

# THE WUHAN COURT BRIBERY CASE

AN HRIC BRIEF<sup>1</sup>

Much of China's public discontent can be traced to frustrations over the inability to receive true justice. The Wuhan Court corruption scandal graphically exposed system flaws that put justice beyond the grasp of so many ordinary Chinese.

In late 2002, a government probe into bribery at the Wuhan Intermediate People's Court in Hubei exposed the biggest judicial corruption scandal in recent years. Media coverage of the case was unprecedented and, considering the extent of media censorship in China, suggested a clear government mandate in exposing crooked practices in the judiciary. The Wuhan case was more than a routine corruption case involving senior government officials: the number of people involved, the bribery network built out of loopholes in the judicial process, and the tools employed for taking bribes all exposed gaping holes in China's judicial system. The collusion among judges and court officials uncovered in the case epitomized the latest corruption tactics within the government structure.

The significance of the Wuhan Court bribery case is two-fold. First, it struck a major blow to the credibility of the judiciary, awakening many Chinese to the fact that judges can be corrupt and that justice in the legal system cannot be taken for granted. Subsequently in 2003, it was reported that 794 judges were disciplined for irregularities, and 52 investigated for criminal offenses,<sup>2</sup> bringing home to the public the prevalence of corruption within the government's judicial branch. The Wuhan case also uncovered an organized and systemic network of corruption rings through which judges and court officials manipulated their official positions for personal gain. Although the case is now closed, and those involved have been sent to jail or otherwise sanctioned, it remains noteworthy for its role in exposing the ingrained culture of corruption within the judicial system.

## The case and the verdict

The Wuhan Court bribery case came to light as a result of an anonymous complaint made in late 2001 to the Central Discipline Commission of the Communist Party (CDCCP) about corruption and irregularities in the court: a disgruntled citizen was

upset that judges did not review his life-sentence verdict after he gave them "gifts." The CDCCP launched a general investigation based on the allegation, which implicated a few judges in that particular court. But when the investigation team reviewed all court cases and documents dated back to 1998, they uncovered a network of graft connecting judges and court officials at all levels under the lead of two senior judicial staff. The investigation also revealed that nearly a hundred judges and court officials were closely connected with the corruption gang in one way or another. This marked a record high number of court staff involved in a single corruption scandal.

After more than two years of investigation, the case went to trial. On April 7, 2004, the ringleaders, former Wuhan Intermediate People's Court vice presidents Ke Changxin and He Changyou, were convicted of corruption and given prison sentences of 13 years and 6 1/2 years respectively.<sup>3</sup> Ten judges under their supervision were also sent to jail, with another judge awaiting a verdict. This 13-member group was found to have pocketed a total of 4 million yuan in bribes. In addition, the investigation implicated more than a hundred other judges and court officials at various levels, who received administrative discipline or were reassigned to other courts.

## Bribery tactics

The Wuhan case exposed a sophisticated scheme of corruption within the court system and demonstrated how multiple levels of judges and administrators were able to form circles of mutual benefit and profit. It also exposed a mind-boggling system of bribe extraction, with the following representing some of the rewarded activities:<sup>4</sup>

- taking bribes from the plaintiff and the defendant (*chi yuan-gao chi beigao*)
- manufacturing court cases (*zao jia an*)
- competing for jurisdiction over specific cases (*qiang guanxia*)
- selling evidence of the court case (*mai zhengju*)
- receiving kick-back for passing cases to certain personnel or departments (*chi huikou*)
- abusing the power of judges to order suspension of business operation or confiscation of property (*lan zhixing*)
- demanding commission for making beneficial judgment (*gao youchang fuwu*)
- embezzling court funding (*tanwu nuoyong zhixing kuan*)

## Lessons

The details of the Wuhan Court bribery case were stunning, embarrassing the government, especially the judiciary, and shaking public confidence in the judicial system. Inquisitive minds are left to wonder if this was an isolated case involving a few corrupt and undisciplined judges in one court, as claimed by many judicial leaders, or if it was the tip of an iceberg of rampant corruption that could sink China's entire legal system. In either case, this case has sounded an alarm for the need to examine the underlying causes of corruption syndicates. Some have attributed the graft to flaws in the judicial system, while others claim poor salaries paid to judicial personnel make them vulnerable to the temptation to exploit their positions for "extra income."<sup>5</sup> Following are some factors that may offer key insights into the root of the problem:

- **Appeal mechanism:** The case came to light when a briber was denied an appeal promised in a bribery deal. The case raises questions over a litigant's right to appeal a court decision and the soundness of the current appeal procedure. Under Chinese law, a litigant is entitled to one appeal after the initial decision; the second trial is the final judgment.<sup>6</sup> Under the "Two Instance Final Adjudication System" (*liang shen zhong shen zhi*), a litigant is allowed to appeal once;<sup>7</sup> the possibility of further appeal is at the discretion of the Judicial Committee (*shenjingjian*) of the Intermediate People's Court.<sup>8</sup> This system creates opportunities for judges to solicit bribes. Although China adopts a four-level court system—basic courts, intermediate courts, higher courts and supreme courts—cases are rarely referred to the Higher People's Court, not to mention the Supreme People's Court. Most cases terminate with the final judgment from the Intermediate People's Court. This system vests tremendous power in judges who act as gatekeepers of "justice."
- **Composition of the court:** The Wuhan Court case vividly demonstrated how court composition makes room for corruption. Each case is heard by a panel of judges under the Collegiate Panel system (*heyiting*), which renders judgment on a consensus basis.<sup>9</sup> In theory, this should ensure the credibility of the judgment and guarantee fairness of outcome, but in practice, the chief judge of the panel often exerts significant influence on the final "collective" decision. This means that a litigant who can identify the key judge to bribe can easily thwart the system. Aside from the initial trial and appeal level, the existence of a Judicial Committee (*shenjingting*) in each court also proves problematic.<sup>10</sup> According to the Organ Laws of the People's Courts, the Judicial Committee does not assume responsibility for trying cases; its main role is to analyze judicial experience and discuss and decide on major and difficult cases. In other words, it reserves the right to intervene and influence court decisions made by the Collegiate Panel. In the Wuhan Court bribery case, the graft began with senior level judges who sat on the Judicial Committee and apparently had the power to "provide convenience" to the briber. The case showed how this system facilitates corruption that starts from the very top of the court system and trickles down to form a network throughout the various levels. The Wuhan case

showed that bribes paid to a senior official with great influence over court decisions were shared among officials at the next levels to ensure a cover-up.

- **Ethics of the legal profession:** Judicial corruption is further enhanced by the lax ethical standards of lawyers in China. Lawyers either bribe judicial officials directly or act as facilitators by introducing the briber to the appropriate court personnel.<sup>11</sup> Both kinds of activity are reported to be common practice in many law firms.<sup>12</sup> In the Wuhan court case, 44 lawyers were investigated, and 13 were eventually charged with bribery.
- **Defective management and lack of effective oversight:** Judges inherently enjoy great power within a legal system: they mete out punishment and awards as part of their official duty. The lack of an effective appeal mechanism exacerbates this power and the tendency to abuse it within the Chinese judicial system. There is also a lack of a check-and-balance system to monitor the conduct of judges. The Wuhan case exposed the ineffectiveness of the internal mechanism, in the form of the collegiate panel. Although an external oversight system also exists, it tends to be formalistic and lacks both substance and expertise.<sup>13</sup>
- **Inadequate remuneration for judges:** The low salaries paid to judges have often been cited as an underlying cause of corruption.<sup>14</sup> Although no justification for wrongful acts, it is an issue that the government should not overlook. Decentralization of fiscal budgets at the provincial level may pose a hindrance to the provision of decent pay for government officials. Given the high salaries that lawyers in the private sector command, the current salaries for judges are not commensurate with their social status; a persistently low salary will inevitably create the temptation for judges to accept bribe to supplement their incomes.

## Implications and concluding remarks

The Wuhan case has underscored the deficiency and inadequacy of China's judicial system and serves as a reminder of the urgency for comprehensive judicial reform to protect the court system from corrupting influences. As noted by Zuo Weimin, director of the Center for Legal Reform Studies at Sichuan University, "corruption" within the judicial system is sometimes actually just "judicial helplessness."<sup>15</sup> Judges are "helpless" in the face of graft practiced by their peers, since the collective nature of bribery renders a single judge powerless to thwart the culture.

For example, an honest judge can insist on being a voice of justice, but will still be out-voted in every case if the two other judges on a collegiate panel are corrupt. Hopes for justice are not brighter on the higher level of appeal, as the Judicial Committee is often dominated by one or two influential judges, who are not necessarily immune to the temptation of bribes. In some cases, the Judicial Committee steps in, *sua sponte*, to interfere with a court judgment due to pressure from senior government officials outside the court.<sup>16</sup> Intervention from other branches of the government can result in arbitrary judgment, since judges are no longer free to make decisions grounded in the law, but must follow the dictates of a certain government

official. The lack of judicial independence, whether caused by graft within the court or interference from government officials outside the court, threatens the integrity of the judicial system and the credibility of the entire legal profession.

The other implication of the Wuhan Court bribery case is its impact on the confidence in the rule of law. Exposed of this kind undermine society's confidence in and respect for the justice system. When people can no longer rely on the court to fairly apply the law, they may resort to taking the law into their own hands either through bribes or violence, contributing to a further decline in social morals. This highlights the importance of a healthy, credible and independent judiciary in every society.

In an effort to demonstrate his commitment to running a "clean ship," Premier Wen Jiabao continues to take a tough stand against official graft.<sup>17</sup> Dozens of senior government officials have been dismissed over allegations of corruption,<sup>18</sup> and the administration has announced new measures to seal off avenues for corruption.<sup>19</sup> Within the judiciary, the People's Supreme Court has publicly acknowledged the need to address corruption practices at all levels of the People's Court, and judges have been targeted for investigation. The 2005 anti-graft campaign in the judiciary will focus on disciplining judges who abuse their power, in particular those who accept benefits in exchange for issuing wrongful verdicts or manufacturing cases and those who are gambling addicts.<sup>20</sup> While anti-corruption efforts are needed, they should be accompanied by judicial and legal reforms addressing the problems that facilitate corruption. As noted by Zhang Weipin of Tsinghua University, "the fight against corruption cannot be done by the judiciary alone."<sup>21</sup> The upcoming revision of China's three procedural laws (Civil Procedure Law, Criminal Procedure Law and Administrative Law) provides a useful starting point to further the course of judicial and legal reform in China.

1. This brief was researched and drafted by Wing Lam and Zenobia Lai of HRIC's Hong Kong research office. The brief draws heavily on details presented in the article "The alliance of corrupted judges" (*faguan de fubai tongmeng*) published in *China Newsweek* (*Zhongguo Xinwen Zhoukan*), April 19, 2004, hereafter referred to as "the Wuhan Report." In addition, a wide range of sources, mainly news articles and Internet materials, were also consulted to complement and verify the facts and descriptions reported in the *China Newsweek* cover story.
2. According to official statistics, there were about 220,000 judges in all levels of courts in 2001 (Wuhan Report, at 29).
3. Wuhan Report, at 23.
4. Wuhan Report, at 27; see also, Li, *Court Reform in China: Problems, Progress and Prospects*, Implementation of Law in the People's Republic of China, c. IV, 55 (J. Chen, ed. 2002).
5. Fan, *Calling for an independent judiciary*, 23 *Beijing Review*, at 32-33 (June 10, 2004).
6. "In the administration of justice, the People's Courts adopt the system whereby the second instance is the last instance" (*Remmin Fayuan shenpan anjian, shixing liangzhong shenchi*). *Organic Law of the People's Republic of China*, *Zhonghua Renmin Gongheguo Renmin Fayuan Zhuzi Fa*, Article 12 (Sept. 2, 1983).
7. The first hearing is the initial trial of any case. The second hearing takes place when one party appeals the initial decision; the outcome of this hearing is often the final judgment in the matter, unless otherwise prescribed by law.
8. "Judicial Committee" is sometimes alternatively translated as "Adjudication Committee."
9. A collegiate panel consists of at least three judges or a combination of judges and People's Assessors. It is the basic form of the People's Court. The composition of a collegiate panel is not fixed; rather, the members are appointed on a case-by-case basis. The president or the presiding judge designates a judge to be the chief judge of the panel.
10. Judicial Committees are established in the People's Court at all levels with presidents, chief judges of divisions and experienced judges as members. It has substantial power in all court cases. Its decision-making procedures are secretive, and the law does not define to whom the Committee is accountable. For more discussion on the political and legal structure of China's judiciary system, see also Chapter II of *Empty Promise: Human Rights Protections and China's Criminal Procedure Law*, HRIC (2001).
11. Wuhan Report, at 25.
12. *Law Industry to be Fixed for Corruption for the First Time* (*zhongguo lushi hangye sheqi you shi yilai zui chezheng fengyundong*), <http://www.baidajob.com/home/zixun/article.asp?Id=598&AClass=3>.
13. See also, Li, *supra* note 4, at 72-73.
14. Wuhan Report, at 28-29.
15. Fan, *supra* note 5, at 32-34.
16. See Yu, *Analysis of 20 Years of Misconduct and Criminal Activities among Chinese Judges*, (20 nian lai zhongguo faguan weifa fanzui de fenxi, 84 *Modern China* at 43-50 [2004]).
17. *CPC Central Committee Issues Outline for Anti-corruption Work*, *Xinhuanet*, [http://news.xinhuanet.com/english/2005-01/16/content\\_2468661.htm](http://news.xinhuanet.com/english/2005-01/16/content_2468661.htm) (January 16, 2005); *Premier Wen Urges Intensified Efforts to Prevent Corruption*, *Xinhuanet*, [http://english.peopledaily.com.cn/200502/17/eng20050217\\_173765.html](http://english.peopledaily.com.cn/200502/17/eng20050217_173765.html) (February 17, 2005).
18. The convictions of Liu Dachang, Vice-Governor of Sichuan, and the dismissal of Liu Tao, a delegate to the Shenzhen People's Political Consultative Conference, served as wake-up calls to government officials who made graft a fact of life. (*Corruption Claims Lead to Sacking*, *South China Morning Post*, <http://china.scmp.com/chitoday/ZZZVP9AHJ3E.html> (January 21, 2005); *Former Vice-Governor Arrested for Corruption*, *South China Morning Post*, <http://china.scmp.com/chimain/ZZZ9S2AHJ3E.html> (January 19, 2005).
19. *Cadres' Relatives in Graft Firing Line*, *South China Morning Post*, <http://china.scmp.com/chitoday/ZZZMWMCHJ3E.html> (January 22, 2005); *List of Bribers Helps Anti-corruption Battle*, *Xinhuanet*, [http://news.xinhuanet.com/english/2005-01/28/content\\_2517514.htm](http://news.xinhuanet.com/english/2005-01/28/content_2517514.htm) (January 28, 2005).
20. *Featured article: Supreme Court to Launch Investigation over Judges Involvement in 7 Types of Power Abuse Activities*, *Chinesenewsnet.com*, [http://www1.chinesenewsnet.com/gb/MainNews/SinoNews/Mainland/2005\\_2\\_14\\_18\\_58\\_53\\_576.html](http://www1.chinesenewsnet.com/gb/MainNews/SinoNews/Mainland/2005_2_14_18_58_53_576.html) (February 15, 2005).
21. Wuhan Report, at 28.