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How Do Japanese Clients View Their Lawyers – and How Did Those Views Change over the Decade between Surveys? [Bengoshi ni taisuru soshōtōjisha no hyōka – 10nen de hyōka wa dou kawatta ka]

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How Do Japanese Clients View Their Lawyers – and How Have Those Views Changed?

Comparing results from surveys of civil litigants conducted in 2007 and 2018*

Daniel H. Foote[#]

Introduction

A central component of the Civil Litigation Behavior Research Project (2003-2008) and the successor Civil Litigation Research Project (2016-2020) was a set of surveys of litigants in civil cases.¹ For comparison purposes, each project also included a survey of the general public, containing a number of identical or similar questions. Among the many aspects of the litigation experience covered in the surveys, several questions focused on the lawyer-client relationship. These included questions about access to lawyers, advice by lawyers, and client evaluations of and level of satisfaction with the lawyers who represented them. After briefly examining some of the ways in which the Japanese legal profession changed in the ten years between the projects, this essay will compare results from the two studies, with a focus on items appertaining to the lawyer-client relationship.

I. Selected Changes in the Japanese Legal Profession

For the first project, data was assembled in 2005 from files for 1132 randomly selected civil cases that had concluded in 2004. Over 56% of those cases commenced in 2004 and over 33% more in 2003; only about 10% commenced in 2002 or earlier. For the latter project, data was assembled in 2017 from files for 1501 randomly selected civil cases that had concluded in 2014. Here again, over half the cases commenced that same year, 2014, and nearly 37% more in 2013, with just 12.3% from 2012 or earlier. Given the high proportion of cases that commenced in 2004 and 2014, respectively, it seems appropriate to consider the state of the legal profession as of those two years. The litigant surveys were conducted in 2006/07 and 2018, and they are referred to below, respectively, as the “2007 survey” and “2018 survey” (or the “first study (survey)” and “second study (survey)”).

The most noteworthy change in the Japanese legal profession in the intervening decade concerns the size of the bar. Between 2004 and 2014, the number of lawyers rose 73%, from 20,224 to 35,045 (Nihon Bengoshi Rengōkai [JFBA] 2014: 60). Since most of the new entrants to the bar were relatively young, the proportion of lawyers in their twenties and thirties also rose greatly, from 27.4% as of 2004 (JFBA 2004: 22) to 42.8% as of 2014 (JFBA 2014: 61). During this period, the percentage of women lawyers also rose substantially, from 12.1% to 18.1%. (It bears note, however, that thereafter the rate of increase for women

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¹ Each project included four separate survey instruments for litigants (plaintiffs with representation, defendants with representation, self-represented plaintiffs, and self-represented defendants), along with survey instruments for plaintiff-side lawyers and defendant-side lawyers.

lawyers slowed greatly. Since 2014, the proportion has edged up gradually; as of 2020 it had only reached 19% (JFBA 2020: 44).)

A second important development, closely related to the first, is the introduction of a new system of legal training centered on professional graduate law schools, which commenced operation from 2004. Although the law schools have faced various struggles (see, e.g., Foote (2013)), their graduates have accounted for the great majority of entrants to the legal profession since 2006.

A third development was the vast rise – and subsequent decline – in suits demanding repayment of excess “gray zone” interest payments. While cases in this category had begun to rise in the early 2000s, a 2006 Supreme Court decision recognizing the right to repayment spurred a flood of cases. The level of other district court civil cases remained largely stable, ranging from a low of 87,495 to a high of 92,838 cases per year from 2005 to 2015 (JFBA (2014): 137; JFBA (2018): 113). In contrast, the interest rate cases exploded in number, rising from under 43,000 cases at the district court level in 2005, the year prior to the Supreme Court decision, to nearly 145,000 cases in 2009, before gradually receding again (JFBA (2014): 137). In an effort to tap into this market while it was still hot, many lawyers and law firms embarked on aggressive advertising campaigns.

Advertising by lawyers has engendered a fair amount of debate (see, e.g., Takanaoka & Ishida (2020): 91-97). An even more intense debate has occurred with respect to the changes in the legal training system and, especially, the great rise in the number of lawyers. By one view, the introduction of graduate level law schools has led to improvements in training and skills (with this view largely supported by evaluations of instructors at the Legal Training and Research Institute who had taught candidates from both the old and new systems (Foote (2013): 409-410)), and the improved training, coupled with the increased competition resulting from the expansion in the size of the bar, has led to a rise in quality. By another view, strongly advocated by some members and leaders of the bar, as part of an ultimately quite successful campaign to restrain and then roll back the increase in the number of bar exam passers and hence new entrants to the legal profession, the new legal training system has seriously threatened a decline in quality. As reasons for this asserted drop in quality, proponents of this view cite factors such as the admission of less qualified new entrants, less opportunity for mentoring of the new entrants by experienced lawyers, and, as a consequence of the increased competition, corner-cutting by lawyers in general (Foote (2013): 413-418).

II. Overview of the Surveys

First Study: 2007 Survey

For the first study, surveys were conducted in late 2006 and early 2007, for cases that concluded in 2004, for the following categories of subjects:

Represented plaintiffs: 677 subjects, 243 respondents, Response rate 35.9%

Represented defendants: 461 subjects, 137 respondents, Response rate 29.7%

Total represented litigants: 380 respondents, Response rate 32.5%

Surveys of self-represented litigants also were conducted, as well as surveys of lawyers who participated in representation in the randomly selected cases. Given the focus of this essay on how clients view their

lawyers, those surveys are excluded from consideration here.

In addition, in March 2007, we conducted a survey of the general public, utilizing many similar questions.

Second Study: 2018 Survey

For the later study, surveys were conducted in 2018, for cases that concluded in 2014, for the following categories of subjects:

Represented plaintiffs: 897 subjects, 247 respondents, Response rate 27.5%

Represented defendants: 428 subjects, 93 respondents, Response rate 21.7%

Total represented litigants: 340 respondents, Response rate 25.7%

Here again, surveys of self-represented litigants also were conducted, as well as surveys of lawyers who participated in representation in the randomly selected cases; those are excluded from consideration.

In addition, in 2018, we conducted a survey of the general public, via the Internet, using many similar (and additional) questions, with a total of 3408 respondents.

III. Access to Lawyers

Expanding access to legal services was a central objective of the reforms that grew out of the 2001 recommendations of the Justice System Reform Council (Shihō Seido Kaikaku Shingikai (2001)). Given the great increase in the number of lawyers during the decade between our surveys, one might surmise access would have improved substantially. This section examines relevant data from the surveys.

Let us first consider perceptions of the general public. Each of the surveys for the general public contained the following question: “[A]ssuming you are faced with a serious matter for which you would have to consider a lawsuit do you think it would be easy to find a lawyer, or difficult?” (on a 5-point scale, with 1 representing Easy, 2 Relatively easy, 3 Can’t say one way or the other, 4 Relatively difficult, and 5 Difficult). Between the dates of the surveys of the general public (2007 and 2018), the number of lawyers had risen by nearly 75%. Notwithstanding that great increase, both surveys found that members of the general public felt it would be difficult to find lawyers. In fact, the mean score on this item was even slightly higher in the second survey than the first, the highly pessimistic score of 3.81, up a touch from 3.75 a decade earlier.

Let us turn next to the experiences of actual litigants. For the represented litigants, each survey asked: “Was it easy to find the lawyer who handled your lawsuit, or difficult?” (on the same 5-point scale, with 1 representing Easy and 5 Difficult). In contrast to the perceptions of the general public, even as of the time of the first survey, represented litigants reported that finding lawyers was on balance relatively easy (with a mean score of 2.37 ($N=330$)). The second survey suggests represented litigants found it even easier to find lawyers, with a mean score of 2.17 ($N=285$) ($p = .039$). The improvement in ease of finding lawyers was especially marked for represented plaintiffs, with a shift from 2.40 ($N=215$) in the first survey to 2.10 ($N=209$) a decade later ($p = .008$).

One might interpret the contrast between the results for the general public and the results for represented litigants in two rather different ways. One interpretation is that, when faced with a serious legal matter, it is easier to find lawyers than most people think. Another interpretation is that those who

find it relatively easy to find lawyers are more likely to undertake litigation. In any event, a comparison of the scores for represented litigants between the first and second surveys provides support for the view that access to legal services has improved with the great rise in the number of lawyers – just as one would expect.

In connection with access to legal services, another notable contrast between the two surveys relates to the way in which litigants found their lawyers. Both sets of surveys asked how the litigants found their lawyers, and in the list of options both included: “Saw an advertisement” and “Internet search.” In the first survey, based on cases that concluded in 2004, only three of the 215 represented plaintiffs who responded to this question (1.4%) chose either of those responses (one through advertisement and two through the Internet). In the later survey, nearly 25% of all represented plaintiffs who responded to the question (52 of 209) reported finding their lawyers in one of those two ways (25 through advertisements, 27 through the Internet). Based on the clients’ estimates of the age of their lawyers, nearly 90% of the lawyers found in one of these two ways were in their 20s through their 40s (42 of 47; for the other five the age of the lawyer was not known). Given the widespread use of advertising to attract clients for the gray zone interest rate cases, it is not surprising that such cases accounted for nearly 70% (17/25) of the cases where litigants found their lawyers through advertisements.²

As a final note in this regard, the use of advertisements, driven in part by the eagerness of one segment of the bar to attract clients for the gray zone interest rate cases, seems to have contributed to plaintiffs’ ease in finding lawyers. Of the twenty-five plaintiffs who found lawyers through advertisements, nine said it was easy to find the lawyer, fourteen more said it was relatively easy, and the other two selected 3 – “can’t say one way or the other.” The mean score on ease of finding lawyers for this group was just 1.76. In contrast, for the twenty-seven who found their lawyers through the Internet, the mean score was 2.67. One might surmise that many of those who located lawyers through the Internet spent a fair amount of time on their searches.

IV. Lawyer Quality: Client Assessments of Their Lawyers

As noted earlier, the impact on lawyer quality of the great increase in the number of lawyers and the changes in legal training has been the object of debate. In that regard, a pertinent question would seem to be: What do the clients think?

Many of the survey questions are relevant to the broad theme of the lawyer-client relationship, including questions about the client’s expectations for the lawsuit, the reasons for choosing the lawyer who handled the case, and the respective roles of the lawyer and client in making decisions about strategy and settlement. For the discussion below, I have elected to focus on the following four sets of questions, which more directly inquire about the lawyer’s performance and the client’s assessment of the lawyer. These questions appeared on each of the surveys of represented litigants, together with the instruction that, “in the event two or more lawyers handled the case, please answer with respect to the principal lawyer.” Each

² In this connection, it bears note that, even though the peak in gray zone interest rate cases had passed by 2014, such cases still accounted for over one-third of all district court civil cases that year. Unjust enrichment cases (a category that includes the excessive interest claims) accounted for 19.1% of the cases in our 2014 sample, up from just 4.5% in 2004.

utilized a 5-point scale, as explained below.

To what extent did your lawyer explain the following matters to you? (5-point scale: 1. Explained well, 2. Explained somewhat, 3. Can't say one way or other, 4. Did not explain very much, 5. Did not explain)

(1) Prospects for the lawsuit.

(2) Lawyer fees.

Looking back on the results of the trial, to what extent were the outlooks [predictions] of your lawyer accurate? (1. Accurate, 2. Somewhat accurate, 3. Can't say one way or other, 4. Not very accurate, 5. Not accurate)

(1) Outlook regarding the cost of the lawsuit

(2) Outlook regarding the time required for the lawsuit

(3) Outlook regarding prospects for winning

To what extent do the following evaluations apply to the lawyer who actually worked on your case? (1. Applies well, 2. Applies somewhat, 3. Can't say one way or other, 4. Does not apply very much, 5. Does not apply)

(1) Understood the substance and background of the case well

(2) Sincerely sought to understand your feelings

(3) Explained the legal aspects of the case in an easy-to-understand fashion

What is your overall evaluation of the lawyer who worked on your case?

(1) Are you satisfied with the lawyer? (1. Satisfied, 2. Somewhat satisfied, 3. Can't say one way or other, 4. Somewhat dissatisfied, 5. Dissatisfied)

(2) If a friend or relative asked you to introduce a lawyer, would you introduce that lawyer? (1. Would introduce, 2. Probably would introduce, 3. Can't say one way or other, 4. Probably would not introduce, 5. Would not introduce)

The first section below compares the results of the 2007 survey and 2018 survey on various measures of client assessments of their lawyers, seeking to explore changes in assessments in the intervening decade. The second section compares assessments from the 2018 survey based on the ages of the lawyers, utilizing three age cohorts in an effort to explore how client assessments of younger lawyers compare to those for middle-aged and older lawyers. A final section compares assessments from the 2018 survey on the basis of gender.

1. Comparisons of Results from the Two Studies

As noted above, a total of 380 represented litigants responded to the 2007 survey and 340 to the 2018 survey. The following provides a comparison of the means for their responses, on the five-point scale, for

the respective items. Where the significance level, as determined based on an independent samples t-test, is at 10% or lower, it is so indicated.

(1) Extent of Explanation (1. Explained well to 5. Did not explain)

To what extent did your lawyer explain:

(1) <i>Prospects for the lawsuit</i>	2007: 1.99 (N=352)
	2018: 1.91 (N=295)
(2) <i>Lawyer fees</i>	2007: 2.18 (N=333)
	2018: 1.97 (N=279)
	(p = .028)

Given that a score of 3 means “can’t say one way or the other,” for both years and both items, on the whole the clients felt their lawyers had explained the prospects and fees well. On both items, the mean score was lower – i.e., more positive – in the 2018 survey, with an improvement with regard to the explanation of lawyer fees significant at the 5% level.

In this connection, it bears note that in 2004 the Japan Federation of Bar Associations replaced the prior set of nonbinding ethics standards with a new set of Basic Rules on Attorney Conduct (Bengoshi Shokumu Kihon Kitei), which took effect from April 2005. Article 29 of the Basic Rules provides that, at the time of accepting an appointment to handle a matter, the lawyer must provide an appropriate explanation of prospects for the matter, how it will be handled, and lawyer fees; and Article 30 provides that the lawyer normally must prepare a representation agreement, including matters relating to lawyer fees. The establishment of these concrete provisions, combined with an expansion in education on professional responsibility (see, e.g., Takanaka & Ishida (2020): 2-5, 132-136), may help account for the improvement in the extent of explanations relating to lawyer fees between the two studies.

(2) Accuracy of Predictions (1. Accurate to 5. Not accurate)

[For the following matters,] to what extent were the predictions of your lawyer accurate?

(1) <i>Cost of lawsuit</i>	2007: 2.46 (N=304)
	2018: 2.26 (N=247)
	(p = .038)
(2) <i>Time required for lawsuit</i>	2007: 2.72 (N=300)
	2018: 2.43 (N=255)
	(p = .026)
(3) <i>Prospects for winning</i>	2007: 2.52 (N=328)
	2018: 2.41 (N=270)

Here again, in both surveys the clients on the whole felt the predictions of their lawyers had been relatively accurate. Here again, on each of the measures the mean scores improved from the first to the second survey, with the improvement regarding predictions on cost and time significant at the 5% level.

(3) Evaluation of Specific Aspects (1. Applies well to 5. Does not apply)

To what extent do the following evaluations apply ...?

<i>(1) Understood the substance and background of the case well</i>	2007: 1.97 (N=345)
(p = .012)	2018: 1.76 (N=301)
<i>(2) Sincerely sought to understand your feelings</i>	2007: 2.11 (N=349)
(p = .035)	2018: 1.93 (N=299)
<i>(3) Explained legal aspects of case in easy-to-understand fashion.</i>	2007: 2.23 (N=343)
(p = .001)	2018: 1.90 (N=297)

In what has become a continuing refrain, even as of the time of the 2007 survey clients evaluated their lawyers highly on each of these aspects. As of the 2018 survey, however, on all three measures the clients' evaluations showed marked improvement, especially with regard to how well lawyers understood the case and how well they explained legal aspects to the clients.

(4) Overall Evaluation

What is your overall evaluation ...?

<i>(1) Are you satisfied with the lawyer? (1. Satisfied to 5. Dissatisfied)</i>	2007: 2.26 (N=353)
	2018: 2.16 (N=300)
<i>(2) If a friend/relative asked you to introduce a lawyer, would you introduce that lawyer? (1. Would introduce to 5. Would not introduce)</i>	2007: 2.62 (N=339)
	2018: 2.62 (N=291)

The seemingly modest improvement in overall satisfaction is not statistically significant ($p = .304$); and the mean scores on whether clients would introduce the lawyer to others are the same. Thus, this is the one category in which there was no statistically significant difference between the two surveys. That said, these results do not support the view that there was a decline in lawyer quality following expansion of the bar and introduction of reforms to the legal training system; and the results on each of the other categories above provide strong indications that, at least in the eyes of the clients, lawyers' performance improved in various respects.

2. Age Cohort Comparisons for Second Study

The first survey did not ask clients to provide an estimate for the age of their lawyers. That question was added in the second survey, with six categories (20s, 30s, 40s, 50s, 60s, 70s and over). Of the 340 represented litigants who responded to the second survey, 285 (over 83%) provided age estimates. Presumably, some clients knew the exact age of their lawyers. For most, though, one may assume the responses were estimates, so there may well be some slippage. It bears note, moreover, that the survey did not ask how the lawyers had qualified – whether they had passed the “old” bar exam under the pre-reform prior legal education system or had attended the graduate professional law schools that commenced operations from 2004, for example. It seems likely most clients would not know the answer to that question,

and some might not even have known about the change in legal training systems. Thus, the data do not permit directly classifying lawyers by whether they qualified through the new or the old system. The age estimates offer a rough proxy, however. As of March 31, 2014, there were 14,997 lawyers under 40 years of age, and 11,158 lawyers had qualified through the new system (JFBA (2014): 61, 63). As noted earlier, nearly 90% of the cases that were included in the second survey commenced in either 2013 or 2014. It is safe to assume most of those who qualified through the new system were still in their 20s or 30s as of 2014. Thus, we may assume a substantial majority of those listed by clients as being in their 20s and 30s were products of the new legal training system.

With a view toward examining the debate over whether the great increase in the number of lawyers and the changes in the legal system led to a decline in lawyer quality, I have combined the survey results into three cohorts, by estimated age of lawyer (with the total number of responses for each cohort): 20s/30s ($N=75$); 40s/50s ($N=146$); 60s/70s and over ($N=64$). The following section summarizes the clients' assessments of their lawyers, for the 2018 survey, by those three age cohorts.

(1) Extent of Explanation

To what extent did your lawyer explain:

<i>(1) Prospects for the lawsuit</i>	20s/30s: 1.78	($N=69$)
	40s/50s: 1.79	($N=135$)
	60s/70s+: 2.10	($N=62$)
<i>(2) Lawyer fees</i>	20s/30s: 1.80	($N=65$)
	40s/50s: 1.89	($N=129$)
	60s/70s+: 2.30	($N=60$)

An analysis of variance (ANOVA) on these scores showed a difference with respect to the explanation of prospects for the lawsuit at the 10% level ($F(2, 263) = 2.559, p = .079$), and a more robust difference with regard to lawyer fees ($F(2, 251) = 3.660, p = .027$). A Tukey post hoc test showed that, as to prospects for the lawsuit, there was a difference at the 10% level between the middle cohort and the older cohort ($p = .089$). As the respective means (1.78 and 1.79) reflect, the younger cohort and middle cohort were virtually identical on that aspect. As to lawyer fees, Tukey showed a statistically significant difference between the younger cohort and older cohort ($p = 0.36$), and a smaller difference between the middle and older cohort ($p = 0.53$). There was no statistically significant difference between the younger and middle cohorts ($p = .853$).

In sum, with respect to the extent of explanation, the younger cohort performed as well as the middle cohort. On both aspects, it was the older cohort for which evaluations were lower.

(2) Accuracy of Predictions

[For the following matters,] to what extent were the predictions of your lawyer accurate?

<i>(1) Cost of lawsuit</i>	20s/30s: 2.08	($N=59$)
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	40s/50s: 2.23	(N=112)
	60s/70s+:2.54	(N=54)
(2) <i>Time required for lawsuit</i>	20s/30s: 2.34	(N=62)
	40s/50s: 2.47	(N=119)
	60s/70s+:2.82	(N=49)
(3) <i>Prospects for winning</i>	20s/30s: 2.03	(N=64)
	40s/50s: 2.38	(N=125)
	60s/70s+:2.82	(N=55)

With regard to the accuracy of predictions, ANOVA indicated differences with respect to predictions of cost and time at the 10% level ($F(2, 222) = 2.463, p = .088$, and $F(2, 227) = 2.766, p = .065$), and showed a highly significant difference with regard to prospects of winning ($F(2, 241) = 6.388, p = .002$). A Tukey post hoc test showed that, as to predictions on cost and time, there was a difference at the 10% level between the younger and older cohorts ($p = .079$ and $p = .060$, respectively), but no other statistically significant differences among the cohorts on those aspects. The most striking result relates to the difference between the younger and older cohorts regarding prospects for winning the lawsuit ($p = .001$), with younger lawyers performing far better, in the eyes of their clients, than older lawyers. As to that aspect, there was a more modest difference between the middle and older cohorts ($p = .067$).

It might be tempting to conclude these results show younger lawyers are much better at predicting the outcomes of lawsuits, and modestly better at predicting cost and time required, than older lawyers. An alternative explanation, though, is that younger lawyers are more likely to handle relatively simple matters, for which predictions are considerably easier. In this connection, it bears note that the survey instructs the client to “answer with respect to the principal lawyer” in the event two or more lawyers handled the case. For complex matters, while younger lawyers often assist, it is rather common for more senior lawyers to serve as the principal lawyer.

(3) Evaluation of Specific Aspects

To what extent do the following evaluations apply ...?

(1) <i>Understood the substance and background of the case well</i>	20s/30s: 1.63	(N=71)
	40s/50s: 1.66	(N=140)
	60s/70s+:2.00	(N=61)
(2) <i>Sincerely sought to understand your feelings</i>	20s/30s: 1.86	(N=72)
	40s/50s: 1.76	(N=136)
	60s/70s+:2.17	(N=60)
(3) <i>Explained the legal aspects of the case in an easy-to-understand fashion.)</i>	20s/30s: 1.87	(N=70)
	40s/50s: 1.77	(N=139)
	60s/70s+:2.20	(N=61)

With regard to client evaluations of specific aspects of their lawyers' performance, ANOVA indicated a difference at close to the 5% level for the first item, understanding substance and background of the case, ($F(2, 269) = 2.933, p = .055$), and differences at the 5% level for the second and third items, understanding substance and background of the case ($F(2, 265) = 3.097, p = .047$, and $F(2, 267) = 3.757, p = .025$). A Tukey post hoc test showed that, as to the first item, there were differences at the 10% level between the younger and older cohort ($p = .086$) and between the middle and older cohort ($p = .070$); here, it is the older cohort that is the outlier. As to the second and third items, there were differences at the 5% level between the middle and older cohort ($p = .036$ and $p = .018$, respectively), but no other statistically significant differences among the cohorts on those aspects. In other words, while the mean scores for the younger cohort on the second and third items were somewhat higher than for the middle cohort, there was no statistically significant difference between them ($p = .802$ and $p = .774$, respectively).

(4) Overall Evaluation

What is your overall evaluation ...?

<i>(1) Are you satisfied with the lawyer?</i>	20s/30s: 2.10	(N=69)
	40s/50s: 2.05	(N=138)
	60s/70s+:2.46	(N=61)
 <i>(2) If a friend/relative asked you to introduce a lawyer, would you introduce that lawyer?</i>		
	20s/30s: 2.47	(N=68)
	40s/50s: 2.45	(N=132)
	60s/70s+:2.90	(N=61)

With regard to these questions about overall evaluation, neither reached even 10% significance in ANOVA, and, with Tukey, the only difference to reach even the 10% level was that between the middle and older cohorts on overall satisfaction ($p = .094$). On both, the results for the younger cohort were nearly the same as for the middle cohort ($p = .960$ and $p = .977$, respectively).

.....

Returning to the debate over whether the great increase in the number of lawyers and the changes in the legal training system have led to a decline in lawyer quality, the above results show that, at least in the eyes of clients, that is not the case. One would assume that the middle cohort is composed primarily of mid-career lawyers, who are widely regarded as having a strong blend of expertise and experience. With regard to each of the aspects discussed above, though, there was no statistically significant difference between the younger cohort and the middle cohort. Rather than the younger cohort, on several of the above measures it is the older cohort that received relatively lower evaluations from the clients.³

³ A study conducted in 2010 by the "Lawyer Quality Research Group" reached similar results, based on completely different methodology. For that study, experienced lawyers evaluated the case files for nearly 200 civil cases filed in Tokyo District Court in 2007, seeking to test the hypothesis that quality rises along with years of experience. They found just the opposite, with quality higher the younger and less experienced the lawyer was, dropping steadily for older, more experienced cohorts. While positing various

3. Gender Comparisons

Both surveys asked clients about the gender of their lawyer. For the clients who responded to the 2007 survey, men comprised 91.1% of the lawyers (336) and women 8.9% (33); another 11 respondents either did not know or did not answer. Even though the overall percentage of women registered as lawyers rose from 12.1% in 2004 to 18.1% in 2014 (the respective years in which the cases included in our studies concluded), the percentage of women lawyers in our surveys declined, with men comprising 91.5% of the lawyers in the 2018 survey (290) and women just 8.5% (27). Another 22 respondents either did not know or did not answer. (In terms of age breakdown, women comprised 16% of the 20s/30s cohort [12 of 74], 5.5% of the 40s/50s cohort [8/146], and 4.7% of the 60s/70s+ cohort [3/64]. The remaining respondents either did not identify age, gender, or either.)

In the 2007 survey, with respect to all the aspects listed above (Extent of Explanations, Accuracy of Predictions, Evaluation of Specific Aspects, Overall Evaluation), the results were similar for both men and women lawyers, with no marked differences. In the 2018 survey, the results for men and women were similar with regard to the extent of explanations and accuracy of predictions. With regard to clients' evaluation of specific aspects of the lawyers' performance and their overall evaluation, though, the results of the 2018 survey are striking.

(3) Evaluation of Specific Aspects

To what extent do the following evaluations apply ...?

<i>(1) Understood the substance and background of the case well</i>	Men: 1.78 (N=272)
	Women: 1.50 (N=24)
<i>(2) Sincerely sought to understand your feelings</i>	Men: 1.95 (N=271)
	Women: 1.54 (N=24)
<i>(3) Explained legal aspects of case in easy-to-understand fashion.</i>	Men: 1.95 (N=270)
	Women: 1.57 (N=23)

Given the small sample size for women (just 23 or 24 responses for each of these items), drawing firm statistical conclusions is somewhat risky. Utilizing an independent samples t-test, with equal variance assumed, the difference for item 1 is significant at the 10% level ($p = 0.65$), and the differences for items 2 and 3 are significant at the 5% level ($p = .016$ on each). Furthermore, the very positive evaluations of women lawyers on each of these items are worthy of note. On all three items, of the clients who responded, for the women lawyers not one selected either 4 or 5, the negative evaluations; nearly all chose either 1 or 2. In contrast, for the male lawyers, while the overall results were highly positive, on each of the items between eight and nine percent of the respondents expressed dissatisfaction; on each, between 24 and 26 respondents chose either 4 or 5.

factors that might account for the findings, they offered the study as a refutation of assertions that the influx of younger lawyers was leading to a decline in lawyer quality (Ōta 2014: 136, 151-152).

(4) Overall Evaluation

What is your overall evaluation ...?

(1) Are you satisfied with the lawyer?	Men: 2.20 (N=270)
	Women: 1.72 (N=25)
(2) If a friend/relative asked you to introduce a lawyer, would you introduce that lawyer?	Men: 2.65 (N=263)
	Women: 2.04 (N=23)

On each of these items, pursuant to the independent samples t-test, the differences between women and men on both items are significant at the 1% level ($p = .004$ and $.008$, respectively). For these overall evaluations, moreover, the differences in the breakdown of responses are especially striking.

With respect to male lawyers, while a substantial majority of the 270 who responded to the former question reported that they were either *satisfied* (101) or *somewhat satisfied* (90) with their lawyer, nearly 10% (25) professed themselves *dissatisfied* and another 10% (27) said they were *somewhat dissatisfied*. With respect to the female lawyers, the overwhelming majority of the 25 clients who responded said they were either *satisfied* (10) or *somewhat satisfied* (12); not one of the respondents chose either 4 or 5. The results were similar with respect to whether the litigants would introduce their lawyer to a friend or relative. In the case of male lawyers, nearly 20% of the respondents (51 of 263) said they would *not* introduce their lawyer to others, and nearly 7% more said they probably would not introduce the lawyer. In the case of women lawyers, *none* of the 23 who answered this question said they would not introduce, and only two said they probably would not do so.

.....

As these results reflect, in the 2018 survey clients evaluated women lawyers highly – in some respects much more highly than male lawyers. Moreover, as noted earlier, the percentage of women lawyers overall rose from 12.1% in 2004 to 18.1% in 2014 (the respective years in which the surveyed cases concluded). Given the very positive evaluations and the substantial rise in the proportion of women lawyers, one might have expected women would have handled an increasingly large share of cases. Yet, as noted earlier, based on the client surveys, the percentage of cases in which women served as the principal lawyers *declined* between the two surveys, from 8.5% to 8.1%.

One might posit various reasons for this. First, the survey focused on civil cases, excluding family law matters. Women lawyers are much more likely to specialize in family law cases than men (Nakamura (2020): 69-71), so the decision to exclude those cases likely served to lower the percentage of women lawyers reflected in the surveys. Secondly, the surveys focused exclusively on litigation matters. Thus, lawyers who primarily handle transactional or other non-dispute matters would not be included. At the so-called Big 5 law firms, which have a strong role in major domestic and international transactions, the proportion of women lawyers has paralleled, or even lagged behind, the proportion in the overall bar. For in-house lawyers within corporations, however, the proportion of women lawyers has greatly exceeded their

proportion in the overall bar. That said, as of 2014, while women accounted for over 40% of in-house lawyers, far in excess of their 18.1% ratio in the overall bar, only 482 women were working as in-house lawyers, representing only 7.6% of all women lawyers. (For men as of 2014, 697 were working in-house; this comprised 2.4% of all male lawyers.) Another potential factor is the instruction to respond with respect to "the principal lawyer" in cases where more than one lawyer participated. It is possible that, on teams of lawyers, men were more likely to take the lead and women to serve in a supporting capacity.⁴

Whatever the reasons may be, it seems highly paradoxical that the rate at which women lawyers serve as lead lawyers for litigation should remain so low, notwithstanding the very positive evaluations of women lawyers by the clients and the substantial rise in the percentage of women lawyers. Indeed, given these highly positive evaluations, one might ask why the proportion of women lawyers overall has not risen even further, rather than lagging at under twenty percent.

Concluding Reflections

In closing, I might offer a brief recap of the themes addressed above.

In the sprawling set of reforms to the Japanese justice system over the first few years of this century, one of the major objectives was improving access to justice. Despite these efforts, based on our surveys, even as of 2018 members of the general public still felt that, if faced with a serious legal matter, it would be quite difficult to find a lawyer. In contrast to this widespread public perception, on the whole the litigants in both our surveys found it relatively easy to find lawyers to handle their cases. In the decade between the 2007 and 2018 surveys, moreover, it became easier for the litigants to find lawyers, with the improvement especially marked for plaintiffs. The surveys also revealed a vast increase in plaintiffs' use of advertisements and the Internet to find lawyers, with the rise in advertising contributing to plaintiffs' greater ease in finding lawyers. In sum, the survey results point to an improvement in access to justice over the intervening decade.

The second major theme relates to the debate over the quality of the legal profession. Frankly, I feel the debate should be framed in terms of whether quality has *improved* as a result of the reforms and the expansion in the bar. Much more typically, however, within Japan the debate is framed in terms of whether quality has *declined*. To consider that question, Part IV examined clients' assessments of their lawyers from two broad perspectives, first comparing the results from the 2007 survey and the 2018 survey, and then comparing the results from the 2018 survey for three age cohorts – younger, middle, and older. Both sets

⁴ Another possible reason is some form of selection bias in the cases with respect to which clients responded. In addition to the surveys of clients, we conducted parallel surveys of the lawyers who participated in representation in the randomly selected sets of cases. Based on the responses from the *lawyers*, in the 2007 survey 13.5% of all responding lawyers who participated in the cases were women (20/148) and 11.2% of the principal lawyers were women (10/89). In the 2018 survey, 17.1% of the responding lawyers who participated in the cases were women (24/140) and 17.2% of the principal lawyers were women (16/93). These figures rather closely parallel the overall proportion of women in the bar as of the respective years studied. It bears note, however, that the response rate on the surveys of lawyers was considerably lower than for clients, with a response rate of 23.2% in the 2007 survey and just 13.2% in the 2018 survey.

of comparisons provide strong evidence that, in the eyes of the clients, the assertions of a decline in quality are unfounded.

In the comparison of the 2007 and 2018 surveys, on the questions regarding overall evaluation (Satisfaction, Introduce to Others?), there was no statistically significant difference. (Even here, the 2014 evaluation on satisfaction was modestly better, but not at a statistically significant level.) In all the other categories – Extent of Explanation, Accuracy of Predictions, and Evaluation of Specific Aspects of Lawyer Performance – client evaluations showed a statistically significant *improvement* on six of the eight individual items examined, with modest, albeit not statistically significant, improvements on the other two.

Turning to the age cohort comparison, some critics have expressed the view that the expansion in the bar and other reforms to the legal training system have resulted in a decline in quality for new entrants to the legal profession. Here again, the survey results strongly refute that view. The younger cohort (those in their 20s and 30s) presumably is comprised heavily of the new entrants. By one view, the most capable cohort is likely to be the middle cohort (those in their 40s and 50s), comprised heavily of lawyers in the prime of their careers, who are thought to possess a strong blend of expertise and experience. While there were modest differences in the mean scores for the younger and middle cohorts on each of the aspects examined, with the younger cohort evaluated more positively on some and the middle cohort evaluated more positively on others, there was no statistically significant difference between the younger and middle cohort on any of the individual items. Rather than the younger cohort, on several of the items it is the older cohort (those in their 60s, 70s and over) that received *relatively* lower ratings (albeit on balance all still positive) from the clients. In sum, based on the views of the clients, the assertions of a drop in quality for younger lawyers seem highly misplaced.

The final section considered gender comparisons. In the 2007 survey, client evaluations for male and female lawyers were generally similar on each of the aspects considered, as were the evaluations on Extent of Explanation and Accuracy of Predictions in the 2018 survey. However, with respect to Evaluation of Specific Aspects and, especially, Overall Evaluation, clients evaluated women lawyers very positively, in some respects much more highly than male lawyers. Nonetheless, even though the overall percentage of women lawyers rose from 12.1% in 2004 to 18.1% in 2014, the percentage of cases reflected in our client surveys in which women served as principal lawyer declined modestly, to just 8.1% for the cases that concluded in 2014.

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