Psychology and Law in Japan: Recent Developments

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This article provides an overview of research in Japan regarding how psychology has been used to support law, and gives insight into specific developments of psychology and law of the most recent decade. We review research on investigative aspects since the emergence of this mixed discipline in the 1990s. In particular, we examine eyewitness testimony, face identification, and false confessions as well as interviews with children. This background review is a prelude to exploring research on a new legal procedure, Saiban-in Seido (lay judge system). The supporting Act was passed in 2004, establishing an adjustment to the legal system such that decisions are made by a panel of three professional judges and six lay-persons; enactment began in 2009. We review studies on factors that affect lay judges’ deliberation and decision making. Finally, using real-world cases and laws, we analyze related research on values and attitudes.

Key Words: eyewitness, investigative interviews, lay judge system

Introduction

This article provides an overview of the background of law and psychology in Japan and shows how advances in the combined discipline of law and psychology have developed in the last two decades. We review (1) research related to investigation, including eyewitness testimony, facial identification, and false confessions, as well as interviews with children, (2) research related to the new legal procedure, Saiban-in Seido (lay judge system), introduced in 2004 and enacted in 2009, (3) emerging areas of research in psychology and law, such as studies of the perception of law and morality, and (4) the place of legal education for lay-persons on legal panels. Research in psychology and law is motivated by real-world cases and the legislation of laws. Therefore, where relevant, we refer to actual past cases and laws that affected them.

1. Brief History and Background

Half a century ago, Tadashi Uematsu majored in psychology and then law, and eventually became a judge. He conducted significant research that combined psychology and law, including research on the credibility of eyewitness testimony, face identification, legal decision making, hearsay, and a false confession (e.g., Uematsu, 1958). His research remains cutting-edge even by today’s research standards. However, for the next thirty years, studies in law and psychology were very scarce. There are some exceptions, such as Hamada’s (1986) work on child testimony, and an expert witness testimony on haptic search (whether a man could hit another with a stick in complete darkness using only the sense of touch), cited in Isa and Watanabe (1996). Evidently, until recently, not many psychologists were interested in legal issues.

In 1984, there was an attack on a government house by a political group with firearms. A man was arrested on the basis of eyewitness testimony given four months after the incident. After the first trial, in 1990, a defense lawyer requested that psychologists, including the author, assess the credibility of the testimony. This assessment became one of the first pieces of empirical research of psychology and law in the area in the 1990s. In 1994, E. F. Loftus gave a keynote speech on misinformation effect and false memory syndrome at the Japanese Psychological Association annual
meeting held at Nihon University, which attracted many psychologists to this mixed discipline. In 2000, the Japanese Society for Law and Psychology was established. The Society annually issues a journal titled “Law and Psychology,” which has published a number of law and psychology studies.

Besides the journal, special issues of other journals have helped the emergence of this research field. For instance,

- “Children’s Safety,” *Japanese Developmental Psychology*, 2010

Today, we can find research in psychology and law in journals, such as *Japanese Journal of Educational Psychology*, *Japanese Journal of Psychonomic Science*, *Japanese Journal of Cognitive Psychology*, *Japanese Journal of Social Psychology*, and *Japanese Journal of Psychology*. Furthermore, quite a few influential books have been recently published. It is difficult to cite all the books, but one that carries significance is “Hou to Shinrigaku no Hiten” (Dictionary of Law and Psychology) (Ochi, Watanabe, & Fujita, 2011). It is the first Japanese encyclopedia of psychology and law.

2. Investigative Research

Early research mainly focused on eyewitness testimony. Ishizaki (2010) analyzed papers and posters presented at annual meetings of the Japanese Society for Law and Psychology from 2000 to 2008, which revealed that the most frequent topics presented were about eyewitness testimony. This topic represented about 20% of studies conducted during the time.

Wells (1978) defined two variables that affect the reliability of eyewitness testimony: estimator variables and system variables. An estimator variable refers to influence that can be only estimated in its effect once an incident has occurred. For instance, in a situation where a witness observed an event, the estimator variables include factors such as light levels, distance from the event, duration, and stress. The personal traits and abilities of the witness are also estimator variables. Variables that an investigator may control, such as the procedures of identification, interviewing methodology, and delay of an investigation, constitute system variables.

First we will show the research dealing with estimator variables. Such studies include witnesses’ encoding strategies, emotions, the effects of misinformation, and social conformity during retrieval of information. In the second section, we will show the studies on system variables, focusing on the interviewing techniques that have recently emerged. These include studies on cognitive and forensic interviews with children. The work with children includes some new basic research on the effect of interviewing methods, children’s vocabulary for emotive words, how children speak of past events, understanding the truth and a lie, and face recognition.

2-1. Eyewitness Studies on Estimator Variables

Post-information Research

Since Loftus’ landmark study that showed participants are easily misled by biased questions to believe they witnessed something they actually had not seen (e.g. Loftus & Palmer, 1974) (i.e., post-event information effect), the effect has been an important topic. Some researchers study the effect using an orthodox paradigm, that is, showing a video to participants and then exposing them to post-information. Nabata, Naka, and Takada (2011) presented a video and then showed positive post-information (i.e., the same information as was shown in the video) and negative post-information (i.e., misleading information, which was not in the video). Results showed the effect was asymmetrical. Participants were more influenced by negative post-information than positive post-information. Nakayama and Hyodo (2010) studied how inoculation by using a recall test on eyewitnessed event enhances resistance to the
effect. They showed participants a series of slides depicting a theft followed by post-misinformation. Participants were given a free recall or cued recall test before or after the misinformation was presented, or they were not given any test at all. Results showed participants could spot the post-misinformation better when they were given a cued recall test beforehand.

Other researchers studied the post-information effect in a social context, called social conformity. In a historically famous case, known as the “Teigina Bank case,” a perpetrator poisoned 12 bank clerks to death. There were about 40 eyewitnesses. The analysis of the eyewitness testimonies suggested that they communicated with each other during the investigation. When a suspect was caught, most of eyewitnesses said he was not the perpetrator. However, in about six months, they came to report that they thought he looked like the man or was the man.

This case inspired Itsukushima and his colleagues to research the effects of other’s opinions on a “naïve” participant’s judgment (Itsukushima, Hanyu, Okabe, Naka, Itoh, & Hara, 2006; Itsukushima, Nishi, Maruyama, & Takahashi, 2006). Earlier participants in this experiment were exposed to a target person, after which they were asked to come to a lab and rate the similarity of faces shown in slides to that of the target person. In the experimental condition, each participant sat with another participant, who was actually a confederate of the researchers. The confederate always answered first, followed by the naïve participants. The results showed that, compared to the control condition, where a participant answered on his/her own, naïve participants’ ratings were influenced by what the confederates said, even when the faces shown were obviously dissimilar to the target person.

Similarly, Takagi and Tsuji (2009) studied the effect of group pressure on memory. They showed four naïve participants a part of a film. Immediately after or a week after the presentation, participants were asked to sit at one of four desks with a computer. Participants were told that the computers were connected to each other. They were either asked to take a recognition test on their own with no further information (control) or they first answered the test and were then given “other people’s answers,” pre-determined by an experimenter. Compared to the control group, not only was there influence by the “others’ answers,” but the influence was greater in the delayed condition. Participants even rated “they remembered” on items they had not seen suggesting that they had incorporated “others’ answers” into their own memories.

Other streams of research on social conformity have been conducted using Mori’s technique (Kanematsu, Mori, & Mori, 1996). Mori and his colleagues devised an apparatus that uses two LCD projectors and polarizing sunglasses. The apparatus allows them to show participants a converged image of two different images projected by two projectors. A participant wearing horizontally polarizing sunglasses sees one image, but a participant wearing vertically polarizing sunglasses sees a different image. Using this method, Garry, French, Kinzett, and Mori (2008) had pairs of participants believe they watched the same film of a robbery, which in reality was not the case. Each participant saw different items in the film. Participants were then asked to remember the items they saw and talk about them with their partner. Although they had seen different items, most of them gave the same answers, suggesting that conformity had occurred. Using the same method, Wakabayashi and Sato (2012) showed pairs of participants a film, in which someone picked up an object (i.e., robbery). One of each pair watched an ambiguous scene where the behavior was obscured. These pairs showed conformity occurred in one direction, that is, those who did not see the robbery came to believe the robbery did in fact occur.

Encoding of incidents

Other research has focused on the encoding process of incidents. Yamada and Chuo (2010) studied the conditions under which weapon focus effect occurs (Weapon focus effect refers to a phenomenon that memory performance decreases in the presence of a weapon, which is thought to attract eyewitness’s attention). The researchers showed participants
one of two videos. In one video, a male was holding a knife and a female a leek in a kitchen (usual
condition). In another, a male was holding a knife and a female a chalk in a classroom (unusual condi-
tion). Memory performance on recall and recognition
tests was significantly lower for the male than
for the female in the unusual condition, whereas no
difference was found in the usual condition, suggest-
ing that the weapon focus effect occurs depending
on situational information or distinctiveness.
Whereas this study examined automatic attention,
Ochi studied conscious attention, that is, effective
encoding strategies to memorize a criminal scene.
Ochi (2009a) showed participants a series of slides
including a murder and instructed them to memo-
rize as much as they could. Afterwards, they were
given a free recall test and a recognition test, fol-
lowed by a questionnaire in which participants were
asked to rate their use of memory strategies, such as
(1) verbalizing, (2) visual search, (3) deep processing,
(4) imaging, and (5) scanning slowly. Results
showed that techniques (1) and (4) were used fre-
quently, but those who used (2) and (5) had the best
recall performance. Interestingly, participants
who were restricted to using (2) and (5) did not show
the performance enhancement (Ochi, 2009b). The
researchers concluded that (2) and (5) were effective
only when participants chose to use the techniques.

2-2. Retrieval and Investigative Interviews
Interviewing with eyewitnesses: the Cognitive
Interview

Research into estimator variables is important to
evaluate credibility of evidence, but research has
increasingly focused on system variables, such as
interviewing techniques and methodologies.
The Cognitive Interview (CI) is an interviewing
methodology that emphasizes free narratives (i.e.,
free recall rather than answering questions) with some
retrieval strategies, such as context reinstatement,
report everything, change order, and change per-
spectives (Fisher & Geiselman, 1992). Meta-analyses
have shown CI elicits more information with only a
slight increase in recall errors (Meissner, Meissner,
& Fraser, 2010). Focusing on the technique of context
reinstatement, Kasahara and Ochi (2006) studied the
effects of context reinstatement and found that such
imaging techniques enhance remembering.

Yamauchi, Takahashi, and Itoh (2008) studied the
relationship between CI and personality. They
expected extraverts to be more open to using these
strategies, and thus, the interviewing procedure
would have greater effect with extraverts. As
predicted, the results showed extraverted partici-
pants produced better performances. Regardless
of the personality type, however, participants who
were interviewed using CI made fewer errors in
their recall.

Some researchers have studied the effect of draw-
ing, expecting it may have effects similar to context
reinstatement in CI. In fact, Ochi and Kosaka (2008)
found a positive effect of drawing on remembering
a picture. However, in Oue, Matsumoto, and
Onuma (2010), where participants were asked to
remember the objects in a waiting room, there was
no measurable effect on memory from drawing.
The mixed results may be due to the differences in
stimuli and/or procedures. As Lamb, Herschk-
owitz, Orbach, and Esplin (2008) suggested, this tech-
nique requires more studies using various stimuli (e.
g., faces, people, objects, scenarios, and actions) and
procedures (e.g., recall after drawing, and recall during drawing)

Interviews with suspects

Interviewing or interrogating a suspect is another
important topic of interviewing research. Follow-
ings are the cases that miscarriage of justice occurred
due to the failure of proper interviews. Mr.
Sugaya, an ex-defendant of the Ashikaga case, was
convicted of rape and murder on the basis of a
primitive “DNA testing” and his own confession of
guilt. Then in 2009, the latest DNA test proved he
was not the perpetrator, and his confession was
determined to be false. In 2009, Mr. Sugaya was
exonerated and released.

In another instance, the Himi case, a man was
convicted of rape and sentenced. After he finished
serving his prison sentence, the actual perpetrator
was found and the convicted man’s innocence was
confirmed. He too had falsely confessed. He filed
a suit against the government in 2009.

In the Shibushi case, 13 people were accused of
transgressions of election rules. Although no other evidence existed, six of them had given false confessions. In 2007, they were all (but one who died before the trial was over) exonerated.

In 2009, the Japanese National Police organized a committee to improve investigation methodologies and discussed to include psychologically sound methods in interviewing processes with suspects.

In 2010, an influential book was published in the U.S., “Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations” (Lassiter & Meissner, 2010). In the book, Meissner, Russano, and Narchet (2010) reviewed results from experiments using Kassin’s Alt–key paradigm and Russano’s paradigm. Alt–key experiments have shown that accusatory interrogation, with maximization (e.g., Participant’s mistake will cause lots of trouble.), minimization (e.g., It is normal to make a mistake.), and eyewitness testimony (stating that the participant was observed making the mistake) lead naïve participants to admit and sometimes internalize the belief that they pressed an Alt–key on a computer keyboard, when no such a thing actually happened. Participants even provided detailed information on the event that did not really happen. In Russano’s paradigm, naïve participants were either led to commit a transgression (helping another participant, who actually is a confederate) or not. Then, the participants were interrogated in either an accusatory manner or by an information gathering approach used to elicit an interviewee’s free recall in a non–coercive way. Results demonstrated that the accusatory interrogation, as opposed to the information gathering approach, elicits more false confessions, which makes discriminating real confessions from false ones difficult.

Although experimental research on suspect interviews has not yet been published in Japan, studies such as Hara, Ohashi, Goan, Mori, Matsushima, Asao, Honjo, and Takagi (2011) have analyzed the transcript of interrogations in the Ashikaga case to elucidate the influence of insinuations and suggestions on interview outcomes (also see Takagi, 2012). Naka (2012a), after attending a three–week suspect interview training in the U.K. in 2011, reported a new direction in suspect investigation. Known as the PEACE model, it was developed and is in use in the U.K. and other countries. The acronym stands for Planning and Preparation (P), Engage and Explain (E), Obtain an Account (A), Closure (C), and Evaluation (E). The model emphasizes eliciting a full account by a suspect before questioning. The model makes the most of open–ended questions and conversation management, similar in principle to CI and other structured interviews. In fact, Bull and Soukara (2010), who analyzed real suspect interviews in the U.K., showed that open–ended questions were associated with spontaneous confessions.

On the basis of such research, a committee of Law and Psychology of the Science Council in Japan issued a proposal to the government in 2011 (Committee of Psychology and Pedagogy, Division of Law and Psychology, 2011). Then, in March 2012, the Japanese National Police issued a public comment on improving interviewing methodology (National Police Agency, 2012a). On December 13th, 2012, a document on investigative interviewing based on CI and other psychological research was also issued by the National Police Agency (2012b). Research and practices in suspect interview methodologies are quickly progressing.

**Forensic interviews, or investigative interviews with children**

In the 1980s and 1990s, a number of allegations of sexual abuse were made by children against their caregivers (e.g., teachers and parents) in the U.S. and the U.K., such as in the McMartin case (California, the U. S.), the Little Rascals Day Care Center case (North Carolina, the U.S.), the Wee Nursery case (New Jersey, the U.S.), the Cleveland case (Cleveland, the U.K.), and the Shieldfield Nursery case (Newcastle, the U.K.). In many of these cases, investigators conducted improper interviews (e.g., Ceci & Bruck, 1995). In the McMartin case, for instance, an interviewer suggested to the children that others had already told her about the incident, and if they did not remember, they were stupid. (Butler, Fukurai, Dimitriu, & Krooth, 2001.)

Interviewers also asked suggestive questions that assumed that a particular person (a suspect) did some-
thing bad. The interviewers repeated questions until a child gave an answer that fitted the interviewers’ expectations.

In Japan, a known miscarriage of justice occurred due to inadequate interviewing methods with children. In the Kabutoyama case, a teacher at an institute for mentally handicapped children was accused of murdering a child. Eyewitnesses, that is, mentally handicapped children at the institute, could scarcely provide information in the beginning. However, after three years of repeated interviews, the children came to give detailed testimony. Hamada (1986) analyzed and pointed out the problems of biased interviews. Yamamoto and his colleagues conducted an experiment to demonstrate that such repeated interviews lead to errors and fabrications (Yamamoto, Wakinaka, Saito, Takaoka, & Takagi, 2003). In the above case, it took the defendant more than twenty years to be exonerated.

Inspired by this case and others, in which the credibility of children’s testimony was in question due to problematic interviews, researchers set out to study the effect of misinformation on young children (see Naka, 2006, for an English review).

Earlier, in the 1990s, in the U.K. and the U.S., a body of research was conducted to improve interviewing methods for children. These studies converged into a structured interviewing methodology, called forensic interviews or investigative interviews (c.f., Milne & Bull, 1998; Lamb et al., 2008; Naka, 2011; Tanaka, 2011). These methods are structured in distinct phases such as ground rules (e.g., explicitly asking the child to tell the truth), rapport building, training of episodic memory (asking the child to remember and narrate what happened), substantive issue (the main topic to be investigated), and closing.

One influential protocol is the NICHD protocol (NICHD stands for National Institute of Child Health and Human Development) developed by Lamb et al. (2008). Supported by Japan Science and Technology Agency, Naka (2011) trained professionals at child guidance centers on the protocol and examined the effects by analyzing mock interviews conducted by trainees before and after the training. Results showed that training changed the use of interviewers’ question types (more open-ended questions and less wh- and yes/no questions) and increased the amount of recall by interviewees.

Basic research relevant to forensic interviews have been conducted as well. For instance, Naka (2012b) examined the effect of different methodologies of interviewing children. Children who were eight and 11 years old were shown a video and then given (a) a free recall test, (b) a free recall test after one-minute imaging, (c) questions with correct and incorrect information (e.g., What kind of clothes did the man wear? Was he wearing a hat? [when the man was not wearing a hat]), or (d) an interview with open-ended questions. Results showed the interview with open-ended questions elicited more correct information and did not affect the second interview, where children were asked whether the film included specific scenes. False reporting during the second interview was higher for younger children especially in conditions (b) and (c).

Uemiya and Naka (2010) studied the use of dolls in interviews. Young children were shown a video, which included physical interactions (e.g., touching the shoulder), moving (e.g., under a table or on a chair), and transferring objects. Whereas half of the children were asked to first verbally describe the event and then demonstrate the event using dolls, the other half were asked to do in the reverse order. Children provided more information when using dolls, especially on locations, although using the dolls increased the use of pronouns (i.e., less concrete words) in the subsequent verbal recall.

As mentioned earlier, children were explicitly asked to tell the truth as a ground rule. Uemiya and Naka (2009) studied young children’s conception of the truth and a lie. They studied young children’s identification, discrimination, and definition of the truth and a lie, and whether they could actually tell the truth or a lie to a puppet. Older children (5-6 years old) were able to discriminate and identify the truth and a lie better than younger children, and could actually tell the truth or a lie when asked to do so. Results also showed that the performance was related to children’s Theory of Mind (ToM). Although a child witness is not neces-
sarily required to take an oath, whether s/he comprehends the truth and a lie is important when evaluating the credibility of her or his testimony. The results showed that even three- to four-year old children could correctly identify the truth and a lie in more than 90% of the case.

Ochi (2011) overviewed ways to prevent children from being misled. One technique is to improve interviewers’ skills so that they use more open-ended questions. Another is to have practice session for the children so that they are not misled. In one of Ochi’s studies, children were given a misleading question. If misled by the question, they were told to be more careful next time. Results showed children who practiced the misleading question four times were more resistant to suggestions in the test phase, suggesting that appropriate ground rules do facilitate children’s performance.

In the criminal cases, children were often asked to talk about negative incidents. To evaluate young children’s vocabulary of positive and negative emotive words, Naka (2010) presented five- to 12-year old children with vignettes depicting positive incidents (e.g., A child puppet helps a teacher find a pair of glasses.) and negative incidents (e.g., A child puppet was left alone at home). The descriptions of the feelings of the puppets increased with the age of the children. As suggested by previous research on adults, the number of words for negative feelings was greater than that for positive feelings. Results also showed children expressed the feelings not only with internal emotive words but also with wishes (e.g., He wishes to….) and questions (e.g., Why did he….). Oyama and Naka (2013) further studied young children’s narratives on positive and negative events, showing the differences in the selection of topics, structures, and use of emotive words.

Face recognition is another important topic. Sugimura conducted a series of studies on young children’s face recognition abilities (Sugimura, 2010, 2011, 2012). In one study on verbal overshadowing effect (The effect refers to a phenomenon that verbaly describing an eyewitnessed face decreases the correct identification.), children attended a picture slide show, in which a woman read a story with the slides and a man assisted. Later, the children were asked to either describe the persons’ face (verbalizing condition) or not. Then, both groups of children were given a recognition test. Results showed performance tended to be lower in the verbalizing group than in the control group, suggesting that a verbal overshadowing effect occurred. In Sugimura (2011), children attended an amusement show played by four people, of whom two were the main characters and two bystanders. Although adult participants never failed to recognize the bystanders’ faces, half of the 5-6 year-old children failed to do so.

In a more recent study (Sugimura, 2012), she studied children’s understanding of gender (e.g., One’s gender does not change even if s/he changes hairstyle), and the identification of the gender depending on a typical hairstyle (i.e., female with long hair and male with short hair) or an atypical hairstyle (i.e., female with short hair and male with a long hair). Children performed the discrimination task better with congruent faces, but the performance was not related with the understanding of gender. These studies are important not only to understand children’s conception of a face but also to help professionals who are in charge of protecting children against crimes.

3. Studies related to the Saiban-in Seido (SIS)
   (the Lay Judge System)

Perception of SIS

In 2009, the Japanese judicial system implemented the Saiban-in Seido, in the criminal justice system. As explained before, the system comprises three professional judges and six lay-persons who participate in the trial as lay judges (saiban-in, or lay judges). These lay judges are randomly selected from the voter’s list (Japanese citizens aged 20 or more who are eligible to vote in elections) and participate in the judgment and sentencing of felonies (e.g., murder, rape, and arson.) That is, along with the three professional judges, the citizens decide guilt or innocence of a defendant and the sentence in the case of a guilty verdict. The introduction of this new format motivated research on SIS, such as studies on people’s perception of SIS, the characteristics of lay people’s judicial judgment, and legal education for
citizens.  
Recently, two studies on citizens’ perceptions of SIS were conducted. Ueichi and Kusumi (2010) studied Japanese citizen’s attitudes toward SIS and the relationship of legal knowledge and personal factors. A total of 321 citizens aged 20–70 years responded to a questionnaire. Overall, the respondents’ interest in the system was low, especially for those who did not have steady jobs. As for the relationship between the factors, two processes were identified. One associated with concerns related to stress, which in turn was related to expected regret. The other was associated with perceived risk, and then perceived benefit, which was related to the perceived cost of becoming a lay judge. These processes related to legal knowledge, suggesting that providing relevant information is important to motivate lay people to participate as lay judges.

Naka, Okada, Fujita, and Yamasaki (2011) studied perceptions of SIS, and how the perceptions relate to psychological knowledge (e.g., knowledge on the credibility of eyewitness evidence) and legal knowledge (e.g., presumption of innocence). A total of 294 citizens aged 20–70 years responded to this questionnaire. In this study as well, participants did not express enthusiasm for the new system. They were concerned with their lack of knowledge and the ability to participate in criminal justice. However, only legal knowledge (the number of correct answers to legal questions) was actually correlated to their attitudes toward the new system. Again, the more knowledge they possessed, the more positive they were about the system.

**Emotionally laden information**

Fujita (2010) examined factors that may affect lay people’s decision making, such as emotionally laden evidence and interactions, media reports, and expert testimonies. Also, he was concerned about whether lay judges could express their opinions enough in deliberation proceedings and whether they could remember complex information presented in court.

In 2008, the amendment of the Criminal Procedure Act enabled victims or victim’s families of certain crimes (e.g., murder, bodily injury, and rape) to participate in the trial. A victim participant is entitled to question the defendant and give his or her opinion. Naka (2009) studied the effect of Victim Personal Statement (VPS: victim’s opinion) and photos of the deceased, which were sometimes brought into court by the victim’s family. Undergraduates and law school students were shown a video depicting a fictitious murder case followed by an eyewitness testimony, and were then presented with a letter from and/or a photo of the victim. Results revealed that the presence of the photo, but not the letter, increased the length of the sentence. It was notable that, although the participant’s decision making demonstrated that they were affected by the victim’s information, they responded otherwise on the questionnaire (i.e., they answered they were not affected by victim’s information).

In the study above, the victim’s letter did not affect the length of sentence. This result may be explained by “asymmetric cognition,” a belief that others are more influenced by a victim’s statement than oneself. Shiraiwa, Hagiwara, and Karasawa (2012) predicted that those who have asymmetric cognition would assume others would give heavier sentences, and thus, would give more lenient sentences or at least not change the sentence when exposed to a victim’s statement. Results supported the prediction, showing that lay judges did not increase their sentence when a victim’s opinion was presented.

On the other hand, in Naka (2009), a photo of the victim affected the judicial judgment without increasing the awareness of being influenced. Watamura (2011) reviewed studies of the effect of gruesome evidence (e.g., photos of corpse and injury) on sentencing outcomes. He concluded that such visual emotive evidence increases guilty decisions and its prevention is necessary. As dual processing theory suggests, verbal evidence may be processed explicitly (consciously), whereas visual information implicitly (unconsciously), which may affect sentencing decisions without self-awareness.

On sentencing, Watamura, Wakebe, and Taknao (2010) showed not only an objective evaluation of the
seriousness of a crime (i.e., whether a victim was dead or the amount of money embezzled), but also other factors such as a perpetrator’s attributes affect subjective perception of the seriousness of the crime, and thus, the sentence given. On the basis of the results, they concluded that subjective evaluation of seriousness, or retribution, would account for lay people’s decision making in sentencing.

Clearly, emotions and subjective evaluations may affect lay people’s decision making. However, it is also necessary, as Itoh (2011) argues, to assess the level of these effects in a realistic trial procedure. For instance, there are time lapses between the presentation of affective information and decision making, and judge’s instructions or cautions, all of which need to be considered in further studies.

Deliberation and decision making

Arakawa and Sugawara (2010) analyzed a mock trial jointly conducted by Nagoya University, the Bar Association, the Court, and the Public Prosecutors office with particular attention to the lay judges’ deliberations. Three professional judges and six lay people (citizens) had a deliberation and made a decision. Quantitative analysis of the discussion showed lay judges talked to a professional judge (the chief judge) rather than to other lay judges, and the amount of speech was about the same among lay judges. A questionnaire and a post-interview showed the lay judges’ satisfaction with the deliberation and the amount of speech was not straightforward. A common complaint from lay judges was that they felt they were required to give rational reasons for what they thought intuitively.

In another study, Arakawa (2012) examined the effect of a defense lawyer’s final arguments on the deliberation. Although lay judges referred to the lawyer’s claims, opinions, and laws relevant to the arguments in the deliberation, the amount of reference was less than two. Now that SIS is being reviewed by the government, it is quite important to elucidate the effects of the presentation method of evidence, judges’ instructions, statements by prosecutors and defense lawyers, and other factors on lay judges’ deliberations and decision making. Further studies are necessary.

4. Recent Developments

Because of the author’s background, much attention has been paid to research dealing with cognitive processes and development. However, other areas of research are also converging into the mixed discipline of law and psychology.

The first is the perception of law and legal education, which includes values such as justice, reciprocity, possession, sharing, morality, freedom, and other concepts related to people’s legal and illegal behaviors, as well as criminal and civil law. Reports of workshops and symposiums on these subjects are to be found in recent issues of the Japanese Journal of Law and Psychology and in the proceedings of annual meetings of the Japanese Society for Law and Psychology. For instance, in the 2011 issue of the journal, a series of articles on “justice and fairness” were published (Wakabayashi, 2011). In 2012, a symposium was held by Hasegawa, Arima, Karasawa, Takahashi, and Toyama entitled “The Front Line of Moral Research” (also see Toyama & Hasegawa, 2011). From a different viewpoint, Shiraaiwa, Miyamoto, and Karasawa (2012) studied the concept attributed to victims. Social psychologists and sociologists will play important roles in the future of law and psychology.

Another area of growth is expert testimony. Small but increasing numbers of psychologists in cognitive psychology, developmental psychology, social psychology, and other fields are now providing expertise in court. Since 2007, Japanese Journal of Law and Psychology has published case reports that contain the contents of expert testimonies. These recent case reports include expert opinions on traumatic memory (Murayama, 2011), a confession (e.g., Wakinaka, 2011), and an eyewitness testimony (Itsukushima, 2010). In these cases, psychologists provided not only a social framework for decision making but also specific analysis of factors in a particular case. Evaluation of the expert’s testimony, that is, how an expert’s opinion is made and the effect or lack of effect on decision makers will be an interesting and important topic of research in the next decade.
Today, the collaboration between researchers and professionals (e.g., social workers at child guidance centers, police officers, prosecutors, and defense lawyers, teachers) is becoming stronger. Collaboration is beneficial for both researchers and practitioners. Researchers can provide expert testimonies, train professionals, and assist the practitioners’ research within their institutes and organizations. In return, researchers can acquire practical real-world knowledge, insights for the future research, and may collect data from unique samples. Such interactions can also be seen at workshops and symposiums of annual meetings of the Japanese Society for Law and Psychology and other professional societies.

Finally, international collaboration is accelerating. In 2009, the Society for Research on Memory and Cognition (SARMAC) was held in Kyoto. In 2011, the congress of International Society for Criminology (ISC) was held in Kobe. In 2012, the East Asian Law and Psychology Conference was held in Kyoto. In general, psychology is said to be led by northwestern countries. However, considering the range of legal systems and procedures, research in any jurisdiction may be said to be “cutting the edge” in that jurisdiction. Each country has its own problems and answers, strengths and weaknesses, and advantages and disadvantages. Opportunities exist to learn from each other.

In 2011, reflecting on the progress of law and psychology research, a project titled “Law and Human Sciences” was provided a grant-in-aid for scientific research on innovative areas by the Ministry of Education, Culture, Sports, Science and Technology. The project consists of 18 research groups of psychologists, sociologists, law researchers, and practitioners, forming four fields: perception of law and legal education, investigative processes, Saiban-in court, and welfare and criminal justice, which aim at creating a new research area.

In 2012, “law and psychology” was added as a keyword to the list of established research areas shown in a grant-in-aid application form. The author hopes for the new research area to promote further research as well as connect related areas to promote working together.

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