

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 16th 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.

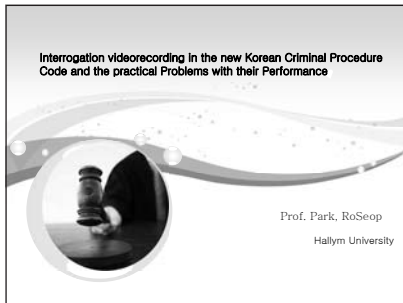
Lastly, this is the new legislative revision on the purpose of video recording. The purpose of the recent reform of the criminal procedure was to have the principle of court-oriented trials taking roots in the society. As a principle, it is needed to deny admissibility of an interrogatory written by 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

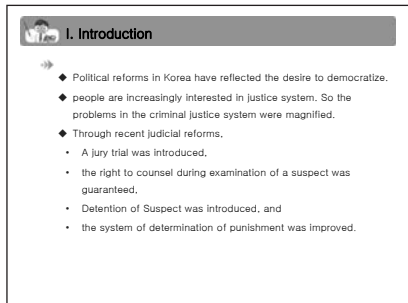
to be the explicit description in the law to stipulate the details of the conditions related to video recording. If the condition is met, then video recording is going to be utilized and get settled as a very innovative means to make the improvement in the procedural system. Thank you very much.

Naoko Yamada

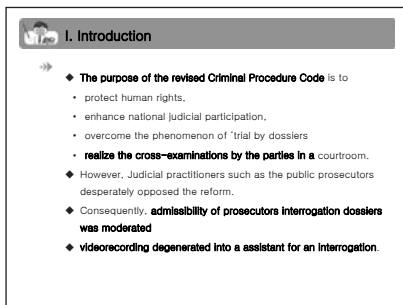
Thank you very much Professor Park.



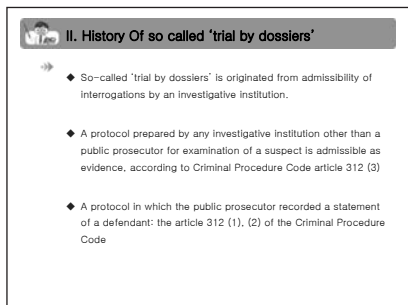
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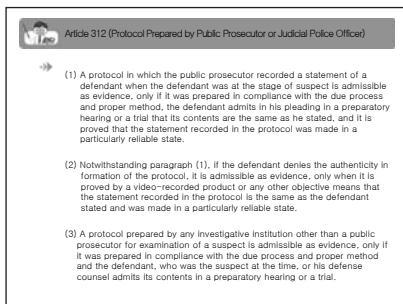
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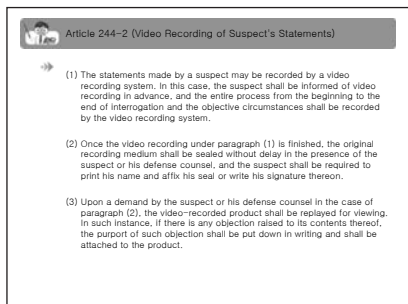
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II. History Of so called 'trial by dossiers'



- ◆ 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.

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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.

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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.**

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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

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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.

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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.

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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

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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

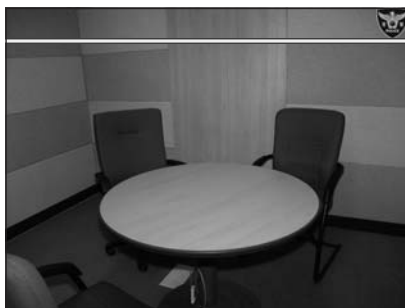
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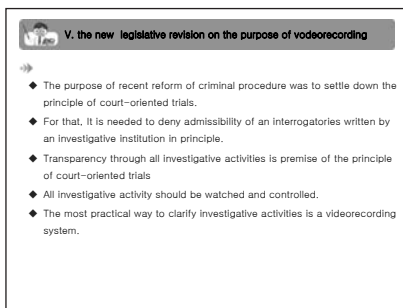
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V. the new legislative revision on the purpose of videorecording



- ◆ 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.

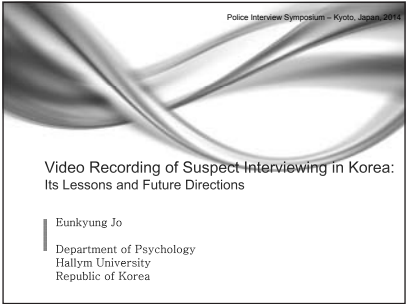
Here is the discussion of the study which I think is pretty straightforward if you read. In this study, I wanted to point out that the benefit of information-gathering approach deserved more attention by the investigators and policymakers, although they believe that relying on the information-gathering 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.

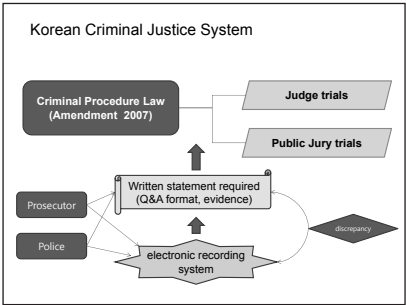


1

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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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3

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.

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Coding Criteria

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

8

Frequency of Discrepancies by Influence Type

Influence	Influence on Verdict	Influence on Sentencing	Procedural Defect	Total
Case #				
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%)

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Frequency of Discrepancies by Influence Pattern

Pattern	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
Case #								
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 (14%)	3.10 (6%)	2.30 (5%)	16.80 (34%)	49.00 (100%)

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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!

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

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A false confession case (2007)
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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A false confession case (2007)
<u>1st 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!

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What actually happened in the video?
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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4. Investigative Interview Skills
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).

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Jo, E. (2013). Development of effective investigative interview manual to counteract psychological changes of suspects. Report Submitted to Supreme Prosecutors' Office.
Research Questions:
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?

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

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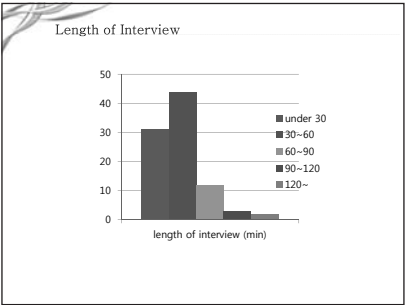
List of 17 psychological tactics	
Coercive approach	Information gathering approach
Maximization of Offence	Disclosure of Evidence
Minimization of Offence	Emphasizing Contradictions
Positive Confrontation	Challenging the Suspect's Account
Interruptions	Open Questions
Repetitive Questioning	Gentle Prods
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.

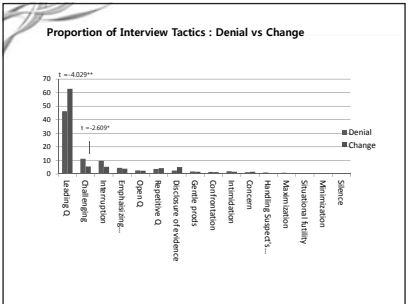
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Themes	Example
Empathy	Express understanding of what the suspect is going through
Encouragement	Encourage the suspects to relax the suspect
Acceptance	Accepting the requests related to the current case
Advice	Providing advice for the suspect's current 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	

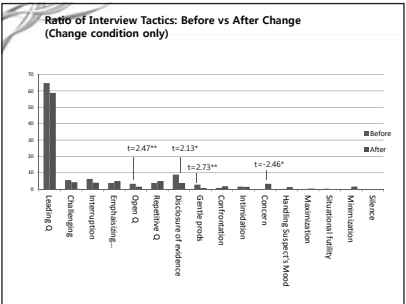
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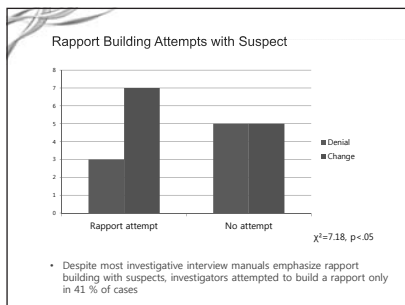
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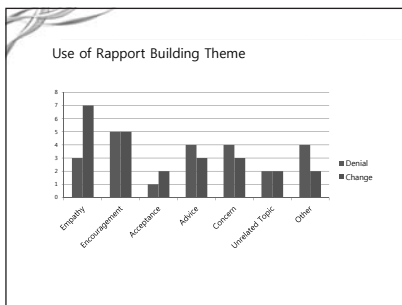
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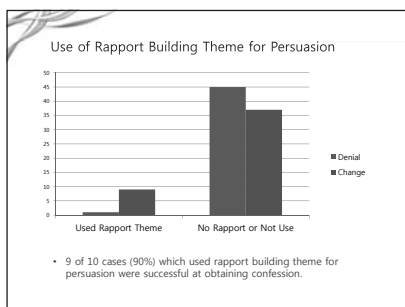
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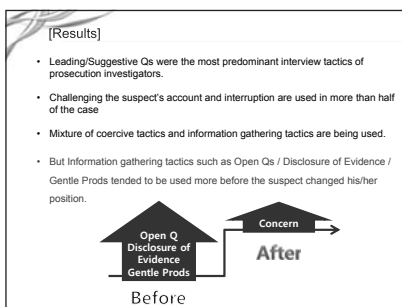
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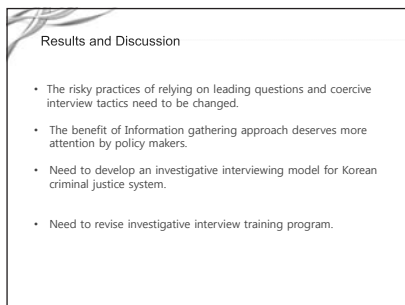
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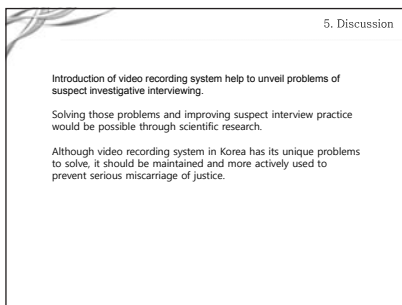
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Naoko Yamada

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.

