***01.치안논단❹95~112 2005.2.23 10:17 AM 페이지95

Explanations on Case Attrition (Type II error) in the Korean Criminal Justice System: Perspectives of Police Investigative Process based upon U.N. World Crime Surveys

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Background

Introduction

The United Nations Surveys of Crime Trends and Operations of Criminal Justice Systems, known as the U.N. World Crime Surveys (fifth survey 1990-1994), was collected in 1997 by United Nations Office at Vienna Crime Prevention and Criminal Justice Branch. And it provides information on the incidence of reported crime and administration of justice in about 90 nations. Variables in the survey describe interrelationships among various components of the criminal justice system, including combined police and prosecution expenditure, number of police personnel, total number of various crimes, number of people formally charged with crime, number of individuals prosecuted and the types of crimes prosecuted, number of individuals convicted and acquitted, numbers sentenced to capital punishment and various other punishments, number of convictions on various charges, number of individuals sentenced and in detention, number of prisoners, sentence lengths, and prison demographics. Interestingly, the data shows that many of recorded cases are dropped out and indicated that trial is very rare event. How can we explain this

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***01.치안논단❹95~112 2005.2.23 10:17 AM 페이지96

phenomenon of case attrition? As criminal justice literatures have reported, for example, at least 50% of the serious crimes committed in the U.S. are never reported to the police (Cole & Smith, 1999). And about 20% of the reported crimes are solved by police. Thus, only about 10% of serious crimes committed pass through the police gateway to the other elements of the criminal justice system, and only 2.7% of serious crimes result in incarceration. The purpose of this paper is twofold. One is to describe the case attrition phenomenon in South Korean criminal justice system using the U.N. World Survey. The other is to explain, in light of police investigation process, why the majority of criminal offenders are not arrested, why the majority of those arrested are not convicted, and why many convicted persons not harshly punished.

Conceptualization of Police Criminal Investigation

Police criminal investigation is a process which can be broadly defined as the information gathering efforts by law enforcement to construct a suspect' s crime related past, using the intelligence produced by many participants in the criminal justice system (Meesig, Lee, & Horvath, 2002). Major participants in the field of crime investigations are victims, suspects, witnesses, patrol officers, informants, detectives, supervisors, forensic scientists, prosecutors, and crime reporters. Their interactions and relationships make up the police criminal investigation process. The police play an especially key role in the collection and use of information to solve crimes, although crimes are difficult to solve unless the victims can supply adequate information to an officer who responds immediately (Greenwood, Chaiken, & Petersilia, 1977).

In general, police criminal investigations begin with the public' s decision to report a crime to the police; it is then subject to a prosecutor' s legal evaluation, and eventually culminates in the court' s judgement. Through the interaction between police and other participantsin this process, the information is produced, processed, stored, and later retrieved, in the process of determining the truth. Since the criminal investigation process has the competing goals of "crime control" and "due process" (Packer, 1968), it often struggles to strike a balance between protecting society, on the one hand, and individual rights on the other. Under the Anglo-American legal

system, it is often seen as necessary to let a party that is presumed guilty go free rather than deprive that individual of his or her legal rights. By contrast, nations with an inquisitorial legal system will tend to attach greater importance to a determination of factual rather than legal guilt.

Except for proactive investigation such as undercover work, it is the crime-reporting behavior of the public that usually opens the door to a police criminal investigation. A crime goes largely unnoticed without the decision by the public to report the crime and by the police to record it. According to the National Crime Victimization Survey, in the U.S., only 36 % of crimes are reported and the figure is even lower for South Korea. This is a product of different social contexts. In South Korea, people tend to prefer to resolve conflicts informally and the police often fail to officially record all reported crimes.

Even when police decide to conduct a follow-up investigation, their scope and motivation of investigation may vary by cases' social status. The cases which receive more media attention may be more likely to make detective efforts available to them. The effort that police, forensic scientists, and prosecutors, put into generating evidence by investigation is not constant across cases (Sanders, 1977; Black, 1980). The police often treat some cases as "big" and investigate them in considerable detail (Ericson, 1981). Those cases often involve a media celebrity, high profile person, or political leader in a community. When socially respectable people of high economic status are victimized, detectives are more likely to "seek physical evidence such as fingerprints, tire tracks, and hair samples at the scene of the crime, interview large numbers of potential witnesses and informants, and conduct extensive interrogations, polygraph ("lie detector") test" (Black 1980). For ordinary cases are against ordinary citizens, less dramatic investigative efforts may be allotted (Cooney, 1994).

One important characteristic of police criminal investigation is the organization' s relational nature with other organizations such as prosecutor' s office and crime lab. In processing criminal cases, police investigator frequently interacts with prosecutor. The quality of police work determines, to a considerable extent, what the prosecutors are able to do with those whom the police arrest since police investigative activities provide the bulk of information used for prosecution. Cases investigated by the police

***01.치안논단❹95~112 2005.2.23 10:17 AM 페이지98

are often dropped by the prosecutor's office when witnesses are classified as uncooperative or evidence is deemed insufficient. Since the immediate goals and tasks of the police and prosecutor offices are quite different, they may view the processof filing charges quite differently. The police criteria of "probable cause," for example, may be seen as insufficient for the prosecutor, who applies criteria based on the concept of guilt beyond a reasonable doubt. Consequently, it is not surprising that a prosecutor's review of police reports tends to weed out weak cases.

With respect to interaction between the police and their crime labs, unfortunately, there is often a lack of communication and collaboration in the processing of physical evidence. Although forensic science technology has made great advances over the past few decades, putting this technology to work is still the responsibility of police investigators. Because police themselves "not only determine what evidence the scientist examines, but also limit the types of analyses that may be performed on the evidence and the types of questions to which the scientist may seek answers" (Peterson, Mihajlovic, & Gilliland, 1986), the forensic scientist's role in processing evidence is limited, However, the value of physical evidence rests on the detective's or forensic scientist's ability to "interpret" it. This means that physical evidence must be connected to a criminal act by interpreting it within the context of the crime (Horvath & Meesig, 1996). This linkage between a piece of physical evidence and a criminal act needs to be co-determined by both police investigators and forensic scientists. In short, police criminal investigations are information processing activities that transpire through interaction between police and other related participants in the administration of justice that are designed to determine the legal truth involved in each case.

Types of Errors

We can say that the criminal justice system is a third party conflict management system (Black, 1998). Agents in this system participate in the case process as a third parties who intervene inthe conflicts between victims and suspects in the name of the state. Police often resolve people's conflicts by providing information, arresting offenders, and giving advice. Prosecutors decide which side will be criminally

charged. Forensic scientists make contributions to conflict resolution by scientifically analyzing evidence.

Finally, judges resolve conflicts of others by sanctions. However, the role of third party conflict management system is not all-powerfulwhen errors are made in the process of criminal cases. There are two types of errors; Type I errors refer to falsely rejecting a null hypothesis that is, in fact, true, and Type II errors are defined as failing to reject a null that is, in fact, false. The former can be called 'false positive,' the latter 'false negative'. This categorization of errors into two types helps us to understand how errors are made in the criminal justice system that result from the investigative processes of the police. Wrongful decisions are made, for example, through a suspect's false confession induced by a police investigator, inaccurate memory of witness, fraudulent forensic science, prosecutorial malpractice, or judge and juror misperception of the presentation of evidence. In fact, many cases of wrongful conviction are blamed on the shoddy or improper investigative practices of the police (Scheck, Neufeld, & Dwyer, 2001). When a person is wrongfully convicted due to incorrect investigative decisions, this represents a typical example of a Type I error. In fact, faulty eyewitness testimony often leads the police to arrest the wrong suspect. Also, when victims and witnesses are afraid of the possibility of retribution at the hands of the offender, they may provide false names and addresses.This inaccurate and unreliable information radically attenuates the ability of the police to make correct decisions and eventually leads to Type II errors.

Type II errors are also common in the police criminal investigation process. When the criminal case does not end up with conviction despite the person's factual guilt, it generates a Type II error. As mentioned above, majority of the serious crimes committed are never reported to the police (Cole & Smith, 1999). Citizen non-reporting blocks the police from information about the distribution of crime, and thus individual offenders go free without intervention from the "long arm of the law" (Skogan & Antunes, 1979), this is the primary phase where the Type II error occurs. Furthermore, only about 20% of reported crimes are solved by the police in the U.S.; in the remaining 80% of the cases the guilty party goes free; this means that the Type II error occurs chronically. Finally, a Type II error also occurs when prosecutors allow

***01.치안논단❹95~112 2005.2.23 10:17 AM 페이지100

the offender to go free by dropping certain cases that have been processed by the police, even though, in some cases, the party is guilty.

Overview of Invisible Case Process in the Criminal Justice System

Both overt and covert pressures and considerations that the criminal justice system ("flowchart") fails to indicate may significantly influence interaction among the components of the criminal justice system. First, the components of the criminal justice network does not necessarily share similar goals and cooperate. As Milner (1971:88) writes, there is often a conflict between the "police perspective's" emphasis on arresting offenders and the "legal perspective's" emphasis on the necessity for building a good case. Police investigative activities and community treatment correctional programs may conflict with each other since the latter may involve loss of police deterrence functions. Also the arrest of marginal criminals, which is intended to enhance the police deterrent effects, may complicate rehabilitation.

Second, the criminal justice network in reality does not operate according to a set of formal procedural rules that always ensures uniform treatment of individuals. In other words, the generation of criminal cases and evidence do not have an asocial legal core. The social composition of the case may partially explain variances in evidentiary power and offense seriousness (Cooney, 1994).

Third, due to the legal technicalities that have nothing to do with the search for truth and the heavy workload of the system, the criminal justice system may fail to answer the main questions: "Did the accused commit the crime?" (Rothwax, 1996). The facts of each criminal case should be used to determine innocence or guilt, yet some claim that actual guilt or innocence is the least important factor in determining legal innocence or guilt. In fact, criminal justice officials may sometimes seem unconcerned with matter of truth and justice. They may emphasize maximum system efficiency, which aims primarily at speedy and early disposition of a case, rather than processing a more deliberate search for the truth.

Police Investigators' Impacts on the Criminal Justice System

The vast majority of people who come in contact with the system, whether perpetrators, victims, or witnesses, deal mainly with the police. This implies that

investigation by police patrol officers and detectives are key determinants of whether or not any other elements of the system ever become involved. When the police investigate cases, many are screened out for lack of investigative leads and no further action is taken on them. Thus, they are typically eliminated from consideration by any other elements of the criminal justice system. The police investigation process also directly impacts the workload of the forensic crime laboratories. The police decide what and how much evidence is collected and sent to labs for analysis. The quality of evidence on which a conviction depends can affect the case outcome at a later stage in the criminal justice system. Since prosecutors seldom enter the case at the scene of the crime, they typically exert relatively little influence on the collection and analysis of evidence. Detectives' knowledge and skills, in the follow-up investigative stage, limit the view and interpretation of the physical evidence they collect and process. It is the police investigation that provides the bulk of the information needed for prosecution. Thus, the police directly influence the amount and quality of evidence available for prosecution.

The police investigation process also influences the workload and activities of the court system. In that it generates many of the legal issues that are subsequently raised and adjudicated in courts. The court sentencing process is directly impacted by the presence of physical evidence in police investigations. Empirical research in some court sentencing programs has shown that the presence of forensic evidence in a case has been found to increase both the likelihood and length of incarceration (Peterson, Mihajlovic & Gilliland, 1984; Peterson, Ryan, Houlden & Mihajlovic, 1987). Thus, the police are largely in control of case intake process and exert substantial control of the system.

Case attrition in the Korean Criminal Justice System

According to the U.N. World Crime Survey, the variables in Table 1 has definitions of the followings; "Crimes recorded by the police" refer to the number of penal code offenses or their equivalent, i.e. various special law offences, but excluding minor road traffic and other petty offences, brought to the attention of the police or

***01.치안논단❹95~112 2005.2.23 10:17 AM 페이지102

other law enforcement agencies and recorded by one of those agencies. "Persons prosecuted" refers to alleged offenders prosecuted against by means of an official charge, initiated by the public prosecutor or the law enforcement agency responsible for prosecution. "Persons convicted" refers to persons found guilty by any legal body duly authorized to do so under national law, where the conviction was later upheld or not. "Admissions to prisons" refer to the number of such events throughout the year and not the number of people admitted on a particular day of the year." (United Nations Office at Vienna Crime Prevention and Criminal Justice Branch, 1997). As indicated in Table 1, about 62% of suspects recorded by police are prosecuted (888,942/1,423,618) and of those 15% are convicted (129,259/888,942). It is also shown in Table 1 that trial is very rare event; only about 10% of recorded suspects are brought before criminal court (145,961/1,423,618). Comparing total admissions to prison to grand total of crimes recorded by police, it is noted that only 2% of the recorded crimes (28,708/1,309,326) are admitted to prison. Overall, the Table clearly shows that many criminal cases are filtered out in the Korean Criminal Justice System.

Table 1. Grand Total of Recorded Crimes and Total Number of Persons who were Processed in 1994 by the Major Components in the Korean Criminal Justice System (data drawn from U.N. World Crime Survey)

Variable names	
Grand total of crimes recorded by police	1,309,326
Grand total of recorded suspects	1,423,618
Total persons prosecuted	888,942
Total persons brought before criminal court	145,961
Total convicted in criminal courts	129,259
Total persons sentenced to incarceration	33,207
Total admission to prison	28,708

Possible Explanations on Reasons for Case Attrition in the Criminal Justice Process

Obviously, case attrition is related to nature of criminal event which is allegedly occurred. When the event is not, in fact, subject to criminal law, the cases are dropped out by police and prosecutors; it was known that many non-criminal events, which are, in fact, civil matter, are reported in South Korea as a form of fraud or embezzlement. Case attrition is usually based upon criminal justice system' s legal judgments, which are in fact true. However, sometimes, criminal justice system may fail to punish persons who actually committed crimes. The emphasis of this paper is to explore possible reasons for the kind of case attrition which is often called "Type II error."

Victim Underreporting

Although the total number of cases which are not reported to the police was not reported in the U.N. World Survey, there is no doubt that victim underreporting is one of the reasons why many cases are not brought to the Justice. Much of the social controls are done by the public themselves in a variety of manners. The management of those conflicts is associated with such phenomena as aggression, negotiation, reconciliation, restitution, retribution, and apology. A victim' s social relationships with an offender may influence whether a crime is or not reported to the police. A victim' s concern over privacy is the most common reason for not reporting crime to the police, and only when victims' desires for safety or justice exceed their desire for privacy, they may report crime to the police (Felson, Messner, & Hoskin, 1999). Citizen' s crime reporting and police incident recording initiate the flow of information between victims and the criminal justice system. The non-reporting may shield the police from information about the distribution of crime, and individual offenders may go free without any intervention from the "long arm of the law" (Skogan & Antunes, 1979)

In the community where victims perceptions of police as well as the criminal justice system are negative, they may be less likely to report crimes. In addition, when a set of services to assist witnesses and victims are not developed, victimsmay be less

***01.치안논단❹95~112 2005.2.23 10:17 AM 페이지104

inclined to participate in the criminal justice system. Furthermore, even when citizens reportcrime, the ability of victims to pass on some description of the offenders in crimes is the next filter in the flow of information to the police. If people do not obtain and remember information regarding a criminal act, then such information no longer exists after the crime is completed, and the artifacts of the crime that may continue to exist are of little value. Therefore, victim underreporting is the first inhibiting factor for case continuation.

Witness Problems in the Criminal Justice System

While the external police-public interface filters out at least half of the serious crimes, the police bureaucracy also screens out much of the remainder from the rest of the criminal justice system. The lack of suspects, insufficient information, manpower constraints, or other priorities are some inhibiting factors for case processing (Cole, 1998). More importantly, the identification of witnesses and their willingness to cooperate can bear directly on the case dropout in the criminal justice system.

Unreliability of eyewitness testimony also attenuates the ability of the police to ensure high levels of certainty of arrest, because victims usually rest on human patterns of cognitive memory under conditions of uncertainty and stress, and offenders are often seen only fleetingly, if at all. In addition, a substantial number of witnesses' statement can not be obtained, since witnesses being interrogated by police are often within earshot of the offender. When they are afraid of the possibility of retribution at the hands of the offender, they may provide false names and addresses. Of course when they give inaccurate information, it allow theoffender to go free again in many instances. Thus, in the criminal investigation process, the critical and most predominant source of information regarding crime is people who produce the "testimonial evidence," and the lack of it affects the significant case attrition in the criminal justice process.

Differences in Immediategoals between police and prosecutor

The quality of police work determines, to a considerable extent, what the prosecutors, and judges can do with those whom the police arrest. For examples,

police-made cases may be dropped by the prosecutor's office when witnesses are classified as uncooperative, or evidence is deemed insufficient. Police and prosecutors may view the charging decision from contrasting perspectives since their immediate goals and tasks are not the same. The police criteria of "probable cause" for determining guilt may be too gross a standard for the prosecutor, who applies criteria related to guilt beyond a reasonable doubt. Additionally, the prosecutor may try to win as many convictions as possible within the manpower limits of the office and the time-consuming procedures necessary in the courts. It may not be surprising that the prosecutor's review of police reports is actually intended to weed out weak cases.

The other characteristic of prosecutors is their quasi-judicial role. They have a responsibilityfor insuring an even flow of cases without docket congestion and delay.Also, they have the duty to do justice, which includes protecting the innocent, pressing charges to fit the crime, and getting the sanction imposed that is most likely to rehabilitate the offender and deter him and others. These considerations have nothing to do with apprehending criminals, which is primarily police responsibility. Therefore, the prosecutor sometimes appearsto drop certain cases which may seem to be sufficient to convict the arrested person.

By contrast, the police have the immediate goal of "doing something" about crime. The main police function is to handle situations that appear to require decisive intervention (Bittner, 1974). Police perform their activities with the capacity to use coercive forces and to do it on short notice. Also, the police are often called upon to keep the peace, rather than to enforce the law (Wilson, 1968). Thus, police personnel rating systems are usually based on charges rather than on outcomes. This is the reason why police tend to overcharge suspects both in frequencyand severity, and why prosecutors much more frequently modify the police charges. The distinctions between the goals and perspectives of the two agencies are critical factors affecting attrition in the criminal investigation process.

Lack of corroboration between forensic scientist and investigator

The value of physical evidence rests on the detective's ability to "interpret" it. Physical evidence "is made available for practical use only through the interpretive

***01.치안논단❹95~112 2005.2.23 10:17 AM 페이지106

schemes employed by the detectives. Without their interpretive work physical evidence would not only remain mute, it would also cease to exist" (Sanders, 1977). Since physical evidence is essentially an artifact of a criminal act, it needs to be connected to the act by interpreting it within the context of the crime (Horvath & Meesig, 1996). However, only a knowledgeable person can make the necessary linkage between the physical evidence artifact information and the memory of a past criminal act. This lack ofcommunication and collaboration between forensic scientist and investigator usually lead to another sources of case attrition, because scientific evidence may be of little usefulness without accurate interpretation of the case context.

Scientific evidence typically has little effect on the odds of arrest or clearance, on or prosecutors' decisions to charge a suspect in most cases. Prosecutors often only look to crime lab forensic analysis of evidence as "insurance," and as a tool to save a losing case, or merely to meet expectations of a judge. Such practices can also lower the potential utility of such evidence and contribute to case attrition in the criminal justice system.

Discriminatory role of evidence in the investigation process

The evidence in a case may not always be interpreted as a direct reflection of what happened but is often mediated by the parties' relationships and social position. Moreover, evidence does not always speak for itself. Its generation requires investigative efforts and evidence technician's interpretation. When socially respectable people of high economic status are victimized, detectives are more likely to "seek physical evidence such as fingerprints, tire tracks, and hair samples at the scene of the crime, interview large numbers of potential witnesses and informants, and conduct extensive interrogations, polygraph ("lie detector") test" (Black 1980). The effort that criminal justice officials put into generating evidence by investigation is not constant across cases (Sanders 1977, Black 1980). The policeoften treat some cases as "big" and investigate them in considerable detail (Ericson, 1981). Those cases can often involve a media celebrity or political leader in a community. For the ordinary cases, which are against ordinary citizens, less dramatic investigative efforts

may be allotted (Cooney, 1994). Thus, the cases and evidence which are linked to the poor social status of the parties may have difficulty in attracting much attention and effort from police investigators, and may remain unsolved.

By the same token, people are not always willing to provide all evidentiaryinformation to legal officials. The willingness of witnesses to come forward tends to increase with the status of the victim. Those with low social reputation, such as the morally unrespectable, often find it difficult to have witnesses come forth on their behalf. It is true that lack of evidence is one of reasons for the attrition of criminal cases. In reality, however, the reasons behind the lack of evidence can be closely related to the status of the principal parties and their nature of their relationship with the investigators. The evidence itself does not speak for "fact," nor is it by itself recognizable as information (Horvath & Meesig, 1996). Evidence is not a fixed commodity attached to a case, but dependent on investigator's perception of case. Therefore, many of the ordinary cases remain unsolved.

Clash between Forensic and Socio-legal Science

Policeinvestigators, prosecutors, and judges typically are not experts on scientific evidence. It is a forensic scientist who can provide expert knowledge to explain the crime scene information to during court presentation. However, when forensic scientists are not familiar with the context of the crime regarding which forensic evidence is collected, or with the context of the judicial process in which the forensic analysis is presented, their analysis is less likely to be conducted or reported in the most effective manner. Even in processing evidence, the forensic scientist role is limited because police "not only determine what evidence the scientist examines, but also limit the types of analyses that may be performed on the evidence and the types of questions to which the scientist may seek answers" (Peterson, 1986). When the forensic scientist is unable to make non-scientists such as judicial officials understand the results of scientific test, the case may easily drop out in the form of acquittal.

Also, to extent which prosecutors are able to effectively question expert witnesses and to bring out the favorable aspects of the evidence can impose limits on the utility of forensic science. Although the culmination of the criminal investigation may

***01.치안논단❹95~112 2005.2.23 10:17 AM 페이지108

consist of the presentation of forensic evidence during a trial, the clash between the discipline of science and sociology of law can greatly affect case attrition. It is true that science enables more exact and precise information to be given in court than legal discipline. Yet socio-legal factors such as the presentation style of forensic experts, the composition of judicial officials, legal technicality, and political ideology can leave much a more significant impression on the judicial officials. Therefore, the factors described above may lead to the acquittals of the defendant.

Implications

Possible consequences of case attrition

The case mortality in a criminal justice process raises some question whether deterrence processes have ever "been given a chance." The holes in the deterrent net cast by the criminal justice system are so large that they may reduce the threat of criminal sanctions. While many scholars state that certainty of punishment is the key to the deterrence,they seldom seem to mention the fact that the vast majority of those who commit crimes are never identified or arrested.

If in fact the certainty of punishment is the key to reducing crime (Cornelius, 1997), criminal justice reforms that focus on the courts and corrections are likely to be too little, too late, because most criminals are not brought before the courts. Thus, thereform needs to begin with the police and with criminal investigations, for it is here that most criminals escape detection which clearly allows them to escape the certainty of punishment. Conservatives argue that lenient anticrime policies undermine the deterrent powers of criminal justice system (Wilson, 1975). In reality, however, police, prosecutors, judges seem to have obstacles in producing deterrent effects, because so many cases are dropped out even without having the chances of considering the issues of 'leniency' or 'tough on' crime policy. When we look at official data in the system, we can easily find that case mortality is extremely low. If the majority of cases are not fully processed in the system, it is not meaningful to

think about deterrence. Due to the large case attrition, the criminal justice system may have already lost the opportunity to use deterrence.

Importance of citizens as co-producers

Crimescan be solved only when citizens report them to the police and assist in identifying offenders because the success of the police in making arrests is dependent on the actions of witnesses and victims. This means citizens should share responsibility for police productivity. Without public support, the criminal justice system would be helpless in achieving its goals. When citizens refuse to provide information to the police, the police may be less able to perform their duties. When members of the public refuse to testify, successful prosecution or defense becomes more difficult. Without the cooperation of the common people, ex-convicts cannot be reintegrated into society.

Therefore, the publicand criminal justice system are essentially co-producers of crime control. Of course, police investigative effectiveness is co-produced by public because the primary method that detectives use to solve crime is successful interaction with victims, witnesses and suspects; detectives carry out their mission-interpersonal communication-by talking to people. Without securing the cooperation from the citizens in order to link a person to crime, investigative outcomes can not be productive. As the Rand report indicated, many cleared cases are due to citizens recognizing and reporting the identity of suspects and stolen property or even conducting their own investigation. Also, most of the serious crimes the police deal with are the ones that are reported to them by people, rather than those that they detect themselves (BJS, 1988; Skogan & Antunes, 1979). Therefore, the predominant activity of police investigators is to collect crime information by talking to people (Horvath & Meesig, 1996). The criminal investigator serves essentially as a connector for the flow of communication, who spent most of the time conducting information processing activities. It eventually follows that the relationship between the police and the communities they serve can critically affect both the quantity and quality of crime information that is exchanged.

***01.치안논단❹95~112 2005.2.23 10:17 AM 페이지110

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국문초록

수사절차 관점에서 본 형사사법 체제의 “사건탈락” (case attrition) 현상: 유엔 범죄 조사 중 한국 데이타를 근거로 하여

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경찰 수사는 넓게 정의하여 피의자의 범죄와 관련된 과거를 재구성하기 위한 정보의 수집, 가공, 재생산의 과정이라 할 수 있으며, 이러한 일련의 과정에는 범죄의 피해자, 목격자, 순찰근무자, 형사, 검사, 법과학자 등이 참여하며 여러 형태의 상호작용을 갖게 된다. 일반적으로 경찰의 범죄 수사의 개시는 주민의 신고에 의함이 보통이고 그 종료는 검찰의 의사결정에 많은 영향을 받게 되지만, 종국적으로는 법원의 판단을 종착점으로 한다고 할 수 있다.

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1997년도의 유엔범죄 조사 중 한국에 관한 데이터를 보면, 일년 동안 경찰에 공식 기록된 범죄발생 총 건수는 1,309,326 이었고, 교도소 수감되게 이르렀던 사건 수는 총발생건수와 대비하여 약 2%에 해당하는 28,078 이었다. 인원수 별로 살펴보면, 경찰에 입건된 피의자 수는 1,423,618 이었고, 검찰에 의하여 기소된 인원수는 전체 피의자의 62%에 해당하는 888,942 이었으며, 이 기소된 인원 중 정식재판을 통하여 유죄(conviction)로 인정된 경우는 기소인원과 대비하여 약 15%에 해당하는 129,259 이었다. 그리고, 실제 형사재판까지 진행되게 되었던 피고인은 경찰에 입건된 피의자와 대비하여 10%였다.

이처럼 형사사건은 법원의 판단과 교도소 수감을 종착점으로 할 때, 대다수의 많은 사건이 중도에서 탈락하게 되는 현상(case attrition)이 나타나게 되며, 이와 같은 “사건탈락” 현상에 대한 이유는 민사사건에 있어서의 고소 남발 현상, 개개 사건의 성격 또는 정상참작 사유 등과 관련된 형사사법기관의 법률요소적 판단 등으로 설명될 수 있겠지만, 이러한 이유 이외에 비법률적 요소와 (extra legal factors) 연관된 일련의 사실로도 그 설명이 가능하다 할 것이다.

이를테면, 실제 범죄가 발생했음에도 피해자가 신고를 안 한 경우는 발생된 범죄 자체의 접수가 불가능하게 되며, 목격자의 증언이 불완전 했을 때, 또는 피해자의 협조가 부족했을 때도 수사절차에 있어서의 사건탈락 현상은 나타나게 된다. 그리고, 경찰과 검찰의 범죄 수사의 목표와 이의 평가에 대한 기준의 상이성, 법과학자와 사건을 담당하고 있는 형사 및 검사간의 교감의 부족, 사건에 투영된 사회적 계층성, 형사재판에 있어서의 법과 과학의 충돌 등이 “사건탈락” 현상에 대한 또 다른 이유가 될 수 있을 것이다.

“사건탈락” 현상으로 만약 실제 범죄자에 대한 처벌을 못하게 된 경우는 형사사법체제의 이른바 “2종 오류” (Type II error) 가 발생하게 되는 것이며, 이는 형사사법체제 (criminal justice system) 전체가 생산하는 범죄 억지력(deterrence)을 약화시키게 된다고 할 수 있다. 수사절차에 있어서 범죄의 실질적 해결은 주민이 제공하는 정보와 증언 등, 국민의 친밀한 협조 없이는 불가능한 것이다. 따라서, 주민과 가장 접촉이 많은 형사사법기관, 즉, 경찰이 시민과 함께 수사절차의 중추가 된다면 2 종 오류의 축소에 많은 도움이 될 수 있을 것이다.