

Session 3

Session 3: Transparency of Interrogation in Japan

Chair: Hiroshi Nakajima (Kagoshima University)

Kotaro Takagi (Aoyama Gakuin University)

Makoto Ibusuki

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

Hiroshi Nakajima

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

Kotaro Takagi

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

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

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

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

the lay judges and the professional judges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hiroshi Nakajima

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

国際シンポジウム「可視化と取調べ：新しい時代の取調べ技法」報告

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

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録音・録画記録によって取調べは「見える」ようになるのか？

2

事例1：足利事件における検察官取調べの録音記録

時刻	録音記録の概要
1991.11.21	被告人の供述内容に関する検察官の質問と被告人の回答
1991.11.22	被告人の供述内容に関する検察官の質問と被告人の回答
1991.11.23	被告人の供述内容に関する検察官の質問と被告人の回答
1991.11.24	被告人の供述内容に関する検察官の質問と被告人の回答
1991.11.25	被告人の供述内容に関する検察官の質問と被告人の回答
1991.11.26	被告人の供述内容に関する検察官の質問と被告人の回答
1991.11.27	被告人の供述内容に関する検察官の質問と被告人の回答
1991.11.28	被告人の供述内容に関する検察官の質問と被告人の回答
1991.11.29	被告人の供述内容に関する検察官の質問と被告人の回答
1991.11.30	被告人の供述内容に関する検察官の質問と被告人の回答
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1992.1.2	被告人の供述内容に関する検察官の質問と被告人の回答
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1992.2.30	被告人の供述内容に関する検察官の質問と被告人の回答



3

録音・録画記録によって取調べは「見える」ようになるのか？

検：（沈黙・約5秒）ところで前にね、君からちよっと変なこと聞いた人でね、今日来たんだけれども。

被：はい。

検：（沈黙・約5秒）今、話している、ね、MMちゃんの事件。

被：はい。

検：（沈黙・約5秒）あれは、君がやったことに間違いないんじゃないのかな？

被：違います。

検：ええ？

被：・・・違います。

検：違う？

被：はい。

検：ふーん。

右側：アレンの導入

4

録音・録画記録によって取調べは「見える」ようになるのか？

被：それでなんか、いいですか？

検：うん。

被：鑑定ですか。

検：うん。

被：自分にはよくわかんないんですけど、なに鑑定っていいましたっけ？

検：DNA鑑定。

被：そんなこと聞いたんですけど、でも自分じゃそれ全然覚えないうす。

検：だけど、DNA鑑定で、君とね、君の体液と一致する体液があるんだよ？

被：全然それ、わかんないですよ。本当に。

検：（沈黙・約5秒）え？

被：絶対、違うんです。

検：違うんですって言ったってさ、え？君と同じ体液持ってる人が何人いると思ってるの？

被：（沈黙・約5秒）

右側：録音記録の開始とアレンの導入

5

録音・録画記録によって取調べは「見える」ようになるのか？

被：僕はずるくなれと言ったわけじゃないんだま？

検：（沈黙・約8秒）

被：ずるくなれと言ったわけじゃないんだま。

検：（沈黙・約10秒）

被：少なくともね、話しているあのMMちゃんの事件については、君が認めたから認めたというわけじゃないんだま？それだけのことじゃないんだま？分かる？

被：（沈黙・約3秒）

検：君が認めたっていうことだけじゃなくて、他に証拠があるからだよ？

被：（沈黙・約17秒）

右側：録音記録の開始とアレンの導入

6

検：君がMMちゃんの事件違うって言う時、そういう話をする時は僕と目を合わせないでしよう？
 検：(沈黙・約10秒)
 検：前にね。
 検：はい。
 検：君がいろいろ聞いたときには、いろいろ考えて下向いたりねえ。そういう時は別として、僕と目を合わせてたじやないの。
 検：(沈黙・約5秒)
 検：違いますんで、君否定するときは、僕と目を合わせてないね。なぜなの？
 検：(沈黙・約18秒)
 検：考えなくてはいけなくても思うんだけど、分かるね？
 検：(沈黙・約10秒)

行動分析を依頼した箇所

検察側 (case) ももとに作成

7

検：植まってから、渡良瀬川の河川敷に連れ出されたっていうのは、検証の時が初めてしよう？あのバスでみんな一緒に行ったわけ。
 検：はい。
 検：君のすぐ前の席に僕が使ってたね？
 検：はい。
 検：あの時が初めてだね？
 検：はい、そうです。
 検：そうよね。
 検：はい。
 検：で、検証した時にはね。
 検：はい。
 検：MMちゃんの眼を捨てたという場面、君が説明したでしょう？
 検：はい。
 検：説明はらうって付道の板子が変わってね。
 検：はい。
 検：よく分からないと言ってるけど説明したっていうけれども、後で写真がここにあったんだと教えてもらってからは。
 検：はい。
 検：ね、あ、じゃあ、捨てたのはここと言ってる説明したでしょう？
 検：はい。
 検：君が説明した場所については、誰から教えてもらったというわけじゃないかね？
 検：え。教わってません。

検察側 (case) ももとに作成

8

検：で、君が説明した場所というのは、そのすぐ下から、MMちゃんの下着が発見されてるんだよ。あんな強い場所まで新聞には出てなかったはずなんだよね。
 検：自分は、あの、河川敷から下りて、それで、ずーっと行って、で、坂がありますね。
 検：うん。
 検：坂があって、それで、確か、左側に木があったと思いますけども。
 検：うん。
 検：君とか、木ですとか。
 検：うん。
 検：で、下がなんか、なってるんですか、下がなんか落ちそうな感じがあったと思うんですけど。
 検：うん。
 検：自分はそんなひどい応答の、話してみたいです。
 検：一応話してみたらつたって、当てずっぽうに話したの？
 検：全然わかんなかったんでよ。
 検：わかんないのがさ、ねえ、実際の事実とさ、狂いが無いわけだ。当てずっぽうに話したわけ？
 検：全然わかんなかったもんで。
 検：いやだから、分かんなかったんで、当てずっぽうで説明したの？
 検：はい、だいたいあのへんだと思ってます。

検察側 (case) ももとに作成

9

検：何で？何でそう思ったの？
 検：あの、前は、あの、橋の上からですか、橋の上から見ると、木がいっぱいあったんですけども、その時はあんまり木がなかった・・・枯れてたっていうか、そういうふうになってたんです。それで分かんなかったんです。
 検：橋の上からって、そこまでわかった？
 検：いやそうじゃなくて、あのお、前はあの、車ですか、グリーンとか。
 検：グリーン？
 検：グリーン色の、いっぱいありましたけど、それで、その当時は、もう、なってるんですか、枯れて、その、分かんなかったんです。
 検：わかんなかった、枯れて、分かんなかったけれども、ねえ、だけど、死体のある場所教えてもらったからは、ヒッパした。位置じゃないの？捨てた場所っていうのは。
 検：(沈黙・約35秒)

証拠写真(左)を理由に

検察側 (case) ももとに作成

10

検：で、コンクリートの境防止上で、省略して、それで選ぶときに、斜面で一回下りたとか、説明したでしょう？
 検：はい。
 検：で、靴が履けたなんて説明もしたでしょう？
 検：はい。
 検：なんでそんな説明したの？
 検：(沈黙・約6秒)
 検：そんな説明するの必要あったの？
 検：(沈黙・約12秒)

証拠写真(右)を理由に

検察側 (case) ももとに作成

11

検：どうなんだい。ずるいじゃないか、ね。
 検：(沈黙・約5秒)
 検：なんでその目を見て言わないの、そういうこと。さっきから君は、僕の目を一度も見ないよ？
 検：(沈黙・約10秒、深く息を吐くような声)
 検：うん？

行動分析を依頼した箇所

検察側 (case) ももとに作成

12

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

※傍聴録(文字)をもとに作成

13

菅家氏=メタコミュニケーションの困難

虚偽自白への再転落

取調官=証拠と論理を用いた自白獲得型のアプローチ

- フレーム世界の困難
- 審問への感情的困難
- 不適切な質問への長期的困難

↓

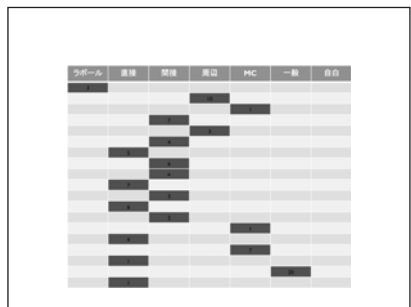
- 有罪フレームの導入
- 心理学定型的論議を喚起した審問
- 結論を喚起した審問
- 行動分析を喚起した審問
- 吃音困難な理由質問

14

事例2：ある検察官取調べにおけるコミュニケーションの展開構造の検討

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

15



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17

日本型取調べのコミュニケーション枠組み (仮説)

	論証	実証
反省	日本型の取調べ	
情報		PEACEアプローチ

・八何の原則による枠付
 ・意図・動機・理由の重視

18

取調べの録音・録画記録によって取調べは「見える」ようになるのか？

- YES → 微細な相互行為過程によってもたらされる失敗の発見

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



日本における取調べ技術の向上・新たな取調べ手法の開発へ

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

19

文献

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20

Takao Fuchino (Ritsumeikan University)

Hiroshi Nakajima

Professor Fuchino is going to discuss from a different perspective.

Takao Fuchino

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hiroshi Nakajima

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

日本における
取調べ可視化の現状と課題

瀧野貴生(立命館大学)

1

I 取調べ可視化の普遍的意義と日本における固有の問題状況

i 普遍的意義

基本的人権としての「黙秘権」保障
→国連人権口規約14条3項(g)
→憲法38条1項

⇔

現実の取調べでは、しばしば侵害される危険

- ・大声で怒鳴られる
- ・脅される
- ・長時間の質問攻め
- ・有形力の行使？

2

I 取調べ可視化の普遍的意義と日本における固有の問題状況

i 普遍的意義

黙秘権を実効的に保障できるような予防的措置の必要性

↓

- ・取調べへの弁護人の立会い
- ・取調べの可視化

3

I 取調べ可視化の普遍的意義と日本における固有の問題状況

ii 日本における固有の問題状況

逮捕・勾留されている被疑者の取調べ
→取調べ受忍義務肯定の実務

取調べの開始→黙秘権の行使→自白の説得

→黙秘権の行使→自白の説得→...

⇒取調べ官がやめるまで取調べが続く

↓

虚偽自白と誤判の発生

～免田、財田川、松山、島田の死刑再審四事件
～布川、袴田事件

4

I 取調べ可視化の普遍的意義と日本における固有の問題状況

ii 日本における固有の問題状況

在宅被疑者の取調べ

→任意取調べという名目での説得

取調べの開始→黙秘権・供述拒否権の行使

→自白の説得→黙秘権の行使→自白の説得→...

⇒被疑者の意思を完全に制圧するまで取調べ可能

5

I 取調べ可視化の普遍的意義と日本における固有の問題状況

・高輪グリーンマンション事件

～4泊に及ぶ任意の取調べ

・平塚ウエイトレス殺人事件

～23時間の徹夜にわたる任意の取調べ

・志布志事件

～1か月にわたる、連日、夜9時、10時まで
の任意の取調べ

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I 取調べ可視化の普遍的意義と日本における固有の問題状況

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

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II 法制審議会・新時代の刑事司法制度特別部会試案の問題点

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

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II 法制審議会・新時代の刑事司法制度特別部会試案の問題点

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

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II 法制審議会・新時代の刑事司法制度特別部会試案の問題点

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

10

III 可視化DVDの証拠としての利用
①～任意性判断目的

i 積極面
 ⇒裁判官・裁判員の判断を取調べの実態(＝事実)に即して行わせることが可能に

【心理学から学ぶべきこと】
 ・取調べを受ける者の心理・精神状況
 ・取調べのどの段階で、供述するかしないかの自由な決定ができなくなるか
 ↓
 可視化DVDの鑑定
 →任意性判断に積極的に利用できる法制度・運用の構築

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III 可視化DVDの証拠としての利用
①～任意性判断目的

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

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III 可視化DVDの証拠としての利用
①～任意性判断目的

【心理学から学ぶべきこと】

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

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IV 可視化DVDの証拠としての利用
②～信用性判断目的

- i 映像による過剰なインパクト
供述が本来有している証明力を越えて、過剰に信用または過少に不信用の危険

↓
予断・偏見に基づく評価を招くおそれのある証拠
⇒法律的関連性の否定

【心理学に学ぶべきこと】

- ・供述の証明力を適正に評価できる録画アングル
- ・裁判官・裁判員へのDVDの見せ方

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IV 可視化DVDの証拠としての利用
②～信用性判断目的

- ii 公判中心主義、直接主義との関係
証拠は、公判廷で、裁判員・裁判官の面前で直接、提供すべき

公判外供述は公判での証言・供述

←正しい心証形成、正確な事実認定を行う方法

←防御権保障～証拠開示を踏まえた被告人の防御方法の決定

何について、どの段階で、どこまで供述するか
＝手続的正義(適正手続)の保障

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IV 可視化DVDの証拠としての利用
②～信用性判断目的

【心理学に学ぶべきこと】

- ・裁判員・裁判官にとって、正確な事実認定にもっともふさわしい証拠の呈示のされ方とは？

↓

【法学が受け止めるべき課題】

公判中心主義・直接主義は、真実発見とは切り離してでも、守るべき手続的正義かどうかを原点に立ち返って検討すること

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Hiroshi Nakajima

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

Hisashi Kosakai

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

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

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

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

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

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

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

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

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

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

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

Hiroshi Nakajima

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

Questioner 1

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

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

Kotaro Takagi

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

Questioner 1

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

Kotaro Takagi

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

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

Hiroshi Nakajima

Thank you very much. Next person please.

Questioner 2

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

Kotaro Takagi

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

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

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

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

Hiroshi Nakajima

Yes, somebody right there.

Questioner 3

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

Hiroshi Nakajima

Professor Takagi, please?

Kotaro Takagi

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

Hisashi Kosakai

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

Questioner 3

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

Kotaro Takagi

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

Questioner 3

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

Kotaro Takagi

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

Hiroshi Nakajima

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

Questioner 4

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

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

Hiroshi Nakajima

Professor Fuchino, are you ready?

Takao Fuchino

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

Kotaro Takagi

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

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

Hisashi Kosakai

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

Hiroshi Nakajima

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