Who keeps watch over incidents behind closed doors?
The Japanese way of video recording in the interrogation room

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Introduction

For many years Japanese police and prosecutors have believed that interrogation is the most important tool for investigating the motives of criminals and the circumstances behind a criminal incident, and to obtain a confession from the defendant. Because Japan has used the inquisitorial system over the last 130 years, the prosecutor interrogates the suspect before a decision whether to prosecute is made. In the view of the interrogator, prospect of visually recording an interview with a suspect is a nightmare. The reason for this fear is that the recording of an interrogation may uncover what the police and prosecutors would prefer to remain secret. Police and prosecutors have consequently been making a stand against the idea of visual recording of interviews with those suspected of criminal activity. However, the police and prosecutors have recently started the partial recording of interviews and confessions of those suspected of committing crimes. This paper will describe the background of this issue in Japan and introduce the current practice of police and prosecutors offices. Finally, it will be surmised that the visual recording of the interrogation of suspects will be introduced even in Japan.

Background

In the 1980s, there were four notorious cases involving the miscarriage of justice in Japan. Four death row inmates were exonerated by new trials after spending over twenty years in prison. In each case defendants had

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confessed to the crime of murder. In their new trials, the court rejected the reliability of all four confessions. Criticism of the criminal justice system grew after the tragic stories of the exonerated became evident to the public. One of the strongest complaints concerned the place where the defendants were held and spent most of their time while they were in interrogation: in *dai-yo kangoku* (substitute prison) - a form of police detention cell. Japanese police can legally detain the accused for twenty-three days before an indictment is made. The abolishment of this procedure was strongly insisted upon by bar associations, human rights groups and opposition parties. The Japanese Criminal Procedure Rules (CPR) give the police three days before sending the case to the prosecutor’s office, and permit the prosecutors to detain the defendant for twenty days before their decision to prosecute based on authorization by the court. For a total of twenty-three days the accused can be legally held in a police detention cell. Although the United Nations Human Right Commission repeatedly criticized this rule and practice, the Japanese government has not changed the law.¹

The confession which the defendant gives to the police can be furnished as evidence in the form of a dossier - statements on paper. The key factor for admissibility of the confession as evidence is voluntariness, as required by the Constitution and the CPR. If the defendant denies his or her prior statement at trial, the prosecutors will submit the dossier as their main evidence. A statement made outside of the courtroom is usually prohibited by the hearsay rule. However, the CPR admits the dossier as an exception to the hearsay rule if the prosecutor can prove the voluntariness of the confession. Generally, the Japanese court rarely finds against the voluntariness of the confession.²

**Recent Movements**

Defense lawyers in Japan have argued that although the voluntariness rule exists, it is rarely applied in practice. Since 2003, the Japan Federation of Bar

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Association (JFBA) has made the introduction of electronic recordings of suspect interviews a priority goal among their policy recommendations\(^3\). However, the Japanese government strongly opposed this recommendation, especially due to the influence of the Japanese Police Agency (JPA) and the Public Prosecutors Office (PPO). The police and prosecutors argued that they believe that communication inside the interrogation room is sensitive information and so cannot be made available to outsiders, although the JPA and PPO have previously used audio-tapings of interviews to record statements in specific cases based on their own discretion.

However, two recent criminal cases where confessions were used as key evidence have had a big impact on this debate and caused the Japanese public to understand the necessity for transparency in the interrogation process. The first case is the so-called “Shibushi case”. On February 23 2007, thirteen defendants were acquitted of the crime of buying votes in the local election of a small town in Kagoshima prefecture (located at the southern end of Kyushu island) in 2003. The Kagoshima District Court criticized the confession as the product of police coercion. The Shibushi case is now known even overseas as a symbol of how the Japanese police use harsh interrogation techniques against suspects\(^4\).

The other case is the Toyama case, in which a defendant was exonerated from a sexual assault conviction after he had served a three year jail term when the true perpetrator was found in January 2005\(^5\). Prior to his indictment and even during the trial, the defendant confessed the crime despite the size of the footprint found at the crime scene being totally different to his own. Following this, the general public in Japan was at last determined to improve the transparency of the interrogation process, and the media started to call for mandatory visual recording in the interrogation room\(^6\).

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\(^5\) Japan Times Editorial Oct 14, 2007 “Framed by the police” http://search.japantimes.co.jp/cgi-bin/ed20071014a1.html

Reforms and Current Practice

Not only defense attorneys but also judges started to expect the introduction of visual recording of suspect interviews. A significant reason for the introduction of visual recording was the start of a mixed jury (*saiban-in*) system in 2009. This involves panels of six randomly selected lay judges and three professional judges charged with the responsibility of fact-finding and sentencing in criminal trials. It became necessary to decrease the length of trials in the mixed jury system as much as possible because lay judges cannot spend many days at court. From comparative study, visual recordings of confessions appear the best way to decide whether the defendant confessed voluntarily because the panel in the courtroom does not need to spend many days hearing testimony about the interrogation.

The PPC and NPA therefore started arranging a plan to increase the transparency of the interrogation process. First, the PPC introduced a dual camera digital recording system in late 2007 and began to use the equipment at all of their offices from April 2008 (see the picture below). The cameras only record part, not all, of the interrogation. There have already been some cases where the prosecutor was required to use the DVD recording as key evidence. Second, the NPA developed a new policy to increase reliability and propriety in the investigation process. Two main supervision mechanisms were introduced: a new department for watching the interrogation; and a peephole in the door of the interrogation room, which enabled the viewing of interrogations. Since September 2009, the JPA has been recording the final portion of interrogations electronically as a test-project in five large prefectural departments. This involves recording the interrogator’s reading of the statement of confession on the dossier to the defendant so as to make certain of its correctness. However, the JPA still refuses to introduce the entire recording of interrogations.

Currently, there is no judicial case in Japan arguing for mandatory recording of entire interrogations, although one court has denied the reliability of partial electronic recordings of interrogations at trial.

**Conclusion: Videotaping to watch over incidents behind closed doors**

In May 2009, a development in the Tokyo High Court had a shocking impact on Japanese legal society and the general public. The Court released the result of DNA analysis from a sexual assault/murder case, the so-called "Ashikaga case". The defendant, Mr. Sugaya, had been sentenced to life imprisonment only to eventually be set free by the PPO. Nine years ago the Japanese Supreme Court confirmed the admissibility of the DNA evidence in his case and upheld the guilty verdict from the first trial of Mr. Sugaya, who had confessed to the sexual assault and murder of a four year old girl in 1991.

The new DNA evidence in 2009 revealed that the original DNA evidence did not match Mr. Sugaya’s DNA type. This meant that the original DNA analysis done by the scientific laboratory of the JPA back in 1991 was incorrect. The Japanese media suddenly became zealous about publishing the story of this unusual case, which happened just two months before the new mixed jury system started to operate.

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Because Mr. Sugaya confessed to the crime just fifteen hours after the police took him to the police station and at a time when he was not in custody, the trial court and the appeal court did not have any doubt as to its voluntariness. Even Mr. Sugaya’s defense attorney did not trust his subsequent retraction of the confession.

Nowadays, the Japanese public is very skeptical about the legitimacy of the interrogation process used by the police and prosecutor office, although both agencies are conducting a campaign against any mandatory requirement of visual recording in the interrogation room. In our country there has been no watcher behind the closed doors of the interrogation room for many years. The right to counsel is guaranteed by the Constitution, and defense attorneys should not accept this situation. Only the use of electronic recordings will reveal the work of the police and prosecutors inside the interview room. The new Japanese government will adopt a Visual Recording Bill promising the full recording of suspect interviews, which was included in the DPJ policy manifesto. Sooner or later, the Japanese police and prosecutors have to start learning how to interrogate suspects and obtain confessions in front of a camera. Changing with the times is the only possible outcome.