
Making Crime in Japan

This book is a study of the everyday activities of Japanese police detectives as part of their criminal investigations. Police detectives in any country work to "create" criminal cases in which suspects can be indicted, convicted, and sentenced to the maximum possible penalties. The focus of their activity is the construction of information in cases to be presented to prosecutors, judges, the mass media, and, ultimately, the public. Crimes are established as officially recorded social events only after the information put together by police detectives is presented and accepted. This information, thus, makes crimes, and *making crime* (Ericson, 1981) is the job of detectives.

The construction of information on crimes is an interactive process in which actors other than detectives also participate. These actors include victims, witnesses, suspects, defense attorneys, and police supervisors. Detectives and other actors participate in this process with different resources and under varying constraints, and any single piece of information is a result of the complex interactions among these actors. This book describes how Japanese detectives mobilize their resources and deal with constraints in their interactions with other actors, explains their behavior as a response to environmental conditions perceived by them, and compares their behavior with their North American and British counterparts.

Direct observation of criminal investigation is crucial to such a study. As is often the case with large organizations in Japan, whether public or private, the Japanese police provide more opportunities for direct observation to foreigners, particularly American researchers (Bayley, 1976; Ames, 1981; Parker, 1984). Until now, these studies conducted by American researchers have been the only observational studies of the Japanese police published in

English, either by foreigners or by Japanese (cf., on the historical background of the modern Japanese police, Westney, 1987: chapter 2).

There was a significant difference among these American researchers in their ability to understand the Japanese language and the length of their observations at a given location. These differences affected their conclusions. Ames spoke Japanese well and unlike others had no need to rely on an interpreter. He also observed a single police station for the longest period of time. It is no wonder, therefore, that his study is more nuanced in both its description and evaluation of the Japanese police. It even includes firsthand information on their relationship with organized crime and social outcasts.

All of these American researchers focused mainly on patrol activities (cf., the first observational study of patrol activities conducted by an independent Japanese researcher, Murayama, 1990). This is understandable given the apparent difference in styles of patrol activities in the United States and Japan. While motorized patrol dominates in the United States, the Japanese style emphasizes foot patrol by officers who are assigned to *koban* or police boxes. Since Japan has had a significantly lower crime rate, the desire to find a more effective style of policing led American researchers to study patrol activities in Japan. However, a series of sophisticated experimental studies in the United States later raised serious doubt about the causal relationship between crime rates and styles and levels of police activities (for a summary of research findings, see Skolnick and Bayley, 1986: 3-5).

In any event, these studies on the Japanese police included no more than a chapter each on criminal investigation (Bayley, 1976: chapter 7; Ames, 1981: chapter 7; Parker, 1984: chapter 5). Among these studies, Bayley offers the most detailed assessment of criminal investigation. Nevertheless, description of investigative activities was not his main concern. This book corrects this dearth of information on criminal investigation in Japan by describing and explaining the routine activities of general police detectives.

Compared to the relative lack of academic interest, the American news media have shown a great deal of interest in criminal investigation in Japan, particularly in its more problematic aspects. On September 20, 1988, for instance, the *New York Times* reported on the lengthy detentions of suspects in police station detention cells, where individuals could be pressured into confessing. The newspaper article stated that "since 1945, 40 people filed suit to overturn verdicts against them on the ground that they were forced to confess crimes they did not commit," and that "since 1963, courts have found 12 cases of false conviction, including 3 people sentenced to death and 3 to life imprisonment." The *Times* also reported on the harsh treatment of persons, including even those accused of minor charges. A female suspect in a loan fraud case was allegedly "stripped naked, subjected twice to a genital search, and forced to urinate while male police officers watched." The police

later found that the money had in fact been paid back before her arrest, and she was released without indictment. On May 1, 1989, the *New York Times* again described how Japanese investigative methods relied on interrogations during lengthy pretrial detentions, this time in relation to the investigation of the so-called Recruit bribery scandal by the Special Investigation Team of the Tokyo District Prosecutor's Office, whom *Time* magazine (April 24, 1989) praised as "lonely heroes."

It is tempting to dismiss serious cases of human rights violations as individual actions committed only by the exceptional police officer. I argue in this book, however, that such cases can happen in investigations that follow well-established routines, and that police detectives are working in an environment that constantly tempts them into more aggressive and questionable behavior. I discover basic similarities between detective work in Japan and North America and suggest that similar institutional and utilitarian explanations are applicable to police behavior both in Japan and in North America.

Questionable investigative activities have occurred in a series of cases in Japan and involve forced confessions to false charges, police crimes, and procedural illegalities. Because it is essential for readers to understand the background of this focus, I summarize some examples of such cases.

Forced confessions to false charges repeatedly appear both in the courts and in the news. Four recent examples are summarized below. Two involve convictions several decades ago, but the third and fourth indicate that forced confessions made during pretrial detention at police station detention cells still remain a problem.

On December 31, 1988, the Shizuoka District Court overturned the conviction of Masao Akabori for rape and murder. Police had arrested Akabori for a theft and he eventually admitted to the rape and murder of a six-year-old girl. He was convicted, and the Supreme Court in 1960 upheld the death sentence. Akabori continued to file petitions for retrial from his cell on death row; on his fourth petition the Shizuoka District Court decided in 1986 to retry the case. The court held that Akabori's confession was untrustworthy and found that other evidence was not sufficient to convict him.

On the same day, the Kumamoto District Court overturned the conviction of the late Masao Matsuo, who had been convicted of rape and injury in 1955 and had served a prison term of three years, but continued to seek retrial after his release. The court accepted his thirteenth petition in March 1988. He died soon after, but the retrial continued. As in Akabori's case, the court found the confession untrustworthy.

On March 3, 1989, the Sakai Branch of the Osaka District Court overturned the conviction of a twenty eight-year-old man for the 1979 rape and murder of a woman. In this case, five youths, including this man, had been arrested and sentenced by the trial court in 1982 to prison terms of ten to

eighteen years. One of them did not appeal and served the sentence, while the four other defendants appealed and eventually were acquitted in 1986 by the Osaka High Court on the grounds that their confessions were involuntary and untrustworthy and that sufficient evidence was lacking. The remaining defendant who had not initially appealed then requested a retrial that led to his acquittal.

On November 16, 1988, a mother and her seven-year-old son were killed in their apartment in Tokyo. The Tokyo Metropolitan Police found no clue for several months and started a blanket investigation of area youths who had been absent from school early in 1989. They arrested three sixteen-year-old boys in April who admitted to committing the crime. The Tokyo District Prosecutor's Office sent the case to family court in May with recommendations for an adult criminal penalty for one boy and commitment to the juvenile correctional house for the other two. Before the first hearing, however, one of the boys told his mother that he was innocent, and a team of defense attorneys was formed. The attorneys found that one boy had an alibi. He had been working as a painter on the day of the crime in a remote place and his supervisor confirmed this. The Tokyo Family Court held that the confessions were not trustworthy and decided to take no action against the boys. It was revealed that the police had known about the alibi from the beginning, but had pressed the witness to change his statement. The witness's interrogation was terminated only by a writ of habeas corpus.

The police also claimed that a brooch found at one boy's house had been stolen from the victim. However, the attorneys proved that the boy had bought it at a hotel, and the police had not tried to verify this. The boys related to the press that the police had told each of them that the other two boys had confessed at the beginning and therefore they had individually abandoned their resistance. The head of the First Detective Department of the Tokyo Metropolitan Police still maintained to the press that they were guilty.

There have been other cases of police crimes and procedural illegalities, as illustrated in the six cases below.

In the summer of 1982, bars, coffee shops, and gaming machine shops with electric gambling machines were thriving in the Osaka Prefecture, the second largest metropolitan area in Japan. The Osaka Prefectural Police ordered the fifty six police stations under its jurisdiction to search these shops for evidence of illegal gambling. Thirty stations failed to find any, while other stations found evidence in only thirty four shops. It was evident that police information had been leaked. The Special Investigation Team of the Osaka District Prosecutor's Office started its investigation. The main suspect was a veteran officer with fifteen years of experience at the lowest rank

of patrolman at the Sonezaki Police Station in downtown Osaka. The Osaka Police planned to relocate him to a southern area of Osaka on November 1. However, realizing this move by the police, the prosecutors asked him to appear in their office on that day. The Osaka Police immediately changed its plan, arrested the officer on the following day, and succeeded in keeping the investigation of its own member internal. The officer was charged with bribery involving thirteen million yen (approximately \$52,000 U.S. by the exchange rate in those days).

As is often the case in organizational scandals in Japan, another person, a police sergeant, killed himself on the same day. It was later learned that he also had received money. On November 11, two former officers were arrested for bribery. A few months earlier, one of them had tried to bribe the other upon request from gaming shops. The former eventually received 200,000 yen (approximately \$800 U.S.), and the latter divided 7.9 million yen (approximately \$31,600 U.S.) with two other officers, including the one who committed suicide. There had been earlier suspicion about their involvement; however, the internal Auditor's Office of the Osaka Police had not arrested them, and, instead, the Osaka Police merely dismissed them for unrelated reasons. The arrest of these former officers was followed by a second suicide. The principal of the National Police Academy in Tokyo killed himself on November 12. He had been chief of the Osaka Police until August of 1982 and it was obvious that corruption had spread during his tenure. By January of 1984, when the Osaka Police closed its investigations, only four active officers of the rank of assistant inspector or lower had been formally charged. More than one hundred officers were dismissed or otherwise disciplined, but only two of them were later indicted. There had been no mention of possible involvement by police executives. The national association of gaming machine manufacturers included many retired police executives. Its president was a former head of the department in charge of regulation of this industry at the Tokyo Metropolitan Police, and its Osaka director was a former police executive in the Osaka area. Moreover, its counselor was a former chief of the National Police Agency and an incumbent cabinet minister.

On November 27, 1986, a wiretap was found on the private phone of Yasuo Ogata, the director of the International Relations Department of the Japanese Communist Party, who lived in Machida City, a suburb of Tokyo. Wiretapping constitutes a crime of obstruction of electric communication punishable by a fine of up to one million yen (approximately \$5,880 U.S. by the exchange rate of those days) or a prison term of up to five years. It is also a crime of violation of privacy of electric communication, punishable by a fine of up to 300,000 yen (approximately \$1,760 U.S.) or a prison term of up to one year. No law in Japan authorizes the police to wiretap anyone. Since

He argued that given such a possibility, prosecutors had made the best deal in this case and it was doubtful that they could have indicted anyone where the real suspects were large organizations that have physical force, such as police and the Self-Defense Force (for a partial translation of this "parable," see Miyazawa, 1989).

On February 6, 1988, Michiko Gusoku, the wife of the owner of a small food store in Sakai City of Osaka Prefecture, found a bank envelope containing 150,000 yen (approximately \$1,170 U.S.) in her store and reported it to the nearby police box, where a young officer received the money. The owner eventually realized that Gusoku had found the money and went to the main police station to retrieve it. The police told him, however, that the money had not been reported, and opened an investigation with Gusoku as the suspect. Detectives came to question her, bringing a torn bank envelope allegedly found near her store. They asked her doctor if it was safe to take her into custody in spite of her pregnancy, and asked the nearby postal savings office to provide information about her recent financial activities. Gusoku retained an attorney and asked a branch office of the police auditor of the Osaka Prefectural Police Department to investigate the young officer, but the request was refused. Only when newspapers reported this case one month later did the headquarters of the Osaka Police take over the investigation. On March 25 the police admitted that the young officer at the police box had failed to report the money to the station and that Michiko Gusoku was innocent. The officer was dismissed, and, in the subsequent civil suit filed by the Gusokus, the Prefectural Government of Osaka agreed to pay two million yen (approximately \$15,000 U.S.) damages. The officer's indictment was suspended by the prosecutor, however, on the grounds that the money was returned and he already had been disciplined.

On December 3, 1988, seven juveniles were arrested for breaking and entering a high school in Hirakata City of Osaka Prefecture. One of the juveniles died less than ninety minutes after the arrest from damage to internal organs. The other juveniles told the newspapers that one of the arresting officers had kicked and thrown the youth down when he had resisted arrest. The Osaka Police Headquarters started an investigation and arrested this officer, a black belt in judo, on the charge of unintentional death caused by physical abuse inflicted by a governmental official in charge of the administration of justice. The officer was dismissed and indicted.

When the gaming shops scandal was exposed in Osaka in 1982, there was suspicion of similar corruption in the neighboring Hyogo Prefecture. A main suspect was an assistant inspector at the Amagasaki Central Police Station. In the process of an investigation in a bribery case, the Kobe District

Prosecutor's Office found that several witness statements prepared by this officer reporting violations of regulations in bars and similar businesses were totally fake, yet the suspects had been indicted and convicted. This was conceivable since such minor cases usually are handled by a summary procedure without trial, and there is no danger that statements will be challenged by the defense attorney. This officer was arrested, indicted, and convicted in 1983 on charges of bribery and forgery of public documents.

In 1986, an officer at the Oi Police Station of the Tokyo Metropolitan Police forged statements by witnesses saying that an American living in Tokyo had possessed marijuana. His supervisor obtained a search warrant based upon these statements, searched the residence of the suspect, and found marijuana there. The police arrested the American at the scene as a flagrant offender. However, the prosecutor discovered the forgery and suspended the prosecution. The officer was dismissed, but his prosecution for forgery was suspended and the police did not disclose this case to the media. The case was reported by a newspaper only in November of 1989.

Among previous studies, Bayley (1976: 4) paints a very different picture of the Japanese police:

[I]f generality of agreement among people in a country is the mark of truth, then Japanese police behavior is astonishingly good. The incidence of misconduct is slight and the faults trivial by American standards.

Bayley (1976: 152) adds:

[M]ost informed observers—lawyers, criminal reporters, law professors, and prosecutors—contend that instances of abuse of persons in custody are rare. Celebrated cases have occurred but the incidence is small, especially when compared with the notorious period before 1945. The suspects that seem to be most vulnerable, according to lawyers, are not the poor, as in the United States, but politically active students.

The cases summarized in this chapter suggest that the Japanese police abuse their authority more often than Bayley's Japanese informants led him to believe, and that their victims are not limited to radical students.

In spite of these and other widely reported cases, it is difficult to find English-language literature on police illegalities and questionable police practices in Japan. One exception is a short paper on forced confessions written by a Japanese attorney, Futaba Igarashi (1984; reprinted Igarashi, 1986).

The Japanese Code of Prisons, enacted in 1908, allowed police station detention cells to be used as substitutes for prisons because of the shortage of prisons in those days. This applied as well to detention sections in prisons for suspects and defendants. This system of *daiyo kangoku*, or substitute prisons, still exists today. Because cases of false conviction invariably involved confessions taken during detention in *daiyo kangoku*, the three bar associations in Tokyo formed a committee to investigate practices there and Igarashi served as its chairperson. After surveying thirty people who were known to have been falsely accused between 1949 and 1982, her committee published a book-length report (Tokyo San Bengoshikai, 1984). Igarashi's subsequent paper vividly describes how detained persons were drawn in and eventually themselves contributed to the construction of a version of events the police and prosecutor wanted to present to the court and the public.

However, Igarashi says little about investigative activities outside the police station detention cells. Moreover, highly publicized, serious cases are not the only problems. Less serious, but equally illegal or questionable actions can appear routinely, and such routine cases may provide the background against which more serious cases occur. What is needed, then, is a comprehensive study of general detective work that provides an understanding of the common characteristics of routine investigations that are conducive to questionable police behavior.

There is only one observational study of the Japanese police which focuses on general detective work—the one I conducted in 1974 in Sapporo City of Hokkaido Prefecture in northern Japan. This field research was inspired by Skolnick's (1966) observational study on the American police, and details of research procedure are discussed in chapter 3.

This book is essentially an abridged translation and updated version of the book published in Japanese (Miyazawa, 1985), with a broader comparative perspective. As the cases noted above show, the situation surrounding detective work in Japan has not changed significantly since my field work.

