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## **Sex Bias in the Japanese Courts?**

**By J. Mark Ramseyer\***

*Abstract:* Wolff (2007) argues that female judges in Japan experience statistically significant pay discrimination. To document his assertion, he compares the mean values for men and women among judges hired in the 1960s. I use multivariate regressions to test his claim with new data on all judges hired between 1978 and 1981. I find (a) that women brought qualifications comparable to the men, (b) that women received initial postings as attractive as the men, (c) that women accepted inter-city transfers in their careers at the same rates as the men, and (d) that women were not more likely to quit their jobs than the men. Although I find (i) that women were underrepresented among those judges who specialized in administrative rather than judicial work, I also find (ii) that women did not climb the pay scale significantly more slowly than the men. Wolff's pay discrimination results are apparently an artifact of an earlier era.

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Do Japanese courts discriminate against the women they recruit onto the bench? Recently, Wolff (2007) argued that they do. Using a dataset from Ramseyer & Rasmusen (2003) on all judges hired in the 1960s, he compared mean values for the men and the women. He concluded that the courts promote women along the pay scale more slowly than men.

Much has changed in Japanese society since 1968. Women today apply for high-status white-collar jobs in far greater numbers than they did 40 years ago. Employers hire them for such jobs in much greater numbers. And an employer who discriminated against women in 1968 would not necessarily do so today.

Just as important, women may sacrifice their family life in ways they would not have sacrificed 40 years ago. The Japanese judiciary requires frequent inter-city transfers, and these moves can wreak havoc on a family. Possibly, women who joined the courts 40 years ago fought those transfers -- and their resistance might have accounted for the pay bias. Possibly, those who join the courts now do not fight the transfers.

In this article, I take career data on all 281 judges hired between 1978 and 1981. Whatever the case 15-20 years earlier, I find that the courts no longer statistically discriminate against women by pay. The women who joined the courts during 1978-81 brought qualifications comparable to those of the men. They received comparable initial posts. They accepted inter-city transfers at comparable rates. They did not quit their work at higher rates. They were indeed under-represented among the small number of judges who devote the bulk of their careers to administrative rather than adjudicative work. But they did not climb the pay scale at a statistically significantly slower pace than the men.

## I. The Japanese Courts

### A. The Career Structure:

For its members, the Japanese judiciary is a career. It hires its members upon graduation from the one national law school, the Legal Research & Training Institute (LRTI). Most of them it retains until they approach mandatory retirement at age 65. Although the judges formally serve ten-year terms, the Secretariat routinely reappoints most. During their careers, it raises their pay for performance. And because it rotates them every three years, it can reward and punish them with posts in cities of varying attractiveness.

To administer this system, the judiciary relies on its Secretariat in Tokyo. It staffs that Secretariat with career judges, who in turn take a sabbatical from judging to run it. Like the other posts in which judges serve, those in the Secretariat usually stay for about three years.

Under this system, some judges do better than others. An anointed judge might have longer and more frequent stints in favored cities, while the unfavored spend decades in the provincial outback. After all, some locations do provide a professional family more valued amenities than others. The anointed might also climb the salary scale more quickly, while the unfavored languished at low pay. After all, although the Constitution does protect judges against pay cuts (Art. 79), it does not require the judiciary to promote all judges at the same pace.

B. What We Know:

We know something of the ends to which the Japanese government puts this career structure: it rewards the bright, the fast, the disciplined -- and thereby creates (by comparison to a place like the U.S.) a court system that handles disputes quickly, cheaply, and predictably.<sup>1</sup> At least three aspects of this phenomenon appear in the data I discuss below. First, those judges who attended the most selective universities enjoy the most successful careers. Their success parallels that of their classmates in the market for private legal services. Just as the judges who attended the perennially first-ranked University of Tokyo climb the judicial hierarchy more successfully than the others, lawyers from the University of Tokyo earn higher incomes (provided they practice in Tokyo; Nakazato, Ramseyer & Rasmusen, 2006b).

Second, those judges who passed the LRTI entrance examination most quickly also experience the most successful careers. Although the government recently expanded the LRTI entering class, during most of the post-war years it maintained the pass-rate on the entrance exam in the 1 to 3 percent range. Within the courts, judges who passed the exam on one of their first tries did better than those who failed it many times. Within the bar, lawyers who pass it on one of their first few tries earn more money than the others (Nakazato, Ramseyer & Rasmusen, 2006b).

Last, each year the Secretariat posts its most promising new recruits to the Tokyo District Court. As they rotate through other courts during their careers, these judges remain among the most successful. They spend longer in the most attractive cities, and climb the pay scale most quickly.

Although judicial pay is not public, at least one proxy for pay is. Generally, a judge reaches a certain pay-grade (as of the late 1980s, step 3) about the same time he receives a "sokatsu" post. This is a modestly prestigious assignment (more prestigious than a regular judgeship, less prestigious than a chief judgeship) with some personnel responsibilities. By identifying the time a judge is first appointed sokatsu, I thus can measure the pace at which he climbs the pay scale.

C. Possible Bias:

1. Politics. -- What we do not yet know is how extensively (and why) the Secretariat administers this structure with bias. To date, most of the controversy has centered on political bias. Through the 1970s and 1980s, critics used anecdotal accounts to argue that the Secretariat discriminated against leftist judges (e.g., Miyazawa, 1991). In the English literature, Ramseyer & Rosenbluth (1993) repeated the claims, and used principal-agent theory to attribute the control to the conservative ruling party.

In a series of articles through the 1990s (consolidated in Ramseyer & Rasmusen, 2003), Ramseyer and Rasmusen reached the same conclusion with more systematic, multi-variate analysis. First, judges who joined a fringe-left political group in the 1960s received less attractive posts than their peers. Second, those same judges climbed the pay scale more slowly. Third, judges who decided high-profile political cases against the political preferences of the ruling party received less attractive posts. Last, according to

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<sup>1</sup> I take this description from Ramseyer & Rasmusen (2003) -- which in turn is based on a series of articles. "Quickly, cheaply, and predictably" -- by comparison, of course. Adjudication can be cheaper than in the U.S. and still be very costly.

Ramseyer & Rasmusen (2006, 2007), this bias has continued beyond the political turmoil of 1993.

Other scholars raise two objections. Haley (2003, 2004) contests the way Ramseyer and Rasmusen interpret the phenomenon. They show not that the ruling party controls the courts, he argues, but that elite judges administer the courts in ways that forestall such political intervention. Fukumoto & Masuyama (2006) focus instead on evidence that leftists climbed the pay scale more slowly. Correct coding errors and use a hazard model, they argue, and the evidence of salary-based discrimination disappears.

2. Sex. -- In this academic environment, Wolff (2007) shifts the focus from discrimination against the political heterodox, to discrimination against women. For evidence to motivate the inquiry, he uses data assembled by Ramseyer & Rasmusen (2003) to study pay-scale-bias against leftist judges. Although they found that women seemed to climb the pay scale more slowly than men, Ramseyer & Rasmusen (2003: 42) focused on the political discrimination. About the women, they observed merely that it was "obviously intriguing and important."

Wolff (2007) apparently finds this treatment irresponsible. Ramseyer & Rasmusen, he writes, "deliberately sidestep the issue" of "the gender composition of the Japanese bench ... even though it is clearly presented in their data analysis." Wolff then takes the Ramseyer-Rasmusen data, employs paired comparisons between male and female judges (Ramseyer & Rasmusen had used OLS regression), and concludes that his "study makes clear that men and women fare differently in their careers on the bench, despite any evidence of any significant distinctions between them in terms of intellectual aptitude or work ethic." All told, he reasons, it raises "serious questions about the neutrality of justice in Japan."

This is troubling on several grounds. First, things may have changed. Having the leftist-group's membership roster only for 1969, Ramseyer & Rasmusen focused on judges hired in the 1960s. Yet much has happened between then and now. Whether a woman hired by the Japanese courts in 1968 experienced discrimination is interesting. It may not say much about whether she would experience discrimination today.

Second, to test for discrimination we need to know whether men and women invest in their careers at comparable rates. The Ramseyer-Rasmusen data on which Wolff relies do let him compare backgrounds. He can ask, for example, whether the men and women attended comparable universities. He can ask whether they passed the LRTI exam at comparable rates.

Unfortunately, Wolff's data do not let him ask how women responded to the career demands courts make. A judgeship in Japan is not a family-friendly job. Because the courts transfer judges at three-year intervals, the career imposes enormous costs on families -- particularly two-career families. Scholars may or may not think the practice of transferring judges every three years good policy. But that is not question at stake.

Suppose (as seems likely) that female judges are more likely to marry professional men than male judges are to marry professional women. If so, then female judges may resist inter-city transfers more strenuously than male judges. Suppose further that the Secretariat considers the transfers basic to court operation. After all, when one senior male judge in the 1969 exercised his legal right to refuse a transfer because his wife was ill, the Secretariat fired him at the end of his 10-year term (Ramseyer &

Rosenbluth, 1993: 156). If women resisted transfers that men accepted, a court that valued transfers would promote women more slowly than men. It would not, however, promote them more slowly because they were women. It would promote them more slowly because they fought their transfers.

## II. Data and Variables

To test Wolff's claims, I chose the most recent population of judges on which I could obtain the necessary career data. Ramseyer & Rasmusen (2003: 40) finds that judges reach the post of sokatsu after a mean career of 22 years. Because my data on judicial careers ends in 2003, the most recent judges with 22 years of data come from the class hired in 1981. To obtain a meaningfully large data set, I assemble information on the 281 judges hired between 1978 and 1981. Although taking years earlier than 1978 would have expanded the number of women in the dataset, it also would have expanded the potential heterogeneity of the experiences they encountered. Women entered the white-collar workforce in large numbers in the 1970s and 1980s. The earlier a woman became a judge, the greater the chance that she entered a different environment than the one a woman entered in 1981.

I take my information from the Zen saibankan keireki soran [Career Data on All Judges] (Tokyo: Nihon minshu horitsuka kyokai, 4th ed., 2004) (the ZSKS). In turn, the ZSKS editors obtained the information on judicial postings from government records. Although the ZSKS omits background information on some judges hired in the last few years (Takahashi, 2007), the 1978-81 classes present no obvious omissions. The ZSKS has been used by scholars from a wide range of political perspectives.<sup>2</sup>

With this data, I create the following variables:

**Sex:** 1 if male, 0 if female.

**U Tokyo:** 1 if a judge attended the prestigious University of Tokyo; 0 otherwise.

**U Kyoto:** 1 if a judge attended the prestigious University of Kyoto; 0 otherwise.

**Flunks:** Number of times a judge failed the LRTI entrance examination, estimated from year of birth.

**1st TDC:** 1 if a judge's first post was the Tokyo District Court; 0 otherwise.

**1st SC-BO:** 1 if a judge's first post was either a summary court or a branch office; 0 otherwise.

**Transfers:** The number of times a judge was transferred from city to city during his first 15 years on the bench.

**Quit:** 1 if a judge permanently left the bench during his first 22 years; 0 otherwise

**Administrative Posts:** The number of years a judge spent in administrative positions during his first 22 years.

**Sokatsu:** 1 if a judge was appointed to a sokatsu position by the 22d anniversary of his appointment; 0 otherwise.

## III. Results

### A. Do Women Start their Careers Differently?

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<sup>2</sup> Haley, Miyazawa, Kyoto folks

1. Do women bring different qualifications? -- As in the bar, the bright and hardworking in the courts do better than the dim and indolent. As a result, career success correlates strongly with a judge's ability to pass the entrance examination to a selective university and the entrance examination to the LRTI. By these measures, the 21 women hired in 1978-81 showed exceptional promise. Of the women, 38 percent had graduated from the top-ranked Universities of Tokyo and Kyoto; of the men, 35 percent had (see Table 1). The women had passed the LRTI examination in a mean 3.95 years; the men had passed in 4.31 years.

[Insert Table 1 about here.]

2. Do women start at different courts? -- The Secretariat typically starts its most promising recruits at the Tokyo District Court. During the years 1978-81, it started 29 percent of the women at the Tokyo District Court; it started 17 percent of the men there (Table 1). More generally, in a probit regression of **1st TDC** on various judicial characteristics, graduation from the **University of Tokyo** raised a judge's odds of starting at the court by 20 percent (Table 2, Col. A; the coefficient on **University of Kyoto** is not significant). Every year he failed the LRTI exam (**Flunks**) decreased those odds by 4 percent. **Sex**, however, made no significant difference.

[Insert Table 2 about here.]

From time to time, the Secretariat has also started its least talented judges in summary courts or branch offices. In a probit regression of **1st SC-BO** on judicial characteristics, **University of Kyoto** graduates were slightly less likely to start at one of these courts (Table 2, Col. B; the coefficient on **University of Tokyo** is not significant), and high-**Flunks** judges were more likely. Again, **Sex** made no difference.

Largely, the ten judges whom the Secretariat started at branch offices or summary courts were people who turned to the law in mid-career. Of the group, six had **Flunk** scores of 10 or more. Judge Tadashi Yokoyama of the class of 1978, for example, was born in 1919. I doubt he flunked the exam 35 times. More likely, he worked in business for 30 years, and then decided to switch careers. The Secretariat put him in a summary court, and there he stayed for 12 years before reaching mandatory retirement (70, for Summary Court judges). The lone woman among the ten was Michiyo Doi. Born in 1945, she was 34 by the time she started her career in the courts. The Secretariat started her in a branch office. Other than 3 years in the Kyoto District Court, she spent her entire career in Kansai-area branch offices.

3. Do women avoid inter-city transfers? -- The Secretariat considers frequent transfers important to judicial administration, but the transfers wreak havoc with a two-career family; do women resist transfers? In fact, they do not. The Secretariat transfers both men and women at comparable rates: about 3.7 to 3.8 inter-city transfers during their first 15 years on the bench (Table 1).

The regression results in Column C of Table 2 confirm this observation. When I regress **Transfers** on the usual independent variables, all coefficients are insignificant. This result follows from the lack of variation in the dependent variable. Fifteen of the judges in the dataset had only 1 or 2 transfers; 17 had 5 transfers; and all the rest had 3 or 4.

B. Are Women Promoted More Slowly?

1. Do women drop out of the courts? -- Judges do quit. The hours are long, the transfers frequent, and the pressure takes its toll. Yet the women did not quit more frequently than men: 17 percent of the men quit during their first 22 years, but only 14 percent of the women (Table 1).

In Column A of Table 3, I regress **Quit** on the standard judicial characteristics. Crucially, women are not more likely to quit than men. Instead, the coefficient on **Sex** is positive and statistically insignificant.

[Insert Table 3 about here.]

The regression does show that high-**Flunk** judges are more likely to quit early. To be sure, these are the judges least likely to succeed in their judicial careers. They are also, however, the judges least likely to succeed in private legal practice. In returning to the bar, they face poor prospects there as well.

2. Do women have fewer administrative assignments? -- According to Column B of Table 3, the Secretariat is less likely to name women to its non-judicial administrative posts. The content of these administrative jobs varies -- a judge may spend a few years at the Secretariat itself; he may serve time at the Ministry of Justice; he may teach at the LRTI. According to Column B, the Secretariat names to these positions judges from elite universities who passed the LRTI examination quickly and started at the Tokyo District Court. It seems not to name women.

More precisely, the Secretariat seems not to pick women to join the handful of judges who will spend the bulk of their career in administrative rather than adjudicative jobs. Of the 223 judges who started at the courts and were there 22 years later, 23 judges spent eight or more years in administrative jobs. All were men. Had the Secretariat named a proportional number of women to the group, it would have named two women. Exclude these 23 judges from the dataset, and the coefficient on **Sex** in the Column B regression becomes statistically insignificant.

3. Do women earn lower pay? -- Recall that appointment to sokatsu status generally signals arrival at a specific pay-grade. Necessarily, the years a judge takes to reach sokatsu generally track the pace at which he climbs the pay scale. Recall too that in accusing the Japanese courts of discriminating against women, Wolff (2007) focuses on the time-to-sokatsu measure: among judges hired in the 1960s, women reached sokatsu significantly later than men.

To test whether current courts pay women less than men, I collect data on judges hired between 1978 and 1981. As explained earlier, these judges represent the most recent group on which I have 22 years of career data -- that being the mean time to sokatsu for judges hired in the 1960s. According to Table 1, 49 percent of the men in this group and 39 percent of the women reached sokatsu by 2004. The difference between 49 percent and 39 percent of the women is two -- and this difference is not statistically significant.

The regression results in Column C of Table 3 confirm that women do not reach sokatsu status significantly more slowly than men. In this regression, I use probit to regress **Sokatsu** on the standard judicial characteristics. If about half of the class receive sokatsu appointments in 22 years, the regression effectively asks whether a judge is in the



top half of his class. The conclusion: men are not significantly more likely to be in the top half than women.

The other variables have the predicted effects: **University of Tokyo** graduates are 13 percent more likely to reach sokatsu status in 22 years; **University of Kyoto** graduates are 27 percent more likely; judges who flunked the LRTI exam the fewest times are most likely; and judges transferred more frequently were also more likely.

Elsewhere, I test alternative specifications for the regressions, but these too fail to show any significant discrimination against women in their progress toward sokatsu. Among those judges who did obtain a sokatsu post within 22 years, if I use a Poisson regression with their actual time to sokatsu as the dependent variable, I obtain no significant coefficient on **Sex**. Similarly, if I use a Tobit regression and use the actual time-to-sokatsu for the faster half of judges but treat that time as censored at 22 for the slower half, I similarly obtain insignificant results for **Sex**.

## V. Conclusions

Do Japanese courts pay their female judges lower salaries than their male judges? Using data on judges hired in the 1960s, Wolff (2007) argues that they do. Japan maintains a career judiciary which judges enter immediately upon graduation from law school. Mostly, they stay in those jobs until they approach mandatory retirement at 65. Although the Constitution protects them against a pay cut, it does not require that the courts promote them up the pay scale uniformly. And the courts do not.

The Japanese judiciary induces its judges to work hard by treating its most effective producers better than the others. In a wide variety of ways, it discriminates in favor of the brightest and hardest-working judges. In part, it discriminates in their favor with pay. In the process, does it also discriminate against women?

Using new data on all judges hired between 1978 and 1981, I find no evidence that the courts promote women more slowly than men at a statistically significant level. Instead, women seem to bring comparable qualifications, to accept a comparable rate of family-unfriendly transfers, and to climb the pay scale at a comparable pace. If women hired in the 1960s did experience significant levels of pay bias, evidence of that discrimination disappears among women hired 15 years later.

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**Table 1: Selected Summary Statistics**

	Male (260 judges)	Female (21 judges)
University of Tokyo	.25	.33
University of Kyoto	.10	.05
Flunks	4.31	3.95
1st Tokyo D Ct	.17	.29
1st Sum Ct or BO	.03	.05
Quit	.173	.143
Inter-city transfers	3.77	3.72
Admin. Posts (Yrs)	2.79	1.50
<u>Sokatsu</u> (w/i 22 yr)	.49	.39
Years to Suktatsu	19.62	20.14

Note: None of the differences are significant at the 10 percent level.

Source: Zen saibankan keireki soran [Career Data on All Judges] (Tokyo: Nihon minshu horitsuka kyokai, 4th ed., 2004).

**Table 2: Determinants of Early Assignments**

<i>Dep. var.:</i>	A	B	C
<i>Regression:</i>	1st TDC Probit <sup>@</sup>	1st SC BO Probit <sup>@</sup>	Transfers Poisson .
Sex	-.089 (0.95)	-.015 (0.43)	.001 (0.01)
U Tokyo	.187 (3.04)***	.009 (0.53)	-.057 (0.68)
U Kyoto	.057 (0.67)	-.016 (1.66)*	.009 (0.07)
Flunks	-.035 (3.75)***	.006 (1.82)*	.002 (0.11)
1st TDC			-.113 (1.19)
1st SC-BO			-.009 (0.04)
n	281	281	226

Note: \*, \*\*, \*\*\*: Statistically significant at the 10, 5 and 1 percent levels.

<sup>@</sup> The probit regressions give the marginal effect, calculated at the mean of the independent variable. The parenthetical values are the absolute value of the z statistics. All regressions include a constant term.

Source: See Table 1.

Table 3: Determinants of Later Careers

<i>Dep. var.:</i> <i>Regression:</i>	A Quit Probit <sup>®</sup>	B Adm Posts Poisson	C Sokatsu Probit <sup>®</sup>
Sex	.013 (0.16)	.679 (3.44)***	.089 (0.72)
U Tokyo	-.066 (0.30)	.157 (1.62)	.133 (1.64)*
U Kyoto	.018 (0.06)	.269 (2.02)**	.267 (2.47)**
Flunks	.053 (1.89)*	-.108 (4.98)***	-.031 (1.97)**
1st TDC	-.241 (0.89)	.948 (10.40)***	.051 (0.55)
1st SC-BO	.307 (0.54)	-13.941 (0.04)	-.025 (0.10)
Transfers			.110 (2.11)**
n	281	222	222

Note: \*, \*\*, \*\*\*: Statistically significant at the 10, 5 and 1 percent levels.

<sup>®</sup> The probit regressions give the marginal effect, calculated at the mean of the independent variable. The parenthetical values are the absolute value of the z statistics. All regressions include a constant term.

Source: See Table 1.