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Reconsideration of Japan's Revised Juvenile Act, and Considerations Regarding Juvenile Justice Reform

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## Reconsideration of Japan's Revised Juvenile Act, and

### Considerations Regarding Juvenile Justice Reform

—As based on a comparative study with U.S. Juvenile Justice Law—

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#### 1. Introduction

##### (1) Juveniles and criminal trials

Japan's Revised Juvenile Act, which took effect on April 1, 2001, reduced the age from 16 years to 14 years when referral (remittance) to a prosecutor is possible (Article 20, Paragraph 1), and also provided a so-called "remittance in principle" stipulation (Article 20, Paragraph 2) for cases where a victim has died due to an intentional act of a juvenile age 16 or older. As a result of such revisions, from a variety of empirical evidence, beginning with statistics of the Supreme Court of Japan, it has been determined that compared with the time prior to the implementation of the Revised Juvenile Act, juveniles have been subjected to criminal trials at considerably high rates (Document 9, Preface, p. 98).

Also, according to Article 2 concerning criminal trials with the participation of jurors ("citizen judges") slated for novel introduction, Article 20, Paragraph 2 of the Juvenile Act stipulates that for all remitted cases, a criminal trial is to be performed with the participation of citizen judges.

In regards to this point, within juvenile trials, from the perspectives of promoting welfare, wholesomeness of youth and guaranteeing appropriate procedures ("due process" or "procedural rights"), there is a demand for a variety of methods that differ from criminal trials. However, in

regards to after a remittment-to-prosecutor, the Juvenile Act has established only a few stipulations concerning criminal procedures (Juvenile Law, from Article 49 on). With only these special provisions, from the past it has been pointed out that the question remains as to whether or not substantial procedural protection is being provided to juveniles (Document 9, p. 143). Within actual implementation of the law, too, most of the prosecutor-referred cases that fall within the scope of the Revised Juvenile Act are major incidents that generate broad public interest, and within criminal public trials, "Prosecutor's closing statements during trials have been such that they appear to be a complete denial of the character of the defendant juvenile, questioning has been performed with an overbearing and high-handed voice, and, in the end, in response to the claims of the youth, prosecutors have asked, 'Do you think the victim will accept your claim ?' while other public prosecutors have been seen to be presenting only one-sided and strong demands for remorse and apology"; "Even court judges have, from beginning to end, continued to censure and blame the juvenile" (Document 9, p. 153). The author of the present paper, too, has personally experienced cases after implementation of the Revised Juvenile Act where there was defendant questioning and prosecutor's final statements that were so demanding that they could be considered as even more severe than in cases involving adults (Document 9, p. 79 ff).

Further, in regards to the citizen judges system planned for novel introduction, even as discussions continue regarding the methods of holding criminal trials where adults are presumed [as defendants], one has the sense that debate regarding methods of holding criminal trials where special consideration must be given to the unique characteristics of juveniles, who have less capability of defending themselves than adults, is being postponed and relegated to a later date.

Within the present paper, considerations are given to the various points under discussion in Japan

concerning the competency of juveniles to stand trial, while at the same time referring to the United States of America, due to the facts, among others, that:

1) Although the U.S. was the first in the world to establish a juvenile court (in 1899, in the state of Illinois) and was the nation that led the world in the full-scale launching of the protectionist concept, thereafter and up to the current day, there has been a drastic tendency to move in the direction of ever more severe penalties, even when compared to other advanced nations. Therefore, from one view, the United States has an accumulated history of criminal trials of juveniles, as well as extensive research.

2) The United States is a nation with a jury system, and has abundant experience with jury trials not only for adults, but also for juveniles.

## (2) Juveniles and criminal investigations and family court hearings

When speaking about criminal trials of juveniles, in a certain sense, it is natural and necessary to also discuss points regarding the stages prior to criminal trials, namely, the investigation and the family court [domestic relations court] stages both of which are linked in an important way with the tendency towards more juvenile criminal trials.

Therefore, within the present paper, before discussing the issue of criminal trials of juveniles, issues considered of importance—the investigation stage and the family court stage—will first be taken up and discussed, one by one.

In regards to the investigation stage study, description will be made regarding the famous U.S. Supreme Court case, *Miranda v. Arizona* (1966) and its relation to the special characteristics of juveniles; as for the discussion regarding the family court stage, reference will be made to the

protection of the right to [choose] counsel, a right guaranteed during the entire process from even before remittment, as indicated in yet another famous Supreme Court case, the decision in Kent v. United States (1966) (further, although not a remittment case, discussion will be made regarding In re Gault (1967), a famous case that cannot be ignored, inasmuch as the Court made statements therein concerning various procedural protections, including right to counsel).

Note: As is well known, in the United States, it has been noted that, in general, there is a distinct trend towards more severe penalties (there has even been strong criticism that, within the current United States, the trend towards stiffer penalties has brought about an acceleration of a "vicious circle," with an increase in juvenile convicts, a lengthening of the pre-trial detention period, longer conviction times, and an inability to follow up by securing sufficient bed space, as well as deficiencies in personal treatment, and other damages (Document 6, p. 533)).

Yet on the other hand, as a result of the more severe penalties and the accumulation of juvenile criminal trials, the United States has become a "leader" in the debate regarding methods, etc., of juvenile criminal trials; this itself means (to some degree, ironically) that one can learn much from such experiences in the U.S.

## 2. Prerequisite U.S. Supreme Court Rulings

In speaking about the experiences, etc., passed through by the United States, one must first discuss some famous rulings by the U.S. Supreme Court. Each of these constitutes a renowned decision, and they have already been broadly introduced within Japan as well. Nevertheless, since these also constitutes prerequisite cases for the present paper, they will be briefly described

hereunder.

Each of these are Supreme Court rulings made in the latter half of the 1960s, and they have served ever thereafter as foundations of U.S. practice.

(1) Miranda Decision, 1966 (Document 7, p. 690)

While the examiner had informed the person in custody of his right to remain silent, it is clear through a perusal of the actual examination performed while in custody that this was not an examination that had actually protected the right to remain silent; the Court ruled that the protection of the right to remain silent includes the right to have counsel present during the examination.

Although this was a ruling on a case concerning an adult, its scope of course extends to juvenile cases.

(2) Kent Decision 1966 (Document 6, p. 416)

This is a decision concerning a remitted juvenile case.

Here, the Court ruled that, without receiving the effective assistance of counsel, a determination by a juvenile court to remit a juvenile is not permissible.

(3) Gault Decision, 1967 Document 6, p. 572)

Here the Court ruled that the protection of appropriate procedural rights [due process] (the protection of the rights to receive assistance of counsel, to be notified of charges, to confrontation and to cross-examination) extends to juvenile courts, and established the guarantee of due process for juveniles. Surely it is one of the most widely known Supreme Court rulings in U.S. juvenile justice history.

3. Discussion Point regarding Investigation Stage: Relationship between the Miranda ruling (1966)

and the special characteristics of juveniles, and the necessity of special considerations regarding the special characteristics of juveniles in regards to waiver of the Miranda Rule

(1) U.S. trends

The Miranda decision, which is also well-known in Japan, was a decision of the U.S. Supreme Court that, as described above, ruled that there had been no protection of the right to remain silent despite the fact that the examiner had formally made known the existence of said right to remain silent, that substantial protection of the right to remain silent is required, and that the right to remain silent includes protection of the right to counsel during an examination, etc.

On the other hand, in the same ruling, the Court permitted waiver of the several rights, the right to remain silent and right to counsel, under the conditions that the suspect does so (1) voluntarily, (2) knowingly, and (3) intelligently (Document 7, p. 691).

In regards to this point, especially problematic for juveniles is the relationship with the above-stated (1) voluntarily, due to the immaturity of the juvenile; here, it must be determined whether or not waiver of said rights was not coerced, but was rather the true and spontaneous will of the juvenile (Document 3, p. 153).

It has been reported that, according to U.S. statistics of the post-Miranda ruling period, within investigations of juveniles, almost all cases have resulted in the waiver of rights (as for percentages of non-right waivers, it has been reported that compared with about 42% of adults, the amount is only about 9% for juveniles (Document 3, p. 156); the same report expresses doubts as to whether such were actually rights waivers performed spontaneously by the juveniles, or whether, in fact, such had been instead waivers of rights that had been coerced). (Document 3, p. 156)

Within the Gault decision, the U.S. Supreme Court stated first that the waiver of the juvenile's

rights was the result of the impact of conditions of "fantasy, fright or despair" related to the immaturity of the juvenile, that the U.S. court had described the dependency, immaturity, submissiveness, etc., of the juvenile, and that the history of the case showed that doubts had frequently arisen in regards to the spontaneous [voluntary] waiver of the juvenile's rights during the investigation (Document 3, p. 153).

From such a backdrop up to the present time, it has been noted that within numerous U.S. states, waivers of juvenile rights made under conditions where the juvenile was not provided assistance (which could "cover" the juvenile's immaturity) have been handled as automatically invalid. In other words, in these states, the expression of desire to waive rights of the juvenile are themselves automatically invalid, so long as they were made without the assistance/advice of a parent or adult friend (presence at the investigation by the parent or adult friend at the time when the juvenile waived his/her rights).

"Some states, however, consider juveniles incompetent to waive their rights unassisted.

"In those states, juveniles' waivers are automatically (per se) invalid if they have not been advised by parents or other 'friendly adults' (that is, if one of these persons was not present at the waiver)." (Document 3, p. 154)

## (2) Considerations for Japan

As for this point, something which could be considered as analogous within Japan is Article 9, Section 3, of the Juvenile Police Activity Principles, which is the standard for juvenile police administration; here it stipulates in regards to investigations of juveniles, that "Except in cases where there is no alternative, these shall be performed in the presence of a guardian who has accompanied the juvenile or of another person deemed appropriate."



Nevertheless, actual implementation in current police practice is far removed from this stipulation; even in the case where a guardian or attorney has accompanied the juvenile, their presence is denied, and it has been pointed out from the past that, in reality, upon detention in a custody facility in a police station (in lieu of a house of detention), the waiver of various rights such as the right to silence, etc., is coerced in the pursuant investigation.

Within the United States, of course the right to counsel to participate in the investigation (questioning), etc., is permitted; additionally, in several states, going even beyond the spirit of the Miranda ruling, even in the case where the juvenile has expressed his/her wish to waive rights, so long as such was the juvenile's will expressed without the presence and advice of a parent or a friendly adult, such automatically becomes invalid as a defective expression of will. A comparison of such suggests that even prior to a discussion of criminal trial methods in Japan, what is most needed (and the Japan Federation of Bar Associations among others has already pointed this out) as prerequisites are establishment of the right of guardians and counsel to take part in examinations, and more visible investigations, such as via taped conversations of actual examinations, etc.

3. Discussion Point regarding Family Court Stage: Protection of right to counsel during the entire process prior to remittance

(1) Rulings in U.S. Supreme Court decisions, including the Kent Decision (1966) and the Gault Decision (1967)

U.S. Supreme Court decisions, beginning with the ruling in Gault, have protected the opportunity to be notified of charges and to have hearings before remittance, and have also protected the right to receive assistance of counsel prior to remittance and at said notification of charges and

hearings (Document 4, p. 133).

In other words, only when counsel has observed and checked all proceedings prior to remittance has one of the prerequisites for juvenile criminal trial been fulfilled.

In actual fact, within the Kent decision case, the counsel to the juvenile Morris Kent had stated that it would be inappropriate to transmit Kent to a criminal court on the basis of the youth's psychiatric problems, and argued that the juvenile court should continue to have jurisdiction over Kent. Nevertheless, the juvenile court, without making any reference whatsoever to said petition, transferred the case. In regards to this, the U.S. Supreme Court ruled that said remittance was performed without having obtained effective assistance from legal counsel, and that this thus violated the Due Process Clause (Document 4, pp. 125-126; Document 6, p. 416).

## (2) Considerations for Japan

As for this point, in Japan, the rate of selection to be accompanied by counsel within a remittance due to the handling of the case as criminal-disposition equivalent is low: 29.8% in 2000, 31.4% in 2001, and 17.6% in 2002. Even for cases of murder or bodily injury resulting in death, which are subject to the "remittance in principle" stipulation of the Revised Juvenile Act, there is insufficient selection to be accompanied by counsel, as this rate has not reached 80% (Document 9, p. 178).

Otherwise stated, currently in Japan, juveniles are being placed in a position where they must be subjected to a criminal trial without having received the assistance of legal counsel.

However, whether or not said juveniles are truly worthy of such subjection to criminal trial, and whether or not juveniles are competent to stand trial, or any other discussion of the method of handling criminal cases involving juveniles loses all its validity when said youth undergo a decision

of remittance, and suffer the proceedings of a criminal trial without having ever received the observation and checking of legal counsel. Surely it is necessary and natural to openly discuss how to perform criminal trials that meet the unique characteristics of juveniles after they have become subject to criminal trial; however, if in the stages prior to subjection to criminal trial, there has been no opportunity for an attorney to confirm the appropriateness of said youth for subjection to such a criminal trial, it is clear that such violates due process, especially when one considers the Kent decision which protected the right to receive effective counsel of an attorney prior to remittance, and the Gault decision which ruled that the assistance of counsel is required within and during all procedures.

Now, in regards to the public attendant issue currently faced by Japan, what must be stated is the necessity of the introduction of a public attendant system of course for cases having possibility of remittance (in reference to the Kent decision), and, at the very least, within all cases involving the custody of juveniles (in reference to the Gault decision).

5. Discussion Point regarding Criminal Trials of Juveniles: Issue of the competency of juveniles to stand and follow effectively proceeded criminal trials (including jury trials)

(1) Preface

As discussed above, within the investigation and juvenile court stages, only when there has been assured legal assessment and checking that takes into account the unique immaturity of youth can a juvenile truly be given the capability [competence] to face a criminal trial.

Even beyond such, in several U.S. states, even further examination is underway to determine whether criminal trials of juveniles are in fact performed in a way differing from the criminal trials

of adults, such that they can be effectively followed in a manner that sufficiently matches the unique capabilities [competencies] of juveniles, and demands are made for trial procedural methods that differ from those used for adults.

(2) Regarding the lack of the competency of juveniles to stand trial due to mental disorder, mental deficiencies, mental illness, mental retardation

In both the United States and Japan, it is a matter of course that a criminal trial cannot proceed in the case where a juvenile has a mental disorder (Document 8, p. 173). A clear text exists in Japan regarding this point (Code of Criminal Procedure, Article 314, Paragraph 1).

Nevertheless, Article 314, Paragraph 1 of the Code of Criminal Procedures stipulates a stay of trial "when there exists a state of insanity in the defendant"; however, insufficient thought has been made in regards to those cases where the defendant suffers from some type of mental disorder yet not to the extent of insanity, and there is doubt as to whether such a defendant has the requisite competence to stand and follow a criminal trial. One imagines anyway that it would be difficult to state that said stipulation, which does not approve of mental disorders, applies as a stipulation that provides protections to "immature" minors.

(3) Considerations regarding the immaturity of juveniles

The problem here is just how a criminal trial system for juveniles is to handle cases that involve juveniles who, even when they have no mental deficiencies, still have insufficient abilities to follow a trial due to their immaturity (Document 2, p. 250).

In regards to this point, within the United States, special consideration has been given to the immaturity of juveniles in that the juvenile courts themselves have historically been designed and established to supplement such immaturities. The opinion exists that, regardless of the severity of the

delinquent act, jurisdiction over mature youth is always retained by the juvenile courts, and courts for adults cannot rule on such (Document 2, p. 251).

This is an opinion that has value in light of the tendencies shown in the history of juvenile court formation.

However, within the current legal system, if one imagines that it is difficult to apply and employ the above-described opinion, then how should such be handled?

In regards to this point, the following issue has been raised in the United States.

" [ . . . ] how should the system respond to a minor's incompetence generated not by mental deficiencies but by immaturity? Should the system wait for the child to grow up?

"[ . . . ] If these cases are to go forward in a reasonable amount of time, juveniles' trial competence must be enhanced or **the trial process adjusted to meet the juvenile's level of competence.**" (Document 2, p. 251)

(\* Emphasis added by the present author.)

(4) U.S. trends concerning "immaturity"

As for this matter, from the perspective described in section (3) just above, one is made aware of the point that within several U.S. states, when a delinquent juvenile is to face trial, investigation is made in regards to the immaturity of the juvenile. Hereunder will be taken up two fundamental rulings in the United States that pertain, one case in the state of Alabama, and one in the

state of Ohio.

1) Alabama state case (Document 5, p. 514; M.D. v. State Court of Criminal Appeals of Alabama 1997)

In the end, although the juvenile's competency to stand trial was confirmed, investigation was made of the juvenile's immaturity and competency to stand trial on the basis of 13 standards or "functions."

"Alabama has relied upon the Competency to Stand Trial Assessment Instrument (CAIS) as evidence of a juvenile's competency.

" [ . . . ] The CAI consists of 13 functions that the defendant should appreciate in order to be competent to stand trial.

"1. Appraisal of available legal defenses: 'How do you think you can be defended against these charges?'

"2. Unmanageable behavior: 'What do you think would happen if you spoke out or moved around the courtroom without permission?'

"3. Quality of relating to attorney: 'Do you have confidence in your lawyer?'

"4. Planning of legal strategy, including a possible guilty plea: 'Is there anything you disagree with in the way your lawyer is going to handle the case, and if so, what do you plan to do about it?'

"5. Appraisal of role of defense counsel, prosecuting attorney, judge, jury, defendant, witness: 'In the courtroom, what do you think is the job of . . . ?'

"6. Understanding of court procedure: 'After your lawyer is finished asking you questions on the stand, who then can ask you questions?'

"7. Appreciation of charges: 'Do you think people in general would regard you with some fear on the basis of the charge?'

"8. Appreciation of range and nature of possible penalties: 'If you're found guilty as charged, what are the possible sentences the judge could give you?'

"9. Appraisal of likely outcome: 'How strong a case do they have against you?'

"10. Capacity to disclose to attorney pertinent facts surrounding the offenses: 'Tell us what actually happened, what you saw and did and thought and heard.'

"11. Capacity to realistically challenge prosecution witness: 'Suppose a witness against you told a lie in the courtroom. What would you do?'

"12. Capacity to testify relevantly Ability to testify with coherence

"13. Self-defeating v. self-serving motivation: 'Suppose the District Attorney made some legal error and your lawyer wants to appeal a guilty finding in your case, would you accept that?'"

## 2) Evaluation

Here, the necessity of a capacity for a correct understanding as represented in the ability to recognize basic factual relationships (standard 10), the ability to communicate (standards 10, 12), and the appreciation of society in general (standard 7), are common points for both adults and juveniles. Items that are characterized as being especially demanding in terms of the immaturity of juveniles and their lack of social experience, etc., are, of course, the check regarding the basic understanding of the various actors in a trial as they fit into the legal structure (standard 5), as well as

handling in those cases where there are conflicts/disagreements with the procedures and policies of attorneys (standards 3, 4, 13), and the check regarding a basic understanding of cross-examination (standards 6, 11), etc. What is most worthy of note here is the point that standards have been established that are essentially related to the unique characteristics of juveniles, namely, whether the juvenile is able to actively express his/her will, whether the juvenile is able to participate in the procedures, or, conversely, whether the juvenile has not rather anticipated or fallen subject to the wishes or others, whether the juvenile has been subjected to hinting or to pointed suggestions, and/or whether the juvenile is self-defeating, etc.

3) Ohio state case (Document 5, p. 514; In re D.G. 1998 Ohio Misc.)

Here, when making a determination as to a juvenile's competency to stand trial, as stated below, such must be made based on standards differing from those for adults; in the end, the juvenile's competency to stand trial was denied.

" [ . . . ] the court held that while the adult standard for competency applies to juvenile proceedings, the court must assess the juvenile by "juvenile norms" rather than adult norms. In assessing the competency of a juvenile in a case, the court commented that it was appropriate to take into account, 'the diminished expectations of a juvenile's ability to appreciate and understand legal strategy; that juveniles are often at earlier stages of emotional growth; that their intellectual development may be incomplete; that they frequently have limited practical experience; and therefore, their value systems may not be clearly identified or adopted.'"



#### 4) Evaluation

As the Ohio case makes clear, here one can observe a stance for determining a juvenile's competency to stand trial not on the basis of adult norms, but of juvenile norms (a "double standard").

In regards to this point, first it is important to understand just what the "adult norms" are; here, however, several U.S. states have established guidelines concerning the competency to stand trial. One general example cited are the Florida guidelines, which consist of the six (6) following norms (Document 3, p. 71):

"a. Appreciate the charges or allegations against him.

"b. Appreciate the range and nature of possible penalties, if applicable, which may be imposed in the proceedings against him.

"c. Understand the adversary nature of the legal process.

"d. Disclose to his attorney facts pertinent to the proceedings at issue.

"e. Manifest appropriate courtroom behavior.

"f. Testify relevantly."

Conversely, as a typical example of juvenile norms that differ from adult norms, there exist the 13 standards as listed in the Alabama case described in subsection 1) above.

Here, when one makes a comparison between the above-listed adult norms a-f and the above-listed juvenile norms 1-13, one might state that "a" corresponds to 13, "b" to 8, "c" to 5, "d" to 10, "e" to 2, and "f" to 12; one notes however that special norms for juveniles have been established (norms 4, 11, 13), in particular in regards whether the juvenile has not been able to anticipate, or has

fallen subject to, the wishes of others, whether the juvenile is self-defeating, and whether the juvenile is passive.

It can be stated, thus, that for juvenile norms, the unique characteristics of juveniles have been taken into consideration, and that such norms have attempted to stimulate a greater expression of the juvenile's own will and his/her participation in procedures (double standard).

#### (5) Considerations for Japan

As for juvenile hearings in Japan, persons involved in the hearings are designated as "persons in cooperation with" the family court, and "the hearing must be conducted in a kind, cordial, and peaceful way" (Juvenile Act, Article 22, Section 1). In actual fact, within the hearing stage at the family courts, persons involved in the hearings are not to use difficult legal terms, but in accordance with the unique characteristics of the involved juvenile, are rather to use words that are understandable, and questioning has been performed in such a way that has enabled an opening and "outpouring" of the juvenile's mind and heart. When a youth has stumbled on a word or has fallen into silence, repeated following up questioning has been used such that the juvenile does not "close his/her heart and mind"; here, the reason for the silence, etc., has been sought, and so that the juvenile can spontaneously speak his/her own true mind, questioning that is repeated and easy to understand has been performed. However, as soon as the juvenile has been remitted, he/she is then directly faced with the court structure, where everyone has their assigned roles, and in a public trial opened to public scrutiny. The juvenile is then directly faced with an opposing prosecutor, plus a judge who is either neutral or even more reprimanding than the prosecutor. From the juvenile's point of view, it is only natural that he/she become perplexed and confused by this 180-degree turnaround

in the state of things (Document 9, pp. 16-96). Further, as stated in the beginning of the present paper, the juvenile is sometimes forced into a severe adversarial position vis- -vis the prosecutor, and in some cases, with the judge as well. The end result, in actual current practice, is that the juvenile is unable to freely express his/her own will, is unable to actively participate in the criminal proceedings, and is twisted and turned about by ruthless logic (although not a remitted case, one can refer to the record of investigation for the Soka case in Document 9, pp. 130 and 138, for an example of a juvenile who was in fact "twisted and turned about by ruthless logic"), is pursued in a reprimanding and condemning manner, is subjected to the prosecutor's final speech, and in the end, is judged with a long-term, indeterminate sentencing (Document 9, pp. 153 and 155).

However, a view of the above-described U.S. norms shows that, from the very beginning, as prerequisite for the juvenile being faced with court proceedings that can only be described as thoroughly confrontational, as discussed in detail above, not only is it demanded that the juvenile first have a considerable understanding of the legal structure and the roles of its various participants, it is also demanded even more is that the juvenile has the ability to deal with and handle any differences he/she has with his/her attorney, plus the ability to basically understanding the cross examination, as well as other capabilities that enable the juvenile to make the appropriate responses as necessary. Stated otherwise, an investigation is made as to whether the juvenile himself/herself is able to actively participate in the proceedings, and whether the juvenile is able to clearly express his/her will and opinions.

## 6. In Conclusion

(1) As a result of the obvious trend therein for stiffer penalties, the U.S. juvenile justice

system has been criticized in Japan, for example family court officer, bar association, Juvenile Training School etc.

Yet conversely, as described above, it is also necessary to make careful note of the fact that only after having passed through special checks and barriers including the fact that special consideration is made of the unique characteristics of juveniles in the examination of juveniles, that there is required assistance of counsel prior to remitment, and, as a prerequisite to proceeding with the trial, that norms are required for juveniles that are different from those for adults (the double standard) then and only then can the criminal trial of a juvenile go forth.

Meanwhile, in Japan, within the Revised Juvenile Act, a policy of more severe penalties has been employed, including that certain approval has been given to the criminal trials of juveniles, etc. Nevertheless, while setting stiffer penalties, the reality is that no improvement has been seen in regards to the examination of juveniles, and in so-called "remitment in principle" cases, let alone in custody cases, there has been no legal establishment of the right to assistance by a public attendant.

In regards to this point, in the document entitled, "Recommendations [of the Justice System Reform Council For a Justice System to Support Japan in the 21st Century," the Justice System Reform Council pointed out that, "taking into account the special nature of juvenile cases and the need for balance when juvenile suspects are also covered under the public defense system, active study must be given to a public attendant system for other juvenile hearing proceedings, as well"

[For the full English text of this report, see

[http://www.kantei.go.jp/foreign/policy/sihou/singikai/990612\\_e.html](http://www.kantei.go.jp/foreign/policy/sihou/singikai/990612_e.html)]; one thus sees here a line of

thought that positively supports the introduction of a public attendant system. On the other hand, this

"Recommendation" also states the importance of giving consideration to the structure of juvenile

hearing procedures and to the roles of family court probation officers, etc. Further, after publication of these "Recommendations," within discussions of the Consultation Group on a Public Defense System of the Office for Promotion of Justice System Reform, it appears that an opinion that does not support the vigorous introduction of a public attendant system has the upper hand, on the grounds of the structure of juvenile hearing procedures, and the roles of family court probation officers, etc. (Document 9, p. 169).

The Gault decision ruled, however, that even while considering as a prerequisite that the probation officer, who performs a check of the character of the juvenile and investigates available social resources, etc., also play a supervisory role for the juvenile, in the final analysis, the probation officer cannot stand as proxy [agent] for the juvenile, neither can a court official serve to represent the interest of a juvenile. Rather, throughout all of the procedures, it is necessary to have the assistance of counsel who stands on behalf of the juvenile in the resolution of legal issues and in the investigation of facts (Document 6, p. 579: "The child 'requires the guiding hand of counsel at every step in the proceedings against him[.]'").

As for this point, just as stated in the "Recommendations" of the Justice System Reform Council, even while guaranteeing public counsel for a juvenile suspect, and while guaranteeing public counsel within the criminal trial of a juvenile, a failure to then guarantee public counsel in the intermediate family court stage makes the entire system lack balance; one must also state that such is inappropriate, too, when viewed in light of the Gault ruling where the U.S. Supreme Court stated the necessity of the assistance of counsel throughout the procedural stages.

Further, in regards to the issue of juvenile interrogations, there is a considerable danger that throughout the judicial reform process, the current state will continue without any revision or

improvement whatsoever. A fundamental, even a grounding basic portion, will thus have been left as is, without having ever been taken up at all.

In the Revised Juvenile Act, Japan has adopted a policy of stiffer penalties. And in the future, permission will be granted to citizen judges to adjudicate a certain portion of juvenile cases.

In the United States, however, which has already undergone the tendency toward stiffer penalties (and as described above, there is strong criticism even within the United States in regards to this tendency; however, since such is not the express theme of the present paper, no further mention will be made of this herein), one must also be sufficiently aware of the fact that, on the other hand, a variety of measures and activities have also been performed to protect the juvenile's right to actively participate in procedures, and to protect the free and voluntary expression of will.

(2) In accordance with the above, at the present time in Japan, as based on a comparison with U.S. juvenile justice practice, it can be said that there is a need to seriously and soberly consider for introduction especially the items described below.

1) Thorough reform of juvenile interrogations

There must be protection of the right of presence of counsel at investigations, greater visibility of interrogations themselves, and special consideration given to the unique characteristics of juveniles in those cases where they abandon their right to silence, etc., within criminal procedures.

2) Introduction of public attendant system

There should be introduction of a public attendant system for all custody cases.

3) Investigation regarding the criminal trial methods, etc., that take into consideration the aspect of the immaturity of juveniles

Investigation needs to be made of methods of performing, etc., criminal trials that differ from those used for adults, due to the immaturity of juveniles even when there is no recognition of a mental disorder.

#### 4) Methods of establishing a trusting relationship with counsel

In regards to this point, although not taken up yet within the present paper, as is clear from the above-described Alabama state norms, including norms 3, 4, 10 and 13, just how to establish a trusting relationship between the attorney and the juvenile who generally has a feeling of mistrust towards adults is of extreme importance in terms of trial proceedings and tendencies. Especially in Japan, where in the future the citizen judges system is slated for introduction, and where thus an even greater division of responsibilities for participants will go forth for criminal procedures, it is beyond doubt that the roles and responsibilities of counsel to protect and support the interests of juveniles has an even deeper significance and importance.

In regards to this point, Document 2, "Youth on Trial," has provided a separate chapter wherein the authors discuss, with special consideration given to the unique characteristics of juveniles, the importance of there being a trusting relationship between the juvenile and his/her counsel, and methods for establishing that trustful relationship, etc.

Within Japan, which is headed in the direction of stiffer penalties for juveniles, it is thought that even further, improved efforts are required to ensure that a trusting relationship is formed between the immature juvenile and his/her attorney, that the juvenile be able to actively participate in related procedures, and that the juvenile be able to actively [voluntarily] express his/her own will.

#### 5) Necessity of legal education

Nothing has been said yet within the present paper in regards to this point, either. However, as is

clear from the above-described Alabama case, for the protection of a juvenile's active participation in procedures, and for the protection of the juvenile's free expression of will and opinions, an essential prerequisite is that juveniles themselves have a correct and accurate understanding of the trial system. In Japan, where trials are said to be far removed from the lives of ordinary citizens, when considering especially the standpoint of those delinquent youth whose opportunity to receive sufficient education has not been guaranteed, in tandem with the future introduction of the citizen judges system, and considering that such will make procedures even more sharply defined for each relevant party in a trial, the necessity of legal education within all types of education venues and settings must be stated.

#### Documents

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Document 3: Thomas Grisso, 2003, Evaluating Competencies, Kluwer Academic/Plenum Publishers

Document 4: Dean J. Champion and G. Larry Mays, 1991, Transferring Juveniles to Criminal Courts, Praeger New York Westport, Connecticut London

Document 5: Frank W. Miller, Robert O. Dawson, George E. Dix, Raymond I. Parnas, 2000, The Juvenile Justice Process, New York, New York Foundation Press



Document 6: Barry C. Feld, 2000, *Juvenile Justice Administration*, West Group

Document 7: Stephen A. Saltzburg, Daniel J. Capra, 2004, *American Criminal Procedure*, Thomson  
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Document 8: Clifford E. Simonsen, 1991, *Juvenile Justice in America*, Macmillan Publishing Co.

Document 9: Hiroyuki Kuzuno, ed., 2004, *The Reconstruction of Juvenile Justice*, Nippon-Hyoron-  
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Document 10: Hiroshi Tamiya and Kenji Hirose, eds. Revised Edition, 2001, *The Annotated Juvenile  
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