
PARTICIPANTS' PAPERS

INVESTIGATION OF CORRUPTION IN JAPAN

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I. CORRUPT PRACTICES BY GOVERNMENT OFFICIALS IN JAPAN

Japan's prosecutor's offices handle and process bribery offences committed by government officials. According to statistics for 1997, there were about 170 government officials under arrest, of whom 150 were accused of taking bribes. According to a breakdown by public office of the accused, the largest number recorded was: 80 for local government officials, followed by 50 assembly members of local government. The remainder consisted of 10 police officials and 10 officials in the National Tax Administration.

In Japan, as mentioned above, the number of cases in which public servants are exposed as being involved in bribery are few, but such crimes are carefully planned and are secretive in nature. So the proportion of cases that remain hidden are rather more than with other criminal cases, and the actual number exposed through the courts is rather small. Thus in Japan, finding out illegal actions by public servants, such as bribery, is quite an important issue for investigating authorities.

There are typical examples in which bribery is committed by government officials in Japan. Administrative bureaucrats exercise their administrative rights at their own discretion, in a broad sense. Information on decision-making processes is inadequately disclosed by administrative organizations. Under such

circumstances, bribes are offered to secure special business favors from government officials in connection with the granting of government licenses or the awarding of government contracts for public works.

These kinds of bribery cases receive public attention. In one such case, the Vice-Minister of Health and Welfare took a bribe from a business owner in return for the granting of a construction subsidy for an aged persons welfare facility. In another case, an executive director of a securities company provided a high-ranking official of the Ministry of Finance with luxurious business entertainment, which constitutes the offence of taking a bribe for favors given in relation to government approval of a financial product.

In Japan, nomination is made for selection of contractors under a competitive bidding system. Contracts to carry out public works are awarded by local governments to the successful bidder(s) among the nominated contractors. Prospective contractors have offered bribes to government officials in return for favoritism during the selection of nominated bidders. Government officials have taken these bribes from prospective bidders to disclose the lowest bid price in the bidding procedure. These corrupt officials were accused of bribery.

In addition to bribery offences committed by administrative bureaucrats, there are many recorded occasions of members of the Diet being involved.¹ Diet members have strong business connections with particular industries. They have been

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¹ The Diet is the Japanese parliament.

known to approach an administrative organ to formulate an industrial policy that is advantageous to one particular industry. In this process, the particular industry offers inducements to the Diet members to influence political decisions in its favor.

Here are some examples of members of the Diet being involved in bribery. In recent years, the Fair Trade Commission attempted to accuse certain construction companies of consulting among themselves to orchestrate predetermined exaggerated bids for public works before the bids were opened. The chairman of the Fair Trade Commission was subjected to political pressure from a member of the Diet, who was consequently accused of receiving a bribe from the construction companies to prevent the proposed accusation. Similarly, in a tax evasion case, a member of the Diet was accused of receiving political donations from many construction companies, with the sole aim of collecting the money for his personal use.

In Japan, those in government service should never accept, for themselves or their family, favors or benefits under circumstances which might be construed as influencing the performance of his or her governmental duties. In general, government employees, including officeholders, adhere to the Code of Ethics for Government Service. Bribery is not necessarily rampant as a social custom. On the other hand, Japan's social structure and the environment surrounding government employees contains many factors that could be seen as a hotbed for corruption. In Japan, investigating authorities are under great pressure to expose corrupt practices by government employees, especially by office holders in the national government - high-ranking government officials and members of the Diet.

II. BRIBERY INVESTIGATIONS OF GOVERNMENT OFFICIALS

A. Public Prosecutor's Involvement in Bribery Cases that are Exposed by Police Officers

In Japan, the police force is the primary investigating authority in criminal cases. In principle, public prosecutors conduct supplementary investigations of criminal cases referred to them by police officers, before determining whether or not to institute prosecution. A public prosecutor's office is an independent investigating authority, as are police stations. As a general rule, these two investigating authorities work in close cooperation with each other.

In bribery cases, police officers conduct the criminal investigation if they themselves expose the leads. To perform effectively during the investigation of a bribery case, police officers require a solid understanding of investigative techniques and legal interpretation. As the courts make ever more complicated rulings that expand the rights of the defendants, the legal requirements for the admissibility of confessions may appear different in certain jurisdictions. Public prosecutors are often involved at the initial stage of criminal investigation, thus exercising control and supervision over the police work. This is to rectify improperly handled investigations and ill-advised conduct on the part of law enforcement officers, especially incomplete interpretation of the law and evaluation of physical evidence.

Good cooperative relations are maintained between public prosecutor's offices and police stations. Public prosecutors and police officers often hold meetings to discuss a particular case in detail before an identified suspect is transferred from the police station to the public prosecutor's office. Even after the

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case is referred to the prosecutor's office, the police maintain a close liaison with the prosecutor's office for competent collection of physical evidence.

B. Independent Investigation by Public Prosecutors

In Japan, a public prosecutor is authorized to conduct a criminal investigation into any type of crime as he/she sees fit. In addition to cases referred to them by the police, public prosecutors identify particular cases and conduct their own criminal investigations.

Statistics for 1997 show the number of people questioned by police officers compared with suspects interrogated by public prosecutors. The police officers questioned about 150 suspects, rather more than the 20 suspects interrogated by public prosecutors. The number of criminal accusations is small on the part of public prosecutors, but the majority of bribery offences committed by government officials or members of the Diet were exposed in the course of independent investigation by public prosecutors.

Public prosecutors are expected to conduct preliminary investigations of bribery offences committed by office holders in the national government - high-ranking government officials and politicians. In practice, public prosecutors perform their investigative duties during investigation of bribery cases. This is partly because the public prosecutor is a skilled practitioner of such diverse skills as legal interpretation and investigative techniques for white-collar crimes, and partly because the public prosecutor's office is independent.

The Public Prosecutor's Office Law provides that no person in the office of public prosecutor can be removed nor disadvantageously treated, even by the

Minister of Justice, without reasonable cause. Moreover, the Law stipulates that, for the purpose of protecting the exercising of prosecution rights, especially for the purpose of eliminating any political pressure and interference of the investigative procedures of a public prosecutor, the Minister of Justice may only command the Prosecutor-General of the Supreme Public Prosecutor's Office with respect to investigations or prosecutions of individual cases. This means that the Ministry of Justice cannot interfere directly with criminal investigations or the solving of crimes conducted by any public prosecutor. In this way, the independence of the public prosecutor is secured. Public prosecutors remain neutral in exercising their prosecution rights against political groups.

III. ORGANIZATION OF PUBLIC PROSECUTORS OFFICES

As described earlier, public prosecutors are authorized to conduct criminal investigations at their own discretion, a factor that is characteristic of the Japanese public prosecutors system. Criminal investigation relies heavily on the investigative duties of public prosecutors, including the institution of public prosecution and the maintenance of public trials.

In Japan, the public prosecutor's office has a special investigative department that takes charge of investigations into bribery and economic crimes committed by government officials. These special investigative departments are established at the District Public Prosecutor's Offices in Tokyo, Osaka and Nagoya. In addition, special criminal departments have been established at 10 district public prosecutors offices throughout Japan.

At the Tokyo District Public Prosecutors Office, the Special Investigation Department has a total of 125 legal officials, comprising of 40 public prosecutors and 85 public prosecutor's assistant officers. These 40 public prosecutors are made up of one director, three deputy-directors and 36 subordinates. All 36 public prosecutors are professionals with four to 18 years of experience since assuming office. They are grouped into three special investigative teams headed by the three deputy-directors.

The following sections address the current situation of independent investigations conducted by the Special Investigation Department and the problems of investigative procedures.

IV. DETECTION OF A BRIBE IN PROGRESS

The Special Investigation Department employs three investigative techniques to find leads for suspicious activities while a bribe is in progress. Firstly, public prosecutors examine news coverage, such as in newspapers and magazines. Another source of information is the question and answer proceedings during the Diet or local government assembly sessions. Public prosecutors look for any suspicious activity conducted by government officials or politicians. Extensive interviews and background investigations are initiated to identify suspects. In particular, examination of the contents of speeches made by Diet or local government assembly members is one important investigative technique to solicit leads in a bribery-in-progress case. Public prosecutors always monitor trends in the Diet and local government assemblies. If a matter of business interest is discussed at a meeting held by a particular corporation or organization, the minutes are made

available for examination by public prosecutors.

Secondly, a public prosecutor's office accepts complaints or accusations from a complainant or accuser for crimes of corruption. The Special Investigation Department has a public prosecutor who takes charge of accepting written complaints or accusation and letters from informants. Suspicious situations worthy of investigation are detected from information contained in written complaints or accusations and anonymous letters. In recent years, an employee of a corporation accused an executive director of a wrongful act. An executive officer of a politician's support association revealed the corrupt practices of the politician. These insider accusations are a major source of information for detecting leads into ongoing bribery cases.

Thirdly, public prosecutors look for signs of suspicious activity during investigations into the crime in question, thus adding weight to the suspicion that some other crimes have been committed. In a tax evasion case, seized account books are examined to identify the flow of funds, thus revealing whether bribes were offered to government officials who could then be accused of bribery. When an identified suspect or witness is questioned with respect to cases of embezzlement or breach of trust by executive directors of a corporation, statements are obtained unexpectedly to detect corrupt practices, thus leading to the prosecution of bribery-in-progress.

V. INVESTIGATIVE TECHNIQUES USED BY THE SPECIAL INVESTIGATION DEPARTMENT

During the course of investigation of a bribery case, the Special Investigation Department conducts a thorough search

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for evidence to collect as many physical items of evidence as possible. Seized evidence is examined to prove an alleged offence of corruption. A search for evidence usually begins in the area to be raided, while the suspect is under arrest. In a serious crime, all people present are mobilized while the raid is conducted and physical evidence searched for. The number of people mobilized during the conducting of specific tasks often exceeds 100. All evidence recovered is seized during the raid, including account books, business diaries, and any other items related to the alleged offence. Seized evidence is often packed in hundreds of corrugated cardboard boxes during a raid on the offices of a big company. The seized evidence is then examined by public prosecutors in detail. They are then used as evidence that a crime was committed.

Secondly, during an investigation into bribery, it is important to clarify the source of funds offered as bribes and how they were used. To locate the source of funds for bribes requires a thorough analysis of account books. To this end, the Special Investigation Department dispatches public prosecutor's assistant officers to the National Tax College and a Regional Taxation Bureau to develop skills in making an analysis of account books. Some public prosecutor's assistant officers receive instruction in bookkeeping at vocational schools. These public prosecutor's assistant officers, who have acquired a working knowledge of bookkeeping, are assigned to special tasks - the analysis of bank deposit slips, vouchers used for business transactions, and ledgers, thus playing an increasingly important role in conducting financial investigations.

Thirdly, public prosecutors conduct intense questioning of suspects or witnesses to obtain their statements to

determine the truth about a fact in question. Bribery is a carefully planned and concealed crime, making it difficult to prove because physical evidence is not easy to gather. So a statement made by an identified suspect or witness is extremely vital to ensure that successful evidence is presented in court. Moreover, the fact that the money received was a bribe is quite difficult to prove without a confession. Public prosecutors do their best to make preparations by collecting objective evidence before beginning any interrogation. This procedure assists the public prosecutors in obtaining a statement from an identified suspect or witness. A statement obtained from an identified suspect or witness is checked against any available background information on the suspect or witness, thus establishing the credibility of the statement. Finally, the public prosecutor's record of oral statements is prepared and presented as evidence in court.

As described earlier, the Special Investigation Department follows basic investigative techniques and procedures for detecting leads during the course of independent investigation into bribery cases. No special authority is delegated to the Special Investigation Department. No special investigative techniques are used for criminal investigations. In a bribery case, criminal investigations conducted by the Special Investigation Department reflect the breadth of practical experience, working knowledge, and investigative methodologies on the part of each public prosecutor.

VI. CHALLENGES TO BRIBERY INVESTIGATIONS

Public prosecutors in today's society face many challenges. Serious crimes such as bribery often results in lengthy, exhaustive, and highly complex criminal

investigations. This requires a heavy allocation of manpower. As described earlier, the Special Investigation Department of the Tokyo District Prosecutor's Office - the largest prosecution team - has only 40 public prosecutors assigned to criminal investigations. As an effective way of managing a complex investigation into serious crimes such as bribery and large-scale economic cases, the manpower shortage is replenished by the dispatch of additional public prosecutors from other departments or other District Prosecutors Offices throughout Japan. In a world of frequent and dramatic changes in information technology, social attitudes and legal opinion, criminal offences are likely to become more and more complex in the future. Conducting complex investigations in an efficient and proper manner requires improvement of investigative methodologies, as well as an increase in the number of public prosecutors in office.

In addition, criminal investigation into bribery poses a major problem - how to secure the appearance of an identified suspect or witness. As Japanese citizens become increasingly aware of their legal rights, the suspect has full opportunity to contact their defence counsel prior to questioning. If identified suspects or witnesses are summoned by the investigating authorities, they often refuse to appear. Such suspects or witnesses refuse to talk during questioning. To cope with these new trends requires consideration to be given to the introduction of new investigative techniques, such as an immunity system. In contrast, Japanese citizens have strong inhibitions about adopting new investigative techniques, such as exemption from legal proceedings and entrapment.

This situation would cause another problem in Japan. The investigation's progress is often hindered by the suicide of individuals being questioned or important witnesses, a contributing factor that has significant effect on criminal investigations. In Japan, a person being questioned often commits suicide to avoid any inconvenience being caused to their organization or immediate supervisor if he/she belongs to an organization. In recent years, news media tends to disclose the nature of an alleged offence and the investigation's progress. The suicide of a person being questioned is often attributable to the disclosure of investigative information through news media.

In a bribery case, a confession obtained from an identified suspect or witness constitutes extremely important evidence. Another problem is how to establish in court the voluntary nature and credibility of a confession. In a bribery case, a confession obtained from an identified suspect at the criminal investigation stage is often revoked by the accused, who denies the voluntary nature and credibility of the confession in court. When the criminally accused challenges the voluntary nature and credibility of the confession made during investigation, their arguments is that he/she was intimidated into confessing because he/she was locked in the interrogation room during intensive questioning.

If the voluntary nature and credibility of confessions is tested at trial, any public prosecutors who conducted an investigation of the case in question will be called to testify in court to establish the facts about the circumstances under which the interrogation was conducted. The admissibility of a voluntary confession obtained during interrogation is established in court by a public prosecutor

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who testifies that the contents of the voluntary confession match the objective evidence and statements made by all the parties involved. If there is a possibility that the voluntary nature and credibility of a confession is tested in court, consideration should be given to the use of video or tape recorders for transparency of the investigative process.

To prevent the investigating authorities from placing over-reliance on a confession, and to facilitate prosecution of a bribery crime, the burden of proof should be changed or presumption regulations should be provided for. These effective procedures should be taken into consideration.

VII. PREPARING FOR COURT

In a bribery case, the defence counsel and defendants have a legitimate right to test the admissibility of physical evidence presented in court by public prosecutors. When prosecuted bribery or economic cases often involve complex fact finding and require a comprehensive list of all physical evidence, the public investigator's record of oral statements and witnesses interrogations. These procedures require enormous effort to establish in court that the alleged crime was committed. The Tokyo District Public Prosecutor's Office has a Public Trial Department and a Special Public Trial Department - an additional department assigned to bribery or economic cases. These departments present truthful, objective information that is effective in establishing the guilt of criminals.