
PARTICIPANTS' PAPERS

EFFECTIVE MANAGEMENT OF THE POLICE AND THE PROSECUTION IN CRIMINAL JUSTICE

*Nobuyuki Kawai**

I. BACKGROUND

A. The Police of Japan

In Japan, the Police Law empowers each prefecture to carry out police duties to “protect life, person and property” and “maintain public safety and order by preventing, suppressing and investigating crimes, apprehending suspects and controlling traffic”. Accordingly, the authority to execute police duties in the field is geographically divided into 47 prefectural jurisdictions, each of which is supervised by respective Prefectural Public Safety Commission. The total prefectural police force numbers approximately 260,000, including 230,000 ranked police officers and 30,000 civilian experts and clerks.

The law also empowers the national government to establish a central police organization to control and supervise prefectural police organizations. The National Police Agency, supervised by the National Public Safety Commission, is serving this role.

The police responsibility varies from crime prevention in general to protection of citizen’s life and property, counter intelligence against terrorism and espionage, the fight against organized crime, traffic control and issuing driver’s licenses, administrative control over private businesses such as entertainment businesses, private security and pawnshops, protection of victims and firearms control.

B. Criminal Investigation

As for criminal investigation, the Code of Criminal Procedure states that “when a police officer deems an offense has been committed, he shall investigate the offender and evidence thereof.” Accordingly, the police are empowered to investigate all illegal acts punishable under Japan’s judicial system, fulfilling the primary responsibility for criminal investigation in the country.

C. Political Neutrality

In order to ensure the political neutrality of the police, the Police Law put police organization under the supervision of public administrative commissions.

At the local level, the Prefectural Public Safety Commission exerts administrative authority over the respective prefectural police. Members of each Commission are appointed by the respective prefectural governor with the consent of the respective prefectural assembly. Each Commission exercises administrative supervision over its prefectural police by formulating basic policy and regulations for police operations. However, neither the Commissions nor the prefectural governors or elected assemblies may interfere with individual cases or specific law enforcement operations of the prefectural police. Prefectural police chiefs are appointed and dismissed by the National Public Safety Commission with the consent of their Prefectural Public Safety Commissions.

At the national level, the National Public Safety Commission exercises administrative supervision over the National Police Agency. While the Commission is under the jurisdiction of the Cabinet Office, the Prime Minister is not empowered to exercise direct command or control over the Agency. This guarantees the Commission’s independence and ensures its political neutrality. The Commission supervises police by formulating basic policies and regulations, coordinating police administration in various fields, and supervising internal inspection of police activities. The Commission also appoints the Chief of the National Police Agency and other senior officers of prefectural police organizations. The Commission consists of a chairman and five members. The chairman is a state minister who presides over Commission meetings. Members, who serve five-year terms, are appointed by the prime minister with the consent of both houses of the Diet. They must be persons who have not served within five years of appointment as police officers or public prosecutors. To ensure political neutrality, no more than two members may belong to the same political party.

* Deputy Director, Firearms Division,
Community Safety Bureau,
National Police Agency, Japan

II. EFFECTIVE MANAGEMENT OF THE POLICE INVESTIGATION

A. Morality, Integrity and Motivation Inspired and Tested by Various Challenges

The institutional setting alone does not necessarily guarantee the effectiveness of any organization. In order for an organization to be truly effective, its members must be aware of the importance of their responsibility to do the job, and become inspired and motivated to improve the efficiency of their own performance. The key to effective management of an organization is its independence continuously tested by positive challenges from outside of the organization.

Historically, the Japanese police had developed a strong sense of responsibility in the struggle to cope with various challenges as explained below. Its positive reaction to the constant pressure from those challenges has improved the capability and fidelity of the Japanese police. In order to fulfill its responsibility while maintaining its independence, the police have constantly been inspiring themselves.

B. Challenge in the Course of Collaborating with Prosecutors

It is the prosecutors who directly challenge and inspire the police in their role as prosecutors and investigators. In collaborating with prosecutors, the police are repeatedly inspired to realize the importance of their responsibility as the primary authority in criminal investigation.

1. Collaboration to Sustain Prosecutions at the Courts

In Japan, prosecutors bear exclusive responsibility to file and sustain prosecutions in the court. Needless to say, the purpose of police investigation is to identify the suspect and gather evidence which can lead to a conviction in court. The police strive to fulfill its responsibility as a primary authority for criminal investigation, by effectively identifying the suspect and gathering evidence while protecting the due process of law so as to support prosecutors' successful management of prosecutions. This challenge, coming from the prosecution, has always been one of major factors to stimulate the police to improve their capability and fidelity.

2. Cooperation as Investigators

While the primary duties of public prosecutors are to determine case dispositions and file and sustain prosecution, they are also empowered to conduct investigations.

In this context, it has to be pointed out that prosecutors have indeed excellent investigating capabilities, especially, when they initiate their own investigations on large scale intellectual crimes and political corruption cases. Prosecutors' successful investigations of such cases always inspire and motivate the police to improve their own skills and to challenge more and more difficult cases.

The prosecutors' investigations are generally supplementary. As the primary investigation authority, police managers try to perfect their investigations so that there is least amount of needs for the prosecutors to investigate the same cases even in supplementary manner.

C. Challenges from Citizens as to their Confidence in the Police

Police activities, including criminal investigations, can't be successful without support from citizens. Police will not get public support unless the citizens have confidence in the police's capability and fidelity.

1. Capability to Detect and Investigate Crimes Effectively

The police have to identify suspects effectively at the same time following the due process of law. This simple but basic point should not be overlooked. Prosecution of criminals is the most effective way to deter crimes. At the same time, any violation of legal or human rights, at any level, leads directly to a distrust, by citizens, of the justice system as a whole. To a lesser degree, the more incidents of unsolved crimes increase, the more the distrust and lack of faith in the police abilities grows.

2. Systematic Self-inspection

The police must be seen as an authority upholding law and order, protecting the rights and property of all citizens equally without bias or favor. Any mishandling of cases could trigger public questioning of police abilities and integrity. This could lead to instability in the police authority as a whole.

In order to maintain the integrity of the police officers, police exercise systematic self-inspection under the supervision of national and prefectural level public safety commissions. The police also disclose information concerning police misconduct to the public, laying itself open to public criticism.

D. Latest Challenges

It is becoming more and more difficult to conduct criminal investigation successfully because of the challenges mentioned below. The clearance rate of crimes continues to decrease. In order to fulfill the responsibility as a primary investigation authority and to meet citizen's expectations in maintaining safety on the streets, the police have to cope with many challenges caused by the modernization of society.

1. Increasing Anonymity in Society

In modern society especially in big cities, the old fashioned sense of "community" does not exist any more. People do not know nor care who is living next door. With such increasing anonymity in society, it is becoming more and more difficult for police to find witnesses to crime. The police have to identify suspects relying on material evidence supported by scientific analysis and gathered strictly following the due process of law.

In order to cope with this challenge, the Japanese police have been developing scientific capabilities for investigation, which include fingerprint identification, footprint identification, photograph identification, analysis of minute object gathered at the crime scene, and engagement of police sniffing dogs. More advanced forensic examination such as the examination and analysis of bloodstains, hair, drugs and DNA are available at the Criminal Investigation Laboratory in each Prefectural Police. Furthermore, at the national level, the National Research Institute of Police Science is promoting the development of cutting edge science in support of police activities.

Attention has been also paid to the legal implication of utilizing modern technologies in investigation, with a view to protect the due process of law and to avoid unintentionally violating human rights of crime suspects.

2. High-tech Crimes

High-tech crimes are increasing rapidly as Japan moves toward an information-oriented society. Computer hacking grows in sophistication as quickly as new computer technology develops. Almost as soon as safeguards are established to protect data systems, criminals are finding ways to breach those safeguards. A perpetrator is generally anonymous and often traces of an intrusion are difficult to detect. Not only is data pirated but also damage to multiple systems can be achieved through a single intrusion using a "virus" that can spread from one computer to another indiscriminately. In addition, due to the international nature of the Internet and other web-based networks, cross-border intrusions occur on a frequent basis.

Besides computer intrusions, analysis of data stored on computer hard drives, in peripheral components, on electromagnetic data storage disks, is becoming a critical aspect in the investigative process.

In the course of investigating high-tech crime, data retrieval is often difficult, especially if the data has been encrypted, deleted or destroyed. The National Police Agency established the High-tech Crime Technology Division to provide technical support to the prefectural police involved in high-tech crime investigation.

3. Internationalization of Society

Recent technology has enhanced transnational trade, commerce and transportation. Consequently, criminal activities such as terrorism, transnational organized crime and money laundering have flourished by this globalization. The rapid development of information technology has also created a borderless cyber space. Criminals can crack and attack computer systems, commit Internet fraud, and deliver illegal contents through the Internet beyond national borders.

In the fight against transnational crimes, there should be neither safe havens nor loopholes for either criminals or their illegal proceeds. In this regard, international cooperation among the law enforcement authorities is indispensable. Accordingly, the National Police Agency actively participates in international forums such as the UN, Interpol, G8 and FATE, which deal with these common issues throughout the world. The Agency is also promoting bi-lateral cooperation with relevant authorities in neighboring countries.

E. Police Training

In order to maintain a reliable police force, individual police officers have to be trained properly in order to cope with the latest challenges. Training is vitally important in effective police management, and for maintaining high moral standards of the individual officer. Thus, much time and resources are put into training programmes as follows.

1. Regular Training for Police Officers

Newly recruited prefectural police officers undergo a twenty one-month initial training programme at prefectural police academies. When promoted to a new rank, police officers again receive training, six weeks for new police sergeants and eight weeks for new assistant inspectors, so that they will be prepared for their new responsibilities.

2. Training of Police Managers

Officers promoted to the rank of police inspector enter the National Police Academy in Tokyo for a three or six-month training programme. They must master management and leadership skills and develop practical abilities to serve as managers in the police activities in the field. The Academy also provides training for officers of the rank of police superintendent to be prepared for assignments as the chief of police stations.

3. Training Specializing in Advanced Skills in Criminal Investigation

The National Police Academy also provides advanced training programmes for officers specializing in criminal investigation activities and who are expected to play managerial roles in the operations. The curriculum includes leadership, management skills and advanced techniques and technologies concerning criminal investigation.

III. COOPERATION BETWEEN THE POLICE AND THE PROSECUTORS

A. Cooperation in General

The police and the prosecutors cooperate closely and well in Japan. Police begin consulting with the prosecutors as appropriate in the early stages of investigation, to establish close collaboration.

As previously mentioned, the positively stimulating relationship between the police and prosecutors in their collaboration encourages each side to remain aware of the importance of each other's responsibility. It is the aim of the Japanese criminal procedure that, in all stages of investigation, either police or prosecutors will exercise their authority in paying due respect to each other's responsibility.

1. For the Prosecution

As for the prosecution, the Code of Criminal Procedure empowers the prosecutors to make general suggestions to the police, by setting forth standards for the essential requirements of criminal investigation needed to institute and support public prosecution.

Various standards for investigation, after informal consultation with the police at the national level, have been suggested by prosecutors and utilized in everyday-investigation.

2. For the Investigation of Prosecutors

As for the investigation of prosecutors, the Code of Criminal Procedure states that the prosecutors and police shall cooperate with each other in their investigations. Accordingly, the Code empowers prosecutors to issue general instructions to the police to mediate conflicts over jurisdiction on certain cases among different law-enforcement authorities including the prosecutors themselves. The Code also empowers the prosecutors, in the course of their own investigations, to instruct the police to provide assistance.

B. Effective Screening of Cases in Collaboration with Prosecutors

1. Effective Clearance of Crimes Following the Due Process of Law

False criminal charges against innocent suspects should by all means be avoided, and those innocents should be released from the scope of criminal investigations as early as possible. In this context, it should be pointed out that effective identification of suspects based on reliable evidence gathered in the due process of law is one of the most important screening methods in criminal procedure. With close collaboration with prosecutors, police are carrying out this task as a matter of prime interest.

2. Diversion of Minor Offenses Through a Simplified Process

Based on the general standards suggested by prosecutors, the police are disposing of certain minor property offenses without referring to prosecutors. As for juvenile offenses, police refer certain minor offenses to prosecutors with certain simplified procedures so that the offenses are diverted from the process of probation or conviction. Accordingly, the police play a major role in the early stage of screening minor offenses.

3. Collaboration with Prosecutors in Non-indictment Dispositions

In 1993, the National Police Agency prepared a bill to amend the Firearms Control Law so that the mitigation of, or exemption from, criminal sanctions for the voluntary surrendering of illegal firearms was introduced. The bill was passed in both houses of the Diet in the same year, and the motivation for illegal possessors to surrender their firearms to the appropriate authority was legislatively institutionalized.

To realize the aim of this amendment, the police are keeping close contact with prosecutors in handling such cases of voluntary surrender of firearms, and the prosecutors are exercising non-indictment disposition in many of such cases. Such collaboration makes it possible to collect many illegal firearms and to reveal the illegal distribution chains. In the year 2001, about 14 % of confiscated illegal firearms were those voluntarily surrendered.