

湖南省长沙市中级人民法院

刑事判决书

(2005)长中刑一初字第29号

公诉机关湖南省长沙市人民检察院。

被告人师涛，化名“198964”，男，1968年7月25日出生于宁夏回族自治区盐池县，汉族，大学文化，无业，住山西省太原市军安里小区3号楼西单元102室。因涉嫌犯为境外非法提供国家秘密罪，于2004年11月24日被抓获，次日被刑事拘留，同年12月14日被逮捕。现押长沙市看守所。

委托辩护人佟文忠，上海市天易律师事务所律师。

长沙市人民检察院以长检刑诉字(2005)第13号起诉书指控被告人师涛犯为境外非法提供国家秘密罪一案，于2005年1月31日向本院提起公诉。本院依法组成合议庭，不公开开庭审理了本案，长沙市人民检察院指派代理检察员苏双技出庭支持公诉，被告人师涛及其辩护人佟文忠等到庭参加诉讼。现已审理终结。

长沙市人民检察院指控，2004年2月11日至同年4月22日期间，被告人师涛受聘湖南省当代商报社，任编辑部主任。同年4月20日下午5时许，湖南省当代商报社副总编王某某、杨

某某在例行评报会和编前会后，又召集该报社要闻部、热线机动部、编辑部等部门负责人参加了一个专门会议。在该专门会上，王某某口头传达了属于绝密级国家秘密的中共中央办公厅、国务院办公厅《关于当前稳定工作的通知》（中办发[2004]11号）的重要内容摘要，并强调该文件属于绝密文件，不能记录、传播，但被告人师涛私自将此重要内容摘要作了记录。同日下午19时许至凌晨2时许，被告人师涛在其办公室，通过其个人的电子邮箱 huoyan-1989@yahoo.com.cn，向位于美国纽约的“民主亚洲基金会”筹设人之一、境外网站“民主论坛”及电子刊物《民主通讯》主编洪哲胜的电子信箱 caryhung@aol.com 发送了其私自记录的上述中办发[2004]11号文件的重要内容摘要，并将提供者化名为“198964”，同时要求洪哲胜尽快想办法发出去，但不要使用师涛的名字。当日，署名“198964”提供的上述中办发[2004]11号文件的重要内容摘要在《民主论坛》刊登发表，此后又被“博讯”、“中国民主正义党”等境外网站转载发表。

对指控的上述事实，公诉机关提供了证人证言、密级鉴定书、相关物证、书证、抓获经过材料、现场照片及物证照片、被告人的身份证明材料、被告人的供述等证据证实，本院认为，被告人师涛的行为已触犯《中华人民共和国刑法》第一百一十一条之规定，构成为境外非法提供国家秘密罪，向本院提起公诉，要求依法判处。

被告人师涛及其辩护人对起诉书指控的犯罪事实及本案的

定性不持异议。被告人师涛辩解：“其为境外非法提供国家秘密的犯罪行为不属于情节特别严重。”其辩护人辩称：“鉴于被告人师涛的行为并未给国家安全和利益造成极其严重的危害后果和认罪态度好，请求对其从轻处罚。”

经审理查明：被告人师涛于2001年4月与境外网站“民主论坛”及电子刊物《民主通讯》的主编洪哲胜（中国台湾省人，居住美国纽约，系“民主亚洲基金会”的筹设人之一）相识。2004年4月20日下午5时许，湖南省当代商报社副总编王某某、杨某某在例行评报会和编前会后，又召集该报社要闻部、热线机动部、编辑部等部门负责人开会，时任该报社新闻中心和编辑中心主任的师涛参加了会议。王某某在会上口头传达了属于绝密级国家秘密的中共中央办公厅、国务院办公厅《关于当前稳定工作的通知》（中办发[2004]11号）的重要内容摘要，并强调该文件属于绝密文件，不能记录，不要传播。被告人师涛将此重要内容摘要作了记录。王某某发现师涛在作记录，就提醒师涛不能作记录，但师涛仍在记录本上作了详细记录。当日晚23时32分许，被告人师涛为向境外敌对分子通风报信，利用其独自在办公室值班之机电话上网，通过其个人的电子邮箱 huoyan-1989@yahoo.com.cn 向境外敌对分子洪哲胜的电子邮箱 caryhung@aol.com 发送了其记录的上述中办发[2004]11号文件的重要内容摘要，并将提供者化名为“198964”，同时要洪哲胜尽快想办法发出去，但不要师涛的名字。当日，署名为“198964”提供的上述中办发

[2004]11 号文件的重要内容摘要在《民主通讯》上刊登发表，此后又被“博讯”、“中国民主正义党”等境外网站转载发表：

证明上述事实的证据有：1、国家保密局作出的密级鉴定书，证实被告人师涛为境外非法提供的国家秘密的材料内容与“中办发[2004]11 号文件（绝密级）中的小标题内容基本一致，泄露了中办发[2004]11 号文件的基本内容，应当属于绝密级国家秘密；2、书证：①、被告人师涛于 2004 年 4 月 20 日 23 时使用其个人的电子邮箱 huoyan-1989@yahoo.com.cn 通过互联网将中办发[2004]11 号文件内容摘要发送给境外敌对分子洪哲胜的电子邮箱 caryhung@aol.com 的电子邮件一封，内容大意为师涛要洪哲胜尽快想办法将中办发[2004]11 号文件发出去，但提供者不要用师涛的名字，而是化名为“198964”，后附有文件摘要内容；②、通过互联网下载的在《民主通讯》、“博讯”、“中国民主正义党”等境外网站和电子刊物刊登发表的署名为“198964”者提供的中办 11 号文件摘要的资料，该资料经被告人师涛辨认，确认与其所提供的国家秘密的内容一致；③、从互联网上下载的敌对分子洪哲胜的身份资料，证实洪哲胜是中国台湾人，居住在美国纽约，系“民主亚洲基金会”的筹设人之一，系境外网站“民主论坛”及电子刊物《民主通讯》的主编；3、取证笔录、物证笔记本，证实 2004 年 12 月 6 日，被告人师涛的妻子王媛将从其家中找到的师涛记录有中办 11 号文件摘要内容的笔记本交给公安机关的事实，及被告人师涛的笔记本上记载有“4 月 20 日开会

传达宣传部文件（绝密文件）（中办 11 号文件），中办关于当前稳定工作的通知。”等文字，后附有文件摘要内容。该笔记本经被告人师涛的辨认，确认系其所作的记录；4、雅虎香港控股有限公司出具的关于用户资料的证明材料，证实 IP 地址：218.76.8.201，时间：2004 年 4 月 20 日 23 时 32 分 17 秒的对应用户资料如下：用户电话：0731-4376362，湖南《当代商报》社。地址：长沙市开福区建湘新村 88 栋 2 楼；5、现场照片及相关物证、书证照片；6、物证：①、境外敌对分子洪哲胜作为稿费寄给被告人师涛的支票一张及信封一件；②、被告人师涛的另一本笔记本，上记载有境外敌对分子洪哲胜的电子邮箱号码；③证人王某某、彭治国的笔记本，上均记载有中办 11 号文件的摘要内容；7、证人王某某、杨某某、彭治国的证言，证实 2004 年 4 月 20 日下午 5 时许，王某某在专门召集报社部门负责人开会的会议上，口头传达了中办发[2004]11 号文件的重要内容摘要，并强调该文件属于绝密文件，不要传播。被告人师涛参加会议并作了记录，王某某发现师涛在作记录，就专门提醒师涛不要作记录的事实以及被告人师涛在当晚值班的事实；8、证人易素芬、何平、胡有德、洪宇的证言，证实报社负责人在传达省委宣传部的重要精神的文件时，如强调不能传播，是绝密文件，作为一名新闻工作者均会将该文件视为国家秘密的事实；9、抓获经过材料；10、被告人师涛的身份证明材料；11、当代商报社招聘人员登记表，证实被告人师涛于 2004 年 2 月 11 日至 2004 年 4 月 22

日受聘于湖南当代商报社的事实；12、被告人师涛的手写自诉材料及供述，均对其故意为境外非法提供国家秘密的犯罪事实供认不讳。上述证据相互印证，足以认定本案事实。

本院认为，被告人师涛为向境外敌对分子通风报信，故意非法将其所知悉的属于绝密级的国家秘密提供给境外的机构，危害国家安全，属情节特别严重，其行为已构成为境外非法提供国家秘密罪。故公诉机关指控被告人师涛的行为构成为境外非法提供国家秘密罪的罪名成立。被告人师涛辩解：“其为境外非法提供国家秘密的犯罪行为不属于情节特别严重。”经查，最高人民法院《关于审理为境外窃取、刺探、收买、非法提供国家秘密具体应用法律若干问题的解释》第二条第（一）项中规定，为境外窃取、刺探、收买、非法提供绝密级国家秘密的，属于“情节特别严重”，被告人师涛为境外非法提供的国家秘密已经国家保密局鉴定为绝密级国家秘密，其行为应认定为情节特别严重，故此辩解本院不予采纳。其辩护人辩称：“鉴于被告人师涛的行为并未给国家安全和利益造成极其严重的危害后果和认罪态度好，请求对其从轻处罚。”经查，与事实相符，故此辩护意见本院予以采纳。据此，依照《中华人民共和国刑法》第一百一十一条、第五十五条第一款、第五十六条第一款之规定，判决如下：

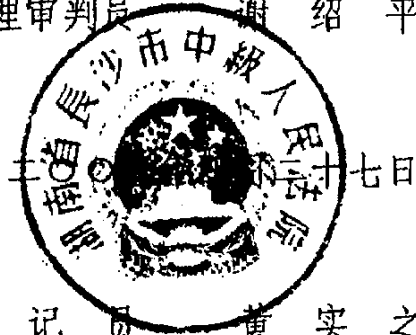
被告人师涛犯为境外非法提供国家秘密罪，判处有期徒刑十年，剥夺政治权利二年。

（刑期从判决执行之日起计算，判决执行以前先行羁押的，

羈押一日折抵刑期一日，即自 2004 年 11 月 24 日起至 2014 年 11 月 23 日止)

如不服本判決，可在收到本判決書後的第二日起十日內，通過本院或直接向湖南省高級人民法院提出上訴，書面上訴的，應提交上訴狀正本一份，副本兩份。

審判長 歐陽華
審判員 柳志敢
代理審判員 謝紹平



本件與原本核對無異

書記員 黃實之

**Changsha Intermediate People's Court of Hunan Province
Criminal Verdict**

Changsha Intermediate Criminal Division One First Trial Case No. 29 (2005)

Prosecuting organ is the Changsha People's Procuratorate of Hunan Province.

Defendant Shi Tao, a.k.a. "198964," male, born on July 25, 1968 in Yanchi County in Ningxia Hui Autonomous Region, Han ethnicity, university graduate, unemployed, resided at Room 102, West Unit, Building 3, Jun'anli Housing Development in Taiyuan, Shanxi Province. Because he was suspected of committing the crime of illegally providing state secrets to foreign entities, he was taken into custody on November 24, 2004, placed under criminal detention on the following day, and arrested on December 14 of the same year. He is currently being held in custody at the Changsha Detention Center.

Authorized defense attorney is Tong Wenzhong, a lawyer with the Tianyi Law Firm in Shanghai.

In Changsha Procuratorate Criminal Indictment No. 13 (2005), the Changsha People's Procuratorate charged defendant Shi Tao with committing the crime of illegally providing state secrets to foreign entities, and on January 31, 2005 it sent the case to this court for prosecution. This court formed a collegiate bench according to law and held a closed trial to hear this case. The Changsha People's Procuratorate sent procurator Su Shuangji to court to support the prosecution. Defendant Shi Tao and his defense attorney Tong Wenzhong were also in court to participate in the proceedings. This trial has now been concluded.

The Changsha People's Procuratorate charged that, from February 11 to April 22, 2004, defendant Shi Tao was employed by Hunan's *Contemporary Business News*, where he held the position of head of the Editorial Department. At around 5:00 on the afternoon of April 20, after a routine newspaper review meeting and a pre-editorial meeting, assistant editors-in-chief of *Contemporary Business News* Wang XX and Yang XX convened a special meeting of the heads of the newspaper's Front Page News Department, the Mobile Hotline Department, and the Editorial Department. During this special meeting, Wang XX verbally communicated a summary of the main contents of a top-secret document issued by the General Office of the Central Committee of the Communist Party of China (CPC) and the General Office of the State Council entitled "A Notice Regarding Current Stabilizing Work" (CPC General Office Document No. 11 [2004]). He also emphasized that this was a top-secret document and that notes must not be taken on it and that it should not be disseminated. However, defendant Shi Tao secretly did take notes on the summary of the document's main content. Between approximately 7:00 pm on that day and approximately 2:00 am the following morning, defendant Shi Tao used his personal email account (huoyan-1989@yahoo.com.cn) in his office to send the notes he had secretly taken on the above-mentioned summary of the main contents of CPC General Office Document No. 11 (2004) to the email account of Hong Zhesheng (caryhung@aol.com), one of the founders of the "Asia Democracy Foundation" located in New York, USA and editor-in-chief of the foreign web site "Democracy Forum" and the electronic publication "Democracy News." He gave "198964" as the alias of the person who provided the document and asked Hong Zhesheng to find a way to distribute it as quickly as possible without using Shi Tao's name. That day, the above-mentioned summary of the main contents of CPC General Office Document No. 11 (2004) was posted for publication on the "Democracy Forum" under the name of "198964." It was later reposted for publication on other foreign web sites such as "Boxun News" and the "China Democracy & Justice Party."

Regarding the above-mentioned facts as charged, the prosecuting organ provided such corroborating evidence as the oral testimony of witnesses, a secrecy-degree verification certificate, related material and written evidence, materials on the process of taking Shi Tao into custody, photos of the crime scene and photos of material evidence, information proving the defendant's identity, and the defendant's confession. The procuratorate maintains that defendant Shi Tao's actions violated Article 110 of the "Criminal Law of the PRC" and that his actions constitute the crime of illegally providing state secrets outside of the country. It has sent the case to this court for prosecution, requesting that a verdict be passed according to law.

Neither defendant Shi Tao nor his defense attorney raised any objections to the criminal facts as charged in the indictment or to the characterization of this case. Defendant Shi Tao argued in his defense: “My criminal act of providing state secrets to foreign entities did not involve especially serious circumstances.” His defense attorney stated: “Considering that defendant Shi Tao’s actions did not cause extremely serious damage to state security or interests and that his attitude in admitting his crimes was good, please punish him leniently.”

In the course of the trial it was determined that: In April 2001, defendant Shi Tao made the acquaintance of Hong Zhesheng (from China’s Taiwan Province, resident of New York in the USA, and one of the founders of the Asia Democracy Foundation), editor-in-chief of the foreign web site “Democracy Forum” and the electronic publication “Democracy News.” At approximately 5:00 on the afternoon of April 20, 2004, after a routine newspaper review meeting and a pre-editorial meeting, assistant editors-in-chief of *Contemporary Business News* Wang XX and Yang XX convened a meeting of senior staff of the newspaper’s Front Page News Department, the Mobile Hotline Department, and the Editorial Department. Shi Tao, then head of the newspaper’s News Center and Editorial Center, attended the meeting. During the meeting, Wang XX verbally communicated a summary of the main contents of a top-secret document issued by the General Office of the Central Committee of the Communist Party of China (CPC) and the General Office of the State Council entitled “A Notice Regarding Current Stabilizing Work” (No. 11 [2004] issued by the CPC General Office). He emphasized that this was a top-secret document and that notes must not be taken on it and that it should not be disseminated. Defendant Shi Tao took notes on this summary of the document’s main contents. When Wang XX discovered that Shi Tao was taking notes, he reminded Shi Tao that he was not allowed to take notes. However, Shi Tao still made detailed notes in his notebook. That night at approximately 11:32 pm, defendant Shi Tao leaked this information to an overseas hostile element, taking advantage of the fact that he was working overtime alone in his office to connect to the internet through his phone line and use his personal email account (huoyan-1989@yahoo.com.cn) to send his notes on the above-mentioned summary of the main contents of CPC General Office Document No. 11 (2004). He also used the alias “198964” as the name of the provider and asked Hong Zhesheng to find a way to distribute the information as quickly as possible without using Shi Tao’s name. That day, the above-mentioned summary of the main contents of CPC General Office Document No. 11 (2004) was posted for publication on the “Democracy Forum” under the name of “198964.” It was later reposted for publication on other foreign web sites such as “Boxun News” and the “China Democracy & Justice Party.”

The evidence demonstrating the above criminal facts is as follows: 1. A secrecy-degree verification certificate issued by the State Secrecy Bureau, which confirms that the sub-headings of the state secret materials illegally provided by defendant Shi Tao to foreign entities were basically the same as those in CPC General Office Document No. 11 (2004) (top-secret level) and that the basic content of CPC General Office Document No. 11 (2004) that was leaked should be classified as top-secret level state secrets. 2. Material evidence: (i) An email sent by Shi Tao at 11:00 p.m. on April 20, 2004 using his personal email account (huoyan-1989@yahoo.com.cn), in which he sent the summary of the contents of CPC General Office Document No. 11 (2004) to the email account of overseas hostile element Hong Zhesheng (caryhung@aol.com). The general idea of the email was that Shi Tao

wanted Hong Zhesheng to find a way to distribute CPC General Office Document No. 11 (2004) as quickly as possible but that he should use “198964”, rather than [the name] Shi Tao, as the name of the document’s provider; the summary of the document was attached at the end. (ii) The summary of CPC General Office Document No. 11 (2004), downloaded from the Internet, where it was posted on foreign web sites and electronic publications such as “Democracy Forum,” “Boxun News,” and “China Democracy & Justice Party” under the name of “198964.” These materials were identified by defendant Shi Tao, confirming that these materials were the same as the state secrets that he provided. (iii) Materials downloaded from the Internet that identify hostile element Hong Zhesheng and confirm that Hong Zhesheng is from China’s Taiwan Province, resides in New York in the USA, is a founder of the Asia Democracy Foundation, and is editor-in-chief of the foreign web site “Democracy Forum” and the electronic publication “Democracy News.” 3. Notes on evidence-taking and the material evidence of a notebook, confirming the fact that on December 6, 2004, defendant Shi Tao’s wife Wang Ai provided the state security organ with a notebook found in their home containing Shi Tao’s notes on the summary of CPC General Office Document No. 11 (2004). There was also a note recorded in Shi Tao’s notebook reading “Meeting on April 20 to relay Propaganda Department document (top-secret) (CPC General Office Document No. 11 [2004]), notice from the CPC General Office regarding current stabilizing work,” with a summary of the document appended at the end. This notebook was identified by defendant Shi Tao, confirming that he was the person who made the notes. 4. Account holder information furnished by Yahoo Holdings (Hong Kong) Ltd., which confirms that for IP address 218.76.8.201 at 11:32:17 p.m. on April 20, 2004, the corresponding user information was as follows: user telephone number: 0731-4376362 located at the *Contemporary Business News* office in Hunan; address: 2F, Building 88, Jianxiang New Village, Kaifu District, Changsha. 5. Photos taken at the scene and photos of related material evidence and written evidence. 6. Material evidence: (i) One envelope and one check sent by overseas hostile element Hong Zhesheng to defendant Shi Tao as payment for a manuscript. (ii) Another notebook of defendant Shi Tao’s, in which was written the email address of overseas hostile element Hong Zhesheng. (iii) The notebooks of witnesses Wang XX and Peng Zhiguo, in both of which was written information on CPC General Office Document No. 11 (2004). 7. The testimony of witnesses Wang XX, Yang XX, and Peng Zhiguo, confirming that at approximately 5:00 on the afternoon of April 20, during a meeting especially convened by Wang XX of the newspaper’s department heads, he verbally communicated a summary of the main contents of CPC General Office Document No. 11 (2004) and emphasized that it was a top-secret document that should not be disseminated; that defendant Shi Tao attended the meeting and took notes; that when Wang XX discovered that Shi Tao was taking notes, he especially reminded Shi Tao of the fact that he was not supposed to take notes; and that defendant Shi Tao worked the night shift that night. 8. The testimony of witnesses Yi Sufen, He Ping, Hu Youde, and Hong Yu, confirming that, when the department heads of the newspaper passed on the main points of a document issued by the Provincial Committee’s Propaganda Department, if it had been emphasized not to circulate it and that it was a top-secret document, as newspaper employees they would all have regarded that document as a state secret. 9. Materials on the process of taking Shi Tao into custody. 10. Defendant Shi Tao’s identity papers. 11. A *Contemporary Business News* employee registration form, confirming that defendant Shi Tao was employed by Hunan’s *Contemporary Business News* from February 11, 2004 to April 22, 2004. 12. Written statements given by Shi Tao, and his confession, confirming that he confessed completely to the fact

that he intentionally and illegally provided state secrets to foreign entities. The above items of evidence corroborate with each other and are sufficient to establish the facts of this case.

This court finds that, in order leak information to hostile elements outside of the country, defendant Shi Tao intentionally and illegally provided information that he knew to be top-secret level state secrets to an entity outside of the country. Having endangered state security and involving especially serious circumstances, his actions constitute the crime of illegally providing state secrets to foreign entities. Therefore, the court accepts the prosecution's charge that Shi Tao's actions constitute the crime of illegally providing state secrets to foreign entities. Defendant Shi Tao argued in his defense: "My criminal act of providing state secrets to foreign entities did not involve especially serious circumstances." This was investigated and it was found that, according to Item 1 of Article 2 of the Supreme People's Court's "Explanation on Certain Questions Regarding the Specific Application of the Law when Trying Cases of Stealing, Gathering, Procuring, or Illegally Providing State Secrets or Intelligence Outside of the Country," stealing, gathering, procuring, or illegally providing state secrets are crimes with "especially serious circumstances." The state secrets that defendant Shi Tao illegally provided outside of the country were verified by the State Secrecy Bureau as being top-secret level state secrets, and his actions should be considered to involve especially serious circumstances. Therefore, the defense argument cannot be accepted by this court. Shi Tao's defense attorney stated: "Considering that defendant Shi Tao's actions did not result in causing extremely serious harm to state security or interests and that his attitude in admitting his crimes was good, please punish him leniently." This was investigated and found to conform with the facts; therefore, the opinion of the defense can be accepted by this court. In view of the above, and in accordance with Article 111, Paragraph 1 of Article 55, and Paragraph 1 of Article 56 of the "Criminal Law of the PRC," the following verdict is passed:

Defendant Shi Tao is sentenced to 10 years' imprisonment with two years' subsequent deprivation of political rights for committing the crime of illegally providing state secrets to foreign entities.

(The prison term is to be calculated starting on the day the verdict is implemented, with each day spent in detention prior to the implementation of the verdict to count as one day of the prison term; therefore, the term will run from November 24, 2004 to November 23, 2014).

If this verdict is not accepted, an appeal may be filed between two and ten days from the receipt of this verdict, either to this court or directly to the Hunan Province Higher People's Court. In case of a written appeal, the original appellate petition must be submitted together with one copy.

Presiding judge: Ouyang Hua
Judicial officer: Liu Zhigan
Deputy judicial officer: Xie Shaoping

April 27, 2005

Secretary: Huang Shizhi

