The Sacrifices behind the "Success" of *Saiban-in Seido* (Quasi-Jury System)

Mika Obara-Minnitt

1. Introduction

On May 21 2009, *Saiban-in Seido* (Quasi-Jury System) was introduced in Japan.[1] Under this system, panels usually composed of three judges and six lay assessors[2] chosen from the electoral register determine both the guilt (or innocence) and the sentence to be imposed including the death penalty.[3] The cases that these lay assessors deal with are serious criminal ones:

> homicide, robbery resulting in bodily injury or death, bodily injury resulting in death, unsafe driving resulting in death, arson of an inhabited building, kidnapping for ransom, abandonment of parental responsibilities resulting in the death of a child, and other serious cases involving rape, drugs, and counterfeit charges.[4]

The Supreme Court reported in 2016 that 54,964 people (55.0 per cent male and 43.4 per cent female) were chosen as lay assessors between May 2009 and December 2016 and they handed down sentences to 9,548 convicts.[5] The Supreme Court also reported that 95.6 per cent of lay assessors (95.5 per cent in 2014) found their experience of participating in *Saiban-in Seido* a positive one and concluded that the vast majority of lay assessors experienced a sense of accomplishment from undertaking their civil duty.[6] Furthermore, opinion polls conducted by the Prime Minister's Office in 2014 demonstrated that 80.3 per cent of the public supported capital punishment (85.6 per cent in 2009).[7] Governmental opinion polls therefore suggest almost full support of the lay assessors involved in *Saiban-in Seido* and their rights to impose death sentences; and this public 'support' is inadvertently giving succour to the governmental retention of the capital punishment policy.

However, in-depth investigation of the support viewed from alternative aspects illuminates different perspectives including the process acting as a hindrance to fair trials for defendants and victims. Additionally there were a significant number of factors that impacted negatively upon the lay assessors who were involved including: (1) experiencing post-traumatic stress disorder after involvement in sentencing a convicted defendant to the death penalty; (2) the fear that they may be involved in miscarriages of justice if death sentences are passed on innocent people; leading to (3) protests against the system and calls for a moratorium on executions until there has been full disclosure of information on death row inmates; and (4) increasing 'no

show' rate of lay assessors in *Saiban-in Seido*.

Despite the majority of lay assessors having little in-depth knowledge of law or criminology, they are involved in judging and imposing sentences including the death penalty. This new legal system has therefore raised public consciousness about their rights and freedom not to be involved in the process and therefore legitimize judicial killing. This paper aims to examine the gap between governmental and public discourse on *Saiban-in Seido* and to shed light on what and who is being sacrificed to achieve the "success" of this system.

2. Introduction of *Saiban-in Seido*

What is interesting to note about the introduction of *Saiban-in Seido* is that the Ministry of Justice was initially not a huge advocate for civil participation in the administration of justice:

> Having enjoyed a 99.9 percent conviction rate in the courtroom, there was no reason for the prosecutors to seek change in the composition of the trial panels. [...The Ministry of Justice] was confident that professional judges would be more accurate in the fact finding process as opposed to a randomly picked group of citizens serving for a single case.[8)]

A similar mood was prevalent within the Liberal Democratic Party (LDP) who were also skeptical about leaving the matter to members of the public chosen randomly from the electoral register:

> Instead, it supported appointing persons with "sufficient knowledge and experience" for fixed terms to serve on numerous cases. In some quarters this was seen as showing the party's distrust of ordinary peoples' competence to make judgements in cases. It was also attacked for attempting to thwart principal objectives of ensuring that court decisions better reflected society's conventional wisdom and common values, and of making members of the public more aware of their responsibilities as citizens.[9)]

However, as the introduction of *Saiban-in Seido* became certain, the Ministry of Justice changed its stance to this legal reform. Matthew J. Wilson, Hiroshi Fukurai and Takashi Maruta analyse that focusing "on the interests of crime victims, the ministry felt that the introduction of public opinion into the deliberation room could possibly help its cause with respect to stricter sentencing".[10)] As well as remodelling courtrooms in order to accommodate lay judges across Japan,[11)] the Japanese government and the Japan Federation of Bar Associations spent over 59 million US dollars on the publicity of *Saiban-in Seido* through different forms including "billboards, print advertisements, television programs, Japanese *manga* (cartoon) [and] *anime* (animation), a mascot, mock trials, symposiums [and] Internet videos".[12)] One of which was a parrot mascot character introduced by the Supreme Court in 2008: *Saiban-inko*—play on word with *saiban-in* (lay assessors) and *inko* (parrot)—and the Minister of Justice at the time, Hatoyama Kunio, wore the mascot costume himself trying to

engage with the public.

2.1. Debates Surrounding *Saiban-in Seido*

In contrast to this national project to promote civic engagement in the trials, opponents have highlighted the institutional and cultural barriers and practical issues that prevent the system from functioning properly in Japan. Proponents expected that lay participation would function as "a safeguard against malpractice by police and prosecutors"[13] as lay assessors can draw conclusions based on evidence given in the court which leads to the reduction of miscarriages of justice.[14] However, it is important to acknowledge that evidence given in the court has already been screened out in pre-trial meetings to speed up the process: "the prosecution and defence meet in court before the trial begins to discuss the facts, decide on the points of argument, what evidence can be agreed, [and] who to call as witnesses and fix a date for trial, together with continuous hearing days".[15] The role that lay assessors can play in fact finding independently from the prosecution and defence teams is thus very limited.

Types of offences triable in *Saiban-in Seido* in Japan is another issue which opponents argue has been creating unfairness to both defendants and victims: *genbatsuka*, or a tendency for harsher sentences, to defendants; and lack of privacy of victims. Whilst professional judges are trained and expected to make a fair judgement based solely upon the evidence irrespective of their personal sympathy towards the defendants, victims or victim's bereaved families, it is not an easy task for inexperienced lay assessors to do so. Emotion could play a large role in decision making and harsher sentences could be expected in particular crimes such as sexual offences. What is equally critical from the perspective of victims of sex crimes is a lack of their privacy in *Saiban-in Seido*: "lay judges sometimes ask defendants and alleged victims 'inappropriate' and occasionally moralistic questions, going beyond legally relevant matters".[16] In fact, it has been reported by the victim lobby that "some alleged victims [have] chose[n] not to report crimes to the police because they do not want to appear before *saiban-in*, or ask[ed] prosecutors to reduce charges to offences below their jurisdiction enabling trial before professional judges".[17] Reconsideration of the types of crimes triable in *Saiban-in Seido* is therefore critical to achieve fair trials for both defendants and victims.

Furthermore, defendants are not fully supported by highly skilled interpreters. The potential therefore for key information to quite literally get lost in translation discriminates against non-Japanese native defendants and increases the potential for harsher sentences or miscarriages of justice resulting from the inaccurate or ambivalent translations made in trials. Given that most evidence is presented live during trials even careful preparation in these circumstances has limited impact.[18] Professional and accurate interpretation is a crucial and arguably life and death necessity if the system is to ensure a fair trial for defendants whose mother tongues are not Japanese. However, as Andrew Watson points out, highly skilled interpreters who are frequently hired for major international conferences tend not to register for court interpretations due to the low pay.[19] This is a fundamental issue that needs to be addressed urgently as misinterpretations by less experienced interpreters can heavily affect lay assessors' decisions of whether the defendants should live or die.

Besides these institutional and practical barriers to running *Saiban-in Seido* fairly for defendants and victims, opponents' concern was that the Japanese public would be reluctant to serve as lay assessors due to "deference to authority and distrust in ordinary people's abilities (*kanson minpi*), a tendency to follow the opinions of those of higher status, group behavior and a desire to maintain harmony (*wa*), and many citizens' sense of remoteness from law".[20] With regard to *kanson mimpi*, as Kawashima Takeyoshi points out, the Japanese public tends to prefer legal incidents being dealt with by legal professionals[21] and they appear to "regard law like an heirloom samurai sword, something to be treasured but not used".[22] A lack of confidence in deciding sentences for those convicted without a sufficient knowledge of the law also has a lot to do with a lack of experience in public speaking and debating and a preference to preserve harmony. As "it is impolite in Japanese culture to blatantly disagree with a superior (on the principle of maintaining harmony),"[23] it was argued by opponents of *Saiban-in Seido* that it would be challenging to expect Japanese lay assessors to contest the opinions of professional judges or even other lay assessors. In fact, a survey carried out by NHK in 2005 demonstrated the Japanese public's reluctance to serve as lay assessors:

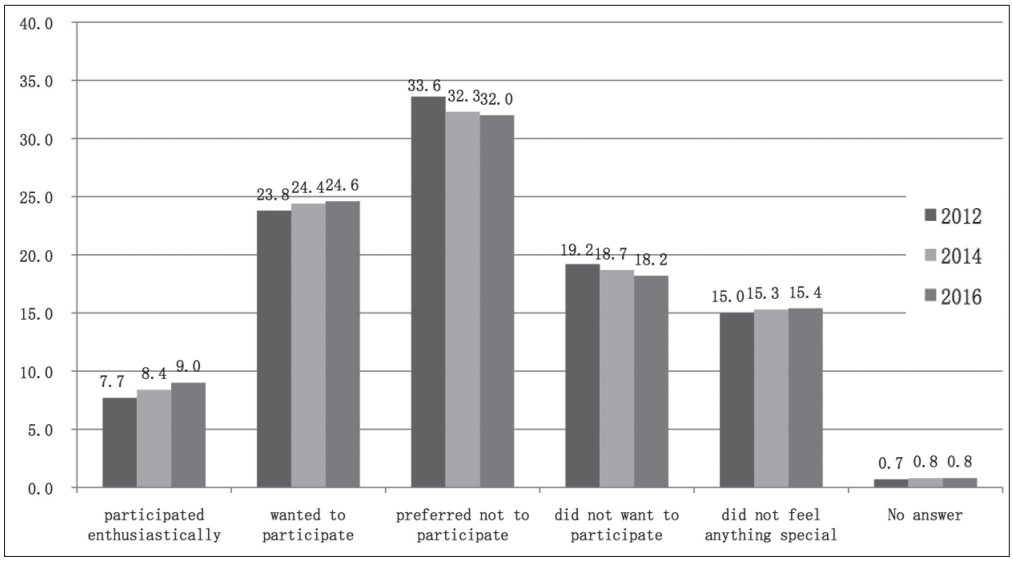
> 64 per cent of those questioned said that they did not want to be *saiban-in*. Of those, 41 per cent simply said that "they did not want to judge someone"; 37 per cent stated that they were afraid they would "make the wrong decision" and 11 per cent did not wish to be *saiban-in* because of the time it would consume. Fear of reaching the wrong decision may to some extent have been accounted for by a realisation that serious offences tried by mixed courts were likely to be visited by severe sentences, even the death penalty.[24]

To represent people who are skeptical of *Saiban-in-Seido* for various reasons, a protest group made an anti-*Saiban-in-Seido* mascot character called *Saiban-in-wa-iranainko* ('We don't need *Saiban-in-Seido*' Parrot) and held meetings and parades, which spread across the nation. One of the largest meetings was held in Hibiya, Tokyo on April 21 2009, approximately one month before the introduction of the system. The speakers included a professor in law, Adachi Masakatsu, who highlighted that it is extremely problematic that out of all the countries which have jury systems, it is only Japan that make lay assessors determine both guilt (or innocence) and the sentence to be imposed.[25] Following this meeting, 2,000 people held an anti-*Saiban-in-Seido* parade towards Ginza, Tokyo, which influenced other like-minded groups across the nation. Despite the protest, the system was introduced in 2009 as scheduled.

2.2. General Public and Lay Assessors' Reactions to *Saiban-in Seido*

In contrast and seeming to overturn the hypotheses by opponents of *Saiban-in Seido*, the Supreme Court has consistently reported that the vast majority of the public support the system. According to the opinion polls conducted by the Supreme Court with lay assessors in 2016, 95.6 per cent found this experience either great or good despite 50.2 per cent reporting they were initially unwilling to participate (Figure 1). The results in 2014 and 2012 were very similar with 95.5 per cent and 51.0

How Lay Assessors Had Felt before Participation (%)



How Lay Assessors Felt after Participation (%)

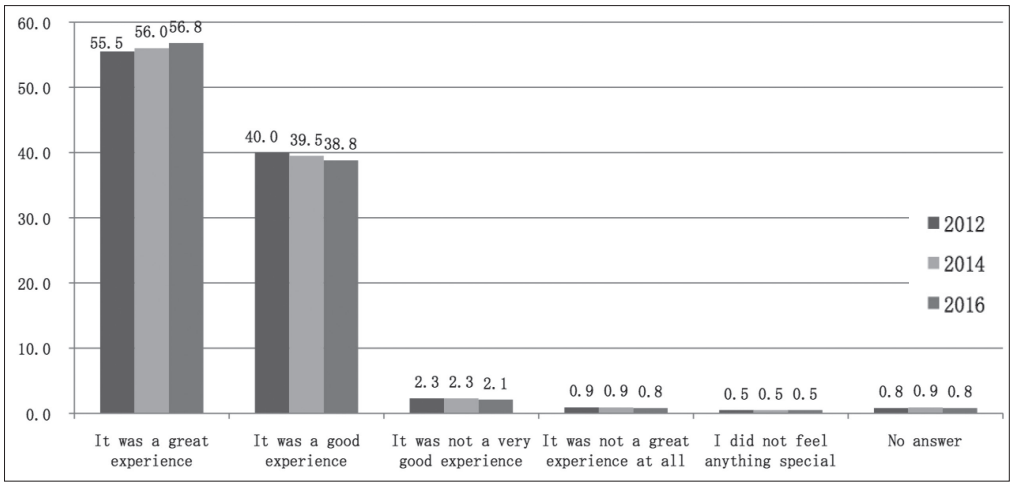


Figure 1: Opinion Poll on Lay Assessors by the Supreme Court

per cent (2014) and 95.5 per cent with 52.8 per cent (2012). This could at first sight indicate that the vast majority of lay assessors enjoyed participating in the system in the end, where they were given responsibility of determining whether to hand down death sentences. Nonetheless, examining the breakdown of percentages can provide us with alternative views: 95.6 per cent (2016) is a totalled percentage combining: (1) 56.8 per cent who answered 'it was a great experience', and 38.8 per cent who answered 'it was a good experience'; and (2) 50.2 per cent is composed of 32.0 per cent who answered 'I preferred not to participate', and 18.2 per cent who answered 'I did not want to participate'. It appears that numbers of those who felt the experience was great or good were strategically totalled in order to arrive at the con-

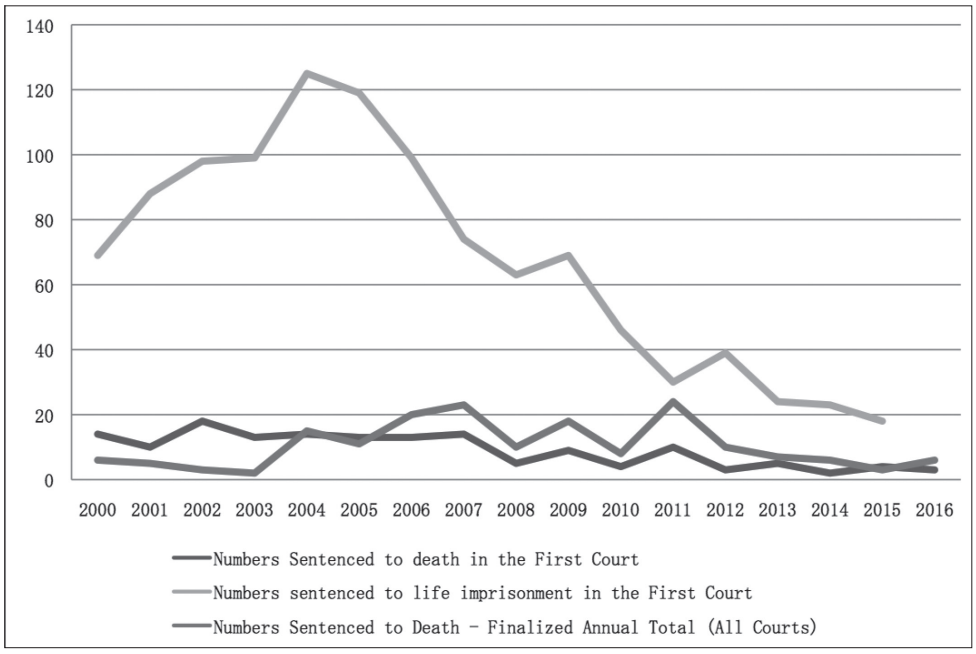


Figure 2: Numbers Sentenced to Death and Life Imprisonment in the First Court
Sources: Ministry of Justice (2016) *'Heisei 28 Nenban Hanzai Hakusho Dai 2 hen, Dai 3 shō, Dai 2 setsu, 2'* (White Paper on Crime 2016 Volume 2, Chapter 3, 2-2).

clusion that the vast majority support the system uncritically.

What also merits attention is that the survey does not inform us about the views of a key sub set of lay assessors, those involved in passing death sentences. As Figure 2 shows, numbers of death sentences issued by lay assessors in the First Court have stayed low in both numerical and percentage terms with its peak of ten in 2011. From the survey data we have no way of knowing how many lay assessors involved in passing death penalties undertook the survey and what percentage they represent of the total number surveyed. It is therefore conceivable to have a high positive satisfaction result overall in percentage terms even if all of those surveyed who were involved in passing death sentences responded negatively because they represent such a small percentage of the total survey group. In addition respondents may have answered that it was a 'good' experience simply because serving as a lay assessor was out of their daily routine and they found it interesting. As research shows, public opinion can also be influenced by governmental behaviour and the poll results that the government publishes.[26] Pro-*Saiban-in-Seido* mood created by governmental campaigns through different media may have influenced participants' feelings towards the system in the 2012 survey; and "positive" results from this may have influenced the participants in the 2014 survey.

The Yomiuri Newspaper Opinion Polls conducted between June 28 and 29 2014 also provide us with interesting data. According to the results, 74 per cent of the Japanese public support the retention of *Saiban-in Seido*. However, the same technique appears to have been adopted to generate a positive mood towards the new

system: only 18 per cent answered that 'we should keep *Saiban-in Seido* as it is'; 56 per cent answered 'we should keep it upon reviewing the system'; 17 per cent answered 'we should abolish the system' and eight per cent answered 'I would rather not respond'.[27] In other words, although Yomiuri Newspaper reported that the majority of the Japanese public felt positive about the retention of *Saiban-in Seido*, 56 per cent of the public felt that the system needed to be reviewed first, whereas only 18 per cent supported the system uncritically. The reality of the social climate in relation to this system is perhaps best illustrated by the unwillingness of members of the public to participate as lay assessors. According to the same opinion poll, 79 per cent responded that they would not like to participate in the system as lay assessors and 58 per cent out of those answered that this was due to lack of confidence in handing down an appropriate sentence. This is a similar result to 76 per cent in March 2013, which supports the hypotheses made by opponents before the introduction of the system, and it is in sharp contrast to the positive results reported by the Supreme Court.

Another opinion poll specifically dealt with the (un)willingness of lay assessors to be involved in the decision of whether or not to sentence to a death penalty. The Mainichi Newspaper conducted an opinion poll in May 2012 in order to evaluate what lay assessors felt about the idea of imposing the death sentence. Surveys were sent to the 467 lay assessors who responded to the initial contact. Of the male respondents, 55 per cent said that it is better that lay assessors get involved in death penalty cases, in contrast to 41 per cent of female respondents.[28] Although Mainichi Newspaper merely presented this as a gender distinction towards getting involved in death sentences, again it is unknown how many lay assessors involved in passing death penalties responded to this survey. In fact, the impact upon the mental health of lay assessors after handing down death sentences has become a very important issue that needs to be addressed following the introduction of the system. The Japan Times (May 30 2012) portrayed the lay assessors as experiencing adverse mental and physical symptoms arising not only from long court proceedings but also from their moral dilemma of deciding whether to condemn the defendant to death.[29] The article quotes the views of one of the lay assessors who had imposed a death sentence: 'The defendant did not appear to be an evil man, and I felt as if I could have become friends with him under different circumstances'.

The following part will further investigate lay assessors' and opponents' views on *Saiban-in Seido* in order to highlight emerging issues to be dealt with by the government.

3. Lay Assessors' Rights not to Participate in *Saiban-in Seido*?

Once members of the public are chosen as lay assessors out of the registers and screened out after brief group interviews, they are required to participate in the system with limited circumstantial exceptions (such as commitments to take care of a family member or business or that the lay assessor is aged 70 or over or pregnant) as specified in the Lay Assessor Act Article 16 'Reasons to Decline'. Otherwise they would have to pay a penalty of 100,000 yen (910.50 dollars) for neglecting the duty. This means that the financially better off can pay the penalty and avoid the moral

	Grand Total	2009	2010	2011	2012	2013	2014	2015	2016
a Number of lay assessors chosen out of the registers	973,843	13,423	126,465	131,880	135,535	135,207	123,059	132,831	127,811
b Number of those whom the Supreme Court notified about the first screening along with a questionnaire about their availability	690,028	9,638	94,220	94,109	97,047	95,541	86,304	92,076	88,326
c Number of those who were granted not to attend the first screening	302,407	3,185	34,147	37,756	42,443	43,451	40,351	43,806	36,586
d Number of those whom the Supreme Court ordered to attend the first screening (b - c)	387,621	6,453	60,073	56,353	54,604	52,090	45,943	48,270	46,763
e Number of prospective lay assessors who attended the first screening	284,284	5,415	48,422	44,150	41,543	38,527	32,833	32,598	30,313
f Attendance Rate (%) (e ÷ d)	**73.3**	**83.9**	**80.6**	**78.3**	**76.1**	**74.0**	**71.4**	**67.5**	**64.8**
g No-Show Rate after receiving summons (%) (100 - f)	**26.7**	**16.1**	**19.4**	**21.7**	**23.9**	**26.0**	**28.6**	**32.5**	**35.2**
h Number of lay assessors appointed	57,139	838	8,673	8,815	8,633	7,937	6,938	6,767	5,698

Table 1: Number of Lay Assessors Involved in *Saiban-In Seido*
Sources: Supreme Court (2016) *Saiban-In Saiban no Jisshi Jōkyō ni Tsuite* (Update on *Saiban-in* Trials).

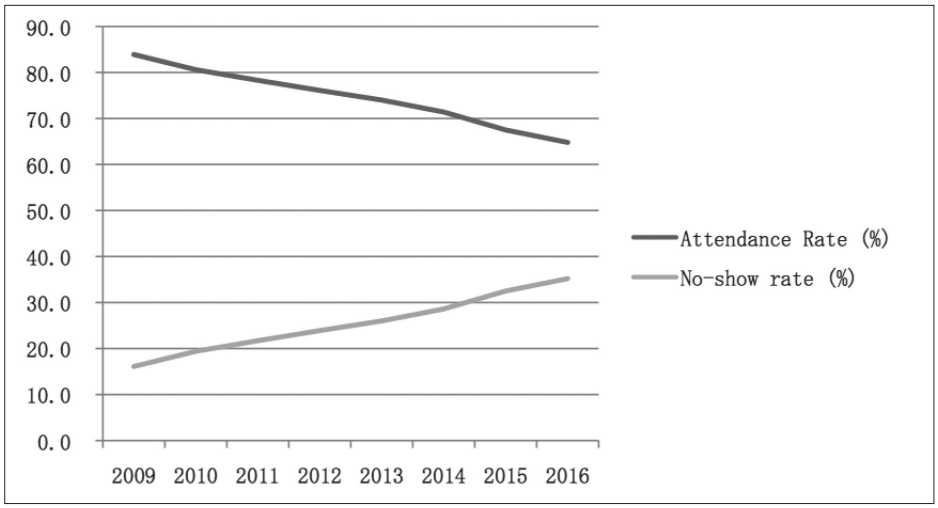


Figure 3: Attendance Rate of Lay Assessors for the First Screening
Sources: Supreme Court (2016) *Saiban-In Saiban no Jisshi Jōkyō ni Tsuite* (Update on *Saiban-in* Trials).

dilemmas whilst less financially able members of society will have no choice but to participate regardless of their views on *Saiban-in Seido* or the death penalty system.

There are currently no examples of those who did not turn up to the court without valid reasons being penalised by the Supreme Court[30] and the absence rate after receiving a summons to sit as a lay assessor has risen from 16.1 per cent in 2009 to 35.2 per cent in 2016.[31] Besides unavoidable circumstances due to family or work commitments, an unwillingness to get involved in judging and imposing sentences because of the moral dilemmas and lay assessors' fear of safety after the court ruling

appear to be hindering active participation. The following part will investigate where lay assessors' unwillingness/resistance to participate in *Saiban-in Seido* stems from.

3.1. Lay Assessors' Post-Traumatic Stress Disorder

Since the introduction of *Saiban-in Seido*, lay assessors experiencing post-traumatic stress disorder has become an important issue and been addressed by scholars, solicitors and medical doctors. Mainichi Newspaper reports that from December 2014, *Saiban-in Keikensha Network* (Lay Assessors' Network), which is mainly composed of lay assessors and solicitors, started investigations on whether or not lay assessors had felt a psychological burden as a consequence of their involvement as lay assessors.[32] According to the questionnaire, over 70 per cent of the respondents (30 out of 42 respondents) answered yes to this question and stated that they would need continuous support for their mental health after the trials in which they had participated. Regarding the reasons, all 30 of them raised issues about the negative impact of the ongoing sense of responsibility having had to make a decision on the fate of the convicts. In addition, 22 raised the required level of secrecy surrounding their duty as lay assessors; and 18 raised the brutal photographs from the crime scenes and testimony which describes them.[33] The Lay Assessor Act provides that "lay judges are subject to a life time secrecy obligations [...and those] who leak trial-related information will be punished".[34] An additional burden is the fact that not only are they feeling that the pressures are significantly magnified deciding whether or not the convicts should live or die, they are not allowed to talk to their family, friends or colleagues about what was discussed in the courts.[35]

One of the most recent studies on lay assessors' stress disorder was conducted by a Doctor of Medicine, Nanbu Saori. Nanbu focused on a trial case on September 30 2014 when a female lay assessor in her 60s sued the Japanese government for state compensation for two million yen (18,210.00 dollars).[36] The lay assessor claimed that she developed the Acute Stress Disorder as she: (1) felt obliged to participate in the system; (2) was shown photographs of crime scenes during the trial and (3) ended up getting involved in sentencing the convicted person to the death penalty—all against her will.[37] As explained earlier, members of the public could decline to sit as lay assessors under certain circumstances as specified in the Lay Assessor Act Article 16. However, her reason for not wanting to judge or impose a sentence in the court is not on the list and she felt obliged to participate to avoid a penalty for neglecting the duty.[38]

As part of the procedure, the lay assessor was shown photographs of the victims (husband and wife) covered with blood and a voice recording of the wife up to the point that she was stabbed. This not only made her physically sick both during and after the trial but also left her unable to cook or eat meats which reminded her of the victims' flesh.[39] What is worse, a feeling of guilt that she got involved in sentencing the convicted person to death made her develop deep depression and insomnia, which led her to lose her job due to taking extended sick leave.[40] Members of the lay assessor's family tried to seek help and contacted the Court but were told that lay assessors were only allowed to receive five free counselling sessions in Tokyo and

had to cover their own travel expenses.[41)]

Following this, her solicitor argued that *Saiban-in Seido* violates the lay assessors' human rights which are protected in the Japanese constitution. Article 18 of the Japanese constitution provides that: "No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited". The Supreme Court declared on November 16 2011 that *Saiban-in Seido* was not against Article 18 of the Japanese constitution. However, her solicitor argued that her responsibility as a lay assessor, with the requirement to get involved in the decision of whether the convict should live or die, would apply as 'involuntary servitude' prohibited in Article 18.[42)] In other words, lay assessors' personal freedom and their right not to be involved in decisions leading directly to the death of other people are neglected in *Saiban-in Seido*. The solicitor also argued that this conflicts with Article 13 which stipulates that "All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs". Despite this, the court ruling was that *Saiban-in Seido* does not constitute 'involuntary service': "it is normal for lay judges to experience emotional stress and that there is an adequate system in place to consider excusal from this civic service".[43)] This sounds like the similar claim when the government justifies the retention of capital punishment and its execution method, hanging. Article 31 of the Constitution stipulates that "No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law" and Article 36 provides that "[t]he infliction of torture by any public officer and cruel punishments are absolutely forbidden". However, it has been declared constitutional since March 12 1948 and the Japanese government consistently claims that there is a fair retrial system in place to prevent miscarriages of justice.[44)]

Although the lay assessor lost in this case, it is important to acknowledge that despite the "wide support on *Saiban-in System*" reported by the Supreme Court, she is not alone in suffering from the feelings of guilt that she was by association involved in state killing as a result of her actions as a lay assessor.

3.2. Agony of Passing Death Sentences

Yonezawa Toshiyasu participated in *Saiban-in Seido* in June 2011. He was a 22-year-old university student at the time and contributed to the finding of guilt and decision to sentence the convicted person to the death penalty. Yonezawa could have refused to serve as a lay assessor as he was a student at the time but chose to participate tempted purely by a daily allowance, 10,000 yen (91.05 dollars).[45)] On this occasion, 150 people were chosen out of the register, 68 were invited to the court and 57 turned up.[46)] Approximately five-minute group interviews of five people were conducted and nine lay assessors were chosen. One female and five male lay assessors (including three male substitutes) were chosen out of them and notified on the same day.[47)]

It turned out to be a murder case that Yonezawa and other lay assessors were chosen to deal with. Tsuda Sumitoshi, 59 at the time, murdered three people (his landlord, landlord's brother and wife) in Kawasaki city in Kanagawa prefecture. Tsuda

used to complain to his landlord who lived next door that the landlord's brother who lived in the same flat as Tsuda slammed the doors hard unnecessarily, used the washing machine in the middle of the night, left the community toilet dirty and so on and they used to argue frequently.[48] Tsuda had also threatened the landlord's family stating that it would be absolutely easy to murder them all.[49] On the day of the incident, Tsuda went back home drunk early in the morning and stabbed the three.[50]

Yonezawa admits that seeing and hearing the victim's bereaved families sob or shout during the trials occasionally made him think in favour of them unconsciously.[51] Although there was a screen so that convicts and their attorneys cannot see the bereaved families, Yonezawa and the other lay assessor could see them from where they sat down in the court. The victim's granddaughter, a high school girl, stood on the witness stand and expressed how wonderful her grandmother was and how much she enjoyed spending time together and demanded the maximum penalty for the convict.[52] A statement written by the victim's wife was also read out at the trial. She also demanded the maximum penalty stating that the convict should not beg for his life and apologise to her husband in heaven.[53] As part of the evidence, Yonezawa was shown a 20.4-centimeter knife with the victims' blood on, photos of the crime scene and the wounds of the victims.[54]

Tanaka Masayoshi, 40, a former lay assessor and one of the core members of *Saiban-in Keikensha ni yoru Community* (the Lay Judge Community Club), participated in the same trial as a visitor. Tanaka remembered Yonezawa listening to the trials very seriously but also wondered if Yonezawa would be too young for this duty due to his limited life experience: he doubted if Yonezawa could understand why the convict raised his experiences of hardship in his juvenile days as one of the reasons to be taken into consideration when deciding sentence.[55] What lay assessors have gone through in their lives would make them sympathetic to those with similar experiences. Yonezawa was living at home with his family at the time and it was very likely that he felt more sympathy to the victim's wife and granddaughter.

As neither Yonezawa nor other lay assessors had sufficient legal knowledge, they used internet search engines to get an idea of how many years sentence had been given to defendants in similar cases.[56] Yonezawa stated that they could not find similar case examples for reference but acknowledged that death sentences tended to be given in a murder case where there were three victims.[57] From judges' and attorneys' explanations, Yonezawa also learned that life imprisonment would mean that the convict would be imprisoned for approximately 30 years on average in Japan.[58] Considering the convict's age at the time, 59, Yonezawa felt that the decision between life imprisonment or the death penalty would not matter much to Tsuda given that Tsuda would not be able to come back into society after a period in custody.[59] However, he also felt that he would like Tsuda to live and atone for the crime that he committed for the rest of his life.[60]

The death sentence was handed down on the basis that the landlord's brother's acts were not malicious enough to justify Tsuda murdering them and that there would have been plenty of opportunities for Tsuda to get out of his unfortunate predicament in the preceding years.[61] A press conference took place after the ruling

and Yonezawa stated there that he would like Tsuda to accept his sentence and would not like him to appeal. Although Tsuda initially appealed, he later withdrew the appeal and the death sentence was confirmed on July 4 2011. Yonezawa felt a sense of relief believing that Tsuda had accepted his sentence and decided to atone for the crime through death.[62] However, when Yonezawa later had an opportunity to talk about this experience to his friend, Yonezawa was asked a question: "Does that mean you killed a person?". As Tsuda had withdrawn his appeal, his death penalty was finalized meaning he could be executed at any time without any notification. From that point onwards Yonezawa has remained consistently anxious and alert to potential information on the news about the person he was involved in convicting and sentencing and only feels briefly relieved when there is no news on TV about his execution.

A series of experiences following his involvement in sentencing Tsuda to the death penalty and being questioned about his decision by his friend made Yonezawa take action. He became one of 20 lay assessors, who signed a petition and submitted it to the Ministry of Justice.[63] The petition called upon the Ministry of Justice to disclose further information regarding the procedure and the mental and physical conditions of death row inmates between sentence and execution prior to placing the responsibility upon lay assessors requiring them to judge whether a person should live or die. Furthermore, the petition called upon the Ministry not to go ahead with executions while disclosure of information on this system is insufficient. In response, Tanigaki Sadakazu, Minister of Justice at the time, maintained that it was not possible to suspend executions without legal backing; or to disclose information on the death row inmates as this could upset *shinjō no antei* (stability of emotions) of those to be executed, their family and other inmates waiting for executions.[64] Although *Saiban-in Seido ni Kansuru Kentōkai* (Review Meetings on *Saiban-In Seido*) have been held since the introduction of the system in 2009 by the Ministry of Justice inviting experts, the abovementioned issues are still outstanding.

On December 18 2015, Tsuda was executed at the age of 63. This was the first execution of an inmate sentenced to death under *Saiban-in Seido* and Yonezawa still keeps asking himself today whether or not the decision he made with other lay assessors was ever appropriate.

3.3. Fear of Miscarriage of Justice Resulting in Death Sentences

Depending on the cases that lay assessors deal with, they are invited to on-site verification. A 32-year-old female lay assessor at the time dealt with a case where a 62-year-old son hit his 82-year-old mother with his car in Kagoshima prefecture in May 2011.[65] When she sat in a car of the same make as part of the on-site verification, she felt that his claim that he could not see his mother from the front mirror may have been valid and he may therefore be innocent.[66] However, she did not speak up about this to anyone on the site or in the court as she did not feel comfortable to do so: she was not sure if this could be a valid point to be raised or something trivial as she did not have a driving license. He was sentenced to three years in prison on September 28 2012. Since then, she has participated in other trials as a visitor and at an event hosted by the Supreme Court to exchange opinions with oth-

er lay assessors, judges, prosecutors, lawyers and the press.[67] What she found out through communicating with others is that 'evidence' presented to lay assessors is frequently only the tip of the iceberg. It was explained to her at the court when she was chosen as a lay assessor that the pre-trial conference procedure is just like the preparation before cooking: evidence has been sorted and all prepared to keep the trial periods short, which she was convinced by at the time.[68] However, she now feels that there seemed to exist a clear 'direction' which the trial was proceeding towards. The cooking analogy, she explains that there were not only potatoes, carrots and meats ready for lay assessors but also curry powder: lay assessors were not expected to cook anything they wanted but only to cook curry.[69]

The NHK News reports on another female lay assessor, who, since being involved in a decision to convict and sentence to death the accused, has been debating every day whether or not her decision of passing the death sentence on the defendant was ever right.[70] It was three years after she participated in *Saiban-in Seido* as a lay assessor that the Shizuoka District Court ordered the retrial of Hakamada Iwao, a former boxer, claiming that fabricated evidence had been used by prosecutors.

On June 30 1966, a family of four—a miso paste company executive, his wife, their son and daughter—was murdered in Shizuoka prefecture.[71] The house had been burgled and set on fire. Hakamada, 30 at the time, who was working at the company's factory was suspected and arrested in August 1966. Hakamada was questioned for 240 hours over 20 days beaten with sticks and not allowed to sleep.[72] The sleep deprivation and beatings took their toll and he felt forced to 'confess' in September that year. On March 27 2014, Hakamada, aged 78 at the time, was released from death row having been there for 46 years since 1968. According to the presiding judge, Murayama Hiroaki, "the possibility of his innocence has become clear to a respectable degree, and it is unbearably unjust to prolong the defendant's detention any further".[73]

Another more recent case highlighted by the media as a potential miscarriage of justice is the Matsubase case. The Kumamoto District Court ordered a retrial of the Matsubase case in which Miyata Koki (then 51, 83 when the court ordered a retrial) served a 13-year prison term on charges of killing an acquaintance in Matsubase in Kumamoto prefecture on January 6 1985. As The Japan Times (June 30 2016) reports, "presiding judge Mizokuni Yoshihisa stated that 'doubts have been raised' over the credibility of Koki Miyata's initial confessions, pointing to 'contradictions' found between what he said and evidence presented by Miyata's defense team."[74]

The sole reason that the police targeted Miyata as a prime suspect was that "Just before the alleged stabbing, Miyata had argued with the man during a meal with others at the victim's home".[75] Miyata's eldest son, Takahiro (then 28, 60 when the court ordered a retrial), recalls that the victim badmouthed Miyata's relatives at the meal but Takahiro has consistently claimed that this would never have made Miyata return to the victim's home to kill the man.[76] Nevertheless, the police kept questioning Miyata 'on a voluntary basis' at home even on days that Miyata refused.[77] Miyata could not bear this as he was suffering from chronic backache and reportedly "confessed" to the crime during questioning and was arrested on January 20 1985.[78] Although he maintained that he was not guilty in the first hearing at the

Kumamoto District Court in April 1985, he was sentenced to 13 years in prison and the Supreme Court finalised the decision on January 26 1990, based solely on his confession.[79]

Miyata developed dementia in prison and his lawyer filed a petition for a retrial in March 2012. "Miyata's defense counsel collected 123 pieces of new evidence to reveal contradictions inherent in his confession"[80] and of which, decisive factors to determine his innocence were a strip of cloth and the victim's scars. According to the deposition, Miyata "had cut off part of his shirt's left sleeve, tied it around the knife's handle so no blood would adhere to the shaft, then burned the cloth after committing the crime."[81] However, the cloth was discovered with no blood stains on it after the district public prosecutors office was requested to produce this piece of evidence for inspection.[82]

In addition "The configuration of some wounds suffered by the victim did not match that of the knife purportedly used in the incident" and "the district court reached a reasonable conclusion […that] 'There is even greater suspicion that the knife may not have been the weapon [used in the killing].'"[83] Following the latest ruling, the Kumamoto District Public Prosecutors Office filed an immediate appeal against the order of retrial denying to admit these findings as "newly discovered evidence", the submission of which provide grounds for a retrial.

As the Asahi Newspaper reports, "Miyata had lived alone since his release from prison in 1999. He now lives in a nursing-care home in the prefectural capital of Kumamoto. His lawyers said Miyata finds it difficult to remember the trial and his time behind bars"[84]—he believes that he was previously a professional baseball player.[85] Miscarriage of justice not only affected the life of Miyata but also of his eldest son: he divorced his wife soon after Miyata's arrest fearing that this could have an impact upon the future of their daughter.[86]

The lay assessor argues that she made a decision of a death sentence solely based on all the evidence that was presented to her and other lay assessors—if the evidence had been incorrect or fabricated, there was nothing they could have done. Consequently she remains fearful and anxious daily that the death sentence that she, with others, imposed may have been a miscarriage of justice. As the Matsubase case demonstrates, an incorrect ruling can influence not only the suspect's life but also his family's. It is doubtful if anyone—citizens with no legal knowledge in particular—should hold responsibility on one's life when mistakes can be made due to lack of and/or fabrication of evidence.

3.4. Fear of Their Own Safety after the Trials

The other reason which appears to have contributed to citizens' reluctance to serve as lay assessors has to do with their own safety after the trials. Protection of lay assessors has emerged as an issue after an incident where two female lay assessors, who served in the Kokura branch of Fukuoka District Court, were approached by two men in May 2016. Both men were acquaintances of the defendant, a leading member of the Kudo Gangster Group: Kusumoto Toshimi, a former member of the group and an old friend of the defendant from junior high school; and Nakamura Koichi, a friend of the defendant and a salaried worker.[87] The two men attended

the first trial where the two lay assessors served, followed them to the bus stop and took the same bus using the opportunity to approach them. Both men tried to intimidate the lay assessors by asking them to do the defendant a favour in the next trial and threatened that they would remember the lay assessors' faces, suggesting they would take revenge on them if the defendant received a heavy sentence.[88] Following this incident, five lay assessors declined to continue to serve in the trial and the subsequent trial was cancelled as an exceptional circumstance.[89] Intimidating and/or threatening lay assessors is against Article 107 (1) of the Lay Assessor Act and the maximum penalty is set as either two years' imprisonment or 200,000 yen (1,821.00 dollars). Both men were arrested in June 2016 resulting in guilty verdicts in January 2017: Kusumoto was sentenced to nine months' imprisonment with a three years' stay of execution and Nakamura with one year imprisonment with a three years' stay of execution.[90] The judge explained that the guilty verdicts stemmed from the fact that this incident shook the fundamental core of *Saiban-In Siedo*: cases regarding leading members of gangster groups became excluded from the trials in which lay assessors would participate.[91] This decision was based on Article 3 of Lay Assessor Act, which stipulates that trials can take place with judges and no lay assessors when: (1) there is a possibility that lay assessors' life would be at risk or disturbed significantly or (2) it became challenging for the court to secure their attendance as they feel threatened.

In response to this incident, the Supreme Court ordered courts nationwide to enhance the safety of lay assessors in early July 2016; and Kyodo News conducted surveys of 60 district courts and their branches across the nation to establish what specific measures have been taken so far.[92] According to the survey results, 57 of the 60 courts have or are planning to enhance safety steps:[93]

> 54 courts said in the survey, which allowed multiple answers, that they have posted signs inside the court buildings saying making contact with lay judges is forbidden, and 33 courts said they started issuing verbal warnings to courtroom attendees. Thirty-six courts said they had taken steps before the Fukuoka incident, such as providing lay judges with bathrooms and parking spaces separate from those for the public, and five courts said they took similar steps after the incident. After the Fukuoka case, 16 courts said they began driving lay judges to nearby stations or other locations and nine said they have court staff accompany lay judges inside court buildings.

Despite the fact that lay assessors are now exempted from trials of leading gangster members and several measures have been taken by courts nationwide to protect them, the security of lay assessors provided by the government is inconsistent given that arrangements in the courts vary widely and are dependent upon 'consideration of increased burdens on court employees'.[94]

The low participation rate of lay assessors had been a concern for a group of Diet members prior to the introduction of *Saiban-in Seido* and some including Shimomura Hirobumi had suggested the increase of a daily allowance for lay assessors from 10,000 yen (91.05 dollars) to 30,000 yen (273.15 dollars).[95] This is based on their

claim that lay assessors take the same responsibility as judges and deserve expenses equal to a judges' salary at a daily rate.[96] If participation rate of lay assessors stagnate in the future, it is possible that the increase of a daily allowance would be considered again. However, it is doubtful if a little more financial incentive can alleviate lay assessors' stress and agony of passing sentences including the death penalty and/or their concern on their own safety after the trial. It is problematic that ordinary citizens' participation has been legalized without providing them with sufficient knowledge, training and physical/mental support before, during and after their participation.

4. Behind the "Success" of *Saiban-in Seido*

Some former lay assessors have taken their experiences surrounding *Saiban-In Seido* positively and been engaging with other and prospective lay assessors. As briefly mentioned earlier, Tanaka Masayoshi became one of the core members of *Saiban-in Keikensha ni yoru Community* (the Lay Judge Community Club) and participates in trials as a visitor. The Community was founded by six lay assessors on August 1st 2012 in order to make a space for former lay assessors, who often feel isolated due to the lifetime secrecy obligations. Conversation topics are trivial including whether or not: there were sweets in the discussion rooms; inspection took place at the entrance; there were lay assessors who were sleeping during the trials; and they called each other by name or numbers.[97] Members in this group believe that it is only other lay assessors who can understand the agony and/or regret of passing certain sentences and it is casual conversations like this that help relieve stress for each other.[98] Some former lay assessors including Oda Atsutoshi travel across Japan to communicate with other lay assessors and visit prisons at their own expense.[99]

What is more, Kodaira Emi, who was a dentist when she served as a lay assessor, gained a qualification as a psychology counsellor and created a local discussion group for school children in spring 2014. Her aim was to help younger generations—who would be chosen as lay assessors in the future—build the ability to judge fairly.[100] These former assessors feel that trials are not something out of the ordinary from their daily lives anymore and believe that their experiences of serving as lay assessors have increased their legal awareness and responsibility as citizens of Japan.

Some lay assessors have thus become interested in how judgements are made in trials after their participation in the system and are keen to keep getting engaged with the system and with future lay assessors. This is certainly a positive movement to challenge the mainstream hypotheses concerning the Japanese public's "allergy" to law and lawsuits. Nonetheless, reactions of lay assessors after the trials can be the opposite to this or extremely negative as evidenced by those who suffer from post-traumatic stress disorders or who suffer from questioning daily whether or not their decision on the convicted person's life—all based on "evidence" presented by the prosecutors—was ever appropriate. Increasing the amount of daily allowance proposed by some Diet members would not lower the 'no-show' rate dramatically as it cannot help alleviate the psychological pains caused by their decisions over whether the defendants should live or die. There exist several institutional and practical bar-

riers to ensuring that *Saiban-in Seido* is fair to both defendants and victims: evidence screened in pre-trial meetings, types of offences triable, lack of access to permanent professional interpreters. However, serious attention needs to be paid to the more fundamental issue that lay assessors' freedom and rights in not wanting to contribute to judicial killing are being overshadowed by governmental opinion poll results which support *Saiban-in Seido* and the limited positive examples of civil participation in the administration of justice.

Notes

1) In Japan, the jury system was used from 1928 to 1943. Under this system, jurors used to determine guilt or innocence, and the sentence to be imposed was determined by the judges.
2) According to Article 2 of *Saiban-in no Sanka suru Keiji Saiban ni Kansuru Hōritsu* (The Lay Assessor Act), panels are composed of one judge and four lay assessors for certain cases such as those where guilt seems beyond doubt.
3) Article 13 of *Saiban-in no Sanka suru Keiji Saiban ni Kansuru Hōritsu* (The Lay Assessor Act).
4) Elizabeth M., Sher "Death Penalty Sentencing in Japan under the Lay Assessor System: Avoiding the Avoidable through Unanimity" *Pacific Rim Law & Policy Journal*, (2011), 638–639.
5) Supreme Court, "*Saiban-in Seido no Jisshi Jōkyō*" (Interim Report on the Quasi-Jury System), (2016), Available at: http://www.saibanin.courts.go.jp/vcms_lf/h28_jissi_matome.pdf [Accessed on August 1, 2017]
6) *Ibid.*
7) Prime Minister's Office, "*Kihonteki Hōseido ni Kansuru Yoron Chōsa*" (Opinion Poll on Basic Legal System), (2009, 2014).
8) Matthew J Wilson, Hiroshi Fukurai and Takashi Maruta, *Japan and Civil Jury Trials: The Convergence of Forces*, (Cheltenham: Edward Elgar Publishing, 2015), 34–35.
9) *Asahi* 'Editorial', February 15, 2001 quoted in Andrew Watson, *Popular Participation in Japanese Criminal Justice: From Jurors to Lay Judges*, (Palgrave Macmillan, 2016), 73.
10) Wilson et al., *op. cit.*, 35.
11) Wilson et al., *op. cit.*, 22.
12) *Ibid.*
13) Watson, *op. cit.*, p. x.
14) Watson, *op. cit.*, 43.
15) Watson, *op. cit.*, 127.
16) Watson, *op. cit.*, 113.
17) *Ibid.*
18) Watson, *op. cit.*, 140.
19) *Ibid.*
20) Wilson et al., *op. cit.*, 66.
21) Takeyoshi Kawashima, *Nihonjin no Hōishiki* (Japanese Legal Consciousness), (Tokyo: Iwanami Shoten, 1967).
22) Meryll Dean, *Japanese Legal System* 2nd ed., (Abingdon: Routledge-Cavendish, 2002), 4.
23) Wilson et al., *op. cit.*, 82.
24) Wilson et al., *op. cit.*, 98–9.
25) *Saiban-in Seido wa iranai Inko no Web Daiundō* (Big Online Movement by a Parrot which does not Want a Quasi-Jury System), "*Inko no Album Nikki*" (Parrot's Video Diary), Available at http://saibanin-iranainko.com/inkoalbum.html [Accessed on August 1, 2017]
26) As Sangmin Bae argues, '[p]olicy changes precede opinion changes, suggesting that the former cause the latter rather than vice versa' (Sangmin Bae, *When the State No Longer Kills: International Human Rights Norms and Abolition of Capital Punishment*, (Albany: State University of New York Press, 2008), 119).
27) *Yomiuri*, "*Saiban-in Seido 'Keizoku wo' 74%—Yomiuri Yoron Chōsa*" (74% of the Public Supports the Retention of the Quasi-Jury System—Opinion Poll by Yomiuri Newspaper), July 11, 2014.

28) *Mainichi*, "*Saiban-in Keiken sha ni taisuru Ankēto*" (Questionnaire to Those who have Served as Lay Assessors in Quasi-Jury System), May 18, 2012.
29) *Japan Times*, "Lay Judges Torn by Death Penalty: Citizens Find Deeming Who Lives, Dies Tests their Moral Fiber," May 30, 2012. Available at: http://www.japantimes.co.jp/text/nn20120530f1.html [Accessed on August 1, 2017]
30) *Asahi,* "*Saiban-in Kōhosha 'Mudan Kesseki' Yon wari, Saikōsai ga Taisaku Kentō e*" (Lay Assessor Candidates' No-Show Rate Has Risen to 40 Per Cent: The Supreme Court Seeks Solutions), May 21, 2016. http://www.asahi.com/articles/ASJ5N5F3JJ5NUTIL03P.html [Accessed on August 1, 2017]
31) Supreme Court, "*Saiban-in Saiban no Jisshi Jyōkyō ni Tsuite*" (*Seido Shikō —Heisei 28 nen 5 Gatsu sue Sokuhō*) (Report on the Quasi-Jury System, Preliminary Report in May 2016), 5. Available at: http://www.saibanin.courts.go.jp/vcms_lf/h28_5_saibaninsokuhou.pdf [Accessed on August 1, 2017]
32) *Mainichi*, "*Saiban-in 'Kokoro ni Futan' Zutto Keikensha 42 nin chū 7 Wari 'Atta' 'Shinri go Shibaraku Shitekara' 14 nin/Hikoku ga Jyōkoku 'Kei Tadashikatta ka*" (70 Per Cent of 42 Lay Assessors Felt Psychological Burden, 14 Felt This Shortly after Trials. Convict Made an Appeal, "Was My Judgement Right?"), April 18, 2015.
33) *Ibid.*
34) Eiji Yamamura, "What Discourages Participation in the Lay Judge System (Saiban'in Seido) of Japan?: An Interaction Effect between the Secrecy Requirement and Social Network," Munich Personal RePEc Archive, No. 15920, (2009), 3. Available at: https://mpra.ub.uni-muenchen.de/15920/1/MPRA_paper_15920.pdf [Accessed on August 1, 2017]
35) Yamamura (2009), *op. cit.*, 4, 7.
36) Saori Nanbu, '*Saiban-in no Stress to "Kueki" ni Kansuru Kōsatsu*' (Study on Lay Assessors's Stress and 'Involuntary Servitude'), *Yokohama Daigaku Ronsō Jinbun Kagaku Keirestu*, Vol, 66, No 2, (2015).
37) Nanbu, *op. cit*., 37.
38) Nanbu, *op. cit*., 41.
39) Nanbu, *op. cit*., 47.
40) Nanbu, *op. cit*., 46–7.
41) Nanbu, *op. cit*., 46.
42) Nanbu, *op. cit*., 47–50.
43) Wilson et al., *op. cit*., 66.
44) Mika Obara-Minnitt, *Japanese Moratorium on the Death Penalty*, (New York: Palgrave Macmillan, 2016), 46.
45) *Asahi,* "*Saiban-in Monogatari: Dōki ga Fujun? Nittō ni Sasoware Saibansho ni Shuttō*" ("Tales of Lay Assessors" Impure Motive? Going to the Court Tempted by Expenses Given by the Court), June 23, 2016, 1.
46) *Asahi*, *op. cit*., 2.
47) *Asahi*, "*Saiban-in Monogatari: 'Dōshiyō' Jibun no Bangō Erabare Asetta*" ("Tales of Lay Assessors" 'What should I do?' I Panicked when My Number was Called), June 24, 2016, 2.
48) *Asahi*, "*Saiban-in Monogatari: Izoku no Sugata, Mieteshimau koto de Kanjita Gimon*" ("Tales of Lay Assessors" What Made Me Wonder Being Able to See the Victims' Bereaved Families in the Court'), June 27, 2016, 1.
49) *Ibid.*
50) *Asahi*, "*Saiban-in Monogatari: Shikei wo Kakugo Shiteita Hikoku, Hyōjō Toboshikatta*" ("Tales of Lay Assessors" The Convict Who was Ready to Face the Death Penalty Showed Little Emotions), June 28, 2016, 1.
51) *Asahi*, "*Saiban-in Monogatari 'Han-nin wa Kiete Kudasai' Izoku no Kotoba ni Shōgeki*" (Tales of Lay Assessors: "The Convict Should Disappear", Shocked at What the Victims' Bereaved Families Said), June 29, 2016, 1.
52) *Ibid.*
53) *Ibid.*
54) *Asahi*, "*Saiban-in Monogatari: Chi no Tsuita Hōchō to Itai Shashin, Shōgekiteki Datta*" (Tales of Lay As-

sessors: Knife with Blood on and Pictures of the Wounded Victims, Shocking Evidence), June 26, 2016, 1.

55) *Asahi*, "*Saiban-in Monogatari 'Han-nin wa Kiete Kudasai' Izoku no Kotoba ni Shōgeki*," *op. cit*., 2.

56) *Asahi*, "*Saiban-in Monogatari: Hyōgi no Sue no Shikei Hanketsu: Kūki ga Omokatta*" (Tales of Lay Assessors: Dark Mood, Death Penalty Sentence after Discussions), June 30, 2016, 1.

57) *Ibid.*

58) *Ibid.*

59) *Ibid.*

60) *Ibid.*

61) *Asahi*, "*Saiban-in Monogatari: "Kōso Shite Hoshiku Nai" Kaiken de Hanashita*" (Tales of Lay Assessors: I Said "I Don't Want Him to Appeal" at the Press Conference), July 1, 2016, 1.

62) *Asahi*, "*Saiban-in Monogatari: Shikei Shikkō, Shinjitaku nai 'Hito no Inochi Ubatta'*" (Tales of Lay Assessors: Didn't Want to Believe that Execution Took Place, "I Took One's Life"), July 2, 2016, 1.

63) *NHK*, "*Saiban-in Seido 5 nen: Inochi wo Sabaku Omomi*" (5 Years since the Introduction of the Quasi-Jury System—Weight of Judging Whether or not Defendants Should Live or Die), May 21, 2014.

64) *Mainichi*, "*Shikei Shikkō, Saiban In no Kunō Genjitsu ni*" (Execution of the Death Penalty: Agony of Lay Assessors Turns into Reality), December 18 2015. Available at: http://mainichi.jp/articles/20151218/k00/00e/040/220000c [Accessed on August 1, 2017]

65) *Asahi*, "*Saiban-in Monogatari: Irei no Genba Kenshō: Blue Sheet ni Kakomarete*" (Tales of Lay Assessors: Exceptional On-site Verification, Site Covered by Blue Sheets), January 24, 2016, 2.

66) *Ibid.*

67) *Asahi*, "*Saiban-in Monogatari: Imi Aru Keiken ni, Kongo mo Kangae Tsuzuketai*" (Tales of Lay Assessors: I Would like to Keep Thinking about the System, Making My Experience Meaningful), January 28, 2016, 1.

68) *Ibid.*

69) *Ibid.*

70) *NHK* (2014) *Ibid.*

71) *Asahi*, "*Hakamada Jiken no Kettei Yōshi: Saishin Kaishi Seikyū*" (Summary of the Hakamada Case Rulings: Calling for Retrials), March 28, 2014. Available at: http://www.asahi.com/articles/DA3S11053243.html [Accessed on August 1, 2017]

72) *New York Times*, 'Soul-Searching as Japan Ends a Man's Decades on Death Row', 27 March 2014. Available at: http://www.nytimes.com/2014/03/28/world/asia/freed-after-decades-on-death-row-man-indicts-justice-in-japan.html?_r=0 [Accessed on August 1, 2017]

73) *Ibid.*

74) *Japan Times*, 'Court to Retry Man Convicted of 1985 Kumamoto Murder', June 30, 2016, 1, Available at: http://www.japantimes.co.jp/news/2016/06/30/national/crime-legal/court-retry-man-convicted-1985-kumamoto-murder/#.V4e7KrjhDIV [Accessed on August 1, 2017]

75) *Japan Times*, 'Court to Retry Man Convicted of 1985 Kumamoto Murder', June 30, 2016, *op.cit*., 2.

76) *Mainichi*, "*Matsubase Jiken 'Chichi wa Yatteinai' Chōnan Uttae 30 Nen, Koe Todoita*" (Matsubase Case, 'My Father Did Not Do It', Eldest Son's Voice Reached after 30 Years), July 1, 2016. Available at: http://mainichi.jp/articles/20160701/k00/00e/040/241000c [Accessed on August 1, 2017]

77) *Asahi*, "Kumamoto Man, 83, Wins Retrial after Serving 13 years for Murder," July 1, 2016, 1. Available at: http://www.asahi.com/ajw/articles/AJ201607010060.html [Accessed on August 1, 2017]

78) *Nihon Kokumin Kyūen Kai*, "Matsubase Jiken" (Matsubase Case), (2016) 1, Available at: http://www.kyuenkai.org/index.php?%BE%BE%B6%B6%BB%F6%B7%EF [Accessed on August 1, 2017]

79) *Japan Times*, "Court to Retry Man Convicted of 1985 Kumamoto Murder", (2016) *op. cit*., 1.

80) *Japan News*, "Matsubase Retrial Emphasizes Need for Thorough Disclosure of Evidence," 3 July 2016, 1. Available at: http://the-japan-news.com/news/article/0003056265 [Accessed on August 1, 2017]

81) *Ibid.*

82) As *Japan Times* reports, 'Criminal justice reform laws, established in May, incorporate the adoption of a system by which prosecutors hand over a list of all evidence to defense counsels before

the opening of a trial' (*Japan News Ibid.*).

83) *Japan News* (2016) *op. cit.*, 1–2.
84) *Asahi* (2016) *Ibid.*
85) *Mainichi* (2016) *Ibid.*
86) *Japan Times*, "Court to Retry Man Convicted of 1985 Kumamoto Murder', 2016, *op. cit.*, 2.
87) *Asahi*, "*Saiban-in ni Koekake Jiken, Hatsukōhan, Moto Kudō Kai Kei Kumi-in wa Hin-in*" (Incident that Lay Assessors were Approached by Acquaintances of Defendant, Former Gangster Member Denied Involvement in the First Trial), September 16, 2016; Mainichi "*Saiban-in Koekake, Moto Kumi-In ra Yūzai Hanketsu, Fukuoka Chisai*" (Lay Assessors Approached by Acquaintances of Defendant, Guilty Verdicts to Former Gangster Member and the Other), January 6, 2017.
88) *Ibid.*
89) *Ibid.*
90) *Mainichi* (2017) *Ibid.*
91) *Ibid.*
92) *Japan Times*, "In Wake of Yakuza Incident, Most Courts Taking Steps to Enhance Safety of Lay Judges," September 4, 2016.
93) *Ibid.*
94) *Ibid.*
95) *Asahi*, "*Saiban-in Nittō Hikiage o' Kokkai Gi-in Dan ga Teigen*" (Group of Diet Members Suggested the Increase of Daily Expenses Allowed for Lay Assessors), August 28, 2008.
96) *Ibid.*
97) *Asahi*, "*Saiban-in Monogatari: Saiban-in Keikensha to no Deai, Kata no Ni ga Orita*" (Tales of Lay Assessors: Meeting with Former Lay Assessors Made Me Destressed), October 19, 2015, 1.
98) *Ibid.*
99) *Asahi*, "*Saiban-in Monogatari: Chikan Desu, Mi wo Motte Shitta Enzai no Kanōsei*" (Tales of Lay Assessors: "He is a Pervert", Possibility of Miscarriage of Justice He Experienced by Himself), August 23, 2016.
100) *Asahi*, "*Saiban-in Monogatari: Taiken wo Kataru, Tsugi no Sedai ni "Kangaeru Chikara wo*" (Tales of Lay Assessors: Talking about the Experiences, Give Next Generations Power to Think and Judge Fairly), July 5, 2015.