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# JUDICIAL REFORM AND THE STATE OF JAPAN'S ATTORNEY SYSTEM: A DISCUSSION OF ATTORNEY REFORM ISSUES AND THE FUTURE OF THE JUDICIARY

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## PART ONE: GENERAL STATEMENTS<sup>1</sup>

Based on the Judicial Reform Council's article "Points at Issue in Judicial Reform,"<sup>2</sup> this paper presents basic issues on the current status of the Japanese attorney system and areas to be addressed in judicial reform.

### I. THE STATE OF THE ATTORNEY SYSTEM AND JUDICIAL REFORM

The wide variety of issues underlying judicial reform are intricately related to one another and form an indivisible whole. One such issue is the reform of the attorney system, which approaches judicial reform from the point of view of the "principal players." As such, the goals and principles of attorney reform are the same as those of judicial reform as a whole. Moreover, reform of various aspects of the attorney system must go hand-in-

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<sup>1</sup> [Translator's Note] This Article formed the basis of Nakabō's report at the twelfth meeting of Judicial Reform Council held on February 8, 2000. It was originally published as the first of a two part paper in SERIES JUDICIAL REFORM I: HOSŌ YŌSEI; RŌSUKŌRU KŌSŌ [LEGAL PROFESSIONAL TRAINING; THE LAW SCHOOL CONCEPT] (2000).

<sup>2</sup> Shihō Seido Kaikaku Shingikai [Judicial Reform Council], *Shihō Seido Kaikaku ni Mukete: Ronten Seiri* [The Points at Issue in Judicial Reform] (Dec. 21, 1999), 1171 JURISUTO 128 (2000).

hand with reforms of other related matters. In this sense, there must be a comprehensive discussion of various issues to be solved by judicial reform.

Attorney reform is at the “starting point” of the reform of judicial “players.” After attorney reform comes the reform of the training system for legal professionals, then prosecution reform and court reform, and finally introduction of the Unified Bar System<sup>3</sup> (along with the jury system and commission judge system).<sup>4</sup> In other words, the goal of this judicial reform is to establish the “Rule of Law” and to introduce the Unified Bar System as the appropriate judicial system for this purpose. This goal must always be kept in mind during the reform process.

The reason why attorney reform is the starting point can be best explained as follows: For citizens, the point of access to the judicial system is the attorney. Additionally, because a large majority of legal professionals are attorneys, how they work decisively determines how the judicial system works. This is the reason for discussing the reform of how attorneys should work. In this sense, it is the attorneys that serve as the backbone of the 21st century judicial system. Moreover, to generally reform how attorneys go about their work is to reform how judges and prosecutors should work. Attorneys must therefore fulfill their responsibility to work with others and create a society of high quality where the rights and freedom of citizens are protected, and where openness and social justice prevails. In short, attorneys must not be satisfied with the status quo. In addition to a reform of the system under which attorneys work, attorneys must proactively and pragmatically reform themselves.<sup>5</sup>

Attorney reform is an attempt to completely overhaul the systems, customs, characteristics, and mentalities that get in the way of attorneys accomplishing their mission “to protect fundamental human rights and to realize social justice.”<sup>6</sup> I point out again that it is necessary for attorneys and bar associations to reform themselves (and their mentalities) in order to go forward with judicial reform.

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<sup>3</sup> [Translator’s Note] The Unified Bar System is called *Hōsō Ichigen* in Japanese. This refers to the American system where all legal professionals are attorneys and are not divided into three separate professions; judges, prosecutors, and attorneys. See *infra* Part IV.B.2.

<sup>4</sup> [Translator’s Note] The commission judge system is called *Sanshinsei* in Japanese. In this system, a citizen and a professional judge form a commission and the commission finds the facts and renders a judgment.

<sup>5</sup> Kōhei Nakabō, *Shingijikō ni kansuru Shian [Draft Proposal for Agenda Items]*, 1170 JURISUTO 229, 231 (2000).

<sup>6</sup> Bengoshi-hō [Practicing Attorney Law], Law No. 205 of 1949 (adopted on June 10, 1949), art. 1, para 1 (Japan) [hereinafter Practicing Attorney Law].

## II. CURRENT STATUS OF THE ATTORNEY SYSTEM AND ITS PROBLEMS

### A. *Analysis of the Attorney System*

According to the Judicial Reform Council's "Points at Issue in Judicial Reform" and "Opinions of Commission members on the Points at Issue,"<sup>7</sup> as well as other opinions on judicial reform, common criticisms of the attorney system include: (a) attorneys and courts are unapproachable and lack warmth;<sup>8</sup> and (b) no concrete image of the judiciary (legal profession) exists in our nation—people do not consider it as familiar and reliable.<sup>9</sup> For example, the Judicial Reform Council described the current attorney system:

From the viewpoint of potential clients, the current situation is such that they cannot easily consult attorneys and use their services. Attorneys are not in a position to adequately meet the need for various legal services in every area of society and the economy. This is one of the obstacles to people's access to the judiciary. In the background looms the shortage of attorneys, their uneven geographic distribution, unpredictability of legal fees, an underdeveloped mode of practice and specialization, and a shortage of available information on attorney services because of advertisement regulation.<sup>10</sup>

Indeed, people often feel that the attorneys are unfamiliar, unapproachable, lacking in warmth, and unreliable. The article "Points at Issue in the Judicial Reform" points out as background the shortage of attorneys, uneven geographic distribution, unpredictability of legal fees, underdeveloped mode of practice and specialization, and shortage of available information because of advertising regulation. It is possible to classify the criticism against attorneys as follows:

(a) Accessibility: this includes a shortage of attorneys, uneven geographic distribution of attorneys, unpredictability of legal fees, an underdeveloped sense of professionalism among attorneys, and a shortage of available information because of

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<sup>7</sup> Judicial Reform Council, *Kaku I-in no Ronten Seiri ni Kansuru Iken-sho* [Opinion of Each Member of the Commission as to Points at Issue], 1170 JURISUTO 219 (2000).

<sup>8</sup> Judicial Reform Council, *supra* note 2, at 132.

<sup>9</sup> *See id.*

<sup>10</sup> *Id.*

advertising regulation. A derivative issue is the relationship with “Quasi-Legal Professions.”

(b) Narrow areas of practice: No concrete image of the judiciary (legal profession) exists in our nation. People do not consider it to be familiar and reliable. Attorneys are not in a position to adequately meet the need for the wide variety of legal services needed in every area of society and the economy. Unfortunately, attorneys do not currently serve as “doctors for people’s social lives.”<sup>11</sup>

(c) Quality of service: attorneys lack expertise and are not in a position to adequately meet the need for various legal services in every area of the society and economy.

(d) In addition, the scandals have exacerbated the problem of society’s trust in attorneys.

In order to understand the significance of these criticisms and discuss them in relation to attorney reform, it is necessary to keep in mind three main points. First, criticism against attorneys tends to center around the problems of lack of accessibility and narrow areas of practice. However, this is only because these problems are more visible to citizens. It does not mean that other issues should be treated as secondary. As the “Summary of Opinions on judicial reform from Various Sectors of Society” points out, clients often make made tough demands upon the attorneys’ quality of service.<sup>12</sup> Moreover, we must expect that society’s trust of attorneys has been severely hurt, as scandals involving attorneys keep appearing in newspapers.

Second, the fact that quality-of-service problems and social-trust problems are not so prominent means that there is not necessarily social consensus about the ethics, public interest, or quality of service that attorneys should maintain. In short, people often overlook low quality of services and actions that go against their interests. Ultimately, this means that attorneys’ presence in society is still very tenuous.

Third, these four problems arise from the same historical and structural causes. They have deep roots having to do with how Japan’s judicial policy has historically treated the attorney system and how the judiciary has been regarded historically. In other words, ad hoc, symptomatic reforms are not sufficient to solve these problems; rather, a radical and comprehensive reform of the entire judicial system is required.

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<sup>11</sup> *Id.*

<sup>12</sup> Nihon Bengoshi Rengōkai [JFBA], *Shihō Seido Kaikaku ni Kansuru Kaku-kai Iken Yōshi-shū* [Summary of Opinions on Judicial Reform from Various Sectors of Society], 1170 JURISUTO 191 (2000).

## B. *Analysis of Historical and Structural Causes*

The root of the problem with the current attorney system lies in the national policy pursued during the fifty-year period between the Meiji Restoration [of 1868] and World War II. It is the so-called policy of creating “a society that needs no attorneys” and “a judiciary without attorneys.” This policy restricted the existence and activities of attorneys by various devices, and thereby tried to relegate their status to a mere complement to court management led by bureaucratic judges. Such governmental policy engendered an attorney system that was weak both in quality and quantity, especially because the social basis for the attorney system was still very weak. In addition, attorneys contented themselves with staying within the framework of such a system.

### 1. *Lack of Emphasis on the Attorney System*

Japanese national policy before World War II paid little attention to the structuring and growth of the attorney system and the training of attorneys. Rather, there was a policy of disregarding, and at times even open hostility toward, the attorney system. As Takaaki Hattori explained:

Although the government in those days was extremely dedicated to developing well-trained judges and prosecutors, it put almost no effort into developing advocates.<sup>13</sup> It was only in 1872 that the government allowed advocates to represent parties, and that was only in civil cases. Such reluctance toward advocates was probably for the following reasons: First, the Public Affairs Advocate (*Kōjishi*), predecessor to the modern attorney, did not gain the trust of the people. Second, there was a general tendency, derived from feudalism, to accord more importance to government positions rather than to private practice. Moreover, advocates were not as important as judges or prosecutors in the context of the national policy of overcoming extraterritoriality.<sup>14</sup>

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<sup>13</sup> [Translator's Note] Attorneys were called “daigen-nin” [advocates] before World War II.

<sup>14</sup> Takaaki Hattori, *Nihon no Hōsō: Sono Shiteki Hatten to Genjō* [The Law Profession in Japan: Its Historical Development and Current Status], in *NIHON NO HŌ: HENDŌ SURU SHAKAI NI OKERU HŌ-CHITSUJO (JŌ)* [LAW IN JAPAN: LEGAL ORDER IN A CHANGING SOCIETY (PART I)] 164 (Arther T. von Mehren ed., 1965) [hereinafter *LAW IN JAPAN*].

## 2. *Policy to Split the Legal Services*

The government before World War II was also reluctant to allow attorneys to go into legal services other than court trials and thus adopted a policy to “split” legal services.<sup>15</sup> The policy consisted of (a) setting up systems other than the attorney system to handle legal issues; (b) classifying such systems as “supplementary” organizations to courts and other government agencies;<sup>16</sup> and (c) having the supervising government agency appoint individuals sympathetic to the agency.<sup>17</sup>

Legal Scriveners, predecessors to the judicial scriveners, were typical examples of such alternative legal professions:

Japan’s bureaucratic judiciary consistently “attacked” even those areas of law directly linked to attorneys’ very existence. This, as Americans point out, has not occurred in any other country. It resulted in the development of what is now called the judicial scrivener [shihō-shoshi]. Objectively, the judiciary’s policy of surrounding itself with sympathetic employees seems to be a defensive act on the part of the government against increasingly rebellious “non-government” attorneys. Nevertheless, such actions were an abuse of power that exacerbated the deep-set rebellion and wariness of many attorneys. This policy thus aroused much distrust, and resulted in the unfortunate birth of what could effectively be called a second-class attorney system, with almost twice the number of scriveners as there were attorneys. Later, even judges deplored the system as anathema to judicial administration. This was one of the tragedies of Japanese judicial system.<sup>18</sup>

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<sup>15</sup> Akira Mikazuki, *Gendai no Hōritsuka no Shokunō to Mondaiten: Bengoshi [Work Abilities and Problems of Contemporary Legal Professionals: Attorneys]* 6 GENDAIHŌ [CONTEMPORARY LAW] 214-15 (1966).

<sup>16</sup> YOSHIHIRO ETŌ, *MINJI SOSHŌ NI OKERU SHOKKEN-SHUGI NI TAISURU SHITEKI ICHI-KŌSATSU [ONE HISTORICAL ANALYSIS OF THE INQUISITORIAL SYSTEM IN CIVIL TRIALS]*. [Translator’s Note]: The year of publication and page cites are not given.

<sup>17</sup> Mikazuki *supra* note 15.

<sup>18</sup> *Id.*

### 3. *Reluctance to Restrict Activities by Non-Lawyers*

Not only did the pre-World War II government allow certain legal services to be provided by non-attorneys, it also failed to aggressively restrict the legal activities of those who are completely outside the legal system (legal activities by laypeople).<sup>19</sup> Specifically, the Ministry of Justice consistently refused to include legal services outside the court in the definition of attorney services.<sup>20</sup> The idea behind this policy can be summarized in the following paragraph:

If only attorneys were allowed to provide legal services, it would be unjustifiable monopoly that ignores the interest of the general public. In fact, one cannot absolutely deny the social necessity of non-attorneys who provide simple legal services at low cost. While it is possible that some harm will come from services provided by non-attorneys, most services provided by non-attorneys will benefit society. Moreover, if the large number of non-attorneys were altogether prohibited from practicing, it would produce massive unemployment, which would inevitably cause societal problems.<sup>21</sup>

### 4. *Limitation on Public Employment*

The public employment limitation that prohibits attorneys from accepting paid public employment has existed since the Practicing Attorney Law of 1893. Even before that, Article 3 of Rule of Advocates of 1876 provided that public officers or quasi-public officers could not obtain an advocate's license.

The idea that the protection of an individual's rights and official duty are incompatible seems to be the rationale behind the limitation. Yet, logically speaking, the two are not necessarily in conflict. This is clear from the fact that it was apparently possible for private attorneys to accept "unpaid" public employment. The true reason for such a limitation appears

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<sup>19</sup> Richard Rabinowitz, *Nihon Bengoshi no Shiteki Hattatsu* [*Historical Development of Japanese Lawyers*], 3 AMERIKANA: JINBUN, SHAKAI, SHIZEN [AMERICANA: HUMANISM, SOCIETY & NATURE] 11 (1957).

<sup>20</sup> *Id.* at 17.

<sup>21</sup> KANAME KANEKO, KAISEI BENGOSHI-HO SEIGI [DETAILED LECTURE ON THE REVISED PRACTICING ATTORNEY LAW] 60 (1934) (explaining the Ministry of Justice's rationale for the 1929 draft amendment to the Practicing Attorney Law. This draft allowed non-attorney activity to a certain extent.).



to be the government's general prejudice (and at times even hostility) toward attorneys.

5. *Lack of Emphasis on Training Attorneys*

a. *Lack of legal education for attorneys in national universities*

While the government established national university law faculties to train judicial officers, training attorneys was not its concern. Eventually, the focus at those national universities shifted to training administrative officers. The government remained indifferent to attorney training, which was provided by private universities. Akira Mikazuki briefly summarized the history of Japanese legal training:

The government decided to adopt a Western European-style legal system as a way of dealing with unfair treaties.<sup>22</sup> Legal education was thus started with the primary goal of training judicial bureaucrats, which was what Japan needed the most. However, when Japan succeeded in amending treaties first with the United Kingdom in the late 1890s and later with other Western nations, the nation's policy began to shift imperceptively from a judiciary-based policy to one centered on the executive. On that basis, the policy focus shifted to increasing the nation's wealth and strengthening its military power. The movement to train personnel for the judiciary came to a standstill, and was replaced with a strong demand for the training of leaders for government administration and corporations. Japanese legal education sensed this change and adapted to it.<sup>23</sup>

b. *Tendencies of legal education at universities*

Legal education at universities had two tendencies that made the education unsatisfactory from the viewpoint of training attorneys. First, the subject matter of legal education was geared toward training bureaucrats. Although legal education in Japan purportedly aimed to train students to

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<sup>22</sup> [Translator's Note] The first treaties between Japan and the Western powers granted rights and privileges to the Western powers that infringed Japanese sovereignty. The Japanese government referred to them as "unfair treaties."

<sup>23</sup> AKIRA MIKAZUKI, HOGAKU NYŪMON [INTRODUCTION TO LAW] 175-76 (1982).

“think like a lawyer,” the subject matter of the courses, in sharp contrast to those of Western European nations, often tended to teach from an “elite” point of view.<sup>24</sup>

Second, the fact that the so-called “conceptualized jurisprudence” from German law influenced Japanese legal education was also unfavorable to many attorneys.<sup>25</sup> This “conceptualized jurisprudence” tried to achieve better application of the law by “sharpening” legal concepts, but it tended to focus too much on conceptual analysis and neglected realistic legal scenarios.<sup>26</sup>

For attorneys to learn to protect individual rights and freedoms, this “conceptualized jurisprudence” style of legal education is not effective. Rather, a legal education should begin with “the facts.” Attorneys find the law and carry out justice starting with the facts, rather than viewing the facts through statutes. This becomes particularly evident when contemplating what an attorney’s social responsibilities are during periods of turmoil or when examining how an attorney must act when involved in foreign relations. In these situations, attorneys must carefully consider all relevant facts and circumstances of a legal situation—they cannot fulfill their social responsibilities simply by declaring “this is the law.” As Kenzō Takayanagi stated:

In terms of judicial administration, we have much to learn from the pragmatic Anglo-American approach.<sup>27</sup> It starts with a concrete analysis of the facts of a case and then gives solutions to the legal problems that arise, rather than by giving solutions to legal problems in advance by abstract formulas.<sup>28</sup>

How do we help students learn to focus on the facts and analyze them thoroughly? How do we instill in them the ability to find from those facts what the law should be or where justice lies? These are questions that have not been asked in Japanese legal education since the Meiji period.

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<sup>24</sup> *Id.* at 178.

<sup>25</sup> *Id.* at 82-83.

<sup>26</sup> *Id.*

<sup>27</sup> Kenzō Takayanagi, *Henkaku no Isseiki [A Century of Revolution]* in *LAW IN JAPAN*, *supra* note 14, at 54.

<sup>28</sup> *Id.*

c. *Insufficiency of the attorney training system*

Legal education in national universities is not the only place where attorney training has been lacking. Before World War II, the government had not established a central training institute for attorneys equivalent to the Legal Study Center training system for judicial officers. In fact, the government has neither assisted attorney training nor considered it to be a necessary professional training. As such, attorney internship programs were slow to develop. Even when they finally came into being, they were in reality little more than law-firm apprenticeships.

6. *Policy to Suppress Civil Actions*

From the Meiji Restoration to the end of World War II,<sup>29</sup> Japan's consistent policy was to suppress dispute resolution through lawsuits.<sup>30</sup> This policy was evident because during the Meiji period, the government promoted alternative dispute resolution through the "Amicable Settlement System" and a series of conciliation laws. Shortly after the Meiji Restoration, the government officially introduced the Amicable Settlement System, which had previously existed as a custom. However, it was abolished when the Code of Civil Procedure became effective in 1890. To deal with the resulting increase in civil suits, the government re-introduced conciliation after World War I.<sup>31</sup>

7. *Bureaucratic Customs of the Judiciary*

a. *Judges*

Japan's judicial system was modeled after the French Judicial System,<sup>32</sup> which was a far more bureaucratic and centralized system than that of any other Western nation. Additionally, when Japan adopted the French judicial system, it did so in a way that magnified the distinct

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<sup>29</sup> [Translator's note] From 1868 to 1945.

<sup>30</sup> ETO, *supra* note 16.

<sup>31</sup> Conciliation Law on Land and House Leases of 1922, Conciliation Law on Tenant Farming of 1924, Conciliation Law on Commerce of 1926, Conciliation Law on Labor Disputes of 1926, Temporary Conciliation Law on Monetary Obligations of 1932, Conciliation Law on Personnel Disputes of 1939, Amendment of Mining Law (Mining Hazards Conciliation System) of 1939. In 1942, the Special Wartime Civil Law made it possible to solve every civil dispute by conciliation, even if the dispute was not covered by any of the special laws.

<sup>32</sup> MIKAZUKI, *supra* note 15, at 70.

characteristics of the French system.<sup>33</sup> Thus, Japan incorporated bureaucratic elements into its judicial system to an even greater extent than in France, putting a large emphasis on uniformity.<sup>34</sup> As a result, Japanese courts and judges are less efficient and more bureaucratic than those of other nations.

*b. Criminal trial practice*

The Crime Management Act of 1880 was based on French law and adopted the French quasi-inquisitorial procedure.<sup>35</sup> Such procedures provided the basis for Japanese criminal jurisprudence up to the end of World War II.<sup>36</sup> Under the Crime Management Act, a trial judge was required to act not as a neutral umpire but as a proactive taker of confessions.<sup>37</sup> Defense attorneys were allowed to cross-examine the prosecution's witnesses, but only with the court's permission.<sup>38</sup>

As Takayanagi describes, the Crime Management Act's system of preliminary trials were reminiscent of inquisitions:

It was quite natural that a defendant who went through detailed examination by a preliminary trial judge, although legally presumed innocent until proven guilty, seemed guilty in people's minds. Under this system the duty of a trial judge was not to hear a case from the beginning, but to review the decision of the preliminary trial judge. Preliminary trial continued to play an important role for a full half-century until its abolition after World War II.<sup>39</sup>

These inquisitorial preliminary trials were exacerbated by the fact that prior to World War II, defense attorneys litigated with a servile and compliant attitude toward the judge, rarely showing any hint of zealous advocacy.

This kind of inquisitorial practice in criminal trials became the norm with judges and attorneys. Moreover, jury trials did not fit in well with

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<sup>33</sup> Akira Mikazuki, *Shihō Seido no Genjō to Kaikaku* [Current Status and Reform of the Judicial System], 5 GENDAIHŌ [CONTEMPORARY LAW] 21 (1965).

<sup>34</sup> *Id.*

<sup>35</sup> Takayanagi, *supra* note 27, at 25.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

Japanese legal professionals trained under the inquisitorial system. This is because, in part, legal professionals did not make a serious effort to help the modified Anglo-American jury system succeed in Japan.<sup>40</sup>

c. *Civil trial practice*

The Code of Civil Procedure was enacted in 1890. In 1926, the Code was amended to strengthen the inquisitorial-style procedure that was used in criminal trials. While the language of the Code seemed modern, the old-fashioned, judge-controlled practice of civil trials remained. In fact, this style survived through World War II. Koji Tanabe described early Japanese Civil Procedure as follows:

Between 1868 and 1890, Japanese civil procedure was a mixture of customary law developed in the Tokugawa era<sup>41</sup> and several laws containing unified rules of procedure<sup>42</sup> that the government enacted by somewhat modernizing the Tokugawa-era customary law. These laws had a strong inquisitorial character, and were applied by judges who doubled as administrative officers of the central or local government.<sup>43</sup>

The pre-war system maximized the role of the trier of fact and minimized the role of the parties and their attorneys.<sup>44</sup> Thus, in civil trials, as in criminal trials, the attorneys' activities were passive and low key. In short, attorneys frequently relied on the trial judge's leadership, displaying an extremely deferential attitude.

8. *Reluctance to Increase the Population of Attorneys*

After the introduction of the attorney qualification system, attorneys were not in control of their own membership. Instead, the government conferred qualifications upon attorneys. In pre-war Japan, the above-mentioned policy resulted in a decreased demand for attorneys. As such, the government had no incentive to increase the population of attorneys. Rather,

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<sup>40</sup> *Id.* at 30.

<sup>41</sup> [Translator's Note] The Tokugawa era is from 1603 to 1867.

<sup>42</sup> Such as rules on pleadings, judicial conciliation, and appeals.

<sup>43</sup> Kōji Tanabe, *Soshō Katei [Trial Process] in LAW IN JAPAN*, *supra* note 14, at 101.

<sup>44</sup> *Id.* at 102-03.

they gave out qualifications only to the extent necessary to make trials go smoothly.

Even after World War II, the government appeared to be far from willing to increase the population of attorneys. As Mikazuki pointed out:

The pass rate of the Japanese Bar Examination<sup>45</sup> is so low that it almost seems as if litigation practitioners in Japan are trying to artificially limit their own. For example, in a normal certification examination, the number of people who pass should increase in proportion to the number of applicants. This is not the case with the Japanese Bar Examination, which has consistently yielded an unreasonably low pass rate. We should ask ourselves whether the larger problem of the status of litigation practitioners in Japan is lurking in the background.<sup>46</sup>

In summary, the historical and structural causes of the current state of the attorney system include government policies that seek to “create a society that needs no attorneys” and “a judiciary without attorneys.” These policies came about because of a weak historical and economic foundation for attorneys. The result of the policies include: a lack of emphasis on the attorney system, the development of quasi-legal professions, a reluctance to prohibit the unauthorized practice of law, a limitation on public employment, a lack of emphasis on and insufficient attorney training, an inquisition-style civil and criminal procedure, a bureaucratic judicial practice, as well as a reluctance to increase the population of attorneys. For all of these reasons, attorneys have failed to establish a broad basis of support among the people, and on the whole, they have settled for an existence as a mere “supplement” to a bureaucrat-run government.

### C. *The Attorney System in the Fifty Years after World War II*

#### 1. *Judicial Reform and Social Responsibility*

From the viewpoint of attorneys, judicial reform means “carrying the burden” of reforms for themselves. This is because judicial reform will not make attorneys’ lives easier. In fact, attorneys would be more carefree under the status quo. For example, the proposals to introduce legal aid,

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<sup>45</sup> [Translator’s Note] The official name of the examination is the Entrance Examination for the Legal Research and Training Center for the Ministry of Justice.

<sup>46</sup> MIKAZUKI, *supra* note 15, at 191.

public defenders, jury trials, and powerful discovery in civil trials all increase the burden put upon attorneys. Likewise, the proposal to begin professional training by law schools means more work for attorneys. Above all, the Unified Bar System will impose a great social responsibility on attorneys. Ironically, Japanese attorneys are proactively asking for a greater burden to be placed on their shoulders, despite the fact that, at least economically, they would not only reap no benefit, but also might incur some costs.

Why are attorneys doing this? It is likely because they realize that if they are to carry on an existence that is useful to the public and to a democratic society, and if they are to engage in their work with pride as a modern-day professional, they must no longer be content to exist within a pre-war judicial system that is devoid of public participation.

## 2. *The Fifty Years After World War II*

Some of the causes of the attorney system's problems faded during the fifty years after World War II while others remained. The new Constitution set forth provisions regarding attorneys that appeared to mandate significant changes in the judiciary laws. However, the changes to the judiciary laws did little to alleviate the underlying causes of the attorney system's problems. Moreover, the people who constituted the judicial system remained the same after World War II. The following tracks the resulting post-war developments.

### a. *The new Constitution and amendment of the Practicing Attorney Law*

The new Constitution, for the first time in the history of Japan, set forth provisions regarding the new status and duties of attorneys.<sup>47</sup> To comply with these new provisions, the Practicing Attorney Law needed a total overhaul. However, this work was delayed. Amendments to the Court Law and Law for the Prosecutor's Office came first, and they entered into effect on the same day as the new Constitution.<sup>48</sup> The Diet finally adopted the amended Practicing Attorney Law in May of 1949, and it entered into effect on September 1, 1949.

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<sup>47</sup> Nihonkoku Kenpō [Constitution of Japan] (adopted Nov. 3, 1946) arts. 34, 37 para. 3, 77 para. 1 [hereinafter Kenpō].

<sup>48</sup> [Translator's Note] These amendments along with the new Constitution became effective on May 3, 1947.

The most significant feature of the amended Practicing Attorney Law was the adoption of attorney self-regulation. The pre-war voluntary association, called Japan League of Bar Associations, accordingly reorganized and became the Japan Foundation of Bar Associations ("JFBA"). The JFBA was based on the amended Practicing Attorney Law, on the very day the amendment entered into effect.

The establishment of attorney self-regulation played a large role in many JFBA activities and proposals, and it enabled attorneys to more effectively serve the public. In the 1970s, attorney self-regulation came under attack when the legislature introduced a bill entitled "Bill for Special Law on Trials without Attorneys." The JFBA responded by issuing their "Reply Brief on Attorney Self-Regulation," which argued that attorneys could effectively, responsibly, and conscientiously conduct their activities to fulfill their mission to serve the public. This won the support of the Japanese people, and the bill was dismissed. Additionally, the JFBA improved the attorney disciplinary system and laid down the "Ethical Rules on Activities of Attorneys in Criminal Trials."

While the need for further self-reform still exists, maintaining and reinforcing attorney self-regulation will play a significant role in promoting future reform of the attorney system, and in protecting the fundamental human rights of the Japanese people.

*b. Quasi-legal professions and limitations on public employment*

Today, quasi-legal professions remain strong. In fact, their populations have increased after World War II, partially because the number of attorneys has not increased sufficiently. Provisions limiting public employment of attorneys remain almost the same today as it was before World War II.

*c. Insufficiency and neglect of attorney training*

Attorney training has improved since World War II. Every trainee now receives the same training at the Legal Research and Training Institute as a paid judicial trainee regardless of his/her future vocation. However, the Legal Research and Training Institute did not update its curriculum; instead it simply added attorney training to the pre-war training system of associate judicial officers. As a result, the subject matter of the training and the administration of the Institute presupposes that the trainees will start practicing as either judges, prosecutors, or attorneys as soon as they finish



training. In short, the current system is set up with the bureaucratic judicial system in mind. The fact-finding concept taught at the Institute is “to understand the facts through analysis of abstract rules.” This method is inadequate for training attorneys.

Law courses at universities are separate from training of legal professionals and basically consist of lectures on the theories of interpretation of abstract rules in large classrooms. A strong influence of the so-called conceptualized jurisprudence still remains, and it is not a satisfactory method of training attorneys who will be able to start with a fresh view of the facts and the scene where the situation occurred.

*d. Policy to restrict civil suits*

Article 32 of the new Constitution grants citizens the right to access to the courts,<sup>49</sup> but it is legal aid that makes the right effective. The government should guarantee funding for such aid just as many other nations do. However, the Japanese government declined to initially guarantee legal aid for the indigent. Instead, the JFBA founded the Legal Aid Association in January 1952, in response to the continued government policy to restrict civil suits. Government-funded legal aid began in 1958 for civil cases. However, the amount paid by the government is very small and does not cover management fees. This has hampered the development of many legal aid projects, and unless there is a drastic reform of the system, it is unrealistic to hope that a great number people will make use of attorneys and assert their rights.

Another factor working against government-funded legal aid is that the judicial branch has been consistently underfunded since World War II. The limited number of judges, clerks, and court facilities has made it difficult for people to make use of the courts. As a result, trials have been less fair and speedy. The budget for the judicial branch was 0.93% of the national budget in 1955, but dropped to only 0.38% in 1999. This is substantially smaller than percentages seen in other developed countries. In short, post-war policies regarding civil suits are not radically different from pre-war policies.

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<sup>49</sup> Kenpō, *supra* note 47, art. 32.

e. *The judiciary*

The new Constitution established a “separation of powers” doctrine that caused the status of courts to rise dramatically. Nevertheless, the courts retained their centralized bureaucracy because the revised Law on Courts adopted a substantial portion of the pre-war Law, and because the courts underwent very little personnel changes.

One example of how this antiquated, centralized bureaucracy negatively affected the judiciary is the ineffective judicial administration system. One of the major reforms brought about by the new Law on the Courts was administration of the judiciary by boards of district and appellate court judges. Unfortunately, this administration system lost its effectiveness after the amendment of Lower Court administration rules in 1955. On this issue, the Special Judicial System Examination Committee pointed out in its opinion on judicial administration “the need to consider measures to clarify the chain of command in judicial administration and establish accountability,” calling the situation a “crisis of the judiciary.”

Thus, the post-war legal profession began with the same people operating a new system using old ideas. Nothing changed for judges, prosecutors, or attorneys. Old characteristics of the legal profession were preserved and old customs remained. In short, a true “judiciary for the public” failed to emerge from the post-war reforms.

The status of attorneys evolved via a tortuous path, from a mere “supplement” to a bureaucrat-run legal system, into a “partner in governance by the people.” In other words, the following processes took place concurrently: (a) an increase in magnitude and visibility of the conflict between the people’s interest and the *ancien régime* of legal society maintained by structural elements that remained after World War II; (b) a gradual spread of efforts by attorneys born mostly after the war to overcome these structural problems; and (c) a progressive shift in mindset, such that attorneys looked more often to truly serve the public and democratic society.

Attorneys and bar associations must continue to promote such progressive ways of thinking. At the same time, it is necessary for attorneys to take drastic steps to remedy the underlying causes of the legal system’s problems. Both elements are necessary for true judicial reform.

Today’s judges have no steadfast base of popular or regional support, and almost no independent authority. The Supreme Court dictates the nominations for judges and the Supreme Court General Executive Council takes the lead in determining their salaries, transfers, and promotions. This kind of bureaucratic control encourages excessive self-restraint. As a result,

judges seldom break with precedent to make innovations in the law, improvements in the court system, or judicial reform proposals. Although the status of judges has changed on the face of the Constitution and amended judiciary statutes, the centralized bureaucratic judiciary has remained in place and has precipitated a so-called "crisis of the judiciary."

*f. Civil trial practice and attorney representation in civil cases*

The post-war reform of the Code of Civil Procedure ended ex-officio fact-finding and introduced direct and cross-examination in an effort to strengthen the adversarial system. However, the reform was not as extensive as the reform to the Code of Criminal Procedure. Specifically, it did not introduce an effective, American-style discovery.

Post-war civil trial practice, while not as formal as in the pre-war practice, nevertheless tended to be court-led, inactive and formalistic in oral argument, and reliant on written briefs. The more lively, tension-filled courtroom characteristic of the adversarial system did not materialize. Attorneys also continued the pre-war pattern of simply deferring to the court and remaining essentially passive.

These tendencies caused lengthy delays in litigation, and led to criticism of the system, especially given the lack of activity in the courtroom. In short, trials were not speedy or effective. Perhaps the recent amendment to the Code of Civil Procedure, which purports to make civil procedure "easy to use and easy to understand" was a response to the concern that procedures had become "difficult to use and difficult to understand."

Of course, we should not forget that a considerable number of attorneys have always vigorously litigated their cases, attracting the attention of society. Examples of these models of advocacy in civil litigation include attorneys in pollution cases or medical product liability cases. Unfortunately, most attorneys still lack these qualities.

*g. Criminal trial practice and criminal defense*

As a result of post-war reforms, the Code of Criminal Procedure included elements of the adversarial system. The Code was, in effect, a mixture of Continental European Law and Anglo-American Law. The kind of criminal trial practice produced by the Code depended on how the principal players used it.

What emerged was a criminal trial practice unique to our country: an Anglo-American system operated in a Continental European way. This is

mainly because there were few attorneys or judges who had the ability to conduct an Anglo-American criminal defense. Therefore, attorneys and judges conducted themselves in it the “old” manner under the new system.

Even so, attorneys have fought harder for the criminal defense reform than for civil reform, mainly because the rights secured for criminal trials are directly linked to constitutional principles. This is especially true for the generation of attorneys who grew up under the new Constitution. They have a better grip of the adversarial method, and more actively defend criminal cases. As a result, criminal defense has become more high-profile. For example, in four recent cases, courts have overturned death sentences and found defendants not guilty upon retrial.

Nevertheless, some attorneys have left criminal defense, disillusioned by what they consider to be a “hopeless” state of criminal trials. Even more disturbing are reports of cases where criminal defense attorneys get away with mediocre work. Thus, the greatest challenge for the criminal defense bar is to establish uniform, truly high standards for criminal defense work.

*h. Continued reluctance to increase the population of attorneys*

Even if the government is not directly limiting the number of attorneys, at the very least, it has done nothing to increase the attorney population.<sup>50</sup> This is clear from the low pass rate of the Japanese Bar Examination. Official data<sup>51</sup> for the second stage of the Japanese Bar Examination is as follows:

- In 1949, out of 2570 applicants, 265 passed. The passing rate was 10.31%.<sup>52</sup>
- In 1959, out of 7858 applicants, 319 passed.<sup>53</sup> The rate was 4.06%.<sup>54</sup>
- In 1969, out of 18,453 applicants, 501 passed.<sup>55</sup> The rate was 2.72%.<sup>56</sup>

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<sup>50</sup> [Translator’s note] Here, the author repeated the same quote from Akira Mikazuki found *supra* Part II.B.8. This Translation omits the quote.

<sup>51</sup> Hōmu Daijin Kanbō Shihō Hōsei Chōsa-bu [Judicial System Research Division of the Secretariat of the Minister of Justice], *Hōsō Yōsei Seido Kaikaku: Kihon Shiryō-shū* [Basic Data Collection for Reform of the Legal Training System], in JURISUTO ZOKAN, Sept. 1991. [Translator’s note] the page cite is not given.

<sup>52</sup> See *id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

- In 1979, out of 28,622 applicants, 503 passed.<sup>57</sup> The rate was 1.76%.<sup>58</sup>
- In 1989, out of 23,202 applicants, 523 passed and the rate was 2.18%.<sup>59</sup>

In spite of increasing applications, the number of those who passed the examination hovered around 500 until 1991.

### 3. *Development of a Judicial Reform Movement (1990–2000)*

The JFBA has made several declarations on judicial reform since 1990 and has been grappling with the following projects in an attempt to achieve a citizen-friendly judiciary. However, these efforts have not yet solved the historical structural problems of the attorney system that date back to the Meiji period.

#### a. *Criminal judicial reform and implementation of an on-call attorney system*

To help alleviate some of the problems associated with indigent clients, every bar association implemented an “on-call” attorney system in 1992. Currently on-call attorneys deal with more than 25,000 cases each year. In addition, the JFBA has been pushing for criminal justice reforms, including the establishment of official public defenders for criminal suspects. In order to protect the rights of suspects and defendants, there is an ever-increasing need for legislative measures and governmental support for such reforms.

#### b. *Movement to improve the management of civil trials*

In 1991, when Miyazaki District Court demanded that every legal professional read their “Outline for Speedy and Effective Trials,” the JFBA and bar associations all over Japan began an active dialogue about effective trial administration with the Japanese courts. The JFBA criticized the courts for pursuing only speed and efficiency, and held discussions on diverse issues, including ways to make attorney representation more effective, and the necessity to augment the courts’ human and material resources. They thus began to implement ideas that help make trials truly effective. Both the

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

Round Table Court and the Teleconference System are ideas that came into being as a result of these discussions.

In 1994, the JFBA started to examine the nationwide facilities of the courts and demand that courts improve these facilities to facilitate citizen access. Bar associations also made persistent efforts to promote reform in relation to the 1998 revised Code of Civil Procedure. They conducted discussions on pre-trial procedures and on improved discovery, with a view toward achieving speedy and effective trials. Even so, many problems remain to be solved, including the overall quality of trials and human resource issues.

*c. Dealing with uneven distribution of attorneys*

In 1996, the JFBA announced that it would establish legal counseling in practice areas that were short on attorneys. Currently, a total of 153 legal counseling centers exist in 132 of 253 local jurisdictional districts. Additionally, of the seventy-three districts with only one attorney or none at all, thirty-four have legal counseling centers.

In December 1999, the JFBA decided to collect a special member fee and spend approximately 1,100,000,000 yen<sup>60</sup> over the next five years on establishing more legal counseling centers, teleconferencing phones for legal counseling, publicly run law firms, and to attract attorneys to practice areas suffering from a shortage of attorneys. In addition to financial support, there is also a need for systematic reform in order to provide training and education for attorneys willing to work in areas short on attorneys.

*d. Japanese bar examination and training of legal professionals*

In 1990, the JFBA, the Supreme Court, and the Ministry of Justice set up a "Basic Agreement on Reform of the Bar Examination System," in which they decided to increase the number of those who pass the examination by 900 or more between 1991 and 1995. At the same time, they agreed on the "Special Rule System"<sup>61</sup> to select additional members of the bar, and decided to form the "Legal Training Reform Council," which was to draft a plan for radical reform of the legal training system. This

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<sup>60</sup> [Translator's note] Approximately \$10,000,000.

<sup>61</sup> [Translator's Note] Under this system, The Management Committee selects approximately 70% of those who pass the examination regardless of the number of times they take the examination. It selects approximately 30% from those who take the examination three times or less so that the younger applicants may pass it more easily. The number changed from 1999 to 80% and 20%, respectively.

Council also examined collaborations with universities. A majority of the Council proposed that the number of those who pass the examination should be raised to 1500 per year, whereas the JFBA proposed that the number should be 1000. After discussions with the Supreme Court and Ministry of Justice, the JFBA also proposed an Intern Attorney System. In 1997, the JFBA, the Supreme Court, and the Ministry of Justice agreed to increase the number of those who pass the bar examination to 1000 per year and to shorten the training period at the Legal Research and Training Institute to one and a half years.<sup>62</sup> However, there is not yet a plan for more systematic reforms.

*e. Involvement of bar associations in appointing judges*

As a result of the 1991 agreement between the JFBA, the Supreme Court, and the Ministry of Justice, the JFBA became involved in the process of appointing attorneys to judgeships. Thirty-four attorneys became judges between 1991 and 1998.

*f. Reform of the legal aid system*

The JFBA announced at its 1993 convention that it would work to radically reform the legal aid system. Working in collaboration with the Association of Legal Aid, the JFBA held discussions with the Ministry of Justice and called for more aid from the government. Nevertheless, the amount of legal aid provided by the government is still extremely low when compared with Western nations.

Attorneys and bar associations must continue to promote these reforms and take bold steps to deal with the causes of the problems with the attorney system.

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<sup>62</sup> [Translator's Note] Training period lasted two years until 1998.

### III. DELINEATING THE ISSUES OF ATTORNEY REFORM

#### A. *The Current Attorney System*

##### 1. *The Nature of Legal Business*

Legal business<sup>63</sup> not only affects people's rights and interests, but it is the foundation for the rules of society. The importance of legal business is the reason for having a qualification system for the legal professions and for establishing stringent rules of professional conduct. In short, legal business is a duty that the public has entrusted to attorneys.

Because legal business is a duty that the public has especially entrusted to attorneys, they must conduct it in such a way as to satisfy and promote the public interest. An attorney's mission is to work to secure the rights and interests of his or her client ("protection of fundamental human rights")<sup>64</sup> while also serving the public interest ("realization of social justice").<sup>65</sup>

To understand these duties, it is essential to determine precisely the meaning of "*Kō*" when talking about "*Kō-eki-sei*"<sup>66</sup> or "*Kō-teki Seikaku*"<sup>67</sup> of attorneys. The Japanese word "*Kō*" may mean "public; Imperial Court; government; nation" or "society; among people; assembly of people."<sup>68</sup> Which is the proper definition with respect to attorneys' duties? It goes without saying that "*Kō*" in "*Kō-eki-sei*" or "*Kō-teki Seikaku*" of attorneys means "of the people" or "community," and is close to the meaning of "public" in English. Thus, attorneys are servants of the people or the community.

##### 2. *The New Constitution and Nature of Attorneys*

The public service duties of attorneys derive not only from the nature of legal business but also from the new Constitution. The Constitution of Japan provides that "the freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people."<sup>69</sup> It thus mandates that the people themselves remain vigilant to maintain and

<sup>63</sup> See generally Practicing Attorney Law, *supra* note 6, art. 2, art. 3 para. 1, art. 72, art. 74. para. 2.

<sup>64</sup> [Translator's Note] *Id.*, art. 1.

<sup>65</sup> [Translator's Note] *Id.*

<sup>66</sup> [Translator's Note] The closest meaning in English is "nature as a public utility."

<sup>67</sup> [Translator's Note] The closest meaning in English is "public nature."

<sup>68</sup> KŌJEN 877 (Izuru Shimmura ed., 1998)

<sup>69</sup> Kenpō, *supra* note 47, art. 12.



promote their rights and freedoms.<sup>70</sup> Assistance of attorneys is essential in this “constant endeavor” of the people. In short, attorneys have a duty to support the people in their fight to realize their constitutional rights.

*B. Attorneys of the Future*

The function of attorneys in the future is clear when we review the Judicial Reform Council’s publications with the new Constitution and current attorney system in mind. As the Council stated:

For the people to have an autonomous existence in which they actively form and maintain various relationships, it is essential for them to obtain the assistance of the judiciary (legal professions) that can provide legal services tailored to their actual situations and needs, rather than one that mechanically relies on uniform administrative regulations without much thought. Just as doctors are essential to the people in maintaining their health, the judiciary (legal professions) should play the role of “doctors for the people’s social life.”<sup>71</sup>

We need to reflect on whether we have depended too much on relationships and too easily relied on the administration, and we need to work a little more consciously on the rules for independent people to coexist. As we work on such issues, there is a very high expectation placed on the role of the judiciary (legal professions).<sup>72</sup>

In twenty-first century Japanese society, people should shed the notion that they are “the governed” and stop relying too much on the government. They need to foster their sense of community, and build a more proactive attitude toward public matters. We also expect that with decentralization, the autonomy of local residents of a region and their participation in regional affairs will become increasingly important.<sup>73</sup>

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<sup>70</sup> *Id.*, arts. 11-13. This is what Rudolf von Jhering calls a “fight for rights”.

<sup>71</sup> Judicial Reform Council, *supra* note 2, at 133-34.

<sup>72</sup> *Id.* at 132-33.

<sup>73</sup> *Id.* at 130.

Considering that pre-war attorneys were mere “supplements” to a bureaucrat-run government, it is essential to firmly establish an attorney system as “partners in self-governance by the people,” based on the post-war reform principles. This means that attorneys must persist in the “protection of fundamental human rights and the realization of social justice” by siding with the people .

Attorneys should be a “reliable protector of rights” (a legal “doctor” for the individual) as well as a “trustworthy guardian of justice” (a legal “doctor” for the community). An attorney can be a true guardian of justice for the public only when she is a passionate protector of each individual’s rights. This is an essential part of the process of shifting away from the notion that the people are “the governed.”

To be a “reliable protector of rights,” attorneys must first of all be accessible to the public, everywhere in the nation. They must expand their activities outside the courtroom and improve the quality of litigation and non-litigation services. It goes without saying that they must also have specialties.

To be “trustworthy guardians of justice,” they must act in the public interest. They must justly handle dispute resolution and other matters in their everyday business of securing individual rights and interests while serving the public.

Some say that protecting an individual client and pursuing the public interest are contradictory. However, attorneys must pursue both interests, understanding that the “public” is made up of individuals. It is necessary to unify the interest of the individual client (as a “reliable protector of rights”) and of the public (as a “trustworthy guardian of justice”). Through such process, attorneys establish themselves in society as “partners in self-governance by the people.”

#### IV. REFORM OF THE ATTORNEY SYSTEM AND ATTORNEY RESPONSIBILITIES

##### *A. Introduction to Reform and Attorney Responsibilities*

Attorneys must work to remove the obstacles, including their own attitudes, to become “reliable protectors of rights” and “trustworthy guardians of justice.” To accomplish this, attorneys and bar associations must achieve self reform more rapidly and firmly, recognizing that reform of attitudes comes only through practice, that the purpose of judicial reform is not to benefit attorneys, but to benefit the public, and that such reforms will be difficult for attorneys.

When attorneys propose to self-reform under the rubric of judicial reform, they have the additional responsibility to maintain and develop the new system for the benefit of the citizens. In essence, judicial reform gives citizens authority over the judicial system, and attorneys carry the attendant responsibilities.

*B. Three Responsibilities*

*1. Service to the Public*

It is a clear social injustice to have a situation where economic reasons prevent access to justice. Attorneys, whose mission is to “realize social justice,” would fail to meet their responsibility if they do nothing about this situation. One of the most important goals of judicial reform is to expand citizens’ access to the judiciary. Whatever the shape of the reform that comes into being, devoted efforts by attorneys will be essential in making the system truly effective. Moreover, there will still be room for proactive efforts by attorneys and bar associations to improve the new system.

*2. Entrance into Public Employment*

As a practical aspect of their public service duty, attorneys have a responsibility to enter into public employment when they have an opportunity to do so. This allows attorneys to ensure that the public is properly served. On this issue, Article 30 of the Practicing Attorney Law is an obstacle to attorneys being able to fulfill these responsibilities, and therefore needs to be amended.

Judgeships are the most important positions in the legal field. The so-called Unified Bar System would modify how judges are selected, allowing attorneys to become full-time judges. Under this system, some attorneys continue with the ordinary legal practice, while others work as full-time judges.<sup>74</sup> The legal profession would thus consist only of attorneys.

*3. Training Successors*

One of the core responsibilities of attorneys and bar associations is to increase the number and quality of legal professionals available to citizens. The quality of legal professionals is an issue that affects the *raison d’être* of

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<sup>74</sup> Thus, judges cannot act as attorneys. See Practicing Attorney Law, *supra* note 6.

attorneys and bar associations. Therefore, securing well-qualified successors is a task that attorneys and bar associations should more proactively undertake as part of their authorized function.

On this issue, we have much to learn from the attitude and practice of the American Bar Association ("ABA"). The ABA has consistently regarded law schools as the fundamental system for training legal professionals. They have contributed to the development of this system by making suggestions for maintaining the quality of law schools and engaging in various other activities. The ABA has consistently taken the initiative in fostering the growth of American law schools. Japan's attorneys and bar associations must take a leading role in the basic planning, realization, maintenance, and development of the Japanese-style law school concept currently under consideration.

## V. DIRECTION OF ATTORNEY REFORM

### A. *Increasing the Population of Attorneys*

Having a large number of high quality legal professionals, especially attorneys, is a prerequisite for the judicial system to function as it should. It is also the basis for a free and democratic society. The current total population of judges, prosecutors, and attorneys together is approximately 20,000. This number cannot be deemed sufficient to meet the existing legal needs of citizens. An even more drastic change in attitude is required on the question of increasing the number of attorneys, if we are to place attorneys in every corner of Japan and in every area of the society in the twenty-first century. This is also necessary to create an open, dynamic, and high quality Japanese society through the efforts of attorneys to expand citizen's rights and freedoms, establish rules based on facts and reason, and maintain legal stability in local societies and communities.

In the past, the question of whether to increase the number of attorneys was more often than not discussed from the point of view of matching the number of people who pass the annual bar examination to the capacity of the Legal Research and Training Institute and other training facilities. However, in order to discuss this subject from the point of view of the future of Japanese society, we must first estimate how many attorneys would be needed in the future for each field of law, and then discuss how quickly we should reach that number. We need to have a full-scale discussion free from the framework of the existing training system.

There is a need for a strategy to greatly increase the number of attorneys in conjunction with an increase in the population of legal professionals as a whole, in order to give citizens access to attorneys, to meet their legal needs, and to reinforce the foundation of the Unified Bar System. At the same time, we should implement policies to ensure the quality of legal professionals, including a radical reform of the training system for legal professionals.

### *B. Reform of the Training System for Legal Professionals*

Attorneys and bar associations must fully collaborate with law schools in recruiting its faculty, developing educational methods, and administrating their curriculum. Attorneys and bar associations must consciously take the initiative in making suggestions so that law schools may satisfy the following criteria:

First, law schools must be able to produce many attorneys who are capable of handling litigation. Second, they must be locally oriented. The school must be set up and operated to produce attorneys who are rooted in local society and who contribute to the political and economic development of the local society. Third, law schools must train their students to start with the actual facts and solve problems by finding “what law should be” or “where justice lies” through the analysis of facts. Fourth, law schools must instill in their students convictions for protecting human rights and a spirit of public service.

### *C. Basic Outline for Reform of the Attorney System*

#### *1. Attorney Accessibility*

In order to solve the problem of uneven geographic distribution of attorneys, we should:

- At the initiative of bar associations, establish publicly run law firms and legal counseling centers throughout the nation to eliminate “attorney shortage” areas;
- Promote incorporation of law offices, forming of joint offices and offices that deal comprehensively with multiple areas of law, so that clients can get all kinds of legal services at one firm;
- Improve the legal fee system to make it easier for clients to understand; and

- Introduce measures to ensure the appropriateness of attorney advertisement, and to promote public disclosure of information about attorneys (possibly with some kind of evaluation system) in order to help clients choose appropriate attorneys.

## 2. *Large-Scale Expansion of Area of Practice*

- Amend Article 30 of the Practicing Attorney Law to enable attorneys to enter into public employment;
- Promote the employment of attorneys in international organizations, administrative agencies, the legislature, and private enterprise; and
- Remove obstacles to attorneys practicing in all areas of society.

## 3. *Improving the Quality of Service*

Attorneys need to improve their quality of service if they are to be a “reliable protector of rights.” In order to improve the level of specialization and other skills, attorneys and bar associations should take the initiative to:

- Reform the legal training system;
- Improve continuing legal education; and
- Introduce new modalities of operation, such as joint offices.

## 4. *The Public Service Obligation*

- Regard public interest activities (public service, public interest employment, and educating successors) as attorneys’ social responsibility; and
- Radically expand and reinforce such activities by appropriate amendments to the Practicing Attorney Law.

## 5. *Professional Responsibility and Self-regulation*

To reinforce professional responsibility, bar associations should:

- Put more emphasis on and develop teaching methods for legal ethics in the initial and continuing legal education;
- Develop an appropriate complaint procedure;
- Make disciplinary procedures transparent and speedy;
- Promote public interest activities (as mentioned above); and
- Strengthen attorney self-regulation and invite citizen input.

6. *Collaboration with Quasi-Legal Professions*

In order to meet the legal needs of citizens and protect their rights:

- Largely expand the attorneys' area of practice outside the courtroom;
- At the same time, establish close cooperation with quasi-legal professions such as judicial scriveners; and
- Remove the problem of accessibility to attorneys.

D. *Reform of Related Systems*

In relation to the reform of the attorney system, it is also necessary to:

- Reform the judicial system;
- Introduce a jury system or commission judge system;
- Reform civil and criminal procedure, especially with respect to discovery;
- Pass new laws on administrative law and consumer issues; and
- Speed up workers' compensation.