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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, PART II

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PART TWO: PARTICULARS¹

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

I. VIEWPOINTS FROM WHICH TO DISCUSS ATTORNEY REFORM

A. *Viewpoints from Which to Discuss Attorney Reform*

The article "Points at Issue in Judicial Reform"³ advances three viewpoints for discussing current judicial reform. The first begins with the

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¹ [This Article formed the basis of Mr. Nakabō's report at the thirteenth meeting of the Judicial Reform Council on February 22, 2000. It was originally published as the second part of a two part paper in SERIES JUDICIAL REFORM I: HOSŌ YŌSEI; ROSUKŪRU KŌSŌ [LEGAL PROFESSIONAL TRAINING: THE LAW SCHOOL CONCEPT] (2000). The first part of the paper was translated in Kohei Nakabō, *Judicial Reform and the State of Japan's Attorney System: A Discussion of Attorney Reform Issues and the Future of the Judiciary*, 10 PAC. RIM. L. & POL'Y J. 623 (2001). Trans.]

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

³ *Id.*

question: "Why is it that at this point in time, one hundred years after the promulgation of the Civil Code and fifty years after the adoption of the new Constitution, one of the main issues in restructuring the nation of Japan, second only to administrative reform, is fundamental reform of the judiciary, an attempt to inject fresh energy into the judicial system?" It is because we are keenly aware that we cannot enter the twenty-first century society without tackling the fundamental issue of how to make Japanese law the "flesh and blood and the foundation of the nation." This nation has been facing this challenge for one hundred thirty years, ever since the birth of the modern nation. This viewpoint seeks the kind of judicial reform necessary to achieve our fundamental goal of making Japanese law the "flesh and blood and the foundation of the nation."

The second viewpoint is as follows: "Spurred on by a sense of urgency, Japan is planning and implementing political reform, administrative reform, decentralization, deregulation and other economic reform in order to bring back to this country its rich creativity and energy. These reforms all spring from the notion that the source of national development in the twenty-first century lies in each Japanese citizen shedding the 'governed mentality,' helping one another and participating in building a free and fair society as autonomous and socially-responsible governing members. Today's judicial reform is the last key to this endeavor." In other words, this viewpoint seeks the kind of judicial reform that would enable people to build a free and fair society of autonomous governing members.

The third viewpoint is as follows:

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 people's social life."⁴

In other words, this viewpoint seeks the kind of judicial reform necessary for legal professionals to play the role of "doctors for

⁴ *Id.* at 133-34.

people's social life." These viewpoints should also serve as the starting point for attorney reform.

B. The Fifty Post-War Years and Recent Trends

As already pointed out, attorneys are no longer merely a "supplement" to a bureaucratic legal system, but are "partners in governance by the people." This evolution is a result of a complex set of processes occurring simultaneously, including: (a) an increase in the magnitude and visibility of the conflict between the people's interest and the *ancien régime* of legal society maintained by structural elements that remained in place after World War II; (b) a gradual spread of efforts by attorneys, most born after the war, to overcome these structural problems; and (c) a progressive shift in mindset, such that attorneys more often truly serve the public and a democratic society. The history of attorneys and bar associations making various efforts for "judicial reform" is by no means recent. However, in the last ten years (1990-2000), judicial reform activity by the Japan Federation of Bar Associations ("JFBA") has reached a new qualitative level.

Several qualitative changes have occurred. First, the movement has integrated the various actions undertaken by attorneys and bar associations during the first forty postwar years, and organized the issues with the objective of achieving a "judiciary for citizens." Second, the movement sought collaboration with citizens' movements to help develop the concept of a "judiciary for citizens." Third, attorneys and bar associations made concrete proposals with achievable goals. Fourth, attorney reform (self-reform) was included as an essential part of judicial reform.

Since 1990, the JFBA has made three declarations on judicial reform and has been working to achieve an accessible judiciary that citizens can easily use and understand. Regrettably, however, historical and structural problems from the Meiji period have proven difficult to overcome.

Nevertheless, the current judicial reform movement, symbolized by the establishment of the Judicial Reform Council, is the result of the JFBA's efforts over the past ten years. The JFBA's efforts paved the way for creation of the "citizens' judiciary" and will also facilitate its successful operation. However, structural barriers to reform still exist, and attorneys and bar associations must continue to actively pursue reform measures.

II. THE HUMAN RESOURCES SIDE OF ATTORNEY REFORM: ATTORNEYS SHOULD PLAY A GREATER ROLE IN THE JUDICIARY

Ensuring the existence of a large number of qualified attorneys is a prerequisite to a fully functioning judicial system, as well as the foundation for a free and democratic society. Therefore, attorney reform aims to establish a solid attorney bar as “partners to self-governance by the people.” This can be accomplished by locating bar associations in every corner of society, so that they may be “reliable protectors of rights” (protection of fundamental human rights: legal “doctors” for the individual) and “trustworthy guardians of justice” (realization of social justice: legal “doctors” for the community). To this end, a large increase in the number of attorneys is needed. To enable attorneys to fulfill their social responsibilities and guarantee that subsequent generations of attorneys are of sufficient quality to fulfill their roles, the training system for legal professionals must be improved and areas of practice must be expanded.

A. *Increasing the Number of Attorneys*

1. *Background*

a. *Shortage of attorneys*

Over the last thirty-five years the attorney population has increased by roughly ten thousand, or 142%. In 1964, the Special Judicial System Examination Committee reported a population of 7134 attorneys, a number that has since grown to 17,183. However, even putting aside the United States of America with approximately 920,000 attorneys, Japan has fewer attorneys than the United Kingdom (approximately 80,000 attorneys), Germany (approximately 100,000 attorneys) and France (approximately 30,000 attorneys), all of which have smaller populations and GDPs than Japan.⁵ The ratio of the total population to the number of attorneys in Japan is still high, at 7319 persons per attorney.⁶ This is 3.7 times that of France (at 1978), 8.7 times that of Germany (at 841), 11.3 times that of the United

⁵ Judicial Reform Council, Dai Jūsan Kai Shingikai Sankō Shiryō No. 24 [Reference Material for the Thirteenth Meeting] (Feb. 22, 2000) (on file with author) [hereinafter Thirteenth Meeting].

⁶ The population of Japan was 126,486,000 as of 1998. Japan Information Network, *Change in Total Population (1984-1999)*, <http://jin.jcic.or.jp/stat/stats/01CEN21.html> (last visited on Nov. 5, 2001). See also SAIBANSHO BINRAN [HANDBOOK ON COURT]. [The author does not cite the author of HANDBOOK ON COURT or page number. Trans.]

Kingdom (at 647), and 20.4 times that of the United States (at 358). Therefore, the number of attorneys in Japan is relatively small. Many people are demanding a large increase in the number of attorneys, judges, and prosecutors.⁷

Historically, Japan's judicial policy has unduly restricted the number of both attorneys and legal professionals in general. Attorneys acquiesced to this policy. These factors have hampered public accessibility to attorneys and the judiciary and have led to Japan's system being called a "small judiciary."

b. Recent trends in relation to reform of the Japanese bar examination

Recent discussion about increasing the number of attorneys has focused on increasing the number of successful applicants to the Japanese bar examination. Note, however, that lowering the age of successful applicants rather than increasing the number of attorneys or legal professionals was the centerpiece of the discussion.

Since the foundation of the "Conference on Basic Issues of the Law Profession" in 1987, discussion has been ongoing about the plan proposed by the Ministry of Justice and the Supreme Court to reform the Japanese bar examination to favor younger applicants. In proposing the system to favor younger applicants, they asserted that a mere increase in intake would not sufficiently lower the age of successful applicants.

As a result of extensive discussion, the JFBA, the Ministry of Justice and the Supreme Court reached a "Basic Agreement on the Reform of the Bar Examination System" in 1990. In this agreement, it was decided that the number of successful applicants would be increased to 600 in 1991 and 1992, and to 700 after 1995. It was also agreed that a quota system favoring newer applicants would be conditionally introduced and that the Council for Reform of the Training System of Legal Professionals ("Training Reform Council") would be established to draft a plan for radical reform of the legal training system.

A majority of the Training Reform Council members advocated an increase in the number of successful applicants to 1500 per annum and a drastic shortening of the training period. A minority opposed the shortening of the training period. They conceded to an increase to 1000 successful

⁷ Thirteenth Meeting, *supra* note 5, at No. 23; see also Judicial Reform Council, Dai Jūni Kai Shingikai Sankō Shiryō [Reference Material for the Twelfth Meeting] Nos. 2, 3 (Feb. 8, 2000) (on file with author) [hereinafter Twelfth Meeting]. Between 1964 and 1999, the number of judgeships increased by 20%, from 1737 to 2090. The number of prosecutor positions increased by 22% from 1067 to 1304.

applicants per annum but held that any further increase should await the strengthening of the "legal infrastructure," i.e., a better legal aid program and a larger number of judges and prosecutors.

The JFBA took the minority position. Needless to say, the minority was not against the increase *per se*. It opposed the shortened training period because it believed that an increase beyond 1000 successful applicants per annum should go hand in hand with overall reform of the legal infrastructure, including reform of the training system and legal aid, so as to maintain the quality of the legal profession.

The JFBA opposed the quota system, arguing that circumstances had changed since the basic agreement was negotiated. The quota system was nevertheless implemented in 1996. Later, in trilateral⁸ discussions with the Training Reform Council, the JFBA proposed the Intern Attorney System in which attorneys and bar associations would be actively involved in the training of legal professionals. In October 1997, the three parties⁹ agreed to increase the number of successful applicants to the examination to 1000 per annum, to shorten the training period to one and a half years from 1999, and to postpone discussion of a further increase in the number of successful applicants to around 1500 until at least Fall 2002. Additionally, they decided to continue the discussion on whether to abolish the quota system. The JFBA also reiterated its position that a substantial increase in the number of attorneys should not be discussed independently of other reforms, but rather, solely in the context of overall judicial reform.

2. *Basic Approach to the Attorney Population Issue*

a. *Large-scale increase in the number of attorneys*

The existence of a sufficient number of quality legal professionals, notably attorneys, is a prerequisite for a fully functional judicial system. It is also the basis for a liberal and democratic society. In the twenty-first century, attorneys should be placed in every corner of Japan and in every area of society, including local and national administrative agencies, legislatures, international organizations, private enterprise, and non-profit organizations.¹⁰ Their efforts to expand the rights and freedoms of citizens, establish rules based on facts and reason, and secure legal stability in local communities, as well as their response to globalization, will help create an

⁸ The Ministry of Justice, the Supreme Court and the JFBA were the parties.

⁹ *Id.*

¹⁰ For a discussion on the issue of how to place attorneys nationally, see *infra* Parts II.B, III.

open, energetic, and high quality society. Many have pointed out that, to prepare for the future, a bold change in approach to the attorney population issue is needed, along with development of other aspects of legal infrastructure.¹¹

b. Relationship with professional legal training

In the past, discussions on increasing the number of successful applicants to the Japanese bar examination have focused on the concern that it would entail a shorter training period or a dilution of the training program, given the limited capacity of the Legal Research and Training Institute and other practical training facilities.¹² In other words, it was argued that the increase in the quantity of attorneys would come at the expense of the quality of the profession.¹³

However, if we are to look to the future of Japanese society, discussion of increasing the attorney population must start by estimating the number of attorneys that will be needed in each area of law, and then move to an analysis how quickly this number should be reached. The discussion must disregard the limitations of the existing training system. The strategy for reaching the target population can then be researched and discussed in tandem with reforms—perhaps as radical as a new law school system—designed to ensure the maintenance of quality.

3. Provisional Calculation of the Desired Number of Attorneys

To secure citizens' accessibility to attorneys, meet their legal needs, and strengthen the foundation of the Unified Bar System, the number of legal professionals, including attorneys, must be increased. There are several ways to calculate the optimal attorney population. However, each method has its theoretical deficiencies and, thus, none of them are perfect. Combining the various methods may provide a credible figure.

¹¹ Twelfth Meeting, *supra* note 7, at 30-69.

¹² Hōsō Yōsei Seido Kaikaku Kyōgikai [Council for Reform of the Training System for Legal Professionals], *Hōsō Yōsei Seido no Gutaiteki Kaikaku ni kansuru Iken* [Opinion on Concrete Reform of the Training System of Legal Professions], in HŌSŌ YŌSEI SEIDO KAIKAKU KYŌGIKAI IKENSHO [OPINION OF COUNCIL FOR REFORM OF THE TRAINING SYSTEM OF LEGAL PROFESSIONALS] (1995). [The author does not cite the page number. Trans.] See also Tokuji Izumi et al., *Hōsō Yōsei Seido no Ayumi to Shōrai no Tenbō* [Path of Training System of Legal Professions and Outlook for the Future], 984 JURISUTO 162, 170-71 (1991).

¹³ Council for Reform of the Training System of Legal Professionals, *supra* note 12; see also Izumi, *supra* note 12, at 170-71.

a. *Comparative analysis of population/attorney ratios*

This method calculates the population/attorney ratio in other countries and then extrapolates the data to Japan. Japan currently has a ratio of 7319 persons per attorney.¹⁴

- To reach the same ratio as France, 65,203 attorneys would be needed, 3.7 times the current number.
- To reach the same ratio as Germany, 150,767 attorneys would be needed, 8.7 times the current number.
- To reach the same ratio as the United Kingdom, 196,419 attorneys would be needed, 11.3 times the current number.
- To reach the same ratio as the United States, 438,078 attorneys would be needed, 20.4 times the current number.¹⁵

Significantly, this method does not take into account the social status and actual function of attorneys in each nation.

b. *Comparative analysis of population/attorney ratios within Japan*

In view of the need to achieve equal access to attorneys everywhere in Japan, this method uses a “model population/attorney ratio.” The number of attorneys required to achieve that ratio nationwide is then calculated.

1. National Average Model: The national population/attorney ratio is 7319 persons per attorney.¹⁶ To place attorneys so that all bar associations satisfy this ratio, 24,291 attorneys would be needed. (The number of attorneys in Tokyo and Osaka would remain the same because these areas already have a larger ratio than the national average.)
2. Osaka Model: To place attorneys evenly throughout Japan so that the national average equals that of Osaka (3743 persons per attorney), 38,355 attorneys would be needed.

¹⁴ HANDBOOK ON COURT, *supra* note 6.

¹⁵ If you divide 438,078 by 17,283 (current attorney population in Japan), then the number will be 25.3 times rather than 20.4 times. The figure of 20.4 times is more accurate if you divide 438,078 by 20,677 (current population of attorneys, judges and prosecutors in Japan). Trans.]

¹⁶ HANDBOOK ON COURT, *supra* note 6.

3. Tokyo Model: To place attorneys evenly throughout Japan so that the national average equals that of Tokyo (1,532 persons per attorney), 82,564 attorneys would be needed.

c. *Demand analysis*

This method calculates the number of attorneys required to meet an independently calculated level of demand for legal services.

i. *Using the results of surveys*

According to survey results obtained by the Training Reform Council and Legal Aid, twenty to twenty-seven per cent of adults have had a legal problem in the last ten years.¹⁷ This means that, on average, two per cent of the adult population had legal problems during a given year. The population of adults in Japan as of October 1, 1998 was 99,619,000. Two per cent of that figure is 1,992,380.¹⁸ Thus, as many as 2,000,000 people experienced some new legal problems in that year.¹⁹ If we assume that there are 2,000,000 legal problems annually in Japan and that an attorney accepts fifty new cases annually (including legal counseling), then the required number of attorneys would be 40,000.

ii. *The number of attorneys required for a fully-functioning on-call attorney system*

There were approximately 100,000 arrests in 1998. If half of the attorneys serve as on-call attorneys for four cases a year, then 50,000 attorneys would be needed.

iii. *Population of legal professionals as a pool for judges under the Unified Bar System*

Under the Unified Bar System, the majority of judges would come from the attorney ranks. For the Unified Bar System to run smoothly, the

¹⁷ The Training Reform Council conducted a survey in 1994 of 3,000 persons selected nationwide, and obtained replies from 2238 of them (74.6%). Legal Aid conducted a survey in 1997 of 3000 persons selected nationwide, and obtained replies from 2205 of them (73.5%).

¹⁸ Ikuo Sugawara, Tsūsanshō Kigyō Hōsei Kenkyūkai Shiryō [Reference Material for Workshop on Enterprise Law by the Ministry of Trade and Industry] (Jan. 25, 2000) (on file with author).

¹⁹ *Id.*

number of attorneys must substantially exceed that of judges. The following table shows the proportion of judges to attorneys in the United States and the United Kingdom, both of which employ the Unified Bar System.²⁰

	Judges	Attorneys	Ratio
United States	30,900	923,834	1 to 29
United Kingdom	3444	81,111	1 to 23

Nearly ninety percent of judges in the United Kingdom used to be barristers. Moreover, the number of part-time judges exceeds twice that of full-time judges. Therefore, this situation does not lend itself to a simple judge-to-attorney comparison. The following table shows the number of judges in the high courts of England and Wales as of May 1999.²¹

	Full-time	Part-time	Total
Total	655	1389	2044
Barristers	580	1232	1812
Solicitors	75	157	232

There are approximately 9000 barristers. Thus the ratio of barristers who become judges, including part-time judges, is one to five, compared to the current judge-to-attorney ratio in Japan of one to 8.2.

Even though the United States and the United Kingdom nominally share the Unified Bar System, the two systems are in fact quite different. Therefore, they do not provide conclusive guidance for Japan. Japan's Unified Bar System must be uniquely Japanese, with the judge/attorney ratio reflecting the design of the system. For example, the JFBA is studying a proposal to launch the Unified Bar System in 2010 and to increase the number of judges to 3000 by around 2020, after which it will remain at that level indefinitely.²² Likewise, if the number of new legal professionals is 2000 per year beginning in 2003, the attorney population would reach 60,065 by 2028. Thus, by 2028 there would be 3000 judges for every

²⁰ HANDBOOK ON COURT, *supra* note 6. [The author does not cite the page number. Trans.]

²¹ Masako Kamiya, GEKKAN SHIHŌ KAIKAKU [MONTHLY JUD. REFORM] (Nov. 1999). [The author does not provide the title or the page of the article cited. Trans.]

²² Tatsuo Ogawa, "Nijusseiki no Shukudai: Hōsō Ichigen Seido no Jitsugen he ["Homework of the Twentieth Century: Aiming at a Unified Bar System], 610 JIYŪ TO SEIGI 50, 59 (2000); see also Hiroshi Saitō, *Shihō Seido Kaikaku Shingikai no Gendankai to Kitaisurumono* [Current Stage of the Judicial Reform Council and Hopes for the Future], 887 HORITSU JIHŌ 54, 59 (2000).

60,065 attorneys, a ratio of one to twenty, which is close to the British ratio (including solicitors).

However, the Unified Bar System under consideration by the JFBA is designed to function with only 1500 new legal professionals per year.²³ To achieve a large increase in the number of attorneys while avoiding the commercialization of attorney practice, a phenomenon apparently occurring in the United States, a tentative goal may be to expand the attorney population up to 50,000 or 60,000.

B. Creating Social Responsibility Based on the Public Utility of Attorneys

1. The Characteristics of Attorneys

Attorneys have three functions. The first is to protect the rights and freedoms of their clients. This is their function as representatives of parties. The second is to perform activities in the public interest. This is why the Constitution refers to attorneys.²⁴ This is their public utility function. The third is their function as citizens. Attorneys are in business to make a living. This is their business function.

Harmonizing these functions is a major challenge. As a result of the policy of "creation of a society that does not need attorneys," pre-war attorneys were not strong in their function as representatives of parties. They had a distorted public function, which was more of a "government-utility" function, and their business basis was weak.

Currently, there are two views on how to build up the functions of future attorneys. One is to emphasize the party representative and business functions and de-emphasize the public utility aspect. Under this view, the attorneys' responsibility is zealous protection of the rights and interests of their clients, thereby "protecting fundamental human rights and achieving social justice."²⁵ Proponents of this view oppose the emphasis on the public utility function out of fear that "government interest" is lurking behind the "public interest." The degree of suspicion regarding the public utility function varies among attorneys. For example, one extreme group regards attorney services as no different from any other service industry (attorney services as a business), to which general market principles apply.

²³ See generally Ogawa, *supra* note 22, at 59.

²⁴ Nihonkoku Kenpō [Constitution of Japan], art. 77, para. 1, art. 37, para. 1.

²⁵ Bengoshi-hō [Practicing Attorney Law], No. 205 art. 1, para. 1 (1949) (Japan) [hereinafter Practicing Attorney Law].

A second view emphasizes the party representative and public utility functions at the expense of the business function, which accordingly should be somewhat restricted. Under this view, the mission of attorneys to “protect fundamental human rights and achieve social justice”²⁶ includes both the party representative and public utility functions. Every aspect of attorneys’ work, including protection of an individual’s rights and interests, must be done in furtherance of “social justice.” Thus, attorneys have social responsibilities based on their public utility function. Fulfilling this responsibility entails some restriction of the business function.

Which viewpoint is superior? For attorneys, the former view, which emphasizes the party representative and business functions, may be simpler and less onerous. Some attorneys may very well feel reluctant to accept social responsibility at the expense of their business interests. However, the guiding criteria are the expectations of citizens and society. It follows that attorneys should gladly make sacrifices in response to requests from citizens and society. Thus, attorneys must take the latter view and pursue both the party representative and public utility functions, allowing their social responsibility to restrict business operations.

2. *The Public Utility Function*

a. *The party representative function and public utility function*

In considering the attorneys’ public utility function, we must distinguish between “*Shi*” (Private), “*Kō*” (Public), and “*Kan*” (Government). What does “*Kō*” mean? One meaning of “*Kō*” is the same as “*Kan*,” that is: “Imperial Court; Government; Nation.” The other meaning is the aggregation of individuals, or “Society; Among people; The public.”²⁷ It goes without saying that “*Kō*” in “*Kō-eki-sei*” (Public utility) or “*Kō-teki Seikaku*” (public character) of attorneys means “the public” or “the community.”

The “public” in attorneys’ “public utility” or “public character” does not refer to the government, but rather to the community. Attorneys must be seen to stand on the side of individuals, society, and local communities as they fight against the authorities for their freedom and democracy. In this sense, the public utility function does not conflict with the party representative function. In fact, we must not let it conflict. Attorneys can

²⁶ *Id.*

²⁷ KŌJEN 877 (Izuru Shimamura ed., 1998).

protect the rights and interests of clients in a real sense only by following “social justice,” or the societal rules of the community. Thus, in the United States, where there is much emphasis on the social responsibility of enterprises, corporate attorneys are expected to give advice both on the social ramifications and on the legality of an enterprise’s activities.

It is obvious that citizens are looking to attorneys to be “reliable protectors of rights.” Attorneys must brush up on their function as representatives of parties. Moreover, as “reliable protectors of rights,” they must exist in every corner of the nation within the reach of the public. They should also expand their activities outside the courtroom, improve the quality of their litigation and non-litigation services, and hone their expertise in specific fields.

Citizens also look to attorneys to be “trustworthy guardians of justice.” It was argued in “The Points at Issue in Judicial Reform” that the Japanese people should stop regarding themselves as “the governed.”²⁸ What does it mean for the people to stop regarding themselves as “the governed”? It means that the people should actively create a liberal, democratic, and high-quality society through their own will and responsibility. In that sense, it is the people—the individuals, society, and local communities—who carry the basic responsibility of working for the good of the public. It means that the people themselves, rather than the authorities, are responsible for the protection of public interests and the promotion of social justice.

In this context, the role of the attorney in the society of tomorrow will be to serve the public and the community. Attorneys will play a public utility role by helping local communities create their own autonomous societies. Through such roles, attorneys must become deeply rooted in society as “parties of self-governance by the people.” Only when they are free from governmental influence can attorneys zealously fight for the rights and freedoms of individuals and truly become “partners of self-governance by the people.” Thus, attorneys must be free of control by and pressure from the authorities. Accordingly, attorneys’ self-governance will become increasingly important.

In summary, attorneys of the future must understand that the word “public” in “public utility” means “the community.” They are expected to integrate their party representative (“reliable protectors of rights”) and public utility (“trustworthy guardian of justice”) functions.

²⁸ [Judicial Reform Council, *supra* note 2, at 132-34. Trans.]

b. Attorneys' social responsibilities and professional activities

Legal professionals who are worthy of participating in the creation of a liberal and democratic society are free professionals who can serve the public in their activities. "Free" means that they are free from government authority, not from the public or the public interest. Attorneys are private and autonomous businesspersons. However, their social responsibilities inevitably impose a limit on their business operations. Such limitations occur in two ways: one occurs when the rights and interests of a particular client conflict with those of society; the other occurs when the social responsibilities of attorneys create economic burdens. Their public utility function thus restricts their freedom as businesspersons.

Attorneys must nevertheless walk this path. Facing this challenge constitutes the core of attorney reform. As stated by the JFBA in December 1999, the challenge is "[t]o leave the position of a mere free entrepreneur." To better clarify the idea that attorney reform will entail great sacrifice on the part of attorneys, I propose the following amendment to Article 1, Paragraph 1 of the Practicing Attorney Law:

(1) An attorney is entrusted with a mission to protect fundamental human rights and achieve social justice.

(2) According to the mission specified in the preceding paragraph, an attorney shall, by faithfully performing his duties, fulfill his social responsibility, and endeavor to promote the public interest, maintain the social order, and improve the legal system.²⁹

3. Clarification of Social Responsibilities

a. Three responsibilities

Attorneys have many social responsibilities. The following are specific social responsibilities that need emphasis in relation to current judicial reform. These three responsibilities are specifically mentioned because, if attorneys are to propose judicial reform, they must also bear the responsibility of maintaining and developing the reformed system for the

²⁹ [The proposal adds the underlined parts to the current provision. Trans.] Cf. Practicing Attorney Law, *supra* note 25, art. 1.

benefit of all citizens. By proposing judicial reform, attorneys effectively promise to society that they will become the key players of the post-reform judiciary. It is an official promise, which gives them an *ipso facto* responsibility of performance.

(1) *Service to the public*

- Attorneys have a responsibility to engage in a wide variety of public interest or pro bono activities, such as the On-Call Attorney System, legal counseling and legal aid cases.

(2) *Public employment*

- Attorneys have a responsibility to accept judgeships and other public employment, including public law school professorships, when such offers are made.

(3) *Training successors*

- Attorneys have a responsibility to train their successors so as to place high-quality successor-attorneys in every corner of society.

It goes without saying that public service is a social responsibility that must respond to the challenges of judicial reform; that is, the challenge of overcoming the accessibility problem and disseminating the Rule of Law to every corner of society. For example, even with a radical expansion of the legal aid system, the financial viability of individual legal aid cases would not immediately improve. Nor would such an expansion completely solve the accessibility problem. Only through a steady buildup of pro bono and various other activities can the legal aid system be developed and the accessibility problem be overcome. Since a majority of Japanese have access problems of some kind, it is impossible to establish the attorneys' *raison d'être* in society without actively working to solve this problem.

Reform requires acceptance of public employment as a social responsibility to ensure that the government and its agencies exercise public authority consistent with the Rule of Law. In moving to a regime where attorneys occupy public posts, attorneys have the social responsibility to ensure a smoothly functioning public employment system. Therefore, if an

attorney is offered a judgeship or a professorship at a national or public law school, the offer must be accepted.

Additionally, improving the quality of the legal training system for new attorneys would help fulfill the obligation of placing high quality attorneys in every corner of society. It would also lead to improvement of the quality of the entire attorney bar. The attorney bar should openly welcome this. The training of successors is thus a priority issue for the bar.

However, the creation of "more legal professionals with better quality" will not happen on its own. On the contrary, the participation and contribution of attorneys as educators or instructors is essential, whether it be in the area of legal education or practical training. Only then can the goal of this reform, the development and maintenance of the new training system to "produce more legal professionals of better quality," be achieved.

b. Significance of the social responsibilities

The term "social responsibility" stands for the proposition that attorneys should not evaluate public sector work from the viewpoint of economic viability or profitability. For example, taking a full-time position as a judge or as a law school professor is a considerable sacrifice of an attorney's business activities, including a substantial loss of income. This cannot be an excuse for declining the position. Attorneys must fulfill these social responsibilities in the absence of a compelling excuse.³⁰ Bar associations should take necessary measures to enable attorneys to fulfill these social responsibilities.

The other reason for using the term "social responsibility" is that it is neither a right nor a privilege. It is not something that attorneys can waive. Nor do attorneys have a right to demand public employment. An attorney simply has the responsibility to accept public employment when an offer is made, having been deemed the right person for the job by bar associations and other organizations, and ultimately, by citizens.

These responsibilities are essential elements of the attorneys' duties. Although the above assertions are self-evident, in order to clarify the fact that these are social responsibilities, a new Article 24-2 should be added to the Practicing Attorney Law, which addresses the "Duty Concerning the Nomination of Judges," as follows:

³⁰ Bar associations, as well as other interested parties, have from time to time asserted attorneys' responsibility to accept judgeships. For example, the Commission for Changing the Judicial System, established in 1945, proposed a law specifying just such a responsibility.

(1) The Japan Federation of Bar Associations has a duty to nominate candidates for judges in numbers required by the Committee on Nomination of Lower Court Judges set up by the Law of Courts (hereinafter Nomination Committee).

(2) An attorney who receives a nomination from the Nomination Committee for registration in the lower court judge candidate list as provided in the Law of Courts shall not refuse to be appointed a judge without a justifiable reason.

(3) The bar association to which the attorney belongs shall examine whether there is a justifiable reason for refusal. The Japan Federation of Bar Associations shall report the result of the examination to the Nomination Committee.³¹

4. *Building Infrastructure for Fulfillment of Social Responsibilities*

Public service must be affirmed as a fundamental responsibility of attorneys, and the requisite infrastructure for fulfilling this responsibility must be built. How should bar associations build this infrastructure? Which national or social systems need reform?

a. Reform of the training system

In order to produce attorneys who are conscious of their social responsibilities and who will actively fulfill them, the legal training system, including university education, must be drastically reformed. "Attorneys are not just service sector businesspersons engaged in the pursuit of profits." This social consensus constitutes the most basic foundation for fulfillment of social responsibilities.

b. Abolition of the restriction on public employment of attorneys

To encourage attorneys to accept public employment, the legislature should amend Article 30 of the Practicing Attorney Law to enable attorneys to simultaneously occupy public posts and work as attorneys.

³¹ [The proposal adds underlined parts to the current Practicing Attorney Law, *supra* note 25. Trans.]

c. *Reform of public employment*

The objective of having attorneys occupy public positions is to make the exercise of government authority more responsive to the needs of citizens and members of local communities. An ancillary objective is to ensure that the Rule of Law pervades the entire process. This can be achieved by giving public positions to those who have ample practical experience working in society alongside, citizens, protecting their rights and interests and striving for social justice. Thus, the public employment system should be reformed to extract the greatest possible benefit from the use of attorneys. For example, the judicial personnel system must be less bureaucratic.³²

d. *Measures to support attorneys in fulfilling their social responsibilities*

Bar associations must take measures to support the public interest activities of member attorneys. First, bar associations should commend members' public interest activities. For example, such activities should be an element in the attorney evaluation system. They should also be an important factor for nominating candidates for judgeship.³³ Second, they should reduce the burdens, economic and otherwise, of public interest work. Some taxation measures are also called for.

C. *Reform of the Training System for Legal Professionals*

1. *Issues*

The current training system, including university law courses, is not producing sufficient quantities of capable legal professionals. On the contrary, it acts as a bottleneck. There are four reasons for this malfunction.

First, the discussion on increasing the number of attorneys has been predicated on the limited capacity of the Legal Research and Training Institute and other training facilities. This approach is totally backwards.

Second, the Legal Research and Training Institute of the Ministry of Justice did not update its curriculum after the war; instead, it simply added

³² We must also establish a complaint process as well as clarify the judges' compensation system.

³³ The list of candidates would contain an evaluation of each attorney's professional devotion to public interest activities, experience, diligence, honesty, objectivity, respect from local community, incorruptibility, health and any prejudice, based on the results of a survey of fellow attorneys, courts, prosecutors, and clients.

attorney training to the pre-war training system of associate judicial officers.³⁴ As a result, the subject matter of the training and the administration of the Institute presuppose that trainees will enter practice as judges, prosecutors, or attorneys. Because of this system, for aspiring judges the training itself becomes a recruiting ground. The current system does not nurture critical thinking skills, which are essential for legal professionals, including judges. The current training system is nowhere near sufficient, in terms of length of training and facilities, for its stated purpose of training high quality attorneys.³⁵ Moreover, the education at the Legal Research and Training Institute focuses on “figuring out the facts through analysis of abstract rules.” This does not constitute good training for attorneys.

Third, the Japanese bar examination, ostensibly a qualification examination, is in fact a competitive examination. Thus, it is an extremely tough examination to pass, and consequently, has led to the separation of university legal education and the training of legal professionals. As a result, a considerable number of those who pass the examination lack a foundation of general, basic knowledge, including legal theory.

Fourth, legal education at universities primarily takes the form of large classroom lectures on theories of interpretation of abstract rules. Attorneys are not trained to begin their analysis with the facts of a particular case.

2. *Basic Issues Concerning Reform of the Training System*

A change over to a “judiciary for citizens” radically transforms the social functions of the attorney. In order to adapt, attorneys and bar associations must improve the attorney training system so that new attorneys will be up to their new tasks. This improved system must include basic legal education, professional training, and continuing legal education. The training process must be designed to satisfy society’s demand for a steady supply of lawyers with a sense of social responsibility, a spirit of public service, high professional ethics, broad knowledge of the sciences, deep insight into human nature, solid legal knowledge, analytical skills, and creativity.

From this point of view, the deficiencies of the Japanese bar examination and training system are painfully apparent. The lawyer training

³⁴ Nobuyoshi Nishitani, *Shihō Shūshū ni okeru Saibankan Zō* [*Image of Judges in Judicial Training*], in SAIBANKAN RON [DISCUSSION ON JUDGES] (Nihon Hoshakaigakkai [The Japan Association of Sociology of Law] ed., 1973). [The author does not cite the page number. Trans.]

³⁵ For example, attorney trainers are not full-time trainers devoted to working at the Institute.

system of the future must go beyond the existing framework. It must look to the possibility and advantages of having educational institutions handle attorney training,³⁶ and must also consider integration of university education and practical training, with cooperation between university professors and practitioners. We should also look to local and civic support for this endeavor (academic freedom, freedom of education, and separation of educators and personnel officers).

Attorneys and bar associations must assist law schools in securing faculty, developing educational methods, and administrating the curriculum. Attorneys and bar associations must ensure that law schools satisfy the following criteria:

First, the purpose of the education must be the training of attorneys. The law schools must meet the social need of placing highly qualified attorneys and other legal professionals in every corner of society. They must produce legal professionals who can handle high-level litigation practice and also meet the demands for legal services outside of the courtroom in various areas of law.

Second, law schools must be appropriately located nationwide so as to produce lawyers who can serve the local community. Each local community should initially be involved in the foundation and operation of its law school.

Third, law schools must teach their students to begin their analysis with the facts, find "what the law is," and determine "how to achieve justice" through analysis of the facts.

Fourth, the curriculum should help students acquire a spirit of public service and professional ethics, obtain a high level of knowledge, and master both analytical skills and basic practical skills. There should be an appropriate system for evaluating the curriculum and teaching methods.

Finally, the door to law schools should be wide open. The schools should establish scholarships and provide evening courses so that prospective students are not economically discouraged. The schools should also have well-equipped libraries so that students can pursue their studies with a smaller financial burden.³⁷

³⁶ Academic freedom, freedom of education, and separation of educators and personnel officers are good examples.

³⁷ Thirteenth Meeting, *supra* note 5, at No. 34 (explaining the role of attorneys and bar associations regarding the training system for legal professionals in major foreign nations).

D. *Expansion of Areas of Practice*

1. *Issues*

Attorneys should play a key role in establishing the Rule of Law in the twenty-first century. Experts have pointed out that there are many potential areas of practice for attorneys well-versed in the Rule of Law, such as administration, legislation, international organizations, private enterprise, and non-profit organizations.³⁸

2. *Direction of Reform*

To expand legal practice to these areas, attorneys must be well-versed in administrative law so that they may serve as administrative inspectors, auditors, or legislative assistants, free from the restrictions of bureaucrats. Legal education would become much more attractive if, for example, law professors at national universities taught from actual experience earned while acting as public defenders in court or at shareholder's meetings. However, attorneys are currently prohibited from taking paid public posts under Article 30 of the Practicing Attorney Law, which provides that:

(1) A practicing attorney shall not concurrently assume any paid public post; provided, however, that this shall not apply in the case where he assumes the post of the President or Vice President of the House of Representatives or the House of Councillors, Prime Minister, Minister of State, Deputy Secretary-General of the Cabinet, Parliamentary Vice-Minister, secretary to the Prime Minister or secretary to the Minister of State, or where he becomes a member of the National Diet or assemblies of local public entities, a chief of local public entities or any other elected public post, or where he becomes a public servant in which full-time service is not required, or performs functions relating to any specific matter on the request of the government or public offices.

(2) Where a practicing attorney concurrently assumes a public post in which full-time service is required in accordance with

³⁸ Twelfth Meeting, *supra* note 7, at No. 2.

the provision of the preceding paragraph, he shall not practice law while performing such public duty.

(3) ***

Therefore, Article 30, Paragraphs 1 and 2, should be amended by deleting Paragraph 1, thus abolishing the restriction on attorneys entering public employment. Paragraph 2, which prohibits attorneys from practicing while occupying full-time public posts, should be amended to allow exceptions where the laws and regulations related to the public post contain no such prohibition and where the attorney's bar association consents. The amended Article 30 would thus provide as follows:

(1) An attorney shall not practice as an attorney while occupying a full-time public post. However, this does not apply to matters for which the attorney's bar association gives permission, and where the laws and regulations related to the public post do not prohibit work as an attorney.

(2) ***

Similarly, the Law on National Government Officials and the Law on Regional Public Government Officials should also be amended to allow attorneys to become national or local public officers.

E. Collaboration with Quasi-Legal Professions

1. Issues

"Points at Issue in Judicial Reform" raises significant issues regarding access to legal services. From the perspective 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 an obstacle to judicial access. In the background loom 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 regulations on advertising.³⁹

Additionally, there have been proposals to integrate quasi-legal professionals into comprehensive law firms. Other proposals would authorize quasi-legal professionals to give legal counsel and legal representation in certain matters.⁴⁰

2. *Direction of Discussion*

The quality and quantity of attorneys can be improved by reforming both training and recruiting programs. Likewise, access problems can be overcome by expanding legal aid and broadening the scope of attorney practice beyond litigation. The question of what kind of quasi-legal professionals would be needed in addition to attorneys should be discussed in this context, with reference to the practice of other countries. Attorneys and quasi-legal professionals could then collaborate in solving issues of university education and legal training.⁴¹

First, we should examine whether quasi-legal professionals have comprehensive knowledge of the legal system and the ability to think in legal terms, and whether they have received sufficient training as legal professionals to enable them to handle legal affairs such as legal representation. At the same time, in discussing whether to grant them the authority to act as representatives in summary courts, we should examine whether the type of proceedings in summary courts, which deal mainly with small civil claims, warrant representation in the first place. In forming a close collaboration between attorneys and scribes, tax accountants and patent attorneys, the form of collaboration, the issue of supervision, and possible conflicts of interests, must be examined.

In Japan, foreign-qualified attorneys must meet certain conditions and register as foreign lawyers at local bar associations and the JFBA. They are subject to the direction, supervision, and discipline of the bar.⁴² Their area of practice is limited to areas specified in their original qualification and laws designated by the Ministry of Justice. They are not authorized to

³⁹ Judicial Reform Council, *supra* note 2, at 132.

⁴⁰ Twelfth Meeting, *supra* note 7, at No. 2.

⁴¹ See *supra* Part I for the historical context of quasi-legal professions and the meaning of judicial policy.

⁴² Gaikoku Bengoshi ni yoru Hōritsu Jimu no Toriatsumaki ni kansuru Tokubetsu Sochihō [Special Measures Law concerning the Handling of Legal Practice by Foreign Lawyers], No. 66 arts. 21, 24 (1986) Japan) [hereinafter Foreign Lawyer Law]; see also Practicing Attorney Law, *supra* note 25 art. 31.

represent clients in Japanese courts or perform Civil Execution.⁴³ A foreign lawyer who forms a partnership with a Japanese attorney must notify the JFBA.⁴⁴ In comparison to the treatment given to foreign lawyers, and considering the significance of legal matters entrusted to attorneys by the people, we should act with great deliberation on demands to qualify quasi-legal professionals for legal counseling without the direction, supervision and discipline of the bar. The same goes for demands to authorize representation by quasi-legal professionals who have not received comprehensive legal education or professional training, since such authorization is denied even to foreign lawyers who received education and training in another country.

III. ORGANIZATIONAL ASPECTS OF ATTORNEY REFORM: EXPANSION OF ATTORNEY SOURCES

There are various obstacles to citizens' access to attorneys. How can attorneys become more accessible, approachable, reliable, and trustworthy? The following is a broad analysis of the "access" problem, with proposals for direct measures to remove the obstacles and reform the related system.

A. *Removing Obstacles to Attorney Access*

Obstacles to attorney access must be removed to create an approachable and reliable judiciary for citizens. This is the responsibility of attorneys and bar associations. In addition to increasing the number of attorneys, issues to be addressed include the expansion of legal counseling, plans for areas short on attorneys, legal fees, disclosure of information on attorneys, and maintaining social trust through improved quality of service and high ethics. These issues are intricately related to other reforms, such as legal aid reform, which share the common goal of protecting human rights.

⁴³ Foreign Lawyer Law, *supra* note 42, art. 3.

⁴⁴ *Id.* art. 49-3.

1. *Expansion of Legal Counseling Activities: Establishing National Legal Counseling Centers and Publicly Run Law Firms*

a. *Reasons for uneven geographic distribution of attorneys*

The uneven distribution of attorneys in Japan is symptomatic of the country's rural depopulation. That is, industrialization brought about the concentration of industry, economy and population in large cities. Such concentration increased and highlighted the need for legal services in large cities. In contrast, the need for legal services became less apparent in rural areas, especially those relying on agriculture, forestry and fishery, as a result of economic recession, population drain and aging society. Attorneys followed this economic trend. However, economics is not the only cause of the current attorney shortage. More fundamentally, legal needs did not become apparent in low-population areas with slowing economies because the pre-war policy to restrict the activity of attorneys had continued even after the war. That is, the small number of successful Japanese bar examination applicants and an insufficient legal aid system tended to create a "small judiciary."

b. *Situation: efforts by bar associations*

In 1996, the JFBA declared that it would provide legal counseling in the areas that were short on attorneys and proceeded to do so. As of December 1999, there were 153 legal counseling centers in 130 of 253 local jurisdictional districts. Additionally, among seventy-three districts with fewer than two attorneys, thirty-four had legal counseling centers.

In December 1999, the JFBA decided to collect special membership fees and to spend approximately 1.1 billion yen⁴⁵ over five years on more legal counseling centers, videophones for counseling, and publicly run law firms that provide litigation and other attorney services on a regular basis. The special fees also support attorneys settling in "shortage" areas. In addition to these financial incentives, training and continuing legal education should be provided for attorneys in these areas.⁴⁶

⁴⁵ [Note that 1.1 billion yen is approximately 10 million U.S. dollars. Trans.]

⁴⁶ Thirteenth Meeting, *supra* note 5, at Nos. 28, 29, 32, 33 (describing the history of activities by the JFBA and local bar associations to expand legal counseling and to deal with the areas short on attorneys).

c. *Future policy*

The development of legal counseling centers and publicly run law firms is urgently needed to strengthen the connection between the judiciary and people without sufficient access to legal services due to the attorney shortage or their own poverty. Citizens' advice bureaus, legal clinics, and public defender's offices in other countries exist as legal counseling centers or publicly run law firms. They act as citizen access points to the judiciary and as protectors of rights. Many of them receive financial support from the government.⁴⁷

Due to the limited budget of the JFBA and local bar associations, national and local governments should take on some of the financial burden for providing legal services to citizens. National publicly run law firms should be established as soon as possible so that there will be no districts with fewer than two attorneys. The JFBA and the local bar associations should continue their efforts to obtain adequate human resources.

In discussing the development of publicly run law firms, their purpose, governing body, method of administration, and degree of attorney involvement should all be discussed.⁴⁸ Additionally, we must research and discuss how to instill in attorneys a sense of mission through university education, legal training and continuing legal education, so that the experience of the "Rural Area Health Care and Medical Service Project"⁴⁹—which in spite of its government subsidy, still has difficulty attracting doctors to rural areas—will not be replicated.⁵⁰

⁴⁷ *Id.* at No. 30.

⁴⁸ See *infra* Points to Note Regarding Publicly Run Law Firms.

⁴⁹ Rural Areas Health Care and Medical Service Project and Law on Special Measures for Activation of Depopulated Areas: In the field of medicine, the Ministry of Health and Welfare has worked on the Health Care and Medical Service Project since 1956 to secure healthcare and medical service for people in depopulated rural areas. The Ministry made a "Plan for Healthcare and Medical Service in Rural Areas," and each prefecture uses public funds to administer various services (rural area core hospitals, hospitals assisting rural area medical services, rural area clinics, rural area health advisory offices, support systems for healthcare and medical services in designated areas, support systems for rural area core hospitals, support systems for rural area clinics, mobile dental clinics for isolated islands, medical educational financial aid for doctors working in rural areas and promotion programs for medical services in rural areas).

The budget for fiscal year 1999 was 2.1 billion yen for operational costs and 29.8 billion yen for facilities. Various measures to counter the problems of depopulation are in place in accordance with Law on Special Measures for Activation of Depopulated Areas, Law No. 15 (adopted on Mar. 31, 1990). However, the law does not contemplate a solution to the shortage of attorneys.

⁵⁰ Thirteenth Meeting, *supra* note 5, at No. 34.

Points to Note Regarding Publicly Run Law Firms:

(1) What services to provide?

First, there is the issue of what kind of services publicly run law firms should provide. The services provided should be diverse, in order to meet the various needs encountered at the local level. Also, publicly run law firms should not limit themselves to solving the accessibility problems in rural areas, but instead should play a variety of roles. They should be established in cities to represent socially and economically disadvantaged clients, take economically unprofitable public interest cases, or handle highly specialized cases that general practitioners tend to avoid. Also, specialized law firms could be established for specific areas such as criminal law, consumer protection, or welfare.

A typical publicly run general law firm should serve not only as a catchall counseling center for the area but also as a public interest law firm protecting citizens' rights. They would provide the following services:

- i. Legal counseling.
- ii. Taking and referring cases to other lawyers (both *judicare* attorneys and staff attorneys, including criminal cases and juvenile cases).
- iii. Making decisions on legal aid (including civil, criminal, family law and juvenile cases).
- iv. Providing general and specific legal information and crime prevention tips for local citizens (Japanese mafia's interference with civil cases; fraudulent sales), as well as information on welfare services, medical services, consumer affairs and administrative services. This could be done by telephone, fax, the Internet or phonovision.
- v. Notary Service.
- vi. Filing applications for various registrations.
- vii. Proposing reform of legal systems and statutes.
- vii. Assisting legal education, legal training and continuing legal education.

A typical publicly run general law firm would require two or more attorneys, at least as many paralegals, two receptionists, and two or more persons in charge of legal aid and legal information services. The size of the law firm would depend on the nature of the work and the number of cases it

handles. However, if the local government provides the office, it would be possible to start the firm with a minimum contingent of one attorney and two assistants, and limit its activities to legal counseling and taking cases (including cases requiring legal aid, court-appointed counsel, or a public defender).

(2) Governing body and method of administration

The law firm could be run by a legal aid organization, a local bar association, a private law firm, a university, a legal clinic, or a private autonomous non-profit organization in which some or all of the above organizations are involved.⁵¹ In order to allow various organizations to run law firms, preferential tax treatment for donations should be explored. A local administrative committee should run a locally-oriented general public law firm.

(3) Finance, supervision and attorney self-regulation

Financial support to publicly run general law firms should come from both national and local government sources. The national government should cover legal fees for such firms through legal aid organizations. It should also adopt new laws to supplement the Special Measures Law Concerning Activation of Depopulated Areas. This would pave the way for "Plans for Local Governments to Provide Legal Services," in which each prefecture, city, town or village administrative body would provide financial support, land, and equipment for this purpose.

Local bar associations would be responsible for selecting attorneys to set up and run publicly run law firms. The national and local governments and local bar associations would share supervising responsibility, depending upon the type of support they offered. The government body that gives financial support should not be allowed to interfere with the selection of attorneys, nor should the independence of the attorneys be compromised. There must be discussion on how to maintain the autonomy of attorneys' activities. Each local bar association should be responsible for maintaining and improving the quality of legal practice.

⁵¹ Classification of a publicly-run law firm by source of funding is as follows: a publicly-run law firm affiliated with local government, a legal assistance office run by a legal aid association, and a publicly-run office led by a local bar association. Classification by location is as follows: a publicly-run city law firm, a publicly-run suburban law firm, and a publicly-run law firm for depopulated areas.

2. *Legal Fees*

a. *Issues*

Anxiety about legal fees discourages recourse to the legal system. “Points at Issue in Judicial Reform” identified the unpredictability of legal fees as a problem area.⁵² Members of the Judicial Reform Council have raised this issue in relation to legal aid and litigation expenses.⁵³

b. *Direction of reform*

The legal fee system must be made easier to understand. Local bar associations should try to increase the transparency of legal fees through publicity by, for example, publishing and distributing examples of legal fees in typical cases. Moreover, the fee guidelines should be amended to reflect citizens’ voices.

At the same time, there is a need to examine complaints about high legal fees. It is generally accepted that legal fees in Japan are not relatively high compared with those of major law firms in Europe and the United States, although a simple comparison may not be appropriate. Thus, the reason why users generally feel “anxious” about “expensive” attorney fees in Japan may be due to feelings about the effectiveness of the trial process.

For example, the limited discovery in civil trials impairs the fact-finding process. Without some change in this area, clients will be satisfied with neither the results nor with the legal fees. Even victorious clients have anxiety and dissatisfaction regarding legal fees as a result of the lengthy delays in civil execution. The relatively small amount of damages the courts award for pain and suffering is an additional deterrent to litigation. These issues are relevant to the discussion of reforms, including enhanced availability of punitive damages, imposition of legal fees and other costs on the losing party, legal aid for the poor, and prepaid legal insurance. However, if the losing party has to bear the cost of litigation, this will deter litigation by injured consumers and by citizens attempting to vindicate their rights. Therefore, a proposal exempting plaintiffs in citizen or consumer suits from the “loser pays” rule should be discussed.

Prepaid legal insurance patterned after the German model also merits discussion. Regarding fees for legal aid and public defenders, a system

⁵² Judicial Reform Council, *supra* note 2, at 132.

⁵³ Twelfth Meeting, *supra* note 7, at No. 3; *see also* Thirteenth Meeting, *supra* note 5, at No. 40 (amendment of guidelines for standard legal fees in 1995).

based on the reality of the practice, such as the nature of the work and the number of attorney hours provided, should be established. Possible references include legal aid programs in the United Kingdom and Japan's medical fee system for doctors.

3. *Disclosure of Information about Attorneys*

a. *Issues*

"Points at Issue in Judicial Reform" points out that people lack information about the activities of lawyers and the courts and, therefore, feel distant from the judiciary.⁵⁴

b. *Direction of reform*

In addition to requiring disclosure on homepages,⁵⁵ the following points warrant research and discussion:

- (1) Liberalizing advertising in general, while regulating the appropriateness of its content.
- (2) Promoting the disclosure of information about attorneys (possibly including some kind of evaluation). The disclosed information would include each attorney's public interest activities as well as negative information such as disciplinary action.
- (3) Promoting certification and publication of specialties.

A majority of the Judicial Reform Council supports the liberalization of advertising. However, some regulation is needed since advertising can be misleading and does not convey negative information. The distribution of pamphlets introducing new lawyers, as is already practiced by some local bar associations, should also be considered.

The evaluation of attorneys by local bar associations would serve as reference material when an attorney is recommended for a judgeship. Thus, it would be necessary to accumulate information over a period of time.

⁵⁴ Judicial Reform Council, *supra* note 2, at 131.

⁵⁵ Thirteenth Meeting, *supra* note 5, at No. 43.

Negative information, such as disciplinary actions against an attorney, should be conveyed to citizens quickly and accurately in accordance with the bar's responsibility to self-regulate. Because disciplinary procedures can be abused, disclosure should be made at the point where the procedure changes from a cautionary action to a disciplinary action. Some local bar associations already follow this practice.⁵⁶

The certification of attorney specializations by local bar associations should also be discussed because of strong demands from various parts of society, cost control and objectivity present difficult problems.

4. *Improvement of the Quality of Work and Reinforcing Working Arrangements*

a. *Issues*

"Points at Issue in Judicial Reform" identifies the underdeveloped professionalism and expertise of attorneys as factors preventing access to the judiciary.⁵⁷ This is an issue to be resolved by the local bar associations, which are responsible for maintaining and improving the quality of attorneys' work. Many members of the Judicial Reform Council concur on this point.⁵⁸

b. *Direction of reform*

Citizens and enterprises of all sizes are calling for quick and satisfactory solutions to disputes inside and outside the courtroom, through prompt and thorough research and negotiation by law firms, as well as intensive court hearings. Law firms should form partnerships, specialize, or become more comprehensive in order to meet the people's expectations of having their rights upheld. Law partnerships and corporations are also desirable as a means of preventing disruption due to attorney sickness and maintaining continuous and stable relationships with clients. Moreover, everyday international transactions and the development of the Internet make it necessary for legal practice to globalize rapidly.

As in Europe and the United States, globalization of the economy demands that Japanese attorneys form partnerships, specialize, offer comprehensive service, and globalize. There is a call for specialization and

⁵⁶ *Id.* at No. 45.

⁵⁷ Judicial Reform Council, *supra* note 2, at 132.

⁵⁸ Thirteenth Meeting, *supra* note 5, at No. 3; *see also id.* at No. 27 (on-call attorney system).

the forming of partnerships (and corporations) in order to spend tax money more efficiently, and to restore social justice for the poor, the disabled, immigrants, and other socio-economically disadvantaged people. Globalization of legal practice is necessary to protect rights of foreigners and to contribute to the international protection of human rights.

To meet these varied needs, the discovery system should be improved to alleviate the uneven possession of evidence and promote thorough trials and hearings. Also, law firms should be allowed to incorporate.⁵⁹ Additionally, in order for attorneys to firmly internalize an attitude of actively solving disputes instead of being totally dependent on the court, we must produce many high quality attorneys through university education, legal training, and continuing legal education. At the same time, we need to overcome the tendency of specialized, highly technical education to produce people of immature character. Our education system needs to produce attorneys with maturity of character, high ethics and an awareness of the public interest, worthy of becoming local leaders and international actors.

5. *Reinforcing Attorney Self-Regulation and Establishing Professional Responsibility*

a. *Current situation and issues*

Attorney self-regulation means that local bar associations regulate attorneys' qualifications and discipline. They are also charged with making rules regarding attorneys' conduct. Attorney self-regulation helps to maintain the quality of attorneys, guarantee attorneys' independence of practice, and assure just trials through freedom from supervision by the Minister of Justice and the court. Attorney self-regulation also protects citizens' rights. Unfortunately, the number of attorney disciplinary cases increased after the collapse of the "Bubble Economy."⁶⁰ That may have been a reflection of the economic or social atmosphere, which influenced attorneys as well as citizens. The core of this problem is the growing tendency of attorneys and others to regard the practice of law as private business. To resolve this problem, we must reinforce attorneys' ethical standards and give stricter discipline to those who violate their professional responsibilities.

⁵⁹ *Id.* at No. 39.

⁶⁰ *Id.*

Non-attorneys currently participate as committee members in the Disciplinary Action Committee and in the Discipline Maintenance Committee.⁶¹ Local bar association members are required to take a class in Professional Responsibility.⁶² Local bar associations also provide ongoing lectures on various topics to improve the quality of practice.⁶³

b. Direction of reform

Establishing professional responsibility is, in a broad sense, part of the effort to maintain and improve the quality of legal practice for the people. It is also an issue of attorney self-regulation. Bar associations must work toward: (a) placing more emphasis on teaching legal ethics in both the initial training of legal professionals and in continuing legal education, and developing better teaching methods; (b) instituting proper complaint resolution procedures; (c) making the cautionary and disciplinary procedures swifter and more transparent; and (d) promoting public interest activities.

Because attorney self-regulation is a response to the needs of the people, citizens' opinions should also be reflected in the administration of local bar associations. As to (c), we should clarify the members' duty to cooperate with investigations by local bar associations. We should also reinforce the local bar associations' authority to investigate their members, reinforce the adversary system in trial, and adopt measures to expedite trials.

B. Reform of Related Systems

For attorneys to fully protect the people's rights and to achieve the prompt and complete solutions the people expect, the attorneys' weapon—that is, the law—must be put to use. To that end, the JFBA and individual attorneys are working on legal reform projects.⁶⁴ Additionally, it is necessary to introduce a much more thorough discovery system to reinforce the adversary system in criminal, civil, and administrative cases. It is also necessary to amend the Code of Administrative Procedure so that citizens and consumers may have a cause of action and standing in administrative cases.

In the field of consumer law, a law on consumer contracts is essential to fill the information gap between sellers and consumers, and effectively

⁶¹ *Id.* at No. 45.

⁶² *Id.*

⁶³ *Id.* at No. 38.

⁶⁴ *Id.* at No. 37.

place them on equal footing. Such legislation would provide substantial protection for consumers by regulating the formation of contracts and their contents, and by granting consumer organizations the right to seek injunctive relief. In labor cases, we must reform the current system in which the Labor Committee and the court may hear the same case up to five times. In criminal cases, legislation is needed to make investigation transparent by abolishing substitute jails,⁶⁵ allowing release on bail before prosecution, and giving attorneys the right to be present at interviews.

⁶⁵ [In Japan, the police routinely hold suspects at their own detention facilities instead of jails controlled by separate authorities. This system allows the police to interrogate suspects for longer hours, for up to twenty-three days. Human rights organizations criticize this practice. Trans.]