

Criminal Defense in Japan

March 20, 2017

I. Our Expertise

We have been practicing criminal law for about 30 years. We specialize in defending foreigners in Japan. We know the cultural differences between Japan and US, UK and other countries. We can speak foreign languages well, particularly English. We can communicate with the suspect/accused and his/her family in English without any translators or interpreters of foreign languages, particularly for English speaker. It is critically important in a high-pressure situation such as the detention center or the court to communicate with the suspect/accused in foreign languages.

We also have extensive experience in criminal cases. We defended one of the most complex murder cases in Aomori, where a U.S. soldier was arrested for the murder of his wife together with another soldier. He was suspected of burning the body of his wife in the back trunk of the car and then having it crushed by the train on a railway. There was no evidence but the tooth of his wife in the car.

We also defended numerous suspects/accused persons for charges of drug related crime. We have been defending a suspected who was arrested and detained for the charge of importation of 230 kilograms of stimulants, the terminal value of which exceeds USD160,000,000, concealed in iron pipes separately imported in four containers from Mexico.

II. How to Defend Our Client

1. Our Privilege

As qualified Japanese attorneys, we have the privilege of communicating with the arrested/detained person without the presence of the police or public prosecutor. Our confidential communication with our arrested/detained client is guaranteed by Article 39(1) of the Criminal Procedural Law of Japan.

We visit our client as soon as possible and as frequently as possible. In particular, we will visit our client in large and complex cases not admitting the charges 7 days per week until he or she was

released or indicted.

During the interview, we listen to the arrested/detained person quietly and carefully. We will advise him/her regarding the Japanese criminal system, particularly about the 99.9% conviction rate once the arrested/detained person is indicted.

We will also advise our client about the rights of the arrested/detained person under the Constitution of Japan and the Criminal Procedure Law of Japan, particularly the right to remain silent.

Based on the interview with the arrested/detained person, we will gradually form our strategy.

2. Our Aggressive and Strategic Defense

Based on the exceedingly high conviction ratio, our top priority is to avoid indictment of the arrested/detained by the public prosecutor.

We will communicate with the police officer who arrested the suspected person.

Based on the interview with the arrested person and our communication with the police officer, we will try to prevent the police from transferring the case to the public prosecutor.

For example, we could get the contact details of the victim and we could negotiate with them on behalf of the arrested, and settle the case with the victim. We will also draft the letter of apology on behalf of the arrested in English, and we will translate it into Japanese. This is useful for assault, injury, or rape cases.

If the case is transferred to the public prosecutor, we will try to avoid detention by communicating with the public prosecutor. We will also communicate with the judge with authority to issue the detention order. We will often file a complaint against the issuance of the detention order to the district court. We sometimes file a special appeal to the Supreme Court of Japan. We also request the district court to disclose the reasons for detention.

After the detention period of 10 days is over, we will also communicate with the public prosecutor to suspend the request for extension of the detention period of 10 days, and we will ask him/her to give up indicting the detained person.

We will also communicate with the judge with authority to issue the detention order.

If the public prosecutor requests an extension of the detention period, and the judge grants the extension order, we will file a complaint to the district court and a special complaint to the Supreme Court.

3. Risk of Arrested/Detained Person

We believe the above immediate and aggressive defense is key to mitigating the risk to the arrested/detained person.

The arrested/detained person is completely prohibited from communicating with anybody other than us, the qualified defense counsel. This is particularly so if the arrested/detained person is suspected of conspiring with another person.

The arrested/detained person will be interrogated by police officers or the public prosecutor without our presence.

Although the arrested/detained person has the right to remain silent under Article 38(1) of the Constitution of Japan, it is, in practice, quite difficult for him/her to exercise his/her right to remain silent if he or she is interrogated for a long time every day for the maximum 23 days without our presence.

Prevailing opinion among criminal psychologists indicates that the arrested/detained person often admits to facts if repeated by a police officer or public prosecutor again and again for a long time without the presence of anybody other than the police or public prosecutor.

We, the Japanese defense counsel, all know that statements made by the arrested/detained in our absence are stories made up by the police or public prosecutor.

Unfortunately, judges in Japan tend to rely on statements made by the arrested/detained to the public prosecutor.

We believe that carrying out the above immediate and aggressive defense activities while the person is arrested/detained is the only way to avoid the risk of the arrested/detained making statements which include false admissions of his/her crime.

4. Pros and Cons of Exercise of the Rights to Remain Silent

The simplest way to avoid the risk of false admission on behalf of the arrested/detained is to advise them to exercise the right to remain silent.

The arrested/detained may completely refuse to answer any questions to the police officer or public prosecutor under Article 38(1) of the Constitution of Japan.

The police or the public prosecutor, however, is entitled to interrogate the arrested/detained person. The rationale behind allowing interrogation of the arrested/detained person is necessity. In an urbanized and anonymous society, it is necessary to regard the person as a criminal who is the sole person in knowledge of the facts. To confirm this, interrogation of the arrested/detained person is required.

We often tell the arrested/detained person that he or she is free to tell his/her story in our presence in front of the judge after he/she is indicted.

We are often asked by the arrested/detained person as to whether his sentence would be suspended or not if he/she is indicted. He/she is so worried about the conviction ratio of 99.9%. Most especially, he/she does not care about being convicted wrongfully so long as he/she could go back to his/her home country as soon as possible.

We tell such arrested/detained persons that under the law of Japan, which lacks the plea of guilty, he/she will not be released even if he/she admits the facts and cooperates with the police or public prosecutor.

The judgment of conviction could be suspended depending on the circumstances of extenuation of the accused.

The circumstances include the degree of reflection of the accused on the crime committed by the him/her and cooperation with the police or public prosecutor investigating him/her and his/her conspiracy, particularly regarding the mastermind of the international drug related crime syndicate.

We sometimes recommend the arrested/detained person not to exercise the right to remain silent completely but to cooperate with the police and public prosecutor in a case where he/she has admitted guilt in front of us and desires to go back to his/her home country as soon as possible.

We, however, do not recommend it so easily bearing in mind that the role of the police and public prosecutor is not to defend the arrested/accused. The only profession in Japan for defending the

arrested/detained/suspected/accused person lays with us.

It is in this truly complicated and difficult moment where we fully utilize our expertise and experience.

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