

インクルーシブ社会研究 12  
Studies for Inclusive Society 12

# Transparency of Interrogation: Innovative Data Recording and Analysis by the Human Science

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Translational Studies for Inclusive Society:  
MEXT-Supported Program for the Strategic Research Foundation at Private Universities  
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## Forward

The “visualization of interrogation” is a key issue for the reform of Japanese judicial system. In order to have a fair and open criminal justice system in Japan, it is necessary to not only examine the existing legal and institutional issues, but also promote cross-disciplinary discussion among legal professionals and scholars in various fields in addition to collecting outstanding case studies in other countries.

Based on awareness of these issues, we organized an international symposium entitled “Transparency of Interrogation: Innovative Data Recording and Analysis by the Human Science” in July 2014 with the cooperation of the “Law and Human Science” project sponsored by the MEXT Grant-in-Aid for Scientific Research and new academic area studies, “Translational Studies for Inclusive Society” project which is a MEXT-Supported Program for the Strategic Research Foundation at Private Universities, and Center for Forensic Clinical Psychology at Ritsumeikan University.

The symposium was conducted with a four-part structure. In the keynote session, there was a speech regarding the multi-lingual and cross-cultural communication issues in the legal practice, followed by a special lecture about the legal interviewing technique to children. In the aftermath, there were three sessions focused on Australia, South Korea, and Japan. Each session had presentations by law scholars and psychologists followed by comments from legal professionals in Japan. At the end, there was a general discussion session based on the topics brought by two Japanese law-psychologists. On the whole, there was a lively discussion transcending not only disciplinary cultures but also national cultures. This booklet

contains the transcripts of keynotes, international sessions, and general discussion sessions in the symposium.

In Japan, the discussion on the visualization of interrogation has been held only by legal practitioners and scholars so far. Therefore, we aimed at bringing many diverse people together at this symposium in the aim of sharing common issues and having a discussion toward a fair and open criminal justice. As a consequence, we are very happy that we could have lively discussion transcending disciplinary and national boundaries.

We expect that this booklet will become a clue to understand the trend and issues of criminal justice in Australia, South Korea and Japan. We are also hoping that this booklet will spark a wider debate on the visualization of interrogation to implement a better society.

March 2016

MEXT-Supported Program for the Strategic Research Foundation at  
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“Translational Studies for Inclusive Society” Project  
Director, Mitsuyuki Inaba

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Chair: Makoto Ibusuki

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Makoto Ibusuki (Seijo University)

Makoto Ibusuki

Good morning. As sponsored by the grant-in-aid for scientific research on innovation areas, the research in the proposed research areas, humanities and social sciences, and Ritsumeikan Global Innovation Research Organization and the Institute of Human Science of Ritsumeikan University, we are going to start the international symposium of transparency of interrogation. We will be offering some remarks as we begin this symposium. My name is Ibusuki. I would like to express our thanks to the sponsoring organizations.

Today, we are going to talk about the innovative data recording and the analysis by human science. Starting now, we are going to have a program until 6 o'clock, and inviting the distinguished speakers from abroad as well. We are going to talk about all aspects of recording of the interrogation. I do hope you are going to enjoy the full part of the program.

This is from Sydney, the interrogation room in a place. You can see that they have a recording system. I visited there together with members of Kyoto Bar Association. This is from Manchester police interrogation recording system. This is from New Zealand when they were using the video. Today they use DVD. This is from Illinois, Chicago, United States. Together with Dr. Wakabayashi of Ritsumeikan who is secretary for this symposium was with me. This is from the prosecutors' office, the interrogation room in Korea.

Finally, this is Japan. The recording system is now being introduced in

Japan. This is the brochure from the public prosecutor's office on a pilot basis and also for internal use. In Japan, the use is already started and this month, the legislative council of the ministry of justice, the special committee on the criminal justice in new era came up with the final recommendation as to the scope of recording, video recording. The proposal will be sent to the Diet in Japan, with law, the police and the prosecutor's office, the custodial suspect which will have the lay-judge trial cases, the interrogation of the suspect will be recorded together with the special cases to be investigated by the prosecutor's office.

However, concerning noncustodial cases (slide 2), the recording of the interrogation is only voluntary and concerning witnesses and eye-witnesses, the decision is made by the discretion. So, there is no legal requirement. But at last in Japan, the recording is now going to be required by a new law. It's quite timely that we planned this symposium in the same month of July. Although this is by accident, I thought that this is quite symbolic. I showed you some pictures of interrogation rooms from different countries.

This is a schematic view of what is done in what way (slide 3). Vertically, you can see the scope of recording for each individual case. As you go higher, it means you have full coverage of recording. Horizontally, it shows you the scope of the type of the crimes to be recorded. If you go to the right, more and more cases with different types will be recorded. This is what I call the video recording map and for Japan, only for the lay-judge trial cases, or the special cases, which comes under the special investigation team of the prosecutor's office will be recorded. So Japan is at the left top. UK or New Zealand, most of the cases are to be recorded. That's why they are in the right top quadrant. Korea, Europe, the US are also mapped here. As you're aware, this May the federal investigation authority of US decided that there will be recording of all cases, that's why it's wider in the US. In

coming November, FBI is going to start recording of the interrogation.

Here, I show you two main purposes of this symposium (slide 4). As the name suggests, we have 50 or 60 researchers who are going to study the integration between law and psychology for coming 5 years. It's quite important that we can integrate the law and psychological perspective so that we can discuss deeply about the technique of investigation to be used for the recording and the possible impact and the possible way of using them effectively. As we have the distinguished speakers in the Australian session this morning and in Korean session this afternoon, we're going to have the comparative study of video recording. It's going to be a wonderful opportunity for us to have international comparison.

The discussion in jurisprudence and legal practice tend to focus on the normative aspect, but is quite important that we have finding from the empirical study because the normative discussion may not be able to cover all aspects of the reality. In all the sessions, we are going to have speakers from jurisprudence and psychology. In order to achieve both objectives of this symposium, in each of the sessions we're going to have today, I do hope that the participants will have these two purposes in their mind as we discuss the issue of video recording of interview. Now Japan is going to have a new law, so we need to think about the future perspective of video recording.

These are the three points of view (slide 5). First is about technology of recording. What will be the equipment, what will be the media to be used for recording, and what will be the duration of storage, and how the access is to be secured. These issues related to technology are quite important and challenging. Second is psychological perspective. Once the images are taken, what will be the implication of the images on the judges, on the lay



judges, isn't there any danger to generate bias? As for the interrogation technique to get voluntary confession, what will be the effective way? We need psychological perspective. We need to think of the legal perspective. How can we make sure that the confession is made on a voluntary basis, and what determines that the confession is voluntary? We relied on the official written documents, but into the future, we need to think about the admissibility of the confession using the recorded images.

There may be other ways to use the recorded information, but how much can we allow other users to make access to the recorded information? It's going to be a long day but I do hope you're going to enjoy the whole program.

Thank you very much.

取調への可視化  
～学際的・国際的視点から考える～

Interdisciplinary/International  
Perspective for Visual Recording of  
Suspect Interview

指宿 信(成城大学)  
Prof. Dr. Makoto IBUSUKI  
Seijo University, Tokyo, Japan

20<sup>th</sup> July, 2014  
At Suzaku Campus, Ritsumeikan University, Kyoto

1

可視化範囲

Range of the recording for  
interrogation/interview

被疑者対象 Suspect	参考人 Witness	第三者 目撃証人 Eyewitness
<div> <div>身体拘束事件 Custodial suspect</div> <div>裁判員裁判 対象事件 Lay Judge Trial cases</div> </div>	<div> <div>非拘束事件 Non-custodial</div> <div>在宅事件での 取調べ、任意 取調 Voluntary interrogation</div> </div>	
警察段階 Police 検察段階 Prosecutor	可視化範囲 Mandatory Recording	可視化対象 とされず Non Recording/P ractical Discretion based
	<div> <div>非可視化領域 Voluntary Recording</div> <div>独自捜査事件 Special cases</div> </div>	可視化対象 とされず Non recording/P ractical Discretion based

2

世界の可視化情勢

World Mapping for Visual Recording

3

趣旨と目的

Purpose of this Symposium

- 法学と心理学の融合(学融的アプローチ)・・・法と人間科学の必要性・重要性 → 捜査・弁護実務、公判審理に対する学際的な示唆を得る
  - Implication from Inter-Disciplinary Approach by Law and Psychology to the investigation/criminal defense and criminal trial practice
- 可視化問題に対する国際的視点・・・可視化技術や尋問技法の比較 → 捜査・弁護実務、公判審理に対する国際的な示唆を得る
  - Implication from Comparative Study of Visual Recording in the Interrogation Room to the investigation/criminal defense and criminal trial practice

4

可視化の将来

What' next for visual recording?

- 可視化のテクノロジー(撮影、メディア、保存保管、アクセス)
  - Technology: angle, media, preservation, accessibility
- 可視化の心理学(偏見、尋問技法)
  - Psychological perspective: bias, interrogation method
- 可視化の法律学(完全性、利用目的)
  - Legal perspective: legitimacy, purpose

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## **Keynote Speech**

Mitsuyuki Inaba (Ritsumeikan University)

Mitsuyuki Inaba

Good morning, ladies and gentlemen. I am Mitsuyuki Inaba at the Center for Forensic Clinical Psychology at Ritsumeikan University. Actually, I study and do research on legal issues from the perspective of information and communication sciences. It seems that I am given this task to speak a rather general and overview type of presentation before substantive presentations are going to be delivered later.

First, I would like to start with my observations concerning these two questions; why do we need audio and video recording of interrogation process in Japan? I'm not a psychologist, nor a lawyer or jurist. So from communication science and humanity's point of view, I would like to make some observations concerning this important question. Second is after an audio-video taping is realized, then what do we need to do from there?

First, I would like to give you one example which is the specific case I had been involved in, but before that specific case story, I would like to give you some background. I am a Japanese living in Japan, and we have been told that Japan is mono-ethnic, mono-linguistic society, but as a model fact, Japan is already a multilingual and a multicultural society. Through a re-examination of one particular case, I came to firmly believe in this fact, I would like to say.

So, Japan being a multilingual and multicultural society, it can be supported by this particular data; for instance, this is from the Ministry of

Justice of Japan. As of 2003, already in Japan, more than 11 million people from overseas entered in this country, and there are an increased number of people who do not understand our language, Japanese. Also, non-Japanese residents in Japan already exceeded 2-million mark as of 2003. Thus, Japan is no longer a mono-ethnic, mono-lingual society today. Furthermore, if you look dialects of Japanese spoken in this archipelago, it seems that it is not quite easy for all Japanese to speak and understand standard Japanese language.

This is a map of Japan concerning the diversity of dialects in Japan (slide 2). This was studied and made by National Institute of Japanese Language. For instance, get up in the morning, okiru. Okiru means get up in the morning, and this shows all kinds of dialects for this particular verb okiru. This is the list of different dialects of standard Japanese verb okiru or get up in the morning and okujo or very strange, totally different words are there as dialects for this one word, verb, okiru (slide 3). So Japanese language is indeed diverse in dialects and different regions, people speak different dialects and sometimes it could be really difficult for them to understand with each other if they speak their dialects. As I mentioned, there are a lot of non-Japanese living in Japan who do not understand our standard Japanese language.

One case which we re-examined is the case about one offence. This served as an opportunity for me to think of Japan as a multilingual and multicultural society. I'm sure that when I speak of this particular case, many of you from Japan will understand this case very well, but I am told not to give you specific name of this case, so I have to say that this is a case of violation of election law. We got some data from the suspects involved in this case. I would like to share with you some of the data and analysis, and I asked one of the defense councils whether I could pass on to the

participants of this conference that data and material I am going to show on the screen, but he advised me not to do so. So, I cannot give you any specific material concerning this particular case. I'm sure that all of you understand the reason for this prohibition. Perhaps, you would bear with me as I go along.

This is the overview of the case. For the charges of a violation of an election law, 13 suspects were indicted and six suspects made confessions in the process of interrogation. However, in the trial, all of them pleaded non-guilty and the only evidence was the statements made by them during the interrogation, but they all pleaded not guilty and because of the lack of credibility of the statements taken by the police officer, all of them were acquitted as a matter of fact. We re-examined this case later on, and I was one of those who was engaged in this re-examination process, the study after they were acquitted.

These are the villages' pictures. This village is in a mountainous area, very few residents, only a little over 10 households in this mountainous village.

This shows the background regarding why we decided to re-examine this particular case. As a witness, Mr. A received interview. Our group was requested to make some psychological testing on him. He grew up in a mountainous area in this village, and he spoke in local dialect with his neighbors, but spoke a standard Japanese to people from outside. Before the trial, the defense lawyer and he went through various facts, but in the trial Mr. A began to say things which were not really agreed upon with his defense lawyer. The defense lawyer was really suspicious whether he had any mental deficiency or some psychological capabilities. For that suspicion, this defense lawyer asked us to perform some psychological testing, not only on this person – and then we went on to study not just him but other

people of the village involved in this case. Not me, but the psychologist performed a psychological test on Mr. A, and as a result, Mr. A was found to have some mild intellectual retardation and some difficulties in sensory integration.

I cannot give you further details but this was the finding. It seemed that he had some psychological deficits, impairments. Besides these psychological tests, our group had a chance to discuss with Mr. A and in certain cases we had difficulty talking with each other, so we decided to perform some vocabulary test on words which appeared in his statements taken by the police officer to see whether he really understood what was asked by the police officer. For instance, "Voluntarily – do you know what this means?" And he said, "No, I don't understand the word."

He can converse with us very naturally but there are words he couldn't understand. "Have you ever heard this word before?", and he said, "No." "Do you understand a phrase – going voluntarily to the police station?" "Yes, I understand." "Then, could you tell us what it means?" Then he said, "It's like police officer saying to me would you come to the police station with me because there is something I would like to speak with you." He seems to understand those things in a concrete manner, but he doesn't have an understanding of this abstract notion of 'voluntarily.'

Also, another person – another villager, a similar test was performed on him. "Do you understand what it means that – for charges or for alleged facts of the crime?" This was a phrase which was shown in the statements taken by the police officer and actually the statement was shown to him and this person signed, but actually he didn't understand this phrase at all. Another word "dismiss someone," then he says, "Dismiss the defense lawyer," but actually, he didn't understand what it meant at all, so he seems



to understand those phrases in concrete specific ways but he did not understand in the abstract notion.

The same goes for another for another villager. They seem to have difficulties understanding abstract notion so though they can understand in concrete specific terms. Another person, Mr. C from the same village. This is also about the words which appear in the statements they made in the interrogation process. Utility cost, he said, "I paid it myself." He spoke in dialects. Then, he can say such as "I pay it using the bank transfer." So, he understood it in very concrete ways but he didn't quite understand the abstract notion of utility cost.

This is another vocabulary test (slide 4). This has nothing to do with the statements during the interrogation process, but where does the sun rise? And Mr. A says, "From the East." Ms. B, "In the South" and Ms. C, "Well, many directions. It depends," she said. Mr. D, "From the East," Mr. E, "Maybe in the West." So, we were really puzzled by all of these answers. But if you go to that village, certainly it's surrounded by mountains, so for them what is very important is not really the direction such as East and South. Rather for them it is important the positions of different mountains, and perhaps, if you consider the relative position of the sun rising and also the mountains, they may say that the sun rises on different directions depending upon the position of the mountains you're talking about.

Another is the boiling point of the water. Different answers as you can see in this slide. Yes, all of them have no difficulty conversing with us and they seemed really normal on the surface, but sometimes they are really strange, and as you can understand from all of these answers, it gave us an impression that they live in a totally different world from ours.

So, from such interviews we gave them and studies we performed of them, especially those who were involved in that particular case for election law violation seemed to be living in a concrete world rather than in abstract world. This is an experiment by Luria about syllogistic reasoning (slide 5). This is the question: "In the far North, all the bears are white and one area is in the far North. What colors are bears there?" One of the subjects answered, "I've never been to the far North. I've never seen the bear so in order for me to answer that question, I have to go to that North area and ask the person who has seen the bears." So, it seems to me a person living in a very concrete specific world seems to think in a very specific way reflecting their cultural context. It's not that they are very much intellectually impaired.

Another research by Cole and Scribner, in a different community they performed such an experiment. The question is "Spider and Black Deer always eat together. Spider is eating now. Is Black Deer eating?" The elder of the village asked, "Were they in the bush? Were they eating together?" So, the interviewer repeated the same explanation but the elder after all said "I wasn't there so how can I answer such a question?" So this elder lives in a very concrete world. As a result, these two people just talk parallel to each other.

Coming back to that specific case, there seemed to be a gap in cultures and their thinking style; and that may be the reason why the investigators and suspects were not able to understand each other. And after all, it ended up in a failure case.

During the interrogation process, there were a lot of communication difficulties. So, we asked Mr. B whether he was given a chance at the end of the interrogation process every day, whether the interviewer reviewed the

statement he took with him. Ms. B – but actually, she said that she was told just sign the statement, and they never asked her whether there were words they couldn't understand. So, I think if they have such serious difficulties in communicating with suspects, they should stop the interrogation – interviewing at that stage.

This is for Ms. C. She said “Yes, I had a chance to review the statement taken by the police officer with him during the interrogation process, but they wrote down the things I never said, and there are things they just listened to me when I got really angry.” For Mr. E, “There were things I didn't say at all, so I didn't sign, but then, the police officer said that this is something we produce as a report. It's not your business.” Then we asked them whether harassment done by investigator. Then he said, “No.”

Very surprising facts were revealed out of this post-talk investigation or examination on our part. So, dialect has its thinking style and the standard language has its another thinking style (slide 6). The legal or the judicial language has its cultural and linguistic background. Because of these gaps and differences, many contradictions took place, but interrogation process never stopped at any of such errors in the case I mentioned earlier. As a result, that case failed from the viewpoints of the public prosecutor's office.

Now, we had a chance to visit a women's community correction center in Hawaii and director told us as follows, “Yes, there are many criminals and they come from different linguistic and cultural backgrounds in Hawaii. On the other hand, the investigation officers come from different ethnic and cultural backgrounds. So efforts are made to make sure that the interviewer and interviewee come from the same cultural or linguistic backgrounds.” So, there is such a community like Hawaii where the things are done more properly, taking into consideration different cultural and ethnic

backgrounds.

Now, discussion concerning audio-video taping of interrogation is indeed a very important discussion, but it's not that audio and video taping, if it's done, everything is okay. Rather from such an audio-video taping of interrogation process, we will be able to understand what difficulties and differences may arise out of such differences between linguistic and cultural or thinking style. And by understanding all of these differences, we might be able to move towards a more inclusive judicial culture and we might be able to make a step further to an inclusive society where people from different backgrounds are able to communicate with each other.

Thank you very much for your attention.

Makoto Ibusuki

Thank you very much, Professor Inaba.

[illegible]

R	日本の方言の多様性(2)～(朝早く)起きる<終止形>		
(1) <i>okiru</i> , <i>okiru</i> , <i>okiru</i> , <i>okiru</i>	① <i>Okiru</i> V	② <i>Okiru</i> V(終)	③ <i>Okutsu</i>
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R

ある選挙違反事件の再検討  
(Re-examining a case on violation of election law)  
～元被告人に対する認知テスト(Cognition Testing)～

Q.太陽はどちらの方角から昇りますか？  
From which direction does the sun rise?

- Mr. A
  - 東から (from the east.)
- Ms. B
  - 南ではないかな (May be from the south.)
- Ms. C
  - いろいろあるからね (It depends on the season.)
- Mr. D
  - 東から (from the east.)
- Mr. E
  - 西だと思っています (Maybe from the west.)

4

R 参考：ルリアによる三段論法の実験  
Alexander R. Luria's Experiment on Syllogistic reasoning

- 実験者：「雪の降る極北では熊はすべて白い。ノーバヤ・ゼムリヤは極北にある。そこ熊は何色をしているか？」
  - EXPERIMENTER: In the far north all bears are white. Novaya Zemlya is in the far north. What colors are the bears there?
- 被験者：「北の方へ行ってもなければ熊を見たこともない。その間に答えるためには、北の方に居たことがあって熊を見たことのある人にかけてみてみなくてはならない」
  - SUBJECT: But I don't know what kind of bears are there. I have not been there and I don't know. Look, why don't you ask old man X, he was there and he knows, he will tell you.

A.R. Luria (1971)

## **Invited Talk**

Makiko Naka (Hokkaido University)

Makoto Ibusuki

The next speaker is the invited lecturer, the representative of Hokkaido University in the committee for the electronic recording. Professor Naka is going to deliver the speech.

Makiko Naka

Thank you very much. I am Naka with Hokkaido University. Thank you very much for inviting me.

In our place, our group consists of 26 units, 60 researchers to talk about the human science research from the legalistic perspectives. This project is related to the suspect interviews and transparent procedures. I would like to focus on the electronic recording, audio and video recording as well as the indirect effect. The project name is Law in Human Sciences, which consists of 26 units with approximately 60 researchers. In this domain, there are four areas; legal concepts, transparent procedure, lay judge system, and psychosocial work.

In this transparent procedure of the investigational, interrogational procedure, that's something we focus in our research. In the coming 30 minutes, I would like to talk about the importance of the transparent procedure and electronic recording and its pros and cons, and also the past issues which were pointed out in the procedures of the electronic recording.

We are now developing from non-electronic recording set up to the

electronic recording. From the psychologist point of view, I would like to talk about how we see the situation, and depending on interview, not only just electronic recording, the appropriate interview has to be carried out vis-a-vis the suspect or the accused, and that has to be combined together with the introduction of electronic recording.

Now, I would like to talk about how we are able to successfully introduce this. The important thing is of course the group in the police NPA as well as the academy of the police and in the legal-council of the Ministry of Justice, which have undertaken such researches. In our group based on the experimental psychology, the abuse with the children by way of crimes and how we are able to retrieve the information as much as possible from the suspect, and that can be applied to the interview with the suspect we thought.

So based on those researches, I would like to focus on two points. One is the volume and the quality of the information, and second, I would like to also touch upon the perception of interview, what kind of information we are able to extract from the suspect. Originally, I was focusing on the interview with the children, but this can be also utilized for the interview with the suspect.

First, about the pros of electronic recording – by the electronic recording, the correct recording of information and accurate information can be done according to the research. Unless there is recording, about two-thirds of the information will be lost, just taking notes 40%-60% are to be lost. Through the electronic recording, there will be motivation for the better interrogation. We are able to restrain the inappropriate interviews by the interviewer and also the suspects can be protected, and interviewers are also protected, both police and public prosecutors, and of course, for the



staff members interviewing the children, the same thing applies. If there is the result of electronic recording, we are able to analyze and verify for the detection of deception and voluntariness of the confession, and we are able to come up with prevention of miscarriage of justice. If we are able to analyze the various problems, those can be utilized for the future better procedure.

These are the excerpts from the documents of the e-recording in 2010 from the Ministry of Justice. In the beginning, there was the concern of narrowing the use of investigative skill of taking a statement without telling the suspect to make an official document and pursue him to agree to make a statement, that kind of methodology cannot be employed. Investigator tells his own privacy in order to get the information from the suspect, that kind of methodology is not going to be utilized if the electronic recording is to be introduced. Those were some of the concerns.

On the other hand, if there is the electronic recording, investigators are demotivated because they think they are watched, and the suspects feel very shameful and they are very much afraid of the revenge by the stakeholders. Victims and stakeholders do not wish because the suspects' statements might give adverse impact on the privacy of the victims. Those are some of the cons.

Now based on those pros and cons, on the left hand side, I have listed the pros of the introduction of electronic recording. On the right, there are also cons. Of course, they do not correspond on one-on-one basis but on the left hand side, looks like electronic recording can be appreciated because this can present the better precise accurate recording.

Audio and video recording, no matter what kind of lies or what kind of

truth they give, the information can be taken as the data, so they are able to get them and record them by 100%. So information collection approach can be realized through the electronic recording. On the other hand, some people think getting the confession is more important. After only getting the confession, the other information can be retrieved and obtained by the suspects. In order to get the confession, you need to convince them to speak out through the various tricks and get the confession followed by getting the related information. So, there is a concern. There is this possibility in the electronic recording. Because of the presence of the camera, the confession seeking approach is not going to be possible. Accusatorial approach is going to be lessened.

But, if you focus on those pros and cons, there are various problems. In the discussion of the electronic recording, there are various cases, precedents such as Ashikaga and Himi and Shibushi and also the illegal use of postal system for the handicapped 2009 and 2007 and 2010 cases. After all those cases, electronic recording was discussed in the public sector. I joined as the committee member of the research committee for the electronic recording. I had the opportunity to get various opinions and there was an opportunity that I was able to get the opinions and comments from the suspects whose conviction turned out to be false. This is Ashikaga and this is Shibushi case. This is what he has commented. So, even if the investigators try to interrogate, they try to get the confession first.

This is what the suspect told me. The suspect considered as follows, "I was treated as if I was the criminal. I was told to admit. I didn't say anything. I did not say anything. They knocked the wall by their pen. They kicked the desk by the foot. Polygraph was used. I didn't do it, I said. The investigator said look at this. You are telling a lie. If you admit you can go home, otherwise you fall into hell. Admit. Everybody else had admitted." So I

admitted. And I said, "I did it once", "not one – did I do that twice?" "No." "Did I do that three times?" "No." "Four times?" "Yes, you did it four times." So I was supposed to have done that four times. "You received your money, 10,000, no not that small. 20,000, no. 30,000" – "Next week it was 60,000 you received." The investigators continued to feed me with the clues and I was put in a place where I give the false the confession.

As a similar structure, Himi case, I was treated as the criminal. "You understand why you are here? What did you do?" He pounded the desk. He continued to accuse me, full of terror. The third round of the interrogation, didn't listen to me, I fainted. "This is your mother's picture. Are you sure that you didn't do that? Your sister admitted you've done that. Yes." "Don't turn it over, don't say yes or no, and if you do not admit, I will be angry after the arrest." For example, "What color is your bra?" – that was a rape case. "What color was your bra?" "White." "No, it was not." And through the various interrogations, it turned out to be black. "What kind of embroidery did you see?" I thought there was embroidery, and I said "flower," and he said, "Oh yes, that was a flower," because I didn't know because he had given the clues and hints which enabled me to answer those questions, but turned out to be the total miscarriage of justice.

In February 2012, there was another research meeting held in NPA, National Police Agency, with 12 members: scholars, public prosecutors, experts in sociology, psychology, former judges, NPA, metropolitan police department, and attorneys. We had 23 rounds of discussion. On behalf of psychologist area, I attended, and I had commented from the psychological perspective. In February 2012, the final report was prepared. At that time, half of the committee members promoted the introduction of electronic recording. "From the psychological perspective, interrogation skill has to be improved," I said, "if you are going to introduce electronic recording." But

half of the members stick to not to introduce the cameras because they're afraid that that would hamper the investigation methodology.

One month later, in March 2012, NPA had announced the sophistication program of the interrogation and investigation method. You can click on this page, two or four pages documents. I believe this is very important document, which shed the light for the future of the electronic records saying that the use has to be expanded to the various types of the cases, not only the ordinary cases that has to be utilized for the case where there was the denial. And also, the systematization and training of the skill of interrogation based on the psychological perspective are needed, that was commented in this document. Of course, there are lot of research institute and forensic research institute where such researches are still going on.

As a member of the committee, the use of psychology is a must and I believe Professor Bull has written this beginner's guide, the PEACE model, the UK model is easily understood if you read them. I translated that into Japanese and had them read by the members of the committee. Science Council of Japan has also made the proposal as you can see here in the brochure.

We wanted to study more about PEACE model and for 3 weeks we were trained in Sussex, UK. We had presented the result of such training.

So through those interactions, three pages of problems were announced. In December 2012, NPA has also announced the basic approach for the interrogation and interview. This is sort of the guideline. You are also able to download it. Based on the cognitive psychology, they are introducing the cognitive interview. To the suspect, there are more opportunities to speak out and give more information. Also, in May 2013, in the police academy, there is the research and training center for investigative interview

methodology to be given to the executives of the police.

In the Ministry of Justice in the legislative council, there was the report announced by the committee. Through the course of development in the Hokkaido University, we are carrying out the interview training, especially for the victimized children and we try to come up with the best interview method in getting the information from the children. I feel very sorry for those children but that is considered to be the leading question that would create the wrong information. So, we tried to be more open so that we will be able to get as voluntary information as possible.

This shows you the number of people who received training. We studied in 2008. Pink represents social workers. Blue is forensic, meaning the police officers and prosecutors. Together with the arrival of those basic documents, we started to see increase of the forensic people attending in the training, especially in 2012 and 2013. We also had outreach program. This is usually 1-to 2-day training, but the picture showed you we do practice of interviews and reviewed it in order to get the skill to allow interviewee to talk more.

This is the protocol. If the interviewer simply says, "Please talk," the interviewee will not talk. So, we need introduction, and then the ground rule must be explained. "If you don't understand the question, please tell me so. If what I'm saying is wrong, please tell me so." So the ground rules must be given and rapport must be established in order to make an environment in which the interviewee or child feels like talking.

Then the practice of episodic memory. "Today, since waking up to your coming here, what happened to you?" Then the first is the pre-narrative. "Why – what brought you here?" So we ask the interviewee to give a free narrative. On the necessary basis, you give the open question, cross

question, then confirm what's necessary to be confirmed. Then you close the session. This is the protocol. Interviewees here are children. In reality – but after having the training, you see the participant used more open questions.

This is the quantity of words by the interviewer and interviewees. Before the training, the interviewer talked more, but after training, interviewee, the light pink talked more. After looking at that, we conducted an interview, and after the training, the participant can get more of the correct information from the same video. This shows you the amount of information obtained from different kinds of questions, open questions, "Please talk," then "what happened next?" In this way, much information was obtained.

If it's about a 'Wh' question, it's around closed question, "is it A" or "is it B," gets less information and tagged question – "this is what happened, isn't it?" Then the interviewee would simply say, "yes" "well" and that's all. Those are the training of interviews used for by the social workers for children.

In 2011, we started the training for the police officers, dark blue and the prosecutors. 150 in 2012, in 2013 more than 200 of them participated. Those who received training in 2012 are now working back in their police stations, and they have become trainers of the interviewing method. And now, we have more prosecutors coming.

So suspect interview, how we analyze the suspect interview from the psychological perspective is discussed in the training. We often received the request from the forensic to give us some expert ideas. In 3 years, we have these numbers of interviews and I attended in the interview room, in one occasion in 2011 and 2013, I was there to see what kinds of questions are used. And by using a monitoring system, I had online attendance to the interrogation so that I could give comment as a psychologist.

I was in Sapporo in 2013, and five psychologists made a team. If the suspect is intellectually disabled, then the psychologist is always there for the interview so that we can offer the psychological evaluation of interviews being done.

This is the previous results, and please looks at this one. We had only nine cases of suspects from different kinds of offending, like theft and rapes and others. Likewise, we looked at how prosecutors posed questions to the suspect. You can see the information gained from different kinds of questions, for open questions, more information was obtained followed by 'Wh' question and closed question getting less information, and tagged information could get very little amount of information.

This shows you before and after the training. I compared the official documents of the interviews. It's not in the handout – but before the training, the open questions were not used, but after the training, a lot of open questions were used together with 'Wh' questions, and less closed questions were used. This shows you the words spoken by the interviewer and interviewee. Before the training, the interviewers talked more and not so much by the interviewee, but after the training, it's about the same or for some interviews, suspect or the interviewee talked more than the interviewer.

This shows the impact or the effects of training. This shows you a structure of the interview. Before the training, the questioning, interrogation started without any introduction, without any closing, but after receiving the training, the interrogation or interview was started with introduction and explanation of the various rights, and confirmation of the identity of the subject. Then ground rules were well explained, to talk about the truth and tell me so if I am saying is wrong or others, then the substantial part of the

questioning followed by closing. They are not following a particular protocol but on a voluntary basis, the prosecutors or the police officers used this kind of structure after the training.

Using the protocol used for the forensic interview for children, the training given to the forensic people did help them change the way they interview their suspects. Psychologists, clinical psychologists, social workers, and forensic professionals participated in interviews.

We had about 100 in each of the two surveys we conducted. The survey was about "what is the type of information to be collected?" Questionnaire said that you have a case in which the child said that, "Daddy hit me." What are information to be collected and what are questions to be conveyed? In the first survey, we asked the participants to tell the most important seven items to be collected and five items to be conveyed. In the second survey, we asked them to evaluate using the four-point Likert scale. The information to be collected about the daddy: age, job, characteristic of the daddy or intention, event means the name of daddy, time, place, body part being hit, one time or more than once, or the last time of the hitting. More clinically, it can ask about the routine or the feeling of the child, or the child's feeling towards the daddy, how many related information, any needs about food and other basic things.

The information to be conveyed by the interviewee, "tell me what really happened. Tell me so if you don't understand." These are ground rules. "You don't need to talk if you don't want to, or you're not wrong," empathy, these are empathy types. Interviewers comment on daddy. "Your daddy was wrong, what he did was wrong, we're going to give him the punishment. I'm going to keep my promise." Or, interviewer's personal information "I experienced similar things."



We asked the participants of the survey, what are the important information to be collected and to be conveyed. You can see before and after training. Left is daddy information, in the middle is event-related information, and the right is related to the family information, needs, children feeling was increased among the event related questions after the training. Needs and children feeling, of course, they understand it is quite important in terms of the welfare, but as for information to be obtained within the interview, their importance has been reduced.

These are information to be conveyed, ground rules – “tell me so if you don’t understand, tell me everything.” More people said that the ground rules are important. You don’t need to talk about it if you don’t want to; you’re not wrong; empathy, promising, they decreased. This suggests that within the interview, interviewer now realized that they should focus on the information related to the events themselves because they need to confirm the authenticity of those information after the interview rather than showing the empathy; because that kind of information to be collected in the interview is quite important for suspects and also for children.

With this, I would like to conclude my presentation. Thank you very much.

Makoto Ibusuki

Thank you very much, Professor Naka.

July 21, 2014  
Suspect interviews and transparent procedures: Interviewing skills, recording methods, and human sciences in new era

## Effects of video-recording of suspect interviews: Better interviewing skills





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1

## Law and Human Sciences

A01: Legal concepts and education  
A02: Investigation [Transparent procedure]  
A03: Lay-judge system  
A04: Law and Psych-Social work



2

## Overview

- Pros and Cons of video-recording
- Problems in 'interrogation'
- A path to video recording and good interviewing skills
  - » National Police Agency Committee
  - » Ministry of Justice Committee
  - » Program and Manual
  - » Training Center
- Training of interviewing
  - » Quantity and quality of information
  - » Perception of interview

3

## Pros of video-recording

- Accurate recording ensures quality and quantity of information
  - » Two thirds of information is lost if not video-taped (Cauch et al., 2010; Lamb et al. 2000; Westera et al. 2013)
- Motivation for good interviews
  - » Appropriate interviews protect interviewer and interviewee (Milne & Bull, 1999; Bull and Soukara, 2010)
- Examination possible:
  - » Voluntary, competence, detection of deception, training, examination of miscarriage of justice

4

## 'Cons'


On audio and video recording of suspect interview (Ministry of Justice, 2010)

- Narrowing the use of investigative skills:
  - » Firstly obtain statement without telling a suspect to make an "official document" (chosho), and then pursue him/her to agree to make chosho.
  - » Investigator gives a piece of private information and obtains statement in return.
- Morale of interviewer: Feeling being watched.
- Suspects' reluctance: Shame, revenge
- Victims' reluctance: Privacy of a victim
- Equipment problems

5

## Different approaches

- Quality and Quantity
- Good interviews
- Examination
- Narrowing down the use of skills
  - » Statement without telling
  - » Private info for statement
- Moral of investigator
- Suspect's reluctance
- Victim's reluctance



Information gathering approach      Accusatory approach

6

## Accusatory approach

- Ashikaga case (1990-2009): Acquitted
- Shibushi case (2003-2007): Twelve people (one died) acquitted
- Himi case (2002-2005, 2007): Acquitted after serving the sentence
- Illegal use of postal system for the handicap case (2008-2010): Charge dropped

7

7

## A path to video-recording

- 2010.2-2012.2 National Police Agency: A committee to promote the improvement of investigative interviews
  - 12+1 members: Academia (law, sociology, psychology), ex-prosecutors (2), ex-judge, ex-National Police Agency, ex-Tokyo Metropolitan Police, lawyer (3), journalists (1+1),
  - 23 meetings
  - 2012.2 The last report
- 2012.3: Improving program for investigative methods and interview/interrogation (NPA)
  - Increase audio and video recording (for lay judge system and suspects with mental handicap)
  - Improve interviewing skills: training, psychological research, advanced methods used abroad

8

8

- 2012.12: "Investigative interrogation/interview" (Basics)
- 2013. 5: Research and Training center for investigative interview methodology <https://www.npa.go.jp/keidal/keidal-en.html>
- 2014. A committee of Ministry of Justice

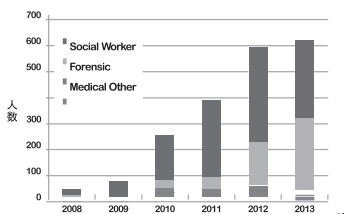


- Free recall
- Focused
- Option posing
  - Context reinstatement
  - Tell everything
  - Different order
  - Detailed memory

9

9

## The number of professionals trained



12

10

## Training for investigative interviews

- Lectures
  - Memory development and suggestibility
  - NICHD guideline
  - Checkable facts and corroborative evidence
  - Difficult questions
  - Reluctant children
- Practice to obtain free narratives
- Planning an interview
- Role plays and review



10

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## NICHD protocol (Lamb et al., 2007) (National Institute of Child Health and Human Development)

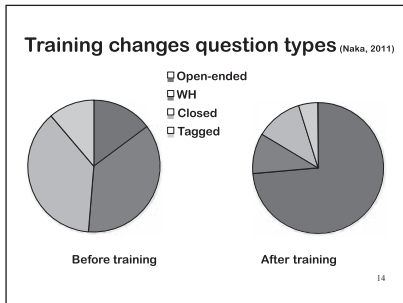
<http://nichdprotocol.com>

3. Rapport building
5. Free narrative (substantial topic)
6. Times
7. Open-ended Q
8. WH Q
9. Break
10. Closed Q
- 11 (Conversation, Eyewitness, Disclosure, Problem)
- 12 Closing

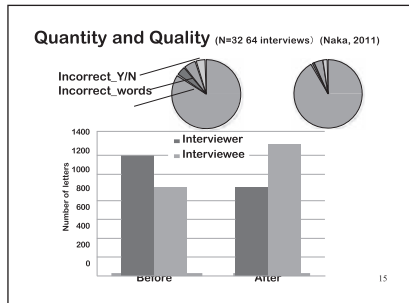


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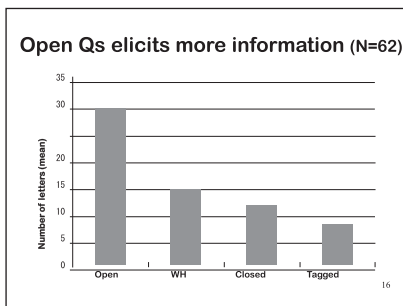
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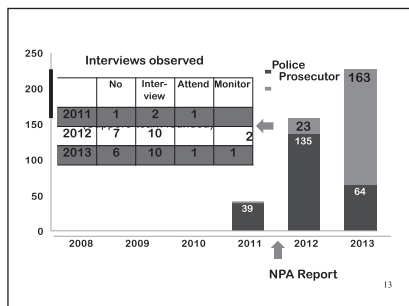
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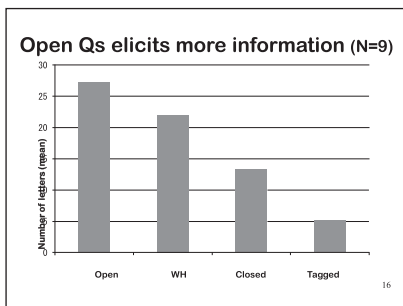
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### Information to deal with (Naka, 2014)

- Participants: 87 (study 1) 110 (study 2) professionals
  - » 29/39 clinical psychologist
  - » 35/33 social workers
  - » 23/38 forensic professionals
- Training: 1-2 day training on the NICHD interview (Lamb et al., 2007)
- Questionnaire:
  - » A child said "Daddy hit me."
  - » Information to collect (15): Choose 7 most important items
  - » Information to convey(12): Choose 5 most important items
  - » Four-point Likert scale (4: very important, 3: important, 2: somewhat important, 1: less important)

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18

Information to collect		
1. Daddy's age		9. One time or more than one time
2. Daddy's job	Daddy	10. The last time of hitting
3. Daddy's characteristics (personality, illness, handicap)		11. Routine of hitting
4. Daddy's intention		12. Child's feeling (sad, fearful, painful)
		13. Child's feeling toward Daddy (like, dislike, getting out)
6. Daddy's name	Event	14. Family members
7. Time		15. Needs for food, cloths, housing
8. Place (room, outside, et.c)		
9. Body part being hit		

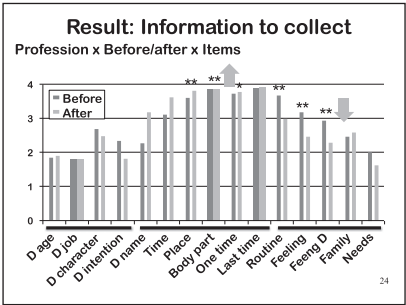
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Information to convey		
1. Tell me the truth.		
2. If you don't understand, say you don't know [DU].		
3. If you don't know, say you don't know [DK].		
4. Correct me if I said something wrong.		
5. Tell me everything.		
		Ground rules
1. If you don't want to talk, you don't have to talk.		
2. You are not wrong.		
3. Empathy, compassion (It must be hard. I am sorry.)		Empathy
1. Interviewer's comment on Daddy (He was wrong. He should have reason.)		Comments
2. Decision (instruction, punishment)		Decision
3. I will promise to you that...		Personal info
4. Interviewer's personal info (family, hobby, similar experience)		

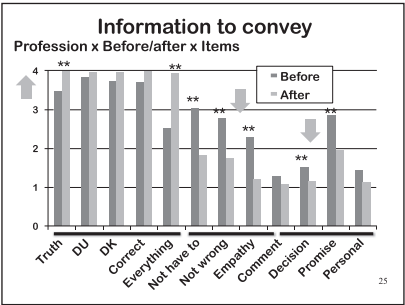
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Results suggests:	
• Professionals are aware that they have to collect episodic memory rather than semantic/script-like memory.	
• They convey ground rules but they also take "counseling-like" attitudes.	
• Training helps professionals be more focused on the specific event and ground rules.	
• Difference between professionals?	

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Summary and conclusion	
• Pros and Cons of video-recording	
• Problems in 'interrogation'	
• A path to video recording and good interviewing skills	
» National Police Agency Committee	
» Ministry of Justice Committee	
» Program and Manual	
» Training Center	
• Training of interviewing affects:	
» Quantity and quality of information	
» Perception of the purpose of interview	

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# **Session 1**

**Transparency of Interrogation in Australia**

**Chair: Makoto Ibusuki (Seijo University)**

Jane Delahunty (Charles Sturt University)

Makoto Ibusuki

Professor Delahunty, Professor Dixon, then Mr. Akita, please come up to the stage.

Now, we would like to move on to part I, Australia. We would like to invite Professor Delahunty, Professor, Dixon and Mr. Akita. Each speaker is going to talk for 30 minutes. Then we are going to have a comment from a Japanese lawyer. And we would like to have some discussion.

Please welcome Professor Delahunty from Charles Sturt University, Australia.

Jane Delahunty

Thank you very much for the introduction and thank you very much for this invitation. It's a great pleasure to be here and to participate in this international symposium, and I'm very appreciative of this opportunity.

Today, I'm going to be speaking about one particular study that I conducted over the past year. This is a study about jurisdictions where some of the participants used video recording, and some did not. And so, I'm focusing on what works, the effective and the ineffective strategies in cases that are significant mostly terrorism cases, and I'm looking at the perspectives here of both the police investigators and interviewers who I call the practitioners, and also the suspects who were detained, whether or not they were convicted.

Just to give you a little bit of an overview at the beginning, I think there's been a lot of interest recently because it is a multinational issue for police to work across many jurisdictions now, particularly with multinational crimes such as terrorism to try to find out what are the best practices, and so this study fits into that kind of examination, to try to see in different countries what is working better. We're also very interested from a police perspective to see which of the strategies are effective in getting reliable disclosures and how quickly or how fast.

In my study, I focused on four kinds of strategies or techniques that are used. Some of those are very physical such as the setting or sometimes the use of torture. Others are more legalistic in nature, and I'll give you some more examples in a moment, and then cognitive strategies that influence the thinking of the suspect or social strategies that have to do with the relationship between the interrogator and the suspect. By background, I'm drawing on a model from the research by Moston and colleagues called the Interaction Process Model, and I am attracted to the theory because so much research in the past looked only at the perspective of the interviewer and neglected much more the perspective of the interviewee, and the Interaction Process Model is appealing because it acknowledges that this is a dynamic situation, a dyad where we need to take the perspectives of both parties into account.

In my research, I do have an international sample from a number of different countries. I wasn't able to get all the countries that I wanted in my study, but I'll talk about five countries today. In every case, I asked the practitioners or the detainees to talk only about one particular concrete interview experience because I didn't want them to talk in general about what they thought happened or in general what their strategies were. I wanted to focus very much on the memory of a specific interview. My study,



therefore, is – it's a non-experimental study in this case, based on interviews with these parties that are retrospective, and the impact of the kind of analysis that I could do of the data. So, the data analysis strategy was more associational looking at what strategies are associated with what kinds of responses from the participants and its correlational in nature rather than direct cause and effect and experiment.

But the questions were mostly what strategies are most effective in getting cooperation from a suspect, making sure that you don't get false information and that you get information that is meaningful to an investigation by the police.

So, as I've said, we want to ensure that we have an interaction that is considered, and this was highlighted for me when I looked at some of the transcripts of interviews with terrorists. For example, I looked at a study by a Korean researcher, Dr. Young, who is a linguist, who had done an analysis of the question and answer pairs. This is what I had hoped to do from videotapes in our study, but for researchers, it's very difficult to get copies of either the transcript of an official police interview or a copy of the videotape.

This particular one was a copy in English of an Australian federal police interview that had been leaked to the public by the defense lawyer. And it was an important piece of research because what the analysis showed was that although this was recorded and although all of the appropriate legal warnings and cautions to the suspect were given to make sure that he didn't feel coerced, in fact the interaction and the dynamic was one where the power distance was very strong. For example, the police used techniques of domination just by using different ways to refer to either their partners or other police versus a suspect. So, the suspect was called always by his first name, and the other officers were referred to very deferentially by

their full name and their full title to emphasize the power difference between the suspect and the police.

Another example was that the police would not interrupt each other, but they would repeatedly interrupt the suspect when he began speaking, to maintain that authority and dominance over the suspect.

So, we were able to see from this example that even when you have a very controlled recorded situation, if you don't study those micro level interaction processes, you might miss some important information about how the dynamic works between the interviewer and the interviewee.

As you heard from one of our earlier speakers, today, from Professor Naka, there are two broad approaches to interviewing, the accusatory style that is often more coercive and then some non-coercive, more information gathering approaches. So, we were very interested in comparing these in our research. By coercive approaches, we mean those where the interviewer starts out with the hypothesis that the suspect is guilty and doesn't really entertain very thoroughly the hypothesis that the suspect might be innocent, and so explanations that are provided, that are consistent with innocence tend to be ignored. And there's a more accusatory or closed-ended set of questions or those tagged kinds of questions that you've just heard about.

I've summarized in this next slide for you some of the differences between what we call the coercive and the non-coercive practices by type of strategy, and I think this is an important way to look at it, because all of the strategies can be used in more coercive or less coercive ways. So, I think about coercion really as a continuum and then the strategies might fall more on one side or another. So, we compared physical strategies that

involved restraints or blindfolds, or sometimes use of extreme temperatures that parties will be subjected to with other kinds of situations where they were in very comfortable surroundings. It looked more like a living room than an interview or interrogation room where the parties were given frequent breaks and refreshments and so forth.

We compared also, as I said, the legalistic style and – there's a little bit of arbitrariness in the way that you might classify a strategy as either perhaps legalistic or cognitive, and so I have set up the kind of taxonomy that we used. For example, if the researcher was focusing on the decision making of the individual, we called that a cognitive strategy, particularly with respect to presentation of evidence, whereas some people might regard the presentation of facts or evidence to a suspect as a legalistic strategy. We did not do that.

In our social category, we had on the positive side issues such as a friendly approach, more of the rapport-building techniques and respect, procedural justice considerations, and on the negative side, more hostility, threats, and intimidation. So, that's how we devised our analysis scheme.

Our study was filling in some of the prior research that has been done with detainees. There are not very many studies internationally done with suspects or detainees. That's an often neglected source of feedback. But it is clear that there's a growing literature in that regard, and so we looked at what other people had done in the past, and we found that in fact detainee studies had been done in a number of ways. So some had been just with a survey, others had been done using an interview methodology, and some had even been done using controlled experiments and scenarios or vignettes, and so I've summarized a little bit what some of the findings there were, because they led to our hypotheses in our own study.

What in general emerged from the detainee perspectives was that when the interviewer was more friendly, used more rapport-building strategies and empathy, then that was promoting more true confessions rather than false confessions, but when the interviewing style was dominating, accusatory, coercive, the procedure was seen by the detainees as unfair, and it led to a decrease in true confessions.

In Sweden, for example, by Christensen and colleagues, 83 convicted offenders were surveyed and those were the kinds of results that emerged. In Australia, a number of studies have been done by Mark Kebbell and colleagues, one was an experiment with 43 sex offenders and then the subsequent study was done with some sex and violent offenders using the interviews methodology, but the consensus out of the three studies was summarized above there.

In our study, we were interested in looking at the perceptions of both practitioners and interviewers who are high-value targets or people who had committed very serious crimes or were suspected of that, and examining the kinds of strategies that worked with them. Ideally, to do this research, you would work from transcripts or preferably from a videotape, but we weren't able to receive those, although we asked every police department that we approached for copies of those materials. In the end, we had to conduct the study without that access. We were interested as dependent measures or the outcomes of our study in disclosures that were valuable or meaningful information for the investigation, how fast it occurred, was it early in the interview or late, and whether the disclosures were seen as full or simply partial or none at all. Did people make incriminating admissions?

Our hypothesis based on our earlier research was that the coercive

strategies would be reported more by the suspects than the interviewers, and that nonetheless if we looked across both groups, we would find that the non-coercive strategies were more effective on all of those dependent measures.

So, our method was to interview practitioners and we had 34 in all in our final sample who worked with high-value targets, and we interviewed a total of 30 detainees. We lost a number of participants along the way for various reasons, but our participants came from all of the countries I've listed there, Australia, Indonesia, Norway, Philippines, and Sri Lanka. The sample was not random. It's what you call a convenient sample through networking. In some cases, the network was through the employers. In other cases, it was through researchers or places where I had gone and conducted past research. People recruited responsive participants. Each interview lasted approximately 1 hour. I conducted most of them personally myself, sometimes with an interpreter, sometimes in English, except for a small group that were done in the Philippines that were done by someone else. After the interviews were concluded, they were transcribed and then they were de-identified for analysis, and all of the questions that we asked were open-ended using a semi-structured kind of interview protocol.

This is just a description of the police practitioners or interrogators who participated, and you can see that the numbers aren't exactly even across the countries. I had a higher ratio in Australia than I did in some of the other countries. I had a good ratio also in the Philippines in terms of percentages, and in the last column, you can see whether or not those interviewer selected to talk to me when they were asked to describe a recent interview with a high value target, whether they talked about a terrorist or a non-terrorist suspect. By and large, we had more people who spoke about terrorists than others. Our sample included both military as

well as police civilian practitioners. So, it was quite a cross section.

In terms of the detainees, the groups that we had were very few in Australia. In fact, not all Australian detainees were interviewed by the police before they were convicted. Because in Australia, the police tend to rely on surveillance evidence and other kind of circumstantial evidence rather than what people say in interviews in order to prosecute the cases. So, I was only able at the end of the day to interview one of the terrorists who had been interviewed previously in Australia, but in other countries, they were far more available. I've listed there their education level as a demographic so that you can see how many of them in fact had some university or tertiary education. All of the detainees that I interviewed were terrorists suspected of terrorism, in some cases in the Philippines, they were not yet convicted because they're detained in the Philippines sometimes for 10-12-14 years without coming to trial even after they've been interviewed. That was my sample.

I asked everyone to think about a case in which there had been a change in the disclosure pattern, either somebody started out being very cooperative and then closed down in terms of answering the questions, or perhaps an interview that they remembered where somebody was very closed and reluctant to answer questions in the beginning and then became more cooperative during the interview. Everybody was able to remember some interview like that. If they remembered more than one, I asked them to talk about the most recent one.

Spontaneously, a few participants wanted to talk about more than one interview. We didn't stop them from doing that and so you'll see that the number of interviews that I've analyzed in terms of what people remembered exceeds the number of participants in my study. But I asked

them all the same kinds of issues about the arrest circumstances, how much preparation was done in advance of the interview, the strategies that they used were the focus, what were the responses to those kinds of strategies and then a little bit about their individuating information.

The interviews conducted in Tagalog by a collaborator rather than myself, that collaborator was in fact someone who had a lot of credibility with the terrorist group. He was an ex-terrorist himself who was well trusted by them. When I had tried to interview that group, they declined to participate because they were repulsed by my funding source, because I had received the funds from the FBI, and the terrorists were unhappy about participating in a study of that nature. But, more than that, they refused because they had participated in other studies before and they had been exploited by the researchers and their faces and their names posted on a website, and they were all labeled as terrorists when in fact they had not yet been legally convicted. And so they felt that this experience was such a bad experience. They were reluctant to trust me as an interloper from another country to ask them those kinds of questions.

Overall, then we had 75 different interview experiences that were accounted and 87% of those were terrorist cases and 13% were other very significant crimes involving either home invasions or homicides and in some cases serious assault. I've listed in the lower half of the slide the kinds of terrorists groups that were represented. So, we had quite a few from the Abu Sayyaf in the Philippines or the LTTE, the Tamil Tigers in Sri Lanka, Bali bombing suspects in Indonesia, and nuclear reactor bombing attempt in Australia, and from Norway the Ansar Al-Islam follower.

In order to ensure that our coding scheme from the transcripts was reliable, we did some inter-rater and intra-rater checking. Statistically, more than

one-fifth of the transcripts were coded twice to produce these statistics and ensure that the scheme and the categories were reliable. You can see that the intra-rater statistics were a little stronger than the inter-rater but they were satisfactory in both accounts.

In addition, we did some regression analyses using the codes that were produced and we had a very complicated coding scheme initially with well over a hundred variables because of the many different things that the interviewees said. We condensed this all down into a few categories that I used as predictors that I'll describe for you.

We also read every interview very carefully to try to see what was the turning point that caused the change between cooperation and non-cooperation in the interview that people were speaking about, and we did some further analysis of what seemed to be the strategies that were associated with making the turning points and producing more cooperation or the closing down. And so, that was qualitative data as opposed to statistical data.

So, I'll start by talking about the statistical data. We had as our predictors the kinds of strategies that I outlined before, legal, physical, cognitive, social and then a global one that was how coercive or un-coercive, and each of those was just categorized in the ways that I've listed there. PJ stands for procedural justice; social elements, meaning the interviewee was given a chance to express his or own opinion without interruption that they were treated in a respectful way, that the interview was more neutral, no presumption of guilt and so forth. And those are more social relational elements, although they also had some legal dimensions.

The outcome variables were cooperation, whether or not, and looking at



how resistant and to what kinds of questions the interviewee was resistant, in other words, were they willing to talk about others in their group but not themselves, were they willing to talk about both, were they willing to make admissions that were negative for themselves incriminating themselves.

In terms of disclosures, we wanted to know much the same kinds of information, and in terms of speed of disclosure, we coded things as to whether somebody never made any admissions or made them very late in the interview, or early in the interview or right at the outset, immediately when the interview started, in which case it's hard to say that that disclosure had anything to do with the strategies, and so we eliminate from our study situations where people provide full disclosure as soon as the interview begins because then it has nothing necessarily to do with the strategies of the interrogator. Perhaps people have decided before they come into the interview that they want to tell the police everything after they're arrested, and so it's not helpful then in terms of analyzing the strategies.

This next slide here shows you some of the correlations (slide 15). The numbers across the very top are the same labels as are presented down on the left side. The main point, I think, to take from this slide here is to see that in fact there seem to be more significant correlations in the social strategy area, that's everywhere where there are those asterisks. That's a statistically significant correlation. In order to avoid having inflated scores here, we adjusted the statistical significance, alpha levels, by using bootstrapping methods 10,000 times so that we know that our outcomes are robust.

I think that what you can discern from this – this is sort of a background to the prediction analysis that I'll talk about next, so I won't spend time on

this in detail. If you look from page 82 onwards in your program, you will be able to see more full explanation in the paper of some of these tables that I'm presenting.

So, I'm going to go on to the logistic regression (slide 16) that was done to see what are the predictors of cooperation information disclosure and speed of disclosure, and the important facts there, I think, are that about a third of the participants who are always cooperative, about one-fifth were always resistant, about two-fifth resisted some of the questions perhaps about themselves, and about 15% resisted first and then became more cooperative later on. But, the most important finding is that five times the rate of cooperation emerged when people were not confronted with evidence. So, confronting the suspect with evidence, even perhaps in a polite way tends to close down the responses to the questions much more than I think the literature has shown in the past, and that was a uniform finding and clearly an odds ratio of five times the rate is an important finding.

We also found that cooperation was unrelated so it didn't increase or decrease with either physical, legal, or social strategy use.

In terms of disclosures, about 30% of the people gave full disclosures. About 30% made statements that were incriminating of themselves. About 25% incriminated themselves as well as others in a group, and very few, in fact, made no disclosures whatsoever, only about 3%. So, I think the idea that people don't make disclosures in interviews is perhaps a bit overrated. They clearly all did.

We found that full disclosure though was more strongly associated with the social rapport strategies, the inter-relational, interpersonal strategies as opposed to legal or physical or other kinds of strategies. The more social

strategies that were used, the more disclosures ensued. So, we counted the number of strategies that were reported.

In terms of speed of disclosure, about one-third of our participants disclosed fairly early on in the interview, about 27% disclosed immediately, and 27% disclosed late. And what seemed to produce more of the changes in the interview was the rapport-building strategies or social strategies produced those changes. If people were interviewed with social strategies, the disclosure rate of earlier on in the interview was 14 times higher. So, it was a very powerful effect of the social relationship.

I'm going to jump through some of these others now. I've been explaining these results already, so I don't need to stop there. I can just summarize by saying that the accusatorial strategies were generally perceived by both groups as less effective, and that despite this, there was a difference in the physical strategies reported by the detainees versus the police. One in five of the detainees reported some torture. Otherwise, comfortable settings were very strongly associated with cooperation and with a reduction in resistance. If it was an uncomfortable setting, there were less disclosures, few admissions, and more false information.

I've just listed here, and I don't think this is in the long paper, some of the kinds of abuses that were experienced. You can see that the police practitioners reported none. All of these come from the detainees, and the most common form of torture abuse was physical violence or physical abuse, and after that many were blindfolded or had their heads covered during large portions of the interview, and other strategies such sleep deprivation or water torture were used far less frequently in this group.

The coercion seemed to be very counterproductive. That's a major finding

here, and in fact, some of our suspect participants told us that if they were given false information by the police, they responded with false information or they simply provided false information to end the interview.

I've talked about that one and this is just a picture summary showing the effectiveness of the softer, more friendly rather than coercive strategies (slide 27). So very important is to emphasize that our measures were indirect and that these are preliminary data that they weren't matched pairs, we didn't have the same interviewer and interviewee except I think in one or two cases. But mostly, they were not matched pairs. And so, far more research needs to be done on those outcomes in matched pairs. But I think this study is valuable as it's one of the first really of terrorist views of strategies that fostered their own cooperation and disclosure, and that I think that the consensus that emerged across the groups is a very important finding.

It's exciting to be able to contribute to this growth of international research.

Thank you for your attention.

Makoto Ibusuki

Thank you very much, Professor Delahunty. It's a very sophisticated and precious research. I believe it is first time to see the report of the rate for using torture in the interrogation. It must be very precious data. Thank you.



1

**Overview**

- International best practices in suspect interviews
- What strategies prompt disclosure, and how fast?
- Four types of techniques: physical, legal, cognitive, social
- Interaction Process Model (Moston et al)
- International sample: practitioners and detainees
- Described a single interview experience
- Non-experimental, correlational, exploratory
- Effectiveness in eliciting cooperation and reliable disclosures of meaningful information

2

**Background**

Interaction process model is dynamic, considers both interviewer and interviewee

Examine impact of strategy on outcome:

- Yoong (2010) linguistic analysis of information gathering approach, legally sound, but subtle social dominance via interruption, name use, apparent consideration of legal rights;

Two broad approaches: coercive vs noncoercive

Coercive strategies are guilt presumptive; noncoercive strategies engage the interviewee to elicit and consider his or her version of the events, entertain alternate hypotheses.

3

Types of Coercive and Noncoercive Interview Strategies		
Strategy	Coercive practices	Noncoercive practices
Physical	Isolation, restraints, extreme temperatures, assault	Soft furnishing, frequent breaks, refreshments
Legalistic	Accusatorial, guilt-presumptive, maximization, minimization	Information gathering, open-ended questions, avoid pre-judgment
Cognitive	Confront with evidence, deceive about evidence, surprise	Present evidence for confirmation, explanations, transparent process
Social	Intimidation, threats, hostility	Rapport, reciprocity, friendliness, respect, consideration

4

**Prior detainee studies**

Rare, undervalued source of feedback

Best method is analysis of interview interactions but videotapes/transcripts often unavailable

Survey, interview and experimental studies: consensus that humane, empathetic approach led to confessions, no confessions in response to domineering, accusatory, unfair process

Sweden: 83 convicted offenders (Holmberg & Christianson 2002)

Australia: 43 sex offenders (Kebbel et al 2008) vignette study; 63 convicted sex and violent offenders (Kebbel et al 2010)

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**Aims of Study**

- Examine perceptions of practitioners who work with high value detainees and of detainees suspected of serious crimes about the effectiveness of coercive and noncoercive strategies in eliciting a change in the disclosures by the suspect
- Disclosure of meaningful information
- Timing of disclosure
- Partial or full incriminating admissions

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### Hypotheses

- Detainees will report more use of coercive strategies than practitioners;
- Both practitioners and detainees will perceive noncoercive approaches as more effective than coercive approaches in securing
  - More cooperation
  - More rapid disclosures
  - More accurate or reliable disclosures

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### Method and Procedure

- Interviewed 34 practitioners working with HVDs and 30 detainees  
Australia, Indonesia, Norway, Philippines, Sri Lanka.
- Purposive, convenience samples, nonrandom
- Practitioners from civilian and military sectors, recruited via employers, professional networks
- Detainees recruited via legal representatives, corrections agencies, terrorism researchers
- Interviewed for approximately one hour
- Audiotaped: confidential, de-identified, transcribed
- Responses to open-ended questions, semi structured

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### Demographic Characteristics of Practitioners (N = 34)

Country	Agency	Participants %	Interview reported (n)
Australia	Police	26.5 (n = 7)	Nonterror suspect (7) Terror suspect (2)
	Military	2.9 (n = 1)	Terror suspect (1)
Indonesia	Police	11.8 (n = 4)	Terror suspect (4)
Philippines	Military	41.2 (n = 14)	Terror suspect (14)
Sri Lanka	Police	8.8 (n = 3)	Terror suspect (4)
	Military	8.8 (n = 3)	Terror suspect (4)
Norway	Police	5.9 (n = 2)	Nonterror suspect (2) Terror suspect (1)

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### Demographic Characteristics of Detainees (N = 30)

Country	Education	Participants %	Interview reported (n)
Australia	Secondary	3.3 (n = 1)	Terror suspect (2)
Indonesia	Secondary	33.3 (n = 10)	Terror suspect (14)
Philippines	Tertiary	3.3 (n = 1)	Terror suspect (1)
	Secondary	20.0 (n = 6)	Terror suspect (6)
	Primary	13.3 (n = 4)	Terror suspect (4)
Sri Lanka	Tertiary	10.0 (n = 3)	Terror suspect (4)
	Secondary	13.3 (n = 4)	Terror suspect (4)
	Unknown	3.3 (n = 1)	Terror suspect (1)

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### Research Procedure

- Semi-structured interview
- Recall case involving change in disclosure, most recent if several recalled (close down/open up)
- 5 topics:
  - Circumstances of arrest
  - Preparation for interview
  - Strategies used (physical, legalistic, cognitive, social)
  - Perceived responses
  - Demographics
- In-person/skype interviews in English; in Tagalog in by a research collaborator; 25% via interpreter (Bahasa Indonesian, Tamil)

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### Cases reported by participants

75 discrete interview experiences were recounted

39 by practitioners; 36 by detainees

- 87% terrorism cases
- 13% homicide, assault, home invasion
  - Armed rebellion by Abu Sayyaf in Philippines
  - Civil conflict Liberation Tamil Tigers of Eilam and Sri Lankan government
  - Bali bombing attacks in Indonesia
  - Nuclear reactors bombing attempt in Australia
  - Ansar al Ismail follower in Norway

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### Analysis

- Transcribed and translated IV recordings
- Coded by 2 trained raters, 22% dual coded
- Krippendorff's alpha intra and inter-rater reliability  
Intra-rater: .82-.95 (A) .90-.97 (B);  
Inter-rater: .69-.90, discussion to resolve
- Analysed quantitatively using correlational and predictive statistics to assess confirmatory questions in terms of predictive relationships and explanatory questions in the same study (Tashakkori & Teddlie, 2003).
- Qualitative analysis of perceived "turning points"

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### Content coding of transcribed interviews

#### Predictor variables:

Legalistic (information gathering/accusatory)  
Physical comfort (comfortable, neutral; uncomfortable)  
Cognitive use of evidence (none, deliberate use of evidence)  
Social (degree of use of rapport, reciprocity, PJ)  
Coercion (noncoercive, psychological, physical, both)

#### Criterion variables

Cooperation (resistant throughout; resistant to personally incriminating Qs; resistant first, then cooperative; cooperative throughout)  
Disclosures (none, about other people and events; about own conduct/motivation; full)  
Speed of disclosure (never, late, early, immediate)

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### Inter-correlations (Spearman's Rho) between Interview Strategies and Interview Outcomes

Variable	1	2	3	4	5	6	7	8	9	10	11	12
<b>INTERVIEW STRATEGIES</b>												
1. Practitioner preparation	-											
2. Coerciveness	-.09	-										
3. Physical discomfort	.11	.44**	-									
4. Interview approach	.32*	.58**	.35**	-								
5. Presented evidence	.24	-.04	.18	.10	-							
6. Social strategies	.36*	-.31**	-.41**	-.20	.24*	-						
7. Procedural justice	.30	-.38**	-.32**	-.22*	.32**	.74**	-					
8. Reciprocity	.08	-.09	-.35**	-.05	.14	.70**	.21*	-				
9. Rapport	.33*	-.23	-.24*	-.24*	.18	.82**	.49**	.36**	-			
<b>INTERVIEW OUTCOMES</b>												
10. Cooperation	-.14	.13	-.04	-.11	.24*	-.05	-.15	-.01	.04	-		
11. Information disclosure	.11	.12	-.19	-.05	.04	.34**	-.13	.31	.33**	.19	-	
12. Speed of disclosure	.20	.08	.07	-.03	-.02	.01	-.06	-.05	.12	.38**	.04	-

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### Logistic Regression Predicting Cooperation, Information Disclosure and Speed of Disclosure by Detainee

Predictor	B	SE	Wald's $\chi^2$	p	OR	95% CI OR
<b>Cooperation</b>						
Constant	-1.48	0.58	6.62	.010	0.23	
Partic type	0.95	0.51	2.49	.062	2.58	[0.96; 6.96]
<b>Evidence use</b>						
Constant	1.57	0.60	6.83	.009	4.81	[1.48; 15.61]
<b>Information Disclosure</b>						
Constant	0.15	0.54	0.08	.780	1.16	
Partic type	0.96	1.19	0.65	.419	2.62	[0.25; 27.09]
Social strategies	1.44	0.69	5.84	.016	4.23*	[1.31; 13.60]
<b>Speed of Information Disclosure</b>						
Constant	-1.55	0.81	3.61	.057	0.21	
Partic type	1.13	0.84	1.82	.177	3.11	[0.60; 16.13]
Rapport	2.65	0.86	9.44	.002	14.17	[2.61; 76.88]

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### Logistic regression outcomes

- $p_{corr}$  = bias-corrected  $p$ -value, based on 10,000 bootstrap samples;
- OR = odds ratio; CI = confidence interval.
- Including outliers, the effect of social strategies was OR = 2.10 [95%: 1.07; 4.13],  $p$  = .031,
- Participant type: OR = 1.65 [95% CI: 0.37; 7.37],  $p$  = .510;
- Overall model evaluation:  $\chi^2$  (2, 75) = 5.75,  $p$  = .056, Cox & Snell R square = .074, Nagelkerke R squared = .119; Hosmer-Lemeshow test:  $\chi^2$  (5) = 3.78,  $p$  = .581

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### Disclosure early in the interview

(Filipino terrorist 41)

Q: When did you first learn that you were going to be interviewed that day?

A: My arresting officer from the police told me that there will be some people that would conduct interviews about my participation and involvement in Abu Sayyaf. So I was asked if I was willing to give information. It was up to me. That's the introduction I got from the officer.

Q: How did you respond?

A: I told him "Yes. Anybody can come and ask me and I'll answer them as best as I can."

Q: And when you say that you had decided to tell them everything, when did you make that decision?

A: After talking to a policeman who happened to be lawyer, too. He explained it to me. He befriended me, actually, and I considered him one of my advisors during that time. He was a very good man. An old man, but he told me "I am a lawyer and a policeman. You know, if you talk, you have nothing to lose. But you might gain something." I was not expecting to gain anything. I told him "Sir, what is important to me is that I can explain what happened, what really happened, and the people involved, and my participation. I am willing to talk about that, but I just don't know who to tell."

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### Disclosure late (Indonesian practitioner 13)

Q: So on the first days, day one and day two, how many interview sessions did you have?  
A: Six sessions on the first and second days, and on the last session of the third day, I cracked the terrorist.  
Q: In the sessions on the first two days when [the detainee] was not answering questions, how long did the sessions last?  
A: I tried interviewing the suspect. After one hour, the suspect didn't crack on the first day, so I stopped. I continued on that day in the afternoon, and stopped again after a similar response. The second day was a repeat of what happened on day one.

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### Analysis of interview "turning points"

The content of interviews was qualitatively analyzed using an inductive approach (Strauss & Corbin, 1998) and a categorizing method (Maxwell, 2005), applying the steps summarized by Braun and Clarke (2006), permitting unique strategies to emerge in a "bottom-up" rather than "top-down" manner, to accurately reflect all reported interviews. These analyses identified strategies which preceded the interview turning points in the relationship between interviewer-interviewee, whether the strategies used were perceived as effective or ineffective, and their outcomes.

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Interview Outcome	COERCIVE		NONCOERCIVE	
	Effective	Ineffective	Effective	Ineffective
<b>Cooperation</b>				
Physical	2.7	16.0	16.0	
Cognitive	1.3	1.3	12.0	1.3
Social	5.3	1.3	26.7	
Legal	9.3		1.3	
Total	18.8	18.6	56.0	1.3
<b>Information disclosure</b>				
Physical	2.7	18.6	10.7	1.3
Cognitive	5.3	13.4	24.0	
Social	2.7	24.0	14.7	
Legal	4.0	2.7		
Total	14.7	58.7	49.4	1.3
<b>Admission</b>				
Physical	4.0	4.0		
Cognitive	6.7		12.0	
Social			6.7	
Legal	5.3		1.3	
Total	16.0	4.0	20.0	

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### Results: reported responses to strategies used

- Confronting with evidence perceived to increase resistance ( $OR=4.8$ ).
- Threats, physical assault yielded information, but not necessarily reliable, and were associated with silence.
- Noncoercive social strategies seen as most effective in securing and maintaining cooperation, more personally incriminating and reliable information
- Confessions/admissions 4x as likely with respectful, nonjudgmental treatment, and rapport.

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### Results

- Accusatorial strategies perceived as less effective; more commonly reported than information gathering; positively correlated with physically coercive strategies ( $r_s = .58$ ), and negatively with social persuasion ( $r_s = -.31$ ).
- Half the detainees rated "mostly cooperative"
- 1 in 5 detainees reported torturous abuse
- Comfortable physical settings strongly associated with cooperation, rapport, little resistance
- Uncomfortable settings associated with less disclosure, fewer admissions, false information

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Torture	ALL	PRAC	DETAINEE
Violence/physical abuse	18.7	0.0	38.9
Electronic shock	2.7	0.0	5.6
Water torture	2.7	0.0	5.6
Sleep deprivation	2.7	0.0	5.6
Darkness	1.3	0.0	2.8
Blind-fold/head covered	9.3	0.0	19.4
Temperature (hot or cold)	4.0	0.0	8.3
Humiliation	5.3	0.0	11.1

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## Counterproductive coercion

Many detainees reported that coercive strategies such as physical assault, deception and or threats by their interviewers, resulted in the provision of false information and/or false confessions. Some reported giving false information to stop assaults from continuing (Indonesian Detainee 17). Other detainees responded to false information with false information. For example, a detainee said: "Yes, of course there was information I told them that was not true...because I am sure they were lying to me, so I made up some lies, too" (Filipino Detainee 77).

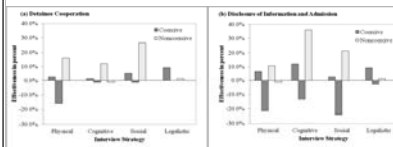
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## Speed of disclosure

- Immediate disclosure is independent of strategies
- A positive relationship exists between speed and cooperation.
- More social noncoercive strategies are associated with early disclosures: rapport, e.g., liking, affinity, humour, interest
- Early disclosure was 14X more likely when rapport-building techniques were reported

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Analysis of Coercive and Noncoercive Strategies Associated with Turning Points regarding Cooperation, Information Disclosure and Admissions of Culpability by Detainees



Effective strategies = positive values; ineffective strategies = negative values.

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## Limitations and strengths of study

- Self-reported use and definitions of success need external validation, corroboration
- Indirect measures of effectiveness
- Preliminary qualitative data, needs replication in systematic analyses of actual interviews, corroborated by non-parties
- Not matched pairs, so consensus and disparities about same interview untested

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## Conclusions

- One of first studies of terrorist views of strategies that foster cooperation and disclosure in investigative interviews
- Detainees are a useful source of feedback
- Strong consensus across practitioner-detainee samples
- Differences mainly in physical coercion measures
- Augmented past theory on interactional processes and the evidence-base of international best practices in suspect interviews.

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David Dixon (University of New South Wales, Faculty of Law)

Makoto Ibusuki

Next speaker is Professor David Dixon from the University of New South Wales, Australia.

David Dixon

Thank you. I'd like to begin by thanking our hosts for your wonderful hospitality on my first visit to Japan. I hope it won't be the last and also to thank our interpreters for doing such a great job for those of us who don't speak Japanese unfortunately.

So, why're we talking about audiovisual recording of police interrogation? From the English-speaking world from which I come, let's be blunt about it, the reason we do so is that traditional interrogation by police has been inefficient. It has been inefficient in that it has produced clear miscarriages of justice, people who have been convicted of things that they haven't done, and secondly, as a corollary, it has led to the people who were really guilty escaping from justice because the police have concentrated on the wrong people, they've got confessions from the wrong people, the really guilty people have escaped. And although it's not in my paper, what Jane has just been taking about, we should also remember that coercive interrogation was one of the reasons why the world is in such a mess it is in now, because it was believed because of coercive interrogation that it was appropriate to invade Iraq.

Why audiovisual recording? Technology seems to be an easy fix. The technology is available and it will be the panacea for all the problems of

police interrogation. Now, what I'm going to suggest today is that while audiovisual recording is very valuable, it has to be seen as having important limits and has to be used properly.

The international developments – I will be talking principally about Australia. I was fortunate to be able to do the only study which has been done anywhere in the world so far as I know, which has been able to take a random selection of audiovisual records of interrogation from across a whole state in Australia for a whole year, and also to follow that up with observation and interviews and a survey of criminal justice professionals. I'm from England originally, and I, before I came to Australia, conducted research, field research, sitting before the days of formal recording by – in England audio recording, in interrogation rooms. And I've also been studying what's been happening in the United States, so I'm trying to give a broad international perspective.

The arguments for and against audiovisual recording – the most important one spans the two of these. It's important I think to see that audiovisual recording is not simply something which is in the benefit of suspects or of defense lawyers. If you look at the experience which I'll be talking about in Australia, and more generally, of audio-recording in the United Kingdom, the benefits have been to everybody, to police, to practitioners, to suspects across the board, and it's a shame I think that I believe there are very a few police officers here today, because this is seen as been for the other side of an argument.

In fact, just to jump ahead a little, in my research, in the surveys which I did of the professionals' experience of audiovisual recording in Australia, the people who favored it most was not the defense lawyers, it was the prosecutors. The prosecutors found it was of great, great benefit to them,

much more so than defense lawyers; and that Australian experience I should add, has been going for a long time, that Australia generally introduced audiovisual recording for almost all interrogations more than 20 years ago.

Now, what are the objections which are raised to having audiovisual recording? These are very familiar I am sure to most people. They are that the audiovisual record will be unreliable, that people will be able to change it, that there is great cost to the criminal justice system of having an audiovisual recording system.

Thirdly, that the interrogation room has to be private. The police can only do their job if there is just them and the suspect there, and the camera will make their work impossible.

Fourthly, which follows from the third that introducing the audiovisual recording will mean that suspects will not make confessions and the criminal justice system will suffer.

Finally, the objections are of course from practitioners because it is seen as a challenge to their expertise, that they know, police claim that they know how to interrogate suspects efficiently, and secondly to their reputation that it suggests a lack of trust that we insist on having cameras and recorders in the interrogation room.

Now, what does the research experience say about those series of objections? Firstly, the claim about tampering has proved so far as I'm aware to be a non-issue. It is now straightforward to include security measures in digital recording. Back in the days when it was only audio recording on cassette tape, the police were required to give the suspect a copy of the cassette,

which meant that any subsequent changing by the police was going to be irrelevant. The area where there is some concern is what happens after the recording in the transcription, how a record is transcribed and then presented in court.

Secondly, efficiency gains rather than audiovisual recording being too costly. It has been a cost winner for criminal justice, in that you get fewer trials and shorter trials because suspects are less likely to argue against any confession that they've made.

Thirdly, the value of openness, and here, this is more of an evaluation. In my view, if a police officer thinks that you can only do things secretly behind closed doors, then that should be a concern to us. If they're not prepared for us to see how they treat suspects and question them, then they should not be using the methods that they use behind those closed doors.

There is also, on the other side, a great benefit to the police of having a visual recording. Firstly, that it reduces the possibility of allegations against them by suspects. The suspect can't say the police officer hit me if there is a visual record. Secondly, the reason that prosecutors like visual records so much is that they are able to show a court a film of what a suspect looked like when he or she was being interviewed, how they were dressed, how they were drunk or drug effected, rather than the court seeing the smartly dressed defendant in the suit standing in the witness box.

Confession and conviction rates – there has been no evidence that introducing audiovisual recording has reduced the efficiency of the police and the prosecutors in getting confessions and convictions. In terms of the acceptance by practitioners, as I've just noted, in fact, contrary to what was said before, it is the police and particularly prosecutors who in Australia

are very favorable towards audiovisual recording. This is I think almost turning out to be an international truth that before audiovisual recording is introduced, police and prosecutors say it is impossible. The sky will fall down. When audiovisual recording is introduced, the police and prosecutors say this is the best thing that has ever happened, and also they often claim it was their idea in the first place.

Finally, what the evidence shows is that audiovisual recording has contributed to improving police interrogation. It's closely linked to the kind of programs of investigative interviewing, the PEACE program in England and so on, which Professor Delahunty has been talking about. What video has shown to police is how badly they have traditionally questioned suspects, how inefficient their traditional methods of doing so have been. And particularly, what audiovisual recording shows is that the police officers who used to think that they were the best at it – you know the people I'm talking about, the star detectives, the old – in Australia, the old detective sergeants who were the heroic figures in policing. It turns out that they're actually very bad at their job. Certainly, they got people to confess, but all too often, they were confessing to things that they had not done, and to go back where I started, that's not just bad for the individual who is wrongly convicted. It's also bad because the real criminal doesn't get caught by the police.

So far what I've said has been very favorable about audiovisual recording. What, though, may be wrong with it? Firstly, having an image available encourages unreliable psychology. Now, I'm a lawyer and a sociologist. I don't claim to be psychologist. However, if you look at the research literature on the detection of deception, what that will tell you is that police officers are not able to detect deception by a suspect in a police interview at anything better than usually something like a level of chance. Of course,

police officers love to claim that they can tell whether a person is lying by the way in which they move or the way they don't look at the person or other physical signs. But what the research literature shows is that what they are judging guilt on is in fact the stresses of being in an interrogation room. So, it is extremely worrying that people still think that you can judge whether a person is telling the truth in a police interrogation room from their behavior. Of course, this has become almost a cultural problem that – I'm not sure if the program is shown here, 'Lie to Me,' do people know that television – an American television series. It's the usual kind of police story, except that the hero is a psychologist who is supposed to be able to detect deception, and of course, he catches the baddie – bad guy every week.

I was in China last year speaking to an audience like this. It was very worrying to hear from a police officer responsible for training of a major Chinese police force that he trained his investigators in detecting deception by looking at body language. I asked him where did he get his idea from of doing this, and he said by watching 'Lie to Me' on American television. So, that is a major problem and needs to be addressed.

The second major problem is incomplete recording. Let me put it bluntly. Video recording is only of benefit to the criminal justice system if you record the whole interaction between the police and the suspect in the police station. If you do what I believe may be being talked about in Japan or particularly what is being used – very commonly used in the United States, where the police question the suspect in the normal way and then only audio-visually record the confession at the end; that to me is worse than doing nothing. Why do I say that? That system only tells you that the suspect has confessed. It does not tell you how the suspect came to give that confession, and by having it on record, it gives a kind of strength to the confession which it doesn't deserve. We have to be able to see how the

confession was produced, what the tactics were that the police used to produce the confession at the end.

I know that people here will say to me, "In Japan, we can't do this because a suspect may be detained for many, many days, up to a month and you couldn't possibly record all of the interaction between investigators and suspects." Well, my answer to that is – I'll come back to it later. You need to reform your criminal justice system, and not just rely on audio-visual recording. There is no need for an efficient police investigation to require people to be detained that length of time. If you look at the English police and criminal evidence system, our research back in the late 1980s, most cases were dealt with within 6 hours. Very few involved a suspect detained beyond 24. Even in the most serious cases, terrorism cases, a week has been the outside. So, please don't tell me that Japanese police need a month to question suspects in regular cases.

Thirdly, the easy availability of audiovisual recording may encourage politicians and those responsible for criminal justice to avoid the hard questions of reform, the kind of thing that I've just been talking about. Similarly, it can encourage overconfidence in and over-reliance on recording and on interrogating. In Australia and in the United Kingdom, the best practice in criminal justice is for police not to rely, as they had done in the past, on simply getting confessions. That is seen as being bad policing. As Professor Delahunty mentioned, what you do is you collect evidence before you arrest a suspect and then you present that evidence to them through investigative interviewing in the interview room. The interrogation and the confession are simply one part, which confirms previous investigation rather than the traditional approach of it being the whole investigation. So, you have to see audiovisual recording as being connected to other controls on detention and interrogation.



Finally, there are more practical problems about using audiovisual records in evidence. There is the problem which relates to simple audio records of having to get caught to listen or to watch very lengthy records of interview. In Australia, when the system was introduced, the intention was that everything would be transcribed and the audiovisual record would only be used in exceptional circumstances. Unfortunately, because going back to my first point about unreliable assessment of deception, it was judges who said that they wanted to see the film of what happened in the police station, and that can lead to lengthy showing of films in some trials. More practically, that's the problem of transcripts where there are fairly straightforward problems of veracity of how an audiovisual record is transcribed.

So finally, some conclusions. Firstly, we should all learn from comparative experience that we can all learn from each other's mistakes and from our experiments and from reforms. I particularly suggest that, as an Englishman living in Australia, I think Australia has a lot to offer, which has been undervalued. For more than 20 years, Australia has had an experience of audio-visually recording police interrogation. I find it amazing that when I go to the United States, Americans still talk as if they're the first people to do this, and they have to think that they don't know what possibly might happen.

Well, look at what happened in the 20 years of experience in the US. We need to look across disciplines, law psychology, sociology, and we need to understand criminal justice as a whole. Most importantly, my conclusion is that if we're going to use audio-visual recording, it has to be used as one tool in a broader regulation of criminal investigation, and that means you have audio-visual recording but you also have to have reform of the way in which the police interrogates suspects, the shift towards the investigative interviewing model and the rejection of the American Inbau and Reid – the

Reid Technique approach seems to be vital. It's quite clear that the Reid Technique will certainly – it will get you confessions but they're not reliable.

Secondly, reform of the criminal justice process must mean that you have lawyers available to suspects in the interrogation room. One of the great myths – this area has many myths, but one of the great myths is that lawyers will prevent the police from doing their job. Going back to my experience of looking at England, the English investigative system where free lawyers are provided to suspects in detention and where now more than half of them have it during the time they're being questioned. The idea that lawyers always obstructed the police and made their job impossible is simply a myth. It is not true.

Thirdly, there needs to be time controls. I think it's beyond argument that the Japanese system needs to be look at the length of time in which suspects are detained. And fourthly, there has to be a reform of the way in which suspects are held in police custody. Again, I think the model for this is what has happened in England under the Police and Criminal Evidence Act where there is a division between the control and supervision of the suspect by uniformed officers and investigation by detective officers. The detective officers only get access to the suspect via those uniformed police officers, and that has proved to be a very important and effective reform.

Finally, I'll just return to the point that I made before. None of this should be seen as being a criticism of police or a suggestion of reforms which would make the work of the police and prosecutors impossible. On the contrary, if you look at the evidence of what has happened in jurisdictions which have done the things that I've talked about this morning, you will see that the police and the prosecutors are the ones who like it most, that they have been able to do their job, and now what their job means is that the people


who get convicted at the end of the criminal justice process are more likely to be really guilty than in the past the victims of miscarriages of justice.

Anyone who's interesting in the background to the research in Australia that I talked about, just give a quick plug for my book, 'Interrogating Images' which is a full research report on the research in Australia.

Thank you very much for listening this morning.

Makoto Ibusuki

Thank you very much Professor Dixon. It is nice touching to the American drama 'Lie to Me.' As you know, - audience you know another famous American drama, CSI, the Crime Scene Investigation, now in the court room in the United States, they have CSI syndrome, because every juror wants to "Where is the criminal good science evidence in this case?" They call it CSI syndrome. I imagine this morning - in the next decade, we will have 'Lie to Me' syndrome. So, many jurors and judges would want where is a good detective for understanding who is liar or not.



**Audio-visual Recording of Police Interrogation**


Never Stand Still Faculty of Law

**Professor David Dixon**  
Dean of Law, UNSW  
Sydney, Australia

1

**Audio-visual recording**


- miscarriages of justice
- technology
- international developments
- arguments for and against



2

**The usual objections**


- tampering with records
- increasing cost
- infringing on necessary privacy
- losing confessions
- challenging practitioners
  - methods
  - reputation



3

**What experience demonstrates**


- technological and process bars to tampering
- efficiency gains
- value of openness
- confession and conviction rates
- acceptance by practitioners
- improving investigative practice



4

**What may be wrong with recording?**


- encouraging unreliable psychology
- incomplete recording
- politically avoiding reform
- encouraging over-confidence in and over-reliance on recording
- isolating recording from other controls on detention and interrogation
- using recorded interviews in evidence



5

**Conclusions**

- learning from comparative experience
- broadening disciplinary perspectives
- understanding criminal justice holistically
- using recording as just one tool in the broader regulation of criminal investigation



6

Makoto Ibusuki

I would like to call upon Mr. Masashi Akita, attorney, to make the comments. He will be attending here as a discussant followed by the questions and answers.

Masashi Akita

I am Akita. I am the attorney on behalf of Osaka Bar Association. Talking about Osaka, this is the original point of the discussion and debate of Japan on the introduction of electronic recording, and there is the poll whether there is the entire electronic recording to be implemented or not, there is a flag. So Mr. Kosakai is going to appear here as one of the discussants.

In Osaka Bar Association, I am one of the promoters who have initiated such introduction of electronic recording for the first time in Osaka. That is the reason why I was invited here. Osaka Bar Association for the electronic recording is like trying to grope in the bush, trying to find some trick, so I had an opportunity to go to Australia to study. I was there in 2004, already 10 years have passed. At that time, very sophisticated – this protocol was already set, and the system was already available in Australia. Very sophisticated electronic recording was already implemented. I was very much stunned and came back to Japan. Ten years have passed since then, and listening to the two lecturers' talks today, looks like you're advancing way farther and I have been given another shock.

I was surprised with the system development at that time, 10 years ago, and of course, those histories you have already known and Mr. Kosakai is going to talk about this. So, we started the debate on electronic recording and partial electronic recording is going to be introduced, and partially the

entire audio-video recording is going to be implemented pretty soon in Japan. But although there has been the change in Japan, the football Japanese team was regarded to get some kind of trophy in the World Cup, but they were totally defeated. Just like this one. This is only analogy. We are way behind to other countries when it comes to the introduction of electronic recording as I was listening to the two speakers from Australia.

Now, talking about World Cup still – yes. Based on my experiences including the case I was actually involved, allow me to make the comments, Saiban-in Lay Judge system was introduced, and there was the terrible scandal by the public prosecutor's office, the district public prosecutor's office in Osaka, and there was development – further debate on the electronic recording on the legislative council. In such circumstances, the cases I was actually involved in many – some cases, I came across with the introduction of electronic recording. However, probably you might know. It's not that it was in the police custody, but there was at home interrogation and voluntary electronic recording and the police said, "Are you going to compete with the police?" and that was the voice of the policeman telling the suspect at home. But I just wonder whether such phenomenon has disappeared. Already for this year, I met the opposition twice already to the police office because there was the coercive confession, which was made by the police to the suspect without any electronic recording.

One of such cases is for the lady, 70 years old, the police shouted, "You must have done this." It was the relationship with this woman with the racketeers, and Osaka police officer was quite coercive.

Another case I was involved is the white-collar crime, and there was the suspicion that there was the reception of the money. My client was the white-collar employee and to the suspect, "You must have got the money,

you have to admit.” And there was the continuation of coercive interrogation.

By the end of the day, there is already established conclusion of the interrogators or the police. So, this is the coercive approach still prevalent in Japan and in the minds of the investigators, there is still established and traditional coercive approach.

Last year Saiban-in judgment, there was the acquittal case. In the hospital, there was the arson case on the wheelchair, and there was no admitting of the crime but there was terrible coercive confession-getting, and my client even refused to meet me and he became very neurotic. He was acquitted but there was a petition of coercive investigation. In the legislative council, there was a debate but still Japanese police continue to make the resistance against such new approach. Mr. Kosakai is going to make a comment later.

So, in the minds or the psychology of the police fact finding and discovering of the fact is for their sake. They try to find the facts which can satisfy their expectations. That is still undergoing. So, on the part of the defense attorneys, what we have to be careful about is to come up with the ways and measures to compete with the interrogators. Of course, mention was made about the perception and mindset of the police, but there are so many things we need to make improvement, because looks like there are more electronic recordings to be introduced, but I wonder whether we, the attorneys, are also equipped with making the use of such recording. As Professor Naka said, police is trying to introduce those techniques and technologies but attorneys are rather behind in adapting ourselves in the introduction. For example, when the criminal procedure law was introduced based on the US in 321 and Article 322, defense attorneys were not able to respond, so we are considered to be the Galapagos, meaning we are the only

alienated and isolated country, and this has created a lot of miscarriage of justice.

Now that we are faced with the development of electronic recording in Japan, we on the part of the defense attorneys have to be equipped with our skill. We should never continue to do the coercive approach for the interrogation. If we continue to do that even after the introduction, that is going to be risky. In the defense activities, attorney Kanaoka said, “In the process of the electronic recording, there was silence on the part of the suspect, but the public prosecutor says, you are supposed to be saying. If you are silent – if you are not telling a lie, you have to say something.” “In the past, you looked very nice, but your face today was terrible.” That was the coercive approach, and they have continued such investigation for 167 hours. By the end of the day, even after the electronic recording is introduced, if they intend to use the coercive approach, that is not going to bring us anywhere. We learnt a lot from the Australian cases. We need the cooperation by the researchers. I would like to get the cooperation further from the researchers.

Thank you very much.

Makoto Ibusuki

Now, we're going to invite questions from the participants. Please raise your hand, and please give us your name and affiliation, and please tell us to whom you're addressing your question. Anybody with a question, please. Please wait for the microphone.

The person in the middle, the second row from the back.



Questioner1

I'm T from Osaka City University. Question to Dr. Dixon. I have a question. With full electronic recording of police interrogation, you said that the prosecutor, the policemen favored them because it improved their practice. The police officers in Australia through the interrogation process, the correction – intention to correct the subject, they don't think anything about how police officers can correct the suspect for – many of the Japanese police officers, they try to correct the suspect is regarded to be one of the important duties of the officers. And I'm afraid, with the start of electronic recording, the police officers intention to do something good for the future of the suspect may be facing some difficulty, but what is the situation in Australia?

Makoto Ibusuki

He points in Japan the detectives think about one of the purpose of interrogation is to focus on rehabilitation of the defendant. So in Australia, do you have the – the detective have the similar purpose on interrogation or investigation process? Please speak up, please.

David Dixon

In Australia, it wouldn't be seen as being the job of the police to correct the suspect in that way generally, but I don't see why audiovisual recording would prevent that happening in Japan. If a police officer is behaving appropriately and is giving – if I understand the question properly, is giving good advice to a suspect, well, there's nothing objectionable about that. So, I don't really understand the question about why audiovisual recording would have any influence.

Makoto Ibusuki

Thank you very much.

Can I respond? Or are you happy with the response?

Questioner1

I'm happy with the answer, thank you.

Questioner2

I was a member of subcommittee of Judicial Affairs Council. I have a question to Professor Dixon. In the conclusion part of your talk, you mentioned some important issues concerning the system in Japan; for instance, access to defense lawyer in interrogation and also the length of detention. In our judicial reform council, those two issues were also discussed. But first of all, access to the defense lawyer in interrogation not only on the part of the investigation agencies but also the people who are supportive of suspects, having a defense lawyer in interrogation room may reduce the chance of suspect disclosing the truth. They may not speak at all, and that was the majority view, as a view against having an access to the defense lawyer. So even a 100 years later, we might not be able to have such an access to this lawyer in the interrogation room. So under such serious difficult circumstances in Japan, how can we persuade the opponent into agreeing to the access to defense lawyer. In your case, how do you convince or how do you persuade the opponents?

David Dixon

You look at the research evidence of what has happened elsewhere, in England particularly, there have been many studies of the use of what we call the right to silence, and of the relationship between a lawyer's presence and a suspect's silence. I just gave you – I have a paper on this issue. I could send if you're interested. But just in brief, the idea that lawyers will always lead to a suspect being silent and therefore the police job being impossible is simply a myth. The percentage of cases in which suspects are silent in

police interrogations even when lawyers are present is remarkably low. Police will tell you, if you have a lawyer there, no suspect will ever say anything. This is just not true. If you look at the empirical evidence, having a lawyer there does not prevent a suspect from speaking.

Why is that so? It may seem strange to you that that would be the case. And it's because there are two factors. Firstly, if the police are doing their job properly as I talked about before, they will have collected evidence before the suspect is being questioned, so that they're not just relying on simply a confession. If a suspect is arrested on the basis of absolutely no evidence, then in that situation, a lawyer would be quite justified in telling that their client not to answer questions and not to cooperate. But the way in which English criminal justice is changed, that happens now rarely. So the second point, if the police do have some evidence against the suspect, then what a lawyer will recommend to a suspect as a matter of course will be to cooperate to get lower charges, lower sentence, better treatment while you're in custody, because refusing to answer is not going to help you.

In fact, my research on the use of the right to silence in England showed that often the reason that suspects refuse to answer police questions has nothing to do with the lawyer being there or the lawyer's advice. It was simply about a bad relationship between police and suspects, that suspects didn't trust police and so they wouldn't speak to them. If police behave properly and have a better relationship with the groups that they deal with, then suspects are more likely to speak in custody.

So in brief, the idea that there is a straightforward connection between the presence of a lawyer and the use of a right to silence and the impossibility of the police doing their job is largely a myth.

Questioner2

Thank you very much.

Questioner3

What about the length of detention; 6 hours you said is enough to be effective, but in Japan 3 weeks is also allowed in Japan for detention, and detention may continue even after the indictment. Some say that the Japanese criminal justice is based on the hostage taking system. Of course, deny or of course often always say that their authorization of detention is always right, but 21 days allowed is the reason why Japan is allowed to have a situation where the suspect is detained as if they are the hostages. 21 days and long hours for interrogation, this is the basic attitude on the part of the Japanese forensic, because they believe this is the best way to get the correct information. How can I try to criticize a Japanese current way of doing criminal justice? If you have any good advice, please.

David Dixon

It's – to take your last point, I'm sure it's the best way to get confessions, but it's not a good way of getting confessions which are going to be reliable. Holding somebody in custody for very long periods is – I mean I should pass the microphone to Professor Delahunty, but this is itself coercive. If you hold someone for that long in custody, I'm not surprised that they get confessions, but I would be very surprised if they are accurate ones. So I don't pretend to know much at all about the Japanese criminal justice system, but I've heard nothing which would convince me that there is a good reason for the kind of very lengthy detention which is used here or that the job of the police and prosecutors would be impossible if that time in detention was restricted. The evidence of criminal justice systems like Australia and England where time limited detention is the norm would seem to suggest that there's no reason why they can't do their job.

Jane Goodall-Delahunt

And in countries where there is variation in the amount of time that a detainee can be held, in my study, we found that the interrogation length was adjusted accordingly. So for example, in Australia, with a 4-hour limit, initially it turned out that the interrogations were mostly completed in less than that time. So, it seemed that was very effective in getting the police to be more effective about using the available time.

The other point that I want to make in response to your question is that there is some quite good recent empirical study, particularly I'm thinking of one in a current issue of law and human behavior in the United States showing exactly some information responsive to your question and to Professor Dixon's point, which is that people psychologically under that pressure are being detained, will eventually say just about anything to end that process and in a very clever study, the incentives were switched around to prove that point whether the – what was facing the suspect was more questioning or more detention and the same result was produced. In other words, they will eventually falsely confess with the finding in order to change that legal process that is uncomfortable for them.

Makoto Ibusuki

Thank you very much.

Questioner3

Thank you very much.

Questioner4

I'm a layperson in law. I study mechanical engineering. My name is O. I'm quite a layperson, so please allow me to give you a layperson question.

I am a lecturer at Ritsumeikan University. My question goes to Professor Delahunty. In the case of Japan, secrecy protection law and other kinds of laws are being proposed as draft bills. But in the case of terrorism, in Japan, just to talk or discuss about a proposed terrorist planning is considered as a crime in Japan. I wonder the same concept is applicable in other countries. In this case, terrorism is not even attempted. It was just a plan, a discussion among the people involved. So if such secrecy or privacy protection bill is enacted in Japan, even such a discussion of terrorism may be regarded as a crime.

Makoto Ibusuki

He points you don't have any crime, just only the conspiracy discussing about future terrorism.

Jane Goodall-Delahunty

My understanding is that Japan is not alone in holding that view. That there are other countries where...

Makoto Ibusuki

Microphone please.

Jane Goodall-Delahunty

Sorry, thank you. That Japan is not alone with that legislation or the perspective and I think there have been controversial cases even in Australia where the connection between the acts that were regarded as culpable and the convictions have raised some concerns. Perhaps you want to comment more on it.

David Dixon

This is an area where you should definitely not follow Australia. Australia

has some of the most extensive antiterrorism laws and they deal with the sort of examples that you're talking about, but also there are very close restrictions on the ability of the press to report anything to do with the detention of a terrorism suspect and so on. It's become a highly political matter where the response to any terrorism fear or incident is for government to pass more and more and more laws. Fortunately, most of them haven't been used as yet, but the standard response is simply passing more and more anti-terrorism laws is not the right way to go.

Makoto Ibusuki

Thank you very much.

I am sure that many other people in the audience have questions they would like to ask but this concludes the panel and part I discussion and presentations. Thank you very much.

We are going to break for 1 hour and begin part II after 1 hour. Thank you.

## **Session 2**

**Transparency of Interrogation in South Korea**

**Chair: Naoko Yamada (Kwansei Gakuin University)**



Ro Seop Park (Hallym University)

Makoto Ibusuki

Thank you very much for waiting. Let us now reconvene in the afternoon session. In Part II, there will be the focus on the electronic video and audio recording in Korea. Professor Yamada is going to act as the chair. As for the announcement for the function or the reception tonight, there are some vacant seats available for you, so please come in if you are interested.

Naoko Yamada

Thank you very much. It is now time to start the second session in Korea. The issues as well as the psychological impact Professor Park and Professor Jo are going to be the two speakers. As a commentator, we have Mr. Toyama from Kyoto Bar Association to make the comments.

There will be some difference from the earlier announcement, but Professor Park is going to be the speaker followed by Professor Jo. Professor Park, Hallym University professor; he is going to talk about the interrogation process, electronic record, and the issues related in Korea. Professor Park, please. He will be speaking in Korean and that would be translated consecutively into Japanese and that would be translated from Japanese to English simultaneously, so that's going to take a little bit longer time. So, Professor Park you have the floor please.

Ro Seop Park

Good afternoon. My name is Park. Thanks Professor Inaba, Sato, Wakabayashi, and Ibusuki to invite me and give me a chance to make

speech in front of you. It is a great honor for me to introduce the Korean video recording system to you.

So far, political reforms in Korea have reflected the desire of the people to democratize the country and people are increasingly interested in justice system. So, the problems in the criminal justice system began to draw a little public attention.

From 2003 October to May 2005, reform of judicial system was introduced. This includes a jury trial, the right to counsel during interrogation of the suspects, and also the system of determination of punishments, as well as the introduction of a court-appointed counsel to the custodial suspect.

The purpose of the revised criminal procedure code is to protect human rights, enhance public participation in justice, overcome of the phenomena of trial by a dossier, and most importantly realize the cross examinations by the parties in a courtroom.

Reformers consider trial by dossiers as the main barrier to the principle of court-oriented trials. Then they initiated the reform to take away admissibility of the statements taken. However, judicial practitioners such as public prosecutors desperately oppose the reform. Consequently, admissibility of the statements taken by the interviewers was moderated and the video recording degenerated itself into just a supplementary method for interrogation. Today, I would like to explain the problems of a trial based upon the statements taken by the interviewers of the suspects, and also the legislative process of video taking in Korea, and how the background motivation of introducing audio-video taking in Korea differs from the motivations in other countries.

A trial by dossier originates from the admissibility of the statements taken by interviewers during the interrogation process. According to criminal procedure code Article 312, Paragraph 3, the statements prepared by any investigative institution other than the public prosecutor for examination of a suspect is admissible as evidence only if it was prepared in compliance with the due process and proper method and the defendant who was the suspect at the time or his defense counsel admits the contents in a preparatory hearing or a trial. But on the other hand according to Article 312, Paragraph 2, even if the defendant denies the authenticity information of the protocol, it is admissible as evidence only when it is proved by a video recorded product or any other objective means that the statement recorded in the protocol is same as the defendant stated and was made in participatory reliable state. You can see the original language of the articles.

Also, criminal procedure code provide for details to enhance authenticity. According to the criminal procedure code Article 144, an investigative institution has to write the statements taken during the interrogation of a suspect and gets the suspect's signature in order to guarantee the objectivity and authenticity of the statement thus taken.

However, even if such requirements of Articles 144 and 312 are all fulfilled, the problem is that there is certain distortion of statement that cannot be overcome, because a long conversation between examiner and examinee is often required; some factors would cause distortion of the truth.

But in Korea for a criminal trial risks were taken and admissibility were given to such statements of suspects in 1954 when criminal procedure code was enacted in Korea. At that time, the most controversial issue was whether to give admissibility of statements or not. After a little discussion and debate, the legislature made an attempt to balance between the

protection of human rights and effectiveness of an investigation. The legislators knew restricting admissibility of such statements by investigation agencies would prevent coercive investigation.

The legislators tried to achieve judicial economy on the other hand by making a distinction between the statements taken by the public prosecutor and that taken by a police officer. However, things the legislators didn't expect happened. First, the prosecutor has to interrogate a suspect to get the admissibility of the statements. If the defendant denies it and statements written by the police officer loses admissibility, so again the prosecutor has to interrogate the suspect whom the police officer already interrogated in order to make sure of admissibility. Secondly, the public prosecutors couldn't directly interrogate all the suspects, because the number of cases was huge; 2 millions in a year, so investigation officer interrogates the suspects and the prosecutor only signs the statements pretending that he or she were still directly examining the suspect. The Supreme Court admits that kind of statements as prosecutor's interrogation dossier. This sort of hidden distortion spoiled the credibility of criminal justice.

In 16<sup>th</sup> December, 2004, the Supreme Court broke the precedents and decided to restrict admissibility of prosecutor's statements of a suspect showing that the substantial authenticity is indeed required. The precedent assumed that substantial authenticity if prosecutor's interrogation statements have only the formal authenticity. Due to Supreme Court's change in its position, the prosecution had no choice but to insist on the introduction of a video recording system.

Today, audio-video recording system is adopted in many other jurisdictions, and often the case it was introduced upon the strong urge from external

bodies such as court and bar associations who became really concerned with the rampant violation of human rights in investigation process, but that was not the case in Korea.

In other words, in Korea, there was a different motivation for the introduction of video recording system. As I said, in contrast to other jurisdictions in Korea, the prosecution and the police led the introduction of a video recording system. Furthermore, unlike Anglo-American tradition countries the purposes of introducing video recording system are different between the prosecution and the police in Korea. In 1998, the police tried to introduce video recording system of a suspect. At that time, the aim of such introduction was to calm down a lot of controversy about oppressive or coercive investigation by a police officer. However, the police was skeptical of a nationwide implementation of video recording system, because they were concerned with enormous cost that has to take place and also leakage of confidential information about the investigation.

But, in 2003, Punishment of Sexual Crimes and Protection of Victims Act was revised and under this revised law video recording of a child victim of sexual violence became mandatory. The police found that video recording can contribute to the credibility of the police investigation and became interested in video recording during the interrogation of a suspect. It had a strong will to gain independent investigative power from the supervision of the prosecutor, and furthermore the police really recognized the benefits of video recording as it ensured the credibility of their investigation while protecting the human rights of a child victim. The prosecution has prepared itself for video recording as studying foreign cases and carrying forward test operations. On the other hand, Criminal Jurisprudence Academic Community did not adequately prepare for video recording that could clarify investigation process, even though it agreed that the admissibility of

interrogation should be denied in a courtroom. In late 2004, a Presidential Commission on Judicial Reform came up with an idea to deny admissibility of prosecutor's interrogation dossiers. The prosecution reacted against it and suggested that video recording materials have admissibility in the courtroom; it was proposed to the commission on judicial reform. With this as a momentum, video recording system emerged as a key issue of the judicial reform when the prosecution suggested that it looked gloomy that interrogation dossiers of the prosecutor would accept the admissibility. As discussion about prosecutor's interrogation dossiers and video recording continued in Presidential Commission on Judicial Reform, the judiciary began to insist that aggravating tasks are worried in case the admissibility of interrogation is denied. The judges and lawyers of the Presidential Commission on Judicial Reform disagreed with the introduction of video recording system that the prosecution insisted. That is why they had some apprehensions that a courtroom listens to a video recording if video recording gets admissibility. After that, accepting the judges and prosecutors suggestions Presidential Commission on Judicial Reform determined the legislation bill that the interrogation by the prosecutor has admissibility which is the same as at present and video recording gets admissibility on condition that it is supplementary means.

However, the legislation bill underwent considerable revision by the national assembly that deleted the article of giving video recording and the admissibility from the criminal procedure code and enforced on January 1st 2008. The revised criminal procedure code clarified it has no will of excluding trial by dossiers by giving the admissibility to an interrogation by the prosecutor.

According to the revised criminal procedure code, it still has admissibility to the interrogation by the prosecutor and video recording is admitted on

condition that it is supplementary means of interrogation. It was predicted to make a difference for the use of the video recording between the prosecutor and police, and it looks difficult that video recording system is utilized as original intent. In the future as for the video and audio recording, we expect that there may be some difference in the interrogation by the prosecutor in comparison with that by the police. It might be rather difficult to effectively utilize video recording as was originally intended.

Now, I would like to talk about the usage of video recording and audio recording after revision of criminal procedure code. Because video recording by the prosecutor can be used to confirm that the prosecutor's interrogation dossier is the same as statements of a suspect during the interrogation, the number of implementation of video recording was expected to increase. The prosecution executed experimental operations in June 2004, and then it has set up about 650 electronic interrogation rooms so far. The number of implementation of video recording sharply increased from 4865 cases in 2006 to 5,723 cases in 2006, 19,987 cases in 2007, and it has increased to 22,016 cases in 2009 and there was a sharp increase. In 2009, it accounted for 50% of the number of all the prosecution investigation.

In the case of the police, it is quite different from that of public prosecutors. The police are obliged to write the written statement regardless of video recording and if the accused or suspect denies the interrogation, the interrogation and the video recording immediately lose their admissibility. In preparation for admissibility of the video recording, the police demonstrated video recording in the economic team Yeoncheon Station and extended enforcement in 2007. Currently, 650 video recording rooms are in operation. The number of implementation of video recording by police was about 90,000 in 2008 and had decreased. But there were some items that were excluded from the conditions and number of the usages has actually

decreased.

As you can see here, it is the Yeoncheon Police Station video room (slide 20). The door is now closed on the left-hand side and it is opened on the right. In this room, the camera two units are located and two units of the computer are placed.

Lastly, this is the new legislative revision on the purpose of video recording. The purpose of the recent reform of the criminal procedure was to have the principle of court-oriented trials taking roots in the society. As a principle, it is needed to deny admissibility of an interrogatory written by an investigative institution in principle. Transparency through all investigative activities is the premise of the principle of court-oriented trials that people participated in. All investigated activities should be watched and controlled. Considering the counsel participation for every criminal case the most practical way to clarify investigating activity is to introduce video recording system.

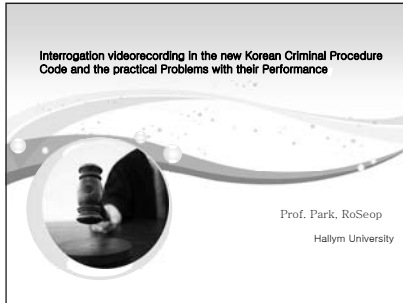
However, under the newly revised criminal procedure law as the tool to have the evidence admissible, it is needed by the prosecutors to continue to use the video recording. The precedence in the other countries video recording is a useful means to guarantee to exclude a false statement. Thinking about that the video and audio recording has to be fully introduced based on the criminal procedure code article 214. This has to be discussed fully in order to maintain the transparency as well as the maintenance of the uniformity or prevent the distortion. It is necessary to make the revision on the criminal procedure code. As for the Article 214-2 of the procedure code, if the discretion has to be utilized for the video recording, it is necessary to maintain the impartiality and authenticity of such statements. In order to maintain and endorse the credibility, there has



to be the explicit description in the law to stipulate the details of the conditions related to video recording. If the condition is met, then video recording is going to be utilized and get settled as a very innovative means to make the improvement in the procedural system. Thank you very much.

Naoko Yamada

Thank you very much Professor Park.



1

### I. Introduction

- ◆ Political reforms in Korea have reflected the desire to democratize.
- ◆ people are increasingly interested in justice system. So the problems in the criminal justice system were magnified.
- ◆ Through recent judicial reforms,
  - A jury trial was introduced,
  - the right to counsel during examination of a suspect was guaranteed,
  - Detention of Suspect was introduced, and
  - the system of determination of punishment was improved.

2

### I. Introduction

- ◆ **The purpose of the revised Criminal Procedure Code** is to
  - protect human rights,
  - enhance national judicial participation,
  - overcome the phenomenon of 'trial by dossiers'
  - **realize the cross-examinations by the parties in a courtroom.**
- ◆ However, Judicial practitioners such as the public prosecutors desperately opposed the reform.
- ◆ Consequently, **admissibility of prosecutors interrogation dossiers was moderated**
- ◆ **videorecording degenerated into a assistant for an interrogation.**

3

### II. History Of so called 'trial by dossiers'

- ◆ So-called 'trial by dossiers' is originated from admissibility of interrogations by an investigative institution.
- ◆ A protocol prepared by any investigative institution other than a public prosecutor for examination of a suspect is admissible as evidence, according to Criminal Procedure Code article 312 (3)
- ◆ A protocol in which the public prosecutor recorded a statement of a defendant: the article 312 (1), (2) of the Criminal Procedure Code

4

### Article 312 (Protocol Prepared by Public Prosecutor or Judicial Police Officer)

- (1) A protocol in which the public prosecutor recorded a statement of a defendant when the defendant was at the stage of suspect is admissible as evidence, only if it was prepared in compliance with the due process and proper method, the defendant admits in his pleading in a preparatory hearing or a trial that its contents are the same as he stated, and it is proved that the statement recorded in the protocol was made in a particularly reliable state.
- (2) Notwithstanding paragraph (1), if the defendant denies the authenticity in formation of the protocol, it is admissible as evidence, only when it is proved by a video-recorded product or any other objective means that the statement recorded in the protocol is the same as the defendant stated and was made in a particularly reliable state.
- (3) A protocol prepared by any investigative institution other than a public prosecutor for examination of a suspect is admissible as evidence, only if it was prepared in compliance with the due process and proper method and the defendant, who was the suspect at the time, or his defense counsel admits its contents in a preparatory hearing or a trial.

5

### Article 244-2 (Video Recording of Suspect's Statements)

- (1) The statements made by a suspect may be recorded by a video recording system. In this case, the suspect shall be informed of video recording in advance, and the entire process from the beginning to the end of interrogation and the objective circumstances shall be recorded by the video recording system.
- (2) Once the video recording under paragraph (1) is finished, the original recording medium shall be sealed without delay in the presence of the suspect or his defense counsel, and the suspect shall be required to print his name and affix his seal or write his signature thereon.
- (3) Upon a demand by the suspect or his defense counsel in the case of paragraph (2), the video-recorded product shall be replayed for viewing. In such instance, if there is any objection raised to its contents thereof, the purport of such objection shall be put down in writing and shall be attached to the product.

6



## II. History Of so called 'trial by dossiers'



- ◆ Distortion~ Problems of Interrogation Protocols
  - Even if the requirements of the articles 244, 312 are fulfilled,
  - the thing is inevitable distortion of an interrogatory.
  - Because a long conversation between an examiner and an examinee makes an interrogatory,
  - Some factors would cause distortion of the truth.

7



## II. History Of so called 'trial by dossiers'



- ◆ The Code 312: the most controversial issue of legislative process in year1954
  - A criminal trial took the risks and gave admissibility of an interrogatory.
  - The most controversial issue is whether to give admissibility of an interrogatory or not.
  - The legislators made an attempt to balance between protection of human rights and effectiveness of an investigation.
- ◆ The legislators tried to achieve judicial economy by making a distinction between an interrogatory by the public prosecutors and by the judicial police officer.

8



## II. History Of so called 'trial by dossiers'



- ◆ **But something the legislators couldn't expect happened.**
  - The public prosecutors have to interrogate a suspect to get admissibility of a statement.
  - The prosecution investigation officers examine a suspect and the public prosecutors only sign an interrogatory.
    - The public prosecutors couldn't directly examine all the suspects because the number of cases is over two millions in one year.
  - The supreme court admit that kind of interrogatory as prosecutors interrogation dossiers.
- ◆ **This underlying distortions spoiled credibility of criminal justice.**

9



## II. History Of so called 'trial by dossiers'



- ◆ The supreme court broke the precedent and restrict admissibility of prosecutors interrogation dossiers, showing that substantial authenticity is required.
- ◆ The precedent assumed substantial authenticity if prosecutors interrogation dossiers only have formal authenticity.
- ◆ Due to Supreme court's change in position, The prosecution has no choice but to strenuously insist on introduction videorecording system.

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## III. Debate about the videorecording and its legislative process



- ◆ **In most countries**
  - Outside organizations, including a court and a bar association, demanded introduction of videorecording system.
  - denouncing that violation of human rights in criminal investigation process
- ◆ **In Korea, on the other hand,**
  - the prosecution and police led introduction of videorecording system.
  - Furthermore, they The purposes of introducing videorecording system differ between the prosecution and police

11



## III. Debate about the videorecording and its legislative process



- ◆ **Korean national police agency**
  - aim of introduction was to calm controversy about pressed investigation by the judicial police officer.
  - However, skeptical of national implement of videorecording with the concerns about enormous expense and leakage of confidential information about an investigation.
- ◆ As 「Punishment of Sexual Crimes and Protection of Victims Act」 was revised in 2003, It is obligated to videorecord children victim of sexual violence.

12



### III. Debate about the videorecording and its legislative process



- ◆ **Korean national police agency**
  - found that videorecording can contribute to the credibility of police investigation
  - was interested in videorecording during interrogation of a suspect.
- ◆ **Korean national police agency** had strong will to prepare to gain independence of investigation.

13



### III. Debate about the videorecording and its legislative process



- ◆ The prosecution
  - has prepared itself for videorecording, as studying foreign cases and carrying forward test operations.
- ◆ Contrarily, the criminal jurisprudence academic community
  - didn't adequately prepare for videorecording that can clarify investigation process
  - even though it agreed that admissibility of interrogation should be denied in a courtroom.
- ◆ In 2004 the prosecution suggested that videorecording materials have admissibility in a courtroom.

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### III. Debate about the videorecording and its legislative process



- ◆ The Reason of the prosecution suggestion
  - It looked gloomy that interrogation would be accepted its admissibility.
- ◆ But as discussion about prosecutors' interrogation dossiers and videorecording continued in presidential commission on judicial reform,
  - The judiciary began to insist that aggravating tasks is worried in case admissibility of interrogation
  - they had some apprehensions that a courtroom descends to a videorecording theater if videorecording gets the admissibility.

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### III. Debate about the videorecording and its legislative process



- ◆ Presidential commission on judicial reform determined the legislation bill
  - an interrogatory by the public prosecutors has admissibility which same as at present(312)
  - videorecording get admissibility on condition that it is supplementary means(312-2).
- ◆ However, the national assembly deleted the article 312-2 of giving a videorecording admissibility
- ◆ The revised Criminal Procedure Code clarify it has no will of excluding 'trial by dossiers' by giving admissibility to an interrogatory by the public prosecutors.

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### IV. Using rate of videorecording after revised Criminal Procedure Code



- ◆ Because videorecording by the public prosecutors can be used to confirm prosecutors' interrogation dossiers are same as written statements,
- ◆ The number of implementation of videorecording was expected to increase.
- ◆ In 2009, It accounted for 50% of the number of all the prosecution investigation.

Years	2006	2007	2008	2009
N of VR	4,855	19,197	25,191	50,967

17



### IV. Using rate of videorecording after revised Criminal Procedure Code

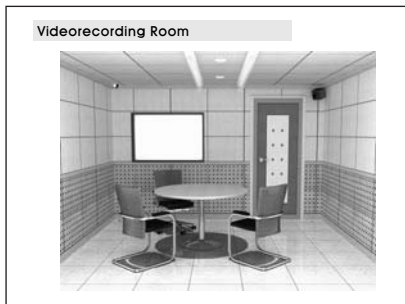


- ◆ The police's application of videorecording differs from the prosecution's.
- ◆ The police have to write interrogations regardless of videorecording.
- ◆ If the accused deny the interrogation, The interrogation and videorecording immediately lose their admissibilities.
- ◆ But the police has already set up 650 videorecording rooms until 2007.

Years	2006	2007	2008	2009	2010	2011	2012	2013
N of VR	943	18,013	89,338	73,371	38,087	21,174	20,295	40,967

※ 2 Million crime cases a year

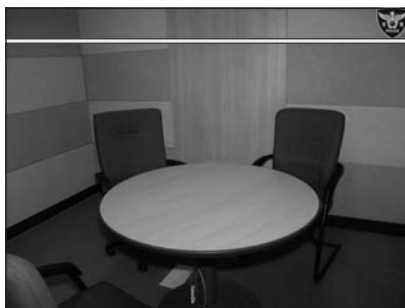
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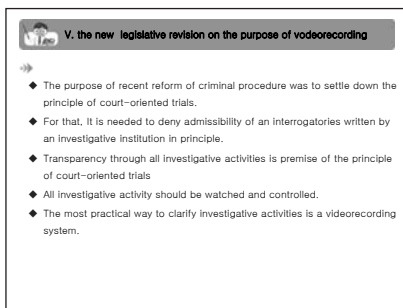
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24



#### V. the new legislative revision on the purpose of videorecording



- ◆ some conditions for a videorecording system to settle down in a criminal suit.
  - obligation draw up of an interrogatory.
  - a suspect should be given request right to videorecording
- ◆ a suspect should be given request right to videorecording.

Eunkyung Jo (Hallym University)

Naoko Yamada

Next speaker is Professor Jo, please start.

Eunkyung Jo

Hello, my name is Eunkyung Jo from Hallym University in Korea. I would like to first thank the host of this great symposium. It's my honor to be here to present some research on suspect interview in Korea since the introduction of video recording of suspect interview.

This is the content of my presentation (slide 2). I would like to focus on the three issues of suspect interviewing, which is the number 2 problem of written examination records which Professor Park told you as dossiers, and the number 3 is confession oriented suspect interviewing skills and number 4 is how to improve the investigative interviewing skills, and I would like to discuss about the future of the suspect interviewing in Korea.

This is kind of basic diagram of Korean criminal justice system in which you will see here the video recording was introduced since the amendment of criminal procedure law in 2007 (slide 3). Although some of the police officers and prosecutors started to video record interviews of children victims of sexual abuse and some trial video recording was attempted in some police stations, as Professor Park told you, before the amendment of the law. The prosecutors and police officers they all interrogate or interview suspects; for the police officers for the investigative purpose, for the prosecutors they interview suspects for charging purpose to be admissible

to court. So, typically the written statement is in the format of question and answer, so it looks like a transcript of an interview but in fact the written examination record is not an actual transcript, it just looks like a dialog but you will see some discrepancies in one of my research so there are quite a bit of discrepancies between the written examination records and the actual statement shown in the video.

A suspect interview was considered to be a topic of legal debate rather than that of topic of empirical research until very recently. So, until the introduction of video recording system, there was little systematic or scientific research on suspect interviewing in Korea. So, the inclusion of video recording of the investigative interviewing in the criminal procedure law amended in 2007 was a big step forward to suspect interview research.

Although the video recording of suspect interview is not mandatory and the access to interview data is very limited, video recording system provides a basis for understanding suspect interview practices. Some recent research on suspect interview has enabled us to understand problems of current suspect interviewing in Korea.

So, in this presentation, I would like to point out three issues of suspect interviewing derived from the research. The first problem that I want to tell you is the problem of the written examination records. The written examination records by prosecutors can be and often used as critical evidence admissible to court, but the question is whether or not the written examination record represents the true statement of the suspect. So, in this research carried out by Hyoung-gon Lee who is a senior inspector and a doctoral student of psychology and I carried out the analysis of comparing the written examination records with the video of the same suspect's interview (slide 7). So, we analyzed the extent and the nature of



discrepancies between the video recorded suspect interview and the written examination records. We analyzed criminal case records. The video recording of suspect interviews were transcribed and the written examination records were analyzed and compared with the video transcripts. So, we coded each and all discrepancies between the video and the written records and categorized by their influence types and influence patterns.

This table shows you the influence types and the influence types are basically in two categories (slide 8). One is distortion which means that the discrepancy could distort the actual statement of the suspect, so distortion is categorized into three elements. It could influence on the verdict; guilty or not guilty of the suspect when it goes to the court, and it could influence on the sentencing and the discrepancy reflects the procedural defects such as inappropriate delivering of Miranda Warnings and inappropriate instructions. Non-distortion categories are; there are discrepancies but the discrepancies themselves do not necessarily distort the content of the statement of suspects, which are summarizing irrelevant content and clear fact which are not distorted but had discrepancies. So, when the distortion was found, the distortions were further categorized into the omission or commission of the content. In the omission categories, there were omissions of answer or omission of question and answer. In the commission categories, there were obvious commissions, subtle commission of answers, and commission of questions that means creation of questions, and then addition of question and answer which didn't exist in the video, and the switch of question and answer that means the answer becomes a question, question becomes answer.

So, the result shows (slide 9); the analysis of 10 cases showed on average 49 discrepancies were found in 10 cases and the most common discrepancies

were these; the influence on verdict distortions which was 79% of all the discrepancies (slide 10), and the procedure defect was also found at least in one in ten cases.

These are the frequencies of influence patterns found and you can see these red letters, the omission of question and A were most common discrepancies found, and the switch of question and answer was the next most common – sorry they were equally common. Next is subtle commission of answers.

So, when I summarized the results of this study, there were distortions of information which could influence guilty or not guilty verdict which were observed in all sample cases, and the procedural defects such as improper Miranda Warning or consent to video recording or improper instruction of a consent to midnight interviewing were also found in all sample cases. The omission of Q&A and switch of Q&A were most commonly observed discrepancies between video and written records. Although obvious commission of answers was rare, subtle commission and omission of answers were frequently observed.

The next topic is confession and the confession-oriented suspect interviewing. Confession as you all know is the most persuasive evidence in criminal trials. Investigators question suspects not only to get information about the case, but also to induce suspects to confess and the pressure to obtain confession could lead to forced confession due to confirmation bias and tunnel vision. As Professor Park previously told you the confession is very important evidence in Korea.

These are some categorization of investigative interviewing styles of suspect; humane versus dominant interview and information gathering versus accusatory interview (slide 13). So, here I would like to tell you about

a false confession case which happened in 2007 (slide 14). There were four teenagers who were accused of brutally beating a homeless teenage girl to death and the teenage suspects were identified as co-offenders by two mentally handicapped and alcoholic adult suspects who initially confessed their crime of beating up the victim to death, but there was no physical evidence against these four teenagers. The teenage suspects were separated from each other and interviewed by a prosecutor as an investigator typed the written records sitting next to the prosecutor. The suspect interviews were videotaped and the results of the trials are like this. In the first trial, the four teenagers were all judged to be guilty. They were sentenced either from 2 years to up to 4 years, but in the appeal trial, the judges said the confessions seemed to be induced by the prosecutor and not credible. No other evidence was presented and so the defendants were not found guilty and the Supreme Court upheld the appeal trial's decision.

I had an opportunity to look into this case, thanks to a public defender Mr. Park who actually analyzed this video and compared this video with the written examination records which were submitted as an evidence to court. What he found and then illustrated were these six points. Number 1 was the video recording started after defendant confessed rather than from the very beginning of the investigation, so the entire suspect interview was not video recorded. Number 2, the confession was induced by various dominant interrogation tactics, such as there is no use for denial because your co-offenders already confessed which was lying. Number 3, suspects were blamed for the crime and lying about their offending. Number 4, suspects were told to believe there are other evidences. Number 5, confession would make the suspects feel better. Number 6, if they confess the investigator or the prosecutor will help the suspects to get more lenient sentences.

In the full manuscript, I have cited another research by police officer Roon

Ye who surveyed prisoners about their experience during the investigation for the reason of giving confession. In his research, he found that most prisoners told that the reason they confessed was the investigators were showing respect to them rather than they were being harsh on them, and they decided to confess from the very beginning even before they were interrogated. Most of them said they decided to confess.

So, this leads to the next question that I raised; what is the most effective interviewing skills to obtain confession or admission to the offense? Even though many investigators believe that obtaining confession depends on the investigator's interview skills, research shows that there is little correlation between suspect's change of position from denial to confession and the usage of interview tactics, so this is quite contrary to investigators' belief.

So, in the next research, I wanted to see whether or not this is actually true for Korean investigators and Korean suspects who are interviewed by prosecutors in Korea. So, in this research commissioned by the Supreme Prosecutor's Office, I had raised these research questions (slide 18); three questions in mind, how are Korean investigators doing with the suspect interviewing, and second question is are there effective interviewing tactics to obtain admission or confession? And then number three what should we do to train investigators to become better interviewers?

In this study, we actually sampled the data through the database for video recorded interview at the Supreme Prosecution's Office. The interviews were recorded between 2005 and 2013, and most of these interviews were collected between 2007 through 2009 because as you saw in Professor Park's presentation the frequencies of video recorded interviews were very high; increased between 2007 and 2009 for some legal reasons, and since then it declined. So, most of the samples came from the period of 2007 and 2009 in

my study too.

In this study, I wanted to compare the denial interviews with the change of position interviews. I had some purpose in mind when I collected the samples, so I had equal number of cases for denial and the change of position. There were 48 cases each and the crime was homicide and sexual assault. We thoroughly transcribed the interviews and we measured the length of interview in minutes and we also coded whether there was rapport building and what was the rapport-building theme and all the identifier information which was very sensitive was removed before the data coding. The coding was carried out by two trained coders. Their inter-rater reliability was 0.67 for interview tactics and the suspect response types reliability was higher of 0.95. The interview tactics that we coded was after Soukara and Bull's research; we followed their coding scheme of coercive approach versus information-gathering approach. These tactics in the yellow color are coercive interview tactics, whereas the white color is information-gathering approach tactics, and then the rapport building themes were made as these categories. These are not from some other research, we basically read through the interview transcripts, and then identified some common rapport building themes, and then we counted how many of each of the rapport building themes occurred.

This graph shows the length of interview. The most common length of the video recorded interview was between 30 minutes to 60 minutes, and under 30 minutes also was about 30% of the sample interviews, so about 80% of the interviews were finished within an hour, and then some interviews were longer. These interviews are homicide and sexual assault crimes which are quite serious crimes, but I must tell you that these interviews are not the initial interviews. All of these suspects were interviewed by the police officers first a few times maybe and then they were sent to the prosecution

and then they were interviewed by the prosecutor at this sample.

These are the results the proportion of interview tactics. The red bar shows the change groups and the blue bar shows the denial groups (slide 23). As you can see it's not interesting, because most common tactic is leading question dominantly, very frequent leading questions all over and the change of position groups the leading question was even more frequently used compared to the denial groups and challenging the suspect's account was less in the change of position groups compared to the denial groups, which was very counterintuitive to our knowledge where we would expect that if you challenge the suspect's account more effectively, then they would change their position and they would confess, but this wasn't the case.

So, all the other tactics whether they were coercive or non-coercive or coercive or information gathering didn't make any difference, they were all suggestive.

We looked into within condition variation in the change of position groups the ratio of interview tactics before and after, so this red bar is after the change of position, the blue bar is before the change of position (slide 24). What happened was also they are very leading – suggestive, but the investigators used more open questions before suspect changed the position and they disclosed evidence more before they changed the position compared to after which makes sense. They used more gentle prods before they changed the position, but after they changed the position they showed more concern toward the suspects, they worry, why I don't know.

The rapport building results are these. Despite most investigative interview manuals emphasize rapport building with suspects, investigators in my sample attempted to build rapport only in 41% of the cases. So, rapport

building attempts didn't occur too often, but in the change of position interviews more rapport building attempts were made compared to the denial cases. And then what kind of rapport building themes they used most? Interestingly, empathy was the most commonly used rapport building themes in the change of position groups. No other differences seemed to be significant. Whether or not they used the rapport building theme to persuade suspects, we found that when they used rapport building theme to persuade the suspects to change the position, they were more successful in the change groups than denial groups; 9 of 10 cases which used rapport building theme for persuasion were successful at obtaining confession, but the case numbers are too small so I can't tell you that these are significant results.

The summary of the results; the leading and suggestive questions were predominant interview tactics of prosecution interviews. Challenging the suspect's account and interruption are used in more than half of the cases and the mixture of coercive tactics and information-gathering tactics are being used. Information-gathering tactics such as open questions and disclosure evidence and gentle prods tended to be used more before the suspect changes the position rather than after.

Here is the discussion of the study which I think is pretty straightforward if you read. In this study, I wanted to point out that the benefit of information-gathering approach deserved more attention by the investigators and policymakers, although they believe that relying on the information-gathering approach may not be effective to get confession.

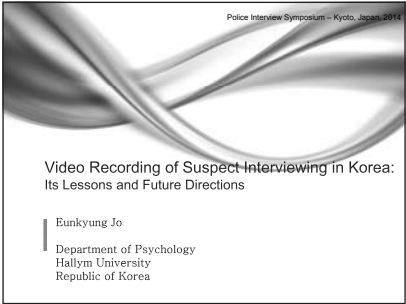
So, the introduction of video recording system helps to unveil problems of suspect interviewing, and to solve these problems and improve suspect interview practices we need more scientific research on suspect

interviewing. Although video recording system in Korea has its unique problems to solve, it should be maintained and more actively used to prevent serious miscarriages of justice. So, this is the end. Thank you very much.

Naoko Yamada

Thank you very much Professor Jo.



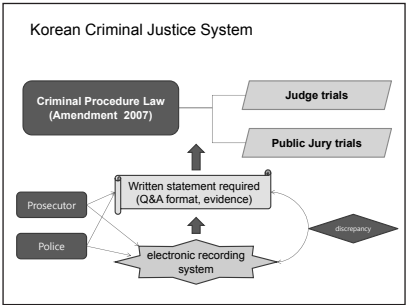


1

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1. Introduction
2. Problem of Written Examination Records
3. Confession-oriented Suspect Interviewing
4. Investigative Interview Skills
5. Discussion

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1. Introduction

Suspect interview was considered to be a topic of legal debate rather than that of empirical research.

Until the introduction of video recording system , there was little systematic or scientific research on suspect interview.

Inclusion of video recording of investigative interviewing in the Criminal Procedure Law Amendment in 2007 was a big step forward to suspect interview research.

4

Although video recording of suspect interview is not mandatory and access to interview data is very limited, video recording system provides a basis for understanding suspect interview practices.

Some recent research on suspect interview has enabled us to understand problems of current suspect interviewing.

5

2. Problem of Written Examination Records

Written examination record is element in Korean criminal justice system.

Written examination records by prosecutors can be used as evidence.

6

Discrepancies between video and written records

Lee H.G., & Jo, E. (2014). The Extent and Types of Distortions in the Examination Record : A Comparison of Paper and Video Records. *The Journal of Police Science, Vol. 14, No.2* 29-53.

They analyzed the extent and nature of discrepancies between the video recorded suspect interview and written examination records based on the video recorded interview.

10 criminal case records were analyzed.

Video recordings of suspect interview were transcribed. Written examination records were analyzed and compared with video transcripts.

Discrepancies between the video and written records were categorized by their influence types and patterns.

7

Coding Criteria

	Influence Type		Influence Pattern
Distortion	Influence on Verdict	Omission	Omission of A
			Omission of Q & A
	Influence on Sentencing	Commission	Obvious Commission of A
	Procedural Defect		Subtle Commission of A
Non-distortion	Summarizing		Commission of Q
	Irrelevant content		Addition of Q & A
	Clear Fact		Switch of Q & A

8

Frequency of Discrepancies by Influence Type

Influence				
Case #	Influence on Verdict	Influence on Sentencing	Procedural Defect	Total
1	1	2	3	6
2	91	17	6	114
3	50	14	5	69
4	26	8	3	37
5	49	1	3	53
6	106	25	4	135
7	4	0	3	7
8	23	0	1	24
9	21	0	5	26
10	15	3	1	19
Mean	38.60 (79%)	7.00 (14%)	3.40 (7%)	49.00 (100%)

Lee & Jo (2014)

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Frequency of Discrepancies by Influence Pattern

Pattern								
Case #	Omission of A	Omission of Q&A	Obvious Commission of A	Subtle Commission of A	Commission of Q	Addition of Q & A	Switch of Q & A	Total
1	0	3	0	0	0	1	2	6
2	9	45	2	9	5	4	40	114
3	5	32	1	14	3	2	12	69
4	1	9	1	8	2	6	10	37
5	7	25	0	7	5	1	8	53
6	9	23	0	15	6	1	81	135
7	2	1	0	0	0	3	1	7
8	0	18	0	2	2	2	0	24
9	1	2	0	4	5	2	12	26
10	2	4	0	7	3	1	2	19
Mean	3.60 (7%)	16.20 (33%)	0.40 (1%)	6.60 (24%)	3.10 (6%)	2.30 (5%)	16.80 (54%)	49.00 (100%)

Lee & Jo (2014)

10

Problem of Written Examination Records

[Results]

- Distortions of information which could influence guilty-not guilty verdict were observed in all sample cases.
- Procedural defects (e.g., improper Miranda warning, consent to video recording, consent to midnight interview) were also found in all sample cases.
- Omission of Q & A and switch of Q & A were most commonly observed discrepancies between video and written records.
- Although obvious commission of answers was very rare, subtle commission and omission of answers were frequently observed.

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3. Confession-oriented Suspect Interviewing

Confession!!

- The most persuasive evidence in criminal trials (Oberlander, Goldstein, & Goldstein, 2003)
- Investigators question suspects
  - To get more information about the case.
  - To induce suspects to confess. (Wrightsmen & Fulero, 2004)
- Pressure to obtain confession could lead to false confession due to confirmation bias and tunnel vision (Kassin, et al. 2003).
- Confession is an important evidence in Korea!

12

Suspect Interview Strategies	
<b>Humane</b>	associated with offenders' <b>admission of crimes</b>
<b>Dominant</b>	tendency towards being associated with <b>offenders' denials</b>
Holmberg & Christianson(2002)	
<b>Information gathering</b>	Aimed at securing evidence PEACE model Rapport, open question, etc.
<b>Accusatory</b>	Aimed at securing confession REID technique Minimization, maximization, etc.
Moston & Engelberg (1993)	

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<b>A false confession case (2007)</b>
Four teenagers (2 girls, 2 boys) were accused of brutally beating another homeless teenage girl to death.
The teenager suspects were identified as co-offenders ("the kids") by two mentally handicapped and alcoholic adult suspects who initially confessed their crime of beating up the victim to death.
There was no physical evidence.
The teenager suspects were separated from each other and interviewed by a prosecutor as an investigator typed the written record.
The suspect interviews were video recorded.

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<b>A false confession case (2007)</b>
<u>1<sup>st</sup> Trial:</u>
Four teenagers all confessed and were judged to be guilty. Sentence: 2 ~ 4 years imprisonment.
<u>Appeal Trial:</u>
Confessions were induced by the prosecutor and not credible. No other evidence was presented. Not guilty!
<u>Supreme Court:</u>
Not guilty!

15

<b>What actually happened in the video?</b>
1. Video recording started after defendants confessed. The entire suspect interview was not video recorded.
2. Confession was induced by various dominant interrogation tactics. <i>"There is no use for denial because co-offenders already confessed"</i>
3. Suspects were blamed for the crime and lying about their offending.
4. Suspect were told to believe there are other evidences.
5. Confession would make them feel better.
6. If confess, they will help the suspects to get more lenient sentences.

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<b>4. Investigative Interview Skills</b>
Nowadays it is getting harder to find physical evidence for criminal cases. Suspects tend not to confess when there is no physical evidence.
Many investigators believe that obtaining confession depends on the investigator's interview skills.
Various investigative interviewing strategies are used by investigators (Moston, Stephenson & Williamson, 1992; Moston & Engelberg, 1993; Leo, 1998; Kassin et al., 2007; Soukara et al., 2009).
Police officers preferred using more coercive interview strategies when evidence is weak (Kim & Jo, 2013).
There were relatively few correlations between suspects' change of 'position' from denial to confession and the degree of usage of the 17 interview tactics. (Soukara, et al., 2009).

17

<b>Jo, E. (2013). Development of effective investigative interview manual to counteract psychological changes of suspects. Report Submitted to Supreme Prosecutors' Office.</b>
<b>Research Questions:</b>
1. How are Korean investigators doing with suspect interviewing?
2. Are there effective interviewing tactics to obtain admission/confession?
3. How should we train investigators?

18

Method
<p>1) Screening of Suspect Interview Videos</p> <ul style="list-style-type: none"> <li>Video Recorded Suspect Interview Database for 2005-2013</li> <li>Consistent Denial : 48 cases (homicide, sexual assault)</li> <li>Change of position (from 'Denial' to 'Confession/Admission') : 48 cases (Homicide , Sexual Assault)</li> </ul> <p>2) Transcribing Interviews</p> <ul style="list-style-type: none"> <li>Type of offence, length of interview (minutes)</li> <li>All identifiable information related to suspects and interviewers was removed.</li> <li>Very thorough transcription of interview was obtained: verbal and nonverbal interactions between interviewer and suspect.</li> </ul> <p>3) Coding by 2 Trained Coders</p> <ul style="list-style-type: none"> <li>Interview tactics (frequency): ICC = .67</li> <li>Suspect's response types (frequency): ICC = .95</li> </ul>

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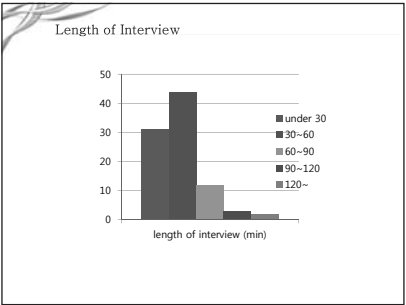
List of 17 psychological tactics	
Coercive approach	Information gathering approach
Maximization of Offence	Disclosure of Evidence
Minimization of Offence	Emphasizing Contradictions
Positive Confrontation	Challenging the Suspect's Account
Interruptions	Open Questions
Repetitive Questioning	Gentle Prods
Leading Questions	Silence
Intimidation	Handling the Suspect's Mood
Suggest Scenario	Concern
Situational Futility	

Soukara, S., Bull, R., & Vrij, A., Turner, M., & Chermnyan, J. (2009). What really happens in police interviews of suspects: Tactics and confessions. *Psychology, Crime & Law*, 15, 493-506.

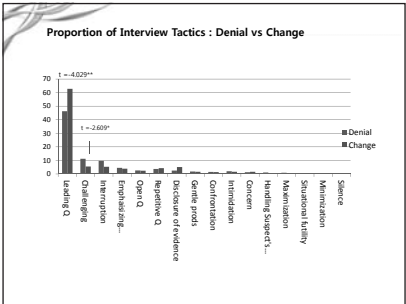
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Themes	Example
Empathy	Express understanding of what the suspect is going through
Encouragement	Encourage the suspects to relax the suspect
Acceptance	Accepting the requests related to the current case
Advice	Providing advice for the suspect's current or future process of the case
Concern	Expressing concern about the suspect's current or future situation
Unrelated Topic	Conversation about job, family, interpersonal relationship
Other	

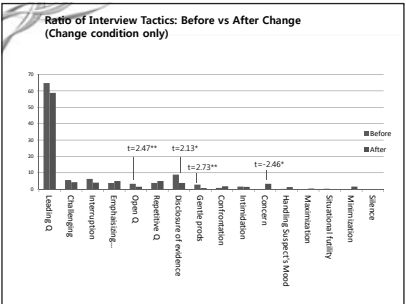
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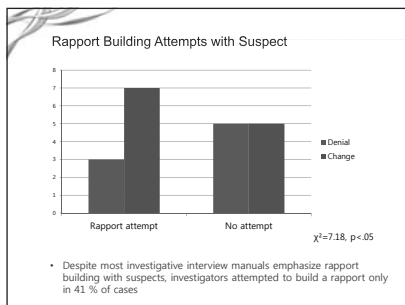
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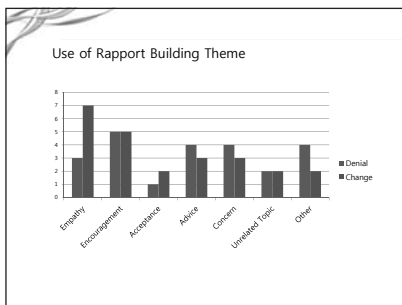
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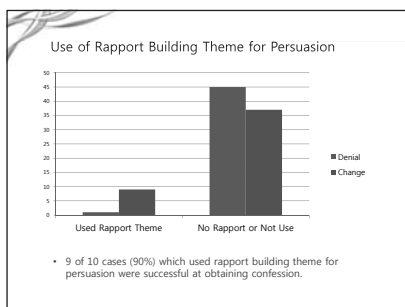
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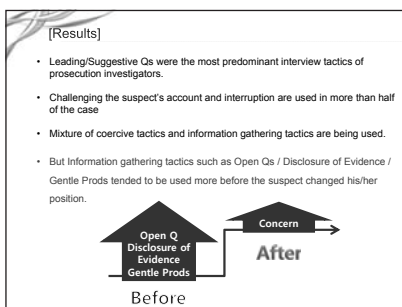
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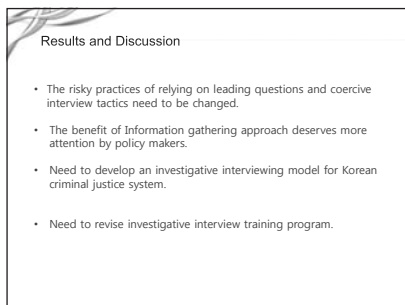
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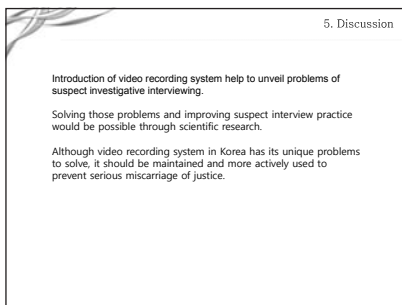
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Naoko Yamada

Now, we are going to invite Mr. Daisuke Toyama attorney who is a member of Kyoto Bar Association and as two speakers were speaking he has been nodding and I am sure that Mr. Toyama is going to give us wonderful insight.

Daisuke Toyama

Thank you for your kind introduction. I am Toyama practicing as lawyer. In 2008, I went to Korea to see how the Koreans are doing the video recording of interviews, and I knew that they are doing something much better than in Japan. When I went to Korea, I visited the police and the prosecutors and they said that the police and the prosecutors took the initiative in implementing the video recording system and I was very impressed and surprised. Back in Japan, Korean type of the recording system can be introduced or should be introduced into Japan.

Now, the special committee of Legislative Council of Ministry of Justice gave us a recommendation and the prosecutors must obtain the admissibility of DVD when they are going to submit the written statement. This partially reflects what has been already implemented in Korea, and I feel very much impressed to see that Japan is now following what Korea has already achieved and Korea is ahead of Japan. It's wonderful that you have deep experience which is big enough to offer the scientific research and the discretionary or voluntary nature of the video recording does have a problem according to Dr. Park. I am a lawyer as a counsel whatever the law say, whatever the system is about in order to prove the credibility of the written statement, according to the law the video recording is supplementary, but whatever the law may say video recording is quite

effective way to ensure transparency of interrogation.

Dr. Jo analyzed many cases that were cases of use of subtle omission or changes between the questions and answers. When it comes to the lay judge trial, I believe that although Japan is going to have mandatory video recording for the lay judge trial, we as a counsel must pay very good attention to what's being recorded in order to make sure that interrogation was done in a transparent and appropriate way, and I do thank the two speakers for giving us very important information, which is going to guide us in Japan.

Concerning the lay judge trial, all processes both at the police and prosecution will be video recorded, but I think I have to tell you what is the reality in Japan. I have opportunity to give talks to police officers in Kyoto or in Osaka; I give lectures to them on a regular basis. What I lecture is about their interrogations. The inappropriate conduct during the interrogation will be known to the counsel sooner or later and that would have a bad impact to you; the evidence may be excluded, so I always tell them that you have to do things right in the interrogation room. Then the police officer would say as follows; they never nod. Symbolically, their response is as follows, "Lawyer Mr. Toyama, I understand what you say, but listening to the suspect is not our job." They say clearly listening to suspects are not our jobs. They; police officers still believe that the interrogation is a place where the hearts of the policemen and the suspects meet each other and this is a good opportunity to offer the rehabilitation opportunity to the suspect.

So, when it comes to the lay judge trial, the whole process of the interview will be recorded visually. I am interested in how the attitude of the interviewers are going to change in Japan, but as Professor Naka

mentioned in the morning, interview type of approach is what police officers would have to take, although they are still resisting very strongly.

What about the prosecutors? I think they are paralyzed or they are getting used to the new reality. Public Prosecutors Office is already video recording many cases. They are getting good at using this new reality. They are preparing video recorded interviews making sure that it would be beneficial to the prosecutors and not be beneficial for the counsel, but when the interviews are not recorded, as Professor Jo mentioned, they are still using many leading questions trying to persuade the suspects or prepare the written statement and show it to the suspect and force the suspect to sign on the prepared written document. But starting with the lay judge trial, all the processes of interrogation at the prosecutor's office will be recorded visually and things I believe will change.

As Professor Park and as Professor Jo mentioned and also as we discussed in the morning, I think the psychology is quite important in order to analyze the statements made by a suspect. In Kyoto, there was a murder case I was involved in it. The suspect continued to say that he is not the offender. In order to prove that the person said, "I know the true person who did it. A person that I know threw the things belonging to the victim into the river." This is what he stated or this is what the statement said that the suspect said, and those items which belonged to the victim that information could have been known only through the person who committed the crime and he was convicted at the first instance but then acquitted later on. This acquittal was based on the notes taken by the investigator. The investigator had a lot of Q&A with the suspect and all the questions and answers were recorded in a notebook kept by a police officer. Police officer said that the suspect said, "I know a person who threw away those things," and the suspect said, "Is what I'm saying strong enough or do you



need more information so that I will be arrested.” So, the suspect was trying to find the answer that would satisfy the investigator. So, the interaction record in the notebook show that the suspect was trying to satisfy the intention of the police person, but that notebook kept by the police officer was disclosed and I don’t know why the police perhaps wanted to be fair or perhaps the police believed that this would not be reveal the leading nature of the questions or there may be more cases in the future where the existence of the leading questions may determine the admissibility of the written statement. So, the recording would require better interpretation of what’s being recorded.

Japan lags behind based on the international standards, but learning from other countries and depending on the jurisprudence but also on the outcome of the psychological researches we the counsel must do our best to improve the situation. Thank you very much.

Naoko Yamada

Thank you very much Mr. Toyama. So, we would like to open the discussion. If you have a question, please raise your hand and wait for the microphone to come to you. Any questions? Someone in the central row. To whom would you like to address your question?

Questioner1

I have a question to Professor Park. I belong to an organization that supports the victims of miscarriage of justice. Well, in Japan, efforts are underway to audio-visual recording of interrogation and legal counsel of the government is doing a lot of discussion, but type of the cases for audio-visual recording seems to be limited to lay judge cases or special cases initiated by prosecutor’s office. That is the current idea in Japan. In the case of your country, Korea, for the types of cases to be audio-visual

recording; are there any kinds of cases which are out of the mandatory audio-video recording or defendants or defense counsel, do they have the right to request for an audio-visual recording or the right to deny audio-visual recording? Two questions.

Ro Seop Park

Regarding your first question in Japan what are the kinds of cases where audio-visual recording can be performed, there isn't any restriction for the scope. According to the regulations, any case can be audio-video recorded and the audio-video recording needs to be known to a suspect beforehand.

About the second question whether the defense counsel or suspect has the right to choose to opt out of the audio-visual taking or can request audio-visual recording, according to the legal provisions they have no choice. However, suspect has the right not to speak during the interrogation. Of course, they can ask for audio-video taking or recording. For your information, audio-video recording in Korea rather than transparency of the interrogation, it has been introduced in order to assure admission of evidence which is the written statements in this case. Thank you very much.

Questioner1

Thank you.

Naoko Yamada

Thank you. Any other question? Yes, somebody sitting on the second row, please.

Questioner2

If I may. You talked about the use of the police interview to rehabilitate the

suspect. This was an issue which came up in this morning's session too. I have a real problem with this. Surely, you only talk about rehabilitating people once you've decided that they are guilty. What this seems to suggest which is a much bigger problem in the Japanese Criminal Justice System is that the police are taking for granted that the people that they question are guilty of the offenses that they are there for. Surely, what the police should be doing is investigating whether a crime has been committed and whether it has been committed by a person who they are questioning. Not simply assuming that the person they have in front of them is guilty and that it is therefore appropriate for them to rehabilitate. Surely, rehabilitation happens after a person has been proved to be guilty. So, I don't understand. Thank you.

Daisuke Toyama

Very good question. Thank you very much. Sometime ago Winny, the file sharing software case, in that case there was the exposure of the leakage of the investigative manual of the National Police of Japan. In that manual, it says the following; the suspect in front of you don't think about whether he has committed or not, don't go out of the interrogation room. In other words, to continue interrogation many times. So, as exemplified in the first statement in this manual for the police officers, they arrested the suspect because they believe that he had committed the crime that means he is the criminal and the accused already. He is no longer suspect to them. Therefore, in the minds of the investigators, he is already guilty and to get the confession as soon as possible and to put it in the well-minded people through rehabilitation is the job of the police officer. That's what they think. This is a very traditional approach. Unfortunately, this kind of mindset is still shared amongst all the police officers. So, when the police objects to the introduction of the audio and video recording, in a way there is a very poor mindset but this is used as a rationale for the objection and reason and the

cons objecting reason rationale for not introducing the electronic recording, and of course as you have rightly said it is a wrong doing, it is not right to do so, but if you think about the mindset of the police officers, rehabilitation is something which is always in the minds of the police officers.

Naoko Yamada

Any other questions, or does that answer your question? Or maybe you have moved in the deep part of the further question Professor Toyama is saying so. So, any other question? We do have some more time. Please.

Hisashi Kosakai

Kosakai, a lawyer practicing in Osaka. In the third part; in the next part after the break...

Naoko Yamada

To whom would you like to address your question?

Hisashi Kosakai

Professor Park and if time allows I'd like to have some answers from Professor Jo, but first to Professor Park. Well, court-oriented system and the use of audio-visual recording medium, in Korea the prosecutor wanted to introduce audio-visual recording and the court was opposed to this. Well, my question is that this trial or court-centered system on one hand and the audio-visual recording; what is the link between the two, I am not quite sure?

Ro Seop Park

Thank you for the question. In court, there are opinions divided. The court-centered system in order to realize such a system and not trial by dossiers, audio-video recording was a must. That is their idea behind introducing

audio-video recording system. But majority of judges are rather conservative in their thinking and they still have the old habits and the old way of mindset. Judges have heavy workload. Because they already have heavy workload, there is some concern on the part of judges in Korea. In reality, in 2005, a survey was taken and 70% of judges were opposed to audio-video recording. Such a tendency is a reality in Korea and against such a backdrop it seems that the motivations for audio-video recording has been different in Korea as opposed to Western countries.

Eunkyung Jo

Just to add one thing to Professor Park's answer is that the judges are quite concerned about having to look at the videos in court and they are kind of afraid that once they allow the video recording as admissible evidence, the prosecutors won't submit documents which they are very used to look at and then think through the documents. So, that's what they are afraid of, so they have to see the documents to think maybe not, I don't know, but it's kind of power struggle between the prosecution and the court. So, the court wants to have all the materials to be able to make a reasonable decision. Whereas once the video recording is admissible, the prosecution are suspected not to submit all the documents that they used to do.

Naoko Yamada

Does that answer your question? Yes, let's revisit this issue in Part III. I think it is now time to adjourn Part II. Thank you very much Professor Jo, Professor Park, and Mr. Toyama. Thank you very much.

Makoto Ibusuki

Session III will be started at 3:20 after 20 minutes break. Some announcements; as was pointed out by Professor Dixon in the function of the interrogation to give the support for the rehabilitation or to encourage

rehabilitation and to the assertion by the investigator how the defense attorney's side is going to argue against. It is the attorney to think about further to help the suspect to rehabilitate. Unless there is such posture on the part of the attorney or defense attorney the investigators would continue to be dominant over the suspect in the interrogatory process. Next week in Kinki Bar Association Meeting we will be acting as the defense counsel and we will discuss that next week, so this was only the announcement for that meeting. Thank you very much. Let's have 20 minutes break.



## **Session 3**

**Session 3: Transparency of Interrogation in Japan**

**Chair: Hiroshi Nakajima (Kagoshima University)**



Kotaro Takagi (Aoyama Gakuin University)

Makoto Ibusuki

Now, we are going to resume the session. Please have your seat. The session third, interrogation and video recording in Japan. Now, we are ready to discuss issue in Japan. After this session number 3 without any break, we will go to the last session. Professor Nakajima of Kagoshima University is going to be the chair of the session.

Hiroshi Nakajima

Now, we are going to start the session in Japan. The title says 'audio-visual recording and what next.' This is a new element in the topic of the session. I am from Kagoshima University. My name is Nakajima. The first speaker is Professor Kotaro Takagi of Aoyama Gakuin University.

Kotaro Takagi

I am Takagi from Aoyama Gakuin University. I am a psychologist. From that perspective, I would like to give my talk. How do interviews fail? The possibility of the use of the interaction using the audio-visual recording, starting this morning until the last session we heard from experts from Australia and Korea, and two psychologists gave us a presentation that made me feel very down, because two experts from these two countries have been using huge amount of video recorded the sessions. They have extracted the essential information. But that access to the huge amount of information is not available – recorded the session of interviews are still rare. It's impossible for us to extract the characteristics of those audio-visually recorded sessions.

Suppose there is a case in front of a court and the counsel may ask a psychologist to analyze the visual recorded sessions or any other sessions recorded with sounds available but that's from a different case. The psychologist in Japan can have access only to case studies. We are very good at analysis of single case but that's all. Now that we see more video recording in Japan and the Japanese psychologists, when we have more access to the video recorded sessions of interviews, then we should try to conduct more comparative studies among different cases. But the very accurate analysis for single case is what I am doing especially using the discourse analysis in order to analyze the interaction between the investigator and the suspect.

Here with me I have several resources of analysis of single cases in Japan. I think I can point out the important issues for the audio-visual recording of interviews in Japan. How do interviews fail? I am dealing with only contentious cases in front of the courts. Beautifully conducted interviews which are done according to the manual and also in a very appropriate manner, they do not become the subject of analysis. The cases are dealt with the cases which do present many dubious aspects. My question always is, how do interviews fail?

In my presentation, I have another perspective (slide 2). By using the audio-visual recording, can we make the sessions of interview visible? I think today we are going to do mainly the visual recording of the sessions of the interviews. That would allow us to see what's happening in the interview. By going through the images people tend to think that the judgment about the appropriateness of the interview should be quite easy. I think so. That's right for many of the cases. But myself and the fellow of my team have looked at several sessions or interviews or cases in which the availability of the visual recorded sessions actually work against in terms of the benefit to

the lay judges and the professional judges.

The misinterpretation of the interview may also increase with the availability of recorded sessions. This is the example or a case that I would like to share with you. Japanese people are quite familiar with this case named Ashikaga case (slide 3). This was the abduction and the murder of a young girl. In 1990, in Ashikaga City in Tochigi, a 4-year-old girl became missing, last seen at a pachinko parlor, and the next morning her body was found on the riverbed of the Watarase River. In December 1991, the bus driver of the school bus of the nursery school, Mr. S was arrested. Based on the DNA analysis, this was the first case in Japan in which the DNA analysis was utilized. He was arrested after the voluntary decision to go to the police, he gave confession. In the sixth session of the trial, he started to deny the confession he made earlier. Then he withdrew the denial. Then he denied again. Ultimately, at the first instance court, he was sentence to life in prison. Appeal court started in 1994. He had a new counsel. The credibility of the DNA analysis results and the admissibility or credibility of the confession was a major point at issue. This was not accepted by the court and appeal dismissed.

The Supreme Court determined that the person should be sentenced to life in prison. There has been repeated petition for retrial. There has been no move, but in 2008, the reanalysis of the DNA was accepted because the concern was accepted that the quality of the DNA analysis done in the past was not good enough, and experts on the counsel side and prosecutor side agreed that the DNA from the crime scene is not from Mr. S. In 2009 in June, Mr. S was released as the picture said from the prison. Mr. Sato, he was the chief counsel for him. Mr. Sato is here today. It was decided that the retrial is to be started. In 2010, in March, he was acquitted finally.

When the case was in front of the first instance and the prosecutor was investigating different cases – offenses. In addition to this murder of a girl, there were two other cases in which Mr. S was regarded to be the subject and he had already made confessions but there was inconsistency to the confessions he made about the two other cases. The court trial was already ongoing for this particular case but for these two other cases prosecutors visited Mr. S and started asking. Perhaps Mr. S, he did not do it. On that occasion, on this particular issue, Mr. S started to deny the confession he made. Then the prosecutor who met Mr. S just listened to Mr. S's denial. Mr. S gave his alibis and he said that, I am not the offender of the case of May 1990. I am not the offender for two other cases. Prosecutor just listened to him. But the next day the prosecutor, investigator came and had a session of interview which Mr. S for this case of murder of the girl. The prosecutor successfully turned Mr. S again into the admission or the confession again.

There was audio recording remaining for this particular session. For the retrial, this audio recording was admitted as evidence. Interaction between the prosecutor and Mr. S, the suspect, were recorded. I think this communication, interaction between the two persons was quite interesting. That's why I decided to analyze the discourse between these two persons in that particular session of interrogation.

There was some interaction, then the prosecutor said, well, earlier you said something very strange and that's why I came here. Mr. S said yes. I think I am going to describe the things on the right hand side later. Ongoing the case of MM, the girl's case which is already indicted. Isn't it sure that you did it? I didn't. Well, I didn't. You didn't? I didn't. Well. The prosecutor did not sound accusative but he sounded very gentle. The suspect said, I didn't. You didn't? I didn't. Well. Then Mr. S started to explain. Can I say something? Expert evaluation. Well, what is it? What type of evaluation?

DNA evaluation. Yes, I think I heard about it. I don't remember anything about it. Well, DNA evaluation showed that the fluid is the same as your fluid. This is what the prosecutor said.

The suspect said, I don't know anything about it. Five seconds of silence of the prosecutor. The suspect said, it's not true. The prosecutor said, how many people can have the same body fluid as yours? Then 5 seconds of silence by Mr. S. Then, prosecutor said, I did not ask you to be dishonest. No words, silence from Mr. S. I didn't ask you to be dishonest. Another 10 seconds of silence of the suspect. At least concerning MM's case which has been indicted, the indictment was not done simply because you admitted. Another silence by the suspect. Not only about your admission this is because of another evidence. Seventeen seconds of silence by the suspect. When you said you didn't do the murder of MM you don't look at me in my eyes. Silence by Mr. S. Earlier yes, when I asked you question earlier, unless you were thinking deeply you looked straight into my eyes. Silence by the suspect. But when you say you didn't do it, you don't look into my eyes, why? Silence 18 seconds by the suspect.

I think you don't need to think about but you understand. Another 10 seconds of silence. After being arrested we went to the Watarase River bed. Wasn't it the first time we were on the same bus? Yes, the suspect said. I was sitting just in front of you. Yes. Wasn't it the first time to go the scene? Yes. When we did the onsite investigation, you explained the scene where you threw away the clothes of MM. At the beginning, the situation you said was different and earlier you said, I don't remember. Then, after listening to the explanation of the place of the body where it was found, you started to say this is where you threw away the clothes. Nobody explained to you about the place you identified. The mass media never reported the details about the place but the place you identified is where the undergarment of

the MM was found. You remember the place. There was a slope and there were trees. Yes. I remember that there was a very sharp slope. I thought this was the place. You said, was it only a guess work? I knew nothing. But what you said was guess is the same as reality. Was it a guess work? I didn't understand. Was it by guess work that you explained that this was the place? Well, I thought that it's about that place.

The prosecutor said, why did you think so? Well, from the bridge there used to be a lot of trees but when we went there no trees withering. That's why I could not find out the place. This is – prosecutor is repeating, asking why the suspect could give the accurate account of the scene. Repeated question again. Why you don't look into my eyes? You always evade my eyes. The suspect started to be weeping. The prosecutor said yes, and then he begins to say, excuse me, in a tearful voice and sobbing sound was recorded. Is that right? He continued to say, forgive me. Forgive me, please. That's all right. Forgive me, please. He was sobbing and said again, excuse me. There was some sniffing sound. The prosecutor began to have admonishing thing.

In such a manner he was driven once again into admitting once again. On the surface presenting a strong evidence such as DNA test result, and on the crime scene examination, the suspect said something which was exactly what was found through the investigation. The prosecutor logically was saying that, you did it. It sounded logical. But from the discourse analysis, there was some trap suspect fell into first in the very beginning of this discourse analysis. Well, a bit ago you said something strange and that's why I came. The prosecutor said something strange, assumed that what suspect said the day before was not true. In the beginning of this interrogation, from the very beginning, the prosecutor assumed, framed that what suspect said before was not right or untrue. This is what I call the introduction of guilty frame. The prosecutor determined from the very

beginning that what suspect said the day before was untrue. It seems as if he was presenting the evidence and trying to get some explanation from the suspect. Still on the surface it seems that he is trying to follow something like a PEACE approach in England and just trying to get information from the suspect. But in reality from the very beginning the prosecutor made up his mind that Mr. S did it. There is no reaction or rebuttal from Mr. S.

Next, about DNA analysis. There is body fluid whose DNA really agrees with yours. The prosecutor was presenting a scientific result. It seems to be trying to logically discuss with the use of DNA test, but DNA test was really unknown back in those days among general citizens. The suspect was told that there was a very good agreement in the test result. There is no way for the suspect to speak back. What is the percentage, how samples did you get? Those are the kinds of questions the suspect could never employ? It seems that the prosecutor is showing a scientific result. Actually, he is almost saying to the suspect that there is disagreement. That really shows that you did it. Then the prosecutor said, I am not saying that you need to be dishonest but for the suspect to be behaving dishonest means that what he said a moment ago was untrue. Still the prosecutor seems to be admonishing him saying that, what you are saying doesn't seem right. But from the communication point of view he is making up his mind what the suspect was saying is untrue. Also, the prosecutor said that you don't look into my eyes.

If having no eye contact is wrong right now that means what the suspect said beforehand while looking into the prosecutor's eyes were when the suspect was disclosing the truth. Therefore, although the prosecutor seemed to be doing some behavior analysis of the suspect, actually the prosecutor was unilaterally concluding that he was being dishonest and he actually did the crime. Then, the prosecutor said, why did you think so, why were you

able to say something which really agreed with the investigational findings? But he didn't commit the crime. On the crime scene, what he was able to do is just to do a guess work because he answered the questions out of guess. Of course, he can explain why he provided such answers but the prosecutor continued to demand answers to his question why you explained that, why you explained that. By so doing the suspect was driven into a long silence. Then, at the end, the prosecutor said once again, you are being dishonest which seems to shake the emotions of the suspect. Then, once again, the behavior analysis, you are not looking into my eyes. The suspect can no longer maintain his calm and he began to say, excuse me, forgive me, forgive me please. But he never said that I did it. He only said forgive me, forgive me please. He never said I did it. But it was more or less taken as an admission.

Overall, what is the structure of communication? For Japanese native speakers perhaps you are able to understand that Mr. S is not good at communication. In other words, he had difficulty dealing with the level of meta-communication. He had some difficulty communicating about what is being discussed. For instance, the very first question the prosecutor mentioned, I heard you say something strange. If you are good at meta-communication you could ask him, what do you mean by strange? Also, why did you say that? Could you explain that? If you are good at meta-communication, perhaps you can speak back to him, well, that's all I can say. If you are good at meta-communication, perhaps he can confront such a prosecutor on the level of meta-communication, but Mr. S is very poor in the level of meta-communication. The prosecutor began to ask questions which can be dealt with only on the level of meta-communication. As a result, Mr. S was driven into silence and was driven into a re-admission of the crime once again.



Those are the traps. If I really doubt lay judges or even a professional judge are able to understand all of those traps if they view only video images. In the process of a trial, how can we take into consideration those subtle matters regarding communication between the two persons?

The other two slides are more or less additional slides which I would like to cover very quickly (slide 15). Japanese Supreme Prosecutor's Office came to ask Professor Naka's group to examine and analyze the process of interrogation and ask for our advice. This is what we have understood from this re-examination about the kind of communication in the process of interrogation. Some of the features are really Japanese. This is an analysis of the questions from the prosecutor. One type of question is rapport, to build a good relationship with the suspect. Some questions are directly related to the crime. Another kind of indirect questions which are more or less indirectly related to the crime such as how the suspect went to the crime scene, and the peripheral questions which are not related to the crime alone for instance the family environment or family structure, and general questions which have nothing to do with the crime or with the suspect. The last kind of questions is the meta-communication questions.

In what stage of interrogation, how many of those different kinds of questions are asked? This is a very interesting case. The interrogation style is not at all coercive even by PEACE standards. This is not a bad interrogation style at all, but there are very uniquely Japanese items. For instance, the interviewer began to ask questions, especially peripheral questions and then more indirect questions, and then toward the end more direct questions. I think this is peculiarly a Japanese way of asking questions. For instance, if your husband has an extramarital affair, the wife would say, well, I found a handkerchief in your pocket, I wonder what that was. In such a manner usually the interviewer begins to ask unrelated

questions and then direct questions to draw confessions, admissions from the suspect. That's one very Japanese way of asking of questions.

Another is some cultural background to Japanese way of interrogation. Interviewer's manual or actual structure of communication of interrogations are what we examine (slide 18). It seems that Japanese more or less demand the suspect to feel sorry about what they did, what they think they did. Rather than trying to get information first, first they want the suspect to say, I feel sorry. Then, Japanese interviewer begins to draw information. There is a possibility that Japanese interviewer cannot really believe that the confessions, the admissions are true unless they get the word "I am sorry" from the suspect. As a result, they are not really good at PEACE style interview. I think this is a very peculiar communication framework for the Japanese.

Now, audio-visual recording (slide 19). If we employ psychological analysis, perhaps we are able to find some subtleties in the interaction between the two people and also Japanese characteristic of interviewing such as starting from the peripheral questions, such a feature can also we further elucidated if the audio or video records are well analyzed. I think it's important to develop new innovative interrogation techniques suitable to Japanese in Japan. Perhaps it's not enough for us to just follow and adopt Western interviewing skills. Having said that, I wonder to what extent such sort of interaction level or analysis is feasible when audio-video materials are examined in trials.

If a video image is shown in the court without a psychological subtle analysis, the late charges may feel that the suspect actually did it as I show a case from Ashikaga case. Thank you.

Hiroshi Nakajima

Thank you very much. That was the lecture from the psychological perspective from Mr. Takagi.

国際シンポジウム「可視化と取調べ：新しい時代の取調べ技法」報告

取調べはどのように失敗するのか？  
～録画・録音記録を用いた相互行為分析の可能性～

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録音・録画記録によって取調べは「見える」ようになるのか？

2

事例1：足利事件における検察官取調べの録音記録

時間	録音記録の状況
1991.11.22	検察官と被疑者の対峙（足利事件）
1991.11.22	検察官と被疑者の対峙（足利事件）
1992.2.7	検察官と被疑者の対峙（足利事件）
1994.4.28	検察官と被疑者の対峙（足利事件）
1996.2.9	検察官と被疑者の対峙（足利事件）
2000.7.17	検察官と被疑者の対峙（足利事件）
2002.12	検察官と被疑者の対峙（足利事件）
2004.2.18	検察官と被疑者の対峙（足利事件）
2006.10	検察官と被疑者の対峙（足利事件）
2009.5	DNA鑑定による検定結果
2009.6.5	検察官と被疑者の対峙（足利事件）
2009.6.26	検察官と被疑者の対峙（足利事件）
2010.3.26	検察官と被疑者の対峙（足利事件）



3

右側フレームの導入

検：（沈黙・約5秒）ところで前にね、君からちょっと変なこと聞いた  
んでね、今日来たんだけれども。  
被：はい。  
検：（沈黙・約5秒）今、起訴している、ね、MMちゃんの事件。  
被：はい。  
検：（沈黙・約5秒）あれは、君がやったことに間違いないんじゃない  
のかな？  
被：違います。  
検：ええ？  
被：・・・違います。  
被：違う？  
被：はい。  
被：ふーん。

録音録画（音声）をもとに作成

4

被：それでなんか、いいですか？  
被：うん。  
被：鑑定ですか。  
被：うん。  
被：自分にはよくわかんないんですけど、なに鑑定っていいましたっ  
け？  
被：DNA鑑定。  
被：そんなこと聞いたんですけど、でも自分じゃ全然覚えないうん  
です。  
被：だけど、DNA鑑定で、君どね、君の体液と一致する体液があるん  
だよ？  
被：全然それ、わかんないんですよ。本当に。  
被：（沈黙・約5秒）え？  
被：絶対、違うんです。  
被：違うんですけどって言ったってさ、え？君と同じ体液持ってる人が何人  
いると思ってんの？  
被：（沈黙・約5秒）

録音録画（音声）をもとに作成

5

証拠品の提出と手配の指示

被：僕はするくなれと言ったわけじゃないんだま？  
被：（沈黙・約8秒）  
被：するくなれと言ったわけじゃないんだよ。  
被：（沈黙・約10秒）  
被：少なくともね、起訴してるあのMMちゃんの事件については、君が  
認めたから起訴したっていうわけじゃないんだま？それだけのこ  
とじゃないんだま？分かる？  
被：（沈黙・約3秒）  
被：君が認めたっていうことだけじゃなくて、他に証拠があるからだま  
被：（沈黙・約17秒）

録音録画（音声）をもとに作成

6

検：君がMMちゃんの事件違うって言う時、そういう話をする時は僕と目を含ませないでしようくん？

検：（沈黙・約10秒）

検：前にね。

検：はい。

検：僕がいろいろ聞いたときには、いろいろ考えて下向いたりねえ。そういう時は別として、僕と目を含ませてたじゃないの。

検：（沈黙・約5秒）

検：違いますんで、君否定するときは、僕と目を含ませてないね。なぜなの？

検：（沈黙・約18秒）

検：考えていくほどでもないと思うんだけど、分かるね？

検：（沈黙・約10秒）

行動分析を依頼した理由

原稿簿（case0）をもとに作成

7

検：睡ってから、渡良瀬川の河川敷に連れ出されたっていうのは、検証の時が初めてでしよううあのバスでみんな一緒に行ったわけ。

検：はい。

検：君のすぐ前の席に僕が居ってたね？

検：はい。

検：あの時が初めてだね？

検：はい、そうです。

検：そうだったよね。

検：はい。

検：で、検証した時にね。

検：はい。

検：MMちゃんの服を捨てたという場面、君が説明したでしょう？

検：はい。

検：最初はずっと付近の様子が変わってね。

検：はい。

検：よく分からないと言って遠うところ説明したっていうけれども、後で死体がここにあったんだと教えてもらってから。

検：はい。

検：ね、あ、じゃあ、捨てたのはここだと言って説明したでしょう？

検：はい。

検：君が説明した場所については、誰から教えてもらったというわけじゃないよね？

検：ええ。教わってません。

証人等の理由書

原稿簿（case0）をもとに作成

8

検：で、君が説明した場所というのは、そのすぐ下から、MMちゃんの平香が見えられてるんだよ。あんな狭い場所まで新聞には出てなかったはずなんだけど。

検：自分は、あの、河川敷から下りて、それで、ずーっと行って、で、坂がありますね。

検：うん。

検：坂があった、それで、確かに左側に木があったと思いますけども。

検：うん。

検：車とか、木ですとか。

検：うん。

検：で、下がなんか、なんていうんですか、下がなんか落ちそうな感じがあったと思うんですけど。

検：うん。

検：自分はそのへんだと一応あのお、話してみたんです。

検：一応話してみたっつたって、当てずっぽうに話したの？

検：全然わかんなかったんですよ。

検：わかんないのがう、ねえ、実際の事実どう、狂いがないわけだ。当てずっぽうで話したわけ？

検：全然分かんなかったもんで。

検：いやだから、分かんなかったんで、当てずっぽうで説明したの？

検：はい、だいたいあのへんだと思ってます。

証人等の理由書

原稿簿（case0）をもとに作成

9

検：何で？何でそう思ったの？

検：あの、前は、あの、橋の上からですか、橋の上から見てると、木がいっぱいあったんですけども、その時はあんまり木がなかった・・・検れいたっていうから、そういうふうになってたんです。それで分かんなかったんですよ。

検：橋の上からって、そこまでわかった？

検：いやそうじゃなくて、あのお、前はあの、車ですか、グリーンとか。

検：グリーン？

検：グリーン？色の、いっぱいありましたけど、それで、その当時は、もう、なんていうんですか、検れて、その、分かんなかったんです。

検：わかんなかった、検れて、分かんなかったけどけれども、ねえ、だけど、死体のある場所教えてもらってからは、ビックリした、位置じゃないの？捨てた場所っていうのは。

検：（沈黙・約35秒）

証人等の理由書

原稿簿（case0）をもとに作成

10

検：で、コンクリートの境府上ね。省観めて、それで選ぶときに、斜面で一回ずらしたとか、説明したでしょう？

検：はい。

検：で、靴が脱げたなんて説明もしましたよう？

検：はい。

検：なんでそんな説明したの？

検：（沈黙・約6秒）

検：そんな説明するの要はあったの？

検：（沈黙・約12秒）

行動分析を依頼した理由

原稿簿（case0）をもとに作成

11

検：どうなんだい。ずるいじゃないか、ね。

検：（沈黙・約9秒）

検：なんで僕の目を見て言わないの、そういうこと。さっきから君は、僕の目を一瞥も見えないよ？

検：（沈黙・約10秒、涙ぐんでいるような声）

検：うん？

行動分析を依頼した理由

原稿簿（case0）をもとに作成

12

彼：（沈黙・約18秒。その後涙声で）ごめんなさい、すいません。  
 検：電だったの？  
 彼：（沈黙・約4秒。すすり泣くような声）  
 検：そうだね？  
 彼：（涙声で）ごめんなさい。勘弁してください。勘弁してください。  
 検：いいから。  
 彼：（泣き声を出しながら）勘弁してくださいませ。  
 検：うん。  
 彼：（泣きながら約3秒沈黙。その後涙声で）すいません。（鼻をすする音）  
 検：彼はね、本当のことを聞きたいっていう言葉を何回も言うよ彼は。  
 彼：（涙声で）はい。  
 検：ね。わかんないこともいっぱいあるから。  
 彼：（涙声で）はい、すいません。  
 検：それは言う。言うけどね、嘘をつけていうことじゃないんだよ彼は。  
 彼：はい。（鼻をすする音）  
 検：で、僕に、僕に、別に聴いたら怒るとか、そういうことじゃないけども、ただ、本当にね、ね、その外、なんていうかな、人を救めたらよかったら、ね、そのことを本当に反省してもらいたいと思うわけ。  
 彼：はい。

※検察側（検）をもとに作成

13

**菅家氏＝メタコミュニケーションの困難**

→フレーム思考の困難  
→被害への感情の困難  
→不適切な質問への批判の困難

虚偽自白への再転落

取調官＝証拠と論理を用いた自白獲得型のアプローチ

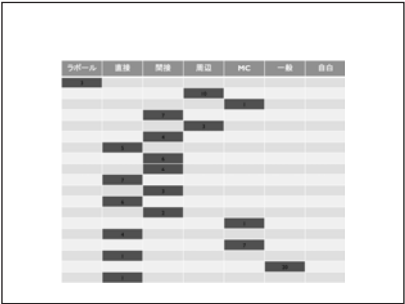
→教育フレームの導入  
→科学憲法的原則を喚起した断定  
→取調を喚起した断定  
→行動動機を喚起した断定  
→吃音困難な理由質問

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**事例2：ある検察官取調べにおけるコミュニケーションの展開構造の検討**

おさげり	空欄	例
ラポール	事前準備や良好な関係づくりのために行われる取調官の発言	疑念の許諾をとる、権利の説明
直接事項	本件犯行と嫌疑者の結びつきに直接言及する取調官の発言	証拠を多して犯行との結びつきを問いつす
間接事項	本件犯行と嫌疑者を間接的に結びつける事項に言及する取調官の発言	犯行現場への取調を導く
周辺事項	本件犯行とは直接関係のない嫌疑者にかかわる事項に言及する取調官の発言	嫌疑者の家庭環境について尋ねる
一般事項	本件犯行と直接関係のない一般的な事項に言及する取調官の発言	刑罰の種類について説明する
メタコミュニケーション事項	コミュニケーションの調整や管理のために行われる取調官の発言	「話したくない」という嫌疑者に理由を確認する

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**日本型取調べのコミュニケーション枠組み（仮説）**

	論証	実証
反省	日本型の取調べ	
情報		PEACEアプローチ

・八何の原則による待付  
・意図・動機・理由の重視

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取調べの録音・録画記録によって取調べは「見える」ようになるのか？

YES → 微細な相互行為過程によってもたらされる失敗の発見

日本型取調べのコミュニケーション構造・枠組み  
日本型取調べを支える文化的枠組み



日本における取調べ技術の向上・新たな取調べ手法の開発へ

?? → 実際の裁判の過程で微細な相互行為レベルの失敗に気づくことができるのか？

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## 文献

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Takao Fuchino (Ritsumeikan University)

Hiroshi Nakajima

Professor Fuchino is going to discuss from a different perspective.

Takao Fuchino

I am from Ritsumeikan University. My name is Fuchino. Good afternoon. I would like to talk about the current situation as well as the issues related to the video and audio taking from the legal perspective. The issues have been already discussed, legal inherent issues and the issues and challenges which have to be solved together with the psychologists. Those are the joint issues.

Let me now start. Probably in the modern democratic nations, there is no nation which can deny the right of the defendant and suspect of the right of silence. That has to be fully guaranteed internationally. United Nations' International Covenant on Civil and Political Rights, Article 14-3 describes clearly the privilege against self-incrimination. In Japan, Japanese constitution stipulates no person shall be compelled to justify against himself in the Article 38-1. But in the actual criminal procedure right to silence is destined to be in the risky situation to be infringed. The suspects as they involve in the investigative procedure in criminal courts, they are required, demanded in many ways through the various threats and coercion to make a confession. Such pressures to the suspect to make a confession is not only done by the police or prosecution, there is the newspaper articles written by mass media or demand for a policy by victims. There are social pressures over the suspect as well. But the biggest of course pressure and



restraint is given by the police or the prosecutor over the suspect at the time of the interrogation. Especially while they are arrested and detained the interrogative would give a lot of threats and coercion.

In this aspect, interrogation while they are detained, they are sometimes threatened, yelled at, shot with the questions for many hours, in extreme cases inflicted with physical assaults. As a result, there is the infringement of the right to silence of the suspect. That's known to us empirically. Because of that in order to prevent that from happening in reality it is not adequate to set the rule of guarantee of the right of silence. We have to take the measures so that we would be able to prevent that from happening. It is necessary to protect in reality the right of silence. There has to be the guarantee precautionary institutional measurement. In order to prevent the illegal and unfair interrogation, the most appropriate is the right to the presence of attorney. Together with this, audio and video recording is a must, is considered to be effective extremely. In order to guarantee effectively the right to silence, I believe this is the necessary, indispensable measure.

In many countries, audio and video recording spread is considered to be the inevitable path for the appropriate criminal procedure. In the contemporary world, I believe it is now the high time to introduce audio video recording because it has the universal value. That has to be also shared in Japan when we say it has the universal value, especially in Japan because of the structural issue of the criminal procedure of Japan much more than the other countries. There is the high need for Japan to introduce audio and video recording because in the actual criminal procedural practices, for the detained suspects there is the actual obligation to accept the interrogation (slide 4). During the interrogation, I do not have intention to make the statement or confess. Even if they execute the right to silence, still the

interrogation continues. Interrogators would continue to convince them to confess to the suspect. It is allowable. The precedents in Japan suggest that there is infringement of the right to silence through those interrogations. Because of that, interrogators are the ones who call it a day until they say this is the end of the interrogation. For many hours, there will be continuation of the interrogation asking them to confess. Of course, there are tricks and strategies to convince them to confess.

In reality, in the major cases even today more than 10 hours interrogation is not uncommon. As a result, there are a lot of retrial cases of the capital cases such as Menda, Zaidagawa, Matsuyama, and Shimada, Fukawa, and Hakamada where the suspect is forced to make the false confession and resulted in miscarriage of justice.

Furthermore, there is another feature vested in the Japanese interrogation. The interrogation for the suspect who is not detained and who is not arrested is possible just like the ones given to the detainees, not much difference in the level of the interrogation in Japan (slide 5). Of course arrested and detained ones, there is no obligation to accept. But as long as they do not control and restrain the right if the suspects accept the interrogation it is allowable for the interrogators to convince them to stay with them in the interrogation process. As a result (slide 6), in Takanawa Green condominium case, there was the voluntariness on the part of the suspect to come to the police. But they were retained and interrogated for 4 days in a row. For 23 days, there was the voluntary interrogation. In Shibushi case, close to 1-month interrogation was carried out including the midnight interrogation. One after another there are incessant cases of such. This particular reason regardless of the state of the arrest until they are fully restrained the interrogation would continue in this interrogation for the suspect, especially in Japan.

Because of this situation, audio video recording is needed because this can contribute to the prevention of illegal interrogation which would make the suspect lose the freedom to make the determination whether to confess or not. But in the legislative council in the special subcommittee, this audio video recording was debated. The final draft was put on the table which is far from the idea of introduction of audio video recording (slide 8). In the final draft, the entire audio video recording should be applied only for the lay judge cases except the ones done by public prosecutors. Saiban-in lay jury cases accounts for 2% to 3% of all the resident retention cases. Out of all the cases, it accounts for 0.1% to 0.2%. Even in the detained case, it accounts for 3% in maximum. The lay judge cases whether the entire video taking is allowed, that is not the case. In the Japanese criminal procedure before the arrest at home they would be interrogated, very similar to that of the detention case, very tenacious and persuasive process to get the confession.

Also, the typical case of the lay judge case is homicide. Because of the operation of the criminal procedure, in the case of homicide, it is not customary to arrest the suspect starting from the homicide charge. They would be charged and brought to the police under the abandonment of corpse. Therefore, for the entire audio video recording would not be the application. While they are detained and abandonment of corpse, of course homicide case would be interrogated. After 23 days, they are arrested under the homicide case where the audio video recording would be started.

Even for the lay jury case for the abandonment of corpse case followed by the homicide would not be the application. There is also the exception for the audio and video recording. This exception case is very ambiguous and arbitrary. For example, if there is no proof that you would be able to get the confession without the audio video recording, very ambiguous condition. If

the police admit that there is less opportunity for getting the confession in the audio video recording, so the police is the one who makes the decision. Instead of depending on the psychology experts, this partial introduction is not going to be effective unless we apply this in the entire process. For the parts which are not recorded, there is to deterrence effect for illegal and unfair interrogation. On the part of the interrogation there is no disincentive for them not to be excessive in the interrogation. If it is not recorded partially they try to put the pressure unfairly on the suspect and get the confession and then start the video recording. There would be the reproduction of the confession starting from that point on onwards. This is video recorded. There would be further promotion of unfair interrogation with the concealment of the facts. In order to have effective interrogation, it is necessary to promote the audio video recording in the entire process.

I identified many problems but this will not bring us closer to the solution of the problem. Suppose that the whole audio video recording of the suspect interview is to be implemented, especially it's recommended for the lay judge cases, then what is going to – what will come next, what are the things that we have to deal with here? We need to have support from the psychology experts. We need to see collaboration between the law and psychology to find better solutions to the problems (slide 11).

Once we have DVD recording of suspect interviews in the following criminal procedures, it can be used in two cases. One is when there is an issue about voluntariness of the confession made in the interview. The voluntariness of the confession is assured only when the right to silence is secured for the suspect, and the suspect had the freedom to make a decision whether or not to give a statement. In that case, DVD can serve as the evidence.

Use of DVD in this way would have a big meaning when we consider the

current reality of the criminal procedure in Japan. I earlier said that the noncustodial suspect sometimes endured 4 days in a row in a session, or the custodial suspect had to stay in a session for 23 hours. Surprisingly, both of these cases were regarded to be legal by the court. In those cases, the court decided that there was no infringement of the right to silence. The court confirmed that the suspect had the freedom to make a decision as to whether or not to make the statement.

In the case of the custodial suspects, it's not rare that more than 10 hours of session continuing for 20 days or more. Again, unless there is a clear demonstration of assault or threat, the voluntariness of the confession is not denied by the Japanese court. But if the DVD becomes available, we can look at scenes of the interview. It would be quite difficult to say that the confession is regarded to be voluntary if the situation in the session is quite different. Here we need support from psychology because psychology can tell us in what situation, at what stage people are driven into a corner and start to lose control of self-decision-making about whether or not to make the statement. That psychological finding would help us in deciding the admissibility of the confession. Instead of relying on the impression made on the part of the judges, I think the admissibility of the confession will be determined based on the facts. It's possible that we ask the psychologist to conduct expert evaluation. The results of the evaluation by the psychologist can be used for the decision of the admissibility. We need to think about what are the legal systems or legal theory necessary to make it happen.

However, this use of DVD to decide admissibility of the confession may have a negative impact, although the DVD is presented to lay and professional judges in order to make a decision about the admissibility, although the DVD is to be viewed in order to understand the overall feeling or the environment of the interview. But the DVD images also show the scenes in

which the suspect made confessions or statements. It's quite difficult for judges, lay and professional, not to think about the credibility of the statements made by the suspect.

There is a concern that certain conviction may start to form in judges. We need to learn from psychology. Is it only a concern or is it the real concern that can happen in reality? If it's clear that the use of the DVD for the purpose of admissibility may have the risk of causing or deforming conviction about the credibility of the confession, then we need to think about whether it's possible to separate these two different judgments, or if there are particular ways of showing DVD to make sure that the decision is focused only on the admissibility. Again, here we should be able to get support from psychology.

Now, the DVD recording of interview can be used as evidence in the criminal trials in another way that is the use of DVD in order to make a decision about the credibility of the statement made (slide 14). When the statements are made in the interview, the recorded confession or the denial will be demonstrated or shown to the judges, lay and professional, in order to make a decision about whether or not the accused did the crime or not. In this way, we do identify two legal issues. First of all, the way the statement is made by the suspect in the recorded DVD may have excessive impact on the part of the lay and professional judges. The impact may be much larger than the intrinsic probative value possessed by the statement.

There is a concern that the judges may overvalue or undervalue the probative values presented by the statement. If the impact gained from the images would lead to overvaluing or undervaluing of the probative values of the statement recorded and if it leads to the forming of convictions based on that, over-evaluation and under-evaluation, then in terms of law that

kind of evidence must be regarded as dangerous evidence that can lead to prejudice or bias which would jeopardize the fact finding. In that case, the legal relevance must be denied according to the theory of criminal procedure. That kind of evidence should not be accepted.

Without increase or decreasing from the probative values intrinsic to the statement made in the interview, to make that the correct judgment can be done by the lay and professional judges, we need to think about the appropriate angle to shoot the scene and the appropriate way to show the audio-visual recorded sessions. Here again, we need help from the psychology. Then, we can decide whether it's appropriate to use audio-visual DVD in order to make a decision about the credibility of the statement by the suspect.

Again, here I find a more fundamental issue which is related to the basic structure of the criminal procedures in Japan (slide 15). In Japan, the principle is that the direct system based on the open court trial. This actually represents the basic philosophy of the criminal procedures in Japan. This principle says that the oral evidence and all evidence must be presented directly to lay and professional judges in the court where the fact finding is done by the judges. By presenting evidence directly to the judges, judges can make correct formation of conviction which leads to the correct fact finding. This principle or the Japanese system has been established concerning all evidence when the statement is given in front of the judges in the court, it's quite acceptable. But if the statement is made outside of the court during the investigation in the interrogation room, vis-à-vis investigator, then this should not be appropriate as evidence used for the criminal trial. This is the issue of *chosho saiban*, the trial by dossier or *chosho*, official document.

So far the issue about the trial based on dossier was due to the distortion of the written documents which does not reflect the information given by the statement correctly. But actually we have more essential issue. Even if the statement was recorded in a written document correctly – if the DVD shows that the statement made in the interview was presented as evidence without distorting the information, still the use of the statement, oral statement made outside of the court should not be qualified as evidence because the principle is that the statement orally must be made in front of the judges directly. In order to make sure that the due process is provided to the suspect, it's quite important. This is something separate from the importance of truth finding.

When a suspect gives a statement even if the suspect had complete control as to the content and as to whether or not to make a statement, still during the investigation any statement even in the presence of counsel, no strategy about the defense has been made on the part of the suspect and his or her counsel because as suspects, they have not received any discovery of the evidence, the suspect and his or her counsel – no material to decide about the defense strategy. But the statement made in that stage is to be used as evidence in a criminal trial.

There is a danger that complete execution of the right to defense is quite difficult on the part of the suspect or the accused. In order to secure the right to defense on the part of the accused, the statement must be made by the accused or the suspect with a strict supervision by the counsel. That should take place not in the interrogation room but in front of the judges in the open court. This is the philosophy of the criminal procedures in Japan.

As to how should we present evidence, meaning the audio-visual recorded sessions to judges so that they can form correct conviction about the fact



finding. I am sure that we can learn about it from the psychology here (slide 16). I assign a lot of importance about the collaboration between law and psychology. The unquestioned assumption in the Japanese criminal procedure law is that it's best to have oral statement by the suspect in front of the judges. But there has been no questioning. This assumption has been taken for granted. It's possible that there is no psychological foundation to say that this has been the best way. We need empirical data so that Japan can make decision as to whether we should maintain the current system of direct open trial system. Based on the input from psychology, maybe we are able to say whether or not the current direct open court system is quite important because this has the normative value to ensure the due process for the suspect. Perhaps this is what we start to see when we are going to have collaboration with psychology. That's about the current issues and future perspective of the video recording of suspect interview in Japan. Thank you very much.

Hiroshi Nakajima

Thank you very much for your presentations from two perspectives, law and psychology. We listened to the presentations.

## 日本における 取調べ可視化の現状と課題

淵野貴生(立命館大学)

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## I 取調べ可視化の普遍的意義と日本における固有の問題状況

- i 普遍的意義
  - 基本的人権としての「黙秘権」保障
    - 国連人権B規約14条3項(g)
    - 憲法38条1項
  - ⇔
  - 現実の取調べでは、しばしば侵害される危険
    - ・大声で怒鳴られる
    - ・脅される
    - ・長時間の質問攻め
    - ・有形力の行使?

2

## I 取調べ可視化の普遍的意義と日本における固有の問題状況

- i 普遍的意義
  - 黙秘権を実効的に保障できるような予防的措置の必要性
    - ↓
    - ・取調べへの弁護人の立会い
    - ・取調べの可視化

3

## I 取調べ可視化の普遍的意義と日本における固有の問題状況

- ii 日本における固有の問題状況
  - 逮捕・勾留されている被疑者の取調べ
    - 取調べ受忍義務肯定の実務
  - 取調べの開始→黙秘権の行使→自白の説得
    - 黙秘権の行使→自白の説得→...
    - ⇒取調官がやめるまで取調べが続く
    - ↓
    - 虚偽自白と誤判の発生
      - ～免田、財田川、松山、島田の死刑再審四事件
      - ～布川、袴田事件

4

## I 取調べ可視化の普遍的意義と日本における固有の問題状況

- ii 日本における固有の問題状況
  - 在宅被疑者の取調べ
    - ⇒任意取調べという名目での説得
  - 取調べの開始→黙秘権・供述拒否権の行使
    - 自白の説得→黙秘権の行使→自白の説得→...
    - ⇒被疑者の意思を完全に制圧するまで取調べ可能

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## I 取調べ可視化の普遍的意義と日本における固有の問題状況

- ・高輪グリーンマンション事件
  - ～4泊に及ぶ任意の取調べ
- ・平塚ウェイトレス殺人事件
  - ～23時間の徹夜にわたる任意の取調べ
- ・志布志事件
  - ～1か月にわたる、連日、夜9時、10時までの任意の取調べ

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## I 取調べ可視化の普遍的意義と日本における固有の問題状況

- ii 日本における固有の問題状況  
被疑者に対して、強度の供述圧力がかけられる  
↓  
取調べの可視化によって取調べの適正化を担保する必要性が一層高い

7

## II 法制審議会・新時代の刑事司法制度特別部会試案の問題点

- i 全過程可視化対象事件の範囲  
裁判員裁判対象事件に限定～全勾留事件の2～3%程度

8

## II 法制審議会・新時代の刑事司法制度特別部会試案の問題点

- ii 裁判員裁判対象事件も全過程可視化にならない可能性  
・逮捕前の任意取調べ部分は含まれない  
・殺人罪における逮捕・勾留の運用  
死体遺棄罪で逮捕・勾留～裁判員裁判非対象事件  
↓  
殺人罪で逮捕・勾留  
・可視化除外事由～あいまいな基準  
～判断者が捜査機関なので恣意的運用の危険性

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## II 法制審議会・新時代の刑事司法制度特別部会試案の問題点

- iii あるべき可視化  
部分的可視化の効果？  
→録画されない部分に違法な取調べ抑止効なし  
→追及的取調べを止める動機付けなし  
→被疑者を完全に屈服させた後の「再演」のみの可視化で違法な取調べを隠蔽するおそれ  
↓  
任意取調べの段階からの例外なき全過程可視化が必要

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## III 可視化DVDの証拠としての利用 ①～任意性判断目的

- i 積極面  
⇒裁判官・裁判員の判断を取調べの実態（＝事実）に即して行わせることが可能に  
【心理学から学ぶべきこと】  
・取調べを受ける者の心理・精神状況  
・取調べのどの段階で、供述するかしないかの自由な決定ができなくなるか  
↓  
可視化DVDの鑑定  
→任意性判断に積極的に利用できる法制度・運用の構築

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## III 可視化DVDの証拠としての利用 ①～任意性判断目的

- ii 問題点  
取調べの雰囲気や取調べのやり方だけでなく、被疑者の供述内容も認識  
⇒供述の信用性についても心証を取ってしまわないか？  
↓  
証拠能力判断と証明力判断が峻別されないおそれ

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### Ⅲ 可視化DVDの証拠としての利用

#### ①～任意性判断目的

##### 【心理学から学ぶべきこと】

- ・供述内容を認識して、供述の信用性について心証形成しないことは可能か？
- ・任意性の点に限定した心証形成を保証する可視化DVDの見方は？

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### Ⅳ 可視化DVDの証拠としての利用

#### ②～信用性判断目的

- i 映像による過剰なインパクト  
供述が本来有している証明力を越えて、過剰に信用または過少に不信用の危険  
↓  
予断・偏見に基づく評価を招くおそれのある証拠  
⇒ 法律的関連性の否定
- 【心理学に学ぶべきこと】
  - ・供述の証明力を適正に評価できる録画アングル
  - ・裁判官・裁判員へのDVDの見せ方

14

### Ⅳ 可視化DVDの証拠としての利用

#### ②～信用性判断目的

- ii 公判中心主義・直接主義との関係  
証拠は、公判廷で、裁判員・裁判官の面前で直接、提供すべき  
公判外供述は公判での証言・供述  
← 正しい心証形成、正確な事実認定を行う方法  
← 防御権保障～証拠開示を踏まえた被告人の防御方法の決定  
何について、どの段階で、どこまで供述するか  
＝手続的正義（適正手続）の保障

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### Ⅳ 可視化DVDの証拠としての利用

#### ②～信用性判断目的

- 【心理学に学ぶべきこと】
  - ・裁判員・裁判官にとって、正確な事実認定にもっともふさわしい証拠の提示のされ方とは？  
↓
- 【法学が受け止めるべき課題】  
公判中心主義・直接主義は、真実発見とは切り離してでも、守るべき手続的正義かどうかを原点に立ち返って検討すること

16

Hiroshi Nakajima

Now, I would like turn to Mr. Kosakai with Osaka Bar Association, lawyer for comments.

Hisashi Kosakai

Thank you very much. My name is Kosakai, a lawyer practicing in Osaka. Two speakers have given us very interesting presentations. I am not sure whether my comments are directly relevant to their presentations, but I have three points I would like to make. First is about the special subcommittee decision, about debate and discussion concerning their decisions. Secondly, as Professor Fuchino mentioned we have long, long way to go for the full and complete audiovisual recording and what is the process we can take toward that complete audiovisual recording. Thirdly, after the complete audiovisual recording is achieved, what are the perspectives we should have toward the future? But I really have not reached question number 3 in my mind yet. So, my comments are rather incomplete.

Now, in the 30th meeting of the special subcommittee of the Judicial Reform Council, they decided to suggest the introduction of audiovisual taping. That's on the way toward implementation. Professor Fuchino in his talk mentioned that this audiovisual partial recording is not at all satisfactory. Of course, I am not taking side with the government and authorities as I think his criticism is really sharp and needs to be taken. Only 2% to 3% of the trial cases are represented by lay judge cases. That is the scope of audiovisual recording as suggested. But on June the 16th, Supreme Court issued a notification for lay judge cases or special cases investigated by the prosecution agency. Besides this, all cases, especially those custodial

suspects which might go into the official trial and also when the audiovisual recording is warranted, those cases shall be added later on as an additional scope of audiovisual recording. As a third step, the witnesses interviews may also be audiovisual recorded. That notification was issued by Supreme Court on June the 16th toward October the 1st.

There are some issues I would like to raise. Even for 2% to 3% of all the cases, all the interrogation including the police interrogation are going to be audiovisual recorded. I think this has very important implications. Even for cases which are outside the scope of audiovisual taking and this is something mentioned at the special committee, even for cases outside the scope, the burden of proof is going to be quite severe and heavy. I am not sure whether the person used the term 'preponderance of evidence' but anyhow the proof of burden is going to be very heavy, even for cases which are right now outside the planned scope of audiovisual recording. Investigators, members of the special committee, those cases outside the scope for the future need to be considered with the same objective of what we have done so far. The credibility of evidence needs to be really assured. Only when that is assured, the statements of images can be admitted in the court. The Supreme Court said yes to these questions.

All of such audio video recording issues had some practical questions to be dealt with. As mentioned, there are some exceptions to the required audiovisual recording. There can be many ways to interpret what is understood as exceptions. But I think the lawyers can do a very good job in trying to limit exceptions to audiovisual recording. That means we as defense lawyers need to do a good job and we need to expect the court to do their part.

Yesterday, chief prosecutor of the attorney general of the prosecution agency

of Japan had a press conference. He stated that the audiovisual recording will be implemented for different levels or degrees of level. But as he so clearly stated in public I think we are in the direction of expansion of audiovisual recording of cases. As Professor Fuchino mentioned, there are some issues specific to Japan. There are some legal issues as he explained but by one century or on the level of one century or 20th century there are some cultural issues, for instance, making the suspect to feel sorry during the interrogation.

Profession Dixon raised a very important question, and there are some specific cultural features which I think are very typical for non-Japanese to really understand. But under such difficult circumstances, I wonder how such a cultural thinking is going to change in the future. In Japan, I think the interrogation techniques so far have been more severe and difficult than the Reid techniques. But as Professor Naka mentioned earlier we hope that with the use and introduction of audio video recording, the changes are gradually going for the better. We have been demanding the complete recording, and there has been a strong opposition from the prosecution, but on the other hand, there have been some changes and revisions to the interrogation manual in police and the prosecution which has invited academicians for advice. In the reality of interrogation, there are changes.

How in practice interrogation and the use of audiovisual taking is going to go forward is what we would like to really closely pay attention to. How the complete audiovisual recording is going to be realized? For some years to come, I am sure that we are going to continue to be confronted with challenges. There has been a significant recording but it's still a partial audiovisual recording. But even with that level some psychological analysis is possible as reviewed by Professor Takagi.

Our practice as a lawyer is going to enter into a new era. In order for investigator to do a good job in collecting evidence what sort of changes are necessary and what can be done to properly evaluate the outcomes, the findings of the investigation? I think that this is where we need to do our good understanding of evaluation. The perspective bias depending upon the view angle of the camera, as we are going to see more audiovisual images, those are some of the very practical questions we the lawyers also need to work with.

The remaining question is concerned with what Professor Fuchino mentioned. The statements made out of a court even if they are collected in a proper manner, such statements made out of the court are still admitted in court if they are not hearsay. How to deal with the statements made outside the court in the trial process is I think another question. If information is gathered properly and if they can be evaluated, those are two important preconditions, then the open trial centered principle may not be the future we are moving ahead. That may change in the future. Thank you.

Hiroshi Nakajima

Thank you very much. Without further ado, let's move into the question and answers. When you ask a question, please identify yourself with your name and affiliation and please identify to whom you are addressing the question. Anybody who would like to take the floor? Yes, please.

Questioner 1

I'm A from Osaka Bar Association. I have a question to Mr. Kotaro Takagi. Towards the later part of your presentation you have to think about how we are going to deal with the uniquely Japanese type of the interrogation. I have a concern about that. If we choose the different path, we might end up with a terrible, worse method of carrying out the interrogation placing



ourselves in the Galapagos, isolated type of doing things. What is your image of the uniquely Japanese interrogation process?

Kotaro Takagi

Japanese interrogation process, the reason why I talked about this is, as we discuss how we are going to deal audio and video recording is the introduction of the scientific ways of interrogation. The templates can be seen in many places. Information gathering type of the PEACE approach, that is one thing or one model we are able to learn from. Public prosecutor's office and the police officials are now gathering those data. As for PEACE, from the cultural psychological perspective, for example, in the beginning there is the confrontation. You are guilty, that's what I think. You have to explain yourself. Just like the sports, it's not the – there is the rule and there is communication. Probably, it is similar to sports if I may use.

Questioner 1

If we are going to proceed public prosecutors, suspects, or the police, if they find themselves all of a sudden in the adversary of confrontational communication, that is something I have to question.

Kotaro Takagi

No. Whether we are going to go forward to PEACE approach which is desirable if we are going to go forward, in the cultural setting of the Western countries that was designed and nurtured so. If we are going to introduce that in a Japanese setup, probably it's better to study the communication culture and interrogative communication. That will have to be fully analyzed where we are able to introduce the Western type of the methodologies. We are regarded as a country to import many things but we cannot transport things as they are without any modification. From the traditional interrogation methods, I believe as the basic fundamental data,

it is necessary to analyze how we have been doing in the unique interrogation. That is what I meant.

Hiroshi Nakajima

Thank you very much. Next person please.

Questioner 2

May I remain seated? I am G, a member of Osaka Bar Association. I am a lawyer. Related question, cultural framework which supports the Japanese interrogation style. You said there is a tendency to ask for the remorse on the part of the suspect. Cultural framework of Japan, when we think about the new interrogation style in Japan how are you going to use the cultural framework? I understand that this would affect the order of questions. But the cultural framework of Japan, the tendency to ask for the remorse or the self-reflection on the part of the suspect, how will it affect that particular tendency?

Kotaro Takagi

I didn't have time to talk everything toward the end of my presentation. Japanese style, Japanese culture which focuses on getting the self-reflection on the part of the suspect, I am not saying that we have to continue to focus on it. The cultural level, the general public in Japan, especially when you see the TV programs, people want to see the feeling of apology on the part of the offender. This consciousness is very strong among Japanese people. We need to discuss how well we can improve the interrogation based on the cultural background. I think that it is not good to start the interview asking for apology on the part of the suspect.

If we simply say to the interviewer that you need to change your mindset, it doesn't work. We need a strategic endeavor to change this attitude. Because

this is culturally formed attitude, you need to change education, you need to change the way the training is done. We need more advanced interrogation system.

When the audiovisual recording was introduced in the UK, they faced opposition. But if the practitioner can see the real benefits by the introduction of the new system, then the culture also will be likely to change. Although the culture asks for the apology or self-reflection on the part the suspect is so deep is Japanese culture but we need first of all intervention by psychology because this can at least shield the depth of this Japanese way of thinking in the Japanese culture.

Hiroshi Nakajima

Yes, somebody right there.

Questioner 3

I am K with Kagoshima Bar Association. I have a question to Professor Takagi. There should be the joint collaboration between psychologists and legal professionals as you rightly pointed out. In the world of psychology, there must be various different opinions. For example, in the world of court judgment, when you try to do the psychological testing, they try to collection the information which works advantageous on one particular side. I wonder whether you could give us any advice including the psychiatric testing. I don't know whether I should be asking this, but Mr. Kosakai, discussant, talked about the attorneys practices. What are the practices which you intend to put into practice in realizing audio video recording, could you please let us know?

Hiroshi Nakajima

Professor Takagi, please?

Kotaro Takagi

As for the psychological and psychiatric perspectives, whenever there is a different opinion, you need to share the first foundation of the discipline. Sometimes we fight because there are different schools with different opinions. We need to avoid such situation from happening. For example, I and Professor Naka go to the courts and fight about the truthfulness of the statement by a child and the analysis has to be discussed between the two professionals on the defense and the plaintiff side. This is a sound way of confrontation and trying to come to a better situation. There should be the collaboration between the psychologists as well as the legal professions. In the research and also in the academic discipline, I think it is necessary to have the joint collaboration.

Hisashi Kosakai

On 16th of June in the Supreme Court, the Public Prosecutors Office, there was the announcement. Of course, this would be institutionalized as a bill. Next year, the first thing we need to do is on the first of October and afterwards that would be implemented. As for the implementation notice, that's what we have already tried, but some additional items were given. We had to cover all the cases. Of course if the suspect, that he has to be detained but it is to cover every case. In that notification how and when and what has to be implemented is stated in that draft. Of course, they are willing to do that but some people said that has to be introduced based on the discretion, then attorneys and counsels and suspects.

Questioner 3

How are we going to appeal the need of the audio and video recording, that has to be fought? If we are beaten, probably there would be the double standard between what we do in practice and what was decided in the institution.

Kotaro Takagi

I believe the defense counsels are able to put that audio and video recording into practice.

Questioner 3

Then if it is realized, what would you do? As Mr. Goto said after visualization and audio video recording, how are we going to guarantee the right to remain silent?

Kotaro Takagi

While we guarantee such right of the suspect, audio video recording has to be further promoted but further efforts are needed. We need to have these sophisticated skills on the point of defense counsel to act upon.

Hiroshi Nakajima

Thank you. One more person or two more persons. Starting with the lady at the back.

Questioner 4

Thank you for this opportunity. Thank you for the presentation. I am a student at the Ritsumeikan University Graduate School. My question is addressed to the two speakers and the commentator. When the audio visual recording of the interview is to be introduced, I realized that the Japanese understanding of the judicial system must be considered. Suppose there is a person taken to the police station, the suspect – usually people will think as follows. Justice is quite important for the early identification of the culprit. Rather than paying due attention to the human right of the suspect, it's more important for justice to give priority to the fact finding to make sure who is the offender. I know that this social common understanding is quite immature and we need to make sure that the people in general should

have more mature understanding of justice. Otherwise, simply changing the system in the criminal justice would not help to solve the problem. This is a question to all of the three speakers.

Hiroshi Nakajima

Professor Fuchino, are you ready?

Takao Fuchino

Yes, I think you are quite right in pointing this out. In Japan, the way the mass media covers crimes is quite problematic. But in order to change the way the mass media covers those cases, it's quite important for us to point out problems. Typically, mass media at the time of the arrest of a person, the suspect will be accused strictly – this is what the investigators say to the mass media. The correspondents simply repeat the message to the general public. This is one way to educate the general public concerning criminal justice, although I believe that this is not the appropriate education. It's quite important to tell to the mass media that this is not the appropriate way to cover criminal cases. Perhaps this is the first step.

Kotaro Takagi

I agree with Professor Fuchino. We do have many criminal justice problems, abundant, and I have to say the role of the mass media is very big. What is the contribution of the psychology? The role of the psychology is to clearly show that this is not a simple issue. Concerning the information gathering and demanding the apology we tend to believe that the truth is obtained only when the information is obtained, when the suspect is apologizing for what he has done. This is one of the hypotheses that we need to test in the field of psychology. We cannot simply say that it's not good to try to get apology or remorse on the part of the suspect. We need to look at what's behind it. There is a kind of network of Japanese understanding or feeling

toward justice. We need to elaborate the characteristics of the network of the minds of the Japanese people. Psychologists can make a contribution if we can elucidate the nature of that network.

Hisashi Kosakai

I don't want to be misleading that the audiovisual recording is neutral in terms of the value. It's true that we have been saying that the video recording is necessary to make things clear. I don't know how the special committee would respond, but by having the institutionalized system of audiovisual recording, we are now saying that the protection of human rights is more toward the center of this reform.

Hiroshi Nakajima

I understand that there are more questions, but it's time for us to close this session and move on to the general discussion including the issues being discussed. We hope to further deepen our evaluation. We would like express thanks to the commentator and also to the two speakers.

## **Session 4**

### **General Discussion**

**Chair: Makoto Ibusuki (Seijo University)**



Makoto Ibusuki

Without a break, let's move on to the Session 4, general discussion. Professor Naka Makiko, Hokkaido university and Professor Hamada Sumio, Ritsumeikan university are the appointed speakers in this session.

We have been here since early in the morning in this session of electronic recording. This is the last stage for us. I hope you will stay with us till the end of this session. Designated speaker is Professor Sumio Hamada. Professor Hamada is known to you. He is indeed the authority as the first generation of interrogative statement procedure. Professor Hamada, you have the floor to talk to us based on the lectures today.

Sumio Hamada

Thank you very much. I am Hamada. With a very limited time given to me, allow me to make a few comments. Just like Professor Naka, I am involved in the children's psychology. While I am also involved in the criminal procedure matters, why is it that I get to be involved? It's been 35 years since I got involved. I was groping in the bush in the beginning but I moved into the fact-finding process and found the role to be played by the psychologist. That's what I have been doing in the past. No audio video recording is done so far. No place for the psychology in the past. As somebody said, in the areas where the psychology functions, numerical and the quantitative perspective, but I think I went into the quagmire of researching each case one by one in order for me to understand the situation. But I was able to see some of the issues and challenges in a way. I am very much excited and having a lot interesting experiences.

As I listened to the talk today as Professor Dixon frankly stated, why is it Japanese interrogation asking for the remorse or rehabilitation, what's going on in the Japanese interrogation – that was the point of the question

I concur with you. In 1980s, American researchers came to Japan to do the field study. Several of them pointed that Japanese interrogation has the inquisition style of remorse. I believe this is to ask for the apology from the suspects, they said. This investigation is supposed to be fact-finding, however in that stage they even ask for the remorse which is uniquely Japanese as Mr. Takagi said, or this is a cultural uniqueness of Japanese interrogation. Be it whether it is cultural feature or characteristic, asking for apology or asking them to take responsibility, fact-finding has to come first. Yes, that's logical but investigators think they are culpable and they are guilty and they ask for apology and for remorse. Why is that?

In the case of the false charges, they started out demanding the apology. In the case of Ashikaga case, he was brought on the voluntary basis and brought to the interrogation room. At that time, the police went to the home of Mr. S and showed the picture of the victim saying you have to apologize to her. Without knowing him as the accused, they demanded the suspect to give the apology to the victim. Asking for the apology equals to the conviction. Only after fact-finding is done that can be possible but they started out that the suspect is the convicted. Without proof, there is the conviction. But in psychology, the conviction has to be the strong belief that there is the culprit.

Suppose Mr. A killed Mr. B and somebody saw that scene and I am confident Mr. A is the criminal but you wouldn't say I am confident. I know he is the accused. There is the difference in understanding conviction. Without proof, you try to have the conviction and try to demand apology. I think this is culturally unique to Japan. But it looks like there are some commonalities as human beings. You think you have seen this crime scene and a strong belief starts to be moved. If there is a serious case, you try to ask for the apology and remorse. In the major fictitious charge case, that kind of thing

was the starting point, unnecessarily excessive demand for apology. But the police investigators do not have any malintention. They were too enthusiastic and we need to rehabilitate this suspect and ask for the remorse, that's what they have in their minds. This is the poster they always keep in their minds as investigators.

In that sense, in comparison with 30 years ago, in the past, I was called as the enemy of the police but nowadays I am invited as a lecturer 10 times a year by the National Police Agency. I am very much appreciative. I will tell in front of the police. Like Professor Naka who teaches the interrogation technique, conviction without proof is something I don't want to do. That's what I always tell them. You try to think he is not guilty and that is going to be the starting point. Otherwise, you cannot prevent the wrongdoing in front of the veteran police investigators. In the Ashikaga case, you got the conviction. Later if he is approved to be acquittal, you will have trouble, nightmare. In order to prevent from that happening, if you have some questions, please start that he is not guilty. That is the starting point. Fictitious conviction, people in the world tend to think that the police use the terrible methods. But there were some cases that fictitious proofs were created. But many of the policemen had a strong belief that they found the real criminal.

Through the audio and video recording in the recording room, we are able to prevent the act of the illegal interrogation. That's for one thing. Also, at the back, we are able to move into the minds of the investigators. That has to be done by the psychologists as to how we are going to tell what they have. For example, demanding the apology, that's the mindset of the Japanese police. In the investigation room, if you see what's happening there, if you feel the same way as the police officer even if they are not resorting to the wrong confession taking, you do have the sympathy to that

policeman. Therefore, as for the demand for the apology or asking for the accountability, that has to be separated out from the sentencing.

When lay jury system was introduced, fact-finding process and judgment on sentencing had to be procedurally separated out. There was such discussion. But this was not treated as the major issue but they were put together in the same court undertakings. In the written statement you always come across a statement by the suspect saying, I am sorry. If you try to note the witness' testimony, the victims said I want him to get the worst sentence. That has to be recognized and improved. Fact-finding has to come first. Only after that, we would be able to demand the suspect to take the responsibility. Although there may be cultural uniqueness, but fact has to be followed. Otherwise, even if we introduce the audio video recording, I don't know whether we would be able to reduce the number of false charge. That might increase the troubles.

There are a lot about challenges. In the past, there were many cases where the audio tapes were used as the proof or evidence in the court. I listened to the tapes of the Niho case. That was a case from 1954. In that case, as long as 30 hours, there was the audio recording. I committed this, until he confessed. There was an assertion that there was torture. Torture is not recorded in audio tape. Give up and after they confess the tapes started for 30 hours and for several days. It was put on the table of the court as a voluntary proof. That was put on the table from the public prosecutor's side. The court said that is voluntary. But if I checked the audio tape, it was totally the fictitious confession. The suspect had trouble in understanding what was asked because he did not know anything about that crime. But the judge recognized there was the voluntariness, but taking more than 17 years, he was acquitted. Even the professional judges were not able to recognize that there was coercion but probably it will be much more

difficult for the lay judge to do that. Those fictitious confessions, for many judges it is very difficult for them understand.

In the Ashikaga case as Mr. Takagi reported, there were questions by public prosecutors in audiotape. In that question, when there was denial on the case on the following day, in the crime scene I just wondered how you committed and how you described the dress of a girl. There was the demonstration and there was the police and public prosecutor. There was no leading question but the suspect said, "Yes, I discarded her dress in this place." The public prosecutor got the strong belief that he had committed. How come there was the denial in the audio tape? This public prosecutor had a very strong conviction that Mr. S was accused in the crime but he was not the convict. But in the interrogation when they were put in impasse, they act as if they were the criminal, although they know they didn't do anything wrong. But the police or the public prosecutors know all the facts but Mr. S was the only one who didn't know what was happening. But Mr. S found them psychologically that he has to admit what was asked. Even if he tries to guess and answer the fictitious questions and those questions are only given to him by the public prosecutors and police, he started to say, oh no and started to respond yes, yes to all those questions.

Now, as the audio video recording is going to be introduced, as for the level of the voluntariness, it is possible to check whether there was any illegal act, but if the policeman has the belief that he is the criminal as to how they are going to treat the suspect, what is the area that there is the risk and danger turning a point, it is very difficult to find that out. Probably there is always the same problem as we came across with the written statement period. I hope that the methodology would be changed as Professor Naka has been stating. First, fact-finding has to come instead of demanding for remorse and self-reflection. But we really have to think that

whether such deception can be detected when we see the images. We discussed tape recording and there was the decision recently on the retrial of Hakamada case. About 3 years ago, I learned the presence of audio tape and it was disclosed, but the suspect gave up and gave in and was forced to make confession so many times. One week or 10 days later his confession was audio taped. He had no way but to act like a true criminal. All the questions are open questions and no tact questions, what and what happened next, as Professor Naka mentioned. Without any break, the suspect was able to answer. If you listen to that rehearsed confession, then all of us will believe that he was the offender.

Intuitively, the investigators know that there should not be any leading question. Even the audio tape taken in 1966, the interviewer gave open-ended questions, what then and what next. But when we introduced the audio visual taking, what kind of role lawyers can take? This is something we really have to certainly think about for the benefit of all of us, including suspects.

The Sayama case, the audio tape was recently disclosed. The audio tape was recorded after the admission by the suspect. The suspect first was sobbing after he made the admission, but in this case, first he admitted as a witness. Three days later he admitted the crime as one of the offenders and thirdly he once admitted. All of the three confessions are tape recorded.

In essence, this is a very important material which would allow us to understand why such erroneous process took place that led to false confessions. At least if a complete process can be audio recorded or audiovisual recorded, I think there are ways we can take for further improvement. Thank you very much.

Makoto Ibusuki

Thank you very much. Now Professor Naka, could you give us your comments about impression of the discussion and further observations?

Makiko Naka

Thank you very much. Many speakers shared with us very interesting outcomes of their studies and research. As Professor Takagi mentioned audio visual recording is now taking place in Japan and some trial cases have been introduced. Interesting materials audio-video are now accumulating in other countries. Professor Delahunty, Professor Dixon, Professor Jo, Professor Park, and Professor Takagi and I myself have interesting materials. Gradually, we are able to accumulate those important materials for further improvement and research.

Then, what is appropriate way of interview? That's one question. The second question is how can we best use the materials we were able to gather so far? First question, what is the right way of interviewing? As has been mentioned, first starting with apology which is not at all neutral is not a right way for interviewing. Confession first comes from a follower making confessions in church to ask for forgiveness from God. Making confessions, if that's spontaneous and voluntary that's good. But when you are driven into confession making, then there are things which really have to be corrected and redressed. Confession made so far might have a confession making in church where the suspect was forced to make apology and remorse. But psychological research or intelligence tests if the person taking the exam or test does not know how to put the blocks together and then clinical psychologist may prompt a right answer. But if such a prompt is given from the examiner, the truth cannot be found. If we want to draw truth from the suspect, then from the very objective way we need to try to draw a statement from the suspect.

In any interview, leading question or suggested questions are usually given from the interviewer when the interviewee said something. If you say just, is that right, tell me the truth, come on, it may be so according to your memory. If those words are uttered by the interviewer, then the interviewee will be forced to say something else even if they are all false. So, a full and complete audiovisual taking is a must but how can we get good and meaningful and also the correct information from the interviewee, that's not easy. Just to tell me or speak to me is not enough. What are the motivations we can give to the interviewee to be honest with the interviewer?

Professor Delahunty and Professor Jo made a very important point that is the rapport building. If you build it in a poor manner, the interviewee will just try to please the interviewer, try to be friend and try to just be compliant with the interviewer. That is not right. What type of rapport makes the environment where the interviewee is able to speak honestly without being compliant? Rapport making perhaps requires to a certain degree the interviewer to speak something about him or herself but to what extent that is allowed is one of the questions we need to look into. In Western countries, especially in the UK, 48 or 72 hours at most and perhaps the same goes to Australia, such a time limitation on detention. Whereas in Japan the detention can be so long, 10 days or up to 1 month and circumstance rapport making is a part of the process we need to be very careful in trying to understand what is the right way to build rapport.

Third question, to ask open questions perhaps you are now good at it. We are now good at making rapport and we began to draw information from the interviewee gradually but sometimes you have difficulties. Professor Inaba referred to a very interesting case in the morning. Some persons are able to speak in a concrete and specific manner but on one level higher



where they have to think in abstract terms they cannot speak meaningfully with the interviewer, or only in a certain frame the interviewee is able to speak. How can we deal with such difficulties in communication on the part of the interviewee? Dr. Hamada discussed the problem of demanding remorse, demanding apology. When this problem is added to the difficulty of communication, we might just end up in drawing information which is favorable from the viewpoints of interrogation. Not just motivation to speak but at the same time how can we allow the interviewee to tell us their accounts in a precise and accurate manner honestly is a very important question.

One way is not to ask them the reasons why, rather what you did then and what happened, just giving a concrete account of what they did is something even a small child can do when they are trained to learn how to account – to tell us what happened. Often case they are good at telling us specifically what happened first and what happened next, such a concrete sequence of events and to ask them to tell us a concrete sequence of events may be one of the ways to get the accurate information from such interviewee. The right interviewing is very important and we have to learn a way to train right interview techniques.

Another question is about the use. Now audiovisual recording is going to begin. We would like to further expand this process to complete a perfect audiovisual recording. But what about the right of silence and what to do about access to defense attorney, and how should we evaluate the evidence that's gained from audiovisual recording? Rather than using this in evidence in court some may say that we should place more emphasis upon the oral statements to be made in court. Professor Jo or Professor Park or Professor Fuchino mentioned the importance so far placed upon the oral arguments in court over statements made earlier. How can we make best

use of a high quality statement or visual images?

I would like to ask one question here. Rapport making, as someone mentioned and as I mentioned earlier, Professor Takagi mentioned the case where the suspect said, forgive me, excuse me. In essence, this seems to mean that there was a rapport, although which was rather inappropriate between the suspect and the interrogator. Perhaps that is why the suspect began to say forgive me, forgive me please to the interviewer. What is the right rapport making? A relaxed atmosphere, 24-hour, 48-hour detention and rapport making when the detention is so long as 10 days or 1 month. Is there any difference in the appropriate way of building the right rapport? That's one question. About the right of silence, and this is something I asked Professor Dixon a minute ago. In the UK when someone stays silence that is taken against the suspect. But that is not the case in Japan and which I think is good in a sense. However, we want the suspect to speak in order to prove not guilty. In the judicial process, I asked Professor Dixon how this remaining silence is taken as something against the suspect is being dealt with. This is a question I would like to throw to Professor Dixon and also to Professor Delahunty or others. Some people say when they are on record, the suspect may stay silent, especially when the defense counsel is there. But basically it seems okay that the suspect stays silent.

Confession is after all a confession. They shouldn't be driven into a confession forcefully. If they do not speak, we have to just do the right job for information gathering beforehand. If the interview is done in the right manner and if the atmosphere is comfortable and if the suspect is given enough information about the rules and the rights they have - it just happens to me Professor Takagi mentioned in PEACE model there is an indication that the suspect may have done something wrong and then rapport making begins. But in PEACE model the interviewer never says

that you perhaps have committed the crime. It's not confrontational and in many occasions there is no confrontation at all between the suspect and the interviewer, so not really force suspect into speaking. But still if the suspect says still silent what is the reason for the suspect to stay silent. He might rather begin to speak in court. He might be afraid that the sessions may not be properly audio video recorded or he might want to just protect the interest of someone else and he might begin to tell in court. What are the reasons for not to speak, to stay silent if the reasons are well documented? I think that can make part of the high court evidence. Memory fades away dramatically over time. Before the suspect begins to forget, perhaps it is beneficial for the suspect to speak and tell that he was someone else on such occasion. Professor Park, Professor Fuchino, or Professor Dixon, this is another sort of question I would like to have some response from other experts.

Makoto Ibusuki

May I try to summarize the questions? There are three types. One is about the rapport formation, how do you see the rapport formed in the case of Ashikaga? I would like to get a comment from an expert in the audience. The second question is the value of right to silence. Professor Fuchino, please give us your comment. Concerning the issues in Korea and Australia, the right to silence is taken as something against the suspect. How do you evaluate the right to silence? I would like to ask Professor Dixon and Professor Park to respond. May I ask Mr. Sato to talk about Mr. S, why he said please forgive me in that interview?

Hiroshi Sato

I am Hiroshi Sato from Tokyo. I am a lawyer. I was the counsel for Mr. S for Ashikaga case. Concerning the audio tapes for the interview, I think it carried a big importance. Discovery of the tape was made after Mr. S was

released, after the acquittal. We knew that listening to the audio would not change the consequence, but the question is whether the audio tape would reveal that Mr. S was not guilty. But I thought that almost everybody would regard Mr. S to be guilty even if you listened to the tape. In the first instance, the counsel believed that Mr. S is the criminal. It's not so simple that the video recording would make sure whether the person is guilty or not. The rapport was a big issue for Mr. S. Rapport in French has a positive connotation, but in Japan, the prosecutors are saying that it's quite important to have the positive relationship between the suspect and the interviewer. That's why they start the interview by asking information about the family of the suspect or reveal the personal information of the prosecutor saying that I was a poor boy as well, for example. That's why before the session that you heard today, there was a very delicate position, the question given.

Mr. S did like being questioned by the prosecutor because the prosecutor gave so many wonderful questions. The prosecutor believed that Mr. S was the culprit for the two other cases. In only 35 minutes, he made a confession that he did kill two other people. Toward the end of the day, he said, "Prosecutor, can I ask a question?" "Yes, go ahead." "Well, you are a strict person but I realized that you are a very kind person." The prosecutor sounded very happy. If this was disclosed to the lay judge, lay judges would regard Mr. S to be guilty. Prosecutors in Japan even with the full recording visually of the sessions would overcome any difficulties by acquiring new technique. The counsel could not detect that the confession was false thanks to the DNA retesting. Only with the DNA retesting, we became sure that the confession was made as a forced confession. But I am not sure whether even the counsel can detect the falseness of the confession. In other countries, there is a clear guideline as a correct way to conduct interviews and the wrong way to do it. We need to learn it. I have to say that we have

more problems today with the start of the audiovisual recording. The miscarriage of the justice even may increase with the start of the audiovisual recording if we are not right about dealing with this issue. I hope I was not misleading.

MAKIKO NAKA

Rapport must be formed carefully to – you need to make an environment for the suspect to feel easier to speak, although it's not good to make the suspects feel that they have to accommodate themselves to the interviewers.

Hiroshi Sato

One day before the session for 2 hours Mr. S explained and continued to deny the crime for 2 hours. The prosecutor succeeded in making a wonderful rapport. Mr. S started to say, "Can I say the truth?" The prosecutor said, "If you have not done it, it's okay." Then, there are 2 hours of tape reporting, Mr. S denying committing the crime. I think this was an appropriate way of receiving information. But the next day, as you heard during the presentation, Mr. S admitted the crime. When I go to the police academy, I talked about the session by the prosecutor one day before the session in the presentation saying that this is a good example of good interview. We can learn both good and bad lessons from the Ashikaga case.

Makoto Ibusuki

Thank you. Professor Hamada?

Sumio Hamada

I believe that the rapport is quite important. The judicial interview has only limited time available. The rapport, the quality in the criminal justice in Japan has dubious quality because 20 days in a row is acceptable. Human

relationship, the trustworthy relationship may come from – may lead to the truth but the human relationship in the session may also lead to the false confession. In the case of Mr. S, Mr. S continued to admit the crime when the voluntariness should be highest in the court, still Mr. S continued to admit the crime because he had to continue the play the role of the culprit because he realized there was nobody who believed in what he really said. The procedure of investigation must be changed, otherwise you can't get the true quality and the benefit of the interview of the suspect.

Makoto Ibusuki

I agree. The whole process of the psychology on the part of the suspect must be visualized, otherwise simply the audiovisual recording is not sufficient. The rapport has a lot to do with how we practice the job of the counsel for the benefit of the suspect.

Now, moving on to the second question. Dr. Fuchino, could you respond? Professor Naka talked about the value of silence because it reveals certain kind of information. What is the significance of silence in the Japanese justice system?

Takao Fuchino

What is the significance of remaining silent? This is the defense against illegal investigation but essentially it has two meanings. Suppose that the person is a real culprit, and then the true culprit making a statement is incriminating. He may be put into a prison or he may receive capital sentence. No coercion of incriminating act is a way to respect the human rights of all people. The second one is more to do with the topic of today's symposium. Suppose the person is not guilty when he was forced to talk, then this right to silence has a big meaning.

Professor Naka started to say that we want to ask the suspect to tell clearly that he has not done it. But this is a way to demand the suspect to show the evidence of not being guilty. The lack of evidence from the suspect may lead to the decision in the court which finds the person to guilty. That's why all the burden of proof is on the part of the prosecutors. There is no burden of proof on the part of the suspect about the innocence. He or she has the right to silence because with this you can excuse the suspect from the burden to prove his innocence. Here, the criminal procedure may have some divergence vis-à-vis psychologists. Psychologists feel that it's better to have many more of good statements in order to prevent the miscarriage of justice because this can prevent miscarriage of justice. Paradoxically, the criminal procedure starts with a lack of statement. There are more unsolved cases because the assumption is that the suspect would remain silent. Even toward the end, it may be impossible to decide whether the person is guilty or not. By having the presumption of innocence when the evidence is not strong enough, that's how the criminal procedure is conducted.

Makoto Ibusuki

Thank you. Clearly, here is the difference between the psychology and criminal procedure. Still being aware of the difference between the law and psychology, we have to think about how better we can prepare the rules for the benefit of all the people concerned. The law is about the norms and the psychology is experimental human science. Here we see a difference. Even with the difference we should be able to benefit from both. We hope to realize such a new relationship.

Now, coming to the last question, right to silence. Right to silence is presumed to be something against the suspect. Australian legal condition for right to silence, please.

David Dixon

It may be more useful to talk about the right to silence more generally in Australia and England. I said before there is extensive research which has been done on this. That research can be summarized into really three points. One, that the use of silence is greatly exaggerated usually by police in claims for greater powers that in fact very few suspects remain silent in police interviews and there are many reasons. I can explain why that's the case.

Secondly, remaining silent does not lead to – is not a benefit – usually very beneficial to suspects that suspects who remain silent are more likely to escape conviction or to escape being charged. Thirdly, the kind of changes which have been introduced in England and in New South Wales to the right to silence, certainly in England do not lead to more confessions or more convictions. In other words, briefly, the right to silence is largely a political issue, not significantly a legal one. It's far too much time spent talking about it.

While I have the microphone, can I just make one more point? I don't understand the Mr. S's case which is being talked about a lot. But if I am right, I am being told that he was innocent. Why we are not talking about the person who really did the killing of the child? The real problem which a criminal justice system which wants to reform has got to look face up to is why do you spend years chasing after someone who turns out to be innocent if the result of it is – forget about the problems that it causes that individual but focus on the fact that somebody killed a little girl and has got away with it has not been convicted. That is a problem which the criminal justice system has to face up. I don't know if this is a general problem in Japan or not. I don't know almost anything about the Japanese criminal justice system. But what did happen in Australia and in England



was that finally the criminal justice system came to realize that letting people get away with bad things was a problem and something was done about it. Specifically what happened is that the judges said that the kind of slow reform which is being talked today isn't enough and the judges started to say, we will not allow police use evidence unless it is being collected properly.

Like I say, I am not telling you that there is a problem in Japan, I don't know. But you people here know and if there is a problem then the way to do something about it is to get judges to stand up, or one way is to get the judges to stand up to the police and say you cannot bring evidence to court which has been collected in ways which are by international standards unsafe.

Makoto Ibusuki

I believe the last point is the adaption of the evidence in the court. I believe that was the very critical point and that has to be received very seriously. The United Nations Human Rights Committee believes there was almost finishing of the discussion on the Japanese case. For example, the very lengthy interrogation time as well as no presence of the attorney, it is criticized by the international community. In spite of those critiques, Japanese courts do not listen to those critiques. As long as it is in the range of 23 days, even if it is a confession after detention it is admissible. This is the response using my prerogative as the chairman. The courts and judges have to act as the watcher, as the protector and guarantor of the suspects. They are not playing the role. Police, public prosecutors, attorneys, those of course are very important but the roles to be played by the court and judges are even more important in that sense.

Could you tell me the situation of Korea about right to silence of defendant.

Professor Park?

Ro Seop Park

I will try. In Korea, the right to silence is guaranteed by the constitution. But in actuality the exertion of the right is very rare. It has to be seen from two perspectives. The first one is, in the investigation the suspect has the right to silence. Secondly, the suspect has the right to silence again at the court because in court the prosecutor has the right to interview the suspect as defendant. The right to silence has to be viewed for two layers of the process. The right to silence in the court trial is more important. Even though the suspect didn't exert the right to silence during the investigation, he or she might have the right to silence again, have a chance to use the right to silence again during the trial.

Additionally, I would like to point out the meaning of the video recording system in Korea. Firstly, in Korea, more focus is on securing the credible statement of the suspect, but I would emphasize that we should move on to have more focus on controlling the investigative process to control the investigative process.

Makoto Ibusuki

Can I ask one question? In Korea, can prosecutors use silence of defendant for presumption against the defendant?

Ro Seop Park

I have some empirical study about the perception of right to silence from suspect's perspective compared to the investigator's perspective. They have different perceptions about the use of right to silence. The investigators perceive that if the suspect uses the right to silence as if the suspect is guilty. It's the kind of evidence that the suspect is guilty. Whereas the

suspects perceive the right of silence – if they use the right of silence they might be perceived as uncooperative suspect. They feel like they have to cooperate to have the kind of justice – to lead the procedure to be not unfair to them. Am I making it clear?

Makoto Ibusuki

Yes. Please, Thank you.

Ro Seop Park

If the suspect actually used the right to silence but still he or she is found to be guilty, then the suspect as a defendant would be disadvantaged in sentencing. That's why even though that's suspect's right, using the suspect's right actually is a very delicate issue.

Makoto Ibusuki

Thank you very much. I am sure there are a lot of questions or comments. But we do have the reception to come. I hope you will have more opportunities to discuss those matters together with the overseas lecturers as well as your colleagues from Japan. We do have some room for the additional people to join, so please join us in the reception. That would be held in Tawawa Restaurant on the 7th floor of this building.

Tatsuya Sato (Ritsumeikan University)

Makoto Ibusuki

Let's move on to the closing remarks. Professor Tatsuya Sato, professor of psychology of Ritsumeikan University is going to give you the closing remarks.

Tatsuya Sato

Thank you very much. I am Sato. Thank you very much for joining us. This is going to be the last closing remarks. From early in the morning we have gone through 8-hour session. Thank you very much for having joined with us. My thanks go to the overseas participants. Probably you are very much appreciative that we are very workaholic including the overseas lecturers also. We are very much privileged that we were able to have today's symposium.

Co-sponsoring organizations and co-organizers, together with them we are very much grateful that we were able to have this symposium. I am not in the position of giving the summation of the points of the discussion. The questions or the challenges, what is going to be the future of the audio video recording. Recording is encoding but what about the decoding side? One thing I came to realize is the importance of the decoding side. That's something we need to further develop on the decoding side. In Japan, this only applies to the use of the lay judge cases. Also, mention was made that this is not going to give a very good dream if it is only applicable to those cases. The freshman asked very good questions. Suppose she is 20 years ago and if she becomes a lay judge, 20 years later, if there was the false charge on the suspect she was attending, probably for the future this is not going

to be the end of the discussion once it is introduced. Encoding and decoding issues have to be also continued to be discussed, and also investigative culture which is supporting those procedures. Still we have 23 days very lengthy detention. That has to be also reviewed.

I don't know whether it is communicated to the overseas participants. At one time I said 23 days detention time. Is that 23 hours? That's still long some overseas participants said. Is it legal, 23 days? Is the Japanese legal system legal? I was very much surprised to be asked with that kind of question. That's something we need to dwell upon. Just system, is it just or not? That's related to Japanese scandal. Japanese justice system and judicial system has to be also reviewed in collaboration with the overseas cases.

Personally, I was led into this field of forensic psychology when in 1994 over 10 years ago when I was employed by Fukushima University and Professor Hamada was the frontrunner already during that time. He was almost a mentor for me. I am very happy that now 20 years later, I was able to organize such a high quality symposium with a great panel. But of course there is a long journey ahead of us.

I hope that I will be able to further our studies and practice together with all of you who are here. Ritsumeikan University is going to open a new campus in Osaka. Professor Inaba in the area of social policies is going to teach students in Osaka campus next year. In Osaka next year Pan-Pacific Law and Psychology meeting I hope is going to be held. Law and psychology is indeed a transdisciplinary area and besides boundary it's not inter but almost a fusion of the two fields, law and psychology and fusion of knowledge and experiences of experts from different countries is going to take place in Osaka. In that meeting in Osaka I sincerely hope that I'll be

able to see all of you on the location where fusion of law and psychology and fusion of different countries experience is going to take place.

We had a long meeting today. A former professor of Tokyo University and Professor Ibusuki who now teaches at another university, Seijo University, has planned this symposium. I am deeply indebted to Professor Ibusuki for his expertise and network for putting together such a wonderful panel. Each speaker has been so good at time management. Because of their cooperation, I have been able to adjourn this meeting on the right time. I would like to thank all of you very much for your very kind cooperation.

This concludes the whole symposium for today. In Japanese, we say *hiraku* which actually means open, not close when we say the meeting is closed or adjourned. I hope that in closing or in opening we hope we'll be able to open this field and experience and learning sharing toward the future. I once again would like to thank all of you, especially to speakers from abroad. We will begin reception at 6:30. All of you are kindly requested to go to the top floor of this building for reception that is going to start from 6:30. For simultaneous interpretation receivers, please be sure to return them at the exit. Thank you.



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Transparency of Interrogation:  
Innovative Data Recording and Analysis by the Human Science

Editors: Mitsuyuki Inaba & Kosuke Wakabayashi

文部科学省私立大学戦略的研究基盤形成支援事業  
「インクルーシブ社会に向けた支援の＜学＝実＞連環型研究」  
社会的包摂に向けた修復的支援の研究チーム

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