

Will Wrongful Convictions Be a Catalyst for Change in Japanese Criminal Justice? 冤罪事件、日本の刑事司法の改革の契機となりうるか

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The Asia Pacific Journal presents a link to an extraordinary 12-minute video by Matthew Carney of the Australian Broadcasting Corporation (<https://apjff.org/site/view/4262>) discussing the death penalty and the problem of wrongful convictions in Japanese criminal justice. This video explains what went wrong in three cases involving men who were victimized in the worst kind of way by Japan's criminal justice system, and it raises the possibility that these cases could stimulate reform in Japan's system of capital punishment and in the criminal justice system more generally.

In the ABC video, Hakamada Iwao can be seen pacing in his sister Hideko's home and referring to himself as "God the undefeated emperor" after being released from death row following 48 years of incarceration - almost all of it in solitary confinement. Hakamada confessed to four murders in 1966 after being interrogated by police and prosecutors for more than 264 hours over a 23-day period - an average of 11 hours and 30 minutes per day. My own article in this issue of *Asia Pacific Journal* presents more details about the police and prosecutor misconduct that led to Hakamada's wrongful conviction and delayed his release for nearly half a century (see "An Innocent Man: Hakamada Iwao and the Problem of Wrongful Convictions in Japan"). Most notably, when concerns arose about the strength of the state's case against Hakamada during the first several months of his trial, it appears that police planted five articles of bloody clothing at the scene of the crimes in order to bolster their case for conviction. In

2007, one of the three judges (Kumamoto Norimichi) who originally convicted Hakamada and condemned him to death publically stated for the first time that he had always believed in Hakamada's innocence but had been outvoted by two senior judges on the Shizuoka District Court in 1968. Kumamoto's repeated pronouncements helped lead to the judicial decision by three different judges of the Shizuoka District Court that freed Hakamada from death row in March 2014 and ordered his retrial.

Ishikawa Kazuo spent more than 10 years on death row following his conviction for the murder of sixteen-year-old Nakata Yoshie in Sayama City in Saitama Prefecture in 1963. Ishikawa confessed after long and brutal interrogations that included punches to the head and prolonged sleep deprivation. The Urawa District Court that convicted him also concluded that he was the author of a ransom note related to this slaying even though he was almost illiterate. Ishikawa was from a community that historically has been subject to great prejudice and discrimination. As a *burakumin*, he had to forego formal education beyond primary school in order to help his family make a living. The ABC video makes no mention of this important aspect of "The Sayama Case," but more information about it can be found in John H. Davis, Jr.'s fine chapter "Courting Justice, Contesting 'Bureaucratic Informality': The Sayama Case and the Evolution of Buraku Liberation Politics" (in *Going to Court to Change Japan: Social Movements and the Law in Contemporary*

Japan, edited by Patricia G. Steinhoff, Ann Arbor: Center for Japanese Studies, The University of Michigan, 2014, pp.73-100). Ishikawa's death sentence was reduced to life imprisonment by the Tokyo High Court in 1974, and he was released on parole in 1994. Since then, he and his supporters have been pushing for a retrial that could formally declare his innocence (see here (<http://www.imadr.org/sayama/>)).

Sugaya Toshikazu is the third man victimized by wrongful conviction who is portrayed in the ABC video. In what came to be known as the "Ashikaga Incident," Sugaya was convicted in 1991 of the murder of a four-year-old girl based on his own coerced confession and what turned out to be a primitive DNA test. In 2007 the journalist Shimizu Kiyoshi revealed problems in the DNA testing method, and in 2009 a new DNA test conclusively showed that Sugaya was innocent. (The same DNA test that was used to wrongfully convict Sugaya was also used to convict Kuma Michitoshi of two murders in Iizuka, Fukuoka prefecture in 1992, but Kuma was hanged in 2008 despite serious concerns about his innocence; see here (http://www.jiadep.org/Kuma_Michitoshi.html)). Sugaya was released after 17 years of imprisonment, and in 2010 he was formally declared innocent at a retrial in which prosecutors admitted that the police had forced him to confess. In 2011 Sugaya was awarded the equivalent of about one million U.S. dollars in compensation by the Japanese government (<http://wrongfulconvictionsblog.org/2012/05/07/implicated-by-dna-exonerated-by-dna-the-ashikaga-case/>). While Sugaya was in prison under a life sentence, two other young girls were killed near Ashikaga City, and two more were killed in Ohta City, on Gunma Prefecture's border with Ashikaga. Wrongful convictions are tragic for many reasons, and one of the least appreciated is the fact that while the wrong person is in custody, the real offender remains free to commit more crimes.

The ABC video also shows scenes from a press conference attended by Hakamada, Ishikawa, Sugaya, and two other victims of wrongful conviction: Sugiyama Takao and Sakurai Shoji, who were sentenced to life imprisonment in 1970 for a robbery-murder in the town of Fukawa in Ibaraki prefecture in 1967. The two victims of wrongful conviction in this "Fukawa case" were released on parole in 1996 and declared not guilty in a retrial that ended in 2011. Like most other victims of wrongful conviction in Japan, Sugiyama and Sakurai both falsely confessed after long and coercive interrogations, and police and prosecutors failed to disclose to the defense many pieces of evidence that pointed to their innocence. It took nearly 45 years to exonerate them, and in 2012 they each received 130 million yen (about \$1.6 million) in compensation from the state (<http://www.jiadep.org/Fukawa.html>).

The ABC video includes compelling testimony from former prosecutor Ichikawa Hiroshi about the pressures police and prosecutors feel to produce confessions and convictions even when they are inconsistent with the truth. The conclusion of the video also raises the "hope" that the revelation of wrongful convictions could be a "catalyst" for change in Japanese criminal justice. But recent history suggests that positive change will be far from automatic. In the 1980s, four men were released from death rows in Japan because of evidence of their innocence (see Daniel H. Foote, "From Japan's Death Row To Freedom," *Pacific Rim Law & Policy Journal*, Vol.1, No.1 (Winter 1992), pp.11-103). Thereafter, there was much discussion about the need for reform in Japanese criminal justice and capital punishment, yet few meaningful reforms were implemented. Two decades later, even the advent of a lay judge system of civilian participation (in 2009) has had little effect on Japanese conviction rates or death sentencing practices (http://www.japanfocus.org/-David_T_Johnson/3461). In the United States, the revelation of

wrongful convictions has helped drive death sentences and executions down by more than half since they peaked in the late 1990s and has contributed to the abolition of capital punishment in six states since 2007 (New Jersey, New York, New Mexico, Illinois, Connecticut, and Maryland). For similar reforms to occur in Japan, an entrenched "culture of denial" will need to be challenged and changed. The contours and consequences of this culture of denial are described in another article published in this issue of *Asia Pacific Journal*: "Wrongful Convictions and the Culture of Denial in Japanese Criminal Justice" (by David T. Johnson). That article concludes with these lines:

"...Japanese prosecutors are still appealing the decision to grant Hakamada [Iwao] a retrial, and police are on their side. Their stance has two main causes: a desire to save face, and a tendency toward tunnel vision which leads them to dismiss evidence that is inconsistent with their preferred outcome ("guilty!") as irrelevant, incredible, or unreliable. If you recognize that errors are inevitable, you will not be surprised when they occur and you will have plans in place to correct them. Conversely, if you refuse to admit to yourself or the world that mistakes do occur, then every wrongful conviction becomes stark and embarrassing evidence of how wrong you are (Tavris and Aronson, 2007, p.156). Japan's

culture of denial is toxic to justice, and so is the certainty of criminal justice officials about the propriety of their own conduct. Doubt is a skill they still need to learn, and error is a reality they must learn to acknowledge..."

This is part one 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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