

Opinion on “Verification on Experimental Audio/Video Recording of Interrogations at Police”

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Japan Federation of Bar Associations

I Summary

1. “Verification on Experimental Audio/Video Recording of Interrogations at Police,” which the National Police Agency (NPA) of Japan published in March 2009, is unjust because it tries to justify the video recording of partial interrogations without giving any consideration to the harmful influences of interrogations taking place behind closed doors.
2. Video recording of the entire process of interrogations must be realized immediately in order to completely eradicate forced confessions and miscarriages of justice, and so lay judges can make proper judgments based on intelligible trials.

II Reasons

1. Introduction

The NPA published “Verification on Experimental Audio/Video Recording of Interrogations at Police” (hereinafter referred to as “this Verification”) in March 2009. This Verification verifies the results of trial audio/video recording of partial interrogations during September 2008 - February 2009 at main police stations nationwide. This opinion explains the problems of this Verification.

2. As to “The Outline of Audio/ Video Recording of Interrogations at Police”

(i) Objective and Method of this Verification

According to this Verification, the police experimentally enforced partial audio/video recording in 66 cases (with 58 suspects) within half a year from September 2008 to the end of February 2009. In this period, there were potentially 838 applicable cases in 5 prefectures so that only less than 8% of the cases were partially electronically recorded. Also, the standard and reasons of selecting the 66 cases are not explained in this Verification. In this way, this Verification does not include sufficient basic facts so that the significance of this Verification is still questionable.

This experimental partial audio/video recording is applicable to cases (1) when the suspects have already confessed and to which *saiban-in* (lay judge) trials are applied and (2) when the head investigators accepted to electronically record the interrogations as appropriate. And if investigators decided not to electronically record interrogations

because it was thought that “audio/video recording” would “spoil the interrogations’ function of truth revelation, in such cases as organized crimes.” However, if they experimentally enforce – even if partially – audio/ video recording at all, it is significant to verify whether electronic recording harms “interrogations’ function of truth revelation” as investigating authorities believe. Actually, this Verification also states, “in verifying this experiment, we must investigate enough from the viewpoint of the influence of enforcing audio/video recording on the function of interrogations.” This experiment, however, does not enforce recording if “it spoils function of truth revelation” – thus supporting the fixed conclusion – and arbitrarily avoided partial audio/video recording in such cases so that it is inadequate and inappropriate as verification.

(ii) Summary of this Verification Result

According to this Verification, partial audio/video recordings were carried out after 11 days or more from the arrest in 86% of the cases. Also, as to the length of audio/ video recording, they recorded less than 20 minutes in 86% of the cases. On the other hand, it does not explain how many days and how long in total the interrogations were carried out in each case. It is at least clear that suspects’ statements were taken in the interrogations before recording so that the meaningful parts of the interrogations were not recorded, but just results of them. This is absolutely inadequate as verification of “proof of voluntariness” or “function of truth revelation.”

3. As to “the Investigators who Participated in this Trial Recording and their Opinions”

This Verification states they heard opinions from the investigators who participated in this trial recording and presents its results. These are, however, all subjective opinions of the investigators. As to the changes in suspects’ attitudes toward making statements, for example, it is not clear whether there were actually changes since the whole process of the interrogations was not visually recorded. Even if some changes in the attitudes of statements were observed, it is not clear whether it was due to the video recording or other factors. In the first place, it is highly possible that the attitudes of statements changed because they did not visually record the whole process of the interrogations but only some parts. As long as they record partially, this Verification inevitably becomes inadequate and biased.

4. As to “Verification on Experimental Audio/Video Recording of Interrogations”

Presupposing above, we further examine the result of this Verification.

(i) As to the Effectiveness and Efficiency of Measures to Prove Voluntariness of Confessions

This Verification concludes that “like the contents of this verification, using relatively short DVDs to demonstrate the circumstances of reading to suspects the contents of statements when preparing depositions about the outline and most important parts of crimes is appropriate as an efficient method of establishing the voluntariness of confessions.”

In the first place, however, it is nearly impossible to verify the voluntariness of confessions with partial audio/video recordings that do not clarify the process of obtaining confessions. Also, this Verification is incorrect in its presumptions as mentioned above so that it is impossible to judge the effectiveness and efficiency of audio/video recordings in proving the voluntariness of confessions.

(ii) About the Influence on the Interrogations’ Function of Truth Revelation

This Verification says, “in this experimental audio/video recording, it became clear that in some cases it affects the interrogations’ function of truth revelation” and so on.

As mentioned before, however, the ground presented is nothing more than subjective opinions of the investigators.

Moreover, the reference of this Verification to the “interrogations’ function of truth revelation” just means that refusing confession (‘not confessing’) directly results in harming the interrogations’ function of truth revelation, and nothing more. Needless to give the examples of *Shibushi*, *Himi* and *Ashikaga* cases, which came to be clear examples of miscarriages of justice, many false confessions arise behind closed doors. Even though obtaining confessions never leads to revelation of the truth, consideration about the danger of false confessions cannot be found in this Verification. Whether a confession is truly trustful and coincides with the truth can be verified only by clarifying the process, the entire interrogation process, of obtaining the confession.

5. Conclusion

This Verification completely lacks persuasiveness in that (1) the objects of the experimental audio/video recording were arbitrarily selected and (2) the grounds of this Verification are nothing more than subjective impressions which lack objectivity.

Especially, this Verification is severely defective because the police only partially video recorded interrogations, based on preconceived conclusions, and thus it lacks verification of comparing influences of partial visual recording to whole process recording. Moreover, (3) as to “the interrogations’ function of truth revelation,” which NPA refers to, it lacks examination of what is to be considered as ‘truth’ in the first place and regards statements (confessions) obtained as a result of interrogations behind closed doors as truth. In this point, the presupposition itself is incorrect.

Just the other day, in the *Ashikaga* case, Toshikazu Sugaya's innocence was confirmed, and, in an event that can only be described as exceptional, the investigating authority apologized to him. A miscarriage of justice not only occurred in the *Ashikaga* case, as the examples of a miscarriage of justice due to false confessions behind closed doors are too numerous to mention. Partial video recording does not prevent false confessions. Moreover, in *saiban-in* (lay judge) trials, trials must be carried out as intelligibly as possible so that lay judges can judge facts properly. However, partial recording leaves endless disputes on unrecorded parts so that intelligible trials can never be realized. The NPA must sincerely consider the fact that false confessions brought many miscarriages of justice, such as the *Ashikaga* case, and that in order to realize intelligible trials for lay judge trials, it must step forward and record the entire interrogation process.