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## Effects of Defendant's Background on Lay Judges' Decisions

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### I. Introduction

A lay judge system (*saiban-in* system) was recently introduced in Japan, and trials with lay judges started at the beginning of August 2009. In this system, each case is decided by a panel of six lay judges (*saiban-ins*) who are chosen at random among eligible citizens, and by three professional judges. At the conclusion of a trial, lay judges are required to make a decision, after being exposed to a large amount of information, including evidence on which they should base their decisions as well as information that they should exclude from the process when they make decisions. To do this properly, a lay judge has to process a large amount of information so that he or she can make a decision after reflection upon relevant evidence and by excluding irrelevant information.

In an elaboration likelihood model (ELM), Petty and Cacioppo (1986) proposed that there are two roots in the decision process: a central root in which a decision is made based on the content of messages given to the decision maker, and a peripheral root in which a decision is made based on irrelevant factors—such as the appearance of the message sender. They argued that one tends to take the peripheral root when one does not have much interest in the decision to be made, or when there is a time pressure. The possibility that a lay judge may not take interest in a case is high, because lay judges are selected at random. Usually a trial involving lay judges lasts for three or four consecutive days, and lay judges might not have enough time for due reflection. Such conditions might lead lay judges to take the peripheral root in their decision making.

Individual differences also have an influence on which root is taken. An indi-

vidual who likes to reflect or has a tendency to reflect, might tend to take the central root, while an individual who does not like to reflect or has a tendency to decide without deliberation, might tend to take the peripheral root. Cacioppo and Petty (1982) devised the need for cognition scale (NCS) to measure the tendency toward reflection, and argued that one who scores high on the NCS tends to take the central root, while one who scores low on the NCS tends to take the peripheral root.

In this paper, we investigated whether irrelevant information, such as a defender's background, has an effect on lay judges' decisions regarding the guilt of a defender and in sentencing, and whether the need for cognition by a lay judge modulates this effect.

## II. Method

### 1. Participants

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One hundred and one undergraduate and graduate students of a university in Tokyo took part in the experiment. They were randomly assigned to judge defendants with two contrasting demeanors: one had a reputable character, and the other a disreputable character.

### 2. Material

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Two versions of a video of a mock trial were prepared. The trial dealt with a case of illegal drug possession. In the video, the prosecutors asserted that the defendant possessed a stimulant drug, while the defendant asserted that he was given the drug by a friend, but thought it was a cold medicine. There was no decisive evidence to prove whether the defendant knew the drug was a stimulant.

In the version of the video prepared for the case in which the defendant had a reputable character, he was depicted as a steady and socially successful person. He had graduated from a university, was working as a bank clerk, and was legally married. In the version prepared for the case in which the defendant had a disreputable character, he was described as a disorderly and socially unsuccessful person. He had dropped out of high school, changed his job several times, was currently unemployed, and had a common-law wife. These different backgrounds of the defendant were presented aurally in the reading of the indictment, however, there were no differences in the visuals of the two versions of the video. The length of the video was about 20 minutes.

To measure the need for cognition scale score, the NCS questionnaire devel-

oped by Kouyama and Fujihara (1991) was used. Another questionnaire asked for a judgment on the defendant's guilt, appropriate sentencing (length of imprisonment), and the reasons for the judgment.

### **3. Procedure**

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Participants took part in the experiment singly or in groups of twos or threes. First, participants responded to the NCS questionnaire. Then they watched one of the two versions of the video under the instruction that they would be required to respond to the questionnaire on the judicial judgment as lay judges. Just after they watched the video, they were asked to answer the judicial judgment questionnaire individually.

## **III. Result**

### **1. NCS scores**

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NCS scores were calculated following Kouyama and Fujihara (1991). The average NCS score for all participants was 4.84 (range: 2.93–6.47, SD: .76). This average score is higher than the ones for university students (4.08–4.36) and nonstudents (4.32–4.43) in Kouyama and Fujihara (1991).

### **2. Judgment of Guilt**

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The percentages of the participants who judged the defendant guilty were 58% (29 out of 50) for the reputable defendant and 63% (32 out of 51) for the disreputable defendant. No statistical difference was detected. To see the relation between the NCS score and verdict, point bi-serial correlations were calculated. No correlations were found either in the reputable cases ( $r=.09$ ) or in the disreputable cases ( $r=-.09$ ).

### **3. Sentencing**

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The average lengths of imprisonment handed out were .86 years for reputable defendants and 1.16 years for disreputable defendants. Participants in cases involving disreputable defendants seemed to think that the defendant should be more severely punished. An analysis of covariance was conducted on the sentencing data of participants who had handed down a guilty verdict with the version of the video as a factor, and the NCS score as a covariant. A significant effect in the version was

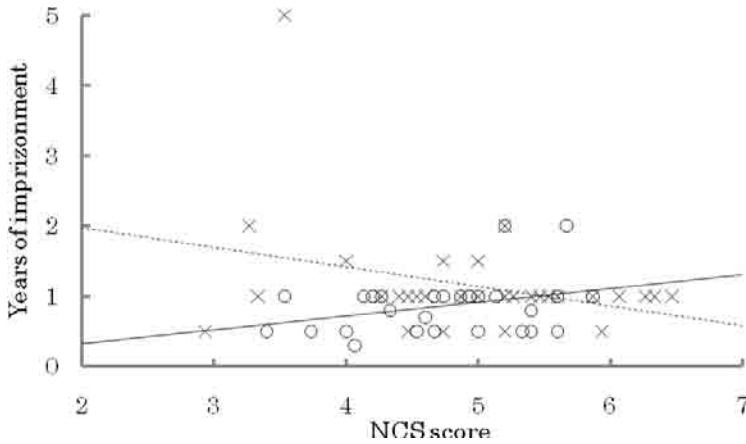


Figure 1. NCS score and length of imprisonment for reputable and for disreputable defendants. (Circles and the solid line are for reputable defendants, crosses and the broken line are for disreputable defendants.)

detected ( $F(1,57)=6.10, p<.05$ ). The interaction between the version and the NCS score was also significant ( $F(1,57)=4.81, p<.05$ ). Figure 1 shows that participants with a lower NCS score seem to have favored severer sentencing in cases involving a disreputable defendant, whereas those with a lower NCS score seem to have made favored lighter sentencing in cases involving a reputable defendant. The Pearson's correlation coefficients between the NCS score and the length of imprisonment were calculated. The coefficient for cases involving a reputable defendant was .20 and the correlation was not significant ( $p>.10$ ). However, a marginally significant correlation was found for cases involving a disreputable defendant ( $r=-.27, p=.06$ ).

#### IV. Discussion

Taking account of the elaboration likelihood model (Petty and Cacioppo, 1986) and the concept of the need for cognition (Cacioppo and Petty, 1982), we hypothesize that participants with low NCS scores tend to make decision relying less on the evidences, and tend to be affected by irrelevant information. We came to the conclusion that the defendant's background, education and job and so forth, were not relevant information in making a judicial decision in this particular trial scenario. If this is so, participants with low NCS scores tend to be affected by the defendant's background and the proportion of guilty verdicts and the sentencing should be different between the cases involving reputable defendants and those in-

volving disreputable defendants. Participants with low NCS scores might consider that the defendant with a socially undesirable background (i.e., disreputable) would be guilty and should be punished severely, and a defendant with a socially desirable background (i.e., reputable) would be innocent and should be punished lightly. On the other hand, participants with high NCS scores would rely exclusively on the evidence, which was same for both types of defendants, and there might be no difference in judgment.

The result showed that there was no difference between the proportions of guilty verdicts for reputable and disreputable defendants. Neither was there any relation between the NCS score and the guilty verdicts for both types of defendants. These results do not fit the above predictions.

On the other hand, looking at the sentencing results, the predictions fit well. As a whole, participants in the trials with disreputable defendants favored more severe punishment than participants in the trials with reputable defendants. This difference was larger for participants with lower NCS scores and there was almost no difference between the conditions for participants with high NCS scores. The correlation between the NCS score and punishment was positive for disreputable defendants and negative for reputable defendants, although these correlations did not reach statistically significant level.

It would be difficult to generalize these results for potential lay judges. The participants of this research were students and younger than the potential lay judges. Their average NCS scores might be higher than the potential lay judges. Irrelevant information might have a larger effect on potential lay judges.

In this research, we considered that a defendant's background—such as education and job—was not relevant information for the trial process and should be excluded when judicial decisions are made. Although the law experts we informally asked about this agreed to our postulation, there may be legal arguments on this matter. There are many kinds of information that could be considered as irrelevant and not to be used in the lay judges' judicial judgments. Some items of information might influence lay judges' judgments whereas lay judges might be able to exclude other items of information when they make decision. We would have to collect more data with nonstudent participants and with other kind of irrelevant information.

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