

## KEEPING UP WITH THE TIMES

A system of citizen judges designed to let people participate in criminal trials is set to start in the spring of next year. Democracy was established in Japan as a system under the current Constitution enacted after the end of World War II, but there has virtually been no existence of direct engagement of citizens in proceedings with respect to legislative, judicial and administrative matters except for a referendum on a constitutional revision, among others. In that sense, it could be said that the introduction of the system allowing people to deal with trials will mark a major transformation of Japanese society. On the other hand, some people have voiced doubt about the system and the foundation that sustains it because of the realities of Japanese people's daily living.

Serious cases such as murder will be targets of trials by lay judges. Presently, judges alone handle criminal trials. Under the new system, however, three judges and six citizen judges selected from an electoral register will deliver a verdict of guilty or not guilty in addition to assessing appropriate punishment. The citizen judge system is to be established against the background of an awareness of problems such as the question of judicial credibility being shaken by judges' decisions far apart from popular feelings and subsequently judges being alienated from the public. In its June 2001 written view that incorporated the introduction of the citizen judge system, the Judicial Reform Council said the judiciary would be able to deepen people's "understanding of and support for the judiciary and gain more solid national foundation by further reflecting their healthy social common sense."



The presiding judge (center in the back row) delivers the court's decision to the defendant (center) in a mock trial. Associate judges sit left and right to the presiding judge. Furthermore, three citizen judges are seated left and right each to the associate judges (at the Tokyo District Court).

jury and professional judge systems, but some members of legal circles voiced the need to increase the number of lay judges because the system appeared to strongly echo the intents of judges.

In criminal trials, the system of a pretrial management conference has been introduced for judges, prosecutors and attorneys to discuss issues and evidence, and lay out proceedings in advance, shortening the period of court hearings. It is said that the bulk of trials to be attended by citizen judges will come to an end in about three days. Even so, there will be no doubt about the burden imposed on lay judges. According to a survey, about 20% of people questioned gave a positive response, saying they would attend trials, while about 30% replied they would not. Some 45% were negative, answering that they

# Will People's Judiciary Participation Succeed?

## Citizen Judge System to Start Next Year

By **Isao ADACHI**

A high-ranking official of the public prosecutors office said judges and prosecutors were surprised to have been told by victims of the 1995 *sarin* nerve gas incident involving subway passengers that "Japanese trials are not taking our feelings into account." The official said, "It was learned that there had been a considerable distance between judges and prosecutors (on the one hand) and the people (on the other)" and added that it was decided to establish the system calling for citizens to directly take part in trials.

The lay judge system bears a resemblance to the jury system. However, while members of a jury make a decision on a verdict of guilty or not guilty in the absence of a judge, citizen judges and judges join together in making not only a judgment on whether the defendant is guilty or innocent but also a degree of penalty meted out to the accused. Explaining the merit of the system, the senior official said, "The outcome of jury deliberations tends to become unstable." Under the citizen judge system, however, "the bench will sort out testimonies of witnesses and lay judges will make statements with their ordinary feelings and be asked to participate in deliberations." The idea is somewhat based on the wisdom of compromises between the

would attend "only because it's our duty." Previously, many citizens said they were too busy to serve as lay judges, but recently voices were heard from a large number of them that they "do not like to try somebody else's case" or "I have no confidence in judging a case."

According to one who has undergone experience in attending mock trials, only five among 25 citizens attending a deliberation made remarks and that a homemaker told them after the meeting she "didn't fully understand" the discussion. There was a difference among participants in their abilities to explain, with some of them showing a strong tendency to be tempted to opinions of those who speak coherently. Many people think "it is embarrassing (for them) to say something wrong," a fact pointed out by some as the cause of Japanese not being able to state their opinions. It is also said that Japanese are not good at claiming what they think is correct even if their views differ from those of others. The realities of democracy in Japan reflect such national traits. If the citizen judge system leads to a change in Japanese society, it should become an opportunity to alter national characteristics themselves by, for instance, permitting lay judges to speak freely after their trials are over.

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