

## Jude Shao Case Background & Status:

- Mr. Shao has served ten years of a 16-year sentence after being convicted of falsely issuing VAT invoices and tax evasion and became eligible for parole on May 8<sup>th</sup>, 2006.
- This case began when Mr. Shao refused to pay a bribe solicited by a Shanghai Tax Auditor. Subsequently:
  - His accounting records were confiscated and his bank accounts frozen, killing his business
  - Mr. Shao was arrested and held incommunicado for 26 months prior to trial
  - Mr. Shao was put on trial without an opportunity to review the evidence against him nor to meet with his attorney prior to the trial
  - His conviction was based upon a flawed Judicial Accounting Audit Report prepared for the Shanghai Police and testimony from a business associate facing the death penalty.
- Mr. Shao has evidence to prove his innocence, which he has supplied in appeals as supplemental evidence, but it has been ignored by the Chinese Courts. This evidence includes
  - Shipping documents that prove medical equipment was shipped from the U.S. to China
  - Accounting records and bank statements that show Mr. Shao's company, China Business Ventures (CBV), paid the appropriate amount of VAT
- A panel of six Chinese legal experts at the National People's University reviewed Mr. Shao's case and the supplemental evidence and concluded that Mr. Shao deserves a re-trial. Specifically the experts concluded that:
  - There was insufficient evidence to convict and that "the People's Court should retry the case according to law" and
  - If the three payment records that were provided as supplemental evidence could be verified as true, these records would show that CBV had paid all of the required value-added tax and Mr. Shao would be innocent on all counts
- A subsequent Audit Report conducted by the Guang Hua Certified Public Accountants in Shanghai in March 2004 verified the veracity of the three payment records submitted as supplemental evidence.
- During the case, Chinese officials have repeatedly violated Chinese law and Mr. Shao has no recourse remaining in the Chinese legal system.
  - The Shanghai High Court three times refused to review the supplemental evidence
  - The Supreme People's Court did not respond to Mr. Shao's petition for review of his case for two and a half years. When the Supreme People's Court did finally respond, they ignored the supplemental evidence presented and affirmed the lower court decision
- In June 2004 Mr. Shao's family filed an Application for Medical Parole with Qing Pu Prison because of a heart condition that cannot be treated by prison doctors. In July, the U.S. Embassy in Beijing filed a Diplomatic Note in support of the application. This appeal has been rejected.
- In May 2006 Mr. Shao finished serving half his sentence and became eligible for parole. He received a 1-year sentence reduction in September, 2006, leaving his official sentence at 15 years.
- Chinese officials have told Mr. Shao that he is eligible for parole and claim that all prisoners are treated the same under Chinese law, but they also state they cannot parole Mr. Shao because he is a foreigner. This violates China's WTO obligations (National Treatment clause) and meets the U.N.'s definition for arbitrary detention.
- China's failure to live up to its WTO commitments for transparency and predictability in its legal system has led to tragedy for Mr. Shao and creates a large impediment to trade for American businesses in general.

## **Jude Shao Case Background**

Jude Shao is a naturalized American citizen who graduated from the Stanford Graduate School of Business in 1993. Mr. Shao then started his own company, China Business Ventures (CBV), with the goal of exporting American medical equipment to China. Four years of hard work later, Mr. Shao's business had grown nicely, with offices in San Francisco and Shanghai and a work force of 15 employees.

In July of 1997 a local Shanghai tax auditor arrived at the CBV offices to conduct a "special tax audit." After Mr. Shao refused a solicitation for a bribe to stop the audit, the auditor confiscated all of CBV's accounting records and eventually froze CBV's bank accounts, effectively killing the business. In April of 1998 the Shanghai police arrested Mr. Shao and told him that they had been asked to "teach him a lesson."

Mr. Shao's family was solicited for a bribe to stop the investigation, which they refused. He was then held incommunicado for the next 26 months. Mr. Shao was put on trial in June of 1999 without an opportunity to review the evidence against him nor to meet with his attorney prior to the trial. Not surprisingly, in March of 2000 he was convicted of tax evasion and sentenced to 16 years in prison.

In 2001, Mr. Shao finally was able to obtain a copy of the evidence against him; a judicial accounting audit report prepared for the Shanghai police. With the help of CBV accounting records recovered from the San Francisco office, he was able to identify errors in the report that were so significant that any impartial reading of the evidence would show him to be innocent. In April of 2003, a committee of Chinese legal experts convened by the Center for Research in Criminal Legal Science at the National People's University reviewed Mr. Shao's case, including the exculpatory evidence presented in his appeals, and concluded that there was insufficient evidence to convict and that "the People's Court should retry the case according to law." The experts also concluded that if Mr. Shao had indeed made the three VAT payments submitted as supplemental evidence (which they could not verify at the time), that Mr. Shao would be innocent on all counts. In March of 2004, the Guang Hua Certified Public Accountants, Co. Ltd. in Shanghai audited the three VAT payments submitted as supplemental evidence and concluded that they were valid.

Despite this, the Shanghai High Court three times refused to review the exculpatory evidence, and the Supreme People's Court did not respond to Mr. Shao's petition for review of his case for two and a half years. When the Supreme People's Court did finally respond, they ignored the exculpatory evidence presented and affirmed the lower court decision.

In May 2006 Mr. Shao became eligible for parole after serving more than half of his sentence. However Chinese officials have told Mr. Shao that he is eligible for parole and claim that all prisoners are treated the same under Chinese law, but they also state they cannot parole Mr. Shao because he is a foreigner. Chinese prisoners convicted of non-violent crimes are routinely paroled after serving half their sentence. This differential treatment of foreign prisoners violates China's WTO obligations (National Treatment clause) and meets the U.N.'s definition for arbitrary detention.

## **Violations of Chinese Law**

Mr. Shao's case clearly shows the arbitrary application of law in China, which is far from China's WTO commitment for transparency and predictability. The case is illustrative because Chinese authorities so flagrantly violated their own laws as follows:

- The Shanghai Tax Auditor's solicitation of bribes violated Article 53 of the Law of the Administration of Tax Collection of the P.R.C.
- Mr. Shao's incommunicado detention for 26 months contravened Article 96 of the Chinese Criminal Procedure Law (and also violated Article 3 of the U.S.-China Consular Convention.)
- The judicial accounting audit report prepared for the Shanghai Police, the basis for Mr. Shao's conviction, exceeded its advisory authority by declaring his guilt rather than reporting facts, thus violating Article 39 of

the General Regulation. Article 42 of the same General Regulation provides that audits going beyond the scope of their authority are invalid.

- The failure to provide Mr. Shao an opportunity to review the audit report prior to his trial violated Article 121 of China's Criminal Procedure Law.
- The court found that Mr. Shao confessed to tax evasion. He vehemently denies this, and the police were never able to produce records of his alleged confession. It should be noted that Mr. Shao did sign a total of nine interrogation records all of which stated that he had paid all taxes and had done nothing illegal. The police were not able to produce these records either. The failure of the Shanghai police to transcribe and have Mr. Shao sign a record of the interrogation in which he allegedly confessed to tax evasion is a violation Article 95 of the Criminal Procedure Law.
- The Shanghai High Court's refusal to accept the exculpatory evidence Mr. Shao produced for his appeals in 2000, 2001 and 2004 violated Article 204 of the Criminal Procedure Law.
- The failure of the Supreme People's Court to respond in writing to Mr. Shao's petition for over two and a half years violated Article 204 of the Criminal Procedure Law as well as Article 302 of the Judicial Directives for the Implementation of Criminal Procedure Law.
- The Supreme People's Court refusal to consider Mr. Shao's exculpatory evidence violated Article 204 of the Criminal Procedure Law.
- Failure to grant parole to foreign prisoners is a violation of China's WTO obligations (National Treatment clause) as well as Article 81 of the Criminal Law of the People's Republic of China. This differential treatment of foreign prisoners also meets the U.N.'s definition for Arbitrary Detention.

## **Conclusions**

China's failure to adhere to its own laws has had tragic consequences for Mr. Shao: imprisonment for over 10 years, financial ruin, and severe deterioration of his health. *In an era when business executives are faulted for weak ethics, it seems especially important for all of us to consider any evidence that some have sacrificed their freedom for principles.*

Additionally, the lack of rule of law in China has larger implications for foreign enterprises trying to do business in China. The arbitrary application of law and the threat of imprisonment create uncertainty and are a serious deterrent for potential exporters to China. This uncertainty raises the cost of doing business in China for all American businesses and effectively shuts out smaller companies—like China Business Ventures—that cannot bear the cost of fighting possible extortion nor rely on consistent enforcement of Chinese law. Given that the American economy is driven by small- and medium-sized businesses, the impact on our current trade deficit of China's failure to meet its WTO commitments for transparency and predictability in its legal system cannot be underestimated.

*Reviewing documents at [http://www.freejudeshao.com/case\\_background/](http://www.freejudeshao.com/case_background/) can substantiate all of the assertions made in this summary regarding Mr. Shao's case and these documents can be provided in hard copy if requested.*

## Supporters of Jude Shao

Below is a partial list of people who have written letters of support for Jude Shao. These letters can be seen at:

[http://www.freejudeshao.com/take\\_action/action\\_hall\\_of\\_fame/](http://www.freejudeshao.com/take_action/action_hall_of_fame/)

- Ambassador to China Clark T. Randt, Jr.
- Former Secretary of State George Shultz
- Senator Dianne Feinstein
- Senator Barbara Boxer
- Senator Chuck Hagel
- Senator Orrin Hatch
- Senator Russ Feingold
- Senator Sam Brownback
- Senator John Kerry
- Senator James Talent
- Senator Christopher Bond
- Senator Gordon Smith
- Speaker Nancy Pelosi
- Former Congressman James Leach
- Former Congressman Tom Lantos
- Congresswoman Jackie Speier
- Congresswoman Zoe Lofgren
- Congresswoman Anna Eshoo
- Congressman Michael Honda
- Congressman Henry Waxman
- Congresswoman Ellen Tauscher
- Congresswoman Barbara Lee
- Congressman Christopher Smith
- Congressman Dana Rohrabacher
- Congresswoman Diane Watson
- Congressman Sherrod Brown
- Congresswoman Shelley Berkley
- Congressman Robert Aderholt
- Congressman Howard Berman
- Congressman Dan Lungren
- Congressman Ike Skelton
- Congresswoman Tammy Baldwin

## Press Coverage

Below is a partial list of media coverage of the Jude Shao case. A complete list can be seen at:

[http://www.freejudeshao.com/press\\_center/press\\_coverage/](http://www.freejudeshao.com/press_center/press_coverage/)

- Wall Street Journal
- Los Angeles Times
- ABC World News Tonight
- National Public Radio
- ABC Nightline
- CBS Evening News
- USA Today
- Newsweek
- San Jose Mercury News
- Associated Press
- Voice of America
- Stanford Daily
- Stanford Magazine
- Stanford Business
- San Francisco Chronicle