

## Notes to the Motion of 11/12/2003 Filed with the Shanghai High Court

(Doc #s referred in this notes are the same as in the << Experts' Opinions>>

1. This is a tax case, which is all about numbers and accounting. The Shanghai Police Bureau commissioned a Judicial Auditing Evaluation Report (Doc #32, formerly called "Judicial Accounting Audit Report" ) in May 1999 in order to make their case. The trial court then derived most of its findings on the facts of the case from this report. But this report was seriously flawed because it was based on fabricated "confessions" and incomplete accounting records. Neither CBV's accountants nor I had been ever consulted during the audit. At the trial I was not even allowed to take a peek at the report so there was never any cross-examination before it was admitted as the prosecution's main evidence. In March 2001, 22 months after the report had been produced, my lawyer was finally able to obtain a copy for me. Frankly, if during the trial or the audit I had been asked to verify certain facts or given the opportunity to provide CBV's accounting records, this wrong conviction might not have happened.
2. To file a renewed appeal with the Shanghai High Court on the basis of new evidence, the new evidence needs to be examined and authenticated. To date I have uncovered 15 pieces of new evidence (Docs #9,10,11,12,13,14,15,16,40,17,18,19,38,41,41). Except docs #17,18,19 that were discovered in August 2002, all others had been submitted to the Shanghai High Court during my appeal in 2001. After the Shanghai High Court had ruled that the new evidence was irrelevant in December 2001, I filed an appeal petition to the Supreme Court of China on January 28, 2003 and picked the three payment records (Docs #11,13,15) to be included in the petition for the Supreme Court to see one of the most clearly and easily provable critical errors in the trial court's verdict. I believed the proof of one reversible error should be enough for the Supreme Court to order a retrial. And the fact remains, because the charges against CBV was at first trumped up and lacked merits, the trial court had to be very arbitrary in producing a guilty verdict, which inevitably contained several critical and easily provable errors. So now if I were to appeal to the Shanghai High Court again, I want both the new evidence and the original Judicial Auditing Evaluation Report reexamined first so all the errors in the trial court's verdict could be appealed together.
3. Procedurally, the only venue left for my appeal is the Supreme Court of China now, not the Shanghai High Court, which had already rejected my appeal in December 2001. But the Shanghai High Court's recent statement issued through the Chinese Consulate in San Francisco could be construed as that the Shanghai High Court is at the least granting me a hearing on the new evidence and the case. So this motion is filed as a response to the Shanghai High Court's statement. It will test the court's genuineness. The court could allow the motion on the basis of Articles 121 and 159 of the Criminal Procedure Law of China. Or the court could ignore the motion and not respond to it at all by claiming that there is not a hearing going on presently so Article 159 does not apply. In the latter case we'll have to go back to the Supreme court of China again. Either way we should know in a month time or so.

Jude Shao  
11/16/2003