

# The Final Report of the Justice System Reform Council

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## **1. Introduction**

Today's movement of judicial reform dates back to April 1987, when the Regular Meeting on Basic Issues on Legal Professions was started. Even after 50 years from the adoption of the New Constitution, it is criticized that lawyers or courts are not open to ordinary citizen. Judge system has been complained as bureaucratic. In 1990, 1991, and 1994, the Bar Association JAPAN gave declarations on judicial reform which proposed to increase budget, facilities, and human resource, to allow public participation in judicial system, and to introduce Anglo-American judge system ("*Hōsō-ichigen*": a system to appoint judges from those qualified to practice law and who have been engaged in legal profession except judges as a rule). Corporations including the Japan Association of Corporate Executives, which has been faced "globalization" and request for de-regulation from the United States, agreed to reinforce human and institutional basis in order to secure economic activity. Liberal Democratic Party had Research Committee for Judicial System in June 1997 and according to its proposal, the Justice System Reform Council was established in July 1999.

The Council gave an intermediate report in November 2000 and the final report in June 2001. This article includes summary of the final report and brief notes onto the report.

## **2. Number of Lawyers and U.S.-style (?) Law School**

The number of lawyers in Japan is about 18,000 and the population per one lawyer is about 7,000. The number is very few comparing to the United States or European Countries. More than 8,000 lawyers live in Tokyo area and there are many towns with no lawyers in countryside. It is said that Japanese people do not use lawyers or courts not simply because they do not like lawsuits, but also because it is not

easy to access to or use legal system. During these 30 years, the Bar Exam has been a very, very narrow gate, for more than 20,000 people take the Exam and only about 500 people (about 2% of the applicant) may pass it. From 1990, the number of passing applicant has been gradually increased up to 1,000 especially for the demand for young assistant judges and prosecutors.

The argument that the current gate to lawyers as one-round exam only must be replaced to continuous training and grading in law school is a novel one. Only three years after the suggestion of the LDP's Research Committee, the Judicial Reform Council decided to open law schools in universities in April 2003 (later, postponed to April 2004). It is really amazing, and therefore difficult to explain, why the U.S.-style law school is so soon focused on. First, the Bar Association, the Supreme Court, the Ministry of Justice and corporations demand for increasing number of lawyers. Second, the Ministry of Culture is encouraging to train professionals in universities. Third, the Bar Association thought that the law school is good for introducing the Anglo-American judge system. Fourth, universities are not satisfied with the current narrow way to lawyers. First-class universities are not pleased that so many students go to preparatory schools for the Bar Exam even not attending classes in the university. Second-class or third-class universities are dissatisfied that a few graduates can become lawyers. They also feared their future while population of young people is getting fewer and fewer.

Among others, it is criticized that the government decided to set up law schools too rapid before the contents of the law school is discussed. Some pointed out that there is no agreement, and not enough discussion about the ideal image of lawyers in the future among the Bar Association, the Supreme Court, the Ministry of Justice, corporations, universities, and ordinary people. It must be a big issue how to rebuild related institutions including the Faculty of Law, the Graduate School of Law, and the Legal Training and Research Institute.

### **3. Jury or Lay-Judge Trial**

In Japan, those who passed the Bar Exam may become a lawyer, a prosecutor, or an assistant judge soon after 18 months training in the

Legal Training and Research Institute. Most of judges are appointed from assistant judges who served 10 years. The Supreme Court has broad discretionary power on personnel affairs, including nomination, place of one's post, and salary.<sup>(1)</sup> Not satisfied with this bureaucratic system controlled by the Supreme Court, the Bar Association has been urged to introduce Anglo-American judge system and jury trial as a way to public participation to the judiciary.

In Japan, Jury Trial Law was enacted in 1927, but the power of the jury was very limited and jury trial had been rarely held until the law was suspended permanently in 1943.

*Saiban-in* is not Anglo-American jury, which the Bar Association originally urged, but lay-judge system used in Germany or other European countries. It seems very difficult for a layperson to join the panel as a judge of full power, and they would be likely to follow the professional judges especially in serious criminal cases, just to affirm severe punishment. It also seems strange that a defendant cannot waive *saiban-in* trial. If we are to reflect communal justice into the administration of justice and take advantage of "common sense" of the public, I think Anglo-American jury trial should be introduced in administrative cases, where not a few decisions by the professional judges are questioned in light of interest of ordinary citizen.

#### 4. Other Features

As for civil cases, the Report emphasized the need for speedy trial and Alternative Dispute Resolution. It paid attention to semi-lawyers including judicial scriveners, administrative scriveners, patent attorneys, tax attorneys, consultants on social insurance and labor, etc., who are influenced by increase of number of lawyers. It mentioned legal assistance to developing countries. What is not appeared at all is how to reform administrative cases litigation.

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<sup>(1)</sup> In 1946 the Supreme Court refused to nominate an assistant judge for appointment with no apparent reason. In 1998 the Supreme Court punished an assistant judge who attended a citizen meeting against enactment of Organized Crime Law.

# **Recommendations of the Justice System Reform Council — For a Justice System to Support Japan in the 21st Century —**

June 12, 2001

(This is summary of the final report originally taken from the official homepage, <http://www.kantei.go.jp/jp/sihouseido/eng-dex.html>, and edited by the author.)

## **Introduction**

### **Chapter I. Fundamental Philosophy and Directions for Reform of the Justice System**

#### **Part 1. The Shape of Japanese Society in the 21st Century**

By realizing simple, efficient, and clear government that is suited to achieving important public functions effectively, the people will build a free and fair society in mutual cooperation as autonomous subjects bearing social responsibility and, on that basis, will contribute to the development of international society.

#### **Part 2. Expected Role of the Justice System in Japanese Society in the 21st Century**

##### **1. Role of the Justice System**

The judicial branch, which is based on the concept of the rule of law and places all parties concerned in an equal position and under which an impartial third party makes a decision based on fair legal rules and principles through proper and clear procedures must, along with the political branches, be a pillar to support the “space of the public good” (*kōkyōsei no kūkan*).

##### **2. Role of the Legal Profession**

For the people to actively form, maintain and develop diversified social connections as autonomous beings, the legal profession which directly engages in the administration of justice must provide legal services in response to the specific living conditions of each individual

and to his or her needs as the so-called “doctors for the people’s social lives.”

### 3. Role of the People

The people, who are the governing subjects and the subjects of rights, must participate in the administration of justice autonomously and meaningfully, must make efforts to form and maintain places for rich communication with the legal profession, and must themselves realize and support the justice system for the people.

## **Part 3. Shape of the Justice System in the 21st Century**

### 1. Three Pillars of Justice System Reform

First, in order to achieve “a justice system that meets public expectations,” the justice system shall be made easier to use, easier to understand, and more reliable.

Second, by reforming “the legal profession supporting the justice system,” a legal profession that as a profession is rich both in quality and quantity shall be secured.

Third, for “establishment of the popular base,” public trust in the justice system shall be enhanced by introducing a system in which the people participate in legal proceedings and through other measures.

### 2. Shape of the Justice System in the 21st Century

#### (1) Construction of a Justice System Responding to Public Expectations (Coordination of the Institutional Base)

In order to make the justice system easier to use, easier to understand and more reliable, the people’s access to the justice system shall be expanded, and a system that enables the resolving of cases effectively shall be constructed by conducting fairer, more proper and more prompt proceedings.

#### (2) How the Legal Profession Supporting the Justice System Should Be (Expansion of the Human Base)

A legal profession shall be obtained that not only has highly developed professional legal knowledge but also has acquired strong legal ethics based on wide cultural knowledge and rich humanity and that

forms a broad class and plays an active role in various fields of society.

### (3) Establishment of the Popular Base

The people shall deepen their understanding of the justice system through various forms of involvement including participation in certain legal proceedings, and shall support the justice system.

## 3. For Realization of the Justice System in the 21st Century

## **Chapter II. Justice System Responding to Public Expectations**

### **Part 1. Reform of the Civil Justice System**

#### 1. Reinforcement and Speeding Up of Civil Justice

The following measures should be carried out, aiming to reduce the duration of proceedings for civil cases by about half:

○ In principle, for all cases, conferences to establish a proceeding plan should be made compulsory, and planned proceedings should be further promoted.

○ Methods for the parties concerned to collect evidence at an early stage, including the period before instituting a suit, should be expanded.

#### 2. Strengthening Handling of Cases Requiring Specialized Knowledge

In addition to the measures related to reinforcement and speeding up of civil trials, the following measures should be carried out, with the aim of reducing the duration of proceedings for cases requiring specialized knowledge by about half:

○ While paying due regard to securing the neutrality and fairness of the courts, study should be given, with individualized attention to the nature of the expertise involved for each category of cases, to the manner in which new systems for expert participation in litigation should be introduced, in which non-lawyer experts in each specialized field become involved in all or part of trials, from the standpoint of their own specialized expertise, as expert commissioners to support judges

(expert commissioner [*senmon iin*] systems).

- The court-appointed expert witness system should be improved.
- Technical expertise of the legal profession should be strengthened.

### 3. Strengthening of Comprehensive Response to Cases Related to Intellectual Property Rights

○ In addition to measures related to the reinforcement and speeding up of civil trials, the following measures should be carried out with the aim of reducing the duration of proceedings for cases related to intellectual property rights by about half:

In order to make the specialized departments at both Tokyo and Osaka District Courts function substantially as “patent courts,” the specialized processing system of these courts should be further reinforced by concentration of both judges with strengthened expertise and court research officials who are technical experts, the introduction of the expert commissioner system, and the granting to the Tokyo and Osaka District Courts of exclusive jurisdiction for cases related to patent rights, utility model rights, etc.

The right of representation for infringement proceedings concerning patent rights, etc., should be extended to patent attorneys, after taking highly reliable measures to assure their ability.

The technical expertise of the legal profession should be strengthened.

○ Alternative dispute resolution by such bodies as the Japan Arbitration Center for Intellectual Property and the Japan Patent Office (*Hantei* system: a system of providing appraisals on the technical scope of patented inventions) should be expanded and vitalized, and measures should be taken to coordinate such ADR activities with litigation.

### 4. Strengthening of Comprehensive Response to Labor-Related Cases

○ Measures related to reinforcement and speeding up of civil trials and measures to reinforce the technical expertise of the legal profession should be carried out, aiming to reduce the duration of proceedings for cases related to labor by about half.

- For labor-related cases, labor conciliation, a system in which those

who have specialized knowledge and experience related to employment and labor-management relations become involved, should be introduced as a special type of civil conciliation.

○ Studies should be started promptly on how the system of judicial review of the Labor Relations Commissions' orders for redress should be, the propriety of introduction of the system of participation by persons possessing specialized knowledge and experience concerning employment and labor-management relations, and the necessity of adjusting legal proceedings particular to labor-related cases.

#### 5. Improvement of Functions of Family Courts and Summary Courts

(1) Consolidation in Family Courts of Actions Related to Personal Status Family-related cases (actions related to personal status, etc.), such as matters of divorce, should be transferred to the jurisdiction of family courts, and the system should be improved by introducing a court councilor system for divorce actions, etc.

(2) Securing of Diverse Sources of Persons to Serve as Conciliation Members, Judicial Commissioners, and Court Councilors

With regard to civil conciliation members, family affairs conciliation members, judicial commissioners and court councilors, measures, including a reconsideration of selection methods, should be taken to secure sources of persons diverse in terms of age, occupation, knowledge, experience, and so forth.

(3) Expansion of the Jurisdiction of Summary Courts and Substantial Increase in the Upper Limit on Amount in Controversy in Procedures for Small-Claims Litigation

○ With regard to the subject matter jurisdiction of summary courts, the upper limit on the amount in controversy should be raised by taking trends of economic indices into account.

○ The upper limit on the amount in controversy in procedures for small-claims litigation should be raised greatly.

#### 6. Strengthening of the Civil Execution System — Securing Effectiveness of Execution of Rights —

○ New measures to improve the civil execution system should be introduced, such as the following:



Measures to promote performance by obligors.

Measures to determine the assets of obligors.

Measures against obstruction of real estate execution by illegal occupants, etc.

○ A system should be established to secure the performance of obligation for the periodic delivery of small amounts of money, such as those obligations that are set by domestic affairs determinations and conciliation.

## 7. Expansion of Access to the Courts

### (1) Lightening of Cost Burden on Users

#### a. Filing Fee

○ Filing fees should be reduced within the scope needed, while maintaining the indexation system.

○ As for the filing fees for small-claims litigation cases in the summary courts, study should be undertaken, including study of the possible introduction of a fixed-fee plan, and necessary measures should be taken.

#### b. Losing Party Responsibility for Lawyer Fees

From the standpoint of making the use of a lawsuit easy by securing the fairness of the financial burden for a party who had to avoid a lawsuit due to the inability to collect lawyer fees from the other side, a system should be introduced to have the losing party bear a portion of the lawyer fees as being included in the costs of litigation. In designing such a system, in order that the system not, contrary to the above viewpoint, unduly discourage lawsuits, the system should not be introduced across the board, and study should be made as to the scope of cases to which the system should not be applied and how best to handle such cases, and as to how to determine the amount of burden to be borne in cases in which the losing party bears a burden.

#### c. Procedure for Determining Costs of Litigation

The procedure for determining the costs of litigation should be simplified.

#### d. Litigation Cost Insurance

The development and spread of litigation cost insurance is expected.

## (2) Reinforcement of Civil Legal Aid System

The civil legal aid system should be further reinforced after comprehensive, systematic studies are made on the scope of cases and persons to be covered, what burdens should be borne by users, how the system should be managed, etc.

### (3) Enhancing the Convenience of the Courts

#### a. Consultation Windows Regarding Utilization of the Justice System; Furnishing of Information

By establishing consultation windows (access points) regarding utilization of the justice system in the courts, bar associations, local public bodies, etc., and by promoting the establishment of networks by using Internet home pages, the furnishing of comprehensive information concerning the justice system, including various alternative dispute resolution (ADR) mechanisms, should be strengthened.

#### b. Introduction of Information Technology (IT) to the Courts, etc.

In order to promote the strong introduction of information technology (IT) to various phases of the courts' work, such as litigation proceedings (including electronic submission and exchange of lawsuit-related documents), clerical work, and furnishing of information, the Supreme Court should work out and publish plans for introducing information technology.

#### c. Nighttime and Holiday Service

The nighttime service of the courts, which is already in place, should be made well known to the public, and studies should be made to further expand the nighttime service and to introduce holiday service.

#### d. Geographical Distribution of Courts

The geographical distribution of courts should be readjusted constantly, taking account of population, traffic conditions, the number of cases, etc.

## (4) Effective Relief for Victims

### a. Determining the Amount of Damages

With regard to determining the amount of damages, in light of the criticism that, viewed overall, the amount of damages is too low, it is desirable that necessary institutional studies be made and that damage determinations continue to be made in line with the circumstances

of each individual case without being bound by the so-called “market rate” of past cases.

b. Measures for Cases in which the Number of Victims Is Large but the Amount of Damages Suffered by Each Victim Is Small

As to the possible introduction of the right of group action and, in case of introduction of the right, the method for determining qualified groups, these matters should be studied for each field of law individually by taking into account the purpose of each respective substantive law and the rights and interests that the law is designed to protect.

## 8. Reinforcement and Vitalization of Alternative Dispute Resolution (ADR) Mechanisms

### (1) Significance of Reinforcing and Vitalizing ADR

○ In addition to making special efforts to improve the function of adjudication, which constitutes the core of the justice system, efforts to reinforce and vitalize ADR should be made so that it will become an equally attractive option to adjudication for the people.

○ In order to promote and improve various types of ADR by making use of their characteristics, cooperation among organizations concerned should be strengthened and a common institutional base should be established.

### (2) Strengthening Cooperation among Organizations Related to ADR

○ In order to promote cooperation among courts, related organizations and the government ministries and agencies concerned toward the reinforcement and vitalization of ADR, arrangements should be made for a system such as a liaison office among the various organizations concerned and a liaison conference among the ministries and agencies concerned.

○ Comprehensive consultation windows concerning dispute resolution, including litigation and ADR, should be improved and cooperation should be promoted by utilizing information technology, such as Internet portal sites, in order to realize a system to provide information at one stop.

○ In order to secure future personnel for ADR, efforts should be made to enhance training concerning necessary knowledge and skills,

after promoting the disclosure and sharing of information on needed human resources and dispute resolution, etc.

(3) Coordination of Common Institutional Bases concerning ADR

○ While carefully watching international movements, Japan should establish an arbitration scheme (including international commercial arbitration) at an early date.

○ From the standpoint of establishing a comprehensive institutional base for ADR, necessary measures should be studied, including the possible enactment of a law (such as “ADR Basic Law”) that prescribes a basic framework to promote the use of ADR and to strengthen coordination with trial procedures. In doing so, the following measures specifically should be studied: coordination of conditions for giving the effect of interruption (suspension) of the statute of limitations; granting execution power; including ADR as an object of the legal aid system; and coordination of procedures for using trial procedures for the whole or a part of an ADR proceeding, and vice versa.

○ In order to utilize non-legal professional experts, such as those from fields adjoining law (so-called quasi-legal professionals), in ADR, study must be given to each such profession individually, taking into account each profession’s actual situation, and the status of such non-legal professionals should be legally defined as part of the revision of Article 72 of the Lawyers Law. That article should at least clarify the contents of restrictions in an appropriate way, including the relationship with persons engaged in corporate legal work, from the standpoint of responding to changes in the contents of services provided by professionals in fields adjoining law and the diversification of company forms, in order to ensure the predictability of the scope and modes of activities that are subject to restrictions.

9. Reinforcement of the Checking Function of the Justice System vis-a-vis the Administration

With regard to how judicial review of administration should be (*gyōsei ni taisuru shihō shinsa no arikata*), including review of the Administrative Case Litigation Law, it is necessary to conduct comprehensive study from various angles under the basic concept of the “rule of law,” with the roles of the judicial and administrative branches in

mind. The government should promptly begin such study in earnest.

## **Part 2. Reform of the Criminal Justice System**

### **1. Reinforcement and Speeding Up of Criminal Trials**

- The following new preparatory procedures should be introduced:

A new preparatory procedure presided over by the court should be introduced in order to sort out the contested issues and to establish a clear plan for the proceedings in advance of the first trial date.

To achieve the thorough ordering and clarification of the contested issues, it is necessary to expand the disclosure of evidence. For that purpose, rules regarding the timing and the scope of the disclosure of evidence should be clearly set forth by law, and a framework that enables the courts to judge, as necessary, the need for the disclosure of evidence should be introduced as part of the new preparatory procedure.

- Trials should in principle be held over consecutive days, and necessary measures should be taken in order to secure the realization of this principle.

- Consideration should be given to how the related systems should be so as to realize the principles of directness and orality.

- Consideration should be given to concrete measures that secure the effectiveness of trial direction by the courts in order that trials are managed in a thorough and smooth manner.

- A system should be established that enables defense counsel to concentrate on individual criminal cases, including the establishment of the public criminal defense system; and at the same time, the human base of the courts and the public prosecutors offices should be enriched and strengthened.

### **2. Establishment of Public Defense System for Suspects and Defendants**

- A public defense system for suspects should be introduced, and a continuous defense structure covering both the suspect stage and the defendant stage should be established.

- The organization that manages the public defense system should

be fair and independent, and public money should be introduced for operation of the system through a proper mechanism.

○ While it is appropriate that technically the courts appoint and remove the defense counsel as in the case of the current court-appointed defense counsel system for the defendant, the above-mentioned organization should be responsible for the other services concerning administration of the system.

○ The above-mentioned organization should take responsibility for the administration of the system vis-a-vis the people, and should establish a system that can offer thorough defense activity nationwide. In particular, it is critical to establish a structure that can support the effective implementation of the new popular participation system in the trial proceedings.

○ In considering the structure and the management method of the above-mentioned organization and how to supervise it, respect should be given to the need to ensure transparency and accountability in order to ensure that it is worthy of the investment of public money.

○ As the autonomy and the independence of the defense activity in the individual case must not be damaged even under the public defense system, this should be sufficiently taken into consideration in regard to designing as well as administering the system.

○ The bar associations should actively cooperate in the establishment and management of the public defense system, taking into account the standpoint of the lawyer system reform, and at the same time should recognize that they themselves bear a serious responsibility to ensure the quality of the defense activity and should autonomously develop suitable arrangements for it.

○ Special attention should be paid to those especially in need of help, such as the disabled and the young.

○ Active consideration should be given to the public attendant system at juvenile hearing proceedings.

### 3. How Public Prosecution Should Be (*kōso teiki no arikata*)

A system should be introduced that grants legally binding effect to certain resolutions of the Inquests of Prosecution.

#### 4. Investigations and Trial Proceedings in the New Era

##### (1) New Forms of Investigations and Trial Proceedings that Can Respond to the New Era

○ With regard to the introduction of new investigative methods such as the immunity system, consideration should be given from multi-faceted viewpoints to what the proper system is for meeting the social and economic changes in Japan in the coming age and the corresponding changes in the crime situation and crime trends, while respecting the import of the guarantee of human rights in the Constitution.

○ Measures to ensure the cooperation of witnesses and measures to protect witnesses should be considered, from similar points of view.

○ The international mutual investigation and mutual judicial assistance systems should be further expanded and strengthened under the guarantee of due process of law.

##### (2) Issues Related to Custody of Suspects and of Defendants

○ Consideration should continue to be given to the reform and improvement of both the systemic and operational aspects, within criminal procedure as a whole, in order to prevent and rectify the improper custody of suspects and of defendants.

○ A system should be introduced that imposes the duty of making a written record, for every occasion of questioning, regarding the process and the circumstances of the questioning, in order to ensure the propriety of questioning of suspects.

#### 5. Rehabilitation of Offenders, Protection of Victims

○ As the criminal justice system has played an important role in the rehabilitation of offenders, adequate attention should be paid to strengthening the system and the human resource structure for the correction and rehabilitation of offenders.

○ Adequate attention should be paid to the protection of and relief for the victims in criminal proceedings, and studies necessary for that purpose should be undertaken. In addition, it is necessary to establish a broad social support system that includes psychological and material care for victims.

### Part 3. Responses to Internationalization

#### 1. Internationalization of Civil Justice

○ In order to respond to the increasing number of international civil cases, the civil justice system should be further reinforced and speeded up, beginning with strengthening of comprehensive response to cases related to intellectual property.

○ The arbitration system (including international commercial arbitration) should be coordinated quickly, paying heed to international trends.

#### 2. Internationalization of Criminal Justice

In order to respond to the increase in international crimes, international mutual investigation and mutual judicial assistance systems should be further expanded and strengthened.

#### 3. Promoting Legal Technical Assistance

Legal technical assistance for developing countries should be promoted.

#### 4. Internationalization of Lawyers (the Legal Profession)

○ In order to enable lawyers to fully respond to legal demands in a time of internationalization, responses to internationalization should be thoroughly strengthened by improving specialization, strengthening business structure, promoting international exchange, and considering the demands of internationalization in the legal training stage.

○ From the standpoint of promoting collaborations and cooperation between Japanese lawyers and foreign law solicitors (*gaikokuho jimubengoshi*), etc., the requisites for specified joint enterprises, for example, should be relaxed.



## **Chapter III. How the Legal Profession Supporting the Justice System Should Be**

### **Part 1. Expansion of the Legal Population**

#### **1. Substantial Increase of the Legal Population**

○ Increasing the number of successful candidates for the existing national bar examination should immediately be undertaken, with the aim of reaching 1,500 successful candidates in 2004.

○ While paying heed to the progress of establishment of the new legal training system, including law schools, the aim should be to have 3,000 successful candidates for the new national bar examination in about 2010.

○ Through the progress of these types of increases in the legal population, by about 2018, the number of legal professionals actively practicing is expected to reach 50,000.

#### **2. Reinforcing the Personnel Structure of the Courts and Public Prosecutors Offices**

○ In the process of increasing the legal population as a whole, the number of judges and prosecutors should be increased greatly.

○ While pushing to improve even further the quality and ability of court staff, including court clerks, and the staff of public prosecutors offices, including public prosecutors' assistant officers, appropriate increases in the number of staff should also be sought.

○ From the standpoint of smoothly carrying out administrative reforms, as well, it is indispensable to dramatically increase the human base supporting the justice system, so it is necessary to take bold and positive measures for that purpose, including legislative steps.

### **Part 2. Reform of the Legal Training System**

#### **1. Development of a New Legal Training System**

○ A new legal training system should be established, not by focusing only on the "single point" of selection through the national bar examination but by organically connecting legal education, the national bar

examination and legal training as a “process.” As its core, law schools, professional schools providing education especially for training for the legal profession, should be established.

○ Law schools should be established, with the aim of starting to accept students as of April 2004.

## 2. Law Schools

### (1) Purpose and Philosophy

### (2) Main Points of the Law School System

#### a. Form of Organization

○ Law schools should be established as postgraduate schools, under the School Education Law, where practical education especially for fostering legal professionals will be provided.

○ Independent law schools (those with no organizational basis in a university law faculty) and joint law schools should be recognized under the system.

#### b. Standard Training Term

The standard training term should be three years, and completion in two years as a shortened term should be recognized.

#### c. Selection of Applicants

○ Applicants should be judged and selected, with the principle of securing fairness, openness and diversity, by considering not only their admission examination results but also their grades at undergraduate schools and actual performances comprehensively.

○ For expanding diversity, students from faculties other than law and working people, etc., should be admitted, in a number that exceeds some certain percentage of the total number of enrollees.

#### d. Educational Content and Methods

○ Law schools should provide educational programs that, while centered on legal theory, introduce practical education (e.g., basic skills concerning how to determine the required elements and fact finding), with a strong awareness of the necessity of building a bridge between legal education and legal practice.

○ With respect to educational methods, the small group education system should be adopted as the basic policy, providing bi-directional (with give-and-take between teacher and students) and multidirectional

(with interaction among students) educational programs rich in content.

○ Law schools should provide thorough education so that a significant ratio of the students who have completed the course (e.g., 70 to 80% of such students) can pass the new national bar examination.

○ Specific measures should be taken to ensure that the students' grades are strictly evaluated and their completion of the course is rigidly certified in an effective manner.

e. Organization of Teachers

○ At law schools, a sufficient number of teachers should be secured to provide small group classes that are rich in content.

○ As for the number and ratio of practitioner-teachers, a fair standard should be defined, considering the contents of the curriculum and the allocation of the legal training between the law schools and the apprenticeship training, after the new national bar examination is implemented.

○ Restrictions on having multiple jobs or a side job and other provisions of the Lawyers Law and the Public Servants Laws should be reviewed or revised as necessary.

○ Standards for qualification as a teacher should be set considering to a large degree the actual educational performance or ability and capacity and experience as a practitioner.

f. Degree

Consideration should be given to establishing a new degree granted only by law schools (specialist degree).

(3) Securing Fairness, Openness and Diversity

○ Attention should be paid to proper geographic distribution of law schools throughout the country, taking local situations into consideration.

○ Evening law schools or distance law schools should be developed.

○ Various support systems such as scholarships, educational loans, and a tuition exemption system should be sufficiently developed and utilized.

(4) Procedures for Chartering and Third Party Evaluation (Accreditation)

○ Law schools shall be chartered, based on the voluntary creative efforts of the parties concerned, if they meet the requirements for establishment, and widespread participation of schools should be permitted.

○ In order to secure fairness, openness and diversity in selection of enrollees; the meeting of educational standards required for legal training institutions; and strictness regarding grade evaluation and certification of completion of the coursework, a proper organization should be established to continuously conduct third party evaluation (accreditation).

○ In designing the structure of the organization to conduct third party evaluation, objectivity, fairness and transparency should be secured by means of participation of external well-informed persons in addition to those involved with the legal profession and schools.

(5) Future Vision of Undergraduate Legal Education

○ Education at undergraduate law faculties after the introduction of law schools is expected to be vitalized as a whole in a situation where universities compete with each other in developing their own characteristics and identities.

○ With respect to the term for completion of programs at the undergraduate stage, it is desirable that the so-called grade-skipping system be applied as appropriate.

(6) Responsibility of Parties Concerned

3. National Bar Examination

○ The national bar examination should be transformed into a new one that responds to the educational programs at law schools.

○ A specific system should be established to ensure the interrelationship between the new national bar examination and the educational programs at law schools.

○ Those who have completed the course at law schools that have achieved accreditation should be awarded the qualification of candidacy for the new national bar examination.

○ Proper routes for obtaining the qualification of legal professional

should be secured for those who have not gone through law schools for reasons such as financial difficulty or because they have sufficient practical experience in the real world.

- In the case of those who have completed the course at law schools that have achieved accreditation, the number of times one is allowed to take the new national bar examination should be limited, e.g., to three times.

- The new national bar examination should be introduced as an examination aimed at the first candidates to complete the course at law schools, which is projected to occur in 2005.

- For about five years after the introduction of the new national bar examination, the current national bar examination should be implemented in parallel to the new examination.

- The priority system for determining successful candidates on the existing national bar examination (Plan Hei) should be abolished in 2004, when the number of successful candidates for the current examination is expected to reach 1,500.

#### 4. Apprenticeship Training

- Apprenticeship training provided after the introduction of the new national bar examination should be designed to cope effectively with the increase in the number of judicial apprentices. At the same time, properly devised training programs should be provided, in light of the educational programs at law schools, placing on-site practical training at the core.

- The stipend system should be reconsidered.

- With regard to the administration and operation of the Legal Training and Research Institute, the cooperative relationship among the three branches of the legal profession should be further strengthened, and mechanisms should be established whereby opinions of persons involved in law schools as well as external well-informed persons will be appropriately reflected.

#### 5. Continuing Education

Continuing education should be developed as a part of the comprehensive and systematic concept of legal training.

#### 6. For Smooth Implementation of the New Legal Training System

○ The governmental departments and other institutions concerned, undertaking appropriate coordination with each other, should further considerations promptly and steadily regarding the necessary measures, such as developing the standards for the chartering of law schools and third party evaluation (accreditation) and designing the concrete plan for the new national bar examination and the apprenticeship training program following the new national bar examination.

○ The standards for the chartering of law schools and third party evaluation (accreditation) should be published as early as possible and widely disseminated.

### **Part 3. Reform of the Lawyer System**

#### 1. Fulfillment of Lawyers' Social Responsibility (the Public Interest)

○ Lawyers should carry out their social responsibility by faithfully pursuing their duties and rendering services to fulfill the public's rights and benefits (for the public interest), as well as by making continuous efforts to improve their professional activities while retaining professional ethics that are suitable for their missions.

○ Performing activities for the public interest should be deemed to be one of the lawyers' duties, with the details of such activities being clearly defined. Lawyers should secure the transparency of such details and demonstrate their accountability to the public.

#### 2. Expansion of the Scope of Lawyers' Activities

○ Restrictions on lawyers in assuming official posts, as provided in Article 30(1) of the Lawyers Law, and the system requiring lawyers to obtain the permission for business, etc., provided in Article 30(3) of the same law should be liberalized by shifting to a reporting system.

○ What is appropriate with regard to professional ethics in connection with the expansion in scope of activities should be studied, and the observance of professional ethics should be secured by improving ethical training, properly applying the official disciplinary system, etc.

### 3. Expansion of Access to Lawyers

#### (1) Development of Legal Consultation Services

The establishment of legal consultation centers should be promoted.

#### (2) Securing Transparent and Reasonable Lawyers' Fees

From the viewpoint of securing transparent and reasonable lawyers' fees, for example:

○ Disclosure and furnishing of information on fees of individual lawyers should be strengthened.

○ A duty to prepare contract documents on lawyers' fees should be established, and the duty to provide explanations on fees to clients should be made fully realized.

#### (3) Public Disclosure of Information on Lawyers

○ With respect to the liberalization in principle of lawyer advertising, consideration should be given and necessary steps taken toward permitting advertising of lawyers' fields of expertise, past performance and the like.

○ Disclosure of information on lawyers should be further promoted.

### 4. Strengthening Lawyers' Business Structure and Strengthening Expertise

○ Necessary measures should be taken to promote the incorporation of law firms and use of joint law firms, to strengthen lawyers' expertise and to promote cooperation and the establishment of comprehensive firms.

○ For improving lawyers' expertise, the continuing education of lawyers should be improved and more effectively carried out, including making it a duty to take training courses as provided by bar associations.

### 5. Internationalization of Lawyers; Cooperation and Coordination with Foreign Law Solicitors

○ So that lawyers may sufficiently meet the demands for legal services in the age of internationalization, the ability to respond to internationalization should be greatly strengthened through such steps as improving lawyers' expertise, strengthening their business structure,

promoting international exchange, and paying heed to the demands for internationalization at the legal training stage.

○ To promote cooperation and coordination between Japanese lawyers and foreign law solicitors (*gaikokuho jimu bengoshi*), requirements for specified joint enterprises should be relaxed.

○ Legal technical assistance to developing countries should be promoted.

## 6. How Bar Associations Should Be

### (1) Ensuring Transparent Administration of Bar Associations

○ The transparent administration of the bar association should be ensured by measures such as the following:

Developing mechanisms by which the people's views can be broadly heard and reflected, such as by expanding the participation of parties other than lawyers in the administration of associations, and

Developing mechanisms for securing the transparency of the decision-making process and for disclosing business and financial information.

○ Bar associations are expected to make necessary arrangements for smoothly effectuating the various reforms set forth in these Recommendations, including the reform of the lawyer system, and for securing the proper operation and development of these reforms.

### (2) Reinforcement of Bar Associations' Systems on Lawyers' Professional Ethics

○ To firmly establish and improve lawyers' professional ethics while responding to the changing social demands, bar associations should strictly exercise their self-regulating functions as well as make further efforts to develop proper lawyer ethics.

○ In consideration of ensuring transparent, prompt and effective enforcement of the disciplinary procedures, at least the following measures should be taken:

Readjust the composition of the membership (e.g., by increasing the number of non-lawyer members) of organizations that, through the disciplinary procedures, carry out these tasks, Grant the voting right to members of the investigation and prosecution committees other than lawyers,



Introduce a system whereby a person who requests a disciplinary action and makes an objection to the decision by the investigation and prosecution committee can submit a further appeal to an organization in which the public participates in the event the previous objection is dismissed or rejected,

Effectuate official investigations by bar association committees (*shokken chōsa*) by clarifying lawyers' obligation to cooperate in inquiries or examinations,

Ensure prompt proceedings by, e.g., fixing a standard period for review,

Improve transparency by clearly indicating minority views along with the decisions of the disciplinary committee,

Make further arrangements to expand the participation of persons who request disciplinary actions in the proceedings and to reinforce the provision of relevant information,

Improve publication of the process and results of disciplinary actions.

○ For protecting the interests of clients and others, fair handling of complaints by bar associations should be achieved by the following means:

Developing complaint consultation services and making them known to the public,

Educating and training persons in charge of such complaint consultation services,

Ensuring fair and transparent procedures to handle complaints,

Strengthening relationships with the disciplinary procedures. In addition, other measures should be considered, such as the promotion of lawyer liability insurance, in order to strengthen remedies for legal malpractice.

○ Ethical training should be strengthened at the legal training stage and at the continuing education stage.

## 7. Utilization of Specialists in Fields Adjoining Law

○ For utilizing, in legal proceedings, the expertise of specialists in fields adjoining law (so-called quasi-legal professionals):

Judicial scriveners (*shihō shoshi*) should be granted the authority

to serve as representatives for litigation in the summary courts, after highly reliable measures to secure their ability have been taken. In addition, equivalent representative authority should be granted for mediation and pre-litigation settlement (*sokketsu wakai*) matters, using the subject matter jurisdiction limits of summary courts as the appropriate standard for matters judicial scriveners are permitted to handle.

Patent attorneys (*benrishi*) should be granted the authority to serve as representatives in patent infringement lawsuits (limited to cases in which a lawyer is a representative for the litigation), after highly reliable measures to secure their ability have been taken;

In tax suits, tax attorneys (*zeirishi*) should be granted the authority to appear and give statements in the court, as assistants (*hosanin*), together with a lawyer serving as representative for the litigation, without any special permission from the court;

With respect to administrative scriveners (*gyōsei shoshi*), consultants on social insurance and labor (*shakaihokenromushi*), real estate and building appraisers and other specialists, if it becomes clear in the future that their expertise is necessary in lawsuits and that their performance is suitable, consideration should be given individually with regard to how each of them should be able to participate in a certain scope or form of legal proceedings, such as appearing and making statements in the court, as a matter for the future.

○ Expertise of quasi-legal professionals should be utilized for legal affairs, including ADR, outside the scope of litigation proceedings. As a part of the review of Article 72 of the Lawyers Law, individual consideration should be given, based on the actual conditions of each occupation, to what the appropriate manner of participation should be, and this should be clearly prescribed by law.

○ In order to, at least, secure predictability regarding the scope and nature of what is regulated under Article 72 of the Lawyers Law, the contents of that regulation should be made clear in an appropriate way, including the relationship to the business operations of quasi-legal professionals and persons engaged in corporate legal affairs from the standpoint of changes to meet diversification of business forms.

○ To achieve one-stop services (comprehensive legal and economic firms), measures should be taken to actively promote cooperation be-

tween lawyers and quasi-legal professionals.

8. The Status of Persons Engaged in Corporate Legal Affairs, etc.

○ The status of persons engaged in corporate legal affairs, etc., should be studied and, at least, systems should be arranged, including the specific conditions therefor, for granting qualification as legal professional to those who have acquired a certain level of actual business experience in the private sector after passing the national bar examination.

○ Consideration should be given to utilizing the expertise of those specially promoted as prosecutors (*tokunin kenji*), assistant prosecutors and those who have been judges at summary courts, and, at least, arrangements should be made for a system for granting qualification as legal professional to those specially promoted as prosecutors.

#### **Part 4. Reform of the Public Prosecutor System**

1. Elevation of the Quality and Ability Demanded of Public Prosecutors

○ From the standpoint of securing people's confidence in the strictness and impartiality of the activities of the public prosecutors, the following measures should be carried out for the reformation of the attitudes of the public prosecutors:

Thoroughgoing reconsideration of the personnel and education system, including having public prosecutors work for a certain period of time in places in which they will learn the attitudes and feelings of the general public.

Concrete measures for the purpose of deepening public prosecutors', including high-ranking public prosecutors', understanding of the feelings of the victims of crime and the activities of primary investigative organs such as the police.

Reinforcing and strengthening internal training in order to prevent public prosecutors from becoming complacent and to build the consistent stance which is fundamentally required for public prosecutors.

○ An appropriate training system should be introduced for the acquisition and improvement of specialized knowledge and experience.

○ An appropriate training system should be introduced to elevate ability to establish proof, etc., so as to bear the effective operation of the new system for popular participation in criminal proceedings.

## 2. Popular Participation in Management of the Public Prosecutors Offices

Mechanisms should be introduced so as to enable the voices of the people to be heard and reflected in the management of the public prosecutors offices, including reinforcing and making effective the system for proposals and recommendations from the Inquests of Prosecution to chief public prosecutors regarding the improvement of prosecutorial affairs.

## Part 5. Reform of the Judge System

### 1. Diversification of the Sources of Supply

○ In order to secure judges with abundant, diversified knowledge and experience, mechanisms should be established to ensure as a system that, in principle, all assistant judges gather diversified experience as legal professionals in positions other than the judiciary.

○ The special assistant judge system should be phased out in stages and on a planned basis. For that purpose, as well as others, the number of judges should be increased and, so as to accomplish this, appointment of lawyers and others as judges should be promoted.

○ In order to promote appointment of lawyers and others as judges, the Supreme Court and the Japan Federation of Bar Associations should make unified efforts and should establish continuous and effective measures, by building a constant framework and promoting consultation and collaboration.

### 2. Reexamination of Procedures for Appointment of Judges

○ In order to reflect the views of the people in the process whereby the Supreme Court nominates those to be appointed as lower court judges, a body should be established in the Supreme Court, which, upon receiving consultations from the Supreme Court, selects appropriate candidates for nomination, and recommends the results of its con-

sideration to the Supreme Court.

○ Appropriate mechanisms should be established so that this body can make its selection of appropriate candidates meaningfully, based on sufficient and accurate information, such as, for example, establishing subsidiary bodies in each geographical region.

### 3. Reexamination of the Personnel System for Judges (Securing Transparency, Objectivity)

○ With regard to the personnel evaluation of judges, appropriate mechanisms should be established for the purpose of securing transparency and objectivity as much as possible, by making clear and transparent who should be the evaluator and the standards for evaluation, by enriching and making clear the materials used in making the evaluation, and by disclosing the contents of the evaluation to the candidate and establishing appropriate complaint procedures in the event the candidate objects.

○ Consideration should be given to what the appropriate system is for increases in compensation (raises) for judges, including possible consideration of simplification of the current compensation grades.

### 4. Popular Participation in the Management of the Courts

Measures should be introduced to enable the views of the people to be reflected broadly in the management of the courts, such as reinforcing Family Court councils and newly establishing in the District Courts bodies similar to such councils.

### 5. With Regard to How Supreme Court Justices Should Be Appointed, etc.

○ Paying due respect to the importance of the position of Supreme Court justice, appropriate measures should be considered to secure a transparent and objective process for their appointment.

○ Studies should be made on measures to increase the effectiveness of the system for popular review of Supreme Court justices, such as by making efforts to reinforce the disclosure of information related to each individual justice subject to review so as to make it possible for the people to make substantive judgments.

## **Part 6. Mutual Exchanges Among the Legal Professions**

By promoting the mutual exchange of personnel among the legal professions (judges, public prosecutors, lawyers, and legal scholars), a justice system (legal profession) should be built up that truly is able to meet the expectations and trust of the people.

## **Chapter IV. Establishment of the Popular Base of the Justice System**

### **Part 1. Establishment of the Popular Base of the Justice System (Popular Participation in Justice)**

#### **1. Introduction of New Participation System in Criminal Proceedings**

A new system should be introduced in criminal proceedings, enabling the broad general public to cooperate with judges by sharing responsibilities, and to participate autonomously and meaningfully in deciding trials.

##### **(1) Basic Structure**

○ Judges and *saiban-in* should deliberate and make decisions both on guilt and on the sentence together. In the deliberations, *saiban-in* should possess generally equivalent authority to that of judges; and in the hearing process, *saiban-in* should possess appropriate authority including the authority to question witnesses.

○ The number of judges and *saiban-in* on one judicial panel and the method of deciding the verdict should be determined appropriately, giving consideration to the need to ensure the autonomous and meaningful participation of *saiban-in* and the need to ensure the effectiveness of deliberations, and also taking into account the seriousness of the cases to which this system will apply and the significance and potential burden of the system on the general public.

○ However, a minimum requirement should be that a decision adverse to a defendant cannot be made on the basis of a majority of either the judges or the *saiban-in* alone.

##### **(2) Selection Method and Duties of *saiban-in***

○ With regard to the selection of *saiban-in*, the selection pool should be made up of persons randomly selected from among eligi-

ble voters, and further appropriate mechanisms should be established to ensure a fair trial by an impartial court. *saiban-in* should be selected for each specific case and should serve for the entire case up through the judgment on it.

- *saiban-in* candidates who have received a summons from the court should bear the duty to appear.

(3) Applicable Criminal Cases

- Applicable cases should be cases of serious crime to which heavy statutory penalties attach.

- No distinction should be made based on whether the defendant admits or denies the charge.

- Defendants should not be allowed to refuse trial by a judicial panel composed of judges and *saiban-in*.

(4) Trial Procedures, Appeals, etc.

- Various efforts should be made in connection with administration of trial procedures and, as necessary, the relevant laws should be modified, so as to ensure autonomous and meaningful participation by *saiban-in*.

- The contents of judgments should fundamentally be structured in the same way as those for trials by judges only.

- Litigants should be allowed to appeal (*koso*) on the ground of error in fact finding or the ground of improper sentence.

## 2. Expansion of Participation Systems in Other Fields

To expand popular participation in the justice system, the following measures should be taken:

- Introduction of an expert commissioner system, and reinforcement of the conciliation member, judicial commissioner and court councilor systems.

- Reinforcement of the Inquest of Prosecution system, and reinforcement of the volunteer Establishment of a new body to reflect popular views in the process for nomination of judges.

- Reinforcement of mechanisms so as to better reflect public views with regard to the administration of the courts, the public prosecutors offices, and the bar associations.

## **Part 2. Laying the Groundwork for Establishment of the Popular Base**

### **1. Realization of a More Easily Understandable Justice System**

The early realization of revisions to basic laws is expected, and it is also desirable that consideration be given to the operation of the justice system to make it more easily understandable from the viewpoint of the general public.

### **2. Reinforcement of Education about the Justice System**

It is desirable to increase opportunities to learn about the justice system in school education, etc. To this end, it is incumbent on those engaged in education and members of the legal profession to play an active role.

### **3. Promotion of Disclosure of Information Related to the Justice System**

Disclosure and furnishing of information by the courts, the public prosecutors offices, and the bar associations should be promoted.

While paying due heed to privacy of the persons involved and other concerns, information on judicial decisions should be disclosed entirely and furnished by making use of Internet home pages and other means.

## **Chapter V. Promotion of this Reform of the Justice System**

### **Part 1. Establishing the Framework for Promoting Reform of the Justice System**

Since the reforms proposed in these Recommendations cannot be accomplished easily without concerted effort by the Cabinet, the Cabinet is requested to establish a strong framework for promoting the reforms and to exert unified and concentrated efforts.



## **Part 2. Efforts of the Cabinet and Relevant Administrative Agencies Toward the Realization of Reform of the Justice System**

○ The Cabinet and relevant administrative agencies are strongly requested to develop measures on reform of the justice system in a comprehensive manner and to make the best possible efforts to implement those measures in a systematic way and at the earliest possible time.

○ With regard to the effectuation of measures related to reform of the justice system by the Cabinet and relevant administrative agencies, it will be difficult to realize the reforms fully without the cooperation and contributions of the Supreme Court, the Japan Federation of Bar Associations and other relevant bodies. Accordingly, those bodies are asked to cooperate to the greatest extent possible in implementing the measures related to reform of the justice system by the Cabinet and relevant administrative agencies, and at the same time to make active efforts for the reform and improvement of systems and administration related to their own duties and functions.

## **Part 3. Financial Measures**

Since provision of sufficient financial resources is indispensable to realize these reforms of the justice system, beginning with expanding human resources at the courts and the public prosecutors office, this Council requests the government to give special consideration to the financial measures necessary to implement measures related to reform of the justice system.

## **Conclusion**