

# An Innocent Man: Hakamada Iwao and the Problem of Wrongful Convictions in Japan 無実の男・袴田巖 日本の冤罪問題

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How long, Lord, how long?

Hakamada Iwao (*Letters from Prison*, 1992)

I pray every day that Mr. Hakamada will be found innocent and released from death row.

Kumamoto Norimichi (2008), one of three judges who sentenced Hakamada to death in 1968

A criminal case can go wrong in two main ways. A person who committed a crime can escape punishment, or a person can be convicted and punished for a crime he or she did not commit (Simon, 2012, p.4). Every criminal justice system makes mistakes of both kinds, but most cultures and criminal justice professionals believe that the worse mistake is the false conviction of a person who is actually innocent (Huff and Killias, 2008). As jurist William Blackstone observed, "it is better that ten guilty persons escape than that one innocent suffer."<sup>1</sup> An aversion to convicting the innocent is also well established in Japan's legal culture. Indeed, the main proximate cause of Japan's high conviction rate may be the institutionalized caution of Japanese prosecutors about charging cases with evidence that could lead to an acquittal (Johnson, 2002, p.237). On this view, the criminal justice system in Japan might convict fewer innocent people than do systems in countries that adopt more aggressive charging policies (Sasaki, 2000).

The main aim of this article is to explore the problem of wrongful convictions in Japanese

criminal justice by focusing on the case of Hakamada Iwao, who was sentenced to death in 1968 and released in 2014 because of evidence of his innocence. The subject of wrongful convictions has received little scholarly attention since Chalmers Johnson's classic account of the *Conspiracy at Matsukawa* (1972), which at the time he wrote was the biggest *cause célèbre* in the annals of Japanese crime. In that case, three persons were killed by the sabotage of a train on the Tohoku line in August 1949. Twenty persons were arrested, nineteen of them being Communists or labor union leaders. In 1950, all 20 were convicted by the Fukushima District Court, and five were sentenced to death. But the prosecution's case came apart on appeal. By 1970, all of the accused had been exonerated. Johnson (1972) concluded that they may well have been victims of a frame-up by police and prosecutors (p.5), but he also believed that miscarriages of justice of that kind were "extremely unlikely" to occur in post-occupation Japan because "nothing has a greater educative effect on the public and through it on the judiciary than an unfair trial" (p.406). This article argues that the problem of wrongful convictions continues to plague Japanese criminal justice today, more than four decades after Johnson wrote.

## Japan in Comparative Perspective

One cannot understand the problem of wrongful convictions in Japan without assessing how it compares with other countries. In this field as in others in the social sciences, "those who know only one country know no country" (Lipset, 1996, p.17). The United States has

been the subject of more wrongful conviction research than any other nation (Huff and Killias, 2013, p.xv), and in this country in the quarter century since 1989, there have been 316 post-conviction DNA exonerations-an average of 1 per month. But since biological evidence is available in only 10 to 15 percent of serious felony cases, the true number of wrongful convictions is much greater than these DNA cases suggest (Simon, 2012, p.228). Between January 1989 and July 2014, more than 1400 persons were wrongfully convicted and subsequently released because of evidence of their innocence-an average of 4.5 exonerations per month (National Registry of Exonerations, 2014). More than 90 percent of these exonerees were men, 46 percent were black, and 76 percent had been convicted of homicide or sexual assault. These exonerees spent an average of 10 years in prison before being released, and many spent two to three times that long.

The true scale of America's problem with wrongful convictions cannot be known because some wrongly convicted (and wrongly executed) persons are never discovered. But educated estimates of the percentage of cases that result in wrongful conviction have been made, and they range from 3 to 5 percent for capital homicide cases and 8 percent or more for cases of sexual assault (Simon, 2012, p.4). These estimates are far higher than anyone supposed before the "discovery of innocence" raised awareness about the problem of wrongful convictions in American criminal justice (Baumgartner, De Boef, and Boydston, 2008).

More broadly, the risk of convicting innocent people "is probably not equally distributed across nations" (Huff and Killias, 2008, p.287), and the risk may be greater in the United States than in most countries of Europe because American systems of adversarial criminal justice strike a different balance between the need to obtain convictions and the

need to find the "truth" than do the more inquisitorial criminal justice systems on the European continent (Killias, 2013, p.73). Although American prosecutors are expected to convict criminals and protect the rights of defendants, their role as zealous advocate often takes precedence because institutional pressures and professional incentives reward them for pursuing convictions (Medwed, 2012, p.3). American criminal justice also relies on plea bargaining to dispose of more than 90 percent of criminal cases, and "errors are probably more frequent in cases handled through plea bargains and summary proceedings than in those that go to trial" because "justice without trial" tends to be faster and rougher than in cases tried by a jury or judge or both (Killias and Huff, 2013, p.376). The comparative conclusion is that "both wrongful convictions and exonerations appear to be far more frequent in the United States than in Western Europe, even when taking into account the respective populations and numbers of convictions in each nation" (Killias and Huff, 2013, p.382).<sup>2</sup>

It is impossible to know how many persons have been wrongfully convicted in Japan, and few thoughtful estimates have been made. The most comprehensive effort to count identifies 162 "wrongful conviction" (*enzai*) cases between 1910 and 2010, all of which were discovered in the post-war period, and more than half of which were homicide cases (Ibusuki et al, 2012). The average number per decade is 16, with a high of 37 in the 1950s and lows of 2 or fewer in the 1910s, the 1920s, and the 1930s. This study probably represents "the tip of an iceberg" of wrongful conviction cases because old cases are difficult to document, because less serious crimes (such as drug offenses and sexual molestation) were excluded from it, and (most fundamentally) because some cases of wrongful conviction are never discovered (Nishijima, 2012, p.155).<sup>3</sup>

**Table 1. Wrongful Convictions in Japan by**

**Decade, 1910 - 2010** (Source: Ibusuki et al., 2012, pp.155-168).

Decade	Number
1910s	2
1920s	1
1930s	0
1940s	13
1950s	37
1960s	14
1970s	31
1980s	31
1990s	16
2000s	17
1910-2010	167

In serious criminal cases, exonerations are much less common in Japan than in the United States. Since 1945, only eight persons have been sentenced to death or life imprisonment and subsequently acquitted at retrial. This average of one exoneration every eight or nine years allows two contrasting interpretations. On the one hand, Japan has few actors and institutions that aggressively search for miscarriages of justice (defense lawyers, investigative journalists, scholars, case review commissions, exoneration registries, Innocence Projects, and so on). Since the number of wrongful convictions revealed depends on how intensely and effectively they are looked for, these institutional shortcomings suggest that Japan's miscarriage of justice problem may well be much larger than what has come to light so far. On the other hand, Japan's prosecution system generally prefers the risk that an uncharged offender will reoffend over the risk that a charged suspect will be acquitted. This conservative charging policy is enforced through organizational mechanisms such as the *kessai* system of hierarchical consultation and review within Japan's procuracy and the penchant for punishing prosecutors who charge or try cases that end in acquittal (Johnson, 2002, pp.237-242). On this view, Japan's

prosecutor-gatekeepers may send fewer innocent persons to trial than do their counterparts in the United States and some other countries (Medwed, 2012; Givelber and Farrell, 2012).

The following case-study of the murder conviction of Hakamada Iwao and his release from death row 48 years later is important not only for what it reveals about how the awesome power of Japan's criminal justice system ruined one innocent man (Vollen and Eggers, 2005). It also illustrates how and why mistakes of this magnitude continue to occur in the Japanese context-and by implication, probably in other Asian contexts (such as South Korea and Taiwan) where legal institutions have been strongly shaped by Japanese influences. In these senses, the purpose of this article is the advancement of what Aristotle called *phronesis* (prudence or practical wisdom). The aim is to improve analysis and discussion of the values and interests at play in Japanese criminal justice, because this is a prerequisite for enlightened legal development in any society (Flybjerg, 2001, p.3).

This study proceeds in six parts, on the man Hakamada Iwao, the four murders he was accused of committing in 1966, the investigations by police and prosecutors that produced unreliable evidence (including false confessions and bloody clothes the police apparently planted in order to frame him), the original trial which resulted in a death sentence that was written by a judge who believed Hakamada was actually innocent, the appeals process that repeatedly ratified the trial court's mistakes, and Hakamada's almost half-century of life in prison, most of which was spent in solitary confinement under imminent threat of execution. The article then goes on to analyze the causes of this miscarriage of justice and of the 2014 decision to release Hakamada from death row while he awaits a retrial that will almost certainly end in acquittal if he does not die first. The conclusion of this article identifies

some lessons that should be learned from this troubling and telling case study. Foremost among them is the need to reduce the level of denial about the possibility of wrongful convictions in Japanese criminal justice.



**Hakamada Iwao before his arrest in 1966**

### The Man

On March 10, 1936, Hakamada Iwao was born in the town of Yuto in Shizuoka prefecture. His birthplace was near Shizuoka City, which is halfway between Tokyo and Nagoya on the Tokaido corridor, about 180 kilometers from Tokyo. His parents were working class, and he was the last of six children, with two brothers and three sisters (Yamamoto, 2004, p.147).

Hakamada was nine years old when Japan

surrendered in 1945. He graduated from junior high school in 1950, and then went to work at an automobile company in Shizuoka (Yamamoto, 2004, p.157). A few years later he became interested in boxing, a sport that required little money to perform. In 1957, at the age of 21, he placed third in the bantamweight division of a prefectural tournament, and in November of the following year he turned professional. He rose to become the sixth ranked featherweight fighter (119 to 126 pounds) in Japan. On the whole, however, Hakamada was more a tough fighter than an accomplished one. He won just over half his fights as a professional (16 wins, 10 losses, and 3 draws), but he was never knocked out, and he still holds the Japanese record for most pro fights in one year: 19 in 1959 (*Hakamada's Letters*, 1992, p.5). In his 21 months as a professional Hakamada fought more than once a month, and in the last six months of his career, which ended in 1960, he did not win a fight (Ogata, 2010, p.54).<sup>4</sup>

After his boxing career ended, Hakamada worked a series of jobs, some in the water trade (*mizu shobai*) as a waiter and bartender. According to police reports, Hakamada had many girlfriends and frequently gambled on mahjong and bike and horse races (though these assertions have been contested). In 1963, he married a woman named "Reiko" whom he met at a club. In 1964 they had a son named "Kiyo," whom Hakamada obtained custody of when Reiko left him. The reasons for the dissolution of their marriage are disputed. Reiko claimed that Hakamada punched, kicked, and bullied her and was lazy at work, but other observers have said that Reiko felt child care duties interfered with her desire to have a care-free life (Yamamoto, 2004, p.171).

In 1963, Hakamada met a wealthy restaurateur named Nishinomiya Hideyo who took a liking to him and put him in charge of a club in the water trade district. When that club lost money, Nishinomiya put Hakamada in charge of a



different club, but it lost money too. Hakamada owed Nishinomiya 550,000 yen (\$5500) for these failed ventures, but Nishinomiya did not push for repayment, and he even introduced Hakamada to Hashimoto Fujio, the man who would become Hakamada's final employer (Yamamoto, 2004, p.161).



**Hakamada Iwao in the boxing ring in the late 1950s**

Hashimoto was also an active participant in the water trade. Before he was murdered in 1966, he is said to have had relationships with more than 60 women at various bars and clubs in Shizuoka, and after his murder his father told the police he had been a "bad guy" (*warui otoko*). Hashimoto hired Hakamada to work in his family's business, the Kogane Miso Manufacture and Sale Company, in the city of Shimizu on the northern end of the Izu peninsula. Hakamada lived in the company dormitory, next to the miso factory that was

just across the train tracks from where Hashimoto lived with his family in a large and well-furnished home. During the period of his employment, Hakamada seemed to be on friendly terms with the Hashimotos. He even took some meals with them in their home (Yamamoto, 2004, pp.87-98).

**Table 2. Timeline of the Hakamada Case**

March 10, 1936	Hakamada Iwao is born in Shizuoka prefecture
June 30, 1966	Four persons murdered near a miso factory in Shimizu city, Shizuoka prefecture
August 18, 1966	Hakamada is arrested 49 days after the murders
September 6, 1966	Hakamada starts confessing on the 20 <sup>th</sup> day after his arrest
September 9, 1966	Hakamada is charged with robbery-murder and arson
November 15, 1966	Hakamada's trial starts in Shizuoka District Court
August 31, 1967	Police find five pieces of clothing in a miso tank 14 months after the crimes
September 11, 1968	Hakamada is convicted & sentenced to death in Shizuoka District Court
May 18, 1976	Hakamada's appeal is rejected by Tokyo High Court
November 19, 1980	Hakamada's appeal is rejected by Supreme Court & his death sentence is finalized
April 20, 1981	Hakamada makes first request for a retrial to Shizuoka District Court
November 13, 1981	Japan Federation of Bar Associations establishes Hakamada Case Commission
August 9, 1994	Shizuoka District Court rejects Hakamada's request for retrial
March 10, 2003	Hakamada tells death row visitor & former Member of Parliament Hosaka Nobuto that he is "omnipotent God" and has taken over the prison and abolished the death penalty
August 27, 2004	Hakamada's retrial request rejected by Tokyo High Court
March - July 2007	Former Shizuoka District Court judge Kumamoto Norimichi announces that he believes Hakamada is innocent & files petition to Supreme Court for Hakamada's retrial
April 2007	Amnesty International & Japan Pro Boxing Association start a new campaign for retrial
March 25, 2008	Hakamada's retrial request rejected by Japan's Supreme Court
April 2008	Hakamada makes second request for a retrial in Shizuoka District Court
April 2010	57 Members of Parliament form "Federation to Save the Condemned Hakamada Iwao"
May 29, 2010	Director Takahashi Banmei releases film "BOX: The Hakamada Case"
March 10, 2011	On Hakamada's 75 <sup>th</sup> birthday, Guinness World Records certifies him as the world's longest incarcerated death row inmate
March 27, 2014	Hakamada is granted a retrial and released from death row at the age of 78 by the Shizuoka District Court; prosecutors have appealed
2016 or 2017?	Hakamada's retrial?

## The Crimes

The fire was set around 2:00 AM on Thursday, June 30, 1966. It was the day after the Beatles arrived in Tokyo to start their Asia tour. Four fire trucks responded to a neighbor's phone call and it took them 30 minutes to bring the blaze under control. After the site cooled, four dead bodies were found inside the Hashimoto home: 41-year-old Fujio (who had earned a second degree black belt in judo), his 39-year-old wife

Chieko, their 17-year-old daughter Fujiko (a junior in high school), and their 14-year-old son Masaichiro (in the second year of junior high school). Their bodies smelled of gasoline and had been stabbed more than 40 times. According to police, 80,000 yen (\$2000) had been stolen from the residence, but more striking was what was not taken: 3,740,000 yen (\$37,400) in cash (it was pay day at the miso factory), bank books, stock certificates, and expensive jewelry. The only surviving member of the Hashimoto family was the eldest daughter Masako, who told police she had returned from a trip the evening before and stopped by to greet her parents at about 10:00 PM before walking to her grandmother's home a short distance away. As a junior in high school, Masako had moved out of her parents' home to move in with her grandmother because her father disapproved of her boyfriend (Yamamoto, 2004, p.99).<sup>5</sup>

This quadruple murder in a quiet corner of Japan attracted media attention-much of it sensationalistic (Ogata, 2010, p.113).<sup>6</sup> The prefectural and local police combined to establish a special force of 80 officers to investigate crimes that made front page news nationwide. Despite the cash and property that was not taken, police maintained that the motive for the murders was money. On this theory, the offender knew it was pay day, so it must have been an inside job. Police also found a knife (*kurikogatana*) inside the home that was usually used for woodworking and that had a blade measuring 13 centimeters long (5.1 inches). They believed it was the murder weapon (Ogata, 2010, p.75).

Police suspicion fell on the 30-year-old Hakamada for three main reasons. First, he did not have an alibi. Hakamada was living alone in his company dorm room, and he claimed that he had joined neighbors and other employees in fighting the fire, though no one remembered seeing him during that period of time. In addition, Hakamada had cuts on the middle

finger of his left hand and on his right shoulder. He said he received these wounds when he fell from the roof while trying to fighting the fire, but police believed they were inflicted while he was committing the crimes. More broadly, some police possessed an "anti-boxer prejudice" (*bokusa kuzure*) that was common in the Japanese society of that period. According to this stereotype, former fighters retain a willingness to use violence to solve problems and to get what they want (Ochiai, 2014). Whatever the logic of these judgments may have been at the time they were made, in retrospect it is clear that police cast their investigative gaze too narrowly (Yamamoto, 2004, p.185). By focusing almost solely on Hakamada and on evidence that supported their hunch about his guilt, they ignored evidence to the contrary and repeatedly committed the mistake of "tunnel vision" (*mikomi sosa*) that is common in wrongful conviction cases in Japan (Miyazawa, 1992) and other countries (Simon, 2012).



**Hakamada Iwao after his arrest in 1966**

## Investigation

Hakamada was arrested on August 18, 1966, 50 days after the four murders occurred. Before this, police had been questioning him on a "voluntary" basis (*nin'i shutto*) and had been leaking information to reporters that made it clear who their one and only suspect was.<sup>7</sup> On July 4, just four days after the crimes, the *Mainichi* newspaper published a headline making it plain who police were targeting:

"Employee 'H' Surfaces" (*"Jugyoin 'H' Ukabu"*). One basis for this claim was the discovery of blood-stained pajamas in Hakamada's dorm room. Police said the blood types on the pajamas (A and AB) matched those of the murdered father and son, but the stains were so tiny that even some police believed the pajamas could not have been worn during the commission of four gory homicides. Subsequent testing of the stains reached the different conclusion that the blood type(s) could not be determined. Police also said they found trace amounts of gas and oil on Hakamada's pajamas, which they regarded as evidence that he had committed the arson too.

The main question for police was whether Hakamada would confess. Confessions have long been the cornerstone of Japanese criminal justice—"the king of evidence" and "the decisive element of proof" sought by every prosecutor and expected by most judges (Johnson, 1972, p.149). Most Japanese law enforcement officials "believe strongly that confessions must be extracted" (Miyazawa, 1992, p.165), and some believe that "the right to silence is a cancer" (Johnson, 2002, p.243). This demand for confessions throughout Japan's criminal justice system helps explain why interrogations frequently are long and intensive and sometimes are coercive (Johnson, 2002, pp.243-275). Hakamada endured 20 days of interrogation after he was arrested and before he confessed. During this period, the average length of interrogation was more than 11 hours per day (see Table 3).<sup>8</sup> Between his arrest and indictment, Hakamada was interrogated for more than 264 hours—about half of all the hours in that 23 day interval (Yamamoto, 2004, p.202). During this interval he was permitted to meet his defense lawyers three times for a total of 37 minutes (Ogata, 2010, p.61).

Research in the United States has found that one of the best predictors of whether a criminal suspect confesses is the length of interrogation. In serious felony cases, American

interrogations average less than three hours per suspect (Leo, 1996), and a study of 125 false confession cases found that the longest interrogations lasted less than one-tenth as long as those that Hakamada experienced (Drizin and Leo, 2004). In most democracies, a confession obtained after more than 200 hours of interrogation would be ruled involuntary, unreliable, and inadmissible as evidence. But not in Japan (Foote, 1991).<sup>9</sup>

**Table 3. Interrogation Times of Hakamada Iwao in Hours and Minutes, August 18 to September 9, 1966** (*Sources: Hakamada san o Sukuu Kai, 1992, p.181; Hakamada Jiken Bengodan, 2003, p.20.*)

Date	Police	Prosecutors	Daily Total
August 18 (Th)	1:35		1:35 (arrest)
August 19 (Fri)	10:30		10:30
August 20 (Sat)	7:23	2:00	9:23
August 21 (Sun)	6:05	1:00	7:05
August 22 (Mon)	12:11		12:11
August 23 (Tues)	12:50		12:50
August 24 (Wed)	12:07		12:07
August 25 (Th)	12:25		12:25
August 26 (Fri)	12:26		12:26
August 27 (Sat)	13:17		13:17
August 28 (Sun)	12:32		12:32
August 29 (Mon)	7:19		7:19
August 30 (Tues)	12:47		12:47
August 31 (Wed)	9:32	2:00	11:32
September 1 (Th)	13:18		13:18
September 2 (Fri)	11:15		11:15
September 3 (Sat)	9:50		9:50
September 4 (Sun)	16:20		16:20
September 5 (Mon)	12:50		12:50
September 6 (Tues)	14:40		14:40 (first "confession")
September 7 (Wed)	11:30		11:30
September 8 (Th)	9:45	3:00	12:45
September 9 (Fri)	7:00	7:00	14:00 ("confesses" to prosecutors and is indicted)
<i>Total for 23 days</i>	<i>249:27</i>	<i>15:00</i>	<i>264:27 (average duration=11:30 per day)</i>

The length of interrogation is hardly the only problem with the "confessions" in Hakamada's case. None of his interrogations was recorded on tape, and none was transcribed verbatim. Instead, all of the statements taken from Hakamada were summarized by police and prosecutors and composed in *their* own words. The 45 dossiers (*chosho*) containing these statements are "essays" in a twofold sense: they are *compositions* written from law enforcement's perspective, and they are efforts to *persuade* trial and appellate court judges of a particular point of view. In Japanese criminal

justice, pressure to produce persuasive compositions sometimes compels police and prosecutors to distort or even fabricate their content (Johnson, 2002, p.248).<sup>10</sup> A survey of 1300 Japanese prosecutors in 2011 found that more than 26 percent admitted to being told by a superior to compose a dossier that differed from what a suspect or witness actually said (*Asahi Shimbun*, 2011a). Hakamada's defense lawyers have consistently maintained that police and prosecutors routinely engaged in this kind of creative license in their client's case. There is even evidence that the confessions composed by police followed a "script" police had written several weeks before Hakamada was arrested (Yamamoto, 2004, p.186). In one trial session, Hakamada himself asked one of his interrogators, "Isn't it true that what you detectives call my series of confessions is in fact a fictitious mystery story (*suiri sakusei*) that you made up in your own minds?" (Yamamoto, 2004, p.229).

During the 23 days of his interrogation, Hakamada was pressured in several ways. He was given bad food—mostly thin miso soup and a cheap mixture of barley and rice. He was deprived of sleep, and when he nodded off police used pins to poke him awake (Ogata, 2010, p.61). He was denied access to the bathroom (when he was permitted to go, police forced him to use a portable toilet in the corner of the interrogation room). He was permitted to bathe only once a week. He was not given adequate water to drink despite the brutally hot weather. And most strikingly, he was repeatedly victimized by police brutality and other forms of the "third degree."<sup>11</sup> As Hakamada described in one of his letters from prison:

"Police threatened me by saying that if they killed me nothing would happen to them because they would report that my death was caused by an illness. I was

derided and beaten with wooden nightsticks. Day after day I was pressured by interrogation teams of two or three people working in shifts. I was interrogated morning, afternoon, and evening. On some nights I was interrogated from 11:00 PM to 2:00 AM. Police took turns hitting and kicking me. This was my interrogation. Their aim was to frame me (*detchiageru*) by composing dossiers saying that I committed murder and arson even though I had done no such thing" (quoted in Ogata, 2010, pp.60-61).<sup>12</sup>

Hakamada also described at trial his experience of the "third degree." He said police pulled his hair, punched him, kicked him, yelled at him, and threatened to bring in his mother and brothers for questioning if he did not confess. On the morning of September 6, 1966, on the 20<sup>th</sup> day of interrogation, Hakamada felt exhausted and offered to confess "in the afternoon" if police would first allow him to rest for a little while. He wanted to stop the agony, but police would not wait. They pressured Hakamada into signing the first of several "confession" statements that they would produce over the next three days. The first confession statement was three lines long. It said, "I am the one who killed the boss's family. I am very sorry. From now on I will tell you in detail what happened." Two other statements were taken on the same day: one was 5 pages and the other was 76 pages. None of these three statements was read by Hakamada or read aloud to him by the police. As Hakamada testified in court, "I wanted a silence and had a headache so I just wrote down my name and put my head down on the table. They held my hand and took my fingerprint" (quoted in Wallace, 2007).

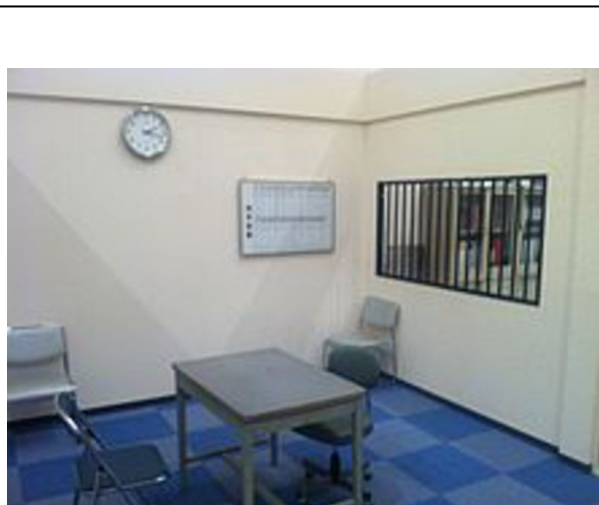
In 1973, five years after Hakamada had been



sentenced to death and while his case was on appeal before the Tokyo High Court, he explained in another letter from prison why he had falsely confessed. His description of his desire to "escape" echoes research in the United States (Leo, 2008) and Japan (Hamada, 1992) which shows that false confessors are frequently motivated by the felt need to escape an intolerable situation.

"Police believe their investigation is complete if they obtain something like a confession through the use of torture (*gomon*). It goes without saying that this belief is wrong. I understand the psychology of people who confess to crimes they did not commit after being interrogated through torture. It wears you down when you get told the same thing [by police] again and again and again. In times like that, when you are experiencing physical pain, you think you can escape the situation by saying you did something you did not really do. Isn't this the way humans are?" (*Hakamada's Letters*, 1992, p.57).<sup>13</sup>

## Trial



## Movie set of a police interrogation room in Japan (2014)

In March 2007, a former Japanese judge named Kumamoto Norimichi revealed that Hakamada and his defense lawyers were not the only persons concerned about police interrogation methods. Kumamoto had been the junior member of the three judge panel of the Shizuoka District Court that convicted Hakamada and sentenced him to death in 1968. Almost four decades later he publically disclosed for the first time that he had always believed Hakamada was innocent. Kumamoto was 29 years old when Hakamada's trial started, and he sat on the bench with a chief judge (Ishimi Katsushi) who was 30 years his senior and another judge (Takai Yoshio) who was 10 years his senior and who seemed certain of Hakamada's guilt from the trial's outset (Ogata, 2010, p.106). In 1966, Kumamoto looked like a rising star in Japan's judiciary. He became a judge in 1961 after finishing with the top score on the bar exam-out of more than 10,000 persons who took it in his year. Some of his mentors and colleagues predicted that one day he would become a Justice on Japan's Supreme Court, but Kumamoto quit the judiciary out of disappointment and despair six months after Hakamada was sentenced to death. Kumamoto himself did not oppose capital punishment. In his first five years as a judge he helped sentence five defendants to death (Wallace, 2007)-and afterward visited four of them on death row (Ogata, 2010, p.13). But Kumamoto did have serious concerns about the truthfulness of the confession statements police had produced in Hakamada's case. Here is how he questioned one of the police who testified at Hakamada's trial (quoted in Ogata, 2010, pp.109-111):

Judge: I'd like to ask you about your understanding of the right to

silence. Why are criminal suspects told about their right to remain silent?

Detective: Because it has been decided that they must be told...

Judge: Is the right to silence an obstacle to investigations?

Detective: Yes.

Judge: Have you been doing the same kind of interrogations for almost 20 years?

Detective: Yes.

Judge: Has there been any suspect who did not confess?

Detective: No.

Judge: What do you think about the right to silence?

Detective: If you are asked a question you should speak the truth, and if you are the real offender you should also speak the truth.

Judge: Oh, so you say, "if you are the real offender." You thought Hakamada was the real offender, didn't you?

Detective: Yes.

Judge: Was it good that he confessed?

Detective: Yes.

Judge: But when a human being is forced to sit confined in a closed space, even for one hour-wouldn't you yourself have a hard time [not confessing] if you were put in that

position?

Detective: Yes. But that doesn't change the fact that I should speak the truth.

Kumamoto reports that the trial prosecutor in Hakamada's case (Yoshimura Eizo) objected to these questions. "He claimed that I was prejudiced and that I was asking leading questions to this detective," Kumamoto recalls. "And I told him, 'Yes, I do possess a prejudice: the prejudice that the wrong person should not be punished.' But that just angered him all the more" (quoted in Ogata, 2010, p.111).

The story prosecutors composed through the medium of Hakamada's "confessions" was that he had been having an affair with Mrs. Hashimoto, who asked him to murder her family and burn their house down so that she could build a new home and start a new life.<sup>14</sup> Police and prosecutors composed a total of 45 "confession" statements during their interrogations: 29 before Hakamada was charged with robbery-murder and arson on September 9, 1966, and 16 more in the month that followed (Ogata, 2010, p.69). The Shizuoka District Court rejected 44 of the 45 statements.<sup>15</sup> In its written opinion, the Court found that police had repeatedly violated the principles of "truth discovery" and "due process" through their interrogation methods, and it concluded that police deserved to be "severely criticized" (though they were never punished). It even said, "We hope and expect that this kind of police behavior will never happen again" (Kumamoto, 2009, p.158). But the Shizuoka District Court also ruled that one statement taken by prosecutors after more than 250 hours of interrogation was voluntary, reliable, and admissible as evidence.<sup>16</sup>

A second devastating blow landed in the 17<sup>th</sup> trial session on August 31, 1967, when prosecutors announced that police had just discovered five articles of clothing in a miso

tank at the Kogane factory. It was fourteen months after the crimes had occurred and nine months after Hakamada's trial had started. When this "discovery" was made, Judge Kumamoto believed the trial was going poorly for prosecutors, and some members of the media had been predicting that the case would end in acquittal (Kumamoto, 2009, p.156). In this context, the Court ruled that prosecutors could introduce the clothing as evidence. Their revised indictment claimed that the pajamas were no longer relevant. Instead, at the time of the crimes Hakamada was now said to be wearing the newly found clothes: a white short-sleeve t-shirt, a gray long-sleeve sport shirt, white underwear, white boxer shorts, and a pair of iron blue trousers. Prosecutors argued that Hakamada hid these clothes in the miso tank after fleeing the murder scene. On this theory, a team of 80 police failed to find the clothes for more than 400 days. For the next half-century, Hakamada and his defense lawyers would argue that police had planted the clothes in order to assure a conviction.

The "discovery" of this clothing proved to be a turning point in Hakamada's trial, for it helped push at least one of the two senior judges toward conviction and capital punishment. But to Judge Kumamoto, who as the "assigned judge" (*shunin saibankan*) had been given the task of writing the Court's opinion, the new clothes confirmed the impression of Hakamada's innocence. As Kumamoto later explained,

"For a long time I had been thinking that there was something strange about the evidence prosecutors presented in this case, and then came their claim that at the time of the murders Hakamada was wearing different clothes than those police and prosecutors first claimed he was wearing. Well then, what in the world was I supposed

to make of police testimony up until this time? When the new clothes came along, I told Chief Judge Ishimi that this was very peculiar. Judge Takai, who seemed sure from the start of trial that Hakamada was guilty, may just have thought that here, finally, was decisive evidence that he was the killer. But I thought just the opposite. To me, this was evidence demanding an acquittal. I believed this was evidence police probably planted in order to frame Hakamada" (quoted in Ogata, 2010, p.108).<sup>17</sup>

In Japan, writing a judicial opinion to acquit the defendant in a capital case is extremely demanding because prosecutors will likely appeal the decision and appellate courts will probably give prosecutors what they want (Harada, 2012). After closing arguments concluded in Hakamada's trial, Judge Kumamoto drafted 350 pages of an opinion that was to serve as the starting point for the judges' deliberations. His draft would have acquitted Hakamada, but the three judges' opinions were so split and their arguments so rancorous that the date to announce their decision had to be postponed. Judge Kumamoto believed Hakamada was innocent. Judge Takai believed Hakamada was guilty and deserving of a sentence of death. The swing vote was Chief Judge Ishimi, who ultimately decided to convict and condemn Hakamada, based mainly on the confession.

Article 38 of Japan's Constitution states that

"No person shall be compelled to testify against himself. Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in

evidence. No person shall be convicted or punished in cases where the only proof against him is his own confession."

But Judges Ishimi and Takai believed "people do not confess to things they have not done" (Ogata, 2010, p.112), and they pressured Kumamoto to rewrite his opinion. Kumamoto resisted, and he even made an inquiry to the Supreme Court. When he was told that "win or lose it is standard practice" for the assigned judge to write the opinion, he went along with this judicial custom, though in a final act of protest he refused to affix his name stamp (*hanko*) to the final page of the decision (Kumamoto, 2009, p.158). A clerk of the court did so in his place (Ogata, 2010, p.116).

Two lives changed dramatically after Chief Judge Ishimi read the Shizuoka District Court's opinion on September 11, 1968.<sup>18</sup> Hakamada Iwao was condemned to death and to decades of struggle against this Court's conclusion. At first he was surprised by the verdict and death sentence, for he had remained confident throughout the two years of his trial that the Shizuoka District Court would recognize the truth and acquit him (*Letters from Prison*, 1992, pp.21-40). But his confidence in Japanese criminal justice disappeared in the years following this capital sentence, and by the early 1980s most people who still knew him believed he was insane (Amnesty International, 2009, p.36). When Hakamada emerged from his half-century of confinement in 2014, he announced to reporters that as "god of the universe" he had abolished capital punishment. It was only when the topic turned to boxing that his words elicited something other than uncomfortable silence or bemused chuckles in his listeners (author's interview with Nitta Shosei, Secretary General of the Japan Pro Boxing Association, May 12, 2014).

Judge Kumamoto's life was also transformed. He quit the judiciary six months after

sentencing and went on to live an anguished life-alcoholic, suicidal, intermittently employed as a lawyer and teacher, homeless, divorced by two wives, estranged from both his daughters, and plagued by Parkinson's Disease, cancer, and other health problems (Ogata, 2010, pp.123-139). Kumamoto has repeatedly said that he believes he helped sentence an innocent man to death. He claims that after quitting the judiciary he tried four times to visit Hakamada, but jail officials refused to allow the meetings. He also says he wrote a letter to Hakamada's defense lawyers offering to appear in appellate court as a witness for their client. The letter was never answered (Ogata, 2010, p.124).<sup>19</sup>



**Former Judge Kumamoto Norimichi declaring his belief in Hakamada's innocence in 2007**

## Appeals

Defense lawyers made six main claims on appeal. They argued that: (1) Hakamada's confessions were false; (2) the blood-stained clothes from the miso tank had no connection to their client; (3) a knife attack by one assailant against four people resulting in more than 40 stab wounds would have resulted in



sounds that nearby neighbors would have heard (4) the small knife that prosecutors claimed was the sole murder weapon could not have inflicted so much damage to the victims' bodies; (5) the back door of the Hashimoto residence, through which Hakamada was said to have entered on the night of the crimes, had in fact been locked and impassable; and (6) Hakamada had no motive to commit these murders.

Between the time of Hakamada's death sentence in 1968 and his release from death row in 2014, dozens of prosecutors opposed these defense arguments, and dozens of judges rejected them. Most notably, an appeal to the Tokyo High Court was rejected in 1976, and in 1980 Japan's Supreme Court finalized the sentence of death. In 1981, Hakamada's defense lawyers made their first application for a retrial in Shizuoka District Court. That Court rejected this request in 1994, as did the Tokyo High Court in 2004 and the Supreme Court in 2008.

In April 2008, Hakamada's attorneys filed their second request for a retrial. Six years later, on March 27, 2014, Shizuoka District Court Judge Murayama Hiroaki declared that Hakamada should receive a retrial and, in the interest of justice, be released immediately from the Tokyo Detention Center. After 48 years behind bars—and after telling the people who first reported the news to him to "stop kidding around"—the world's longest serving death row inmate was released. Prosecutors have appealed, but as of this writing in February 2015, 78-year-old Hakamada Iwao remains free, living with his sister Hideko in Hamamatsu, struggling to recover his physical and mental health, and—as a matter of Japanese law—still a convicted killer under sentence of death. Analysts expect the remaining appeals process to last two years or more.

Hakamada's defense attorneys and supporters regard the Shizuoka District Court's decision as

a "de facto acquittal" that will be "impossible" to overturn on appeal, and three Japanese journalists told me they believe Hakamada will win the legal battle if Father Time does not kill him first (author's interviews, May 2014). For the police, prosecutors, and judges who perpetrated and perpetuated this injustice, the most welcome outcome might be the death of Hakamada before he is officially exonerated.

DNA was decisive in winning Hakamada's freedom. DNA tests have been used by police and prosecutors to obtain convictions in countless cases since the late 1980s, but in Japan they have seldom been used to exonerate the wrongfully convicted.<sup>20</sup> The Shizuoka District Court's retrial and release decision of March 2014 focused on the five articles of clothing that the Supreme Court had declared the "most important evidence" when it finalized Hakamada's sentence of death in 1980. DNA tests on those clothes were performed by experts for both the prosecution and the defense, and the Shizuoka District Court found the latter more reliable. The defense tests showed that the blood on the garments came from neither Hakamada nor the murder victims. This satisfied the legal requirement that "new evidence" be submitted before a retrial can occur, and it strongly suggested that the clothes were planted by police. To the Court, the DNA test results constituted "clear evidence that the defendant should be acquitted."<sup>21</sup> As for Hakamada's confession, the Court concluded that "its evidentiary value is weak" and "absolutely not enough to convict the defendant."



**Hakamada Iwao trying on the pants police "discovered" in the miso tank (1976)**

The Shizuoka District Court saved its strongest language for the end of its opinion, where it explained why Hakamada should not only be retried but also released from death row

immediately. Japan had four death penalty retrials in the 1980s, all of which ended in acquittal (Foote, 1992). In all four cases the convicts remained on death row until the retrial had ended in acquittal (Foote, 1993). Hakamada's release from death row was a striking break from this precedent. As the Court explained,

"In addition to approving a retrial for the defendant, it is natural to suspend the execution of his death sentence. Moreover, based on this court's discretion, we conclude that it is also appropriate to suspend the execution of the defendant's confinement. This defendant has been convicted and incarcerated for an extremely long period of time under the threat of capital punishment based on important evidence that may well have been planted by the investigating authorities. At present, when the high probability of the defendant's innocence has been made clear, detaining him any longer would violate justice to an intolerable extent" (Shizuoka District Court, 2014, pp.66-67).

### Life on Death Row

Hakamada was 78 years old when he was released from death row in March 2014—diabetic, deluded about his identity, and dimly aware of his own legal situation. He was sentenced to death in the same year that Martin Luther King Jr. and Robert F. Kennedy were assassinated. What will this Japanese Rip Van Winkle do after decades of confinement in a cell measuring eight square meters?

Hakamada spent the first three months of his freedom receiving treatment in hospitals in Tokyo and Shizuoka. Then he started living

with his sister Hideko. In July 2014 the media reported that he spent most of his time "wandering silently back and forth on the hallway that connects the bedroom and tatami room" of her home (Cho, 2014; see also [the Australian Broadcasting Corporation's video](#)). Pacing apparently dominates his daily routine, from the time he rises at 5:00 AM until the time he goes to bed at 8:00 PM. Hideko has given the press access to her home because she wants people to know "what happens to a human being when he is imprisoned for 48 years" and to "see [him] as he is." She believes his condition is showing some signs of improvement, but she also says "I'm still unable to feel happy that he's come back" (quoted in Cho, 2014).

Hakamada spent 17,388 days behind bars, but the pains of his punishment involved more than its duration. For Hakamada as for the 130 other inmates on death row in Japan at the time of his release, life waiting for death was solitary, monotonous, and scary. Before the men and women on death row are physically killed by hanging (a method Japan has not changed since 1873), they are socially extinguished through the state's severe restrictions on meetings and correspondence. Condemned persons are not permitted to communicate with each other, and outside contact with them is all but impossible unless the person who wants to meet is a defense lawyer or close relative. When meetings are permitted, strict limitations are placed on the frequency, duration, and content of contact. The state's stated reason for this policy is to promote "stable feelings" (*shinjo no ante*) in the inmates so as to help them prepare for death, but one function of killing socially before killing physically is the facilitation of smooth executions in which detached and demoralized inmates do not resist. In these circumstances, many inmates on death row in Japan become mentally ill—as did Hakamada (Amnesty International, 2009).<sup>22</sup>

Death row inmates in Japan are not notified of the date or time of execution until an hour or so before it occurs. This policy has been likened to a "surprise attack" (*damashi-uchi*). Most inmates live for years not knowing if the present day will be their last (Johnson, 2006, p.254). In Hakamada's case, from the time the Supreme Court finalized his death sentence in November 1980 until his release from death row in March 2014, there were more than 8000 days on which he may have woken up wondering if this would be the day he is executed (hangings in Japan are carried out in the morning and only on weekdays). Menda Sakae, who was exonerated and released from death row in 1983 after 34 years of incarceration, has described the effects of this notification policy:

"Between 8:00 and 8:30 in the morning was the most critical time, because that was generally when prisoners were notified of their execution... You began to feel the most terrible anxiety, because you don't know if they [the guards] are going to stop in front of your cell. It is impossible to express how awful a feeling this was. I would have shivers down my spine. It was absolutely unbearable" (quoted in French, 2002).<sup>23</sup>

Death row is difficult even for the guilty, but to be innocent and incarcerated in these conditions surely makes the suffering more severe. Hakamada seemed to go through several stages during his 48 years of confinement (*Letters from Prison*, 1992). For the first several years he appeared strong and confident. In a letter sent to his mother in 1967 he wrote, "Of course I don't have any connection to this case. Mom, please be confident and come visit me here in jail with your head held high" (p.23). Later that year he wrote, "I am innocent, and now I am calmly

waiting for my trial to conclude. I am in a warm room and I do not have any complaints" (p.26). A little later in the same year he said, "I believe the court will understand that I am innocent. There is no way I will lose this fight" (p.29). And near the end of 1967 he even predicted that "My experience in this detention facility will be a plus for my future life" (p.32).

After Hakamada was sentenced to death on September 11, 1968, he wrote a brief note to his mother in simple kanji and katakana: "Mom, please don't worry about me, and get well soon." Thereafter, his letters expressed more frustration and anger, feelings which intensified over the years until he started showing signs of seriously disturbed thinking and behavior a few months after the Supreme Court confirmed his death sentence in 1980 (Amnesty International, 2009, p.37). Here is a sampling from his *Letters from Prison*, which were edited by members of his support groups and published in 1992:

"The police are framing me by trying to connect my stuff to this case. To my knowledge, the ridiculous nonsense of their investigation is unprecedented in history" (1970, p.55).

"As I feel fear spreading across my body like a black wave, I have fallen into a condition of despair, with a feeling of rage that wants to curse everything about this transitory world" (1974, p.59).

"The ugliness in my heart must not be ignored, even if only a little of it can be seen from the outside" (1981, p.77).

"Oh God, what a difficult thing it is to live. Will my life be nothing but suffering until the very end? I don't know how many more years this

awfulness of authority will continue. There is no sin in me. Lord God, please help me..." (1982, p.98).

Hakamada's last published letter was written in 1989. It was a message to Rubin "Hurricane" Carter, the professional boxer who was convicted of a triple murder in New Jersey in 1966 (the same year of Hakamada's arrest) and incarcerated for 20 years before being released in 1985 when a federal judge ruled that his prosecution had been "predicated upon an appeal to racism rather than reason, and concealment rather than disclosure" (quoted in Hirsch, 2000). Here, in part, is what Hakamada wrote to Hurricane, 25 years before his own release:

"Hey, Mr. Carter! Isn't it great that you have been cleared? Congratulations! I bet you didn't forget your intense passion for boxing during your long term of imprisonment! You and I both have maintained a similar passion for boxing, and there is no doubt that your fighting spirit was the splendid driving force that proved your innocence. I, too, will receive power from the circle of people who are committed to justice, and believing in the love and decisive judgment of the Japanese people (who are not inferior to the American people), I will try my hardest to continue after you. From the bottom of my heart I humbly request that hereafter, through the good will that comes from me being in circumstances much like your own, you will support our struggle here in Japan to prove my innocence..." (p.175).



Hakamada continued to write letters until August 1991. According to his sister Hideko, most of the ones written after his death sentence became finalized in 1980 made little sense (Amnesty International, 2009, p.37).<sup>24</sup> The trajectory of Hakamada's mental illness is impossible to describe because corrections officials did not allow him to be psychologically examined until 2007-about 25 years after symptoms first appeared. According to Hideko and his defense lawyers, sometime in the early 1980s he started to lose touch with reality, and in the decades that followed his delusions became increasingly severe. Hakamada often told visitors that someone was conducting electricity through his cell and poisoning his food. Around 1990, he started refusing to meet Hideko, telling prison officials "I do not have an older sister." When Setagaya Ward Mayor and anti-death penalty activist Hosaka Nobuto visited death row in 2003, Hakamada told him, "I am the omnipotent god," and he announced that he had taken over the Tokyo Detention Center and abolished capital punishment (quoted in *Asahi Shimbun*, 2014). When some of Hakamada's relatives died in the mid-2000s, raising legal questions about inheritance, his lawyers submitted an application to the Tokyo Family Court asking that Hideko be named his legal guardian. This resulted in outside examinations that found he was suffering from mental illness. Several experts have said the main illness is "institutional psychosis" (*kokin shojo*) caused by the length and conditions of his confinement, but corrections officials claimed he was showing signs of senile dementia, perhaps exacerbated by the blows he experienced as a boxer.

On March 27, 2014, when Hideko went to the Tokyo Detention Center to relay the news about his retrial and release, her brother said "Stop kidding around. The Hakamada case is over. Go home because this is none of your business" (*Asahi Shimbun*, 2014). But eventually he was persuaded to leave, and when he shuffled out the front exit of the jail where he had lived for

most of the past five decades, a crowd of cameramen was there to record the moment of his liberation. Eight weeks later, on May 19, Hakamada was escorted into the ring at the Korakuen Hall Boxing Stadium in Tokyo, where he received an honorary championship belt from supporters in the Japan Pro Boxing Association. One hundred or so members of the media were present on this occasion, and at the press conference which followed the ceremony in the ring, Hakamada rambled incoherently, with little regard for who held the microphone. I could not understand everything he said, but I did hear him say on several occasions that he is "god" and "the dictator of the universe." When one of his former boxing trainers took the microphone to express admiration for his protégé's perseverance, Hakamada told him to "sit down and shut up" because "these people are here to see me." After about fifteen minutes of awkward interaction, a boxing official interrupted Hakamada to say that the subject of this press conference was too tired to continue, and Hakamada was escorted out of the room and, eventually, back to the hospital in Tokyo where he was staying. Hideko looked on with what might have been a smile of embarrassment on her face, and the rest of the people sitting at the front table continued to answer questions from the media after the innocent man disappeared.



**Hakamada Iwao and his sister Hideko leaving the Tokyo Detention Center on**

March 27, 2014

## Causes of Hakamada's Conviction

The wrongful conviction and condemnation of Hakamada Iwao has six main causes. First, Hakamada falsely confessed to crimes he did not commit. His admissions of guilt were not spontaneous or voluntary, as some false confessions are. They were coerced by the police through interrogation practices that broke his will to resist. (Research shows that more than two-thirds of college students can be manipulated into making a false confession; see Siegel, 2015). Moreover, Hakamada's false confessions were composed by police in language that failed to capture his resistance, reluctance, and resignation. Those police essays then formed the basis for the confession composed by prosecutors that the Shizuoka District Court admitted as evidence in his trial. According to Kumamoto, the decision to admit this one statement as evidence was motivated by his judicial colleagues' recognition that the physical evidence against the defendant was too weak to convict or to impose a sentence of death (*Mainichi Shimbun*, 2014a). Once this fateful decision was made, the psychological phenomena of "tunnel vision" and "confirmation bias" caused other prosecutors and judges who reviewed Hakamada's case to focus on evidence that supported the conviction and to disregard evidence that indicated innocence (Leo, 2008, p.263).

Second, police apparently planted evidence - the clothes in the miso tank - in order to frame Hakamada. Some analysts believe police probably did this out of a sincere belief in Hakamada's guilt (author's interview with reporters for the *Shizuoka Shimbun*, May 10, 2014). If this was indeed the perception of some police, then they aimed to frame a "guilty" man.<sup>25</sup> But of course, planting evidence - even against the guilty - is both illegal and egregious, as was recognized by the Shizuoka

District Court that rebuked police and ordered Hakamada's release in 2014.

Third, prosecutors withheld from the defense almost 600 pieces of evidence, some of which pointed to Hakamada's innocence and much of which raised reasonable doubt about his guilt. As summarized by one of Hakamada's defense lawyers, there were four main kinds of concealed evidence (Nishijima, 2014, p.82).

(a) Prosecutors possessed color photographs of the clothes from the Kogane miso tank that were taken soon after the clothes had been "discovered" in August 1967. The photos show that the colors of the t-shirt and boxer shorts were too light and the blood stains too dark to be consistent with police and prosecutor claims that they had been submerged in miso for more than 14 months.

(b) Prosecutors possessed a written statement taken from an employee of the company that manufactured the pants "found" in the miso tank. On the back of the pants was a "B" tag which police and prosecutors claimed indicated their size - a size which would have fit Hakamada. But in this undisclosed document the employee had stated that the tag reflects the *color* of the pants (iron blue), not their size.

(c) Prosecutors possessed several written statements taken from the victims' neighbors and from Kogane employees describing what they had seen and heard before, during, and after the time of the crimes. Some of these statements cast doubt on the prosecution's claims about what transpired on

June 29-30, 1966.

(d) Prosecutors possessed evidence showing that the miso tank where the clothes were "found" had contained a combination of miso left over from past batches and miso that had been added after the crimes occurred. According to defense lawyers, prosecutors must therefore have known that it would have been impossible for the clothes to remain hidden during the miso mixing process.

In total, prosecutors concealed from the defense more than 100 photographs and statements which could have cleared Hakamada decades before they finally acknowledged the existence of this critical evidence in August 2014 (Nishijima, 2014; *Japan Times*, 2014b). Of course, at the time of Hakamada's first trial and in subsequent appeals, prosecutors had few obligations to disclose this kind of evidence to the defense. By law, they were required to disclose only evidence in their possession that would be used at trial. This rule is premised on the principle that prosecutors will try to reveal *the truth* at trial, no matter what it might mean for the case outcome. In Hakamada's case as in other miscarriages of justice in Japan, prosecutors' persistent refusal to disclose potentially exonerating evidence belies their claim that their main aims are to "clarify the truth" and "do justice" (Johnson, 1972; Foote, 1992 and 1993; Johnson, 2002, p.272; Ibusuki et al, 2012; Ibusuki, 2014).

Fourth, media coverage of the Hashimotos' murders put pressure on police and prosecutors to solve the case and on courts to produce a conviction. Media coverage of this case also reflected and reinforced the "tunnel vision" and "confirmation bias" that afflicted police and prosecutors. Weeks before Hakamada was arrested, newspaper articles

based on anonymous police sources implicated him as the killer ("Employee 'H' Surfaces"). During the 23 days of his interrogation, reporters routinely printed what police told them-including their confidence that their one and only suspect would confess because he was the real killer. After Hakamada confessed, the media displayed remarkable naivete about the harsh reality of these interrogations ("Hakamada Succumbs to Scientific Investigation"). During Hakamada's trial, the media saw signs of his guilt in innocent gestures ("Inappropriate Smiling"). On September 13, 1968, two days after Hakamada was convicted and sentenced to death, *Asahi Shimbun* published a profile of Morita Seiji, one of the lead detectives in this case. Morita stressed that throughout his interrogations of Hakamada (which lasted 264 hours and involved frequent yelling, hitting, kicking, and sleep deprivation), he had maintained "respect" for Hakamada's "point of view" (*tachiba*) and "humanity" (*ningensei*). All in all, media coverage of this case reads more like public relations for the police than like an independent effort to find and report the most relevant facts (Ogata, 2010, p.67). Former Judge Kumamoto has said that the main causes of this miscarriage of justice were Hakamada's false confession and public opinion that was severely distorted by biased reporting in the media. Kumamoto also believes the difference of opinion between him and his two senior judges can be partially attributed to the fact that he was transferred to the Shizuoka District Court after Hakamada's trial had already started, leaving him less affected by pretrial publicity (Ogata, 2010, p.113).

Fifth, Hakamada's trial failed to ascertain the accuracy of the evidence produced by police and prosecutors-and Hakamada's own defense lawyers contributed to this failure. In criminal trials in Japan and elsewhere, the adjudicative process provides a number of mechanisms that are supposed to safeguard the accuracy of verdicts (Simon, 2012, p.180). These

safeguards include the presumption of innocence, a high burden of proof for prosecutors, vigorous cross-examination by defense lawyers, and assurances that the adjudicators will be impartial and objective. All of these safeguards failed in Hakamada's trial. His coerced confession pushed the presumption of two of his three judges toward guilt. Prosecutors were supposed to prove the defendant's guilt "beyond a reasonable doubt," yet the Shizuoka District Court convicted despite an abundance of doubt about the voluntariness and reliability of Hakamada's confession, the province of the clothes "found" in the miso tank, the capacity of a small fruit knife to cause dozens of deep cuts without causing significant damage to the blade, and the ability of an adult man to enter the victims' residence through a locked gate.

Hakamada's defense lawyers were also ineffective—partly for reasons beyond their control (author's interview of Yamasaki Toshiki, director general of Hakamada's support group in Shizuoka, May 10, 2014). Defense lawyers lacked access to their client during the all-important pre-indictment stage, and they lacked access to evidence in prosecutors' possession which would have helped them test the state's claims through cross-examination, a mechanism which has been called the "greatest legal engine ever invented for the discovery of the truth."<sup>26</sup> This engine was seldom started in Hakamada's trial (Yamamoto, 2004, pp.363-389).

But defense lawyers also bear some responsibility for the wrongful conviction of the man they represented. Most notably, their inexperience in criminal trials and the norms about criminal defense in Japanese legal culture (Johnson, 2011) led them to conclude that they should not directly challenge certain aspects of the state's case. In particular, by refusing to challenge the honesty and propriety of police and prosecutors, they failed to recognize that, at least in this case, the best

defense might have been a good offense. As one of the lead attorneys on Hakamada's appellate defense team has acknowledged, it took decades for other defense lawyers to arrive at this recognition (Ogawa, 2009, p.75).<sup>27</sup>

Sixth and finally, Japan's appellate courts failed to acknowledge problems in Hakamada's case for more than forty years. It took the Tokyo High Court and the Supreme Court twelve years to reject Hakamada's original appeals and finalize his sentence of death. Then, after Hakamada's defense lawyers filed their first request for a retrial in 1981, it took the three levels of Japan's judiciary 27 years to reject it. The Hakamada team's attempt to get a retrial began to make meaningful progress only after a second request was made (in 2008). This effort eventually succeeded, but not before more than twenty judges had ratified the Shizuoka District Court's original mistake (Yamamoto, 2004, p.552). Hakamada's case started to receive significantly more public attention in 2007, after former judge Kumamoto proclaimed that he had always believed Hakamada was innocent. This pronouncement not only attracted much media attention; it stimulated "save Hakamada" movements in Amnesty International, Japan's Pro Boxing Association, and a "Federation" composed of 57 members of Japan's Parliament. This social movement gained additional strength in 2010, when director Takahashi Banmei released "BOX," a two-hour film documenting and dramatizing this miscarriage of justice and the anguish Kumamoto felt before and after his participation in the case.<sup>28</sup>

Studies suggest that in some contexts and cases, politics and public opinion influence judicial decision-making in Japan (Upham, 2005). It is hard to state how these forces worked after Hakamada's second request for a retrial, but two influences do seem significant. Murayama Hiroaki, the chief judge who led the panel of three judges in the Shizuoka District Court that made the retrial and release



decision in March 2014, is widely regarded as a capable and accomplished judge. He would not have been assigned to Shizuoka if Hakamada's case were not on the docket, and the General Secretariat of Japan's Supreme Court would not have transferred him there if it did not regard him as a reliable executor of judicial policy. In addition, politics and public opinion drove the movement for "justice system reform" (*shiho kaikaku*) in Japan that resulted in the advent of a new "lay judge trial system" (*saibanin saiban seido*) that started in 2009 (Shinomiya, 2013). This trial system is not directly connected to Hakamada's case, for lay judges do not work on appellate courts. But indirectly, it did stimulate many criminal justice reforms, including significantly expanded obligations for prosecutors to disclose evidence to the defense (*shoko kaiji*). In Hakamada's case, Judge Murayama persuaded prosecutors to disclose previously undisclosed evidence to the defense—evidence which greatly assisted defense arguments that Hakamada is innocent (Nishijima, 2014). And Judge Murayama's decision to pressure and cajole prosecutors arose from his perception that the new norms of discovery in Japanese criminal justice, though not legally binding with respect to a retrial petition, should be applied in Hakamada's case too (*Mainichi Shimbun*, 2014b).

### Causes of Hakamada's Release

Hakamada will be 80 years old in 2016. If he does not die before his retrial, he will almost certainly be acquitted when three judges of the Shizuoka District reconsider the state's case against him. Retrials in Japan seldom end in acquittal, and the 2014 decision to grant Hakamada a retrial leaves little doubt about his innocence. If he is acquitted, he will likely receive from the Japanese state 12,500 yen (\$125) for each day he was incarcerated (Sasakura, 2012). In Hakamada's case, this would sum to a total of about \$2,200,000, more than triple the amount received by Govinda

Mainali, who received \$680,000 for the 15 years he was wrongfully incarcerated for the murder of an employee of Tokyo Electric Company before being acquitted at a retrial in Tokyo in 2012 (Ishida, 2013).<sup>29</sup>

Although Hakamada has not been officially exonerated (legally he remains sentenced to death), it is worth considering what caused the dramatic change of judicial opinion in his case. The most important proximate cause of this reverse course is the evidence that prosecutors finally disclosed to the defense after more than 40 years of stonewalling. That evidence led to new DNA tests, the results of which undermined the state's claims about the meaning of the bloody clothes pulled out of the miso tank by raising disturbing questions about who had put them there.

But larger forces also shaped the judicial process in this case. The lay judge reform of 2009 (and the politics which preceded it) changed many norms in Japanese criminal justice and thereby enabled Judge Murayama to pressure prosecutors into disclosing evidence that had long been concealed. Public opinion about Hakamada's case also became more intense after former Judge Kumamoto revealed the nature of his own participation in it. Perhaps most importantly, the heroic efforts of people working on Hakamada's case kept hope alive—and kept him alive—during five decades of struggle. Through it all, Hakamada's strongest ally was his sister Hideko, who wrote to him often and visited him monthly (at her own expense), even during the long years when he refused to meet with her. Hideko participated in hundreds of meetings, marches, and rallies all over Japan, some focused on her brother's case and others on the criminal justice problems this case illustrates. In addition, Hakamada now has a large and able team of defense lawyers, led by Nishijima Katsuhiko and Ogawa Hideyo.<sup>30</sup> If they had been his original trial attorneys, the outcome might have been different. Finally, Hakamada has been

aided by several "support groups" (*shienkai* and *kyuenkai*) which have provided practical assistance to him and his family.<sup>31</sup> The unglamorous but essential work performed by the volunteers in these groups ranges from organizing meetings and arranging media coverage to editing publications and providing emotional, logistical, and financial support (Steinhoff, 2014). Most importantly, they kept the memories of this man and his miscarriage of justice alive through the sheer force of their determination and perseverance.

Although the foregoing causes help explain the turn toward acquittal in Hakamada's case, they are not comprehensive. As in most wrongful convictions that end in exoneration, *luck* also played a prominent role in this case (Nishijima, 2012, p.156).<sup>32</sup> From 1966 to 2014, Hakamada Iwao was surely one of unluckiest persons in Japan, but he might also be called "lucky" in some respects. He was lucky to have a sister who made huge sacrifices for him. He was lucky to be judged by a man like Kumamoto, who had the courage to break with custom and law by (belatedly) going public. He was lucky to have experiences as a professional boxer that attracted public interest to his case. He was lucky *not* to have his execution authorized by any of the sixty or so Ministers of Justice who served in that office after his death sentence was finalized in 1980. More than 100 inmates were hanged while Hakamada was on death row, and some of them had credible claims of innocence (Aoki, 2009, pp.173-204). And he was "lucky" to have lived so long under such difficult conditions of confinement.



**Hakamada Iwao pacing in his sister's house in 2014**

## Lessons

Wrongful convictions are an "abomination of justice," especially when they involve intentional misconduct (Forst, 2013, p.36). Hakamada's defense lawyers and many other analysts believe Shizuoka police planted evidence in order to frame him for crimes he did not commit (*Mainichi Shimbun*, 2014b). In 2014, the Shizuoka District Court was sufficiently persuaded of this probability to order his release from death row before he was acquitted. This unprecedented action reflected that Court's serious concern about official abuses of power and about Hakamada's own welfare (Shizuoka District Court, 2014).

The criminal process is only as good as the evidence on which it feeds. In Japan as in the United States, police and prosecutors produce most of the evidence (Miyazawa, 1992), and their investigations are "the single most important determinant of evidence accuracy" (Simon, 2012, p.17). The first lesson from Hakamada's case is that police and prosecutors should not coerce confessions or fabricate evidence.<sup>33</sup> Although this proposition is elementary, it needs to be stressed because Japanese police and prosecutors have coerced confessions in other cases (Foote, 1991; Miyazawa, 1992; Hamada, 1992; Johnson, 2002; Tomita, 2014), and because they also have fabricated evidence (Otsubo, 2011) and been directed to do so by their superiors (*Asahi Shimbun*, 2011a), as explained by former prosecutor Ichikawa Hiroshi in the Australian Broadcasting Corporation video that appears in this issue of *Asia-Pacific Journal* (<http://japanfocus.org/site/view/4262>). Of course, merely imploring police and prosecutors to "be good" will have few positive effects. When these officials believe it is in their interest to cut corners and break rules, they sometimes do so, usually with impunity. To improve on their performance and reduce the risk of wrongful conviction, their behavior must be made more accountable. Two structural reforms are critical.

First, interrogations by police and prosecutors should be video recorded in all cases and in their entirety (Suo, 2014). The interrogation room is the most closed, secretive, and important space in Japanese criminal justice, and it is also where most miscarriages of justice germinate. The start of Japan's lay judge system in 2009 stimulated some recording, but much more can and should be done to make interrogations more transparent and interrogators more accountable (*Yomiuri Shimbun*, 2014). In 2013, police interrogators recorded the entire interrogation in only 29 out of 3315 cases that went to a lay judge trial (0.87 percent). Moreover, lay judge trials

comprise only about three percent of all criminal trials in Japan; the other 97 percent are tried before a single professional judge or a panel of three professional judges. In 2013, police recorded the entire interrogation in only 4 of these non-lay judge cases. By contrast, Japanese prosecutors recorded the entire interrogation process in 75 percent of the lay judge cases they handled that year (*Japan Times*, 2014a). Police interrogations are far more common, intensive, and fundamental in Japanese criminal justice than are interrogations by prosecutors. It is therefore no surprise that the strongest resistance to recording reforms comes from the police. More than 90 percent of individual police officers in Japan believe recording interrogations is either "greatly effective or effective to some extent" (*Japan Times*, 2014a), but leaders of the police institution want to maintain their discretion to turn off recording machines when it suits their purposes, as when they deem recording likely to inhibit candor from a suspect or witness. In this sense, Japan's penchant for "bureaucratic informalism" in legal reform remains alive and dysfunctional in its criminal justice system (Upham, 1987, p.27).<sup>34</sup>

The second vital reform is the creation of an obligation for prosecutors to disclose to the defense *all* of the evidence in their possession (Ito, 2012). Hakamada was convicted partly because prosecutors hid much important evidence, and he remained incarcerated for almost half a century because his defense lawyers and the trial and appellate judges who heard his case did not have access to many critical facts. Prosecutors in Japan claim that their cardinal objective is "discovering the truth" about criminal cases (Johnson, 2002, p.98). Too often, though, their version of "the truth" fails to reflect key facts (Ezoe, 2010). The lay judge reform of 2009 stimulated some expansion in prosecutors' duty to disclose evidence to the defense (Itoh, 2012), but more must be done to make "discovering the truth" more than a mere slogan (Ishida, 2014).

Evidence in criminal cases is not owned by prosecutors; it is "public property" which has the potential to reveal enough truth so that prosecutors, judges, and lay judges can make sound decisions about guilt, innocence, and punishment (Ibusuki, 2010). Japanese criminal justice needs to respect this basic principle.

There are other reforms which would improve the quality of Japanese criminal justice (Ibusuki et al, 2014), from the creation of forensic labs that are independent of the police to the provision of better defense lawyering for indigent suspects. In these respects, Japan lags behind the widely recognized "best practices" of criminal justice systems in other developed democracies (see Simon, 2012).

There is also the question of capital punishment. To reduce the risk of wrongful death by execution, Japan should reform its death penalty system. Error is inevitable in all death penalty systems (Death Penalty Project, 2014), but Japan's takes strikingly few institutional and procedural safeguards to prevent mistakes (Johnson, 2013). In 1968, Hakamada was sentenced to death by a two-to-one vote of judges in Shizuoka District Court. Under Japan's current lay judge system, murder defendants can be convicted and condemned to death by a vote of five-to-four (provided at least one of the five votes comes from a professional judge). Despite official claims to the contrary, this voting rule does not reflect a "cautious" (*shincho*) approach to capital punishment, nor does it reflect the lessons that former Judge Kumamoto learned from his own encounters with Japan's death penalty (Ogata, 2010).

More generally, death in Japan is not deemed a "different" (*tokubetsu*) form of punishment requiring special procedures and protections for capital defendants. In a capital case in 1948, Japan's Supreme Court did state that "a single life weighs more than the entire earth," but two-thirds of a century later prosecutors

are still not required to tell the defense before trial whether they will seek a sentence of death (they are permitted to make their sentencing request on the penultimate day of trial). This practice hampers the efforts of defense attorneys and bar associations to prepare effective counterarguments if a capital sentence is sought. Prosecutors in Japan are also allowed to appeal acquittals and non-capital sentences if the court of first instance does not give them what they want. These deficiencies in Japan's death penalty system reflect both an insensitivity to the possibility of error and a failure of political will (Johnson, 2013, p.182).

The foregoing reforms would reduce the risk of wrongful conviction, but the most important lessons from Hakamada's case concern cultural assumptions that are relevant in many areas of Japanese society, from medicine to nuclear energy to criminal justice.<sup>35</sup> As explained in an accompanying article in this issue of *Asia-Pacific Journal* (Johnson, 2015), three principles seem primary (Schulz, 2010, pp.299-307). First, in order to eradicate error one must assume it is inevitable. At present, too many criminal justice officials in Japan assume that wrongful convictions are a thing of the past. Second, successful strategies for preventing error rely on principles of openness and transparency to identify mistakes. Recording all interrogations and disclosing more evidence to the defense would move Japan considerably closer to realizing this imperative. Third, Japanese criminal justice must rely more on verifiable data so that decisions can be made based on facts rather than on opinions, assumptions, and the prerogatives of power.<sup>36</sup> Empirical criminology in Japan is less developed than its counterparts in the United States and England, and Japanese criminal justice professionals remain relatively uninformed about how "law in action" is patterned. There are many reasons for this, including different sensibilities about what it means to do "social science" in Japan (Barshay, 2007), but in my view the key cause



of this deficit is the resistance of Japanese criminal justice officials to being studied in a serious way. Most notably, while police are the most important actors in Japanese criminal justice because they are the main producers of evidence (Miyazawa, 1992), hardly anyone studies them in a serious way. As one Japanese reporter observed:

"If a prominent sociologist from the West...came here to research the Japanese police, that scholar undoubtedly would conclude that this country is 'a strange land.' First he would run into the police wall of secrecy, and he would be unable to investigate actual police practices and conditions. Next he would be informed that there is no investigative reporting about the police by newspaper or other mainstream journalists, and that there are very few free-lance journalists who follow police issues. Then he would learn that in Japanese colleges and universities there are no courses about the police (as there are in the West) and no scholars who seriously study them. In the end, our friend the sociologist would discover that citizens and taxpayers (who have entrusted their safety to the police) have an extremely weak consciousness to try to check the police. Such a scholar, I think, would be seized by this question: Is Japan really a democratic country?" (Kobayashi, 1998, p.vi).

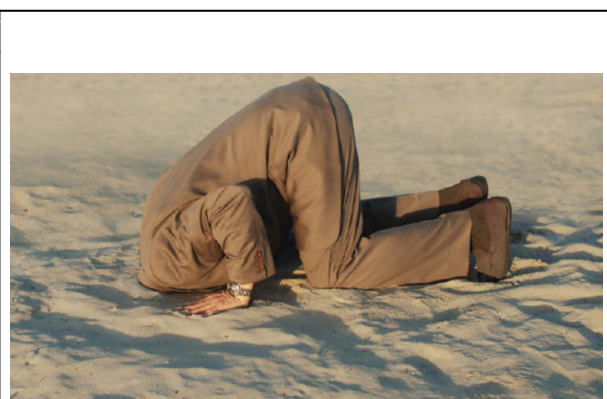
Seventeen years after this passage was published, Japan remains a "strange land" with respect to police research. Ironically, much of the best research about Japanese policing is based on field work that was finished decades ago-and much of that was done by foreigners

(Bayley, 1976; Ames, 1981). Police studies in Japan today may even be behind where it was twenty or thirty years ago (but see Croydon, forthcoming for one recent and welcome contribution).

In the United States, the problem of wrongful convictions has attracted an "explosion of attention" in the past three decades (Radelet, 2013, p.xv), and the discovery of innocence has been the most important cause of sharp declines in death sentences, executions, and public support for capital punishment (Baumgartner, De Boef, and Boydstun, 2008). In Japan, by contrast, there has been relatively little research and debate about the frequency, causes, and consequences of wrongful convictions, and it seems no coincidence that Japan is one of the few countries in the world where capital punishment has accelerated in recent years (Johnson and Zimring, 2009). The case of Hakamada Iwao and other revelations of wrongful conviction in Japan are tragic in their own right but they also raise troubling questions about other problems in Japan's criminal justice system. If Japan convicts people who are actually innocent, how much faith should be placed in the proposition that prison sentences are proportional to harm and culpability or that police stops have a solid legal foundation? How often are Japanese police and prosecutors overzealous, and how often are defense lawyers incompetent, unprepared, or handicapped by the law and economics of doing criminal defense in a system that tilts strongly toward state interests? And if Hakamada Iwao, Ishikawa Kazuo, Sugaya Toshikazu, Sugiyama Takao, Sakurai Shoji, and Govinda Mainali (among other victims) can be wrongfully convicted in murder cases that receive major media attention, how frequently does Japanese criminal justice fail when the stakes are lower and the criminal process is largely hidden from public view?

So far, Japanese researchers, journalists, and

legal professionals are merely scratching the surface of these critical questions. Wrongful convictions are hardly a thing of the past in Japanese law and society, in part because unfair criminal trials and procedures have not had the "educative effect" that Chalmers Johnson (1972) predicted when he finished his case study of the "Conspiracy at Matsukawa" more than forty years ago. For the problem of wrongful convictions to persist in the decades to come, all Japan needs to do is continue denying this reality.



**Japanese prosecutor explaining why his office appealed the decision to grant Hakamada a retrial**

This is part two of a three part series curated and written by David T. Johnson on The Death Penalty and Wrongful Convictions in Japan.

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## Notes

<sup>1</sup> Some analysts suggest a different ratio. Benjamin Franklin put the proper proportion at 100 to 1, while rabbi-scholar Maimonides put it at 1000 to 1. In contrast, Jeremy Bentham stated that "we must be on guard against those sentimental exaggerations which tend to give crime impunity, under the pretext of insuring the safety of innocence." On this view, too much concern about condemning the innocent could lead to the pernicious principle that "nobody ought to be punished, lest an innocent man be punished" (quoted in Volokh, 1997). Research suggests that "the public prefers lower standards of proof in situations where more serious offenses have been committed, and higher standards of proof where the crime committed is less serious" (de Keijser, de Lange, and van Wilsem, 2014, p.45). And in some contexts, the public seems to care more about failures to convict than about the costs of false conviction.

<sup>2</sup> Many studies have been done about wrongful convictions in the United States, England, and some countries of Europe (Huff and Killias, 2008 and 2013), but little research has been published in English about wrongful convictions in Asia. The Asian studies include Jiang, 2013 (on wrongful convictions and death penalty reform in The People's Republic of China), and Chen and Chua, 2010 (on the risk factors for wrongful conviction in Singapore). Accounts of wrongful conviction cases in Asia include Sherrer, 2011 (on the posthumous acquittal of Chiang Kuo-ching, who was executed in Taiwan in 1997), Hankyoreh, 2007

(on eight persons in South Korea who were exonerated 32 years after they were executed for treason in 1975), and Sherrer, 2013 (on Nguyen Tan Chan, who was convicted and sentenced to death in Vietnam in 2004 and exonerated in 2013). Two websites provide useful information about wrongful convictions in Asia: [The Wrongful Convictions Blog](#) (edited by Mark Godsey of the Center for the Global Study of Wrongful Conviction at the University of Cincinnati); and [Justice Denied](#) (published by Hans Sherrer), which lists 77 other web sites related to wrongful convictions. In Japan, Michael H. Fox maintains the Japan Innocence and [Death Penalty Information Center](#).

<sup>3</sup> The Japanese language for miscarriages of justice is rich, and there is significant semantic overlap between various terms. *Enzai* is typically translated as "wrongful conviction" or "miscarriage of justice." *Mujitsu no hito* refers to a person who is "actually innocent" while *mujitsu no tsumi* refers to a "factually baseless criminal charge." *Nureginu* means a "false charge or accusation." *Detchiageru* means to "make up, frame up, or invent." *Netsuzo* means to "invent, fabricate, forge, or frame." And *gohan* means a "misjudgment, mistrial, or miscarriage of justice" (Nishijima, 2012, p.155). Some analysts have criticized the concept of "miscarriage of justice" as a "misnomer" which fails to recognize that police care more about "efficiency, obedience, and order" than justice (Dubber, 2009, p.281), and which fails to "exhaust the universe of injustices" (Ewick, 2009, p.304), but these critiques seem misplaced. The scope of the meaning of "miscarriage of justice" also varies from culture to culture. In Japan, persons who are arrested but never charged are sometimes said to be victims of a "miscarriage" (*enzai*), but this language is seldom used to describe analogous cases in the United States. The comparative study of miscarriages of justice is still in its infancy and is heavily concentrated on the nations of the West, but linguistically if not culturally, Japan may have more sensitivity to

miscarriages than do some jurisdictions in the United States. More research is needed on this and many other topics related to wrongful convictions (Huff and Killias, 2008 and 2013).

<sup>4</sup> Some observers believe that the psychological problems Hakamada experienced after his death sentence was finalized in 1980 are better explained by brain trauma inflicted while boxing than by the conditions of his conviction and confinement (author's interviews in Tokyo, May 12 and 15, 2014).

<sup>5</sup> Masako told police that she knocked on the door of her parents' home and was greeted by her father, who did not let her in (Yamamoto, 2004, p.103). Some observers believe Masako knew more about the murder of her family than she acknowledged. We may never know for sure because she apparently committed suicide a day or two after Hakamada was released from death row in March 2014. Shizuoka police have released little information about the circumstances of her death (author's interview with reporters from Shizuoka Shimbun, May 10, 2014).

<sup>6</sup> In the United States, crimes of this kind attracting significant media attention are called "heaters" (Schmidle, 2014, p.36). In Japan, crime reporting about "heater" cases tends to be sensationalistic and strongly supportive of law enforcement's perspectives (Miyazawa, 1992, p.227; Kawai, 2004, p.194).

<sup>7</sup> Police said they "let Hakamada swim" for seven weeks before arresting him because they wanted to see whether he would engage in other acts that would be incriminating (police tailed him for most of this period). But the truth is more complicated. Police in Japan are permitted to do things on a "voluntary" basis (*nin'i doko* and *nin'i shutto*) during investigations (such as restrict a suspect's liberty and require him or her to be questioned) that would not be allowed prior to arrest in other criminal justice systems (Miyazawa,

1992, p.103). In addition, the long pretrial period gave the media plenty of time to construct images of Hakamada that strongly suggested he was guilty (Ogata, 2010, p.64). Most fundamentally, police did not have enough evidence to arrest Hakamada, which is also why they tried hard to obtain admissions of guilt from him during the long pre-arrest period (Yamamoto, 2004, p.190).

<sup>8</sup> An expression used by the yakuza testifies to the difficulty of maintaining claims of innocence during police interrogation in Japan: "It is a miracle to withstand three days of interrogation" (author's interview with Shizuoka defense lawyers, May 10, 2014).

<sup>9</sup> In a case in Kagoshima involving allegations of vote buying in a local election, six elderly suspects falsely confessed after enduring hundreds of hours of interrogations, and one man who refused to confess spent 395 days in jail before finally being released (Onishi, 2007). The practice of jailing suspects for prolonged periods of time if they do not confess has been called "kidnap justice" (*hitojichi shiho*) because it creates strong incentives to provide police with the "ransom" they seek (a confession) in order to obtain freedom (Egawa, 2014).

<sup>10</sup> In one recent case, prosecutors in Osaka altered information on a floppy disc in an attempt to convict a high-level government official of corruption. The official (Muraki Atsuko) was acquitted in 2010, and three prosecutors were criminally convicted for their role in this fraud (Otsubo, 2011).

<sup>11</sup> In 1931, The Wickersham Commission Report on law observance and law enforcement in the United States defined the "third degree" as "the infliction of physical pain or mental suffering to extract information" (Leo, 2008, p.43).

<sup>12</sup> Hakamada told his sister that during interrogation, "I could do nothing but crouch down on the floor trying to keep from defecating. One of the interrogators put my

thumb onto an ink pad, drew it to the confession he had composed, and ordered me to 'Write your name here!' while he was shouting at me, kicking me, and wrenching my arm" (quoted in Policy Review, 2005).

<sup>13</sup> In Japan, police conduct the large majority of interrogations, but prosecutors interrogate too. In 2010, a survey about prosecutors' interrogation practices was sent to all of Japan's 28,870 private attorneys. Respondents identified six main categories of abuse: threats ("if you do not confess you will not be released on bail"), inducements ("if you confess we will not charge you"), violence (hitting, kicking, throwing things, and so on), attempts to undermine a suspect's relationship with defense counsel ("your young lawyer is lousy!"), long interrogations that overbear a suspect's will (some respondents reported interrogations of 8 hours or more each day for many days in a row), and "other" problems (such as prosecutors telling a suspect "you are the worst kind of human being" or not reading a dossier aloud before asking a suspect to sign it). For more details about this survey, see Nihon Bengoshi Rengokai, 2011.

<sup>14</sup> According to some defense lawyers and members of Hakamada's support teams, the four Hashimoto victims may have been killed by yakuza sent by their boss to exact revenge for Mr. Hashimoto's involvement with "the wrong woman" (author's interviews, May 10, 2014). On this view, the boss's rage was reflected in the brutality of the murders.

<sup>15</sup> The Shizuoka District Court gave four reasons for rejecting 44 of the 45 statements (choshō). First, Hakamada's interrogations were long, averaging almost 12 hours per day for 23 days. Second, police had pressured Hakamada for information (about his alibi, blood on his pajamas, a cut on the middle finger of his left hand, blood on a glove, and the murder weapon), but Hakamada had not incriminated himself despite their high-

pressure tactics. Third, police had continued to pressure Hakamada to confess despite his repeated denials. And fourth, before Hakamada's first confession on the twentieth day of interrogation, he had been allowed to meet with his defense attorneys only three times, for 7, 15, and 15 minutes, respectively (Nishijima, 2014, p.79).

<sup>16</sup> The Shizuoka District Court gave three reasons for admitting one of the 45 confession statements. First, police were not present when Hakamada confessed to prosecutors. Second, police and prosecutors are different, so it is inappropriate to focus on Hakamada's interactions with police. And third, the interrogating prosecutor did not have police statements on his desk when Hakamada confessed to him (Ogata, 2010, p.114). Former Judge Kumamoto has said he opposed this reasoning during deliberations and claims that the other two judges wanted to admit at least one confession statement as evidence in order to make a sentence of death seem more reasonable (Mainichi Shimbun, 2014a).

<sup>17</sup> Former Judge Kumamoto has not said whether Judges Ishimi and Takai believed that police planted the clothing evidence and that Hakamada was the real killer (Ogata, 2010, p.108). If this was their view, then the two senior judges would have believed that police planted evidence in order to frame a guilty man.

<sup>18</sup> The Shizuoka District Court's decision made no mention of Kumamoto's dissent, as is the custom in Japan's judiciary.

<sup>19</sup> It is unclear why former Judge Kumamoto went public in 2007 with his revelations about this case. He has given various explanations. By law, judges in Japan have a "duty of confidentiality" (shuhī gimu) to refrain from speaking about their case deliberations, and this may help explain why Kumamoto waited so long before speaking out. My own view is that

his decision to go public may have been motivated by the deaths of former Judges Ishimi and Takai and by his own desire to atone for his involvement in a decision that ruined an innocent man's life. For more details, see Kumamoto (2009), Ogata (2010) and Yamadaira (2010). In May 2014 I tried to interview Kumamoto, but I was told he was too ill to communicate effectively.

<sup>20</sup> Before Hakamada, the most well-known DNA-based exonerations in Japan occurred in the case of Sugaya Toshikazu, who was released from prison in 2009 after serving 17 years in prison for the murder of a four-year-old girl in the Saitama city of Ashikaga, and in the case of Govinda Mainali, a Nepalese man who was acquitted at a retrial in 2012 after serving 15 years in prison for the murder of a Japanese woman in the Shibuya district of Tokyo.

<sup>21</sup> The Shizuoka District Court further found that the colors of the clothes were "unnatural" and inconsistent with the state's claim that they had been submerged in miso for 14 months, and it said it was "unnatural" to believe that it took 14 months for police to find this clothing or that the killer would hide incriminating evidence so close to the scene of the crime. The Court also concluded that the pants "found" in the miso tank were too big to fit Hakamada, a fact that police and prosecutors discovered during their pretrial investigations and kept hidden from the defense for more than 40 years.

<sup>22</sup> At the time of Hakamada's release in March 2014, the 130 inmates on death row under a finalized sentence of death had spent an average of eight years and five months in this condition (New York Times, 2014). More than half were seeking a retrial. Condemned inmates are held in detention centers (kochisho) in Tokyo, Osaka, Nagoya, Sapporo, Sendai, Hiroshima, and Fukuoka, and they lack many of the rights accorded to persons incarcerated in prisons (keimusho). Death rows in Japan have

also become more closed and secretive over the past few decades. Until the 1970s, condemned inmates were notified a day or two before they were hanged and were given more opportunities to communicate with persons on the outside (Johnson, 2006, p.261).

<sup>23</sup> Life on Japan's death row is not only scary, it is tinged with irony, absurdity and humiliation. In a letter to Hideko written on a winter morning in 1981, Hakamada complained about the bitter cold in his cell and his frostbitten fingers before going on to observe that "The radio was just turned on. It's the same show as always. [Someone] is asking 'How are you spending this pleasant Sunday morning?' There are about 2000 inmates in this jail listening to this radio show. Among them, not a single one thinks he is having a 'pleasant Sunday.' I hate being forced to listen to these absurd words" (Letters from Prison, 1992, p.84).

<sup>24</sup> Hideko believes the letters may have stopped because guards who screened inmates' correspondence found it "too cumbersome" to read through all the nonsense her brother was writing and "told him not to write" anymore (quoted in Amnesty International, 2009, p.37).

<sup>25</sup> In O.J. Simpson's murder trial, which ended in acquittal in 1995, several jurors believed that police planted blood evidence on Simpson's sock in order to frame a guilty man and they voted to acquit. One of Simpson's defense lawyers has said that students at Harvard Law School who confront this dilemma-should a killer who has been framed by police be convicted or acquitted?-are "always divided" (Dershowitz, 2014).

<sup>26</sup> This assertion was originally made in 1904 by the American jurist John Wigmore and was repeated by the U.S. Supreme Court in 1981 and 1999 (Simon, 2012, pp.180-183).

<sup>27</sup> Many defense lawyers in Japan and the United States believe that truly innocent persons are the hardest kind of defendant to



represent because they know nothing about the crime and can provide little assistance to their attorneys (Morton, 2014, p.69).

<sup>28</sup> Two of Hakamada's defense lawyers told me that Takahashi's "BOX" film is "mostly fiction," and one of them said Yamadaira Shigeki's (2010) book about Judge Kumamoto Norimichi's role in this case and his reactions to Hakamada's death sentence is also "unreliable" (author's interviews in Shizuoka, May 10, 2014). In writing this article I have not relied on these sources.

<sup>29</sup> The matter of Hakamada's compensation raises some interesting questions. For example, is \$2,200,000 a lot for 48 years of what Hakamada went through? Not compared to the \$40 million awarded in 2014 to the five Latino and black defendants who were wrongfully convicted of rape in the 1990 "Central Park Jogger" case in New York City—none of whom served more than 13 years in prison. On the other hand, 24 American states have no legal provision for financial compensation to persons who have been wrongly imprisoned.

<sup>30</sup> Since 1981, Hakamada's defense team has been financially supported by funds and personnel from the Japan Federation of Bar Associations. In many countries, institutional support of this kind is often the difference between wrongful convictions that get revealed and those that do not (Huff and Killias, 2013).

<sup>31</sup> Hakamada's support groups include The Shimizu and Shizuoka Citizens' Group to Rescue Mr. Hakamada Iwao (Hakamada Iwao san o Kyuen Suru Shimizu - Shizuoka Shimin no Kai, based in Shizuoka and led by Mr. Yamasaki Toshiki), The Group to Save Innocent Death Row Inmate and Former Pro Boxer Hakamada Iwao (Mujitsu no Shikeishu - Moto Puro Bokusa Hakamada Iwao o Suku Kai, based in Tokyo and led by Ms. Monma Sachie), and Free Hakamada Now (led by the Japan Pro Boxing Association in Tokyo). On the role of

support groups in Japanese law and society more generally, see Andrews (2014) and Steinhoff (2014).

<sup>32</sup> As one veteran defense lawyer has observed (Nishijima, 2012, p.156), many exonerations in Japan are achieved through some combination of "superhuman efforts" (*chojin teki doryoku*) and "accidental factors" (*guzen teki yoso*).

<sup>33</sup> Japanese officials sometimes argue that miscarriages of justice occur mainly because criminal suspects give false confessions. This claim ("if only they wouldn't do that") fails to acknowledge that persons suspected of serious crime seldom provide false confessions spontaneously (Nishijima, 2012, p.156). The vast majority of false confessions are given because suspects were manipulated or coerced by police (Hamada, 1992).

<sup>34</sup> Two hallmarks of the "bureaucratic informalism" that characterizes Japan's approach to law and social change are legal informality (through an emphasis on officials' discretion), and strict limits on the judicial review of discretion (Upham, 1987, p.22). Japan's slow progress toward recording interrogations also reflects the tendency of Japanese law to make hortatory pronouncements without providing legal sanctions for failures to comply (Haley, 1980). John Haley calls this pattern in Japanese law "authority without power" and "command without coercion" (Haley, 1991, p.193). As of August 2014, Japan's Ministry of Justice plans to submit a bill to Parliament in 2015 that will require police and prosecutors to "electronically record the entire interrogation process in all criminal cases subject to lay judge trials" (Japan Times, 2014a). Even if this bill becomes law, police and prosecutors will maintain their discretion not to record in the 98 percent of criminal cases that are tried by professional judges (Suo, 2014).

<sup>35</sup> Reform of laws and institutions is the main

means of change in the modernist approach to developing democracy, but the idea that reform alters actual practice "is a hypothesis, not an axiom" (Flyvbjerg, 1998, p.234). The best research on "making democracy work" warns that the "designers of new institutions are often writing on water" (Putnam, 1993, p.17). Since culture conditions new laws and

institutions, reformers should attend to this area too.

<sup>36</sup>

More generally, Japan is often a "fact-rich but data-poor" focus for empirical research in the social sciences because individual-level data are largely unavailable (Brinton, 2003, p.195).