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Author(s)	Naka, Makiko; Okada, Yoshinori; Fujita, Masahiro et al.
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RESEARCH ARTICLE

Citizen's psychological knowledge, legal knowledge, and attitudes toward participation in the new Japanese legal system, Saiban-in seido

Makiko Naka^{a*}, Yoshinori Okada^b, Masahiro Fujita^c and Yuko Yamasaki^a

^aDepartment of Psychology, Hokkaido University, Sapporo, Japan;

^bDepartment of Law, Nanzan University, Nagoya, Japan;

^cPolicy Research Center, National Graduate Institute for Policy Studies, Tokyo, Japan

* Corresponding author. Email: mnaka@psych.let.hokudai.ac.jp

Abstract

A new procedure, *saiban-in seido*, will be introduced in the Japanese criminal court in 2009.

A mixed tribunal of three professional judges and six lay people selected from a list of voters will deliberate the verdict in serious criminal cases such as murder, rape, and arson. This study researches lay people's attitudes toward the new system, their psychological knowledge (e.g., the reliability of eyewitness testimony) and legal knowledge (e.g., 'presumed innocent'), and the relationship between attitude and knowledge. Study 1 examines the responses of 294 citizens to a questionnaire; 90 responses are examined in Study 2. In both studies, respondents showed concerns about their lack of ability and knowledge to become a lay judge. Although legal knowledge was related to attitude - i.e., the more legal knowledge, the less negativity - no relationship was found between psychological knowledge and attitude. Relevant support for citizens to become lay judges was discussed.

Key words: lay participation in criminal justice, mixed tribunal, *saiban-in seido*, attitude, psychological knowledge, legal knowledge, Kassin et al.'s statements on eyewitness testimony (2001)

Although citizen participation in the justice system, as on a jury, is not yet common in East Asia, there have been some changes. For example, a jury system was introduced in Korea in 2007 and a mixed tribunal, *saiban-in seido*, will be introduced in Japan in 2009. When a new system is introduced, perceptions of and interest in the system are important issues. This study researches Japanese citizens' perceptions of the prospective system and the relationship between their attitudes and knowledge of law and psychology. First it describes how the new system differs from the old system and why knowledge might affect attitudes toward the system.

Since the Imperial Constitution was introduced in the late 19th century, justice in Japan was conducted mostly by professional judges.¹ Shinomiya (in press) argues that because of a limited number of judges dealing with an increasing number of cases, trials inevitably became long and judges relied heavily on written documents so that they could prepare for trials outside of court. A trial based on voluminous documents made civil participation unrealistic. In order to improve the situation, the Minister's Secretariat Office assigned a committee to discuss and recommend the innovation of judicial procedures. In 2001, the committee handed in a report saying that '... in order to further reflect the people's sound social common sense, a system should be created where ordinary citizens participate in the judicial decisions with professional judges' (Shihokaikaku shingikai, 2001: 10). Based on this recommendation, the new system starts in 2009.

¹ For a short period of time, 1925-1945, a jury system was attempted but eventually abolished due to the weaknesses of the system (Fujita, 2008): there were limited types of cases that a jury could decide, and only men could serve on a jury.

In the new system, three professional judges and six lay people make judicial decisions in capital criminal cases such as murder, rape, and arson. Lay judges are drawn from a list of Japanese citizens aged 20 or older who are eligible to vote. They sit next to professional judges in the court, deliberate on the verdict with professional judges, and make decisions based on a majority (which must include at least one professional judge). They make decisions on guilt or innocence (the guilt phase) and, if the defendant is found guilty, they decide the sentence (the penalty phase).

In spite of the enthusiasm of lawmakers, however, citizens do not seem to be keen about the new system, according to surveys. The Minister's Secretariat Office conducted surveys in 2006 and 2007, and Intage Research conducted a similar survey in 2008. In 2006, 70% of 2,077 respondents said they did not want to be a lay judge. In 2007, 78% of 1,795 respondents said they would not or would reluctantly be ('I do not want to participate but if it is an obligation, I have to') a lay judge. In 2008, 82% of 10,500 respondents said they would not or would reluctantly be a lay judge.

What are the reasons? In these surveys, respondents were asked to choose as many reasons as were appropriate from a list including: *lack of confidence/ability to make judicial decisions, lack of knowledge about the judicial system, lack of confidence to express opinions in front of professional judges, obstacles due to work, obstacles due to housework, obstacles due to health problems, obstacles due to child or elder care, heavy responsibility, concerns about safety (not to be attacked by people on the defendant's side), reluctance to try a person*, and so on. Among those, *lack of confidence/ability in making judicial decisions* was chosen as the top reason in 2007 (46%) and as the second reason in 2006 (44%) and 2008 (64%). (The top reason was *heavy responsibility*.) Also,

lack of knowledge was chosen as the second reason in 2007 (42%) and as the third reason in 2006 (23%). (This alternative was not given in 2008 survey.) Such results suggest that at least a part if not all of their reluctance comes from a lack of confidence in relevant ability and knowledge.

One kind of knowledge that may affect attitudes could be legal knowledge. For instance, *presumed innocent*, *free discretion*, *burden of proof*², and so on are important presumptions in the evaluation of evidence and in making judicial decisions. Those who lack such knowledge may think they are not eligible to be a lay judge, while those who have such knowledge may think they are ready to be a lay judge and thus have more positive attitudes toward the new system.

Another kind of knowledge is forensic psychology. Kassin and his colleagues listed a range of statements that are relevant in court, and their reliability as rated by experts³ (Kassin, Ellsworth, & Vicki, 1989; Kassin, Tubb, Hosch, & Memon, 2001). For instance, *post-event information* (eyewitness testimony about an event often reflects not only what the eyewitness actually saw but information obtained later) is rated highly reliable by the experts, whereas *long-term repression* (traumatic experiences repressed for many years and then recovered) is not. Although citizens, university students, and even professional judges do not have sufficient knowledge (Brigham & Bothwell, 1983; Deffenbacher & Loftus, 1982; Wells, 1984; Yarmey & Jones, 1983; Wise & Safer, 2004), such knowledge must be important in making fair decisions (Cutler, Penrod, & Dexter, 1999; Leippe, Eisenstadt, Rauch, & Seib, 2004). For instance, in Cutler, Penrod, and

² See Table 4 for the definitions.

³ Respondents in Kassin's study were the experts in law and psychology, i.e., 63 in Kassin et al. (1989) and 64 in Kassin et al. (2001) had publications and 99% of them had a doctoral degree in psychology.

Dexter (1999), university students who were provided with knowledge from expert witnesses were more sensitive to evidence than those who were not. Furthermore, having such knowledge may affect the attitude toward the system: the more knowledgeable and confident the respondent, the more likely it is that the system that allows use of that knowledge will be perceived favorably. Indeed, Shaw and Skolnick (2005) found that mock jurors who had taken a course in psychology and law made judicial decisions with more confidence and were more motivated to be on a jury, compared to those who did not take the course. These studies suggest that relevant knowledge would affect attitudes toward the new system.

In Study 1, the data from a survey conducted in December 2004⁴ was analysed. The sample was of citizens randomly selected from voters' panels in Fukushima, Nagoya, and Tokyo. The questionnaire included a range of questions on the new system, willingness or reluctance to be a lay judge, reasons for that willingness or reluctance, anxiety, concerns, needs, and so on. There were also questions to assess respondents' knowledge of forensic psychology or psychological knowledge and legal knowledge. This paper reexamines lay people's attitudes, psychological knowledge, and legal knowledge separately and then explores the relationship between attitude and knowledge.

In Study 2, the study is replicated with a more eager or active sample, i.e., those who spontaneously attended a mock trial held by a bar association in March 2007. Attitude, psychological knowledge, and legal knowledge are examined to see whether the relationship between attitude and knowledge found in Study 1 holds.

⁴ Descriptive data of this survey, i.e., percentages of affirmative and negative responses to each question, was reported in *Nanzan Hogaku*, a law journal written in Japanese (Okada, Naka, & Fujiga, 2006a, 2006b, 2007). In that report, however, no further statistical analyses were conducted.

It was hypothesised that the more legal and psychological knowledge a respondent had, the less negative the respondent would be toward the new system. How knowledge is related to attitude is important to know to effectively raise citizens' interest in the new system as well as to provide better support so that they can more confidently serve as lay judges.

Study 1

Method

Sample. A total of 1,500 lay citizens were randomly selected from lists of prospective voters—males and females aged 20 years or older who are eligible to vote—available at the board of election. Three different cities in Japan were selected: Tokyo (Ohta Ward), Nagoya (Midori Ward), and Fukushima. They represent a populous city, a mid-sized city, and a regional city, respectively. At the time, the population of eligible voters in Ohta Ward, Midori Ward, and Fukushima were 553,698, 166,514 and 229,927, respectively. Every 600th person in each list was selected. Four individuals who were born in the Meiji era (95 years old or older) were excluded because answering a lengthy questionnaire might be troublesome for them. Table 1 shows the demographic data of the sample.

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Insert Table 1 here.

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Questionnaire. Table 2 shows the 38 questions on attitude used in the questionnaire (1: disagree to 5: agree).

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Insert Table 2 here.

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Tables 3 and 4 show the psychological and legal statements.⁵ For psychological knowledge, ten statements were used from Kassir et al. (1989, 2001); these statements were created for experts in law and psychology. Because lay people may not be familiar with psychological terms, the statements were made simpler and less technical. For instance, ‘Alcohol intoxication impairs an eyewitness’s ability to recall persons and events later’ was presented as ‘What is witnessed while drinking is unreliable’. Also, in Kassir et al., *repression* and *retrieval* were asked about in one sentence (‘Traumatic experiences can be repressed for many years and then recovered’), but here they were asked about separately (‘Traumatic experiences can be repressed’ and ‘Traumatic memory totally forgotten for many years can be recovered suddenly’).

In Kassir et al., experts rated the statements by choosing one of seven alternatives: (a) the evidence suggests the reverse is probably true; (b) the evidence does not support it; (c) the evidence is inconclusive; (d) the evidence tends to favor it; (e) the evidence is generally reliable; (f) the evidence is very reliable; and (g) I don’t know. However, these respondents may not know about scientific evidence and thus it may be difficult for them to answer if Kassir et al.’s alternative were used.⁶ Thus in this study, respondents were to answer by choosing: 1 (agree), 2 (don’t know), or 3 (disagree).

⁵ Because of the limited number of statements included in the questionnaire, only half the statements used in Kassir’s study were used. Statements on line-ups were omitted because there is not a specific line-up procedure in criminal investigations. Statements on hypnosis were also omitted because the authors are not familiar with the use of hypnosis in investigation, and so on. In order to elucidate the difference between lay people and experts, a full comparison using all the statements is needed.

⁶ In a supplemental study, whether the distribution of responses changes due to the

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Insert Table 3 about here.

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The second author, an associate professor in criminal law, wrote the legal statements used. Twelve statements were basic assumptions in criminal justice, such as *presumed innocent*, *right to silence*, *free discretion*, and so on, based on the current Criminal Law and Codes of Criminal Procedures in Japan (see Table 4 for the definitions). The other three statements were on empirical issues: *reliability of self-confession*, *DNA analyses*, and *photo identification*. As in psychological knowledge, three alternatives were used: 1 (agree), 2 (don't know), or 3 (disagree).

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Insert Table 4 about here.

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Finally, demographic data was collected on gender, age, and final level of education.⁷ The information was collected using a multiple-choice method, where

wording of statements (i.e., simplified version or verbatim translation) and/or the presentation of the answer (i.e., three alternative choices or seven) was examined. A total of 116 undergraduates were offered a simplified version with three alternatives, which was the same as the one used for lay people, a simplified version with seven alternatives, a verbatim translation with seven alternatives, or a modified verbatim translation with seven alternatives that was to increase readability. There were no differences between the verbatim and simplified versions except for 'alcohol intoxication' and 'child witness accuracy', for which correct responses were lower in the simplified versions (i.e., more people answered that alcohol did not impair memory and that children's memories were not inaccurate when asked in a simplified form), suggesting that simplified versions were not necessarily easy to understand. There was no difference due to the number of alternative choices. Because of these results, the modified verbatim version was used in Study 2.

⁷ Although the questionnaire was sent to three areas, Tokyo, Nagoya, and Fukushima, it did not collect information on respondents' residential information and the sample was

participants circled the description that best fit their status. The questionnaire was sent on 15 November 2004, with a response deadline of 20 December 2004.

Results

Of 1,500 citizens, 294 returned the questionnaire (19.9%). The results for attitude and for psychological and legal knowledge are presented, and then the correlations follow. In order to see the effect of age, gender, and education level, gender $\times$ age $\times$ education level ANOVAs were performed. Because the number of respondents in each cell was small, they were merged into two age groups (20–49 and 50+) and two education levels (less than 15 years, i.e., college or less, and 15+ years, i.e., university or more) (see Table 5 for the newly created age and education groups). The analyses were done using the cases with no missing values. A significance level was set at 0.05. When multiple comparisons were necessary, a LSD test was used. The Pearson product-moment correlation coefficient was used for correlations.

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Insert Table 5 about here.

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Attitude. In order to group related statements, a factor analysis was conducted on the 38 statements. It produced 10 factors with Eigen values greater than one but the scree test suggested only three of these should be rotated. The three factors rotated to a varimax solution accounted for 37.96% of total variance. Factor loadings for the remaining 27 statements and the percent of variance explained are shown in Table 2. Factor 1 (F1) was related to such statements as ‘I am for the new system of mixed tribunals’, ‘Mixed

considered as a whole. Thus there are no analyses based on locale. Further study is necessary to clarify the differences due to residential area.

tribunals are necessary to improve our society’, and so on. Thus, this factor was referred to as *negativity*. The second factor (F2) was related to ‘I am reluctant because I do not know much about criminal procedures’, ‘I am concerned about my lack of ability’, and so on. The factor was referred to as *concern for knowledge and ability*. The third factor (F3) was related to ‘Whether my workplace gives me leave is important’, ‘Whether my workplace supports me is important’, and so on. Thus the factor was referred to as *practical concerns*.

As shown in Table 2, statements 1 to 11 are highly loaded with Factor 1, negativity. Therefore these items were considered as a scale to measure negativity toward the new system. The mean score for these items for each individual is a scale score for negativity. In the same way, the scale scores for F2, concern for knowledge and ability, were calculated based on statements 12 to 20, and for F3, practical concerns, on statements 20 to 27. The higher the scores are the more negativity, the more concern for knowledge and ability, and the more practical concerns there are.

A gender (2) $\times$ age (2) $\times$ education level (2) $\times$ scale (3) ANOVA was conducted with scales being a repeated measure. The main effects of education level and scale were significant ($F(1, 250) = 5.67, p < 0.05$; $F(2, 540) = 11.43, p < 0.01$). The score was greater for those with less education than for those with more education (3.23 v 3.01, respectively), and it was greater for concern for knowledge and ability (F2) and practical concerns (F3) than for negativity (F1) (2.93, 3.27, and 3.15 for F1, F2, F3, respectively). Interactions of gender $\times$ scale and age $\times$ scale were significant ($F(2, 500) = 3.1, p < 0.05$; $F(2, 500) = 13.85, p < 0.01$). As shown in Figures 1 and 2, the score for concern for

knowledge and ability (F2) was higher for females than for males, and the scale score for practical concerns (F3) was lower for the older than for the younger group.

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Insert Figures 1 and 2 about here.

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Psychological knowledge. Table 4 shows percentages of respondents who chose ‘agree’, ‘disagree’, or ‘don’t know’. For the ten statements that are comparable to Kassir’s, the responses were rated ‘correct’ or not, assuming the dominant response by Kassir’s experts were ‘correct’ responses.

Two different analyses were conducted. First the percentage of correct responses for each statement (i.e., the number of respondents who gave a ‘correct’ response to a statement divided by the number of respondents who responded to the statement) was calculated. The mean percentage of correct responses across 10 statements was 42% for this study⁸ whereas for Kassir’s it was 75%. In order to examine if the difference is significant, a paired *t*-test was conducted on the percentage of correct responses for ten statements. The difference was significant ($t(9) = 4.58, p < 0.01$), showing Kassir’s experts have more accurate knowledge than these respondents.

Close examination of each statement revealed that there was comparative difference in the percentage of correct response between *child witness accuracy* and *long-term repression and recovery*. Fifty percent of these respondents disagreed with the statement ‘Young children are less accurate witnesses than adults’, whereas 62% of Kassir’s experts agreed with the statement. Sixty-five percent and 71% of the respondents

⁸ The mean was used for repression and recovery statements.

gave credibility to repression and recovery, whereas only 16% of Kassir's experts gave credibility to 'Traumatic experiences can be repressed for many years and then recovered'. However, the correlation between the percentage of correct responses for Kassir's experts and that for these respondents was significant for ten statements, suggesting that these respondents had the same tendency in evaluating the statements, i.e., they gave more credibility to statements that experts rated more credible ($N = 10$, $r = 0.85$, $p < 0.01$).

Second, the percentage of correct responses for each individual was calculated, i.e., the number of correct responses made by one respondent divided by the number of psychological statements (12). A gender (2) $\times$ age (2) $\times$ education level (2) ANOVA was conducted on the score. It resulted in no major effect but interactions of gender $\times$ education level and age $\times$ education level were significant ($F(1, 265) = 9.00$, $p < 0.01$; $F(1, 265) = 5.52$, $p < 0.05$). As shown in Table 6, the mean score was greater for females with more education than for those with less education. Also, the score for the older group was lower for those with less education than for those with more education.

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Insert Table 6 about here.

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Legal knowledge. Table 4 shows the percentages of the respondents who chose 'agree', 'disagree', or 'don't know'. The responses were coded as 'correct' or not.⁹

⁹ Because the correct answers for empirical statements are not known or may change depending on situations, only 12 statements on legal presumptions were coded.

Again there were two analyses. First the percentage of correct responses for each statement was calculated. The mean percentage of correct responses across 12 statements was 62%.

Second, the percent of correct response for each individual was calculated. A gender (2) × age (2) × education level (2) ANOVA was conducted on the score, which resulted in the main effect of education level ($F(1, 263) = 12.6, p < 0.01$). The score was higher for those with more education (69%) than for those with less education (59%).

Correlations between attitude and knowledge. Table 6 shows the correlations between attitude, psychological knowledge, and legal knowledge. There were negative correlations between legal knowledge and negativity (F1) and between legal knowledge and concern for knowledge and ability (F2) scores ($r = 0.144, p < 0.05$; $r = 0.300, p < 0.01$). However, no correlation was found between attitude and psychological knowledge.

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Insert Table 7 about here.

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Discussion

In this study, the responses from 294 respondents on attitudes toward the new system, psychological knowledge, and legal knowledge were analysed. Factor analyses resulted in three factors: negativity (F1), concern for knowledge and ability (F2), and practical concerns (F3). Results showed that the younger age group had more practical concerns, and those with less education had more concerns about knowledge and ability.

As for psychological knowledge, respondents' ratings were similar to Kassir's experts' though there were some statements that lay people saw differently, e.g., children's testimony and repression and recovery of memory. The score was higher for female respondents with more education but this should be interpreted with care because there were only 7 respondents in this group. It is intriguing that the older group did not necessarily have more psychological knowledge, suggesting that psychological knowledge may not necessarily be acquired from life experiences. Rather, that was related to education level.

As predicted, legal knowledge was correlated with negativity toward the new system and with the concerns about knowledge and ability. However, no correlation was found between psychological knowledge and attitude.

Study 2

Study 2 was done in order to examine whether the pattern of results holds for the sample that is more eager for or accepting of the new system. In this study, the wording of psychological statements and the answers were modified to be equivalent to Kassir's statements (see Footnote 3). There was also an additional statement about lay people's perception of their psychological knowledge.

Methods

Respondents. The questionnaire was distributed to about 300 attendees at a mock trial by a mixed tribunal held by the Sapporo Bar Association in Sapporo, the capital city of Hokkaido (population 1.8 million) on 13 March 2007. These participants applied to participate in the mock trial, announced beforehand by the Bar Association. Ninety

attendees (46 male, 41 female, three unknown) returned the questionnaire. Two of them were excluded because the respondents' age was under 20. See Tables 1 and 5 for the demographic details of the respondents.

Question items. In order to lessen the respondents' burden, the number of questions was reduced from 38 to 16: six items from negativity (F1), six items from concern for knowledge and ability (F2), and four items from practical concerns (F3) (see Table 2 for the specific items). Items were chosen based on the factor loadings but some exceptions were made so as to allow some variations in items. In this study, mean scores for the six items of negativity, six items of concern for knowledge and ability, and four items of practical concerns are the scale scores of negativity, concern for knowledge and ability, and practical concerns, respectively. An item asking about psychological knowledge was added ('I do not have enough knowledge of forensic psychology such as knowledge of the reliability of eyewitness testimony, etc.'). A seven-point Likert scale was used for attitudes (from 1 'disagree' to 7 'agree').

For psychological knowledge, the statements in Study 1 that are compatible with Kassin's were used, as well as seven statements that Kassin's experts rated highly reliable (>0.90). Three empirical statements on legal knowledge were removed. (See Tables 3 and 4 for the statements used in Study 2). In this study, for both psychological and legal knowledge, the same seven alternatives as in Kassin's study were used.

Results

The results on attitude, psychological, and legal knowledge are presented separately, followed by the correlations. The results from this study are compared with those from Study 1.

Attitude. Scale scores for negativity (F1), concern for knowledge and ability (F2), and practical concerns (F3) were calculated for each individual by averaging the six items for F1, the six items for F2, and the four items for F3. A gender (2) $\times$ education level (2) $\times$ scale (3) ANOVA was conducted with scale being a repeated measure. Results showed the main effects of age and scale ($F(1, 61) = 4.55, p < 0.05$; $F(2, 61) = 13.78, p < 0.01$). As in Study 1, the score was greater for the younger than for the older group (3.95 v 3.38, respectively). The score was greater for concern for knowledge and ability (F2) than for negativity (F1) and practical concerns (F3) (3.17, 4.29, and 3.55 for F1, F2, and F3, respectively). Also an interaction of gender, age, and education level was significant ($F(1, 61) = 2.35, p < 0.05$). The score was greater for young males with less education (4.69) and was lower for older females with more education (2.89), but the result may not mean much because the number of respondents in the cells is small.

To compare Study 2 to Study 1, a study (2) $\times$ scale (3) ANOVA was conducted for compatible items. Five-point scale scores in Study 1 were converted to seven-point scale scores used in Study 2 (i.e., scores 1, 2, 3, 4 and 5 were converted to scores 1, 2.5, 4, 5.5, and 7, respectively). The main effect was significant ($F(1,331) = 22.21, p < 0.01$). Scores were greater for Study 1 than for Study 2 (4.23 v 3.62, respectively, on a converted seven-point scale), suggesting that respondents in Study 2 were less negative toward the new system. Also the main effect of scale was significant, showing concern for knowledge and ability (F2) was greater than negativity (F1) and practical concerns (F3) ($F(2, 662) = 54.72, p < 0.01$) (3.37, 4.6, and 3.81 for F1, F2, and F3, respectively).

Psychological knowledge. Responses 1 and 2 were categorised as ‘disagree’, 4 to 6 as ‘agree’, and 7 as ‘don’t know’. Table 3 shows the percentages of respondents who agreed, disagreed, or didn’t know for each statement.

As in Study 1, two different analyses were conducted based on the responses ‘disagree’, ‘agree’, or ‘don’t know’. First the percentage of correct responses was calculated for each statement, i.e., the number of respondents giving a correct answer for a statement was divided by the number of respondents responding to the statement. The mean percentage of a correct response across 17 statements was 69% for this study whereas for Kassir’s experts it was 83%. A paired *t*-test for 17 statements resulted in significance ($t(16) = 3.77, p < 0.01$), showing that Kassir’s experts were more accurate than these respondents. As in Study 1, a large difference was found for *child witness accuracy* and *long-term repression*. Whereas 62 % of Kassir’s experts agreed with the statement ‘Young children are less accurate witnesses than adults’, 31% of these respondents did so. Also, 16% of the experts gave credibility to long-term repression whereas 39% of these respondents did so. Again, the correlation between the percentage of correct responses for these respondents and that for the experts was significant over 17 statements, suggesting that these respondents gave higher credibility to the statements that experts rated more credible ($r = 0.73, p < 0.01$).

Second, the percentage of correct responses for each individual was calculated. A gender (2) $\times$ education level (2) ANOVA was conducted on this score but no significant results were found. Also, in order to compare the results for the comparative 10 statements from this study with those from Study 1, a one-way ANOVA was conducted. The main effect of the study was significant, showing the percentage correct was greater

for Study 2 than for Study 1 ($F(1,360) = 45.62, p < 0.01$) (42% and 58% for Study 1 and 2, respectively).

Legal knowledge. As with psychological knowledge, Responses 1 and 2 were categorised as ‘disagree’, 4 to 6 as ‘agree’, and 7 as ‘don’t know’. Table 4 shows the percentages of respondents who agreed, disagreed, or didn’t know. Based on those responses, the percentage of correct responses for each statement was calculated. The mean percentage of correct responses across 12 statements was 80%, showing the respondents in this study have comparatively accurate legal knowledge.

Second, the percentage of correct responses for each individual was calculated. A gender (2) $\times$ education level (2) ANOVA on the score was conducted but no significant results were found. In order to compare the results from this study with those from Study 1, a one-way ANOVA was conducted. The correct response was significantly greater for this study than for Study 1 ($F(1,348) = 40.38, p < 0.01$) (62% and 79% for Study 1 and 2, respectively).

Correlations between attitude and knowledge. The correlations between psychological and legal knowledge and scale scores are shown in Table 5. Again, psychological knowledge was not correlated with attitude. Legal knowledge was negatively correlated with negativity (F1) and practical concerns (F3) ($r = 0.38, p < 0.01$; $r = 0.29, p < 0.05$), showing that respondents with more legal knowledge have less negativity and fewer practical concerns.

A question statement on psychological knowledge (‘I do not have enough knowledge in forensic psychology’) was positively correlated with concern for ability and knowledge (F2) ($r = 0.40, p < 0.01$), but no correlation was found between the rating

and actual psychological knowledge, and between the rating and legal knowledge. Those more concerned about psychological knowledge were more concerned about their knowledge and ability, though it did not necessarily mean that they actually lacked the knowledge.

Discussion

In this study, the original study was replicated with more enthusiastic participants – those who attended a mock trial. Indeed, their attitude toward the new system was less negative than those in Study 1 and they had more accurate psychological and legal knowledge. Nevertheless, they were still concerned about their knowledge and ability. It is notable, however, that their concerns were not correlated with actual legal knowledge but with the concern for psychological knowledge (i.e., ‘I do not have enough knowledge in forensic psychology’). As in Study 1, legal knowledge was negatively correlated with negativity toward the new system, i.e., the more legal knowledge the respondent has, the less negativity the respondent has.

General discussion

The purpose of this study was to investigate citizens’ attitudes toward mixed tribunals and the status of psychological knowledge and legal knowledge, and then the relationship between knowledge and attitude.

In Study 1, questionnaires were mailed to citizens selected from a list of voters in three different areas in Japan. In Study 2, questionnaires were distributed to attendees at a mock trial. Table 8 shows the summary of results from Studies 1 and 2. Apparently, the latter sample had fewer negative attitudes toward the new system and had more accurate knowledge of psychology and law. However, for both samples there was a pattern that

the more legal knowledge a respondent had, the less negative he or she was toward the new system.

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Insert Table 8 about here.

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According to the Japanese Supreme Court, lay judges are not expected to have legal knowledge. The Court explains that the decisions of lay judges are similar to decisions on ordinary matters in everyday life (http://www.saibanin.courts.go.jp/qa/c4_3.html). As Ivkovic (1999) suggested, the wisdom or the values of the community is considered important. However, the results from this study showed that lay people take their lack of legal knowledge seriously. Moreover, accuracy of legal knowledge was related to the attitude toward the new system. In order to increase citizens' interest and confidence in the new system, it is important to provide basic legal knowledge. It should be helpful to educate citizens so that they feel more ready to serve as a lay judge.

As Table 4 shows, lay people have better knowledge on some statements but not on others. For instance, many of them answered correctly to the statements *right to silence* ('A person must not be assumed guilty only because he remains silent') and *reasonable doubt* ('Conviction can be made even when there remains some doubt') which might be learned through dramas and movies, but they were less accurate on statements such as *testimony* ('Testimony made in court is evidence'), *burden of proof* ('A defendant must prove that he or she is not guilty'), and *proof of guilt* ('To prove the case, it is good enough for prosecutors to suggest the existence of evidence'). The

Japanese Bar Association is trying to rephrase technical terms to be more comprehensible (e.g., ‘opening statement’ is rephrased as ‘prosecutor’s story’) (Japanese Bar Association, 2008). Results of this study on the accuracy of legal knowledge should be helpful in effectively providing such information.

Psychological knowledge, in contrast to legal knowledge, was not related to attitude. Although there are some statements that lay people responded to relatively well, for example, *post-event information* (‘Eyewitness testimony about an event often reflects not only what was actually seen but also information obtained later’) and *unconscious transference* (‘An eyewitness sometimes identifies someone seen in another situation or context as a culprit’), as a whole respondents did not have accurate knowledge in forensic psychology as shown in the previous research (Deffenbacher & Loftus, 1982; Yarmey & Jones, 1983; Brigham & Bothwell, 1983), and in particular, in both Studies 1 and 2, the respondents’ answers to *child witness accuracy* and *long-term repression* were the opposite from those of Kassir’s experts. Furthermore, in Study 1 older respondents and those with less education showed less accurate knowledge of psychology. Although psychological knowledge is sometimes considered to be in the realm of common understanding or common sense that anyone is expected to have (Deffenbacher & Loftus, 1982; Yarmey, 2001; Yarmey and Jones, 1983), it may not necessarily be so.

Why did psychological knowledge have no effect on attitude? There may be several reasons. One may be the difficulty of having ‘correct knowledge’ in the first place. Although ‘correct’ psychological knowledge is found in scientific journals, lay people do not have much access to them. Even if they had, it may not be easy to utilise the knowledge because unlike legal knowledge, psychological knowledge is often based on

probabilities that are difficult to apply. Another reason may be that an individual has everyday experience that may affect an evaluation of psychological knowledge. Loftus, Garry, Brown, and Rader (1994) argue that the belief in memory repression or recovery may be similar to ‘misconception’ in physics, in which students think that objects thrown horizontally travel in curved paths even when there are no external forces. Although daily experiences may strengthen some knowledge, other knowledge may be compromised. Indeed, Naka and Maki (2006) showed that the more frequently respondents reported normal forgetting and remembering in everyday life, the more credibility they gave to a belief in memory repression and recovery. Such knowledge acquired in daily experiences might be considered irrelevant in trials.

Nevertheless, Wise and Safer (2004) showed that the more psychological knowledge a professional judge had, the more she or he was apt to resort to legal safeguards such as instructions, cross examination, expert witnesses, and so on in order to prevent misjudgment. As mentioned, Cutler et al. (1989) showed that participants who were given expert testimony made judicial decisions with more confidence. Shaw and Skolnick (2005) found that those who completed a course in psychology and law made judicial decisions with more confidence than those who did not. Given that in Study 2 respondents who were concerned about a lack of psychological knowledge (‘I do not have enough knowledge in forensic psychology’) were more concerned about their knowledge and ability (F2), providing them with proper psychological knowledge may help them gain a positive attitude and confidence toward the new system.

Some limitations should be addressed. Although relationships between legal knowledge and attitudes were found, the direction of causality is not known. Those who

had more legal knowledge might be more interested in the new system. On the other hand, those who had more interest in the new system might have acquired more knowledge of the law. Further studies are necessary to elucidate the direction and to see whether providing knowledge encourages a positive attitude toward becoming a lay judge.

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Figure captions.

Figure 1. Results from Study 1: Interaction of gender and scale.

Figure 2. Results from Study 1: Interaction of age group and scale.

Table 1

Demographic data of samples

		Male			Female			Other		
Age group	Education level ^a	More	Less	Other	More	Less	Other	More	Less	Other
Study 1										
20-29		4	1		4	13	1			
30-39		11	13		5	18	1			
40-49		20	8		14	9				
50-59		18	11		5	37				
60-69		11	24		2	21				
70-		5	11			23	1		1	1
Other			1							
Total		69	69		30	121	3		1	1
Study 2										
20-29		3	1		3	1				
30-39		4			2	3	1			
40-49		2	1		3	4				
50-59		7	4		3	5				
60-69		9	7		1	13				
70-		5	3			1	1			
Other										3
Total		30	16		12	27	2			3

^a *More* indicates 16 years of education or more, i.e., university and graduate school. *Less* indicates less than 16 years of education. *Other* indicates the number of respondents who gave no information on gender, age, or education level.

Table 2
Questionnaire statements of the attitudes toward the new system of mixed tribunals^a

No.	Factor	Statement	F1: Negativity	F 2: Concern for knowledge and ability	F3: Practical concerns
1	1	I am for the new system of mixed tribunals. ^b	-0.783		
2	1	Mixed tribunals are necessary to improve our society. ^{b, c}	-0.757		
3	1	Mixed tribunals contribute to the interest of justice. ^{b, c}	-0.734		
4	1	A nondisclosure obligation ^c makes one more committed to this duty.	-0.659		
5	1	Because of mixed tribunals, the Japanese will be more interested in justice. ^b	-0.615		
6	1	I want to be a lay judge because it must be a good social experience.	-0.585		
7	1	Serving as a lay judge will be a useful experience for me.	-0.583		
8	1	I want to have the same experience that professional judges have.	-0.571		
9	1	A nondisclosure obligation makes one more responsible for this duty.	-0.536		
10	1	It is a citizen's responsibility to serve as a lay judge. ^b	-0.531		
11	1	It must be interesting to make a judicial decision in criminal court.	-0.458		
12	2	I am reluctant because I do not know much about criminal procedures. ^b		-0.764	
13	2	I am concerned about my lack of legal knowledge. ^b		-0.698	
14	2	I am concerned about my lack of ability. ^b		-0.697	
15	2	I do not want to have anything to do with criminal events. ^b		-0.613	
16	2	In the deliberation, I may be led by what professional judges will say.		-0.516	
17	2	I do not want to be exposed to mass media.		-0.49	
18	2	A nondisclosure obligation hinders free discussion in deliberations. ^d		-0.452	
19	2	In the deliberations, I think I can fully express my opinion. ^{b, c}		0.5114	
20	2	I am confident that I will make a good lay judge. ^{b, c}		0.6863	
21	3	I am concerned about whether my workplace gives me leave. ^b			0.7208
22	3	I am concerned about whether my workplace is cooperative. ^b			0.7119
23	3	I am reluctant because I am too busy due to my work/study. ^b			0.5481
24	3	I am afraid I may breach the nondisclosure obligation.			0.5289
25	3	I am concerned about whether the court pays me. ^b			0.5265
26	3	The atmosphere of the court is important.			0.4978
27	3	We need a clearer explanation of the nondisclosure obligation.			0.4243
Variance			0.1552	0.1396	0.0849

^a Only the statements related to factors are shown.

^b The statement is also used in Study 2.

^c This indicates the opposite statement.

^d *Nondisclosure obligation* is a rule that a lay judge should keep secret that he or she was a lay judge and should not disclose any information about or from the trial.

Table 3
Statements on psychological knowledge and results from Studies 1 and 2^a

Description	Statements	Kassin's experts	Study 1		Study 2		N	Agree	Dis-agree	DK
			N	Agree	Dis-agree	DK				
Stress ^b	Very high levels of stress impair the accuracy of eyewitness testimony.	Agree 64	287	47	15	36	86	81	6	3
Weapon focus	The presence of a weapon impairs an eyewitness's ability to accurately identify the perpetrator's face.	Agree 88	287	55	6	37	86	53	18	12
Exposure time	The less time an eyewitness has to observe an event, the less well he or she will remember it.	Agree 83	287	35	31	33	86	48	31	1
Accuracy-confidence ^b	An eyewitness's confidence is not a good predictor of his or her identification accuracy.	Agree 90	287	47	8	44	86	82	6	3
Post-event information	Eyewitness testimony about an event often reflects not only what was actually seen but information obtained later.	Agree 95	289	75	7	17	86	95	2	1
Unconscious transference	An eyewitness sometimes identifies as a culprit someone seen in another situation or context.	Agree 92	285	68	8	23	86	75	1	6
Alcohol intoxication	Alcohol intoxication impairs an eyewitness's ability to recall persons and events later.	Agree 82	285	48	15	36	86	90	3	1
Child witness accuracy	Young children are less accurate as witnesses than are adults.	Agree 62	283	9	50	40	85	31	38	3
Discriminability	It is possible to reliably differentiate between true and false memories.	Disagree 60	282	12	31	55	86	19	45	11
Long-term repression	Traumatic experiences can be repressed for many years and then recovered.	Disagree 38	284 283 ^a	65 71	4 4	29 24	85	38	17	27
Repeated testimony	As a witness repeatedly testifies, the testimony becomes more accurate.		282	13	48	37				
Event memory like a video	An event memory is not forgotten because memory is like a video/audio tape recorder.		284	10	65	23				
Familiar face	Identification of a familiar person is more reliable than that of an unfamiliar person.		284	46	21	32				
Memory in general	Generally, eyewitness testimony is reliable.		282	27	23	48				
Lineup instructions	Police instructions can affect an eyewitness's willingness to make an identification.	Agree 91					86	95	1	0
Wording of questions	An eyewitness's testimony about an event can be affected by how the questions put to that witness are worded.	Agree 100					85	95	1	1
Mugshot-induced bias	Exposure to mug shots of a suspect increases the likelihood that the witness will later choose that suspect in a lineup.	Agree 98					86	90	2	1
Child suggestibility	Young children are more vulnerable than adults to interviewer suggestion, peer pressures, and other social influences.	Agree 93					86	79	9	4
Attitudes and expectations	An eyewitness's perception and memory for an event may be affected by his or her attitudes and expectations.	Agree 100					85	70	3	12
Hypnotic suggestibility	Hypnosis increases suggestibility to leading and misleading questions.	Agree 84					85	57	2	31
Cross-race bias	Eyewitnesses are more accurate when identifying members of their own race than members of other races.	Agree 95					85	62	15	4

^a In the column of Kassin's experts, top rows show dominant responses and bottom rows show the percentages of experts who gave the dominant response. *N* indicates the number of respondents who responded to the statement and DK indicates 'don't know'. The results are shown as percentages. As for the repression and recovery statement, the top row shows the result for repression and the bottom row shows that for recovery.

^b In Study 1, statements 1 and 4 were shown in reverse form.

Table 4
Statements on legal knowledge and results from Studies 1 and 2^a

Description	Statements	Expected responses	Study 1		Study 2		N	Agree	Dis-agree	DK
			N	Agree	Dis-agree	DK				
Presumed innocent	A person is presumed innocent until he or she is proven guilty.	Correct	285	65	14	19	85	92	5	0
Right to silence	A person must not be assumed guilty only because he remains to be silence.	Correct	286	84	6	9	86	95	0	1
Free discretion	A lay judge is allowed to have free discretion in evaluating the reliability of evidence.	Correct	286	53	20	25	86	87	5	2
Testimony	Testimony made in court is evidence.	Correct	287	54	16	29	85	63	16	2
Record of interrogation	Records of interrogation can be used as evidence.	Correct	286	74	4	20	83	75	9	3
Defendant's oral statements	Conviction can be made solely based on a defendant's oral statement.	Wrong	287	9	59	31	86	9	68	5
Indictment	Indictment is evidence.	Wrong	285	16	46	37	85	10	74	3
Forced confession	Forced confession made by a suspect can be used as evidence.	Wrong	288	8	71	20	82	6	85	2
Burden of proof	A defendant must prove that he or she is not guilty.	Wrong	284	38	30	30	84	20	71	0
Proof of guilty	To prove the case, it is good enough for prosecutors to suggest the existence of evidence.	Wrong	283	12	50	36	84	15	71	7
Reasonable doubt	Conviction can be made even when there remains some doubt.	Wrong	288	3	77	19	84	1	97	0
Hearsay	Hearsay can be used as evidence.	Wrong	286	2	79	18	82	6	84	1
Confession	An innocent person could make a confession.		285	18	55	25				
DNA evidence	Evidence from DNA and fingerprints are unfailing.		287	48	22	29				
Photo identification	Photo identification is unfailing.		287	5	55	38				

^a N indicates the number of respondents who responded to the statement and DK indicates 'don't know'. Results are shown as percentages.

Table 5

Demographic data of two samples for each analysis

	Male				Female			
	Young ^a		Old		Young		Old	
	Less ^b	More	Less	More	Less	More	Less	More
Study 1								
Attitude	22	33	39	30	38	23	67	6
Psychological knowledge	21	33	41	33	39	23	76	7
Legal knowledge	21	33	42	30	39	23	76	7
Study 2								
Attitude	2	7	10	18	7	8	13	4
Psychological knowledge	2	8	11	21	6	8	18	4
Legal knowledge	2	8	9	21	6	7	16	4

^a *Young* indicates respondents who are less than 40 years in age, and *Old* indicates respondents who are 50 years old or older.

^b *More* indicates 16 years of education or more, i.e., university and graduate school. *Less* indicates less than 16 years of education. *Other* indicates the number of respondents who gave no information on gender, age or education level.

Table 6
Psychological knowledge in Study 1^a

	Less education		More education	
	<i>N</i>	Mean (%)	<i>N</i>	Mean (%)
Male	62	43.62	66	39.03
Female	115	36.11	30	47.06
Young	60	43.62	56	40.60
Old	40	35.77	117	45.15

^a The table shows the results representing the interactions of gender × education level (top) and age group × education level (bottom).

Table 7
Correlations between knowledge and attitude

	Study 1		Study 2	
	Legal knowledge	Psychological knowledge	Legal knowledge	Psychological knowledge
F1: Negativity	-0.144*		-0.381**	
F2: Concern for knowledge and ability	-0.300**			
F3: Practical concerns			-0.296*	

* $p < 0.05$

** $p < 0.01$

Table 8
Summary of Studies 1 and 2

	Study 1	Study 2
Attitude (scale scores) ^a		
F1 Negativity	5.39	3.15
F2 Concern for knowledge and ability	4.85	4.34
F3 Practical concerns	4.26	3.37
Correct response on psychological knowledge (%)	58% ^b (67% ^c)	42% ^b
Correct response on legal knowledge	79%	62%

^a Figures for Study 1 were converted to seven-point scale.

^b Percentage of correct responses based on 10 statements.

^c Percentage of correct responses based on 17 statements.

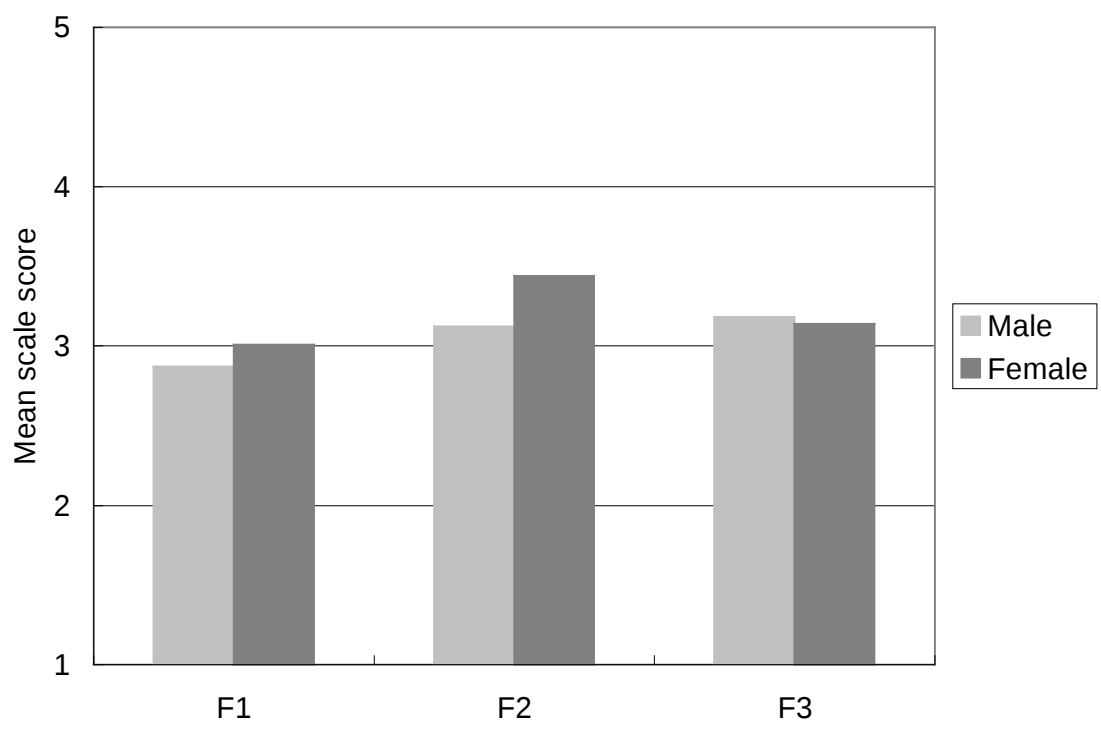


Figure 1

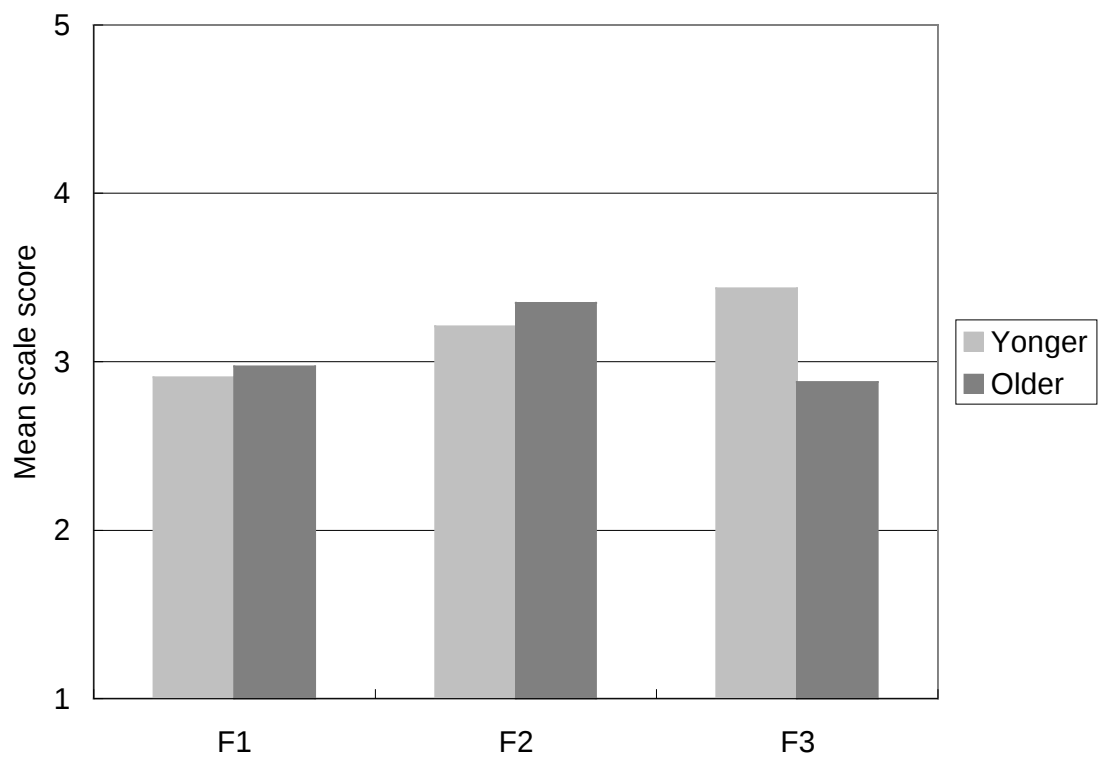


Figure 2