

Serious suspicions arise concerning the committees for the inquest of prosecution (directly controlled by the Supreme Court) that made Ichiro Ozawa into a criminal defendant (Did such committees actually exist?)

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1. Overview of the indictment decision by the committees and its impact

In March 2009, as anticipation grew about a shift of power from the Liberal Democratic Party to the Democratic Party of Japan, the Special Investigation Department of the Tokyo District Public Prosecutors Office began an investigation of Ichiro Ozawa, the President of the Democratic Party of Japan, who was pegged to become the next prime minister following the shift of power. This investigation was in response to suspicions that political donations had been made to Mr. Ozawa through dummy organizations of the Nishimatsu Construction Co., Ltd.

The Special Investigation Department indicted Mr. Ozawa's aid Takanori Okubo forcibly, and Mr. Ozawa was forced to step down as president of the party. Following the change of administrations, Mr. Ozawa was investigated with regard to a separate matter of an alleged violation of the Political Funding Control Law (by his organization Rikuzankai), but the violation could not be confirmed, and in February 2010, the case was dropped because of insufficient evidence. A citizens' organization, which protested the dropping of the case, filed a complaint with the Committees for the Inquest of Prosecution. The Tokyo No. 5 Committee for the Inquest of Prosecution, which received this complaint, began an inquest in March 2010.

In April and September, the committees, each of which consists of 11 members, issued decisions that the case "merits indictment." (It had been established that from May 21, 2009 onward, if a second decision has been made that a case "merits indictment," then indictment will become mandatory.)

Accordingly, Mr. Ozawa was mandatorily indicted in January 2011, and as a criminal defendant, his political activities were restricted until he was acquitted in November 2012. The Democratic Party of Japan, which let go of Mr. Ozawa because he was a criminal defendant, suffered a staggering defeat in the general election, and Mr. Ozawa became the leader of a small opposition party. The mandatory indictment system for the Committees for the Inquest of Prosecution, which entered into force last year, has significantly changed politics in Japan.

2. Immediately after the decision was announced, suspicions arose that "there might not have actually been any committee members" and that "a fictitious decision might have been issued."

a) Suspicion 1: decision made too quickly

On September 8, 2010, six major newspapers reported that "a second inquest of the Ozawa case had entered full swing," and that "a decision is likely to be issued in late October." Nevertheless, on October 4 (20 days after the decision had been made) it was announced that a decision had been made that the case would "merit indictment" 30 minutes prior to the presidential election for the Democratic Party of Japan in which Mr. Ozawa ran, on September 14—six days after September 8.

b) Suspicion 2: doubtful average age of the committee members

The Office of Committees for the Inquest of Prosecution announced that the average age of the committee members that issued the second decision was 30.9 years old, and it was said that this is

“too young.” Nevertheless, the Office then stated that there “had been a mistake,” and corrected the figure twice, first to 33.91 years old, and then to 34.55 years old. The Committees Office then also corrected the average age related to the first decision to 34.55 years old.

The probability that average age of the committee members is 34.55 years old in relation to both the first and second decisions is one in a million, and is thus extremely unlikely.

3. Our investigative activities and results

Katsuko Ishikawa (Director of Shimin Ombudsman Ibaraki) and I made numerous visits to the Office of Committees for the Inquest of Prosecution and the Supreme Court Secretariat, which has direct control over the Office of Committees for the Inquest of Prosecution, in order to address the suspicions. We also repeatedly made requests to the Office of Committees for the Inquest of Prosecution, the Supreme Court, the Public Prosecutor’s Office, the Tokyo District Court, and the Board of Audit for the disclosure of information. Based on our field investigations and analysis of materials, etc., we came to the following conclusions.

“Inquests regarding Mr. Ozawa did not take place.”

“The committees for the inquest of prosecution did not exist.”

“The mandatory indictment of Mr. Ozawa was a ‘fictitious decision.’”

“The ‘fictitious decision’ was overseen by the Supreme Court Secretariat.”

The background and results of our investigation are stated in the attached book *Saikosai no Wana: The Trap for Ozawa*, which was published at the end of last year (December 2012). Subsequently we continued our investigation and analysis and uncovered new serious suspicions. These are covered in a signed article that appeared in the April 5 edition of the Shukan Post (also attached) entitled “New Serious Suspicions Concerning the Committees for the Inquest of Prosecution that Made Ichiro Ozawa into a Criminal Defendant.”

4. Reasons for concluding that “the committees did not exist” and that “the decision was fictitious”

- a) **On September 8, 2010, six major newspapers reported that “the inquest would be entering full swing going forward” and a decision was issued six days later, yet there are no signs that a committee held a meeting at any time between September 8 and 14.**

The Asahi Shimbun (on October 5) and the Yomiuri Shimbun (on October 6) wrote that a rush decision had been made, stating that “Frequent meetings of the committee were held on weekdays at the beginning of September, and a decision was reached after the discussions had matured.”

Nevertheless, based on an “invoice showing the daily allowance and travel expenses of committee members” that was disclosed, the only “day in early September on which meetings of the committee were held” was September 6. This means that it was leaked on September 8 that “the inquest would be entering full swing going forward,” and then a decision was issued on September 14 without a single committee meeting being held. If a decision was reached on September 14, this invariably means that this decision was fictitious.

- b) **The prosecuting attorney went to give a briefing after the indictment decision had been issued.**

Article 41 of the Act on the Committees for the Inquest of Prosecution states, “Before a

committee for the inquest of prosecution issues a decision to carry out prosecution, it must give the prosecuting attorney an opportunity to attend a meeting of the committee for the inquest of prosecution and share opinions.”

Private citizen Mr. A told me, “On September 28, 2010, I met Takahiro Saito, Assistant Head of the Special Investigation Department of the Tokyo District Public Prosecutors Office (the prosecuting attorney) on the first floor of the Tokyo District Public Prosecutor’s Office. At that time, Mr. Saito told me that he was about to brief the committee for the inquest of prosecution on why Mr. Ozawa should not be indicted.” (Looking at the “invoice showing the daily allowance and travel expenses of committee members,” it appears that the alleged committee members got together on September 28.)

The committee for the inquest of prosecution cannot issue a decision unless it has first heard a briefing by the prosecuting attorney, so if a meeting of the committee was held and a decision was made on September 14, Mr. Saito should have been called in before September 14, and there would not have been any need to call him in on September 28.

We requested the Public Prosecutor’s Office to disclose the “business trip management records” of the prosecuting attorney, and there was no record of Mr. Saito having gone to a meeting of the committee for the inquest of prosecution during the period of inquest from August 1 through September 14. We made requests to the Supreme Court, Office of Committees for the Inquest of Prosecution, and Public Prosecutor’s Office for the disclosure of documents showing when Mr. Saito had given a briefing, and in each case our request was denied.

Since there does not appear to be any evidence that Mr. Saito was called in prior to the decision being made, we cannot help but think that the story that “the committee held a meeting and issued a decision on September 14” was invented.

c) “Payment procedures for daily allowance and travel expenses of committee members”: unusual batch processing and very long delays in processing

Looking at the “invoice showing the daily allowance and travel expenses of committee members” that was disclosed, it seems that the committee for the inquest of prosecution in the Ozawa case began its inquests on March 9 and ended them on October 4, and during this period held 22 meetings.

Mr. Denda, former head of the Office of the Tokyo No. 5 Committee for the Inquest of Prosecution, commented, “The Office staff submit the invoices that they have received from committee members to the Tokyo District Court on the day of an inquest or the following day.” The Tokyo District Court then promptly carries out the payment procedures. The amount of time from the “date of the inquest meeting” to the “date on which payment procedures are carried out” appears to be usually about two to six days.

According to the “documentation on annual expenditures” for the 22 meetings, we found that there is a lot of variation in the amount of time required from “date of the inquest meeting” to the “date on which payment procedures are carried out,” with this period ranging from two to 27 days. The time period was seven days or longer in nine cases.

The invoices for 15 meetings are processed after each inquest, but the four meetings on March 9, 16, 23, and 30 are processed altogether on April 1, and the three meetings on August 10, 24, and 31 are processed altogether on September 6.

If the committee members did actually have the meetings, it is expected that the payments would have been processed for each separate meeting day, and that there would not have frequent occurrences of batch processing or long delays in processing. For this reason as well, we suspect that the committee members do not exist and that the invoices have been forged.

- d) The Office of Committees for the Inquest of Prosecution and the Supreme Court Secretariat will not reveal the dates on which the committee held meetings, the number of times that meetings were held, the names of the meeting rooms, and the dates of birth of the committee members and candidates, in spite of our repeated requests for disclosure.**

This information is not personal information, and it is not the type of information that must be kept confidential. Therefore, we cannot help but think that these entities are refusing to disclose it because it is inconsistent with the information that has been released thus far.

- e) If there were committee members and supplementary members related to the inquest of prosecution for Mr. Ozawa, they would number 44 people, but no comments have been made by any of them.**

In the time before and after the decision was issued, there were many odd occurrences and numerous reports of things that could not have possibly happened, so this had led to various suspicions. If these 44 people truly did exist, ordinarily some of them would come out and say, “In fact, we carried out the inquest in this manner.” Nevertheless, close to three years have passed, and still no one has made any comments.

- f) Submission of falsified documents by the Office of Committees for the Inquest of Prosecution (possibly to camouflage the fictitious decision)**

The details about this are covered in the Shukan Post. In November each year, the Office of Committees for the Inquest of Prosecution creates a list of committee member candidates, which it uses to select committee members for the next fiscal year. This list includes the name, date of birth, address, and place of registry of 400 people.

We requested the disclosure of the 2010 list of committee member candidates two times—once in 2012 and once in 2013—and in the documents that were disclosed, the above-mentioned entry columns were blacked out.

We found that the two lists, which should have been the same, differed with regard to the following points.

- (i) In the document that was disclosed in 2012, the printed text in the upper right shows the date “2/15/2012” but the document disclosed in 2013 shows “9/11/2008.” (The Office of Committees for the Inquest of Prosecution explained that this is the date on which the document was printed.)**
- (ii) Only the document disclosed in 2013 has marks of binder holes (holes punched into the document for filing).**

This means that one of the two documents has been falsified, or that they have both been falsified. The Office of Committees for the Inquest of Prosecution has thus disclosed a falsified document.

g) Another fictitious decision was issued concerning the “case of Toshihiro Nikai receiving political donations through dummy organizations of Nishimatsu Construction,” which was investigated by the Tokyo No. 3 Committee for the Inquest of Prosecution.

While the Office of Committees for the Inquest of Prosecution indicted Mr. Ozawa’s aid Takanori Okubo over suspicions that political donations had been made to Mr. Ozawa through dummy organizations of Nishimatsu Construction, it dropped charges against Liberal Democratic Party assembly member Toshihiro Nikai and his associates, who received political donations from Nishimatsu in a similar manner. A citizens’ organization, which protested the dropping of this case, filed two complaints with the Tokyo No. 3 Committee for the Inquest of Prosecution, and decisions were issued on June 16 and July 21, 2009, both stating that “non-indictment would be unjust.”

A decision of “non-indictment would be unjust” is completely different than one stating that the case “merits indictment.” The latter can lead to mandatory indictment, while the former does not necessarily lead to mandatory indictment and in essence means that “the case can be dropped.”

We determined that the decision regarding “the case of political donations made to Toshihiro Nikai through dummy organizations of Nishimatsu Construction” was fictitious based on the following points.

- (i) In both of the two cases, a decision was issued based on just a single committee meeting. Judgments regarding violations of the Political Funds Control Law are difficult, and holding an inquest and reaching a decision regarding complex allegations of “receiving donations through dummy organizations” in a single day would be tough.
- (ii) A decision regarding the case was reached on July 21, but there is no sign that committee members attended a meeting on that day.

The committee members affix their seal to the invoice for daily allowance and travel expenses when they show up to the meeting of the committee, and the Tokyo District Court carries out payment procedures based on this invoice. We requested the Tokyo District Court to disclose the invoices and other documentation on annual expenditures, and saw that there is no record of payments regarding July 21.

- (iii) Mr. Ozawa’s aid Takanori Okubo was arrested by the Special Investigation Department of the Tokyo District Public Prosecutors Office in March 2009, and immediately following this, Deputy Chief Cabinet Secretary Iwao Uruma of the Liberal Democratic Party-Komei Party coalition at that time stated that the “allegations of donations from Nishimatsu” in which politicians of both the Liberal Democratic Party and the Democratic Party of Japan were involved would “not have repercussions for the Liberal Democratic Party.” Perhaps this meant that from the start, a decision had been reached that “Mr. Nikai would not be indicted,” as was reported at that time.

Reference materials

- *Saikosai no Wana: The Trap for Ozawa*, Takehiko Shiki, Kotaro Yamazaki (K&K Press).
- Shukan Post, April 5 edition, pp. 50-53, “New Serious Suspicions Concerning the Committees for the Inquest of Prosecution that Made Ichiro Ozawa into a Criminal Defendant.”