at 1535.

²¹ *Id.* at 1536.

²² *Id.*

²³ *Id.* U.S. District Judge William Orrick presides over the District Court of the Northern District of California, the site of Leung's trial.

²⁴ *Id.* Immediately following this discussion, the court called a recess. Swenson and the PRC officials met with Wang in Swenson's office, at which time the PRC officials were very displeased and told Wang "your life is in our hands." *Id.* at 1536-1537. Swenson added that Wang didn't need a lawyer, since he (Swenson) was Wang's lawyer. Wang relented and said he no longer wanted a lawyer. Counsel was nevertheless appointed, and Cedric Chao became Wang's attorney. *Id.*

²⁵ *Id.* at 1537. The court found this testimony to be untruthful.

²⁶ *Id.* The court noted that as a result of the hearing on the motion, Wang felt that he could begin to tell the truth.

²⁷ *Id.*

²⁸ *Id.* at 1538. Wang's application for an asylum hearing was granted. However, even the INS attempted to railroad Wang's application. First, the INS attempted to process Wang's application unusually quickly. Second, when exclusion proceedings were begun, the charging

Furthermore, Wang filed suit against the United States to prevent his return to the PRC.²⁹ At this point, the Goldfish case had completely unraveled, and Judge Orrick declared a mistrial.³⁰

Wang was obviously in a difficult situation, mainly due to the fact that Swenson and the U.S. Attorney's office never inquired into whether Wang had been mistreated while in PRC custody. By never asking (on the grounds that it would be insulting to the Chinese and it would jeopardize the case against Leung), Swenson placed Wang in an impossible situation: he could lie and remain alive when returned to China, or he could tell the truth and be dealt with very harshly when returned. Wang did not choose to come to the United States to testify.³¹ By deciding to tell the truth on the stand, Wang embarrassed the PRC, and Judge Orrick's later decision to allow Wang to stay in the United States caused considerable deterioration in relations with the PRC.³² After analyzing Wang's case against the United States, this Recent Development will explain that Swenson's actions indeed had a considerable impact on U.S.-China relations which could have been avoided had Swenson been concerned more with justice than with winning the Goldfish case.

II. LEGAL BACKGROUND

Wang originally stated twelve causes of action against the United States government and the INS.³³ Jurisdiction was grounded in the general federal

documents were filed in such a manner as to ensure that Wang's case would be heard by Judge Bette Stockton, who was known for her "conservative" reputation in asylum matters. *Id.* at 1539-1541.

²⁹ *Id.* at 1539.

³⁰ *Judge Declares Mistrial in U.S.-Chinese Drug Smuggling Case*, REUTERS, Feb. 14, 1990, available in LEXIS, News Library, Curnws file.

³¹ Wang, *supra* note 1, at 1542. Wang gave up any chance of being treated with leniency in the PRC when he testified truthfully.

³² Harriet Chiang, *Officials Tied to Drug Case Return to China*, S.F. CHRON., Feb. 13, 1990, at A2. PRC officials were furious, in fact. They decried Judge Orrick's decision as a violation of international law and international norms, and as an encroachment upon Chinese judicial sovereignty. Wang, *supra* note 1, at 1542.

³³ Wang, *supra* note 1, at 1544. The causes of action ranged from violation of due process to violations of international law. For the purposes of this paper, only the violation of substantive due process and the violation of the government's duty to protect its witnesses are germane. All causes of action requested the same relief: a permanent injunction barring the United States from returning Wang to the PRC.

question statute.³⁴ Wang's main claim was that the U.S. government violated his substantive due process rights by bringing him to the United States against his will, and that the subsequent attempt to return him to the PRC would result in his execution.³⁵

The government argued two main points with regard to Wang's substantive due process claim: first, that because the basic conduct complained of occurred outside of the United States, the court could not consider the constitutionality of his treatment; and second, that because Wang was an alien who had not affected entry under the immigration laws, he could claim only limited constitutional protections (i.e., he could only bring suit on his right to be free from abuse by U.S. government officials).³⁶ However, the court distinguished this situation from cases involving such a "narrow" substantive guarantee, since Wang's claim had nothing to do with the federal government's power over immigration.³⁷ Moreover, the court held that in order for Wang to prevail, he had to show government misconduct that "shock[ed] the conscience" and that the government acted with gross negligence.³⁸

In applying the "shocks the conscience" standard, the court found that the government had acted with "deliberate indifference" to Wang's rights.³⁹ The court relied on numerous facts to reach this decision. First, the government completely disregarded the probability that if Wang testified

³⁴ 28 U.S.C. § 1331 (1988).

³⁵ See Wang, *supra* note 1, at 1548. Wang alleged that his arrival in San Francisco began the process that brought about the "disastrous" result of the Goldfish case. *Id.*

³⁶ *Id.* at 1547-1548.

³⁷ *Id.* at 1549. The legal authority relied upon by the government all involved challenges to the immigration proceedings which ended in the applicant's exclusion from asylum. Here, however, Wang's case does not implicate the exclusion proceedings. In fact, Wang's claim arises wholly apart from any claim involving the exclusion proceedings. His claim rests not on his attempt to become a U.S. citizen, but that the United States government violated his due process rights in even bringing him to the United States. While this basis for distinction may seem somewhat suspect, narrowing Wang's substantive rights to the mere freedom from physical abuse by U.S. government officials misses the point of his claim. Wang's claim centers on the fact that he came to the United States involuntarily and at the request of U.S. officials.

³⁸ *Id.* at 1550.

³⁹ *Id.* at 1551.

truthfully, he would face severe penalties when returned to the PRC.⁴⁰ Second, the government ignored indications that Wang's testimony was coerced and did not inform him that defense counsel would exploit the possible coercion in order to discredit his testimony.⁴¹ This created the "intolerable choice" of lying to receive lenient treatment in China, or telling the truth and facing execution. These points are interconnected and will be examined together.

The government's first indication that Wang's confession was coerced was the change in his story during his initial interrogation.⁴² Swenson and Aiu both had noted the change, and yet neither of them ever sought an explanation. Indeed, Swenson feared that asking about the voluntariness of the confession would be "very insulting" to the PRC, and Wang therefore would not be allowed to testify.⁴³ The court clearly believed that Swenson simply did not want any interference with his prosecution of the Goldfish case.⁴⁴

Next, the U.S. government quite literally intervened in the PRC's criminal system by bringing Wang to the U.S. before he had been sentenced by the Chinese court.⁴⁵ The court found this fact extremely important, because before that point, Wang had earned some measure of leniency from the Chinese court by cooperating with the PRC officials.⁴⁶

⁴⁰ *Id.* The court used expert testimony to reach the conclusion that Wang would most likely be executed upon return to the PRC. The court seemed to impute knowledge to the prosecution team of the consequences of the government's refusal to ask Wang or the PRC officials about the conditions surrounding Wang's confession to the prosecutor. Most importantly, the government ignored evidence of possible mistreatment, and in particular, did not seek out the videotape which was the basis for Hong Kong's reluctance to prosecute Leung.

⁴¹ *Id.*

⁴² *Id.* at 1552.

⁴³ *Id.* at 1553. The court noted that this concern is inappropriate for a prosecutor to consider. The feelings of a foreign government are properly within the purview of a diplomat, but not something: "a responsible prosecutor would allow to stand in his way of asking hard and unpleasant, but nevertheless extremely relevant, questions." *Id.* at 1552.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* The consequences of the government's intervention are clear: if Wang had not been paroled before the Chinese court had sentenced him, he would not have been available to testify. The situation faced by Wang at the Goldfish trial was the direct result of the government's active role in keeping Wang out of the Chinese court system.

Furthermore, the government failed to consider the reasons why the Hong Kong authorities chose not to prosecute the Goldfish case.⁴⁷ The McNair Memorandum is most important on this point: Swenson knew when he received the memorandum that building a case against Leung on the basis of Wang's confession would be extremely risky, since evidence (including the videotape) tended to show that Wang's confession had been coerced.⁴⁸ Swenson then buried the memoranda in his files, underscoring the importance that the document must have had to him.⁴⁹

The government also failed to prepare PRC witnesses for cross-examination, or inform the PRC that Wang could apply for asylum.⁵⁰ These points are germane for one reason: had the PRC officials known that defense counsel would cross-examine Wang on the voluntariness of his confession or that he could apply for asylum, they never would have allowed Wang to travel to the United States in the first place.⁵¹

Finally, the court found Swenson had lied about his knowledge of Wang's mistreatment.⁵² Swenson had denied that he had any knowledge or suspicion of mistreatment.⁵³ He also claimed that he did not know about the videotape.⁵⁴ Both of these representations were dismissed by the court as outright falsehoods.⁵⁵ It seemed that all along, Swenson had been

⁴⁷ *Id.* at 1553-1554.

⁴⁸ *See supra* note 11 and accompanying text.

⁴⁹ *Id.* at 1554. Swenson attempted to downplay the importance of the memoranda by calling them "speculation," and by claiming that the documents' allegations were dispelled during his face-to-face meeting with Wang. *Id.* The court found that this did nothing to justify Swenson's behavior. *Id.*

⁵⁰ *Id.* at 1556.

⁵¹ *Id.* at 1556-1557. This is a rebuttable presumption, however. The PRC officials were confident that Wang would testify the way they wanted him to, since they had threatened him with severe treatment if he testified that his confession was not voluntary. The main problem with this line of reasoning, however, is that the threats themselves constitute witness intimidation. Still, the PRC officials might have let Wang testify in the United States even knowing that his credibility and the voluntariness of his confession would be questioned.

⁵² *Id.* at 1557.

⁵³ *Id.* at 1552.

⁵⁴ *Id.*

⁵⁵ *Id.* at 1558. The Court also addressed the fact that the INS had attempted to "railroad" Wang's asylum application. *Id.* at 1559. The court found that the actions of the INS, when taken together, displayed the intent to have the application fail before it was even heard. These actions were also found to "shock the conscience." *Id.* This point, however, is beyond the scope of this Recent Development.

concerned with only one thing: convicting the Goldfish defendants. As the court pointed out in the opening paragraph of its opinion, Swenson and the government had a greater duty:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.⁵⁶

III. ANALYSIS

The Goldfish case marked the first-ever cooperative effort between the United States and the PRC in combating heroin transportation.⁵⁷ As evidenced by the above discussion, the prosecution of the Goldfish case was riddled with problems. However, when one looks at the overall picture, the implications of the failed prosecution and Wang's successful case against the United States government are much greater than simply a failed prosecution of drug dealers. The case strained relations with the PRC to the point that further cooperation between the two governments in criminal prosecutions has become virtually impossible. There are two reasons for the stalemate: first, the government's misconduct in connection with Wang seriously embarrassed the PRC and cast unwanted publicity on the nature of the PRC's criminal process; and second, the Goldfish case highlights the incompatibility of the PRC's criminal system and the United States' criminal system.

A. The U.S. Government's Action in Relation to Wang Severely Strained Relations With the PRC

Wang's case arose at a very difficult time in U.S.-China relations. Swenson and other members of the prosecution team visited Beijing to

⁵⁶ *Id.* at 1511.

⁵⁷ See generally Chris Dobson, *Goldfish Drug Case Success*, SOUTH CHINA MORNING POST, Oct. 18, 1992, at 3; Howard Mintz, *Immigration Judge Accuses INS of Judge Shopping*, THE RECORDER, Dec. 29, 1992, at 2; Howard Mintz, *A Refugee of the Drug War*, THE RECORDER, Apr. 1, 1993, at 1; and *US Concerned About Drug Trafficking through Mainland China*, CENTRAL NEWS AGENCY, May 21, 1992.

interview Wang only four months after the Tienanmen Square uprising and the subsequent crackdown on pro-democracy movements.⁵⁸ As pressure was placed on relations with China as a result of the crackdown, the PRC was extremely wary of cooperating with the United States in a drug case. However, Swenson and Aiu assured the PRC officials that nothing would go wrong, and that prosecuting the Goldfish case was a "win-win situation."⁵⁹

When Wang applied for asylum, PRC officials were outraged. His request not only ruined the prosecution of the Goldfish case, but also embarrassed the PRC officials to the point that they decided not to participate in cooperative efforts with U.S. law enforcement again. Given the fact that the United States had been stepping up efforts to slow the flow of heroin through East Asia, Wang's request for asylum directly affected the government's ability to combat a very real problem.⁶⁰ The critical problem, however, was not Wang's request, but the circumstances leading up to it.

In pursuing the Goldfish case, the government ignored significant exculpatory evidence. By ignoring the evidence of possible mistreatment in order to avoid "insulting" the PRC, the government invited disaster. First, Swenson seemed to think that if he had asked truly harsh questions, Wang would not have been allowed to testify.⁶¹ Second, if Wang did not testify, the government would have had no case. Thus, by placing a premium on ignorance, the government ruined its own case, placed Wang's life in danger, and created an intense rift between U.S. drug enforcement and PRC authorities.

The PRC's response to the situation was swift and unequivocal. The Chinese consulate in San Francisco issued a statement immediately following

⁵⁸ Wang, *supra* note 1, at 1532. In fact, an officer of the U.S. Embassy in Beijing involved in the Goldfish case recommended that the Goldfish case not be pursued until a later time. *Id.* This recommendation was not given serious consideration. *Id.* at 1528-1530.

⁵⁹ *Id.* at 1522. DEA agent Tommy Aiu made this assertion to PRC officials at a banquet during which Aiu and Swenson were attempting to convince PRC officials to allow Wang to come to the United States to testify.

⁶⁰ *Asia: Increase in Drug Traffic Through Hong Kong*, SOUTH CHINA MORNING POST, Feb. 22, 1990, available in LEXIS, News library, Curnws file.

⁶¹ See Wang, *supra* note 1, at 1523 n.10. In fact, Swenson admitted in court that "Mr. Wang wouldn't be here today if I asked questions like that." *Id.* Swenson has since been transferred from the criminal division of the U.S. Attorney's office to its claims and judgments division, which handles monetary claims of the government on delinquent student loans, among other things. Howard Mintz, *A Judge Finds the Feds Turned a Blind Eye to Torture*, AM. LAW., Dec. 1993, at 26.

Judge Orrick's decision to allow Wang to pursue asylum condemning the decision as "utter defiance" of international law and international relations.⁶² Furthermore, PRC Foreign Ministry spokesperson Jin Guihua not only reiterated the consulate's statement, but called the decision a breach of the PRC's "judicial autonomy."⁶³

Perhaps most problematic for the government was Swenson's assumption of an improper role. As the court noted, deciding how to assess the "feelings" of another government is properly left to the diplomatic corps.⁶⁴ Swenson's fear of insulting the PRC was misplaced, given the fact that he was in a position which demanded that he know all the facts. Furthermore, by failing to stress the need for a voluntary confession, Swenson placed the PRC officials and Wang at risk of being completely unprepared for trial.

The consequences of Wang's treatment are far-reaching and troublesome. Lack of cooperation by PRC officials in future drug cases could cause significant problems in stemming the flow of heroin and other narcotics into the United States. The U.S. government has grown more and more concerned about China's role in the international drug trade as a land route and a producer of opium and heroin.⁶⁵ Since 1992, the PRC has insisted that cooperation is not possible until Wang is returned to the PRC.⁶⁶ The Goldfish case, then, remains the single largest obstacle to cooperation.⁶⁷

⁶² *Judge Declares Mistrial in U.S.-Chinese Drug-Smuggling Case*, REUTERS, Feb. 14, 1990 available in LEXIS, News library, curnws file. On what tenet of international law the PRC relies is never clear.

⁶³ *USA/China: Drug Case Asylum Quest May Sour Ties*, SOUTH CHINA MORNING POST, Feb. 11, 1990, available in LEXIS, News library, curnws file. Just what this "judicial autonomy" means is not apparent. PRC courts are usually a staged process by which a defendant pleads guilty and the court, without regard to any rights of the individual, passes sentence. The courts are agents of the state and exist to vindicate the state's interest in maintaining power. In no sense do the Chinese have an independent judiciary. See Wang, *supra* note 1, at 1542.

⁶⁴ Wang, *supra* note 1, at 1553. See also *supra* note 43 and accompanying text.

⁶⁵ *US Concerned About Drug Trafficking Through Mainland China*, CENT. NEWS AGENCY, May 21, 1992, available in LEXIS, News library, curnws file.

⁶⁶ *Id.*

⁶⁷ *U.S.A.: Sino-US Drugs Battle Stumbles Against Bizarre "Goldfish Case,"* SOUTH CHINA MORNING POST, June 14, 1992, available in LEXIS, News library, Curnws file.

B. The Incompatibility of the PRC's and the United States' Criminal Systems

A major problem with the Goldfish case and Wang's testimony was the fundamental misunderstanding of PRC authorities about the United States' treatment of its criminal defendants. The U.S. system attempts to seek justice while still vindicating the rights of defendants. Had Wang's confession been obtained through torture in the United States, it certainly would not have been admissible in court. In the PRC, however, a premium is placed on cooperation with the state in order to receive lenient treatment from the courts.⁶⁸ PRC officials may have believed that Wang's testimony would not raise issues of voluntariness, since they thought he would immediately be sent back to the PRC for sentencing. PRC officials repeatedly warned Wang that unfavorable testimony would merit harsh treatment from the courts in the PRC.⁶⁹ Wang was placed directly in the center of two competing systems of criminal justice. Fortunately for Wang, the United States system won him a reprieve from imprisonment or death. On the other hand, the American system has allowed a man guilty of a major offense in China to escape punishment.

While the PRC's frustration at the result of Wang's case is understandable, the United States should not allow pressure from foreign governments to deter its pursuit of vindicating the rights of individuals. Wang's case shows that cooperation with the PRC on drug cases is theoretically possible, but that limits defined by the Constitution should prevail over obtaining a guilty verdict through coerced testimony.

IV. CONCLUSION

The Goldfish case is far from over. Apparently, the government intends to appeal the injunction barring Wang's return to the PRC. However, when governmental misconduct rises to the level reached in the Goldfish case, the

⁶⁸ For a thorough discussion of the history of the Chinese criminal system and the presumptions associated with it, see Timothy A. Gelatt, *Chinese Criminal Code Symposium: The People's Republic of China and The Presumption of Innocence*, 73 J. CRIM. L. 259 (1982). See also Wang, *supra* note 1, at 1541-1543. Expert testimony elicited at Wang's trial emphasized this point. Even the government's expert testified that he believed Wang would have been treated harshly had he returned to China. *Id.*

⁶⁹ Wang, *supra* note 1, at 1536.

court may properly step in and address the problem. In Wang's case, the governmental misconduct created severe problems in U.S.-China relations. This case should serve as a lesson for future cooperative efforts and should highlight the necessity for U.S. prosecutors to make clear to foreign governments the standards by which our criminal system operates.⁷⁰

William W. Tanner

⁷⁰ Interestingly, the Justice Department has tightened its policy on accepting witnesses on parole from the PRC due to the Goldfish case. One official commented, "We won't be encouraging individuals who have been charged with crimes in China to be brought here as witnesses." Simon Beck, *Red-faced US Tightens Stand on Overseas Witnesses*, SOUTH CHINA MORNING POST, Jan. 23, 1994, at 8.

