

# Developments and Challenges of Clinical Legal Education in Japan: Collaboration of Academics and Practitioners<sup>†</sup>

- I. Clinical Legal Education and the Foundation of Japanese Law Schools in the Context of the Judicial System Reform  
*Takao Suami*
- II. “Bridging Theory and Practice”: The Waseda Refugee Law Clinic Pilot Program  
*Shigeo Miyagawa*
- III. An Experiment of the Civil Law Clinic at Waseda Law School  
*Nobuo Kojima*
- IV. Making a Criminal Justice Clinic in Japan  
*Takashi Takano*
- V. Shibuya Public Law Office’s Approach to Clinical Legal Education: The Collaboration of the Tokyo Bar Association with Four Law Schools in the Tokyo Metropolitan Area  
*Katsumasa Hirabayashi and Eishi Misawa*
- VI. Omiya Law School and the “All Day Clinic”  
*Lawrence Repeta*

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# **I. Clinical Legal Education and the Foundation of Japanese Law Schools in the Context of the Judicial System Reform**

**Takao Suami\***

## **1. Introduction**

I would like to present an overview of the on-going reform of the judicial system in Japan, with a special focus on the introduction of clinical legal education. I hope this will provide background information necessary to easily understand the presentations by my colleagues to follow.

## **2. On-going Judicial System Reform in Japan**

The judicial system reform program which began in the late 1990s is still in progress. This is by far the most significant reform of Japan's legal system since the period immediately after World War II.

The reform program is a response to major societal factors, including globalization and the collapse of the so-called "Bubble Economy" in early 1990s. The official starting point for the current judicial reform was the establishment of the Judicial System Reform Council under the Cabinet in July 1999. The scope of the Council's mandate was very broad<sup>(1)</sup>. Following intensive discussions regarding nearly all aspects of Japan's judicial system, the Committee made its final report (referred as "the Report" hereafter) public in June 2001<sup>(2)</sup>. The Japanese Government

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<sup>(1)</sup> The Council has the purposes of "clarifying the role to be played by justice in Japanese society in the 21st century and examining and deliberating fundamental measures necessary for the realization of a justice system that is easy for the people to utilize, participation by the people in the justice system, achievement of a legal profession as it should be and strengthening the functions thereof, and other reforms of the justice system, as well as improvements in the infrastructure of that system (Article 2, para. 1 of the Law concerning Establishment of the Justice System Reform Council).

<sup>(2)</sup> The Justice System Reform Council, Recommendations of the Justice System Reform Council—For a Justice System to Support Japan in the 21st Century—(June 12, 2001).

immediately accepted this Report and committed to implement recommendations suggested in it. Therefore, the Report is actually considered to be a kind of “Bible” for the Japanese reformist.

If you briefly look through the Report, you will easily see that if the recommendations are fully respected, Japan will acquire a judicial system quite different from the present one. For example, Japan will have much more lawyers, more judges appointed from among practicing attorneys, a quasi-jury system in criminal cases, and faster disposition of civil cases. Overall, the public should have easier access to judicial remedies. Supporters of the reforms believe these changes will contribute much to strengthening the rule of law in Japan.

### **3. Introduction of American-style Law Schools**

Educational reform is regarded as a major pillar of the total judicial reform program. Needless to say, legal professionals themselves form the most basic infrastructure of the judicial system. Without a sufficient number of lawyers of high quality, no judicial system can work well, even if it is ideally designed on paper. Therefore the Report recommended that the core of the new system should be, “law schools, professional schools providing education especially for training for the legal profession, should be established.”<sup>(3)</sup>

#### **1) Pre-existing Legal Education and the New Law Schools**

The establishment of such law schools will have a big impact on legal education in Japan. Japan imported European-style legal education in the late nineteenth century. Since then, legal education has been provided at the undergraduate-level within the faculty of law. However, the present undergraduate legal education is virtually similar to a basic liberal arts education offered at American universities. Most graduates of law faculties become corporate employees and government officials. In addition, although most lawyers in Japan have obtained undergraduate law degrees, completion of a university law program is not currently a prerequisite to taking the bar examination in Japan. Until establishment

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<sup>(3)</sup> Id.

of the new law schools in 2004, there had been no university institutions responsible to train the legal profession.

Of course, we must consider the role of the “Legal Research and Training Institute” controlled by the Supreme Court. Without question, the Institute provides legal training to candidates who have passed the bar examination. However, the Institute should not be considered equivalent to a university law school. First of all, in my view, the Institute provides practical training rather than a legal education; in particular, this training is focused on litigation practices. Second, since the Institute does not have the capacity to conduct academic research, there is a lack of a critical perspective toward current legal practice.

## **2) The Influence of American Law Schools**

It is generally believed that the design of Japan’s new law schools was heavily influenced by the American law school model. The two systems have many in common. For example, Japanese law schools offer three-year graduate programs like the American schools. Second, in order to ensure diversity, Japanese law schools are expected to accept students from among people with work experience and with undergraduate degrees outside the law. Third, teaching methods are similar. Unlike the one-way lecture typical in the undergraduate law programs in the past, law school classes must be interactive like the case-method style lecture in American law schools. Fourth, unlike the very low pass rate on the old bar examination, once the students have completed the law school program, it is expected that a significant ratio of those students (70 % to 80 %, according to the Judicial Reform Council Report) will pass the new bar examination. These features show that American law schools provided the model for the new Japanese law schools.

On the other hand, there are some aspects of Japanese legal education that will remain different from the American model. First, Japan will maintain law studies at the undergraduate level for the time being at least. Therefore, in addition to a standard training term of three years, a shortened term of two years is acceptable in Japanese law schools in order to accommodate students with undergraduate degrees in law. Also, the Legal Research and Training Institute will survive despite the establishment of law schools. This means that after passing the bar examination,

law school graduates must spend another one year as judicial trainees under the supervision of the Institute.

### **3) Establishment of the Law Schools**

Following the timeline proposed in the Report of the Judicial Reform Council, Japan's law schools opened in April 2004. More than 60 law schools were founded and they accepted a little less than 6,000 students in 2004. The size of the schools varies. The biggest law school accepts 300 students each year, while the smallest accepts only 30.

As mentioned above, the new system is a combination of the American model and traditional Japanese system. Reflecting the mix of influences, educational policies of the new schools are not uniform. Generally there are two types of law schools. The first is close to the American model and the second is quite different. For example, the former type has few two-year course students or none at all. The latter type accords much more respect to undergraduate legal education; two-year course students comprise the majority. This distinction is also apparent in terms of clinical legal education. The latter group of law schools is not positive toward the development of clinical education.

## **4. Inclusion of Clinical Legal Education into the Law School Curriculum**

### **1) Law School and Clinical Legal Education**

Japanese universities have had no experience of clinical legal education and they have had little interest so far. Education in university law departments centers upon legal theory.

However, the Report of the Judicial Reform Council recommends that "practical education" should be introduced "with a strong awareness of the necessity of building a bridge between legal theory and legal practice."<sup>(4)</sup> This recommendation can be considered as the starting point for the development of clinical education in Japan.

In Japan, unlike the United States and many of other developed countries, the world of law professors has been totally separate from that of

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<sup>(4)</sup> Id.

lawyers. Most law professors did not pass a bar examination and therefore do not have any practical experience. There is even a tendency among some of these professors to be *proud* of their lack of practical experience. As a result, the outcome of academic research does not always satisfy the needs of practitioners or of society and practitioners often disregard academic research. This explains why the Report emphasizes the need for a bridge between legal theory and legal practice.

The Report does not clearly refer to clinical legal education. However, the necessity of clinical education was confirmed by the Ministry of Education at a later stage. Following the Report, the Central Education Council under the Ministry of Education issued recommendations in August 2002 for the official requirements of accredited law schools. Under these recommendations, “clinics” and “externships” were officially recognized as a part of “practical education.”<sup>(5)</sup> Since then, many universities started preparing for their own clinical education programs.

## 2) The Japanese Concept of Clinical Legal Education

The concept of clinical legal education has yet to be fully established in Japan. However, it is commonly understood that clinical education is something outside ordinary law courses centered on legal theory. In my view, Japanese clinical education can be classified into three types of practical education. The first is the so-called “Legal Clinic,” in which law school students work on actual cases for live clients under the close supervision of clinical professors in a law office attached to or associated with their law school. The second is the “Externship,” in which students are engaged in legal practice at outside institutions for fixed periods. Sponsoring institutions may include law firms, central or local governments, non-governmental organizations, international organizations and legal department of business corporations. The third is the “Simulation,” in which students are not involved in work for live clients at all; instead they study with professors who make use of real case materials with some modifications. The role-play method may also be used.

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<sup>(5)</sup> Chuo-Kyoiku-Shingikai, Hoka-Daigakuin-no-Setchikijyun-nitsuite (Toshin) (August 25, 2002).

These ideas on clinical education are very much influenced by present clinical education in American law schools. As you know, for many years Japanese law professors have studied in the United States. But until very recently, few of them paid any attention to clinical education there. Therefore, this type of education is quite novel in Japan. But times have changed. After its establishment in 2002, our Institute, Waseda Institute of Clinical Legal Education, dispatched delegations to American and Canadian law schools for the purpose of gathering information about current clinical education,<sup>(6)</sup> and on the basis of this information, published several articles and a book in Japan. On this occasion, I would like to express my sincere appreciation to the many people who provided kind assistance to our delegations. Other Japanese universities have also been very eager to study clinical education in North America. Due to these efforts, the concept of clinical legal education has already become much more familiar to law professors and lawyers in Japan.

## **5. Importance of Clinical Legal Education for Japanese Law Schools**

The importance of clinical education for Japanese law schools can be explained from different perspectives.

First, from the viewpoint of the law school project, the introduction of clinical legal education is a symbol of the professional law school, and clearly indicates that law schools aim at training lawyers. The idea of the professional school has not been fully accepted by Japanese society including the three major branches of the legal profession (judges, prosecutors and attorneys). When one considers clinical education, one must recognize the concept of the professional school again.

Second, the clinical education is likely to have an impact on how legal scholarship is practiced in Japan. For the purpose of bridging the gap between legal theory and practice, clinical education can play an

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<sup>(6)</sup> We visited New York University Law School, Harvard Law School, Georgetown Law School, Osgoode Hall Law School, Yale Law School, University of New Mexico Law School, and University of California, Boalt Hall Law School in the last several years.

effective role by reducing the distance between academics and practitioners. In order to supply clinical education, law school faculty must include practitioners as well as academics. If they have an opportunity to work together for clinical education, a new type of scholarship can arise from such collaboration.

Third, although Japan has decided to increase the number of lawyers, there is still an upper limit to the annual production of lawyers. Actually it is generally argued that the capacity of the Legal Research and Training Institute is limited to 3,000 each year. As long as we keep the system of judicial traineeship by the Institute, it is quite difficult to increase the annual production beyond 3,000. Sooner or later, we will have to discuss whether or not we abandon the present system of judicial traineeship. In this context, the development of clinical education in the law schools will provide ammunition to those who support the idea of abolishing the present judicial trainee system.

However, it should be kept in mind that not all Japanese law schools support clinical education. The most typical example is the law school of the University of Tokyo. Their education does not contain much of clinical component.

## **6. Concluding Comments**

Clinical education in Japan is about one-year old. It is much too early to reach any conclusions. Further, no reform in Japan is based on a clear-cut idea. Because people in charge are always trying to strike a good balance among existing interested parties, every reform project is forced to contain many contradictory elements.

This has already happened in the law school project. The Bar Examination Committee under the Ministry of Justice recently published its plan regarding the number of applicants to be allowed to pass the bar examination in 2006 and 2007. Graduates of the new law schools will take a bar examination in 2006 for the first time. According to Ministry's plan, it is expected that about 50 % of law school graduates will pass in 2006. Surprisingly, unlike the original idea in the Report of the Judicial Reform Council, the pass rate will go down to less than 40 % in 2007. Many professors are very skeptical of that the concept



of the professional law school will survive if the pass rates are so low. But Japan's clinical legal education has already started. We have already crossed the Rubicon. If you listen to the following presentations to follow, you will see that there is no turning back.

## II. “Bridging Theory and Practice”: The Waseda Refugee Law Clinic Pilot Program

Shigeo Miyagawa\*

### Introduction

Japan is in the midst of a major overhaul of its judicial system involving a range of significant initiatives including how lawyers are trained and credentialed. Concerns about “bridging theory and practice” are a major issue and have been a source of vibrant debate both before and after the establishment in 2004 of new law schools in Japan. From the educational point of view, the prime objective of the new law school system is to provide professional legal education at the graduate level; until 2004 there were no professional law schools. Previously, there were only undergraduate academic faculties of law where law professors teach theories of law to students who are fresh out of high school. These students can graduate with an undergraduate degree in law, but they tend to only have general knowledge and do not receive intensive training in legal studies and practice as is common in professional law schools in the U.S. Some of these law graduates have gone on to graduate schools in law where they pursue scholarly research and prepare themselves for careers in academia. Those who wish to become lawyers must pass a very difficult bar examination requiring intensive preparation, usually at cram schools.

From the wider viewpoint of legal scholarship and the practice of law, “bridging theory and practice” is seen as an imperative goal in Japan’s newly established law school system. In this talk, I try to shed light on how law schools are responding to this challenge by explaining: 1. The gap between legal scholars and practitioners of law; 2. Plans for a pilot program establishing the Refugee Law Clinic of Waseda Law School; and, 3. The common values instilled by clinical legal education from a comparative perspective. Further, I explain three approaches to “bridging theory and practice” in law school education involving personnel, the contents of a classroom course required before the clinical

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course and what students learn through law school education.

## 1. The Chasm

The career of law professors is distinctly separated from that of law practitioners in Japan. Though it is true that both scholars and lawyers study law at the faculty of law in university, their training and career path are quite distinct after graduation. Those who want to be a scholar of law may proceed to the graduate school of law without taking the bar examination while those who wish to practice law continue their study of law on their own and/or by attending a cram school where studies are narrowly focused on passing the bar examination. Would-be scholars usually take up one particular area of law as their research field of concentration. In contrast, would-be practitioners study a wide range of law in order to pass the bar examination with the view of becoming a general practitioner of law. It is important to bear in mind that once they are appointed as a law professor or admitted to the bar, there are very few opportunities to move from academia to legal practice and vice versa. The majority of law professors teaching in the new law schools in Japan do not have practical experience in law. In many cases, the law practice was prohibited by the terms of the employment contract with the university. University administrations expected law professors to dedicate their efforts to research and education and not get involved in litigation.

In general, the rigidity of career paths in the legal profession reflects the low level of job mobility that prevails in Japan. Since scholars and practitioners pursue separate career paths, they have very little opportunity for interaction between them as ideally there should be. Scholars pursue research related to their academic interest which may not necessarily reflect the current state of law as it is practiced. Therefore, research themes that are eminently important for the practice of law are largely ignored by scholars. In the area of refugee law and international human rights law, for example, such research themes as the judicial applicability of international treaties to domestic violations of human rights have been only recently gaining academic attention. Another shortcoming related to the chasm dividing scholars and practitioners is that there has been almost no course on professional ethics or lawyering skills at the faculty

of law in university. Since scholars are insulated from the practice of law, professors cannot teach these courses to law students. Moreover, some scholars are even unaware of their importance.

## **2. Waseda Refugee Law Clinic**

In 2004, 68 law schools opened their doors in Japan, enrolling some 6,000 students. In an effort to bridge the gap between classroom teaching and actual practice of the law, many of these law schools began to incorporate the clinical legal education into their academic curricula, though the Ministry of Education and Science only requires the offering of some form of lawyering skills courses at new law schools. At the outset of the new law school system, a majority of the law schools uses externship programs as the method of providing the clinical legal education. And yet, about a dozen of the law schools established in-house clinics. These clinics provide law students with hands-on experience while also offering easy access to legal services to people who find themselves in need of legal counseling. Promoting greater accessibility to legal services is one of the aims of the government's Judicial Reform Council that was tasked with renovating Japan's legal system. To this end, the government plans to double the number of lawyers over the next decade, a goal that helps explain why the law schools have been established. There have been longstanding concerns that the blinkered education offered by cram schools does not create well-rounded or intellectually curious lawyers. There is also a sense of a gulf between the judicial system and the public that has generated concerns about a crisis of legitimacy; Japan's passive and inaccessible legal system has not been seen as an effective venue for redress by citizens and it is often perceived to be biased in favor of the State and vested interests. In this context, legal clinics would be seen as a form of outreach designed to regain legitimacy and offer practical help to those in need of counseling.

The Refugee Law Clinic at Waseda Law School is a pilot program to integrate "theory and practice." The Waseda Refugee Law Clinic is jointly run by an academic, that is me, who has been on the Waseda law faculty for six years, and a lawyer who joined the Waseda Law School as a visiting professor effective April 1, 2005. The guidelines promulgated

by the Ministry of Education and Science require that about 20 percent of the faculty members be practitioners to incorporate the practical orientation in the law school instruction. He is one of them. The Clinic has been established to provide legal services to refugees and non-citizens. Third year law students are supervised by him concerning practical legal matters. Although the academic also supervises students in academic aspects, the ultimate responsibility to clients lies with the practitioner in the strict sense of legal representation.

As a pre-requisite course for taking this Clinic, students take a class on refugee and immigration law that is jointly taught by the above-mentioned team of an academic and a practitioner. In this course, students are introduced not only to the current development of theories concerning domestic immigration law and international human rights law, but also to a variety of legal practice issues and lawyering skills such as legal draft writing and communication with foreign clients. This course is also designed to examine the lawyer's role in non-governmental organizations, or NGOs, for human rights advocacy, and international organizations such as United Nations High Commissioner for Refugees.

Legal practice in Japan is largely confined to the fields that are related to litigation. This is mainly because there are only a limited number of lawyers in Japan. That is about 21 thousand. One consequence of the limited number of lawyers, is that they are busy providing litigation-related legal services, and tend to be content with practicing law in this manner. However, there are a variety of fields where legal professionals can provide other services and take initiative in developing the law into an effective tool for shaping society and promoting reform. Lawyers can play a key role as autonomous actors relatively insulated from pressures and constraints, making them effective advocates. It is also possible that lawyers who become involved in advocacy work may find it desirable as a career and thereby contribute to the professionalization of NGOs. Many commentators argue that professionals, *inter alia*, are key to helping NGOs realize their full potential.

Aside from providing legal counseling, the Refugee Law Clinic takes responsibility for sending externship students to offices of NGOs and international organizations. There was one student last summer who was sent to the office of a refugee-related NGO. In that office, staff

members were all non-lawyers. They provide many kinds of services to refugees, including assistance in filling in government application forms for the refugee status, and doing research on the likelihood that the refugee would face persecution if forced to return to his/her home country. Through working at the NGO and providing such services to refugees, this student found herself reflecting upon the role of lawyers in non-litigation settings. She reflected on how law school education enables her to contribute to the NGOs activities in ways different from the other staff without legal training. This experience helped her appreciate what is the essential training that makes her a lawyer and what it means to be a lawyer. This type of externship experience broadens the horizons of law students in ways that lawyers trained in the government's Legal Research and Training Institute have not been exposed to. Thus, the revamping of legal training and shifting it from a government to an academic setting carries the potential for significant transformation of the role of lawyers in society. Creating networks between aspiring lawyers and NGOs is also a way of supporting the work of NGOs and helping them to become more effective institutions.

With regard to providing lawyering skills, the Refugee Law Clinic had one student take part in interviewing a refugee concerning his personal story about leaving his country and seeking refugee status. This interview required the assistance of an interpreter. The refugee was a person from Burma and a political dissident. The student was given an opportunity to draft written testimony to be submitted to the court. This draft testimony was first submitted to the supervising attorney for comment. The student was tasked with reconstructing the facts of his client's story with the view to making the testimony more persuasive to the judge. He found himself facing language and cultural barriers in trying to communicate with the client so as to present compelling testimony about his experiences in Burma to a Japanese judge. What makes sense in one culture may not in another and how information is obtained and relayed also varies greatly. These experiences in dealing with cross-cultural communication problems have benefits extending beyond the immediate goal of assisting refugees; law students with such experiences will be in a better position to serve foreign clients not only in human rights cases but also in commercial transactions or other litigation. That is to say, the training

given at the Refugee Law Clinic is transferable to other aspects of legal practice and sensitizes law students to foreigners' varied assumptions, expectations and perspectives about the legal process.

The Refugee Law Clinic also aims at imbuing the students with academic curiosity. With the establishment of the new law school system, the training of legal scholars will shift away from the existing graduate schools of law where academic research is emphasized. By exposing students to the reality of legal practice through legal clinics and externships with NGOs and international organizations, advocates of the new system hope that students will be eager to pursue research relevant to their practical experiences that would address legal problems they have seen first hand. The student who participated in interviewing the refugee applicant is now writing a case note for publication on the subject of the endless detention of non-citizens who, after being issued a deportation order, have been denied re-entry by their home countries. This is an example of exactly the type of socially conscious, reform minded lawyers that have not been produced under the previous system. A group of law practitioners, scholars, and NGO staff members who helped to build this Refugee Law Clinic have come to realize that we share a common interest in reforming the practice of law in the area of refugee and immigration law. We also share a common desire to participate in educating young lawyers who aspire to be active in this area of law. As a result, we decided to publish a textbook for students who take the Refugee Law Clinic and similar clinical courses at other law schools. This textbook differs greatly from existing law school textbooks because it is interdisciplinary, involving an authority on refugee law, an expert on international human rights law, a long-term member of the United Nations Human Rights Committee, and an interpreter. The list of these contributors literally represents the idea of "bridging theory and practice" in the area of refugee and immigration law. Truly, legal clinics represent a new and exciting frontier in Japan's legal education.

### **3. Three Approaches to “Bridging Theory and Practice” and Values Inherent in the Clinical Pedagogy**

The Refugee Law Clinic draws on various pedagogical approaches to “bridging theory and practice.” The first approach involves a scholar and a practitioner forming a teaching team. They teach courses together, and both supervise students together. The second approach concerns the content of a preparatory course that is required of students before working at the Refugee Law Clinic. The course content incorporates both academic theories of law and lawyering skills. The third aspect involves what students acquire through participating in the Refugee Law Clinic. Students get not only lawyering skills, but also are encouraged to engage in self-reflection about the role of the lawyer and the role of the law in ways that help them develop as human beings and as lawyers.

The Refugee Law Clinic aims to instill ethics and values that will make lawyers more aware of their social responsibilities. It is essential to encourage critical self-reflection on the legal profession, and work toward the improvement of how law is practiced. Clinical training and externships aim to promote diversification of the roles of lawyers beyond litigation-related legal services. These values underlying the Refugee Law Clinic are inherently clear in the pedagogy of the Refugee Law Clinic. By creating a teaching team of a practitioner and an academic, students benefit from a dynamic tension between teachers from different professional backgrounds. It is this tension and exposure to different perspectives that facilitate reflection about the legal profession. By integrating theoretical considerations and practical training in the course, we aim to bridge the gap between theory and practice. In exposing law students to other fields of legal practice such as working in a refugee-related NGO where there are traditionally not many lawyers involved, students can explore the broader potential of the legal profession and bring their skills to bear in new fields. The fulfillment of these goals, i.e., emphasis on critical self-reflection and social responsibility, the improvement of legal practice, and diversification of legal profession, will raise the level of services to actual clients and reach a broader potential clientele who can benefit from lawyers’ expertise.



## Conclusion

Legal clinics provide both educational services to students and legal services to clients. The practice and role of law is redefined in this process. In the case of Waseda's clinics, students are given an opportunity to help people who are vulnerable and often are unable to use the law to seek redress. Students can gain a sense of satisfaction in using their skills to benefit people who desperately need their help while finding out more about a problem that receives little attention in Japan. The vulnerable status of refugees and non-citizens in Japan is reflected in the small number of people who have been recognized as refugees by the Japanese government. The number is a little over three hundred since the Japan's accession of the Geneva Convention on Refugees in 1981. In the enforcement of refugee and immigration law by the Japanese government, human rights protection is trumped by the government's desire to tightly control refugees and non-citizens. Although the Waseda Refugee Law Clinic is in an embryo stage of development, we hope to develop it into a full-fledged legal clinic where law students gain vital experiences and refugees and non-citizens gain access to badly needed legal counseling and representation. Efforts such as these aimed at renovating the law are part of the gradual and incremental process of building a more robust civil society.

### **III. An Experiment of the Civil Law Clinic at Waseda Law School**

**Nobuo Kojima\***

#### **1. Two aspects of our experiment**

I will speak on an experiment of the Civil Law Clinic at Waseda Law School. There are two aspects in the experiment:

- 1) It is a pilot program conducted with students on the non-credit basis.
- 2) It is a new attempt toward the new legal education.

Our regular clinical program for credit is planned for the 3rd year students. Because our new law school has not reached the year to offer the course for credit, the experiment of the Civil Law Clinic I explain here is about a pilot program conducted last year with students on the non-credit basis.

And more importantly, our attempt is quite new in Japanese legal education.

#### **2. Why the education by a law school clinic is innovative in Japan**

I would like to briefly describe existing legal education in Japan:

- 1) Undergraduate university legal education

45,000 to 50,000 students study law at university undergraduate legal education department.

They learn legal theory through lectures at big classes. So their way of learning law is passive and they mainly learn abstract legal theory.

- 2) Legal education at the Institute of Legal Research and Training

The Institute of Legal Research and Training is a special training courses after passing the Bar Examination.

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It was established soon after the Second World War in order to learn legal practice together (before there was a legal practice training course only for judge and prosecutors).

For long time the training period was two years. But recently it was shortened to one & a half year and soon will be one year because the number of trainees is expected to increase due to the establishment of new law schools like Waseda Law Schools.

What they teach at the Institute is reading and writing legal documents for litigation and other court procedures and draft court documents. Control of the Supreme Court is very strong.

### **3. Seeking new legal practices based on the critical reflection of the past practice**

#### **1) Typical dissatisfactions of clients with legal counseling in the past**

Due to the inadequate past legal education, lawyers are not so good at oral communication with clients.

Client A: “I wanted lawyers to understand why I visited him and how I felt, but lawyers did not show any interest in my feelings.”

Client B: “Lawyers irritably urged me to speak. So I could not explain the situation well.”

Client C: “Lawyers told me something difficult to understand but never explained to me what I wanted to know.”

Client D: “Lawyers showed me several ideas, but I was not able to know what I could do.”

#### **2) Increase of the need for legal services but lack of appropriate legal services**

- i) In the change of social system, the traditional dispute resolution measures in the Japanese society declined.
- ii) The Japanese government system and relationship between government and society changed from the control over the people by bureaucrats to the deregulation and more public participation.
- iii) The number of attorneys in Japan will increase from approximately 21,000 as of 2005 to 50,000 by 2018

The range of activities in which attorneys are involved has become diverse from the typical litigation-related activities to various professional fields.

- 3) In this situation, many people who want to be lawyers are seeking better skills for legal counseling and other legal services:
  - i) Legal oral communication with clients
  - ii) Legal negotiation skills
  - iii) Practical and comprehensive knowledge including tax, various legal registration procedure

These are also needed for present practicing lawyers.

#### **4. Features of the Waseda Civil Law Clinic**

Let students do as much as they can.

At legal counseling:

Students first ask questions to clients, then teachers assist later.

Discussion among students and teachers

Students answer and explain to the clients

Before the legal counseling, teachers show students an outline of the case and students conduct research and prepare for the consultation.

Draft many documents possible.

#### **5. Results of the pilot program evaluated at the end of March**

##### **1) Overview**

Duration: from June 2004 to March 2005

5 teachers (4 attorneys with experiences of 20 years and more and one scholar)

The number of students participated: 66

4 students make one team for 2 months.

3 teams for every two month.

6 students for one team of the last two month: February and March of 2005

Number of teams  $3 \times 5 = 15$

79 cases consulted by the Waseda Civil Law Clinic.

The Average number of cases consulted by one team is 5.3.

1/5 inheritance; 1/5 money trouble; 1/5 divorce or custody

1/10 landlord and tenant dispute; 1/10 real estate

1/10 employment; 1/10 tort (accident)

Litigation	3	solved	1
Preparation for litigation	2		
Mediation or other family court procedure	3	solved	none
Preparation for family court procedure	3		
Negotiation or document drafting	10	solved	8

## 2) Feedbacks from the clients

Most of the clients who visited our legal clinic showed their great satisfactions.

E.g., I received 7 letters of thanks in the past 10 months. It is my first experience in the 21 years of my career as an attorney.

Why ?

- i. Take the good amount of time for consultation
- ii. Comprehensive research and discussion among teachers and students

## 3) Comments from students

The 1st most common comment:

“Communication is very difficult.”

“Difficult to establish good relationship with clients”

“Clients never talk in the way we (i.e., students) expect.”

“Difficult to question clients”

“Difficult to explain and answer to clients”

“Gap in understanding between us and clients about what is legal and what is not. It is difficult to explain the distinction.”

“Difficult to understand clients’ silence. They sometimes just looked at each other and did not say any words.”

The 2nd most common comment:

“I realized the importance of legal theories which we learn now.”

“Legal theories are really necessary to solve real cases, so that we must study more.” Namely, strong incentives to study hard!

The 3rd most common comment:

“I learned what the practical knowledge and critical thinking mean to lawyers.”

Students are, for the first time, exposed to actual evidences, so that they realize the need of the comprehensive knowledge relevant to the system of legal registration such as the real estate register and the family register),

Students are also placed to make fact analyses and evaluation of evidences.

Students learn the balance between time and cost and the need to predict the prospect of their cases in reaching an appropriate solution.

Students learn how to use law creatively.

**4) Students are not allowed to be present with their supervising attorneys in the courtroom.**

E.g., A family court judge requested students to be abstained from the procedure in which their supervising attorney participated.

**5) The clinical course workload is heavy for students.**

E.g., Only 2 credits are given to students at the curriculum of Waseda Law School. Considering the amount of time they spent on the clinical work, the number of credits is too small.

## IV. Making a Criminal Justice Clinic in Japan

Takashi Takano\*

### 1. Introduction

Japanese legal education system, from Western standpoint, seems to have been something “upside down,” that is, professional education would begin only *after* passing bar exam. All Japanese lawyers and judges are the persons who have been studying legal *theories* and memorizing them by reading books for a number of years, in average, four and a half years after undergraduate level of college education. And the successful candidates, “a selected few”<sup>(1)</sup> who are naturally very good at memorizing and writing theories, pass the National Judicial Examination and become the students of National Judicial Training and Research Institute where they encounter professional legal education for the first time in their lives.

Out of eighteen month period of “shiho shushusei” (judicial trainee or judicial apprentice), twelve months are given for a kind of clinical education. It is called “jitsumu shushu,” literally means “practice training.” These twelve months of practice training periods are divided into four parts: (1) civil judgeship; (2) criminal judgeship; (3) prosecution practice; and (4) private practice. They spend six months at local district courthouse, studying how to write orders and judgment; three months at a public prosecutors office to learn the skills of interrogation and disposition of criminal suspects; and another three months at private law office, learning basics of client interviewing and drafting litigation documents.

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(1) The number of successful applicants of the National Judicial Examination (Japanese counterpart of bar exam in the United States) had long been restricted to approximately 500. And the number of applicants were around 30,000, thus the average passage rate used to be less than 2.0%. As a result of recent judicial reform movement, the Judicial Examination Committee of Ministry of Justice, in charge of the administration of the exam, decided to increase the number. In the year of 2004, 1,500 out of 60,000 applicants passed the examination (passing rate is 2.5%). The number is to be 3,000 by the year of 2010.

Thus half of “practice training” periods are devoted to learning judge-ship and almost always their training is focused on skills of paper work. Even the three month period at private law office is mostly devoted to paper work. Although they have chance to talk with live clients, they are not permitted to argue or examine witnesses in courtroom. They are just allowed to sit at counsel’s table and see what his or her boss does. There are no clear legal grounds such as “Student Practice Rules” upon which judicial trainees are able to practice for clients under the supervision of licensed attorney. Judicial trainees interrogate live criminal suspects at a public prosecutor’s office and do some lawyer-client interview at a police station with a supervising attorney present. These activities are, however, accepted as a custom rather than based on law. And as I indicated above, Japanese “clinical” legal education is mainly focused on paper work, and students’ activities are “seeing” oriented rather than “doing.” In short, it is “learning by seeing.”

We, the clinical professors at Waseda Law School, thought that traditional “jitsumu shushu” or pseudo-clinical legal education had several shortcomings. First of all, it is too late. We believe that students should have some clinical experience *before* passing bar exam. When students have passed the bar exam, they naturally will feel like that they have already accomplished most part of the prerequisite for being a lawyer, even although it is an illusion. In order to pass the bar exam, they have spent much of their time and energy for memorizing theories, so that their motivation to learn new things or real world practice, are not so high. Secondly, it is too much devoted for Judgeship training and too less for private practice. In light of the fact that more than seventy percent of the judicial trainees are to become private attorneys, the education shall be focused on private practice. And thirdly, it is too much restricted. As I showed above, it is mainly “learning by seeing.” We believe that clinical legal education should be much more of “learning by doing” than it is today.

Founders of Waseda Law School clearly understood the importance of clinical legal education and its prospective role in professional legal education in general. Soon after had Waseda Law School celebrated its inauguration it opened up its legal clinic office in the spring of 2004, and boldly started experimental criminal justice clinic with two instructors



and thirteen students (first and second year) in the summer of the same year. And in the spring of 2005 Waseda Criminal Justice Clinic formally accepted sixteen students (second and third year). This paper is to explain and evaluate these experiments and discuss about some problems facing Japanese clinical legal education specifically in criminal justice field.

## 2. An Experiment of Waseda Law School

Professor Satoru Shinomiya and I, who are teaching criminal procedure and criminal advocacy at Waseda Law School with some twenty years of experience of criminal defense practice, are in charge of criminal justice clinic. In the summer of 2004 we selected 13 students<sup>(2)</sup> from some 40 applicants and divided them into four groups, so that each group consists of 3 or 4 students. Shinomiya and I supervised two groups respectively. In the spring of 2005 we took 16 students<sup>(3)</sup> out of some 40 applicants, and divided them into four groups, i.e., each group consists of 4 students. Apart from these groups I set up “team S” group, which is the group of four volunteer students<sup>(4)</sup> who took experimental criminal justice clinic course in the preceding summer. These “returning students” were automatically excluded from the candidates for the spring of 2005, but strongly insisted that they be allowed to do some work at the clinic office. So I decided to build up on extra group of students named “team S” (S stands for “special”), with whom I could do another experiment. In the following pages I mainly explain the activities of ordinary clinic students and briefly refer to those of “team S” students.

### A. How the Course Flows

Orientation. In Waseda Law School, Criminal Procedure is a compulsory subject for the fall semester of first year students<sup>(5)</sup>. Professional

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<sup>(2)</sup> Two second year students and 11 first year students.

<sup>(3)</sup> Six third year students and 10 second year students.

<sup>(4)</sup> All of them are second year students.

<sup>(5)</sup> The school calendar starts in April in Japan. First year students in Waseda Law School, just having finished the spring semester, have not yet started attending Criminal Procedure classes.

Responsibility and Criminal Advocacy are the courses for second year students and Criminal Evidence for third year students. Thus some students may lack necessary knowledge and skills for handling live clients. This is especially true for the first year students in the spring of 2004. But we expected that our first year students would be motivated enough to do hard work when dealing with real cases and students would help each other<sup>(6)</sup>. As an orientation for the entire clinic on the first day of the course we lectured all students on basics of criminal procedure and legal ethics, then took them to a tour. At a local police station students took a look at interrogation room and other facilities and listened to a lecture by an officer on recent trend of crimes. At the Tokyo District Court they saw a couple of trials and attended an on-site lecture by district judges and could ask them some questions.

Oath on Confidentiality. Clinic students must sign the agreement to keep confidentiality of communications with clients and related persons, which includes the provision that they will accept any sanctions including expulsion from the school when they breach this agreement. Case files are kept inside the clinic office and in order to make copy of them they need to get permission of their supervising attorney.

How We Take Cases. One of the most outstanding characteristic traits of Japanese Criminal Justice System is in its treatment of criminal suspects during the pre-indictment detention period. A suspect, once arrested, may be detained for as long as 23 days during which time they are continuously interrogated by police officers and prosecutors. In light of the Western understanding of the right to remain silent, there is no such right in Japan, since suspects are deemed to have legal duty to remain inside interrogation room<sup>(7)</sup>. In order to meet the detainee's need for legal advices, local bar associations throughout the country established "toban bengoshi seido" (duty counsel system)<sup>(8)</sup>, in which enrolled attorneys are

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<sup>(6)</sup> Our expectation soon proved to be correct.

<sup>(7)</sup> For general description of pre-indictment stage of Japanese criminal justice system, see David T. Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (Oxford University Press, 2002), at pp. 243–75; Takashi Takano, *The Miranda Experience in Japan* in Malcolm M. Feeley, et al. ed., *The Japanese Adversary System in Context: Controversies and Comparisons* (Palgrave Macmillan, 2002), p. 128.

<sup>(8)</sup> See, Masayuki Murayama, *The Role of the Defense Lawyer in the Japanese Criminal*

on duty on specific dates, responding the call from detainees, visit to the detention site and give free legal advice. And when the suspect wants to retain the attorney as his or her counsel, the lawyer as a rule must take it, as a legal aid attorney if the suspect is indigent. Shinomiya and I were enrolled as a duty counsel of a bar association in the Tokyo district and utilize this scheme to get cases for our students. Since the system of legal clinics is completely new in Japan, Waseda's criminal justice clinic is the first of this kind in history. We have to explain it to almost all people we meet, including police officers, suspects, victims and so forth. We set up rules for taking cases which include, among other things, standard of income level substantially same as the one set by the legal aid society in Japan. But we decided we should liberally take cases at the moment in order to take a variety of cases under the present stage of common knowledge of our presence. We take cases for free even if clients are of higher income<sup>(9)</sup>.

## **B. How Students Handle Cases**

Our Goals. Goals of Waseda Criminal Justice Clinic are: (1) to learn basic skills of criminal defense advocacy; (2) to know how the criminal justice system works; (3) to know how our clients (criminally accused) are treated; and (4) to provide the assistance of counsel for those who cannot afford it through ordinary process. As above mentioned we criticize the traditional judicial apprenticeship's paper-work-oriented, "learning by seeing" method. In contrast, our approach, I would like to say, is a proactive, "learning by doing" method. We encourage our students to think of themselves as real counsel and involve themselves as much as possible. We try to let students do as much as possible. Followings are typical activities that our students do.

Interviewing clients at Station House. Criminally accused persons have the constitutional right to assistance of competent counsel<sup>(10)</sup>. And they are provided with the statutory right to confidential lawyer-client

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*Process* in Malcolm M. Feeley, et al. ed., op. cit., 42, at pp. 47–48.

<sup>(9)</sup> Some of our clients made donations to the University fund.

<sup>(10)</sup> Article 37, section 3 of the Constitution of Japan.

interview at detention sites<sup>(11)</sup>. In current practice, however, these fundamental rights to counsel are limited literally to the counsel's own activities. Counsel's assistant or secretary cannot meet alone with their boss's clients. Judicial apprentices, as a custom, can be accompanied with a licensed lawyer at a confidential meeting with clients, but they are not allowed to conduct a lawyer-client interview by themselves without a licensed lawyer's attendance. There is no rule which expressly permits or prohibits law students to be inside the interview room alone with their supervising attorney and his or her clients. As a matter of fact, several police stations in Tokyo metropolitan area allowed our clinic students to attend a lawyer-client interview. That is, they treated our students just like judicial apprentices. The majority of police stations, however, refused to do so, arguing that law students are not like judicial apprentices who have passed bar exam. I shall take this issue later more deeply. When students are allowed to attend a confidential interview, we encourage them to ask questions and advise our clients. In cases where the police do not allow students' involvement in a confidential interview, we ask students to prepare questionnaires for a nonconfidential interview, and let students do their interview with permission of clients to the extent which is not prejudicial to the clients even in front of the police attendant<sup>(12)</sup>.

Pretrial motions: Motion to quash detention order; bail, etc. The pretrial detention stage is crucial in Japan. In order to detain a suspect prosecutor needs a warrant issued by a judge. Yet practically speaking, prosecutor's requests are almost always granted. The rate of the dismissal of a detention request is ignorable: it is somewhere around 0.3%<sup>(13)</sup>. Our students, however, try to take all the possible actions for our clients' earlier release. They file a brief to argue that detention is ille-

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<sup>(11)</sup> Article 39, section 1 of the Code of Criminal Procedure.

<sup>(12)</sup> These are the limited cases in which clients do not contest the charge and sentencing is the solo issue.

<sup>(13)</sup> According to the latest statistics, out of 148,333 cases of detention request in 2003, 536 requests (0.36%) were turned down. The General Secretariat of the Supreme Court, ed., *Shihoutokei Nenpo*, 2 (keijihen) (heisei 15 nen ban) [Vol. 2 (criminal affair), Annual Judicial Statistics Report for the year of 2003], at p. 14.

gal or unnecessary before a judge issues a detention warrant<sup>(14)</sup>, and once the judge issues the warrant, file a motion to quash the warrant. These actions, of course, require a lot of “out of office” work, for example, interviewing with related people and drafting their written statements. I would like to comment that we have a good deal of advantage at this crucial stage of the process in comparison with the situation of ordinary private practitioners. We handle each case by a team which consists of one licensed attorney and three or four hard-working students, and the very small caseload will make it possible that we spend much more time on each case than private practitioners. It seems clear that this special advantage makes sense to our client. For example, in two of all the nine cases in the pretrial detention stage, we won the judge’s dismissal of warrant requests, i.e., 22% in the dismissal rate. In other words, we have accomplished 73.3 times higher than the ordinary dismissal rate. Given the fact that the number of cases we dealt with is very small, this statistics should not be taken seriously. However, it is safely said that our performance can rival some respectful criminal defense lawyers.

Trial participation. In four out of nine cases at the first instance level<sup>(15)</sup>, our clients were formally indicted. In one of the four cases insanity defense was raised, while in remaining three cases defendants pled guilty of the all charges. Even though charges were not contested, since Japanese criminal trials are not “bifurcated,” trials should be held in all the indicted cases. One client was summarily prosecuted with minor charge (destruction of property) and fined. Remaining four cases were all dismissed by the prosecution itself, out of which cases charges are contested in two cases.

Our students can do all the “out of court” work (witness interview, drafting argument, etc.) that licensed practitioners can do for the preparation for their trials. However, students *cannot* do trial by themselves. They cannot even sit at counselor’s table at trial. Students will see their trials from the spectator’s seat just like ordinary people. While polices’ responses were, as I said above, varied from station to station, judges’

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<sup>(14)</sup> That means within 72 hours of arrest. Art. 206, C. Crim. Proc.

<sup>(15)</sup> We took one appellate case referred not from the duty counsel system but by direct call from a client’s relative.

responses were always the same: they refused to allow our students to sit at the counselor's table. Judicial apprentices are, as a custom, allowed to sit with their supervising attorneys at the counselor's table, but not to argue or examine witnesses.

### 3. Temporary Observation

Ten cases are not enough to draw any conclusion, for sure. However, one can get some tentative evaluation from observing such a small number of cases regarding a crucial question of whether or not we have reason to believe in the future of Japanese clinical legal education. And my answer is definitely "yes."

Students' performance. Table 1 shows some characteristics of the ten cases. In sum, we took 9 cases at the pre-indictment level: four cases were formally indicted; in the indicted cases, two clients got suspended sentence. Another client who had several previous crime records got imprisonment, while the remaining one still pending at trial level. Out of four suspended prosecution cases, two clients contested the charge while other two admitted their guilty.

Table 1: Basic Characters of Cases

Case No.	Client			Level	Charge		Indictment	Result
	Sex	Age	Prev. rec.		Crime	Contest		
1	m	30	none	preT	petit larceny	nc	n	sp
2	m	35	1	app	drug + petit larceny	nc		afirmed
3	f	21	none	preT	drug	nc	y	ss
4	m	29	1	preT	petit larceny	c	n	sp
5	m	51	several	preT	fraud	nc	y	ip
6	m	28	none	preT	fraud	nc	n	sp
7	m	30	none	preT	drug	nc	y	ss
8	m	60	none	preT	sexual molestation	c	n	sp
9	m	40	several	preT	property	nc	n	summary pro.
10	m	48	several	preT	drug	c (insanity)	y	pending

Abbreviations:

sp = suspended prosecution

ss = suspended sentence

ip = imprisonment

There is a criticism upon the prosecutors' abuse of the term "suspended prosecution" for contested charge case. Usually, "suspended prosecution" means a case in which the suspect has admitted the charge and shown his or her remorse by apologizing and compensating victim and so forth. But when a prosecutor disposes a contested case with suspension of prosecution, it may cover up the weakness of evidence against an innocent suspect and may have prejudicial effects upon the suspect<sup>(16)</sup>. Case number 8 is the evidence of the existence of this practice. Our client, a 60 year-old office worker, with no criminal record whatsoever, was grabbed of his arm by a high school girl right after he got off from an extremely crowded morning commuter train in downtown Tokyo. She claimed that he had touched her genital area from upon her high school uniform. He denied the charge but was arrested by the local police. I met him the next day as a duty counsel and with his permission took his case for my students. As I indicated at the previous section, we won a judge's dismissal of his detention. But the prosecutor appealed and he won this time. That is, our client was to be detained for ten days or more and to be continuously interrogated. We tried everything to get him released and continued to meet him and advise him how to cope with the interrogation. Fortunately, he did not confess and was released on the sixteenth day of his arrest with the prosecutor's decision of "suspended prosecution."

"Team S" students. "Team S" students were the returning students who had already experienced our criminal justice clinic and expressed their strong intention to do more of criminal defense works. I decided to let them join a defense team with a very serious case in which our client, an 19 year-old girl, was charged with as a co-conspirator of a murder and amputation. They had to read the case file of several thousand pages, make memoranda of legal issues, draft briefs for procedural points and assist the lawyers' factual investigations. They were all second year students, but I observe that they already had done much more criminal defense works than a young lawyer with a couple of years of experience.

As a temporary observation, I should be proud of our students' performance. Our experiment shows that even first year law students, with proper directions of a supervising attorney and supports of peer students,

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<sup>(16)</sup> See, Johnson, *supra* note 7, at p. 57.

can compete with respectful experienced lawyers. We have a good reason to believe in the future of Japanese clinical legal education.

Educational effects. The work at our Criminal Justice Clinic is an intensive and time-consuming professional training. Once we take a case at the pre-trial detention stage, students have to spend, in average, three to four hours everyday for the case at this critical stage of the criminal procedure. Once the client is indicted students will get together at the legal clinic office once or twice in a week for the preparation of trial. Students spend totally 80 to 100 hours within the period of 60 days or so. Apart from the intensiveness, students in the clinic, of course, meet live clients and, I should say, experience the real world of human activities, especially, real faces of the criminal justice system. From my observations, there is no doubt that these features help students to meet their educational goals: (1) to learn basic skills of criminal defense advocacy; (2) to know how the criminal justice system works; and (3) to know how our clients are treated. Almost all the clinic students express that clinic is *the best* method to learn the law and practice of criminal procedure. Students said they were shocked by realizing the gap between law-in-book and law-in-action and that meeting with clients naturally motivated them to think of “what I can do for him and how.” Even though clinic course requires hard works, students do not seem to be tired or overwhelmed. One second year student wrote in his report<sup>(17)</sup>, “I was excited and it was a fun.”

#### **4. Our Problems**

Our experiment of the criminal justice clinic has brought some issues to our attention. I would briefly explain some of them.

##### **A. How far can a student do as a “student counsel”?**

In September 2003 the Criminal Justice Bureau of the Ministry of

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<sup>(17)</sup> We require all students to submit their reports on clinic experience at the end of the course.



Justice sent a paper<sup>(18)</sup> to the Higher Education Bureau of the Ministry of Education and Science, in which the Criminal Justice Bureau expressed their concern about “privacy” of related people and warned that: the “status of law school students is different from that of judicial apprentices”; “there is no legal ground on which law students can confidentially interview with the accused”; “ordinary citizens such as law students have no legal status allowed in the courtroom except in the spectator’s seat”; and “handling of criminal case files shall be done with careful attention and within the limits by the law.” Some scholars and practitioners follow this position. There are some law schools which made agreements with local bar associations that clinic students be prohibited to access to the information that may lead to personal identity of the clients and related persons! We oppose this position. We believe that privacy or lawyer-client confidentiality be protected not by restriction of student’s access to information but by student’s bearing of the same ethics as lawyers. We also believe that without any legislations clinic students may have the status of an assistant of the attorney just like a law office personnel.

As I showed above there is a controversy whether or not students be allowed to attend a confidential interview by a licensed attorney with clients at the police station, while there is even *no* dispute that students without a lawyer’s presence cannot interview confidentially with clients. And as I said district court judges have never allowed our students to be with us at a counselor’s table in the courtroom, let alone, students’ arguing causes or examining witnesses.

Aside from the non-existence of student practice rules, I should point out the basic uncertainty of law students’ status as a cause of these problems. Whereas judicial apprentices, having passed the bar exam, look like being promised to become a licensed lawyer<sup>(19)</sup>, law students have no such a status. According to a recent media coverage, the members of the Judicial Examination Committee reached an agreement that approximately 1,000 law school graduates be passed the bar exam in the year

<sup>(18)</sup> The title of the paper is “Hokadaigakuin ni okeru riigaru kurinikku tou no jisshi ni kanshi ryuui subeki tenni tsuite” (Points that must be considered regarding the administration of law school’s legal clinics).

<sup>(19)</sup> Recently out of 1,500 judicial apprentices each year, not more than 100 fail to pass the final exam.

of 2006. Since there are 2,200 third year law students at the moment throughout the country, the expected percentage of successful candidates shall be around 50 %. One of our students argues in her report that:

problems will be resolved if law students' passing rate becomes around 80 %, because in that case society will deem a law student as "a person who highly possibly will be a lawyer" and this social recognition must be the necessary basis to allow us law students to attend a confidential interview on an equal footing with judicial apprentices and it would allow us law students to function like lawyers.

## **B. Student Practice Rule**

Those obstacles shall disappear once we have the same kind of "Student Practice Rule" as almost all States of the U.S. have promulgated. However, as a clinical teacher who supports our students' active involvement of real cases, I have a reason to hesitate to suggest our law makers at the moment to create those rules. The law school system itself has yet to be recognized well in Japanese society, let alone legal clinics. There is a funny but true story about this. One day our clerk received a phone call from a man related to a case. Having heard our office's name, he said, "Oh, your boss is a medical doctor, isn't he. That's why..." For ordinary Japanese people, the word "clinic" indicates a hospital or doctor's office, and it often implies a medical clinic of a plastic surgeon or gynecologist. At this stage of developments in the clinical legal education, I am afraid that legislators will not be able to counteract against an "expert opinion" such as the one from the Criminal Justice Bureau and as a result they will make rules that will be an obstacle rather than a catalyst for the development of legal clinics in Japan.

## **5. Conclusion**

Japan's clinical legal education has just begun with the establishment of its law school education throughout the country. I am, however, convinced already, from Waseda Law School's venturesome experiments, that in-house legal clinics shall be not only a great educational facility for professional law schools but also a great social engine to evolve our concept

of legal education. One of my students concludes her report, stating:

I have not decided my future career. I learned, however, from my experience at the Waseda Criminal Justice Clinic, crucial lessons for a legal professional whatever it might be. That includes an professional attitude toward each case, how to find and analyze issues, and how to gather necessary materials. But most of all I have learned the existence of variety of lives. Each case may be disposed of as one of many cases. But for the people behind it, each case must be the “never-before” case.

When I was a student preparing for the bar exam I would have never thought like that. Neither would my friends have thought at the Judicial Training and Research Institute. I wonder if the majority of lawyers in Japan will be in the near future graduates from the law school where students learn not just to memorize theories but have some experiences with real live clients before taking the bar exam. However, this is the venture worth trying.

## **V. Shibuya Public Law Office's Approach to Clinical Legal Education: The Collaboration of the Tokyo Bar Association with Four Law Schools in the Tokyo Metropolitan Area**

**Katsumasa Hirabayashi\* and Eishi Misawa\*\***

### **1. Introduction**

In Japan, a series of judicial system reforms have been occurring over the last few years. The core of the reforms centers upon developing a system that enables citizens to receive appropriate legal services. In order to build such a system, large-scale qualitative and quantitative improvements in the legal profession are necessary. Responding to this need, a new system of legal professional training, which is based on a process-oriented style of learning, has been designed for graduate-level law schools. While the National Bar Examination should be reformed to increase the number of individuals passing the examination (currently the pass rate is less than 3%), new graduate-level law schools should be established to ensure the quality of legal professionals. These law schools, which provide practical legal professional training for two to three years, are the pre-requisite for taking the National Bar Examination.

One of the goals of law school training is the facilitation of active exchange of opinions between legal scholars and practitioners, in order to put theories into practice and theorize practices; previously, active exchanges between them did not occur. In this new system, clinical legal education, including legal clinics and externship programs, among other new initiators, will contribute to achieving this goal.

As part of the initiative to implement legal clinics, the Tokyo Bar Association has established a public law office, the Shibuya Public Law Office (hereinafter referred to as "the Office") in the building of Kokugakuin University Law School. There are currently six lawyers at the Office. The Office commenced its activities on July 1, 2004.

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\*\* Attorney, Shibuya Public Law Office

Although the word “public” gives an impression that this Office is run by the national or local government, unfortunately it is not. Expenses related to the establishment of the Office were funded by the Tokyo Bar Association, and all the operational expenses are financed by funds earned by the lawyers of the Office through their legal practices. The services they render are not free.

The primary function for which the Office was established is to conduct and enhance clinical legal education of law schools. Since a funding agreement was signed between the Office and certain law schools, the Office receives custodial fees from these law schools. Also, the Office is exempt from paying rent for its office space, as well as fuel, light and water charges, thanks to support from Kokugakuin University.

## **2. Legal Clinic Programs Offered by the Office**

The Office provides two Legal Clinic programs. One program is a Beginners’ Legal Clinic course presented by Professor Ando, the head lawyer of the Office and full-time faculty of Kokugakuin University Law School. This course mostly consists of simulation exercises, providing opportunities for students to learn the practice of law through role playing. The other program is an Advanced Legal Clinic course which is funded by four law schools, namely Kokugakuin University, Meiji Gakuin University, Tokai University and Dokkyo University. In this course, law school students are required to participate in actual cases. Although curricula differ depending on each law school, the advanced legal clinic course is generally the core of each university’s clinical legal education program, which is a part of the third year of course work in a standard three-year law school course.

As today’s theme is the advanced legal clinic, I would like to describe the Office’s program.

## **3. Advanced Legal Clinic**

- 1) The Office was established in order to offer clinical legal education.

The clinical course aims to provide students with opportunities to understand how the theories that they study in law school classroom

actually work or are applied in practice, to acquire techniques and skills required for that process, and to learn sophisticated negotiating skills.

In this course, students, in cooperation with lawyers, are required to engage in actual cases to learn the true mechanism of solving disputes. Students learn how to identify and investigate facts, gather evidence, interpret laws, and resolve conflicts through interactive discussions from theoretical, practical and ethical points of view.

2) Students enrolled in the law schools affiliated with the Office are required to attend a class held in the Office every week. In each class, typically 90 minutes, one lawyer instructs two students. Each client has a team consisting of one lawyer and two students who work to resolve his/her dispute. In some cases, legal scholars join a team to discuss the issues.

3) There are no restrictions on the subject matter of the actual cases taken for advanced legal clinic, since there is no disadvantage to students by exposing them to different areas of the law.

The aim of the legal clinic offered by the Office is to provide students with opportunities to learn how theories that they study at law schools work in actual cases, not to train the legal professionals specialized in certain areas.

As a result of not limiting cases to certain practice areas, students will be able to have opportunities to discuss a wide range of cases handled by other teams during briefing sessions, enabling students to learn about a number of different practice areas.

4) Now, I would like to briefly discuss the advantages of handling these projects through the Public Law Office.

The biggest advantage for law schools and students is that the Office handles a variety of actual legal cases, and these experiences can be used in classes. When in-house legal clinic programs are carried out at law schools, there must be many cases available to be handled in classes. Because the Office was established by the Tokyo Bar Association, the Office is able to handle a wide range of legal aid services that are provided by the Tokyo Bar Association.

Another advantage is that all lawyers assigned to the Office have been screened by the Tokyo Bar Association, which gives a sense of security to the law schools that fund the Office's legal clinic.

In terms of client advantages, clients can receive better legal services provided by a lawyer and two assistant law students. This was confirmed at the end of this March from a survey of clients who received services at the legal clinic on a trial basis.

In addition, there is an incidental advantage: observing lawyers practicing law at the law school campus significantly helps increase students' motivation to study, and this is particularly true for students of Kokugakuin University Law School. On the other hand, lawyers at the Office can use books, periodicals and other resources kept by law schools, which may be an advantage for them.

5) As described above, since the advanced legal clinic course handles a variety of actual cases, classes are not always conducted as planned. However, the general flow of the course is as follows:

At the first class, the purposes of the legal clinic as well as the code of practice to which the students must comply are explained to students. Sometimes, a number of teams jointly attend this class. In this class, participants discuss the pros and cons of receiving money and goods from clients and the rules regarding contacting clients. Students are required to submit a pledge of confidentiality.

At the second class, a lawyer and students provide legal consultation to a client. Before the consultation, the lawyer explains to the client the purpose of the legal clinic, and emphasizes that students have pledged to keep all matters discussed during the consultation strictly confidential and have already submitted a pledge of confidentiality. After gaining an agreement from the client regarding the engagement, the lawyer allows students to participate in the consultation.

During the client interview, students take notes of matters discussed in the consultation. Sometimes students ask the client questions. Students are required to prepare a report describing facts drawn from the consultation, legal issues, and possible solutions.

At the third class, the team discusses the reports prepared by the two students and examines the following questions: What are important facts

involved in the dispute? What are the main issues? Which issue is the most important? The team debates these issues. Through this process, the lawyer determines whether students understand the client's request correctly, fully understand related legal issues, and conducted adequate research required to analyze such issues. Students are required to prepare a new report based on the discussions by the next class, which will be presented to the client.

At the fourth class, the team discusses the concrete plans, based on the student's report with the client. If further preparations are necessary, the students will work on these preparations by the next class.

If classes are conducted according to the schedule mentioned above, a mid-term joint briefing session will be held around the seventh class. At this session, three teams are given 15 minutes each to report progress on individual casework.

At this briefing session, students exchange ideas and discuss other cases. Since the Office operates as a legal clinic from four law schools, briefing session can be participated by teams from each law school.

After the session, the lawyer and students prepare a complaint to file a suit, collect evidence, or research legal precedent to deal with each specific case.

6) The legal clinic course consists of 15 classes, which are scheduled to proceed as described above. Since the cases handled by the clinic are actual rather than simulated cases, the disputes are not always resolved according to the proposed schedule and may extend beyond the conclusion of the term. Therefore, the lawyer is expected to deal with the issues after the 15 classes conclude; it is also possible for the students to continue to work on the case together with the lawyer after the course ends. On the other hand, if the dispute is resolved before the end of the 15 classes, students will be engaged in a new case.

#### **4. Closing remark**

Clinical legal education at law schools has just started in Japan. We are determined to make efforts to become the standard for Japan's clinical legal education.



## VI. Omiya Law School and the “All Day Clinic”

Lawrence Repeta\*

Late on the evening of December 1, 2004, an e-message appeared on the Omiya faculty list that read, “This evening’s cases were both quite interesting. One involved poor maintenance of a condominium, with rain leakage that had been going on for several years without action by the property manager. The second concerned an unpaid design fee.” The message was sent by the head of the Shibuya counseling center opened by Omiya Law School on that day. Two days later a message from the head of our Omiya center said, “One client was especially delighted that he could get legal advice at night. He came over on his motorcycle after work. I gave him a stack of flyers and said he should spread the word.”

Omiya Law School opened both legal counseling centers on the day the first message went out. One is located in our law school building in the city of Omiya, a suburb easily accessible from the Tokyo city center. The other is located in the Shibuya district of Tokyo. The counseling centers are intended to serve as prototypes for the live client clinics planned to be opened by Omiya Law School with accredited student participation in January 2006.<sup>(1)</sup>

In his presentation, Professor Suami described the broad judicial system reform movement which has been sweeping through Japan for the past several years. The existence of the Omiya Law School (OLS) itself was made possible by the reforms. OLS is Japan’s first freestanding law school, unaffiliated with any university. Our school was launched in 2004, without an existing faculty, an experienced team of university administrators, or other advantages of an ongoing school. On the other hand, with no history in the pre-existing system, our school has enjoyed the opportunity to take maximum advantage of the new thinking embod-

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\* Professor, Omiya Law School

<sup>(1)</sup> The accredited clinics opened on schedule in January 2006. A total of 31 students participated in the program’s first semester, featuring three in-school clinics and two clinics conducted at law offices located outside of the school. The Omiya counseling center became the location for the in-school clinics. The Shibuya counseling center was closed in August 2006.

ied in the judicial system reforms. The clinical program is intended to be an important part of the curriculum at Omiya; there is sufficient capacity to enable all students to participate. There is an air of excitement at our school. Students and faculty seem to share the belief that they can help to shape the future of Japan's legal profession.

In my remarks, I will describe some of the special characteristics of our new school and the role we expect our clinics to play in providing an education suited to the needs of Japanese society.

## **Some Special Characteristics of Omiya Law School and the Omiya Legal Clinics**

### **1. Philosophy**

When Omiya's founders sought funding for the new clinics, they expressed dissatisfaction with the current state of law practice in Japan, explaining that existing law firms tend to have a weak understanding of their role as service providers. Omiya would challenge this status quo. "Just as the sales practices of retailers and service providers have evolved in a manner to suit the needs of consumers," they explained, "so in the area of legal services, there is a need to build a new consumer-friendly model. And it is the mission of the new law schools to make a large contribution to this model."<sup>(2)</sup> The Omiya legal clinics comprise one concrete expression of this philosophy.

### **2. Practical Education**

The founders of OLS declared they would "pursue a new ideal in cultivating legal professionals and in pursuing legal research."<sup>(3)</sup> An important part of the new ideal is a focus on practical skills. Along with core

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<sup>(2)</sup> Application for clinic funding, p. 4 (2004). This philosophy is expressed in greater detail in a book written to introduce Omiya Law School. See Setsuo Miyazawa and Noriaki Ikezoe, "We're Building a Law School, We're Building Lawyers," (『めざせロースクール, めざせ弁護士』) (Hankyu Communications, 2003).

<sup>(3)</sup> Memorandum presented to the Ministry of Education and Science, Sept. 13, 2002, p. 4.

doctrinal courses in constitutional law, civil law, criminal law and others, all Omiya students are required to earn a minimum of ten credits in practical courses including client counseling, legal research and writing, evidence, a full-year course in professional responsibility, and other courses focused on practical issues. In their first notification that they would seek approval for a new law school, the OLS founders declared they would offer clinical education, in which students could earn between 4 to 6 credits, of which 2 credits would be earned through a mandatory seminar and the remainder through clinical work. They explained that, under the supervision of faculty who are licensed legal professionals, students would “provide advice, conduct negotiations, and represent clients,” thus acquiring these skills themselves and cultivating an appreciation for the professional responsibility issues that arise in every day legal practice.<sup>(4)</sup>

### 3. Faculty

Japan has a tiny number of professional lawyers compared with all other major industrialized countries. Today there are approximately 21,000 lawyers to serve a nation of more than 120 million people. For Japan’s new law schools, the small pool of lawyers means not only that there is limited legal service available to the Japanese people; it also means that there are relatively few experienced practicing lawyers available to serve in teaching roles, including teaching roles in clinics.

The single most prominent characteristic of OLS is the large number of practitioners on the faculty. As mentioned by Professor Miyagawa, government guidelines require that approximately 20 % of regular faculty members be practitioners. Omiya is perhaps Japan’s only law school with a proportion greater than 50 %. The strong participation of the practicing Bar in our faculty is a powerful draw for applicants and also provides the hands necessary to lead practical courses.

This is the result of the direct support from and close relationship with the Tokyo Dai-Ni (Second) Bar Association.<sup>(5)</sup> At present, there are more than 2800 members of this bar association, nearly 15 % of the

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<sup>(4)</sup> Id.

<sup>(5)</sup> <http://www.niben.jp/english/>.

total lawyer population in Japan. The Tokyo Dai-Ni Bar Association is a co-founder of OLS and has undertaken contractual obligations to support the school in such areas as curriculum development, recommendation of candidates for permanent and adjunct positions on the faculty, financial support and the “recommendation and introduction of an appropriate number of lawyers to serve as instructors in the clinic to be opened in the law school.”

#### 4. Students

In each of its first two years, Omiya welcomed an entering class of 97 persons, with night program students comprising approximately half of the total. The Omiya entrance standards were crafted with a view toward attracting students from a broad swath of society. The Judicial Reform Council Report envisioned that applicants to the new law schools would be judged “with the principles of securing fairness, openness and diversity.” Regarding diversity, the report states that “The legal profession in the 21st Century should include a wide variety of people who have learned academic areas other than law, such as economics, science and mathematics, and medicine.” The Omiya administration took this charge seriously. Many OLS supporters believe that the most serious failing of the current system is that it effectively limits entry to the legal profession to individuals who have spent many years preparing for a very specific examination and thereby excludes people with other skills and qualifications. OLS entrance standards are explicitly designed to promote diversity and internationalism, with additional points awarded in the entrance process to female applicants, applicants with first degrees in fields other than law, and applicants with especially strong English language capability.

Of the 97 students in the first entering class, 27 had completed a first degree in law, 36 had completed first degrees in other liberal arts and social sciences, and 34 had graduated from departments in the hard sciences. By Omiya’s calculation, only 14 of these students progressed directly from undergrad programs to law school. 83 of them fit the category called “*shakaijin*,” literally “members of society.” The average age

of each of our entering classes has been about 33; for the class entering in 2005, the average age of day program students is 29 and the average age of night students is 35. Slightly more than one-third of our students are female.

Most of the new law schools offer a reduced two-year course for students who have already completed a four-year undergraduate degree in law; Omiya does not. All students must complete a full 93 credit, three year course of study. (Night students are allowed the option of completing the program in four years.)

Omiya is one of only two out of the 68 law schools that opened in 2004 to offer a full evening program. Our students can complete all degree requirements through classes offered on weeknights and Saturdays. The evening program is especially targeted at attracting students with diverse backgrounds, because they are able to continue their existing careers while acquiring an additional qualification as a legal professional.

## **5. The “All-Day Clinic”**

The counseling program launched in December 2004 is labelled the “All Day Clinic” because it is open during the evenings and on weekends. Thus the Omiya counseling centers can provide service to clients who work or are otherwise occupied during the day and they also allow for the participation of students in our evening program, nearly all of whom hold down full-time jobs while taking classes at night. Both the Omiya and the Shibuya counseling centers are open 7–9 P.M. on weekday evenings and from 10 A.M. through 4 P.M. on Saturdays and Sundays, with breaks for lunch.

### **Managing the Clinical Offices**

The “All Day Clinic” counseling centers provide free one-hour sessions. Formal representation beyond the counseling session is presently beyond the scope of authorized service, but clients can obtain such service directly from the attorney in charge of the counseling session. Full service in civil and criminal matters will be available from the Omiya

clinics when they are fully operational beginning in January 2006.<sup>(6)</sup> In addition to clinical services in general criminal and civil law matters, the Omiya clinic will also offer a specialized service in freedom of information cases.

Each counseling center is managed by a licensed attorney with more than twenty years experience and an appointment as a regular OLS faculty member. These office heads are assisted by a team of at least ten practicing lawyers, employed on an adjunct basis. All lawyers participating in the Omiya clinic will be members of the Saitama Bar Association. (Omiya is located in Saitama Prefecture, just outside the Tokyo boundary.) All lawyers participating in the Shibuya clinic or otherwise providing clinical educational in Tokyo will be members of Tokyo Dai-Ni Bar Association. Adjuncts must meet minimum experience standards.

Every client is provided with a list of terms and conditions at the initial visit and is required to sign (affix a personal seal to) a brief document indicating agreement to participation of OLS students the consultation. The terms currently state that individual attorneys bear sole responsibility for services provided. Each student who participates is required to formally agree to protect client confidentiality.

An evaluation committee composed of four members has been appointed in order to review and evaluate the clinics' activities in an objective manner.

### **Student Credit**

Once the clinics are fully operational in January 2006, students will be able to earn a maximum of four credits per class. In order to earn these credits, students will be obliged to participate in the clinic for a period of six months, either from January through June, or July through December. Participation is limited to third-year students. They can choose either a two credit or a four credit course per six-month period, and are thus able to earn a maximum of 8 credits by participating in two four-credit clinics consecutively. In order to earn four credits, students are expected to par-

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<sup>(6)</sup> In November 2005, Takeshi Hagiwara, the director of the Omiya clinical program and a member of the Saitama Bar Association, formally registered the clinic office on the first floor of the OLS school building as his place of business. This enabled the clinic to offer full legal representation through this office.

ticipate in a weekly two-hour clinic meeting and to work an additional six hours per week. Students in two credit courses carry half this load.

### **Experience to Date**

As noted at the outset, OLS opened two legal counseling centers in December, 2004. During the first three months of operation, the Shibuya office conducted 60 consultations and the Omiya office conducted 144. Most concerned core civil matters such as divorce and other family matters, real estate, wills and debts.

Students have been invited to attend the sessions from the start in order to gain face-to-face experience with live clients. One hour is allocated for each session. When students are present, the consultation is limited to 45 minutes, with remaining time reserved for immediate discussion between lawyer and student. Attending students are requested to submit written comments on their experience. Presently students receive no credit, so the number attending has not been large.

Many Omiya faculty members believe clinical experience will have a powerful impact on study. Observations by participating students appear to confirm this view. Comments on the experience have included the following: it has a positive impact on law study by providing a realistic picture of law practice and a real life context for legal study; it offers the opportunity to think not only about the possibilities for legal redress, but also the limitations; clients have difficulty in clearly explaining important details; experienced lawyers have acquired particular skills in extracting important details from clients.<sup>(7)</sup>

### **Challenges**

There are many obvious challenges to be overcome. First, we must secure a flow of consultations sufficient to provide enough appropriate cases for our students. After an article appeared in a major daily newspaper to report the opening of the Omiya counseling centers, the phone lines were tied up with inquiries for several days. But there has been a drop-off since. We have taken steps to promote the counseling centers, including local advertising and flyers placed at city government offices

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<sup>(7)</sup> Comments of Takeshi Hagiwara at a conference held at the Tokyo Bengoshi Building on March 18, 2005.

and other outlets. Sourcing appropriate cases, especially for the Shibuya center, appears to be a significant challenge. The law school clinics are new and people don't know what to expect.

For the school itself, perhaps the most fundamental issues concern integration of the clinical experience with the total educational program. How will students reconcile the time commitment expected for clinical work with other onerous responsibilities? Japanese law students have a heavier class load than Americans (a minimum of 93 credits to graduate). Moreover, Japanese students can be expected to sharply focus on bar exam preparation throughout their law student careers, but especially in their final year. (The pass rate on the new bar exam is expected to be well below 50 %.) And Japan has no limited practice rule, so the student role will be limited to assisting lawyers. Will this be sufficient to keep them interested enough to allocate time to the clinics in the face of other pressures? (My colleagues tell me that Japanese judges will not even allow students to sit at the counsels' table in courtrooms.)

And of course, our faculty does recognize the challenge of training our instructors in sound pedagogy. Clinical education is a new discipline. Leaders of Japan's clinical movement, such as the team that has appeared in Chicago today are carefully studying American and other foreign examples for clues on how to operate the new programs to best achieve educational goals.

We cannot forget the subject of money. Low student-to-faculty ratios make these programs expensive. One notable difference between the US and Japan in this regard is the paucity of significant private foundations and philanthropies with the mission of supporting this kind of activity in Japan. How many Japanese law schools will be willing and able to provide these programs on a significant scale remains to be seen.