

Will the Lay Judge System Change the Japanese?

By Matsunaga Tsutomu

LONG known for its dour countenance, Japan's judiciary has recently become more approachable. The courts are inviting elementary and junior high school students into the courtrooms, allowing them to put on judges' robes and letting them have their pictures taken seated in the Chief Justice's chair. Children who wear the long-sleeved black robes, say cheerfully, "Just like Harry Potter!" The Tokyo District Public Prosecutors Office has begun a visual presentation of evidence using video projectors.

The cue for this opening up of the legal world is the lay judge system that will be introduced by May 2009. In almost all advanced nations, citizens are allowed to participate in the legal process. Japan had a brief experience of the system beginning in 1928, but that came to a halt at the time of World War II.

There are several reasons for the introduction of the lay judge system this time around. Critics have long clamored for improvement of the closed nature of court trials, which continue at great length and are not based on the actual legal battle in the courtroom but on considerations of documents and records composed in legal terminology. Admittedly Japanese judges are serious and earnest and the "quality" of the courts gives a definite image of reliability but there is frequent criticism of their slowness in delivering verdicts. The first trial of the Aum Shinrikyo leader, who ordered terrorist attacks that shocked Japan, took a full seven years and 10 months.

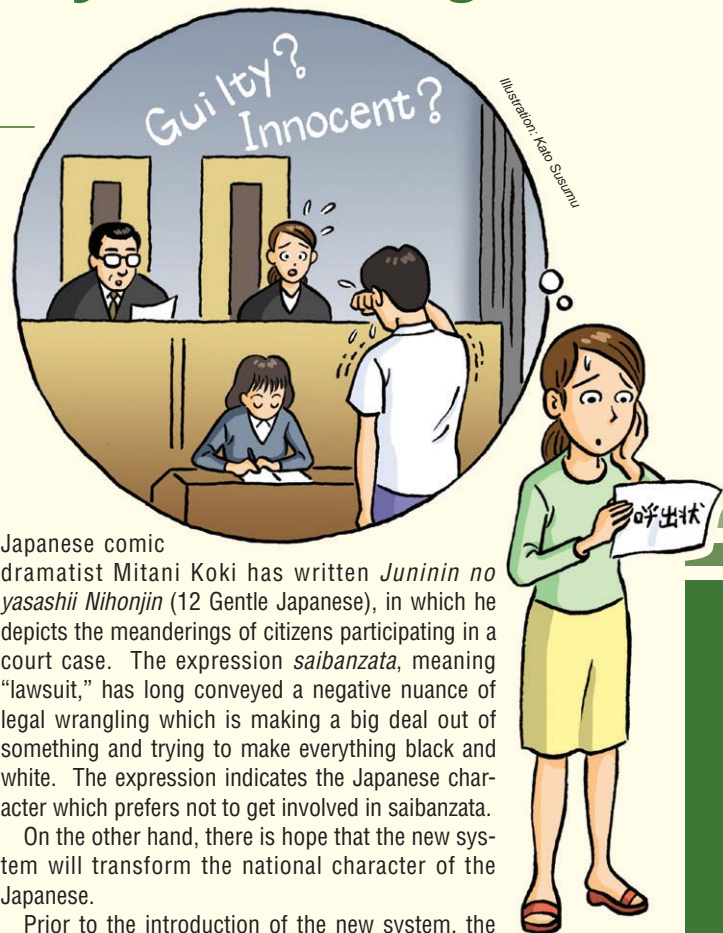
This new system of lay judges is different from trial by jury in which citizens determine by vote whether a defendant is innocent or guilty independently of the judge. As a general rule, three judges and six selected citizens will work together as one panel to determine guilt or innocence and to decide the appropriate punishment. In order to speed up the actual trials, the points at issue in the case will be sorted out before the trial and a system will also be established so that the trial can be completed in a single day for cases involving comparatively minor offenses.

The new law (Act Concerning the Participation of Lay Assessors in Criminal Trials) was passed in May 2004, but it appears that public understanding remains insufficient.

In a poll carried out by the Cabinet Office, some 70% of the respondents answered that they "would not want to serve as a lay judge." They said: "It seems difficult to decide whether a person is guilty or not," "I would not want to judge others," or "I don't want to get involved in a trial or criminal case."

Some experts have argued that Japanese are not suited for participation in legal affairs. "Japan, surrounded by seas, has never experienced being under the control of a different ethnic group. Rather than being judged by their peers, the Japanese people prefer to be judged by the authorities."

As a parody of the American court movie *12 Angry Men*, a



Japanese comic dramatist Mitani Koki has written *Juninin no yasashii Nihonjin* (12 Gentle Japanese), in which he depicts the meanderings of citizens participating in a court case. The expression *saibanzata*, meaning "lawsuit," has long conveyed a negative nuance of legal wrangling which is making a big deal out of something and trying to make everything black and white. The expression indicates the Japanese character which prefers not to get involved in *saibanzata*.

On the other hand, there is hope that the new system will transform the national character of the Japanese. Prior to the introduction of the new system, the Supreme Court carried out mock trials with citizens participating as lay judges. The participants gave the following responses: "It was tough to grasp the contents of the trial, but if I am called to serve as a lay judge, I will do my best." "I'm not entirely confident whether I can reach a decision based on just testimony and evidence, especially in the event that the victim breaks down in tears, but it was a very valuable experience. If chosen, I would endeavor to serve."

The participation of citizens in legal proceedings could cultivate a positive spirit of contributing to society among contemporary Japanese, in an age where self-centeredness seems to be rampant, so some see this as a contributing factor to establishing a mature democracy.

The Supreme Court has selected as the mark of the lay judge system the scientific symbol for "infinity (∞). If the opinions of the two people taking part in the mock trial and the person who spoke at the public hearing become mainstream thinking, then there really will be infinite possibilities for not only the courts but also for Japanese society itself to change.

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