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The Acquittal of Hakamada Iwao and Criminal Justice Reform in Japan

David T. Johnson

Abstract: *In September 2024, after 56 years under a sentence of death, Hakamada Iwao was acquitted in a retrial in Japan. This article summarizes what went wrong in his wrongful conviction case and what should be learned from it. The Shizuoka District Court's retrial decision concluded that police and prosecutors conspired to frame Hakamada with evidence they had fabricated, but there is more to the case than that. This tragedy occurred because of mistakes and misconduct that were exacerbated by underlying weaknesses in Japan's criminal process. To prevent a recurrence, many things need to change in Japanese criminal justice. The conclusion identifies five priorities for reform.*

Keywords: *Wrongful convictions, Miscarriages of justice, Death penalty, Police, Prosecutors, Criminal courts*

On September 26, 2024, after 58 years of proclaiming his innocence, Hakamada Iwao was acquitted of homicide in a retrial in Shizuoka District Court (2024).[1] He is 88 years old and in poor health, with diabetes and other serious ailments. He is barely able to walk, and he needs a lift to go up and down stairs. He also has "detention syndrome" (koukinshou), which helps explain his fear of men (it was men who guarded him during his decades on death row). His older sister and main caretaker is Hideko (age 91), who has been called "the best big sister in the world" (Awano, 2024). To protect him, she and other supporters try to minimize his encounters with males. Cognitively, Hakamada is confused about his present circumstances and past experiences. The people closest to him say he moves in and out of the world of reality and the world of delusion, and they believe he mostly exists in the latter. His letters from death row reveal what used to be an inquisitive mind and articulate voice, but after his death sentence was finalized by Japan's Supreme Court in 1980, he lost his mind and his resolve to clear his name.[2]

On May 22, 2024, at the end of the defense's closing argument in Hakamada's retrial, defense attorney Ogawa Hideyo (2024a) described the defendant's state of mind while making a passionate appeal about his innocence and the need for Japanese law and society to learn from this case. Four months later, the Shizuoka District Court would ratify his core claims.

> Iwao's daily routine is to go out to shop and eat. It is the same routine every day. Buy the same drink from the same vending machine, eat and drink while sitting in the same place, buy the same products at the same store, and then at the end, eat the same meal at the same restaurant. If someone notices Iwao and speaks to him, he doesn't even turn around. He has absolutely no interest in other people. He is indifferent. He never looks around or looks back.
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> In this way, Iwao repeats the same actions every day. When he was released from jail [in March 2014], he walked back and forth in the same room for hours every day. Today, there is virtually no difference in his routine. By doing the same thing over and over, he seems to be

1 For a summary of the Shizuoka District Court's decision, see *Asahi Shimbun*, "Hakamada san Saishin Muzai Hanketsu" (September 27, 2024), p. 27.

2 For more about what Hakamada thought and felt while fighting for his freedom, see his "Letters from Death Row," published in English by *Asahi, at* https://www.asahi.com/special/hakamadaletters/en/. And for a larger collection of his letters in Japanese, see Mujitsu no Shikeishu – Moto Puro Bokusa Hakamada Iwao o Sukuu Kai (1992).

relieving some of the stress he feels. If someone prevents him from acting in the usual way, he thinks it is the work of germs.

Mr. Iwao…was released from death row 10 years ago, but his heart remains completely closed. He is smothered in fear that he may be executed at any time, and the only thing for him to do is to try to cancel it out. Indeed, you could say that he lives a life that only cancels out fear.

Mr. Iwao's mental world is no different from what it was when he was confined in a cramped cell [about 50 square feet] on death row at the Tokyo Detention Center. He does not feel happiness through connections with people. And unfortunately, when he is found innocent, he will not be able to join hands with Hideko and rejoice about it.

I feel it is no longer possible for Iwao to come back to the real world. Nonetheless, a not-guilty verdict must be issued as soon as possible. There is nothing else we can do about our mistakes.

Mistakes are inevitable in court cases. But a wrongful judgment cannot be undone, and wrongful death sentences are especially serious. Even if an execution is not carried out, the act of mistakenly condemning someone to death (like Mr. Iwao) is itself a serious criminal act by the state. In fact, a sentence of death completely robbed Iwao of 58 years of his life.

As long as prosecutors turn a blind eye to the truth and try to prove guilt while making excuses that it is their assigned job to do so, public criticism of them will only increase. Prosecutors should apologize to Mr. Iwao immediately. Then police and prosecutors should explain why they committed wrongful and illegal acts, and what they will do about them in the future. Everyone knows that this is the only way to restore trust in the prosecutors' office. Prosecutors should sincerely repent about the way they have handled this case.

There are also things we ask this court to do. The eyes of the world are on this trial, and people are wondering what kind of decision Japan's judiciary will make, and how it will achieve justice. Of course, Mr. Iwao will be acquitted, but the reason he had to live a hard, painful, and absurd life for 58 years is because of the crimes committed by investigating authorities. This kind of thing must never happen again, and the court's judgment should clearly describe the improper and illegal acts that police and prosecutors committed.

Finally, even if the verdict in this case is not guilty, it has already been 43 years since the defense first petitioned for a retrial [in 1981]. It has repeatedly been proven that the original judgment in this case was wrong, because there is no proof that the five items of clothing [found in a miso tank] were the criminal's clothing. If prosecutors had disclosed evidence to us earlier, the retrial would have started long ago. As we have described in this retrial, the belated disclosure of evidence by prosecutors led to our discovery of much important evidence. Based on evidence that they kept hidden in their possession, prosecutors knew that the judgment in this case was clearly mistaken. Over a long period of time, we defense lawyers repeatedly asked them to disclose more evidence to us, but they just kept refusing. In other words, prosecutors did not even try to correct a mistaken sentence of death.

No system that allows prosecutors to knowingly leave in place an erroneous death sentence can be said to belong to a democratic country. Tolerating a mistaken sentence of death is no different from sending an innocent person to the gas chamber.

It is only natural that Mr. Iwao should be ac-

> quitted. But that is not enough. After his acquittal, there must be an investigation into the causes of the mistakes in this case, and countermeasures must be taken so that this kind of miscarriage of justice does not happen again. We must also put laws and policies in place as soon as possible, so that when mistaken judgments do occur, they can be quickly corrected. With these requests and expectations, I conclude our closing argument.

Hakamada Iwao did not attend the closing argument or any of the 14 retrial sessions that preceded it. Chief Judge Kunii Koshi of the Shizuoka District Court concluded that the defendant could not understand the proceedings or meaningfully participate in his own defense, so Hideko was appointed as his representative. On the evening of September 26, after her brother was acquitted, Hideko informed him of the not-guilty verdict, but it is unclear whether he understood what she said. "The court said you are not guilty," Hideko repeated numerous times. "It is just as you have always said. You are not guilty." The video of this moment shows Iwao sitting in the living room of the apartment that he shares with his sister in Hamamatsu City. He did not speak, but to my eye, the faint signs of a smile can be detected.

Three days later, Iwao appeared with Hideko at a public event in Shizuoka. The purpose was to inform people about what may be the most newsworthy acquittal in postwar Japanese history, and thereby to prevent an appeal by prosecutors. With Hideko helping him to hold the microphone, Iwao spoke in language that reflected his past as a professional boxer, and with clarity that surprised the people present, except perhaps Hideko, who had coached him about what to say. The man that Guinness World Records had certified in 2011 as the world's longest-held death row inmate said,

> "We could not wait to hear those words [of acquittal from the court]. A not-guilty victory has finally come to pass. I am happy to appear in front of you today celebrating that I have finally won a complete victory. Thank you very much" (NHK video, September 29, 2024).

On October 14, Iwao appeared at another public meeting in Shizuoka to publicize the not-guilty verdict. This time he spoke gibberish. After two minutes of his incoherent rambling, Hideko whispered in his ear, Iwao fell into a stupor, and Hideko thanked all who were present and apologized for her brother's fogginess. The man who sent me this video said that what he observed on that day made him "keenly aware of the depth of the wounds left on Iwao san." In my view, it was sad beyond words.

Tragedies occur in life, but what happened to Hakamada Iwao surely ranks among the worst experiences a person can have. Some commentators have called it the worst miscarriage of justice in Japanese history,[3] and on the day after his acquittal, the "Voice of Heaven" (tensei jingo) column on the front page of Japan's newspaper of record (Asahi Shimbun) said that law enforcement's effort to convict Hakamada and sentence him to death on the basis of fabricated evidence can be called an "attempted homicide" (satsujin misui). If what the Shizuoka District Court concluded is correct—if Hakamada's confession was fabricated, if he was framed with physical evidence prepared and planted by law enforcement, and if police and prosecutors hid from the defense for decades much evidence that pointed to his innocence—then this case is indeed what Hakamada's defense lawyers have long called it: a "heinous crime by the state."[4]

This rest of this article summarizes what went wrong in Hakamada's case and what should be learned from it. The Shizuoka District Court's retrial decision concluded that police and prosecutors conspired to frame Hakamada with evidence they had fabricated, but there is more to this case than that. Many mistakes combined to produce this miscarriage of

3 On the day after Hakamada's acquittal, *Nihon Keizai Shimbun* (2024a) said "a wrongful conviction case with this many human rights violations is unprecedented" and "disgraceful."

4 Similarly, *Chunichi Shimbun (*2024) called Hakamada's conviction "the ultimate state crime," and *The Mainichi (*2024b) called it "an outrageous criminal act."

justice, and they were exacerbated by underlying weaknesses in Japan's criminal justice system. To one degree or another, everyone involved was responsible (police, prosecutors, judges, defense lawyers, and the media), if not by making a mistake, then by failing to catch one.[5] To prevent a recurrence of this terrible tragedy, many things need to change in Japanese criminal justice. The conclusion of this article identifies several priorities for reform.

Fabricated Evidence

As explained in an article that was published in this journal almost ten years ago, Hakamada Iwao was arrested in 1966 for the murder of four members of a family whose father managed the miso factory where Hakamada worked (Johnson, 2015). He was convicted and sentenced to death in 1968, the same year that Sato Eisaku was Prime Minister of Japan and Martin Luther King Jr. was assassinated in the United States. He was released from death row in 2014 because of evidence of his innocence, but he remained under a sentence of death until his exoneration in 2024.

The evidence against Hakamada was never compelling. Judge Kumamoto Norimichi, who wrote the 1968 judicial opinion convicting and condemning him to death, believed Hakamada was actually innocent, as did at least one of the judges who heard his appeals (SBSnews 6 video, 2024).[6] In fact, Judge Kumamoto originally drafted a 350-page opinion that would have resulted in Hakamada's acquittal, but he had to rewrite it after being outvoted by the other two judges on the Shizuoka District Court bench that first adjudicated this case. Judge Kumamoto resisted his two senior colleagues, and he even made an inquiry to the Supreme Court, but when he was told that, win or lose, it is standard practice for the assigned judge to write the opinion, he went along, though he also planted in the opinion serious concerns about the evidence and harsh criticisms of law enforcement that would pique the interest of readers for more than half a century thereafter. Kumamoto resigned from the judiciary a year after writing that opinion, and he went on to live a life plagued by guilt and regret (Worth, 2024). Many who knew him say he spent the last half-century of his life as "a prisoner of his own conscience" (Union of Catholic Asian News, 2017).

In 2007 and 2008, after the other two judges in Hakamada's trial died, former judge Kumamoto went public with this backstory, and he petitioned Japan's Supreme Court to grant Hakamada a retrial (it was rejected). In 20, four years after Hakamada was released from death row, he and his sister visited the bedridden Kumamoto in Fukuoka, and Hideko thanked him for speaking the truth about Iwao's case (Ogata, 2023). In subsequent years she would frequently refer to the former judge as her brother's "life saver" (inochi no onjin). After a long illness, Kumamoto died in 2020. He was 83, just one year younger than Iwao.

Between 1968, when Hakamada was sentenced to death, and 2023, when his retrial started, dozens of appellate court judges rejected his appeals and ratified his conviction and death sentence. Their conclusions relied mainly on two types of evidence, both of which were dubious.[7]

First, Hakamada confessed to crimes he did not commit. The retrial decision even said his confession was "fabricated" (捏造, or *netsuzo*), meaning police and prosecutors composed his confession statements without regard for the truth or the coercion of their interrogation methods. It appears Japanese courts had not previously used this word to describe a false confession. Hakamada's initial confession came on day 20 of interrogation, after more than 200 hours of high-pressure questioning by police and prosecu-

5 After Hakamada's acquittal, many Japanese media apologized for their coverage of his case, including the *Asahi, Yomiuri, Mainichi, Chunichi,* and *Shizuoka n*ewspapers. For example, an editorial in Asahi acknowledged that "Hakamada was widely presumed guilty in news reports," and it said the newspaper "takes that mistake to heart and resolves never to repeat it again" (*Asahi Shimbun*/Asia & Japan Watch, 2024b).

6 For interviews with former Judge Kumamoto and former Judge Kumada Toshihiro, who sat on a Shizuoka District Court bench that heard Hakamada's appeal for a retrial in the 1980s, see the SBSnews 6 video (2024).

7 On the central role that judges play in producing and maintaining wrongful convictions in Japan, see Ibusuki and Johnson (forthcoming).

tors.[8] They broke his will to resist, as the Shizuoka District Court acknowledged in Hakamada's trial when it refused to accept 44 of the 45 "confession" statement summaries that investigators had composed. Speaking for the court, Judge Kumamoto said investigators repeatedly violated the principles of "truth discovery" and "due process" through their coercive interrogation methods. But remarkably, the same court ruled that one of the confession statements taken by prosecutors was voluntary, reliable, and admissible. According to former Judge Kumamoto, the decision to admit this statement (chosho) was motivated by his colleagues' recognition that the physical evidence against Hakamada was, on its own, too weak to convict (Hamada, 2020). In 2024, the retrial verdict ruled that this statement was involuntary and unreliable and therefore could not be considered evidence against Hakamada. It was a fabrication.[9]

The other problematic evidence was physical. In August 1967, nine months after Hakamada's trial had started, five articles of clothing were found in a miso tank at the factory next to the home where the murders occurred. At the time this "discovery" was made, Judge Kumamoto believed the trial was going poorly for prosecutors, and some observers were predicting it would end in acquittal. In this context, the court ruled that prosecutors could introduce the five articles of clothing as evidence. According to the revised indictment, Hakamada was not wearing the pajamas he had confessed to wearing at the time of the crimes. Now, he was said to be wearing a white short-sleeve shirt, a gray long-sleeve shirt, green briefs, white boxer shorts, and iron blue trousers. Prosecutors argued that Hakamada hid these clothes in the miso tank soon after fleeing the scene of the murders. On this new theory, a team of 80 police officers had failed to find the clothes for more than 400 days. The discovery of the clothes by a company employee proved to be a turning point in this trial, and ultimately it persuaded the chief judge to side with the second-most senior judge, to convict Hakamada and sentence him to death.

For the next half-century defense lawyers would argue that police had planted the clothes in order to frame Hakamada. Decades after his conviction, three different courts concluded that this is in fact what happened. In 2014, when the Shizuoka District Court granted Hakamada a retrial and released him from death row, Chief Judge Murayama Hiroaki said "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 fabricated by the investigating authorities," and "detaining him any longer would violate justice to an intolerable extent" (Shizuoka District Court, March 27, 2014). In 2023, the Tokyo High Court said "there is an extremely high possibility" that Hakamada was framed on the basis of fabricated evidence (netsuzo no kanosei ga kiwamete takai). And in the retrial verdict the following year, the Shizuoka District Court concluded without qualification that the five articles of clothing were fabricated by police in conspiracy with prosecutors, and it said police had planted them in order to frame Hakamada.

In addition to the fabricated confession and the fabricated clothing, the Shizuoka District Court's retrial decision used the same language a third time, to describe a piece of cloth (tomo-gire) that police claimed to discover during their search of the house occupied by Hakamada's mother at the time the five articles of clothing were found in the miso tank. According to police and prosecutors, the miso company sent this small piece of cloth and other possessions owned by Hakamada to his mother's house soon after the homicides occurred, and they claimed the cloth matched the fabric and the color of the pants that had been found in the tank. In their telling, this was strong evidence that the pants had belonged to Hakamada. However, the retrial decision of 2024 concluded that a prosecutor rewrote the indictment to describe how police supposedly "found" the piece of cloth before police had even searched the house.

8 In total, Hakamada was interrogated for 430 hours (*Asahi Shimbun,* 2024a).

9 For a seven-part series about how interrogations without a defense lawyer present result in written statements (*kyojutsu chosho)* that misrepresent what suspects and witnesses actually said, see Asahi Shimbun (2023).

Logically and logistically, the prosecutor was either clairvoyant or he was lying to cover up a law enforcement conspiracy to frame Hakamada. The three judges who presided at Hakamada's retrial held that it was the latter.[10]

Hidden Evidence

In addition to the fabricated evidence that was used to convict Hakamada (confession, clothes, and cloth), prosecutors withheld from the defense for decades evidence that raised reasonable doubts about his guilt and pointed to his innocence. Most importantly, the belatedly disclosed evidence included color photographs of the clothes from the miso tank that were taken soon after they were found in August 1967. The photos showed that the clothes were too light in color, and the blood stains too red, to be consistent with prosecutors' claims that they had been submerged in miso for 14 months. When Hakamada's supporters and expert witnesses conducted experiments with blood-stained clothes soaking in miso, the blood stains came out a lot less red than the blood-stained clothes that were introduced as evidence at trial. Questions about color would become the central issue in the retrial that resulted in Hakamada's acquittal.

The key sessions in Hakamada's retrial were March 25, 26, and 27. Seats for spectators were assigned by lottery, and I was able to observe the session on March 27. On all three days the key question was whether the blood stains on the clothes would still appear red after soaking in a tank of miso for 14 months. The defense said no, and their claim was supported by the testimony of three expert witnesses and by evidence from experiments conducted with bloody clothing and miso. In contrast, the prosecution argued that "it is possible" for blood stains on clothing to appear red even after soaking in miso for more than a year.

There were two major problems with the prosecutors' claim. First, one of their two expert witnesses stated repeatedly that blood stains on clothing would not appear red after such a prolonged soaking. In other words, on the single most important issue in this retrial, the prosecution's own expert witness gave testimony that supported the argument of the defense. In addition, the fundamental premise of any sound system of criminal justice is that prosecutors bear the burden of proof to show that the defendant is guilty "beyond a reasonable doubt." But in Hakamada's retrial, prosecutors did not try to prove that blood stains would "certainly" or "surely" remain red after prolonged immersion in miso, nor did they even try to prove that the stains would "probably" or "likely" remain red. They merely argued that "it is possible" the red color would remain. If this claim were correct (and the experiments suggest it is not), it would not be enough to convict a man of murder. It wouldn't even be close.

I have been studying criminal justice in Japan for more than 30 years, and my writings have frequently acknowledged aspects of the Japanese system that deserve praise (Johnson, 2002; Johnson, 2022). On this occasion, however, I came away shaking my head in dismay. Having made the decision to charge Hakamada, prosecutors refused to reverse course, despite abundant evidence that they were wrong. Obstinance of this kind has long characterized their behavior in high-profile cases (Sasakura and Johnson, 2020).

Prosecutors also withheld from the defense a written statement taken from an employee of the company that manufactured the pants found in the miso tank. The pants had a tag with the letter "B", which prosecutors said indicated their size, and they argued in court that this size would have fit Hakamada. This was important because during his appeal before the Tokyo High Court, Hakamada tried on the pants three times, and in each instance the pants proved to be too small to pull over his hips. Prosecutors claimed the pants had shrunk and Hakamada had gained weight, but in a document that prosecutors

10 Several years ago, defense lawyer Ogawa Hideyo sent a letter to the person who charged Hakamada, describing his misconduct and asking for a response. When there was no reply, Ogawa went to the former prosecutor's house, but he left after two female voices from inside the house threatened to call the police if he did not go away (author's interview, September 27, 2024).

withheld from the defense, the employee of the clothes company said the B tag indicates the colorof the pants, not the size. For more than 40 years prosecutors failed to disclose this crucial fact to the defense and the courts. They just let their big lie lie, and one prominent prosecutor apparently perjured himself when he testified about this issue during an appellate court hearing (Ogawa, 2024b).

Prosecutors also possessed evidence showing that the 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. They must have wondered whether it was possible for the clothes to remain hidden during a miso-mixing process that requires someone to walk around in the tank, and they must also have realized that these facts could help the defense. But they did not disclose them to the court or to the defense until decades after Hakamada's conviction. In short, prosecutors concealed from the defense many photographs and statements that would have cleared Hakamada long before they were finally disclosed. Ironically, this behavior was abominable but not illegal, for at the time of Hakamada's trial and in subsequent appeals, prosecutors had no obligation to disclose such evidence to the defense. By law, they were required to disclose only evidence that would be used at trial. This rule is premised on the principle that prosecutors can be trusted to reveal the truth at trial, no matter what it might mean for the verdict. Virtually all prosecutors in Japan claim that "discovering the truth" about a case is their most important work objective (Johnson, 2002, p.98), but in Hakamada's case as in other wrongful convictions, their failure to disclose exonerating evidence belies that claim.

One question is why, starting in 2010, prosecutors finally disclosed to the defense crucial evidence that they had kept hidden for more than 40 years. It was not because the defense failed to ask for it, because Hakamada's team had made repeated requests that were denied by prosecutors or killed with silence. Hakamada's lead defense lawyer, Ogawa Hideyo (2024b), says the disclosures began in 2010, when he received an unexpected phone call from a prosecutor who told him, vaguely, that circumstances had changed and more evidence would be forthcoming. The disclosures which followed were hard to explain: some items the defense had requested were not disclosed, and some items not requested were. Ogawa believes the belated disclosures may have resulted from guidance given by higher level prosecutors to their subordinates on the front lines who were handling Hakamada's case, but he is not sure. What can be said is that the evidence came to the defense decades after it should have been revealed. It was unexpected, partial, and chaotic, not well organized or systematic. And it was all done verbally, presumably to avoid the creation of a paper trail that could bind prosecutors in future cases. This kind of "bureaucratic informalism" has long characterized legal decision-making in Japan (Upham, 1989). Almost 90 years ago, in a case involving prosecutorial misconduct in the United States, the U.S. Supreme Court articulated its view of a prosecutor's duty, which has been widely repeated in court decisions ever since. The Court said the prosecutor's interest in a criminal prosecution "is not that it shall win the case, but that justice shall be done," and it emphasized that while a prosecutor "may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one" (Berger v. United States, 1935). I know of no Japanese prosecutor who disagrees with this view, but by fabricating and concealing evidence, prosecutors failed in a grand way to fulfill their most important obligation. To seek a sentence of death against a man in a case with such severe evidentiary problems is more than merely a reckless act. It is a moral and legal failure of the highest order.

Exonerations Without Reform

In the 1980s, four men were released from death rows in Japan because of evidence of their innocence. For many years thereafter, Japanese criminal

justice just kept chugging along, despite numerous calls for reform.[11] All of the death row exonerations stemmed from a 1975 decision by Japan's Supreme Court, to relax the standards governing retrials for people who may have been wrongfully convicted. At the time, many analysts cheered the Court for its "progressive activism", and subsequently, the retrial "door that never opens" was opened four times (Foote, 1992b; Foote, 1993).

Menda Sakae falsely confessed to murdering two people in Kumamoto after police deprived him of sleep for 80 hours. He was acquitted in 1983, 33 years after being sentenced to death.

Taniguchi Shigeyoshi falsely confessed to a murder in Kagawa prefecture after interrogations that lasted four and a half months. He was acquitted in 1984, 34 years after he was arrested.

Saito Sachio was convicted and sentenced to death in 1957 after he falsely confessed to murdering a family of four in Miyagi prefecture. Foreshadowing Hakamada's case, the evidence prosecutors used against Saito included blood stains on a futon cover that may well have been fabricated by police. He was acquitted in 1984, nearly 27 years after being sentenced to death.

And Akabori Masao was convicted and sentenced to death for killing a six-year-old kindergarten girl in the city of Shimada in Shizuoka prefecture in 1954. He was acquitted at a retrial in 1989 because the findings from the victim's autopsy contradicted the content of his confession statements, and because the court could find no evidence linking him to the crime other than his own confessions. He was released in 1989, 31 years after being sentenced to death.

These retrial acquittals from the 1980s have several striking similarities, and they also resemble the wrongful conviction of Hakamada Iwao. In each case, a town or a small city was shaken by a brutal crime, and someone was wrongfully sentenced to death. In each case, police faced strong public pressure to apprehend the offender. In each case, the suspect was detained in a holding cell in a police station (daiyo kangoku) where he was readily available for interrogation. In each case, interrogations by police and prosecutors were long and coercive. In each case, prosecutors failed to disclose important evidence to the defense. In each case, the advocacy of defense lawyers was severely curtailed by laws and informal norms. And in each case, the judiciary repeatedly rejected the defendant's requests for a retrial before finally granting one. In short, wrongful convictions occurred in these cases because of serious failures throughout the criminal process.

There were many calls for criminal justice reform following these death penalty retrial acquittals. Scholars, legal professionals, journalists, and legislators argued that prosecutors play too large a role in Japanese criminal justice. They said police have too much unchecked power to interrogate, and prosecutors have too much unchecked control over evidence. They said defense lawyers need to be empowered to make criminal proceedings fair. They said judges should stop siding with police and prosecutors at trial and in pretrial hearings. They said a conviction rate that exceeds 99 percent was the sign of a broken system. They said criminal trials in Japan are "hopeless" (zetsubo teki) (Hirano, 1989). And there was even a moratorium on executions for 40 months, from November 1989 to March 1993. However, no significant reform occurred in Japanese criminal justice until 2009, when the lay judge system (saibanin seido) was introduced to adjudicate homicide cases and some other serious crimes (Kage, 2017).

The lay judge reform did stimulate reform in other parts of Japan's criminal process, chiefly by expanding discovery rights and requiring the recording of

11 A similar statement can be made about law enforcement in Shizuoka prefecture, which just kept chugging along after many revelations of wrongful conviction and serious police misconduct in the 1950s (Ogata, 2023, p.61). In Japanese legal circles, Shizuoka was so notorious that it came to be called "the empire of wrongful charges" (*enzai taikoku)* and a "department store for wrongful convictions" (enzai no depaato). The most infamous Shizuoka detective (Kurebayashi Asao) was known as "the king of torture in the Showa era" *(Showa no gomon-o)*.

some interrogations (Foote, 2014). But on the whole, the most striking pattern in Japanese criminal justice is continuity, not change (Johnson and Vanoverbeke, 2020; Vanoverbeke, 2024). Most importantly, the mindsets of police, prosecutors, and judges have not significantly changed since the death row exonerations in the 1980s. As defense attorney Shinomiya Satoru sees it, a "culture of denial" remains so deep-rooted among Japanese legal professionals that "mistakes are seldom acknowledged," and when a miscarriage of justice is revealed, "there is seldom research into its causes or countermeasures." All too often, Shinomiya says, criminal justice officials attribute wrongful convictions to "a lack of effort" rather than to systemic weaknesses that recurrently generate unjust outcomes (author's interview, August 16, 2024). But it is the systemic weaknesses that most need to be addressed (Nishi, 2023).

Reform Priorities

Hakamada's acquittal creates an opportunity for much-needed reform in Japanese criminal justice. The public is paying attention, and many institutions are pushing for change, including the mass media and some 350 members of parliament who have joined a multi-party coalition to revise the country's archaic retrial law. In my view, there are five priorities for reform. If preventing wrongful convictions is the main aim, then the first priority should be preventing false confessions.

Prevent False Confessions

False confessions were a key cause of the wrongful conviction of Hakamada Iwao. If he had not confessed, he would not have been charged or convicted. In his trial, this is why the Shizuoka District Court turned jurisprudential somersaults to use one confession statement as evidence while deeming 44 other confession statements involuntary and unreliable because of the coercion employed to obtain them. More generally, false confessions are the primary proximate cause of wrongful convictions in Japan, and they are often obtained through a system of "hostage justice" (hitojichi shiho) in which police and prosecutors detain a suspect until he gives them what they want (Human Rights Watch, 2023). In the postwar period, all five death penalty retrial cases involved false confessions, as did more than 70 percent of all retrial acquittals in the last 80 years (Japan Times, October 13, 2024).[12] False confessions are also a serious problem in ordinary cases that do not result in retrial. One study found that that 29 of 42 falsely charged (enzai) cases (69 percent) involved a false confession (Nishi, 2023, p.152). Another study found that a confession was part of the evidence marshaled against defendants in 84 percent (42 out of 50) of falsely charged cases in which the conviction was later overturned by an appellate court (Davis, 2014, p.76). These figures are six to seven times higher than the percentage for the United States, where false confessions were a contributing factor in 12 percent of the exonerations that occurred between 1989 and 2020 (National Registry of Exonerations, 2024).

Japan should take two significant steps to reduce the risk of false confession. First, all interrogations should be video recorded in their entirety, so that police, prosecutors, judges, and lay judges have an objective record of a process that occurs in one of the most secretive spaces in Japanese society. At present, interrogations must be recorded in only a small percentage of criminal cases: mainly cases eligible for lay judge trial (2 to 3 percent of all criminal cases), and cases in which prosecutors in special investigative units (tokusobu) initiate an investigation, typically for political corruption or other white-collar crimes. One result of this narrow recording regime is that little is known about the interrogations that occur in the vast majority of criminal cases. This needs to change.

In addition, judges in Japan should abandon the doctrine that a criminal suspect has a "duty to receive interrogation" (torishirabe no junin gimu) even after he or she has invoked their right to si-

12 According to research by Jiji Press, 20 people in 18 cases have been acquitted in a retrial in the postwar period. Of them, 15 people in 13 cases were previously convicted of homicide because of a false confession (*Japan Times,* 2024).

lence (RAIS, 2024). This "duty" has no sound basis in law (Takano, 2021), though judicial decisions can be invoked to justify it.[13] But Article 38 of the Japanese Constitution states that "No person shall be compelled to testify against themselves," and "Confessions made under compulsion, torture, or threat, or after prolonged arrest or detention shall not be admitted in evidence." This is beautiful language, but the judge-made "duty to receive interrogation" brazenly contradicts it, and often results in interrogations that overbear the will of criminal suspects. This doctrine also renders the right to silence little more than a pretense, for it gives a judicial "yes-you-may" to police and prosecutors who want to steamroll suspects who refuse to talk, as two recent cases illustrate.[14] I have even seen judges allow the steamrolling of a defendant in open court, as when the Tokyo District Court permitted prosecutors to continue questioning Ino Kazuo during a homicide trial in 2011 even after Ino had made it perfectly clear that he would not answer any questions. That spectacle—a prosecutor asking incriminating questions to a resolutely silent defendant in front of a panel of three judges and six lay judges—continued for about 30 minutes (and without objections from the defense). Ino was convicted and sentenced to death, but on appeal, his punishment was reduced to life in prison.[15]

Require Open-File Discovery

One of the most troubling facts about Hakamada's case is that for decades, prosecutors refused to disclose evidence that would have helped him. This was a conscious and collective cover-up by a powerful organization that routinely trumpets the importance of discovering and telling the truth. To remain silent about their wrongdoing is to silently condone it, and the first step toward change is clarity in condemnation. So to be clear: the prosecutorial cover-up in this case was odious and inexcusable.

Prosecutors and police have immense power to gather evidence. As a prominent former judge has observed, they have cannons while the defense has an air gun (Kitani, 2024). But the evidence in a criminal case does not belong to law enforcement. It is public property, and it should be used to serve the public interest. As stated in Article 4 of the Public Prosecutors Office Law, prosecutors are supposed to "represent the public interest" (koeki no daihyosha), and the Ministry of Justice website proclaims that "The exercise of prosecutorial power is based on the principle of strict fairness and impartiality, and cases are handled with due respect to the human rights of the suspects" (Japanese Ministry of Justice, 2024). But in reality, prosecutors have repeatedly demonstrated that they cannot be trusted to disclose relevant evidence to the defense, and they have long opposed reforms that would require them to disclose more. This could not be more at odds with the claim that they fairly and impartially respect the human rights of criminal suspects, chief of which is the right to hu-

13 One of the most frequently cited judicial justifications for "the duty to receive interrogation" is found in a unanimous decision made by Japan's Supreme Court in 1999. The main topic of this decision is a suspect's right to communicate with defense counsel, and the Court's reasoning about interrogation is superficial. The decision states that a "reasonable balance" must be struck between the rights of criminal suspects and the investigative authority of police and prosecutors, and it holds that "the interpretation that the suspect in custody has a duty to be present for interrogation and to stay for interrogation does not necessarily mean that the suspect is deprived of the right against self-incrimination." The Court says this conclusion is "obvious" and "a matter of course." It also says that "by what means the prohibition against forcing a statement of self-incrimination should be effectively guaranteed is basically left to legislative policy." The (conservative) Liberal Democratic Party has ruled Japan almost continuously since 1955, and it has never enacted legislation that would give real substance to the right to silence. For an English translation of the Supreme Court's decision, which many scholars and defense lawyers have criticized (Takano, 2021, pp.118-163; RAIS, 2024), see https://www.courts.go.jp/app/hanrei_en/detail?id=433).

14 One recent case involved attorney Eguchi Yamato, who was charged and convicted of suborning perjury in a traffic case (he has appealed). His civil suit against the state was decided in 2024, when he was awarded 1.1 million yen (about US$7500) for the brow-beating that he endured during 21 days of questioning by a prosecutor in Yokohama. All the while, Eguchi invoked his right to silence – while meditating. For video of some parts of his interrogation, see https://www.youtube.com/watch?v=OZh6Gnq2kW0. In a separate case, an employee of the Osaka-based Pressance Corporation was subject to malicious and coercive questioning in an embezzlement investigation. He was pressured by prosecutors to provide incriminating evidence against Pressance CEO Yamagishi Shinobu, who was acquitted at a criminal trial in 2021. Three years later, the Osaka High Court ruled that one of the prosecutors involved in the investigation should be charged with "assault and cruelty by a specialized public employee" (*The Mainichi,* 2024a). His criminal trial will start in 2025. This appears to be an unprecedented case in which a prosecutor is being charged for illegal interrogations by a court, through a process called the "analogical institution of prosecution" (fushinpan seikyu) (Johnson, 2002, p.223). By law, in both the Eguchi and the Pressance cases, the interrogations had to be video recorded because the investigations were conducted by a special investigative unit of prosecutors (*tokusobu*). If they had not been recorded, the misconduct would not have been exposed.

15 For more details about Ino Kazuo's case, see https://www.jiadep.org/Ino_Kazuo.html.

man dignity, which encompasses the right not to be falsely convicted (Kuzono, 2024, pp.30-33). While Japanese courts have not recognized any wrongful executions in recent years, some have probably been carried out, including the hanging of Kuma Michitoshi in Fukuoka in 2008, which occurred after egregious failures by prosecutors to disclose evidence to the defense (Aoki, 2009, pp.173-221). After Kuma's death as before it, courts have refused to grant him a retrial (Kyodo News, 2024).

The right to discovery is more restricted in Japan than in the US, Germany, Holland, and many other countries. The current system relies heavily on the goodwill of prosecutors to disclose evidence to the defense. This system is not working. Many wrongful convictions in Japan occur when prosecutors withhold evidence from the defense and the court. In the past 15 years, persons sentenced to life imprisonment in the Ashikaga, Fukawa, and Tokyo Electric Power Company murder cases were acquitted in retrials, and prosecutors' failure to disclose relevant evidence played a major role in each of these wrongful convictions. Before and after the advent of the lay judge system in 2009, discovery rights expanded (Johnson and Vanoverbeke, 2020), but prosecutors' duty to disclose evidence remains cabined by considerations of materiality (juyosei), necessity (hitsuyosei), harm (heigai), and fairness (sotosei), all of which involve prosecutors' discretion, which is often exercised in ways that serve their own interest, not the public interest or the interest of justice. Deeper reform will require legislative action, but since criminal justice legislation usually originates in the Ministry of Justice, which is run by prosecutors, the procuracy must also join the cause. The best course of reform is open-file discovery, whereby defendants are entitled to all of the information in the prosecutor's file (or at least to a summary of each item in it), not just to the evidence that prosecutors use at trial and choose to disclose (Ibusuki, 2014). This would better serve the public interest and the interests of truth and justice, and it would help prevent wrongful convictions too (Ishida, 2024).[16]

Reform the Retrial Law

It took courts 27 years to reject Hakamada's first request for a retrial, and then it took 6 more years to grant his second request. But because prosecutors appealed, Hakamada's retrial did not actually start until 2023, and then it took another year to reach a verdict. In this snail-like way, it took 44 years for Japan's legal system to acknowledge the terrible mistake that the Supreme Court ratified in 1980. In total, a man arrested at age 30 spent 58 years fighting to clear his name and regain his freedom. Japan's retrial law is severely defective.[17] In the months before Hakamada's acquittal, the Asahi newspaper surveyed 50 former judges who had experience in retrials, and it received answers from 18 of them. More than 80 percent (15 out of 18) said the current law is inadequate (Asahi Shimbun, 2024b). The law is old, and it is perfunctory in its brevity. There are no clear provisions about how and how quickly a court needs to decide whether to grant a retrial, and when a retrial is granted, there is no meaningful guidance for judges about how to conduct it. There are, therefore, large inconsistencies in how different judges handle retrials. Moreover, the duty of prosecutors to disclose evidence to the defense is not clearly defined in the current retrial law, and prosecutors are permitted to appeal decisions they do not like, which they routinely do. A recent study of 20 cases in which a retrial was granted found that prosecutors appealed 18 of them, and they persuaded a court to overturn 5 of those 18 (Ueji, 2024, p.128). In this way, prosecutors' appeals greatly slow the retrial process and routinely block efforts to correct injustices.

The retrial law needs major reform, but prosecutors and the Ministry of Justice have expressed little support for it, and on at least four previous occasions efforts to reform the law have failed (in 1962, 1977,

16 Ironically, something closer to open-file discovery seemed to be the norm in prewar Japan, when defense counsel had limited ability to undertake their own investigations and evidence gathering, and prosecutors were expected to provide them with a full dossier. When Occupation reforms introduced a more adversarial system of criminal justice, prosecutors took the position that each side is responsible for preparing its own case and developing its own evidence, so (prosecutors said) they no longer had a duty to turn over their dossier (Foote, 1991, p.479; Foote, 1992a, p.384).

17 Japan's retrial law provisions are found in Articles 435-453 of the Code of Criminal Procedure.

1985, and 1991). Similarly, in 2019 the Ministry of Justice created a council of experts to review the retrial system, but it has yet to make any recommendations.

Yet there is some reason to hope. As of September 2024, more than 350 Members of Parliament had joined forces to pursue reform (about half from the ruling Liberal Democratic Party). Their initiative is supported by many local governments throughout the country. Hakamada's case is providing much of the motivation and momentum for change. Reform will be too late for him, but the Japan Federation of Bar Associations is currently supporting retrial petitions in at least 14 other cases, 5 of them involving a death sentence (Kuzono, 2024, p.30). Efforts to correct injustices should not be blocked by a law that fails to protect the rights of the innocent, but the grim reality is that Japan's retrial law is far less functional than similar laws in Taiwan, Germany, France, the UK, and the USA (Shimasaki and Yamada, 2024; Yomiuri Shimbun, September 30, 2024).

Recognize That Death Is Different

Hakamada's acquittal is also an occasion to reflect on problems in Japanese capital punishment. Government surveys on the subject are flawed, but they consistently show that the vast majority of Japanese people support the death penalty (Sato, 2014), mainly because they believe punishment should be morally proportionate to the crime. On this view, some crimes are so horrible that the only appropriate response is execution. Hakamada was wrongfully convicted of killing four people, but if he had committed those crimes, most Japanese would say he must atone with his life.

In many countries, including Japan, the main question people ask about capital punishment is whether some horrible offender should be condemned and executed. Aum guru Asahara Shoko, serial killer Miyazaki Tsutomu, Akihabara mass murderer Kato Tomohiro, and so on: should they be put to death? When the question is framed this way, most Japanese say yes, the death penalty is "unavoidable" (yamu o enai). But Hakamada's case shows that asking about the propriety of executing some detestable offender is the wrong question to ask. The crucial question is not about any particular person. It is about the system, for if you have capital punishment, you need to reckon with all of its consequences. The pivotal question is whether it is possible to construct a system of capital punishment that reaches only the rare, right cases without also condemning the innocent or the undeserving (Turow, 2003, p.114).

The United States has tried much harder than Japan to construct such a system, with a "death is different" jurisprudence that requires "super due process" in capital cases. But America's efforts have failed. There are large race, class, and gender biases in the administration of capital punishment, and in the last half-century more than 200 people have been exonerated from death rows because of evidence of their innocence. This is not a morally proportionate system of capital punishment. It is a broken system. With Hakamada's acquittal, Japan has now exonerated five people from death row since the 1980s. This is a much smaller number than in the US, partly because Japan has fewer homicides, but also because Japanese criminal justice is neither assertive about searching for wrongful convictions nor effective at finding them (Nishi, 2023). Statistically, Hakamada's case may look like a rare exception, but substantively it should be cause for concern, because Japanese jurisprudence does not regard the punishment of death as "different" (tokubetsu) in its seriousness and finality, nor does it provide special procedures and protections for people accused of capital crimes.

The problems in Japan are legion. Interrogations are long, and false confessions all too common. Prosecutors fail to disclose evidence to the defense, and they do not even have to provide defense lawyers with advance notice of whether they will seek a sentence of death. The retrial law is dysfunctional. Victims' emotional demands for punishment are permitted to distort fact-finding at trial (Johnson, 2010). Death sentencing standards are vague and

unclear. There is no automatic appellate review for defendants who have been sentenced to death (in recent years, about one-third of all death sentences have been finalized without review by the Supreme Court). Lay judge panels are allowed to impose a death sentence by a vote of 5 to 4, provided that at least one judge is in the majority. Prosecutors are permitted to appeal not-guilty verdicts, and if a sentence of death is not imposed, they may try a second time to get a death sentence on appeal. And the secrecy that surrounds executions is taken to extremes not seen in other nations (Johnson, 2020, pp.19-60).

In Japanese capital punishment, there is little effort to achieve moral proportion, and there are no reasonable grounds for believing the ultimate penalty is administered in a manner that is fair, just, and accurate. The country either needs to abolish the death penalty, or it must start taking seriously the assertion its Supreme Court made in a 1948 decision upholding the constitutionality of capital punishment—that "a single life weighs more than the entire earth." Whatever road Japan chooses to travel, this much is clear: the present presumption that death is not different is deeply problematic.

Learn From Mistakes

The legal reforms described above are important, but without change in Japan's culture of criminal justice they will have limited impact. Reforming law is the main means of change in the modern approach to developing democracy, but the designers of new laws are often "writing on water" (Putnam 1993, p.17). Culture conditions the effectiveness of rules, and traditions shape the course and pace of change. Because culture counts, addressing the problem of wrongful convictions must attend to this area as well. The most important imperative concerns assumptions that are relevant in many other areas of Japanese society where mistakes occur, from aviation and medicine to food safety and nuclear energy. Two principles are primary.

First, in order to reduce error, one must assume it is inevitable (Schulz, 2010, p.304). When I first started studying Japanese criminal justice in the 1990s, several prosecutors told me that the miscarriages of justice that occurred in the first decade or so after the Pacific War "could not happen anymore" because they were caused by an immature system of criminal justice that had been radically reformed during the Occupation and that was still finding its way in the early postwar period. But mistakes continue to occur in Japanese criminal justice, and so do fabrications and cover-ups like those that poisoned Hakamada's case.[18] All too often, these accidents and crimes continue to be denied by police and prosecutors. Their denial takes two main forms. Some contend that such problems are a thing of the past, a claim which becomes increasingly hard to maintain with every revelation of a wrongful conviction. Other denials offer a grand non-sequitur, that the fabrication and concealment of evidence "is impossible" (arienai) and therefore could not have occurred in whatever case is being called into question. This is claptrap masquerading as moral outrage that the media and the public do not trust and support law enforcement.[19] It is nonsense on stilts.[20]

Police and prosecutors in Japan continue to disavow wrongful convictions, and the most important cause is a culture of denial that makes it difficult for them to acknowledge mistakes and misconduct (Sasakura and Johnson, 2020). Judges are culpable too. When Chief Judge Kunii Koshi apologized to Hideko

18 See, for example, former judge Fukuzaki Shinichiro (2024), who describes 11 cases in which evidence was fabricated or concealed, and former judge Kitani Akira (2021), who analyzes many other cases involving illegal investigations and wrongful convictions.

19 A survey of 2298 adults was administered after Hakamada was acquitted *(Asahi Shimbun*, 2024e). It found that only 31 percent of respondents trusted prosecutors while 69 percent did not. When the latter group was asked about their reasons for distrusting prosecutors, the top answers concerned wrongful conviction, the denial of error, and the fabrication of evidence.

20 For examples of the denial that continued to occur after Hakamada's acquittal, see the statements made by former prosecutors Takai Yasuyuki (2024) and Ito Tetsuo (2024). After Hakamada was acquitted, Shizuoka Prefectural Police Chief Tsuda Takayoshi (Yamaguchi, 2024) and Shizuoka Chief Prosecutor Yamada Hideo did offer in-person apologies to Iwao and Hideko. During the latter, Yamada said "we have no intention of saying that Mr. Hakamada is the culprit in this case, nor do we see you as the offender" (*The Mainichi*, 2024d). But after the apology, Yamada held a press conference where he stressed that the evidence in Hakamada's case was not fabricated, and he refused to say why he did not apologize for the inhumane interrogations that prosecutors had inflicted on Hakamada (*Asahi Shimbun*, 2024f). In other words, Hakamada got an apology, but prosecutors kept "vexing his team" (*Asahi Shimbun*/Asia & Japan Watch, 2024c).

Hakamada at the conclusion of her brother's retrial, he said he was sorry for how long it had taken the courts to rectify this miscarriage of justice, but he said nothing about the causal and moral responsibility of the dozens of judges who, for more than half a century, had ratified that rotten conviction. Transforming this culture of avoidance and denial into a culture of learning and accountability will require criminal justice officials to become more humble, honest, curious, and courageous (Nishi, 2024). It will also require pressure from Japanese society (Horikawa, 2024). In many ways, it was pressure from Hakamada's supporters that finally moved Japan's judicial system from a position of complacency to a posture of concern. His supporters refused to give up, and without their heroic efforts, he would probably now be dead.

The second important cultural imperative is to recognize that successful strategies of error prevention rely on principles of openness and transparency to identify and learn from mistakes. When a plane crashes, we investigate. We do not pretend it did not happen, and we do not falsely promise that it will not happen again. We learn from it, and we make changes so that it is less likely to recur. This is the main reason air travel has become substantially safer over the past half century, and it is the only sensible approach to criminal justice too. But police, prosecutors, and judges in Japan remain deeply resistant to outside scrutiny (and journalists and scholars must hold them more accountable by bringing more truth to light). Their insularity reflects the assumption that criminal proceedings are their own special province, and that legal professionals can be trusted to do the right thing. The terrible tragedy of Hakamada Iwao reveals how dangerous these presumptions can be.

Conclusion

On the day after Hakamada was acquitted, Japan's three largest national newspapers (Yomiuri, Asahi, and Mainichi) published the same headline on page one: "Prosecutors Must Not Appeal" (kensatsu wa koso dannen o). In its lead editorial on the same day, the Nihon Keizai Shimbun (2024b) observed that "wrongful convictions are not a thing of the past," and it stated that "what is demanded from prosecutors now is not trying to save face by continuing to claim that Hakamada is guilty. It is sincerely acknowledging their errors and taking steps to ensure that they do not happen again." If prosecutors do not do that, the newspaper said, "the trust they have lost in this case will never be recovered."

After Hakamada was acquitted, prosecutors had two weeks to decide whether or not to appeal, and many people worried that legal proceedings could continue for several more years—or until Hakamada's death, which would have ended the case without a final judgment. Some defense lawyers and Hakamada supporters believe prosecutors were hoping for the latter, but on October 8, two days before the deadline, Prosecutor General Unemoto Naomi, the first woman to become Japan's top prosecutor, announced that prosecutors will not appeal, and so the acquittal was finalized. But Unemoto stressed that "this is an unacceptable ruling that contains many problems and should have been appealed to a higher court for a decision" (The Mainichi, 2024d). Most of her page-and-a-half statement was spent criticizing the courts that ruled in Hakamada's favor and insinuating that prosecutors have plenty of good evidence against him. But her punchline was that because of the "long retrial process," which stretched from 1981 to 2024, "Hakamada's legal status was placed in an unstable condition, and we have reached the judgment that it would not be appropriate to appeal and cause that condition to continue."[21] The chief of the Shizuoka Prefectural Police echoed this when he said, "We feel sorry that Mr. Hakamada was placed in an unstable legal status for a long time" (The Mainichi, 2024c). With this, Hakamada's fight for freedom was over, though no one knows whether his nightmares are over too.

21 Unemoto's "discourse" (*danwa*) about prosecutors' decision not to appeal is summarized in *Asahi Shimbun (2024d). According to some sources, prosecutors in Shizuoka and in the Toky*o High Prosecutors Office wanted to appeal Hakamada's acquittal, but the Prosecutor General overruled them, apparently because she believed there would be intense public criticism if the case went on any longer. On this view, Unemoto's exasperated explanation was meant mainly for other prosecutors, not the general public (author's interviews, October 11, 2024 and October 15, 2024).

In a press conference on the same day that prosecutors announced they would not appeal, Hideko said she is "thrilled" that her brother is no longer under a sentence of death, and she said she would soon find an appropriate time to convey the good news to him. The next day, in a video taken by supporters, Hideko said she continues to tell Iwao that he has been acquitted and his case is over, but she cannot tell how much he understands, and she hopes the reality will sink in over time. A male grandchild of the couple that was murdered in 1966 told reporters he has "no choice but to accept what the prosecutors decided" (The Mainichi, 2024c), but few commentators seemed to recognize that by falsely charging Hakamada, law enforcement let the real culprits get away.

For their part, defense lawyers expressed relief about the finalized acquittal while emphasizing that Prosecutor General Unemoto's statement was troubling in many ways. One defense lawyer said the top prosecutor's discourse was "absolutely disgraceful" because it continued to deny the reality of criminal misconduct and serious mistakes by police and prosecutors. Another said it was "very hard to forgive" prosecutors for continuing to make claims that courts had already rejected, and a third said Unemoto's "disgusting" statement shows that nobody should expect prosecutors to seriously confront the systemic problems in Japanese criminal justice that have been revealed in this case.[22] My own view is that by explaining prosecutors' decision not to appeal in such a dubious way, Unemoto is like a boxer who gets knocked out and then goes to the post-fight press conference to declare, "I was winning; the fight should have continued!"

There will be a rematch in civil court. Under Japan's Law on Compensation for Wrongful Conviction (gohan kyusai ho), an exonerated victim of wrongful conviction can be compensated up to 12,500 yen for each day of incarceration. Hakamada's lawyers estimate that he will receive about 200 million yen ($1.4 million), and they plan to file a separate civil suit for additional compensation (Nihon Keizai Shimbun, 2024c). In the United States, people who bring civil suits after being exonerated receive an average payout of $3.7 million, or $318,000 for each year spent incarcerated (Kilgannon, 2022). But of course, even this amount of money (ten times more per year of incarceration than Hakamada is set to receive) cannot fix this level of injustice or restore the best years of a life.

Retrials rarely occur in Japan. From 2017 to 2021, 1160 persons convicted of a crime petitioned for a retrial, but only 13 retrials were granted (1.1 percent) (Asahi Shimbun, 2024c). In this sense, Hakamada's case is extraordinary.[23] But the mistakes and misconduct that occurred in his case are ordinary events in Japanese criminal justice (Nishi, 2023). There is, therefore, much to learn from it. Denial will only deepen the problems and make it more difficult to correct them.

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22 For an abridged version of the defense lawyers' press conference, see https://www.youtube.com/watch?v=dZh7cFikgvA.

23 In England and Wales, the Criminal Cases Review Commission reviews approximately 1400 cases each year, and it refers 40 to 60 of them for retrial (3 to 4 percent) (Hoyle and Sato, 2019, p.6). Some scholars regard the CCRC as a model institution for deciding who deserves a retrial. Ibusuki Makoto, Professor of Law at Seijo University and a leading authority on wrongful conviction, says Japan should create a similarly well-resourced and independent institution, but he believes "there is no way" it will happen in the next ten years because of resistance from prosecutors and the Ministry of Justice. For the same reason, he believes it is "very unlikely" that Japan will create an expert commission (*shingikai*) to study and learn from Hakamada's case (author's interview, October 11, 2024).

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David T. Johnson is Professor of Sociology at the University of Hawaii at Manoa and the author of many works on Japanese criminal justice, including *The Culture of Capital Punishment in Japan* (Palgrave Macmillan, 2020), and Japan's Prosecution Review Commission: On the *Democratic Oversight of Decisions Not to Charge* (Palgrave Macmillan, 2022), both of which have also been published in Japanese by Iwanami Shinsho. More recently, he is the author of "Is Rape a Crime in Japan?" (*International Journal of Asian Studies*, 2024), available via open access.