

Japanese Lay Judge Courtroom Design: The Effect of Civic Participation on Trial Participants

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1 Introduction

It has been over a decade since ordinary Japanese citizens began to participate in criminal trials as decision makers under the *saibanin seido*, or the lay judge system, where in principle, six lay judges and three professionally trained judges participate together on the bench to decide the facts about a crime and mete out a sentence should they find the accused guilty.¹ Figures from the Supreme Court of Japan show that as of the end of November 2020, 13,625 cases had been tried under the system, 76,765 citizens had served as lay judges, and 26,058 more had served as alternate lay judges since the first case was tried in August 2009.² Civic participation in the criminal trials that had been handled by legal professionals for seventy years has various effects, not only on the trial proceedings but also on people's perception of the justice system and their mindsets. Thus, the lay judge system has been examined extensively, especially in the field of law, and has also become a new area of study in other

disciplines including sociology, psychology, and forensic linguistics.³ Personal accounts of people who have exercised this new civic duty have been also been published, including those of academics.⁴ However, studies on the spatial aspects of courtrooms in lay judge trials are scarce, even though that there are salient, visible differences between lay judge and conventional, judge-only trials.⁵ For example, in conventional trials overseen solely by professional judges, prosecution and defense attorneys simply stood at their seats behind their tables when addressing the court or questioning witnesses, but they are now seen moving from their desks to the witness stand, which faces the bench, when they make their arguments. Another striking visible change that has occurred is the seating arrangement of the defendant, which differs significantly from conventional trials. In this paper, I attempt to demystify the Japanese lay judge courtroom environment and explain how the new setting has shifted trial participants' interactions in the

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courtroom, including its underlying dynamics. I argue that the inclusion of citizens on judicial panels as lay judges has spurred changes in the ways that people interact in the courtroom, and that this is reflected in the use of space in the courtroom, the available equipment, and how they are used by participants. Among the changes observed, this study focuses on how the inclusion of lay judges has changed where other courtroom participants stand or sit when a trial is in progress. My hypothesis is that the entry of lay people into the courtroom as decision makers working alongside professional judges has triggered a need to apply new design principles and arrangements to the conventional courtroom, and that this new setting has affected the performance of trial participants.

To investigate this hypothesis, this paper provides an overview of the structural design

of the Japanese criminal courtroom, both those used for judge-only and lay judge trials after reviewing literature that examines courtroom layout and its correlation with people's interactions. Based on the analysis of two lay judge trials observed at the Tokyo District Court and interviews with legal professionals and lay judges, this study then examines two of the new features and layout introduced to the lay judge courtroom - the bench and the seating of the defendant - and the effects these changes have had on the interactions among trial participants. The analysis of the two trials was conducted by applying the dramaturgical approach outlined by Erving Goffman (Goffman, 1959). Through this examination, this study aims to show that the design of the courtroom and the use of its environment must be taken into consideration to further understand the structural dynamics of lay judge trials in Japan.

2 Literature review

2.1 Existing studies on courtroom design and participant interactions

In the international context, courtroom design and people's interactions have been studied from various perspectives, from the design and symbolism of the buildings to the geopolitics of the trial.⁶ For example, in the United States, studies on courtroom design and the proxemics of trial participants and their effect on jury perception have existed since the 1960s when the American Bar Association and

the American Institute of Architects jointly studied the country's traditional courtrooms, which stemmed from the colonial days, as the country started to implement several design variations (Wolfe 1995, 594). Architect Allan Greenberg wrote that courtroom arrangement is "the reflection of society's view of the appropriate relationship between the accused and judicial authority" and stressed the

importance of taking such symbolic aspects of the judicial system into account when planning a courtroom's layout (Greenberg 1976, 422-426). Meanwhile, Jeffrey Wolfe argued that courtrooms whose designs are based on such architectural standards tend to overlook the specific demands of advocacy in a trial. In his study involving mock trials, Wolfe concluded that an attorney's location in the courtroom affects jury perception and thus stressed the need for courtrooms to reflect adversarial design criteria, as this could improve the quality of advocacy (Wolfe 1995, 593-656). These studies cast light on the complexity of courtroom design.

Studies on the location of the defendant's seat and its influence on jurors have been conducted in Australia, where the dock is placed in different parts of the courtroom and, in some cases, surrounded by glass walls or metal bars. Blake McKimmie, Jillian Hays, and David Tait found that a courtroom's design, as well as the specifics of the dock design, can affect jurors' perceptions of the defendant, including his or her guilt and the seriousness of the crime with which he or she has been charged (McKimmie, Hays, and Tait 2016, 885-892). Tait, in a separate study, overviewed the history of the dock and the use of handcuffs and body belts (Tait 2011, 467-495). He pointed out that American courts abolished the dock as it infringed on the defendant's right to counsel, the dignity of the accused, the presumption of

innocence until proven guilty, and the defendant's right to a fair trial (Ibid., 472-474). According to this study, similar arguments were made concerning Australian courts in 2007 by defense lawyers of Muslim men who were charged for conspiring to commit terrorist attacks; the judges in both cases exercised their authority and ordered the removal of the glass, or the "layer of prejudice" to secure a fair trial (Ibid., 483-489).

Some studies from the United States have also compared criminal trials with theaters. For example, in his research on the impact of non-verbal communication on jurors' decision-making, Peter Murphy directly acknowledged the similarities between the two. "Both have a stage, a set, a certain degree of costuming, and unfolding drama... Moreover, there are many theatrical exercises and techniques, well known to actors, which can benefit trial lawyers in the technical development of their professional courtroom skills, such as voice production and effective public speaking" (Murphy 2002, 111). Meanwhile, Milner Ball, who also wrote about the theatrical aspects of the courtroom, additionally argued that the presence of the audience, which is essential to a live theater performance, is equally important in courtroom action. He claimed that the audience in criminal trials are not only regarded as a safeguard for ensuring fair trials to defendants and monitor the proceedings but they also "help the active participants keep their perspective, thereby

prompting them to perform their proper roles” (Ball 1975, 86). In another example, in his essay discussing the prejudicial effects of courtroom design on jurors, Denis Brion argued that the criminal trial is a “complex form of theater” that “consists of two distinct yet interrelated theatrical productions that are directed toward two distinct audiences for two different purposes” (Brion 2014, 343-344). He referred to the two as “formal theater” and “real theater” (Ibid.). The former is a public ritual, whose function is to “announce to the community at large the purpose of the criminal process, which is to reinforce the commitment of the society to the principles of due process and the Rule of Law” (Ibid.). The stage actors are the trial participants – the judge, the accused, the prosecution and defense lawyers, the witnesses, the bailiff and other officials, and the jury – while the audience members are the spectators and journalists attending the trial (Ibid.). The audience completes the ritual by confirming and internalizing the implicit message conveyed by the act of conducting the trial (Ibid., 343). On the other hand, the “real theater” functions to “determine the meaning of the events that form the basis of the charges against the accused,” namely, the verdict of guilty or not guilty (Ibid., 344). In “real theater,” the main performers are the trial council and judge, and the audience is the jury, and the principal stage includes all the area inside the courtroom except the jury box (Ibid.). However, Brion

argued that the entire courtroom outside the jury box that is visible to the jury, including the spectators, has significance (Ibid., 343-346).

Despite the existence of such examinations of spatial practice overseas, however, some researchers who have undertaken such studies have claimed that the significance of courtroom architecture or design on the performance of courtroom players has been overlooked academically. According to Linda Mulcahy, the reason for the lack of such research “can in part be explained by lawyers’ obsession with the word,” as studies of the law center on the written judgment or transcript “as though they give a complete account of why a case is decided in a particular way” (Mulcahy 2011, 3). She criticized this notion as preventing the acknowledgment that spatial dynamics can influence judges’ rulings and public opinion of the judicial process (Ibid.). Moreover, McKimmie et al. pointed out that the lack of studies on courtroom design and seating is due to the fact that courtroom design is relatively uniform within a jurisdiction (McKimmie, Hays, and Tait 2016, 885-886).

These observations are interesting arguments when applied to the Japanese context. The assumption that studies on trials and the court system tend to focus on written transcripts and judgments may also be true in Japan, but the fact that criminal trial proceedings have been handled solely by legal professionals could also have been a major

contributing factor to the lack of inquiry into the courtroom environment. Satoru Shinomiya noted that “Japanese courtrooms have not been a subject of different scientific research fields, despite the fact that the courtroom is fundamentally a place where people persuade others,” because judges have developed and maintained a particular trial practice centered on a reliance on documents (Shinomiya 2009, 107). Traditional trial proceedings conducted solely by legal professionals have been more of a formality. In general, the trial process has been centered on submitting court documents and affidavits as evidence, and the judges would take them back to their chambers and read them carefully before deciding their rulings, even though the Japanese Criminal Procedure Law stipulates that judges must decide on the facts of a case based on the evidence and

2.2 Existing studies on Japanese courtrooms

Even before the lay judge system was introduced, court building architecture and courtroom design were understudied in Japan, except for few studies in the field of architecture that examined the history of Japanese court buildings.⁷ Other existing studies examining the Japanese courtroom environment have been conducted in the field of psychology, in which Yuki Yamada, Kyoshiro Sasaki, and Kayo Miura investigated the possible link between the judge’s dominant hand and the seating locations of the

witness testimonies that are entered by both the prosecution and defense in an open court (Shinomiya 2009, 98-101). In other words, how the prosecution and defense lawyers performed in front of the judges was not traditionally a matter of utmost importance. Indeed, it was common to see prosecutors and defense lawyers read out written opening statements at high speed, and the questioning of witnesses by neither council was necessarily well structured. Meanwhile, some judges have been seen reading documents entered as evidence while the questioning was taking place in front of them. Shinomiya argued that such courtroom practices have deprived councils of the opportunity to perform their duties and have negatively affected their courtroom presentation and lawyering skills (Shinomiya 2009, 100).

prosecution and defense (Yamada, Sasaki, and Miura 2014). They paid attention to the fact that in some courts, the location of the seating of the prosecution and defense are situated on the opposite sides. In their experiment, which tested the theory that people tend to favor the side of their dominant hand, they found that right-handed participants tended to lower sentences by one year on average when the defense was seated on the right side of the courtroom, and indicated the need to consider aspects of space cognition in courtroom design

(Ibid.). Other existing studies were conducted in the field of court interpretation. In her study on the relationship between court interpreters and their clients during trials, Masako Mouri examined the location of court interpreters in Japanese criminal trial courtrooms, both in lay judge and judge-only trials (Mouri 2013, 225-236). Mouri pointed out that the court translators in Japan tend to be seated next to the court clerk, facing the witness stand where the foreign defendant or witnesses are seated during questioning (Ibid., 231). Such an arrangement, she noted, is made by the courts with the intention of ensuring the safety of the interpreters (Ibid.). Meanwhile, in the United States, court interpreters are seated next to the defendant requiring interpretation assistance (Ibid., 232). Mouri argued that although Japanese court interpreters interpret the verbal interactions of everyone involved in the trial while maintaining their impartiality, the current seating arrangement may give

foreign defendants or witnesses the impression that the interpreters are on the side of the court authority and that this could hinder them from winning the trust of the defendants (Ibid., 232-235). Mouri's argument focused on the theoretical definition of the interpreter in a courtroom setting and described the existing manners of spatial practice, but it is an example that reads into the link between spatial settings and how people's perceptions of others are affected by them. While these two studies are valuable observations of courtroom settings, the present study more closely examines how people communicate in that environment, and how design influences their interactions. To do so, this study applied Erving Goffman's dramaturgical framework (Goffman, 1959) to illustrate which changes lay participants have brought to the remodeled criminal courtroom setting and to the performances of its participants.

3 Methods

3.1 Research framework

The theatrical metaphor laid out by Goffman provides a framework to study the interactions of people in the courtroom, which is a public forum in a peculiar setting where people communicate to decide the fates of individuals. Goffman describes every person as deliberately or unintentionally employing various visual

“fronts,” which function to define the situation for the audience (Goffman 1959, 22). This involves the “setting,” including “the furniture, décor, physical layout, and other background items which supply the scenery and stage props for the spate of human action played out before, within, or upon it” (Ibid.). A setting

tends to be fixed so that “those who would use a particular setting as part of their performance cannot begin their act until they have brought themselves to the appropriate place and must terminate their performance when they leave it” (Ibid.). Goffman also labeled other performance elements as “personal fronts,” which he further divides into “appearance” and “manner” (Ibid., 23-24). Appearance portrays the performer’s social status or the temporary state of their role, whether he or she is engaging in formal social activity, work, or informal recreation. Examples include badges of office or rank, clothing, gender, age, racial characteristics, size, and attractiveness (Ibid.). Manner refers to how a performer plays the role and serves to warn the audience of the interaction he or she is willing to display, such as being aggressive or apologetic (Ibid.). Goffman argued that performance can also be staged by a team, or any set of individuals in relation to an interaction or series of interactions, to express the definition of a social situation before their audience. A team must keep the nature of their cooperation secret from the audience to ensure that their performance is effective (Ibid., 104-105).

Goffman noted that performance also often involves the cooperation of a team and that the success of a performance usually depends on separating the space in two, creating the “front stage” or “front region” where the performance is delivered for the audience and

the “back stage” or “back region” where the performers can relax and be themselves and plan and prepare for their performances (Ibid., 106-140). Goffman also pointed out that, like theater, a performance takes place on the “front stage” or in the “front region,” where the actors formally perform before an audience and adhere to standard appearances and behaviors that have certain effects or meanings for the audience (Ibid., 107-108). The front stage is also where performers use impression management techniques and try to put on their best performances. On the other hand, the “back stage” or “back region” is where “the suppressed facts make an appearance” (Ibid., 111-112). Back stage, the actors can relax, revert to their own selves, and they may behave differently from their formal performances, because they know that others cannot see them (Ibid., 112-113). The back stage is usually separated from the front stage by a partition and a “guarded passageway,” and impression management calls for controlling the audiences’ access to this area (Ibid.). Goffman stressed that impression management is crucial to any performance, and to successfully defend the show, performers need to express “dramaturgical loyalty,” “dramaturgical discipline,” and “dramaturgical circumspection” among their teammates (Ibid., 208-228). At the same time, Goffman noted, selecting a tactful audience who can use techniques to save the show is equally

important to successfully managing impressions (Ibid., 229-233).

The dramaturgical perspective has been applied as an analytical framework in various studies on the justice system, including studies on social interactions in courtrooms.⁸ The arguments made by those studies that apply the dramaturgical framework to the analysis of courtroom interactions, as well as those that observed the theatrical elements of the courtroom, seem to challenge the “sanitized view” that the courtroom is a “controlled laboratory” where “the attorneys present evidence, the judge supervises for quality control, and the jurors give the results of the experiment; there is little room for emotions or actions whose impact cannot be predicted”

3.2 Data collection

The main data collection methods used in this study include observations and semi-structured interviews. With the aim of identifying the interactions during the court proceedings, I observed two lay judge trials which took place at the Tokyo District Court in Chiyoda Ward in July and September 2016. The two cases were chosen from the calendar of hearings on the Tokyo District Court’s website, which is usually made available approximately one month in advance.⁹ The selection criteria were that I could attend the hearings and that the cases were held in different courtrooms and presided over by different judges. Otherwise,

(Levenson 2008, 574-575). While they acknowledge that formal evidence plays an especially important role in criminal trials, various factors, including people’s locations, appearances and events that take place in the courtroom can affect the verdict, and such a possibility needs to be considered to ensure a fair trial (Ibid., 581-583). While the effect of non-verbal interactions on the decision-making of lay and professional judges is not within the scope of my research, I share their view that courtroom settings and people’s social interactions are important elements to critically understand how our justice system works. My observation of the two trials focused on the setting of the courtroom and the people’s interactions in relation to that setting.

the cases were chosen at random. While the online calendar lists the crimes with which the accused is charged, the names of the defendants are not publicized. It was only on the first day of the hearings that I could confirm the defendants’ names and genders, and their statuses as defendants (i.e., whether they were in custody or had been released on bail). Thus, while statistics show that most defendants are men in these cases, both defendants were women.¹⁰ The two defendants were accused of different crimes, and their statuses as defendants differed: one had been released on bail, and the other remained in

custody. Between these two trials, I also visited the court to observe other conventional criminal trials to compare and confirm the differences between conventional, judge-only trials and lay judge trials.¹¹

As the use of all recording devices and cameras is prohibited in the courtroom, the process of gathering data was limited to note-taking. I documented in my field notes the entire trial process with a focus on the movements and actions of the participants, courtroom design, and non-verbal interactions. Based on these field notes, I listed the interactions and extracted the movement patterns of people and things and the interactions that I observed in the two courtrooms. These patterns were identified in comparison to conventional judge-only criminal trials.

To confirm the patterns observed in the lay judge trials and to understand the changes in participants' performances, I conducted semi-structured interviews with judges, prosecutors, and defense attorneys who had experience in criminal trials prior to the introduction of the lay judge system. In addition, to understand how lay judges experience a trial in terms of the new layout and participant performances, I interviewed people who had previously served as lay judges. Two persons from each category

participated in the interviews, and snowball sampling was used to recruit participants. Lay judges are prohibited from discussing the contents of the trial deliberations, therefore, my interviews centered on what occurred in the courtroom and did not involve elements that could infringe upon their confidentiality obligations.¹²

My questions to the legal professionals centered on their courtroom performance before and after the introduction of the lay judge system. I also questioned them about the courtroom setting, their views related to the bench, how they utilize the newly installed devices, courtroom seating, and patterns related to the lay judge trials I had observed in the two court cases. My questions for the lay judges also touched on their experiences with the courtroom setting and their observations regarding the courtroom performances of the legal professionals. Although they play a central role in all courtroom proceedings, the defendants were not included in this study, as it is difficult to interview people on trial or locate those who have been defendants under the lay judge system. Finally, in addition to the observations and interviews, I also gathered data from books, newspapers, journals, and websites and made inquiries to the Supreme Court of Japan for this study.

4 Results

4.1 Courtroom design

This section discusses the courtroom design, both for judge-only trials and lay judge trials. Court facilities in Japan are structured according to standards compiled by the Department of Maintenance of the Financial Bureau of the Supreme Court General Secretariat. The *Saibansho chōsha sekkei kijun*, or Court Facilities Design Standards and the *Saibansho chōsha sekkei hyōjunzu* or Court Facilities Standard Plan include requirements for the courtroom space and ceiling, furniture, the number of seats in the gallery, and other design requirements as well as the lighting and electrical distribution systems.¹³ Thus, while the appearance of court buildings may differ depending on the district, the interiors of all courtrooms are standardized.

Japanese Supreme Court officials have previously stated that one of the most important elements of courthouse design is controlling the flow of people, as various people have access to the court and hearings are open to the public (Kitamura 1962, 72-73, Miwa 1974, 1-5). This is especially true for in-custody defendants who are brought to the courtroom through a door that connects to the inner corridor, to which the public or the parties involved have no access to (Ibid.). Moreover, this is partly reflected in the location of the

courtroom doors. For example, a citizen observing a criminal trial will have access to the courtroom from the hallway for the public and the parties involved. There are two doors to the courtroom. One has a sign on the door that reads “Entrance for Prosecution and Defense Attorneys” (*kensatsukan/bengonin iriguchi*) and the sign on the other door reads “Entrance for the Audience” (*bōchōnin iriguchi*). The door for the legal professionals leads them to the courtroom well and the audience’s door leads to the gallery area.

Upon entering the courtroom, one will notice a bar separating the gallery from the seating space for trial participants. Once seated in the gallery, audience members face the judge’s bench, which in turn faces the audience. In front of the judge’s bench, at the same level as the rest of the participants, is the desk of the court clerk who also sits facing the audience. Between the court clerk and the bar is the witness stand, which faces the judge’s bench. Meanwhile, the desks of the prosecution and defense are seen facing each other on either side and are located toward the center of the well where the witness stand is. The defendant’s seat, which is often a couch, is usually located in front of the defense lawyer’s desk. A model criminal courtroom for judge-



Figure 1. A conventional criminal trial courtroom with three judges. The participants in the photos are as follows: 1. judges, 2. court clerk, 3. stenographer, 4. court secretary (bailiff), 5. prosecutor, 6. defense attorney, and 7. defendant. Source: Supreme Court of Japan, *Saibansho nabi*. (2017) p7. Photo used with permission from the Supreme Court of Japan.

only trials and a typical floor plan are shown in Figures 1 and 2, respectively.

At the Tokyo District Court, the side the prosecution or the defense sits on is not fixed. In other words, in one courtroom, the prosecution could be seated at the desk on the inner side of the courtroom and the defense could be on the side near the hallway, whereas in another courtroom, their positions could be reversed. As some parts of the standard documents were undisclosed, it is unclear whether this issue has a written rule. However, according to one of the judges interviewed for this research, the presiding judge ultimately has the authority to decide on which sides of the courtroom the prosecution and defense sit.

Ideally, he said that the defense should be seated on the inner side of the courtroom so that in-custody defendants can be seated as soon as they step into the courtroom from the inner door; such an arrangement also helps to keep the defendants at a distance from the hallway for security reasons. However, if circumstances exist in which it is better for the prosecution to be seated on the inner side of the courtroom, such as allowing a victim who will testify behind a screen to enter from the inner door so that she can be kept out of sight of the audience, the presiding judge can decide to make such an arrangement and place the defense on the hallway side. “The decision [...] is based on what is more reasonable under the

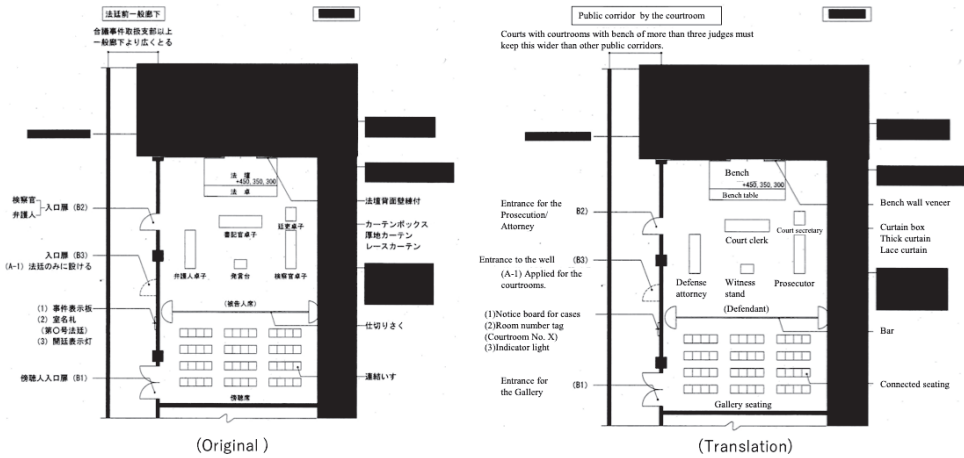


Figure 2. A model floor plan of a criminal trial courtroom for judges-only trials Source: Department of Maintenance of the General Secretariat, the Supreme Court of Japan. *Saibansho chōsha sekkei hyōjunzu* or the Courtroom Building Design Standard. For security reasons, parts of the floor plan were undisclosed, seen here as blotted out in black. Translation of the original Japanese document was prepared by the author.

circumstances,” the judge said.¹⁴

In terms of where the desks are situated, the courtrooms used for lay judge trials generally have a similar structure to the conventional criminal courtrooms just described above. However, many unique features are installed, especially for lay judge trials. The most prominent difference is the judges’ bench, which is a curved table long enough to accommodate nine people. The length of the bench seems to vary depending on the size of the courtroom, but it is typically 7.5 meters to 8.8 meters long.^{15,16} The bench is raised 35 centimeters above the other participants, but it is 10 centimeters lower than the conventional bench.¹⁷ A typical lay judge trial courtroom and floor plan are shown in Figures 3 and 4, respectively.

Another prominent new courtroom feature includes monitors. Five small 15-inch monitors are installed on the bench and two large 65-inch monitors are installed on the walls behind and above the seats of the prosecution and defense, as shown in Figure 5.¹⁸ Other communication devices are also present in the courtroom, such as a document camera and tablet that are primarily used at the witness stand to display evidence on the monitors. At the same time, recording devices including video cameras and microphones for speech recognition systems are used to record the questioning of the witnesses and the defendants so that the lay and professional judges can replay the recordings during their deliberations if necessary (Koshinaka, Emori, and Onishi 2010, 47-49).



Figure 3. A model view of a lay judge courtroom. Those depicted in the photo are as follows: 1. judges, 2. lay judges, 3. court clerk, 4. prosecutor, and 5. defense attorney. Source: Supreme Court of Japan, *Saibanin seido nabigēshon*, (2019) p.9. Photo used with permission from the Supreme Court of Japan.

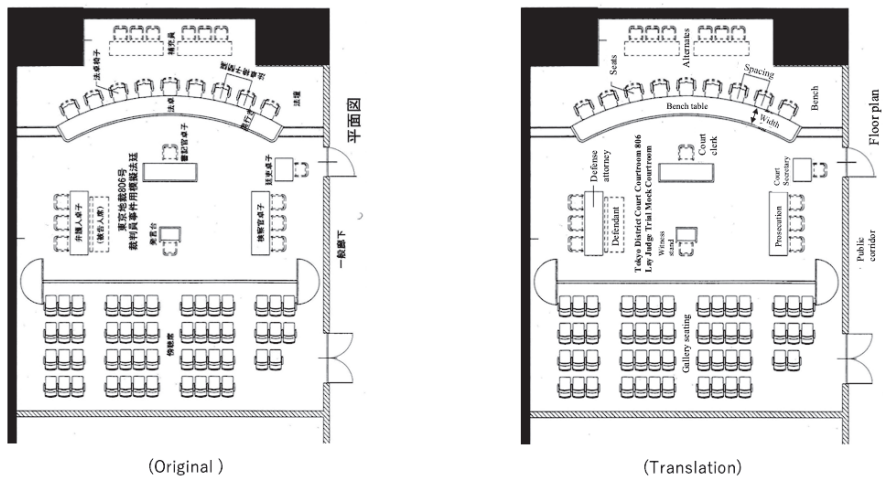


Figure 4. A model floor plan of the lay judge mock trial courtroom, which was made in one of the courtrooms at the Tokyo District Court. Source: Department of Maintenance of the General Secretariat, the Supreme Court of Japan. *Saibansho chōsha sekkei hyōjunzu* or the Courtroom Building Standard Plan. Translation of the original Japanese document was prepared by the author.



Figure 5. A lay judge courtroom in the Saitama District Court is seen from the bench. Small monitors are installed on the curved bench and the desks of the public prosecutors and the defense. The witness seat has a touch screen. Two large monitors, one of which appears on the wall, are installed in the courtroom. Source: Supreme Court of Japan, *Saibanin seido nabigēshon*. (2019) p.48. Photo used with the permission of the Supreme Court of Japan.

The Supreme Court explained that arched benches enable professional and lay judges to see each other's faces and make eye contact, while allowing a natural view of the witnesses and defendant when they are on the witness stand.¹⁹ It also explained that the bench was

4.2 New bench

As previously mentioned, one of the most notable and unique features of the lay judge courtroom is the bench, which is a wide, curved table facing the front of the bar and audience. When asked about their first impressions of the bench, the legal professionals interviewed all expressed that they were initially surprised to

lowered by 10 centimeters compared to conventional criminal courtrooms to reduce pressure on the defendant (Kobayashi 2004). As of September 1, 2016, 151 layjudge courtrooms had been established in 50 district courts and 10 district court branches across the country.²⁰

see how wide it became compared to conventional courtrooms.²¹ The former lay judges, on the other hand, said it was the height of the bench that caught their attention.²² The professional judges in fact acknowledged that the raised bench is one of the questions often asked by the lay judges, but they expressed

that what mattered most was that the level of the eyes between the judges and the witnesses and defendants when they take the witness stand, are on the same level.

In the two cases studied, the entry to the bench by the lay and professional judges occurred in a specific order, and this was repeated every time that the members of the bench returned from recess. The ritual-like entry of the members of the judicial panel can be considered one of their first team performances.²³ The following excerpt from my field notes from the in-custody defendant case describes the typical entry of the defendant and the members of the judicial panel:

The door inside the bar and near the prosecution's seats opens, and two custodians bring the defendant into the courtroom. One of the custodians, a male, leads the way, followed by the defendant in handcuffs and a female custodian who holds the belt that encircles the defendant's waist and is connected to the handcuffs. They walk across the floor, and when they reach the defense's seats, the female custodian loosens and removes the belt, which is connected to the handcuffs that remain on the defendant. The female custodian continues to hold the rope as they

take their seats. The court secretary then enters the courtroom from the same door and looks across the room at the custodians and asks them to unlock the handcuffs. The three stand, with the defendant facing the female custodian who unlocks and removes the handcuffs. The male custodian from behind watches the process with his back toward the audience. When the handcuffs are removed, the three sit down again. The female custodian puts the handcuffs away.

After confirming that the handcuffs were removed, the court secretary goes out the door again. He then returns to the courtroom immediately, this time calling out to the courtroom: "Please rise." As everyone rises, the door next to the bench opens, and the presiding judge appears and steps up to the raised bench and stands in front of his seat in the middle. Following the presiding judge is the senior associate judge, who sits on his left, and the lay judges, who enter one after another and stand in front of their seats. Two

alternates follow and walk to their seats behind the lay judges. The junior associate judge, who enters last, closes the door and walks to her seat next to the presiding judge. Once everyone is in place and facing the courtroom, everyone bows, then sits down.

Instead of bowing, the custodians both salute.²⁴

The seating arrangement and the order of entrance into the courtroom by the lay and professional judges are shown in Figures 6 and 7, respectively.

In fact, entry to the courtroom is rehearsed

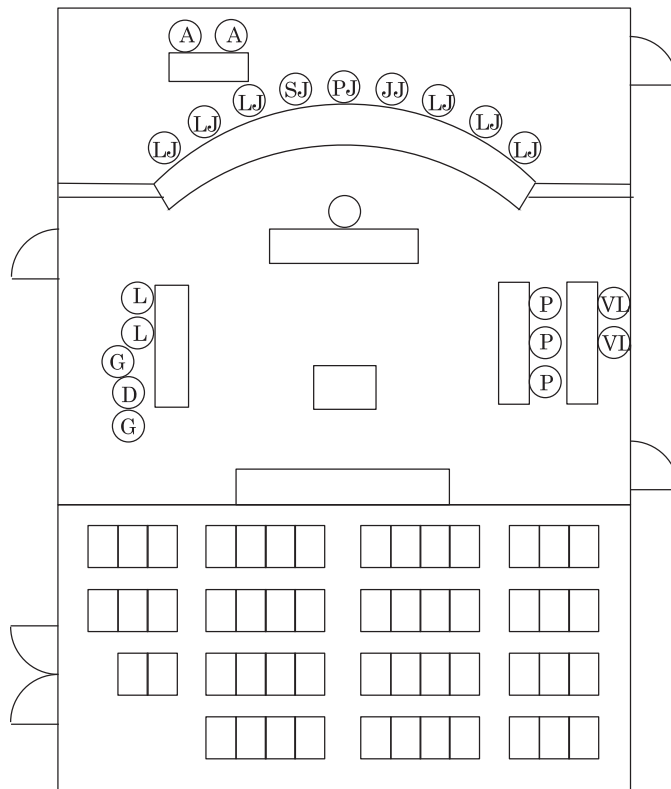


Figure 6. The seating arrangement of the participants of the trial of the in-custody defendant. The presiding judge (PJ) sits at the center of the bench. The senior assistant judge (SJ) and junior assistant judge (JJ) sit next to the presiding judge; they are sandwiched by the lay judges (LJ), who sit on both sides of the bench. The court clerk (C) sits in front of the bench. Alternate lay judges (A) are seated behind the bench. Meanwhile, the prosecutors (P) are seated on the right side, with the lawyers representing the victims (VL) seated behind them. The defense lawyers (L) are seated on the left side, with the defendant (D) next to them, with the custodians (G) sitting beside her. The court secretary, or the bailiff, is not shown in this diagram.

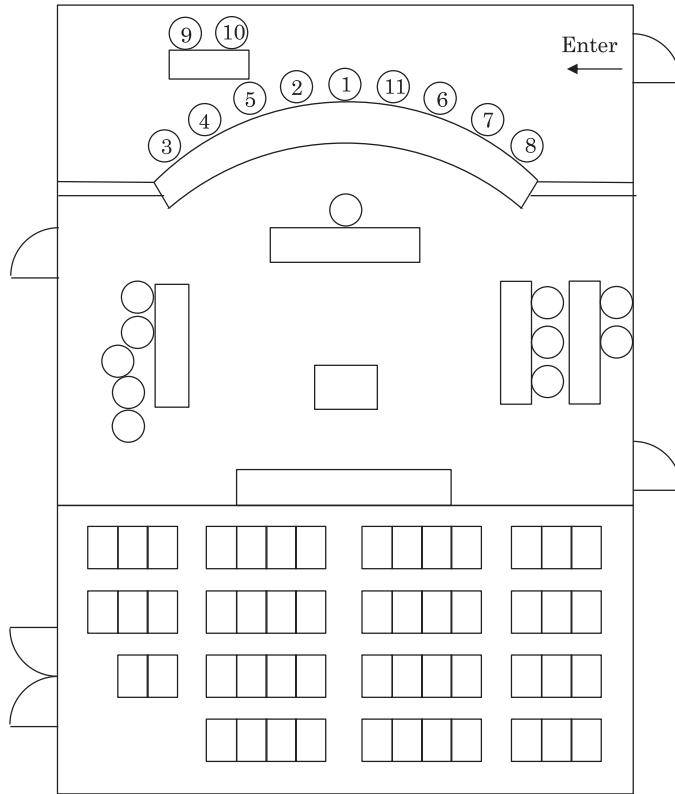


Figure 7. The order of entry of lay and professional judges for the trial of the in-custody defendant. This order was preserved throughout the trial.

prior to the opening of the trial. According to the interviewed judges and lay judges, it is part of the orientation they go through that takes place once the lay judges are selected and sworn in. The judges claimed that the reason they have an assigned order is to secure a smooth entry, although there is no order in the exit as each individual has their own pace to gather their belongings.

During the hearings, the judges in the two cases were occasionally seen to look at both sides of the bench, and the judges interviewed

revealed that they are most concerned about whether their lay counterparts are following the proceedings or not. They acknowledged that the curved bench in fact provides a good view of the entire bench. Thus, if they spot a clueless expression on a lay judge, they are able to stop the person questioning and ask him or her to elaborate because it isn't clear enough. The judges said they also check to see if anyone is looking sleepy or feeling ill.

The bench is the only setting that faces the entire courtroom; thus, the nine-judge panel,

who sit in a line, always seems to perform as a team, with the presiding judge taking leadership and moving the proceedings forward. Meanwhile, the prosecutors and defense lawyers of the cases observed all went to stand in front of the witness stand and faced the bench when they made their arguments. As the witness stand is set up in the center and faces the bench, it inevitably puts the person who is called to the stand to face

towards the bench. However, the prosecutors and defense lawyers in the two cases independently took that position when they addressed the bench for the opening statements and closing arguments. The position taken by the prosecutors and the defense lawyers took to address the bench in the in-custody defendant case is shown in Figure 8.

Since lay judge trials resort to live oral performances than documents, prosecutors and

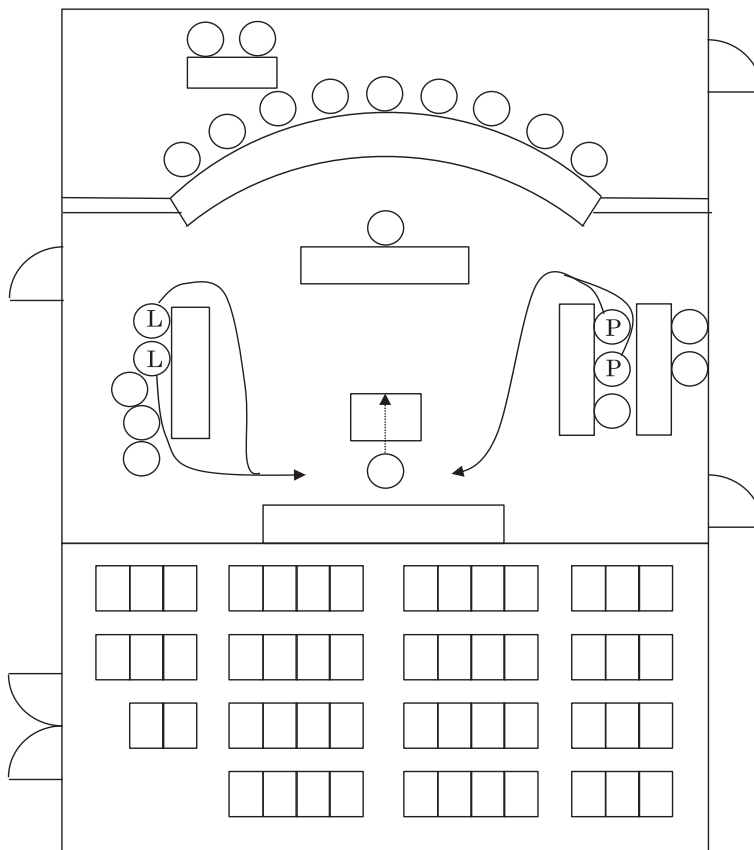


Figure 8. The prosecutors(P) and defense lawyers(L) moved from their seats and stood in front of the witness stand and faced the bench as they made their opening statements and closing arguments.

defense lawyers need to mobilize their communication skills. Interviewees noted several skills they considered important were, in consideration of their location when addressing the bench, making eye contact and gestures, and using visual aids and vocal cues. Lawyers interviewed mentioned that it was encouraged among the defense lawyers to position themselves in the center of the courtroom to address the bench, and the professional judges interviewed were also in favor of this practice. One of the judges mentioned a practical need, claiming that speaking from the center allowed the person's voice to reach the bench equally, thereby making sure the message could be received by all members seated there. Meanwhile, the prosecutors interviewed denied this as a standard practice of the prosecution, which stands in contradiction to the performances of

4.3 Defendant's seating arrangement

Although the presence of the two custodians on either sides of the in-custody defendant was notable, it has become a regular practice in lay judge trials for defendants to be seated next to their attorneys in lay judge trials. In bench trials in the Tokyo District Court and most others, however, it has been common practice that the defendant's seat is situated in front of the defense council's seat. Until recently, as the judges interviewed noted, some judges even had the defendant sit on a bench located behind

the prosecutors observed during the two cases. This contradiction among those in the same profession may be a reality for other legal professionals, as the judges and the lawyers acknowledged that some defense lawyers hesitate to come to the center and face the members of the bench. According to the two lay judges, the defense attorneys in their cases also moved to the witness stand and faced the bench to address them. The prosecutors made their opening statement from their seats, but for the closing argument, one of them moved from her seat and stood in front of the witness stand and addressed the bench without a script and looked them in the eye while speaking. This indicates that how to perform in front of the bench in lay judge trials is still being worked out by legal professionals regardless of their roles in the bar.

the witness stand, which made them face the judges, an arrangement that was common in pre-war criminal courtrooms that separated defendants from their lawyers.

According to one of the lawyers interviewed, whether their client is seated in front of them or next to them makes a big difference for the defense attorney. When the defendant is seated in front of him or her and he or she needs to communicate with them during the trial, the lawyer explained, he or she must tap them on

the shoulder to make them turn around, if it is urgent, or wait until recess to communicate with the client. In some cases, the client will turn around to speak to their lawyer, but not all defendants are courageous enough to do so. Comparatively, having the defendants sit next to their lawyers makes it much easier to communicate. This lawyer cited many benefits of this seating arrangement:

It really makes me feel that we are working on the case together. For example, even though evidence is shown on the large monitor [where the defendant can see it], we can look at it together on the monitor in front of our desk. It also allows me to ask them something like, “Is this true?” in writing during the hearing. It’s become much easier to communicate in many ways.[...] Even giving a pat on the shoulder [to comfort the accused] becomes easier when they are seated next to me.²⁵

This seating arrangement is especially significant when it comes to in-custody defendants, because the courtroom is the only opportunity lawyers have to meet their clients directly without having some sort of barrier between them. Until that point, they speak

through an acrylic wall during the lawyer’s visits to the detention facility. The wall hinders smooth communication and the lawyer said that at such times he has no choice but to press evidence that he wants to show his clients against the transparent wall.

Indeed, the defense lawyers in both observed trials were seen to show their clients the copies of the handouts provided by the prosecution upon giving their arguments. They also shared with their clients a slide presentation on the monitor in front of them. When he left his seat to make his opening statement in front of the witness stand, the defense lawyer for the in-custody defendant left a handout for his client to see. Her lawyers seemed to communicate more frequently than the lawyers in the other case who came to the courtroom with their defendant in the other case, which suggests that they might agree with the interviewed lawyer’s assessment of the difficulties of communicating during detention center visits. These examples demonstrate how this seating arrangement enables lawyers and defendants to work as a team.

Having defendants sit next to their lawyers in the presence of lay judges is in fact the fruit of negotiations between lawyers, the courts, and the Ministry of Justice prior to the introduction of the lay judge system. The Japan Federation of Bar Associations (JFBA) had pushed for the Supreme Court and the Ministry of Justice to allow defendants to be seated next

to their lawyers, an argument that some defense lawyers had been making for nearly twenty years (Takano and Kanaoka 2007, 106-112). The JFBA claimed that the conventional courtroom arrangement, with the defendant either facing the judge behind the witness stand or seated in front of the defense lawyers, could prejudice lay judges against the accused, adding that in-custody defendants should also be seated without guards (Aoki 2013, 157-169). They also stressed that having their clients sit next to them was necessary to facilitate communication during hearings (Ibid., 160-161). The Ministry of Justice, which oversees the treatment of in-custody defendants, argued that having guards sit on either side of the defendant was necessary to prevent escape

attempts (Ibid., 160-161). In the end, after heated negotiations, the Supreme Court and the Ministry of Justice acquiesced to the JFBA's demands, on the condition that this arrangement would be limited to lay judge trials and only when the presiding judge approved the seating arrangement. The Ministry of Justice drew up a concrete plan on how to seat the defendant (Ōguchi 2010, 29-33). The plan carefully states that one of the custodians "must sit right next to the defendant, while the other custodian, who sits closer to the lawyers, will place their seat about a shoulder width away from and half a seat behind the defendant" (Ibid., 29-30). The Ministry also notified detention officials not to seat the defendant close to the bench (Ibid., 31-

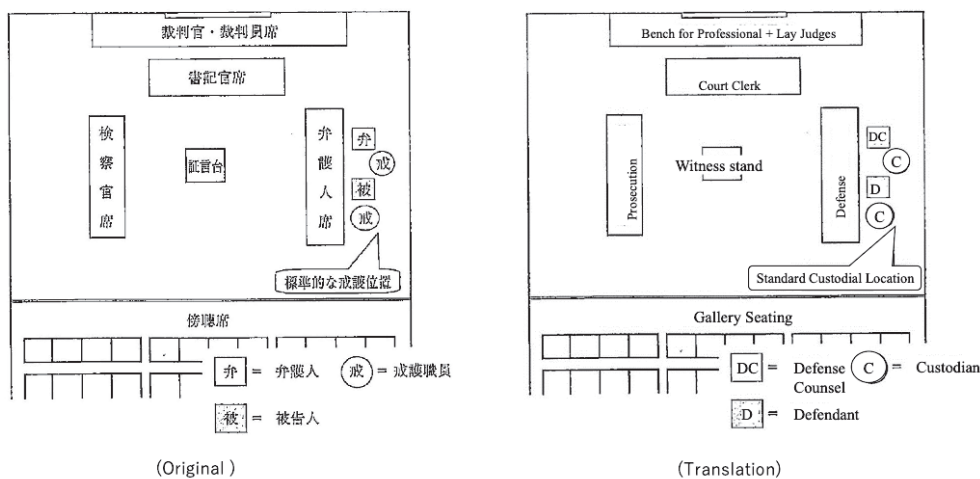


Figure 9. A diagram that explains the “standard seating locations” of the custodians when seating the accused in a lay judge trial. Source: Ōguchi Yasuo, ‘Saibanin seido no sutāto to kyosei no jitsumu – Saibanin saiban no hōtei ni okeru hikokunin no kaigo’. Keisei, 121:1 (2010), p30. Translation of the original Japanese diagram prepared by the author.

33). A diagram illustrating this arrangement is shown in Figure 9.

Thus, the new seating arrangement for the defendants partly derived from the intention to reduce potential prejudice among lay judges

seated on the bench, but side-by-side seating also had the consequence of allowing lawyers and defendants to communicate and smoothly work together as a team, thereby ensuring a better team performance.

4.4 The dynamics of the lay judge courtroom setting and participant performance

In this study, the analysis of the two cases and the interview data showed that the court environment has indeed been adjusted from that of judge-only trial courtrooms, primarily in consideration of the lay judges who are now audience members of the performances given by the other trial participants. The courtroom features that were confirmed as unique to lay judge courtrooms can be largely divided into those that relate to location and communication devices. The present study focused on the former, which include the wide bench, a setting designed to place the lay judges in a location where they can be seated alongside their professional counterparts. The performances of the members of the bench, such as their entry to the courtroom, as well as their questioning of the witnesses and defendants were orderly and well-planned. The interviews confirmed that these team performances were the result of rehearsals and coordination backstage, with the presiding judge playing the role of the “director” and ensuring that everything goes smoothly (Goffman 1959, 97).

Another new courtroom feature was the seating arrangement of the defendant. In both

cases attended, the defendants were seated next to their lawyers, although the in-custody defendant had two custodians seated on either side of her. In judge-only trials, defendants are generally seated in front of their lawyers. It was confirmed during the interviews that this new arrangement is the result of negotiations among the judicial circle and was implemented with the intention of reducing anti-defendant prejudice in the courtroom; however, it is left up to the defense lawyer to seek this arrangement. Having the defendant sit next to his or her lawyers facilitates communication between the members of the defense and allows them to work as a team, which was demonstrated in the two trials observed in this study. Thus, although the new features of lay judge courtrooms were installed or arranged for different reasons, they serve a common purpose: to set the stage for the lay judges to work with the professional judges as effective decision makers. This consequently brought benefits to defendants, who are now allowed to be seated next to their lawyers.

5 Conclusions

Civic participation in criminal trials has brought various changes to the Japanese criminal justice system, but its impact to the courtroom design and the interactions have been overlooked. This study addresses this research gap by demystifying the courtroom design and identifying its underlying dynamics by analyzing two trials using Erving Goffman's dramaturgical approach and interviews with legal professionals and former lay judges. While this research looked into the courtroom and the practice of legal professionals, it was also an observation of how ordinary citizens have changed a system that was long run by experts, especially in terms of how they communicate in a particular setting. The analysis introduced in this paper, which focused on the new bench and the seating arrangement of defendants, showed that such new settings that were primarily established for the lay judges have influenced the performances of the legal professionals who continuously strive to improve their communication skills in the courtroom. The new arrangements also seem to benefit the defendant to some extent, but it is important to note that such positive change can be observed only by the eyes of the lay judges and not necessarily by the spectators, as the timing of removing the handcuffs indicate. Some other courtroom elements also needs further investigation, such as the use of

monitors and slide presentations. The results of this study demonstrate that the courtroom environment alone has many aspects to be understood. Goffman's argument that the setting is part of the performance proved to be true as dramaturgical analysis clarified that the environment, including the locations of its participants and objects, influence people's activities within a social setting and should therefore be considered. There is much about the lay judge courtroom to be studied from various perspectives, including the field of media and communication studies that may lead to the improvement of the issues and challenges observed in this study. Studying the courtroom and people's interactions from various disciplines will help open the justice system further to public understanding and promote greater transparency.

This study has several limitations. First, because videotaping or audio recording is prohibited in the courtroom, the only means of recording data during the trials was taking field notes, which has obvious restrictions. I tried to observe and carefully note down as many elements of the courtroom and trial process as possible, but it was impossible to record everything that went on when so much was occurring simultaneously. Second, although I was able to interview legal professionals and former lay judges who are not necessarily

normally accessible, the sample size was small and as the interviewees indicated, opinions regarding some of the new practices still differ even among those in the same profession, and this requires further consideration. While courtroom practice does not change very rapidly, more data need to be gathered from recent court hearings to investigate the findings

further. Despite these limitations, it is hoped that the information contained in this study will provide useful data and ideas that further our understanding of how civic participation can bring about changes in our legal institutions, as well as in people's behaviors, mindsets, and surrounding environments.

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註

- ¹ Article 2 of the Lay Judge Law also stipulates that the court can decide to rule a case with four lay judges and a single professional judge if no dispute concerning the charges and facts of the case exists and other circumstances deem it to be suitable.
- ² Supreme Court of Japan, Accessed January 20, 2021. https://www.saibanin.courts.go.jp/vc-files/saibanin/2020/r2_11_saibaninsokuhou.pdf
- ³ For example, see Matsumura, Kinoshita, and Ota (2015), Mishima (2015), Okada, Fujita, and Naka (2009), Shiraiwa (2019), and Hotta (2009). Makino, Oshiro and Ii (2019) and Oshiro, Sakagami and Fukuda (2019) are among the works that look back at the first ten years of the system.
- ⁴ See Taguchi (2013) and Ii and Saiban-in Lounge (2019) for the personal accounts of those who served as lay judges. Papers published by academics on this subject include Uemura (2013) and Shimomoto (2018).
- ⁵ A few practical materials on trial advocacy by defense lawyers show some interest on courtroom space, such as the Japan Federation of Bar Associations (2009), Takano (2011), and Yahata, Tsuji, and Endo (2009).
- ⁶ For example, see Resnik and Curtis (2011), Mulcahy (2011) and Dahlberg (2016) .
- ⁷ Notable studies on the history of Japanese courtroom buildings include Hosono (2000, 2004) and Zaidan Hōjin Shihō Kyokai (1995, 1997).
- ⁸ Goffman's front stage/back stage framework has been applied in various studies on criminal justice system settings, from the context of policing to racial discrimination in the decision-making process and restorative justice settings. See Portillo et al. (2013, 1-22). The framework has also been used for studies on civil trial juror's decision making. For example, see Rose, Diamond and Baker (2010, 310-323).
- ⁹ On May 2, 2016, the Supreme Court of Japan announced on its website that the schedule for lay judge trials would now be available on the website of each district court, a move that seems to be the judiciary's response to growing public interest in the new system.
- ¹⁰ Ministry of Justice statistics show that in the 2015 fiscal year, 371,459 people were indicted, among which 14,867 were female defendants. See Ministry of Justice (2016).
- ¹¹ My previous reporting experiences of criminal trials mainly at this courthouse have also contributed to my observations.
- ¹² Supreme Court, "Saibanin seido Q&A."

- ¹³ The two documents, 裁判所庁舎設計基準 and 裁判所庁舎設計標準図 in Japanese, which were compiled in April 1995 but reflect updates from December 2006, were obtained by the author in February 2017 from the Supreme Court using a judicial administration information disclosure request. Several pages of the documents were undisclosed due to security reasons and were blotted out in black. The official standard floor plan for lay judge courtrooms could not be found in the design standard except for the one shown in Figure 4. It could have been included in one of the pages that were not disclosed. However, the current lay judge courtrooms look basically the same as this diagram.
- ¹⁴ Interviewed on July 28, 2016.
- ¹⁵ The width of the bench for the lay judge courtroom built at the Yamagata District Court in 2007 was set at 7.5 meters. *Yomiuri Shinbun* (2007). "Saibanin muke hôtei kansei chisai Yamagata." Dec. 2. Meanwhile, the width of the bench is set at 8.8 meters in the layjudge courtroom in the Fukui District Court, which is the largest courtroom in Japan. *Saibansho nabi Fukui* Vol.6. 2007. http://www.courts.go.jp/fukui/vcms_lf/105006.pdf.
- ¹⁶ When the new lay judge courtrooms were finished, district courts promoted them on their websites, with detailed descriptions of the new features. An example can be seen in the Sendai District Court Website (2007). "Saibanin saibanyō hôtei no shōkai" Accessed October 29, 2017. <http://www.courts.go.jp/sendai/about/koho/hoteikansei/index.html>.
- ¹⁷ Ibid.
- ¹⁸ Ibid.
- ¹⁹ The Supreme Court's response to an inquiry made by this author in September 2016.
- ²⁰ The number of courtrooms was provided to the author by the Public Affairs Office of the Supreme Court in September 2016.
- ²¹ One judge recalled thinking "it was going to be challenging to see us all as one and move the trial forward," while another noted that he was initially concerned that the width might intimidate whoever takes the witness stand; however, he no longer believes this to be true.
- ²² One lay judge said that because their view was raised he wondered where he should be looking during the trial, while the other lay judge said "it was higher than I thought."
- ²³ However, their exit from the bench did not seem as organized. What did seem like a pattern, however, was that the junior associate judge always opened the door for the lay judges and then alternates to retire in a random order, followed by the senior associate judge and presiding judge.
- ²⁴ Notes taken on the second day of this trial held in September 2016.
- ²⁵ Notes taken during an interview in September 2016.

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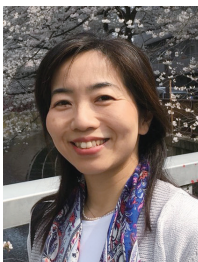
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Japanese Lay Judge Courtroom Design: The Effect of Civic Participation on Trial Participants

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Since its introduction in 2009, the impact of citizen participation in criminal trials under Japan's saibanin seido, or the lay judge system, has been studied from various perspectives except on how it has influenced the courtroom layout and people's interactions within it. This study fills this research gap by demystifying the courtroom design and identifying its underlying dynamics by analyzing two trials using Erving Goffman's dramaturgical approach and semi-structured interviews with legal professionals and former lay judges. This paper provides an overview of the structural design of the Japanese criminal courtroom, both those used for judge-only and lay judge trials. Based on the observations of two lay judge trials at the Tokyo District Court and the interviews, this paper focuses on the analysis of the wide bench and the seating arrangement of the defendant and the effect these changes have had on the interactions among trial participants. The study results showed that lay participation triggered the need to apply new arrangements to the conventional courtroom, which in turn have evoked new performances from trial participants. The new features of lay judge courtrooms were installed or arranged for different reasons but with a common purpose: to set the stage for the lay judges to work with the professional judges as effective decision makers. Consequently, these changes have benefited defendants, who are now allowed to be seated next to their lawyers during trials.

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