Miscarriage of Justice in Imperial China: The Case of “Yang Nai Wu and Xiao Bai Cai” (杨乃武与小白菜).

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Miscarriage of Justice in Imperial China:
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By

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Provincial candidate becomes offender, lose all dignity (举人变犯人斯文扫地);
Study studio becomes penal ward, Nai Wu goes to heaven (学台充刑台乃武升天)。

Yang Nai Wu (杨乃武). 1

Clearly, much more work must be done before we can begin to evaluate how well the formal criminal justice process in late imperial China actually worked.


Introduction

“Yang Nai Wu and Xiao Bai Cai” (杨乃武与小白菜) 3 is a well known wrongful conviction or “yuan an” case happened during the late Qing dynasty. Specifically, it is

1 Yang Naiwu entrusted this to his good friend (胡雪) on the eve of his execution. http://www.hudie.org/duilian/ly/l008.htm
4 In western jurisprudence “wrongful conviction” is a species of “miscarriage of justice”, and frequently made synonymous with it. “A miscarriage of justice is primarily the conviction and punishment of a person for a crime that they did not commit.” http://www.answers.com/topic/miscarriage-of-justice According to the Innocence Project at the Benjamin N. Cardozo School of Law at Yeshiva University, founded by Barry C. Scheck and Peter J. Neufeld in 1992 which seeks to exonerate the wrongfully convicted through postconviction DNA testing, wrongful conviction is a serious problem within the American criminal justice system, wrongful conviction cases show that many factors contributed to wrongful convictions, including: false Confessions, unreliable informants / snitches, false
about the investigation, prosecution and wrongful conviction of a scholar, Yang Nai Wu and his (alleged) married mistress, Xiao Bai Cai. The actual trial of Yang Nai Wu and Xiao Bai Cai captured the attention of the nation and became a household name (家喻户晓), being known as one of the “four unusual case of late Qing” (晚清四大奇案). The

Witness Testimony; faulty hair comparison matches; bad lawyering; defective or fraudulent Science; prosecutorial misconduct; police misconduct; serology inclusion and mistaken I.D. By far the worse culprit is the mistaken identity. A. Ronald Huff, Ayre Rattner and Edward Sagarin, CONVICTED BUT INNOCENT: WRONGFUL CONVICTION AND PUBLIC POLICY (Newbury Park, CA: Sage Publications, 1996)

Every country has its noteworthy – telling and cautionary - wrongful conviction cases: In Australia Lindy Chamberlain was convicted for the murder of her 9 week-old daughter, Azaria, in 1982 by a jury. The police theorized that Chamberlain killed the child in the front seat of the car despite of the fact that there was no trace evidence, e.g. blood, in the car or on her body. She claimed that the baby had been taken off by a Dingo. Many eye witnesses accounts in support of Chamberlain’s assertion was overlooked or ignored. Her conviction was quashed in 1988. For a brief fact of the case, see “A Cry in the Dark” Crime Library – Court TV http://www.crimelibrary.com/fillicide/azaria/ For detail investigation of into the facts and circumstances of the case, see Royal Commission of Inquiry into the convictions of Lindy and Michael Chamberlain (May 1986). In Canada, Guy Paul Morin was convicted in 1992 for the murder of Christine Jessop on or after October 3, 1984, notwithstanding the fact that Morin was acquitted in his first trial on February 7, 1986. After the new trial, he was convicted of her murder on July 30, 1992, with contaminated forensic evidence and unreliable jailhouse informant. He was exonerated by DNA evidence in 1995. For detail investigation of into the facts and circumstances of the case, see Report of the Kaufman Commission on Proceedings Involving Guy Paul Morin http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/morin/ In England it is the Stephen Downing case, known international as the “Bakewell Tart” murder. Downing, a 17 years old with a learning disability and reading level of 11, was convicted of murdering Wendy Sewell in a Bakewell churchyard in 1973 on account of a confession induced by the police after nine hours of interrogation without access to a solicitor. Stephen Downing’s conviction was finally overturned in January 2002. For brief facts and public outcry over the case, see “Stephen Downing” Innocent Project UK. http://www.innocent.org.uk/cases/stephendowning/#twp For detail of investigative reporting which helped to reverse the case, see Don Hale, Town Without Pity (UK: Arrow Books Ltd, 2005) In the United States Sam Sheppard, a Physician, was convicted of murdering his pregnant wife Marilyn on July 4, 1954. His conviction was overturned on appeal in 1966. by the U.S. Supreme Court SHEPPARD v. MAXWELL, 384 U.S. 333 (1966) as a result of denial of due process caused by adverse publicity in the case, which the court described as: ”trial by newspaper.” For an investigative reporting of the case, see “The Murder of Marilyn Sheppard” Crime Library – Court TV http://www.crimelibrary.com/sheppard/sheppard.htm 5 “Jiayu – huxiao” or known to everyhousehold. The Pinyin CHINESE-ENGLISH DICTIONARY (PYCED) (Beijing: Commercial Press 1968), p. 234L 6 The case is “typical” and “normal” in the sense that it exposed the reality of corrupted officialdom in Qing China. It is “unusual” in many ways – from the egregious corruption it exposed to the wide publicity it received. As to what constitute the famous (or notorious) “four unusual case of late Qing”, there are different answers. Except for The “Yang Nai Wu and Xiao Bai Cai” and “Zhang Wenchang ci ma an” (“张文祥刺马案”) cases who which was made famous by books and media, there was no agreement on the other two less well known cases. See Zhou Lenjia (周楞伽). Four unusual case of late Qing (《 Qing mo sida qi an - 清末四大奇案 》(Beijing: Beijing Chubanshe 1985) What is “four unusual case of late Qing” (何谓 “清末四大
case reflected the organization and dynamics of late Qing social life, particularly how the criminal justice process operated in practice, and in default.

The case resonated with the people of the time because it reflected and reinforced common experience and public sentiments. Later it was made part of China’s cultural landscape and entered into Chinese folklores through news media and vernacular literature as an enduring story of corruption and abuse in Qing court on the one hand and an uplifting tale of the vindication of justice on the other. As one commentator to the book observed:

奇案”)?

http://www.zjol.com.cn/gb/node2/node70516/node70524/node162796/node162811/userobject15a1i1677051.html “Zhang Wenchang ci Ma an” is a case about the assassination of Ma Xin, a Qing governor, an incompetent official, by Zhang Wenchang, a loyal officer, on the morning of 25 day of seventh month in the rein of Tung Zhi. In covering up the reasons for the killing, Empress Dowager “Ci xi”; or Tz’u-hsi (慈禧) be convicted of treason and conspiracy with pirates and executed without a proper trial and exposing the misdeeds of Ma. See e-book “Zhang Wenchang ci Ma an” http://novel.jschina.com.cn/novelqfxlcom/nch/gudian/9and1781/1.htm

7 The general popularity, social significance and legal ramification of the case easily eclipse that of O.J. Simpson and Lacy Peterson murder cases in modern time in the U.S. For social impact and implications implication of historical sensational cases. See Jonathan Yovel, “ARTICLE: INVISIBLE PRECEDENTS: ON THE MANY LIVES OF LEGAL STORIES THROUGH LAW AND POPULAR CULTURE,” 50 Emory L.J. 1265 (The murder case of R. v. Thurtell (1842) found way into public consciousness by way of popular literature and folk informatics, and was later re-contextualized to serve judicial reasoning by later courts, in UK and US.)

8 The publicity of the case was supplied by Shenbao. “Yidai baowang She Liang cai” (A dynastic newspaper king Shi Liangcai) (一代报王史量才) People Vol. 4, 2000 (In 1872, Shenbao defeated its sole competitor Sanghai Xin Bao and became the sole newspaper in Sharhaid. It was then known for its aggressive investigative reporting exposing the corruption of the government and advocating the grievances of the people. “Yang Naiwu” case was one of his success story.)


9 Novel, opera, official history (yeshi), impromptu notes, now movie and DVD.

10 “Yang” case was often pointed to in contemporary time as need for vigilance against police corruption and miscarriage of justice. See “Nie Shubin, Yan Nanwu, Xiao Baicai, Qiandaowu shijian” (The cases of Nie Shubin, Yan Nanwu, Xiao Baicai, Qiandaowu) (聂树斌，杨乃武，小白菜，千岛湖事件) (Nie Shubin, an obvious miscarriage of justice case, should receive as much attention as Yang Nanwu case. Yet Nie was not vindicated and no officials were punished.) (http://www.boxun.com/hero/caogenduanping/72_1.shtml “Nie Shubin de beihou” (The Background of Nie Shubu) (聂树斌案的背后) (Nie Shubi was accused, prosecuted and convicted of rape and murder the police happened on August 5, 1994. It turned out that the police did not conduct a thorough investigation – no examination of DNA, no questioning of key witnesses, ignoring unexplained evidence and use of torture to coerced evidence. In January of 2005 another criminal confessed to the crime.) “Nie Shubin was sentenced to death without appeal” Chongqing Times (聂树斌当年被判死刑没经复核)

http://cqsbg.uash.com/gb/cqsbg/2005-03/19/content_1721411.htm

Editorial “Cong Sun Zhigan xiangdao” (Reflecting on Sun Zhigan) (从孙志刚事件想到的)

Lianhe zaobao (联合早报) June 24, 2003. (It is hoped that the case of Sun Zhigan would not
From this unusual case, we witnessed political corruption of late Qing, and observed tell tale signs of its eventual demise. In this simple murder case, officials at every level knew the murder to be the magistrate’s son, yet refuse to punish him by law, and instead substitute one offender for another (“移花接木 - yihua-jiemu”)11, and place the blame (“嫁禍- jia huo”)12 on Yang Nanwu. Only because “with money you can make the devil turn the milestone” (“有錢能使鬼推磨 - you qian shi de dui tui mo”)13. As a result from the county magistrate (“zhifu”) to circuit intendant (“xunfu”), down to prison guards and runners, anything, no matter how big, can be bought. This revealed the dark side of officialdom, make people infuriated. From this case, we can also see that during late Qing, official (“貪贓枉法 – pervert justice for a price”)14 is a common occurrence. Of course, there were a few officials of high integrity …who were able to handle cases justly, but they were far few and between.”15

As a social commentary the book validated century old age old Chinese adage that official suppression would bring about public rebellion against the government, and as a morality play it rejuvenates the universal principle b that good ultimately triumphs over evil and in the end justice will prevail over injustice. 16

Digging deeper, the book tells many stories and portent still more lessons. In the main it is a story of corruption in high places how justice was bought and sold. In the regard, justice has little to do with law, evidence process but everything to do with connection and money. On the side, it tells revealing and interesting stories of human nature, personal courage, family relations, social structure, community custom, moral climate, sexual morals,17 female role,18 gentry status, legal culture,19 investigative practice, judicial process,20 judicial culture.21

follow the footstep of Yan Naiwu and be resolved only with the intervention of the highest authorities.)

11 PYCED, p. 817R.
12 Short for “jia huo yu ren”. PYCED, p. 326R.
13 PYCED, p. 842R. “有錢能使鬼推磨” is a common saying that sanctify the power of money and epitomize corruption in government. Wen Ruzheng, Zhongguo Suyu Dacidian (Encyclopedia of Common Sayings (Proverb) (Zhanghai chishu Chubanshe, 1987) p. 1123. (“suyu” or common saying (PYCED, p. 653R) is also called “yanyu” PYCED p. 798L). The are usually short, to the point, punchy, popular and reflective of collective sentiments. Zhongguo Suyu Dacidian pp. 1- 9.
14PYCED, p. 663R.
16 Milena Dolezelova-Velingerova, The Chinese Novel at the Turn of the Century (University of Toronto, 1980), esp. “Plot Structure in late Qing Novels” (Late Qing novel was successful in breaking out of the old Confucius mode, calling forth pattern of good triumphing over evil.)
The Yang’s case still has much relevancy in China today. The “Yang” story was made into classical Peking opera, contemporary movie and now a much watched and talked about TV series in the PRC. It has entered into mass consciousness and become part of the cultural landscape. It was used by the PRC political leadership to admonish the people – political cadres, government officials, private citizens – to learn the need for rule of law, the problem with maladministration of justice and the commitment of the authority to seek justice at all cost.22 “Yang” was chosen because: “The play contains a very clear and explicit assessment of the political situation in the country…”23 The play makes two things clear, the best law is not enough to prevent injustice, we need honorable people to apply the law and committed government leadership to make sure that the system functions as it should. The skepticism of the law and the optimism on Party leadership should not be lost on the audience.

This article provides an annotated translation of court documents attending to the Yang’s case. By reading the court papers we can come to a deeper appreciation of justice is done in imperial China. In this regard I am answering the calls of Professor Alford:24

“Before we can arrive at definitive judgments about the formal criminal justice process in late imperial China, we must greatly enhance our understanding of it at three different levels. First, we must endeavor to elaborate our picture of the various components of the process, their intended function and their actual operation. Second, we must further explore its larger historical, philosophical, political, social, and economic contexts. Finally, we must sharpen our awareness of the enormous difficulties inherent in such cross-cultural judgments, id p. 1248.

This remains to be one the main purpose of this article.

The Case of “Yang Nai Wu and Xiao Bai Cai”25:

18 Matthew H. Sommer, Sex, Law, and Society in Late Imperial China (Stanford, CA: Stanford University Press, 2000).
23 id. 141.
An Annotated Translation

“As with many a detective tale, solving the mystery of institutional performance requires us to explore the past…”

(Putman 1993:13)26

DOCUMENT 1

Memorial (“juti”) of Yang Changjun27

Director of Military Affairs serving as junior deputy Chief Censor28, Governor of Zhejiang, Military Commander29 (“tidu”) and supervision of salt affairs hereby memorialized.

In regard to reprimand and removal of academic title matter (“chi ge”30), according to this officials, a “juren” who committed an offense should be memorialized for impeachment (9’ti ge”).

According to Lieutenant Governor Lu Dingxue, Commissioner of Justice Ku Hesun detail statement: Yuhang county report, in the case common woman GHS and “juren” YNW having illicit sex and poisoned GBL to death. It was ordered that the “juren” to be temporarily impeached, to be gathered together for the investigation of cause. The order has been followed accordingly.

Now, according to the detail examination of Yuhang magistrate Liu Xitong together with and under the supervision of Hangzhou prefect Chen Lu, the said juren YNW and the deceased GBL’s wife GHS was engaging in extramarital affairs, and conspired to poison to dead GBL, and have confessed fully.

26 Putman, Making Democracy Work: Civil Traditions In Modern Italy (Princeton University Press, 1993).
28 “Du ha yan you fu du yu shi”
29 “Tidu” is the chief provincial military officer.
30 “Chi ge” is to impeach or terminate an appointment. Hangyu Dachidian Vol. 6, 1054L. Brian E. McKnight, “Song Legal Privileges,” Journal of the American Oriental Society Vol. 105, No. 1 (Jan., 1985), pp. 95-106 (Gentry, degree holders and officials were treated differently in juridical process than comer, p. 100L. Specifically before an official can be arrested and brought to trial, there must be a memorial for impeachment.)
The said YNW is a resident of Yuhang county, sitting for the Tongzhi “Gui You” (13 year) as “zengsheng”. He ranked 104 in the provincial “juren” examination. The examination has been certified (“fu shi”). Now (YNW) has committed serious offense, should be impeached immediately, so that examination can conclude and transported to capital for final disposition (“shén ni sháojie”). Requested that this be examined carefully on the facts. This official have examined the file and found no error, and ordered the prisoner to be transported, the reason are hereby memorialized.

Beg the emperor to examine the same, and ordered the impeachment to proceed. This is memorialized for the emperor’s edict.

DOCUMENT 2

Censorial Memorial to the Throne

Chief censor Guang Shou and others memorial and request for edict:

According to complaint of Zhejiang Yuhang county civilian female Yangjiang Shi (YJS) who petitioned by proxy through Yao Shifa regarding the case of Mrs. Ge Hau Shi (GHS) poisoning her husband Mr. Ge Benlian (GBL), and unjustly accusing Yang’s husband, Yang Naiwu (YNW) of committing the murder as a result of an illegal affair. Your

31 “Zeng sheng” is an additional government student (“shengyuan”) allowed to sit for the examination. Hangyu Dachidian Vol. 2, 1222L

32 Under Qing law all capital offender who have confessed must be transported to capital for final examination. Hangyu Dachidian Vol. 6, 518R<<Qing Hui Dian Shi Li. Xingbu. Xinglu Duanyu>>: “For those who have murdered and robbed and been and have sentenced to die in the province, prefecture and magistrate and transported to the capital for final disposition (“shaojie”), after they have been duly examined according to charges, they should be imprisoned by the Commissioner of Justice and country prison to be secured safely.”

33 The said memorial is not dated.

34 “Du Cha Yuan Zouzhe: Yu Hangmin Cheng Kong Xing Biming deng Qing Qing” (Censorial Memorial to the Throne - Circumstances of Request of Yuhang female civilian petition complaining of unjust accusation of murder). In Wang Celai (ed.), Yang Naiwu yu Xiao Baicai (Beijing: Zhongguo jiangcha Chubanshe, 2002), pp. 20 – 22. The memorial document was reprinted from Shenbao on the seventh day of tenth month, the 13th year of Tongzhi rein (1874). Shenbao in turned reprinted it from the capital Capitol Gazette (“jingbao”). As observed by Wang Celai there was a disparity between this reported Censorial memorial as reported by Shenbao and the official facts of the case, as reported by the Board of Punishment. The officials reports - Board of Punishment final memorial, Hu Ruilan and Yang Chang [ X ] memorials that Yang reported that Ms. Yangjiang shi capital appeal was lodged at the Capital Gendarmerie Office (“Bujun Tongling Yamen”) not the Censorate.
humble servants supervised department officials in conducting an exhaustive inquiry, according to Yao Shifa (YSF):

I am a resident of Zhejiang Hangzhou Fu Yuhang, 28 years old. I lived in Chou Qi within the country, making a living with farming. In the tenth month of last year, there was a case of GHS poisoning her husband GBL. GHS being the suspect falsely accused my cousin YNW of murdering as a result of an illegitimate affair. The magistrate summoned YNW to court and tortured him until he falsely confessed. My cousin’s wife YJS has appealed to this magistrate. She also submitted a petition to the Commissioner of Justice ("nieshi") and the Governor ("xunfu"). The case was reverted back to the prefecture. My cousin’s blood elder sister Ye Yang Shi asked me to file an appeal with the Censorate. It was returned to the province and returned to the prefecture, and was disposed of in a careless and perfunctory manner ("hanhu\\textsuperscript{35} liaoshi\\textsuperscript{36}"). Under the circumstances, my cousin’s wife YJS felt the urgent need to appeal, asked me to come to the capital to present the complaint on her behalf. Since I am being interrogated, I present the details of the case. I am not informed of other matters. I plead that you read the petition and take appropriate action to investigate and deal with the matter.

According to investigation, YJS appealed by proxy through YSF about GHS poisoning her husband and falsely accusing YNW of murdering as a result of an illegitimate affair. The magistrate summoned YNW to court and tortured him until he falsely confessed. The case was appealed to the governor of this province and also by proxy to the Censorate at the capital. The case was referred back to the prefecture in the province which disposed of the case in a careless and perfunctory manner. Whether this is true must be thoroughly investigation to the bottom, in order to discover the truth based on facts.

The original petition was copied and made available for your honor’s perusal. We patiently away further instruction.

In accordance with emperor’s decreed procedure, a warranty ("ganjie\\textsuperscript{37}") was collected from the proxy petition YSF. It indicated that an appeal has been lodged with the governor, who did not investigate personally, and came to a collective announcement.

It is so memorialized.

The tenth month of the 13\textsuperscript{th} years of Tongzhi.

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\textsuperscript{35} "Hanhui" is to act carelessly or perfunctorily. \textit{PYCED} p. 82R.

\textsuperscript{36} "Liaoshi" is to dispose of a matter. \textit{PYCED} p. 429R.

\textsuperscript{37} \textit{Hangyu Dachidian} 974L. Under Qing law appellate – petition were responsible for the truthfulness and the merit of the appeal. They will be punished for bringing an appeal, notwithstanding result. Jonathan K. Ocko, “I’ll Take It All the Way to Beijing: Capital Appeals in the Qing,” \textit{The Journal of Asian Studies} 47 (2): 291 – 315 (1988)
DOCUMENT 3

Copy of original submission of Ms Yang Shi from Zhejiang Yuhang’s second visit to government office
Second Petition of Mrs. Yang Zhan

The study of traditional Chinese legal order has relied mostly on historical records, e.g. official history, at the expense of less formal source (yeshi). Since most writers were gentry and part took in imperial examination and have substantial investment in the state ideological system, they were likely to report historic from a privileged perspective. Actual investigation into how the law applied and criminal system function was rare.

In the eight month of 13\textsuperscript{th} year of Tongzhi, Mrs. Yang (wife of Yang Naiwu (YNW) filed the following petition with the Board of Punishment to challenge YNW’s criminal investigation and conviction:

“This petition was filed by Ms. Yang Zhan, a Zhejiang (province), Hangzhou (prefecture), Yu Hang county resident by and through Yao Shifa (“qiang pao gao”), in

\begin{footnotesize}
\begin{enumerate}
\item The “koukong” (oral disposition”) were not full statements as conventionally understood, flowing naturally chronologically as experienced or informed by the witnesses. Nor was it comprehensively account of what had had happened incorporating all the acts known to the witness. Instead, it was a truncated testimonial given in reaction to interrogation by the adjudicative magistrate or reviewing prefect. They were structured and organized, usually by the mouyou, and viewed and interpreted, in all cases by the presiding inquiring/reviewing officials, in accordance with a certain theory of crime. Usually, clerks and scribes (“daishu”) were responsible for taking down depositions of criminals, witnesses and petitioners. . John R. Ward. \textit{The district magistrate in late imperial China} (N.Y: Columbia University, 1972), pp. 220.
\item See “Zhejiang Xu Hang Yang Shi er ci kou hun yuan cheng digao” (The draft of Ms Yang’s second petition to government office). In Wang Celai (ed.), \textit{Yang Naiwu yu Xiao Baicai}(Beijing: Zhongguo jiangcha Chubanshe, 2002), pp. 22 – 26. The second draft petition was published in the \textit{Shenbao} on December 7 – 8, 1984 with the following editorial note: “Published in yesterday’s official newspaper (“di bao”), was a petition to the Censor (“Ducha Yuan” or “Tu-Ch’a Yuan”) emperor’s decree; it was a summary of the original. Since this news agency has obtained the draft copy, thus (we will) publish here for all to read, to show the exceptional nature of the injustice done (“yi bao qi yuan”).
\end{enumerate}
\end{footnotesize}
the eight month of 13th year of Tongzhi reign,44 and was dispatched on the 20th day of the ninth month.

The petition is a last attempt (“lisu”) to vindicate a gross injustice (“chen yuan”)45 to an innocent person (“wu gu”46) occasioned by a wrongful capital conviction (“wei wugu

42 It is near certain that judging by the content (legalistic), style (eloquence) and organization (tight logic), the petition could not have written by Ms. Yang, an uneducated woman. In traditional China, women were not encouraged to be educated. The conventional wisdom was: “Nuizi wucai bian shide” (Virtuous are the women without education) Paul S. Ropp, “The Seeds of Change: Reflections on the Condition of Women in the Early and Mid Ch’ing,” Signs Vol. 2, No. 1 (Autumn, 1976), pp. 5-23, p. 9, note 19. Increasingly, this position was being challenged by more enlightened and progressive views challenging the view that females were not as intelligent as male or calling female requires no (Confucius) education, see for example Li Chih (1527 – 1602) who observed that female were not just given to shortsightedness, they were also endowed with long sightedness. Id. 10. The petition has to be written by a learned person, most likely YNW himself, a songshi (pettifoggers). The formal requirements (and associated punishment for bringing suits) would preclude most people, except those who were experienced or learned, from plead before a local magistrate or on appeal. Philip C. C. Huang, “Between Informal Mediation and Formal Adjudication: The Third Realm of Qing Civil Justice,” Modern China Vol. 19, No. 3 (Jul., 1993), pp. 251-298, 254 – 258 (The required plaint form came with detail instructions, e.g. size of paper, total words, alteration, and context (facts pleading, no law). In Sung China, litigation specialists organized special school to provide for the services. In Qing time such persons, schools and profession was frowned upon by high minded Confucius scholars, e.g. they were derogatorily referred to as “songgung” and heavily regulated by concerned administrators, commonly referred to as “songshi”, e.g. a 1725 order proscribe against embellishment of facts and gentry who promote litigation were given punishment. John R. Ward. The district magistrate in late imperial China (N.Y: Columbia University, 1972), pp. 220 – 221, esp. note 17.)

43 Under Ming – Qing, degree holders and married women were not allowed to engage in litigation. In order to seek justice from the justice system, they have to do so by proxy, i.e. ask another commoner to file a claim on their he them. This is called “pao-gao”. Hangyu Dachidian (Shanghai: Hangyu dachidian Chbanshe 1993), vol. 6, p. 409 L. The word “pao” by itself means dispatch. PYCED p. 544L. Some David C. Buxbaum, “Aspects of Civil Procedure and Practice at the Trial Level in Tanshui and Hsinchu from 1789 to 1895,” The Journal of Asian Studies Vol. 30, No. 2 (Feb., 1971), pp. 255-279, 264.

44 The date was missing from the Shenbao copy and was noted by the author. See Wang Celai (ed.) p. 22.

luo sizui”) and to set aside an appeal sustaining guilt with fabricated charges and torture ("duan lian”\textsuperscript{47}). The petitioner begs the Board of Punishment to investigate thoroughly to get at the bottom of the matter (‘cedi genjiu”),\textsuperscript{48}

My husband YNW, 36 years old, was a scholar making a living as a tutor.\textsuperscript{49} On the ninth day of the tenth month last year, there was a murder case of Mrs. Ge Hua Shi (GHS) charged with poisoning her husband Mr. Ge Benlian (GBL).

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context appears as “yuan wang” (wrongful treatment), “yuan an” (wrongful case) or “yuan yu” (unjust charge or verdict), i.e. “miscarriage of justice” in the western sense.\textsuperscript{46} “Wu gu” is an innocent person. \textit{PYCED} p. 727R.\textsuperscript{46} “Duan lian” has two meanings, first fabricating charges to frame people and second, to torture suspect until submission, see \textit{Hangyu Dachidian} vol. 11, p. 1356L (16, 17 (4), (5).

Unlike appeals in common law countries, where spirit, doctrine, principle, and letters of the law must be invoked to mobilize the court to execute the law, a rational - logical process, the petition for just must invoke “qing” (compassion), “li” (reason) and “fa” (law) to move the judges to dispense with justice, an affective – moral approach. Robert E. HEGEL, “Imagined Violence: Representing Homicide in Late Imperial Crime Reports and Fiction,” \textit{Zhongguo Wenzhe Yanjiu Jikan}. Vol. 25: 61 – 89 (2004) Lest observers think that the two processes and approaches are totally different, there are common inter-penetration principles. First to observe is that as a meta principle, those who come before the court (west or east) to seek justice, must demonstrate to the court that they have justice on their side, as deserving of legal relief in western courts and equitable treatment in imperial courts. Second, in day to day litigation, any competent lawyers in the west know that in order to persuade juries (and judges) they must present facts laden with emotional appeal and arguing laws with reasons in support; a simple law as black and white approach would not work. Any sensible defendants in Chinese courts knew that they must not invoke the law, but also shows that “li” and “qing” is on their side.\textsuperscript{48}

Socially, education for personal enlightenment and career development was taken very seriously, by state and the public. There was high demand for Confucius teacher to man imperial college (Hanlin) clan school (shuyuan). Adam Yuen-chung Lui, \textit{The Hanlin Academy} (Arkon Books, 1981), p. 20. Personally, learned gentry (persons with official or academic titles), as potential, expectant or retired officials, sought local private teaching to augment their income, promote Confucius ideas/ideals, help with examination preparation, or just waiting for appointments. Chang Chung-li, \textit{The Income of Chinese Gentry} (Seattle: University of Washington Press, 1962) (Degree holders paid handsomely for teaching in local schools or offering private lessons), p. 94. Chang Chung-li, \textit{The Chinese Gentry} (Seattle: University of Washington Press, 1955) (The gentry were actively engaged in teaching and illustrating Confucius moral principles.) p. 63. John R. Ward. \textit{The district magistrate in late imperial China} (N.Y: Columbia University, 1972) (The waiting period between attaining qualification and first assignment of office could be as sort as one or two years (seldom) or sometimes as long as 30 years.), p. 45.
GHS falsely accused ("wuy zi"\(^{50}\)) my husband YNW for murdering as a result of an illicit affair. The case was dispatched to the province for a hearing, and my husband was forced to confess ("wu fu"\(^{51}\)) under torture\(^{52}\) ("xing bi"\(^{53}\)). I have complained of miscarriage of justice ("xu yuan qin") at the magistrate office ("fu xiang"\(^{54}\)), commissioner of justice office ("nei xiang"\(^{55}\)), and ("fu xiang"\(^{56}\)). My husband’s sister in law – Ms. Ye Yang has appealed to the Censorate (Du Cha Yuan)\(^{57}\) at the capital by

\(^{50}\) "Wu" is falsely accused, as in “wugao” bringing in false charge against someone.
\(^{51}\) "Wu fu" mean confession in spite of guilt ("wu gu er fu zui").
\(^{52}\) While confession was expected and torture allowed, coerced confession was suspected and deemed inferior to voluntary confession. Karen Turner, "War, Punishment, and The Law of Nature in Early Chinese Concepts of The State," *Harvard Journal of Asiatic Studies* Vol. 53, No. 2 (Dec., 1993), pp. 285-324, 307. (Chia I: “If the punishment is not suitable and you kill one person who does not deserve it, your crime will be reported to the Highest heaven.” Huai-nan-zhu observed: “Oppressive laws and orders give rise to plague. If the innocent are put to death, the country side will suffer drought.” N. 90)
\(^{53}\) “Xing” means torture *PYCED* p. 772L. “Bi” is short for “bigong” meaning to extort a confession. *PYCED* p. 31L.
\(^{54}\) Hangyu Dachidian vol. 6, p. 87RL
\(^{55}\) "Nei xiang” stands for “nei si”, another name for “an cha si” or commissioner of justice *Hangyu Dachidian* vol. 8, p. 1338L
\(^{56}\) *PYCED* p. 210L
\(^{57}\) Charles O. Hucker, "The Traditional Chinese Censorate and The New Peking Regime," *The American Political Science Review* Vol. 45, No. 4 (Dec., 1951), pp. 1041-1057. (The Censors worked as eyes and ears of the emperor. They honored the good and exterminated the corrupted and tyrannical. In so doing, they rectified public morale and activated government principles. (p. 1045 As part of their duty, they were to check on prisoners conditions and cases for injustice (p. 1046). For lower officials they could seize and try them for wrongdoing. As to senior officials, They could file impeachments. With respect to judicial proceedings, they coordinate with Department of
proxy “qiang pao”. The Censor has returned the case for review at the original province. Since the original adjudicating official is prejudiced in the case (“hui hu”), my husband awaits death in injustice (“han yuan daibi”), there is no other recourse than to file a new petition to state the truth.

Originally GHS was arranged to marry (“xu”) GBL as wife, later she wanted to repudiate the marriage (“lai hun”). GBL was our neighbor. They came to seek my

Punishment and together functioned as the Grand Court of Revision which has automatic jurisdiction all major cases, e.g, treason or capital punishment.)

58 “Qian pao” is the short form of “qiang pao gao”, see note 2 supra.

59 “Hui hu” is to be predisposed in favor of. It is the opposite of “hui bi” which is recluse oneself because of conflict of interest. Hangyu Dachidian vol. 3, p. 608 L (12, 13). Qing law requires officials to recluse oneself in cases of conflict of interests.

60 “Xue” as in “xue pei” meaning bethroth a girl. PYCED p. 780R. Actually GHS was a “tongyangxhi” (child raised to become daughter – in – law) because the blood parent was not able to support the daughter for financial reasons. Technical it was illegal to sale girls into servitude, but it was morally accepted and legally tolerated, as a social practice (“ting cong minbian” or law following public convenience). Philip C. C. Huang, “Women’s Choices under the Law: Marriage, Divorce, and Illicit Sex in the Qing and the Republic,” Modern China Vol. 27, No. 1 (Jan., 2001), pp. 3-58, 9. (There was a fundamental change in female role conception in between late Qing and early Republication of China; during Qing time female were male dominate family properties and in the Republic period she took on an autonomous individual personalities.) The feeling, interest and welfare of the female was less important as the wishes and desires of the parents and family. In imperial China, female rarely married for love and mostly for convenience, as in GHS, which led to allegations of marital infidelity and murder. Ann Waltner, “On Not Becoming a Heroine: Lin Dai-Yu and Cui Ying-Ying,” Signs Vol. 15, No. 1 (Autumn, 1989), pp. 61-78 (Lin Dai-yu, the heroine in Dreams of Red Chamber, did not married for love, which was not necessary nor desirable. In eighteenth century China marriages were pre-arranged by families, p.63)

61 In this case the marriage contract was sealed more than likely for economic reasons, i.e. GHS’s father died and her mother has no mean to support her. Steven N. S. Cheung, “The Enforcement of Property Rights in Children, and the Marriage Contract,” The Economic Journal Vol. 82, No. 326 (Jun., 1972), pp. 641-657 (Marriage contract in China was economically structured. T’ing yang-his, daughter in law raised from childhood was worth less than a ready to made bride.)

62 PYCED p. 405R

63 Litigation in imperial China was not only sorting out issues of law and facts (as in the west), but also about morality and reputation. In this case, the petition placed in issue the reputation and morality, in turn integrity and veracity of GHS, a key witness in this case, in issue. The petition suggested GHS was not a virtuous woman to be associated. She was not respectful of the mother and unfaithful to her paramount. She was not an honest person to be trusted. She did not see fit to uphold a “hun yue” pre-arranged by her
husband help65 ("li lun"66) and was able to conclude the marriage arrangement.67 GBL already harbored resentment68 ("huai hen"69)

parents. Mark Elvin, "Female Virtue and the State in China," Past and Present No. 104 (Aug., 1984), pp. 111-152. (In traditional China, as a form of state control by ideology, virtuous conduct was lionized and unethical conduct condemned.) Ultimately, as persons of dubious morality, GBH deserved less protection of the law. Black (1976). For example, under Qing law, unchaste women could not be raped. Rape trial has less to do with finding guilty of the accused or seriousness of the criminal act, but turned on the status (chastity) of the victim. Vivien W. Ng, "Ideology and Sexuality: Rape Laws in Qing China," The Journal of Asian Studies Vol. 46, No. 1 (Feb., 1987), pp. 57-70. (Punishment of rapist turned on the chastity of the victim (p. 66) A rapist escaped death penalty into exile when it was discovered that the victim has illicit sex with another male, unrelated to the case (p. 64)

64 There was no mentioning who came to ask for YNM. The clear impression is that he as asked but not volunteer to help.

65 As a practical matter, it was most logical and reasonable for GBL to approached YNW for help. First, YNW was a neighbor and neighbors were supposed to help each other. Second, YNW was a natural local leader, by force of personality, e.g. charisma, character, e.g. integrity, education, e.g. scholarship, and status, e.g. academic title. He was sought out by others to help in offering advice, settling disputes and confronting governing, i.e. all round resource person to call upon for help. Kung-Ch'uan Hsiao, Rural China: Imperial Control in the Nineteenth Century China (Seattle, Washington: University of Washington Press, 1960), p. 291 (Three kinds of local leaders, elders, scholars and natural leaders.) Third, as a learned scholar, he has the knowledge provide for advice and stature to arbitrate dispute. Chung-li Chang, The Chinese Gentry (Seattle, Washington: University of Washington Press, 1955). Fourth, as a learned gentry (class) and as intermediary between the state and the people, YNW was expected by he magistrate, local community and gentry class to assume a leadership role in providing moral education and settling disputes. Kung-Ch'uan Hsiao, Rural China: Imperial Control in the Nineteenth Century China (Seattle, Washington: University of Washington Press, 1960), p. 291 (Local leaders have the following qualities: integrity, impartiality, good sense, while not indispensable being a gentry and from a family of mean and status.)

As a litigation strategy, it is important to explain YNW’s involvement with the relationship between GBL and GHS in the most benign terms, i.e. he was dragged into this at the behest of the decease and his wife and for their own good. This indicated not only a lack of motive to kill because of illicit relationship with GHS, but an inclination to help GBL to seal up an anticipated marriage with GHS.

66 “Li” reason. “Lun” is to argue or debate. “Lilun” is to debate with reason. Hangyu Dachidian vol. 11, p. 577 L (2)

67 Some traditional Chinese clan rules provided against backing out of arranged marriage: “The man’s engagement (“nan pin”) and woman’s betroth to (“nui ding”) to each other is a matter of fate. The man who has engaged from youth, might turn out to be sexually incompetent or deformed and ugly, or not matching in economic status, this has
In the fourth month of the eleventh year, GBL rented my husband’s house, we were living a wall apart, we learned that GHS resented (“xian”) GBL for his old age and been designed for life, and cannot be rescinded. The woman has been betrothed since young, the named household might have been rich and turned poor, or turned sexually incompetent, the marriage contract is sealed for life, and cannot be changed…” “Zhao Xue Tang Sun Shi Amended Clan Rules” Fei Chengkang, China family rules and clan regulations (Zhongguo de jiafa zugui) (Zhanghai shehuikexuyuan Chubanshe, 1998), p. 364.

GBL was resentful for a number of reasons. First, he was jilted by his own wife, in front of others. This challenged his manhood. This was a personal affront. This amounted to denial or identity. Second, a most personal and intimate matter has to be settled by an outside. This was a great a lose of face for the family. This amounted to “jiachou waiquan”, a taboo. PYCED p. 323R. Third, as a male and head of family, he should be able to take care of his own personal and family business. He felt a lost of institutional power and social status.

The fact that GHS and GBL moved from YNW’s rented premises was not in doubt. The reason why they have to move, at the behest of YNW or desire of GHW, was a point of contention, and might help in determining where GHS and YNW has an on going illicit affair. Property law research has been focusing on relationship between landlord and peasant, less so household tenancy. The former line of historical research made clear that landlord and tenant relationship was never a pure commercial and legal relationship, extraneous considerations often come to play in the extending a contract, e.g. compassion, or termination of a lease, e.g. moral transgression. This might be incomprehensible to a common law lawyer who is indoctrinated to think in terms of freedom of control. But it is not hard to explain when one realize that (hierarchy) relationships in China were interpenetrating and denominated in moral terms. Thus landlords were likely to be social, economic, cultural and political superiors, e.g. gentry, clan head, village leaders of the tenants (peasants, commoners). The contractual – rights and responsibilities – relationship to land was subject to the web or mutual reinforcing relationship commanded by Confucius norm, social custom and legal rules. Mark Elvin,” The Last Thousand Years of Chinese History: Changing Patterns in Land Tenure,” Modern Asian Studies Vol. 4, No. 2 (1970), pp. 97-114, 101 (Hu Hung wrote of landlord – tenant relationship in year 1000: “There is a chain of obedience stringing from master to tenant…Master should see to it that their tenants have a secure livelihood.” Beyond that the master have a right to expect the tenant not to behave perversely, to respect distinction between master and tenant; to not gamble and drink in access and without restrain; not to entice other men from their wives; not too many male in the household.) Qing research showed that the tenants could be remove for multitude of reason including unilateral increase in rent or rowdy conduct. Madeleine Zelin, ”The Rights of Tenants in Mid-Qing Sichuan: A Study of Land-Related Lawsuits in the Baxian Archives,” The Journal of Asian Studies Vol. 45, No. 3 (May, 1986), pp. 499-526, 512, Table 5. “Justifications given for eviction in Baxian Tenancy Dispute”.
poor economic condition. She often times started abusive altercations and was contemplating having affairs.  

71 “Xian” stands for “xianqi”. “Xian” is dislike. “Qi” means avoid or cold shoulder. PYCED p. 748L

72 Social and economic, though not emotional, compatibility between husband and wife was deemed important in making Chinese family. Thus the saying “mendang hudui” or family couple should be well matched in social and economic status.” PYCED p. 446R.

73 In any event, a condition for picking wife was the understanding that once the wife would bear whatever hardship experienced by the husband and be unconditionally supportive. In return she could be expected to be taken care off by the husband when alive and his family (as one of his own) when he died with no children. Shu-Ching Lee, “China’s Traditional Family, Its Characteristics and Disintegration,” American Sociological Review Vol. 18, No. 3 (Jun., 1953), pp. 272-280, 276R.

74 Whatever moral and ethical judgment were to made of QHS, she was far from being the desirable kind of female people would find to be attractive and like to be associate with, i.e. weak, pliable, dependent, shy. Paul S. Ropp, “The Seeds of Change: Reflections on the Condition of Women in the Early and Mid Ch‘ing,” Signs Vol. 2, No. 1 (Autumn, 1976), pp. 5-23, p. 6.

75 “Gou” insulting or accusatory remarks in popular culture and with vernacular speech, sexually liberated seductresses were refer to as “fox-spirit” (“huli jing”) PYCED p. 283R. 

76 The demonization of deviants, criminals and enemies is necessary to establish moral boundary and consolidate community effort to deal with social harm. Stanley
GBL worked in a bean curb shop as a laborer ("yong gong") days on end. (During such times) GBL often associated a chayi and lishu named He Chunfang in a suspicious manner ("zhongji keyi").

My family and theirs home was barely separated by a wall, this was consider as unsuitable and inappropriate. My husband has asked GBL to admonish his wife.

Cohen, *Folk Devils and Moral Panics: Creation of Mods and Rockers* (1972) called this the construction of “moral panic”. Following this logic all female in traditional China who failed to act their role and re-enact Confucius moral script were demonized and ostracized. Yenna Wu, “The Inversion of Marital Hierarchy: Shrewish Wives and Henpecked Husbands in Seventeenth-Century Chinese Literature,” *Harvard Journal of Asiatic Studies* Vol. 48, No. 2 (Dec., 1988), pp. 363-382 (Assertive, demanding and dominating women were roundly and uniformly denigrated as ill tempered, contentious, intimidating, dangerous and evil, to be avoided in popular culture and literature. (p. 369)

A “chayi” was a government runner. They served the local government in many capacities: messengers, guards, and policemen. See Chapter IV “Government Runners” in Tung-Tsu Ch’U, *Local Government in China under the Ch’ing* (Cambridge, Mass.: Harvard University Press, 1962), pp. 61 – 64. Four kinds of functionaries worked for the magistrate in administering the county: runners, clerks, personal servants, and private secretary, for their role and functions, qualification, recruitment and training, see *Id* Chapter III, IV, V, VI respectively.

“Shuli” was a government clerk. They prepared and drafted many of the documents – warrant, tax record, reports, memorandum, pp. 4` - 43. See Chapter III “Clerk” in Tung-Tsu Ch’U, *Local Government in China under the Ch’ing* (Cambridge, Mass.: Harvard University Press, 1962)

The appeal strategy here was to implicate the local officials, intimating corruption and violation process.

"Zhongji” is track or trace. *PYCED* p. 953R “Keyi” is suspicious. *PYCED* p. 388R. Together “Zhongji – keyi” suggested that the relationship between GHL and He Chunfang was a dubious one, hinting at sexual affairs. In imperial China, open and uninhibited association between married women and other males was itself a moral transgression and attracted family discipline and social discontent, see Vivien Ng, "Sexual Abuse of Daughters-in-Law in Qing China: Cases from the "Xing’an Huilan" *Feminist Studies* (Summer, 1994), pp. 373-391 (In 1785, a lady Han from Shandong was found joking and laughing with Zhang Ke (her adulterer) by her father-in-law, Zhoa Goa, who chided her in her unseemly conduct (p. 380)

The petition did not elaborate why this was inappropriate, safe to assume that in traditional China, particularly during Qing time, when female chastity was promoted as state policy to enhance the Manchu’s legitimacy of rule, the entertaining of male by a married female while the husband was away was not considered as appropriate.
GBL told her what YNW said, verbatim and reprimanded (“xunze”85) her.86 GHS harbored more resentment (towards YNW).

Traditional Chinese family rules and clan regulations cautioned married and unmarried female consorting with other male, alone. There were strict rules against male and female interaction. Fei Chengkang, *China family rules and clan regulations* (Zhongguo de jiafa zugui) (Zhanghai shehuikexuyuan Chubanshe, 1998) (Some family rules forbid man and woman to sit together. Others warned against girls and guys teasing, walking, dinning, bathing together. Still other disallowed men talking to women, except in ceremonious events, and men were not welcomed in woman quarter, particularly servants and strangers. (p. 61). The fundamental rationale, daily operation and practical implications of women rules were explained in detail in who observed that at the end of the day, strict and uncompromising male and female relationship rule is to isolate the parties so that they rise to corrupting influence. John W. Dardess, "The Cheng Communal Family: Social Organization and Neo-Confucianism in Yuan and Early Ming China," *Harvard Journal of Asiatic Studies* Vol. 34 (1974), pp. 7-52

84 PYCED p. 566L. Professionally, as a member of a gentry class, YNW has a moral duty to intervene when there was a (suspected) transgression of imperial law, Confucius ethics, local custom, and clan rules. Adultery was prohibited by Qing Code, Statues 336 (fanjan – committing illicit sex) and 367 (hejan – consenting to illicit sex) Philip C. C. Huang, "Women's Choices under the Law: Marriage, Divorce, and Illicit Sex in the Qing and the Republic,” *Modern China* Vol. 27, No. 1 (Jan., 2001), pp. 3-58, pp. 8 – 10. For legal construction and actual application of “tongjan” law, see id. pp.15 – 16.

Personally, as an educated person of high social status and moral standing, he could not afford having such moral, if not legal, indiscretion happening in his own house. A failure to act would implicate his integrity. He would be held personally accountable for offering direct material assistance or rendering indirect moral support. Kung-Ch’uan Hsiao, *Rural China: Imperial Control in the Nineteenth Century China* (Seattle, Washington: University of Washington Press, 1960), pp. 72 – 73. (Residents have obligation to report crime.) As a community leader, YNW as a gentry has an obligation to educate the public as to what Qing law prohibits and Confucius ethics requires. He also has an affirmative duty to uphold morality, i.e. stop extra-marital affairs, and maintain order, i.e. forestall future disputes. Lastly, as a control agent of the government, he was expected to keep things in the community under control. Kung-Ch’uan Hsiao, *Rural China: Imperial Control in the Nineteenth Century China* (Seattle, Washington: University of Washington Press, 1960).

In traditional China, the husband was responsible for disciplining the wife. Qu Tungzhu, *Zhongguo falu yu Zhongguo shehui* (Bejing: Zhonghua shuju, 1981, original 1947) (Husband was allowed to discipline and hit the wife for failure to respect the parents-in-laws and disobedience to the husband.), pp. 105 – 114.

85 “Xunze” is to the same as “xunchi”, i.e. reprimand. PYCED p. 788L. “Ze” stands for “Zegui” means to blame. PYCED p. 868R. “Xunze” means reprimand and blame.

86 In imperial China, a wife “belong” to the husband as property. He was responsible for his well being as well as discipline. The husband has legal authority provided by the Qing code and customary power provided by family and clan rules over the wife. The husband could be held responsible for the wife’s misconduct. Fei Chengkang, *China
My husband asked them (GBL) to move, they did not do so for a long time. My husband has no choice but requested *dibao*\(^{87}\) Yang Ren in the sixth month last year to order and escort (“ya ling”\(^{88}\)) them to move (“yi tu”\(^{89}\)). GHS left blaming (“yuan li”\(^{90}\)) my husband.

In the ninth day of the tenth month, last year, after we heard about the sudden death of GBL, we found that local government runners (“chayi”) were engaging in private discussion (“siyi”) in Ge’s home for two days. It was on the 11\(^{th}\) day when GBL’s remarried mother Mrs. Shen Yu Shi, that is Mrs. Ge Yu Shi, reported to the county for an autopsy\(^{91}\) and inquiry.\(^{92}\) The magistrate (“xian zhu”\(^{93}\)) arrested (“ju na”\(^{94}\)) GHS to family rules and clan regulations (Zhongguo de jiafa zugui) (Zhanghai shehuikexuyuan Chubanshe, 1998).


\(^{88}\) “Ya” is to escort. *PYCED* p. 790L(3). “Ling” is command or order *PYCED* p. 436R(1).

\(^{89}\) “Yitu” is to vacate ones premises. *Hangyu Dachidian* vol. 8, p. 79L (1).

\(^{90}\) “Yuan” is to find fault with, hate *Hangyu Dachidian* vol. 7, p. 447 R(1) (2). “Li” is to blame. *Hangyu Dachidian* vol. 11, p. 103L (1). “Yuan li” is finding problem with and blaming others for ones problem, especially by “xiao ren” (uneducated and based people). *Hangyu Dachidian* vol. 7, p. 451R (1).


\(^{92}\) The first step to report a crime was to petition the local magistrate for the redress of a wrong, i.e. “shenyuan” (literally appeal (“shen”) for redress to injustice “yuan” *PYCED* p. 605L) or “shenyan” (literally straighten (“shen”) out bent justice “yuan” *PYCED* p. 605L). The process was a simple one: grabbing the attention of an official, telling an injustice (“yuan qing” or literally unjust situation), and seeking redress “zhao xue” (“Hangyu Dachidian” vol. 1, p. 1241L (“shenyuan”), vol. 5, 668L (“zhao xue”, literally let light in or “zhao” and make it snow white or “xue”). A criminal complaint must be filed with the county (“xian”) or department (“zhou”) official (magistrate) in three ways: file a plaint (“cheng zhuang”) at the magistrate office (“yamen”), stopped the magistrate on the road and complained directly (“zhisu”) or changed the gong in front of the yamen to complain orally (“kaosu”).

Under normal circumstances the magistrate would personally receive or hear the complaint to determine whether there is a prima facie case through careful interrogation of the complainant. The determination was based on “wun ting” or five ways of ascertaining the truth of the case through active observation. Observing here means the...
assist with official inquiry. GHS immediate falsely accused my husband to have 
murdered because of illicit affairs. The magistrate summoned my husband to the case 
(“dao an”). My husband immediate appeared in person (“nian su”) detailed everything 
suspicious including compelling GHS to move. Magistrate did not investigate into the 
details of the case, but accused my husband being crafty (“jiaohua”). My husband 
rebuked him. This angered the magistrate. Magistrate runner Yuan De came to our 
family to ask for bribe. He did not get what he wanted and made secret allegations to 
the magistrate.

The magistrate based on GHS’s detail confession, removed the official title of my 
husband’s official and subjected him to coercive interrogation. During the torture 
torture interrogation of my husband, he confronted face to face with GHS. GHS unexpectedly 

using of all or senses: hearing, watching, smelling. <<Zhouli.qiuguan.xiao siou>>: 
“First, observe speech (“citing”). Second, observe color (“setting”). Third, observe 
breathing (“qiting”). Fourth, observe hearing (“erting”). Fifth, observe eyes (“muting”). 
Hangyu Dachidian vol. 1, p. 393L. The basic principle behind “wuting” is that if 
people are not telling the truth they would unduly elaborate, they would change facial 
color, they would breath heavily; they would be confused, they would look daze. Chinese 
“wuting” anticipates modern lie detection technology by 2000 years! Scientifically, the 
polygraph or lie detector does not reveal truth telling only physiological change during 
torture. Modern lie detector measured rate of respiration (The pneumograph 
(“NEW-mow-graf”), blood pressure (sphygmomanometer (“SFIG-mow-meh-NOM-eh-
ter”) and electric resistance of skin (galvanic skin response (GSR). 
It is at this point that criminal cases could become civil cases and vice versa. Zhao 
Xiaohua. Social observations of late Qing criminal and civil litigation system (Wan 
Qing songyu kidu de shehui kaocha) (Beijing: Zhongguo renmin daixue chubanshe, 
93 “Xian” is a county and “zhu” is the head. “Xianzhu” is the head of county, i.e. 
magistrate.

94 “Juna” is to arrest Hangyu Dachidian vol. 6, p. 484L.

95 There were many reasons why a thorough investigation was not conducted in this 
case. Modern – western criminal investigation literature informs that how to proceed 
with an investigation hinges of a number of consideration, one of which is strategy. In 
Qing China economy and accountability played a role. Brian E. McKnight, “A Sung 
95, No. 3 (Jul., 1975), pp. 483-485

96 PYCED p. 340R.

97 Bradly W. Reed, “Money and Justice: Clerks, Runners, and the Magistrate's Court in 
Late Imperial Sichuan,” Modern China Vol. 21, No. 3 (Jul., 1995), pp. 345-382

98 Brian E. McKnight, "Song Legal Privileges," Journal of the American Oriental 
Society Vol. 105, No. 1 (Jan., 1985), pp. 95-106, 100. (Graded gentry who committed a 
crime was not subjected to regular judicial process; the case must be memorized and the 
gentry impeached, before inquisition and torture.)
regain her conscience (“tianliang”99), and testified that the murder was not perpetrated by YNW.101

99 PYCED p. 676R.

100 In traditional Chinese political philosophy, the individual personality was intimately linked with the corporate state. The individual is a microcosm of larger state. Just like conduct of a family member reflects on the family, the ethics of the people reflect on the morality of the state. A corrupted individual was not only a personal failing but a failing of the family education and state control. Hoyt Cleveland Tillman, “Consciousness of T’ien in Chu Hsi’s Thought,” Harvard Journal of Asiatic Studies Vol. 47, No. 1 (Jun., 1987), pp. 31-50. Here, QHS’s discovery of conscience was used to inform on the moral bearing of the Qing, i.e. capable of improvement and perfection. This was the politically correct position to take. Indira Satyendra, "Metaphors of the Body: The Sexual Economy of the Chin P’ing Mei tz’u-hua,” Chinese Literature: Essays, Articles, Reviews (CLEAR) Vol. 15 (Dec., 1993), pp. 85-97.

101 The sudden reversal of QHS spoke to the power of the righteous force in correcting people’s way in the last minute. Guilty individuals were worried about carrying the burden of guilty feeling to death and beyond; a blemish on their soul.

While Confucius scholars deny the existence of spirit and afterworld (“Lunyu”), the commoners who followed Buddha subscribed to the immortality of the soul. While Confucianism taught people to perfect oneself to perfection and at times suggesting that commoners were not capable of doing so, Buddhism admonish people – high to low – to mend the way and cherish the external soul. Walter Liebenthal, “The Immortality of the Soul in Chinese Thought,” Monumenta Nipponica Vol. 8, No. 1/2 (1952), pp. 327-397. For a popular collection of vengeful ghosts and spirits, see Yan Zhitu, Yuanhun zhi (Tales of Vengeful Soul) (Sixth Century). Cohen, Alvin P., “The Avenging Ghost. Moral Judgment in Chinese Historical Texts” (Ph.D. diss., University of California at Berkeley, 1971)

The first neo-Confucius scholar to provide an explanation for guei-shen was Zhu Xi. Thus, while acknowledging much of the popular reporting of guei – shen has been overstated, and heir explanation, misguided (p. 602L), Zhu Xi (1110 – 1200), one of the most influential thinker in Sung (960 – 1279) firmly acknowledged that spirit and supernatural existed and could be explained in term of cosmic order and natural forces (yin-yan). For example, when people who were not supposed to die was killed (felonious murder or wrongful conviction), their chi lingered on, manifested as ghost or spirit. (p. 602R) He cited the case of Po Yu of Cheng (6th Century BC) who was murdered and his chi remained to seek revenge for his death. In another case, Chang-chous was murdered by his wife with the aid of her boy friend. The chi refused to dissipate until the lover was beheaded and wife hanged by officials. (p. 602R) Daniel K. Gardner, “Ghosts and Spirits in the Sung Neo-Confucian World: Chu Hsi on kuei-shen,” Journal of the American Oriental Society Vol. 115, No. 4 (Oct., 1995), pp. 598-611.

The way to avert the spell of ghost or spirit was to mend ones way, and came to terms with ones wrong doing. Robert F. Campany, “Ghosts Matter: The Culture of Ghosts in Six Dynasties Zhiguai,” Chinese Literature: Essays, Articles, Reviews (CLEAR) > Vol. 13 (Dec., 1991), pp. 15-34, see “Naturalistic and moral relationship between the Living and the Dead”, ff. 20.
The magistrate did not investigate who was responsible, but angrily reproach GHS for repudiating her earlier testimony and immediately applied torture, such that GHS was afraid to tell the truth, and continued to falsely accuse my husband.

The magistrate did not continue the investigation and escorted GHS and my husband to the province (for examination).

In the return trip, the magistrate passed through Dongxiang Cangqiang town, where he summoned the employee at Ai Ren Tang herb medicine shop ("yaopu" 102), Qian Baosheng (QBS), to appear at the county office. QBS appeared at the government office, he was received at the guest reception room 103 ("hua ting" 104) for a long period of time before leaving. The next day, it was informed that QBS has dispatched his testimony ("gongjie") about selling arsenic to her husband to the magistrate office. The magistrate asked him to go home and dispatched the testimony to the prefecture.

The prefecture, based on QBS testimony, repeatedly tortured my husband with various instrumentalities. My husband fainted and recovered many, many times. The investigating official chose to belief in the magistrate, and based on the testimony of QHS, wrote up a fabricated confession, and coerced my husband to admit. My husband was an educated person. He was not given the statement to read. Nor was he allowed to write his own. Instead, when my husband fainted during harsh torture, his hand print in ink was printed on the paper as evident of his assent to the confession. This is the truthful factual circumstances of my husband’s wrongful conviction.

This case has been referred back for retrial. The investigating officer 105 knows that this is a wrongful convict but still knowingly endorse the same, seeking to conclude the matter without clarifying the facts. This kind of cruel and usual miscarriage of justice cases, is beyond compassion and reason ("qing li"). 106

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102 PYCED p. 676L.
103 The form of invitation and circumstances (venue) of meeting was highly unusual, thus suggesting foul play. It was not common for material witnesses in a case to be invited by the magistrate personally to his office to discuss a case. It was not proper to question witnesses and suspects in the guest room of the magistrate. This process also violate principle of open trial which obtained in Qing.
104 Hangyu Dachidian vol. 9, p. 307L.
105 Official in charge of interrogation of prisoners and adjudicating of cases. Hangyu Dachidian vol. 12, p. 41L
106 Fan Zhong Xin, Qing Li Fa Yu Zhong Guo Ren 范忠信《情理法與中國人》188. It is now common to identify law with state enforced coercive rules (Austin), forgetting that law might embrace other moral ideas and social practices, to form an at once more expansive and integrative concept of law that is part of the live in the heart and prevail the routines of the people. http://etext.lib.virginia.edu/cgi-local/DHI/dhi.cgi?id=dv3-01
Looking at the full report filed in the case from below (“tung xiang quan wen”107), according to Ge Yu Shi statement, on the ninth day of the tenth month, her son GBL died, in the statement it was stated that when GHS was confronted, she equivocated (“yanyu zhiwun”108) and failed to tell the truth (“tu shiqing”109). However, because her son was bleeding from the mouth, she suspected willful murder and asked for any inquest at the magistrate.

Further look at how the prefecture decide the case, according to GHS confession, she poisoned GBL, and GYS stated that she interrogated GHS who confessed to listening to my husband (YNW) in poisoning her husband (GBL). This was reported to the local dibao for a forensic examination of the body.

After critical examination of GHS’s statement, showed, if it is true, it was GYS who first made the report. At that point, she has already interrogated and found out that my husband has committed the murder due to illegitimate affairs, and should have accused my husband of the crime. However, it happened that in GYS complaint she asserted that GHS equivocated, and then started to suspect foul play. There was absolutely not reason that she would hide what she already knew (YNW being the murdered).

According to the what was in the official report summary, no one knows, and we cannot be sure, whether the magistrate has relied on GYS’s statement to file his report. (But we do know) There was only one request by GYS for an inquest (“yan xin”110). At that time, the president officer failed to inquire further (into the discrepancies). This is non comprehensible fact number one.

Further examination of the magistrate’s report, GHS was taken back to the government office after the autopsy. According to the statements on record, YNW and GHS engaged in extra-marital affairs during the ninth month, 11th year of Tongzhi rein while living together in the same household. After GHS moved out in the sixth month next year, YNW did not see GHS anymore until the fifth day of the tenth month. Since my husband and GHS did not see each other, how could there be a conspiracy? Since YHW did not know whether GHS would agree to a conspiracy, why would YNW brought the poison before they met? Also, if in fact GHS was having a heated extramarital love affair, to the point of willing murdering the husband to engage in intimacy forever, why would she voluntary betrayed my husband once she was called to account and before the use of torture?

107 Hangyu Dachidian vol. 10, p. 994R.
108 “Yan yu” is speech. PYCED p. 974L “Zhiwu” is to be evasive and equivocate PYCED p. 676L
109 “Tu shi” is to review the truth. PYCED p. 697R.
110 “Yan” is to examine and “xin” is to interrogate. Together “yan xin” is to examine and question, or in context a death inquest. Hangyu Dachidian vol. 10, p. 994R.
According to description in prior final report ("tijie"), he magistrate escorted GHS back to office after forensic examination of the body, whether she confessed or not of what the content, I have no way of knowing. But the magistrate did not attempt to clarify contradictions. This is non comprehensible fact number two.

Also, when the prefecture was adjudicating the case, the testimony of GHS stated that on the 24th day of the eight month, my husband was teasing each other, this was discovered by GBL. She was hit and disciplined. She was not to see YNW again. On the 20th day of the ninth month my husband went to visit his old love and started to think about murder. But on examination my husband was attending the provincial examination during the eighth month, returning the end of the eighth month to Yuhang. How can he be having fun on the 24th day of the eighth month?

Investigation revealed that on the 24th day of the eight month, GBL returned home from work and ran into GHS having fun with “lishu” He Chunafang and hit and discipline her. GHS was angry and agitated. She cut her hair and swore that she wanted to be a nun. On that day, there was the Menglan ghost festival (“Menglan Penhui”), the neighbors should all witnessed this. This is on the 24th day of the eight month. The facts could be verified. If there was no meeting (with YNW) on the 24th day of the eight month, how could there be a meeting on the 20th day of the ninth month?

Also, Qiang Bao Sheng (QBS) in his statement submitted to the magistrate claimed that on the third day of the tenth month, my husband bough arsenic from him. GHS claimed that on fifth day of the tenth month she was given the arsenic. On close examination, on the 15th day of the ninth month after my husband learned that he passed the provincial examination, he borrowed money to go to the provincial capital, to arrange for the ceremonial matters related to his appointment. Because my husband has to attend ending of death ceremony at his maternal home of Zhan household in South village on the fourth day of the tenth month and public discussion on ancestry issues on the fifth, my husband traveled back from the province on the second day of the tenth month and arriving on the third day early morning. He immediately turned around and leave for Zhan household at South village. He finished the death ceremony and returned on the sixth day.

Since my husband was at Zhan household at South village on the third of the month, how could he be buying arsenic at East village, Cang Qiang town? Since my husband was

111 The gesture of cutting hair and becoming a nun has long established cultural meaning. By cutting the hair, she was protesting her innocent. It was also an act to make her asexual, thereby making her sexually unappealing. By wanting to be a nun, she was making a statement. She was showing her commitment to stay virtuous for the rest of her life – staying away from sex, leading a more secluded, contemplative, and spiritual life. More importantly, she was seeking an escape from this troublesome world to a more spiritual one, i.e. “kanpo hingchen” or see through the vanity of this mortal world.

still at Zhan household on the fifth of the month, how could he pass on the arsenic to GHS? At that time, relatives and friends at Zhan household heard about my husband being wrongfully accused has filed their statements with the government office. My husband’s paternal cousin Kongzhi, also filed his statement about wrongful accusation with magistrate’s office. The magistrate failed to investigate clearly and refuse to report the same. This is non comprehensible fact number three.

GYS was the kind of people to seek revenge for her son. During the re-hearing, I heard her said in open court that: “As to YNW committing murder, this women has little information.” She further said that since the case was brought to the attention of the magistrate and till the retrial, she did not know who committed the murder. She did not firmly and falsely accused my husband. The statement by GHS that GYS has made the accusation (of YNW) in face to face interrogation, was fabricated. This was easy to see. GHS lied about her own mother in law. So much for my husband!

But the magistrate and inquiring official chose to listen and believe in GHS testimony and point of view. There was no attempt to subject GHS’s testimony at the re-trial to stringent cross-examination. There was also not attempt to question GHS face to face. This is non comprehensible fact number four.

Wang Xinpei (WXP) was GHS’s neighbor and witness. During the re-trial, I heard him say: “I did not see YNW going to Ge’s home. I did not know that GBL ran into YNW and blame – hit GHS.” Whether my rendition of WXP statement was the same as those in court, I have no way of knowing. However, since there is a contradiction, should the inquiry officer not question GHS to find out once and for all? This is non comprehensible fact number five.

He Chunfang lived in town at Cheng Qing alley, and was present at the trial. I heard him claimed at the trial: “I do not know GBL couple.” On close examination, when Mr. and Mrs. GBL was living close to my house, I have witnessed He Chunfang coming to visit GHS often. After Ge’s family moved to Cheng Qing alley. He Chunfang was close neighbor. There is no reason why he did not no them. The inquiry heard this statement but did not follow up with question. This is non comprehensible fact number six.

QBS who sold arsenic was a key witness. He should be questioned in open court. Why did the magistrate interviewed him in the living room? The magistrate should escort QBS to the province for a face to face confrontation with my husband, in order to clear up any ambiguity of facts, why was he allowed to go home and his written statement transmitted to the province by the magistrate? Why did the inquiry officer from the prefecture failed to summon QBS to the province, and only rely on the statement submitted by the magistrate as the final proof of buying arsenic, and proceed to torture my husband to finalize the case? Now at the retrial, the prefecture saw fit to issue summon to the magistrate for the production of QBS, but he refused to show up for the case. According to him: “The magistrate has asked of be to confess, I refuse to because it was not true. The magistrate threatened me, and at the same time repeatedly promised me that if I confess, he would let me go home and hold me harmless. He swore under
heaven that he would keep his promise. Why am I being summoned to appear in the case now.” Those who are aware of the case are most perplexed. Now, with other false promises, QBS finally agree to appear. In as much as QBS has appeared, why was it that the inquiring officer not allow my husband to confront QBS? This is non comprehensible fact number seven.

My husband has special characteristics on his body no known to others. If in fact GHS was having an affair with my husband, GHS should be able to tell, if subject to questioning, the truth and false would be easily revealed.

In order to make clear, the inquiry asked in return: “Where was the secret marking?” I was asked to reveal it in open court for everyone to hear, this would be known to GHS through rumors? But QHS was never questioned on this matter. This is non comprehensible fact number eight.

I was about to raise the above facts, circumstances and issues during the re-hearing, but the inquiring officer would not allow me to challenge the finding, based on the rationale that the case has been finalized, and refuse to overturn the conviction. This heartless disregard of reason is the worse kind of abuse.

On reflection, if this case was re-examined by inquiry officer from the province, there would inevitably a conflict of interest leading to coverage up of prior wrong, and the original holding conviction would hold, and my husband would suffering another round of painful torture, and not able to right the wrong.

Myself and Yeyang shi and her two children is now held in custody, and was not able to have the complaint for justice heard. There is no choice but to file his complaint seeking to redress of injustice. The copy of the magistrate report is copied and attached.

This proxy begs the official on high to grant the appeal and memorize it to the emperor.

The case should be handed over to the Board of Punishment to conduct a thorough inquiry in order to find out the true culprit as supported by evidence and undo the miscarriage of justice. Will be forever be grateful. Will await reply in earnest. Submitted.

**DOCUMENT 4**

**Memorial for Supervising Secretary Wang Shurui**

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112 Memorial for Supervising Secretary Wang Shurui – Investigating – adjudicating official re-hearing the important (capital) case is delaying, please send high official to investigate the reason. (‘Gie Shi Zhong Wnag Shurui Zhe - Wenguan zhongan zhongan yi quan zhanxun, qing pai daiyuan cha ban yau’). In Wang Celai (ed.), *Yang Naiwu yu Xiao Baicai* (Beijing: Zhongguo jiangcha Chubanshe, 2002), pp. 27 – 28.
Memorial by Hu Ruilan as attachment to memorial submitted in kneeling position by seal holder supervising secretary in charge official Wang Rui submit in kneeling position, regarding why adjudicating official re-hearing the important (capital) case is delaying, please send imperial appeal official, to justly investigate (“bing gong cha ban”) in order to right the right the exceptional miscarriage of justice (“xue qi yu an”) and make sure that the case is properly adjudicate with no residual doubt (“xin yan”).

Respectfully memorialized and patiently await the holy emperor’s attention.

Regarding the case of Zhejing Yuhang county commoner female GHS positioning her husband GBL and falsely accused “juren” YNW, in the fourth month of last year, YNW sister Ye Yang Shi (YYS) filed a petition against miscarriage of justice at the capital by proxy at the Censorate. The Censorate referred the case back to Zhejiang province for re-hearing. As a result of original examining officer used every mean to cover up the case, the wife of YNW Yang Zhan Shi (YZS) again came to the Censorate to complaint against unjust circumstance by proxy. The said office has already memorialized the case.

By edict of the emperor, the case was assigned to official Yang Changjun and Commissioner of Justice to personally investigate and memorialize. This officials has recently been informed hat that the assigned (rehearing) committee has completed the re-hearing process. GHS and QBS has confess to the truth. In spite of repeated use of torture for confession, GHS has steadfastly maintained that she has been misled by others, and leveled false accusation because of personal animosity. The case has nothing to do with YNW. The said (rehearing committee) knowing that there was a miscarriage of justice, but due to need to protect their peer officials, failed to deal with the case in a truthful manner. They have not taken the initiative to retrial the case, and attempted to get out of it. That is why the case has not been ratified for such a long time.

Now the empress dowager and the emperor has called for responsible administration (“qing qiu zhili”) and broad consultation (“yanlu guankai”). An and also on top, there are edict to clearly ascertain penal measures (“qing li xingyu”), this official is critical of department unworthy of respect (“tian shi yan ze”) because of information had and believe, not dare to ignore or conceal. Considering the posture of this case, it has been decided (“dingni”) and reported (“juti”). The original investigating officials of the province is afraid of being held responsible, they are likely to obscure the facts to conceal

113 PYCED p. 44R.
114 Provincial degree holder.
115 PYCED p. 903R.
116 “Yanlu” refers to avenue for officials to give feedback to the emperor Hangyu Dachidian vol. 11, p. 9L. In imperial China, the emperor has sought advice from officials in order to improve their policy and decision making. The process was institutionalized in the office of the censor. During Qing, emperor has used confidential memorials to encourage officials to write in to the emperor.
their mistakes, how can they be expected to undo the injustice? Thus this earliest appeal for the emperor to send an independent imperial high official to investigation. This is the only way to uncover the truth and truly reflect the imperial intent to be careful with punishment.

Whether this is appropriate, I beg your highest empress dowager and the emperor to review.

It is so memorialized.

The first year of Guang Xu, the fourth month and 24th day.

**Memorial for Supervising Secretary Wang Shurui**

New information on current investigative official situation revealed that intent to conduct just review in over turning the case is thawed by the original adjudicating official, thus the attempt to procrastinate. If YNW and others (in the case) suffered any untoward happening ("youyi shigu"), the case can be closed in a perfunctory manner ("hanhu liejie").

If it is discovered that imperial official is dispatched to investigate the case, the said investigative officials would fear for the worse, and not unlikely to secretly arrange for the killing of witness.

Begging the emperor’s grace to instruct Zhejiang governor Yang Changjun to sternly instruct officials in charge to properly care of YNW, GHS and other key witnesses. Should any one of them died in prison, those officials will be held responsible and punish accordingly. This would guarantee that the truth would be attained and injustice revealed. This is the reason for this supplemental memorial. It is hereby memorialized.

**DOCUMENT 5**

**Imperial edict (two items)**

Grand Ministers of State (Junji Dachen) dispatch ("jiji")

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Someone memorialized, there was a number of memorials intentional delay “zhanxun” in re-examination of Zhejiang case and requested for the sending of senior officials (“dai yuan”\textsuperscript{121}) to investigate,\textsuperscript{122} the case of Regarding of Zhejing Yuhang county commoner female GHS positioning her husband GBL and falsely accused “juren” of conspiring as a result of illegitimate affairs which has been appealed by YNW elder sister Ye Yang Shi at the Censorate (“De Cha Yuan”). The case was re-examined by said office. Because they case involved original investigating officials covering up prior wrong (“huihi qiangfei”\textsuperscript{123}). A complained was filed against the Capital Gendarmerie Office (“Bujun Tongling Yamen”). The complain of miscarriage of justice was referred to Yang Changjun supervising Commission of Justice to personally summoned the witnesses for investigation and reporting (memorializing). Now that GHS and QBS already has confessed to the true facts and circumstances of the case, this should be the made the basis to get to the bottom on the case, in order to review the truth (“shuiluo-shichu”\textsuperscript{124}). Why is it that the original examining officer repeatedly use torture to compel offenders to keep to their original statement? Besides, GHS insisted that she engaged in false accusation because of hate, in fact it had nothing to do with QHS. Why is that the original examining officer still took no heed of this (“Zhiruo wangwen”\textsuperscript{125}). This looks awfully like intentionally delay, this is unacceptable practice.

Hu Ruilan is directed to gather together witnesses and evidence, seriously and earnestly examined the case, such that the facts can be uncovered and the truth revealed. If the

\textsuperscript{119} Council of State (Junji Chu 軍機處) supervised the overall running of the government. It was chaired by a prince and lead by five Grand Ministers of State (Junji Dachen 軍機大臣).

\textsuperscript{120} “Ji” is words, “jis” is dispatch. Together, “jiji” is dispatch of words, here from above. \textit{PYCED} p. 920L and p. 320R respectively.

\textsuperscript{121} \textit{Hangyu Dachidian} vol. 2, p. 1363L

\textsuperscript{122} See DOCUMENT 4, above.

\textsuperscript{123} “Huibi” is to avoid, evade or side step crucial issues. \textit{PYCED} p. 279R “Qian” is prior \textit{PYCED} p. 541L and “fei” is wrongdoing. \textit{PYCED} p. 194R Together it means to sidestep prior wrongdoing.

\textsuperscript{124} “Shui” is water. “Luo” is going down. “Shi” is rock. “Chu” is to appear. Together, it means that when the water subside the rock would show, i.e. the whole truth would appear after the water subside. \textit{PYCED} p. 642R.

\textsuperscript{125} \textit{PYCED} p. 711R.
Zhou Director of Studies ("xuezheng") was disposed to protecting the peer officials, once it is found out, for sure Hu Ruilan would be held personally accountable. 126

The circumstances of this case is a most serious one, the said examination officer keep delaying, it is very likely that he wished YNW and others died in prison, in that case the case can be closed in a perfunctory manner ("hanhu liejie"127).

Now the case is assigned to the Director of Studies for investigation and disposition ("char ban"128), one cannot say for sure ("nan bao" 129) that here was no secret plan to kill off a witness or accomplice ("miekou"130).

It is instructed that Yang Changju serious instruct all examination officials to watch over YNW, GHS and other important witnesses carefully awaiting trail. If there are death in prison, not only would the officials be held to account ("zhi131 gai yuan ying deng132 yi ying de zhi zu133"). It is afraid ("kong"134) that not even Yang Changjun could shoulder ("dan"135) this grave blame ("zhong jiu"136). The original memorial and petition of Yang Zhan Shi is hereby duplicated for Hu Ruilan to read, such that whoever seen this instruction can be informed and advised, by grace of the emperor. Letter is sent by authority of imperial edict.

The first year of Guang Xu, the fourth month and 24th day

126 “Wei Hu Ruilan shiwen”. The common expression is “wei ni shi wen” or “You’ll be held personally responsible.” PYCED p. 711L.
127 “Hanhu” is to act carelessly or perfunctorily. PYCED p. 82R “Liejie” is to close of settle. PYCED p. 70L
128 “Cha” is to investigate and “ban” is to deal with. PYCED p. 429L.
129 “Nan” is difficult. “Bao” is guarantee. Together, it means no guarantee, suggesting a high probability rather than just a mere possibility. PYCED p. 489R.
130 “Mie” is to destroy. “Kou” is the mouth. “Meikpu” is figuratively and literally destroy a mouth (which can tell the truth). “PYCED p. 473L.
131 “Zhi zui” is to punish (“zhi”) for a crime (“zui). PYCED p. 903R.
132 “Gai yuan ying deng” is such an official and others.
133 “Ying de” is deserving. The common expression is “zui you ying de” meaning getting the right punishment for the wrong. PYCED p. 893R. Here “ying de zhi zu136” mean punishment befitting the crime.
134 PYCED p. 382L.
135 “Dan” is a carrying pole, suggesting weight on shoulder literally and figuratively. PYCED p. 234R.
136 “Zhong” is heavy. “Jiu” is lacing fault or blame. “Zhong jiu” is having someone carry the blame, or find fault with a person. PYCED p. 367L.
Grand Secretariat ("neige"137) Imperial edict:

Someone memorialized, regarding a examination officer attempting to delay the re-investigate a capital case, and a requested for the sending of senior officials was made in a memorial. According to the memorial, in the case of Zhejing Yuhang county commoner female GHS positioning her husband GBL and falsely accused “juren” of conspiring as a result of illegitimate affairs, it has been re-examined by commissioned official (“wei yuan”) Yan Changjun, (and reprotexd) GHS and others have already confess to the facts and circumstances. In spite of repeated torture to confess as originally stated, GHS still maintained that she erroneously trusted in other’s word, and made false accusation. It has nothing to do with YNW. This case is a very serious one. Since GHS has confessed to the facts and circumstances, the miscarriage of justice should be ratified as called by the evidence.

Hu Ruilan is instructed to gather together all the witnesses and evidences in this case, Seriously ascertain investigate and ascertain the facts in an impartial and just manner (“bin gong138 yangxun queqing”), in hope of getting to the bottom of the matter. There should not be any protection of peer officials, disposing of the case in a perfunctory manner, thereby attracting liability. It is so ordered.

DOCEMNET 6

Memorial of Yang Changjun139

Memorialized
Second day of the sixth month
Zhejiang Governor Yang Changjun memorialized in kneeling.
In regard to unfinished re-examination of capital case, as instructed by imperial edict, (officials have been) instructed to look after (prisoners) carefully, remove to Director of Studies for examination and disposition, respectful memorialized for emperor’s inspection.

137 Grand Secretariat provided secretarial service and consultative advice to the emperor. It also managed the country and supervise the administration of the nation. It is headed by “Dai Xue Shi” the Grand Secretary. The powers of Grand Secretary broad as they were, was shared by other institutions, e.g. Grand Council also provide advice and secretarial services to the emperor, and the six board did not report to the Grant Secretariat. Alfred Kuo-liang Ho, “The Grand Council in the Ch‘ing Dynasty,” The Far Eastern Quarterly > Vol. 11, No. 2 (Feb., 1952), pp. 167-182.
138 PYCED p. 44R.
139 “Yang Changjun ze – yao an weijie zunjiaoxuezeng xunban you” (Memorial of Yang Changjun – the capital case is not finished, the case has been assigned to Director of Studies as instructed). In Wang Celai (ed.), Yang Naiwu yu Xiao Baicai(Beijing: Zhongguo jiangcha Chubanshe, 2002), pp. 31 – 34,.
This official received instruction from Grand Ministers of State on 24th day of the fourth month, in first year of Gang Xi

According to imperial edict: Someone memorialized, there was a number of memorials alleging intentional delay “zhanxun” in re-examination of capital case and requested for the sending of senior officials (“dai yuan”) to investigate various memorials: The case of involved Zhejing Yuhang county commoner female GHS positioning her husband GBL and falsely accused “juren” of conspiring as a result of illegitimate affairs. The case has already been appealed by YNW elder sister Ye Yang Shi at the Censorate (“De Cha Yuan”). The said office already responded to the re-examination. Because the case involved original investigating officials covering up prior wrong (“huihi qiangfei”). A complaint was filed at the Capital Gendarmerie Office (“Bujun Tongling Yamên”) to renew the complaint. The complain of miscarriage of justice was referred to Yang Changjun supervising Commission of Justice to personally summon the witnesses for investigation and reporting (memorializing). The investigation has been completed and memorial filed.

Now that GHS and QBS already has confessed to the true facts and circumstances of the case, this should be the made the basis to get to the bottom on the case, in order to review the truth (“shuilo-shichu”140). Why is it that the original examining officer repeatedly use torture to compel offenders to keep to their original statement? Beside, GHS insisted that she engaged in false accusation because of hate, in fact it had nothing to do with QHS. Why is that the original examining officer still took no heed of this (“Zhiruow angwen”141). This looks awfully like intentionally delay, this is unacceptable practice…142

The emperor’s admonishment is serious and urgent. Upon reading kneeling and reading with fear and trepidation (“huang song143”). Official adjudicating case must be based on suspect statement (in court)144 and not on rumors in the street.145 The investigation of a

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140 “Shui” is water. “Luo” is going down. “Shi” is rock. “Chu” is to appear. Together, it means that when the water subside the rock would show, i.e. the whole truth would appear after the water subside..

141 **PYCED** p. 711R.

142 Governor Yang provided a near verbatim account of the context and status of the case by citing extensively and at times verbatim DOCUMENT 5, before responding. **PYCED** p. 294R and 252L.

143 **PYCED** p. 141L. “He yu bi yi fan gong wei duan”. This is one of the more famous assertion in the case. It reaffirmed long standing judicial practices that case adjudication is based on confession.

144 “Daolu chuan wen”. “Daolu” “Daolu” is road. **PYCED** p. 141L. “Chuan wan” is hearsay or rumor **PYCED** p. 642R 106L. Together this mean hearsay from the street, or rumor. The imperial – Qing hearsay rule should not be confused with that of the common law kind which prohibits the introduction of out of court statement to assert the truthfulness of the matter asserted. According to FRE Rule 801:“The following
case ("kan an") depends on beginning facts (submission) ("chu qing") and should not rest ("bu bi xin") on fabricated statements afterward ("shihou zhou chang"). If the decisive facts of the case have been ascertained clearly in the beginning of the case. How can it be overturned after confession was made, as a result of conjured up petition to reverse by relatives. The law has provided that if the prisoners has confessed to the crime ("yi zhao") and pleaded guilty ("fuzui"), any relatives who filed false and improper complaint ("wang su") is to be punished with 100 strokes. A case is to be determined by confession or statement, this has been settled practice. The enforcement of law must be strictly applied, such that the legal code would be respected.

The case of impeached Yuhang county “juren” YNW who because of illegitimate affairs conspired with unfaithful wife QHS to poisoned her husband. No sooner has YNW attained distinction ("fijing zhongshi"), when he immediately got netted by the law ("jutau fawan"). At that time, that was gossips ("renyan jiji"), not all the rumors were

definitions apply under this article: (a) Statement -- A "statement" is (1) an oral or written assertion or (2) the nonverbal conduct of a person, if it is intended by the person as an assertion. (b) Declarant -- A "declarant" is a person who makes a statement (c) Hearsay -- "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” For an origin and rationale behind the hearsay rule, see “TRIAL OF SIR WALTER RAILEY, KNIGHT, FOR HIGH TREASON, BY A SPECIAL COMMISION OF OYER AND TERMINER, AT WINCHESTER, 17TH NOVEMBER, 1603, 2 JAMES I.” In 1 Criminal Trials 389-520 (David Jardine ed., 1850) (“Raleigh was charged with conspiring with Lord Cobham and others to kill James I and to place Lady Arabella Stuart on the throne. Cobham was interrogated in the Tower of London and signed a sworn confession, which he later recanted. His confession was the chief evidence against Raleigh.”)

146 “Kan” is to investigate. PYCED p. 383L.
147 “Chu is beginning”. PYCED p. 101L “Qing” is facts. Together it means facts gathered at the beginning of a trial. This observation or proposition can be defended on three grounds. First, in the beginning all witnesses giving testimony has not rehearsed their answer and was not confronted with inquisition. The original statement is the most innocent manifestation of the witnesses. Second, in the beginning, no one knows about the case. No one could collaborate what was said on the record. Third, in the beginning the investigator was not contaminated with ideas of his own.
149 “YIzhao” is to have confessed. PYCED p. 879L.
150 Fuzui“ is to plea guilty PYCED p. 207R, reference 208L.
151 “Wang su” is to made false or preposterous claims. PYCED p. 712L.
152 PYCED p. 910L..
153 “Hu” is immediately. “Tau” is to drop into. “Fawan” is the long arm of the law or the law’s net. PYCED p. 183R.
the same, but many of the gentry detested the conduct. This official felt that the illegitimate relationship was a dubious one (“aimei”\(^{154}\)), the circumstances of the conspiracy well concealed (“mou qing yinbi”\(^{155}\), if it is not investigated completely and thoroughly, it is difficult to convincing proof the case conclusively (“nan cheng xin [ ]”). Besides, YNW is an educated person. He should have some self respect (“yingzi ziai”\(^{156}\)), instead he behaved like a community scum (“xingtong bailei”\(^{157}\)). There must be some other explanation (accounting for the gentry’s deviance.) The Commissioner of Justice was instructed to supervise and work with Hangzhou prefect to investigate the case secretly, and do not bent or suppress any facts (“qu yi”).

According to the investigation of the prefect, GHS and YNW live under the same housing compound, (YNW) took liberties (with GHS) and engaged in illegitimate sex (“tiaoxi chengjiang”), more than one time. The husband GBL did not know about the relationship before seeking another place to live. YNW was teasing each other when GBL ran into them. He admonished and physically disciplined her and prohibited them from seeing each other again. YNW was emotionally aroused as a result of the illicit relationship and conspired with GHS to killed GBL.

On the third day of the tenth month in the 12\(^{th}\) year of Tongzi, YNW purchased a package of arsenic for 40 yaun at Qiang Bo Sheng’s herbs medicine shop claiming to be for eradication of mousse. This was secretly given to GHS, instructing her to administer the poison in the opportune moment. In the afternoon of the ninth day, GHS put the poison into the longan soup (“guiyuan tang”\(^{159}\)) and given to GBL to drink and was killed by the poison. The report was investigated, a memorial was submitted for impeachment. Further investigation revealed all the facts and circumstances fitted in (“huanse ruiyi”). GHS was put to death in accordance with the law to death by slicing. YNW was sentenced to death according toe regulation to be death by beheading, immediately. QBS was sentenced to pole beating. This was thoroughly reviewed by Commissioner of Justice Ku Hesun. This officials has personally reviewed the invesgigation, all parties confess to the crime candidly (“gongying buwei”\(^{160}\))

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154 \textit{PYCED} p. 4L.
155 “Mou qing” is the conspiracy plot. “Yinbi” is to cover up or concealed \textit{PYCED} p. 829L.
156 “Zi” is self and “ai” is to love. \textit{PYCED} p. 930R.
157 \textit{PYCED} p. 15R.
158 “Tai chi” is taking liberties with a women. \textit{PYCED} p. 681L.
159 “Guiyaun” is longan. \textit{PYCED} p. 256R. “\textbf{Medicinal Uses}: The flesh of the fruit is administered as a stomachic, febrifuge and vermifuge, and is regarded as an antidote for poison. A decoction of the dried flesh is taken as a tonic and treatment for insomnia and neurasthenic neurosis. In both North and South Vietnam, the "eye" of the longan seed is pressed against a snakebite in the belief that it will absorb the venom.” See “Longan” in Julia F. Morton, J. 1987, Fruits of warm climates, p. 259–262.
160 \textit{PYCED} p. 238R.
The current acting district magistrate of Huang Yan county, Xi Hao, was instructed, as a special commissioned officer, to changed into plan clothes, to investigate at and around Yuhang. He found nothing different.

This official reviewed the case in detail. YNW and GHS was engaging in illicit affairs and conspired to murder. This came first from the mouth of GHS. This coincides with the testimony of QBS. The testimony of YNW stated that he secretly gave the arsenic to GHS to administer it in an opportune moment, the responsible rested on GHS. This is also consistent with all the testimony. These are all key points of the case (“jinyao guanjian”161). Since the investigation have clarified the detail circumstances, and well substantiated by confessions and testimonies. The case should be dealt with in accordance with laws and regulations. All the detail statements and confessions in the case has been prepared and submitted for the record on the 20th day of 12th month in the 12th years of Tongzhi.

The investigating official assembled the witnesses and evidences to ascertain the source of the arsenic and carefully determine the beginning and end of the matter. If in fact YNW was falsely accused of the crime and denied justice as a result of GHS’s taking revenge, since he is not an educated rural person, why did he testified according to his original confession, when he was escorted to prefecture for trial and when confronted by this official. This official supplied the statement to him to read over, YNW personally signed the confession and did not challenged any aspect of it. Why is it that there was no one from the offender’s family to his official’s office to analyze the essence of the problem (“pouxi”162). Not until six month of last year did the Censorate start to inquire, it was then found put that prisoner’s sister Ye Yang Shi has filed a capital appeal by proxy, return for re-examination.

According to investigation, YYS confessed that she was fabricating the facts (“neiqing” 163) and filing preposterous complaint (“wang su”164). Each and every aspects of the criminal allegation was thoroughly investigated and supported by evidence. It was found that GHS did not conspired to made false accusation or resulted from official tortured confession.

The Commission of Justice reported the details and awaiting edict. In the process of examination, the prisoner’s wife YZ again filed a complain with the Capital Gendarmerie Office.

As instructed by royal edict, the case was assigned to this official to supervise Commission of justice to examine the case. Just about that time, newly appointed Huzhou prefecture, prefect XI Guangfu arrived at the province, together with Shao Xing fu, Prefecture Gong Jiajun, Fu Yang County, District Magistrate Xu Jiade, Huang Yan

161 PYCED p. 248L.
162 PYCED p. 527R.
163 PYCED p. 498L.
164 PYCED p. 712L.
County, District Magistrate Chen Baoshan. They were not associated with the case originally and nothing to protect. They were appointed to collectively examine and analyze the case. This was during the time of government closure ("feng zhuan") and a national catastrophe. The prefecture was also organizing an imperial examination. Thus no immediate determination was made. There was no deliberate delay.

The Prefect Xi Guang and others have conducted a hearing at the provincial capital a number of time. According to record, the prisoner refused to tell the truth. QBS did not alter his testimony from beginning to end and alleged that the relatives of the prisoner visited the herbs medicine shop many times to harassing his mother pressuring him to change his testimony. Even the proxy complainant Yao Shifa testified that relatives of prisoner wanted QBS to recant his testimony.

The circumstances of this criminal case changed unpredictably ("yu qing bianhuan"\textsuperscript{165}). Why be concerned with the use of crafty and cunning measures? There was evidence in the re-examination to support a devious plot to overturn the true facts and circumstances of the case. This official as border officer, in dealing with capital cases, dared not be prejudiced.

All the officials in this case from the county, to the prefecture, to the province all has moral conscience ("tianliang"\textsuperscript{166}). They have no reason to be hostile to the people ("choushi"\textsuperscript{167}). The case having decided on adjudicated facts ("shen zhi"), no one is brave enough to exonerate the guilty ("kai tuo"\textsuperscript{168}), and put oneself in the jeopardy of the law.

GBL was a small handicraft comer ("shouwei xiao min") and has been murdered innocently. How might his wrong and anguish be vindicated! This case also involved intimately people’s heart and social custom, what is fundamentally right and wrong.

The Board of Punishment was late in responding original report. It was not until the fourth month that the Board granted the permission to proceed. Since the case was appealed to the capitol, the best way is to response to inquiry. The case is now being retried, and has not been memorialized as finished. But petitioner complained that the re-hearing is being delayed. The case is waiting the emperor’s hearning.

This official does not understand what the problem is, It is either a case of listening to unreliable rumors, or only listen to YNW’s die of the story. Thus arousing suspicion.

I beg the emperor to see through the case clearly, and allowed the director of studies to investigate and dispose of the case,. It is not difficult to get to the bottom of the matter.

\begin{footnotes}
\footnote{PYCED p. 38L.}
\footnote{PYCED p. 676R.}
\footnote{PYCED p. 96R.}
\footnote{PYCED p. 138R.}
\end{footnotes}
This official has the choice of not responding, except that the investigating officials involved in this case, has been most fair and cautious ("shigong sheng"). There was no used of torture to induce confession. This official knows it very well and could not remain silence.

Before memorizing, instruction has been given to safeguard YNW, GHS and other key witnesses, to await the hearing by the director of studies. If there should be any secret plan to kill witness, those involved would be severely punished, dare not offer protection of the culprit. They would be treated seriously. Respectfully memorialized in detail.

Begging Empress Dowager and Holy Emperor for instruction. Respectfully memorialized.

19th day of the fifth month of first year of Guang Xi.

DOCUMENTS 7

Hu Ruilang zhouze Memorial169

Memorial

First day of the eighth month.
Zhejiang Director of Studies Hu Ruilang

Memorialized. Because the prisoner was crafty and cunning in testifying, it is difficult to clearly ascertain the facts of the case. It is now close to the imperial examination date, the basic facts of the investigation is hereby presented, first. Request for edict to guide action.

This official was instructed by edict to investigate into the case of Yuhang commoner female poisoning her husband. Have memorialized that the investigation would start after the imperial examination.

This official is aware of the serious circumstances of the case, have retained commissioned competent officials ("ming lian weiyuan") to assist with the investigation.

Accordingly, Ningpo prefecture, Prefect Bian Boacheng, Jiaxing county, District Magistrate Liu Zhisen, supplemental District Magistrate Gu Deheng, Long Shizhong were chosen. They were not the original investigators, there is no need to avoid conflict – cover up wrongdoing.

This official finished the imperial examination after 18th day of the sixth month, and immediately went to the public office with the other officials to examine the records and documents of the case. Witnesses were also summoned to be separately interrogated.

The deceased GBL moved into YNW household in April. GBL was a helper in a bean curd shop and often stayed there overnight. One time when he returned home, he found GHS eating dinner with YNW. He also overheard YNW teaching GHS classics in her room. He complained to her mother Shen Yu Shi (SYS) and (step-father) Yu Jingtian. When SYS visited at GBL home, she also ran into GHS eating dinner with YNW. Since it was difficult to discuss with YNW because of his class status, SYS advised them (GBL) to move. On the six month of the twelve year, GBL moved to Taiping alley.

On the 24th day of the Eight month, GBL and GHS entered into a big argument. GHS cut her haired and informed SYS that it resulted from her association with YNW.

On the ninth day of the tenth month, GBL experienced the resurfacing of old aliment erysipelas on the leg (“liuhuo”170) and returned home for a rest. GHS boiled gingseng (“Yang Sheng”172) and longan for him to drink. After that he experienced stomach cram and puke. SYS heard and came over, and found GBL with hand to the heart, speechless, and finally died.

On the tenth day, GHS repeated called for buria, SHS refused. Boils appeared on the body, blood came out of the mouth and nose. It was then that poison was suspected. When GHS was interrogated, she was evasive. It was when official complain was threatened that she (GHS) admitted that YNW has supplied the medication for erysipelas medication. SHS went to the county (district magistrate) and requested for a forensic examination but did not made an affirmative accusation (of GHS). The living

170 PYCED p. 437R.
171 “Diagnosis: ERYSIPELAS Discussion: Erysipelas, earlier named St Anthony's fire, is an acute superficial cellulitis characterized by a sharply demarcated advancing border surrounding raised, deeply erythematous, indurated painful skin involving the dermis, lymphatic, and superficial subcutaneous tissue. It is usually associate with a portal of entry. A number of clinical entities can present with similar lesions: the "slapped cheek" of erythema infectiosum (fifth disease), early herpes zoster involving the second division of the fifth cranial nerve before the vesicular eruption, contact dermatitis, insect bites, furunculosis, sialadenitis, impetigo, malar rash of systemic lupus erythematos, photodermatis, rosacia, Melkersson - Rosenthal syndrome, Sweet's syndrome, dermatomyositis and relapsing polychondritis.” http://www.embbs.com/aem/face-d.html
172 PYCED p. 606R.
together between GBL and YNW came first, then after moving out, the poisoning occurred.

The District Magistrate Liu Xitong personally went to inspect the body and confirmed it was death by poisoning, and proceed to bring the case and evidence to the yamen for examination and interrogation.

According to the testimony of GHS, she conspired with YHW to poison because of illicit affairs. YNW was then summoned to be confronted (“hui zji”\(^{173}\)), he was not cooperating (“bu fu”). On the 12\(^{th}\) day, a detail petition for YNW impeachment was launched. Then as per instruction YNW was escorted to the provincial capital to be examined by Prefect Chen Lu.

According to YNW confession, he has an affair with GHS and conspired to poison. He also confessed to buying arsenic on pretense for rat poisoning from QBS on the third day of the month at his herb medicine shop, handing it over to GHS on the evening of the 5\(^{th}\). The fact of buying arsenic has been confirmed with QBS by the magistrate. It is appropriate to impose liability according to law and reviewed by the Commissioner of Justice, then report to the Governor in detail.

In the sixth month of the 13\(^{th}\) year, according to communication from Censorate, Ye Yang Shi alleged that GHS made false accusation because of illicit affair, the original examining official use illegal torture to coerce confession, prosy petition sought reversal, the case was returned to Zhejiang. The rehearing uncovered no evidence of conspiracy to torture for confession. In the ninth month Yang Zhan Shi filed an appeal with Capital Gendarmerie Office alleging that the reexamination was based on fabricated evidence and tortured confession (“duan lian”).

Imperial edict has instructed (this official) to conduct an examination. After an examination by Hu Zhou Prefect, Xi Guang and others, YNW and GHS all retracted their testimony (“fan qiang gong”). According to Yao Shi Fa, he has tried to pressure QBS to reverse and retract his testimony but to no avail. Yu Shen Tian testimony revealed that Ye Yng Shi has instructed him to go to the province and taught GHS to retract her testimony. These are the facts and circumstances of two capital appeals (“jing kung”) from beginning to the end (“yuan wei”).

After examining the whole file, including all the statements and YNW and confession to the prefecture, provincial and two capital appeals. They alleged that GHS was unsuccessful in rescinding the marriage and she was angry at YNW for his meddling. GHS was frequently in the company of country runner and “li shu” He Chunfang. WNW informed GBL and GHS was admonished and disciplined. She was also evicted by local police (di bao). These are all proof of seeking revenge by making false allegation (against YNW).

\(^{173}\) PYCED p. 171R.
It was also claimed that since GHS lived in the house of YNW, if they was having an affair, there was no reason why they would be forced to leave. Since YNW has secret birth mark, GHS should have been ordered to disclose them, so as to show whether there was an illicit affairs, and demonstrate that there was no illicit affairs.

It was also claimed that there was no conspiracy. Since GHS has moved out (of the house), she disappeared. There was no opportunity to conspire. In such a case, it was hardly unlikely that YNW brought the poison to her. This is evidence that there was no conspiring to murder by poison.

It was also claimed that on the fourth day of the tenth month, YNW’s mother in law’s home of Zhan has the last day of funeral. On the 5th day they named the successor. YNW returned to home on the third day and immediate went over to Zhan’s resident. He returned on the sixth. The offender’s Zhan family, relatives and friends have presented the above facts to show that YNW has no opportunity to purchase poison for the crime.

It also claimed that if GHS was having an illegitimate affairs with YNW, she would be solicitous of her lover, why was it that, once summoned, she made statement before being tortured? According to investigation, on the 24th day of the eighth month, it was He Chunfang and GHS who was teasing each other. This is evidence of another illegitimate sexual (male) partner.

It was also claimed that on the ninth day of the tenth month, at Shen Tiren’s house there was a carpenter and escaped apprentice Ni Bajin died at the same time. This showed that GBL has a fierce disposition, and has a lot of enemies. Poisoning might not be evidence of illicit affairs.

It was also claimed that after GBL’s death, magistrates runners were being consulted in Ge’s premise for two days. GHS confessed without torture is evidence of conspiracy of false accusation.

At the yamen the examining official repeatedly used severe torture on him, he fainted and nearly die. His figure print was deep in ink and imprinted on the confession. This is evident of torture to obtain confession.

Upon investigation it was discovered that the wise marriage’s dowry, resulted from the arrangement of his god mother Feng Xu Shi, not YNW.

YNW has a perverse character (“huaili”\(^{174}\)). Few people dared to visit with him. He seldom has past association with retired runners. Because GHL was well aware of his conduct (“gui po xingzhi”\(^{175}\)). He tried to avoid him. There was no local police (“di bao”) supervising eviction.

\(^{174}\) PYCED p. 171R
\(^{175}\) PYCED p. 773R
The new home of GBL was within a walking distance (one hundred steps) (of YNW’s house). There was also inconspicuous path reaching Yan’s house backdoor. According to neighbor Wang Xinpei testimony, GHS slept very late. She was observed to open the door and look around. He did not know whether YNW has been visiting with her.

Also, Qiang Bao Shen herbs shop is in Cang Qiang Town, it is on the road from the province to Yu Hang. From Yu Hang to Nan village Zhan’s resident, it is about 10 odd miles. According to the statement submitted by Hu Yuhun stated, that on the 5th day of the month, they were at Zhan’s household establishing succession and right of inheritance (“li ji”\textsuperscript{176}). After that they all split and return home. This is in conflict with YNW’s return date of the sixth date.

Also, before GHS was married, she was gentle (xun\textsuperscript{177}) and circumspect (“jin”\textsuperscript{178}). After she moved to YNW’s household, rumors spread. According to a neighbor Zheng [X], there was no other illicit affairs.

On the 24th day of the eighth month, GBL admonished and disciplined GHS. According to rehearing, Shen Yu Shi claimed that his son informed her that he as venting his anger because of YNW matter. Whether this was a result of catching YNW in the act or whether it was the harboring of ill will, has to be ascertained by the court.

On the 10th day of the 10th month, Shen Jiaren household has a cousin, a prisoner, Ni Jingyun, same as Ni Bajin who died because of decease. There was no carpenter. The same day, GHL did not visit with Shen Tiren’s household.

Also GBL has a non-aggressive personality. A few years ago, there was a fight between shopkeepers. He suffered a bloodied finger as a result of a bite, there was no broken finger at the joint. This witnessed by “dibao” Wang Lin. Besides that he has no enemy.

GBL dies on the night of the ninth, Shen Yu Shi suspected that it was an acute disease (“sha zheng”\textsuperscript{179}). She discovered symptoms of poisoning on the morning of the 10th and reported to the magistrate on the 11th. There was no runners discussing the case for two days.

The magistrate Liu Xitongs; eldest son, returned to his resident in the fourth monty, and was not at the magistrate’s office.

The claimed that Yuan De asking for a bribe, and that there was payment. However as to who was involved, how much was paid, these have not be detailed.

\textsuperscript{176} PYCED p. 320L.
\textsuperscript{177} PYCED p. 787L.
\textsuperscript{178} PYCED p. 354R.
\textsuperscript{179} PYCED p. 591L.
The claim that figures were put in ink while unconscious and imprinted on confession. Inquiry at Commissioner of Justice and Governor’s office found that no torture was used in open court. The signing of confession could not be denied. Further examination of the impeached juren’s confession showed that there was a word “feng” between pages.

As to birth sign on YNW body, he knew full well that GHS would retract her statement, thus he suggested that because GHS could not point out (his birth mark), this proved that there was no illicit affairs. No question needed to be asked.

APPENDIX

On Role of Female

In a society where the sole worth of women is defined in sexual chastity and marital fidelity, mere suggestion of flirtation with male brought heavy moral criticism and social ostracism. Any slight deviation of female behavior norm in Qing China were treated to sexual slurs, imputing to them lack of essential sexual quality, i.e. virtuousness. Thus females who have or sort power were ipso facto unchaste and not pure.) Li Yutang, the fame China philosopher and public intellectual, have trace this fetishism with female chastity to that of Taoist superstition.

The flirtatious conduct of GHS was especially appalling when compared with the state ideology and social practice of women defending chaste until death. During Qing time, there were repeated cases of women giving up their life to fulfilling their calling as loyal wife and virtuous lady. For example, a woman Liu’s fiancée Chan Shou died before the wedding. Her parent secretly arranged to be betrothal to another man. Liu cut her hair and disfigured her face and vowed to be faithful to her deceased fiancé than be remarried.

In imperial China and especially during the Qing period, Confucius ideal of womanhood - being chaste and loyal to elder - often came into irreconcilable conflict. For example, a case in Xing’an Huilan showed a young woman’s husband died before wedding. She chose to stay chaste and unmarried in her father-in-law household. The father-in-law made sexual advance on her. Failing that, he sexually harassed her. Caught

180 “Feng” is the crack or crevice. PYCED p. 206L.
184 See also Vivien Ng, "Sexual Abuse of Daughters-in-Law in Qing China: Cases from the "Xing’an Huilan" Feminist Studies (Summer, 1994), pp. 373-391
between chastity to her late husband and loyalty to her new father-in-law, she found the only viable alternative - hanged herself (p. 377). Women who chose to defend their chastity from encroachment of father-in-law, might find themselves punished with death, when their defense occasioned injury on the in-laws (p. 379).

Females were taught and expected to be virtuous and pure. Virtuous wives were supposed to display “sancong side”: “three obedience (to father before marriage, to husband after marriage, and to son after the death of husband) and four virtues (morality, proper speech, modest manner and diligent work). Female who lived up to such expectations in exemplary ways were honored as early as 515. Under Qing rule, after death chaste woman was entitled to apply to government for all kinds of gifts and privileges, including the erecting of an archway at the family ancestral shrine and to perform sacrifice in her honor.).

In imperial China, disobedience of husband and quarrelsome within family were grounds of for the “terminating” wife (“xiuqi”) A caveat is in order. This formal structure and idyllic view of a submissive and virtuous wife might not reflect reality, especially with uneducated commoners, and certainly was subjected to wide ranging variations in expectations and practices between families and localities. China, especially western, scholars treated traditional female as an “object” constructed with western assumptions and infused with liberal values. View in this light the basic constitution female, from disposition and propensity, in the west as with China, are considered all alike, universal, unchanging and monolithic, to wit tending towards

186 PYCED p. 585L. For a brief description of traditional female role in a family, see Rose Hum Lee, "Research on the Chinese Family” The American Journal of Sociology Vol. 54, No. 6 (May, 1949), pp. 497-504, 499 – 501. For a full rendition of what a “good” wife should and should not do during Qing China, see Lu Ch’I<<Hsin-fu p’u>> (Instructions of the new wife) (1614) as cited in Paul S. Ropp, “The Seeds of Change: Reflections on the Condition of Women in the Early and Mid Ch’ing,” Signs Vol. 2, No. 1 (Autumn, 1976), pp. 5-23, p. 5 ( A wife was supposed to be gentle and yielding (you shun), i.e. obedient.)
188 Id.
189 Hangyu Dachidian vol. 1, p. 1171L (2) Daniel Harrison Kulp, Country life in South China: The sociology of familism (N.Y. Columbia University, 1925) (There were seven conditions for repudiating a wife: (1) no posterity; (2) licentiousness; (3) disobedience to parents-in-laws; (4) quarreling; (5) jealousy; (6) disease.), p. 186. For discussion of rights of husband and wife under relevant Qing code, see also Philip C. C. Huang, “Women's Choices under the Law: Marriage, Divorce, and Illicit Sex in the Qing and the Republic,” Modern China Vol. 27, No. 1 (Jan., 2001), pp. 3-58, p. 12.
individual actualization and sexual liberation.\textsuperscript{191} (The “white man’s burden” imperialists (from missionaries to colonists) was responsible for trying to free Chinese women from traditional bondage, from bounded feet to arranged marriage. Their view of women status in society and status in life was informed by Confucian classics, without first hand knowledge and accumulated experience of what Chinese woman hood was all about. For the “civilizing’ project on hand, it hardly mattered. The need to civilize did not rest on the true status or condition of the woman but was anchored in the imploring and impelling belief system of the missionaries, to save the last soul for God on high. Later the feminist was eager to extend their “female as victim” of oppressive patriarchy social structure campaign to China, without seriously interested in understanding what China womanhood is all about) p. 121 - '25. There was very little attempt to understanding the status and identity of female in cultural context and concrete circumstance, away from pre-disposed ideas and ideal, and as living, breathing being in point of time and place. Misconceptions Concerning the Chinese Families.” J. Holmgren, "Myth, Fantasy or Scholarship: Images of the Status of Women in Traditional China,” \textit{The Australian Journal of Chinese Affairs} No. 6 (Jul., 1981), pp. 147-170 (Study of traditional Chinese women attitude and behavior has ignored wide temporal and regional differences.), p. 178.

\textbf{Reporting of Crime}

There is a need to distinguish between “baoan” (report a crime), “gao zhuang” and “shen yuan” (seek redress for injustice” for they are not one and the same as a cultural phenomenon, social process and legal event.

“Bao an” or reporting a crime happened when the community – village, clan, family - considered it a matter to be not amendable to personal negotiation and internal conflict resolution, e.g. attack by bandits (lack of authority) or required by criminal law (imperial jurisdiction).\textsuperscript{192} (In traditional China, there were different level of law. The family law, as inner law, claimed first obedience while the state law might have the ultimate say.) There were to be other more sociological reasons. The government was considered the least competent to understand the case and totally ineffective in enforcing any judgment. Reporting of “crime” acknowledge social control failure. It also exposed the family or clan to ridicule. It also incited and invited the use of formal and legal, instead of communal and informal, means to solve problems. Lastly, allowing the government the intervene meant that the clan and family lose power relative to the

\textsuperscript{192} Fei Chengkang, \textit{China family rules and clan regulations} (Zhongguo de jiafa zugui) (Zhanghai shehuikexuyuan Chubanshe, 1998). (Family rules and clan regulations were very clear ALL disputes must be first presented to the family and clan for resolution. This reaching out would be punished.) Leopold Pospisil, "Legal Levels and Multiplicity of Legal Systems in Human Societies,” \textit{The Journal of Conflict Resolution}, Vol. 11, No. 1, Law and Conflict Resolution (Mar., 1967), pp. 2-26
government. The legal process could be prohibitive in social (disruptive), economic (costly), emotional (anguish) and physical (torture) terms.193

“Gao zhuan” or filing a complaint sought relief from the government when the community considered it a matter (administrative, civil or criminal) that was beyond its control or ability to resolve, e.g. inter clan disputes, external transgression, or official abuses.194 “Shen yuan” sought redress for injustice from the imperial government of any kind, from oppression by government policy to wrongful conviction (as in YNW case). The “writ” was characterized by three things: (1) It was a general claim of relief. It challenged the government to take action to right a wrong, much like a habeous corpus plea, (2) It was a last effort. All other administrative or legal courses of action have been exhausted or find wanting, much like a clemency. (3) It was moral claim based on natural justice. The government was asked to intervene in the name of natural justice, much like equity relief in common law courts. (4) It was an all purpose relief. It was not bound by artificial classification of administrative, civil, economic or criminal matters. Nor was it limited to individual wrong or government cases. The petition for “shen yuan” was based on “yuan qing” (circumstances of injustice) and could be anything.

“Shen yuan” as a mean to redress injustice was based on the political philosophy espoused by Confucianism (Yao & Shun, Confucius) and Daoism (Lao Tse) that the emperor governs his realm with mandate from heaven and in line with law of nature (dao).195 “Shen yuan” thus asked the emperor to ratify man made injustice and return natural justice. Failing that the emperor has violated his mandate and undermine his legitimacy, as provided by heaven and as judged by the people. Tao-Wei Hu, "The Chinese Version of the Law of Nature," *International Journal of Ethics* Vol. 38, No. 1 (Oct., 1927), pp. 27-43. (Justice will inevitably be done (p. 27). People have a right to demand justice and remove the emperor (Shujing) (p. 36). Emperor loses right to vote if he failed the heavenly way and oppress the people. (Mencius) (p. 37) Finally, the duty to remove injustice rests on the shoulder of everyone, rich and poor, educated or not. John W. Dardess, "The Cheng Communal Family: Social Organization and Neo-Confucianism in Yuan and Early Ming China," *Harvard Journal of Asiatic Studies* Vol. 34 (1974), pp. 7-52 (Cheng’s family donate to charities driven by observed ill distribution of wealth and resulting social injustice (p. 32.).

On Concept of “wang”

194 David C. Buxbaum, “Some Aspects of Civil Procedure and Practice at the Trial Level in Tanshui and Hsinchu from 1789 to 1895,” *The Journal of Asian Studies* Vol. 30, No. 2 (Feb., 1971), pp. 255-279, 269. (A review of case filings from filings in Tanshui and Hsinchu from 1789 to 1895 showed that of 971 cases, over 50% (468/971) were administrative cases.
While the concept of “yuan wang” (wrongful treatment) and related concepts recall that of “miscarriage of justice”, the two are not one and the same:

The concept of “Yuan wang” and “miscarriage of justice” compared:

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<th>Imperial China “Yuan wang”</th>
<th>Contemporary United States “Miscarriage of justice”</th>
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<tr>
<td><strong>Meaning</strong></td>
<td>treated unjustly, substantively attributing responsibilities – legally, morally – when none existed</td>
<td>denial of substantive and procedural due process</td>
</tr>
<tr>
<td></td>
<td></td>
<td>wrongful conviction conviction without due process of law</td>
</tr>
<tr>
<td><strong>Philosophical foundation</strong></td>
<td>moral – disturbance of cosmic order</td>
<td>legal – violation of individual (natural and positive) rights</td>
</tr>
<tr>
<td><strong>Scope of application</strong></td>
<td>all human intercourse (*) in social/legal settings</td>
<td>all criminal transaction in criminal prosecutions</td>
</tr>
<tr>
<td><strong>Victims rights/responsibilities</strong></td>
<td>everyone has the duty to right gross injustice (“cheng yuan”)</td>
<td>only the interested parties – prosecutor and defendant – have the right to undo miscarriage of justice</td>
</tr>
<tr>
<td><strong>Offenders rights/responsibilities</strong></td>
<td>confess to crime and made amend196</td>
<td>punish for crime and be deterred</td>
</tr>
<tr>
<td><strong>Remedial forces</strong></td>
<td>cosmic forces – truth and justice will prevail (**)</td>
<td>adversary forces – battle for right and wrong</td>
</tr>
</tbody>
</table>

(*) as in “yuan wang hao ren” (attributing responsibility to an innocent person)
(/**) “tianweng huihui, shu er bu lou” is a traditional Chinese saying, the (justice) net of Heaven is large and long, it does not allow (unjust) matter to escape retribution. Justice will be done was ingrained in popular culture and expected by the public as a matter of (inevitable course). George A. Hayden, "The Courtroom Plays of The Yuan and Early Ming Periods.” Harvard Journal of Asiatic Studies Vol. 34 (1974), pp. 192-220, 209 – 210 (Injustice was always brought to light and mistrial undone by smart detective work and upright judges in the end of the gongan plays.) Justice will be done with the help of supernatural forces, see Joanna Waley-Cohen, "Politics and the Supernatural in Mid-Qing Legal Culture,” Modern China Vol. 19, No. 3 (Jul., 1993), pp. 330-353, ff.344. Supernaturals play a role in delivery of justice in many ways, the most common of which is when the ghost of the victim or wrongfully convicted return to help solve the case or agonize the offenders. Yan Zhitui <<Yuanhun zhi>> (531 – 590) The 196 Self-examination and criticism was expected of the Confucius scholars and bearing the soul was required by the Daoism. Pei-Yi Wu, “Self-Examination and Confession of Sins in Traditional China,” Harvard Journal of Asiatic Studies Vol. 39, No. 1 (Jun., 1979), pp. 5-38. (Confucius confessional started with Wang Yangming (1472 – 1529), p. 22)
force of righteousness and ghost of victims were often resort to compel the offender to confess or owe up to the crime. Huang Liuhong Huang Liu-hung, A Complete Book Concerning Happiness and Benevolence (Fu-hui ch'uan-shu): A Manual for Local Magistrates in Seventeenth-Century China, translated and edited by Djang Chu ((Tucson: The University of Arizona Press, 1984) 347-8. A cursory inspection of Chinese literature would find many stories of ghost and spirit related to justice, revenge and retribution, e.g. ghost returning from hell the right a wrong, corrupted officials haunted by ghosts to tell the truth, bad persons burnt in hell. Anthony C. Yu, "Rest, Rest, Perturbed Spirit!" Ghosts in Traditional Chinese Prose Fiction,” Harvard Journal of Asiatic Studies Vol. 47, No. 2 (Dec., 1987), pp. 397-434 (In Chinese fictional stories Ghosts return to earth were usually purposive, e.g. bearing witness to injustice, establishing ones innocence or reveal bureaucratic abuses, p. 410)

While the idea of cosmic forces and supernatural agencies righting wrong and doing justice has popular appeal, it went against Confucius teachings and was questioned by critical elites. Their skepticism ranged form Wong Chong’s denial of existence of spirits to Dian Daxin (1728 – 1804) rejection of karma and retribution. Hong Liangji (1746 – 1809) rejection of the ability of spirit to mete out punishment. 197

On Method
This is a project seeking meaning of justice (injustice) and understanding of law (illegality) in action and in context, i.e. culture.198 To do so, we must not study abstract legal philosophy as ideas and theory as concepts, but attend to the actual realization of law in action and contextual application of law in context. Geertz called this "the extrinsic theory of thought" the foundation to his “interpretative anthropology.”199 For Geertz law is not pure either as an idea. Idea is not pure because as personal disposition it represents and embraces the totality of who we are and what we want to become: ability, ideation, motivation, attitude, sentiment
This approach to understanding law as ideas in action go before treating law as symbols -manifestation and registration of inner thought process – but active engagement of

198 (Culture) refers to the meaning mode handed down from the history and embodied in symbols and the handed -down conceptual system incarnated as various symbolic forms whereby people exchange, maintain and develop knowledge about life and their attitude towards life" (1973, 89). The second was made at the beginning of the 1970s, "the concept of culture I maintain. . . is essentially a semiological concept. Like Marx Weber, I also hold that human beings are animals hanging an the web of meanings they themselves have woven. In my opinion, culture is just the web of these meanings and so the analytic culture is the interpretative science exploring meanings rather than the experimental science seeking laws. " (1973 , 1975)
personal ideas with public thoughts, negotiating and transforming, revising and suggesting. (1) thought, as ability, idea, attitude, sentiment and so on, is not the independent existence in "consciousness" but can only be displayed through concrete actions; (2) the proceeding of human thought must rely on the action operating the objective materials (including the body of man himself). 200

In seeking to document things – events past, or doing history, there is a perennial issue of authority and validity. China has a love affair with recording history from Sima Qiang Shi Zhi to Qing Shi Gao. But official history tells stories in narrative form is no more reliable than yeshi or xiasuo.201 Conversely, Chinese fiction partake in dispensing with historical truth when the basic facts and common meaning of personality, events and issues reflects public understanding and mentality of the time. In eesenee, “source study” or “derivative study” or “influence study” of fictional narratives would found intertextual sharing between fiction and historical, making the contemporary fictional account a must read to understand the facts as well as sentimentality of the case.202 The imaginative or creative, a./k/a what is fictional, comes in when the classical materials has to make to fit popular culture. In this conversion process, historical narrative join hadn local culture – legend, myth. History made to speak in local language. The challenge is to discern the fiction from the real, especially when the real parts take fiction, what was referred to intertextuality (K. Kao) issue.203 Chinese literarily theories suggest that intertextuality in China means there were substantial transmission, modeling, emulation, coherence and identification involved. View in this light, there was one set of historical facts told in many ways not many stories based on different facts.204 However, Lu observed that historical vs. literary fiction is two different enterprise, aim at difference audience and for different purpose, e.g. their sense of justice and legitimacy might not be the same.

In looking at legal culture, we look to discourse of law in the case file, as reflecting various understanding of the case different level and vantage point. 205

200 Geertz, “Law is local knowledge, not placeless principles’ C. Geertz, Local. Knowledge (1983) 218
203 The Fictional Discourse of Pien-wen: The Relation of Chinese Fiction to Historiography,” Id. 52
204 Rashomon.
205 Guangyuan Zhou, “Illusion and Reality in the Law of the Late Qing: A Sichuan Case Study,” Modern China Vol. 19, No. 4 (Oct., 1993), pp. 427-456 (What constitute justified vs. unjustified tax rebellion in depends on vantage point and perspective, as reflecting more ingrained socio-political considerations.)
The basic China theory of crime and punishment is preserving cosmic harmony. It is believed that under this theory that there is a fixed and unchanging cosmic order consisting of heaven (tian), earth (di), people (ren) and everything else (wen wu). The cosmic order function in perfect harmony (heqi) with everything relating to everything else, such is the case with Confucius five relationship. The disturbance of cosmic order require restoration, in cases of crime retribution (p. 70). Under this system there is a correspondence of relationship. The upsetting of relationship require adjustment. The necessity is to restore order and tendency is punish people, not attributing liability. (p. 71)

“If there was any belief in China concerning crime and punishment, “shared by all sections of society”, it was that no crime or sin could escape detection by the watchful spirits over ones head or inside one’s body, that for every crime committed in life one would finally be tortured in the underworld, or that the imperial code was valid even in the other world, but it was not an overriding belief that was an overriding obligation to preserve the universe of the harmony of the universe” (va der Sprenkle) 207 p. 121.

Administrative, civil and criminal case disposition in Tanshui and Hsinchu from 1789 to 1895

<table>
<thead>
<tr>
<th>Duration</th>
<th>Administrative Cases</th>
<th>Civil Cases</th>
<th>Criminal Cases</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15 days</td>
<td>90 cases/19.3%</td>
<td>8 cases/4.0%</td>
<td>51 cases/17.0%</td>
<td>149 cases/15.4%</td>
</tr>
<tr>
<td>16 to 1 month</td>
<td>60/12.9</td>
<td>10/5.0</td>
<td>31/10.5</td>
<td>101/10.5</td>
</tr>
<tr>
<td>1 – 3 months</td>
<td>85/18.3</td>
<td>22/10.5</td>
<td>60/22.5</td>
<td>167/14.5</td>
</tr>
<tr>
<td>3 – 6 months</td>
<td>49/10.1</td>
<td>37/16.0</td>
<td>59/20.1</td>
<td>145/14.5</td>
</tr>
<tr>
<td>6 – 12 months</td>
<td>49/10.1</td>
<td>48/23.0</td>
<td>37/12.7</td>
<td>134/13.9</td>
</tr>
<tr>
<td>1 to 5 years</td>
<td>104/22.3</td>
<td>67.33.0</td>
<td>38/13.0</td>
<td>209/21.7</td>
</tr>
<tr>
<td>5 – 10 years</td>
<td>18/3.9</td>
<td>11/5.5</td>
<td>13/4.4</td>
<td>42/4.4</td>
</tr>
<tr>
<td>10 – 15 years</td>
<td>6/1.4</td>
<td>4/2.0</td>
<td>3/1.0</td>
<td>13/1/3</td>
</tr>
<tr>
<td>15 – 25 years</td>
<td>6/1.4</td>
<td>1/0.5</td>
<td>1/0.4</td>
<td>8/0.8</td>
</tr>
<tr>
<td>Over</td>
<td>1/0.3</td>
<td>1/0.5</td>
<td>1/0.4</td>
<td>3/0.3</td>
</tr>
<tr>
<td>Total</td>
<td>468/100</td>
<td>209/100</td>
<td>284/100</td>
<td>971/100</td>
</tr>
</tbody>
</table>


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