The Jury System in Pre-War Japan: 
An Annotated Translation of “The Jury Guidebook” 
(Baishin Tebiki)

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I. INTRODUCTION ................................................................. 231
A. The Pre-War Jury Act and Promotion Efforts .................. 233
  1. Guidelines Issued by the Ministry of Justice .......... 234
  2. Hōritsu Shinbun (The Legal News) ......................... 235
B. The Jury Guidebook and Its Significance as a Historical
   Document ................................................................. 237
C. The Japan Jury Association (Dai Nippon Baishin Kyōkai) .... 240
D. Notes on the Illustrations ..................................... 243
E. The Discovery of the Jury Guidebook and Notes on
   Translation ............................................................ 243
F. Conclusion .................................................................. 243
II. TRANSLATION .................................................................. 244
III. ILLUSTRATIONS .............................................................. 282

I. INTRODUCTION

On May 28, 2004, the Japanese Diet passed the Act Concerning Participation of Lay Assessors in Criminal Trials (“Lay Assessor Act”)

The Lay Assessor Act provides for the establishment of a new mixed-
court jury (saiban’in) system where the verdict and sentencing in major crimes will be decided by a panel comprising three professional judges and six lay persons. Although the scheduled 2009 introduction of the lay assessor system has frequently been regarded as unprecedented reform by scholars, this is not the first experimentation with citizens’ trial participation in the history of the Japanese criminal justice system.

Between 1928 and 1943, the twelve-layperson jury system functioned in early Shōwa Japan. To date, this Anglo-American style jury system was doubtlessly the most significant of Japan’s past experiences with the jury system. The pre-war jury system differed from the saiban’in system in several respects. For instance, the saiban’in system will be a mixed-court system, whereas the Shōwa-period jury only consisted of laymen. In addition, members of the pre-war jury did not decide whether the defendant was guilty or not guilty. Instead, the judge submitted questions on the points of fact (tōshin) to the jury and had the option of ignoring the jury’s answers and calling another jury. In contrast, the Lay Assessor Act stipulates that lay assessors will be required to deliberate together with judges both the verdict and sentence. Another difference between the Shōwa-period jury and the saiban’in system are the

3 Cases where the maximum penalty is death or an indefinite period of penal servitude. Lay Assessor Act, supra note 2, art. 2(1). A mixed-court system is a system by which lay persons and professional judges sit together on the bench, deliberate, reach a verdict, and determine the sentence.


5 Baishin Hô [Jury Act], Law No. 50 of 1923, as last amended by Law No. 51 of 1929 and Law No. 62 of 1941, suspended by Law No. 88 of 1943, art. 95 [hereinafter Jury Act].

6 Lay Assessor Act, supra note 2, art. 6.
requirements for jury service. In the Shōwa-period system, jury members had to be male citizens over thirty years old, reside in the same city, town, or village for at least two years, pay for more than three yen in national direct taxes, be literate, and possess Japanese citizenship. In the saiban’in system, jury members will be selected from a list of persons eligible to vote in the general population. Furthermore, the Shōwa-period system functioned against the background of increasing militarization, a situation that is substantially different from present-day circumstances.

Despite these differences, an examination of Japan’s Shōwa-period system is an important tool to evaluate current efforts to expand lay participation in the judicial system. An examination provides insights into the effectiveness or lack thereof of certain methods of information dissemination and of promotion techniques that aim to familiarize potential jurors with the new system. The Jury Guidebook: Includes Journal of Trial Participation (The Jury Guidebook) is a document that adds new details to what is already known about these efforts.

In this introduction, Section A summarizes what is known regarding the functioning of the jury system and promotional efforts in pre-war Japan from sources other than the Jury Guidebook. The most obvious source to look at in this regard is of course the Jury Act itself. However, because the Jury Guidebook provides a comprehensive summary of the contents of this piece of legislation, this introduction instead focuses on other less widely known sources. Section B discusses the significance of the Jury Guidebook as a historical document. Section C discusses the Japan Jury Association. Sections D and E provide brief notes on the illustrations that accompany the original text and on the translation. Finally, the conclusion draws parallels between the promotion and information dissemination efforts carried out in the Shōwa-period system and the new saiban’in system.

A. The Pre-War Jury Act and Promotion Efforts

The pre-war Jury Act was promulgated on April 18, 1923, became operative on October 1, 1928, and was suspended on April 1, 1943. Like the saiban’in system, the pre-war Jury Act provided for a five-year preparation period. During this preparation period, the Ministry of Justice and the local Bar Associations actively promoted the Shōwa-period

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7 Jury Act, supra note 5, art. 12.

8 Lay Assessor Act, supra note 2, art. 13.

9 See Jury Act, supra note 5.

system. The government increased the number of judges and prosecutors, built courtrooms with seats for jurors and jury accommodation facilities in seventy-one district courts across Japan, and held explanation sessions. In addition, judges, prosecutors, and lawyers traveled abroad to study how the jury system functioned in other countries. Several documentary sources regarding the details of each of these efforts have survived to this day.

1. Guidelines Issued by the Ministry of Justice

In 1926, the Ministry of Justice issued a set of guidelines entitled *Preparing for the Enforcement of the Jury Act*. The guidelines made it mandatory for presidents of ward courts and the members of the prosecutor’s office to meet with heads of cities, towns, and villages to explain the importance of the Jury Act and to distribute pamphlets regarding the system. These pamphlets were later given out to residents of those cities, towns, and villages. Presidents of ward courts and the members of the prosecutor’s office were also required to organize explanation sessions for the general public about the importance of the Jury Act. In addition, the document specified that in 1925, 2,800,000 explanation pamphlets were published and predicted that an even greater number of pamphlets may be required in the future. The guidelines also emphasized future strategies of newspaper advertisement and special radio programs to explain jury system features and to draw the public’s attention to the Jury Act.

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12 See *Shihodo Dainin Kanbo Chosa Ka, Shihodo Shiryo: Baishin Seido Shisatsu Hokokusho Shuu No. 85, [Judicial Materials: A Compilation of Reports Examining the Jury System No. 85]* (1926) (discussing examples of publications based on reports of legal professionals who were sent to observe the functioning of the jury system in other countries) [hereinafter Compilation of Examination Reports].


14 In accordance with the Court Organization Law, all courts with the exception of civil district courts (*Minji Chihō Saibansho*), had a prosecutor’s office attached to it. Saibansho Kōsei Hō [Court Organization Law], Law No. 6 of 1890, art. 6.


16 *Id.* at 1.
Another important source of details concerning information dissemination efforts in pre-war Japan were newspaper articles in the *Hōritsu Shinbun*, which covered developments in the legal system for forty-four years. Masutarō Takagi, a lawyer, established *Hōritsu Shinbun* in 1900 with the goal of disseminating legal information to benefit the general public. The editors of the newspaper closely followed the intricate enactment process of the Jury Act and welcomed the promulgation of this new legislation.  

In particular, an editorial, published on March 28, 1923 stated that the promulgation of the Jury Act signaled the “fulfillment of the hopes of the people” and that it represented “the most important reform in the history of [efforts aimed at] protecting human rights” in Japan. The *Hōritsu Shinbun* scrupulously reported the details of mock trials that took place in various cities across Japan, discussed the progress of the

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17 The first effort to introduce the jury system in Japan dates back to 1879 when Gustave Emile Boissonade de Fontarabie included the provisions regarding the establishment of such a system in his Code of Criminal Instruction. These provisions were rejected by the legislators at that time, and concerted efforts aimed at introducing the jury system in Japan started in the early twentieth century. Kenzo Takayanagi, *A Century of Innovation: The Development of Japanese Law, 1868-1961 in LAW IN JAPAN: THE LEGAL ORDER IN A CHANGING SOCIETY* 5, 21 (Arthur Taylor von Mehren ed., 1963). Specifically, in February 1910, the Rikken Seiyūkai (Friends of the Constitutional Government Party), one of the leading political parties in Japan at that time, submitted a proposal concerning the establishment of the jury system in Japan (*Baishin Seido Setsuritsu Ni Kansuru Kengian*), which was passed by the House of Representatives. The proposal stated that lay participation in the judicial system would serve to ensure the independence of the judiciary and contribute to the impartiality of justice. In 1919, one year after Takashi (Kei) Hara’s cabinet was inaugurated, the Extraordinary Legislative Council (*Rinji Hōsei Shingikai*) was set up and on June 28, 1920 the Council approved the General Principles Concerning the Jury System (*Baishin Seido Ni Kansuru Kōryō*). Work on the drafting of the Jury Act was completed on December 4, 1920 and on January 1, 1921 the Privy Council started deliberations regarding the law. On May 4 of the same year the proposal was rejected. Hara resubmitted the law for consideration at the Privy Council two more times, but without success. The proposal was supported by the cabinet of Prime Minister Takahashi Korekiyo who succeeded Hara in that post. After undergoing several revisions, including the introduction of provisions that stipulated that jury candidates were to be chosen by lot and of those that made the decisions of jurors not binding on the court, it was finally passed by the Privy Council on February 27, 1922. The draft was then resubmitted for consideration by the House of Representatives and passed by the House of Representatives on March 1 of the same year, but was subsequently rejected by the House of Peers. The fourth draft of the law was finally approved by the Privy Council on December 20, 1922, by the House of Representatives on March 2, 1923, and by the House of Peers on March 21, 1923. Toshitani, *infra* note 36, at 374-377.

18 *Baishin Hōan No Tsūka O Shukusu* [Celebrating the Passage of the Jury Bill], *Hōritsu Shinbun*, Mar. 28, 1923, at 3.

19 *Sendai Ni Okeru Mogi Baishin Saiban* [Mock Jury Trial in Sendai], *Hōritsu Shinbun*, May 20, 1928, at 17; *Tokyo Bengoshikai Shusai No Mogi Baishin Saiban* [Jury Mock Trial Organized by the Tokyo Bar Association], *Hōritsu Shinbun*, Aug. 13, 1928,
building of new jury courtrooms and jury accommodation facilities, and published reviews of Jury Act promotional films. The newspaper also organized seminars and provided a forum for academics, lawyers, and government officials to freely discuss the jury system.

The seat layout in the jury courtroom and whether the seats of the prosecutor and of the attorney should be of equal height became subjects of heated discussion on newspaper pages. There was also deliberation about the effect of the jury system on the Japanese judicial system and the practice of relying on pre-trial investigations. Following the

at 1; *Baishin Hō Mogi Saiban Ni Tsuite* [On Mock Jury Trials], Hōritsu Shimbun, Dec. 28, 1927, at 3.

20 *Baishin No Oshigoto Ni Isogashii Tokyo Chihō Saibansho* [Tokyo District Court Busy with Preparations for the Jury], Hōritsu Shimbun, Jan. 1, 1928, at 1; *Baishin Saiban Kunren Hajimaru* [Jury Trial Training Starts], Hōritsu Shimbun, Mar. 10, 1928, at 17; *Kōji O Isogitsutsu Aru Tokyo Chihō Saibansho Baishin Hōei* [Construction of Jury Courtroom Speeded Up at Tokyo District Court], Hōritsu Shimbun, Apr. 23, 1928, at 1.

21 A total of eleven films were used to promote the jury system in Japan, four of which were foreign and seven were made within Japan. An article that appeared in the Hōritsu Shimbun in 1927 reviewed one such film entitled *Kabane Wa Katarazu* [A Dead Body Does Not Speak], produced by the Ministry of Justice in 1927 and directed by then Secretary at the Ministry of Justice Ryūma Satō. The article argues that the film is much easier to understand than the “foreign films” that were shown in Japan previously, but states that *A Dead Body Does Not Speak* has several shortcomings. First, according to the article, the film failed to emphasize the fact that most events happening in the courtroom will be scrupulously reported by newspapers and will thus be made known to the general public. Second, the subtitles had several typographical mistakes. Third, the prosecutor was unduly shown in a highly negative way, and fourth, the section at the beginning of the film showing the Minister of Justice was much too long. *Baishin Hō Senden No Kansen Eiga* [Jury Act Promotional Film Endorsed by the Government], Hōritsu Shimbun, Dec. 18, 1927, at 3.


23 One of the central points discussed in this regard was the question of whether the seats of the prosecutor and that of the attorney should be of equal height in the courtroom. See *Kenji To Bengoshi Zaseki Wa Dōtō* [Seats of Prosecutor and Attorney to Be Equal], Hōritsu Shimbun, Aug. 8, 1927, at 17; *Hōei Ni Okeru Kenji, Shoki Narabi Ni Shihō Kisha No Zaseki Ni Tsuite* [Concerning the Seats of the Prosecutor, the Secretary, and of the Judicial Reporters], Hōritsu Shimbun, Aug. 10, 1927, at 3; *Baishin Hōei No Zaseki Mondai (2)* [The Seating Problem in Jury Courtrooms (2)], Hōritsu Shimbun, Nov. 20, 1927, at 4; *Shirahama Hanji No Baishin Hōei Zaseki Mondai Ni Tsuite* [On Justice Shirahama’s ‘The Seating Problem in Jury Courtroom’], Hōritsu Shimbun, Dec. 5, 1927, at 5.

24 *Baishin Hōei O Haikai Toshite No Yoshin, Hōei Chūshin Shugi Ka Yoshin Chūshin Shugi Ka* [Pre-Trial Investigations Against the Background of Jury Trials; Courtroom-Centered or Pre-Trial Investigation-Centered Approach?], Hōritsu Shimbun, Apr. 8, 1928, at 1; *Baishin Hō Jō No Gigi O Ronjite, Hōshō Kakui No Kōsetsu O Motomu* (1) [Discussing the Doubts Regarding the Jury Act, Opinions of Legal Professionals Wanted (1)], Hōritsu Shimbun, June 13, 1928, at 3; *Baishin Hō Jō No Gigi O Ronjite,*
implementation of the jury system, the newspaper provided detailed information of jury trials in the country and published the verdicts of these trials.\textsuperscript{25} When the first jury trial in Japan opened in the district court of Oita Prefecture on October 23, 1928, the newspaper characterized this first experience as a success.\textsuperscript{26}

B. The Jury Guidebook and Its Significance as a Historical Document

Efforts to promote the jury system in Japan continued even after the Jury Act was implemented in 1928. The Jury Guidebook is one example of such efforts. Published in 1931, this guidebook adds more detail to the picture presented in the above mentioned sources.

First, the Jury Guidebook was written four years after the introduction of the jury system in Japan. Thus, its information can help understand the public’s reception of the reform at the time of its functioning. The document also provides an analysis which sheds light on the reasons why the Jury Act was suspended in 1943.\textsuperscript{27}

\textsuperscript{25} See Yoshikazu Inaba, Shiryō De Miru: Baishin Hō Hanrei Shūsei [Looking at Archive Materials: A Collection of Jury Trial Decisions] 13-149 (Gakujutsu Sensho 2000) (listing a reprint of all articles mentioning jury trial decisions that were originally published in Hōritsu Shinbun).

\textsuperscript{26} According to the newspaper, the defendant in this case, Mr. Kameji Fujioka, 34, was charged with the attempted murder of his mistress. Court summons were sent out to twenty-six jury candidates, and the jurors empanelled on that trial came from eight towns and villages of the prefecture. Six members of the jury were more than sixty years of age, with the eldest member being seventy-one years old. The jurors were active when carrying out their duty and exercised their right to ask questions during the trial hearing—a right that was guaranteed by the Jury Act. Jury Act, supra note 5, art. 70(2). The names of the members of the jury were surprisingly released to the newspaper, and the article reported that Mr. Kiichiro Andō, a member of the jury panel, asked the question concerning the amount of alcohol that the defendant was in the habit of consuming on average. With regard to the jurors’ answers to the questions submitted to them by the judge, the newspaper reports that the jury gave the answer of “No” to the first question (“Did the accused have the intention to kill?”) and “Yes” to the second question (“Did the accused inflict injury without the intention to kill?”). Based on the answers received from the members of the jury, on October 25, the presiding judge proclaimed the defendant guilty of violating Article 204 (bodily injury) of the Penal Code of Japan and sentenced the accused to six months of penal servitude. Keihō, art. 204, Penal Code, Law No. 45 (1907), translated in 2 EHS LAW BULL. Ser. No. 2000, at PA39 (2008); Baishin Saiban Ni Seikō Shita Ōita Chihō Saibansho [Oita District Court Successfully Carries Out] Jury Trial, Hōritsu Shinbun, Nov. 3, 1928, at 1; Ōita Chihō Saibansho Hatsu Baishin Hanketsu [Oita District Court First Jury Verdict], Hōritsu Shinbun, Nov. 3, 1928, at 17.

\textsuperscript{27} Baishin Hō No Teishi Ni Kansuru Hōritsu [Act Suspending the Jury Act],
Specifically, the *Jury Guidebook*’s preface reveals that as of 1931 the “spirit of the Jury Act” had not yet “penetrated all of the Japanese society” and states that “the statistics of the number of jury trials reflects this fact.”

In the concluding section, the authors emphasize that the number of jury trials held in Japan is “considerably lower than that expected by the judicial authorities when the Jury Act was first implemented.” The guidebook suggests that several factors account for this. First, although the government spent an “enormous amount” of funds on promotion prior to the introduction of jury trials, the amount of financial support dramatically decreased once the system was introduced. The authors argue that the “drums and flutes should play loudest not before the dance starts—a period during which the objective is only to attract people—but after the dance has started.”

Second, the authors state that “people in our country have traditionally been indifferent to the law.” The indifference is attributed to the predominance of the Law No. 88 of 1943. The reasons that have been proposed by scholars in the existing literature regarding this question can be grouped into two categories: 1) internal factors (factors related to the internal workings of the Jury Act) and 2) external factors (factors that lay outside the realm of the Act, such as political climate in Japan at the time and culture). With regard to internal factors, Justice Saitō Kitarō, for instance, has argued that the fact that the judge was not bound by the juror’s answers seriously impeded the functioning of the system by undermining any true power of the jury. In addition, criminal defendants tried by jury did not have the right to appeal kōso on points of fact. This, it has been argued, made jury trials less attractive to both the defendants and their attorneys. The Jury Act also enabled the judge to make instructions to the jury, which often became the object of criticism from attorneys and prosecutors.

External factors that have been cited by scholars included the fact that the jury system was incompatible with the basically inquisitorial law of criminal procedure that existed at the time of its enactment. Another external factor considered to have led to the failure of the jury system in Japan is the political climate during the time of its operation. Yet another reason proposed by scholars of the unpopularity of jury trials in Japan is Japanese culture. According to this position, Japanese people would generally prefer trial by experienced judges rather than by laymen.


28 See infra section II Preface.

29 See infra section II.28 and accompanying text.

30 See infra section II.7 and accompanying text.

31 See supra note 28.

32 Id.
principle that “law is something to be followed, not known.” The authors argue that this principle guided the government’s legislation efforts prior to the promulgation of the Meiji Constitution. According to the Jury Guidebook, in pre-constitutional times, law was “coercively imposed on the people, and the public therefore was completely uninterested in its provisions.”

In addition, the Jury Guidebook is a highly valuable document because it contains insights that allow the contemporary reader to better understand the period in which it was written. More precisely, the guidebook reflects ideas from two movements that were characteristic of the late Taishō and early Shōwa periods. The first movement is the democratization movement, known as “Taishō Democracy.” The second movement is the militarization movement of the early Shōwa period, which saw an increase of oppression on the freedom of thought. Indeed, 1931, the guidebook’s publication year, has been referred to as the year of transition from democratization to militarization. The Jury Guidebook’s authors comment on the transition when discussing Jury Act features. On the one hand, the authors refer to the Jury Act as a law of “unprecedented importance.” Further, they commend the promulgation for making it possible for eligible ordinary citizens to participate in the judicial branch of government. On the other hand, the Jury Guidebook states that “serving as a juror in the divine courts of justice that carry out proceedings, most

33 See infra section II.1 and accompanying text.

34 Id.

35 See Shimizu, infra note 36, at 3, 7.

36 See Makoto Shimizu, Senzen No Hōritsuka Ni Tsuite No Hito Kōsatsu [A Study of Legal Professionals in the Pre-War Period], in 6 Iwanami Köza: Gendai Hö [Iwanami Lectures: Contemporary Law] 3 (Toshitaka Ushiomi ed., 1966) (analyzing the impact of these two movements on the legal profession in general and on the process of drafting of the Jury Act in particular); Nobuyoshi Toshitani, Shihō Ni Taisuru Kokumin No Sanka: Senzen No Hōritsuka To Baishin Hö [Lay Participation in the Judiciary: Legal Professionals in the Pre-War Period] and the Jury Act], in 6 Iwanami Köza: Gendai Hö 365 (analyzing the impact of these two movements on the legal profession in general and on the process of drafting of the Jury Act in particular); See generally JAPAN IN CRISIS: ESSAYS ON TAISHO DEMOCRACY (Bernard S. Silberman & Harry D. Harootunian eds., 1974) (discussing the Taishō period in general).


38 See supra note 28.
humbly, in the name of His Majesty the Emperor of Japan is a great honor and a duty comparable to that of serving in the Imperial army.”

Furthermore, the guidebook is an important source of information regarding the functioning of the jury system. For instance, it explains the meaning and significance of the three types of questions that the judge could ask the jury: “main questions” (shumon), “supplementary questions” (homon), and “other questions” (betsumon). These explanations could contribute to the existing literature in English on the subject of Japan’s past experiences with jury trials. The same is also true of the descriptions of jury courtrooms and of the court wardrobe.

The *Jury Guidebook* is also a significant historical document because it was written by the Japan Jury Association (Dai Nippon Baishin Kyōkai), an organization established to promote the jury system. In this regard, the guidebook is a particularly important source because it is one of the very few existing documents that informs us of the activities of this organization.

C. The Japan Jury Association (Dai Nippon Baishin Kyōkai)

The authorship of the *Jury Guidebook* belongs to the editorial department of the Japan Jury Association (the “Association”). The *Jury Guidebook* was printed on August 15, 1931 and officially published on August 20, 1931. According to the guidebook, the Association was established in November 1928 “with the goal of educating the general public with regard to the matters related to the jury system and law in general, while explaining the beauty of the Jury Law as the law of unprecedented importance.” In order to fulfill its mission, the Association distributed pamphlets and other materials that focused on developments in the Japanese legal system, such as *A Quick Guide to the Constitution* (Kenpō Hayawakari), *A Quick Guide to Trial by Jury* (Baishin Hayawakari), and the Japan Jury Newspaper (Nihon Baishin Shinbun), to Association members.

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39 See infra section II.3 and accompanying text.
40 See infra section II.19 and accompanying text.
41 See supra note 29.
43 See Dai Nippon Baishin Kyōkai Henshūbu, supra note 1.
44 Id.
45 See supra note 29.
46 Id.
47 Id.
48 Not much in known about this newspaper apart from the fact that it was
members. The Association arranged excursions to jury courtrooms, jury accommodation facilities, and prisons for jury candidates.\textsuperscript{49} It also planned lectures, seminars, and public viewings of promotional films about the jury system.\textsuperscript{50} In addition, the Association established a permanent attorney service and provided free legal consultations to Association members.

The Association was formed under the guidance of Vice Minister of Justice and Professor of Law On Koyama, Professor Yoshimichi Hara and Professor Kikunosuke Makino, who served as President of the Great Court of Judicature between 1921 and 1923.\textsuperscript{51} Professor Kiichiro Hiranuma, Kisaburō Suzuki, and Takuzō Hanai, and “other authoritative figures in the judicial circles outside and inside the government” participated in the Association’s formation.\textsuperscript{52} In 1931, Katsutarō Yokoyama headed the Association, which included 50,000 Japanese jury candidates as members.\textsuperscript{53}

Interestingly, the Association included members with opposing views of the future of Japan and its legal system. On the one hand, Baron Kiichiro Hiranuma and Professor Kisaburō Suzuki were associated with the right-wing camp, which aimed to combat the spread of liberal ideas.\textsuperscript{54} Hiranuma, in particular, was famous for promoting the development of Japan’s thought police and for establishing the \textit{Kokuhonsha} nationalist society in 1924.\textsuperscript{55} The society called upon patriots to reject foreign influences and to adhere to the traditional national spirit.\textsuperscript{56} Suzuki was a protégé of Hiranuma, a colleague of Hiranuma’s at the Ministry of Justice, and a member of the \textit{Kokuhonsha} society.\textsuperscript{57} According to an article that appeared in \textit{Hōritsu Shinbun}, Hiranuma and Suzuki were initially opposed to the idea of introducing lay participation in the judicial proceedings in

\textsuperscript{49} See \textit{supra} note 29.
\textsuperscript{50} \textit{Id.}
\textsuperscript{51} \textit{Id.}
\textsuperscript{52} See \textit{infra} section II.7 and accompanying text.
\textsuperscript{54} Shimizu, \textit{supra} note 36, at 8-17.
\textsuperscript{55} JAPAN: AN ILLUSTRATED ENCYCLOPEDIA, \textit{supra} note 37, at 538.
\textsuperscript{56} \textit{Id.}
\textsuperscript{57} Shimizu, \textit{supra} note 36, at 8-17.
However, they ultimately changed their attitudes towards the Jury Act proposal, which led to its successful enactment.\(^{59}\)

Takuzō Hanai and Yoshimichi Hara, on the other hand, were associated with the democratization movement, which aimed to establish a court system that would serve the interests of the people.\(^{60}\) Hanai was a famous criminal attorney, politician, and member of the Lower and Upper Houses of Parliament.\(^{61}\) He represented defendants in high-profile cases, such as the Hibiya Incendiary Incident (Hibiya Yakiuchi Jiken) of 1905 and the High Treason Case (Taigyaku Jiken) of 1910.\(^{62}\) Hara was a renowned civil trial attorney and statesman who shared Hanai’s ambition to increase the accountability of the legal process in Japan.\(^{63}\) Between 1927 and 1929 he served as Minister of Justice in the Tanaka Giichi’s government.\(^{64}\) The Jury Guidebook also mentions Professor Makoto Egi to support the introduction of a jury system in Japan.\(^{65}\) Egi was one of the “authoritative figures in the judicial circles outside of government,” wrote extensively on the subject of jury trials, and co-authored *A View on the Jury System as a Legal Principle* with Hanai and Hara in 1921.\(^{66}\)

The fate of the Japan Jury Association is unclear. It can be assumed, however, that as the number of jury trials in Japan decreased and as the Second World War progressed, the decision was made to suspend the Association’s activities.\(^{67}\) The Jury Guidebook testifies to the activities of the Association. The text of the booklet makes one appreciate the authors’ devotion to make known the benefits of the jury system to the general public.

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\(^{58}\) Hōritsu Shinbun reported in 1923 with a certain degree of amazement that the opinions of Hiranuma and Suzuki changed after the cabinet of Takashi Hara was established in 1918. *Baishin Hōan No Tsūka O Shukusu*, *supra* note 18, at 3.

\(^{59}\) *Id.*

\(^{60}\) Shimizu, *supra* note 36, at 18-34.


\(^{62}\) *Id.*

\(^{63}\) *Id.* at 21-22.

\(^{64}\) *Id.* at 21, 28-29.

\(^{65}\) See *infra* section II.7 and accompanying text.

\(^{66}\) MAKOTO EGI ET AL., *BAISHIN SEIDO HŌRIKAN [A VIEW ON THE JURY SYSTEM AS A LEGAL PRINCIPLE]* (Hiramatsu Ichizō 1921); *see also* MAKOTO EGI, 4 REIKAI ZENSHŪ [FULL COLLECTION OF REIKAI’S WORKS] 341-454 (Reikai Zenshū Kankōkai 1927). “Reikai” was Egi’s pseudonym.

\(^{67}\) The number of jury trials during the period when the Jury Act was functioning were: 1928 (31), 1929 (143), 1930 (66), 1931 (60), 1932 (55), 1933 (36), 1934 (26), 1935 (18), 1936 (19), 1937 (15), 1938 (4), 1939 (4), 1940 (4), 1941 (1), 1942 (2). *JAPANESE LEGAL SYSTEM: INTRODUCTORY CASES AND MATERIALS* 482 (Hideo Tanaka & Malcolm D.H. Smith eds., Tokyo University Press 1976).
D. Notes on the Illustrations

The illustrations that appear in the Jury Guidebook are arguably as important as the text in terms of the guidebook’s main objective, which is “to provide a summary of the main points regarding the Jury Act for jury candidates in the hope that this will enable readers to carry out their duty flawlessly and impartially.”

For the contemporary reader, these illustrations are valuable not only because they make it easier to understand the text, but also because they serve to deepen our understanding of the context in which the guidebook was written. This article reproduces the illustrations in the same order that they appear in the original.

E. The Discovery of the Jury Guidebook and Notes on Translation

The Jury Guidebook was discovered by Professor Satoru Shinomiya, who received it from the descendants of Mr. Yoshino, a juror in pre-war Japan. This translation is based on a reprint of the guidebook published in 1999. In translating, the main objective was to stay as close as possible to the original. For the sake of clarity, information that might be useful for the contemporary reader was added in the footnotes. All footnotes have been added by the translator and are not a part of the original text.

F. Conclusion

In light of the current introduction of the saiban’in jury system, the Jury Guidebook now appears to be significant as an important historical document. Not only does it provide contemporary readers with detailed and, in many instances, previously unknown information about the introduction process and the functioning of the Shōwa-period jury system, it is also a source that can tell us a lot about the period in which it was written. The fact that it was published by an organization that aimed to promote the virtues of the pre-war jury system is another feature of the guidebook that makes it an important piece of historical evidence.

In contemporary Japan, preparations are underway for the introduction of the saiban’in system. Many pamphlets and books are being published to familiarize the public with the details of the new system. Mock trials are being organized and new courtrooms with special seats for lay assessors are in the process of construction. In addition,

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68 See supra note 28.
69 DAI NIPPON BAISHIN KYÔKAI HENSHŪBU, supra note 1, at iii.
70 One-hundred and seventy courtrooms have been reformed all over Japan to provide for seats for lay assessors. (Saiban’in Jidai) Mezase Yasashii Saibansho; Shimin Ni Haisetsu O Seibi [(The Lay Assessor Era) Aiming for Courts that Are Close to the People]: Providing Facilities that Take People’s [Needs] into Consideration], ASAHI SHINBUN, July 16, 2007, at 29.
public viewings of promotional films are being held, a significant number of advertisement posters are being printed, and excursions to courts are being offered in cities across Japan. These 2007 strategies appear to be remarkably similar to those used in pre-war Japan. Thus, the *Jury Guidebook* and other materials published when the jury system was functioning in the *Shōwa* period provide us with many insights.

II. **Translation**

The Jury Guidebook: Includes Journal of Trial Participation

**Preface**

The Jury Act (*Baishin Hō*) is a law of unprecedented importance in our country. It is truly regrettable that the authorities concerned who spent an immense amount of funds on promoting the law prior to its implementation stopped overseeing this piece of legislation once it was enforced. Drums and flutes should play loudest not before the dance starts—a period during which the objective is only to attract people—but after the dance has started. The spirit of the Jury Act has not yet penetrated all of the Japanese society, and the statistics of the number of jury trials reflects this fact. So far, laymen have considered law as a field that is extremely difficult to understand, and people in our country have traditionally been indifferent to the law. This guidebook aims to provide a summary of the main points regarding the Jury Act for jury candidates in the hope that this will enable readers to carry out their duty flawlessly and impartially and is therefore written in extremely plain language. We firmly believe that in the event you are called to serve as a juror, bringing this booklet along with you would be of some benefit, in spite of it being very short. We have included a journal for trial participation, so if our readers would care to use it for taking notes, this journal will certainly become a precious souvenir and an item of honor that is likely to decorate your family archives for a long time.

August, the sixth year of *Shōwa*.  

**Table of Contents:**

1. Everyday Life and Law
2. The Court of People's Practical Wisdom
3. The Meaning of Trial by Jury
4. The Jury Systems in Foreign Countries

---

71 *Bideo Ya Hōtei Kengaku, Saiban'in Seido O Manabu; Shiminra Ga Manabu Matsue Chisai De/ Shimane Ken* [Video [Viewings] and Courtroom Excursions, Citizens Learn about the Lay Assessor System; Matsue District Court/ Shimane Prefecture], *Asahi Shinbun*, July 1, 2007, at 28.

72 1931.
5. The Spirit of Our Country’s Jury Act
6. Our Country’s Jury System Is Unique in the World
7. The Implementation of Jury Trials
8. An Explanation of Standard Court Procedure
   The investigation
   Charging the suspect
   Pre-trial hearings (*yoshin*)
   Trial
9. Cases Tried by Jury
   Cases designated by law to be tried by jury
   Cases that can be tried by jury upon request
10. Waiving Trial by Jury and Confessions
11. Qualifications for Jury Service
12. Jury Candidates
13. Persons Ineligible for Jury Service
14. Persons Excluded from Jury Service
15. Persons Excused from Jury Service
16. Persons Who May Withdraw from Jury Service
17. Procedures for Formation of the Jury Panel
   Method of jury selection
   What is meant by peremptory challenge
   Peremptory challenge procedure
18. Jury-Trial Hearing Procedures
   Court seating
   Court clothing
   Jury duty instructions
   The oath of jurors
   The statement of the prosecutor
   Questioning of the defendant
   Questioning of witnesses
   Examination of evidence
   Questioning by the jurors
   The closing arguments of the prosecution
   Arguments of the defense
   Instructions from the presiding judge
19. Question Sheet (*Monsho*) for Jurors
   Main questions
   Supplementary questions
   Other questions
20. Jury Deliberations and Submission of Answers
   Verdict
   Responses
21. Completion of Jurors’ Responsibilities
22. Adoption and Revision of Jurors’ Responses
23. Appealing the Jury Decision *Kōso* Is Not Possible
24. Remuneration for Jury Service
   Traveling allowance
Daily allowance
Accommodation allowance
25. Penal Provisions Regarding Jurors
Examples of cases when jurors failed to report to court
Examples of cases when jurors leaked information regarding deliberations
26. Jury Accommodation
27. The Rules of Conduct for the Jury
Avoid having preconceptions
Do not let yourself be swamped by emotions
Listen calmly to the arguments of the defense
Rid yourself of favoritism and refrain from being influenced by public opinion
28. The Activities of the Japan Jury Association
Appendix 1. Layout of the Jury Courtroom
Appendix 2. Journal for Taking Notes during the Trial

1. Everyday Life and Law

If each of us, members of the Japanese nation, attempts to calmly consider our everyday activities, many may find it surprising to hear that there exists a relationship between these activities and law.

Firstly, why is it that we can carry out our daily activities with a sense of security? It is due to the protection that law affords us. In the event somebody does something bad to us, we can immediately seek protection from law. If somebody causes us harm or damages our reputation, we can take legal steps against that person. Such acts as marriage and child-birth require the issuance of notifications to authorities in accordance with the law. When property is purchased, this transaction needs to be registered. The procedures of drawing a bill or writing a receipt cannot come into effect unless all the requirements set forth by law are satisfied. Even when one goes outside and takes a car or train ride, or boards a steam ship, each of these actions is related to law.

Despite this fact, apparently, there are many people who often say with a certain degree of pride: “Because I have not done anything wrong, I have nothing whatsoever to do with law, consequently, I have never been past the gate of a courthouse.” Now that Japan has become a splendid constitutional state, this line of reasoning does not hold true. Our contemporary court system was of course formed after the Meiji Restoration. Before that, during the feudal era, when the samurai government was in charge, the actions of statesmen were guided primarily

73 The Plan of a Jury Courtroom is reproduced in the Illustrations section of this paper. See infra section III.28.

74 The Journal of the Trial Participation is reproduced in the Illustrations section of this paper. See infra sections III.29, III.30, III.31, and III.32.
by the principle that “law is something to be followed, not known.” Law was coercively imposed on the people, and the public therefore was completely uninterested in its provisions. These attitudes have since persisted and have come to constitute what is now called the traditional way of looking at the law, and this perspective has been difficult for our people to rid itself of.

2. The Court of People’s Practical Wisdom

The so-called *oshirasu* court system of the feudal era\(^{75}\) was rapidly succeeded by the court system of the Western type. More than fifty years have passed, and in October, the third year of Shōwa,\(^{76}\) the unprecedented system of trial by the people—jury trial—came into effect in our country. As a result, the citizens of Japan have come to participate in trial hearings in the capacity of jurors and have been entrusted with the important duty of making decisions regarding points of fact. Unfortunately, the number of people who do not know what the Jury Act is or what jurors should do is still far from being small. Trials by jury are customarily referred to as “trials of practical wisdom,” which reflects the extent to which jury trials rely on the common sense of jurors. While knowing the technicalities of the provisions of the criminal law, or of the Code of Criminal Procedure is not necessary, getting acquainted with the essence of the jury system and acquiring an understanding of what kind of an attitude to have towards participating in court deliberations as a juror is not only beneficial for prospective jurors, but is an obligation of all Japanese citizens. This is a point that cannot be overemphasized. In what follows, we attempt to provide an explanation of the system in a very simple manner to help you understand it sufficiently.

3. The Meaning of Trial by Jury

To put it simply, the jury is a system by which legal proceedings are carried out not only with the participation of professional judges but also with the participation of the members of the general public who are not professionally trained. Jurors discuss the points of fact regarding the incident—that is, they evaluate the question of what the defendant has

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\(^{75}\) The word *shirasu* literally means “white sandbar” and refers to courtyards, spread with white gravel, in commissioners’ offices of the Edo period (1600-1868) that were used for adjudicating civil and criminal cases. The word *oshirasu* was used to refer to the court system that existed then. If the defendant was a member of the lower classes, he or she was made to sit on the white gravel during the trial hearing, while upper-class defendants, such as the samurai, sat on the stairs leading from the gravel to the commissioner’s desk. *JAPAN: AN ILLUSTRATED ENCYCLOPEDIA*, supra note 37, at 1396.

\(^{76}\) 1928.
done and deliberate whether the actions of the defendant constitute a crime. They then answer the questions that are posed to them by the judge. If the judge decides that the findings of the jury are just, he accepts them and then decides on an appropriate sentence for the defendant. Unlike jurors in other countries, jurors in Japan do not directly decide on the sentence. Making decisions concerning the fundamental questions regarding points of fact, which lay the groundwork for the determination of the question of whether the accused is guilty or not, however, is a very important responsibility of jurors. Serving as a juror in the divine courts of justice that carry out proceedings, most humbly, in the name of His Majesty the Emperor of Japan is a great honor and a duty comparable to that of serving in the Imperial army.

4. The Jury Systems in Foreign Countries

Abroad, the jury system has been employed since old times, and in the United Kingdom, for instance, the introduction of the jury system dates back seven hundred years. In France, the system was introduced one hundred and forty years ago, at the time of the French revolution, and at present, there are only three countries in the West that do not have the jury system—Turkey, Spain, and Holland.

There exist several types of jury systems. These can be broadly divided into two categories—the civil jury and the criminal jury. The civil jury decides on the points of fact in cases involving property disputes and in suits concerning the social position of parties involved, while the criminal jury decides on cases involving criminal offences.

The criminal jury can be subdivided into grand jury (indictment jury) and petit jury (trial jury). The former decides on whether or not to bring charges against the accused and evaluates the validity of the case.

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78 The authors of the guidebook are not entirely correct in this observation. A Republican decree of April 27, 1931 reinstated trial by jury in Spain. Thus, when this guidebook was published (August 1931) jury trials were functioning in Spain. See Steven C. Thaman, Spain Returns to Trial by Jury, 21 HASTINGS INT’L & COMP. L. REV. 241, 249 (1997-1998); Steven C. Thaman, Europe’s New Jury Systems: The Cases of Spain and Russia, in WORLD JURY SYSTEMS 319 (Neil Vidmar ed., 2000). Holland had a jury system during the period when it was occupied by France (1811-1813), and the system was abolished immediately after it became an independent state. Vidmar, supra note 77, at 430.
presented by the prosecutor. The latter, on the other hand, makes decisions on points of fact regarding a case in which the accused has been indicted and has been found guilty by the judge in the course of preliminary hearings. The jury system in our country belongs to the latter type, petit trial jury.

5. The Spirit of Our Country’s Jury Act

In the United Kingdom, the jury system was adopted in response to the demands of the public who had long suffered from the oppression by the authorities and had their life and property interests infringed upon by the judges’ arbitrary decisions. Other countries adopted the jury system on similar grounds.

The reasons behind the introduction of jury trials in our country are fundamentally different from those that triggered the implementation of the system in other countries. In Japan, the citizens did not demand that this system be introduced and did not suffer from the trial system that preceded it. The scrupulous fairness of Japanese courts was unrivaled in the world and was exceptional in that it was trusted by the citizens unreservedly. The reasons for introducing the jury system lie in the essence of the constitutional state.

The Japanese Empire is graciously ruled by the line of Emperors unbroken for ages eternal, and the supreme power in the Empire lies with the Emperor alone, which is something that does not require any additional explanation. Consequently, all powers of the state are the prerogative of the Emperor. The establishment of the constitutional form of government that implies that state actions are to be based on the articles of the Constitution and that the people are to be allowed to participate in national administration is nothing else but an expression of the Emperor’s care for His people. Now in our country there are three branches of government: the legislative, the judicial, and the executive. The legislative branch comprises the members of the Imperial Diet who are representatives of the people and who are given the power to give consent [to decisions regarding the annual budget]. With regard to the administrative branch, the development of the system of self-governance is illustrated by the establishment of prefectural, town, and village assemblies in various regions of the country. Thus, Japanese citizens are

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79 Article 64 stipulates:

The expenditure and revenue of the State require the consent of the Imperial Diet by means of an annual Budget. Any and all expenditures overpassing the appropriations set forth in the Titles and Paragraphs of the Budget, or that are not provided for in the Budget, shall subsequently require the approbation of the Imperial Diet.

Meiji Kenpō, art. 64 (1889).
now participating in both the legislative and the executive branches of government.

Until recently, the judiciary was the only branch of power that did not allow for public participation, and justice was carried out exclusively by professional judges. That was because the functioning of the judicial system includes the most important objectives among the affairs of the state, such as the protection of the subjects’ assets, the maintenance of law and order and of social stability. More than forty years have passed since the promulgation of the Constitution, and the Japanese people have accumulated sufficient experiences and have been prepared for participating in the national administration. In addition, the realities of the world have become more complex, and allowing for public participation in certain trial proceedings is likely to result in an even higher level of trust in the judicial system on the part of the ordinary citizens. It is also a good opportunity for people to develop their knowledge and understanding of law, which, in turn, should enable the operations of the court system to be carried out smoothly. The aforementioned arguments represent the spirit behind the introduction of the jury system in Japan.

6. Our Country’s Jury System Is Unique in the World

As was discussed in section four, above, the Jury Act provides for petit jury only for criminal trials, and it was this type of jury system that was proposed for introduction in Japan from the very start. The reasons for this include the fact that as we have already mentioned, the situation was such that the majority of citizens were ignorant of the law and lacked the necessary knowledge regarding this field and were known in the West as a nation that is notoriously cold towards such concepts as rights and duty. The Japanese people possessed neither knowledge nor experience regarding the jury system. It was highly risky therefore to introduce the institution of jury service to all trials, as this could jeopardize the administration of justice in the country. Civil cases in particular involve specialist knowledge of legal matters, and it was decided that deliberating these cases would be hard for jurors, so the civil jury was not introduced in Japan.

In the European countries, as we emphasized earlier, it was the opposition of the people to the abuse of royal authority that triggered the introduction of the jury system. Consequently, once the system was introduced, the opinions of the jury were made to be of absolute authority, while those of the judge were restricted, and courts of justice became susceptible to the interference of emotions. As a result, solid cases for prosecution end up being rejected by the jury, leaving no choice to the judge but to declare the accused “not guilty.” The French jury’s verdict of “not guilty” in the recent murder case where Madame Caillaux, the wife of
the Prime Minister of France, was the defendant is one example of how this can happen.\footnote{The reference here is to the trial of Madame Henriette Caillaux, wife of Joseph Caillaux who served as the Minister of Finance in the French government (1899-1902 and 1906-1909) and subsequently became the Prime Minister of France (1911-1912). Madame Caillaux was tried in the Assize Court of the Seine for the murder of Gaston Calmette, editor of the Figaro, who was found dead on March 14, 1914. Madame Caillaux admitted to murdering the newspaper editor and pleaded her case as a crime of passion. Madame Caillaux was acquitted on July 28, 1914. \textit{See} Edward Berenson, \textit{The Trial of Madame Caillaux} 13-42, 240-241 (University of California Press 1992) (discussing Caillaux’s trial).}

To avoid the aforementioned flaws and difficulties, in our country, the decisions of jurors are not binding on the court. In the event the jurors are led by their emotions towards unfair decisions that the judge deems unreasonable, another jury can be called to deliberate the case again, and this can be repeated as many times as is necessary to ensure the fairness of decisions. This provision is not to be found in any other jury system in the world. Japan’s Jury Act is unique in this respect, and this provision is therefore a source of great pride for us.

7. The Implementation of Jury Trials

The Jury Act in our country is based on the suggestions of three authoritative figures in the judicial circles outside of government—the late Professor Makoto Egi,\footnote{Makoto (alternative reading: Chū) Egi (1858-1925) got his Doctorate degree from Tokyo Imperial University in 1900. \textit{Major 20th Century People in Japan: A Biographical Dictionary}, \textit{supra} note 53, at 422; \textit{Concise Japanese Biographical Dictionary} 200 (Masaaki Ueda et al. eds., 3rd ed., Sanseidō Ltd. 1994). After working for the Police Department, the Ministry of Justice, the Ministry of Agriculture and Commerce, and the Ministry of Foreign Affairs, Egi assumed the post of secretary to Minister of Internal Affairs Yajirō Shinagawa. \textit{Id}. Professor Egi was one of the eighteen scholars and attorneys who in 1885 established the \textit{Igirisu Hōritsu Gakkō} (English Law School), which became Chuo University in 1905. \textit{Id}. In 1893, Makoto Egi opened his legal practice. He also served as President of the Tokyo Bar Association. \textit{Id}.} Professors Yoshimichi Hara\footnote{Yoshimichi Hara (1867-1944) opened his legal practice in 1893. \textit{Major 20th Century People in Japan: A Biographical Dictionary}, \textit{supra} note 53, at 53. In 1920, he became a member of the Jury Act Advisory Committee (\textit{Baishin Hō Shimon linkai}). \textit{Taichirō Mitani, Kindai Nihon no Shihōken to Seito: Baishinsei Seiritusu no Seiji Shi} [Judicial Power in Modern Japan and Political Parties: The Political History of the Creation of the Jury System] 178, 213-214 (Hanawa Shobō 1980). During the period between 1930 and 1938 Hara served as the President of Chuo University. \textit{Major 20th Century People in Japan: A Biographical Dictionary}, \textit{supra} note 53, at 53.} and Takuzō Hanai.\footnote{Takuzō Hanai (1868-1931) was a famous criminal attorney, politician, and member of the Lower and Upper Houses of the Imperial Diet. \textit{Japan: An Illustrated Encyclopedia}, \textit{supra} note 37, at 496. He was the first person to receive a doctoral
approval of then Prime Minister Takashi Hara and was the subject of deliberations in the legislative council (hōsei shingikai) and then in the Jury Act research commission (baishin hō chōsa iinkai). It was submitted to the Diet in the ninth year of Taishō. The twists and turns of the deliberations during the meetings of the research commission are now famous because of the memoirs of Professor Hanai, and it appears that the efforts of the head of the committee, Professor Nobushige Hozumi, were exceptional. The Jury Act was approved during the forty sixth session of the Diet, promulgated on April 18, the twelfth year of Taishō, and enforced after a five year preparation period, on October 1, the third year of Shōwa.

If one considers the length of the text of the Jury Act, this piece of legislation may appear to be insignificant as it is short, consisting of a little more than one hundred and ten articles. Due to the fact that this Law provides for lay participation in the trials that are carried out in the name of the Emperor, however, it is one of the most important laws since the beginning of time. It is because of this that the government has spent an enormous amount of money—five million yen—from public funds to prepare for the introduction of the system. In all district courts across the country courtrooms with seats for jurors were built along with jury accommodation facilities, the number of judges and prosecutors was

degree in law from a Private University (Igirisu Hōritsu Gakkō (English Law School), which later became Chuo University). Id. at 203; Chuo University, http://www2.chuo-u.ac.jp/global/info/feature/hakumon.html (last visited Apr. 9, 2008). Professor Hanai served as President of Tokyo Bar Association. His career included representing the accused in such high-profile cases as Hibiya Incendiary Incident (Hibiya Yakiuchi Jiken) of 1905 and the High Treason Case (Taigyaku Jiken) of 1910. JAPAN: AN ILLUSTRATED ENCYCLOPEDIA, supra note 37, at 525, 532. Hanai is famous for being a proponent of abolishing the death penalty in Japan. MAJOR 20TH CENTURY PEOPLE IN JAPAN: A BIOGRAPHICAL DICTIONARY, supra note 53, at 2010. Professor Hanai was actively engaged in the drafting of the Jury Act. JAPAN: AN ILLUSTRATED ENCYCLOPEDIA, supra note 37, at 496. See Shimizu, supra note 36, at 19.

84 Takashi (Kei) Hara (1856-1921) served as Prime Minister during the period between 1918 and 1921. JAPAN: AN ILLUSTRATED ENCYCLOPEDIA, supra note 37, at 502. Prime Minister Hara is known as the first Prime Minister to form a party cabinet in accordance with the principles of parliamentary government. Id.

85 1920.

86 Nobushige Hozumi (1856-1926) is famous as a scholar of legal history and drafter of the Japanese Civil Code. JAPAN: AN ILLUSTRATED ENCYCLOPEDIA, supra note 37, at 576. He was appointed to the House of Peers in 1890 and to the Privy Council in 1916, becoming president of the latter body in 1925. Id.

87 1923.

88 1928.

89 The Jury Act consists of 114 articles.
increased, and many judges and prosecutors were sent to Europe and America to observe the jury system procedures in these countries. Lectures were organized in various regions of Japan, pamphlets were published and distributed. The jury system was promoted in the cinema, through radio, newspapers, and magazines in various ways on a scale that is unprecedented since the promulgation of the Constitution. This is also indicative of the importance of the Jury Act for our state.

8. An Explanation of Standard Court Procedure

Starting from here, we will explain the contents of the Jury Act, and it is this part of the booklet that will be of primary importance for jury candidates. As the Jury Act is related to the area of Criminal Law, it would be beneficial to first gain an understanding of some of the features of standard criminal procedure, and it is with outlining these that we begin this section.

Immediately after receiving the information regarding the fact that an offence has taken place—this may for instance be in the form of a report of a judicial police officer, or a complaint, or the notification that a suit has been filed—the prosecutor opens an investigation through coordinating the work of the relevant agencies. If as a result of a scrupulous interrogation, sufficient evidence is revealed, or if suspicions grow that the accused is guilty and it is determined that the offence requires punishment, then even in the event the accused does not confess to committing the crime, the prosecutor charges the suspect. In the event the crime is a serious offence or if it is of complicated nature, then it is administered by the district court, while all other crimes are dealt with by ward courts. Some of the cases that go to the district court can be immediately put on trial, while others need to first become the subject of pre-trial hearings (yoshin). In fact, the number of cases that go directly to trial is very small. In the event the prosecutor requests a pre-trial hearing, the magistrate (yoshin hanji) scrupulously examines the case, and if as a result of this investigation it is determined that there are sufficient reasons for suspecting the accused of criminal activity, then the magistrate orders that the suspect be tried. This is what is implied by the words “pre-trial decision” that frequently appear in newspapers. If the magistrate

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90 In pre-war Japan, ward courts (Ku Saibansho) were the courts of first instance over small claims and had exclusive jurisdiction over bankruptcy, land registration, and noncontentious matters related to family law and succession. See Percy R. Luney, Jr., The Judiciary: Its Organization and Status in the Parliamentary System, 53 LAW & CONTEMP. PROBS. 135, 137 (1990). These were the only courts where one judge presided. Id. District courts (Chihō Saibansho) were courts of first-instance, general original jurisdiction, and appellate jurisdiction from the ward courts. Id. Two other types of courts existing in pre-war Japan were the Court of Appeal (Kōsoin) and the Grand Court of Judicature (Daishin'in). Id.
determines that the case does not involve a crime or that there is not enough grounds for suspecting the accused of criminal activity and for sending the case to trial, then that case is dismissed and the suspec is let go.

With regard to cases that are tried, before the actual trial hearings start, preparation procedures for trial (kōhan junbi tetsuzuki) take place. If in the course of these procedures the accused confesses, then the subsequent court hearings take place in accordance with standard court procedure. If on the other hand, the accused continues to deny the facts and if the case is of the kind described in Article 2 of the Jury Act, then it is referred to as a case designated by law to be tried by jury (hōtei baishin jiken), and the jury trial opens.

9. Cases Tried by Jury

The Jury Act in our country, as was mentioned earlier, stipulates that only criminal offences are to be tried by jury. There are two types of such cases—those that are designated by law to be tried by jury (hōtei baishin jiken) and those that can be tried by jury upon request (seikyū baishin jiken).

Cases designated by law to be tried by jury include those involving murder, arson and other crimes that can be penalized by death or life-time penal servitude and imprisonment. These cases are in principle tried by jury, unless the defendant refuses jury trial.

Cases that can be tried by jury upon request are limited to those cases that involve such crimes as larceny, fraud, embezzlement, and forgery for which the penalty is more than three years of penal servitude or imprisonment and where the accused has requested a trial by jury.

Many other crimes are punishable by terms of imprisonment that exceed three years. These crimes are defined in special laws, and discussing them all here would be impossible, therefore, we will only give a few examples.

Article 225 of the Criminal Code states that a person who kidnaps another by force or enticement for the purpose of profit, indecency, or marriage is to be punished by imprisonment with hard labor for no less than one year but not more than ten years. As this crime potentially involves a penalty that may exceed three years of imprisonment, this is a case that can be tried by jury upon request.

Article 205 of the Criminal Code states that a person who causes another to suffer injury resulting in death is to be punished by imprisonment with hard labor for a definite term of not less than two years. As the maximum length of a definite term of penal servitude with

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91 “Crimes punishable by death or life-time penal servitude and imprisonment.” Jury Act, supra note 5, art. 2.
hard labor is fifteen years, this Article in fact implies that this crime is punishable by imprisonment with hard labor “for a term of not less than two years and not more than fifteen years.” Therefore, cases involving this Article are also cases that can be tried by jury upon request.

Article 246 of the Criminal Code states that a person who defrauds another of property is to be punished by imprisonment with hard labor for not more than ten years. As the minimum length of penal servitude is one month, Article 246 implies that for this crime the penalty is imprisonment with hard labor for a term of more than one month and less than ten years. Consequently, this case is one that can be tried by jury upon request.

The request for jury trial should be made prior to the first day of the trial and within ten days after receiving the summons. The request is not accepted after that.

Certain cases falling under the Articles discussed above are not eligible for trial by jury. These include cases that involve: 1) crimes against the members of the Imperial Family; 2) crimes related to instigation of internal disturbances as well as instigation of foreign aggression,92 crimes related to foreign relations,93 and crimes of disturbance;94 3) offences against military law and crimes related to military secrets; 4) violations of the Election Law;95 and 5) crimes related to attempts to overthrow the government and those involving the refusal to recognize private property.

10. Waiving Trial by Jury and Confessions

The Jury Act in our country does not impose jury trial on those defendants who do not wish to be tried by jury. In the event the accused does not want to be tried by jury, even cases designated by law to be tried by jury can be tried by professional judges. Instances when this happens are referred to as “jury trial waivers.” The procedures for waiving trial by

92 KEIHŌ, supra note 26, arts. 81, 82 (enumerating Instigation of Foreign Aggression and Assistance to the Enemy, respectively).

93 KEIHŌ, supra note 26, arts. 92, 93, 94 (enumerating Damage of Foreign National Flag, Preparations or Plots for Private War, and Violations of Neutrality Orders, respectively).

94 Article 106 stipulates that “a person who assembles a crowd and commits an act of assault or intimidation thereby commits the crime of disturbance” and Article 107 applies to cases “when a crowd assembles for the purpose of committing an act of assault or intimidation and fails to disperse after being ordered three times or more to disperse by a public officer.” KEIHŌ, supra note 26, arts. 106, 107 (enumerating Disturbance and Failure to Disperse, respectively).

95 Shūgīin Giin Senkyo Hō [House of Representatives Members Election Act], Law No. 73 of 1900, as amended by Law No. 38 of 1902, Law No. 39 of 1902, Law No. 58 of 1908, Law No. 65 of 1910, Law No. 60 of 1919, Law No. 47 of 1925, and Law No. 81 of 1926 [hereinafter Members Election Act].
jury are not described in the Jury Act, therefore, a verbal or written statement should be sufficient. The indication that one wishes to waive jury trial should be made no later than the time when the prosecutor makes the statement concerning the facts constituting the offence charged.\textsuperscript{96}

With regard to cases where jury trial can be requested, the defendant who requested trial by jury is allowed to withdraw this request after the trial hearings have started. This procedure is referred to as “withdrawal of jury trial request.” The period during which such a request can be made is the same as that for the procedure of waiving jury trial.\textsuperscript{97}

In the event the accused admits to committing the crime—that is, confesses—either during the preparation procedures for trial or during trial hearings, that case is not tried by jury, as it is no longer necessary to seek the opinion of jurors regarding the facts constituting the offence charged, and the application of legal provisions and sentencing are handled in accordance with standard court procedure. The confession referred to here is not the one that may be made during the interrogations carried out by the prosecutor or during pre-trial hearings. If a defendant who confessed during the interrogation by the prosecutor or during the pre-trial hearing, later, either during the course of preparation procedures for trial or during the trial, negates that confession, then that defendant will be tried by jury.

In the event there are several defendants in a case and only one has confessed, then only those defendants who have not confessed will be tried by jury.

11. Qualifications for Jury Service

In order to become a juror, a person needs to satisfy the following four requirements: 1) be a Japanese subject, be male, and more than thirty years of age; 2) must have lived in the same city, town, or village for not less than two consecutive years; 3) must have been paying more than three yen in direct national taxes for more than two consecutive years; 4) be able to read and write.

Every year on September 1, an inquiry is made to determine how many people satisfy the aforementioned requirements. Then the necessary number, as decided upon by the President of the District Court based on his expectations, is selected by lot.

As becoming a juror implies participating in the administration of justice in our country, item one stipulates that being a juror is a right that is reserved exclusively to Japanese nationals, and a foreigner’s participation is not accepted under any circumstances. In addition, the minimum age for jury service has been set at thirty years of age, and that

\textsuperscript{96} Jury Act, supra note 5, art. 6.

\textsuperscript{97} Id.
is because jury service requires possessing sufficient experience and knowledge. Furthermore, jury service is restricted to men and excludes women, and this is due to the fact that as an examination of the current state of our society reveals, now is not yet the right time to allow women to serve as jurors.

The second requirement states that a person needs to have lived in the same place consequently for not less than two years, and this is due to the fact that persons who frequently travel from one area to another are likely to encounter many difficulties if they become jurors.

The third requirement states that only those who pay no less than three yen in direct national taxes are eligible for jury service. This is based on the understanding that those persons who possess neither land nor other property, or those whose business fails to yield sufficient profit are likely to encounter difficulties when serving as jurors.

The types of direct national taxes include: 1) land tax; 2) schedule III income tax; 3) business profits tax; 4) placer lot tax; 5) schedule II capital interest tax; 6) mining activities tax; 7) urban residential property tax; 8) fishing tax. National business taxes fall under the category of business profits tax. There are no restrictions as to the place where these taxes are paid, therefore, if they are paid anywhere within Japan and within Karafuto for two consecutive years, this is acceptable.

The fourth requirement stipulates that jurors must be able to read and write. During a trial hearing, jurors may need to refer to pieces of written evidence, and it is frequently necessary to write things down. Therefore, unless a person can read and write, it is impossible for that person to perform jury duty. As for the extent of required ability, it is the same as that necessary for conducting daily activities—that is, the level of a primary school graduate.

The names of those individuals who satisfy the aforementioned requirements are listed by the heads of the cities, towns, and villages every year on September 1. This list is called “The List of Individuals Eligible for Jury Service” and includes not only the names of candidates, but also their social status, profession, address, date of birth, and the amount that each has paid in taxes. The number of individuals that are eligible for jury service across Japan currently stands at around 1,700,000 to 1,800,000 people.

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98 *Daisanshu Shutokuzei*. Scheduler income taxation was introduced in Japan in 1899, and income tax was divided into three schedules: I (corporate income, tax rate 2.5%), II (interest, tax rate 2%), and III (personal income, tax rate 1% to 5.5%). See *Tax Bureau (Ministry of Finance), The Comprehensive Guidebook of Japanese Taxes* 2 (2006), available at http://www.cas.go.jp/jp/seisaku/hourei/data/jt.pdf.

99 Karafuto is the Japanese name for Sakhalin.
12. Jury Candidates

First, the President of the district court determines the number of jurors that will be required for adjudicating cases that year. Next, he distributes this number among the cities, towns, and villages within the jurisdiction of that court and sends a notification to the heads of these cities, towns, and villages who then choose by lot the jury candidates at a ratio of one juror to three jury candidates. The names of jury candidates are compiled into a list, which is called “The List of Candidates for Jury Service.” This list, just like “The List of Individuals Eligible for Jury Service,” contains the names of candidates, their social status, occupation, address, date of birth, and the amount paid in taxes. This year—that is, the sixth year of Shōwa—100—the number of candidates for jury service in all of Japan totaled 78,222 people. Being selected as a jury candidate from the list of some 1,700,000 to 1,800,000 individuals eligible for jury service is an exceptional honor and privilege.

13. Persons Ineligible for Jury Service

Certain persons who satisfy the requirements for jury service that were discussed above nevertheless cannot serve as jurors. Persons belonging to this category include:

- Persons who have been adjudged incompetent or quasi-incompetent;
- Persons who have suffered bankruptcy and have not been rehabilitated;
- Persons who are deaf, mute, or blind;
- Persons who have been sentenced to penal servitude or to imprisonment for more than six years, and those who have been sentenced for a crime (jūzai) in accordance with the former Penal Code and those who have been sentenced to imprisonment with hard labor (jūkinko).103

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100 1931.

101 The Old Penal Code adopted the French classification of offences into “crime” (jūzai), “délit” (keizai), and “contravention” (ikeizai).

102 The reference here is to Kyū Keihō [Old Penal Code], Law No. 36 of 1880, as amended by Law No. 11 of 1898, as last suspended by Law No. 45 of 1908.

103 Literally “heavy imprisonment.” According to the Penal Code of 1880, this penalty was most often used for offences falling under the “délit” category and provided for imprisonment with hard labor of not less than eleven days and no more than five years. It was distinguished from keikinko (literally “light imprisonment”) in that “heavy
It is considered inappropriate to let persons falling under the aforementioned categories participate in the court system and contribute to the process of administration of justice. They are therefore ineligible for jury service.

14. Persons Excluded from Jury Service

This category includes those persons who are eligible for jury service but who for various reasons are not asked to serve as jurors. These include:

- Ministers of State;
- Acting judges, prosecutors, army and navy lawyers;
- Acting President and counselors of the Administrative Court;\(^\text{104}\)
- Acting officials of the Imperial Household;
- Serving members of the army and of naval forces;
- Acting heads of administration of towns and prefectures (governors), island governors (tōshi), and heads of the sub-prefectures of Hokkaido;
- Acting police officials;
- Acting prison officials;
- Acting chief court secretaries and court secretaries;
- Acting revenue officers, customs officials, Monopoly bureau officials;
- Employees of the postal offices, telegraph and telephone agencies, railway and railroad companies as well as ship crews;
- Heads of cities, towns, and villages;
- Attorneys and patent agents;
- Notaries public, bailiffs, and judicial scriveners;
- Primary school teachers;
- Shinto priests, Buddhist priests, and clergy;
- Doctors, dentists, and pharmacists;
- Students and those in training.

Persons in the aforementioned categories are either in jobs that are of significance for the country, or in those professions that are closely

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\(^{104}\) Administrative Court (Gyōsei Saibansho) was provided for by the Meiji Constitution of 1889. In accordance with the Constitution, this court was separate from the judicial system, with jurisdiction only over administrative cases. **Meiji Kenpō**, art. 61. The Administrative Court was abolished with the enactment of the Shōwa Constitution of 1947.
linked to the welfare of the people. As requesting persons in these professions to participate in trial hearings as jurors would infringe upon public interest, it has been decided that they would not be asked to serve as jurors.

15. Persons Excused from Jury Service

Persons who are excused from jury service are those who are eligible for jury service but are excused because of special circumstances, which are listed below:

- When the candidate for jury service is the victim in the case to be tried;
- When the candidate for jury service is a party to a civil suit;
- When the candidate for jury service is a member of the immediate family of the accused, the injured party, or of the plaintiff, or in the event the candidate is expected to assume a position similar to those described;
- When the candidate is the head of the family of the accused, the injured party, or the plaintiff, or belongs to the same household;
- When the candidate is acting as a legal representative of the accused, the injured party, or of the plaintiff and when the candidate is acting as a guardian or conservator of either the accused, the injured party, or of the plaintiff;
- When the candidate is residing together with the accused, the injured party, or the plaintiff, or is employed by him/her;
- When the candidate is the person who has brought charges against the defendant in the case to be tried by jury;
- When the candidate is to serve as a witness or to give expert opinion during the trial to be tried by jury;
- When the candidate is the representative, attorney, or advisor of the accused, or if the candidate is the representative of the plaintiff;
- When the candidate is the judge, prosecutor, or the judicial police official in charge of the case to be tried by jury or is serving as a juror on a different case.

It would be difficult for persons in the aforementioned situations to serve as jurors and make decisions fairly and selflessly. Therefore, they are excused from jury duty.

16. Persons Who May Withdraw from Jury Service
Those who, due to reasons related to their occupation or health status, are permitted to withdraw from jury service are referred to as “persons who may withdraw from jury service.”

- Persons older than sixty years of age;
- Persons whose current occupation is government service or regional public service and those who are in the teaching profession;
- Members of the House of Peers or of the House of Representatives and members of any assembly that was formed in accordance with the law are excused only during times when that assembly is in session.

The reason why persons who are older than sixty years of age are included in item one is because some people in this age group may have problems in their physical or mental health. The government and regional public employees mentioned in item two, above, refer to employees other than those mentioned in the “Persons Excluded from Jury Service” section, while teachers mentioned in item two include those working in governmental, public, or private middle schools as well as those working in establishments other than primary school. Assemblies formed in accordance with the law mentioned in item three imply prefectural, municipal, town, and village assemblies whose members are allowed to refuse jury service only during those times when the respective assemblies are in session. The law does not outline any specific procedures for withdrawing from jury service, therefore, a verbal or written notification of your intention to withdraw will be accepted at the court. The law provides for a penalty for those persons who were summoned to serve as jurors but failed to report to court without making this notification, so please be very careful in this regard.

17. Procedures for Formation of the Jury Panel

17.1 Method of Jury Selection

Twelve jurors are required per case. In the event the contents of the case are extremely complex and it is expected that the hearings will continue for two to three days, however, one or more supplementary jurors are selected. These supplementary jurors are essentially jurors in reserve and are to be called to duty in the event one of the serving jurors either falls sick, or has to withdraw because of unavoidable circumstances.

While supplementary jurors participate in trial hearings in the same capacity as acting jurors, they are not allowed to take part in jury deliberations or to make decisions on points of fact, unless an acting juror cannot fulfill his responsibility.
Regarding the selection of twelve acting jurors and of one or two supplementary jurors, first, the President of the district court decides on the date of the trial hearing, then jurors are selected by lot by one or more court secretaries in such a way that ensures that some are selected from town X, some from village Y, and some from Z city. The thirty-six persons who are selected in this manner from the many jury candidates are then sent summons five days prior to the date of the trial.

It is thirty-six people who are summoned despite the fact that only twelve jurors are needed for a trial to take place. That is because some jury candidates may fall sick, some may need to withdraw due to unavoidable circumstances, and some will need to be excused from jury service. More than twenty-four people need to be in attendance. If less than twenty-four persons are present, then the presiding judge selects the necessary number by lot in order to fulfill this minimum number requirement among the candidates living in the cities, towns, and villages adjacent to the location of the court and summons the persons who had been selected. The selection process is of course also done in the presence of court secretaries.

As soon as not less than twenty-four jury candidates are selected, court hearings that are closed to the public take place in the presence of the judge, the prosecutor, the court secretaries, the defendant, and the attorney. First, the presiding judge hands the documents where the addresses, occupations, names, and ages of jury candidates are stated over to the prosecutor and the defendant. He then asks whether anyone on the list wishes to be excused. This process takes place in order to determine which jury candidates are eligible for jury service. It is during this time that jury candidates first find out about the case they may be judging and also the name of the defendant. If it is determined that some candidates have a valid reason to be excused, or that some have the right to be exempted from jury service, or if some candidates are deemed ineligible for jury service, then these candidates are excused immediately. After the aforementioned procedures have been completed, the prosecutor and the accused carry out a procedure that is called “peremptory challenge.”

17.2 What Is Meant by Peremptory Challenge?

This is a procedure during which the prosecutor and the defendant can exclude those of the jury candidates that they do not want to adjudicate the case, as they may have reason to believe that these candidates will not be able to be fair in their judgments and may conclude that having those persons on the jury panel would not be beneficial. For

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105 The Jury Act is not clear as to the exact number of supplementary jurors, but states that “one or several” supplementary jurors are required. Jury Act, supra note 5, art. 31.
example, the prosecutor may decide that because a certain jury candidate lived close to the accused there is a chance that he knows the defendant from daily experiences and that there were occasions when he received favors from the accused and that he is therefore likely to make a decision in favor of the defendant. The defendant, on the other hand, may think that because a certain jury candidate was a trade rival of his or was unfriendly in daily life towards him, that candidate is unlikely to decide in his favor. If that is the case, the defendant can excuse the candidate from jury service. There is no need to verbally explain the reason why jury candidates are excused.

The word “challenge” has a negative connotation, and this has been the source of many misunderstandings. There is a real-life story about this. A person was called to the Tokyo district court as a jury candidate and considered this to be a great honor to his family and therefore went to the court happily. According to this person, “as soon as the judge read out my name in the courtroom the prosecutor glanced at me and said: ‘excused.’ After this, I was asked to leave immediately. What was wrong with me that I was rejected in spite of the fact that I have never done anything inappropriate in my life? How can I return to my village after being excluded in such a shameful way without any explanation?” This person was angry with the judicial authorities, and such complaints may seem to be perfectly legitimate to those who are not familiar with this procedure. There is nothing shameful about being excused. Please make sure you have this understanding if you are selected as a jury candidate.

17.3 Peremptory Challenge Procedure

After some of the jury candidates are excused and after the required number of candidates eligible for jury service are identified, the presiding judge writes the names only of those jury candidates who are eligible to be jurors on pieces of cardboard that look like visiting cards and puts them into a box that looks like a portable safe. The box is shaken, after which the prosecutor and the defendant are told that they can challenge, for instance, eleven or twelve more candidates. This number is divided evenly between the defendant and the prosecutor, and if the number of candidates to be excused is odd—for example, eleven or thirteen—then an additional elimination right is given to the defendant rather than to the prosecutor. Thus, in such minute details the law in our country favors the defendant.

The presiding judge takes out a card from the box that was referred to earlier and reads the name that is written on it. First, the prosecutor states if he accepts that juror or excuses him. If excused, that jury candidate leaves the courtroom. Next, the defendant accepts or excuses that candidate. If the defendant excuses the candidate, that candidate leaves the courtroom. In the event the defendant accepts the candidate that
was accepted by the prosecutor, then that candidate becomes an acting juror and remains in the courtroom.

This procedure is repeated until twelve acting jurors and one or two supplementary jurors are selected. The jurors remain in the courtroom and sit down in the special seats for jurors in the same order that the cards with their names were taken out of the box. This procedure, starting from calling the jury candidates to come to court and finishing at this point, is called “forming the jury panel.”

18. Jury Trial Hearing Procedures

After the formation of the jury panel—the procedure described in the previous section—has been completed, trial hearings that the members of the public are allowed to attend take place. Here, we will briefly explain the layout of the courtroom and the ordering of the seats for your convenience. Please refer to the illustrations at the beginning of this booklet.  

18.1 Court Seating

The seats that are located right across the room from the place where members of the public are seated and that are placed on a platform that is one step higher than ground level are the seats of the judges. The central seat is that of the presiding judge and the seats to the right and left of that are those of the associate judges. To the left of the seats of the judges is the place where the prosecutor sits, and to the right of the seat of the judges is the seat of the secretary. To the left of the seat of the prosecutor—that is, on the left-hand side of the prosecutor’s seat—are tiered seats of the defense council. On the opposite side of the room are the seats of the jury. The lower section of the defense council’s seat that is surrounded by wooden columns is the seat of the defendant, and it is there that the accused sits together with his or her guards. Directly below the seat of the judge there is a glass display case that is called the “evidence display case” and that contains the evidence related to the case that is on trial. Sometimes one can see fresh-blood-stained clothes in that box. The witness stand—a table that looks like a podium for making speeches and that can be moved from one place to another—is located in the middle of the courtroom.

18.2 Court Clothing

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106 The illustrations referred to here are reproduced in the Illustrations section of this paper. See infra sections III.3, III.16, III.17, and III.28.
The clothes that the judges, prosecutors, and attorneys wear in a courtroom are called court clothing. They are all of the same design and resemble the clothing of the Nara period. The part of the dress from the collar to the shoulders and chest is decorated with arabesque pattern embroidery, and the color of this pattern is purple on the court clothing of judges, red on that of the prosecutor, and white on the attorney’s clothing.

18.3 Jury Duty Instructions

At the beginning of the trial hearing, the presiding judge gives instructions to the jurors. Instructions may include an explanation of the importance of jury duty and of the points in the case tried that require particular attention. The judge may also emphasize the need to not be influenced by feelings of either hatred or sympathy towards the accused and to try to make calm and fair judgments on points of fact. In other words, the judge explains the rules to be observed by jurors in an easy to understand way.

18.4 The Oath of Jurors

Next, the presiding judge reads out the text of an oath to the jurors: “I solemnly swear to follow my conscience and to conduct my duty fairly and in good faith.” The jurors are requested to sign and seal a document that contains this sentence, with which action the oath procedure is concluded.

When the judge reads out the contents of the oath, all people present in the courtroom should stand up.

The presiding judge then tells the defendant to stand up and asks him or her to state his or her name, address, occupation, age and answer some other questions in order to confirm that there is no mistake in the identity of the accused.

18.5 The Statement of the Prosecutor

Next, the judge asks the prosecutor to state the facts of the crime. For example, the prosecutor may say that the defendant on such-and-such day and at such-and-such hour and for such-and-such reason used a short sword to stab Mr. X to death and is therefore charged with murder. Or the prosecutor may say that the defendant has set a residential area on fire and is therefore accused of arson. In other words, the prosecutor makes a statement that is of the same contents as the report on the verdict of the pre-trial hearings (yoshin kettei sho), and this is called the statement of the prosecutor.

18.6 Questioning of the Defendant
After the statement of the prosecutor, the questioning of the defendant begins. As in most cases put on jury trial, unless the circumstances of the case are special, the findings of investigations that preceded the trial—that is, the pre-trial investigations as well as the interrogations carried out by the prosecutor—are not admissible as evidence. As the members of the jury that are to make decisions regarding points of fact of the case do not have any knowledge regarding the details of the case, all facts and evidence need to be made known to the jury at this time, therefore, the presiding judge needs to clarify all the details of the incident from the time it occurred. Firstly, the judge asks the defendant: “Do you disagree with any point in the indictment that was declared in the statement of the prosecutor?” If to this question the accused replies: “No, all is just as stated” and thus acknowledges the facts put forward by the prosecution or in other words confesses, then the jury trial is dismissed and trial by professional judges only takes place.

18.7 Questioning of Witnesses

Following the defendant’s testimony, the presiding judge asks questions regarding the reasons behind the incident, the motives, the scene of the incident, and the defendant, and addresses these questions to persons who are directly or indirectly involved in the case that is tried— that is, to witnesses or expert witnesses. Witnesses receive the request for providing information before the beginning of the trial from the prosecutor, the attorney, or the defendant. As witness testimonies become evidence at the trial, jurors should carefully listen to these.

Jury trials are different from other types of trials in that the testimony obtained during the interrogations carried out by the prosecutor and during pre-trial hearings is not admitted as evidence and in that they rely solely on the testimony given during the trial. In some cases, such as those described below, however, this rule is not applied and testimony records of pre-trial hearings and of the prosecutor’s investigation may be admitted as evidence:

- When a co-defendant or a witness cannot attend the trial hearing, due to death, illness, or another reason;
- When the testimony of the defendant or a witness given at the trial hearing differs from that given prior to the trial on points of importance;
- When the defendant or a witness refuses to testify during the trial.\[107\]

Doubtlessly, the testimony of the witnesses is of utmost importance for the members of the jury. The testimony of witnesses is

\[107\] Jury Act, supra note 5, art. 73.
living evidence. Oftentimes, the statements of the defendant, due to perhaps the state of mind he or she is in, are limited to words, such as “I do not know” or “No”, and cannot be trusted too much. Thus, listening very carefully and with particular attention to the testimony of the witnesses is critically important.

18.8 Examination of Evidence

After the testimonies of witnesses and expert witnesses the presiding judge shows to the jurors the material evidence related to the case, such as drawings, documents, and objects. Items displayed may include photographs of the scene of the crime, the weapons used, the clothing that was on the victim, or rags with evidence of burning on them. Next, if the case falls under one of the categories mentioned in the preceding sub-section, the testimonies from the preliminary trial records and the expert opinions of witnesses are read out.

18.9 Questioning by the Jurors

In order to enable jurors to make accurate decisions regarding points of fact, they are given the right—alongside the prosecutor and the attorney—to ask the defendant, witnesses and expert witnesses questions whenever there is something unclear or puzzling to them. These questions should be raised without any feelings of embarrassment and without reservation. It is necessary to ask the judge for permission, and questions unrelated to the case are not allowed. This is because unrelated questions without substance hamper the process of trial instead of facilitating it.

At the beginning of the functioning of the jury system, jurors were able to raise highly relevant questions that professional judges, the prosecutor, and the attorney failed to come up with concerning important evidence, much to the astonishment of the judges. Recently, however, such instances of enthusiasm on the part of jurors have not been apparent, which leaves one wondering why this is so. The members of the jury sit in the upper level of the tiered seats in the courtroom and are not mere observers of the trial. Theirs is a critical responsibility to come up with a clear understanding of the facts of the case. We would like to ask you to remember this important responsibility and to participate in trial hearings in earnest. If jurors were expected to solely understand the superficial aspects of the case in the same way as mere observers, then doubtlessly the government would not have made you go into the trouble of participating in trials as jurors. If the responses of the jury, which should have great authority, become reduced to decisions based on the discussion of rumors, this will signal the end of the authority and justice of the state,
and this is something we ask you to bear in mind. The right to ask questions is indeed a unique weapon given exclusively to the members of the jury, and it should be treated with utmost responsibility.

18.10 The Closing Arguments of the Prosecution

Immediately after the evidence has been examined, the prosecutor stands up, turns towards the jurors, and conducts the so-called first round of closing arguments. Unlike the closing arguments in a standard trial, the first round of closing arguments in a jury trial is addressed to the jurors with the aim of persuading them to make the decision regarding the points of fact and therefore does not include such points, as application of laws or issues of penalty. Instead, the prosecutor states his opinion regarding the structural elements of the crime and the issues related to points of fact. For instance, the prosecutor may say: “Thus, the accused has stolen the money and goods. People tend to think that if a defendant did not inflict an injury on another person with a weapon in order to steal, then the defendant’s crime does not constitute burglary. Although the accused in this case did not have a weapon, when he was discovered by the guard, he used brass knuckles with tremendous force and injured the guard. The accused claims that he did so in order to escape, but I believe that this action implies that this crime qualifies as burglary. I would like the members of the jury to keep this point in mind and reach a wise decision.”

18.11 Arguments of the Defense

Following the arguments of the prosecutor, the attorney delivers the first round of closing arguments of the defense. This also includes only the attorney’s perspective on the facts constituting the offence charged and highlights the problem areas with regard to points of fact or points of law. For instance, the attorney may say: “The prosecutor has stated that this case should be classified as burglary, however, there is not enough evidence to support this claim. It is human nature to attempt to resist confinement and to run. We have heard the testimony of the guard who stated that when he ran after the defendant and tried to catch him, the defendant suddenly turned and gave a blow to his nose. Whatever angle you choose to look at this case, it is certain that this was a case of plain theft. I expect the members of the jury to base their judgments on common sense.”

18.12 Instructions from the Presiding Judge

Trial hearings include an array of complex procedures: the questioning of the defendant, the testimony of many witnesses, and the closing arguments of the prosecutor and of the attorney. As a result, by the
end of the trial, jurors might feel confused. At this point, therefore, the
presiding judge instructs the jurors and helps them make sense of all the
information that was presented in court. The prosecutor, the defendant,
and the attorney each emphasize the evidence that supports their
respective positions. The judge, however, is not biased when he provides
explanations to the jurors regarding the facts of the crime. He may say, for
instance, that from the perspective of the law, these are the points in
question, while in actual fact it is also important to consider other points,
and that such-and-such evidence illustrates this and that. During these
instructions, the judge is not allowed to make any indication of his own
opinion on the case.

19. Question Sheet (Monsho) for Jurors

Following the instructions of the presiding judge, a question sheet
(monsho) is given to the members of the jury. This document contains the
questions from the judge that are to be discussed by the members of the
jury as they debate the points of fact of the incident. The questions are
phrased in such a way that they can be answered by “yes” (shikari) or
“no” (shikarazu). There are three types of questions—“main questions”
(shumon), “supplementary questions” (homon), and “other questions”
(betsumon). Depending on the case on trial, however, there may be
instances when only the main questions are asked and there are no
supplementary or separate questions. There are also cases when only main
and supplementary questions are asked.

Main questions are those questions that require the members of the
jury to deliberate on the presence or absence of facts constituting the
crime. To put it simply, jurors discuss whether the facts constituting an
defense with which the prosecutor has charged the accused actually took
place or not. The main questions are therefore the most important
questions, while the supplementary questions weigh less in terms of
importance.

Supplementary questions are those questions that require jurors to
deliberate on the presence or absence of facts other than those that the
defendant was initially charged with. If in the course of the trial
concerning a case where the defendant is charged with attempted murder it
is revealed that there is a possibility that the crime involved the infliction
of bodily injury, then a supplementary question might be as follows: “Did
the accused injure the victim?”

Other questions are those that require jurors to deliberate on the
presence or absence of facts that make the establishment of the crime
impossible. This may sound complicated, but such facts are relevant to
cases involving the possibility that the defendant acted in self defense, or
was completely drunk and therefore in an unconscious state of mind when
inflicting an injury. In such cases as this when it is difficult to charge the
defendant with attempted murder or with bodily injury, the following separate question may be asked: “Did the accused inflict injury upon Mr. N in self defense?”

Providing answers to these questions is the ultimate goal of the jury trial and the most important part of the trial. It is with the purpose of providing impartial answers to these questions in the form of two or three-letter words “yes” or “no” that jurors attend trial hearings for the period of one to two days. It is impossible to overemphasize the fact that the Jury Act, which is a law of unprecedented importance, was introduced with precisely the goal of receiving fair judgments from jurors. An incorrect judgment implies that an innocent person will be penalized and a guilty person will be let go, which damages the prestige of the judiciary. Jurors are advised to consider this with utmost care.

20. Jury Deliberations and Submission of Answers

Upon receiving the question sheet, members of the jury proceed to a special room for jury deliberations. First and foremost, jurors need to elect a jury foreman. The method for choosing the jury foreman is not specified in the law, so any method—be it a vote or drawing of lots—is acceptable. The duty of the jury foreman is similar to that of a chairperson and includes facilitating the deliberations of jurors.

The deliberations start from the discussion of the main questions. In the event the jurors decide to agree that the facts constituting the crime have taken place and answer the main question regarding this with a “yes”, then there is no need to discuss the related supplementary questions. It is only in the event the jurors answer “no” to a main question that supplementary questions need to be discussed. The jury foreman asks each member of the jury for their opinions and then finally states his own opinion.

The verdict is considered decided upon when the majority—more than half of the members—are in agreement. In other words, the agreement of no less than seven jurors, including the jury foreman, is required. In the event the opinions are split evenly between jurors, with the equal number of jurors saying “yes” and “no”, then the jury is required to choose “no” as the answer.

The responses of jurors are required to consist of simple “yes” or “no” answers. In the event a question refers to facts relating to a number of crimes and the jurors have agreed that the answer is “yes” with regard to one crime but “no” with regard to the other, then each crime should be written out separately together with the corresponding “yes” or “no” answers. For instance, if the question is as follows: “Did the defendant break into Mr. N’s residence and steal the money and goods?”, then jurors may answer “yes” concerning the offence of breaking into the residence of Mr. N, but answer “no” with regard to the accusation of stealing. The jury
foreman is required to sign and seal this document and return it to the presiding judge.

If some members of the jury did not completely understand the judge’s instructions, or if there were some points that remained unclear and this inhibited the deliberations, it is possible to request the judge to instruct the jurors again. Also, if the phrasing of any question is difficult to understand, it is possible to ask for clarification.

Jurors are taken to the jury deliberation room because it is necessary to ensure the confidentiality of their deliberations and to prevent outsiders from interfering with the deliberations. Therefore, once in the deliberation room, jurors are forbidden to leave freely, or interact or talk with outsiders until the deliberations are over. Of course, even the judge is not allowed free entry into the room.

21. Completion of Jurors’ Responsibilities

Upon receiving the answers of the jury from the jury foreman, the presiding judge passes the document to the secretary at the public trial hearing and orders that the answers be read out. The moment when the jury’s responses are read out constitutes the climax of the jury trial. Not only the accused, but also the prosecutor, the attorney, and observers all wait anxiously for this moment when the whole courtroom is filled with tension.

The reading out of the responses signals the completion of the jurors’ duty. The judge thanks the members of the jury and acknowledges their hard work, and the jurors leave their seats.

22. Adoption and Revision of Jurors’ Responses

After the members of the jury leave the courtroom, the presiding judge and two assistant judges proceed to their chambers to discuss whether they will accept the answers of the jurors or not. In the event the answers of the jurors are accepted, the presiding judge declares so in the courtroom. If that is the case, then in the event the answer of the jurors was “no,” the judge proclaims that the verdict is “not guilty.” If jurors found the facts of the crime to be true and answered “yes,” then the prosecutor immediately states his opinion regarding the legal application and penalty. He may say: “The crime that the accused committed falls under Article N of the penal code for which the penalty is NN years of penal servitude. Because of the mitigating circumstances, however, I suggest reducing this penalty to M years of penal servitude.” Next, the attorney says: “M years of penal servitude is too harsh a punishment, S years is the appropriate sentence.” These statements are called the second round of closing arguments of the prosecutor and of the defense, respectively.
If the decisions made by the jury are deemed unacceptable by the judges, their responses are not admitted. This happens in the event the presiding judge concludes that despite the presence of ample evidence proving the guilt of the accused, the jury gave the verdict of “not guilty.” In such an instance, the judge orders that other jury candidates be called and a new jury panel formed, and the trial is carried out again from the beginning. This process may be repeated as many times as is necessary before the opinions of the jury and of the judge match. This is called “the revision of the jury,” and since the introduction of the system, the Oita district court was the first to witness this procedure, followed by courts in Mito and Osaka.

In Europe and America, the decisions of the jury have absolute authority and even in the presence of ample evidence for convicting the accused, if the jurors decide that the defendant is not guilty, the judge is bound by their decision and has to acquit the defendant. This is a defect of foreign jury systems. The jury system in our country, on the other hand, does not make the verdicts of the jury binding in order to preserve strict fairness. This aspect is unique to the Japanese system and is something that we can be proud of.

23. Appealing the Jury Decision Kōso Is Not Possible

The decisions resulting from the deliberations of jurors who represent the Japanese people and who have reached these decisions in accordance with their conscience and in a fair manner deserve utmost respect, therefore, complaining about the verdict is not allowed. Thus, unlike in the case of a standard trial, it is not possible to appeal kōso on points of fact.

In some limited instances, however, appealing jōkoku on points of law to the Great Court of Judicature is possible. These instances include the following situations: cases when the procedures during the jury trial were not carried out in accordance with the law (in other words, in the event there were errors during the course of the jury trial), or if the judge included his own opinion in the instructions to the jury, or when persons serving as jurors were actually not eligible for that service. Such an appeal is heard by the Great Court of Judicature, and if the appeal is accepted and the verdict is dismissed, then the Great Court of Judicature decides if the case should go back to the same court or to another court of the same rank for a new trial. Since the implementation of the Jury Act, the verdicts in two cases tried by the Chiba district court have been dismissed and transferred to the Tokyo district court.

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108 The trial that involved the case of attempted arson reopened on Dec. 7, 1928, in the presence of a new jury panel. Ōita No Baishin [Oita Jury], Hōritsu Shinbun, Dec. 25, 1928, at 19.
24. Remuneration for Jury Service

Jury candidates who have been called at the opening of the trial hearings are offered remuneration for their services.

24.1 Traveling Allowance

With regard to steamships and trains that have three classes of travel, the equivalent of the expenses for second class travel is paid. In the event there are only two classes of service, the higher class price is paid. If there is only one class of service and a jury candidate is traveling by sea, the amount of not more than 15 sen is paid per sea mile of travel, while in the case of traveling by land, an amount not exceeding 90 sen per one \( \text{ri} \) of travel is paid.\(^\text{109}\)

24.2 Daily Allowance

In the event you have participated in trial hearings as either an acting or supplementary juror, the allowance is 5 yen per day of service, while if you did not participate in the trial—that is, if you only came to court when called and were not selected as a juror or were excused—the daily allowance is 2 yen and 50 sen.

24.3 Accommodation Allowance

In the event the trial continues for more than one day and the juror stays in the jury accommodation facility, an allowance of 2 yen and 50 sen per night is provided. If the juror stays at an accommodation other than this, an allowance of 5 yen is provided. There are not many instances when a juror has to stay at a place other than the accommodation facility for jurors.

The payment of the travel, daily, and accommodation allowances should be requested before the verdict has been announced, and the judicial secretary in charge of issues related to jurors carries out most of the necessary procedures necessary in this regard.

25. Penal Provisions Regarding Jurors

Members of the jury are meant to represent the people’s justice. They participate in the Holy courts that carry out justice in the name of the Emperor, and jury service is therefore not only an honorable right, but also a valuable responsibility. If selected, a person should carry out this service

\(^{109}\) One \( \text{ri} \) equals approximately 3.9 kilometers.
with utmost devotion, and if he demonstrates negligence with regard to this important duty, the following sanctions are taken against him:

1. In the event a person who was called to court fails to report at the specified time and on the specified day without any acceptable reason, the penalty of up to 500 yen is applied. Since the introduction of the system, in January, fourth year of Shōwa,\(^{110}\) at a district court in Kyushu, one jury candidate who had failed to report at the specified time without any notification was required to pay 10 yen as penalty.

2. As was described above, jurors are required to take an oath upon appearing in court, and in the event a juror breaks this oath, the penalty of up to 500 yen is applied.

3. After entering the room for jury deliberations, jurors are not allowed to interact with outsiders or leave in a disorderly fashion until the time when the deliberations are over, and in the event a juror breaks any of these rules, a penalty of up to 500 yen is applied.

4. Before jurors proceed to the room for jury deliberations, the judge gives certain instructions to the members of the jury, and in the event a juror fails to follow these, the penalty of up to 500 yen is applied.

5. In the event a juror is responsible for an information leak regarding either the details of the deliberation process, or the opinions of individual jurors, or the distribution of votes, the penalty is up to 1,000 yen. If this information is published in a newspaper or magazine or in any other material, then regardless of whether that information is accurate or not, the author is required to pay up to 2,000 yen as penalty.

A person who served as a juror in a trial that opened in March of the fifth year of Shōwa\(^{111}\) in Tōhoku\(^{112}\) was visited by a correspondent working for a major newspaper in Tokyo after his jury service was over. The juror was so excited about this experience that he proudly shared information about jury deliberations with the correspondent. The correspondent wrote an article based on this information that appeared in the local edition of the newspaper, and this became a major incident. The juror in question doubtlessly did not know that leaking information was a punishable offence and did not think that the penalty would be so strict and that is probably why he talked so carelessly with the correspondent. The fact that a professional newspaper journalist considered the information a scoop and decided to publish it, however, is outrageous. Later, both the juror and the journalist were substantially penalized, and it is certainly necessary for all citizens—not only jury candidates—to acquire a better understanding of at least the contents of the Jury Act.

\(^{110}\) 1929.

\(^{111}\) 1930.

\(^{112}\) This incident took place in Miyagi Prefecture. Baishin Hō Ihan [Jury Act Violation], Hōritsu Shinbun, Mar. 13, 1930, at 18.
6. Persons other than the members of the jury who enter the jury deliberation room without the permission of the judge or who interact with jurors in the courtroom prior to the start of deliberations are subject to a fine of up to 500 yen.

7. Persons who approach jurors with questions (such as asking whether the accused is guilty or not guilty, or inquiring about the jurors’ opinions prior to the end of the deliberation process) are subject to imprisonment for up to one year or a fine of up to 2,000 yen.

26. Jury Accommodation

If the jury trial is not concluded within one day, jurors are required to stay in a special jury accommodation facility established within the territory of the court. That is because letting jurors go home or stay at a hotel while the trial is continuing can compromise the fairness of jurors’ decisions, especially those concerning the nature of the case and the defendant.

With regard to the accommodation facilities, the Ministry of Justice has been very meticulous in its efforts to make them exceptionally comfortable. To ensure that jurors can relax well, the facility is equipped with baths and a lounge, and entertainment, such as games—go and shōgi—radio, and reading materials, is provided. In the bedrooms, bedding is provided of a quality that is higher than in first-class hotels. Jurors are permitted to have a drink with their dinner as long as the quantity is less than is necessary to become drunk. Of course, interaction with outsiders is not allowed, but if it is necessary to have a meeting that is unrelated to the case that is being tried, it is possible to have that meeting after receiving the permission from the judge. Jurors are also allowed to write letters and send telegrams, and the judge secretary can connect you to the person you wish to speak to through the telephone. If there is something a juror needs, he can ask the janitor to purchase it for him. Many people say that jury accommodation is a very isolated facility, but in reality it is very much like a bright and comfortable hotel. All persons who have actually visited jury accommodation facilities on an excursion say that they would even be willing to pay for the privilege of staying there. Needless to say, persons who serve as jurors are in various occupations, therefore, judicial authorities are making efforts to ensure that jury trials do not continue for too long. You should keep in mind, however, that although this depends on the case, jury trials usually go on for two to three days. The longest jury trial since the introduction of the Jury Act was the case of infanticide that opened in October, the fourth year of Shōwa,\textsuperscript{113} in Shizuoka and continued for seven days. Other jury trials that have taken place so far have continued for one to two days on average.

\textsuperscript{113} 1929.
27. The Rules of Conduct for the Jury

It is a serious mistake to think that the duty of a juror consists only of following the stipulations of the Jury Act and avoiding the behaviors that are penalized. Certainly, knowing the rules is important, but jury service is a noble responsibility that enables one to represent the Japanese people and to uphold the justice of our state. As this duty involves making important decisions regarding a person’s life, it is imperative to keep the aforementioned in mind. In what follows, we outline the rules of conduct for jurors.

27.1 Avoid Having Preconceptions

Deciding that the defendant is guilty based only on what the newspapers say about the case or on rumors, or choosing to rely on the fact that the ruling of the judge in the preliminary hearing was “guilty”—approaching jury duty in such a manner is highly dangerous. This is referred to as “having preconceptions.” The presence of jurors who have such attitudes is very inconvenient for the defendant. Instances when, contrary to the expectations of the accused who hopes that the jury will certainly ignore groundless accusations, the verdict of “guilty” is given based on such accusations alone substantially damage the prestige of the judicial system. The preliminary investigation report does not imply with certainty that the evidence proves the facts of crime, therefore, jurors should be very careful to refrain from having preconceptions.

27.2 Do Not Let Yourself be Swamped by Emotions

Next, we would like to bring to your attention some points regarding the first impression that you might have of the defendant. Being moved by the defendant’s looks and peculiarities of language use is something that is strictly forbidden. So is thinking along the following lines: “This person looks ferocious and is probably capable of killing someone.” Coming to the courtroom wondering if such a beautiful person could ever commit such a terrible crime is another attitude that should be avoided. Relying on such impressions would result in the fact that to the jurors something that is black might appear to be white and vice versa, leading them to fail to make fair judgments. Therefore, extreme caution is required in this regard.

27.3 Listen Calmly to the Arguments of the Defense
Next, we would like to make a precaution regarding the clashes between the prosecutor and the defense counsel. The prosecutor is the representative of the plaintiff and is therefore in the position to attack. He views the person on trial only as “the accused” and attempts to oppose the claims that the actions of the defendant do not constitute a crime with all his might. If you listen to the prosecutor’s arguments, it will always seem that the accused is a criminal. However, if you listen to the defense counsel, it will seem that the accused is not guilty. This is not an exaggeration at all, as the attorney will only emphasize the points that are favorable for the position of the accused. Sometimes the attorney will use misleading strategies in court to win the sympathy of jurors and try to make the defendant look vulnerable. It is human nature to long to help the weak, so the aforementioned strategies may result in the development of a certain degree of emotional involvement and interest on the part of jurors, but allowing such feelings to take root is strictly prohibited. Thus, it is necessary to calmly listen to the statements of both the prosecutor and the defense counsel.

27.4 Rid Yourself of Favoritism and of Being Influenced by Public Opinion

Favoritism is strictly prohibited when serving the state. When carrying out deliberations, being moved by the views or opinions of people you know or of those who have done you favors in the past as well as being influenced by political or economic considerations is not permissible. Instead, one should follow the lead of his own conscience and strive to uphold justice. We often follow public opinion, but public opinion is not necessarily correct. For instance, if the accused is a high-level bureaucrat who is seen as a model to follow by others, you might think that punishing this person is impossible, or conversely, you might think that if a person with such a good reputation has become a defendant in a case, then that person should definitely be punished. Even if the public opinion in the society might give support to the aforementioned thoughts, there is no need to follow their lead. It is important that jurors are not influenced by the power of authority and are independent and strong-minded as they carry out their duty.

28. The Activities of the Japan Jury Association

Two years have passed since the introduction of jury trials in our country—an event that marked the start of a new era for our country’s legal system. The total number of cases tried by jury during this period is two hundred and thirty five. This number is considerably lower than that expected by the judicial authorities when the Jury Act was first implemented. This is probably due to the fact that the spirit of the Jury Act
has not yet completely reached all of the Japanese society and that the true virtues of trial by jury have not yet been understood. The number of cases tried by jury is certainly low, but the attitudes with which the public participates in the system are far from being unsatisfactory, which is something to be expected, given the tremendous amount of money—five million yen—spent by the Ministry of Justice in the course of the preparation for the introduction of the system and the earnest efforts made in terms of advertising.

If we calmly consider the developments since the introduction of the jury system, we need to admit that there have been several cases when the lack of understanding and knowledge regarding jury trials on the part of jury candidates has led to mistakes and misconduct. As was mentioned above, there have been instances when summoned persons failed to report to the court and when the information regarding deliberations was leaked. What is unbelievable is that in a court of the Imperial capital during the deliberations in a recent forced double suicide case, a juror who was to make decisions regarding the facts constituting a crime revealed his ignorance regarding his duty as a juror by addressing the following odd question to the presiding judge: “Is this a case of suicide by agreement or of forced suicide?” This question caused great disturbance in the courtroom. This incident is shameful, and the ignorance of that juror fills us with utter amazement.

In order to prevent instances such as this from happening, the Japan Jury Association was established in November, the third year of Shōwa—approximately at the time that the Jury Act was introduced—with the goal of educating the general public with regard to the matters related to the jury system and law in general, while explaining the beauty of the Jury Act as the law of unprecedented importance. The Association was created around and under the guidance of former Vice Minister of Justice and Professor of Law On Koyama, at one time Minister of Justice Professor Yoshimichi Hara, President of the Great Court of Judicature Professor Makino and with the participation of Professor and Baron Kiichiro Hiranuma, Professors Kisaburō Suzuki and Takuzō

114 1928.

115 On Koyama served as head of the department of law in Waseda University. See Waseda Daigaku Daigaku Shiryō Sentā, Waseda Daigaku Hyaku Nen Shi [Hundred Years of Waseda’s History], http://www.waseda.jp/archives/database/cent/1910.html (last visited Nov. 27, 2007).

116 Yoshimichi Hara (1867-1944) served as Minister of Justice from 1927 to 1929. Shimizu, supra note 36, at 21-22.

117 Makino Kikunosuke (1886-1936) served as President of the Great Court of Judicature during the period between 1921 and 1923. MAJOR 20TH CENTURY PEOPLE IN JAPAN: A BIOGRAPHICAL DICTIONARY, supra note 53, at 2292.

118 Baron Kiichiro Hiranuma (1967-1952) served as President of the Great Court
Hanai, as well as of other authoritative figures in the judicial circles outside and inside the government. The Association is headed by Katsutarō Yokoyama, and all members are approaching their work with great devotion. The Association already includes 50,000 jury candidates from all over Japan as members and has been striving to provide instructional guidance and to make a contribution to the extent possible to the effective implementation of the Jury Act. Unfortunately or fortunately, persons failing to report to the courtroom or leaking information regarding deliberations, or asking inappropriate questions have not yet joined the ranks of the members of our Association.

With regard to the activities that our Association has carried out so far, we have been distributing every issue of the Japan Jury Newspaper (Nihon Baishin Shinbun) that is published by Japan Jury Newspaper Company (Nihon Baishin Shinbunsha) to our members and have also presented them with such booklets, as “A Quick Guide to Trial by Jury” (Baishin Hayawakari) and “A Quick Guide to the Constitution” (Kenpō Hayawakari). In addition, having received the support of the Ministry of Justice, we have arranged for the courtrooms and jury accommodation buildings to be opened for excursions in Tokyo, Chiba, Yokohama, Urawa, Maebashi, Niigata and other areas, allowing jury candidates in these regions to visit these. We have also requested prosecutors at courts in the aforementioned regions to give lectures and thus contribute to the proliferation of information regarding the spirit of the jury system and have been involved in the organization of visits to prisons as well as of seminars regarding the jury system and of public viewings of films about the jury system. Furthermore, we have a permanent attorney service that gives advice free of charge to the members of the Association and thus

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119 Kisaburō Suzuki (1867-1940) served as prosecutor for the Court of Cassation in 1912, prosecutor-general in 1921, and Minister of Justice in 1924, and served as Home Minister during the periods of 1927-1928 and 1932. JAPAN: AN ILLUSTRATED ENCYCLOPEDIA, supra note 37, at 1488.

120 Katsutarō Yokoyama (1877-1931) was a lawyer and member of Parliament (Constitutional Democratic Party Rikken Minseitō). MAJOR 20TH CENTURY PEOPLE IN JAPAN: A BIOGRAPHICAL DICTIONARY, supra note 53, at 2714.

121 According to the Japan Federation of Bar Associations, eleven films were made by the government and shown to the public during the five year preparation period for the implementation of the Jury Act. See Japan Federation of Bar Associations, Saiban’in Seido Ni Tsuite: Nihon Ni Mo Atta Baishin Seido [About the Lay Assessor System: Japan also Had a Jury System], http://www.nichibenren.or.jp/ja/citizen_judge/about/column2.html (last visited on Nov. 27, 2007).
contributes to making the process of receiving expert opinion more convenient. We have thus been working to foster our citizens’ understanding of the law by enabling them to grasp the essence of the nature of the constitutional state. We hope that the readers of this guidebook will sympathize with our cause, understand it, and will be filled with an earnest desire to offer support to our state and public benefit activities.

Attention!

Some jury candidates will one day receive a notification that they are requested to participate as jurors in trials. When this happens, please do not forget to carry this booklet with you. We believe that it will surely be of use as a reference material during your service. We have included a journal for making records during the trial at the end of this booklet, which may later serve as a souvenir to remind you of your service. If our readers would care to use it for making notes, it will certainly become a precious souvenir and an item of honor that will surely for a long time decorate your family archives. If you have any questions about the Jury Act, please do not hesitate to write to the publishing department of our Association (please enclose money for the mailing costs of correspondence).

Journal for Taking Notes During the Trial (Page 1):
Note: It is advisable to use a pseudonym when writing the name of the accused.
Jury Seat number:
Court: ____ District Court
Length of Trial: _____ days
Opening of Trial: ___(month), ___(day), ___(year Shōwa), __:__(am/pm)
Closing of Trial: ___(month), ___(day), ___(year Shōwa), __:__(am/pm)
Case:
The Accused: Name, Address, Occupation, Age
Presiding Judge:
Assisting Judge:
Assisting Judge:
Prosecutor:
Attorney:

Journal for Taking Notes During the Trial (Page 2):
Summary of the Facts Constituting a Crime:
Summary of the Testimony of the Accused:
The Testimonies of Witnesses—Main Points:
Name:
Summary of the Closing Arguments of the Prosecution:
Summary of the Closing Arguments of Defense:
Questions:
Main questions:
Responses:
Supplementary questions:
Responses:
Other questions:
Responses:
Penalty sought by the prosecutor:
Sentence:
Impressions:

Note: Writing about the contents of deliberations is strictly prohibited.
III. Illustrations

Figure 1. The Jury Guidebook: Includes Journal of Trial Participation. Cover of the original edition.

Figure 2. The Imperial Rescript. His Majesty, the Emperor on the day of the enforcement of the Jury Act, during His visit to the Court of Appeal (Kōsōin).

122 “Judicial courts uphold the social order and preserve the rights of the people and thus determine the fate of the state. Now that the Jury Act has come into force, do your duty with even greater diligence and determination.” Baishin Hō Ni Saishi Shihō Bu E Chokugo [Imperial Rescript [Addressed] to the Ministry of Justice on the Occasion of the Enforcement of the Jury Law], Oct. 1, 1928.

123 Photograph courtesy of the Imperial Household Department.
Figure 3. Tokyo District Court Jury Courtroom. The Courtroom where the first jury trial in Tokyo—the famous “beautiful woman accused of arson” case—opened on December 17, 1928.  

Figure 4. Prominent Figures Who Have Provided Guidance and Support for the Association. Top row: President of the Association Katsutarō Yokoyama. Second row (from right to left): Baron Hiranuma, Professor On Koyama, Professor Kisaburō Suzuki. Third row (from right to left): President of the Great Court of Cassation Kikunosuke Makino, Professor Yoshimichi Hara, Prosecutor General Matsukichi Koyama. Fourth row: Professor Takuzō Hanai.

124 The first jury trial in Tokyo continued for five days and ended in the verdict of “not guilty.” *Tokyo Ni Okeru Hatsu Baishin* [First Jury Trial in Tokyo], HŌRITSU SHINBUN, Dec. 30, 1928, at 1.

Figure 5. Activities of the Association.

First photograph (from top): The reception held at the Imperial Hotel to announce the establishment of the Japan Jury Association. Vice Presidents of the Great Court of Cassation Naomichi Toyoshima and Hayashi Raigiburō, Prosecutor General Matsukichi Koyama, Minister of Justice Professor Yoshimichi Hara, Baron Hiranuma, Professor On Koyama, former President of the Great Court of Cassation Kikunosuke Makino, Justice Numa of the Great Court of Cassation, and Prosecutor Nakajima.

Second photograph: This photograph depicts a charity event that the Japan Jury Association held in spring 1931. Article Four of the rules of the Association stipulated that supporting activities aimed at preserving justice was one of the main objectives of this organization.

Third photograph: At the end of 1930, the Association organized thirty four excursions for jury candidates to the courtrooms of Tokyo District Court. This photograph depicts the lecture given by Justice Tanaka to excursion participants.

126 Naomichi Toyoshima (1872-1930). Id. at 1743.

127 Raigiburō Hayashi (1878-1958). Id. at 2047.

128 Yoshimichi Hara (1867-1944) served as Minister of Justice from 1927 to 1929.
Sovereignty of the Emperor

The Executive Branch of Power
The system of self-governance
(prefectural, town, and village assemblies)

The Legislative Branch of Power
Participation through the Imperial Diet
(members of the Diet are representatives of the people)

The Judicial Branch of Power
Participation through the implementation of the Jury Act

Figure 6. Citizens Participate in National Administration through the Implementation of the Jury Act.
Figure 7. Trial by Jury in France—An Illustration.

Figure 8. Examples of Offences that Are Tried by Jury:
- Murder, robbery
- Rape, adultery
- Arson;
- Use of explosive substances;
- Inflicting bodily injury on a person.

Figure 9. Examples of Offences that May Be Tried by Jury upon Request (Offences for which the Penalty Is Not Less than Three Years of Penal Servitude):
- Larceny;
- Embezzlement;
- Fraud.
Figure 10. Cases not Eligible for Trial by Jury:

- Instigation of internal disturbances;
- Violation of the Election Law.

Figure 11. Cases not Eligible for Trial by Jury

- Crimes against the members of the Imperial Family;
- Offences against military law.

Figure 12. Qualifications for Jury Service.
Figure 13. Persons Excluded from Jury Service:
- Ministers of state;
- Judges;
- Doctors and pharmacists;
- Members of the army;
- Members of the naval forces.

Figure 14. Persons Excluded from Jury Service:
- Attorneys;
- Heads of administration of cities and towns;
- Shinto priests;
- Policemen;
- Buddhist priests;
- Those in training;
- Students.

Figure 15. Method of Jury Selection.
Figure 16. Jury Courtroom in Tokyo—An Illustration.

Figure 17. Yokohama Boasts a Jury Courtroom that Is the Best in the Orient.
Figure 18. Trial by Jury. The Judge, the prosecutor, the defense counsel, the defendant, a witness, the evidence, the jury.

Figure 19. Jury Deliberation Procedure. Submission of “Yes” or “No” answers.
Figure 20. The Appeal Process
Figure 21. Remuneration for Jury Service. Staying at an accommodation facility that is similar to a hotel ensures sound sleep. Even if the juror chooses to walk, an allowance of 90 sen per one ri of travel is provided as carfare.

Figure 22. Remuneration for Jury Service. If a juror travels by steamship, the equivalent of the expenses for second class travel is paid. If a juror travels by train, the equivalent of the expenses for second class travel is paid.

Figure 23: Penal Provisions Regarding Jurors. If a person who was called to court fails to report without any acceptable reason, a penalty of up to 500 yen is applied. If a juror interacts with outsiders, a penalty of up to 500 yen is applied.
Figure 24: Penal Provisions Regarding Jurors. In the event a juror does not take his oath, a penalty of up to 500 yen is applied. In the event a juror is responsible for an information leak regarding the deliberation process, the penalty is up to 1,000 yen.

Figure 25. Penal Provisions:
- Penalty of up to 500 yen;
- Penalty of up to 1,000 yen;
- Penalty of up to 2,000 yen;
- Penalty of up to 2,000 yen and imprisonment of up to one year.

Figure 26. Jury Accommodation
Figure 27. Preparation on the Part of Responsible Citizens with regard to the Jury Act.
At home (reading the “Jury Newspaper”): “Interesting contents! Even laypersons like myself [cannot resist] reading. I am prepared to be summoned at any time”.
In the courtroom: “Today I should be able to properly fulfill my responsibility to judge fairly and selflessly.”

Figure 28: Plan of a Jury Courtroom
Figure 29. Journal of Trial Participation (1)

Figure 30. Journal of Trial Participation (2)
Figure 31. Journal of Trial Participation (3)

Figure 32. Journal of Trial Participation (4)