

# *A Seventh Child and The Law*

**Patrick Yu Shuk-siu**



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## **11** *The War Years (Part Two)*

For almost one week after my return to Qujiang, I lay sprawling face downwards on my bed in order not to aggravate the numerous cuts sustained around the seat of my anatomy. Several of them had turned septic, and for a couple of days I ran a fever from blood poisoning. Lying in bed during those few days did me a world of good. First and foremost, I badly needed to rest after the exhausting journey and to recuperate from my ugly wounds. What I appreciated most was the opportunity to do a little quiet thinking and planning for the future. The fiasco of my respective applications to the Chinese Customs and Excise Department and the Bank of Communications convinced me that it would be futile trying to obtain employment by answering advertisements. My experience with British Naval Intelligence made me realize on the other hand that notwithstanding my lack of working experience, my knowledge of the English language and my ability to communicate readily in both Chinese and English were both useful assets.

I had not hitherto offered my services to the Chinese army only because it had not crossed my mind to do so. The Customs and Excise advertisement, Mr Pang's offer to be my referee for the Bank of Communications, and Mr Sedgwick's introduction to the British Naval Intelligence Office had taken place one after another in rapid succession after my arrival in Qujiang, and I had responded to each event as any young aspirant looking for employment would have done. Besides, I had not seen or been in touch with my two elder brothers since Guilin, so that even if I had wanted to follow in their footsteps and join the Chinese army, I would not have known how to begin. I had no idea

how much they were paid by the Chinese army, and frankly was not concerned with the question of pay. As a single young man of twenty with hardly any responsibility on my shoulders, I was simply eager to find work of any kind in order to make myself useful. The adequacy or otherwise of the remuneration offered had never entered into my calculations.

Meeting with Lt.-Gen. Lee Yen-wor at the headquarters of the 7th War Zone had left a deep impression on my mind. He was such an imposing character and yet such a kind and simple man. The exceptional interest he showed towards me almost made me forget my own unimportance. His stunning disclosure that I was better paid than he was gave me food for thought. It explained in part why Chinese university graduates preferred to join the banks, the customs and excise department, and other better paying institutions. The promptitude with which my brother Ping Tsung had been snapped up by the Chinese Air Defence in Chungking only served to underline the acute shortage of bilingual personnel with an adequate knowledge of the English language ready and willing to work for the Chinese military authorities. Lt.-Gen. Lee had himself said he would love to have me work for him, save that the Chinese army could not afford my kind of pay. In the weeks and months which followed, I found myself chewing over everything he said to me on that occasion again and again.

Lt. Gen. Lee was reputed to be one of the few incorruptible high ranking officers of the 7th War Zone. He had a wife and four young children to support. The thought foremost in my mind was that if he and his family could survive on his army emoluments, there was no reason why I could not do likewise on the standard pay, however meagre, of the Chinese Nationalist Army. Lt.-Commander Davies' sarcastic suggestion that I work for Lt.-Gen. Lee at a fraction of my British Naval Intelligence pay helped me make up my mind to do just that. I reasoned that if other young men invariably opted for the more attractive emoluments offered by the British or the American establishments, then surely it must be the Chinese military authorities who most needed and would best appreciate my kind of services. I felt much happier once I arrived at this conclusion.

Lt.- Gen. Lee lived in the outskirts of Qujiang not too far away from the British Consulate. As soon as I recovered sufficiently from my wounds, I walked right up to his residence one late afternoon without an appointment, and asked to see him. To my surprise, Mrs Lee, who opened the door, enquired almost immediately whether I was the brother of Pak Chuen and Ping Tsung, because, she said, she could easily see the

family resemblance. I could not help feeling gratified that she should mention my two elder brothers. Her husband must have discussed my family with her. As we were talking on the doorstep, Lt.-Gen. Lee arrived home riding his bicycle, as usual. He had no difficulty in recognizing me. Obviously he knew about the bungalow in the consulate grounds in which my parents lived, because he immediately asked with great concern whether anything had gone wrong in my home which required his assistance. I assured him nothing untoward had happened. With considerable audacity on my part, I proceeded to ask him instead whether he was serious when he said a few months ago that he would be glad to have me work for him. If so, I said, I was ready and willing to serve him. He was clearly surprised by the directness of my approach and instead of answering my question, invited me into his home where he formally introduced me to his wife and his four young children.

Lt.-Gen. Lee and his family lived in a small single storey stone house with a minimum amount of furniture and ornamentation. Over a cup of tea in the sitting room, he tactfully enquired what had happened since he last saw me. I spent the next hour telling him about my trip to Fuzhou ending with my resignation from the British Naval Intelligence Office, and what had since been going through my mind. Although he listened with great patience and attention, his reaction appeared at one stage to be a trifle hesitant and embarrassed, which had me wondering momentarily whether he had changed his mind about wanting to have me work for him. As we spoke further, it soon transpired that my anxiety was altogether unnecessary. The Chinese Nationalist Army was apparently somewhat particular about degrees and qualifications. My brother Ping Tsung had been quickly accepted by the Chinese Air Defence mainly because of his HKU war-time degree. As I was almost two years his junior, Lt.-Gen. Lee had assumed that I did not hold a similar degree. Thus he was afraid that the Personnel Department of the 7th War Zone might raise difficulties about giving me a proper assignment. He was more than happy to hear that I, too, held a war-time degree just like that of Ping Tsung, although he could not help asking how that was possible. So I explained to him that the two of us had been classmates ever since we were kids.

Lt.-Gen. Lee declared that he had for some time longed for the luxury of having an English secretary himself. But regrettably no such post existed hitherto in the 7th War Zone. That was why he had despatched Ping Tsung to work for the Chinese Air Defence in Chungking instead. He explained that his was the so-called Political Department of the 7th War Zone with a sizeable section of headquarters and a substantial

staff assigned to him. He said he would be delighted to take me forthwith into his department, and leave the details of my employment to be worked out later. He was almost apologetic when he touched on the question of remuneration. I hastened to assure him that I was completely happy to accept the standard pay of whatever post he could offer me. Before I departed, he thanked me warmly for my willingness to work for him on those terms. I only wished I could tell him in return exactly how much I appreciated his readiness to offer me an opportunity to make myself useful, especially after my repeated frustrating experiences since my arrival in Qujiang from Guilin.

Despite this happiest of understandings arrived at between Lt.-Gen. Lee and myself at his home, the Personnel Department of the 7th War Zone appeared to take its time processing the necessary documents relating to my appointment, and more than a month elapsed before I was able to don a military uniform as an officer of the Chinese Nationalist Army. While I cannot pretend not to have been impatient waiting for my official appointment to materialize, those few weeks turned out to be more rewarding and instructive for me than the whole of the two odd years I subsequently spent working in the political department of the 7th War Zone. During this period of waiting, most of my evenings were spent with Lt.-Gen. Lee at his home where he would never tire of telling me about his hopes and misgivings about the war, about corruption in China at large, about the many difficult problems he was confronted with in the 7th War Zone, and about the virtues and short-comings of Chiang Kai-shek and the Kuomintang. Those were all truly priceless lessons on matters most of which I had not even heard of. He said that I must know about such matters if I were to survive in the Chinese Nationalist Army. He certainly appeared to have taken to me like his own son just because I had given up a much better paid job in order to work for him; even in after years, the warm affection he had for me never at any time cooled off.

Lt.-Gen. Lee had taken a doctorate's degree in pharmacy in France before he became a professional soldier. I soon discovered that he was also a Chinese classical scholar and historian. His recollections and anecdotes on personalities and events covering the post-1911 Revolution era leading right up to the Japanese invasion of China were particularly fascinating. From the first time we met, Lt.-Gen. Lee had struck me as a true leader of men. In the course of time, I learnt to admire and appreciate him even more as a man of letters, a loyal friend, a faithful husband, a dedicated parent, and above all a man of virtue and a tireless fighter against corruption. I could not help noting the contrast in life-



styles between him and some of the high ranking officers in the 7th War Zone. Lt.-Gen. Lee lived a simple Spartan life with his wife and four young children. More than once I was invited to stay for dinner at his house, and could see and tasted for myself the simple meagre meals which he and his family took from day to day. Gen. Yu Hon-mou, for example, was known to have four wives all of whom lived in comfort and luxury. Yet Lt.-Gen. Lee's loyalty was such that I never heard him say one derogatory word against Gen. Yu. The two of them had apparently pursued their professional soldier's career together as sworn blood-brothers.

After the failure of the Kuomintang regime on the mainland in 1948, Gen. Yu followed Chiang Kai-shek and his armies to Taiwan. Lt.-Gen. Lee decided to do otherwise. Altogether disillusioned about Chiang Kai-shek and the Kuomintang by this time, yet unwilling to serve the Communist Party under Mao Zedong to which he had inherently been opposed, Lt.-Gen. Lee elected to take his family to Hong Kong instead in order to give his children a better education. Throughout his stay in Hong Kong until his death in 1989, he was content to live incognito and in utter poverty, maintaining his family and bringing up his four children on no more than the meagre pay of a school teacher. His wisdom in bringing his family to Hong Kong has long since been richly rewarded by the outstanding achievements of his children. Of his two sons, one is today an eminent Queen's Counsel (now Senior Counsel) practising at the local bar, while the other is a renowned neurologist and physician and a former lecturer at the university. One of his daughters, who read law late in life, is now a District Judge in New Zealand and the first Chinese to be so appointed. In 1971, after my son Denis had successfully taken his Oxbridge Examinations in England, he came home specially in order to study Chinese for a year before going up to Merton College at Oxford. Lt.-Gen. Lee was kind enough to come out of retirement to be Denis' tutor. To this day, Denis still takes pride in describing the many incomparable and interesting lessons he was fortunate enough to have received from his affectionate mentor.

When in 1943 I received the official documentation relating to my appointment, I was pleasantly surprised to find that Lt.-Gen. Lee had succeeded in getting the post of an English secretary to the 7th War Zone specially created for me. That was why my appointment had taken so long to materialize. I was given the rank of major in the Chinese Nationalist Army and was seconded to the Political Department to work under Lt.-Gen. Lee. Indeed I could hardly have expected a more satisfying appointment, or hoped to have a better superior officer. As things turned

out, however, I must confess that work-wise, my job left much to be desired. It was not without good reason that hitherto there had not been any English secretary appointed in the 7th War Zone, because there was no need for one. There was no English correspondence to be handled; there were few documents which had to be translated from day-to-day; and English speaking visitors to Headquarters who required the regular services of an interpreter were extremely limited in number.

For no more than a couple of weeks at the beginning of 1944 was I busily engaged in liaison work with a team of American aviation officers who visited the 7th War Zone to explore the possibility of setting up an airfield or two in the area. But the plan was soon abandoned because the marginal utility of such airfields could not justify the enormous cost. Besides, such airfields could not be safeguarded from the watchful eye of the Japanese air force and army. In 1943–4 there was a British Army Aid Group stationed in Qujiang headed by one Major Urquhart but I had no more than a few isolated and minor dealings with him. In fact my main and regular work as English secretary of the 7th War Zone consisted of listening to the news broadcast from the BBC three times a day, and thereafter in translating any material news item into Chinese, and circulating it among the different departments of the War Zone. After a while, I could not refrain from speaking to Lt.-Gen. Lee and asking for more work of any kind. In due course, he appointed me as deputy leader of a group of young officers, all about my age, who were responsible for war propaganda in the 7th War Zone through group singing, drama and sport. Unfortunately I could not sing at all while the dramatic activities of the group were severely limited by the extreme shortage of funds and play scripts. However, I did succeed in organizing a fair number of soccer, basketball and ping-pong competitions for the group, and getting the British Army Aid Group, the Provincial Government Civil Service, as well as my eldest brother's regiment to participate in them. At times I also tried conducting a few English classes for the officers of the propaganda group, but immediately felt handicapped by the shortage of books and other necessary equipment for teaching.

At the end of 1944, the Japanese army made one last effort to capture Qujiang. As a result, the headquarters of the 7th War Zone had to be evacuated. I was dispatched to Long Chuan in the East River area with a section of the propaganda group and a skeleton complement of the Political Department. Gen. Yu, Lt.-Gen. Lee and most of the senior officers and men of the 7th War Zone retreated into Jiangxi Province.

My younger brother Brian, who had shortly before been appointed

tutor to the four children of Lt.-Gen. Lee, was evacuated safely to Long Nan in Jiangxi with the Lee family. My parents, sisters Winnie and Rosalind, and sister-in-law Norma and her son Anthony on the other hand all came from Qujiang to Long Chuan before branching off northwards to an obscure village of no strategic importance whatever in the hills some thirty to forty miles away called He Shi (鶴市), where it was thought they would be safe from the Japanese army. There they all stayed until the end of the war. My brother Ping Tsung was transferred back from Chungking to the 7th War Zone at about this time. He rang me up while I was in Long Chuan and gave me a very unusual although by no means unpleasant assignment. A very attractive and charming female medical student of Ling Nan University by the name of Wong Wai Wa was one of the many evacuees from Qujiang to Long Chuan. Ping Tsung made me promise to look after her and keep her company while she was in Long Chuan. I could readily guess what that meant, and was only too happy to carry out my brotherly assignment. Seeing Wong Wai Wa regularly in Long Chuan pleasantly added colour to my life and led to our becoming close friends. After the Japanese surrender she returned to her folks in Canton and in due course she became Ping Tsung's wife and my dear sister-in-law. My brother Pak Chuen in the meantime fought the Japanese army to a standstill at Qujiang for two weeks before being compelled to retreat into Jiangxi with what was left of his command.

At this stage, the so-called 7th War Zone was in tatters, and what remained of its army could easily have been completely wiped out by the advancing Japanese. I can still remember the uncomfortable feeling my fellow officers and I had in Long Chuan every day during this period trying to anticipate where the Japanese army might be going next. There were of course isolated units of the Cantonese army still remaining in Jiangxi and in the East River Area. But they were so depleted and demoralised that it was altogether doubtful whether they could give battle to the Japanese at all if the latter chose to march against them. But, thank heavens, the Japanese military obviously had their own problems. They were heavily committed not only in many other parts in China but also in the Pacific, as well as all over south-east Asia, and their lines of communication were getting more drawn out and precarious every day. As a result, they elected to stay put after capturing Qujiang, and thus enabled the 7th War Zone Command to reorganize and redeploy their beaten armies for yet further efforts of resistance.

It was in those circumstances that Long Chuan survived the following six months in comparative peace and quiet. Once every ten days or so

during this period, I would hire a bicycle in order to ride the thirty to forty miles to He Shi to visit my parents for no more than a couple of hours each time before returning to my place of work. This was an altogether uneventful although anxious period.

At the beginning of August the first atom bomb was dropped on Hiroshima followed by a warning that unless Japan instantly surrendered, more such bombs would follow. Three days later the second bomb was unloaded on Nagasaki. On 15 August, Emperor Hirohito broadcast the unconditional surrender of Japan. My parents and the rest of the family almost immediately packed their belongings and returned to Hong Kong. I, however, had yet to go through another brief but exciting episode before I quit the Chinese Nationalist Army.

## 2

## *The Case of the Midnight Court*

Jimmy's Kitchen is a restaurant in Hong Kong with an essentially Caucasian cuisine, situated on the ground floor of South China Building, No. 1 Wyndham Street. It may not be the favourite meeting place of gourmets and billionaires, but it is inexpensive, and commands a menu with a great variety of dishes including some with a Malaysian, Indian, as well as Chinese flavour, which entitles it to boast of a wide patronage and great popularity among the residents of Hong Kong.

I am still a regular patron of Jimmy's Kitchen at its current location, but I must say I remember it best as an elite little place in the 1950s of no more than a dozen tables, with a cockloft, that is to say, a small elevated area at the back of the restaurant reserved for regular patrons and accessible only via a wooden staircase.

In those days, it was situated at Theatre Lane facing Queen's Theatre, and was part of China Building. It was then wholly owned by one Leo Landau, who used to go round the tables every day cracking jokes with and recommending the best dishes of the day to his guests and regular patrons.

Immediately after the last war, it was one of the few places in the colony where fresh oysters were served. I remember only too well the regular luncheon meetings I had with my lawyer friends the late Leo D'Almada e'Castro, QC, Leslie Wright, and the late Frank D'Almada at Jimmy's. Those gatherings would almost invariably take place in the cockloft on Fridays.

Friday was chosen for two reasons, primarily because those were slack and leisurely days for the Bar and the legal profession at large, and every weekend would be a long one commencing from Friday afternoon,



so that even an additional glass of wine or two at lunch would do no harm to anybody. Furthermore, fresh oysters were regularly flown into Hong Kong from Australia every Thursday afternoon, and Jimmy's would invariably have the best ready for its guests on the following day.

In the early and mid-1950s, among the dozen or so practising barristers listed in Hong Kong at the time, Leo D'Almada e'Castro, QC, John McNeil, QC, Leslie Wright, and Brook Bernacchi practically monopolized all the civil work in our courts.

As a newcomer to the local Bar, I had no real cause for complaint because as a result of their preoccupation with the more lucrative civil litigation, I was seldom short of briefs to appear in the criminal jurisdiction of our courts.

Frank D'Almada was a solicitor with an enormous criminal practice to whom I owed quite a number of my earlier briefs. He was a very popular member of the legal profession who alternated between practising as a solicitor and sitting as a magistrate. The latter eventuality was due to the fact that there was a distinct shortage of legally qualified magistrates in those days, and as a favour to the government, a number of legal practitioners in the private sector accepted temporary appointments as magistrates from time to time in order to help clear up the huge arrears of accumulated hawkers' summonses, parking summonses, as well as other normally uncontested matters in the magistrates courts. Contested cases would of course be adjourned to be heard by permanent magistrates.

At one of our Friday gatherings, Leo Landau came to our table, and offered free liqueurs for all of us. As we sipped our coffee and his liqueur, he said he had a favour to ask and a proposition to make.

Apparently, his cook boy Kam Yee Fai had been arrested, and charged with wounding with intent to cause grievous bodily harm. Leo Landau said he would like one of us to defend him, looking first at Leslie Wright and then at me.

Leslie Wright immediately suggested I was the man he wanted, because he was not particularly fond of jury trials. Frank D'Almada said he assumed that his firm would be required to instruct me for the defence, and asked further whether Leo D'Almada should also be retained as leading counsel in the case. To which Leo Landau replied with some embarrassment saying that it would be too expensive. What he had in mind was simply to treat us to a couple of free luncheons at the conclusion of the case.

Frank D'Almada thereupon said in that case he would see to it that a competent articled clerk of his was detailed to look into the facts and assist me in preparing the defence.

Accordingly, we parted on the understanding that Frank D'Almada's firm would instruct me to defend Leo Landau's cook boy, at the conclusion of which there would be a couple of succulent meals waiting for us at Jimmy's.

The competent articled clerk promised by Frank D'Almada turned out to be Helen Lo, the daughter of Hin-Shing Lo, a well-known magistrate. Helen Lo was not only an able budding lawyer, but also a talented opera singer in both Cantonese and English, and a competent horsewoman, whom I knew well. Hin-Shing Lo and my father were contemporaries at Cambridge and Oxford respectively during the First World War, and long-standing good friends. I was of course more than happy to have the assistance of Helen Lo in preparing the defence.

I heard no more about the case until shortly before the mid-autumn festival, when Helen Lo told me that our client Kam Yee Fai had already been committed for trial before a judge and jury in the Supreme Court, and that she was sending me a complete set of the depositions of the witnesses taken before the magistrate. After reading the depositions, I rang Helen Lo to arrange a meeting at the Victoria Remand Prison with our client.

The prosecution case could be summarized as follows. Kam Yee Fai had worked for some years for Leo Landau at his residence in MacDonnell Road, where he reported for duty every morning at about 7.30 a.m., prepared breakfast, lunch, and dinner, and washed up in the evening before leaving. There was also an amah who lived in and attended to the domestic chores of the household from day to day.

Several months before his arrest, Kam Yee Fai had gone to visit his sick father in Shanghai after recommending his friend, Yau Yiu Tim, to replace him. Upon his return to Hong Kong, he asked to be reinstated. But Yau Yiu Tim refused to quit. As a result there were quite a few unpleasant confrontations involving not only the two of them but also the amah and Leo Landau.

Prior to Kam Yee Fai's departure for Shanghai, he and the amah had been lovers. In his absence Yau Yiu Tim had replaced him not only as Leo Landau's cook boy but also as the amah's paramour. That naturally added spice to their dispute over the job.

Leo Landau took the stand that the triangular love affair was none of his business. As Kam Yee Fai and Yau Yiu Tim had both served him well, he left it to them to sort things out themselves.

Unfortunately that was exactly what the lovers were unable to do. As a result there were repeated appearances by Kam Yee Fai at MacDonnell Road. Each of those occasions led inevitably to an unpleasant exchange of angry words and mutual recriminations.

The amah would not commit herself to either of the two men, maintaining that they were both her friends and were being very silly over the whole affair. This certainly did not help to resolve the stalemate.

On the night of the alleged offence, Kam Yee Fai had turned up again at MacDonnell Road and asked to see Leo Landau shortly after 8 p.m. Leo Landau was entertaining a number of guests that evening. Accordingly he told Kam Yee Fai to call again at some other time. Instead of leaving, however, Kam Yee Fai proceeded to the servants' quarters, where Yau Yiu Tim and the amah were just preparing to serve dinner.

Shortly thereafter, there was another row between the two men and the shouting and recrimination was clearly audible throughout the house.

Leo Landau naturally went to the servants' quarters, and ordered Kam Yee Fai to leave at once, threatening to send for the police. At this juncture, Kam Yee Fai allegedly turned to Yau Yiu Tim, accused him of stealing his woman as well as his job, and warned him to watch his step thereafter. The time was then about 8.30 p.m.

The dinner party ended shortly before midnight.

After cleaning up, Yau Yiu Tim left Landau's residence, took the short cut as usual from MacDonnell Road, down the footpath alongside the Peak tram railway in order to get to the Peak tram terminal.

As he was walking along the footpath, he was attacked by someone from behind, felt a sharp pain near his waist, and fell to the ground. When he sat up, he said he could see Kam Yee Fai running away down the footpath towards the terminal and disappearing.

Yau Yiu Tim was bleeding badly and so decided not to give chase. Eventually he too made his way to the terminal, where a policeman gave him first-aid before sending him to hospital.

In consequence, Kam Yee Fai was arrested on the following day at his home in Shaukiwan, whither he claimed he had gone immediately after being told by Leo Landau to leave. He denied having threatened or attacked Yau Yiu Tim.

Upon examining Kam Yee Fai's person, and the shoes and clothes he had worn on the previous evening, the police found a recent blood smear on one of his shoes, which was however too small for testing or grouping. It was not possible even to determine if it was human blood.

Leo Landau did not know enough Cantonese or Shanghainese to say whether Kam Yee Fai had or had not threatened Yau Yiu Tim that evening, although he confirmed that the two were shouting at each other at the top of their voices. That was why he saw fit to order Kam Yee Fai to leave, as he had guests in the house whom he did not wish to upset.



The amah was not very helpful to the prosecution case. Although she confirmed that there had been disputes between Kam Yee Fai and Yau Yiu Fai, she said she did not know what it was all about. Furthermore she said that she did not hear Kam Yee Fai threaten anybody that evening.

That, then, was the sum total of the evidence against Kam Yee Fai; apart from someone from the Public Works Department, who merely produced a plan of MacDonnell Road, the footpath and the Peak tram terminal. Yau Yiu Tim had no difficulty reading and fully understanding this plan, and duly marked on it the spot where he said he was attacked and stabbed.

It sounded to me like a straightforward case of a jilted lover stabbing his rival, and I could not help wondering what defence Kam Yee Fai could put up other than a bare denial.

Alibi? Unlikely, because Kam Yee Fai lived alone and it would be difficult to find corroborative evidence. He had told the police he had gone straight home from MacDonnell Road and almost immediately to bed.

Mistaken identity? The two men were close friends and knew each other very well, so that any suggestion of mistaken identity was not likely to be well received.

Feigning the attack was out of the question, because the medical evidence was unmistakable. In fact, Yau Yiu Tim was immobilized and hospitalized for nearly three weeks.

Thus the thought did cross my mind to enquire whether Kam Yee Fai was prepared to admit the charge, and plead for leniency from the trial judge.

However as soon as Kam Yee Fai saw Helen Lo and myself at the Victoria Remand Prison, he burst out against Yau Yiu Tim saying how could anyone be so wicked and ungrateful. He had made it possible for Yau Yiu Tim to take up his job at a time when the latter was out of work and money, and was badly in need of employment. Instead of appreciating this assistance rendered to him, Yau Yiu Tim had refused to give Kam back his job in accordance with the clear understanding they had arrived at prior to Kam's departure to visit his sick father in Shanghai. Furthermore, Yau Yiu Tim had taken advantage of his absence and stolen his woman, meaning the amah at Leo Landau's residence, and had now falsely accused him of such a serious criminal offence. He alleged Yau Yiu Tim must have planned to implicate him in order to keep his job and his woman.

I could see instantly there was no point in asking Kam Yee Fai to consider changing his plea. Apart from denying the charge however, he

could not help us at all otherwise with the defence. He had heard Yau Yiu Tim say at the committal that the stabbing took place after midnight along the footpath leading to the Peak tram terminal. He said that he would not dream of waylaying anybody at all, especially after midnight, because he was a timid man and particularly feared the dark. If we did not believe him, we could confirm it with Leo Landau, or the amah, or even Yau Yiu Tim.

I asked Kam Yee Fai only one question before we left him. The blood stain on his shoe: was he aware what it was and how it got there? He said that as he was a cook boy it could easily have been chicken blood or even strawberry ice-cream. I politely told him that while I would not know whether it was chicken blood, there was no way it could have been strawberry ice-cream.

I must say that Kam Yee Fai's suggestion that the blood stain might have been strawberry ice-cream demonstrated what a naive and stupid man he was. It hardly augured well if he had to go into the witness box to give evidence and submit to cross-examination. On the other hand, the simplicity with which he spoke, and the vehemence with which he accused Yau Yiu Tim of treachery, was impressive.

The next thing I decided on was to visit the scene of the crime.

The case had already been set down for hearing on the Tuesday following the mid-autumn festival long weekend. As the actual date of the mid-autumn festival happened to fall on a Sunday, the following Monday had been declared a public holiday to make up for the occasion. That visit of Helen Lo and myself to the Victoria Remand Prison had taken place during the week before the festival date, so that there were only a handful of working days left before the trial.

I suggested to Helen Lo that in order to make our visit to the scene of the alleged offence altogether worthwhile, it must be undertaken after midnight, just in case some otherwise unimportant but related incidence might turn out to be important after all. Helen Lo was most reluctant to venture out after midnight, and said so. Out of deference to me, however, she eventually agreed, but only as a result of a compromise suggestion proposed by me.

I had promised to take my wife and children on the Peak tram on Sunday evening to go to the Peak around midnight in order to watch the festival lanterns and to celebrate the mid-autumn festival there, as many people customarily did in Hong Kong every year. So, I asked Helen, would she come along, and have supper with us on the Peak after visiting the scene of the alleged offence, thus killing two birds with one stone. Put to her that way, Helen Lo said she could hardly refuse.

On the Sunday evening two days before the trial, I drove my family shortly before midnight to the Peak tram terminal compound half way up Garden Road. Helen Lo was already there waiting for us. We all caught the next Peak tram, but whilst Helen Lo and I got off at the very first stop at MacDonnell Road, my wife and children proceeded on to the Peak to wait for us to rejoin them.

From the Peak tram station where we alighted, Helen Lo and I went down to MacDonnell Road, and there took the footpath which ran almost parallel to the Peak tram railway, and walked along it all the way back to the terminal, keeping a careful lookout for anything of significance throughout our little walk.

In those days, there were a large number of big tall trees almost lining the whole length of the footpath which ran alongside the peak tram railway from the terminal to MacDonnell Road. The thick foliage of those trees provided ample cover for users of the footpath from the hot sun in the course of the day. The St John's Apartments had not yet been erected, so that the peak tram's terminal was a much more desolate spot at the time than it is today, especially in the evening. Most of those trees were subsequently cut down and disappeared, when the St John's Apartments were built and the Helena May Institute was redeveloped.

Apart from the foregoing premises, however, there was very little difference then in the general outlay in that area.

At the end of the little experiment which Helen Lo and I carried out at the footpath, neither of us was any wiser than before as to how best to proceed with the defence. The only conclusions arrived at were that there were few people along the footpath at that hour, and visibility was fairly good.

There was an unexpected turn of events on the following Tuesday, on which date the trial was originally scheduled to commence. The trial judge was suddenly taken ill, and the case had to be adjourned for fresh dates to be fixed. The original dates had not been appointed to suit my diary, because the court had not previously been notified that I was appearing for Kam Yee Fai. But when in due course fresh dates were fixed, I particularly asked for and was given certain specified dates of my choice, the reason for which will be made known to the reader shortly.

Between the adjournment of the original hearing dates and the fixing of new dates, another of our foursome luncheon dates took place at Jimmy's Kitchen.

On this occasion, I took the liberty of asking Leo Landau, perhaps somewhat improperly, as he was a prosecution witness in the case (although it was done with the knowledge and consent of prosecution

counsel) whether Kam Yee Fai was known to be afraid of the dark. To which he replied, somewhat bemused, that indeed he was. He added that Kam Yee Fai was particularly afraid of ghosts, and would usually ask to leave his apartment slightly earlier than usual whenever there was little or no moon, because he would invariably avoid taking the short cut via the footpath, but would instead walk the whole distance of MacDonnell Road, down Garden Road to the Peak tram terminal. This of course bore out what Kam Yee Fai had told Helen Lo and myself at the Victoria Remand Prison.

The trial in due course took place on the rescheduled dates before Mr Justice Gregg. Prosecution counsel was Dermot Rea.

After the prosecution case had been outlined to the jury, Leo Landau was called as the first witness. He told the court that Kam Yee Fai and the amah had been working for him for some time. Several months ago Kam Yee Fai left for Shanghai, and was replaced by Yau Yiu Tim. When he returned, he had asked Yau Yiu Tim in vain for his job back. Each time this would end up in a row between the two men. On the night of the alleged offence, there was another such confrontation to the extent that Leo Landau had found it necessary to threaten to call the police. He had retired to bed shortly after midnight immediately following his guests' departure. The next thing that happened was the arrival of the police at his apartment at about 4 a.m. the next morning, to inform him that Yau Yiu Tim had been stabbed, and to ask him for a statement.

Dermot Rea then asked him to identify in turn, Kam Yee Fai, Yau Yiu Tim, and finally the amah employed by him.

In cross-examination, I asked Leo Landau to confirm, which he readily did, that Kam Yee Fai was a very mild and timid man, who was afraid of the dark, to the extent that on occasions, he would rather walk the whole distance of MacDonnell Road, down Garden Road, than take the short cut via the footpath to the Peak tram terminal. Leo Landau added that he regretted not having adopted a more positive attitude in the dispute between Kam Yee Fai and Yau Yiu Tim, and given the job back to Kam Yee Fai, who had been employed by him for so long. On the other hand, he said that Yau Yiu Tim was definitely a better cook, and he had no knowledge of any previous understanding between the two men requiring Yau Yiu Tim to quit upon Kam Yee Fai's return from Shanghai.

The amah of Leo Landau was a pretty young woman, who had obviously enjoyed playing the two cooks against each other. Under cross-examination, she denied having been the woman of either of them, or the cause of their repeated quarrels. She had heard no threat uttered by Kam Yee Fai, and furthermore said she was more than surprised to hear



that Kam Yee Fai would stab anyone at all, because he had always been such a timid and mild man, who was known to be afraid of the dark, and would frequently avoid taking the footpath to the Peak tram terminal. She said both men were good friends of hers, and she did not mind which of them she worked with. She said that on the evening of the alleged offence, Kam Yee Fai was wearing a dark Hawaiian shirt and dark trousers.

The plan of MacDonnell Road, the Peak tram terminal and the footpath was then agreed upon and tendered as evidence by consent, thus leaving Yau Yiu Tim as the only remaining witness to be called for the prosecution.

Yau Yiu Tim turned out to be a somewhat aggressive man, who obviously felt rather sure of himself. He admitted that he had been out of work for a little while until Kam Yee Fai suggested that he should take his place at Leo Landau's home, but denied that there was any understanding or agreement that he should quit when Kam Yee Fai returned. In fact he said Kam Yee Fai had told him it was more than likely that he would not be returning to Hong Kong. He admitted that he was fond of the amah, and that they were lovers. He said he did not know whether or not Kam Yee Fai had previously been her lover. He denied having stolen Kam Yee Fai's woman. He said the many rows he had had with Kam Yee Fai were all because Kam Yee Fai wanted his job back, and he saw no reason why he should oblige him.

Yau Yiu Tim's account of the assault and stabbing at the footpath was very brief. He was suddenly grabbed by someone from behind, after which he felt a stinging pain in his side, as he struggled and fell. At one stage, he said he saw Kam Yee Fai's face when he struggled to sit up after being stabbed and falling to the ground. But later, under cross-examination, he corrected himself and said he never saw Kam Yee Fai's face, but only saw his back as the latter ran away. He admitted that he was in great pain as he struggled to sit up, and his main thoughts were to have his wound treated. Once again he identified the spot marked on the agreed plan of the layout in the area where he said he was attacked and stabbed.

I asked him how far his attacker had run away, when he sat up and saw his back. He said he could not say offhand. I asked whether that man was as far away from him as I was from where I stood. He was then standing in the witness box while I stood behind counsel's table. He thought for a while and agreed. I asked the trial judge to note that this was a distance of some twenty-five to thirty feet, which prosecution counsel readily agreed.

Yau Yiu Tim concluded by saying that he had no reason to make false accusations against Kam Yee Fai, and that he genuinely believed that it was in fact Kam Yee Fai who had stabbed him. On that note, I sat down. That completed the prosecution evidence.

I should mention that in the course of the trial, I had had a couple of quick conferences with Kam Yee Fai in the Supreme Court Building, and had decided on a number of things with him. After Mr Justice Gregg had given his usual advice on the three alternatives then open to the defence, I informed him that Kam Yee Fai had decided to remain silent and to call no evidence.

Mr Justice Gregg enquired whether that meant I was closing my case. I replied yes, save that before doing so, I would request him and the jury to visit the scene of the alleged offence. He asked whether that was necessary in view of the very clear official plan of that area already admitted by consent. I said that it was very, very necessary because I was asking for the visit to be made that same evening at midnight.

Mr Justice Gregg was obviously surprised, and initially very reluctant to grant my application, saying that it was ages since he last ventured out after midnight. Eventually he said he felt obliged to grant it, adding however that he hoped I knew what I was doing, because he would be very very unhappy if nothing important turned on the unusual proposed nocturnal undertaking by a court of law. I assured him he would not be disappointed.

Helen Lo could not refrain from asking me, as the court adjourned, what mysterious trump card I had up my sleeve, as her previous visit with me to the scene had produced nothing of significance. I said she would find out soon enough.

The application for the visit was made at mid-morning on the third day of the trial. Transport was immediately organized by the judge's clerk for the judge and jurors, and a time was fixed for everybody to meet again shortly before midnight at MacDonnell Road, where the steps led to the footpath.

Thus at the agreed hour, everybody involved in the case duly attended at the designated spot in MacDonnell Road. This included all the jurors, the judge, the judge's clerk, the court interpreter, Kam Yee Fai, Yau Yiu Tim, prosecution counsel, Helen Lo and myself. I was carrying my usual brief case.

As soon as the judge's clerk had ascertained that everybody was present, I led the way down the steps followed by the trial judge, his clerk, the court interpreter, and the jurors, in that order.

Shortly after the descent down the steps, I could hear a small murmur from those following me, **because it was pitch dark.**

It was the end of the lunar month, just as it had been on the evening of the alleged offence, and there was no moon whatever. This was the reason why I had particularly asked for those rescheduled dates.

I had brought along with me in my briefcase a fair number of electric torches which I produced and handed over to the other members of the party in order to light up the footpath. Not only was there no moon, but the thick foliage of the trees also completely shut out any possible light from the stars.

When we reached the spot marked on the agreed plan of the area where Yau Yiu Tim said he was stabbed, I requested that the electric torches be switched off, which was promptly done.

The court interpreter was the fourth member of the party walking behind me, and about fifteen feet away. I asked him whether he could see me at all. I should mention that I was wearing my court suit, which was no darker than the Hawaiian shirt and trousers Kam Yee Fai was wearing on the night of the alleged offence. He answered emphatically and without hesitation — 'NO!'

I asked the judge and jury to note the distance between the court interpreter and myself, and his answer to my question. The foreman of the jury thereupon volunteered the comment that visibility did not extend to beyond three to five feet from where he stood.

That brought an end to our nocturnal visit, but not before I had thanked Mr Justice Gregg for granting my application, to which he responded with a happy grin of satisfaction. I also thanked the jury and everybody concerned for taking part in the visit, and for being so patient with me. One of the jurors in turn thanked me for being so thoughtful as to bring the torches.

On the following morning, I asked the court interpreter to confirm with the lunar calendar that the date of the alleged offence had been at the very end of a lunar month. This was duly done. I thereupon formally closed the case for the defence.

As the defence had called no evidence, prosecution counsel elected not to address the jury a second time. I then made a very short speech to the jury simply inviting them on the evidence to acquit Kam Yee Fai, confident that the trial judge would back me up all the way after the visit to the footpath the previous evening.

This was followed by Mr Justice Gregg's summing-up, in which he directed the jury, *inter alia*, just as I expected, in no uncertain terms, that after the very enlightening and useful experience of the previous night, they should have no difficulty whatsoever in dismissing the claim of Yau Yiu Tim that he could identify his attacker as Kam Yee Fai, by

just looking at his back at a distance of twenty-five to thirty feet and running away, when the visibility at the material spot at the material time could not have exceeded three to five feet.

The jury duly responded by forthwith returning a unanimous verdict of not guilty against Kam Yee Fai, who was duly acquitted and discharged.

Helen Lo was at one stage furious with me, because I had obviously visited the footpath again on a moonless night in her absence, and had kept it from her, which was exactly what I did. But she forgave me readily, when I reminded her that she had said she hated going out into the wilderness after midnight. She said she should have realized there was a full moon at mid-autumn festival, which rendered the visibility then better than otherwise. She further asked me how I first came to think of the limited visibility at the venue when there was no moon. I replied, 'Elementary, my dear Watson; Kam Yee Fai had told us that there were occasions when his fear of the dark would lead him to avoid travelling along the footpath, and Leo Landau and the amah had both confirmed it!'

After she qualified, Helen Lo had a very successful practice as a solicitor, and ended up as a district judge. Tragically, however, leukaemia in the course of time robbed us all of a very competent judge, and me, in particular, of a very good friend.

In the aftermath of the case, Leo Landau dismissed both Yau Yiu Tim and the amah, and employed a new cook boy and his wife to serve him in his MacDonnell Road residence. He decided he could not afford to have any more trouble arising out of the triangular love affair, even though Yau Yiu Tim was truly a first-class chef. As far as Kam Yee Fai was concerned, Leo Landau felt he had already done more than his due in getting lawyers to defend him on the wounding charge. But he did not forget to treat the four friends to two sumptuous luncheons, as promised, as well as Helen Lo and myself to an excellent dinner.



# 8

## *The Case of the Hunter Who Became the Hunted*

If I were asked which was the most extraordinary case I had ever handled, I would have no hesitation in naming the case of *the Queen v. Augustine Chung*. This was the summary trial of a solicitor in the Victoria District Court in Hong Kong in October 1975 for blackmailing for monetary gain, or, alternatively, attempting to obtain property by deception. At the time, I thought it deserved the epithet of being the case of the year. I see no reason to think otherwise today.

Augustine Chung read Sociology at the University of Hong Kong in the 1960s with the aid of a monetary grant from the Hong Kong government. Upon his graduation he worked as a social welfare officer for two years in order to fulfil the terms of his grant. After leaving the Social Welfare Department, he joined a local solicitors' firm as an articled clerk, qualified as a solicitor in 1970, was employed initially as an assistant solicitor, but soon became a partner of a prominent local firm. In no time, he built up a substantial practice in the magistrates' courts representing drivers and owners of public cars and light buses in traffic summons. He was appointed legal adviser and official spokesman for their trade union, and represented them in a miscellany of other matters including suing government for the cancellation of the New Territories taxi licences and public light bus licences.

By 1975, Augustine Chung was a solicitor of five years' standing who had not only done well professionally and financially, but had also won considerable publicity for himself. He owned a deluxe flat, a Rolls-Royce, a Maseratti sports car, a Volvo and an expensive motor launch. He and his wife also had substantial holdings in a number of publicly listed companies.

With that background, it might be difficult to understand why a person in Augustine Chung's position would want to blackmail anyone for monetary gain or attempt to obtain property by deception.

No less remarkable was the fact that the victim of the alleged blackmail or deception should be none other than Donald Cheung, another prominent solicitor, who was at the time the senior partner of a leading local firm of solicitors, and a former President of the Law Society of Hong Kong. If for some unknown reason, Augustine Chung had indeed sought financial gain, he might have picked easier prey.

At the relevant time, Donald Cheung, apart from being a solicitor, was also a director of a well-known firm of building contractors namely, Paul Lee & Co. Ltd., whose affairs were under investigation by the authorities. Paul Lee was a local builder and contractor whose company became publicly listed.

Between 1969 and 1971, the share market enjoyed a boom unheard of before. Local businesses suddenly became aware of the immediate fiscal advantages of becoming publicly listed, and consequently queued up to offer their shares to the public. To add respectability to their management, prominent citizens and eminent professional men were regularly invited to join their respective boards of directors. The value of shareholdings in these newly listed companies frequently jumped several times in the space of a few months as a result of wild rumours and hushed tips.

For a while the people of Hong Kong seemed to be interested only in making a quick return from the stock market. Those with ready cash hastened to invest it all in one or other of the new companies. Others secured overdrafts from the only-too-willing banks to do the same. The newly purchased shares would, more often than not, be pledged as fresh security for more purchases on credit.

As a result, prices kept spiralling upwards until eventually the inevitable occurred. In 1973 the bubble finally burst after the local Hang Seng Index hit an up-to-then record dizzy height of 1780, and in due course crashed to a record low of 158.

Paul Lee & Co. Ltd. had appeared to be carrying on a flourishing business until it suddenly failed in 1973 almost immediately following upon the Stock Market crash. Upon investigation of its affairs by order of the Financial Secretary, vast sums of money were found to be missing. Fraud, larceny, misappropriation of the company's funds to speculate in the stock market, as well as other offences were suspected.

In the months which followed, rumours were rife as to what action the authorities would take upon completion of the investigation, for

example, who, if anybody, would be held responsible for the failure of the company's business and for the disappearance of the company's money, and further whether anybody would be charged criminally, and if so, who, how, and when.

It was not surprising that Donald Cheung, a director of Paul Lee & Co. Ltd., should protect himself by taking legal advice from leading counsel in London as well as from his brother Oswald Cheung, a leading counsel and Councillor in Hong Kong.

Against this background a number of meetings took place between Augustine Chung and Donald Cheung in the month of July 1975. The first of these meetings occurred on Monday 7 July 1975 when the former contacted the latter by telephone, and met him for coffee in town. Hitherto the two men had only known each other professionally.

Augustine Chung said he had information from 'up-top' that certain directors of Paul Lee & Co. Ltd. would imminently be charged with criminal offences, and that because Donald Cheung had made a bad statement to the authorities, he had been put on the Immigration Stop-List and would not be permitted to leave Hong Kong. Nothing much else was said at that meeting, so that Donald Cheung must have been left pondering over what he was told, why he was told, and what, if anything, was to follow.

Two days later, i.e. on Wednesday 9 July, Donald Cheung was stopped at Immigration Control when he tried to take his wife to Macau. It may be interesting to note that subsequently Augustine Chung divulged in the witness box that this Stop-List information about Donald Cheung, which turned out to be 100% accurate, had in fact been supplied to him not by anyone 'up-top' but only by the brother of another director of Paul Lee & Co. Ltd. The precise source of that information was not known.

On Friday 11 July 1975, a second meeting by appointment took place between the two solicitors. This time Augustine Chung told Donald Cheung that he was acting on behalf of friends involved in deciding whether or not to institute criminal proceedings in the Paul Lee investigation. He said those friends had in their possession a document damaging to Donald Cheung, which they were prepared to destroy for half a million US dollars. He added very ominously that even if Donald Cheung was acquitted, he would be finished professionally.

If Augustine Chung had expected Donald Cheung to be overawed by the Stop-List information or the disclosure that he, Augustine Chung, had friends who had in mind instituting criminal proceedings in the Paul Lee investigation, he could not have been more mistaken.

Donald Cheung's reaction was, instead, to suspect corruption, and, immediately after that second meeting with Augustine Chung, to contact Oswald Cheung QC, who in turn brought the matter to the attention of the Attorney-General.

As a result, officers of the ICAC, the Independent Commission Against Corruption, went to Donald Cheung's home on Saturday 12 July. There they connected a tape-recorder to his house telephone, and another to his body, so that any future conversations with Augustine Chung could be recorded.

That same evening i.e. on Saturday 12 July, Augustine Chung took Donald Cheung out for a drive in his car, unaware of the trap laid waiting for him. Augustine Chung told Donald Cheung that the incriminating statement mentioned on 7 July had not in fact been made by Donald Cheung but by a third party, and that the price for destroying it had been reduced to HK\$1 million payable by five cashier orders of \$200,000 each.

Augustine Chung further offered himself as a stakeholder of the cashier orders, so that even if there was a double cross and the charges were not eventually dropped, or it turned out to be all a false pretence, Donald Cheung would still be able to recover his money and not be out of pocket.

On the following day, i.e. Sunday 13 July, Augustine Chung, still not suspecting that the trap was closing in on him, took Donald Cheung out again in his car, and told him that as soon as the cashier orders were handed over, his name would be taken off the Stop-List. However, the matter must be finalized within forty-eight hours. A discussion then followed between the two men as to how best to raise the money.

At each of the three previous meetings, Donald Cheung had apparently tried unsuccessfully to find out who the 'up-top' connections of Augustine Chung were. He tried again on Sunday 13 July. As soon as it became obvious that the information he sought was not forthcoming, he gave a pre-arranged sign to a number of ICAC officers who had been waiting for the two men to return from their drive. As a result, Augustine Chung was placed under arrest on suspicion of conspiracy to solicit bribes.

Immediately upon his arrest, Augustine Chung said that he could explain everything, that no corruption was involved, and that he had only been conducting an experiment on Donald Cheung to whom he wished genuinely to apologize. This was of course to no avail, and he was taken back to the offices of the ICAC.

On Monday 14 July, I returned from Court to my chambers shortly

after 5 p.m. There I found waiting for me my old friend, a senior solicitor W.I. Cheung, who said he would be instructing me as defence counsel for his partner Augustine Chung. He asked if I could request bail for Augustine Chung. Accordingly I got in touch with the ICAC, and bail was agreed.

After the conclusion of the arrangements for bail, I had my first conference with Augustine Chung in my chambers. I soon learnt that no fewer than 6 ICAC officers had taken turns the previous evening to record a lengthy voluntary statement from him. This began a little after 11 p.m., continued throughout the night and the following morning and day, and only ended in the late afternoon of Monday 14 July.

My first conference with Augustine Chung commenced shortly after 6 p.m. on Monday 14 July. It continued until 2 a.m. on the following Tuesday morning 15 July when I terminated the meeting arbitrarily until another date could be fixed.

While my instructing solicitor and I were both completely exhausted, Augustine Chung remained fresh and enthusiastic, and could and no doubt would have gone on for many more hours if I had not put an end to the conference. This was the more amazing bearing in mind that he had just previously been involved night and day in giving the long statement to the ICAC.

From the very outset of this account, I have indicated that this was an extraordinary case. Augustine Chung, who was the principal character in the case, was undoubtedly an extraordinary man.

This must be borne in mind when one tries to ascertain whether or not his unusual and surprising defence was bona fide. In his judgment, Judge Hopkinson said of Augustine Chung's defence that 'such an idea is crazy and half-baked. In the case of an ordinary normal individual one would dismiss it out-of-hand as utterly absurd. But here we were dealing not with an ordinary normal individual, but with a crank.'

To say that Augustine Chung's defence was simply that it was all an experiment in psychology and he had no intention of depriving Donald Cheung of anything would be to over-simplify the issue. Otherwise it would be difficult to understand why it had taken him so very long to explain it initially to the ICAC officers, subsequently to his legal representatives, and finally to the Court. His statement to the ICAC took many working hours, his instructions to his lawyers on separate occasions took several times as long, and eventually his evidence in Court lasted two and a half painful hearing days.

As far as the case went, and particularly where Augustine Chung himself was concerned, his defence was necessarily tied up completely



with his whole life, about which he took great pride in talking. Thus he was invariably at pains to tell the world at every opportunity that he was born of humble parents, survived a poverty-stricken and unhappy childhood, had to overcome many hurdles before he could complete his education and finally qualify as a lawyer. He said that he had chosen the legal profession because the law offered not only monetary and other material attractions, but also ample opportunities to fight against social, legal, as well as other forms of injustice.

At the ICAC, Augustine Chung first mentioned a number of existing articles written by him in both English and Chinese on psychology and social problems, some while he was still an undergraduate at the University of Hong Kong, others when he was working as a social welfare officer. When, on a later occasion, I asked him in my chambers whether any of those articles was still available, he surprised me by immediately producing from his briefcase quite a collection of somewhat tattered privately printed literature, some in English and others in Chinese, all bearing his name as author. These specimens of his personal literature were all produced in Court subsequently.

Although in due course the trial Judge described these specimens of his printed literature as unoriginal and tedious, he concluded nevertheless that only someone with a social conscience could have written them. Since there was no way they could have been trumped up just for the defence, their existence necessarily made Augustine Chung's explanation that he was only carrying out an 'experiment' on Donald Cheung more readily believable.

In one of those printed pamphlets, in particular, Augustine Chung propounded the view that because the underprivileged classes of society were constantly suffering from poverty and hunger, it was only to be expected that they would stoop to crime from time to time. The privileged classes on the other hand were spared such suffering and thus were far less susceptible to committing crimes. He believed however that if the privileged members of our society should be subjected to the appropriate kind and amount of pressure, they too would crack at some stage and be involved in crime. Unfortunately, he said, opportunities to prove his theory were necessarily scarce, if they occurred at all. He felt destined to be a champion of the underprivileged, and would dearly love to be able to put his pet theory to the test.

This latter pamphlet in particular introduced a ring of truth into his defence. For, if he had hitherto entertained a constant desire to prove the vulnerability of the privileged classes under pressure, the Paul Lee investigation rumours and the Stop-List information would certainly

appear to offer a golden opportunity for the psychological experiment to be carried out on somebody such as Donald Cheung. For Augustine Chung, to be able to describe the result of such an experiment subsequently in print would truly satisfy a life-long ambition.

Beside his writings, another unrelated piece of evidence would also appear to lend support to Augustine Chung's claim to having a social conscience. In November 1974, he had taken out a life insurance policy for US\$700 000 for the joint benefit of his wife and the Community Chest. It was to take effect only if he was injured or died within a period of five years. Presumably he must have genuinely believed in his own worth to the community if he should survive the prescribed period. In case he died, the sum insured would presumably replace the loss of his service to the community.

At one of our many conferences, it was suggested that in the face of the unusual nature of the defence it might be of assistance if our client was psychiatrically examined. Augustine Chung himself did not initially accede to the suggestion but was eventually persuaded to agree to be examined.

Dr David Chen was the best qualified and best known psychiatrist in Hong Kong. He had then just left government service to set up private practice. In due course, he examined Augustine Chung on a number of occasions.

Augustine Chung was tried before Judge Hopkinson in the Victoria District Court at the beginning of October 1975. The hearing lasted seven days. On each day the Court was packed to overflowing. This was not surprising because both Augustine Chung and Donald Cheung were well-known in Hong Kong and not only in the legal profession. Besides, it was unique for a lawyer to be charged with blackmailing another lawyer for monetary gain.

As the trial progressed, and Donald Cheung and the ICAC officers had all given evidence in turn, those who had packed the court expecting to see fireworks must have been somewhat disappointed, because none of the prosecution witnesses were cross-examined by me at all. In addition to the evidence of those witnesses, three tape-recordings were admitted as evidence and played back in Court. Two of these were taken from the tape-recorder carried on the person of Donald Cheung and merely confirmed the conversations which took place between him and Augustine Chung on 12 and 13 July respectively. Light entertainment was provided when the play-back of one of those two tapes reflected a miscellany of other sounds recorded when Donald Cheung apparently went into the wash-room and forgot to switch off the machine he was carrying! The

third tape was a long recording of the statement made by Augustine Chung at the ICAC, the play-back of which in Court took the greater part of a day.

This third tape set out in great detail not only Augustine Chung's explanation in answer to the charge, but also his whole life story. Accordingly the defence became an open book even before Augustine Chung went into the witness box. The sole issue of the trial in fact hinged on Augustine Chung's state of mind when he met and spoke to Donald Cheung on the four occasions respectively on 7, 11, 12 and 13 July. That those several meetings and conversations took place was never disputed. The only dispute was whether Augustine Chung had intended thereby to secure monetary gain or obtain property from Donald Cheung, or, whether, as Augustine Chung claimed, it was all part of an 'experiment' which he had dearly wanted to put to the test all his life.

At the conclusion of the prosecution case, Augustine Chung duly took the witness stand, and in no time was once more performing his long solo act, talking and rambling for two and a half days about his past life, his unhappy childhood, his success story, and his social conscience. There could be little doubt in the mind of anyone watching and listening to him that at times he was thoroughly enjoying himself. He looked every inch the proud author when he produced and read out his several papers on psychology and social problems in Hong Kong, and explained to the Court, how as champion of the underprivileged he had consistently longed for an opportunity to test the reaction of the privileged classes to psychological and other forms of pressure. He said that if he were to miss this opportunity to test Donald Cheung's resistance to psychological pressure, he would never get another chance. He told the Court unashamedly of his achievements in the magistrates' courts, his relative financial affluence, his numerous rich possessions, and the many expensive gifts showered on him by his grateful clients. He could hardly contain his pride when he referred to and produced the insurance policy he had taken out for the benefit of the Community Chest and explained why he had done it. Once again he was profuse in his apologies for picking Donald Cheung as the guinea pig for his experiment. He explained that the case of Donald Cheung offered him an opportunity he simply could not resist for putting his life-long theory to the test.

His repeated professed apologies to Donald Cheung, tendered first upon his arrest, then at the ICAC, time and again when instructing his defence lawyers, yet again when interviewed by Dr David Chen, and finally in the witness box, were not entirely insignificant, because they



not only reflected consistency on his part, but perhaps would not normally be expected from a genuine blackmailer.

Augustine Chung was cross-examined somewhat sparingly by Prosecution Counsel. He was pressed only to explain his intent behind each of the several meetings he had had with Donald Cheung. Eventually it was put to him very simply and succinctly that the whole exercise was by no means just an experiment as claimed, but, instead, a real attempt to secure monetary gain from Donald Cheung, and that he would have kept the five cashier orders of \$200,000 each for himself if and when Donald Cheung handed them over to him.

Augustine Chung replied that he had never intended to secure anything for himself because he was so well-off that another million dollars would not make any difference to his way of life, and that if and when the cashier orders were produced, they would prove that Donald Cheung had succumbed to pressure, and the experiment would have been completed. He would there and then have told Donald Cheung the truth, apologized to him for everything, and happily asked him to keep his money.

After Augustine Chung had concluded his evidence, I called Dr David Chen to give evidence. He told the court that in the month of August he had interviewed and examined Augustine Chung on a number of occasions in his clinic. As a result he was of the opinion that his patient was suffering from a mental disorder called hypomania, which could get progressively worse as time goes on, and which invariably left the invalid totally disjointed, and completely preoccupied with his own importance and image. It was a disturbance of mood, he said, and necessarily affected the invalid's way of thinking as well as his behaviour from day to day. He was not cross-examined.

At the conclusion of the evidence, Prosecution Counsel submitted that on the undisputed evidence before the Court, Augustine Chung had clearly attempted to blackmail Donald Cheung for monetary gain or alternatively to obtain property from him by deception. The explanation of 'experiment', even if believed, was no defence because the admitted request for the cashier orders showed adequate intent either to secure monetary gain or obtain property by deception. He further suggested that the so-called explanation reflected no more than a prepared defence carefully planned before the commission of the crime.

I maintained and submitted that each of the two charges required a criminal intent to be proven, so that if the Court should be left in reasonable doubt whether or not the accused was only carrying out an experiment on Donald Cheung, it must follow that the requisite guilty

intent to secure monetary gain for himself or permanently to obtain property by deception would not have been proven, and the accused must be acquitted. I said the offences with which Augustine Chung stood charged were clearly distinguishable from the simple offence of intimidation in respect of which no criminal intent was required to be proven. I further submitted that the suggestion of a prepared defence could hardly be squared with the existence of the personal literature of the accused and the insurance policy taken out for the benefit of the Community Chest.

On 18 October, Judge Hopkinson read out a carefully prepared written judgment upholding my submission on the law and giving the benefit of the doubt to Augustine Chung who was accordingly acquitted. In brief, Judge Hopkinson said he had been led by the following factors to find in his favour, namely, relative financial sufficiency and affluence, and his personality and characteristics. He had watched Augustine Chung very carefully not only during the two and a half days when he was in the witness box but also when Dr David Chen was giving evidence. Furthermore, he took into consideration the overall consistency of Augustine Chung's account from the very moment of arrest; his repeated wish to apologize to Donald Cheung; the purport and significance of his numerous writings and the support they lent to his defence, the fact that he was suffering from the mental disorder hypomania, which must have affected his mind and behaviour according to the evidence of Dr Chen, which was not challenged by the prosecution at all, and finally the insurance policy he had taken out in favour of his wife and the Community Chest in the event of his dying within five years which indicated not only the fact that he had a social conscience but also the extent to which he genuinely believed in himself being a net asset to society as champion of the underprivileged. The Judge said that in the face of all those factors, he was not convinced that the 'experiment' was merely a prepared defence. Augustine Chung was accordingly discharged.

The acquittal of Augustine Chung in the Victoria District Court created quite a sensation at the time. Judge Hopkinson was openly criticised for his verdict, while I was credited with having accomplished another mission impossible. In my respectful view, neither such criticism nor credit so attributed was warranted. On the evidence led, Judge Hopkinson's reasoning for his verdict could not be faulted, while Augustine Chung's defence was entirely his own.

What was overlooked by the public was that the Prosecution had played no small part in bringing about Judge Hopkinson's verdict. Each of the two charges preferred, namely, (a) Blackmailing for monetary

gain, or alternatively, (b) Attempting to obtain property by deception, required a specific criminal intent to be proven. In the end Judge Hopkinson was not satisfied that this intent had been so proven and Augustine Chung was accordingly acquitted. What was especially difficult to understand was why those two particular charges were laid despite the Prosecution having had full prior knowledge of the exact nature of the defence-to-be. If Augustine Chung had instead been charged with (a) Intimidating Donald Cheung, or, alternatively, (b) Attempting to procure the commission of a corrupt offence by Donald Cheung, the question of proving a criminal intent would not even arise and the explanation of a psychological experiment on Donald Cheung would not provide a defence.

After the Victoria District Court trial, Augustine Chung was nonetheless brought before the Disciplinary Committee of the Law Society and eventually struck off the Rolls for Intimidating Donald Cheung.

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