



The Jude Shao Case

How One American's Story
Illustrates the Pressing Need for
Reform in China's
Criminal Justice System

By Raneta Lawson Mack, Professor of Law

Let's suppose the following: A foreign tourist spent US\$1,000 to purchase a pair of genuine Italian Gucci shoes in a Chinese state-owned shopping mall in Shanghai. Several days later the government's Industrial and Commerce Bureau discovered that the shopping mall was selling counterfeit products. That pair of shoes the foreign tourist bought was found to be fake and worth only US\$10. But instead of punishing the state-owned shopping mall for selling fake products and cheating on customers, the government arrested the foreign tourist and [threw] him into jail for having unknowingly purchased the fake shoes, would that be fair? The cheater goes unpunished and [continues] its business as usual while the cheated goes to prison and [loses] everything? Is that fair[?]

Jude Shao's Appeal Petition to the People's Supreme Court of China (arguing his case to the court by analogy)

On May 9, 2006, China was elected to the United Nations Human Rights Council. This newly formed body replaced the widely criticized Commission on Human Rights, which was perceived as a public embarrassment because countries with deplorable human rights records, such as Sudan, Libya and Zimbabwe, became members and thereby managed to avoid thorough investigations of their own human rights records. To avoid the overt politicization and obstruction of human rights enforcement that beleaguered the Commission, candidates for membership on the new Council were required to demonstrate a genuine commitment to human rights, and agree to fully cooperate with the Council by, among other things, submitting to periodic universal reviews of their standards for promoting and protecting human rights. China, a country with a remarkably poor record in the area of human rights, put forth its candidacy

for the Council and, in support thereof, submitted a written pledge outlining its strong commitment to human rights.

In its pledge, China acknowledged that "much work remains to be done in the field of human rights." But, "the Chinese Government respects the universality of human rights and supports the U.N. in playing an important role in the protection and promotion of human rights." China then formally pledged its commitment to the work of the Council, while also propounding its view of the Council's role in protecting and enforcing human rights. The pledge stated:

The Chinese Government holds that the Human Rights Council should respect the historical, cultural and religious backgrounds of different countries and regions, and promote dialogue among the civilizations, cultures and religions; attach equal importance to civil and

political rights on the one hand and economic, social and cultural rights on the other. The Council should insure impartiality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization, thus avoiding the mistake of political confrontation made by the Human Rights Commission. China stands ready to take an active part in the future work of the Council and work together with all the other members to achieve the above goals.

The human rights umbrella encompasses a broad spectrum of legal, economic, social and political rights, as well as the institutions that protect and enforce those rights. Criminal justice processes and the agencies that administer those processes are arguably at the forefront of the human rights effort because the inner workings of a criminal justice system often directly

manifest a country's commitment to fairness, due process, and the protection of civil and human rights.

This article will examine one man's journey through China's criminal justice system. Jude Shao's case is not an anomaly and represents a microcosm of China's functional criminal justice system with its 99 percent conviction rate and where it is not uncommon for just a few months to pass between arrest and execution. Shao's case and others like it illustrate that China faces a daunting road ahead as it seeks to meaningfully comply with its documented pledge to human rights and to the rule of law. Indeed, one of the main challenges to the legitimacy of the new U.N. Human Rights Council will be ensuring that recently elected member states, such as China, do not use the Council as a shield to protect themselves from criticism and in-depth reviews of their protection and enforcement of human rights.

The Jude Shao Case



Shao

Jude Shao is a naturalized American citizen, a graduate of the prestigious Stanford Graduate School of Business, and an entrepreneur. He

is also currently serving a 16-year prison sentence for tax evasion in the Shanghai Qing Pu prison in China. Shao's road from Stanford business classes to a Chinese prison is complex, but unraveling the details of the case against the backdrop of the Chinese criminal justice system provides unique insight into the status of the current system while also highlighting the pressing need for further reform.

Shao was born in Shanghai, China, and emigrated to the United States in 1986 to work at Digicom Computers. Five years later, he enrolled in classes at Stanford Graduate School of Business, and upon graduation, joined a group of American investors to start China Business Ventures (CBV), a trading company specializing in exporting medical equipment to China. To facilitate installation and maintenance of the equipment in Chinese hospitals, CBV established a subsidiary in Shanghai (CBV Shanghai), which was staffed with 15 employees. Because of the company's dual office locations in San Francisco and Shanghai, Shao frequently traveled between the U.S. and China.

companies had not properly forwarded the funds to the Chinese government. Yet, notwithstanding this admission, the auditors persisted with the review of CBV's financial documents, and eventually seized all of the company's accounting books.

Over the course of several months, as Shao sought the return of CBV's accounting books, tax officials continued their "audit" and, at one point, asked Shao to pay a "special tax audit bond" (approximately \$60,000 US) in exchange for return of the books and discontinuance of the audit. Shao refused to pay the bond, considering it nothing more than a bribe. A few months later, the tax auditors froze CBV's

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In July 1997, Jude Shao became an American citizen. Coincidentally, that same month, tax officials from the Shanghai tax bureau paid a surprise visit to the CBV office in Shanghai for a "special tax audit." The audit purported to reveal 53 Value Added Tax (VAT) invoices for which the proper tax had not been paid. As part of its export business, CBV participated in a system whereby it paid the required VAT to two state-owned Chinese import companies, and those companies, in turn, paid the taxes to the Chinese government. The tax auditors apparently acknowledged that CBV had paid the appropriate taxes and that, in fact, the Chinese import

bank accounts, effectively forcing Shao to cease business operations.

Shao's formal encounter with the Chinese criminal justice system began in April 1998, when he was detained by investigators from the Shanghai police department. Once again, Shao was asked to pay a special tax bond, which he again refused to do. As a result, he was jailed and remained incommunicado for over a year while the Chinese government prepared its case against him.

During the course of that year, the Chinese police turned the case over to



AP Photo/Ag Han Guan

Chinese petitioners protest at the Babaoshan People's Heroes' Cemetery as municipal leaders visit during Qingming festival in Beijing on April 5, 2006. Petitioners from around China, after failing to find just recourse through the legal system, often turn to public protest as a way of getting China's leadership to pay attention to their grievances.

the prosecutor at least two times, only to have it rejected and sent back because of insufficient evidence against Shao.

Finally, the police commissioned a "Judicial Accounting Audit Report" (Audit Report), which outlined the case against Shao, including alleged confessions that Shao made while incommunicado. Based upon the Audit Report and the alleged confessions on May 13, 1999, Shao was charged with: 1) Violating article 205 of the criminal law for Falsely Issuing VAT invoices, which is punishable by 10 years to life in prison; and 2) Violating Special Tax Code Article 3, which is punishable by a maximum of three years in prison.

Essentially, the Chinese government alleged that the VAT documents had been forged to appear as if the appropriate taxes had been paid and accused Shao of instructing the Chinese import companies to commit the forgery. The government

also alleged that the import/export transactions between CBV and the Chinese import companies were sham transactions, despite the fact that Chinese hospitals were actually using the medical equipment sold by CBV.

One month later, the case went to trial. During the entire period of Shao's confinement, he was not allowed access to defense counsel or any evidence against him, including the Audit Report. He received the indictment papers a mere three weeks prior to the start of his trial. As a result, Shao and his defense counsel were completely unable to prepare and present an effective defense to the charges against him.

Shao's trial lasted three days, with the judges handing down their verdict eight months later. In March 2000, Shao was found guilty of both charges in the indictment, and sentenced to 16 years in

prison. Shao's defense attorney appealed the case, and a second trial was held in May 2000. By this time, Shao and his attorney had managed to gain access to some exculpatory evidence demonstrating that Shao had paid the appropriate taxes, but the Chinese court refused to review it. Thus, the verdict after Shao's second trial was the same — guilty as charged.

Nearly a year later, Shao finally obtained a copy of the Audit Report, which had served as the basis for his indictment. When comparing the Audit Report with his own business records, Shao identified egregious accounting errors in the prosecution's case against him. In addition, at least two separate reports commissioned by independent bodies supported Shao's claim of innocence.

The Expert Advisory Committee on Hard and Complex Criminal Cases of the Research Center of Criminal Law Science of Renmin University commissioned a group of experts to conduct an analysis and evaluation of the case. After a thorough review of numerous pieces of evidence, these experts concluded:

The evidence based upon which the judgment of first instance and the ruling of second instance were rendered were in fact not sufficient enough to prove that Jude Shao had factually instructed [an employee of the Chinese import company] to forge value-added tax documents. Neither could the evidence exclude the possibility that there [were real] business [transactions] and cash flowing between CBV Company and [the import companies]. The three pieces of new evidence produced by Jude Shao, if verified truthful, may prove that CBV had already paid all tax dues. Therefore, Jude Shao did not commit a crime of



AP Photo

Chinese police parade 50 suspects of robbery and theft in Shenzhen, in southern China's Guangdong province on Aug. 12, 2005. As well as trying to cut down on robbery and petty theft by exposing the criminals using this method which officials believe is effective to cut down on crime, communist leaders are also punishing thousands of officials and managers of state companies as the government has uncovered a series of cases of fraud, embezzlement and other wrongdoing at state banks as they undergo audits in preparation for stock market listings.

forging value-added tax documents. As [for] the crime of evading taxes, there is a need to conduct further investigation of the facts. Since the new evidence produced by Jude Shao has direct [bearing] on the fact-findings of the case and satisfies the requirements stated in Article 204 of the Criminal Procedure Law, the people's court should legally conduct a new trial accordingly.

Article 204 of the Criminal Procedure Law of China states in pertinent part:

Where petitions of parties and their statutory agents and close relatives meet any of the following situations, the people's courts shall hold a retrial:
1) Where it has been proven by new evidence that there is actual error in the determination of facts in the original judgment or ruling; (2) Where

there is untrue or inadequate evidence for the decision of punishment, or contradictions between major evidence that prove the facts of the case ...

Examining the new evidence produced by Shao and applying the standards of Article 204, the Expert Advisory Committee Report concluded that a new trial was required by law. The Expert Advisory Committee Report also identified substantive irregularities with the Audit Report used by the Chinese government as a basis for Shao's indictment. Specifically, the Expert Advisory Committee concluded that rather than maintaining an unbiased and evaluative perspective, the Audit Report made a determination of the case and assessed legal responsibility. The Expert Advisory Committee observed that using words and phrases such as "conspiring" and "taking advantage of legal duty" in the text

of the Audit Report demonstrated a bias in favor of the prosecution's case.

Notwithstanding Shao's exculpatory evidence and the Expert Advisory Committee Report that concluded Shao was, at minimum, entitled to a new trial under the Chinese Criminal Procedure Code, in November 2004 the Supreme People's Court of the People's Republic of China determined that Shao's appeal "did not meet the requirement of a retrial set forth in Article 204 of Criminal Procedure Law of the People's Republic of China and the original verdict should be upheld." According to the court's opinion, there was ample evidence to convict Shao of falsely issuing VAT invoices. This evidence consisted of witness testimony (although two of the witnesses were Shao's co-defendants who were employed by the Chinese import companies and who

had motives to confess and identify Shao as the mastermind of the tax scheme), the confessions allegedly made by Shao while in police custody (although no documentation of any such confessions has ever been produced) and the Audit Report (which had already been harshly criticized by independent experts as so incomplete and biased that a new trial was warranted).

The only new pieces of evidence apparently considered by the court were three receipts for payments of importation fees demonstrating that there had been actual transfers of goods and payments between CBV and the import companies that Shao engaged to transmit CBV's tax payments to the Chinese government. However, the court, without analysis or explanation, deemed these items irrelevant as proof that there was a transfer of goods, and declined to accept them. The brief opinion made

no reference to any other exculpatory evidence, including the Expert Advisory Committee Report.

Where the Case Stands Today

At this writing, Shao remains in a Chinese prison suffering from a debilitating heart condition. On May 8, 2006, Shao became eligible for parole after serving one half of his 16-year sentence if, according to Chinese law, he "earnestly observes prison regulations, undergoes reform through education, demonstrates true repentance, and will not cause further harm to society after being paroled." However, with all other legal avenues closed to him, his fate now appears to be in the hands of lobbyists and members of the executive branch of the U.S. government, all of whom have made considerable appeals to the Chinese government for Shao's release on human rights grounds.

Although the Chinese government has been nonresponsive to these appeals thus far, there is some hope that granting Shao parole or a medical release will allow the Chinese government to "save face" by maintaining the guilty verdict against him, while freeing him short of his 16 year sentence.

Undoubtedly Shao's supporters are also cautiously optimistic that China's new membership on the U.N. Human Rights Council will cause it to reflect carefully on its own human rights record, and make prompt and meaningful adjustments in keeping with its new pledge to human rights reform.



Photo by Mark Romesser

About the author: Raneta Lawson Mack is a professor of law at Creighton University. Mack is currently drafting a casebook entitled, *Comparative Criminal Procedure: History, Processes and Case Studies* (forthcoming W.S. Hein, 2007). The Jude Shao case will be included among the case studies in the book. A special thank you to Chuck Hoover (a former Stanford classmate of Jude Shao's) for providing background documents related to Shao's case. Mack can be contacted at rmack@creighton.edu.