

Impact of the popular legal participation on forced confessions and wrongful convictions in Japan's bureaucratic courtroom: A cross-national analysis in the U.S. and Japan*

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Abstract: The interrogation and lengthy detention of the accused by Japan's police and prosecutors without access to legal counsel has generated many forced confessions in Japan's criminal court. As results, past research estimated that a large number of innocent people have been falsely convicted, and some of them were even executed for crimes they have not committed. Since almost all of indicted cases result in convictions in Japan's criminal court, allegations of wrongful convictions have raised serious human rights issues, and the use of forced confessions in criminal proceedings has long been criticized by families of the accused, their attorneys, legal scholars, citizen activists, and international human rights groups. This paper examines whether or not the 2009 introduction of the Saiban-in Saiban (the quasi-jury trial), where ordinary citizens deliberate together with Japan's bureaucratic judges, helps prevent instances of wrongful convictions. As Japan's high conviction rate has substantiated that the Japanese court may be another bureaucratic system that is more interested in preserving its own authority and maintaining the status quo, the infusion of non-bureaucratic legal participants into the traditional judicial process may create the potential to alter the nature of trial processes, the quality of deliberations, and thus ultimate outcomes of criminal trials. Based on interviews and survey responses from Japan's grand jury (i.e., Kensatsu Shinsa-kai, or prosecutorial review commission (PRC)) participants and American citizens who served in jury trials, the paper explores the ways in which civic participation in criminal processes may affect the quality of legal decision making in Japan's criminal court.

Key words: lay participation in legal decision making; confession; jury; saiban-in; substitute prison systems; wrongful conviction

1. Introduction

"I was completely stripped naked in a dark cell of Hyogo Prefectural Police Headquarter, and the experience

* This research was supported by the University of California, Office of President, Pacific Rim Research Program (Award#:19900-485212) and Abe Fellowship from SSRC. Assistance with the design of the study to collect information from the Prosecutorial Review Commissions Society in Japan was offered by Naoko Tamura of Waseda University School of Law, Satoru Shinomiya of Kokugakuin University School of Law and late Kiichi Hirayama of the Japanese Prosecutorial Review Commission Society. For assistance with collecting and processing the data reported herein, we wish to thank Sheri Kurisu, Diana Lopez, Horacio Sanchez, Theodore Cha, Mauricio Orantes, Lora Verarde, Phuong Mai, Hector Garcia, and Fanta Summers for their valuable assistance. At the Dallas County Courthouse, we received helpful cooperation and oversight from Court Jury Services Manager Lori Ann Bodino and Attorney Arthur Patton.

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completely destroyed my spirit and pride as a human being," recalled then 22 year old Etsuko Yamada in the infamous wrongful conviction case called "Kabutoyama Jiken," in which she was accused of killing a mentally impaired boy whose body was found in a septic tank at the Kabutoyama Gakuen school near Kobe.¹ In 1974, despite her insistence of innocence, a former day care worker finally broke under interrogation and signed a confession, stating "I believe I must have committed the crime while unconscious"² On September 29, 1999, in an unprecedented trial that has lasted more than 21 years, Ms. Yamada was acquitted for the third time of the murder.³ This time, prosecutors decided not to appeal the ruling, and Ms. Yamada's nightmarish experience finally came to a close.⁴

Unfortunately, the instance of wrongful convictions is quite common in Japan. Today, many legal scholars and civic activists argue that there may be a large number of people who are wrongly convicted in Japan. Many remain behind bars and some were already executed for crimes they did not commit. Well-respected defense attorney Masanori Kabashima, for example, stated that approximately 30% to 40% of innocent people might have been wrongly convicted.⁵ When approximately 92% of all indicted cases result in confessions, many confessions were coerced by police and/or prosecutors; but those forced confessions were still considered the "queen of evidence." Sakae Menda, a former death row inmate whose conviction was overturned in 1983, stated that, while on death row for 34 years and having witnessed 77 inmates executed, he is certain that at least 7 of them were completely and factually innocent.⁶

The use of torture by police and prosecutors to extract confession is quite common in Japan and other parts of East Asia. Kim Byung-jin, a Korean resident of Japan was brought to court as a Communist suspect while studying at Yonsei University in Seoul, South Korea in 1983, and he finally "confessed," after investigators sent electricity to wires tied around his fingers and threatened to send his wife to a brothel and his infant son to an orphanage.⁷ In 1975, eight wrongly convicted members of "People's Revolutionary Party" were also hanged on the basis of confessions extracted under torture in South Korea.⁸

In 2004 and 2005, President Roh Moo Hyun created the Truth and Reconciliation Commission to examine human rights abuses in Korea's recent past and established the judicial reform committee to create comprehensive strategies to democratize its judicial system and criminal trial procedures.⁹ In April 30, 2007, the government finally announced to introduce an all citizen jury, starting from January 1, 2008.¹⁰ Similarly in Japan, following the Japanese Supreme Court's decisions in the 80s to overturn the convictions in four capital cases, in which confession was prosecutors' only credible evidence, public outrage and pressure from economic sectors generated demands for judicial reforms; including the introduction of the system of civic legal participation. In May 2009,

¹ Kabutoyama Jiken no 25 nen o Kataru: Jo (Part 1: Narrating the 25 year history of the Kabutoyama Case). *Asahi Shimbun*, October 14, 1999. A total of two children's bodies were later discovered in the septic tank – one boy and one girl.

² Ibid.

³ Teacher acquitted third time in 21-year murder trial. *Japan Times*, September 19, 1999. Retrieved from <http://search.japantimes.co.jp/cgi-bin/nn19990929a4.html>.

⁴ Prosecutors give up on Kabutoyama case. *Daily Yomiuri*, October 9, 1999, 2.

⁵ *Donatteruno? Saiban-seido* (What's happening to our trial system) [broadcast]. Radio Osaka (Radio Osaka), November 5, 2006. This is an excerpt from statements made by Attorney Kabashima in the radio program (tape on file with the first author).

⁶ Arrested in 1950 for the murder of four family members, Sakae Menda was sentenced to death, while he insisted that he was tortured into confessions. See generally Chihiro Isa (2004). *Shimada Jiken* (The Shimada case).

⁷ Choe Sang-Hun (March 11, 2007). South Korea reviews its dark past, but the pace is slow. *N.Y. Times*.

⁸ Ibid.

⁹ Joo San-min (August 15, 2005). Roh struggles to break old system: Public sharply divided over controversial reform projects. *Korea Herald*.

¹⁰ Ibid.

the Japanese government then introduced a Saiban-in Seido (the quasi-jury system), in which criminal cases are tried by a panel of three professional and six lay judges.¹¹

This paper examines people's opinions and attitudes about the use of confessions in criminal trials, allegations of physical and psychological violence in soliciting confessions, the importance of transparency during criminal proceedings, defendants' testimony and claims of innocence, and the interaction between judges and jurors during deliberation in criminal cases, in which confessions remain as key prosecutorial evidence.

The paper is structured as follows. Part 1 focuses on contributing factors and known causes of forced confessions. Part 2 presents analytic results of two cross-national surveys conducted in Japan and the U.S. Those two cross-cultural groups include Japan's grand jurors (Kensatsu Shinsakai (Prosecutorial Review Commissions (PRC)) members) and American citizens who served as jurors. Both groups were asked to respond to a series of questions, concerning their views and attitudes toward criminal justice procedures, including the use of confession reports in Japan, their believability, use of torture to extract confession, and defendant's testimony. Part 3 then discusses the impact of popular legal participation on the evaluation of the use of confession documents in criminal trials. Finally, Part 4 presents a set of recommendations and suggestions to help reduce the likelihood of wrongful convictions in Japan's criminal court.

2. Japan's forced confessions and contributing factors

A number of factors are known to have produced forced confessions in Japan. Those are: (1) use of substitute prisons, (2) limited access to defense counsel, (3) use of physical and psychological torture and violence to obtain forced confessions, (4) Japanese judges' uncritical attitude toward use of confession documents, and (5) limited means available for the accused to obtain a pretrial release. Each of those factors is an independent cause of forced confessions in Japan's criminal process. And any combination of those factors also increases the likelihood of erroneous and forced confessions. Because of Japanese judges' near blind acceptance of confessions as evidence of guilt, the extraction of confessions from the accused is considered as the principal cause of wrongful convictions in Japan's criminal courts. The following section provides detailed analyses of each of the causes and contributing factors of forced confessions in Japan.

2.1 Substitute prisons

Article 38 of the Japanese Constitution provides a comprehensive prohibition against self-incrimination and forced confession, stating that (1) "No person shall be compelled to testify against himself," (2) "A confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence," and (3) "No person shall be convicted or punished in cases where the only proof against him is his own confession."¹² Similarly, Article 36 states that the "infliction of torture by any public officer and cruel punishments are absolutely forbidden."¹³

Shojiro Goto, one of the most respected and revered Japanese defense attorneys, has argued in his book that the wrongful conviction is a serious governmental crime, similar to the engagement of wars that can be only made

¹¹ See generally Hiroshi Fukurai (2007). The rebirth of Japan's petit quasi-jury and grand jury systems: A cross-national analysis of legal consciousness and the lay participatory experience in Japan and the U.S.. *Cornell Int'l L. J.*, 40, 315.

¹² The *Constitution of Japan* (hereinafter Constitution), art 38. Retrieved from <http://www.constitution.org/cons/japan.txt>. See also Jeff Vize (2003). Torture, forced confessions, and inhuman punishments: Human rights abuses in the Japanese penal system. *UCLA Pac. Basin L.J.*, 20, 329, 344, n144.

¹³ See Constitution, supra note 12, 38.

possible by the governmental abuse of authority and power.¹⁴ Goto argues that the use of police holding cells as substitute detention facilities (i.e., substitute prisons) has led to a large number of wrongful convictions in Japan. Currently Japan has 114 detention and branch detention facilities, and 98.3% of arrested criminal suspects and trial defendants are being held in police cells known as substitute prisons.¹⁵ The legal basis for the use of police holding cells comes from Article 1, Section 3 of the 1908 former Prison Law, which still allows the use of detention cells in police stations for interrogation.

Articles 203 (1) and 205 (1) of the Japanese Code of Criminal Procedure further indicate that a suspect must be brought before a judge within three days of arrest. If the prosecutor seeks further detention of the suspect, he or she must ask a judge for an extension; however, such request is almost always granted without exception. Once the judge allows the extension, the suspect may be transferred to a special detention center and the prosecutor has another ten days to interrogate the suspect before filing charges.¹⁶ If no confession results during this period, the prosecutor may request additional ten days, meaning that the total detention period at the substitute prison may last up to twenty-three days.

The use of substitute prisons is discretionary for the judge. Nevertheless, in practice, it is used routinely, as are detention extensions. Prosecutors request detention for about 85% of all criminal suspects, and an additional ten day extension is requested for approximately 33% of those 85% of the cases.¹⁷ The judge grants these requests 99.7% of the time.¹⁸

The Japan's criminal procedure thus gives both the police and prosecution a considerable period of time to interrogate the suspect. However, in more difficult cases where evidence is weak and the suspect refused to confess, the practice of so called "bekken taiho" or "arrest for a different or minor crime" is also used quite extensively. This controversial practice allows police to arrest the suspect and hold him under the continuous custody for a separate offense, while trying to develop evidence in the main offense for which the suspect was initially arrested. In substitute prisons, criminal suspects can be questioned at any time, for any length of time, without food, or breaks, or access to a lawyer. Consequently, confessions are extracted through the use of physical and psychological torture and are carefully documented in admission reports by investigators.

2.2 Limited access to defense counsel

There is a right to counsel in Japan. Nevertheless, the counsel for the indigent has not been provided by the government until after indictment. In October 2006, the public defender system was established to provide defense counsel to the indigent, technically prior to the indictment. However, only those whose total net wealth does not exceed a half million yen (\$4,500) are allowed to access the legal service of the public defense lawyer.

Under Article 39 (1) of the Code of Criminal Procedure, detained suspects may have the right to talk to their attorneys, and Section 3 of the same article also indicates that prosecutors may control access to defense counsel to detained suspects. However, they can impose stringent conditions on meetings between the suspect and counsel. In serious criminal cases, this power is exercised by the prosecutors such that access is severely restricted because of the prosecutorial argument that unlimited access risks the possible destruction of evidence and may leak case-sensitive information to the media. Meetings with counsel are also limited to fifteen minutes once every four

¹⁴ Shojiro Goto (1980). *Enzai* (Wrongful convictions). 1.

¹⁵ Giving detainees breathing room. *Japan Times Weekly Editorial*, March 18, 2006, Retrieved from <http://www.japantimes.co.jp/weekly/ed/ed20060318a1.htm>.

¹⁶ *Keiji Soshoho* (Code of criminal procedure, hereinafter Criminal procedure), arts 203 (1), 205 (1).

¹⁷ Daniel H. Foote (1992). The benevolent paternalism of Japanese criminal justice. *Cal. L. Rev.*, 80, 317, 335.

¹⁸ *Ibid*, 336.

or five days and suspects in detention are unlikely to have much more opportunities to meet with the counsel until the prosecutors have finalized their cases.¹⁹ Similarly, the defense counsel is never permitted to attend interrogation sessions at any time before or after indictment.

2.3 Physical and psychological torture and violence to obtain forced confessions

Japanese scholars argue that Japanese investigators tend to consider that the questioning of suspected criminals is more important and efficient than searches and seizures.²⁰ Thus, in practice, the use of psychological and physical tortures has been an accepted and became carefully codified means of obtaining confessions. In 1879, at the onset of Japan's modernization (called the Meiji Restoration when Japan finally agreed to end its isolation policy) abolished torture as a means of soliciting confessions; however, today's investigators still rely on the use of torture, including intimidation and physical abuse, to extract confessions from detained suspects.²¹ While there are no clear statistics on the prevalence of the torture to obtain forced confessions, Professor Toshikuni Murai estimated that the number of forced confessions could be as high as fifty percent of all criminal cases.²²

Police and prosecutorial practices of relying on physical and psychological tortures to obtain confessions have long been criticized by domestic and international human rights organizations on their systematic disregards and abuses of the accused's human rights. Historians, however, have argued that the prohibition against the use of torture is relatively new to Japan. In the Tokugawa feudal era, for instance, torture was considered a central component of the criminal justice system, with methods prescribed in law.²³

Japan's courts thus have rarely overturned convictions for torture or inhumane treatment. From 1952 to early 1990s, for example, over 12,000 complaints of torture and similar abuses were reported. However, only 15 cases were accepted by the courts and only eight resulted in the punishment of police.²⁴ Similarly, the proof of torture has been extremely difficult because of the closed nature of interrogations in substitute prisons. In order to make the investigative process more open and transparent, in July 2006, prosecutors decided to use video-recording devices during their interrogations. However, the recording was only applied to a very small number of criminal cases and was only limited to interrogations in Tokyo Prosecutors' office. In February 2007, the similar practice of recording interrogations was extended to eight regional prosecutorial offices. However, the recording was still limited to a small number of criminal cases. Furthermore, the use of recording devices was not still allowed in police detention cells, where an overwhelming majority of alleged physical and psychological tortures have occurred.

Japan has so far signed two key international treaties governing abuses in prisons and detention centers, namely the International Covenant on Civil and Political Rights (ICCPR) which Japan ratified in 1979 and the Convention Against Torture (CAT), to which Japan acceded in 1999. However, despite the international treaties, Japan continues to solicit confessions based on physical and psychological violence, and safeguards against torture and self-incrimination have been systematically ignored.

Professor Stephen Thaman suggests that the less the police rely on confessions, the better will be the independent investigation of the case, and thus theoretically, the better the search for truth, arguing that the new

¹⁹ Kazuo Itoh (1988). On publication of the "citizens" human rights reports. *Law in Japan*, 20, 29, 54-61.

²⁰ See Goto, supra note 14. See also Toshiki Odanaka (1993), *Enzai wa koshite tsukurareru* (In the making of the wrongful conviction cases).

²¹ Foote, supra note 17, 330.

²² Teresa Watanabe (Feb. 27, 1992). Victims of a safe society: Behind Japan's low crime rate and civilized streets is a criminal justice system criticized as the most backward in the industrialized world. *L.A. Times*, A1.

²³ Rajendra Ramlogan (1994). The human rights revolution in Japan: A story of new wine in old wine skins? *Emory Int'l L. Rev.*, 8, 127, 199.

²⁴ *Ibid*, 182.

codes of criminal procedure in Italy and Venezuela require defense counsel to be present during the interrogation for it to be admissible.²⁵ The U.S. Supreme Court in *Escobedo v. Illinois* also ruled that criminal suspects have a right to counsel during police interrogation, stating the law enforcement "which comes to depend on the confession will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation."²⁶ Prominent Japanese legal writer Chihiro Isa similarly argues that the over-reliance on the confession leads to the general lack of police and prosecutorial efforts to seek and obtain material, forensic, and/or other collaborating evidence necessary to ensure the conviction of the accused.²⁷

2.4 Japanese judges' uncritical attitudes toward the use of confession documents

Senshu University Law Professor Toshiki Odanaka warned that wrongful convictions largely stem from Japan's professional judges' systematic and intentional disregard and neglect of the rights of the accused.²⁸ He specifically suggested the following four types of Japanese judges' indifferent attitudes and neglects as the main cause of wrongful convictions in Japan: (1) disregard of the fairness of criminal investigative processes, (2) indifference towards circumstances and conditions surrounding the suspect in soliciting confessions, (3) non-critical attitudes towards the credibility of confessions and expert opinions, and (4) indifference towards possible internal contradictions of storied narratives of coerced confessions.²⁹

Kwanzei University Law Professor Takashi Maruta also stated that Japanese judges' systemic disregard of the rights of the accused and near-blind acceptance of confession as evidence of guilt may stem from the standardized trainings they receive, as well as the bureaucratic control on their opinions imposed by the Office of the Supreme Court Secretariat. He argued that judges are not independent thinkers when it comes to making legal decisions or issuing their opinions. He stated that:

Judges in Japanese courts were all children of the same type of high-income parents, all studied at the same leading high schools, went to the same bar exam preparatory schools, graduated from the same universities, studied at the same [legal] training institute and, without ever experiencing any other profession, spend most of their lives in court with colleagues who all share the same mode of thinking.³⁰

Professor Maruta suggested that Japanese judges have very little autonomy or judicial independence, as they are subject to reappointment every ten years and may be reassigned to different courts in various regions in Japan. The threat of denying reappointment and "shipping" non-compliant judges to remote courts have been effectively used by the Secretariat of the Supreme Court to ensure that judges follow their standardized procedures, efficiently manage their case loads, and do not issue opinions divergent from the court's precedents. Similarly, Japanese judges who failed to process or skillfully dispose a large number of criminal cases become subject to negative and critical evaluations by the Supreme Court in periodic merit and promotion considerations.³¹ Such critical evaluations of, and strict bureaucratic control over, the Japanese judge by the Secretariat, thus helped standardize the court's opinions, control ideologies of individual judges, and promote efficient, bureaucratic

²⁵ Stephen Thaman (2001). Japan's new system of mixed courts: Some suggestions regarding their future form and procedures. *St. Louis-Warsaw Thans. L.J.* (2001/2002), 89-105.

²⁶ *Escobedo v. Illinois*, 378 U.S. 488-49 (1964).

²⁷ Chihiro Isa (2006). *Shiho no hanzai* (Crimes by the Judiciary).

²⁸ Toshiki, supra note 20.

²⁹ Ibid.

³⁰ See generally Takashi Maruta (2004). *Saiban'in seido* (The quasi-jury system). 43. The translation is from Colin P. A. Jones (2006). Book review: Prospects for citizen participation in criminal trials in Japan. *Pac. Rim L. & Pol'y J.*, 15, 363, 364.

³¹ Takashi Maruta (1990). *Baishin saiban o kangaeru* (Considering the jury trial).

dispositions of a large number of criminal cases. This is despite the fact that judges' complete independence has already been guaranteed under Article 78 of the Japanese Constitution, which states that "Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency."³²

2.5 Pretrial release and the lack of Miranda rights

Another major problem in Japan's criminal proceedings is the lack of pre-trial release of the accused and the lack of so called Miranda rights in criminal processes. There is almost no post-indictment bail system or pre-indictment release on a bail system in Japan. Requests for pre-indictment bail are universally rejected on the grounds that no such institution exists, meaning that the suspect is not entitled to bail during the "mandatory" twenty three day detention period. Article 89 of the Code of Criminal Procedure states that post-indictment bail is possible in Japan; however, there are many grounds on which a judge may deny bail. Post-indictment bail thus becomes extremely difficult to obtain, and approximately 80% of the indicted await trial in custody.³³ The Japanese Federation of Bar Associations (JFBA) reported that in 1996, only 16.3% of defendants were released on bails.³⁴ It is reported that denials of charges or remaining silent are taken as indications of the defendants' tendency to destroy evidence and thus become the basis for denying bail.³⁵ As results, Japanese judges exhibited a great tendency to give greater weight to recommendations of prosecutors, not defendants or their defense counsel.

Given the fact that the access to defense counsel is quite limited and pre-indictment release is impossible, today's defense lawyers tend to recommend that the suspect remain completely silent in custody and do not even engage in any conversation with police or prosecutorial investigators. Since Japan does not have a so called Miranda warning, where criminal suspects in police custody are informed of his/her rights, a movement to systematically popularize the use of Miranda warning was firstly initiated by a group of progressive lawyers to encourage defendants to remain silent in substitute prisons or in any custodial situation.³⁶ Attorney Takashi Takano, who created the Mindanda no Kai (The Miranda Association), indicated the great success of his group's efforts and the significant impact of their strategies, suggesting that prosecutors decided not to indict more than 90 percent of their clients because of their complete silence in custody.³⁷

3. An empirical research

In this section, we examine whether or not the civic legal participation helps reduce the likelihood of wrongful convictions in Japan. After the quasi-jury law was put into effect in 2009, a judicial panel of lay and professional judges began to make the guilt and penalty decisions in criminal cases. This section then examines opinions and attitudes of jurors and other trial participants about the use of confessions in criminal trials, allegations of physical and psychological violence in soliciting confessions, the importance of transparency during

³² *Constitution and Government of Japan*. Retrieved from http://www.kantei.go.jp/foreign/constitution_and_government/frame_01.html

³³ See Japanese Federation of Bar Associations (1998). *Alternative report to the fourth periodic report of Japan on the international covenant on civil and political rights*. 57.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ Takashi Takano (2002). The Miranda experience in Japan. In: Kalcolm K. Feeley & Setsuo Miyazawa (Eds.), *The Japanese adversary system in context*. 128-139.

³⁷ Sec Miranda no Kai (The Miranda Association). *Henshusha no koe* (Editor's voice). Retrieved from <http://mirandanokai.net/body/news/hitokoto.html> (Koremade miranda hoshiki no bengo katsudo o yatta hinin jiken no 9wariijo wa fukiso ni natteiru (In more than 90% of contested criminal cases where we applied Miranda warning (asking the suspect to remain silent in custody), prosecutors failed to issue indictments)).

criminal proceedings, defendants' testimony and claims of innocence, and the interaction between judges and jurors during deliberation in criminal cases, where confessions remain as key prosecutorial evidence.

3.1 Methods

We created four sets of cross-national data for present research. Gastil et al. indicated that deliberative experiences, including deliberations of jury trials, strengthen one's commitment to democratic processes and egalitarian principles because the majority of Americans who served in jury trials were more likely to report their positive experience, a heightened sense of civic responsibility, and greater willingness to participate in future civic duties.³⁸ Fukurai also reported similar findings among those who participated in judicial decision making in Japan.³⁹ Thus, American and Japanese respondents were subdivided into smaller groups based on whether or not they had prior deliberative experiences. In Japan, we asked the members of the Prosecutorial Review Commission (PRC) Society to respond to our research questions.⁴⁰ The all-citizen PRC is similar to America's grand jury and evaluates the appropriateness of prosecutors' non-indictment decisions. The commission consists of randomly selected 11 citizens from voter rolls, and the term of service is six months. The PRC Society is a non-profit organization composed of ordinary citizens with PRC experiences. From September 2005 and November 2006, with the help of the President of the Japanese Prosecutorial Review Commission Society, we asked 229 members in 11 prefectural and regional offices to fill out the survey questionnaire. We also interviewed PRC members about their experience by telephone and in person.

In the United States, we asked prospective jurors who reported to a county courthouse in Dallas, Texas to fill out the same questionnaire. The survey was conducted between March 7 and April 3, 2006. A total of 2,564 prospective jurors responded to the survey questionnaire and 1,011 of them indicated that they had previously served on juries.

In order to effectively examine people's attitudes toward civic legal participation and use of confessions in criminal courts, Japan's PRC respondents are also sub-divided into those who did and did not engage in actual deliberations. In some regional districts in Japan, a small number of cases and/or poor attendance led to a failure in constituting the commission, and in other cases, some PRC members remained as alternates, therefore they did not directly participate in deliberative processes. A total of 137 respondents said that they examined actual cases and participated in deliberations.

In order to make cross-national comparisons of attitudes toward the use of confessions in criminal courts, we also obtained survey results from college students in the U.S. and Japan. In the U.S., a select group of undergraduate students at the University of California, Santa Cruz and the University of California, Davis were contacted and asked to respond to the survey questionnaire in late 2005 and early 2006 (n=623). Among American students, 31 indicated that they have previously served in jury trials. In Japan, between October and December

³⁸ John Gastil, Hiroshi Fukurai, Kent Anderson, & Mark Nolan (2007). *Seeing is believing: The impact of jury service on attitudes toward legal institutions and the implications for international jury reform* (the file with the first author).

³⁹ Fukurai, Hiroshi (2007). *What brings people to Japan's criminal courtroom?* (A paper presented at the Pacific Sociological Association Meeting in Oakland, CA, March 29, 2007).

⁴⁰ In order to promote popular legal participation and publicize the importance of its duty in Japan, the Prosecutorial Review Commission Society was established in 1955. Currently many regional branch offices exist all over Japan. While approximately 490,000 people have served in review commissions, not everyone automatically becomes a member of the society. The active conduct of business of the society is only supported by members' volunteer work. There are variations as to the extent of activities and member recruitments among regional branches. When the JFBA asked the society members to respond to a survey questionnaire in 2000 in one of the largest surveys ever conducted on popular legal participation, 2,315 members completed the questionnaire. See JFBA (2001), *Kensatsu shinsa kyokaiin ni taisuru anke-to kekka hokokusho* (The final reports of the results of JFBA survey).

2005, undergraduate students at three private universities in a Tokyo metropolitan area were asked to fill out the same survey questionnaire (n=607). Those universities included: (1) International Christian University, (2) Senshu University, and (3) Toyo University. Both Japanese and American college students come from a group of students enrolled in sociology and psychology courses during the time of survey. None of Japanese students have served as PRC members.

3.2 Survey questions

The following four questions are asked to both Japanese and American respondents in order to understand their attitudes and opinions about the credibility of the confession documents, the importance of transparency during jury selection and other criminal proceedings, the role of judges and jurors during deliberation, and trial fairness and verdict legitimacy of criminal trials. Those four specific questions include: (1) "Some defendants plead innocent, even if they already confessed. In such a case, I am curious to know how the confession was made," (2) "For the above case, I believe that the defendant's insistence of innocence is a lie," (3) "Recording (transcribing or videotaping) is important in all trial proceedings," and (4) "During deliberation, jurors should ask the judge to clarify their questions/concerns."

Because of the different cultural milieu and legal context in Japan and the U.S., the above questions are slightly changed to ensure better understandings of the questions by our cross-cultural respondents. For the second question, in order to understand whether or not police and/or prosecutorial misconduct was responsible in obtaining confessions from defendants, the question for American respondents was modified in the following: "For the above case, I believe that the defendant was forced to confess." For the third question, the question was also slightly modified for Japanese respondents in order to examine the importance of transparency during jury selection. Thus, the statement for Japanese respondents is phrased as, "During jury selection, every question posed by a presiding judge and/or others should be carefully transcribed and recorded." While Japan's jury selection process will not be recorded and transcribed like the U.S. procedure, it was important for Japanese respondents to consider the importance of recording jury selection procedures. Similarly the fourth question was slightly modified to fit the American situation, in which the question was phrased as, "In determining a final verdict, jurors should utilize the judge to clarify their questions/concerns." In all those statements, respondents were asked to rate their agreement on a five-point Likert scale: (1) strongly agree, (2) somewhat agree, (3) uncertain/neutral, (4) somewhat disagree, and (5) strongly disagree.

3.3 Analysis

When posed with the following question, "Some defendants plead innocent, even if they already confessed. In such a case, I am curious to know how the confession was made," 73.5% of PRC members with deliberative experiences strongly agreed, and 24.2% of them somewhat agreed with the statement, suggesting that the overwhelming majority of them felt the need to understand the nature of the confessional process (see Table 1). Over 90% of both PRC members without deliberative experience and Japanese college students also agreed with the statement. Both American jurors and college students also exhibited the similar interest and curiosity about the process in which confession was extracted and documents. When posed with another question, "For the above case, I believe that the defendant's insistence on his innocence is a lie," the large majority of PRC members with deliberative experience (72.3%) disagreed with the statement, suggesting that, when the discrepancy exists between the confession document and defendant's open court testimony, they are likely to believe the defendant's claim of innocence. A similar result is found among PRC members without deliberative experience (72.7%). For Japanese college students, more than half of them indicated that they were not sure about the plausibility of the

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defendant's claim of innocence.

Almost one out of every four American jurors (24.3%) felt that the defendant was forced to confess, while almost half said that the confession was not forced (47.3%). While it is difficult to make a direct comparison with Japanese counterparts, it is surprising to find out that a large number of American jurors said that they were not sure whether or not the confession was coerced (28.5%). The uncertainty about the coercion of confession is shared among American respondents (i.e., Dallas residents) without jury experience (33.5%), college students with jury experience (29.0%), and without jury experience (36.8%).

Table 1 Believability and credibility of confessionary documents

	Strongly agree	Somewhat agree	Uncertain	Somewhat disagree	Strongly disagree
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Q1. Some defendants plead innocent, even if they already confessed. In such a case, I am curious to know how the confession was made.

Japan	Deliberative experience					
PRC members	Yes	73.5%	24.2%	0.8%	0.8%	0.8%
	No	60.9	30.4	6.5	0.0	2.2
Students	No	71.1	20.2	5.2	2.2	1.3
U.S.						
Jurors	Yes	54.2%	33.2%	3.2%	6.4%	3.1%
	No	59.9	26.7	5.5	5.2	2.7
Students	Yes	67.7	29.0	0.0	3.2	0.0
	No	68.8	20.8	5.1	3.0	2.3

Q2. For the above case, the defendant's insistence in his innocence is a lie.

Japan	Deliberative experience					
PRC members	Yes	2.3%	12.3%	13.1%	36.9%	35.4%*
	No	4.5	6.8	15.9	50.0	22.7
Students	No	4.2	12.7	58.1	16.4	8.7

Q3. For the above case, I believe that the defendant was forced to confess.

U.S.	Deliberative experience					
Jurors	Yes	5.0%	19.3%	28.5%	25.5%	21.8%
	No	10.2	18.3	33.5	22.3	15.8
Students	No	3.2	25.8	29.0	32.2	9.7
	No	9.7	32.0	36.8	16.3	5.1

Note: PRC members (n=229 and 137 with deliberative experiences); Japanese college students (n=607); American respondents (n=2,564 and 1,011 with jury experiences); American college students (n=623 and 31 with jury experiences).

* p < 0.01 ** p < 0.001 *** p < 0.0001

Table 2 examines the bivariate relationship between respondents' interests in confessional processes and the believability of the defendant's claim of innocence. One out of every four PRC members with deliberative experience (24.2%), who showed the strongest interest in confessional processes, indicated that the defendant's claim was a lie, suggesting that the overwhelming majority of them believed that the defendant did not lie about his/her claim of innocence. It is also important note that none of those who did not show interest in confessional processes felt that the defendant's claim of innocence is a lie. For PRC members without deliberative experience

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who showed strong interests in confessional processes, less than a majority of them also felt that the defendant lied about his claim of innocence (37.5% and 38.1% for "strong" and "somewhat" agreements, respectively). Japanese college students also gave similar answers.

Table 2 Defendant's claim of innocence and the credibility of his/her statement

	Strongly agree	Somewhat agree	Uncertain	Somewhat disagree	Strongly disagree
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Q1. Some defendants plead innocent, even if they already confessed. In such a case, I am curious to know how the confession was made.

Q2. In such a case, the defendant's insistence in his innocence is a lie.

Japan		Deliberative experience					
PRC members	Yes	24.2%	35.5%	0.0% ¹	0.0% ¹	0.0% ²	-0.084
	No	37.5	38.1	20.0	100.0 ¹	0.0 ¹	-0.042
Students	No	15.2	23.3	9.7	30.8	12.5	-0.102

Q3. For the above case, I believe that the defendant was forced to confess.

U.S.		Deliberative experience					
Jurors	Yes	28.2%	21.9%	15.6%	15.7%	6.6%***	0.277***
	No	31.0	28.1	13.1	16.5	24.4***	0.160***
Students	Yes	33.4	11.1	--(0)	100.0 ¹	--(0)	0.236
	No	43.2	43.2	17.2	47.2	30.8***	0.111

Note: ¹ n=1; ² n=2; *p<0.01 **p<0.001 ***p<0.0001

One of the main objections against the use of confession in criminal cases is its covert and violent method used to extract confessions from the accused. As literature reviews suggest, the transparency of interrogations in criminal proceedings is thus considered as an important means to eliminate the use of psychological and physical torture in extracting confessions.

Table 3 then examines the relationship between people's attitudes towards the importance of transparency during criminal proceedings and defendants' claim of innocence in trials where defendants dispute their own confessions. The overwhelming majority of PRC members and Japanese college students supported the importance of open and transparent criminal proceedings. American respondents similarly supported the use of recording (i.e., transcribing and videotaping) throughout all investigative and trial proceedings. With respect to establishing the communication with judges, the overwhelming majority of PRC members indicated that jurors should ask the judge to clarify their questions and concerns (94.7% and 91.0% for PRC members with and without deliberative experience, respectively). Jurors' reliance on the judges to clarify questions and concerns are also strongly supported by American respondents (93.7% and 89.6% for Americans with and without jury experience, respectively). Similar patterns are also observed among American college students with and without jury experience.

Table 3 Transparency of pre-indictment proceedings and judges' role during jury selection and deliberation

	Strongly agree	Somewhat agree	Uncertain	Somewhat disagree	Strongly disagree
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Q1. During jury selection, every question posed by a presiding judge and/or others should be carefully transcribed and recorded.

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Japan		Deliberative experience				
PRC members	Yes	42.1%	29.4%	9.5% ¹	7.9% ¹	11.1%
	No	40.0	34.5	8.0	4.6	12.6
Students	No	49.2	31.1	5.0	3.0	11.5

Q2. Recording (transcribing or videotaping) is important in all trial proceedings.

U.S.		Deliberative experience				
Jurors	Yes	71.9%	17.9%	2.0%	4.9%	3.4%
	No	71.0	16.9	4.0	4.4	3.7
Students	Yes	74.2	9.7	3.2	6.5	6.5
	No	62.8	23.2	4.7	4.2	5.1

Q3. During deliberation, jurors should ask the judge to clarify their questions/concerns.

Japan		Deliberative experience				
PRC members	Yes	73.3%	21.4%	1.5%	1.5%	2.3%
	No	62.9	28.1	3.4	3.4	2.2
Students	No	56.4	30.4	4.3	3.0	5.3

Q4. In determining a final verdict, jurors should utilize the judge to clarify their questions/concerns.

U.S.		Deliberative experience				
Jurors	Yes	75.5%	18.2%	1.3%	2.2%	2.8%
	No	67.9	21.7	3.1	4.2	3.1
Students	Yes	56.7	30.0	3.3	10.0	0.0
	No	55.7	28.4	7.7	3.9	4.4

Table 4 examines jurors' attitudes towards the credibility of confession, the transparency of criminal proceedings, and the role of judges during jury selection and deliberation. For PRC members and Japanese students, the greater support for recording jury selection proceedings leads to the greater interest in confessional processes, and vice versa ($p < 0.01$ & $p < 0.0001$, respectively). For all American respondents except college students with jury experience, the statistically significant relationship was also observed, in which acknowledging the importance of recording all trial proceedings leads to the strong interest in the way confession documents are created ($p < 0.001$ & $p < 0.0001$). For American college students with jury experience, the relationship between the two variables did not attain a statistically significant result perhaps due to its small sample size ($n = 31$). However, the gamma value is the largest among four American respondents (0.455), suggesting that the relationship is found to be the strongest among four groups of American respondents.

Similarly, those who are willing to ask judges to clarify their questions or concerns are more likely to pay critical attentions to confessional procedures. The finding is consistent for PRC members with deliberative experience and Japanese college students ($p < 0.0001$). The same statistically significant patterns are found among three of four American groups of respondents. Again, the relationship for American college students with jury experiences did not attain statistical significance because of its small sample size, while the positive gamma indicates the identical pattern found in other American groups. When defendants dispute their own confessions in open court, those who are willing to ask judges about their concerns and problems are more interested in knowing how the confession was extracted and documented, suggesting that ordinary people are more willing to become supportive of the transparency in criminal

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proceedings, serve as active participants in criminal trials, and remain critical of the credibility of confessionary evidence during deliberations. And for Japanese jurors with PRC experiences, they are more likely to believe the defendant's claim of innocence when the defendant testifies that his/her confession was coerced.

Table 4 Jurors' attitudes towards the credibility of confession, the transparency of pre-indictment proceedings, and the judge's role during jury selection and deliberation

	Strongly agree	Somewhat agree	Uncertain	Somewhat disagree	Strongly disagree
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Q1. During jury selection, every question posed by a presiding judge and/or others should be carefully transcribed and recorded.

Q2. Some defendants plead innocent, even if they already confessed. In such a case, I am curious to know how the confession was made.

Japan	Deliberative experience			Gamma			
PRC members	Yes	100.0%	92.9%	66.7%	100.0%	100.0%(2)***	0.233
	No	92.7	84.0	100.0(2)	66.7(3)	100.0(2)	0.350*
Students	No	49.2	31.1	5.0	3.0	11.5	0.328***

Q3. Recording (transcribing or videotaping) is important in all trial proceedings.

Q4. Some defendants plead innocent, even if they already confessed. In such a case, I am curious to know how the confession was made.

U.S.	Deliberative experience			Gamma			
Jurors	Yes	87.4%	87.7%	70.0%	85.8%	97.0%	0.115**
	No	88.5	84.9	79.1	85.1	73.2	0.288***
Students	Yes	95.6	100.0	100.0(2)	85.1	100.0(2)	0.455
	No	91.9	84.1	86.2	85.2	95.9	0.286***

Q5. During deliberation, jurors should ask the judge to clarify their questions/concerns.

Q6. Some defendants plead innocent, even if they already confessed. In such a case, I am curious to know how the confession was made.

Japan	Deliberative experience			Gamma			
Jurors	Yes	73.3%	21.4%	1.5%	1.5%	2.3%	0.658***
	No	62.9	28.1	3.4	3.4	2.2	0.405
Students	No	56.4	30.4	4.3	3.0	5.3	0.540***

Q7. In determining a final verdict, jurors should utilize the judge to clarify their questions/concerns.

Q8. Some defendants plead innocent, even if they already confessed. In such a case, I am curious to know how the confession was made.

U.S.	Deliberative experience			Gamma			
Jurors	Yes	89.1%	84.1%	53.9%	90.9%	74.1%***	0.233***
	No	90.6	84.2	53.3	68.7	78.1***	0.414***
Students	Yes	100.0	100.0	--	100.0	100.0	0.235
	No	93.4	89.4	75.0	79.5	72.7***	0.317***

Note: Figures in parentheses show a number of respondents in analyses; *p < 0.01 **p < 0.001 *** p < 0.0001

Table 5 shows the result of multivariate analysis in examining the relationship between people's concern

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about confessional processes and socio-attitudinal variables that are associated with jury trials and duties. An ordinary least square regression analysis was used for analysis and unstandardized regression coefficients were reported in the table. For Japanese respondents, their willingness to examine confessional processes was significantly correlated with their confidence in people's abilities as jurors. For instance, those who prefer bench trials to all citizen juries are more likely to show interests in knowing how the confession was made ($p < 0.01$). People with their abilities to make a fair and just judgment also showed greater interests in confessional processes ($p < 0.10$). Both findings suggest that, when judges are sole decision-makers in criminal trials, people are more interested in knowing the extractive process and credibility of confessions. People with confidence in their ability to make a fair and just decision are also more willing to pay a critical attention to the details of the confessional process. Similarly, people who are less likely to believe that juries' decisions reflect the community's values and judgments are also more likely to show their interest in confessional processes ($p < 0.01$).

In evaluating whether or not the defendant's open-court claim of innocence is a lie, those who, as jurors, feel difficulties in determining verdicts and appropriate penalties are more likely to believe defendants' claim of innocence ($p < 0.01$). The multivariate analysis also showed that the direct effect of the interest in confessional processes on the credibility of defendants' claim of innocence is no longer statistically significant, suggesting that people's confidence in legal processes, their abilities as jurors, moral responsibilities, and other attitudinal variables seem to have attenuated the effect of confessional interests on the credibility of the defendant's claim of innocence.

For American respondents, jurors' willingness to serve as jurors, as well as their superior abilities to separate actual evidence from media coverage positively correlated with their interest in confessional processes ($p < 0.01$ and $p < 0.001$, respectively). Those who believed in their abilities to make a fair judgment, despite the threat of safety due to gang presence in criminal trials, also showed greater interests in confessional processes ($p < 0.10$). Those who supported gender parity in legal profession and the right of permanent residents for jury service are more likely to be interested in confessional processes ($p < 0.001$ and $p < 0.10$, respectively). In evaluating defendants' claims of forced confession, those with strong interests in confessional processes felt that defendants' confession was forced ($p < 0.001$). Those who showed the greater willingness to serve, regardless of its voluntary or mandatory nature of jury duties, are less likely to believe defendants' claim of forced confession ($p < 0.10$ and $p < 0.10$, respectively). Those who are concerned about possible retaliation from defendants and feel overwhelmed by jury duty are also more inclined to believe defendants' claim of forced confession ($p < 0.001$). Similarly, men and younger respondents are also more likely to believe defendant's claim that the confession was coerced ($p < 0.10$).

**Table 5 People's willingness to evaluate confessional documents and defendants' claims of innocence—OLS
unstandardized regression coefficients**

Questions	Japanese PRC members		American jurors	
	Confession ¹	Innocent ²	Confession	Innocent ³
(A) Willingness to serve as jurors				
I am willing to serve as a juror	0.016	-0.002	-0.018	-0.058*
I feel it is my duty to serve as a juror when needed	0.077	-0.046	0.085**	-0.092**
(B) Perceived obstacles to jury service				
If I could pick the date of jury service 6 months in advance, I could easily serve	0.062	-0.021	0.043**	0.007
My employer would not be resentful of my jury duty	-0.017	0.152**	0.024	-0.031*
(C) Confidence in public legal participation				

(to be continued)

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It is extremely difficult for ordinary people to determine the verdict (i.e., guilty/not-guilty)	0.063	0.112**	0.008	-0.065**
It is difficult for ordinary citizens to determine an appropriate penalty in a criminal trial	-0.048	0.124**	-0.014	0.008
In high profile cases, jurors are incapable of separating actual evidence from media coverage ⁴	0.031	0.039	0.062***	0.058**
(D) Moral/ethnic responsibilities				
I would feel overwhelmed if I had to make a judgment on the defendant and his/her charges	0.019	-0.093	0.009	0.099***
I am confident that, if I became a juror, I could make a fair and just judgment	0.092*	0.099	0.067*	-0.003
(E) Confidence in jurors' abilities				
If I became a defendant in a criminal case, I would prefer a jury trial to a judge trial ⁵	-0.079**	0.030	0.018	0.022
A jury's decision reflects the community's values and judgments	0.146**	-0.028	-0.012	0.026
(F) Fear of serving as jurors: possible retaliation from defendants and/or their families				
If I became a juror, I would be concerned about potential retaliation from the defendant	0.046	0.065	0.27	0.069***
In a trial where many gang supporters may appear, I believe I could make a fair judgment as a juror	-0.023	0.156**	0.047*	-0.013
(G) Confidentiality, resident alien's participation, and publicity about jury service				
It would be very difficult for me to never discuss my jury experience	0.023	0.025	0.024*	-0.008
The importance of jury duty is widely advocated in my community	-0.009	0.055	-0.001	0.007
Every taxpayer including permanent residents (non-citizens) should be allowed to serve on juries	-0.018	-0.082	0.022*	0.040**
It is important to increase female judges/lawyers as they only make up 12% of Japan's bar ⁶	0.032	0.000	0.069***	0.098***
(H) Transparency of confession interrogation				
Some defendants plead innocent, even if they already confessed. In such a case, I am curious to know how the confession was made.		0.009		0.187***
Gender (1=male, 2=female)	0.059	-0.016	-0.055	0.092*
Age	0.001	-0.008	0.004	0.005*
Constant	0.494	1.558	0.533	1.348
R-Square	0.133	0.202	0.052	0.152

Note: American respondents (n=2,564) and Japanese respondents (n=229). The term, "juror" was translated as "quasi-juror (Saiban-in)" in a Japanese version of a survey questionnaire. All the attitudinal variables are measured on a 5-point likert scale: From (1) "strongly agree" to (5) "strongly disagree."

¹ "Some defendants plead innocent, even if they already confessed. In such a case, I am curious to know how the confession was made."

² "For the above case, the defendant's insistence of innocence is a lie."

³ "For the above case, I believe that the defendant was forced to confess."

⁴ In a Japanese questionnaire, the question was phrased as: "In a media saturated trials like Wakayama Curry case, quasi-jurors are incapable of separating facts from media reports."

⁵ In a Japanese questionnaire, the question was phrased as: "Decisions by saiban-in (Japanese petit jurors) are fairer than those by professional judges."

⁶ In a Japanese questionnaire, the question was phrased as: "It is important to create programs to increase the number of female and minority lawyers."

*p<0.10 **p<0.01 ***p<0.001

3.4 Discussion

The results of cross-national analyses suggest that, when defendants dispute the content of confession documents in open court, ordinary citizens, regardless of whether or not they had deliberative experiences, show acute interests in discovering how confessions are extracted and documented. Similarly, those with greater willingness to ask judges to clarify questions and concerns are more likely to show their curiosity on confessional

processes. Moreover, the greater support for the recording of trial proceedings also leads to the greater willingness to ask judges about concerns and questions that citizens encountered during trial proceedings. Furthermore, when the defendants dispute their own confessions, a large number of Japanese citizens with deliberative experiences are more likely to believe defendants' claim of innocence, rather than confession documents that indicate their admission to crimes. Those findings show that ordinary citizens are more willing to ask critical questions about the credibility of confessions and are more concerned about the transparency of criminal processes. Those findings suggest that they are also more willing to become active participants in criminal trials, and their opinions and concerns about prosecutorial evidence and trial proceedings may possibly alter the quality of deliberative discussions among jurors themselves, as well as deliberative relationship between jurors and judges.

When attitudinal variables are included in the analysis, different relational patterns emerged between Japanese and American respondents. The impact of people's interest in confessional processes due to defendants' claim of innocence was no longer statistically significant for Japanese respondents because other attitudinal variables seem to account for the large variation of the original relationship between those two critical variables. For American respondents, however, despite the presence of many attitudinal variables and ideological measurements, the direct relationship persisted, suggesting that the more interest in confessional processes, the greater belief that confessions were coerced, and vice versa. Similarly, when defendants dispute their own confessions in open court, those who supported gender equality in legal profession and the rights of non-citizens to service as jurors are more likely to believe that confessions were coerced.

While Japanese judges routinely accept confession documents as evidence of guilt, present research suggests that the infusion of ordinary citizens into deliberative processes may possibly alter the quality of deliberative discussions and prevent the automatic acceptance of confession documents as evidence of guilt in criminal courts, thereby potentially reducing the likelihood of wrongful confessions in Japan's criminal courts. Furthermore, our findings also substantiated the fact that citizen jurors are more willing to engage in criminal processes, ask crucial questions about the credibility of prosecutorial evidence or concerns they encountered during trial proceedings, and actively participate in deliberative discussions concerning defendants' claims of innocence.

Despite the positive findings, it is important to point out that present research did not address or examine the extent to which judges' own opinions and instructions may influence jurors' views and attitudes during deliberations. Present research also did not address or examine other causes of wrongful convictions in Japan's criminal courts, including the peculiarities of criminal proceedings unique to Japanese criminal processes, such as the procedural lack of discovery, in which prosecutors are allowed not to present evidence to the defense, the lack of public defender systems for indigent defendants unless their net economic worth is less than \$4,500, the lack of standardized jury instructions to the jury prior to its deliberations, apparent lack of a vigorous criminal defense bar, or any standard directions or guidance on how to understand the contradictory testimony or evidence, including confessions.

Nevertheless, our research substantiated that citizens are not static participants in a deliberative process. Rather, they are active participants in the criminal proceeding; they showed strong support for the transparency of the criminal process, including the recording of jury selection and other proceedings; and they displayed strong the curiosity and desire to understand apparent contradictions of defendants' open court claims of innocence and their own "confessions." Our research thus suggests that the lay participation in Japan's criminal court could possibly disrupt, or even prevent, today's near "assembly line" of guilty mills, where judges almost universally accept confession documents as evidence of guilt, thereby producing "convicted criminals" without carefully examining and critiquing how confessions are extracted and documented.

4. Socio-legal implications of lay participation and adjudication

The importance of civic legal participation becomes ever more salient and necessary, especially in criminal trials where citizens are indicted and prosecuted for "criminal activities" against their own government. The system of civic legal participation affords the citizen a degree of self-determination that becomes particularly valuable during times of social unrest and transformation. For example, after China regained control of Hong Kong from Britain in 1997, with popular support, the Hong Kong government finally introduced a bill that people charged with treason, secession or subversion must be tried by an all citizen jury and that those charged with sedition or unlawful disclosure may opt for jury trial if they prefer.⁴¹ Clearly, such a civic effort reflects the widespread consensus that a trial by all citizen jury is perceived to be fairer to a defendant because it creates the public form for dissenting voice, and ordinary citizens, not bureaucratic judges, can determine guilt or innocence. It is no coincidence that the jurisdictions in Japan, South Korea, China Mainland and Taiwan, currently exploring fair and equitable judicial proceedings, are places where confessions have been used extensively in their criminal processes. Present research then shows possible ways, in which civic legal participation may help make the criminal process more transparent, energize the deliberative process, decreases instances of forced confessions, and reduce the likelihood of wrongful convictions in criminal courts.

Given the fact that a first quasi-jury trial began in 2009 and there is a strong international opposition against the use of confessions in criminal courts, some Japanese judges are finally starting to express signs of skepticism about the credibility of confessions, at least, in some prominent criminal cases. On February 23, 2007, in a big election fraud case in Kagoshima Prefecture, a presiding judge ruled not guilty verdicts to all 12 defendants who were charged with vote-buying and receiving money for votes in a 2003 local election in violation of the Public Offices Election Law.⁴² All defendants pleaded not guilty, including five who had previously confessed. One defendant died during the trial from the stress and another tried to kill himself by jumping into a river but was saved by a man out fishing.⁴³

The admission of wrongful convictions is even rarer than not guilty verdict by Japanese judges, but it happened miraculously in January 2007. Toyama prefectural police announced that they wrongfully arrested then the 39 year old man for two rape related crimes, which resulted in the man serving a three-year prison term.⁴⁴ The police later found the real culprit. Nevertheless, the defendant confessed to the crime because "the investigators repeatedly told me that my family members had said I was guilty. In that situation I had no choice but to accept the allegations against me."⁴⁵ In March 2007, the Fukuoka High Court also upheld the acquittal of Teruhiko Matsue because of allegations of the use of physical violence and psychological torture to extract his confessions. He was accused of killing three women in Saga Prefecture in the late 1980s. The court found that there was no evidence other than his confessions, which had been extracted from him after 17 days of interrogations that went on more than 10 hours a day.⁴⁶ He stated that he made false confessions because he was "exhausted mentally and physically."⁴⁷ In all of those cases, however, the police and prosecutors who extracted confessions through

⁴¹ Frank Ching (February 28, 2003). The jury is in *South China Morning Post*.

⁴² Toru Tsunetsugu & Keiichiro Azuma (February 25, 2007). Court ruling puts spotlight on police: Questions raised over interrogation methods used in vote-buying case. *Daily Yomiuri*. 3.

⁴³ Pressed by police, even innocent confess in Japan, N.Y. Times says. *Japan Economic Newswire*, May 11, 2007. (Hereinafter Pressed by police).

⁴⁴ Man was forced to confess to rape: Toyama police made him sign false statement after 3 rounds of questioning. *Daily Yomiuri*, January 27, 2007. 2.

⁴⁵ See Tsunetsugu and Azuma, supra note 42.

⁴⁶ Pressed by police, supra note 43.

⁴⁷ Court rejects use of 15-yr-old memos as evidence in murder trial. *Kyodo News Service*, September 16, 2004

psychological or physical tortures have gone unpunished, while the prosecutors only made a brief apology in the Toyama case.⁴⁸

In another wrongful conviction case, called the Fukuoka Incident, two defendants were also convicted of murdering two men based on their confessions in 1947. One of the defendants was already executed and another man's death sentence was commuted to a life sentence. Defense Attorney Mitsuhide Yahiro, who represented both defendants, gave a metaphor regarding every Japanese investigator's pathological urge to force and produce a confession from the accused, stating that "it's like putting a mouse into the cat's cage. If you were locked up in police hands for 20 days, anyone could confess because you are driven to despair."⁴⁹ Those and other Japanese defense lawyers, victims of wrongful convictions, their families, and civic supporters and activists all argue that legal participation by ordinary citizens may and should function as a dog in a cat's cage in ensuring the proper handling of a mouse.

5. Conclusion

The interrogation and lengthy detention of the accused by Japan's police and prosecutors without access to legal counsel has generated many forced confessions in the past and produced a fair amount of wrongful convictions. As results, past research estimated that a large number of innocent people have been falsely accused and convicted, and some of them were even executed for crimes they have not committed. Since over 99% of all indicted cases result in convictions in Japan's criminal courts, allegations of wrongful convictions have raised serious human rights issues, and the use of forced confessions in criminal proceedings have long been criticized by families of the accused, their attorneys, legal scholars, citizen activists, and international human rights groups. This paper examined whether or not the introduction of the Saiban-in Seido in 2009, where ordinary citizens deliberate together with Japan's bureaucratic judicial elites, might help reduce the instances of wrongful convictions. As Japan's high conviction rate has substantiated that the Japanese court may be another bureaucratic system that shows more interest in preserving its own authority and maintaining the status quo, our research suggested that the infusion of non-bureaucratic legal participants into the traditional judicial process may create the potential to alter the nature of trial processes, the quality of deliberations, and thus fair and equitable decisions of criminal cases. Based on the analysis of survey responses from Japan's grand jury (PRC) participants and American citizens who served in jury trials, our analysis found that the participation of ordinary citizens in criminal processes may improve the quality of legal decision making in Japan's criminal court. Our research also found that the lay participation in Japan's criminal court could disrupt the current "near assembly line" of guilty mills, where judges almost universally accept confessions as evidence of guilt without carefully examining and critiquing how confessions are extracted and documented. Nevertheless, in order to eliminate the use of forced confession and reduce wrongful convictions in Japan, further research is still needed to examine the effect of other non-deliberative factors, such as the procedural lack of discovery, absence of a more egalitarian public defender system, lack of standardized jury instruction to the jury prior to its deliberation, and apparent lack of a vigorous criminal defense bar or any standard direct guidance on how to understand contradictory testimony or evidence involving confessions. Future research thus must focus on those factors to examine if lay participation in Japan's criminal court truly helps reduce the likelihood of wrongful convictions.

(Edited by Albert Q.)

⁴⁸ See *supra* note 42.

⁴⁹ Masami Ito (April 25, 2004). Back from the brink after living 28 years on death row. *Japan Times*.