

Wrongful Convictions and the Structural Analysis of Innocence Cases

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Agenda

1. Introduction
2. Concepts: “Wrongful Conviction”, “Miscarriage of Justice” and “Actual Innocence”
3. “Factual Innocence” vs “Legal Innocence”
4. Challenge by trichotomy of innocence cases
5. Proposal for new categories of innocence cases
6. Conclusion



1. Introduction



Japanese man granted retrial after 45 years on death row

Iwao Hakamada, 87, was convicted of four murders in 1968 but granted temporary release in 2014 after new evidence emerged

Justin McCarry in Tokyo
Wed 13 Mar 2023 09:55 GMT
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A court in Japan has granted a retrial to a man - thought to be the world's longest-serving death row inmate - who was sentenced to hang for the murders of a family of four almost six decades ago.

The Tokyo high court ruled on Monday that Iwao Hakamada, 87, should be tried again for the crimes in a decision campaigners said was a "step towards justice".

Hakamada was convicted of the murders in 1968 and spent 45 years on death row before new evidence led to his release in 2014. At the time of his release, he was thought to be the world's longest-serving death row inmate.

The former boxer initially confessed to the murders but later retracted his confession and insisted he was innocent throughout his two-year trial.

Japon: le plus ancien condamné à mort au monde aura droit à un nouveau procès

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Iwao Hakamada

AFP
L'AFP, 13 mars 2023, 09:55 GMT
L'AFP, 13 mars 2023, 09:55 GMT

Mál manns sem var hálfa öld á dauðadeild endurupptekið



Iwao Hakamada á hafi í höndum Japan í dag. Iwao Hakamada, 87 ára gamall, er nú á dauðadeild. AFP/Reuters/News

Mál japana, sem sat á dauðadeild í nærri hálfa öld, verður tekið til endurupptöku hjá dómstól.

Tæp fimmtíu ár á dauðadeild

Tengdar fréttir

Dauðarefsingar

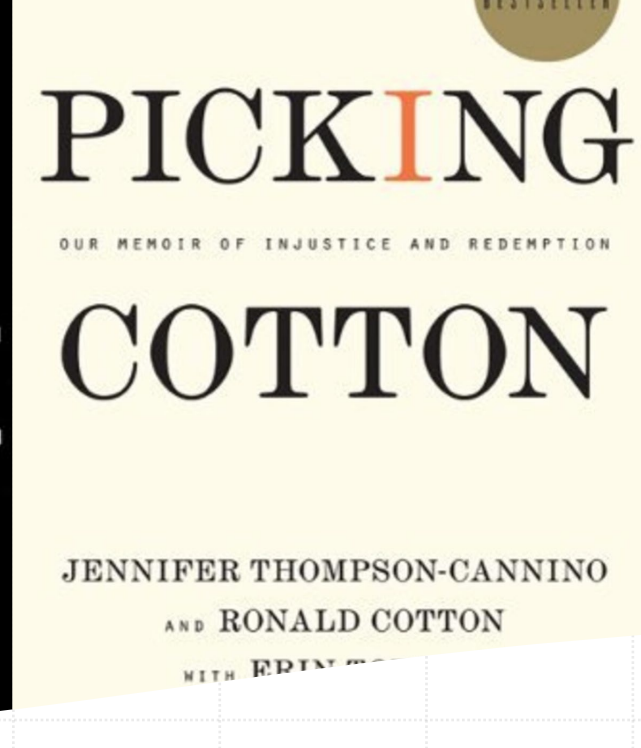
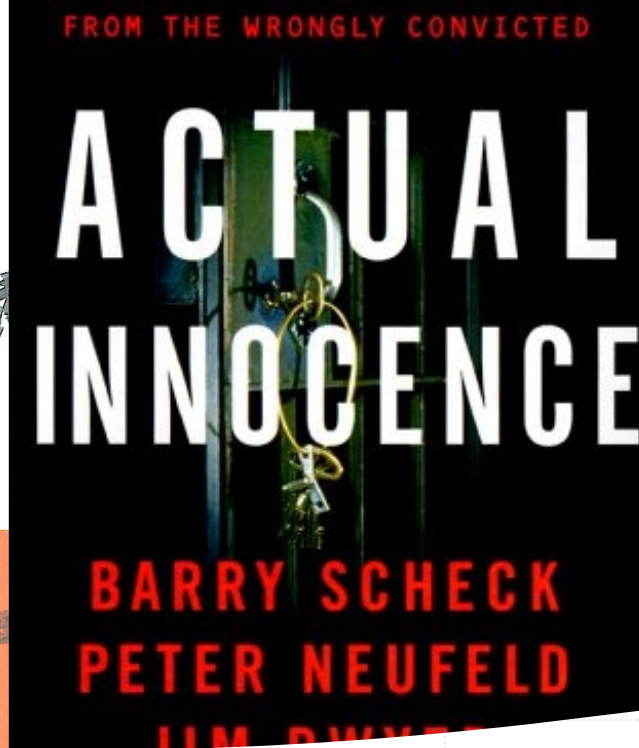
BBC greinir frá því að Iwao Hakamada, sem er nú 87 ára gamall, sé sá fangi sem hefur setið lengst á dauðadeild altra í heiminum. Hakamada var áður atvinnuboxari.

Hann var dæmdur árið 1968 fyrir að stinga yfirmann sinn, eiginkonu hans og tvö börn þeirra til bana árið 1966 nærri Tókýó.

Hakamada jafnaði verkinuðinn eftir að hafa verið yfirheyrður í 20 daga. Hann sagðist hafa verið barinn er þær stóðu yfir. Hann dró síðan játninguna til baka frammi fyrir dómi.

Skera úr um hvort DNA tilheyrði Hakamada

Mannréttindasamtök hafa gagnrýnt japönsk yfirvöld fyrir að reiša sig



From my background,

- Translation of two important English books into Japanese
- Various articles on the issue of miscarriage of justice, disclosure of evidence, public inquiry into causes of wrongful conviction, criminal case review systems, interrogation techniques, camera perspective bias and police/prosecutor misconduct
- Over thirty expert opinions to the court
- Advisor for defense teams in two cases of miscarriage of justice



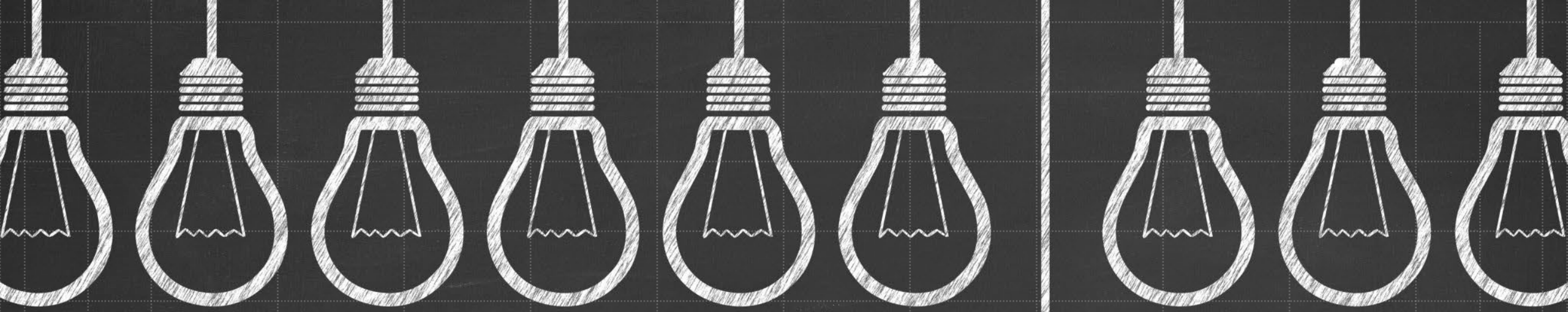
Questions from comparative research on wrongful conviction and innocence programs

- Focus on “factual innocence” in previous research, exoneration cases and the innocence movement in the U.S.
- On the other hand, there are varied/multiple reasons for wrongful convictions and requests for case reviews
- Many exoneration cases in Japan involve non-factual innocence, such as negligent nursing care, tax evasion, illegal entrapment, consensual sex, self-defense, embezzlement, accessories to copyright violations.



Legal framework of the criminal review process in non-US jurisdictions

- No requirement of “factual innocence” in some jurisdictions
- Example 1: Criminal Cases Review Commissions (CCRC) in Commonwealth countries -
- Example 2: Article 435, Section 6, Japanese Criminal Procedure Law



2. Concepts: “Wrongful Conviction”, “Miscarriage of Justice” and “Actual Innocence”

- Wrongful Conviction:

- "A conviction of a person for a crime that he or she did not commit".
Black Law Dictionary, 11th ed.

- Miscarriage of Justice:

- "A grossly **unfair outcome in a judicial proceeding**, as when a defendant is convicted despite a lack of evidence on an essential element of crime". *Id.*

- Actual Innocence:

- "The **absence of facts** that are prerequisites for the sentence given to a defendant". *Id.*

- Legal Innocence:

- "The absence of one or more procedural or legal bases to support the sentence given to a defendant". *Id.*



3. “Factual Innocence” vs “Legal Innocence”

- Distinguish:

- "'factual innocence' roughly synonymous for 'did not commit the act that one is accused of having committed'. There is a way to make sense of this dispute by distinguishing between being 'legally innocent' and being 'factually innocent',"

- L. May and N. Vinner, *Actual Innocence and Manifest Injustice* (2005)

- Difficult to do research on legal innocence:

- "Culpability questions tend to hinge on subtle and elusive aspects of the criminal event, and thus are not readily subject to objective confirmation or refutation. It follows that mistaken determinations of the defendant's culpability are rarely traceable." Dan Simon, *In Doubt: The Psychology of The Criminal Justice Process*, p.9 (2012)

- Factual Innocence = Actual Innocence:

- "the specific term 'actual innocence' is most often used in the context of someone convicted for a crime he or she did not commit. Claims of 'actual innocence' are, in that sense, usually raised in post-conviction challenges to a conviction." *Wikipedia*



Question: Why should we change the categories of innocence?

- i. Similarity in the causes of wrongful conviction based on actual innocence and legal innocence
- ii. Doubt about the moral legitimacy of penal sanctions
- iii. Volume of the legal innocence
- iv. Difficulty in finding the best way to defend a case of innocence
- v. Difficulty in proposing the concept of how to prevent cases of innocence



4. Challenge by a trichotomy of innocence case categories



Discussion

- What is the best logical approach to analyse a claim of innocence by the suspect?
- Let's think about the approach by looking at an example of a situation which can arise in daily life.

Familiar example in our daily life

The example: “stepped on foot”

Ms A is the “suspect”.

Mr. B is the “victim”.

What is a conceivable scenario when A is accused as the culprit?

Scenario 1

Accused of stepping on the foot, but it did not happen, in fact.



Scenario 2

Accused of stepping on the foot, but it wasn't A.

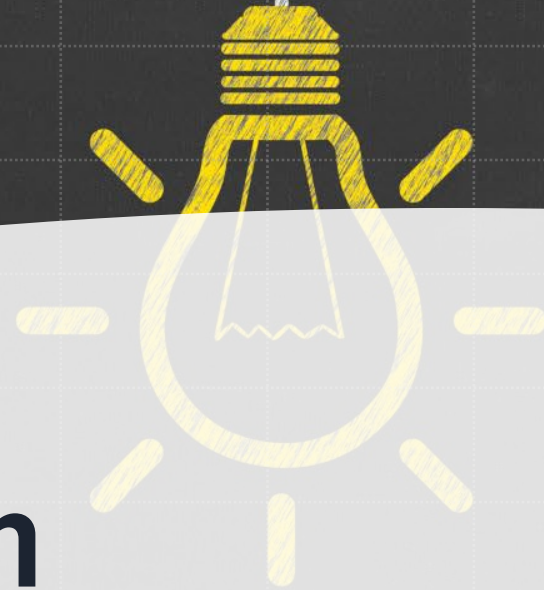
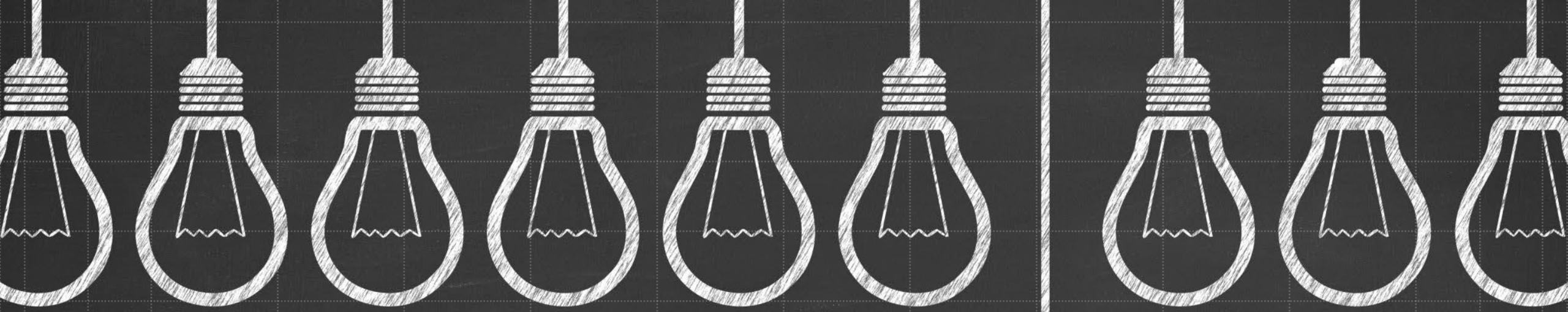
Accused of stepping on the foot, but it wasn't intentional by A.

Scenario 3



	Laufer (1995)	Raymond (2001)	Burnett (2002)
Actual innocence	Applied on appeal, questions of proof	Another person committed the crime (misidentification)	The “wrong person” was convicted
Factual innocence	Simple claim of innocence in fact		In some way involved but not responsible
Legal innocence	All defendants are legally innocent until or unless convicted	Committed the actus reus but lacked the mens rea	Committed but excused or justified (no mens rea)

Table 1: Proposals for a trichotomy in defining “innocence”



**5. Proposal: my own
categorization of innocence cases**

New trichotomy analysis

1. **False Accusation Type (Scenario 1):** accusation not happen
2. **False Arrest Type (Scenario 2):** typical “actual case”
3. **Responsibility Error Type (Scenario 3):** no/minor criminal responsibility for a crime

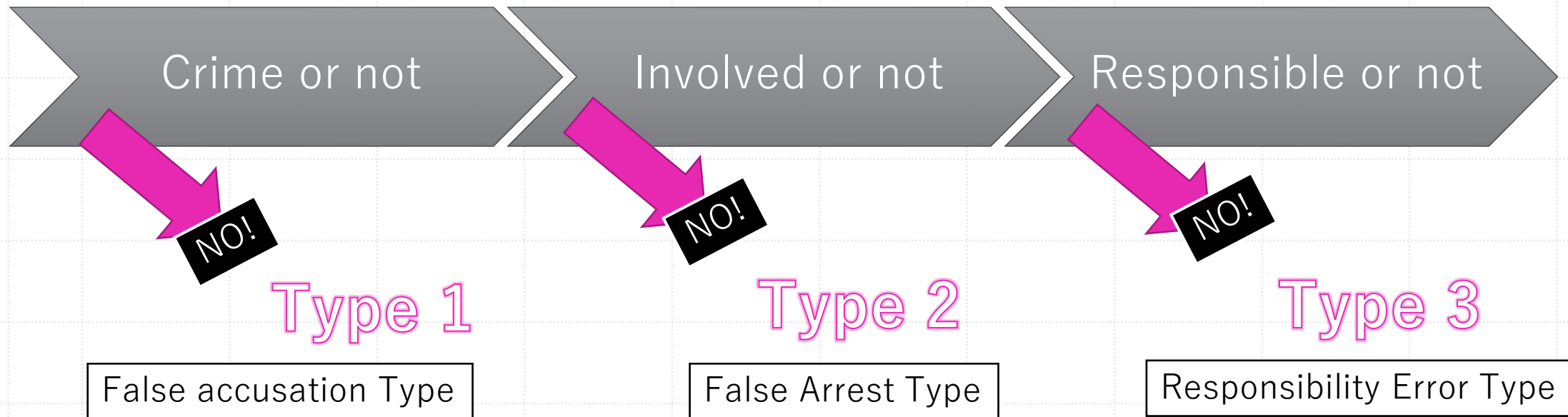
Surely, the fact occurred,
But it is NOT a crime.
Accident?

Surely, the fact occurred
But the accused did not
commit the crime.
Someone did!

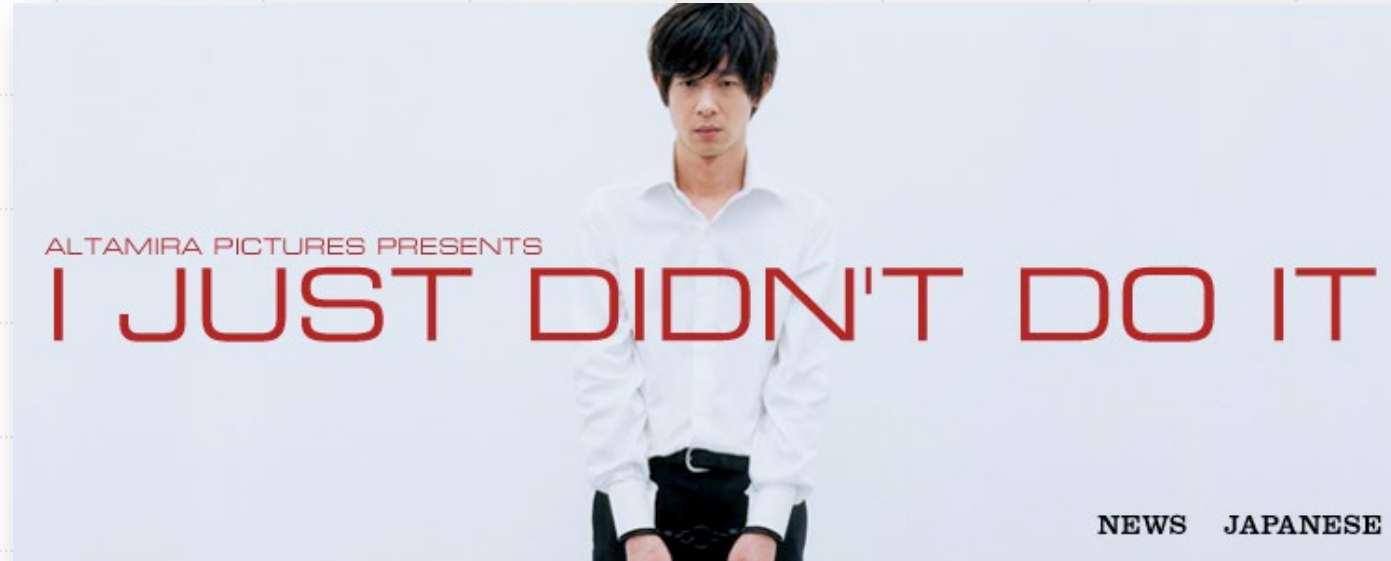
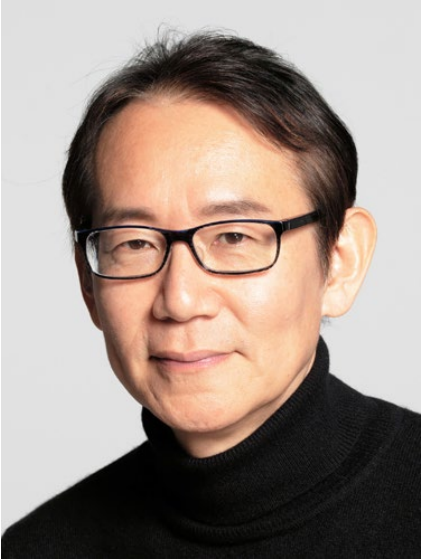
Surely, the fact
occurred. But there is
NO criminal
responsibility.

Logical thinking about a claim of innocence?

When a guy is accused of being a sexual molester in a crowded train in midtown Tokyo...



- “Soredemo boku wa yattenai (I just didn’t do it)” (2006) directed by Mr. Masayuki Suo. Award-winning work of the Academy of Japan.



<https://www.youtube.com/watch?v=UjS0W0-KSUA>

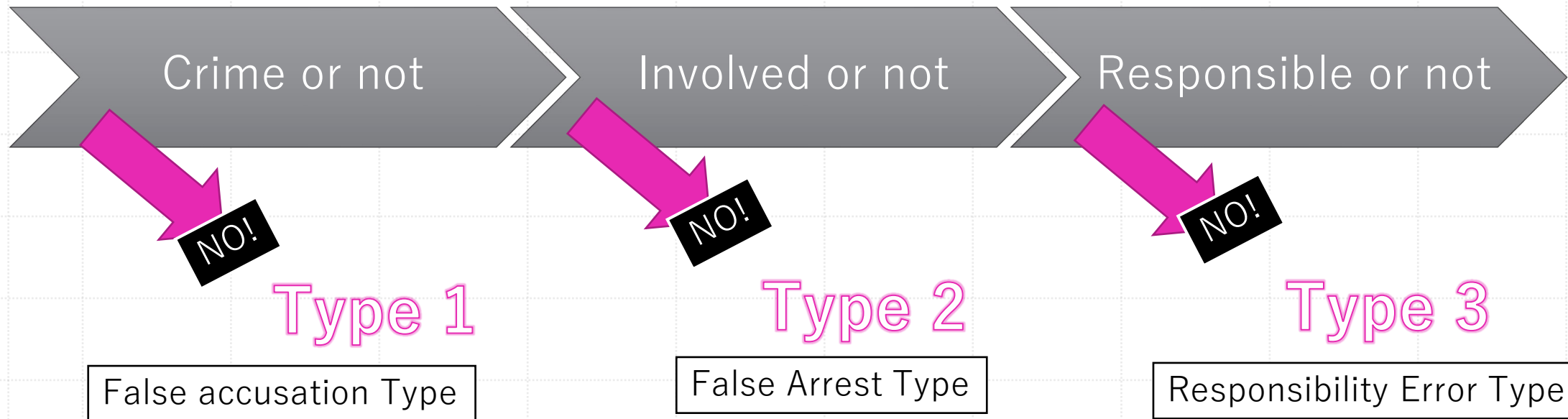
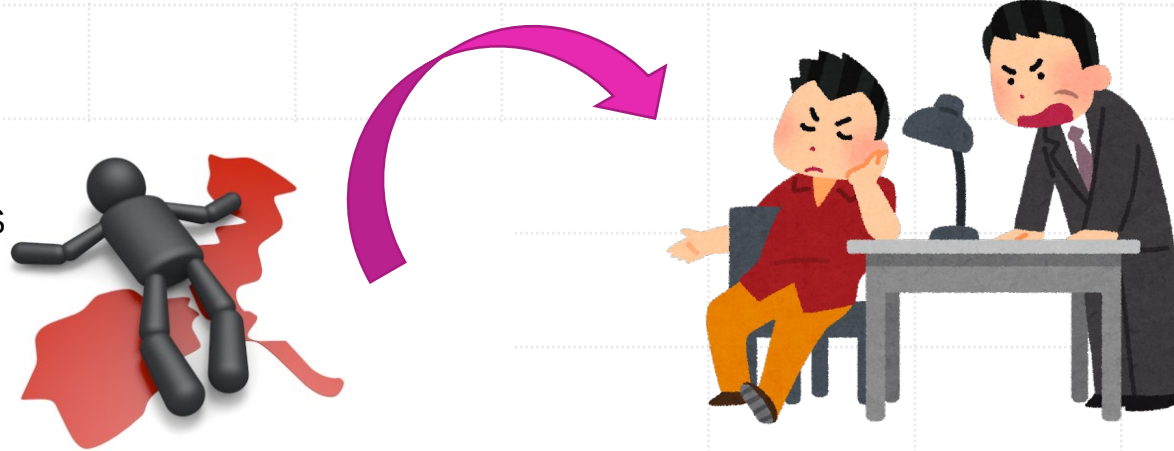
In this movie, Japanese director Masayuki Suo depicts the controversial Japanese court system. A young man is falsely accused of molesting a high-school girl on a train. He is arrested and charged, and experiences endless court proceedings, all the while insisting that he is innocent. Based on a true story.

True examples of each type of innocence case

Type	Type One False Accusation	Type Two False Arrest	Type Three Responsibility Error
Actual case	A female claimed she was a victim of molestation in a crowded subway train in Osaka, the second largest city of Japan. Mr. Kazuo Kokubu was arrested based on her account. However, two weeks later, she confessed to police that her boyfriend had forced her to role-play a molestation victim to try to obtain settlement money. This couple was indicted for the crime of false accusation and convicted.	There are many cases of false arrest for molestation in crowded Japanese trains. It is extremely difficult to identify the true suspects in this situation. Now, as a precaution, many cameras are installed in the cars and every train has “female only car”.	A junior high school student claimed she was a victim of molestation in a crowded bus in Mitaka City, a suburb in metropolitan Tokyo. She accused Mr. Masayoshi Tsuyama, a junior high school teacher, who was arrested. At trial, the defendant argued that this was accidental not intentional. However, he was convicted. In the court of appeal, the defense expert presented a graphic analysis demonstrating how the suspect’s bag hit the area around the victim’s waist when the bus was shaken at a point where road construction was in process. The guilty verdict was overturned.
	Osaka Case in 2008		Mitaka Case in 2011

These categories can be applied to another crime

When a dead body was found,
Mr. X was accused as the victim's
killer.



滋賀・呼吸器事件「冤罪」暴いた記者が問う"歪み" 7回の有罪判決も調査報道が明らかにした真実

Frontline Press 著者フォロー

2022/08/18 5:00

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印刷

A+ 拡大

A- 縮小



滋賀「呼吸器事件」で再審無罪となった西山美香さん（中央、写真：共同通信）

Type 1

Actual case: “Koto-Memorial Hospital Murder” (Nishiyama Case)

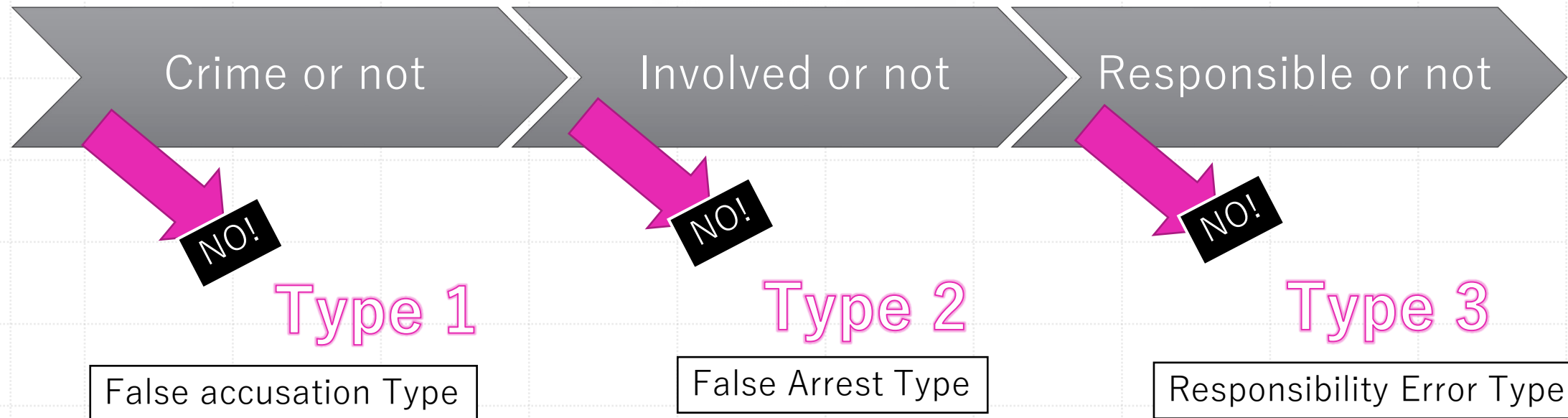
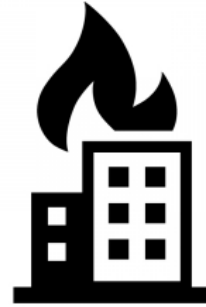
Ms. Nishiyama was indicted for murdering a patient, a 90-year-old man, whom she cared for as an assistant nurse.

She was convicted in 20xx . After imprisonment for twelve years, a court recognized that the patient’s cause of death was his personal medical illness, previously diagnosed. Finally, she was acquitted by the Otsu District Court in 2021.

Now, she has civil suit against the police, the prosecutor and the judges.

These categories can be applied to another crime

When a building caught on fire, Mrs. Y was accused of crime of arson.



Actual case: “Higashi Sumiyoshi (Aoki Case)”

NEWS 大阪 火災 大阪小6女児死亡火災 西宮

【大阪の小6女児死亡火災】無期懲役の母親ら2人が無罪確定へ

大阪市東住吉区で1995年に起きた、当時小学6年生の女児が死亡した火災をめぐり、殺人などの罪で無期懲役が確定した母親ら2人の再審（裁判のやり直し）が認められたことについて、大阪地検は3月16日、再審公判で有罪を主張しない方針を決めた。

吉川慧 — The Huffington Post

2016年03月16日 17時3分 JST | 更新 2016年03月24日 JST



時事通信社

大阪市東住吉区で1995年に起きた、当時小学6年生の女児が死亡した火災をめぐり、殺人などの罪で無期懲役が確定した母親ら2人の再審（裁判のやり直し）が認められたことについて、大阪地検は3月16日、再審公判で有罪を主張しない方針を決めた。

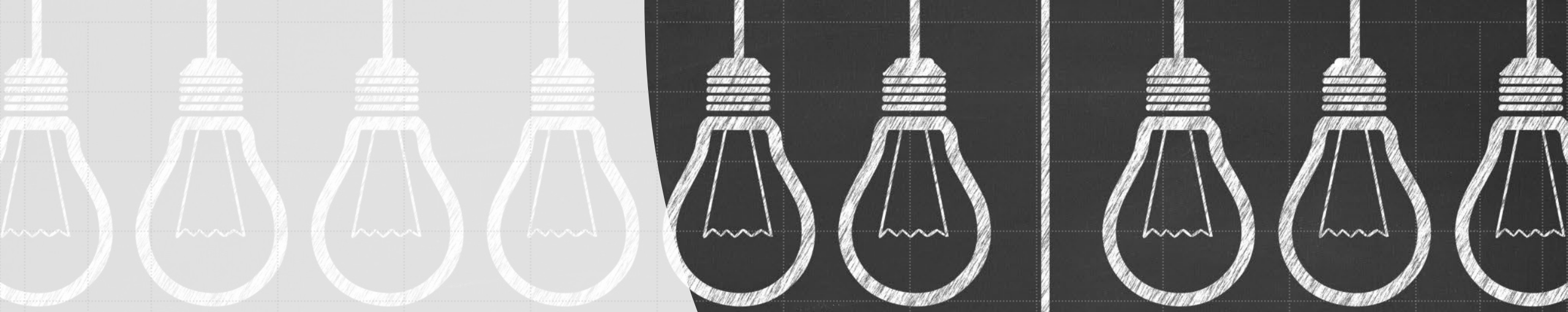
朝日新聞デジタルなどが報じた。これにより、母親の青木恵子さん（52）と、内縁の夫だった朴龍皓さん（50）の再審無罪が確定することになる。

Ms. Keiko Aoki confessed to the crime by her daughter of arson and was convicted.

XX years later, the defense team conducted a fire experiment test and proved that the fire was caused by oil leaking from a car parked in the garage.

In 20xx, the court reversed her conviction and she was acquitted in her new trial.

She filed civil suits against the police, the prosecutor and the judge for her long imprisonment and illegal interrogation.



6. Conclusion

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- Why should we use the new categories rather than the traditional dichotomy and other proposed trichotomies?
 - i. Matches logical thinking about typical scenarios with variations in the falsity/error of each case.
 - ii. Assists the defense to disconfirm the prosecution theory.
 - iii. Assists the analysis by police in the investigation process.
 - iv. Assists the fact-finding in each case by the prosecutor/judge/jury
 - v. Matches the legal framework for applications for criminal review of wrongful convictions

Factual culpability, perpetrator identity and variations in falsity/error in innocence cases

	Fact	True perpetrator	Variations in falsity and error (cases)
Type One - False accusation	No	No	Victim false accusation (Osaka case)
			Police error (Higashi Sumiyoshi case)
			Expert evaluation error (SBS innocence case)
Type Two - False arrest	Yes	Yes	Identification error (Ronald Cotton case)
			Investigation error (Hakamada case)
			False confession – drug intoxication, withdrawal (Muraki case)
Type Three - Responsibility error	Yes	---	False police evaluation
			False victim accusation (Mitaka case)
			Legal evaluation error

Table 2: Variations based on different types of falsity/error in innocence cases



Thank you for your attention!
Please send your feedback!

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