

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.


Effective social interviewing techniques in high stakes cases: Interviewers' and detainees'experiences
 Jane Goodman-Delahunty & Natalie Martischuk
 Australian Graduate School of Policing and Security & School of Psychology
 Manly Campus, Charles Sturt University, Australia
 Mandeep K Dhami
 Middlesex University, London, United Kingdom

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)

5

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

6

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

7

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

8

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)

9

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)

10

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)

11

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 Eelam and Sri Lankan government
 - Bali bombing attacks in Indonesia
 - Nuclear reactors bombing attempt in Australia
 - Ansar al Ismail follower in Norway

12

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"

13

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)

14

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

Variable	1	2	3	4	5	6	7	8	9	10	11	12
INTERVIEW STRATEGIES												
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	.30*	-.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	.62**	.49**	.36**	-			
INTERVIEW OUTCOMES												
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	-

15

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

Predictor	B	SE	Wald's χ^2	p	OR	95% CI OR
Cooperation						
Constant	-1.48	0.58	6.62	.010	0.23	
Partic type	0.95	0.51	2.49	.082	2.58	[0.98; 6.96]
Information Disclosure	1.57	0.60	6.83	.009	4.81	[1.48; 15.61]
Information Disclosure						
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]
Speed of Information Disclosure						
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]

16

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: $\chi^2 (5) = 3.78$, $p = .581$

17

Disclosure early in the interview (Filippino 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."

18

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.

19

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.

20

Interview Outcome	COERCIVE		NONCOERCIVE	
	Effective	Ineffective	Effective	Ineffective
Cooperation				
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	18.6	18.6	56.0	1.3
Information disclosure				
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
Admission				
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	

21

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.

22

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

23

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

24

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).

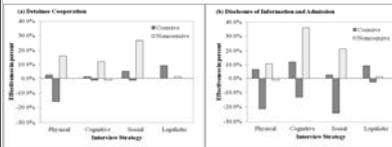
25

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

26

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.

27

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

28

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.

29

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30

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-Delahunty

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.