The Glowing Influences of "Lawyer Substitutes" on Citizens' Access to Legal Services

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I. Introduction

One of the unique aspects of the Japanese legal services market is that it involves various license holders, apart from attorneys (*bengoshi*)[1]. In Japan, these license holders are called "quasi-legal professionals (*rinsetsu hōritsushoku or jun hōritsuka*)" or a part of "lawyer substitutes," a term coined by a prominent American scholar, Professor Mark J. Ramseyer[2]. In addition to discussing about unlicensed corporate employees in legal departments, Professor Ramseyer highlights the existence of various license holders to supplement the lack of attorneys in Japan. However, there is little literature available in English concerning the whole structure of quasi-legal professionals, despite their increasing significance in the legal services market. The introduction of the Justice System Reform (*shihōseido kaikaku;* hereinafter, "JSR") has resulted in the legal services market in present-day Japan becoming much more complex than before. Therefore, a holistic understanding of all legal service providers present in

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1 *See, e.g.,* Mark J. Ramseyer, *Lawyers, foreign lawyers, and lawyer-substitutes: The market for regulation in Japan,* 27 Harvard International Law Journal 499 (1986); Shozo Ota and Kahei Rokumoto, *Issues of the lawyer population: Japan,* 25 Case Western Reserve Journal of International Law 315 (1993); Dan Fenno Henderson, *The role of lawyers in Japan, in* Japan: Economic success and legal system, ed. H. Baum (1997: New York).

2 Id.

Japan is necessary for discussing the Japanese judiciary.

This article discusses the increasing role of major licensed legal services providers, apart from attorneys, with regard to citizens' access to legal services following the introduction of the JSR. The JSR expanded the scope of authorized practice for these license holders in order "to meet the existing demand for legal services[3]." Although it appears that policymakers have maintained the conventional distinction between attorneys and the so-called quasi-legal professionals, the expansion of authorized practices of these groups invoked a new market competition among license holders, including attorneys. As a result, the JSR may bring about an unexpected outcome with regard to the structure of the legal professionals in Japan, namely, the expansion of the role of quasi-legal professionals from mere substitutes for attorneys to a valuable part of the legal profession.

Section II provides a brief overview of the JSR and discusses how the JSR expanded the scope of authorized practice for quasi-legal professionals. Section III discusses the current state of quasi-legal professionals, beginning with a brief history on their origin, their authorized practice areas, and their current population. This section then examines the geographical distribution of attorneys, judicial scriveners (*shihōshoshi*), and administrative scriveners (*gyōsei shoshi*). Finally, Section IV discusses the theoretical implications of the reforms pertaining to the practice of quasi-legal professionals under the JSR.

In this paper, I discuss the major groups of quasi-legal professionals whose practice areas were expanded under the JSR policies and who thereby have come to exercise greater influence on citizens' access to legal services. A discussion on the characteristics and practices of these groups can illustrate the current complex state of the Japanese legal services market. However, these groups are not the only groups, apart from attorneys, who partially practice law in Japan[4]. For example, as Professor

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[3] The Justice System Reform Council, Recommendations of the Justice System Reform Council-For a Justice System to Support Japan in the 21st Century-", June 2001, ch. 3, part 3−1, online *at* http://www.kantei.go.jp/foreign/policy/sihou/singikai/990612_e.html (last visited September 1, 2008).

[4] There are other license holders such as real estate and building appraisers

Ramseyer points out, corporate employees in legal departments generally serve as substitutes for attorneys—they handle legal affairs without holding a license for practicing law on behalf of the corporation to which they belong[5]. However, an elaboration of such unlicensed legal professionals is beyond the scope of this paper.

II. The Justice System Reform and the Utilization of Lawyer Substitutes

A. The Background and Purpose of the Justice System Reform

In Japan, the modern-style legal profession in Japan commenced with the adoption of a western legal system in the late nineteenth century[6]. Although 120 years have passed since then, the judiciary's role in Japanese society had been intentionally limited to matters of national policy. Moreover, the number of successful candidates in the national bar examination—which produces judges, prosecutors, and attorneys—was capped at a mere 500 per year until 1990[7]. Accordingly, the total number of candidates in these three groups was so small that their existence as well as the judiciary's existence had been concealed from ordinary citizens. However, subsequently, the JSR decided to expand the roles of the judiciary and the professionals working in proximity to the judicial process.

In 1999, the Act Concerning the Establishment of the Justice System Reform Council (*Shihōseido kaikaku shingikai setchihō*) was promulgated, and the Justice System Reform Council (*shihō seido kaikaku shingikai*) (hereinafter, the Council) was founded and placed under the direct supervision of the Cabinet[8]. The purpose of the Council was "to consider funda-

(*tochi kaoku chōsashi*) who partially deal with legal affairs in the course of their professional services.

5 Ramseyer, *supra* note 1, 518.

6 Rabinowitz, *The Historical Development of the Japanese Bar,* 70 Harv. L. Rev. 61 (1956) (historical overview of development of Japanese attorneys from 1688–1950).

7 The Supreme Court, *Wagakuni no hōsō jinkō sū no suii* (Change of the population of the legal profession in our country), available online *at* http://www.courts.go.jp/about/kaikaku/img_18.html (Last visited September 1, 2008).

8 Shihōseido kaikaku shingikai setchihō (law concerning establishment of jus-

mental measures necessary for reform and infrastructure overhaul of the justice system by defining the role of the Japanese administration of justice in the 21st century[9]." The Council was not the first committee that attempted to reform the justice system after the Second World War. In 1962, the government had established the Provisional Judicial System Investigation Committee (*Rinji shihōseido chōsakai*) in order to investigate the state of the legal profession[10]. The committee's report in 1964 highlighted the necessity of reforming the recruiting system for judges, adjusting the uneven geographical distribution of attorneys, improving the national bar examination system, and establishing professional responsibility for attorneys[11]. The committee also proposed to increase the number of legal professionals, to expand the field of practice of attorneys, and to rationalize court proceedings[12]. As a result, in 1964, the number of successful candidates in the national bar examination exceeded 500 for the first time in Japan's history[13].

The Council examined issues similar to those discussed almost forty years ago. However, the difference this time was that the reform took place as part of wider administrative reforms and involved much broader public discussion[14]. Accordingly, the scope of the reform became much wider than before. In 1994, the Act Concerning Establishment of

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tice system reform council) (Law No. 68, 1999, repealed).

9 Shihōseido kaikaku shingikai setchihō, art. 2. For background information of establishing the Council, see, the Justice System Reform Council, *The Points at Issue in the Justice Reform,* online at http://www.kantei.go.jp/foreign/policy/sihou/singikai/991221_e.html (last visited September 30, 2008).

10 Rinji shihōseido chōsakai, *Rinji shihōseido chōsakai ikensho* [Opinion from the Provisional Judicial System Investigation Committee] 1 (Rinji shihōseido chōsakai 1964).

11 Id. at 185–190.

12 Id. at 190–194.

13 The Supreme Court, *Wagakuni no hōsō jinkō sū* no suii [Change of the population of legal profession in our country, http://www.courts.go.jp/about/kaikaku/img_18.html (Last visited April 3, 2006).

14 Both the Liberal Democratic Party and the Keidanren promoted the fundamental reform of the judicial system. *See,* Setsuo Miyazawa, *The Politics of Judicial Reform in Japan: The Rule of Law At Last?,* 2 Asian-Pac.L. & Pol'y J. 19 (2001).

Administrative Reform Committee (*Gyōsei kaikaku iinkai setchihō*) (Law No. 96, 1996) was enacted, and the government tackled the deregulation and information disclosure in administrative agencies[15]. The three-year program for Promoting Deregulation, which was announced by the Cabinet in 1998, stated that the basic policy of the government was "to fundamentally reform our economic organization by making it a free, fair, and internationally open one based on self-responsibility and the market principle, and to transform an advance-control administration to an after-the-fact remedy administration[16]." The program highlighted fifteen fields that required deregulation, and the field of legal services was one of them. The program, in order to promote competition among various license holders, recommended a rapid increase in the number of legal professionals, removal of the ban on attorney corporations, and deregulation of the unauthorized practice of law[17].

The Council began its deliberations amid this whirlwind of administrative reforms, and it came under pressure from many outside the legal profession to achieve fundamental justice reform. In June 2001, the Council published the "Recommendation of the Justice System Reform Council—For a Justice System to Support Japan in the 21st Century" (hereinafter, the Recommendation)[18]. The Recommendation insists that

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[15] Gyōsei kaikaku iinka secchiihō [Law concerning Establishment of Administrative Reform Committee] (Law No. 96, 1996).

[16] The Cabinet decision, *Kisei kanwa suishin sankanen keikaku* [three-year program for promoting deregulation] (decided on March 31, 1998), online at http://www.soumu.go.jp/gyoukan/kanri/kisei010.htm (last visited September 30, 2008).

[17] Id. Even the Japan Federation of Economic Organizations (current Japan Business Federation or Nippon Keidanren) published an opinion on the justice system reform. It claimed that a satisfactory justice system was a necessary component of the basic economic infrastructure post deregulation. The federation also proposed an increase in the number of legal professionals (judges, prosecutors, and attorneys), reform of the legal education system including the introduction of law schools, and reconsideration of the current regulation of legal services that permits large monopoly by attorneys. Nippon keidanren, *Shihō seido kaikaku nitsuite no iken* [opinion concerning the Justice System Reform], http://www.keidanren.or.jp/japanese/policy/pol173.html (last visited March 10, 2006).

the JSR is "the 'final linchpin' of a series of various reforms concerning the restructuring of 'the shape of our country[19].'" Although the reforms in the Recommendation cover various aspects, its basic principle is explained as "the three pillars of the reform:" First, "in order to achieve 'a justice system that meets public expectations', the justice system shall be made easier to use, easier to understand, and more reliable[20]." Second, "by reforming 'the legal profession supporting the justice system', a legal profession that is rich in terms of both quality and quantity shall be secured[21]." Third, "for the 'establishment of the popular base', public trust in the justice system shall be enhanced by introducing a system in which the people participate in legal proceedings[22]." It proposed the introduction of a new system for a subset of criminal cases wherein citizens would work in cooperation with judges and share responsibility in the judging of cases[23]. On the basis of the publication of the Recommendation, the government established the Headquarters for Promoting the Justice System

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[18] An English version is available. *See*, the Justice System Reform Council, *supra* note 3.
The Recommendation declared the purpose of the reform as follows:
> This Council has determined that the fundamental task for reform of the justice system is to define clearly what we must do to transform both the spirit of the law and the rule of law into the flesh and blood of this country, so that they become 'the shape of our country' and 'what is necessary to realize, in the true sense, respect for individuals and popular sovereignty, on which the Constitution of Japan is based." Id. ch. 1.

All minutes of the Council meeting are also available online *at* http://www.kantei.go.jp/jp/sihouseido/ (last visited September 28, 2008).

[19] Id. ch. 1.

[20] The Justice System Reform Council, *supra* note 3, ch. 1, part 3.1. For this purpose, the Recommendation suggested introducing case scheduling for civil litigation, establishing specialized courts for intellectual property, and expanding alternative dispute resolution. It also proposed the reinforcement of the judicial review function against the administrative branch, and procedural reforms in criminal proceedings to ensure due process and prompt processing of cases. Id. ch. 1, part 3.2(1).

[21] Id. ch1, part 3.1.

[22] Id.

[23] The new system, called "the lay judge system," will commence in 2009. With regard to civil cases that require specialized knowledge, this system proposed that experts become involved in all or part of trials and support judges in proceedings. Id. ch. 1, part 3.2(3).

Reform (*Shihō kaikaku suishin honbu*) in the Cabinet in 2001, and initiated the necessary legislation and deliberations.

Needless to say, the second pillar of the reform involves the reform of the entire legal profession or *hōsō*, which conventionally indicates judges, prosecutors, and attorneys. The Recommendation points out that the number of legal professionals is very small in Japan as compared to other industrialized countries—as of 1999, the total number of judges, prosecutors, and attorneys was 20,730 (one legal professional per 6,300 citizens)[24]. The government decided to increase the number of legal professionals by increasing the number of successful candidates of the national bar examination—the examination for becoming a judge, a prosecutor, or an attorney—from 812 in 1998 to 3,000 in 2010 so that the total number of legal professionals will be more than 50,000 by 2018[25]. In addition, a new training system for the legal profession, namely, a graduate-level law school, was introduced in 2004 so that candidates "do not focus only on the 'single point' of the national bar examination[26]." In April 2004, sixty-eight new universities established graduate-level law schools (*hōka daigakuin*)—and more than 5,700 students enrolled[27]. For those who do not have a legal

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[24] The Recommendation compares the number of legal professionals with the following countries: approximately 941,000 in the United States (one per 290 people); 83,000 in England (one per 710); 111,000 in Germany (one per 740); and 36,000 in France (one per 1,640). The Justice System Reform Council, *supre* note 18, ch. 3, part 1–1.

[25] Id.

[26] Id. In Japan, although legal education typically starts at the undergraduate level, an LL.B (*hōgakushi*) is not a prerequisite for taking the national bar examination; in fact, prior to the reform, even graduation from college was not a prerequisite. In the instance wherein a candidate had not completed a two-year liberal arts education at college, he or she was required to first pass another examination. However, if a candidate had completed a liberal arts education, he or she could take the bar examination regardless of his or her major at college. Thus, candidates focused on acquiring techniques for passing the bar examination and tended to ignore university classes even when their undergraduate major was law. The Recommendation highlighted the problem of quality in the legal practices of those successful candidates who had focused only on passing the national bar examination.

[27] Approximately half of all law students have prior work experience, and one third of them have an undergraduate degree other than law. Seiji Kitagawa & Satoshi Chiyozaki, Mainichi News Paper, May 13, 2004 (Tokyo, Morning

background, the program is of three years duration, and for those who have some legal background, such as an undergraduate degree in law or work experience at a legal department, the program is of two years duration. Candidates who successfully graduate from a law school are qualified to take the new bar examination[28]. Candidates can take the national bar examination up to three times within five years once they become qualified to take the examination[29].

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ed.).

[28] The new legal examination for those who graduate from law schools began in 2006, when the first batch of students of the two-year curriculum graduated from the new law schools. The new examination comprises two parts: a multiple-choice exam and an essay exam. Subjects for the examination will be increased subsequently. For the first multiple choice exam, the subjects are constitutional law, administrative law, civil law, commercial law, civil procedure law, criminal law, and criminal procedure law. In the second essay exam, in addition to the subjects of the multiple choice test, elective subjects are included. The present examination will be abolished in 2011. The Ministry of Justice, *Shin shihōshiken* Q & A(the new national bar examination: Question and Answer), http://www.moj.go.jp/SHIKEN/shinqa01.html (last visited September 30, 2008).

However, the government decided to leave open the option of taking the bar examination even if candidates do not graduate from a law school, provided they can pass the preparatory examination for the bar examination. Shihōshikenhō[National Bar Examination Law](Law No. 140, 1949), art. 4(1)(revised, effective on December 1, 2005). This exception was provided in order to accommodate those who have financial difficulty in attending law schools and also to provide a short route to those who have already practiced law without a license such as corporate employees in legal departments. The Justice System Reform Council, *supra* note 3, ch. 3, part 2–3(3).

[29] Shihōshikenhō, art. 4(1). The reason for limiting the number of times candidates can take the examination is explained as follows in the Recommendation.

> From the standpoint of transforming the selection system based only on a "single point" into a new legal training system based on a "process," the national bar examination should be changed to a new system that will take into account the educational programs at law schools, which will constitute the core of the new legal training system.… In light of the spirit of the law school system and the new national bar examination system mentioned above, in the case of those who have completed the course at law schools that have achieved accreditation, the number of times a candidate can take the new national bar examination should be limited, e.g., to three times.

B. Reforms to utilize licensed legal service providers other than attorneys

While the major focus of the Council with regard to the reform of the legal profession was placed on attorneys, prosecutors, and judges—the so-called *hōsō*—the actual reforms under the JSR had a significant impact on legal service providers, apart from attorneys. In order to "transform both the spirit of the law and the rule of law into the flesh and blood of this country" as the Recommendation states, legal professionals who can provide individuals with access to justice need to be available across Japan. However, there was a very grave imbalance in the distribution of attorneys prior to the reform[30]. As of 1998, 9,772 attorneys out of a total of 16,852 practiced around Tokyo, and 3,210 attorneys practiced around Osaka[31]. In contrast, only 264 attorneys practiced around Takamatsu in Shikoku, while 385 practiced in Hokkaido. Moreover, the provision of legal services by non-attorneys was strictly prohibited under the Attorney Act Article 72. Thus, the absence of attorneys in a particular town meant the absence of authorized legal services in that town. Although the Japan Federation of Bar Associations (JFBA), the national regulatory organization for attorneys, had addressed this problem by establishing a foundation (*himawari kikin*) to send attorneys to areas that did not have practicing attorneys, it seemed impractical to attempt to achieve the proposal of the Recommendation—distribution of legal services throughout Japan—within a short period, relying solely on attorneys.

Id. However, candidates will be permitted to take the bar examination even if they failed the previous three attempts, if they acquire another status that qualifies them to take the bar examination more than two years after the last time they took the exam. For example, suppose one graduated from a law school and failed the bar examination thrice. He or she could still take the preparatory examination for the bar examination two years later, and if successful, again take the bar examination up to three times within the next five years . Shihōshikenhō, art. 4 (2) (revised, effective on December 1, 2005).

30 The Justice System Reform Council, *supra* note 3, Ch. 3, part 3–7.

31 Todōfuken betsu bengoshi saibankansū [Number of attorneys and judges based on prefectures], distributed at the 28th JSR Council (August 29, 2000), *available* online at http://www.kantei.go.jp/jp/sihouseido/dai28/pdfs/28bessi4ap2.pdf (last visited September 30, 2008).

Therefore, the Recommendation proposed that other license holders be utilized, for example, by granting judicial scriveners (*shihōshoshi*) the right to represent clients in summary court and patent attorneys (*benrishi*) the right to appear in court for patent infringement actions[32]. Accordingly, many laws governing such alternative license holders were revised to expand the scope of their authorized practice. The following table presents how license holders excluding attorneys obtained a broader scope of practice under the JSR.

In addition, several independent laws were established to facilitate individuals' access to legal services both in and out of court. The government enacted the Comprehensive Legal Support Act (*Sōgō hōritsu shienhō*) in 2004, which will establish the Japan Judicial Support Center (*Nihon shihō shien sentā*) (hereinafter "the Center" in this section) under the

Table 1 : Utilization of licensed legal services providers other than attorneys

(Number of licensed individuals)	Major areas of practice BEFORE the Reform	Expanded areas of practice AFTER the Reform
Judicial Scriveners (19,225 : as of August 2008)	Draft documents for submission to court and represent clients in real property registration proceedings	Conditionally represent clients in summary court and ADR and provide legal advice on matters that they are authorized to handle
Administrative Scriveners (39,203 : as of Spring 2008)	Draft documents for submission to administrative agencies and represent clients for submission proceedings	Draft contracts and provide legal advice on matters that they are authorized to handle
Patent Attorneys (7,790 : as of July 2008)	Register intellectual property, represent client in arbitration proceedings and contract negotiations	Conditionally represent clients in patent infringement cases
Tax Attorneys (71,160 : as of August 2008)	Deal with tax laws, draft documents, represent clients in tax proceedings, and on issues pertaining to tax laws	Appear in court as assistants to attomeys
Certified Social Insurance Labor Consultants (32,332 : as of March 2008)	Deal with particular social insurance and labor laws, draft documents, represent clients in administrative proceedings, and consult on issues about labor and insurance laws.	Represent clients at labor dispute committees of the prefecture

[32] The Justice System Reform Council, *supra* note 3, ch. 3, part 3–7.

Ministry of Justice[33]. The Center, which began providing services from October 2006, will be located all over Japan to manage various legal services, both civil and criminal, such as referring legal professionals (not only attorneys but also judicial scriveners and other quasi-legal professionals) to help with specific problems, developing legal aid, and establishing a system for providing criminal defence attorneys[34].

Furthermore, the Act Concerning the Promotion of the Use of Alternative Dispute Resolution Proceedings (*Saibangai funsō kaiketsu tetuzuki no riyō no sokushin ni kansuru hōritsu*) (hereinafter, the ADR Act) was enacted in 2004[35]. The ADR Act provides procedures to authenticate a person as a business person and to provide ADR services such as mediation. Authentication is given by the Minister of Justice[36]. Such an activity by a non-attorney is generally prohibited by the regulation of unauthorized practice of law under the Attorney Act and criminalizes the service provider if the service provider continuously engages in such services as an occupation[37]. However, the ADR Act permits a non-attorney service

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[33] Sōgō hōritsu shienhō [Comprehensive Legal Support Law) (Law No. 74, 2004).

[34] Id. art. 3–5. The purpose of establishing such offices is described in Article 1 as follows:

> Considering that dispute resolution by law will become more important with changes in social and economic situations both inside and outside Japan, the purpose of this law is to lay down basic principles, the responsibility of the government, and other fundamental items concerning the implementation and preparation of the comprehensive support scheme for facilitating the use of litigation and other legal dispute resolution system and familiarising access to *services of attorneys, judicial scriveners, and other quasi-legal professionals.* By achieving these purposes, this law aims to contribute to the formation of a more liberal and fair society. (Emphasis added)

The law explicitly includes "judicial scriveners" with attorneys as legal service providers who should contribute to citizens' access to justice.

[35] Saibangai funsō kaiketsu tetuzuki no riyō no sokushin ni kansuru hōritsu [Law concerning Promotion of Use of Alternative Dispute Resolution Proceedings] (Law No. 151, 2004).

[36] Id. art. 5.

[37] Regulation of unauthorized practice of law under the Attorney Law criminalizes the provision of legal services by non-attorneys if it is provided in exchange for fees and as an occupation.

provider to obtain authentication if the applicant prepares a measure to ask an attorney for legal advice as necessary[38]. The purpose of the ADR Act is to promote ADR by creating an exception to the regulation of unauthorized practice of law while maintaining the quality of ADR services by the certification process[39]. As of September 2008, there are eighteen organizations that have been authenticated by the Ministry of Justice[40]. Among others, the Kanagawa Judicial Scriveners Association and the Kyoto Social Insurance and Labor Consultants Association are two of the authenticated business providers.

III. History, current practice, and distribution of major quasi-legal professionals

Given the fact that various reforms are now in place in the legal services market, this section discusses several individual groups of major quasi-legal professionals. First, Section A discusses the brief history and current practice areas of the following five groups: judicial scriveners (*shihō shoshi*); administrative scriveners (*gyōsei shoshi*); patent attorneys (*benrishi*); tax attorneys (*zeirishi*); and social insurance and labor consultants (*shakai hoken rōmushi*). Next, Section B examines the prefectural distribution of attorneys, judicial scriveners, and administrative scriveners, whose practice areas overlap with each other in matters pertaining to ordinary legal affairs.

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38 ADR Act, art. 6(5).

39 Moreover, if a person brings a dispute to such authorized ADR service providers but the ADR is unsuccessful in resolving the dispute, and the person brings a lawsuit about the dispute, the defendant can invoke suspension of prescription (statute of limitations) from the date on which the ADR proceeding commenced. Saibangai funsō kaiketsu tetuzuki no riyō no sokushin ni kansuru hōritsu, art. 25. This provision probably promotes the use of ADR services through certified service providers because users do not need to worry about prescription during ADR proceedings.

40 Ministry of Justice, *Ninshō funsō kaiketsu jigyōsha ichiran* (List of authenticated dispute resolution providers), *at* http://www.moj.go.jp/KANBOU/ADR/itiran/ninsyou-index.html (last visited September 30, 2008).

A. History and current practice

1. Judicial Scriveners (*Shihō shoshi*)

The origin of the judicial scrivener (*shihō shoshi*)[41] was the daisho nin, which means "scrivener," provided in the first regulation of legal professionals in 1872 after the Meiji Restoration[42]. Daisho nin was created as a service provider who drafted documents that were related to litigation. In 1886, the land registration system was established under the Land Registration Act (*Tōkihō*)[43]. Land registrations were processed in courts at that time, and the work pertaining to land registration was included in the duties of the *daisho nin*[44]. Gradually, *daisho nin* was divided into two groups as follows: those who drafted documents for litigation and land registration and those who drafted documents for administrative agencies. The former group became *shihō daisho nin*, which means judicial scriveners, and the latter group was termed *gyōsei daisho nin*, which means administrative scriveners[45]. In 1919, the Act of *Shihō daisho nin* (Law No. 48, 1919) was established, marking the legislative starting point for judicial scriveners[46]. All *shihō daisho nin* had to be approved by the district court chief[47]. They belonged to district courts[48] and were supervised by the district court chief[49]. In 1935, the abovementioned law was amended to become the Judicial Scrivener Act (*shihō shoshihō*), and their name was

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41 Occasionally, "*shihō shoshi*" is translated as "solicitors," since they were originally introduced for the purpose of drafting legal documents. Some of them prefer to be called just "*Shihōshoshi lawyer*" because they are quite original, and it is difficult to find the appropriate word in English. Nonetheless, this paper uses the term "judicial scriveners" for them because it is the direct translation of their name.

42 Kobayashi Akihiko & Kawai Yoshimitsu, *Chūsyaku Shihōshoshihō* (Commentary on Judicial Scrivener) 1 (Teihan 2003).

43 Tōkihō (Land Registration Law) (Law No. 1, 1886).

44 Kobayashi & Kawai, *supra* note 42, at 2.

45 Id.

46 Article 1 of the Law provides the duties of *shihō daisho nin* as follows:
Shihō daisho nin under this law means those persons who draft the documents that should be submitted to the court or to the prosecutor's office upon the request of others.

47 Shiho daishoninhō (Law No. 48, 1919), art. 4.

48 Id. art. 2.

49 Id. art 3 (1).

changed from *daisho nin* to *shihō shoshi* (judicial scrivener).

After several amendments to the Judicial Scrivener Act, the current law (Law No. 197, 1950) provides that those who pass the examination for judicial scriveners, and those who have practiced for more than ten years as a judicial secretary, clerk, legal secretary, or prosecutor's secretary, and who are approved by the Minister of Justice, can become judicial scriveners[50]. All judicial scriveners are required to register with the Japan Federation of Judicial Scriveners Association (JFJSA) through their local judicial scriveners associations[51]. The director of the Legal Affairs Bureau (*hōmukyoku*) or the Local Legal Affairs Bureau (*chihō hōmukyoku*), which is the local organ of the Ministry of Justice, has the authority to supervise the judicial scriveners within their jurisdiction[52].

Judicial scriveners provide a variety of legal services. They act as agents for their clients for land registration, draft documents to be filed in courts or other legal proceedings, and assist in preparing the necessary documents to complete various routine legal transactions such as registering land transfers at a Local Legal Affairs Bureau or making deposits in a public deposit office[53]. The 2002 revision of the Judicial Scrivener Act markedly expanded the scope of judicial scriveners' practice. Today, judicial scriveners can represent a client in summary court[54], and also represent a client to settle, negotiate, or mediate legal disputes where the claimed amount is within the limit allowed in summary court[55]. However, the expanded practice is available only for those judicial scriveners who have completed a training program designated by the Minister of Justice and approved by the Minister of Justice[56]. In addition, judicial scriveners can provide legal advice on matters that they are authorized to handle.

As of August 2008, there were 19,225 judicial scriveners all over

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50 Shihōshohihō [Judicial Scrivener Law] (Law No. 197, 1950), art. 4.
51 Id. art. 8.
52 Id. art. 47.
53 Id. art. 3 (1) – (5)
54 Id. art. 3 (6). The summary court currently deals with disputes involving claim amounts of under 1,400,000 yen (approximately 12,844 USD). Saibanshohō (the court law) (Law No. 59, 1947), art. 33 (1)–1.
55 Shihōshohihō, art. 3 (7).
56 Id. art. 3–2.

Japan, and 10,709 had completed the training program allowing them the expanded scope of practice[57]. Compared to attorneys, they are relatively well distributed all over Japan, as discussed in the subsequent section.

2. Administrative Scrivener (*Gyōsei shoshi*)

The origin of the administrative scrivener[58] is the same as that of the judicial scrivener, which is described above. Although the 1872 regulation in (*shihō shokumu teisei*) originally introduced *daisho nin* as a person who drafts documents for court proceedings, some *daisho nin* served ordinary people by drafting documents to be submitted to town or city offices or to the police office[59]. Around 1900, there existed several rules and ordinances by the police and local governments that governed both judicial and administrative scriveners[60]. While the Judicial Scrivener Act was established by the National Diet in 1919, the regulation of administrative scriveners was provided in a government ordinance (*Daisho nin kisoku*) issued by the Ministry of Domestic Affairs in 1920[61]. It mainly followed the former regulations and ordinances established by local governments and the police agency, prohibiting people from drafting administrative documents for business in the absence of obtaining approval from the local police[62]. Although there was a movement to establish a law governing administrative scriveners around 1935, it did not materialize owing to the onset of the Second World War[63].

Upon the establishment of the Japanese Constitution after the Second

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57 Japan Federation of Judicial Scriveners Association, *Heisei 19 nendo kansai soshōdairi tou nōryoku nintei kousa kekka happyō* (Results of the examination to authorize representation at the Summary Court), September 4, 2007, *at* http://www.shiho-shoshi.or.jp/association/info_disclosure/news/news_detail.php?article_id=3 (last visited September 30, 2008).

58 Again, this paper applies the direct English translation of the Japanese name for this group.

59 *Chihō jichi seido kenkyuukai* (Study group for local autonomy), *Yōkai gyōsei shoshihō* (Commentary on the Administrative Scrivener Law) (Yuhikaku 1992) at 3.

60 Id.

61 Id. at 5.

62 Id.

63 Id. at 6.

World War, the ordinance governing administrative scriveners was repealed, and as a result, there was no regulation governing their business[64]. In order to serve the needs of citizens, some prefectures provided local regulations for governing the business of administrative scriveners. This regulation was called "Administrative Scrivener Ordinances" (*Gyōsei shoshi jōrei*), which authorized prefectural governors to supervise administrative scriveners[65]. Until 1950, more than twenty prefectures locally regulated their administrative scriveners; however, the remaining prefectures did not exercise any control over them[66]. Given the need to control administrative scriveners all over Japan with a unified standard, the National Diet passed the Administrative Scrivener Act (*Gyōsei shoshihō* (Law No. 4, 1951) in 1951.

After several revisions, the current law allows the following persons to become administrative scriveners: those who have passed the examination for administrative scrivener; those who have the license of an attorney, patent attorney, public accountant, or tax attorney; and those who have worked for either the central or local government or the administrative management office of Japan Post (*Nihon yūsei kōsha*) for more than twenty years and have graduated from high school[67]. All administrative scriveners have to register with the roll of administrative scriveners, which is managed by the Japan Federation of Administrative Scriveners. The governors of prefectures have the authority to supervise the business of administrative scriveners in their respective prefectures.

Administrative scriveners can draft documents to be submitted to government agencies, serve their clients as agents in the proceedings by submitting documents to the government agencies, and consult with clients on the documents that they are authorized to draft[68]. The 2002 revision of the Act expanded their scope of practice. Besides administrative documents, they are now permitted to draft documents, represent clients, and consult with clients in matters relating to individual rights and duties or factual verification on matters such as contracts, wills, and succession[69].

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64 Id.
65 Id. at 7.
66 Id.
67 Gyōsei shoshihō, art. 2.
68 Id. art. 1−2 and art. 1−3.

They can also provide legal counseling in relation to the documents they are authorized to handle. Furthermore, the revision of the above act in 2008 enabled them to represent clients in administrative hearings pertaining to matters that they are authorized to handle for clients[70]. As of April 2008, there are 39,203 registered administrative scriveners in Japan[71].

3. Patent Attorney(*Benrishi*)

In Japan, the patent system started in 1885, when the government promulgated the Patent Regulation(*Senbai tokkyo jōrei*)(*Dajyōkan* Rule, 1885). However, Japan was not ready to introduce the patent attorney system at that time. For more than ten years after the regulation was adopted, the inventor or the agent who wrote the patent application also conducted the application proceeding[72]. In 1899, the government revised the intellectual property laws and established the Patent Act, the Design Act, and the Trademark Act, in order to join the Paris Convention for Industrial Property. Moreover, an agent system was created through the Patent Act[73]. The regulation details were contained in the Rules of Patent Attorney Registration(Imperial Order No. 235, 1899)[74]. In 1921, the government promulgated the Patent Attorney Act(Law No. 100, 1921), which first made it mandatory for all patent attorneys to register with the Patent Attorney Association before commencing their practice. This law survived for almost eighty years, albeit with several amendments. However, many people recommended an overall revision of the law, citing reasons such as the law being too simple to govern modern patent practice, the text being written in the old style with *katakana* characters, and the rules being insufficient for providing a legal basis for the contemporary Japanese patent environment[75]. In 2000, the government completely revised the law

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69 Id.

70 Administrative Scrivener Act, art. 1–3.

71 Japan Federation of Administrative Scrivener Association, *Introduction of prefectural administrative scrivener association, at* http://www.gyosei.or.jp/unit/index.html(last visited September 30, 2008).

72 Tokkyochō soumuka, *Jōkai benrishihō*[Commentary on the Patent Law]15 (2001, Gendai sangyo sensho).

73 Id. at 16. Article 8 states as follows: "a person who operates as an agent concerning patents shall apply for registration to the chief of the Patent Office."

74 Id.

and enacted a new Patent Attorney Act (Law No. 49, 2000).

The Patent Attorney Act provides that, in order to practice as a patent attorney, one has to register with the Japan Patent Attorneys Association (JPAA)[76]. In addition to those who have passed the patent attorney examination, those who are qualified as attorneys, and those who have engaged in trial or examination work as patent trial examiners or examiners in the Patent Office for at least seven years can also register as patent attorneys[77]. The Minister of Economy, Trade and Industry (METI) has the authority to discipline patent attorneys according to this law[78].

Patent attorneys handle much of the legal work related to registering and are also responsible for properly securing entitlement to various forms of intellectual property such as patents, trademarks, designs, and utility models (*jitsuyō shin'an*), a type of intellectual property that receives protection in Japan but does not rise to the level of patentability[79]. Patent attorneys can also represent a client in arbitration proceedings that concern intellectual property and unfair competition, or in negotiating contracts that pertain to intellectual property and secrets in technology[80]. Moreover, they can consult with clients about those contracts[81]. The 2002 revision expanded the scope of practice of patent attorneys. The government granted patent attorneys who have passed a specified examination the right to represent a client in patent infringement actions[82]. However, they can do so only when clients also retain another individual attorney[83]. As of August 2008, there are 7,790 registered patent attorneys, and 2,082 of them are certified to practice in newly authorized areas[84].

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75 Id.at 19.
76 Benrishi hō (the patent attorney law) (Law No. 49, 2000), art. 17.
77 Id. art. 7.
78 Id. art. 32.
79 Id. art. 4 (1).
80 Id. art. 4 (2) and art. (3).
81 Id. art. 4 (3).
82 Id. art. 6.
83 Id. art. 6 (2).
84 Japan Patent Attorneys Association, *nihon benrishikai kaiin no bunpu jyōkyō* [distribution of patent attorneys], *at* http://www.jpaa.or.jp/about_us/information/pdf/kaiinbunpu.pdf (last visited September 30, 2008).

4. Tax Attorneys (*Zeirhishi*)

The system of tax attorneys (also translated as "tax agents") was established in 1942, when the government enacted the Tax Attorney Act (*Zeimu dairishihō*) (Law No. 46, 1942). However, the origin of tax attorneys is more accurately stated to be around 1886, when the government established the Sales Tax Act[85]. After the outbreak of the Russo-Japanese War (1904–1905), the government ceaselessly increased taxes, and the tax consulting business gradually increased. Osaka prefecture adopted the Regulation of Tax Attorneys (*Zeimu daibensha torishimari kisoku*) in 1912, which mandated that all tax attorneys in the prefecture had to be licensed by the police agency. In 1942, the Tax Attorney Act was established by the Diet in order to promote the appropriate management of tax administration during the Second World War. According to this law, tax attorneys had to be approved by the Minister of Finance in order to conduct business. They drafted documents to submit to the Tax Office, represented clients in tax administration proceedings, and consulted with clients about tax management. After the War, the Tax Attorney Act (*Zeirishihō*) (Law No. 237, 1951) was enacted, and the name of tax attorneys was changed from *zeimu dairishi* to *zeirishi*.

After several revisions, the current law provides that all people who are qualified to become tax attorneys must register with the Japan Federation of Tax Attorneys in order to practice[86]. In addition to those who have passed the examination for tax attorneys, attorneys and certified public accountants are also qualified to become tax attorneys[87]. Local associations are located at every jurisdiction of the Regional Taxation Bureau (a local organ of the National Tax Administration Agency)[88]. The Minister of Finance is authorized to supervise tax attorneys according to the Tax Attorney Law[89].

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[85] This part relies on the following literature. Tanaka Jiro, *Sozeihō* [Tax Law] 136 (Yuhikaku 1990).

[86] *Zeirishihō* [Tax Attorney Act] (Law No. 237, 1951), art. 18. Moreover, specified subjects are exempted if an applicant has a certain degree or over 3 years of teaching experience at a university. art. 3.

[87] Id. art. 3.

[88] Id. art. 49.

[89] Id. art. 44.

Tax attorneys can advise, draft and file documents, and represent clients in all tax matters during complaint proceedings within the Tax Office[90]. The 2001 revision of the Law granted tax attorneys the right to present statements in court as an assistant (*hosanin*) to attorneys[91]. As of July 2008, there are 70,517 registered tax attorneys in Japan[92].

5. Social Insurance and Labor Consultant (*Shakai hoken rōmushi*)

The introduction of social insurance and labor consultants (*shakai hoken rōmushi*) (hereinafter, 'Consultant' in this section) among licensed legal services providers is relatively new. As a result of the developments in the health insurance system and the social insurance system after the Second World War, administrative work in enterprises became complicated and detailed. Many small and medium enterprises lacked staff that could deal with such difficult matters, and there was a need for persons who could offer professional advice on labor-related laws and insurance laws to both employers and employees, and instruct employers on labor and social insurance management[93]. Therefore, the government enacted the Social Insurance and Labor Consultant Act (*Shakai hoken rōmushihō*) (Law No. 89, 1968) in 1968, which was designed to provide a license to those people who "contribute to the smooth enforcement of regulations concerning labor and social insurance and the healthy development of businesses and laborers' welfare[94]."

The Law provides that all social insurance and labor consultants must register on the roll of social insurance labor consultants located at the

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[90] Id. art. 2.

[91] Article 2 (2) provides that:

> A tax attorney may present a statement concerning taxation in court as an assistant, by appearing in court with an attorney.

[92] Nihon zeirishi rengōkai, *Zeirishi tōrokusha zeirishi hōjin todokedesū* [the total reported number of tax attorneys and tax attorney corporations], http://www.nichizeiren.or.jp/association/touroku.html (last visited September 30, 2008).

[93] Hirano, *Shakaihoken rōmushi* [social insurance labor consultant], Rōdōhō [Labor Law] vol. 71 (1969) at 108.

[94] Shakai hoken rōmushihō [Social Insurance and Labor Consultant Law] (1968, Law No. 89), art. 1.

Federation of Social Insurance and Labor Consultants Associations (*Shakai hoken rōmushikai rengōkai*)[95]. In addition to passing the examination required for becoming a Consultant, an applicant must have two years of experience in the area of labor and social insurance law[96]. Attorneys can register as Consultants regardless of their work experience in labor or social insurance law[97]. The Minister of Health, Labor, and Welfare has the authority to discipline Consultants according to the abovementioned law[98].

Consultants deal with specific laws concerning employment and insurance. The law currently specifies fifty-three laws and their related regulations that Consultants can deal with[99]. They can draft applications pertaining to these laws for submission to administrative agencies, and they can represent clients in administrative proceedings relating to such documents[100]. They can also provide consultation services on labor management in enterprises and other matters that concern these laws[101]. The 2001 revision of the Law granted consultants the additional right to represent clients in labor disputes before dispute management committees (*funsō chōsei iinkai*) in the prefectural government under the Law concerning the Promotion of Individual Labor Disputes (*Kobetsu rōdō funsō no sokushin ni kansuru hōritsu*) (Law No. 102, 2001)[102]. As of March 2008, there are 32,332 registered social insurance and labor consultants in Japan[103]. Since the licences granted to Consultants is relatively new as compared with those of other quasi-legal professionals, 39.9% of consul-

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95 Id. art. 14–2.

96 Id. art. 3. Some applicants are exempted from taking certain subjects of the examination based on their work or research experience. Id. art. 11.

97 Id. art. 3(2).

98 Id. art. 24 and 25.

99 Id. art. 2(1).

100 Id. art. 2–1(1), (2), and (3).

101 Id. art. 2–3.

102 Id. art. 2–1(4). The committee at which they can represent a client for labor disputes is located at the Labor Department of each prefecture. Kobetsu rōdōkankeifunsō no kaiketsu no sokushin ni kansuru hōritsu (*The* law concerning the promotion of individual labor disputes), art. 6(1).

103 Japan Federation of Social Insurance and Labor Consultants Association, *Shakai hoken rōmushi toha* [about social insurance and labor consultants], *at* http://www.shakaihokenroumushi.jp/general-person/known-profit/index02.html (last visited September 30, 2008).

tants also have other licenses such as those for tax attorneys or administrative scriveners, according to a survey conducted in 2001[104].

B. Distribution

This section examines the prefectural distribution of attorneys, judicial scriveners, and administrative scriveners, whose practice overlap with each other with respect to citizens' ordinary legal affairs. Table 2 in the next page shows the prefectural distribution of three groups. The number in parenthesis at the bottom line in each cell shows the ratio of prefecture population to the number of license holders in each profession (attorney, judicial scrivener, or administrative scrivener).

The table shows that all forty-seven prefectures have more than a hundred judicial scriveners and administrative scriveners, whereas there are eighteen prefectures that have less than a hundred attorneys. In total, there are approximately 6,000 less judicial scriveners than attorneys, and thus, it is clear that judicial scriveners are more equally distributed all over Japan as compared to attorneys. In addition, administrative scriveners are also well distributed: each prefecture has at least 200 administrative scriveners, which means one administrative scrivener per approximately 4,900 residents. In general, it is fair to say that judicial and administrative scriveners are more accessible than attorneys.

However, there are two prefectures that have more attorneys than judicial scriveners or administrative scriveners, which are Tokyo and Osaka, the two biggest cities in Japan. In fact, more than 60 percent of attorneys are concentrated in these two prefectures: the ratio of attorneys to residents is one attorney per 1,046 residents in Tokyo and one attorney per 2,725 residents in Osaka. In these two prefectures, people may prefer retaining attorneys over retaining other quasi-legal professionals because the former are easily accessible and can provide a comprehensive range of legal services.

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[104] Zenkoku shakai hoken rōmushi kai rengōkai, *Shakai hoken rōmushi jittai chōsa hōkokusho gaiyō* [Summary of the research report on actual condition of social insurance and labor consultants], *Gekkan shakai hoken rōmushi* [Monthly Journal of Social Insurance and Labor Consultants] (July 2002) at 52.

Table 2: Prefectural distribution of attorneys, judicial scriveners, and administrative scriveners

Region	Prefecture	(A) Population[1]	(B) Attorney[2] (A/B)	(C) Judicial Scrivener[3] (A/C)	(D) Admin. Scrivene[4] (A/D)
Hokkaido	Hokkaido	5,601,000	585 (9,574)	605 (9,258)	1,480 (3,784)
Tohoku	Aomori	1,423,000	63 (22,587)	128 (11,117)	299 (4,759)
	Iwate	1,375,000	69 (19,928)	160 (8,594)	282 (4,876)
	Miyagi	2,355,000	288 (8,177)	282 (8,351)	738 (3,191)
	Akita	1,134,000	59 (19,220)	129 (8,791)	303 (3,743)
	Yamagata	1,208,000	64 (18,875)	165 (7,321)	391 (3,090)
	Fukushima	2,080,000	114 (18,246)	284 (7,324)	700 (2,971)
Kanto	Tokyo	12,659,000	12,097 (1,046)	2,952 (4,288)	4,382 (2,889)
	Kanagawa	8,830,000	960 (9,198)	844 (10,462)	1,931 (4,573)
	Saitama	7,071,000	435 (16,255)	719 (9,834)	1,840 (3,843)
	Chiba	6,074,000	398 (15,261)	594 (10,226)	1,585 (3,832)
	Ibaragi	2.972,000	136 (21,853)	294 (10,109)	1,016 (2,925)
	Tochigi	2,015,000	119 (16,933)	213 (9,460)	741 (2,719)
	Gunma	2,021,000	168 (12,030)	295 (6,851)	1,072 (1,885)
	Yamanashi	880,000	77 (11,429)	134 (6,567)	288 (3,056)
Shin'etu	Niigata	2,418,000	170 (14,224)	310 (7,800)	800 (3,023)
	Nagano	2,189,000	147 (14,891)	359 (6,097)	1,046 (2,093)
Hokuriku	Toyama	1,110,000	67 (16,567)	167 (6,647)	384 (2,891)

	Ishikawa	1,172,000	109 (10,752)	183 (6,404)	315 (3,721)
	Fukui	819,000	65 (12,600)	136 (6,022)	336 (2,438)
Tokai	Aichi	7,308,000	1,166 (6,268)	1,032 (7,081)	2,383 (3,067)
	Gifu	2,015,000	199 (16,933)	353 (5,708)	815 (2,472)
	Shizuoka	3,797,000	278 (13,658)	431 (8,810)	1,495 (2,540)
	Mie	1,873,000	94 (19,926)	275 (6,811)	695 (2,695)
Kinki	Osaka	8,815,000	3,235 (2,725)	2,050 (4,300)	2,262 (3,897)
	Hyogo	5,590,000	554 (10,090)	898 (6,225)	1,619 (3,453)
	Kyoto	2,643,000	425 (6,219)	499 (5,297)	750 (3,524)
	Shiga	1,389,000	82 (16,939)	195 (7,123)	405 (3,430)
	Nara	1,416,000	116 (12,207)	191 (7,414)	331 (4,278)
	Wakayama	1,028,000	91 (11,297)	157 (6,548)	361 (2,848)
Chugoku	Tottori	604,000	48 (12,583)	108 (5,593)	219 (2,758)
	Shimane	737,000	39 (18,897)	128 (5,758)	262 (2,813)
	Okayama	1,955,000	230 (8,500)	321 (6,090)	720 (2,715)
	Hiroshima	2,875,000	345 (8,333)	449 (6,403)	981 (2,931)
	Yamaguchi	1,483,000	102 (14,539)	243 (6,103)	454 (3,267)
Shikoku	Tokushima	805,000	60 (13,417)	149 (5,403)	373 (2,158)
	Kagawa	1,009,000	107 (9,430)	172 (5,866)	361 (2,795)
	Ehime	1,460,000	115 (12,696)	246 (5,935)	554 (2,635)
	Kochi	789,000	67	123	254

			(11,776)	(6,415)	(3,106)
Kyushu	Fukuoka	5,054,000	754 (6,703)	807 (6,263)	1,079 (4,684)
	Saga	863,000	61 (14,148)	122 (7,074)	208 (4,149)
	Nagasaki	1,466,000	101 (14,515)	157 (9,338)	337 (4,350)
	Kumamoto	1,836,000	162 (11,333)	329 (5,581)	503 (3,650)
	Oita	1,206,000	98 (12,306)	168 (7,179)	280 (4,307)
	Miyazaki	1,148,000	76 (15,105)	167 (6,874)	520 (2,208)
	Kagoshima	1,743,000	98 (12,306)	292 (5,969)	736 (2,368)
Okinawa	Okinawa	1,368,000	199 (6,874)	210 (6,646)	317 (3,259)
	TOTAL	127,770,000	25,012 (5,108)	19,225 (6,646)	39,203 (3,259)

[1] The data is as 2006. Statistic Bureau, *Jinkō setai* [population and household], *at* http://www.stat.go.jp/data/nenkan/zuhyou/y0203000.xls (last visited September 30, 2008).
[2] The data is as of August 1, 2008. Japan Federation of Bar Associations, *Bengoshi kai betsu kaiinsū* [number of members based on local bar association], *at* http://www.nichibenren.or.jp/ja/jfba_info/membership/data/080801.pdf (last visited September 30, 2008).
[3] The data is as of August 1, 2008. Japan Federation of Judicial Scriveners Associations, *Zenkoku shihōshosikai ichiran* [List of local judicial scriveners associations], *at* http://www.shiho-shoshi.or.jp/association/shiho_shoshi_list.php (last visited September 30, 2008).
[4] The data is as of April 1, 2008. Japan Federation of Administrative Scriveners Associations, *Kaku todōfuken gyōseishoshi kai no shōkai* [Introduction of prefectural administrative scriveners association], *at* http://www.gyosei.or.jp/unit/index.html (last visited September 30, 2008).

On the other hand, the Tohoku region does not have many attorneys; the ratio of one attorney per residents in all prefectures except the Miyagi Prefecture in the region is one attorney per more than 18,000 residents. In these areas, people rarely find an attorney. Naturally, we can assume that the better distributed "lawyer-substitutes"—judicial scriveners and administrative scriveners—in these areas take the place of attorneys by providing legal advice and drafting legal documents. For the residents in these

areas, these lawyer-substitutes are not the substitutes for attorneys because a "substitute" implies someone who does someone else's job for a limited period of time[105]. Moreover, at least presently, there is almost no attorney practicing in these areas, and it is unforeseeable when attorneys will be available. Thus, these quasi-legal professionals are the only available legal professionals for the residents.

In consideration of the geographical distribution of the three groups of legal services providers as described above, it is clear that the reforms under the JSR significantly expanded the amount of authorized legal services available in the market, especially in the countryside. Before the JSR, it was only attorneys who could represent clients in the court or provide legal advice with regard to ordinary legal affairs. Today, judicial scriveners can represent clients in summary court, and many other license holders are authorized to provide legal advice within a limited scope. In addition, the establishment of the Japan Legal Support Center promotes the utilization of quasi-legal professionals. For example, if a person calls the Center regarding his or her divorce problem but he or she resides in the countryside, the Center would probably refer that person to an accessible legal services provider in that town, paying careful consideration to the issues and the amount of money involved. Therefore, although the expanded scopes of practice for quasi-legal professionals are still limited compared to what attorneys can perform, the expansion significantly reduced the gap between attorneys and other licensed legal services providers. From the user's perspective, the legal service providers who are accessible and professionally provide legal services are trustworthy lawyers, even if they are not attorneys.

IV. Theoretical implications of the complexity in the market

In the light of the complexity of the legal services market, this section discusses the theoretical implications of the current state of legal professionals in Japan. First, Section A discusses Andrew Abbott's profession theory and why his theory is meaningful in analyzing legal services providers in Japan. The remainder of this section sheds light on the characteristics of Japanese legal professionals (Section B) and the prospects

[105] Longman Dictionary of Contemporary English (2006).

and limitations of quasi-legal professionals in the future (Section C).

A. Profession Theory by Abbott

There are various theories and discussions about the concept of professions by sociologists. Early sociologists focused on the functions of professions and recognized professionals as honored servants of public need[106]. Later, sociologists evaluated professions more critically. For example, Larson examined the relationship between a profession and the market[107]. Eliot Friderson focused on the political influence of professions in his work of 1970[108]. However, for the purpose of analyzing legal professionals in Japan, I primarily employ the theory of Andrew Abbott in *The System of Professions*[109]. In this book, Abbott claims that professions constitute an interdependent system. Among the literature discussing the theory of professions, his argument is distinctive in the sense that he recognizes the existence of various competing professions or para-professions in society, and suggests a theory for why one particular profession becomes successful whereas others fail. He defines the word "profession" very loosely, stating that professions are "exclusive occupational groups applying somewhat abstract knowledge to particular cases[111]." He focuses on the work of professions, terming the link between a profession and the

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[106] See, for example, Talcott Parsons, *The Professions and Social Structure*, in *Essays in Sociological Theory* 35 (Free Press 1964).

[107] Magali S. Larson, *The Rise of Professionalism: A Sociological Analysis* (California 1977).

[108] Eliot Freidson, *Profession of Medicine: A Study in the Sociology of Applied Knowledge* (Dodd Mead 1970).

[109] Andrew Abbott, *The System of Professions* (Chicago 1988).

[110] Early sociologists focused on the functions of professions and recognized professionals as honored servants of public need. See, for example, Talcott Parsons, The Professions and Social Structure, in Essays in Sociological Theory 35 (Free Press 1964). Later sociologists looked at professions more critically. For example, Larson examined the relationship between a profession and the market; Magali S. Larson, The Rise of Professionalism: A Sociological Analysis (California 1977). Eliot Friderson focused on the political influence of professions in his work of 1970. Eliot Freidson, Profession of Medicine: A Study in the Sociology of Applied Knowledge (Dodd Mead 1970).

[111] Id. at 8.

work it involves as "jurisdiction." He examines how the jurisdiction of a profession is settled and what factors can break it. He argues that professions are interdependent and that the essence of the system of professions is the jurisdictional competition between professions.

Abbott argues that a profession occupies a jurisdiction only when finding it vacant or by fighting for it[112]. A profession's jurisdictional shift inevitably affects other professions because jurisdiction is exclusive in principle. Moreover, the system of professions can be disturbed by external or internal sources. Abbott cites changes in technologies or culture, competitors' attacks, and state policy as examples of external sources that disturb the system. On the other hand, client differentiation, internal divisions of labor, and career patterns are examples of internal sources. When state policy forcibly changes the jurisdiction of one profession, it inevitably affects the profession that is thus deprived of its jurisdiction and other professions that can participate in the competition to occupy that jurisdiction. Moreover, when internal divisions of labor are promoted in a profession, a dominant group becomes real professionals, while the subordinate group allows outsiders to invade the jurisdiction. Accordingly, Abbott argues that the system of professions is dynamic and that no profession can survive forever.

Abbott's theory is insightful in the sense that he defines "profession" very loosely and pays little attention to the privileged status of conventionally defined professions such as medicine or law. Some sociologists criticize his analysis as "idiosyncratic," despite the strong influence of his work on the theory of professions[113]. However, Abbott's theory is useful for analyzing the current state of legal professionals in Japan. Indeed, there are several kinds of legal professions—if we employ Abbott's definition of profession—in Japan. Attorneys, judicial scriveners, administrative scriveners, tax attorneys, patent attorneys, social insurance and labor consultants, and other license holders that are not discussed in this paper have some exclusive practice areas and provide specific services by apply-

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[112] Id. at 86.

[113] Eliot Freidson, *Professionalism The Third Logic 6* (Chicago 2001). However, Freidson also acknowledges Abbott's theory as one of the most influential analysis.

ing some of their professional legal knowledge to particular cases. For a long period of time after the framework of the Japanese legal profession was first established in late 19th century, legal professionals were territorially segregated, with attorneys in litigation, judicial scriveners in registration, patent attorneys in patent application, and so on. However, the JSR allowed more than one group of LSPs to share some areas of practice—such as legal counseling for small claims. In such areas, several groups of legal professionals now have to compete with each other, and the practice of one particular group can affect another group's market share. Indeed, as Abbott suggests, one group's practice is not self-contained.

Thus, in this regard, the JSR dramatically affected all the jurisdictions of legal professional groups. At present, they face new jurisdictional competition and jurisdictional disturbance inside the group. For example, the jurisdiction of attorneys has been invaded by judicial scriveners because of their expanded scope of practice with respect to representation in summary court. Attorneys will also suffer internal division of labor by increasing the number of attorneys within a short period of time. Accordingly, their jurisdiction today becomes more fragile than what it was in the past. At the same time, the jurisdiction of judicial scriveners, for example, also involves fragileness today. An increase in the number of attorneys may lead some attorneys to handle out-of-court matters such as land registration, which has been practically dominated by judicial scriveners. In addition, only those judicial scriveners who have passed an additional examination and undergone additional training can handle the expanded practice area. This may promote the internal division of labor among judicial scriveners. The same could happen to other quasi-legal professions that involve an additional qualification for specified practice under one license. In this manner, a new competitive environment has prevailed among Japanese legal professions. While it is difficult to determine how and when jurisdictional disputes will be settled, it is clear that this movement enhances the complexity of the legal services market in Japan.

B. Characteristics of Japanese legal professionals

As the preceding discussion illustrates, multi-layered professions exist in Japan's legal services market. This is a distinguishing characteristic of Japanese legal professionals. Some may argue that Japan is not the

only country that grants non-attorneys the right to practice legal business within a limited scope. In fact, even in the United States, certain non-attorneys are allowed to practice law in specified kinds of cases under both federal and state laws[114]. However, a significant difference between the United States and Japan is that Japan has legally recognized various license holders and the legal services provided by these license holders in a manner that is more substantial in content and quantity. The examination of the work of each group of quasi-legal services providers and their distribution indicates that they have considerable responsibility toward meeting the legal needs of citizens in this century. It is obvious that out-of-court legal services by quasi-legal professionals can have a substantial impact on the rights of corporations and individuals. They can provide a broad range of legal services such as offering legal advice to employees with respect to social insurance, registering land, or protecting inventions developed in a laboratories. In addition, they affect legal rights even in courtrooms by drafting complaints or other documents, presenting statements for clients, and even representing clients in patent infringement actions or disputes in summary court. As Professor Ramseyer highlighted in his work of 1986, the lack of attorneys had been supplemented by the legal services of lawyer substitutes. Besides, today, these lawyer substitutes assume a more important role in providing legal services to ordinary people.

The expansion of the scope of authorized practice of quasi-legal professionals, however, has not changed their essential nature, even after the JSR. The history of each group of license holders shows that they were created to support particular administrative policies such as land registra-

[114] For example, at the federal level, specified persons are allowed to represent another person in tax proceedings before the Internal Revenue Service as "a recognized representative." 26 CFR § 601.502. *See also*, 31 CFR § 10.3. Moreover, a person can appear in a proceeding in the Interstate Commerce Commission with an attorney or "*other qualified representative*." 18 CFR § 385.2101. Furthermore, a statute regulating patent attorneys clearly states that "any citizen of the United States who is not an attorney, and who fulfills the requirements of this part may be registered as a patent agent to practice before the Office." 37 CFR § 11.6(b). With regard to state laws, the Washington State Supreme Court, for example, provides exceptions to unauthorized practice of law under Admission to Practice Rules. Rules 8, 9, 12, 14.

tion or tax collection; therefore, they had been regulated by administrative agencies. Thus, although attorneys enjoy self-regulation, quasi-legal professionals are still regulated by supervising administrative agencies. The Recommendation by the Justice System Reform Council does not recommend any reform to the current regulatory scheme of quasi-legal professionals, even as it states the following:

> With respect to the relationship between lawyers and quasi-legal professionals, it is necessary to comprehensively reconsider who should carry out legal services in the future when the amount of lawyers will significantly increase and as various reforms concerning lawyers become a reality, in view of the purpose and significance of the scheme for each kind of specialist and the convenience of and demands for protection of the rights of users[115].

While the Recommendation indicates the future need to reconsider the structure of legal professionals, it does not exactly recommend any direction or state as to when such reconsiderations should occur. Indeed, quasi-legal professionals have maintained their jurisdictions with a strong tie to supervising administrative agencies: the law governing a particular group of license holders is amended only when their supervising government agency decides to do so; the details of their practice are not provided by the law but by official notices (*tsūtatsu*) from the supervising agency; and each group accepts retired staff members from the supervising administrative agency as a member of the group without an examination as provided by the law. While Abbott suggests various factors that influence the jurisdiction of a profession, state policy or administrative policy is the most influential factor in the jurisdiction of quasi-legal professionals in Japan. In that sense, they are closely embedded in the administrative bureaucracy, and this characteristic has not changed even after the implementation of the JSR.

C. Limitations and possibilities of quasi-legal professionals

The JSR was an epoch in a sense that it invoked jurisdictional competition among various legal services providers, which had never occurred, at least not officially, since the establishment of the current system.

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[115] The Justice System Reform Council, *supra* note 18, ch. 3, part 3(7).

However, if we focus on the impacts of the JSR on quasi-legal professionals, there are some limitations in the competition among quasi-legal professionals.

First, quasi-legal professionals still heavily rely on administrative agencies, as discussed above. The details of their services are directed by supervising agencies, which is unclear to ordinary people, and their standards of conduct are not clearly provided to the public[116]. The structure governing them was designed to enforce national policies, and therefore it essentially places individual citizens in the position of "objects" of regulation. If quasi-legal professionals provide their services on the basis of unclear directions from supervising government agencies, an expansion in the scope of practice would imply an expansion of the extent to which the government agency can discretionally regulate citizens through quasi-legal professionals. The JSR was presented as "the final linchpin" of various reforms, tying all things together under "the rule of law" in order to realize "peoples' transformation from governed objects to governing subjects[117]." Ironically, individuals may have remained as governed objects under the utilization of quasi-legal professionals, if these quasi-legal professionals were closely controlled by the government in a non-transparent manner.

Second, it may be quasi-legal professionals, and not attorneys, who detrimentally lose in jurisdictional competition. The number of attorneys will be increased within a short period of time in the future. Moreover, attorneys are the only legal professionals who can provide a comprehensive range of legal services including representation in general litigation. Their unbalanced distribution and small population provided quasi-legal professionals with a wider scope of authorized practice. However, if the number of attorneys grows rapidly in the future and they become available even in the countryside at affordable prices, ordinary people would prefer to consult attorneys, as compared to other quasi-legal professionals, for their legal problems. Subsequently, survival will be difficult for legal ser-

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[116] *See*, Kyoko Ishida, *Ethical Standards of Japanese Lawyers: Translation of the Ethics Codes for Six Categories of Legal Service Providers*, 14 Pac. Rim L. & Pol. J. 383 (2005) (showing that each group of licensed legal service providers provides their own ethics codes but most of them are ambiguous.)

[117] The Justice System Reform Council, *supra* note 3, ch1, part1.

vices providers whose practice areas overlap with attorneys—particularly for judicial and administrative scriveners.

On the other hand, there are some positive prospects regarding the future of quasi-legal professionals. First, the JSR provides an opportunity to quasi-legal professionals to enhance their social status. As discussed, attorneys are currently not easily accessible in many countryside areas in Japan, and quasi-legal professionals will be utilized in these areas. For the residents in these areas, these quasi-legal professionals are "the lawyers." Enhancing their social status will help them to maintain clients and ultimately to maintain their jurisdiction. If quasi-legal professionals in the countryside secure social trustworthiness and high status before the concept of attorneys, which is alien to people in the countryside, comes to town to seek clients, they may be more powerful than attorneys. In this sense, the expansion of authorized practice for quasi-legal professionals surely provides them with an opportunity to strengthen and expand their jurisdiction.

In addition, the competitive environment prevailing under the JSR may affect the whole system of legal professions in Japan. Currently, all licensed legal professionals are regulated by different institutions regardless of the reality that their practice areas overlap with each other. For example, some judicial scriveners may obtain almost the same skill and knowledge as an attorney working alone in a rural area, or some patent attorneys may become competent in performing almost the same duties as an attorney in the field of intellectual property. However, individuals who simultaneously retain an attorney, a judicial scrivener, and a patent attorney may not realize that they are regulated differently. Only when individuals try to file disciplinary complaints against all three legal service providers will they understand the complexity of the regulatory system. Then, they may exclaim, "What a complicated system! Why are they regulated differently when they all provide legal services?"[118] A discussion

[118] Professor Takao Suwami at Waseda Law School claims that it is possible, in practice, for the JFBA to incorporate other license holders as members of bar associations. He refers to the gradual unification of lawyers in France as an example. Takao Suwami, *Shihōseido to hōritsuka: bengoshihō 72jō mondai heno shiten* (the justice system and legal professionals: a view towards the issue of Article 72 of the Attorney Law), in Grōbaru shakai no hōritsukaron,

may thereby be initiated to reconsider the regulatory scheme of Japanese legal service providers to make it clearer and more transparent for users. From the public's perspective, it is simpler to combine them under a unified regulatory body, given that different license holders provide the same or similar services in a field.

V. Conclusion

This paper discussed the complex state of the legal services market focusing on quasi-legal professionals. The JSR increased the amount of legal services available in the market by utilizing quasi-legal professionals. This reform is so influential that the entire structure of the legal profession may undergo reconstruction in the future. Quasi-legal professionals are no more than "mere substitutes" of attorneys, especially in the countryside, but they actually provide their services as legal professionals. While there is still a gap between the system of the Japanese legal profession—which supports the enormous difference in social status between attorneys and quasi-legal professionals and incorporates a complex regulatory scheme—and reality, there may soon be a discussion to reconsider the entire structure of legal service providers in Japan.

48 at 51 (Gendaijinbunsha 2002).