

**An All-Laymen Jury System
Instead of the Lay Assessor (*Saiban-in*) System for Japan?
Anglo-American-Style Jury Trials in Okinawa under the U.S. Occupation**

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I. INTRODUCTION

On May 28, 2004, the Japanese Diet passed the Act Concerning Participation of Lay Assessors in Criminal Trials (“Lay Assessor Act”)¹ that provides for the establishment of a new mixed-court jury (*saiban-in*) system where the verdict and sentencing in major crimes² will be decided by a panel comprising three professional judges and six laypersons. The virtues and vices of this law, which is scheduled to come into force within five years of its enactment – that is, before June 2009 – and of the system that it envisages, have been in the spotlight of public debate in Japan.

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1 *Saiban-in no sanku suru keiji saiban ni kansuru hôritsu*, Law No. 63/2004; English translation: K. ANDERSON / E. SAINT, Japan’s Quasi-Jury (*Saiban-in*) Law: An Annotated Translation of the Act Concerning Participation of Lay Assessors in Criminal Trials, in: *Asian-Pacific Law & Policy Journal* 6 (2005) 233-283. The full text of the law in Japanese is available online at SUPREME COURT, *Saiban-in no sanku suru keiji saiban ni kansuru hôritsu* [The Act Concerning Participation of Lay Assessors in Criminal Trials], <http://www.saibanin.courts.go.jp/shiryô/pdf/02.pdf>.

2 Cases where the maximum penalty is death or an indefinite period of penal servitude (Art. 2 (1), Lay Assessor Act).

While the majority of government-sponsored and independent publications tend to praise the *saiban-in* system and its potential for radically transforming Japan's legal architecture,³ a number of recent contributions to the debate have been critical of the system.⁴ The arguments proposed in the literature belonging to the latter category can be divided into two groups. The first strand of the anti-*saiban-in* argument, sometimes referred to in the scholarly literature as the *mochi wa mochiya de* (every-man-to-his-trade) argument, favors trial by professional judges and rejects the idea of increasing public participation in legal proceedings beyond the existing level.⁵ On the other hand, the proponents of the second version of the anti-*saiban-in* argument, sometimes referred to as the *okazari* (nominal, ornamental) strand of argument, support the government's efforts to increase lay participation in the Japanese courtroom, emphasizing that this will serve to revitalize the judicial system. However, they claim that, under the quasi-jury system that the Lay Assessor Act provides for, public participation will be purely nominal in nature and will therefore fail to realize any significant change in Japan's legal architecture. They assert that instead of implementing an untested hybrid, or re-introducing the jury system that existed in the *Taishō* and early *Shōwa* periods, Japan should introduce an Anglo-American-style jury system.⁶ Some adherents of the *okazari*

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- 3 See for instance, T. KOBAYASHI, *Minna no saiban* [Court for All] (Tokyo 2006); I. NAMA-ZUGOSHI, *Saiban-in seido to kokumin no shihō sankā: Keiji shihō no dai-tenkan e no michi* [The *Saiban-in* System and Public Participation in the Judiciary System: The Road towards a Great Turning Point in Criminal Justice] (Tokyo 2004). For an overview of the recent information dissemination efforts carried out by the Ministry of Justice, the Supreme Court, the Japan Federation of Bar Associations, and the Lay Assessor Promotions Office (*Saiban-in Seido Kōhō Suishin Kyōgi-kai*) in English, see K. ANDERSON / L. AMBLER, The Slow Birth of Japan's Quasi-Jury System (*Saiban-in Seido*): Interim Report on the Road to Commencement, in: ZJapanR / J.Japan.L. 21 (2006).
- 4 See, for instance, T. YANO, *Akireru saiban to saiban-in seido: Saiban-kan wa naze shin'yō dekinai no ka?* [Repulsive Courts and the Saiban-in System: Why Judges Cannot be Trusted] (Tokyo 2006); C. ISA, *Saiban-in seido wa keiji saiban o kaeru ka: Baishin seido o motomeru wake* [Will the Lay Assessor System Transform Criminal Courts: Reasons for Demanding a Jury System] (Tokyo 2006); S. TAKAYAMA, *Saiban-in seido wa iranai!* [We Do Not Need the Lay Assessor System!] (Tokyo 2006); M. KABASHIMA, *Saiban-in seido, keiji soshō-hō no kaiaku ni hantai shi baishin seido no fukkatsu o* [Opposing the Lay Assessor System and the Deterioration of the Code of Penal Procedure, Demanding Revival of the Jury System], in: *Gendai no Riron* 4 (2005) 176-186; SAIBAN-IN SEIDO NI HANTAI SURU KAI, *Saiban-in seido ni Hansuru Kai no iken-sho* [Opinion Statement of the Association for Opposing the Lay Assessor System], in: *Hanrei Jihō* 1844 (2004) 3-7.
- 5 ISA (*supra* note 4) 178. For an overview of the status of laymen participation in contemporary Japan in English, see K. ANDERSON / M. NOLAN, Lay Participation in the Japanese Justice System: A Few Preliminary Thoughts Regarding the Lay Assessor System (*saiban-in seido*) from Domestic Historical and International Psychological Perspectives, in: *Vanderbilt Journal of Transnational Law* 37 (2004) 966-973.
- 6 The pre-war Jury Act was enacted in 1923 and became operative in 1928. The act was suspended in 1943 (*Baishin-hō*, Law No. 50/1923, as amended by Law No. 51/1929 and Law No. 62/1941, suspended by Law No. 88/1943). Unlike either the mixed-court system scheduled for introduction in 2009 or the American-style jury system, members of the pre-

view reject the *saiban-in* proposal completely, while others agree to accept the mixed-court jury system as an interim measure that can be implemented to ensure a smooth transition from trials by professional judges only to an all-layperson jury.

The view favoring an Anglo-American-style jury system is not new. The introduction of an all-layperson jury system has been proposed repeatedly since the end of the Second World War by various citizen groups,⁷ and became the subject of initial deliberations by the Judicial Reform Council (JRC) before being rejected in favor of implementing the lay assessor system.⁸ A lack of empirical evidence has often been cited as the stumbling block in assessing whether an all-layperson jury system would work in the Japanese context.⁹ While such a system has indeed never been formally introduced on the Japanese mainland, jury trials according to the Anglo-American model were implemented in Okinawa, under the U.S. occupation, as some of the recent contributors to the anti-*saiban-in* pro-jury literature have noted. This experience has not yet been sufficiently examined in either the Japanese or the English scholarly literature.

Describing the jury system that functioned in Okinawa under the U.S. occupation is one objective of this paper. Analyzing the question of whether Okinawa's experience with the jury system can be utilized as evidence to suggest that an all-layperson independent jury trial system is what contemporary Japan needs is another. Providing an overview of the arguments proposed in recent contributions to the anti-*saiban-in* debate is the third goal.

I begin by discussing some of the important additions to the body of anti-*saiban-in* literature, and then turn to the unique experience of Okinawa in an effort to evaluate the validity of some of the claims proposed by the anti-*saiban-in* pro-jury camp. In conclusion, I analyze the implications of Okinawa's experience with jury trials and summarize the findings of this paper.

war Japanese jury panel were not to decide on the verdict of "guilty" or "not guilty" but instead were required to give answers to the questions submitted to it by the judge regarding points of fact. In addition, the judge was given the option of disregarding the jury's responses and calling another jury (Art. 95, Jury Act).

7 ANDERSON / NOLAN (*supra* note 5) 939.

8 The JRC is a deliberative body established in 1999 by the Japanese Cabinet with the aim of making recommendations regarding the possibility of legal change. The proposal for the introduction of an American-style jury system was discussed during JRC deliberations but subsequently rejected despite the support of Japanese Federation of Bar Associations in view of the Japanese Supreme Court's highly cautious attitude towards the prospect of establishing an all-laymen jury system in Japan. See JUDICIAL REFORM COUNCIL, *Besshi; Saikō Saiban-sho: Kokumin no shihō sankā ni kansuru saiban-sho no iken* [Supplement; The Supreme Court: An Opinion Statement on the Public Participation in the Judicial System], <http://www.kantei.go.jp/jp/sihouseido/dai30/30bessi5.html>.

9 L. KISS, Reviving the Criminal Jury System in Japan, in: Law and Contemporary Problems 62 (1999) 277; R. LEMPert, A Jury for Japan, in: American Journal of Comparative Law 40 (1992) 70-71.

II. RECENT DEVELOPMENTS IN THE ANTI-SAIBAN-IN DEBATE

Arguments against the introduction of the jury system in Japan are as old as the debate regarding the possibility of expanding lay participation in postwar Japan itself. Recent additions to the anti-*saiban-in* literature, however, are interesting in that they are not confined to publications backed by the authority of the Supreme Court, which prior to the promulgation of the Lay Assessor Act was consistently cautious regarding the question of establishing a jury system in Japan;¹⁰ instead, they include contributions written by practicing attorneys and non-governmental organizations.

1. *Open Letter Prepared by the Association for Opposing the Lay Assessor System* (*Saiban-in Seido ni Hantai suru Kai*)

One example is the open letter prepared by the non-governmental organization called the Association for Opposing the Lay Assessor System (*Saiban-in seido ni Hantai suru Kai*) that was established in October 2003.¹¹ Submitted to the Office for Promotion of Justice System Reform on December 16, 2003, the letter offers a highly critical view with regard to the question of whether the lay assessor system will work effectively in contemporary Japan. The group's members include former justice Tarô Ôkubo, former president of Takushoku University Shirô Odamura, lawyer Katsuhiko Takaike, and professor of Saitama University Michiko Hasegawa. The open letter, which was subsequently published in *Hanrei Jihô* (Judicial Reports) in 2004, criticized the proposal for the reintroduction of the lay assessor system and offered an alternative solution for achieving increased public participation in the legal system.¹²

The organization's criticisms are based on an analysis of the Japanese legal system and society. Specifically, the letter claims that the *saiban-in* system is unconstitutional as it infringes on the right of an individual to a fair trial by a professional judge (Chapter 6 of the Constitution) and places an unreasonable responsibility on ordinary citizens, thus affecting their right to "life, liberty, and the pursuit of happiness," which, as article 13 of the Constitution stipulates, should be "the supreme consideration in legislation and in other governmental affairs." The authors of the letter also note that the

10 During the 30th round of JRC deliberations held on September 12, 2000, representatives of the Supreme Court indicated that legislation establishing an all-laymen jury system would in all likelihood be found unconstitutional, and argued that in the event an independent jury system were to be introduced in Japan the responses of jurors would have to be made unbinding. See JUDICIAL REFORM COUNCIL, *Shihô Seido Kaikaku Shingi-kai dai 30-kai giji gaiyô* [Judicial Reform Council 30th Round of Deliberations: Minutes], <http://www.kantei.go.jp/jp/sihouseido/dai30/30gaiyou.html> and JUDICIAL REFORM COUNCIL (*supra* note 8).

11 KOKUMIN SHINBUN, *Saiban-in Seido ni Hantai suru Kai hossoku* [Association for Opposing the Lay Assessor System Is Established], <http://www5f.biglobe.ne.jp/~kokumin-shinbun/H16/1601/1601002devilsystem.html>.

12 SAIBAN-IN SEIDO NI HANTAI SURU KAI (*supra* note 4).

saiban-in system will be costly to implement and to maintain. They warn readers that all the allowances (transportation costs for traveling to court, for instance) that will be guaranteed to lay assessors will come out of the taxpayers' pockets. Admitting that the Japanese legal system needs reforms in order to minimize the effect of such limitations, such as time-consuming trials and verdicts that are often too light, the authors nevertheless argue that the lay assessor system is not the right way to approach these flaws. A better way, they claim, is to strengthen the existing system of *chôtei i'in*, or conciliation commissioners, by allowing laymen to participate in an advisory capacity not only in family court and civil hearings but also in criminal trials of a serious nature. Unlike the *chôtei i'in* system, the lay assessor system is based on a radically new conception for which the Japanese society is not ready, argue the authors, as the majority of citizens are not interested in participating directly in trials in a capacity similar to that of professional judges.

2. “*We Do Not Need the Lay Assessor System!*” (Saiban-in seido wa iranai!):
The Book and the Public Movement

Another example of a recent contribution to the anti-*saiban-in* debate is the highly controversial and speculative book entitled “*We Do Not Need the Lay Assessor System!*” (*Saiban-in seido wa iranai!*), written by Shunkichi Takayama, an attorney and member of the Tokyo Bar Association who has criticized the lay assessor proposal since its inception.¹³ Takayama claims that imposing jury responsibility on a society that is not ready for such a reform is short-sighted and dangerous. Takayama even argues that jury duty is similar to general conscription service, and that speedy trials and heavy punishments which the introduction of the system is supposed to realize also are attributes seen in military tribunals. This leads him to assert that the introduction of lay assessor trials might be an indication of the government's desire to militarize Japanese society. Instead of dealing with the weaknesses of Japan's judicial system, he continues, the government is attempting to place the responsibility for solving these problems on the shoulders of ordinary citizens. Based on his analysis, Takayama claims that efforts should be made to stop the establishment of the *saiban-in* system.¹⁴

13 TAKAYAMA (*supra* note 4). Also see S. TAKAYAMA, *Saiban-in seido o hajimesasete wa naranai* [The Lay Assessor System Should Not Be Allowed to Start], in: *Mô Hitotsu no Sekai* e 8 (2007) 24-26.

14 TAKAYAMA (*supra* note 4) 176-195; “*Takayama Shunkichi—Mondai teiki: saiban-in seido de hontô ni ii no ka; nihon no mirai: arienu baishin hatten, shihô e no kokumin sôdô-in, sensô kokka no shajiku* [Shunkichi Takayama Raises Question: Is the Lay Assessor System Really Acceptable? Japan's Future: An Impossible Jury Development; Conscribing Citizens for Judicial Service, the Advance of Militaristic Government]”, *Hôritsu Shinbun*, 06 January 2006; “*Giron naku kokumin sôdô-in; saiban-in seido hihan no hon shuppan Takayama bengô-shi* [General Conscription without General Discussion; Attorney Takayama Publishes a Book Criticizing the Saiban-in System]”, *Tokyo Shinbun*, 1 October 2006.

Indeed, after the publication of Takayama's book, Kazutoshi Satô, an attorney and member of the Tokyo Bar Association, proposed starting a public movement to counter the efforts of the government, the Ministry of Justice, and the Japan Federation of Bar Associations to promote the lay assessor system.¹⁵ As possible activities of such a movement that would use the title of Takayama's book as its name, Satô suggested organizing symposia and mock trials that would be held in order to demonstrate the inadequacy of the lay assessor system.¹⁶

On April 26, 2007, Satô's idea was realized when a group of lawyers and academics led by Shunkichi Takayama established the movement and created an official website for it.¹⁷ The list of the organizers includes among others Masakatsu Adachi, professor at Kantô Gakuin University; writer Kôsaburô Arashiyama; Muneyuki Shindô, professor at Chiba University; Takashi Yamaguchi, professor at Meiji University; and lawyer Nobuo Oda. The movement was created in order to organize anti-*saiban-in* campaigns across Japan, plan seminars, and collect signatures in support of a petition appealing to the government to stop the introduction of the lay assessor system in 2009.¹⁸

The petition against the *saiban-in* system prepared by this movement is addressed to the Speaker of Japan's House of Representatives and to the President of the House of Councilors and gives a number of justifications for demanding the abolishment of the Lay Assessor Act.¹⁹ Firstly, the Act does not allow those citizens who oppose the concept of trials with laymen participation to be excused from lay assessor duty, which, the authors of the petition claim, infringes on the Japanese people's right to freedom of thought and expression. Secondly, the burden of the responsibility to keep the details of trial hearings confidential is too great for ordinary citizens to bear. In addition, after the implementation of the Lay Assessor Act, the access of the media to the courtroom will be limited to a larger extent than is currently the case, which will affect the general public's right to be informed. Furthermore, the authors of the petition argue that, unlike the all-laymen jury system where unanimous consent is necessary for a verdict to be accepted by the judge, under the lay assessor system cases will be determined based on the decision of the majority and the opinions of the minority will be disregarded.

15 SAIBAN-IN SEIDO HAISHI O MEZASU SHIMIN / HÔSÔ NO TSUDOI, *Saiban-in Seido Haishi o Mezasu Shimin / Hôshô no Tsudoi hôkoku-shû* [Reports from The Meeting of Citizens and Jurists Aiming for the Abolishment of the Lay Assessor System] 20 October 2006, 8, available online at <http://www.takayama-law.com/kiji/061020.pdf>.

16 *Ibid.*, 8.

17 *Saiban-in Seido wa Iranai! Dai Undô*, <<http://no-saiban-in.org/index.html>>.

18 *Ibid.*

19 SAIBAN-IN SEIDO WA IRANAI! DAI UNDÔ, *Saiban-in hô no haishi o motomeru seigan-sho* [Petition Demanding the Abolishment of the Lay Assessor Act], <http://no-saiban-in.org/image/070312seigan.pdf>.

The petition also refers to the results of recent public opinion polls according to which almost 80 per cent of the respondents state they do not wish to serve as lay assessors.²⁰

The “We Do Not Need the Lay Assessor System!” movement is planning a number of events aimed at winning supporters. The first official seminar is scheduled for June 16, 2007, and will take place in Sendai.²¹ The second event will be held in Tokyo on June 29 and will feature a lecture by Professor Toshiki Odanaka of Tōhoku University and a play entitled “A Lay Assessor Trial (*Saiban-in saiban*)” that will highlight the problem areas of the *saiban-in* system.²²

3. Organizations Promoting the Reintroduction of an All-Layperson Jury System in Japan

The idea of reintroducing an all-layperson jury system in Japan has been promoted by a number of non-governmental organizations that were established at different times after the Second World War. Many pro-jury citizen groups that are still active were set up in the 1980s and 1990s. One example is the Association for Deliberations on the Jury [System] (*Baishin o Kangaeru Kai*), formed in 1982.²³ Others include the Society for Advancement of Jury Trials in Niigata (*Niigata Baishin Tomo no Kai*), established in 1986 by Professor Yoshito Sawanobori of Niigata University, and the Saitama Jury [System] Forum (*Saitama Baishin Fōramu*), formed in 1988 by twelve lawyers belonging to the Saitama Bar Association.²⁴ The youngest group is the Association for the Revival of the Jury System (*Baishin Seido o Fukkatsu suru Kai*) that was set up in 1995 by lawyer Chihiro Saeki, Professor Takashi Maruta of Kwansei Gakuin University, and Hanako Watanabe of the Japan Judicial Interpreters Association.²⁵

Since their establishment, these organizations have been primarily engaged in social research and publishing activities and have also served as organizers of public lectures on topics related to their area of interest. Some have conducted mock trials in various prefectures of Japan where volunteers were asked to participate in the deliberations regarding some real, major legal cases. The results of such trials were published and

20 *Ibid.* The results of an opinion poll carried out by the Japanese government on 1 February 2007, show that 78.1 per cent of respondents do not wish to serve as jurors. See “*Saiban-in seido shitteiru 81%, sanku shōkyokuha 78%, tokubetsu yoron chōsa* [Special Opinion Poll: 81% of Respondents Know about the *Saiban-in* System, 78% Passive about Participating]”, *Asahi Shinbun*, 2 February 2007.

21 SAIBAN-IN SEIDO WA IRANAI! DAI UNDŌ, *Saiban-in seido ni igi ari! Kōen shūkai* [An Objection to the Lay Assessor System! Lecture and Meeting], <http://no-saiban-in.org/pdf/6.16kouenkai.pdf>.

22 SAIBAN-IN SEIDO WA IRANAI! DAI UNDŌ, *Saiban-in seido wa iranai! 6.29 shūkai* [We Do Not Need the Lay Assessor System! The June 29 Meeting], <http://no-saiban-in.org/image/6.29chirashi.jpg>.

23 *Baishin o Kangaeru Kai*, <http://www.baishin.com/05baishinkai/index.htm>.

24 *Saitama Baishin Fōramu*, <http://homepage2.nifty.com/saitama-jury/soghoainai.htm>.

25 *Baishin Seido o Fukkatsu suru Kai*, <http://www.baishin.sakura.ne.jp/>.

have been used by these organizations to prove that arguments regarding the alleged incompatibility of Japanese cultural values are unfounded.²⁶

These NGOs have remained active after the promulgation of the Lay Assessor Act and are now concentrating their efforts on organizing public seminars that aim to demonstrate how an all-layperson independent jury is superior to the *saiban-in* system. For instance, in December 2004, the Association for the Revival of the Jury System organized a nationwide conference, “Opposing the Lay Assessor System and the Deterioration of the Code of Penal Procedure, Aiming for the Realization of the [Introduction] of the Jury System.”²⁷ Conference participants argued that laymen participation under the Lay Assessor Act will be purely nominal in nature, as the Act does not provide any incentives for discontinuing the use of pre-trial dossiers.²⁸ They argue that, after the implementation of the *saiban-in* system, verdicts will continue to be determined behind closed doors and prior to the public hearing in which lay assessors are to participate. Based on this analysis, the participants of the conference conclude that in order to change the criminal justice system for the better, Japan should introduce an all-laymen jury system.²⁹

4. “Will the Lay Assessor System Transform Criminal Courts?
Reasons for Demanding a Jury System”

(*Saiban-in seido wa keiji saiban o kaeru ka: Baishin seido o motomeru wake*)

Another recent addition to the debate regarding the negative aspects associated with the *saiban-in* system was written by Chihiro Isa. In a book entitled “Will the Lay Assessor System Transform Criminal Courts? Reasons for Demanding a Jury System” (*Saiban-in seido wa keiji saiban o kaeru ka: Baishin seido o motomeru wake*), Isa argues that in order to make lay participation meaningful and to give it the potential of making a positive contribution to the existing legal structure, Japan should opt for an all-laymen jury trial system.³⁰ According to Isa, the *saiban-in* system does not provide clear incentives to prevent those problems that have been cited as justifications for legal reform, such as the heavy reliance of Japanese courts on confessions and documentary evidence (dossiers)

26 See, for instance, NIIGATA BAISHIN TOMO NO KAI (ed.), *Baishin seido: shimin no te ni saiban o* [The Jury System: Putting the Court into the Hands of the People] (Tokyo 1998); and SAITAMA BAISHIN FÔRAMU (ed.), *Kuni vs. Itô: Baishin seido – sono jissen* [State vs. Ito: The Jury System in Practice] (Tokyo 1989).

27 A summary of the discussions at the Conference is available at *Saiban-in seido keiji soshô no kaiaku ni hantai shi baishin seido no jitsugen o mezasu zenkoku kyôgi-kai*, http://www.l-wise.co.jp/baishin/200412_zenkokuyougikai_kosshi.htm.

28 *Ibid.*

29 *Ibid.*

30 ISA (*supra* note 4).

that prosecutors submit.³¹ In the absence of such incentives, he concludes, change is unlikely to occur.

An all-layperson American-style jury, on the other hand, Isa argues, would make the transformation of the existing legal system inevitable.³² Specifically, in the presence of an independent jury, the prosecutors will be required to demonstrate in language understandable to ordinary citizens that the defendant is guilty “beyond a reasonable doubt”; consequently, relying on the dossier or a confession alone will no longer be enough to secure a verdict, and this will result in an inevitable change in existing practices.³³ Isa also notes that jurors tend to be good fact-finders and that Japanese courts would benefit immensely from the contributions of ordinary citizens who can bring in their knowledge of everyday life.³⁴

Chihiro Isa became a proponent of the establishment of an American-style jury system in Japan after he had the opportunity to participate as a juror in an all-laymen system that was established in Okinawa under the U.S. occupation, and he has written extensively on the subject of jury trials.³⁵ His 1977 autobiographical novel entitled “Turnaround: A Jury Trial in Okinawa under American Rule (*Gyakuten: Amerika shihai-ka Okinawa no baishin saiban*)” received the Ôya Sôichi Non-Fiction Literature Prize in 1978 and has since remained one of the very few sources discussing Okinawa’s experience with the jury system.³⁶ It is of no surprise, therefore, that in his latest book on the vices of the lay assessor system and on the virtues of an independent jury system, the author relies heavily on his own experiences as a juror in occupied Okinawa in an effort to demonstrate that the concept of an independent jury is not incompatible with the legal consciousness of the Japanese people, and that serving on the jury panel is not as intimidating a task as many prospective lay assessors in Japan tend to imagine.

To what extent can the unique experience of Okinawa, where the jury system was implemented under the U.S. occupation, be relied upon as empirical evidence in favor of dismissing the lay assessor system and of embracing an independent American-style jury system? In order to address this question, it is necessary to look at the distinguishing features of the jury system that was introduced on the Ryukyu Islands³⁷ during the period of the U.S. occupation.

31 *Ibid.*, 13-19.

32 *Ibid.*, 64-91.

33 *Ibid.*, 87.

34 *Ibid.*, 87-90.

35 C. ISA, *Okinawa baishin saiban no keiken o fumaete* [On the Experience of Jury Trials in Okinawa], in: Saitama Baishin Fôramu (ed.) (*supra* note 26) 248-260; and C. ISA, *Watakushi to baishin seido* [The Jury Trial System and Me], in: Niigata Baishin Tomo no Kai (ed.) (*supra* note 26) 175-213.

36 C. ISA, *Gyakuten: Amerika shihai-ka Okinawa no baishin saiban* [Turnaround: A Jury Trial in Okinawa under American Rule] (Tokyo 2001).

37 The terms “Ryukyu,” “Ryukyu Islands,” and “Okinawa” are frequently used interchangeably, and this convention is followed in this paper.

III. THE JURY SYSTEM IN OKINAWA UNDER THE U.S. OCCUPATION

1. *Historical Background*

Article 3 of the San Francisco Peace Treaty, signed on September 8, 1951, gave the United States the right to exercise “all and any powers of administration, legislation, and jurisdiction over the territory and inhabitants” of Japan’s Okinawa prefecture.³⁸ During the civil administration period of the U.S. governance of the islands, which continued until 1972 when Okinawa was reverted to Japan’s control, two principal political bodies were established.

On December 15, 1950, the United States Civil Administration of the Ryukyu Islands (USCAR) was set up.³⁹ Headed by the High Commissioner of the Ryukyu Islands, a serving Lieutenant General of the U.S. Army, USCAR was the government body that replaced the United States Military Government and assumed all its powers and functions. Co-existing with USCAR was another political institution – the Government of the Ryukyu Islands (GRI) – that was established on February 29, 1952.⁴⁰ Headed by the Chief Executive, a Ryukyuan who was directly responsible to the USCAR High Commissioner, the GRI was to “exercise all powers of government within the Ryukyu Islands, subject however, to the Proclamations, Ordinances, and Directives of the United States Civil Administration of the Ryukyu Islands.”⁴¹ The duality of the government structure during the period of civil administration affected the judicial system established on the islands, with both USCAR and GRI maintaining their own court systems.

Specifically, USCAR maintained civil and criminal courts and appellate tribunals (USCAR criminal courts consisted of the Superior Court, the Sessions Court, and the Appellate Courts⁴²) that exercised jurisdiction over those cases that were “of particular importance affecting the security, property, or interests of the United States, as determined by the High Commissioner” as well as those cases that involved: 1) members of the United States Forces or those civilian persons of United States nationality who were employed by, serving with, or accompanying the United States forces in the Ryukyu Islands; 2) employees of the United States Government who were United States nationals even though not subject to trial by courts-martial under the Uniform Code of Military

38 The full text of the Peace Treaty is available in E.O. REISCHAUER, *The United States and Japan* (Cambridge, Massachusetts, 1965) 363-378. For details of postwar planning for Okinawa following the surrender of Japan, see R.D. ELDRIDGE, *The Origins of the Bilateral Okinawa Problem: Okinawa in Postwar US-Japan Relations, 1945-1952* (NY 2001).

39 Establishment of the United States Civil Administration of the Ryukyu Islands, Civil Administration Proclamation No. 1/1950.

40 Establishment of the Government of the Ryukyu Islands, Civil Administration Proclamation No. 13/1952.

41 *Ibid.*

42 Code of Penal Procedure, Civil Administration Ordinance No. 144/1955, as amended on 8 March 1963, section 1.2.1.

Justice; and 3) dependents of the foregoing (spouse and any child or relative by affinity, consanguinity, or adoption when dependent upon the principle for over one half of his or her support while living on the territory of the Ryukyu Islands, unless such a dependent is a Ryukyuan).⁴³

The system of courts operated by the GRI exercised jurisdiction in all other civil and criminal cases,⁴⁴ with the exception of those incidents that involved persons subject to trial under the Uniform Code of Military Justice (these cases were handled by courts-martial).⁴⁵

Civil and criminal proceedings at GRI courts were conducted in the Japanese language, in accordance with Japanese law, and did not have juries. The courts operated by USCAR, on the other hand, used English during trial hearings and introduced jury trials.

2. *The Jury System in USCAR Courts*

The criminal jury (petty jury and grand jury)⁴⁶ was introduced to the USCAR court system through two amendments issued on March 8, 1963, and effective as of March 11, 1963, and the civil jury system was introduced on May 21, 1964.⁴⁷

As a result of these amendments, any person charged with an offence before a USCAR court was given the right to indictment by a grand jury “as to any offence which may be punished by death or imprisonment for a term exceeding one year and

43 Providing for Administration of the Ryukyu Islands, Executive Order No. 10713/1957, section 10, para. b.

44 Providing for Administration of the Ryukyu Islands, Executive Order No. 10713/1957, section 10, para. a.

45 Providing for Administration of the Ryukyu Islands, Executive Order No. 10713/1957, section 10, para. c. A number of features highlight the fact that the balance of power in Okinawa’s legal system was heavily weighted toward the USCAR, not the GRI. For instance, any case that was initially tried in a GRI court could be transferred to the USCAR court in the event the High Commissioner deemed so appropriate. In addition, it was the USCAR that maintained the highest appellate court on the islands and had the authority to review any case, civil or criminal, tried in either: 1) the inferior USCAR courts, upon appeal by any party; or 2) the highest court of the GRI. Furthermore, the High Commissioner had the right to remove any judge or other judicial official working in the Ryukyuan court system “with or without stated cause, if he deems it necessary in the interests of the Occupation and for the general good of the people of the Ryukyu Islands” (Ryukyuan Court System, Civil Administration Proclamation No. 12/1952, Art. 6, section 7, para. b).

46 The grand jury is a selection of jurors who decide on whether or not to indict a suspect, while the petty jury decides on the verdict of “guilty” or “not guilty” during a public proceeding. J. DRESSLER (ed.), *Encyclopedia of Crime & Justice* (New York 2002) 737-744; G.G. COUGHLIN / G.G. COUGHLIN, JR., *Dictionary of Law* (New York 1982) 107.

47 Code of Penal Procedure, Civil Administration Ordinance No. 144/1955, as amended on 8 March 1963, and United States Civil Administration Criminal Courts, Civil Administration Proclamation No. 8/1958, as amended by Civil Administration Proclamation No. 18/1963.

trial by petty jury as to any offence other than petty offence.”⁴⁸ The defendant also had the right to waive a petit jury trial.⁴⁹ The grand jury was summoned to work for not more than one year and consisted of not less than six and not more than nine members with an indictment found only upon the concurrence of five or more grand jurors.⁵⁰

Procedurally, jury trials in USCAR courts closely resembled those in the United States. For instance, the trial began with jury selection, with names randomly chosen to form a panel from which the trial jury was selected. Those on the panel whose knowledge of the people or circumstances related to the case to be tried might affect their impartiality were excused by the judge.⁵¹ In addition, as in the United States, jury deliberations in Okinawa were carried out in a separate room, with the jurors frequently requesting material evidence to be brought in and asking the judge for clarification.⁵² According to the jurors who participated in trials held during the American occupation of Okinawa, the deliberation process involved heated discussions and all members of the jury approached their task in a highly responsible manner.⁵³

On the other hand, a number of features made the jury system in Okinawa unique. Firstly, regarding the provisions regarding qualifications for jury service in Okinawa, there was no nationality requirement, and therefore any person who had lived in the Ryukyus for at least three months and was literate (that is, could speak and read English) could be summoned for jury service.⁵⁴ This resulted in the fact that Ryukyuan,

48 Code of Penal Procedure, Civil Administration Ordinance No. 144/1955, as amended on 8 March 1963, chapter 5, section 1.5.1.

49 Code of Penal Procedure, Civil Administration Ordinance No. 144/1955, as amended on 8 March 1963, chapter 5, section 1.5.3.

50 Code of Penal Procedure, Civil Administration Ordinance No. 144/1955, as amended on 8 March 1963, chapter 5, section 1.5.4. The 18th amendment of the United States Civil Administration Proclamation No. 8, entitled “United States Civil Administration Criminal Courts” (dated July 21, 1958), stated that in the Superior Court of USCAR offences punishable by death or imprisonment were to be tried before three judges in the event the defendant waived jury trial, and before one judge in all other cases.

51 See Appendix 3 of this paper for a list of questions for cause that were used in USCAR courts.

52 See Appendix 5 of this paper for a copy of the request for clarification addressed to the judge by the members of the jury during deliberations in a USCAR court (*United States of America v. Megumi Yoshihisa* case, 1964) and the response to this request by the judge.

53 JAPAN FEDERATION OF BAR ASSOCIATIONS, *Okinawa no baishin saiban: fukki-zen no Okinawa baishin-sei no chôsa hôkoku* [Jury Trials in Okinawa: An Investigative Report on the Jury System in Pre-reversion Okinawa] (Tokyo 1992) 13-14.

54 The qualifications required of prospective jurors included the following: 1) any person who has attained the age of 21, and 2) any person who has resided for a period of three months within the Ryukyu Islands with the exclusion of those persons who: a) had been convicted of a crime punishable by imprisonment for more than one year and have not been pardoned; b) who were illiterate (unable to speak the English language); c) who were incapable by reason of mental or physical infirmities to render efficient jury service; d) who served as an officer or employee of the civil administration, whether as a member of the Armed Forces of the United States or as a civilian. Exception from jury service could be claimed by the

Japanese, Filipinos, and Chinese participated in trials as jurors. For example, the document entitled “Petty Jury-SUP C-13-64” that is part of the materials related to one criminal case tried in a USCAR court – *United States of America v. Megumi Yoshihisa*, a case that will be referred to later in this paper – lists jury candidates for that trial in accordance with their nationality and gender in the following way: “U.S.: 29; Ryukyuan: 13; Filipino: 5; Chinese: 2; Japanese: 1; Total: 50. Male: 34; Female: 16.”⁵⁵

Secondly, the legal framework that was put in place in Okinawa implied that cases not only involving American citizens but also Japanese and Okinawans could be and were tried by jurors, as the USCAR criminal and civil courts exercised jurisdiction not only over those cases that involved American citizens, but also those that were “of particular importance affecting the security, property, or interests of the United States, as determined by the High Commissioner.”⁵⁶

Why did the American administration of the islands decide to introduce jury trials to the USCAR courts in the 1960s? The answer to this question appears to lie in the fact that once it became clear that the American presence in Okinawa was to continue for an extended period of time, the U.S. civil administration recognized the need to ensure that the constitutional rights of U.S. citizens stationed on the islands and of their dependents were protected. Specifically, the sixth amendment of the United States Constitution guarantees defendants the right to “a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed,” and, according to documentary materials remaining from the time of the occupation, American lawyers working in Okinawa repeatedly expressed the necessity of introducing the jury system on the islands.⁵⁷ However, the discussion regarding the possibility of introducing the jury system in Okinawa gained momentum as late as November 1963 when Bennet N. (Ken) Ikeda, a Hawaiian-born American citizen and an executive at Empire Soap Co. of Naha, who had been found guilty of criminal fraud through false registration and mortgaging of houses, was released from Naha jail as a result of a *habeas corpus* writ

following persons: Members of the Armed Forces of the United States on active duty, attorneys actively engaged in the practice of law in the Ryukyu Islands; practicing physicians, surgeons, and dentists; ministers of the gospel and clergymen of every denomination; and persons employed in police and other law enforcement activities and fire protection (Code of Penal Procedure, Civil Administration Ordinance No. 144/1955, as amended on 8 March 1963, chapter 5, sections 1.5.5 and 1.5.8).

55 *United States of America v. Megumi Yoshihisa* case materials. The fact that the petty jury in USCAR courts was not made up exclusively of American citizens was used as grounds for appeal. Specifically, in *Rose v. McNamara*, 126 U.S. App. D.C. 179, the appellant argued that conviction by USCAR petit jury was invalid for this reason and cited Title 28 of the United States Code, which requires that federal jurors be citizens. This claim was rejected by the court.

56 Providing for Administration of the Ryukyu Islands, Executive Order No. 10713/1957, section 10, para. b.

57 JAPAN FEDERATION OF BAR ASSOCIATIONS (*supra* note 53) 8-9.

issued by a U.S. federal court judge in Washington DC.⁵⁸ Ikeda claimed that he had been deprived of his constitutional rights as he had neither been indicted by a grand jury nor was going to be afforded a jury trial in Okinawa. Four months later, in March 1963, the criminal jury system was introduced to the Ryukyus, and the “Ikeda case” became the first to be tried before a USCAR jury.

The first session of the jury trial opened on May 1, 1963, and the news regarding the court proceedings made the first page of *Morning Star Okinawa*, an English-language daily newspaper.⁵⁹ According to the article, the members of the jury working on the Ikeda case were “proficient in the English language” and consisted of nine men and three women.⁶⁰ Judging from the names of the members of the jury that, surprisingly, were released to the newspaper, the panel comprised citizens of Japanese and/or Ryukyuan nationality as well as Americans. The article directly connects the legal maneuvering of Ikeda’s lawyers to the establishment of the jury system in Okinawa. It is necessary to note, however, that there were other cases of similar nature that emphasized the need of establishing a jury system in USCAR courts to protect the rights of U.S. citizens stationed in Okinawa and their dependents.⁶¹

The number of jury cases tried in Okinawa after the introduction of the system and before the end of the U.S. occupation is quite small. A report prepared by the Japan Federation of Bar Associations provides the following statistics for the period between 1963 and July 31, 1967.⁶²

58 *Ikeda v. McNamara*, Habeas Corpus No. 416-62, D.D.C., Oct. 19, 1962.

59 *Morning Star Okinawa*, Ikeda Pleads Not Guilty: Okinawa’s First Jury Trial Opens, 01/05/1963. See Appendix 6 of this paper for a reprint of an excerpt of this article.

60 *Ibid.*

61 For instance, *Nicholson*, Habeas Corpus No. 141-61, D.D.C., Nov. 19, 1963, cited in *Rose v. McNamara*, 126 U.S. App. D.C. 179. Okinawa Times reported in November 1963 that a U.S. federal court judge in Washington DC reversed the decision of the USCAR criminal court that had found the wife of a U.S. military personnel guilty of beating her four-year-old child and sentenced the defendant to five years of penal servitude and deportation to the United States. According to the Okinawa Times article, the decision was reversed on the grounds that the defendant was denied trial by jury in the USCAR court. The paper also stated that decisions in two or three cases that had been tried in Okinawa were reversed for similar reasons. The article that appeared on November 22, 1963, in Okinawa Times is cited in T. OZAWA, *Ryūkyū rettō beikoku-min seifu saiban-sho no baishin seido* [The Jury System in USCAR Courts], in: Urata (ed.), *Okinawa bei gun kichi hô no genzai* [The Present State of U.S. Military Base Law in Okinawa] (Tokyo 2000) 263.

62 JAPAN FEDERATION OF BAR ASSOCIATIONS (*supra* note 53) 14.

Table :

<i>Year</i>	<i>Number of criminal cases tried by jury</i>	<i>Number of civil cases tried by jury</i>	<i>Total number of cases (criminal and civil) tried by jury</i>
1963	3	0	3
1964	1	1	2
1965	0	2	2
1966	0	0	0
1967 (until July 31)			1 (only Grand Jury session)

The report specifies further that a total of 103 cases (89 criminal cases and 14 civil cases) were tried in Okinawa during the period between 1963 and July 31, 1967, and that consequently, those tried by jury represent 7.8 per cent of the total.⁶³ Ten is the estimated total number of cases (criminal and civil) tried before USCAR jury during the period of the system's functioning.⁶⁴

3. *A Case Tried by Jury in Okinawa:*

United States of America v. Megumi Yoshihisa (1964)

The *United States of America v. Megumi Yoshihisa* – the fourth criminal case tried by jury in Okinawa and the only criminal case tried before jury in 1964 – is one of the best-documented jury trial cases in Okinawa. Unlike other criminal cases, the details of *United States of America v. Megumi Yoshihisa* are available not only through official trial records but also through a literary work subsequently written by Chihiro Isa, who served as a juror on it.⁶⁵

⁶³ *Ibid.*, 14.

⁶⁴ ISA (*supra* note 36) 491.

⁶⁵ *Ibid.* Chihiro Isa was subsequently sued for tortious injury by a defendant in this case and was ordered to pay 500,000 yen in a decision that was later confirmed by the Japanese Supreme Court (Supreme Court, February 8, 1994, Minshû 48, 2-149, cited in ANDERSON / NOLAN (*supra* note 5) 958). The summary of the Supreme Court judgment on this case (in Japanese) is available at http://www.courts.go.jp/search/jhsp0030?action_id=dspDetail&hanreiSrchKbn=01&hanreiNo=25689&hanreiKbn=01; the full text of the Supreme Court judgment (in Japanese) is available online at <http://www.courts.go.jp/hanrei/pdf/CF4088374AF5102C49256A8500311E44.pdf>; and a summary of the Court's ruling in English is available at <http://courtdomino2.courts.go.jp/promjudg.nsf/766e4f1d46701bec49256b8700435d2e/7eb9b65bae45dbb649256b8800362168?OpenDocument>.

“Turnaround: A Jury Trial in Okinawa under American Rule” (*Gyakuten: Amerika shihai-ka Okinawa no baishin saiban*) is a detailed description of the trial – starting from the time Isa received the summons to appear in court and ending with the description of the procedures of jury deliberations and sentencing. Isa explains in this autobiographical novel that participating in a jury trial was a “life-changing experience” and that his main objectives for writing down his memories of the occasion were to emphasize the virtues of the jury system, to set the record straight on the court ruling with regard to this case, and finally to show the real state of the U.S. occupation of Okinawa to contemporary readers.⁶⁶

In this case which involved an incident that took place in Futenma Village in Ginowan-shi, four Ryukyuan were accused of inflicting bodily injury on two U.S. Marines by beating them and causing the death of one of them, in violation of Articles 205 (bodily injury resulting in death) and Article 204 (bodily injury) of the Criminal Code of Japan as in effect in the Ryukyu Islands. The defendants were four “honest and sober boys,” as the people living in the same village with them testified in statements that accompanied the petition supporting the defendants.⁶⁷ The villagers claimed that the American Marines “were drunk, offering to fight, showing karate positions” at the time of the incident.⁶⁸ The jury on this trial, which consisted of three Japanese or Ryukyuan and nine Americans,⁶⁹ found the defendants not guilty on the charge of murder, but guilty of inflicting bodily injury.⁷⁰

According to Isa’s account of the jury deliberations, at the beginning of the discussion of the case, the majority of jurors were in favor of proclaiming at least one of the defendants guilty of murder. It was Isa who persuaded the rest of the members of the jury to find all the defendants not guilty of violating Article 205 – hence the word “turnaround” in the title of the novel. The details of the deliberation process mentioned by Isa thus indicate that the fact that there was no citizenship requirement for prospective jurors – thus allowing Americans, Ryukyuan, and Japanese to serve together as jurors – contributed to protecting the jury from being biased against either the American soldiers or the Ryukyuan defendants. Based on his experience as a juror, Isa highly commends the democratic nature of the American judicial process in general and of the institution of jury service in particular, emphasizing the ability of the latter to empower individuals drawn from different walks of life to strive to achieve a collective wisdom that none could achieve alone.

A very favorable attitude towards the concept of jury service did not prevent Isa from arguing that the regime of occupation under which the jury system was introduced in

66 ISA (*supra* note 36) 471-474 and 477.

67 *United States of America v. Megumi Yoshihisa* case materials.

68 *Ibid.*

69 *Ibid.* ISA (*supra* note 36) 286-288.

70 See Appendix 7 of this paper for the exact phrasing of the jury verdict in this case.

Okinawa was essentially undemocratic and that this has resulted in the fact that the impartiality of justice on the islands was at times compromised.

Specifically, when discussing some of the problem areas of the jury system in Okinawa during the occupation, Isa notes that those witnesses who could not speak English found it difficult to adequately express their opinions at times, and that although this was apparent to Okinawans present in the courtroom, their concerns were dismissed by the court. Isa's novel features a dialogue that is interesting from this perspective. A Ryukyuan witness originally uses the word *kurasu*, which in the Okinawan dialect means "beating somebody," when describing the incident. The Japanese-English court interpreter fails to understand this word and the witness is asked to clarify the meaning of it in Japanese. Confused, the witness mistakenly rephrases the original statement using the word *korosu* (which means "to kill" in Japanese).⁷¹

Secondly, Chihiro Isa expresses concern with regard to the question of the fairness of sentencing in USCAR courts. He states that while the highest penalty for murder (Article 205) as provided by the Japanese law was twenty years imprisonment, the punishment for this article in cases such as the *United States of America v. Megumi Yoshihisa* (where the defendants were Ryukyuan accused of attacking a U.S. Marine) was going to be the death penalty.⁷² This inconsistency led him to question the impartiality of justice in USCAR courts. Isa's view appears to reflect the perception on the part of the non-American members of the jury panel of the contradiction that existed between the democratic nature of the jury trial proceedings on the one hand and the essentially non-democratic regime of the occupation under which the judicial structure was established on the other.

4. *Okinawa's Experience:*

A Valid Argument Against the Introduction of the saiban-in System?

What can the data available from the jury trials held at USCAR courts tell us about the prospects of the lay assessor system in contemporary Japan, and to what extent can the unique experience of Okinawa be relied upon as empirical evidence in favor of rejecting the *saiban-in* system and embracing an independent American-style jury system?

A number of factors limit the applicability of Okinawa's experience with jury trials in drawing conclusions regarding the prospects of laymen participation in the Japanese

71 ISA (*supra* note 36) 140-141.

72 *Ibid.*, 419. Although Isa does not explicitly say so, he appears to be referring to Code of Penal Procedure, Civil Administration Ordinance No. 144/1955, as amended on 11 July 1956, section 2.2.2, that states: "Any person who willfully and unlawfully kills; or who, in the course of committing a felony, causes the death of any United States Forces personnel or security guard employed by the United States of America or any agency or instrumentality thereof, while such guard is engaged in the performance of his duties as such or because of such employment, may be punished by death or such other punishment as a Civil Administration Court may order".

judicial system. Firstly, the number of cases tried by jury during the U.S. occupation of the Ryukyu Islands is very small. Secondly, the circumstances under which the jury system was implemented in Okinawa – that is, the situation of military occupation – may have affected certain aspects of how the system functioned. For instance, it may be argued that the fact that Japanese and Okinawan jurors disagreed with other members of the jury in occupied Okinawa does not necessarily reflect the weak influence of the Japanese “culture of consensus” as Isa would have his readers believe, but may in fact suggest the stronger influence of a “culture of protest” against the occupying power. In addition, the composition of the jury panel in Okinawa (varied nationalities, but equal position in respect to authority) differed essentially from what is likely to be the composition of the mixed court lay assessor system (homogeneous in terms of nationality, but stratified in terms of authority).

On the other hand, Okinawa’s experience with jury trials does indicate that despite the many challenges that serving on a jury in USCAR courts implied for the Japanese and Ryukyuan members – such as the requirement to use English, which was a foreign language for the Japanese, and the need to overcome the barriers of inter-cultural communication when participating in deliberations with non-Japanese members of the jury – those jurors who were selected for service approached their task diligently and with a great sense of responsibility. This seems to support the optimistic view regarding the prospects for effective public participation in the Japanese court system, as serving on a jury panel where deliberations will be carried out exclusively in the Japanese language can be expected to be in some respects less challenging than jury service in Okinawa.

IV. CONCLUSION

As the date of the official start of the *saiban-in* system in Japan is drawing closer, the government, the Ministry of Justice, the Japan Federation of Bar Associations, various citizen groups, NGOs, and private individuals have been actively participating in the ongoing debate regarding the prospects of a successful implementation of the lay assessor system.

Recent publications on the subject of lay assessor trials have included contributions that view the introduction of the *saiban-in* system as a highly positive development and contributions that openly criticize the system envisaged by the Lay Assessor Act. The arguments proposed in the literature belonging to the latter category are diverse. Some contributions (Shunkichi Takayama’s “We Do Not Need the Lay Assessor System!”) warn of the dangers of unilaterally imposing jury duty on a society that is not ready for such a reform, while others (the open letter prepared by the Association for Opposing the Lay Assessor System, publications by various NGOs supporting the introduction of an all-laymen jury system, and Chihiro Isa’s “Will the Lay Assessor System Transform Criminal Courts? Reasons for Demanding a Jury System”) suggest alternative ways of

ensuring effective public participation in the judicial system, such as strengthening the existing system of conciliation commissioners (*chôtei i'in*) and allowing laymen to serve in that capacity in criminal trials of serious nature, or introducing an independent all-laymen jury system instead.

Okinawa's experience with the American-style jury system that was introduced on the islands during the period of the U.S. occupation has been used as evidence to substantiate the claim that the *saiban-in* system should be rejected in favor of an independent jury, and to argue that introducing an American-style jury system has the potential to change Japan's legal structure for the better.

This paper argues that there are several problems with relying on the data available from Okinawa's jury trials to make such an assertion. Firstly, the number of cases that were tried by jury in Okinawa is very small. Secondly, the jury system was introduced in *occupied* Okinawa, a situation which restricts the applicability of the data from USCAR courts in any analysis of the prospects of any similar system working effectively in contemporary Japan.

Would an all-laymen jury system serve to fulfill the objectives of Japan's legal reform effort more effectively than the lay assessor system? Will the *saiban-in* system indeed turn out to be nothing more than an ornamental feature that will fail to change the existing legal structure? It appears to be too early to propose any definite answers to these important questions that have been raised in the recent literature.

Clearly, introducing a system of mixed tribunals is a step that is far less disruptive of current procedures than a move to an independent jury system. Whether this fact is to be interpreted to imply the government's unwillingness to allow real reform to happen, as the literature opposing the *saiban-in* system suggests, or to be seen in a positive light, as an effort to preserve the internal integrity of the country's judicial system and to administer a remedy "that would not undermine the benefits of its system,"⁷³ should become clear once the system is implemented in 2009.

The Lay Assessor Act was drafted with the objective of improving Japanese democratic participation.⁷⁴ The heated debate concerning the nature and future of the *saiban-in* system that is currently taking place in Japan and the activities of various non-governmental organizations and public movements that it has triggered are facts that strongly suggest that the Japanese people view themselves as the ultimate decision-makers with regard to whether any new system is to be accepted and to function effectively in the country. This in turn seems to be a powerful indication that a significant step toward achieving the main objective of the Lay Assessor Act has already been made.

73 D.H. FOOTE, *The Benevolent Paternalism of Japanese Criminal Justice*, in: *California Law Review* 80 (1992) 322.

74 ANDERSON / NOLAN (*supra* note 5) 990.

V. APPENDIX: THE JURY SYSTEM IN OKINAWA, DOCUMENTARY MATERIALS

Appendix 1. Court Summons Text (1964)

United States Civil Administration Superior Court
Ryukyu Islands

SUMMONS FOR PETIT JUROR

You are hereby summoned to appear in the United States Civil Administration Superior Court, Rooms 5 and 6, Justice Building, Naha, Okinawa on 21 September 1964, at 9:00 o'clock A.M. to serve as a petty juror during a term of the court to commence on that day.

Russell L. Stevens
Judge

Date: 8 September 1964

Important Notice

1. Jurors are entitled to receive for their service the fees and mileage allowed by law.
2. Failure to attend in accordance with this summons is punishable by fine or imprisonment.
3. Only the Court can excuse a person from jury duty.
4. If you have moved out of this judicial district, or if you are physically unable to attend court at the time and place specified, or if you believe you have a valid reason for being excused, you should immediately notify the Court in writing, giving a full statement of the facts.
5. Unless you receive a communication from the Court excusing you from service, you must attend as directed by this summons.⁷⁵

⁷⁵ USCAR Superior Court Ryukyu Islands, Summons for Petit Jury, USCAR-JU FL-3, September 1964. This document is part of the materials related to the *United States of America v. Megumi Yoshihisa* case.

Appendix 2. Jury Duty Instructions

Ladies and Gentlemen:

You have been summoned to Court this morning as potential jurors in the case of _____ (title of the case). From among the total called, 12 will be selected to serve. It will be necessary for all of you to remain in Court until the 12 have been finally selected, after which those remaining will be excused. Those not selected will report to the Clerk in room 29 for payment for this morning's appearance. Kindly wait until the Clerk is free to leave the Courtroom.

This is a criminal action. On my right are Messrs. _____ (names of defendants), and the attorney who represents them, _____ (name of attorney) and his co-council, _____ (names). On my left is Mr. _____ (name), who is the attorney for the Government. After the 12 members of the jury have been selected and sworn, they will be given general information relative to their service on this case.

The Clerk will now select 12 names from the box. As names are drawn and called, the individuals will kindly take their seats in the jury box, commencing with the first chair on my left, in the rear row of seats. Each juror will be questioned, and all jurors are subject to challenge. Will all persons called this morning kindly rise, and be sworn to answer questions on *voir dire*:

“You and each of you do solemnly swear or affirm that you will make true answer to such questions as shall we put to you, touching upon your qualifications to serve as trial jurors in this case now on trial”.⁷⁶

Appendix 3. Questions for Cause

1. State your name, residence, and occupation. (If woman, state husband's occupation).
2. Are you over 21 years of age?
3. Have you resided for a period of three months or more within the Ryukyu Islands immediately prior to receipt of jury summons?
4. Have you ever been convicted of a crime? If so, was it punishable by imprisonment over one year? Were you pardoned?
5. Can you read and write?
6. Do you have any mental or physical infirmities which make you incapable of performing efficient jury service?
7. Are you an officer or employee of the Civil Administration?
8. Do you claim legal exemption from jury duty? (Section 1.5.6)
9. Do you have knowledge of this case? If so, explain.
10. Do you have any interest in this case?
11. Do you know, or are you related to, the defendants or any attorney involved in this case?
12. Do you have any prejudice, or any feeling, that will influence your decision?
13. Do you know any reason why you cannot reach an impartial verdict?
14. Have you formed any opinion as to innocence or guilt?

_____ (name) is passed for cause.

The box is passed for cause.⁷⁷

⁷⁶ The text provided here was recited in relation to *United States of America v. Megumi Yoshihisa* case on September 21, 1964.

Appendix 4. Oath of Jurors

Members of the Jury, you will rise, hold up your right hand, and be sworn to try this case: “You and each of you do solemnly swear or affirm that you will well and truly try the issues joined herein between the Government and defendants, and true verdict therein render according to law and the evidence”.⁷⁸

Appendix 5.

Note from Jury to the Judge

Question (jury foreman to judge): If the jury agrees on one count but not on the other, does this throw out the entire proceeding?

Answer (judge to jury foreman): If the jury is able to agree on one count, that verdict will be received. If [the jury] cannot agree on [the] second count, the verdict on the first one will still be valid.⁷⁹

Appendix 6.

Excerpt from the Morning Star Okinawa Article Covering the First Jury Trial in Okinawa

The US government prosecutor Lonis A. Otto Jr. outlined the government’s case in his opening address to the jury and predicted he would prove that Ikeda, through false registration and mortgaging of houses, is guilty as charged of criminal fraud.

Kicking off the prosecution case was army criminal investigator Alexander R. Honore who spearheaded the CID probe into Ikeda’s business activities. Honore, who also played a prominent role in the recent investigation of the American Realty company and subsequent fraud conviction of executive Shoko Yokota, produced a statement signed by Ikeda last fall.

Reading the document from the witness stand, Honore said Ikeda admitted having 11 houses in Koza registered both in his name and the Empire Soap Co. of Naha. Ikeda, who has a joint foreign investment board license to operate his soap company, admitted that his application for a real estate enterprise was denied 2 times by the JFIB board. He claims that prior to beginning construction he had received assurances from prominent Koza civic leaders, including the mayor, that his JFIB license would be approved. When the board disapproved it, he said, it was too late since he had already begun construction.

The defendant said he was only a representative of the Okinawa Housing Development Co., a Ryukyuan organization whose key executives are reportedly in Japan. Some of the houses which Ikeda sold, of which a number of the transactions were processed through the American Realty Co., were later found to have been mortgaged to Ryukyuan banks without knowledge of the buyers leading to the fraud charges. Ikeda is being defended by local attorney Howard B. McLellan with Judge Russel L. Stevens presiding.⁸⁰

77 *United States of America v. Megumi Yoshihisa* case materials.

78 *Ibid.*

79 *Ibid.*

80 Morning Star Okinawa (*supra* note 59) 1 and 3.

Appendix 7.

The Jury Verdict (*United States of America v. Megumi Yoshihisa*)

United States Civil Administration Superior Court
Naha, Okinawa, Ryukyu Islands

Superior Court Case C-13-64
Criminal Jury case No. 4

United States of America
Versus
Megumi, Yoshihisa
Matsu, Toyoji
Ganeko, Seitoku
Ashitomi, Kansuke

Verdict:

We, the jury, in the above entitled case, find the Defendants MEGUMI, Yoshihisa, MATSU, Toyoji, GANEKO, Seitoku, ASHITOMI, Kansuke, Not guilty of violation of Article 205 as set forth in count Number 1 of the indictment, but guilty of unlawfully inflicting bodily injury on Ramon D. Williams, Jr., in violation of Article 204.

8 October 1964

John C. Black Jr.
Foreman of the jury⁸¹

81 *United States of America v. Megumi Yoshihisa* case materials.

ZUSAMMENFASSUNG

Die Änderungen durch das Gesetz zur Beteiligung von Schöffen (saiban-in) an Strafprozessen („Schöffengesetz“), das innerhalb von fünf Jahren nach seinem Erlaß im Jahre 2004 – mithin vor Juni 2009 – in Kraft treten soll, werden in der japanischen Öffentlichkeit lebhaft diskutiert. Während die Mehrzahl der offiziellen und der unabhängigen Veröffentlichungen das sogenannte saiban-in-System und seine Möglichkeiten zur radikalen Umwandlung des japanischen Rechtssystems tendenziell anpreist, werden in jüngster Zeit auch kritische Stimmen laut. Die saiban-in-Gegner wenden ein, daß Japan statt der Einführung eines nicht praxiserprobten Mischsystems oder der Wiedereinführung des Jury-Systems der Taishō- und frühen Shōwa-Zeit besser ein Jury-System nach angloamerikanischem Vorbild adaptieren sollte. Andere Kritiker lehnen den saiban-in-Ansatz völlig ab, während wieder andere das System der gemischten Besetzung von Gerichten nur als Übergangslösung zur Gewährleistung eines reibungslosen Wechsels von einem mit Berufsrichtern besetzten Gericht zu einer Jury, die sich nur aus Laien zusammensetzt, befürworten.

Der Mangel an empirischem Material wird oft als Hauptargument dafür angeführt, daß eine fundierte Beurteilung, ob eine nur mit Laien besetzte Jury in Japan funktionieren kann, nicht möglich sei. Während ein solches Verfahren tatsächlich nie formell auf den japanischen Hauptinseln etabliert wurde, führten unter der US-Besatzung Juries nach angloamerikanischem Vorbild auf Okinawa Strafprozesse durch, wie in letzter Zeit einige saiban-in-Gegner, die das Jury-System befürworten, betonen. Der Beitrag stellt dar, wie das Jury-System auf Okinawa aussah und funktionierte, und geht der Frage nach, ob die Erfahrungen mit dem Jury-Verfahren auf Okinawa Rückschlüsse darauf zulassen, daß es den gegenwärtigen Bedürfnissen in Japan gerecht würde. Außerdem wird ein Überblick über die Argumente der saiban-in-Gegner gegeben.

Die Verfasserin vertritt die Meinung, daß es problematisch sei, die Behauptung, die Einführung eines Jury-Systems nach angloamerikanischem Vorbild werde zu einer Verbesserung des japanischen Rechtssystems führen, auf Datenmaterial aus den Jury-Verhandlungen auf Okinawa zu stützen. Erstens sei die Zahl der Fälle, die durch Juries auf Okinawa entschieden wurden, sehr klein. Zweitens sei das Jury-System auf Okinawa in Zeiten der Besatzung durch die Amerikaner eingeführt worden, was die Verwendbarkeit der Daten aus Gerichtsverhandlungen unter der US-Zivilverwaltung der Ryukyu-Inseln für die Beurteilung der Zukunftsaussichten eines solchen Systems im heutigen Japan stark einschränke.

Es ist offensichtlich, daß die Einführung eines Systems von gemischten Strafgerichten weniger einschneidend als der Übergang zu einem unabhängigen Jury-System ist. Ob sie auf einen mangelnden Reformwillen der Regierung schließen läßt, wie die saiban-in-Gegner behaupten, oder im positiven Sinne als Bestreben zu werten ist, die interne Integrität des japanischen Justizsystems zu erhalten und eine Lösung herbeizuführen, die die Vorteile des Systems nicht beseitigt, wird sich wohl im Jahr 2009 zeigen, wenn das System eingeführt ist.

(dt. Übersetzung durch die Red.)