A stylized map of Asia and the United States is shown in the background. The map is rendered in a light blue color against a darker blue background. The United States is on the right, and Asia is on the left. The map is partially obscured by the text on the right.

TRENDS IN THE INNOCENCE MOVEMENT IN ASIA AND THE U.S.

Tuesday, December 8, 2020

7:30 - 9:30 pm

U.S. Eastern Time



U.S.-Asia Law Institute
New York University
School of Law

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*Full-text report is available at

https://www.law.umich.edu/special/exoneration/Documents/Government_Misconduct_and_Convicting_the_Innocent.pdf

THE **INNOCENCE** NETWORK

AN OVERVIEW

Innocence Network Support Unit

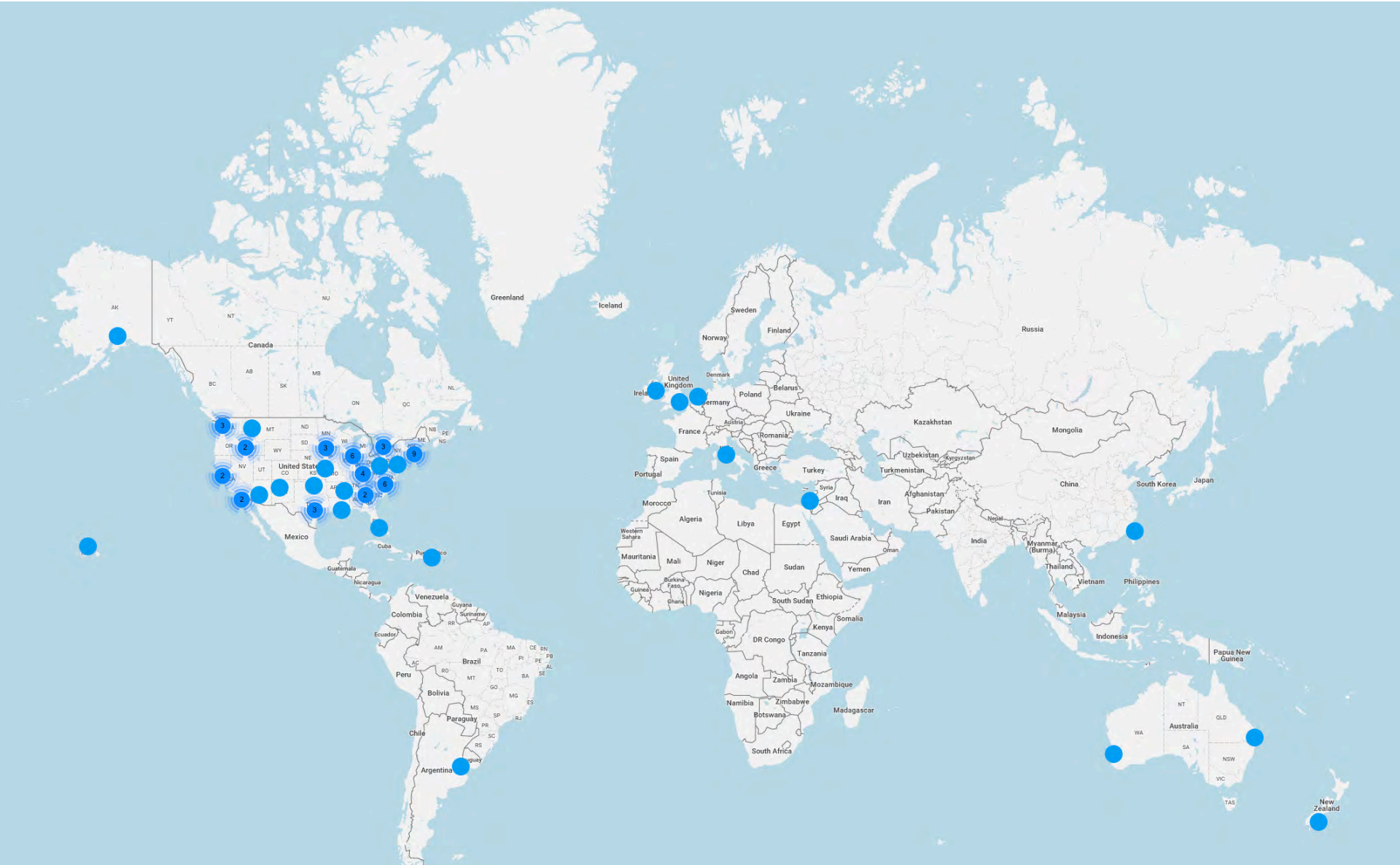
Meredith Kennedy, Director

mkennedy@innocencenetwork.org

The Innocence Network

- Founded in 2005 (Network Support Unit in 2012)
- Currently there are 68 member organizations
 - 56 U.S. and 13 international members
 - Average staff of 5 and budget of \$275,000
- Organizations represent a diverse mix of non-profits, law school clinics, public defender units, and everything in-between

The Innocence Network



Network Member Organizations

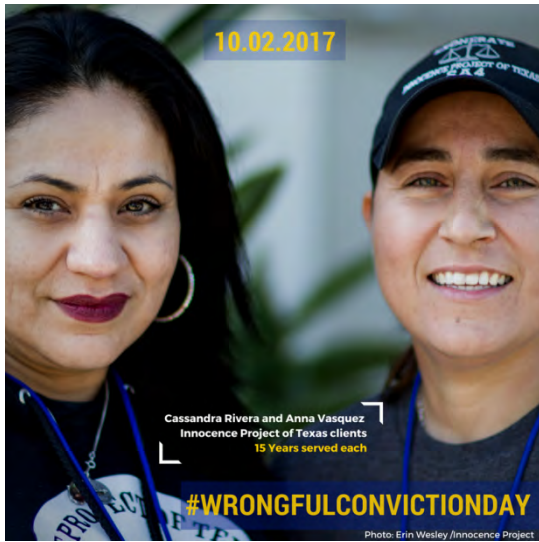


MIDWEST
INNOCENCE
PROJECT



Network Highlights

- Collectively achieved **67 exonerations** in 2019
 - Up from 60 in 2018 and 53 the year before, and the highest number ever in a single calendar year
- Combined aggregate budget of **\$53,739,451**, which represents an **increase of 20%** over 2018, and the largest year-over-year increase since the NSU began tracking budget info in 2013
 - Organizations in the Network that fundraise collectively raised **\$47,471,380** in 2019, which is **up 11%** over 2018
- As our capacity grows, the demand for our help is growing, too. Last year, **22,330 new individuals requested assistance** from Innocence Network members, up from 17,813 in 2018



WRONGFUL CONVICTION DAY

Annually on October 2nd





www.wrongfulconvictionday.org

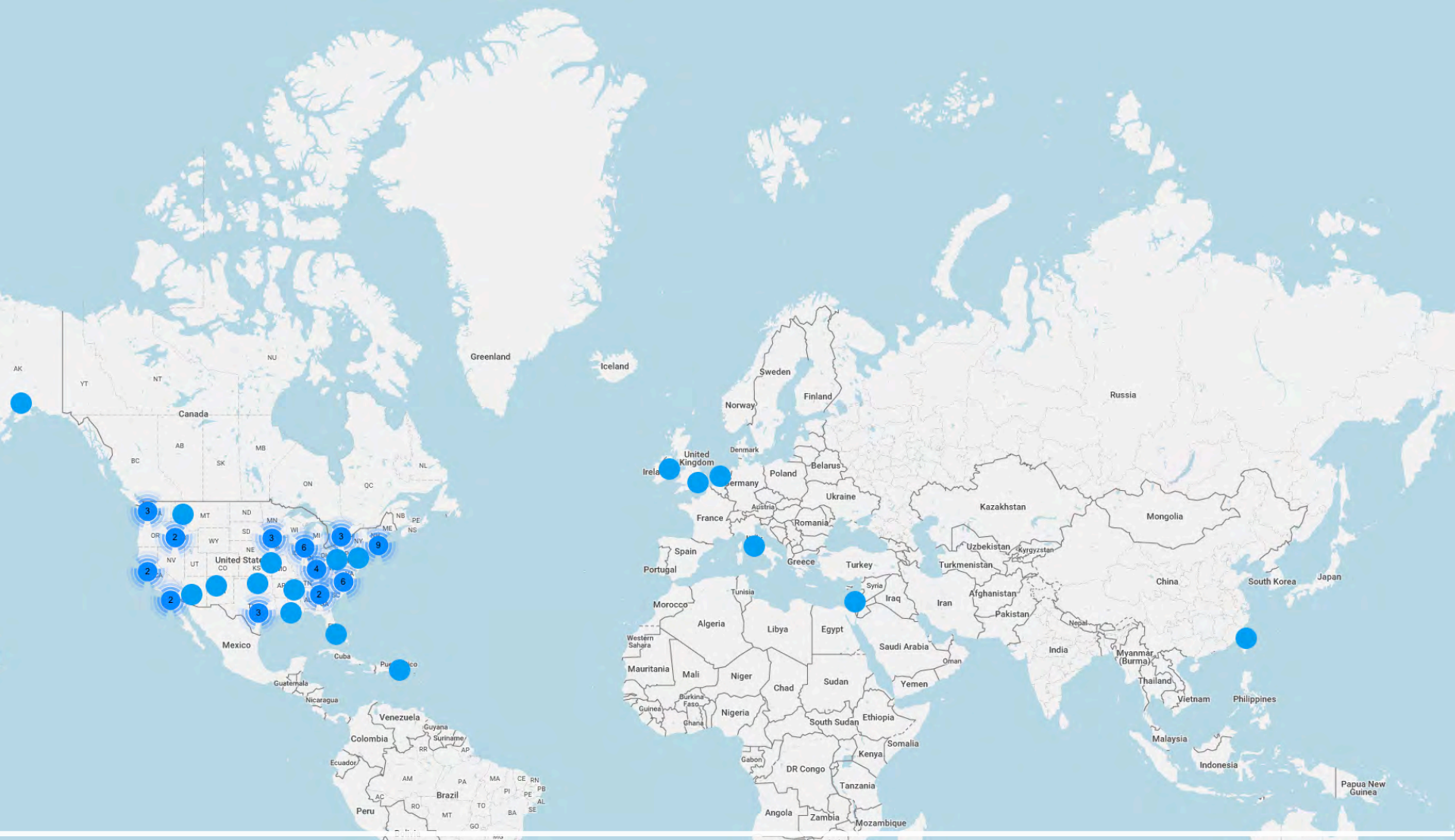




THE **INNOCENCE** NETWORK

ANNUAL CONFERENCE • MARCH 23-24, 2018 • MEMPHIS, TN





www.innocencenetwork.org

Eliminate the use of Junk science

Yu Tianmiao

Criminal Lawyer

Beijing Shangquan Law Office

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Examples of junk science

- 1. The process of material extraction, storage and the procedure of tests do not comply with the law.
- 2. There is inconsistency between the test material and the on-site material in the process of transferring the evidence.
- 3. The scientific method may be not scientific enough.
- 4. The tests opinion is sometimes wrongly analyzed and used

Examples



- **1.The process of material extraction, storage and the procedure of tests do not comply with the law**
 - The witness who signed on the on-site report in Miu's case happened to be the driver of the investigation organ.
 - The experts who wrote autopsy report in Zhang Zhichao's case had participated in the interrogate as investigators.
 - The "Crime Scene Inspection Record" in Miu's case is too simple, and no photos or videos were taken.

Examples



- **2. There is inconsistency between the test material and the on-site material in the process of transferring the evidence.**
 - A Forensic Medical Examination Report recorded that the victim had hair length of 26cm, and the victim's hair was brown-red.
 - In another Expertise Report, the inspection material is recorded as "there are 2 black hairs and 1 brown hair, 4-5cm long".
 - The investigation organ issued a statement that "the remaining 5 hairs were suspected to be black after being sent to the Department for inspection.
 - At the very beginning of the investigation, these hairs were sent to several **judicial expertise centers**, but were failed in the process of authenticate. While three months later, another **expertise center** gave the clear opinion that the on-site hair matched the victims' DNA.

Examples



- **3. The scientific method may be not scientific enough.**
 - mtDNA identification method in Miu's case.
 - The method of exclusion does not exhaust the possibilities and does not consider other exceptions.
 - The scientific problem of INSUFFICIENT DNA points
 - False positive in DNA identification.
 - The problem that the expert may be subjectively interfered by other factors of the case.

Examples



- **4. The tests opinion is sometimes wrongly analyzed and used**
 - a shoeprint inspection report shows that the sneakers' marks left on the scene and the sneakers worn by the suspect Xu Yusen are of the same type of no. 40 rubber sneakers produced by the same manufacturer.
 - The shoeprint on the spot is reported "arched depression can be seen faintly"
 - Xu Yusen's shoes are reported "The wear of the whole shoe is more severe than the damage of the impression of the spot shoes, and the inner part of the shoe is cracked"

Suggestions

- **1. Attach more importance to the investigation and evidence collection procedures of scientific evidence.**
- **2. Cultivate judges' understanding and prudent attitude towards scientific evidence, and strengthen their examination and judgment ability of scientific evidence.**
- **3. Improve the attendance rate for expert and expert witnesses to appear in court.**

Thank you!

Yu Tianmiao

Criminal Lawyer

Beijing Shangquan Law Office

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Shaken Baby Syndrome in Japan

Recent Developments

Dec 8, 2020

Kana Sasakura, Ph.D.

Professor, Konan University

Co-Director, SBS Review Project

Deputy Director, Innocence Project Japan

How we are trying to challenge the science
behind SBS/AHT with much help from the
international innocence community

“Shaken baby syndrome is a severe form of child abuse caused by violently shaking an infant or child”
(U.S. National Library of Medicine)

* SBS was traditionally diagnosed when a baby had **three symptoms (the triad)**: Subdural hemorrhage (bleeding in the brain), retinal hemorrhage (bleeding in the eye), and brain swelling
= “SBS hypothesis”

Questions to the
“science” of SBS
hypothesis



1970s

1980s

1990s

2000s

2010s

US

SBS Hypothesis
1971-1974

Accusations and convictions
based on SBS Hypothesis
1990s – 2010s

UK

Emergence of
Criticisms towards
SBS hypothesis 1980s
**Lack of scientific
evidence** etc ...

Rising Criticisms
2000s- present

Exonerations, Acquittals

Others

UK Studies
2004
Goudge Report
(Canada) 2008

Sweden
Supreme Court 2014
SBU Report 2016
Admin SC 2018

Japan

Importing
SBS
Hypothesis
Early 1990s

SBS gaining
attention in
media/
academia
2000s

Rise in number
of SBS
accusations/
convictions
2010s

- Japanese doctors “imported” the SBS hypothesis in early 1990s. SBS hypothesis was becoming popular in US and UK in the 1980s and 1990s
- Coinciding with the fight against child abuse in Japan in the 2000s, SBS hypothesis and its “believers (mostly pediatricians)” gained popularity by the late 2000s in Japan.
- Ministry of Health, Labor, and Welfare (MHLW) teamed up with these Japanese pediatricians and funded their studies from the late 2000s. The doctors wrote the guidelines on abuse published by the MHLW and they testified for the prosecution in criminal cases.

The Result....



- There were many accusations based on doctors' diagnosis of abuse especially after 2010. SBS diagnosis were mainly made based on the triad of symptoms
- Some neurosurgeons in Japan were concerned about the situation (since they knew from experience that short falls and other mechanisms can cause the “triad”) but did not speak up
- No one translated or introduced numerous articles and literature in US / UK questioning SBS hypothesis

Founding SBS Review Project: 2017

- In January 2017, Masashi Akita (attorney from Osaka) and I exchanged email messages about a SBS case he was working on and became aware that the situation in Japan was serious
- We got together with several attorneys in Osaka defending SBS cases : since information was crucial in fighting SBS cases, we created a listserv and started to work on translating English articles
- Launched SBS Review Project in September 2017

Currently about 30 members (lawyers & Scholars)

SBS検証プロジェクト

shakenbaby-review.com/

SBS Review Project Japan

ブログ「SBSを考える」は[こちら](#) [English](#)

揺さぶられっ子症候群
Shaken Baby Syndrome=SBS
Abusive Head Trauma =AHT を考える

～日本でも冤罪多発か?～
揺らく医学神話にこだわる日本の刑事司法

SBS検証プロジェクト
SBS Review Project Japan

CONTENTS

- トップページ
- SBSとは?
- SBSへの疑問
- 弁護士の方へ
- About Us
- カンパのお願い
- 参考翻訳等
- 関連リンク

あなたやあなたの身近な人が、赤ちゃんを揺さぶって虐待したと疑われていますか?

[揺さぶられっ子症候群\(SBS,AHT\)](#)について、徹底的に検証するサイトです。

私たちは、法学研究者や弁護士が中心となって「[SBS検証プロジェクト](#)」(SBS Review Project Japan)を立ち上げました。もちろん乳児虐待は決して許されません。しかし、無実の養育者が、不確実な理論で誤って虐待者とされることも絶対に許されません。そのような事態は、誤って疑われた養育者だけでなく、子どもたちにも大きな不幸を及ぼしかねないのです。

今後私たちは、研究を進めるとともに、SBS理論に基づき、誤った訴追を受けた方々への支援活動を進めていく予定です。

ご自身または身近な人が、揺さぶられっ子症候群(SBS)により虐待をしたと疑われている方は、下記アドレス宛にご連絡ください(相談無料)。

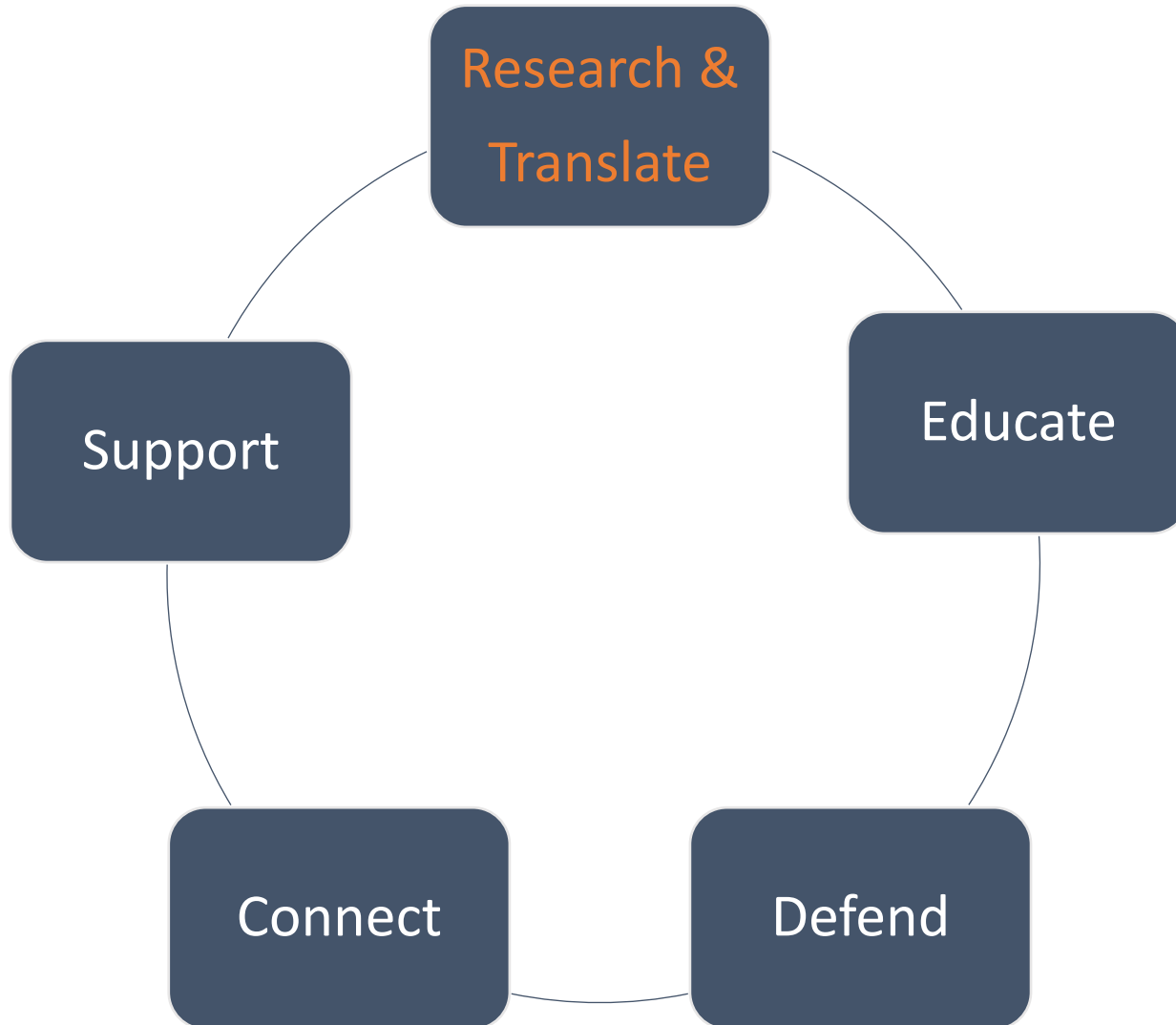
連絡先 info@shakenbaby-review.com
[プライバシーポリシー](#)

SBS検証プロジェクト

ここに入力して検索

23:37
2018/01/10

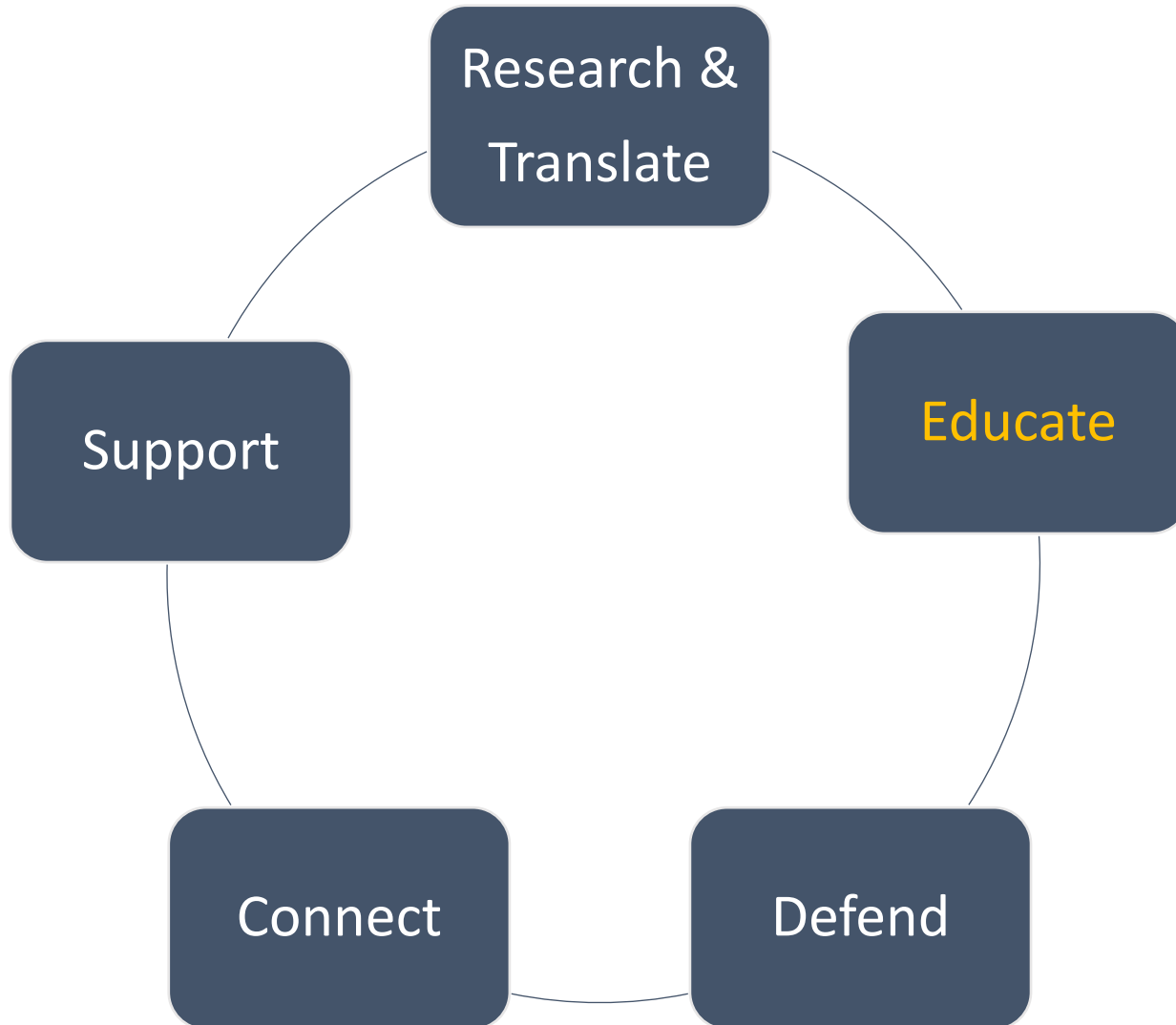
What We Do



Research & Translate

- Gathered around 700 English articles and books, over 300 Japanese articles and books, newspaper articles, and court decisions
- Working on translating key English articles and court decisions challenging SBS hypothesis
- Gather info everyday through Innocence Network's SBS listserv
- Write articles and papers, present research in conferences and symposia

What We Do

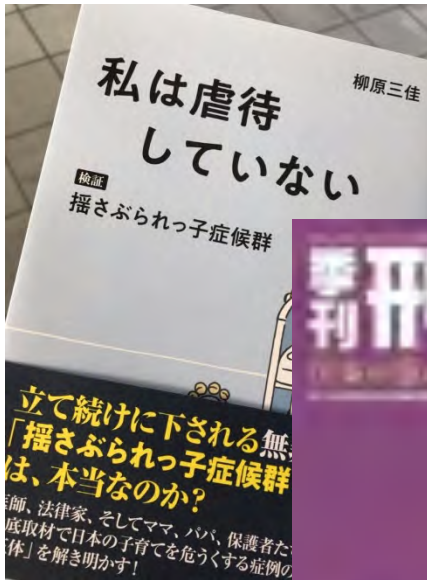


International symposia in 2018 and 2019

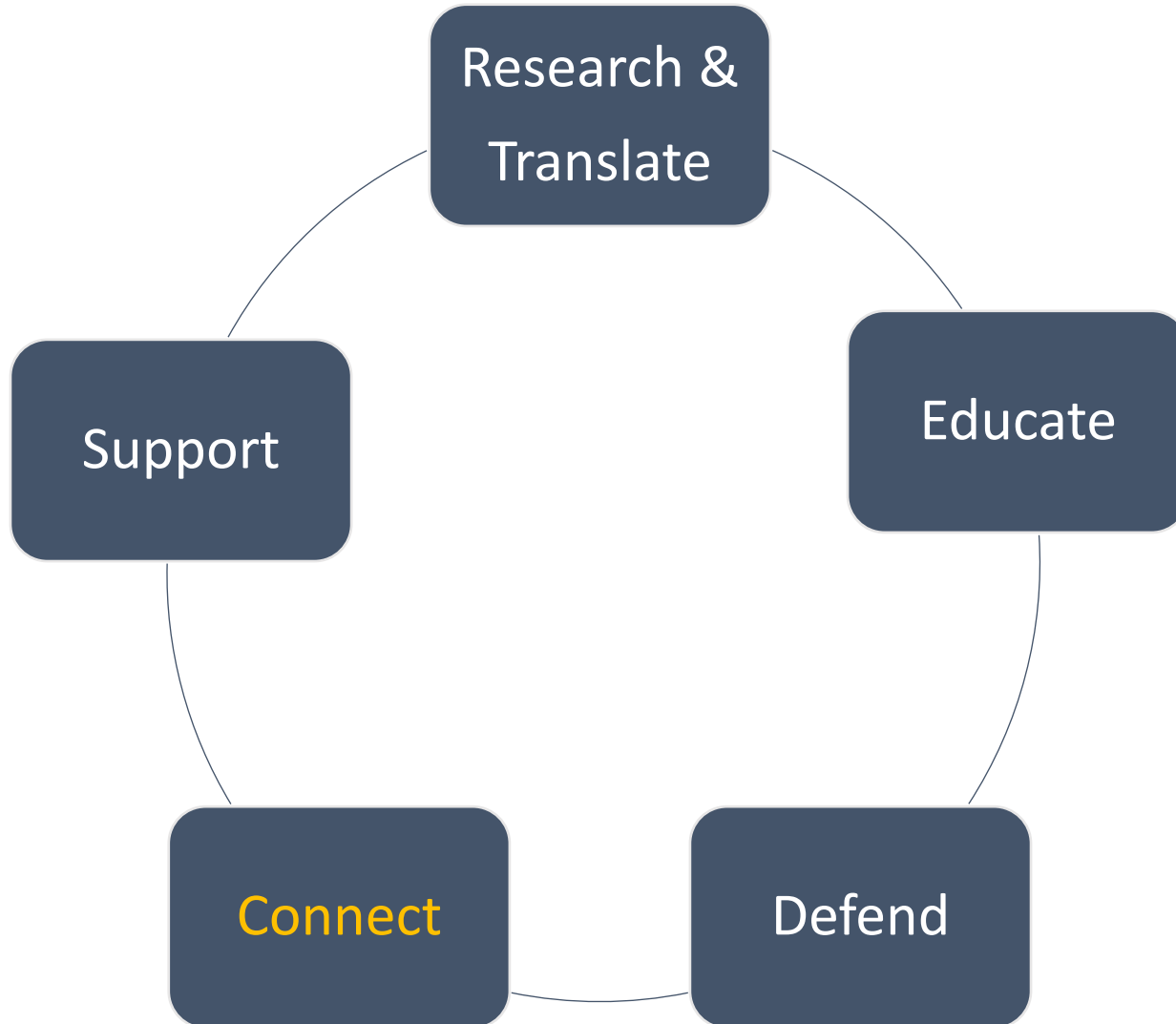
Invited: Dr. Waney Squier, Dr. Anders Eriksson (SBU),
Keith Findley and Kate Judson



Books and articles on SBS



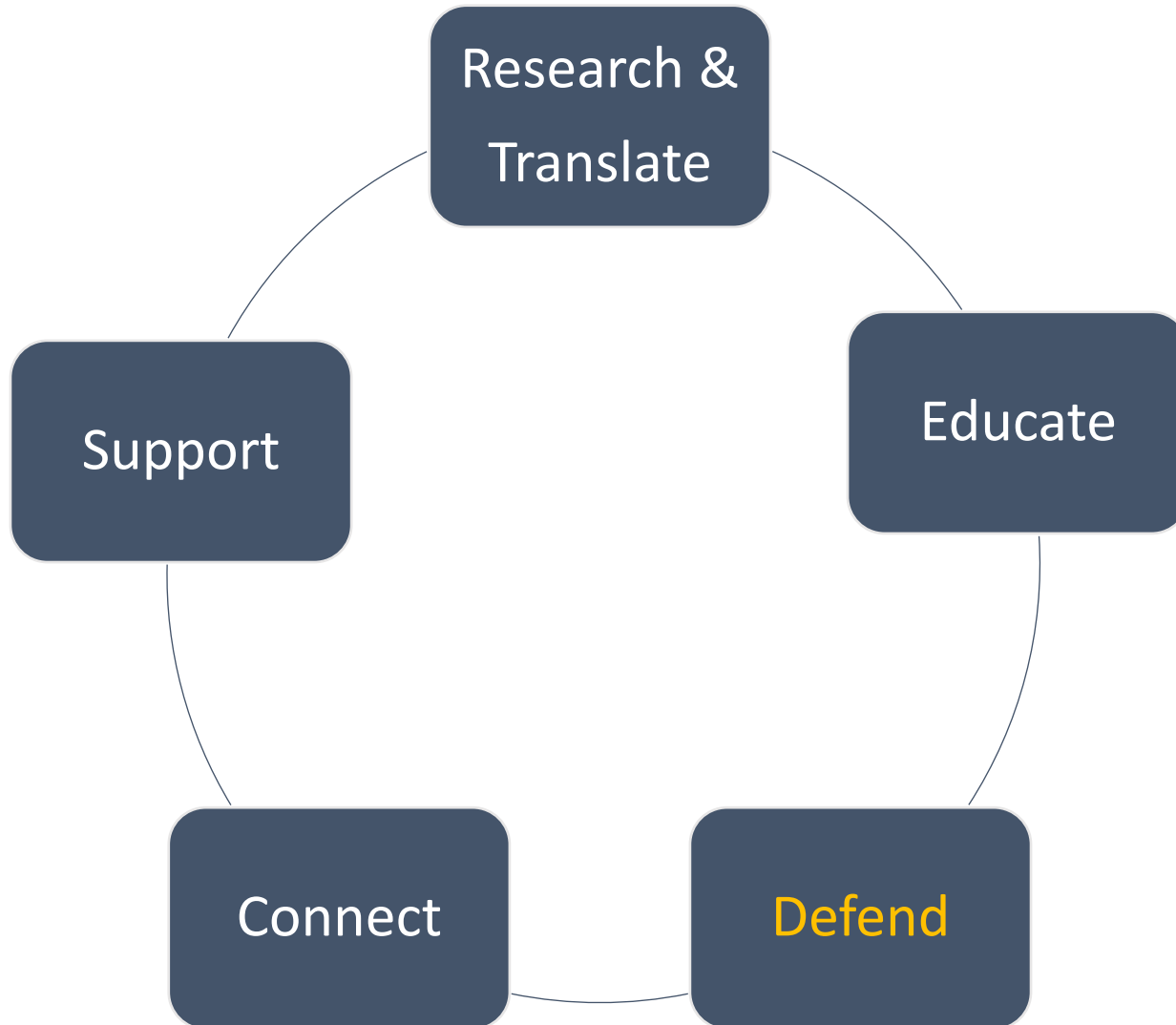
What We Do



Conduct Research with Medical Doctors

- Started an academic **study group** with doctors (mainly neurosurgeons) who are concerned about the SBS debate in the country (since 2019-)
- Won a **research fund** from the Ministry of Education with doctors (since 2020-)

What We Do



Defending SBS cases

- Challenging prosecution's case by conducting thorough research of the case
- Challenging doctors' diagnoses of abuse
- Working together with experts such as neurosurgeons and forensic pathologists
- Asking opinion from experts outside of the country

... these efforts all lead to winning cases

Not Guilty Decisions since 2018 n=10 (8 cases)

Cf. general conviction rate in Japan is 99.9%

Charges Dropped n= more than 13

No	Date	Court	Case	Result	.
1	2018.03.14	Osaka DC	injury resulting in death	Not Guilty	Same case as #5
2	2018.11.20	Osaka DC	injury resulting in death	Not Guilty	Same case as #8
3	2019.01.11	Osaka DC	injury	Not Guilty	Finalized
4	2019.10.25	Osaka HC	injury resulting in death	Not Guilty	Finalized
5	2020.01.28	Osaka HC	injury resulting in death	Not Guilty	Same case as #1
6	2020.02.06	Osaka HC	injury	Not Guilty	Pending appeal
7	2020.02.07	Tokyo DC Tachikawa Branch	injury resulting in death	Not Guilty	Pending appeal
8	2020.03.13	Osaka HC	injury resulting in death	Not Guilty	Same case as #2
9	2020.09.25	Gifu DC	injury	Not Guilty	Pending appeal
10	2020.12.04	Osaka DC	injury	Not Guilty	NEW!!

The support from the international Innocence community is crucial in winning these cases!

Thank you!

中国《人民检察院刑事申诉案件异地审查规定
(试行)》

**Provision on Examining Appeal Cases in
Different Places by People's Procuratorate**

Huang Jiade, Lawyer

hjiade@163.com

Dec. 8, 2020

I. Practices in the past

- 1. Notice of the Supreme People's Procuratorate on Relevant Issues concerning the Handling of Prisoner Criminal Appeal Cases, 2007

监所检察机关对服刑人员申诉审查。最高人民检察院关于办理服刑人员刑事申诉案件有关问题的通知（高检发刑申字[2007]3号）一、人民检察院监所检察部门及派出检察院接到服刑人员及其法定代理人、近亲属提出的刑事申诉后，应当认真审查，提出审查意见，并分别情况予以处理：（一）原审判决或者裁定正确，申诉理由不成立的，应当将审查结果答复申诉人，并做好息诉工作；（二）原审判决或者裁定有错误可能，需要人民检察院立案复查的，应当将申诉材料及审查意见一并移送作出原生效判决或者裁定的人民法院的同级人民检察院，由刑事申诉检察部门办理；

- 2. Provisions on the Reexamination of Criminal Petition Cases by the Supreme People's Procuratorate (2014) [Expired] Article 35

最高人民检察院《人民检察院复查刑事申诉案件规定》（高检发[2014]18号）第三十五条 下级人民检察院对上级人民检察院交办的刑事申诉案件应当依法办理，并向上级人民检察院报告结果。

- 3. Case: 石河子张飙检察官在张辉张高平案件中，最高人民检察院指定浙江省人民检察院审查海南陈满案。

II. History of the PROVISION

- In 2015, on the Central Political and Legal Committee demanded to explore ways to establish the mechanism of **Examining Appeal Cases in Different Places**
- 2015年中央政法工作会议提出“探索建立刑事案件申诉异地审查制度”。
- In 2015 National Conference of the chief procurators, in 2016, the 14th Procuratorial work conference, these two conference both bring this system up.
- 2015年全国检察长会议、2016年第十四次检察工作会议都提出健全刑事申诉案件异地审查制度。（最高人民检察院检察长曹建明在2016年3月13日向十二届全国人大四次会议所作的工作报告中说，检察机关“认真审查每一份申诉材料，发现有冤错可能的及时调查处理。建立刑事申诉案件异地审查制度”，“勇于自我纠错”。2016年7月20日，在长春召开的第14次全国检察工作会议再次重申，“落实刑事申诉案件首办责任制，健全公开审查和异地审查制度”。）
- Then, the Criminal Complaints Office of the Supreme People's Procuratorate drafted out the first version of the Provision, and Solicit opinions widely. 最高检刑事申诉检察厅起草了《规定》，并广泛征求意见。
- From 2015 to 2017, According to the spirit of the Central Political and Legal Committee and Supreme People's Procuratorate on the establishment of the mechanism, the Local procuratorial organs had made useful explorations, and some local procuratorial organs have also formulated normative documents on this
- 最高检：“近年来，各地检察机关根据中央和最高检关于建立刑事申诉异地审查机制的精神，对这一工作机制进行了有益探索，一些地方检察机关对此还制定了规范性文件。但是由于缺乏统一部署，各地对该项机制适用范围、办案程序、处理方式等方面认识做法不一。比如，有的省级检察院将本院管辖的刑事申诉案件交原管辖地以外的下级检察院办理；有的省级检察院将本院管辖的刑事申诉案件交原管辖地以外的下级检察院(基层检察院)审查提出意见，再由省级检察院检察官审查并以其名义办理案件；有的地方将异地审查机制理解为抽调原案管辖地以外的下级检察院检察官与本院检察官共同组成办案组审查办理案件；有的地方规定异地审查机制仅适用于不服法院刑事判决、裁定的申诉案件；等等。”
- The Provisions, as adopted at the 70th meeting of the twelfth Procuratorial Committee of the Supreme People's Procuratorate on October 10, 2017. 2017年10月10日，最高检第十二届检委会第七十次会议讨论通过了《人民检察院刑事申诉案件异地审查规定（试行）》（最高人民检察院 高检发刑申字（2017）3号）。

III. Provision

- **(I) Two types of criminal Appeal Cases are applicable.
Dissatisfaction with the procuratorate's decision to terminate the criminal handling appeal case; Dissatisfaction with the court's effective criminal judgment or ruling.**
- 一、适用两类刑事申诉案件：
 - △ 不服检察院诉讼终结刑事处理决定的申诉案件，
 - △ 不服法院生效刑事判决、裁定的申诉案件。

- (II) Three ways to initiate a Different Places review:
- 1. The Supreme People's Procuratorate found that the criminal apple cases under the jurisdiction of the provincial courts may be wrong and matches one of the "five situations" It should be accepted and rejected or the application is still delayed after the acceptance; Encountered greater resistance in handling the case, which may affect the fair handling of the case; Due to statutory reasons such as recusal, the party believes that the provincial People's Procuratorate in the jurisdiction cannot handle it fairly in accordance with the law; The complainant's long-term petition may affect the fair handling of the case; Other situations that are not suitable for the provincial people's procuratorate in the jurisdiction.
- 2. If the provincial court believes that the criminal complaint case handled needs to be reviewed in another place, it can apply to the Supreme Procuratorate for a remote review.
- 3. The complainant can apply to the provincial court or the Supreme Procurator for a remote review.
- (For the first and second situation, the complainant's consent should be obtained)

• 二、启动异地审查的三种方式：

- 1. 最高检发现省级院管辖的刑事申诉案件有错误可能，且具“五种情形”之一的（第二条 最高人民检察院发现省级人民检察院管辖的刑事申诉案件原处理决定、判决、裁定有错误可能，且具有下列情形之一的，经检察长或者检察委员会决定，可以指令由其他省级人民检察院进行审查：（一）应当受理不予受理或者受理后经督促仍拖延办理的；（二）办案中遇到较大阻力，可能影响案件公正处理的；（三）因存在回避等法定事由，当事人认为管辖地省级人民检察院不能依法公正办理的；（四）申诉人长期申诉上访，可能影响案件公正处理的；（五）其他不宜由管辖地省级人民检察院办理的情形。），可以指令由其他省级院进行审查；
- 2. 省级院认为所办理的刑事申诉案件需要异地审查的，可以提请最高检指令异地审查；
- 3. 申诉人可以向省级院或者最高检申请异地审查。
- （省级院提请或者最高检决定异地审查，申诉人未提出申请的，应当征得申诉人同意。）

- **(III) Decision:**

(1) Dissatisfaction with the procuratorate's decision to terminate the criminal handling appeal case; The provincial procuratorate for remote review shall put forward a "re-examination handling opinion" after the re-examination is completed, and after the review and decision of the Prosecution Committee, it shall be submitted to the highest procurator for review.

If the Supreme People's Procuratorate agrees to maintain the original handling decision, it shall instruct the provincial procuratorate of the jurisdiction to make the decision to maintain the handling decision.

If the Supreme People's Procuratorate agrees to revoke or alter the original handling decision, the provincial court of the jurisdiction will be instructed to make a corresponding decision, or the handling decision can be made directly.

If the Supreme People's Procuratorate disagrees with the review and handling opinions, the case should be filed for review and notified in writing to the complainant, the provincial court in the jurisdiction and the provincial court in other places for review.

If the Supreme People's Procuratorate believes that if the review opinions find that the facts are unclear or the opinions are unclear, and the reasons are insufficient, they can be sent back to the provincial court for review in a different place for review, or the case can be directly filed for review.

(2) Dissatisfaction with the court's effective criminal judgment or ruling.

After the re-examination by the provincial court of the remote review is concluded, if it is deemed necessary to lodge a protest, it shall be submitted to the Supreme Procuratorate after the review and decision by the Procuratorate. After the Supreme People's Procuratorate decides whether to protest or not, a notice of criminal appeal review shall be made and sent within ten days. Reach the complainant and send a copy to the provincial court.

If it is deemed unnecessary to lodge a protest, a criminal complaint review notice shall be prepared after the review and decision by the Procuratorate Committee, which shall be delivered to the complainant within ten days, and a copy shall be sent to the provincial court of the jurisdiction and submitted to the Supreme Procuratorate.

• 三、结果

- （一）对不服检察院诉讼终结刑事处理决定的申诉案件，
 - 异地审查的省级检察院复查终结后应提出“复查处理意见”，经检委会审议决定后，报请最高检审查。
 - 1. 最高检同意维持原处理决定的，指令管辖地省级检察院作出维持的处理决定；
 - 2. 同意撤销或变更原处理决定的，指令管辖地省级院作出相应决定，也可直接作出处理决定；
 - 3. 不同意复查处理意见的，应立案复查并书面通知申诉人、管辖地省级院和异地审查的省级院；
 - 4. 认为复查意见认定事实不清或者意见不明确、理由不充分的，可以发回异地审查的省级院重新审查，也可以直接立案复查。
- （二）对不服法院生效刑事判决、裁定的申诉案件，
 - 1. 异地审查的省级院复查终结后，认为需要提出抗诉的，应经检委会审议决定后提请最高检抗诉，在最高检作出是否抗诉的决定后制作刑事申诉复查通知书，并在十日内送达申诉人，同时抄送管辖地省级院；
 - 2. 认为不需要提出抗诉的，应经检委会审议决定后制作刑事申诉复查通知书，在十日以内送达申诉人，同时抄送管辖地省级院，并报最高检。

IV. Implementation

- Let's see how this would play out. Well, it's not really the case. Or, we could say it's a bit more complicated than the provision.
- 我们来看一下实际情况。实际情况并非如此，或者说但实际情况要复杂一些。

- In the past three years, although many complainers and defense lawyers have been full of expectations for this regulation, in fact, we have not seen such cases, nor have we seen any follow-up official reports, although there may be cases in which the program is initiated and rehabilitated. The implementation of the remote review requires the publication of several typical cases. It also requires the Supreme People's Procuratorate to introduce how the system is being implemented in the "Report of the National People's Congress" or in other forms?
- 三年以来，尽管诸多冤案申诉者和辩护律师，社会各界对该规定充满了期待，但事实上，我们并没看到这样的案例，也没看到任何后续的官方报道了，虽然对相关案例启动程序并获得平反这样的案例可能是存在的。异地审查的落地，急需几个典型案例的发布，也需要最高人民检察院在《全国人大会议报告中》或其他形式介绍该制度实施的情况。

人民检察院刑事申诉案件异地审查规定

**Provisional Regulations Regarding People's Procuratorates in Other Jurisdictions
Reviewing Criminal Appeals**

最高人民法院

高检发刑申字〔2017〕3号

Supreme People's Procuratorate

No.3 [2017] of the Supreme People's Procuratorate

关于印发《人民检察院刑事申诉案件异地审查规定（试行）》的通知

**Notice of the Supreme People's Procuratorate on Issuing Provisional Regulations
Regarding People's Procuratorates in Other Jurisdictions Reviewing Criminal
Appeals**

各省、自治区、直辖市人民检察院，解放军军事检察院，新疆生产建设兵团人民检察院：

The people's procuratorates of all provinces, autonomous regions, and municipalities directly under the central government; the Military Procuratorate of the People's Liberation Army; and the People's Procuratorate of the Xinjiang Production and Construction Corps:

《人民检察院刑事申诉案件异地审查规定（试行）》已经2017年10月10日最高人民法院第十二届检察委员会第七十次会议通过，现印发给你们，请认真贯彻执行。执行中遇到的问题，请及时报告最高人民法院。

Provisional Regulations Regarding People's Procuratorates in Other Jurisdictions Reviewing Criminal Appeals as adopted at the 70th Session of the Twelfth Procuratorial Committee of the Supreme People's Procuratorate on October 10, 2017 is hereby issued to you for your conscientious implementation. Any problem encountered in implementation shall be reported to the Supreme People's Procuratorate in a timely manner.

最高人民法院

2017年11月14日

Supreme People's Procuratorate

November 14, 2017

人民检察院刑事申诉案件异地审查规定

(试行)

Provisional Regulations Regarding People's Procuratorates in Other Jurisdictions Reviewing Criminal Appeals

(2017年10月10日最高人民检察院第十二届检察委员会第七十次会议通过)

Passed at the 70th Session of the Twelfth Procuratorial Committee of the Supreme
People's Procuratorate on October 10, 2017

第一条 为了进一步规范人民检察院办理刑事申诉案件异地审查工作，强化监督制约机制，保障当事人的合法权益，维护司法公正，根据相关法律规定，结合检察工作实际，制定本规定。

Article 1

In order to further standardize the work of people's procuratorates in other jurisdictions reviewing criminal appeals, intensify the supervision and restriction mechanisms, safeguard the lawful rights and interests of the parties, and promote judicial fairness, these Regulations are formulated in accordance with relevant laws and regulations, and in light of the actual circumstances of procuratorial work.

第二条 最高人民检察院发现省级人民检察院管辖的刑事申诉案件原处理决定、判决、裁定有错误可能，且具有下列情形之一的，经检察长或者检察委员会决定，可以指令由其他省级人民检察院进行审查：

- (一) 应当受理不予受理或者受理后经督促仍拖延办理的；
- (二) 办案中遇到较大阻力，可能影响案件公正处理的；
- (三) 因存在回避等法定事由，当事人认为管辖地省级人民检察院不能依法公正办理的；
- (四) 申诉人长期申诉上访，可能影响案件公正处理的；
- (五) 其他不宜由管辖地省级人民检察院办理的情形。

Article 2

If the Supreme People's Procuratorate discovers there may be errors in the original decision, judgment, or ruling in a criminal case that has been appealed and is under the jurisdiction of a provincial people's procuratorate, upon approval by the chief procurator or the procuratorial committee, it may direct another provincial-level people's procuratorate to conduct a review, provided that one of the following applies:

- (1) if the procuratorate that should have accepted the case has failed to do so, or delays after being urged to handle it;
- (2) if the procuratorate encounters great obstacles in handling the case, which could impact the fair handling of the petition;
- (3) if a party believes that the provincial people's procuratorate with jurisdiction is unable to fairly handle the appeal due to recusal or other statutory reasons;
- (4) if the appellant appealed or lodged complaints over a long period of time, which could impact the fair handling of the case;
- (5) other circumstances that make it unsuitable for the provincial people's procuratorate with jurisdiction to handle the petition.

第三条 省级人民检察院认为所办理的刑事申诉案件需要异地审查的，可以提请最高人民检察院指令异地审查。

Article 3

If a provincial people's procuratorate believes that a criminal appeal it is handling should be reviewed by another Procuratorate, it may apply to the Supreme Peoples Procuratorate to order another jurisdiction to conduct a review.

第四条 申诉人可以向省级人民检察院或者最高人民检察院申请异地审查。

Article 4

An appellant may apply to a provincial people's procuratorate or the Supreme People's Procuratorate for the case to be reviewed by a different jurisdiction.

第五条 省级人民检察院拟提请或者最高人民检察院拟决定刑事申诉案件异地审查，申诉人未提出申请的，应当征得申诉人同意。

Article 5

If a provincial people's procuratorate intends to apply for review in a different jurisdiction, or the Supreme People's Procuratorate intends to order such a review of a criminal appeal, the consent of the appellant shall be obtained, if the petitioner did not initiate the application.

第六条 省级人民检察院决定提请最高人民检察院指令刑事申诉案件异地审查的，应当向最高人民检察院书面报告，阐明理由并附相关材料。

最高人民检察院经审查决定刑事申诉案件异地审查的，应当在十五日以内将案件指令其他省级人民检察院办理，同时通知管辖地省级人民检察院；决定不予异地审查的，应当在十日以内通知管辖地省级人民检察院继续办理。

Article 6

If a provincial people's procuratorate decides to apply to the Supreme People's Procuratorate to order a review of a criminal appeal by a different jurisdiction, it shall report to the Supreme People's Procuratorate in writing, elucidate its reasoning, and attach relevant materials.

If, after review, the Supreme People's Procuratorate decides to order a review of criminal appeal by a different jurisdiction, it shall within 15 days direct another provincial people's procuratorate to handle the appeal and at the same time notify the provincial people's procuratorate that has jurisdiction; if the Supreme People's Procuratorate decides not to grant such a review, it shall within 10 days notify the provincial people's procuratorate with jurisdiction to continue handling the case.

第七条 最高人民检察院决定刑事申诉案件异地审查的，异地审查的省级人民检察院应当在收到异地审查指令后七日以内通知申诉人

申诉人向省级人民检察院申请异地审查，省级人民检察院经审查决定不予提请，或者提请后最高人民检察院决定不予异地审查的，应当在作出不予提请决定或者收到不予异地审查的通知后五日以内通知申诉人。

申诉人向最高人民检察院申请异地审查，最高人民检察院经审查决定不予异地审查的，应当在作出决定后十五日以内通知申诉人。

Article 7

If the Supreme Peoples' Procuratorate decides to grant a review of criminal appeal in a different jurisdiction, the designated provincial people's procuratorate shall notify the appellant within 7 days of receiving the order for review in a different jurisdiction.

If the appellant applies to the provincial people's procuratorate for a review in a different jurisdiction and the provincial people's procuratorate decides, after review, not to apply to the Supreme People's Procuratorate, or after the provincial people's Procuratorate makes an application, if the Supreme People's Procuratorate decides not

to grant such a review, the provincial people's procuratorate shall notify the appellant within 5 days of deciding not to apply or of receiving the notification that the request for review in a different jurisdiction is not granted.

If the appellant applies to the Supreme People's Procuratorate for a review in a different jurisdiction, and the Supreme People's Procuratorate decides not to grant such application after deliberation, the Supreme People's Procuratorate shall notify the appellant within 15 days of making the decision.

第八条 异地审查的省级人民检察院应当依照《人民检察院复查刑事申诉案件规定》立案复查。审查期限自收到异地审查指令之日起重新计算。

Article 8

The alternative provincial people's procuratorate designated to conduct the review shall follow the *Supreme People's Procuratorate Regulations on the Reexamination of Criminal Appeals* in filing the case for reexamination. The time limit for review shall restart from the day that the alternative people's procuratorate receives the order to conduct a review.

第九条 对不服人民检察院诉讼终结刑事处理决定的申诉案件，异地审查的省级人民检察院复查终结后应当提出复查处理意见，经检察委员会审议决定后，报请最高人民检察院审查。

Article 9

With respect to an appeal of a people's procuratorate's decision to terminate a criminal proceeding, the alternative provincial people's procuratorate shall issue its reexamination opinion after concluding the reexamination, and after the procuratorial committee deliberates and makes a decision, report to the Supreme People's Procuratorate for review.

第十条 最高人民检察院对异地审查的省级人民检察院依据本规定第九条提出的复查意见，分别以下情况作出处理：

（一）同意维持人民检察院原处理决定的，指令管辖地省级人民检察院作出维持的处理决定；

（二）同意撤销或者变更人民检察院原处理决定的，指令管辖地省级人民检察院作出撤销或者变更的决定，也可以直接作出撤销或者变更的处理决定；

（三）不同意复查处理意见的，应当立案复查并书面通知申诉人、管辖地省级人民检察院和异地审查的省级人民检察院；

(四) 认为复查意见认定事实不清或者意见不明确、理由不充分的，可以发回异地审查的省级人民检察院重新审查，也可以直接立案复查。

Article 10

The Supreme People's Procuratorate shall handle a provincial people's procuratorate's reexamination opinion submitted in accordance with Article 9 of these Regulations variously in the following sets of circumstances:

- (1) if it agrees to affirm the original decision of the people's procuratorate, order the provincial people's procuratorate with jurisdiction to uphold the original disposition;
- (2) if it agrees to cancel or alter the original decision of the people's procuratorate, order the provincial people's procuratorate with jurisdiction to cancel or alter the original decision of the people's procuratorate; the Supreme People's Procuratorate may also directly cancel or alter the original decision;
- (3) if it disagrees with the reexamination opinion, the people's procuratorate shall file the case for reexamination and notify the appellant, the provincial people's procuratorate with jurisdiction, and the alternative provincial people's procuratorate;
- (4) if it believes that the determination of facts in the reexamination opinion are unclear, the opinion is not clear or the reasoning is not full, it may remand the case to the alternative provincial people's procuratorate for another review, or may directly file the case for reexamination.

第十一条 对不服人民法院生效刑事判决、裁定的申诉案件，异地审查的省级人民检察院复查终结后，分别以下情况作出处理：

- (一) 认为需要提出抗诉的，应当经检察委员会审议决定后提请最高人民检察院抗诉，在最高人民检察院作出是否抗诉的决定后制作刑事申诉复查通知书，并在十日以内送达申诉人，同时抄送管辖地省级人民检察院；
- (二) 认为不需要提出抗诉的，应当经检察委员会审议决定后制作刑事申诉复查通知书，在十日以内送达申诉人，同时抄送管辖地省级人民检察院，并报最高人民检察院。

Article 11

When an appeal is filed against an effective criminal judgment or ruling of the people's court, after concluding its reexamination, the alternative people's procuratorate shall make a disposition variously in the following sets of circumstances:

- (1) if it deems it necessary to file an appeal, after the procuratorial committee deliberates and makes a decision, it shall apply to the Supreme People's Procuratorate to make an appeal; after the Supreme People's Procuratorate decides whether to make

an appeal, it shall produce a notice of reexamination of a criminal appeal, and within 10 days serve the notice to the appellant, delivering a copy at the same time to the provincial people's procuratorate with jurisdiction;

(2) if it deems it unnecessary to file an appeal, after the procuratorial committee deliberates and makes a decision, it shall produce a notice of reexamination of a criminal appeal, and within 10 days serve the notice to the appellant, delivering a copy at the same time to the provincial people's procuratorate with jurisdiction and reporting it to the Supreme People's Procuratorate.

第十二条 异地审查的省级人民检察院需要调阅案卷材料、补充调查或者送达法律文书的，管辖地省级人民检察院应当予以协助。

Article 12

The provincial people's procuratorate with jurisdiction shall provide assistance if the alternative provincial people's procuratorate needs to access the case file, conduct a supplementary investigation or serve legal documents.

第十三条 异地审查的省级人民检察院刑事申诉检察部门应当在结案后十日以内，将刑事申诉复查终结报告、讨论案件记录等材料的复印件或者电子文档以及相关法律文书，报最高人民检察院刑事申诉检察厅备案。

Article 13

The criminal appeals department of the alternative provincial people's procuratorate shall, within 10 days of concluding a case, file photocopies or electronic documents of the criminal appeal reexamination concluding report, the case discussion records and other documents with the criminal appeals department of the Supreme People's Procuratorate for record.

第十四条 被害人不服地市级人民检察院作出的不起诉决定，在收到不起诉决定书后七日以内提出的申诉，依据刑事诉讼法及相关规定办理，不适用本规定。

Article 14

A petition against a decision by the people's procuratorate at the prefecture level not to institute a prosecution, filed by a victim within 7 days of receipt of the written decision not to institute a prosecution, shall be handled in accordance with Criminal Procedure Law and relevant rules and regulations, and these Regulations shall not apply.

第十五条 本规定由最高人民检察院负责解释。

Article 15

These Regulations shall be subject to the interpretation of the Supreme People's Procuratorate.

第十六条 本规定自发布之日起试行。

Article 16

These Regulations shall come into effect on the date of issuance.



THE ROLE OF PROSECUTION

IN THE INNOCENCE MOVEMENT

IN TAIWAN



柯昀青 Yunching Ko
宣傳主任 Communications Director
台灣冤獄平反協會 Taiwan Innocence Project

2020 Dec.

10 Exonerations

2014



陳龍綺

2017



陳燕飛

2018



黃冠宇

2019



許哲偉

2020



林進龍



張月英



蘇炳坤



黃明芳



謝志宏



鄭性澤

4 Retrials in Proceeding



劉正富



后豐大橋案



林金貴



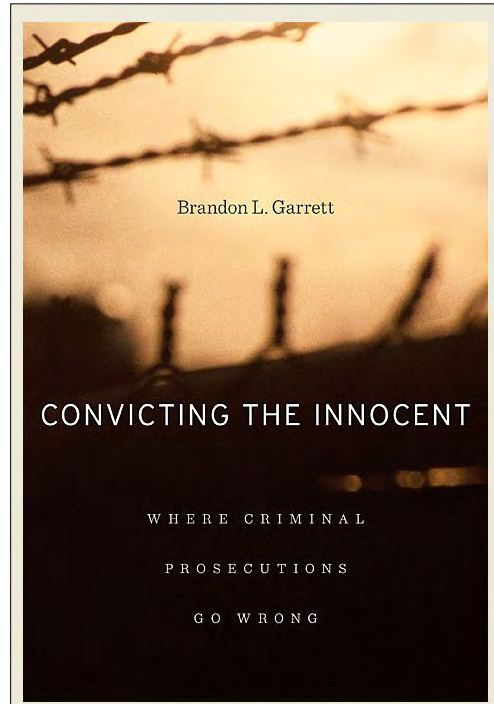
陳火盛



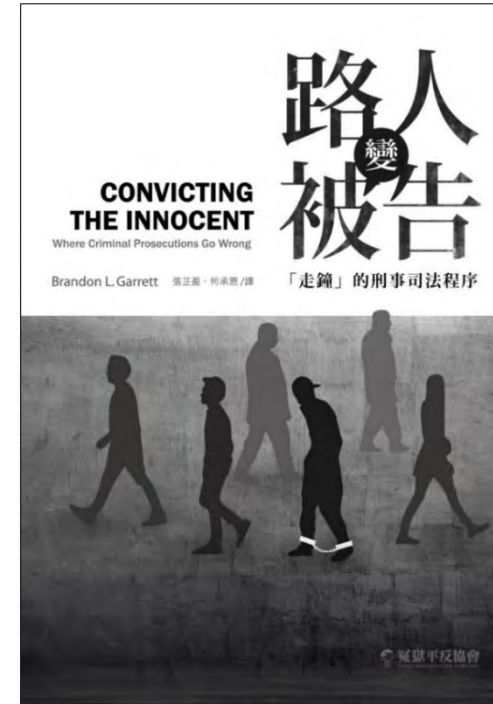
HSIEH, Chih-Hung

May 15, 2020

Learning from the U.S



Brandon Garrett
Convicting the Innocent: Where the Criminal Prosecutions Go Wrong



路人變被告：「走鐘」
的刑事司法程序



Conviction Integrity Unit

檢察官完善定罪小組

- One of the most efficient ways to right the wrongs
- Some led by prosecutors with prior experience in criminal defense
- Evidence full-disclosure

Prosecutor Inger H. Chandler

邀請德州哈里斯郡檢察官來台



2016. Taipei, Taiwan
TIP's annual conference

Professor Chin Meng-Hwa

〈美國完善小組建置之借鏡〉

冤錯案之平反救濟——美國「定罪完善小組」建置之借鏡

1

冤錯案之平反救濟 ——美國「定罪完善小組」建置之借鏡

Reversing Wrongful Convictions: Lessons Learned from the Conviction Integrity Units in the United States

金孟華

Mong-Hwa Chin

摘 要

所謂「定罪完善小組」，泛指美國各地區檢察署中，負責審查定讞

Prosecutors in Taiwan's Innocence Movement

台灣無辜運動中檢察官的角色

LU, Jie-Min 呂介閔



CHENG, Hsin-Tse 鄭性澤



HSIEH, Chih-Hung 謝志宏



拜DNA鑑定進步 內湖裸屍案大逆轉

2015-05-08 15:58:15 中央社 台北8日電

存新聞



呂介閔
LU, Jie-Min

2015

First DNA re-testing exoneration
by the prosecution



呂介閔下午3點半左右步出山上外役監獄，堅稱自己是清白的。記者吳淑玲／攝影

鄭性澤

CHENG, Hsin-Tse

2016 March

First-ever in Taiwan's judicial history that a prosecutor filed a motion for a retrial on behalf of a death-row inmate



2017 October

CHENG, Hsin-Tse was fully exonerated, became the 6th death-row exoneree in Taiwan



謝志宏
HSIEH, Chih-Hung

2018 September

The second case in Taiwan's judicial history that a prosecutor filed a motion for a retrial on behalf of a death-row inmate



2020 May

HSIEH, Chih-Hung was fully exonerated, became the 7th death-row exoneree in Taiwan



Institutionalization

從個案到制度，讓檢察官平冤不只是個案



法務部新聞稿

發稿日期：105年3月24日
發稿單位：法務部檢察司
連絡人：檢察官章京文
連絡電話：02-23146871 轉 2310 編號：016

法務部長指示最高檢成立爭議死刑案件救濟審查小組

法務部於今(24)日下午舉行部務會報，會中羅部長因應顏檢察總長之提議，指示檢察總長於最高法院檢察署成立死刑案件救濟審查小組，對於目前判決死刑確定但具重大爭議而尚未執行之案件，再一次主動審核，以查其是否有再審或非常上訴之事由，並據以提出救濟，貫徹法務部保障人權減少死刑使用之政策。

羅部長於今日部務會報中指出，顏檢察總長此項提議極具積極性，雖然法務部對於判決死刑確定案件執行之審核極為審慎嚴謹，惟部分尚未執行之受判決人，對於確定判決之證據取捨及事實認定仍存重大爭議，鑑於死刑執行之無可回復性，及刑事訴訟法第420條第1項第6款、第3項於去(104)年2月4日修正公布施行後，關於判決確定前已存在或成立而未及調查斟酌，及判決確定後始存在或成立之事實或證據，均可據為受判決人之利益聲請再審，為避免冤獄，羅部長特別為上開指示，就受判決人否認犯罪且於證據取捨及事實認定具重大爭議之案件，再一次主動審核該案卷證，如發現有新事實、新證據，或發見該案認定犯罪事實與所採用證據顯屬不符，而有利於受死刑判決之被告者，應即主動聲請再審或提出非常上訴，以資救濟。希望藉由該小組之成立與運作，充分發揮檢察官監督法院判決及保障人權之職責。

以合作 取代 對抗

法務部 正式啟動 有罪確定案件審查機制

Duty of the Prosecutors

內涵於刑事訴訟法的檢察官客觀性義務

01

The public officers shall give equal attention to circumstances both favorable and unfavorable to an accused.

實施刑事訴訟程序之公務員，就該管案件，應於被告有利及不利之情形，一律注意。

02

Prosecutors have the right to file a retrial for the defendant.

為受判決人之利益聲請再審，得由左列各人為之：一、管轄法院之檢察官。

From Confrontation to Cooperation

以合作取代對抗



2018. Taipei, Taiwan
TIP's annual conference



Thank you for your time!

 冤獄平反協會

 @twinnocenceproject

THE ROLE OF PROSECUTORS IN THE WRONGFUL CONVICTION AND EXONERATION OF FRANCES CHOY

PROFESSOR SHARON L. BECKMAN

DIRECTOR, BOSTON COLLEGE INNOCENCE PROGRAM

Sharon.Beckman@BC.edu

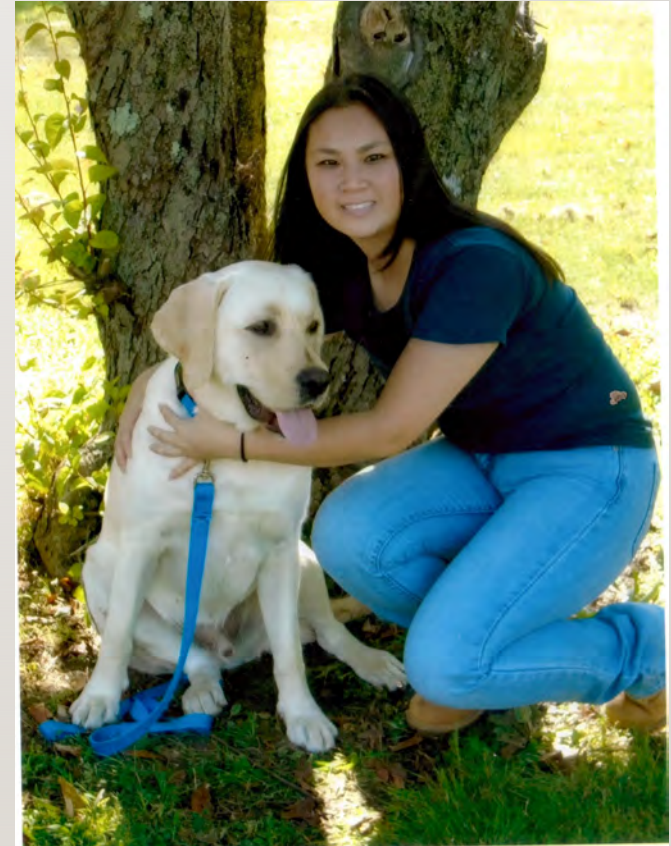
BOSTON COLLEGE INNOCENCE PROGRAM

- Clinical Legal Educational Program at Boston College Law School
- University-wide and Interdisciplinary
- Study Wrongful Convictions
- Investigate and Litigate Innocence Claims in Massachusetts
- Collaborate on Law and Policy Reforms
- Public Education



INTRODUCING FRANCES CHOY

- First generation Chinese-American
- Parents were Chinese Immigrants from Hong Kong and Vietnam
- Grew up in Brockton, Massachusetts
- B.S. Sociology, *magna cum laude* from Boston University's Metropolitan College
- Licensed cosmetologist
- Worked for 8 years as a Sous Chef
- Raised therapy dogs for American Service Veterans



FRANCES CHOY, EXONEREE!



- Wrongfully Imprisoned at age 17 (2003)
- Exonerated at age 34 (9/29/2020)
- Only Asian-American woman on the National Registry of Exonerations
- First Asian-American exonerated in Massachusetts
- Wrongful prosecution and convictions of Asian Americans is under-examined

FRANCES CHOY AT 17: CRIME VICTIM AS CRIMINAL SUSPECT



- Rescued from Deadly Fire (4/17/03)
- Interrogated, Arrested, Imprisoned
- Three trials (2008-2011)
- Convicted: arson and first-degree murder
- Sentenced to life without parole

FRANCES CHOY'S WRONGFUL CONVICTION: CONTRIBUTING FACTORS

- Incentivized False Accusation by Immunized Absent Witness
- Faulty Forensics
- Police Misconduct
- False Retracted Alleged “Confession”
- Judicial Errors
- Ineffective Assistance of Counsel
- Prosecutorial Misconduct

TRIAL PROSECUTORS' ROLE IN WRONGFUL CONVICTION OF FRANCES CHOY

SOURCE: MEMORANDUM AND ORDER, *COMMONWEALTH V. CHOY* (9/17/20)

- Withholding exculpatory evidence
- Misleading closing argument to jury
- False representations to trial court
- Inducing false testimony by law enforcement officer
- Intentional anti-Asian racial bias against Frances, her family, and all Asian Americans

THE TRIAL PROSECUTORS' ANTI-ASIAN STEREOTYPE OF FRANCES CHOY



GIRL SCOUTS

Maybe next time you'll buy the fucking cookies

Prosecutor's Closing Argument:

- "Emotionless"
- "Narcissistic"
- "Controlling"
- "Only concerned about herself and her stuff"

Social Science Research on Asian Stereotypes held by White Americans:

- "Lacking interpersonal warmth and kindness"
- "cunning, sly, selfish"
- "fear that they will stop at nothing to achieve their end goals"

TRIAL PROSECUTORS' RACIAL STEREOTYPE OF ABSENT IMMUNIZED ACCUSER



LONG DUK DONG,
SIXTEEN CANDLES (1984)



“Clothing Kenny left in lockup”

From: OSullivan, Karen (PLY)
Sent: Wednesday, September 09, 2009 4:47 PM
To: Bradley, John (PLY)
Subject: RE: Choy

You will be happy to know that me and Galibois are back on! We talked today for the first time in weeks (he is still a very creepy dude). We had a case on today, and of course the ice breaker was Kenny Choy. I think he is feeling nervous that you won't use Kenny after all and he will be out of the lime light. I haven't looked to see what # my case is on in the Appeals court, I hope they are not at the same time. **I will show up tomorrow wearing a cheongsam and will be the one doing origami in the back of the court room.** My guess is that there is no way Krowski will make it there for case #1.

From: Bradley, John (PLY)
Sent: Wednesday, September 09, 2009 12:31 PM
To: OSullivan, Karen (PLY)
Subject: Choy

just got a call from Jane Lewis at SJC...my first thought was that she was going to say that we were off the list, but instead she told me that we have been bumped up to #1...we'll see if Krowski is on time. Can you text Galibois and let him know?

LEGAL ARGUMENT: TRIAL PROSECUTORS' ANTI-ASIAN RACE DISCRIMINATION REQUIRED VACATING FRANCES' CONVICTIONS

- **Prosecutors' Racial Bias Violated U.S. and MA Constitutions:**
 - Equal Protection: Racially Discriminatory Intent and Action
 - Due Process
 - Fair Trial
- **Structural Constitutional Error:**
 - Automatic reversal of convictions
 - Constitutional Error Also Not Harmless/Was Prejudicial
- **Justice May Not Have Been Done (Mass. R. Crim. Proc. 30(b))**

POST-CONVICTION PROSECUTORS' ROLE IN EXONERATING FRANCES CHOY 2019-20

Spring/Summer
2019:
Prosecution
provides "open
file" discovery

3/18/20: Frances'
Motion to Stay
Execution of
Sentence and
Release Filed

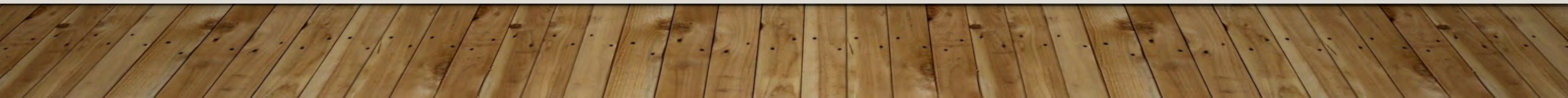
9/11/20:
Prosecution filed
Response
Supporting
Motion for Post-
Conviction Relief

9/29/20:
Prosecution filed
Nolle Prosequi
dismissing
charges in
interest of
justice.

1/6/20: Frances'
Motion for Post-
conviction Relief
Filed

4/13/20:
Prosecution filed
Non-Opposition
to Motion for
Stay of
Sentence/Release
and Court
granted

9/17/20: Court
Granted Motion
for Post-
Conviction Relief



MASSACHUSETTS CONVICTION INTEGRITY WORKING GROUP (SINCE 2019)

Goals:

- CIUs in all MA prosecution offices
- Best practices to remedy and prevent wrongful convictions
- Spring 2021 Report and Recommendations
- Ongoing Task Force, Training, and Support

Multi-Stakeholder Members:

- MA Bar Association
- MA Attorney General's Office
- CPCS (MA Public Defender)
- MA Innocence Network Orgs
- Three DA's Offices

PROSECUTION CONVICTION INTEGRITY PROGRAMS: KEY ELEMENTS

- Leadership and Support from the Top
- Structural Independence from other Units
- Clear Internal Program Practices
- Public Access
- Periodic Internal Reviews and Staff Training

WHAT PROSECUTION INTEGRITY MEANS FOR BCIP CLIENTS



Ronnie Qualls
Exonerated 9/1/20
After 28 years



Frances Choy
Exonerated 9/29/20
After 17 years



Tommy Rosa with his son
Released 10/18/20
After 34 years

Government Misconduct and Convicting the Innocent

The Role of Prosecutors, Police and Other Law Enforcement

Samuel R. Gross, *Senior Editor*, srgross@umich.edu

Maurice J. Possley, *Senior Researcher*

Kaitlin Jackson Roll, *Research Scholar* (2014-2016)

Klara Huber Stephens, *Denise Foderaro Research Scholar* (2016-2020)

NATIONAL REGISTRY OF EXONERATIONS

SEPTEMBER 1, 2020

National Registry of Exonerations

Newkirk Center for Science & Society • University of California Irvine • Irvine, California 92697
University of Michigan Law School • Michigan State University College of Law