

\$1.4 Million Awarded Korean After Espionage Exoneration

By JD Staff

Twenty-one year-old Ham Ju-myeong was trapped in North Korea when the Korean War ended in 1953. As a ploy to return to South Korea and be with his family, he volunteered to be a North Korean agent.

After being smuggled across the border Ham surrendered and told South Korean authorities about his scheme of pretending to want to spy for North Korea in order to get out of the country. Ham was released after an investigation and placed for a time on probation.

Twenty-nine years later, in early 1983, Ham was arrested on espionage charges. He confessed to spying for North Korea after many weeks of intensive interrogation. Charged with violating South Korea's National Se-



Painting of waterboarding from Cambodia's Tuol Sleng Prison, that currently serves as a torture museum.

curity Law, Ham recanted his confession at his trial, claiming he had only done so to stop being tortured. The judge rejected Ham's recantation, and after his conviction he was sentenced to life in prison.

In August 1998, after almost 16 years of imprisonment, Ham was released as part of a general amnesty following South Korea's return to civilian rule after years as a military dictatorship.

In 1999 the man who oversaw Ham's torture, Lee Geun-an, admitted Ham told the truth at his trial - his confession was contrived after 45 continuous days of physical and psychological mistreatment that included waterboarding, sleep deprivation, physical beatings, and electrical shocks: all while Ham was blindfolded and naked.

Based on the new evidence his confession was coerced, Ham filed a petition in 2000 to quash his conviction. His evidence was compelling enough that in 2003 his petition was granted and a new trial was ordered. It was the first time that a South Korean espionage conviction had been overturned.

Acquitted after his July 2005 retrial, Ham filed a compensation suit for his wrongful conviction and years of imprisonment. In September 2005 Ham and his family were awarded \$320,000. The South Korean government appealed, arguing that the statute of limitations had expired before Ham filed his suit.



'Mothers With Purple Scarves' (also known as the Minkahyup) is a South Korean human rights group that for 32 years has protested the government's wrongful imprisonment of people. Ham Ju-myeong said after his exoneration, "When nobody paid attention to our pleas of innocence, the mothers of Minkahyup were the only ones who fought for us."

Source: Militant moms mark 20 years of protests, *JoongAng Daily*, December 12, 2005.

In November 2006 the appeals court ruled the statute of limitations doesn't apply to civil suits involving claims of "illegal, inhumane crimes perpetrated by state agencies." It also increased the lower courts compensation award more than 400% to \$1.4 million.

Sources:

Were not more wrongly accused of espionage, Editorial, *The Hankyoreh*, July 16, 2005.

High court overturns faulty spy conviction, *JoongAng Daily*, September 5, 2005.

Korea Democracy Foundation Newsletter No. 4, November 2005, esp. 2-3.

Militant moms mark 20 years of protests, *JoongAng Daily*, December 12, 2005.

We cannot turn our backs on the unjustly accused, Editorial, *The Hankyoreh*, November 6, 2006.

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the fact that hypnosis can, in certain circumstances, result in the distortion of memory. Perhaps most troubling is the potential rate of error in the additional information obtained through hypnosis when it is used for forensic purposes. At the present time, there is no way of knowing whether such information will be accurate or inaccurate. Such uncertainty is unacceptable in a court of law."

...
"The admission of Ms. Haghnegahdar's post-hypnosis testimony constitutes an error of law." *R. v. Trochym*, 2007 SCC 6, ¶55 and ¶67 (02/01/07).

The Court also rejected the proposition that a jury could be exposed to hypnosis testimony by a witness whose recollection didn't differ from what it was prior to the hypnosis, since it could improperly suggest to the jurors that the hypnosis increased the likelihood the testimony was truthful.

The three dissenting Justices contended that barring post-hypnosis evidence was too drastic of an action by the Court. They argued it is sufficient to instruct a jury about the unreliability of hypnosis recovered memories, and to instruct the jurors that they should weigh the hypnosis testimony in the context of other evidence in the case.

The Supreme Court's decision makes Canada the first country with an English common law legal tradition to bar post-hypnotic evidence.

1 *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).

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