

## Wrongful Convictions in Japan: Causes, Challenges, and Preventive Measures

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*This study provides a broad overview of the current state of wrongful conviction research in Japan and derives several key lessons from its findings. The criminal justice system heavily relies on interrogations, reinforced by systemic flaws. With an exceptionally high conviction rate, judges' role in determining guilt is largely limited, making prosecutors the key decision-makers. Once arrested and indicted, innocent individuals face detention, prolonged interrogations, and inherently unequal circumstances. These structural issues often lead to wrongful convictions, as investigators extract false confessions and accomplice statements based on their mistaken assumptions. Failure to address these causes has allowed wrongful convictions to recur in the same patterns. Psychological factors and types of evidence recognized globally as causes of wrongful convictions also play a role in Japan. This highlights the universality of wrongful conviction risks and underscores the need for international collaboration. Since transitioning away from interrogation-dependent investigations is difficult, developing an alternative investigative model is essential and also calls for global research. For the prevention of wrongful convictions, Japan has traditionally refined fact-finding through evidentiary evaluation guided by the Cautionary Principle, grounded in the knowledge base developed from past judicial rulings. A new approach has been proposed that integrates risk management principles, aiming to prevent future errors by continuously analyzing the causes of wrongful convictions and systematizing the lessons learned. The idea of "learning about and from wrongful convictions" is emerging as a critical theme in global wrongful conviction research.*

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## I Introduction

The United States has played a leading role in research on wrongful convictions. In addition to exonerating numerous individuals, it has implemented reforms based on these cases, leading to improvements in its criminal justice system. These developments have been widely recognized internationally. However, wrongful convictions are a concern not only in the United States but across various jurisdictions. International collaboration, facilitated through the exchange of research findings between countries, can contribute to a more effective approach to reducing such convictions globally.

This study examines the causes and prevention of wrongful convictions in Japan for readers around the world. Identifying factors in Japan that align with those observed in other countries would support the universality of such causes and highlight the potential for collaborative research. At the same time, findings unique to Japan may offer valuable insights applicable in other contexts.

The rest of this article proceeds in three parts. Section 2 provides an overview of Japan's criminal justice system and some of the salient issues in it. Although Japan is frequently commended for its high level of public safety, this section shows that the system also has serious weaknesses and vulnerabilities. Section 3 examines the causes of wrongful convictions in Japan. In addition to identifying causes that also occur in other national contexts, this section highlights Japan's heavy reliance on interrogations, which leads to false confessions and false statements by accomplices. The salience of these causes is one of the main Japanese distinctives to emerge both from this study and from prior research. Section 4 outlines two of the measures that have been proposed to prevent wrongful convictions in Japan, including the Cautionary Principle, a framework for evidence evaluation, and a more recent approach that incorporates insights from the study of risk management. Section 5 presents the lessons drawn from wrongful convictions in Japan and indicates the necessity, significance, and direction of international research aimed at preventing future wrongful convictions.

## II Issues in Japan's Criminal Justice System

### A. Integrity of the Judicial System

Japan follows the principle of separation of powers, dividing authority among the legislative, executive, and judicial branches. While instances of judicial corruption such as bribery are rare<sup>1</sup>, official misconduct has been regarded as a serious concern. In particular, cases involving the coercion of confessions, falsification of evidence, and fabrication of evidence by prosecutors and police have been documented (e.g., *Hakamada Jiken* [Case No. 19]; *Kōrosho Moto Kyokuchō Enzai Jiken* [Case No.37]<sup>2</sup>).

### B. Criminal Investigation Issues

Japan's investigative system is notably dependent on interrogations. This practice has been credited with enabling efficient investigations and maintaining public safety (Keisatsuchō, 2012), but it has also faced criticism for contributing to wrongful convictions through false confessions and coerced statements (Foote, 1991; Johnson, 2002; Hōsēshingikai, 2013).

Several factors underlie this emphasis on interrogations, including historical developments, the prioritization of investigative efficiency, the aim of uncovering the full truth, including motives, and relatively limited authority to collect objective evidence compared to other countries<sup>3</sup>.

This reliance has resulted in the widespread use of prolonged interrogations. A 2010 Ministry of Justice survey involving 8,223 cases found that the average interrogation time per

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<sup>1</sup> According to Trace International, Japan ranked tenth worldwide for low bribery risk in 2024, making it the most transparent country in Asia (Trace International, 2025).

<sup>2</sup> Case numbers referenced throughout the article correspond to the cases listed in Table 1, below.

<sup>3</sup> For example, in Japan, plea bargaining, criminal immunity, wiretapping, and undercover operations are restricted by legislation or judicial precedent.

suspect was approximately 22 hours, with the average for murder cases being around 51 hours (Hōmushō, 2011)<sup>4</sup>. Among the 1,692 cases (21%) in which suspects initially denied the charges during prosecution questioning, 861 eventually confessed before the final decision, compared to 831 who maintained their denial. This pattern raises two concerns: first, that confessions obtained following an initial denial may be coerced and unreliable; and second, that extended interrogation durations can erode denials regardless of their accuracy.

Regarding the criminal justice system, the framework of detention facilitates interrogations. In 2023, the rate of physical detention for cases referred to the public prosecutor's office was 34.8%. Under this framework, suspects may be detained for up to 72 hours after arrest, and prosecutors may then request pre-indictment detention of up to 20 additional days. In total, suspects can be held for as long as 23 days before indictment. More than 90% of pre-indictment detention occurs in police stations, a practice criticized as a form of “substitute prison” (*daiyō kangoku*) that allows investigators to exercise continuous control over suspects. Detention is carried out on a case-by-case basis rather than per individual. Consequently, if additional charges are brought, arrests and pre-indictment detention can be repeatedly extended for up to 23 days. For example, a suspect initially arrested on suspicion of theft may be re-arrested for fraud, enabling authorities to reset the detention period and prolong custody.

Barriers to interrogation are minimal. While suspects are legally entitled to remain silent, Japanese law has been interpreted to impose a “Duty to Submit to Questioning” (*torishirabe junin gimu*) on those in detention. Although detainees are not required to speak, they cannot refuse to attend interrogation sessions. This interpretation is derived from applying an *a contrario* approach to the Code of Criminal Procedure. The Supreme Court has ruled: “it is evident that interpreting a suspect under detention as having a duty to appear for and remain in interrogation does not immediately mean depriving the suspect of the freedom to refuse to make a statement against their will.”<sup>5</sup> Hence, interrogations continue even when suspects refuse to answer, often under the guise of “persuasion” (Foote, 1991). Defense counsels are not legally entitled to be present during interrogations, and prosecutors almost invariably deny requests for such attendance. Video recording of interrogations was introduced in 2019, but the requirement applies to only about 3% of criminal cases, primarily those subject to lay judge trials (Nihon Bengoshi Rengōkai, 2024b; Kensatsuchō, 2025). Moreover, interrogations outside physical detention, such as pre-arrest questioning or witness interviews, remain unrecorded.

The results of interrogations are typically summarized by investigators in written statements rather than recorded verbatim. If signed and sealed by the suspect, these statements may be admitted as evidence under certain conditions. Because investigators draft them, the content often reflects prosecutorial priorities, omitting inconvenient details (Nihon Bengoshi Rengōkai, 2024b; Ibusuki, 2024). Despite longstanding criticism (e.g., Hirano, 1985 [1989 English trans.]), Japanese judges have traditionally relied on “document-based trials” (*chōsho saiban*), determining verdicts by reviewing written statements in chambers rather than through live

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<sup>4</sup> According to another survey by the Ministry of Justice, interrogations in Western countries on average typically last from several minutes to a few hours (Hōmushō, 2011).

<sup>5</sup> Supreme Court of Japan. (1999, March 24). *Minshū*, 53(3), 514.

testimony. While the introduction of the lay judge system has reduced this practice, written statements continue to play a significant role in criminal trials.

Japan also introduced a plea bargaining system in 2018, but it has been rarely utilized<sup>6</sup>. Courts have held that statements by co-defendants under plea agreements risk being tailored to meet prosecutorial expectations, making their admissibility uncertain. Moreover, prosecutors are often able to obtain favorable statements through conventional interrogations, further limiting the use of plea bargaining.

### C. Criminal Trials Issues

Criminal trials in Japan are generally presided over by professional judges, who determine both guilt and sentence. Since 2009, however, cases punishable by death or life imprisonment, along with intentional crimes resulting in death, have been subject to the lay judge system. With few exceptions, all cases in this category must be tried before a mixed panel of three professional judges and six lay judges, and defendants cannot opt out. In 2023, 807 defendants (1.8%) were tried under this system, while the vast majority of cases continued to be adjudicated solely by professional judges (Saikō Saibansho Jimusōkyoku, 2024). Japanese criminal trials also face distinctive challenges, as discussed below.

#### i. High Conviction Rate

Japan's conviction rate is exceptionally high, prompting criticism that prosecutors effectively determine outcomes, while courts merely confirm their decisions (Hirano, 1985 [1989 English trans.]). Although this is partly explained by the prosecution's strict indictment standards, it may conceal numerous wrongful convictions (Johnson, 2002, 2019).

In 2023, police and other investigative bodies reported 703,351 Penal Code offenses, of which 269,550 cases (involving 183,269 individuals) were cleared (Hōmushō Hōmu Sōgo Kenkyūjo, 2024). As a general rule, cleared cases are referred to prosecutors, although minor offenses may instead be concluded with a strict warning. In 2023, 48,292 individuals (26.4%) were processed in this way.

Prosecutors typically indict only when there is a high probability of conviction (Shihō Kenshūjo Kensatsu Kyōkan Shitsu, 2023). Accordingly, the 2023 indictment rate was 36.9%, with 64,695 individuals prosecuted (Hōmushō Hōmu Sōgo Kenkyūjo, 2024). More than half (56.1%; 444,261 individuals) of referred cases resulted in suspended prosecution, in which prosecutors acknowledged the facts but declined to indict due to mitigating circumstances. Additionally, Japan

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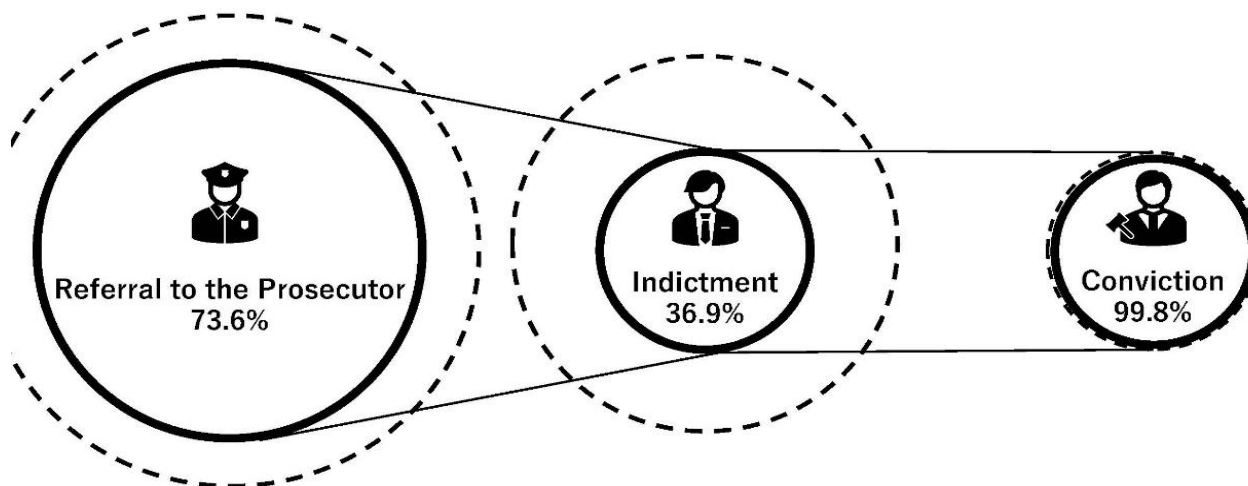
<sup>6</sup> It has been used in only five cases from 2018 to February 2025 (Sankei Shimbun, 2025). For example, in the case involving former Nissan chairman Carlos Ghosn for the underreporting of executive compensation, Gregory Kelly was convicted at both the trial and appellate levels for his alleged involvement. However, concerning the testimony obtained through plea bargaining from Nissan's former head of the secretary's office, the Tokyo High Court emphasized that such testimony "carries the risk of being tailored to the prosecutor's expectations in the hope of receiving favorable treatment," and declined adoption for most of it.

employs a summary procedure allowing fines to be imposed without a formal trial if the offense is minor and the suspect consents. This differs from the police practice of issuing warnings for minor cases, as the summary procedure is prosecutorial and results in a court-issued fine. In 2023, 162,761 individuals (20.6% of those finalized by prosecutors) were processed under this procedure (Hōmushō Hōmu Sōgo Kenkyūjo, 2024).

According to 2023 statistics, 43,880 first-instance cases were concluded (Saikō Saibansho Jimusōkyoku, 2024). Excluding procedural dismissals, 42,106 cases remained, of which 42,033 resulted in guilty verdicts, yielding a conviction rate of 99.8%. In jury trials, 807 cases were decided, and 795 ended in guilty verdicts, for a conviction rate of 98.5%.

Two points qualify for these figures. First, Japan does not recognize guilty pleas as in the United States, and even full-confession cases are processed as trials. When limited to contested cases, the conviction rate is about 96%, which is still high, but less extreme than 99.8%. Moreover, if guilty plea cases were included in U.S. statistics, conviction rates there would also exceed 99% (Aronson, 2021). Second, Japanese criminal statistics are difficult to reconcile, as they mix “cases” and “individuals,” are separately compiled by police, prosecutors, and courts, and are based on annual tallies that do not always correspond to the timing of arrests, indictments, and trials. Although precise figures are difficult to obtain, the accompanying chart illustrates how cases are filtered successively by police, prosecutors, and courts. Notably, what distinguishes Japan is that the primary “screening” of cases occurs not in court but by investigative authorities.

Figure 1: Screening in criminal justice



## ii. Inequality in Criminal Trials

Once indicted, defendants in Japan occupy a markedly disadvantageous position, with only a 0.2% chance of acquittal. Criminal trials follow an adversarial format in which the court presides over proceedings and determines guilt based on arguments and evidence presented by both sides. Because prosecutors are generally assigned consistently to each court panel, the exceptionally high conviction rate raises concerns that judges may develop a predisposed trust in the prosecution (Kitani, 2017).

Defense representation is widespread: in 2022, the appointment rate was 70.7% before indictment and 99.5% after indictment, combining both court-appointed and privately retained attorneys (Nihon Bengoshi Rengōkai, 2024a). Nonetheless, criminal defense carries little financial incentive compared to civil practice. A 2020 survey found that attorneys spent 36.4% of their time on civil litigation, but only 5.6% on court-appointed criminal defense and 2.2% on privately retained defense (Nihon Bengoshi Rengōkai, 2021). Coupled with the near impossibility of acquittals and the lack of results despite the effort, these conditions discourage many attorneys from specializing in criminal defense, and those who do often leave the field (Muraoka, 2017; Okabe, 1998).

Bail is another serious concern. Although defendants have a legal right to bail, the overall bail rate is 31.9%, while the detention rate in district courts is 72.8% (Hōmushō Hōmu Sōgo Kenkyūjo, 2024). This system has been criticized internationally as the “*hostage justice system*” (*hitojichi shihō*) (Ibusuki & Repeta, 2020; Takano, 2021; Human Rights Watch, 2023). Defendants who deny charges are more likely to be detained and held longer than those who confess (Nishi, 2025). In 2023, the bail rate before the first trial date was 26.5% for confession cases, but only 11.7% for denial cases (Nihon Bengoshi Rengōkai, 2024b). Evidentiary rules provide insufficient safeguards. While involuntary confessions are inadmissible and the Constitution prohibits conviction based solely on confession, corroboration requirements can be met when statements are shaped to fit other evidence. Moreover, convictions may rest solely on accomplice or witness testimony if deemed credible. Although perjury is a crime, proof of intent is required, therefore, mistaken testimony is rarely punished.

Evidence disclosure is also limited. Since 2005, evidence has been subject to disclosure in pretrial arrangement proceedings, but this procedure applies to only two to three percent of cases (Nihon Bengoshi Rengōkai, 2024b). Outside such proceedings, prosecutors disclose only the evidence they intend to use or choose to provide voluntarily, creating a systemic risk that exculpatory evidence remains hidden. Furthermore, because interrogations are not consistently recorded at all stages, problematic practices are often unverifiable, compounding the risk of wrongful convictions.

### **iii. Multiple Layers of Risk for Conviction**

Prosecutors in Japan are permitted to appeal acquittals. The appellate court, as a fact-finding body, reviews the judgment and evidence from the first instance. If the factual findings are deemed unreasonable under logical or experiential rules, the court may overturn the judgment. The Supreme Court, primarily a court of law, generally refrains from reviewing factual issues. However, it may intervene if a significant factual error is found and failure to correct it would cause serious injustice. Thus, while appellate and Supreme Court review can result in exoneration, the system also allows acquittals to be reversed into convictions.

In retrial proceedings, judgments cannot be altered to the detriment of the defendant, but prosecutors may present arguments and evidence to preserve the original conviction. Retrials are granted only when “newly discovered evidence clearly proving that a not guilty verdict should be rendered” is found. This standard is interpreted extremely narrowly, making retrials extremely difficult (Foote, 1993a; Nihon Bengoshi Rengōkai, 2024b). Moreover, there is currently no legal

framework mandating disclosure of evidence in retrial proceedings, leaving disclosure to judicial discretion. As a result, obtaining new evidence necessary for retrial remains a substantial challenge.

#### **D. Issues Relating to Wrongful Convictions**

##### **i. Limited Recognition of Wrongful Convictions**

Japan's high indictment standards reduce the likelihood of innocent individuals being prosecuted. At the same time, the strict requirements for acquittal and retrial equally limit opportunities for the wrongfully charged to be acquitted and the wrongfully convicted to secure exoneration and increase the risk and harm in cases of wrongful conviction. Consequently, the number of officially recognized wrongful convictions remains low (Johnson, 2015).

Fewer than 100 acquittals are issued annually, with only zero to one retrial initiated per year, and retrial acquittals are rare. Since World War II, there have been only 20 retrial acquittals that were supported by the Japan Federation of Bar Associations (Nihon Bengoshi Rengōkai, 2024a). Japan also lacks a comprehensive database documenting wrongful conviction.

There have been five cases wherein finalized death sentences were later overturned in retrial acquittals. The most recent case, the *Hakamada Jiken* (Case No. 19), concluded with an acquittal in 2024. Mr. Hakamata spent 45 years in detention, making him the world's longest-incarcerated death row inmate, a record certified by Guinness World Records. The court ruled that key evidence used for his conviction had been fabricated (Johnson, 2024; see Foote, 1993b for earlier cases).

##### **ii. Insufficient Public Awareness of Wrongful Convictions**

The Japanese term “冤罪” (*enzai*) is broader than “wrongful conviction” or “miscarriage of justice” in English. It encompasses wrongful arrests and indictments as well as convictions (Shōgakukan, 2001), reflecting the Japanese context because of the high probability of conviction once charges are filed and the lengthy detentions that may occur even in wrongful arrest or indictment cases.

Because officially recognized wrongful convictions are few, they are often mistakenly regarded as rare exceptions, with limited relevance to the wider public.

##### **iii. Political Inaction on Wrongful Convictions**

The National Diet has historically been reluctant to legislate against wrongful convictions. A conservative ruling party has dominated postwar politics and has not prioritized criminal justice reform, partly because public awareness of such issues is low and reforms yield little electoral benefit.

Since 2021, however, public concern has grown following several high-profile exonerations and increased recording of interrogations, which exposed problematic practices. In



2024, the *Hakamada Jiken* (Case No. 19) acquittal had a particularly significant impact. In response, Diet members formed a parliamentary coalition, and legislative efforts to revise retrial procedures are underway.

Nonetheless, the Ministry of Justice, substantially influenced by the Public Prosecutors Office, has consistently opposed reforms restricting investigative authority. Major legal reforms, including amendments to the Code of Criminal Procedure, traditionally require consultation with the Ministry's Legislative Council, further slowing progress. Consequently, retrial law reform was again postponed and was not enacted during the 2025 ordinary session.

#### **iv. Lack of Systematic Examination of Wrongful Conviction Causes**

When wrongful convictions are revealed, investigative bodies seldom conduct internal reviews and publish findings. To date, the National Police Agency has reported on only six cases, and the Public Prosecutors Office also reported on six cases, but these internal reviews are often inadequate, and they seem more like attempts to avoid criticism and resist reform than sincere efforts to explain the causes of wrongful convictions [*Hakamada Jiken*(Case No.19); *Ashikaga Jiken* (Case No.27); *Himi Jiken* (Case No.32); *Shibushi Jiken* (Case No.34); *Kōrosho Moto Kyokuchō Enzai Jiken* (Case No.37); *Pasokon Enkaku Sōsa Jiken* (Case No.39); *Ōkawara Kakōki Jiken*].

Courts, however, have refrained from reviewing wrongful convictions, citing judicial independence. This is because the Court relies on the view that reviewing wrongful convictions would infringe on the independent and free judgment of the judges who handled the case and judges who may serve in the future.

Although the Japan Federation of Bar Associations has long advocated for an independent body to investigate wrongful conviction causes (Nihon Bengoshi Rengōkai, 2010b), realistically, there is limited prospect of its establishment because of the lack of political momentum.

While individual organizations have conducted study sessions and legal professionals have published their own analyses, no comprehensive system has been developed to coordinate insights across all three branches of the legal profession.

#### **v. Limitations in Wrongful Conviction Research**

Research on wrongful convictions in Japan has traditionally relied on court rulings, as judgments must provide detailed reasoning for verdicts and can extend to dozens of pages in complex cases. While not all rulings are public, many are uploaded to court websites or included in legal databases. However, access to trial evidence is severely restricted for both the public and researchers, and the use of past trial evidence for research may even incur criminal penalties. Consequently, empirical research on wrongful convictions in Japan faces significant constraints.

Despite these limitations, judges, attorneys, and scholars have critically examined wrongful convictions by analyzing past rulings, highlighting investigative and judicial errors that contributed to them. The tragic nature of wrongful convictions has spurred ongoing efforts to raise

awareness and advocate for reform. However, discussions have often focused on criticizing individuals or institutions rather than examining the underlying causes and mechanisms of wrongful convictions. Wrongful convictions are often explained by incompetence or personal failings, while proposed preventive measures remain at a conceptual level, emphasizing ideals such as “being humble toward evidence,” “listening carefully to defendants,” or “avoiding prejudice.”

In recent years, research in the United States drawing on cognitive psychology has been introduced to Japan. Building on major prior research both in the United States and internationally, an approach referred to as “冤罪学” (*enzai gaku*; Wrongful Conviction Studies) has emerged, synthesizing these insights and analyzing the cause, prevention, and exoneration of wrongful convictions in an academic, interdisciplinary, and comprehensive manner (Nishi, 2023, 2024). This perspective frames wrongful convictions not as failures of specific individuals or organizations but as errors that anyone can commit, consistent with the saying “*to err is human*.” It distinguishes between accountability and causal analysis, aiming to prevent future wrongful convictions through systematic study of past cases. In these ways, the study of wrongful convictions in Japan echoes some of the most insightful and promising research about wrongful convictions elsewhere.

### III Causes of Wrongful Convictions in Japan

#### A. Psychological Tendencies Contributing to Wrongful Convictions

The application of cognitive psychology to wrongful conviction research has highlighted the role of bias in Japan, confirming its universality. Beyond bias, there are also attempts to explain the causes of wrongful convictions scientifically through other concepts from cognitive and social psychology, such as heuristics, cognitive consistency, cognitive dissonance, and prejudice (Nishi, 2023, 2024). While many findings align with international research, some reflect unique features of the Japanese context. This section examines both.

##### i. Confirmation Bias

Confirmation bias, which is the tendency to selectively perceive information that supports one’s expectations, has received particular attention in Japan. When investigators assume that a suspect is guilty, they may focus on evidence confirming this view while disregarding contradictory information (Simon, 2012). Confirmation bias makes us view new information through a warped lens and is a critical factor that leads to tunnel vision and other forms of investigative error (Godsey, 2017). This bias is made worse by the step-by-step structure of Japan’s criminal justice process: cases advance from police to prosecutors, from prosecutors to courts, and from trial to appeal. Each stage produces a formal decision, reinforcing prior conclusions and amplifying confirmation bias (see Medwed, 2022).

Patterns recognized in U.S. research mirror those observed in Japan. Investigators often test hypotheses by imagining what would occur if they were true and then searching only for supporting evidence (Simon, 2012). In Japan, wrongful conviction cases have revealed so-called

*black investigations*, where police pursued only evidence consistent with their assumptions, neglecting alternative explanations or falsification, known as *white investigations* (Kanagawa Prefectural Police, 2012)<sup>7</sup>.

Another pattern is applying stricter scrutiny to information contradicting investigators' conclusions while more readily accepting supporting evidence (Simon, 2012). Reports on Japanese wrongful convictions consistently note that incriminating evidence, especially confessions, was insufficiently tested through corroborative investigation (Nishi, 2023).

Investigative agencies have also long been criticized for overvaluing evidence consistent with case theories while discounting contradictory information (Shihō Kenshūjo Kensatsu Kyōkan Shitsu, 1997). Case reviews document instances where investigators relied heavily on multiple consistent confessions while neglecting exculpatory evidence such as alibis (Saikō Kensatsuchō, 2007).

Confirmation bias is not limited to investigators and judges. Defense attorneys, too, may presume guilt. In the *Ashikaga Jiken* (Case No. 27), the Japan Federation of Bar Associations reported that the defense attorney dismissed the client's claims of innocence as implausible, failing to provide adequate representation (Nihon Bengoshi Rengōkai, 2010a). Similarly, in the death penalty *retrial Menda Jiken* (Case No. 6), defense counsel assumed guilt from the outset and provided ineffective representation (Foote, 1993b).

## ii. Heuristics

In Japan, intuitive and impression-based judgments in criminal cases have long been criticized, and recent analyses interpret these errors through heuristics (Nishi, 2023, 2024).

Human cognition operates through two systems: intuitive (*system 1*) and deliberative (*system 2*). However, deliberation does not always prevail, and intuitive thinking can lead to errors (Kahneman, 2011). A well-documented example is the *representativeness heuristic*, whereby people instinctively categorize objects or individuals based on their similarity to a prototype. In criminal investigations, when evidence resembles characteristics commonly associated with a crime, investigators or judges may intuitively infer guilt. Another relevant shortcut is the *availability heuristic*, in which judgments rely on readily accessible information, such as vivid or frequently encountered cases. Investigators or judges may thus assume guilt when a case resembles a well-known crime or prior experience, even without objective support.

For judges, concerns about *prejudgment*, forming a presumption of guilt before evaluating evidence, and *prejudice*, distorting interpretation, can be understood through heuristics. Prejudgment often arises when extraneous information, such as media reports or co-defendant trials, primes intuitive associations. Representativeness and availability heuristics may then

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<sup>7</sup> For example, former Supreme Court Justice Dando Shigemitsu voiced a similar concern in his writings. In a death penalty case, his Petty Bench upheld the conviction based on the available evidence; however, he observed that had the police pursued a broader investigation rather than narrowing their focus prematurely, they might have identified another suspect (Dando, 1991).

reinforce confirmation bias, narrowing attention to incriminating evidence. In Japan, the media's tendency to treat arrest as guilt contributes to this presumption. Moreover, the same judge often presides over related cases, including those involving co-defendants, yet recusal is rarely granted. Although judges are assumed to remain unaffected, unconscious influence cannot be excluded.

Prejudice stems from categorization in everyday cognition, which can produce inaccurate generalizations and negative stereotypes. When heuristics operate on such stereotypes, they may yield impression-based judgments of guilt. In Japan, prejudice concerning criminal records, disabilities, foreign nationals, and gender has been recognized as a contributing factor in wrongful convictions [e.g., *Kotō Kinen Byōin Jiken* (Case No.35); *Fukawa Jiken* (Case No.20); *Tōden Josei Shain Satsugai Jiken* (Case No.30); *Hakamada Jiken* (Case No.19)].

### iii. Fraud Triangle Theory

Humans tend to seek *cognitive consistency* among emotions, thoughts, and actions. When confronted with contradictions, they experience *cognitive dissonance* and are motivated to reduce the discomfort (Festinger, 1965). These mechanisms can lead to conclusion-driven judgments or denial of errors and, in extreme cases, misconduct such as fabricating evidence to preserve internal consistency (Nishi, 2023, 2024).

Such misconduct can be explained through the *Fraud Triangle Theory*, which posits that fraudulent behavior arises when motivation, opportunity, and rationalization converge (Cressey, 1953). When investigators mistakenly identify a suspect and experience cognitive dissonance, these three elements can align, creating a strong risk of misconduct. Thus, misconduct can potentially occur in any criminal case.

Japan has witnessed recognized instances of such misconduct. In the *Kōrosho Moto Kyokuchō Enzai Jiken* (Case No. 37), a prosecutor tampered with a floppy disk; in the *Presansu Moto Shachō Enzai Jiken* (Case No. 41), an interrogator shouted and pounded a desk continuously for 15 minutes; and in the *Hakamada Jiken* (Case No. 19), the bloodstained clothing admitted as decisive evidence was, in fact, fabricated.

Because misconduct occurs in secrecy, it is extremely challenging to prove, yet it often concerns decisive evidence and can profoundly affect trial outcomes.

### iv. Tunnel Vision

The interaction of psychological factors can produce *tunnel vision*, a cognitive narrowing in which investigators fixate on guilt and disregard alternative explanations (Godsey, 2017; FPT Heads of Prosecutions Committee Working Group, 2021). When evidence is gathered under such assumptions, errors escalate: false evidence accumulates, reinforcing the initial mistake and creating a self-perpetuating cycle of wrongful conviction (Simon, 2012; Hamada, 2013).

Exculpatory evidence is often neglected, distorted through tampering, or undermined by coerced statements, leaving it concealed within the evidentiary framework (Nishi, 2023, 2024).

This process can also mislead defense attorneys into assuming their client's guilt, weakening their representation.

In adversarial trials, judges cannot independently collect evidence and must base decisions on what is presented. When the evidentiary framework itself is flawed, judicial error is almost unavoidable. This chain of mistakes across investigators, prosecutors, defense attorneys, and judges culminates in wrongful convictions.

## **B. Evidentiary Factors Contributing to Wrongful Convictions**

### **i. Four Key Types of Evidence**

In Japan, four types of evidence have long been recognized as major contributors to wrongful convictions: false confessions, false accomplice statements, mistaken eyewitness testimony, and erroneous scientific evidence.

A study examined 42 Japanese cases regarded as factual innocence (Table 1. Nishi, 2023). Although objective truth is ultimately unknowable, the study focused on cases that ended in acquittals or dismissals, including those finalized after multiple appeals or retrials, those acknowledged by investigative authorities with formal apologies, and those in which the actual perpetrator was later identified. In this research, "eyewitness testimony" encompassed perpetrator identification and statements placing defendants near crime scenes, while "scientific evidence" referred broadly to forensic or expert analyses. Official misconduct is not included in this study because the analysis focuses solely on the types of evidence used to support convictions, rather than on misconduct itself. The study's findings are limited by small sample size, selection bias toward highly publicized cases, and the difficulty of determining factual innocence, yet, in the absence of a wrongful conviction database in Japan, they provide valuable insights into general tendencies.

The results showed that confessions appeared in 69% (29 cases), accomplice testimony in 35.7% (15 cases), eyewitness testimony in 45.2% (19 cases), and scientific evidence in 62.7% (27 cases). Combined, confessions and accomplice testimony featured in 83.3% (35 cases), underscoring the centrality of testimonial evidence. In 30 of these 35 cases, multiple forms of evidence were present, suggesting that confessions or accomplice testimony often served either as a basis for gathering additional mistaken evidence or were themselves elicited in response to other flawed evidence. In contrast, among 350 exonerations handled by the U.S. Innocence Project, wrongful convictions involved confessions in 21%, informant in 22%, eyewitness in 72%, and forensic evidence in 74% (Garrett, 2017). Another analysis of the first 2,939 cases in the National Registry of Exonerations (as of 2022) found false confessions in 12%, erroneous scientific evidence in 24%, and mistaken eyewitness testimony in 28% (Norris et al., 2023). Compared to these findings, Japan is distinguished by its high reliance on confessions, while the significant role of scientific evidence is a shared characteristic (Nishi, 2023, 2024).

Overall, 78.5% (33 cases) of Japanese wrongful convictions involved multiple types of flawed evidence, with an average of 2.14 per case. This aligns with U.S. research showing more than two erroneous evidence types per wrongful conviction (Saks & Koehler, 2005). The presence

of multiple flawed evidentiary forms illustrates error escalation: one mistake often triggers the creation or collection of further faulty evidence (Simon, 2012). In Japan, this dynamic frequently stems from practices where false confessions or accomplice testimony generate additional mistaken evidence, or corroboration is sought to reinforce already false statements.

Table 1: Enzai cases in Japan (n = 42) and four key types of wrongful conviction evidence

Cases/Evidence	Confession	Accomplice Testimony	Eyewitness Testimony	Scientific Evidence	Year of Crime	Year of Final Exoneration
1. 巖窟王事件 ( <i>Gankutsuō Jiken</i> )		○		○	1913	1963
2. 加藤事件( <i>Katō Jiken</i> )		○		○	1915	1977
3. 八丈島事件 ( <i>Hachijōjima Jiken</i> )	○	○			1946	1957
4. 井村事件 ( <i>Enaimura Jiken</i> )		○	○		1946	1994
5. 幸浦事件 ( <i>Sachiura Jiken</i> )	○	○			1948	1959
6. 免田事件 ( <i>Menda Jiken</i> )	○		○	○	1948	1983
7. 弘前大学教授夫人殺人事件 ( <i>Hirosaki Daigaku Kyōju Fujin Satsujin Jiken</i> )			○	○	1949	1977
8. 松川事件 ( <i>Matsuura Jiken</i> )	○	○	○	○	1949	1961
9. 二俣事件 ( <i>Futamata Jiken</i> )	○			○	1949	1956
10. 財田川事件 ( <i>Saitagawa Jiken</i> )	○			○	1950	1984
11. 小島事件( <i>Ojima Jiken</i> )	○				1950	1959
12. 梅田事件 ( <i>Umeda Jiken</i> )	○	○		○	1950	1986
13. 八海事件( <i>Yakai Jiken</i> )	○	○		○	1951	1968
14. 米谷事件 ( <i>Yoneya Jiken</i> )	○		○	○	1952	1978
15. 徳島ラジオ商殺し事件 ( <i>Tokushima</i> )	○	○	○	○	1953	1985

Cases/Evidence	Confession	Accomplice Testimony	Eyewitness Testimony	Scientific Evidence	Year of Crime	Year of Final Exoneration
<i>Rajioshō Goroshi Jiken</i>						
16. 島田事件 ( <i>Shimada Jiken</i> )	○		○	○	1954	1989
17. 仁保事件 ( <i>Niho Jiken</i> )	○		○		1954	1972
18. 松山事件 ( <i>Matsuyama Jiken</i> )	○		○	○	1955	1984
19. 袴田事件 ( <i>Hakamada Jiken</i> )	○			○	1966	2024
20. 布川事件 ( <i>Fukawa Jiken</i> )	○	○	○	○	1966	2011
21. 鹿児島夫婦殺し 事件( <i>Kagoshima Fūfu Goroshi Jiken</i> )	○			○	1969	1986
22. 山中事件 ( <i>Yamanaka Jiken</i> )		○		○	1972	1990
23. 甲山事件 ( <i>Kabutoyama Jiken</i> )	○		○	○	1974	1998
24. 遠藤事件( <i>Endō Jiken</i> )	○		○	○	1975	1989
25. 旭川日通事件 ( <i>Asahikawa Nittsū Jiken</i> )	○				1981	1985
26. 松橋事件 ( <i>Matsubase Jiken</i> )	○			○	1985	2019
27. 足利事件 ( <i>Ashikaga Jiken</i> )	○			○	1990	2010
28. 大阪指紋混入事 件( <i>Osaka Shimon Konnyū Jiken</i> )	○			○	1990	1992
29. 東住吉事件 ( <i>Higashi Sumiyoshi Jiken</i> )	○	○		○	1995	2016
30. 東電女性社員殺 害事件( <i>Tōden Josei Shain Sastugai Jiken</i> )			○	○	1997	2012
31. 宇和島事件	○		○		1998	2000

Cases/Evidence	Confession	Accomplice Testimony	Eyewitness Testimony	Scientific Evidence	Year of Crime	Year of Final Exoneration
<i>(Uwajima Jiken)</i>						
32. 氷見事件( <i>Himi Jiken</i> )	○		○		2002	2007
33. 平野母子殺害事件( <i>Hirano Boshi Satsugai Jiken</i> )			○	○	2002	2017
34. 志布志事件( <i>Shibushi Jiken</i> )	○	○			2003	2007
35. 湖東記念病院事件( <i>Kotō Kinen Byōin Jiken</i> )	○			○	2003	2020
36. 大阪市強姦虚偽証言再審事件( <i>Ōsakashi Gōkan Kyōgi Shōgen Jiken</i> )			○		2004	2015
37. 厚労省元局長冤罪事件( <i>Kōroshō Moto Kyokuchō Enzai Jiken</i> )		○			2004	2010
38. 泉大津コンビニ強盗事件( <i>Izumi Ōtsu Konbini Gōto Jiken</i> )			○		2012	2014
39. パソコン遠隔操作事件( <i>Pasokon Enkaku Sōsa Jiken</i> )	○				2012	2012
40. 山内事件( <i>Yamauchi Jiken</i> )				○	2016	2019
41. プレサンス元社長冤罪事件( <i>Presansu Moto Shachō Enzai Jiken</i> )		○			2017	2021
42. スナック喧嘩犯人誤認事件( <i>Sunakku Kenka Hannin Gonin Jiken</i> )			○		2020	2023
Total	29 cases	15 cases	19 cases	27 cases		
Percentage	69%	35.7%	45.2%	62.7%		



## ii. False Confessions

False confessions are widely regarded as the most critical contributor of wrongful convictions in Japan. Given the heavy reliance on interrogations, the risk of coerced or fabricated statements is particularly high. Contributing factors such as coercive interrogation practices and the detention system have been extensively criticized (Nihon Bengoshi Rengōkai Jinken Yōgo Iinkai, 2009).

Hamada (2005) identifies several mechanisms underlying false confessions in Japan. According to the study, innocent suspects, lacking any awareness of suspected offense, often experience a sense of unreality during interrogation and assume that recounting their memories will be sufficient to prove innocence. Yet demonstrating innocence constitutes a “devil’s proof,” an almost impossible task requiring proof of nonexistence. Investigators convinced of guilt may intensify questioning, interpreting denials as deliberate lies. As suspects realize their statements are not believed, prolonged detention and interrogation produce exhaustion and despair. Many come to underestimate the consequences of a false confession, believing the truth will later emerge in court, and focus instead on escaping the immediate stress of interrogation. In this state, they yield to confession. Once a false confession is made, the suspect’s relationship with the interrogator often shifts to a cooperative dynamic. Guided by interrogator suggestions and feedback, suspects search for “correct” answers, refining their accounts. In the *Himi Jiken*, later overturned by DNA evidence, the innocent suspect eventually led investigators to the crime scene after observing their cues. Multiple elaborate statements were produced, which judges mistakenly treated as containing “concrete” and “vivid” details that only the true perpetrator could provide, thereby contributing to conviction.

Several cognitive and psychological mechanisms explain this process. For suspects, the *illusion of transparency* leads individuals to overestimate others’ understanding of their internal states (Vrij, 2008). *Belief in a just world* fosters confidence that innocence will eventually be recognized. Prolonged stress can result in *learned helplessness*, in which repeated failures to escape a situation lead to resignation. These universal mechanisms strongly contribute to the decision to falsely confess.

For interrogators, coercive practices can be understood through *cognitive dissonance* (Festinger, 1965). When suspects deny guilt despite interrogators’ belief in their culpability, the resulting dissonance creates a strong motivation to secure a confession. Prolonged questioning in closed settings without legal counsel provides both the means and opportunity to exert pressure. Such behavior is often rationalized as necessary to elicit truth, consistent with the fraud triangle, where motivation, opportunity, and rationalization converge. Structural features of Japan’s system, including prolonged interrogations, substitute prisons, “hostage justice,” and the duty to submit to questioning, further create conditions conducive to coerced confessions (Nishi, 2023, 2024).

A distinctive feature of criminal investigations in Japan, compared to other jurisdictions, is the practice of prolonged interrogations, reflecting the system’s reliance on confession-based methods. The average interrogation lasts about 22 hours, a duration that inherently places pressure on suspects. Research in the United States shows that the risk of false confessions rises sharply after six hours, with most occurring between six and twenty-four hours of questioning (Drizin &

Leo, 2004). Beyond heightening the risk of coercion, prolonged interrogations allow investigators to compel and refine confessions, elaborate their content, and obscure meaningful analysis of recorded footage. These dynamics, reinforced by judicial interpretations that tolerate prolonged interrogations, collectively underscore the dangers of extended interrogation practices.

### iii. False Testimony by Alleged Accomplices

For an innocent suspect, an “accomplice” does not exist. However, wrongful convictions may result when alleged accomplices provide false statements implicating them. Because accomplices are also arrested and interrogated, the risk of false implication is considered as serious as false confessions in Japan’s interrogation-heavy system. In jurisdictions where plea bargaining is common, such risks should also be recognized as significant.

In Japan, *hipparikomi* (false implication by an accomplice) has long been identified as a risk of wrongful conviction (Shihō Kenshūjo, 1996). Alleged accomplices may fabricate statements to shift blame, protect the true perpetrator, or frame another person. To secure such benefits, they must ensure their fabrications remain undetected, often making their statements increasingly elaborate.

Prolonged detention and interrogation exacerbate these risks. Even truthful denials may be interpreted as lies, leading to harsher questioning. In such circumstances, accomplices may recognize that truthful testimony will not be believed, exposing them to threats of liability or perjury charges. Conversely, false statements implicating another are typically accepted by investigators and may even reduce the accomplice’s own liability, present them as cooperative, or spare them further interrogation. This *reversal of credibility* increases the likelihood of false statements by alleged accomplices (Nishi, 2023; see Hamada, 2005).

A notable example occurred in the *Presansu Moto Shachō Enzai Jiken* (Case No.41). An accomplice who initially denied the company president’s involvement was subjected to aggressive tactics, including an interrogation in which the investigator slammed the desk and shouted for 15 minutes. The following day, further pressure was applied: “You are a heinous criminal who has disgraced the company” and “Can you compensate for the company’s losses? It won’t be just one or two billion yen (6.7–13.4 million USD).” Under this pressure, the co-defendant falsely implicated the president. Despite initially telling the truth, the accomplice was accused of lying and threatened with both criminal and civil consequences, prompting a false statement to deflect responsibility.

Unlike false confessions, accomplice statements are seldom retracted in court, making them more likely to remain consistent. Their motives are often difficult to identify, and their accounts, blending fabrications with partial truths, can appear credible. Judges may therefore fail to detect falsity, increasing the risk of wrongful conviction.

### iv. Erroneous Eyewitness Testimony

Concerns about eyewitness testimony in Japan largely mirror those identified internationally. Errors typically arise at three stages: encoding (misperceptions during observation), retention (memory distortion or forgetting), and retrieval (inaccurate recall).

For example, there have been cases where identification procedures became problematic. In Japan, flawed practices, such as showing one or two photographs suggestively or failing to provide proper instructions, have contaminated witnesses' memories and led to wrongful convictions and false accusations [e.g., *Himi Jiken* (Case No.32); *Sunakku Kenka Hannin Gonin Jiken* (Case No.42)].

Because Japanese investigations place heavy reliance on testimonial evidence, repeated questioning can further distort memory. *Post-event misinformation* and *repetition-induced confidence* strengthen inaccurate recollections (Loftus, 1979). Interviews may also induce conformity, aligning witness statements and spreading error.

One case illustrates this process: seven eyewitnesses initially gave widely varying age estimates for the perpetrator, ranging from 20–35. As the investigation progressed and a suspect was identified, their estimates gradually converged to a narrower range of 24–28 (Hō to Shinri Gakkai, 2005). This example demonstrates how repeated exposure and investigative influence can contaminate memory, reinforcing inaccurate testimony and contributing to wrongful convictions.

## **v. Erroneous Scientific Evidence**

The risks associated with scientific evidence are recognized internationally. A major concern is the *aura of scientific infallibility*, which may lead non-expert judges to place excessive trust in forensic analyses (Shihō Kenshūjo, 2013; Norris, 2021).

In Japan, many concerns relate to structural and organizational issues (Hiraoka, 2022). Forensic evidence is produced by internal divisions of investigative agencies, creating vulnerability to bias and preconceptions. Most forensic methods are not standardized, lack ISO certification, and omit error rate assessments. Even when samples are entirely consumed in testing, no video or record is kept, yet the results are still accepted in court. In forensic medicine, a shortage of experts has been acknowledged. Because prosecutors and defense attorneys retain their own experts, adversarial dynamics emerge, and experts who testify for the defense may be avoided by investigative authorities in future cases. Interaction between scientific and legal communities remains limited, and miscommunication between them has been identified as a significant risk.

The *Ashikaga Jiken* (Case No.27)<sup>8</sup> exemplifies these concerns. A defendant was wrongfully convicted on the basis of early-stage DNA analysis with limited discriminatory power, yet the “scientific” character of the evidence led to its decisive acceptance<sup>9</sup>.

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<sup>8</sup> The defense arranged for the defendant to mail a strand of his hair, which was subjected to the latest DNA analysis. The results indicated that the DNA type did not match that of the actual perpetrator. Nevertheless, the Utsunomiya District Court dismissed the retrial request without even ordering a re-examination, reasoning that there was no corroboration that the hair sample belonged to the defendant. The Tokyo High Court later conducted a new DNA test, and experts for both the prosecution and the defense confirmed that the defendant's DNA type was inconsistent with that of the perpetrator, resulting in the decision to grant a retrial.

<sup>9</sup> Similar concerns have been raised in other high-profile cases as well (Kidera, 2024).

Another problematic area is child abuse cases involving *shaken baby syndrome* (SBS) or *abusive head trauma* (AHT). When infants or children suffer severe medical events without external trauma, the so-called triad, including subdural hematoma, cerebral edema, and retinal hemorrhage, is often interpreted as evidence of violent shaking. This assumption frequently directs suspicion toward the caregiver present at the time. However, SBS or AHT-based wrongful convictions have increasingly been challenged, and since 2018 more than ten acquittals have been issued in Japan (Akita et al., 2023; e.g., *Yamauchi Jiken* [Case No. 40]).

### C. Societal Factors Reproducing Wrongful Convictions

Wrongful convictions are not simply the result of errors in individual stages of the criminal process. When underlying causes remain unaddressed, similar convictions recur under the same conditions. Recent research has sought to explain this cycle from a psychological perspective (Nishi, 2023, 2024).

#### i. Denial of Wrongful Convictions within Society

Japan's investigative authorities and courts have been described as exhibiting a *culture of denial*, resisting acknowledgment of their own errors (Johnson, 2015, 2019). This tendency is reinforced by institutional secrecy and a preoccupation with self-preservation. Excessive attachment to the belief that wrongful convictions must not exist has led to avoidance of confronting those that do.

A defining feature of wrongful convictions is their invisibility: unless the true perpetrator is later identified or an alibi conclusively proven, innocence cannot be objectively confirmed. An acquittal alone does not necessarily establish that a wrongful conviction occurred. Psychological mechanisms such as cognitive dissonance further discourage individuals and institutions from admitting mistakes, contributing to ongoing denial (Nishi, 2023; cf. Givelber & Farrell, 2012).

#### ii. Failure to Prevent the Recurrence of Wrongful Convictions

Even after a wrongful conviction is recognized, various psychological factors hinder appropriate systemic correction (Nishi, 2023, 2024). One such factor is *optimism bias*, the belief that negative events are unlikely to happen to oneself. This leads individuals to assume they will never become victims of wrongful conviction. The *normalcy bias* causes people to underestimate anomalies, viewing them as extensions of everyday experiences. Consequently, wrongful convictions are often dismissed as rare exceptions rather than systemic issues requiring reform.

The *status quo bias* reinforces inertia, discouraging efforts to investigate wrongful convictions or introduce preventive measures. Within Japan's criminal justice system, characterized by fragmented roles, responsibility tends to be deflected, with actors shifting blame onto others. As a result, no one is held fully accountable, and comprehensive systemic reviews are avoided (Garrett, 2011). This phenomenon is aptly captured by the phrase: "*no single snowflake in an avalanche ever feels responsible*".

### iii. Neglect of Underlying Causes of Wrongful Convictions

The causes of wrongful convictions are rarely investigated, and where reviews do occur, their scope is typically narrow. For example, the Supreme Public Prosecutors Office's 2024 review of the *Hakamada Jiken* (Case No.19) did not acknowledge prosecutorial error. Instead, it framed the court's finding of fabrication as mistaken and rather than proposing preventive measures, presented a self-protective and self-preserving narrative (Saikō Kensatsuchō, 2024). In the *Matsuyama Jiken* (Case No. 18), another death penalty retrial acquittal, the court raised suspicions that bloodstains had been added post-seizure, possibly indicating fabrication. Yet, the Prosecutors Office's internal review assumed no fabrication occurred and simply recommended clarifying evidence-handling procedures to avoid misunderstandings (Gohan Mondai Kenkyūkai, 1989). As these examples show, past reviews of wrongful convictions have often functioned as exercises in self-preservation.

Fundamental legal obstacles, such as judicial independence, confidentiality obligations, restrictions on evidence use, and the secrecy of investigative methods, create substantial barriers to examining the causes of wrongful convictions. Even in lawsuits seeking compensation, fear of liability often deters key witnesses from providing full testimony, hindering efforts to uncover how the conviction occurred. Courts, for their part, restrict rulings to the issue of compensation without addressing the underlying causes or considering preventive measures.

As a result, the structural and procedural flaws behind wrongful convictions remain unexamined. This stagnation perpetuates the same conditions under which similar convictions continue to be repeated.

### D. Reflections on Interrogation-Dependent Investigations

Testimonial evidence offers more interpretative information than objective evidence, as it can provide reasonable explanations that go beyond mere inference, making interviews and interrogations a valuable investigative tool. However, such evidence allows for a wider range of interpretation than objective evidence, which makes it particularly susceptible to bias. Erroneous testimonial evidence, therefore, poses a heightened risk of leading to wrongful convictions.

In Japan, excessive reliance on testimonial evidence has contributed to wrongful convictions. Suspects are often arrested based on flawed assumptions, coerced into false confessions, and subsequently subjected to confirmatory investigations aimed at reinforcing guilt. This investigative approach has been criticized for prioritizing narrative construction over objective fact-finding (Nihon Bengoshi Rengōkai Jinken Yōgo Iinkai, 1998). In such cases, evidence is shaped to fit investigators' preexisting beliefs, rather than informing an impartial determination of facts. This process reverses the principle of evidentiary trials, whereby judgments should be based on evidence, not vice versa (Hamada, 2013). The convenience of testimonial evidence has thus produced an unstable investigative model prone to error escalation.

These challenges are not confined to institutional behavior alone. The interrogation-dependent model is reinforced by legal structures that facilitate such practices and by judicial passivity that fails to restrain them. Japanese courts tend to focus narrowly on evidence bearing on guilt or absence of guilt, as opposed to investigating the broader causes behind wrongful

convictions. Statements obtained during interrogations and trial testimony are prioritized, while broader scrutiny of investigative procedures is generally avoided. Judges have further legitimized the interrogation-dependent approach by relying on written statements in document-based trials, endorsing the duty to submit to questioning, tolerating pressure on suspects who remain silent, and easily approving detention (Hirano, 1985 [1989 English trans.]; Foote, 2010). Hence, they have conformed to investigative norms rather than exercising independent oversight.

This model is further entrenched by cultural norms. Interrogation-dependent investigations have been normalized in public consciousness, often reinforced by media portrayals in crime dramas, where suspects are routinely detained and confessions are central to uncovering the truth. Interrogators are frequently depicted as shouting in the name of justice. The public tends to regard those who are arrested as criminals and to believe that they should endure the disadvantages.

Judicial systems, shaped by historical and institutional context, are subject to *path dependency*, where past decisions constrain future change (Vanoverbeke, 2024). As a result, practices like prolonged interrogations and the duty to submit to questioning are largely tolerated by both professionals and the public, despite their problems.

Evidently, wrongful convictions in Japan largely stem from testimonial evidence, a product of this interrogation-based model. Preventing future wrongful convictions requires transitioning toward an investigative framework that prioritizes objective evidence. However, this shift presents significant challenges. Japan lacks a clear conceptualization of what an objective-evidence-driven investigation entails. Moreover, such a model may carry its own risks, including privacy violations and abuse of investigative powers, which prevent unconditional adoption.

Ultimately, identifying the flaws in the current model is not enough. Research may also need to move toward articulating what an ideal investigative system should look like. This effort cannot rely solely on domestic reflection. Comparative studies of global investigative and judicial systems are essential for shaping a more effective framework, highlighting the critical role of international collaboration in criminal justice research. For example, concrete alternative proposals are needed on how to detect and prosecute crimes such as bribery that occur behind closed doors, without relying excessively on interrogations and testimonial evidence.

## IV Strategies for Preventing Wrongful Convictions

### A. Fact-Finding Methods and the Cautionary Principle

This section introduces Japan's fact-finding methods and the Cautionary Principle as preventive measures against wrongful convictions. In Japan, judges bear primary responsibility for determining guilt or absence of guilt. Given the number of wrongful convictions that have occurred, the judiciary must also bear responsibility for such errors. In response, based on past judgements, judges and researchers have sought to confront this responsibility by studying *fact-finding* methods; that is, how conclusions are drawn from evidence, and by developing *cautionary principles* that identify key considerations to avoid erroneous judgments. Specifically, with regard

to confessions, accomplice statements, eyewitness testimony, and scientific evidence, which are types commonly associated with wrongful convictions, the Legal Training and Research Institute (LTR) of the Supreme Court of Japan has examined past rulings to formalize Cautionary Principles (Shihō Kenshūjo, 1991, 1996, 1999, 2013; see Shihō Kenshūjo Keiji Saiban Kyōkan Shitsu, 2012, on fact-finding).

In other countries, such principles and jury instructions may also be developed through case law or rulemaking. In Japan, a distinctive feature is the systematic effort to incorporate these principles into the knowledge base of the legal profession. This approach secures the principles of free evaluation of evidence without binding judges by rules, while preventing impression-based decisions. By requiring judges to provide detailed written judgements that justify their conclusions and enable future review, it promotes logical consistency. Not only judges but also defense attorneys use Cautionary Principles in their arguments to make them more plausible. This model does not assume that judges possess superior fact-finding abilities compared to lay judges<sup>10</sup>. Rather, it illustrates how lessons from past trials have been softly integrated into the criminal justice system.

However, Cautionary Principles have limitations. Fundamentally, they are drawn from judicial reasoning and reflect what judges considered in past cases. They are not empirically validated against objective truth and may themselves contain biases or errors. Furthermore, if a judge becomes subject to tunnel vision, they may fail to apply the principles effectively, allowing wrongful convictions to occur. Critics question whether judges truly follow these principles in practice, noting that safeguards like the presumption of innocence, the burden of proof, and proof beyond a reasonable doubt are often only nominally respected (Nihon Bengoshi Rengōkai, 2024b). Thus, Cautionary Principles alone are insufficient to fully prevent such outcomes.

Nonetheless, these Cautionary Principles may also prove valuable for international efforts. Unless otherwise noted, the following section introduces the principles compiled by the LTR, while acknowledging their inherent limitations (Shihō Kenshūjo, 1991, 1996, 1999, 2013; Shihō Kenshūjo Keiji Saiban Kyōkan Shitsu, 2012).

### **i. Methods of Judicial Fact-Finding**

In fact-finding, when *direct evidence*, such as eyewitness testimony or crime footage, is available, the key issue is assessing its credibility. In the absence of direct evidence, and where only *circumstantial evidence* exists, fact-finding proceeds by identifying objective, undisputed facts and progressively constructing a reliable interpretation through reasonable *inferences*. Judicial precedent establishes that in cases relying solely on circumstantial evidence, the established facts must be such that the case would be inexplicable, or at least extremely difficult to explain, if the defendant were not the perpetrator<sup>11</sup>.

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<sup>10</sup> In lay judge trials, judges may introduce Cautionary Principles to lay judges by presenting them as perspectives. However, if judges take on the role of instructors, it would undermine equal discussion. Therefore, these principles are not considered binding rules but rather viewpoints, the validity of which should be subject to discussion.

<sup>11</sup> Supreme Court of Japan. (2010, April 27). *Keishu*, 64(3), 233.

Evaluating the weight of established facts requires assessing both their direction, whether they support guilt or absence of guilt, and their evidentiary value (*probative force*), the degree of strength they hold. Facts do not hold value in isolation; their meaning often emerges through connections with other established facts.

Particular caution must be taken with regard to narrative-driven fact-finding used to compensate for insufficient evidence. This goes beyond reasonable inference and increases the risk of unjust convictions. Moreover, deeming a defendant guilty solely because their statement is considered unreliable is regarded as self-defeating in criminal trials.

## **ii. Cautionary Principles for Assessing Confessions**

Modern judicial practice generally follows a two-step approach to evaluate confession credibility and prevent excessive reliance. First, the existence of the alleged fact must be assessed based on evidence other than the confession, and only then should the confession's credibility be examined.

When assessing consistency between a confession and objective evidence, it is important to determine whether discrepancies exist beyond a reasonable margin. If inconsistencies concern material parts and lack a plausible explanation, the confession's credibility is diminished. Since even coerced or manipulated confessions may appear consistent with objective facts, credibility must not be judged solely on such alignment. The conditions under which the confession was obtained must be scrutinized. Conversely, if corroborative evidence that should ordinarily exist is absent, this also weakens the confession's credibility.

Regarding changes in confessions, credibility is not necessarily denied if a reasonable explanation exists. However, if the confession undergoes changes without justification, its credibility is more likely to be rejected.

A confession that includes facts known only to the true perpetrator and later confirmed as objective facts is referred to as a "disclosure of secret information" (*himitsu no bakuro*) and is generally considered strong evidence of credibility. However, wrongful conviction cases have shown that investigators may already have inferred or known such information and then deliberately led the suspect to "reveal" it, creating the illusion of genuine disclosure. Therefore, whether the information was truly secret must be critically examined based on the investigation's progress, the state of evidence collection, and the investigators' prior knowledge (Watanabe, 1992). Conversely, innocent individuals trying to describe events they have not experienced may unknowingly construct incoherent or contradictory statements based on information provided to them afterward (see Hamada, 2018). These inconsistencies may indicate a false confession and should be carefully examined.

## **iii. Cautionary Principles for Assessing Accomplice Testimony**

When evaluating accomplice testimony, general factors such as corroboration by objective evidence and internal coherence are essential. However, particular attention must be paid to any benefits the accomplice may receive from providing the testimony. Since such benefits are



often hidden unless voluntarily disclosed, an approach that actively seeks to uncover potential motives is crucial. While incentives influencing an accomplice's statement are difficult to assess without their admission, examining the context in which they named the defendant during the investigation may offer valuable insights.

Regarding the incentive to shift responsibility, the greater the reduction in the accomplice's own criminal liability, the stronger the incentive becomes. This incentive is particularly high when the accomplice's liability remains undetermined and can be displaced onto the defendant. Conversely, if the accomplice's liability is unaffected by the statement, or if the statement does not serve to shift responsibility, the incentive is weak. Moreover, if shifting responsibility disadvantages the accomplice; for example, if the defendant is a close relative or if there is a risk of organizational retaliation, the incentive is diminished.

The incentive to protect the actual perpetrator tends to be stronger when the true perpetrator shares a close relationship with the accomplice or poses a threat of retaliation. Thus, it is necessary to determine whether such an individual exists and to assess their relationship with the defendant.

The incentive to falsely implicate an innocent person may arise even from a seemingly minor personal grievance, which can result in significant animosity. As it is difficult to assess what level of hostility may lead to false statements, careful scrutiny is warranted. Because the defendant is often best placed to recognize hostility from the accomplice, their testimony should be considered when evaluating the presence or absence of such antagonism.

#### **iv. Cautionary Principles for Assessing Eyewitness Testimony**

Erroneous eyewitness testimony can arise from either intentional falsehoods or unintentional errors. Regarding witnessing conditions, a witness who directly observes the crime is more likely to perceive the event as distinctive, increasing the likelihood of memory retention. However, attention may be diverted due to factors such as *weapon focus*, and stressors, including fear, panic, shock, or alcohol intoxication, can impair visual perception. If the witness only saw the perpetrator near the crime scene, the experience may have seemed ordinary, making conscious observation less likely. Unless something memorable was associated with the event, memory retention may be weak. Events are often recalled due to narrative structures, but physical features do not form a coherent story and may not be encoded unless deliberately noticed. Therefore, the vividness of the witness's account should be evaluated separately from the reliability of their identification.

The initial identification is the most critical point, as all subsequent identifications are influenced by the first and merely confirm its accuracy. Accordingly, the focus should be on the accuracy of memory at the initial identification and the appropriateness of the procedure. The credibility of trial testimony should be assessed not only through the final statement but also by considering the initial identification, subsequent changes, and the conditions under which identification occurred, all of which must be examined as evidence.

If more than one week has passed since the incident, eyewitness testimony is generally considered unreliable unless a reasonable basis exists to conclude that the witness had sufficiently observed and retained the perpetrator's appearance or corroborative evidence is available. Additionally, memory naturally deteriorates over time and becomes more vulnerable to post-event information, which can distort recall and align it with the characteristics of the defendant. As the risk of memory distortion increases with time, testimony should be obtained as early as possible, and direct and cross-examinations should occur without undue delay. When visibility conditions are in question, it is important to verify, under the same conditions at the actual scene, whether identification was realistically possible. Moreover, the confidence expressed by a witness does not directly correlate with the accuracy of their testimony.

## **v. Cautionary Principles for Scientific Evidence**

When assessing scientific evidence, it is crucial to distinguish between what it can and cannot prove. For example, even if a substance linked to the defendant is found in a sample related to the crime, its probative value remains limited if it could reasonably have been deposited independently of the offense. Such evidence must therefore be evaluated with caution.

Scientific findings are derived from human knowledge and interpretation, both of which have inherent limitations. Hence, scientific evidence should not be regarded as absolute. A six-stage, eight-factor framework has been proposed as a guideline for evaluating the reliability of scientific evidence.

Table 2: Six-stage, eight-factor framework

Stage	Factor
1.	Reliability of the fundamental scientific principles and knowledge
2.	Reliability of the theories and techniques used to apply scientific principles in practice
3.	Reliability of the specific examination <ul style="list-style-type: none"> <li>• Reliability of sample collection and processing</li> <li>• Accuracy of the specific examination methods and procedures</li> </ul>
4.	Skill level and expertise of the examiner
5.	Reliability of the evaluation of examination results <ul style="list-style-type: none"> <li>• Reliability of the principles and standards used in evaluation</li> <li>• Reliability of the application of those principles to the specific case</li> </ul>
6.	Integrity of the examination materials (e.g., proper collection, transportation, and storage of samples)

In DNA profiling, a mismatch at even one locus generally precludes a common origin. Although exceptions such as organ transplants or mutations exist, selectively highlighting favorable results undermines fairness and must be avoided. If certain loci are ambiguous, their causes and implications should be carefully assessed with expert guidance.

## **B. Emerging Approaches to Preventing Wrongful Convictions**

Recently, studies have proposed applying *risk management* principles to wrongful conviction prevention (Nishi, 2023, 2024). This perspective emphasizes the need for systemic prevention within the judiciary and encourages continuous review of the justice system through the analysis of past errors and implementation of countermeasures (cf. Doyle, 2014). The overarching aim is to eliminate the recurrence of wrongful convictions through institutional learning, as in aviation and medical safety.

### **i. Risk Management**

Risk management offers a structured framework for institutionally addressing wrongful convictions. It involves identifying risks requiring intervention, analyzing them, implementing countermeasures, and conducting monitoring to evaluate effectiveness. This evaluation then informs further countermeasures, forming a continuous cycle.

Wrongful convictions constitute one of the most serious failures within the judicial system and, due to their impact and systemic vulnerabilities, must be treated as a priority risk. When such a conviction occurs, an independent audit should be conducted and made public. Measures to prevent recurrence must be adopted, and the justice system should be continuously refined based on evaluation outcomes.

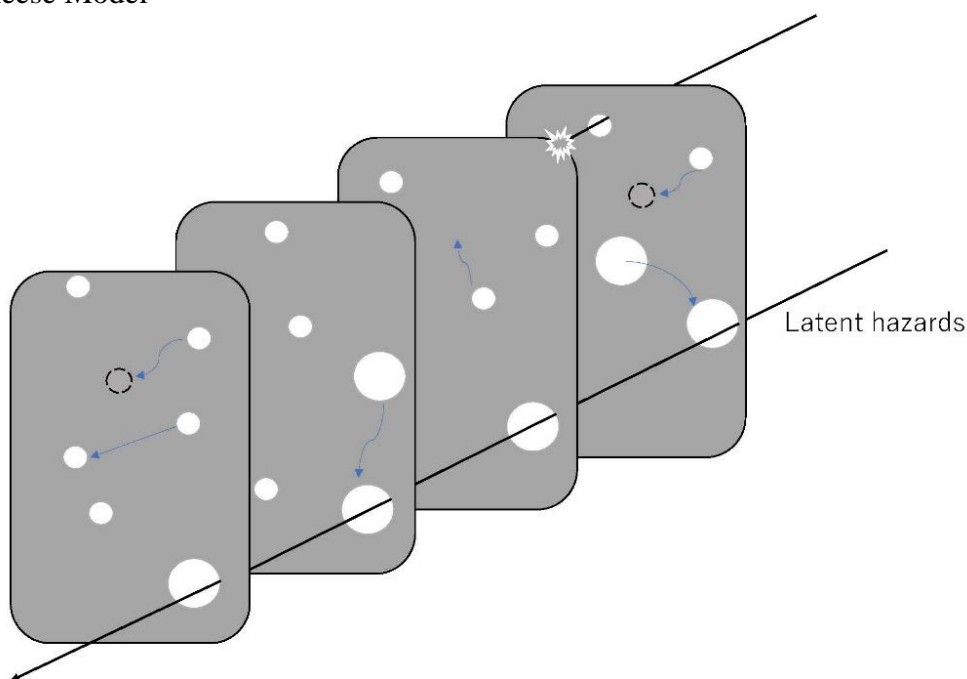
In practice, wrongful convictions have persisted because past causes were not adequately investigated or because preventive measures, even when adopted, became ineffective or symbolic over time. This represents a failure of risk management within the justice system. While risk management has been successfully applied in the private sector, the same logic should be extended to wrongful conviction prevention to enhance reliability.

In future, an independent commission should be established to institutionalize reviews of wrongful convictions. Its role would not only be to identify errors but to analyze their causes, systematize lessons learned, and integrate those lessons into legislation and judicial practice.

### **ii. Swiss Cheese Model**

Research on *human error* also offers valuable insights for preventing wrongful convictions. According to the *Swiss Cheese Model*, every system contains latent hazards, but multiple layers of defense usually prevent failure. However, when the “holes” in these layers align, failure can occur (Reason, 2000). To reduce the risk of wrongful convictions, it is vital to minimize these gaps or increase the number of protective layers through systematic safeguards.

Figure 2: Swiss Cheese Model



The causes of these gaps can be broadly classified into two categories: *active errors* and *latent errors*. Active errors refer to human mistakes, such as lapses, forgetfulness, or rule violations, which can often be addressed individually to prevent recurrence. Conversely, latent errors arise from systemic weaknesses or long-term deficiencies, such as staffing shortages or structural flaws in the system. Unlike active errors, latent errors are difficult to detect and tend to persist over time, creating conditions that increase the likelihood of active errors and posing a serious threat to the integrity of the system. Therefore, in preventing wrongful convictions, special attention must be directed to latent errors, particularly deficiencies in legal frameworks and review mechanisms, as these underlying flaws perpetuate systemic failures.

### iii. Preventive Measures against Misconduct

Misconduct can be addressed by targeting the three elements of the fraud triangle: motivation, opportunity, and rationalization. Prevention efforts should try to: (1) make the act more difficult to commit, (2) increase the likelihood of detection, (3) reduce the rewards of the act, (4) decrease inducements for the act, and (5) prevent justifications for the act (Jōho Shori Suishin Kikō, 2013).

### iv. Countermeasures against Cognitive Bias

Countermeasures against bias and similar cognitive distortions can be divided into preventive and mitigating approaches. To prevent bias, individuals can undergo training to raise awareness of bias and enhance their ability to recognize when they may be affected by it. This increased awareness may help individuals detect and correct their own biases.

To mitigate bias once it has occurred, methods include articulating and documenting the reasons behind one's judgments, evaluating competing hypotheses (Dhami et al., 2019), and incorporating dialogue and deliberation with others during the decision-making process.

Double-checking from alternative perspectives is also useful as a safeguard against cognitive bias. In Japan, in fact, cross-checks by trial prosecutors, top-down reviews by organizational superiors, and reviews of statements by the officers in charge have been institutionalized as measures to prevent the recurrence of wrongful convictions and false accusations. However, these systems do not function effectively and have become perfunctory, which is another serious problem (e.g. *Presansu Moto Shachō Enzai Jiken* (Case No. 41), *Pasokon Enkaku Sōsa Jiken* (Case No.39)).

## V Conclusion: Lessons Derived from Wrongful Convictions in Japan

This study has tried to provide a broad overview of the current state of wrongful conviction research in Japan. Based on the findings, there are five key lessons to learn.

First, the psychological tendencies and types of evidence contributing to wrongful convictions in Japan are broadly consistent with those identified in the United States and other countries. This suggests that the causes of wrongful convictions may be universal, and it means it should be possible to share research findings and promote international collaboration in order to better prevent such errors.

Second, wrongful convictions are closely linked to the structural features of a country's criminal justice system. In Japan, the heavy reliance on interrogations has played a central role in producing false confessions and accomplice statements. But the challenge is not merely to improve the investigative practices, because these are sustained and reinforced by the wider judicial framework, especially through the actions and inactions of judges.

Third, once established, an investigative model becomes deeply embedded within a country's legal culture, making reform difficult, even when serious flaws are evident. Transforming such a model requires the construction of an ideal alternative framework, which may require learning from the other criminal justice systems.

Fourth, wrongful convictions continue to recur due to persistent underlying causes. Breaking this pernicious cycle of reproduction requires the systematic examination of past wrongful convictions and the application of lessons learned to prevent recurrence.

Finally, although human limitations remain, developing and refining methods to prevent wrongful convictions and sharing such knowledge internationally is an important approach to their prevention. By cultivating a global effort to "*learn about and from wrongful convictions*," the first steps can be taken toward meaningful reduction. I hope that the Wrongful Conviction Studies in Japan will contribute to that foundation.

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