

## Recommendations on the Population of Legal Professionals in the Foreseeable Future

March 18, 2009  
Japan Federation of Bar Associations

### Summary of Recommendations

1. The Japan Federation of Bar Associations (JFBA) shall continue to accelerate a variety of justice system reforms aimed at realizing a judiciary which perfectly functions to guarantee citizens' rights and liberties by allowing the rule of law, the constitutional principle, to prevail throughout society. Regarding the legal professions (judges, public prosecutors and attorneys), who make up the judiciary, we shall put forward our maximum efforts from this position to realize a society with 50,000 legal professionals in order to meet citizens' needs while simultaneously maintaining and improving the quality of service provided.
2. Justice system reform at this time requires unified and balanced materialization and implementation of various measures, such as improving human and institutional infrastructure, taking into consideration changes in the needs of the judiciary and the legal profession. However, the new legal education system has not yet reached maturity, and various fields have raised concerns about the quality of newly admitted legal professionals. Compared with the situation of rapid growth in the population of attorneys meanwhile, the circumstances surrounding the judiciary such as quality assurance, changes in legal needs and improving the institutional infrastructure of the judiciary including fiscal measures has not changed as substantially as first planned. The JFBA requests the authorities concerned to improve their efforts in these areas.
3. Considering that it will take a number of years for improvement of these issues and reforms to be seen, the number of successful bar examination candidates shall be carefully and strictly determined for several years from the next fiscal year (FY 2009), keeping in mind the current number of successful candidates. The appropriate population of the legal profession after that time should be reviewed taking into account changes in the above situations.

## Reasons for the Recommendations

### I. Significance of the Recommendations

The JFBA expressed its “Urgent Recommendation on the Issue of the Population of Legal Professionals” (hereinafter referred to as the “Urgent Recommendation”) on 18 July 2008 and made the following requests on deciding the number of successful bar examination candidates, considering that the new legal education system has not yet reached maturity.. We requested careful and strict reviews with a sufficient level of consideration given to the quality of the legal profession and reconsideration of the first numerical goal for realizing a unified and balanced reform of the justice system.

In addition, the JFBA established the “Board on the Population of Legal Professionals” (hereinafter referred to as the “Board”) for making recommendations regarding the proper size and actual growth of the legal profession’s population in the medium and long term. The Board examined, analyzed and discussed this issue, and published the “JFBA’s Recommendation Opinion” (hereinafter referred to as the “Board Opinion”)<sup>1</sup> on the 2<sup>nd</sup> of February 2009.

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<sup>1</sup> The Board Opinion states, “ ... considering that it will take several more years to improve education at law schools and judicial bases and that it will take a certain amount of time for the JFBA and bar associations to take measures for maintaining the quality of the legal profession, the number of successful bar examination candidates over several years (approximately 3 to 5 years) from the 2009 business year (the Heisei 21 business year) shall be determined utilizing careful and strict judgments and roughly keeping the number similar to that of the 2007 and 2008 business year (the Heisei 19 and 20 business years) (2100 to 2200 including both the new and old examinations). The legal profession’s population is sure to increase even with the 2100 to 2200 successful candidates, so after several years we shall examine the maturity of legal education, the conditions of ‘quality’ maintenance and improvement of the legal profession, and changes in social circumstances in order to determine the proper number of successful bar examination candidates and realize a total population of 50,000. Therefore, they should not hastily realize a rapid increase in the number of successful bar examination applicants while being bound by the first numerical goal (approximately 3000 a year).”

## II. Basic Viewpoint on Considering the Issue of the Population of the Legal Profession

The JFBA maintains that the principle of judicial system reform must be to aim to guarantee all citizens' rights and liberties by allowing the rule of law, the constitutional principle, to prevail throughout society. The JFBA aims to continue the acceleration of each aspect of judicial system reform including improvements in human and institutional infrastructure from the position of achieving "judiciary for citizens."

Regarding the improvement of human infrastructure, the government should increase the number of legal professionals as needed by the citizenry while simultaneously working to maintain their quality. In particular, they should aim for the total population of 50,000 legal professionals (judges, public prosecutors and attorneys) which was shown in the resolution of the JFBA special general assembly on 12 June 2001 and the Recommendations of the Justice System Reform Council (hereinafter referred to as the "JSRC Recommendations"), and continue to increase the population of the legal profession every year thereafter.

However, the new legal education system has not as of yet attained its originally expected standards and various problems have been identified regarding quality maintenance of the legal profession. In addition, the process of institutional infrastructure reform, such as the expansion of civil legal aid, as requested by the JSRC, has been too slow while the population of legal professionals has been growing rapidly and citizens' needs for the judiciary do not appear to be fully apparent. In particular, it should be noted that only the number of attorneys has been rapidly increasing while the numbers of judges and public prosecutors, which were also originally expected to increase rapidly have proven to be disproportionately low when compared to the increase in successful bar examination candidates.

The JFBA is discussing the issue of the legal profession's population from the viewpoint of aiming to realize unified and balanced judicial system reform in order to resolve various problems occurring in judicial practice.

## III. Quality Assurance of the Legal Professions

### 1. Quality of Legal Professionals

Members of the legal profession as discussed in the JSRC Recommendations, assume the practice of the judicial function. To put it another way, they function as "social doctors" for citizens. In particular, attorneys, the closest legal professionals to the citizenry, are widespread in every region and occupational field of society, forming thick layers and organizing autonomous groups to maintain their ethical standards. Attorneys are expected to provide a high level of legal service quality which matches the various legal needs of the public by energetically working on special professional activities. Attorneys are expected not only to realize the protection of citizens' rights and the achievement of social justice by continuing these activities but also to positively participate in various pro bono activities. Such nature of attorneys as professionals shall not be changed.

As for the qualifications required for such legal professionals, the JSRC Recommendation lists them as follows: "fundamental qualifications such as rich humanity, sensitivity, wide-ranging liberal arts and professional knowledge, flexible thinking and persuasive negotiation skills, and additional qualifications such as insight into society and human relationships, a sense of human rights, knowledge of advanced legal areas and foreign laws, international views and language skills etc."

The new system of legal education is designed to maintain and improve such "quality."

The JFBA published its “Recommendation on Measures to Improve the New Legal Education System” in January of this year hoping to achieve further improvement of the new system of legal education. Based on this recommendation, we are working in closer cooperation than ever with the applicable authorities and putting forward our best efforts to achieve improvement and development of the new legal education system.

## 2. Concerns on the Maintenance of “Quality”

Under the new legal education system, students are required to sufficiently devote themselves to their studies to earn a degree through a strict accreditation process, pass the bar examination, complete a legal apprenticeship, and pass the examination for legal apprentices (*Nikai-Shiken*, i.e. “second examination”). As it is necessary for students to go through such a lengthy process of education, it was not originally anticipated that large numbers of students would fail the *Nikai-Shiken*, the final hurdle for them to clear.

Nevertheless, a high level of students, who completed the law school course and passed the bar examination, have proceeded to fail the *Nikai-Shiken* (59 in FY 2007 and 101 in FY 2008). This indicates that the new law-school based legal education system is experiencing problems both in the contents of the legal training provided in the law schools themselves and in the connection between these contents and the bar examination and/or *Nikai-Shiken*. Accordingly, there is concern over whether or not the quality of newly admitted legal professionals is being sufficiently ensured.

Bearing in mind the legal profession’s duty to solve legal conflicts in society and to guarantee the rule of law and access to justice, producing candidates lacking in the minimum level of quality required for legal professionals and allowing them to practice will clearly fail to lead to the realization of effective reform of the judicial system for the public.

## 3. Law Schools

Five years on from the launch of the law school system, the schools themselves have created steady outcomes as the core educational institution for the new legal education system. At the end of last year, students completing the course for those previously graduating without an LL.B became legal professionals for the first time, thus bringing new qualities and experiences into the Bar.

On the other hand, however, law schools have not yet reached a sufficient level of maturity and at present still suffer from the following problems:

Currently the number of law schools is 74 with a capacity of 5,795 students (FY 2008), which is substantially higher than the original expectations.

The current situation is markedly different from the design set out in the JSRC Recommendations which stated that “law schools should provide a rich quality of education so that the majority of students completing the course (approximately 70 to 80 percent) will be able to successfully pass the bar examination.”

In addition, there has been a decrease in both the total number of applicants to law schools and the number of applicants from non-law faculties and/or applicants with prior work experience. Considering the comparatively low pass rate in law schools for students not in possession of an LL.B., this decrease clearly shows that it is difficult for the legal profession to accept large numbers of human resources

from a variety of backgrounds as legal professionals.

Considering the analysis of the Central Council for Education Law School Special Committee and The Supreme Court General Secretariat, and the opinions of some legal training course mentors in practice as attorneys etc., it can be indicated that some students who have completed the law school course are still lacking sufficient basic knowledge and understanding on basic legal subjects etc., and some are lacking sufficient skills in logical drafting. Further, we can indicate that the capabilities of such students vary greatly and the number of people with low levels of capability is increasing. Regarding law school, it can be shown that the educational contents of both basic legal subjects and basic legal practice subjects vary between law schools. We can also point out that law schools and legal training courses have not succeeded in providing systematically coordinated education.

Such problems in the present situation facing law schools should be resolved by preparing the conditions for and successfully realizing the fundamental principles regarding the contents and methods of education at law schools as listed in the JSRC Recommendations. While these are urgent matters, it will still take a certain amount of time to bring about concrete improvements and achieve the original principles.

#### 4. Legal Training Courses

Legal training courses aim to deepen the legal knowledge of successful bar examination candidates, develop their abilities of applying it in practice and improve their skills and ethics as legal professionals.

In addition to problems involving the connection with legal education provided at law schools, however, the length of the legal training course was shortened to one year and the training provided in the first semester has been abolished. Further, too many legal apprentices are being assigned to only one court or prosecutor's office. These reasons have contributed to the legal training course not functioning sufficiently and leading to concerns over ensuring quality.

Therefore, in addition to improvement in the operations of law schools, achieving improvement of the legal training course is an urgent matter. Rapidly increasing the number of legal apprentices under the present situation will further weaken the functioning of the legal training course.

#### 5. OJT and Seminars

As the new system of legal education has as yet failed to reach maturity the importance of OJT and seminars for newly admitted legal professionals is increasing more than ever.

On the other hand, so called "job shortages" are occurring in large part because the number of newly registered attorneys has increased. Thus, we have seen a rise in the number of so called "immediately independent attorneys" (those who newly register as attorneys and open independent businesses simultaneously) who are lacking in opportunities to undergo OJT. It is concerning that this trend will lead to occasional obstacles occurring in the pursuit of guaranteeing citizens' rights if such attorneys are permitted to independently deal with actual cases.

The JFBA and bar associations are making efforts to improve the ethics as well as specialized knowledge of attorneys by providing various kinds of seminars. However, such seminars can only replace OJT for newly registered attorneys to a limited extent.

It is necessary to design a brand-new concept to provide newly registered attorneys with

opportunities to experience OJT, however this process will take a considerable amount of time.

#### IV. Legal Needs and Access to Justice

##### 1. Relationships between Human Infrastructure Development, Legal Needs and Institutional Infrastructure Development

It is necessary to expand and enrich human infrastructure in order to achieve the concept of a “large-scale justice” aimed for in the JSRC Recommendations. In order to bring about a more accessible judiciary for the citizenry it is necessary to link an expanded and enriched human infrastructure to the public’s needs for legal services. This requires the development of a special mechanism which identifies citizens’ legal needs, i.e. the various forms of infrastructure necessary to guarantee access to justice.

As indicated previously, however, a large increase in the number of attorneys is currently proceeding while there has only been a slight increase in the number of judges and public prosecutors<sup>2</sup>. In addition, under the current situation, as we mention later, development of infrastructure designed to identify the public’s legal needs and improve access to justice has been delayed. In order to realize a judiciary which is more accessible to the public, the most important requirements are to bring about a large increase in the number of judges and public prosecutors and the development of institutional infrastructure.

##### 2. Legal Needs

The JSRC Recommendations states, “It is expected that, in the future, the needs for legal services in

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Careers after Completing Judicial Training Course in Last Five Years: Assistant Judges, Public Prosecutors and Attorneys. \*1

|                         | Completed | Assistant Judges (%) | Public Prosecutors (%) | Attorneys (%) |
|-------------------------|-----------|----------------------|------------------------|---------------|
| 57 <sup>th</sup> (2004) | 1,178     | 109 (9)              | 77 (7)                 | 983 (83)      |
| 58 <sup>th</sup> (2005) | 1,187     | 124 (10)             | 96 (8)                 | 954 (80)      |
| 59 <sup>th</sup> (2006) | 1,477     | 115 (8)              | 87 (6)                 | 1,270 (86)    |
| 60 <sup>th</sup> (2007) | 2,376     | 118 (5)              | 113 (5)                | 2,188 (89)    |
| 61 <sup>th</sup> (2008) | 2,340     | 99 (4)               | 93 (4)                 | 2,080 (88)    |

\*1 As of 3 February 2009.

Numbers of Judges, Public Prosecutors and Attorneys in Last Five Years \*2

|      | Total  | Judges | Public Prosecutors | Attorneys |
|------|--------|--------|--------------------|-----------|
| 2004 | 24,130 | 2,385  | 1,505              | 20,240    |
| 2005 | 25,213 | 2,460  | 1,548              | 21,205    |
| 2006 | 26,182 | 2,535  | 1,591              | 22,056    |
| 2007 | 27,398 | 2,610  | 1,634              | 23,154    |
| 2008 | 31,328 | 2,685  | 1,679              | 26,964    |

\*2 The numbers of judges are the prescribed numbers of each business year and exclude judges of summary courts.

The numbers of public prosecutors are the prescribed numbers of each business year and exclude assistant prosecutors.

The numbers of attorneys are as of 1<sup>st</sup> April of each business year. But the 2008 number is as of 1<sup>st</sup> September 2009

various aspects of citizens' lives will increase in quantity. It is also expected that these needs will also diversify and advance in terms of quality," and lists certain reasons for this: (1) Improvement of economic and financial internationalization, (2) Dealing with global issues such as human rights, environmental problems and international crimes etc. (3) An increase in legal disputes requiring specialized knowledge such as intellectual property, medical malpractice and labour law issues etc. (4) The necessity of redressing regional shortages of attorneys and (5) An increase in the role of attorneys as "social doctors" for the public etc.

In March 2008, however, the Project Team for Investigating and Examining Legal Demand and the Population of Legal Professionals in the JFBA's General Promotion Center for Attorneys' Practice reported that it is difficult to expect a rapid increase in the demand for attorneys' legal services in the next five years or so considering the current number of lawsuits and the results of research conducted with large, small and medium-sized enterprises as well as the general public.

Regarding the number of lawsuits, if we include cases from district courts, summary courts and family courts, the rate of increase seen in the number of cases has exceeded the increase in the number of attorneys. However, this increase in case numbers has been significantly affected by numerous cases involving excessive payments made to consumer finance companies, which should prove to be a temporary phenomenon. Thus, when this factor is removed, the total amount of litigation is actually increasing very slowly. The improvement of and enriched access to legal services is necessary in order to ensure a more user-friendly lawsuit system.

Regarding the legal needs of small and medium-sized enterprises, the results of the project team's investigations indicate that many such enterprises are experiencing legal problems but do not regard them as issues for which it is necessary to seek legal consultation. As a result, they do not generally contact attorneys in these kinds of matters. This suggests that there is a potential need for legal services, but the issue of how to increase the access of these enterprises to attorneys is a matter for the future.

On the other hand, the number of in-house lawyers, working in enterprises, has gradually been increasing alongside the growth in the population of attorneys. It is expected that more and more attorneys will find work in government offices, local authorities and other organizations in the future.

In addition, the need for attorneys in international areas is expected to expand in correlation with international growth in the importance of human rights issues, the expansion of various enterprises to oversea markets and extension of international legal and judicial assistance by the government and the JFBA.

### 3. Development of Institutional Infrastructure

Even if the size of the potential legal needs is expected to remain stable to a considerable extent, the public will be unable to reach appropriate legal solutions and remedies without sufficient access to justice. These needs cannot be satisfied merely through rapid growth in the population of attorneys.

The deregulation policies of the government contributed to the expansion of economic and regional disparities. Despite having great needs for legal assistance, vulnerable groups in our society do not wield enough power to ascertain access to justice. Thus, lacking in any means of assistance, they are left languishing on the bottom rungs of the social ladder. In order to guarantee their access to justice, it is necessary and essential that institutional infrastructure be further developed.

In order to guarantee access to justice, it is clearly necessary to ensure the realization of a variety of

policies such as expanding and enriching civil legal aid and the mitigation of costs imposed on users of the legal system etc.

The JSRC Recommendations regarding civil legal aid states that, “Compared with European and American countries, the range of cases and persons to which civil legal aid service is applicable are limited. The budget scale is also small so that it seems inadequate from the viewpoint of practically guaranteeing “the right of access to the courts” (the Constitution Article 32). It also suggests that “the government should generally and systematically reconsider and additionally improve the range of applicable cases and persons, and burden on its users.”

Since then, however, the budget for civil legal aid has remained substantially lower than that of other advanced countries (one eightieth of the UK’s budget, one fortieth of the Netherlands’ and one eighteenth of Germany’s budget per capita.) Thus an increase in civil legal aid has been remarkably delayed. The range of applicable income groups only encompasses approximately the bottom 20% of the public (compared to approximately 50% on average in European countries), and in principle, it contains a heavy imposition of reimbursement of all costs (in principle, no reimbursement is required in many countries). Moreover, the user-unfriendliness of this system is hampering the increase in applications. It is impossible to achieve the expected aim of improving access to justice without at least expanding and enriching this system of civil legal aid.

Since the distant past and well before the JSRC Recommendations, it has been indicated that it is necessary to reduce the cost imposition on users as a way to promote usage of the judicial system, but the reduction in lawsuit costs is still inadequate. The right of action for consumer associations, introduced for the aid of customers, does not contribute to the recovery of damages itself. Introduction of the class action system and a stricter disclosure system has not yet been realized. Insurance for legal expenses (lawsuit cost insurance and/or attorney’s fee insurance) has become more noticeably widespread recently, but it is a far way from being in general usage like health insurance.

The growth in the population of attorneys has contributed to an increase in attorneys based in regional cities, but regional shortages of attorneys have also been remedied through the usage of policies such as the following activities. The JFBA has established law offices and legal counseling centers supported by the JFBA or regional bar associations and adopted financial aid measures etc. The Japan Legal Support Center (*Houterasu*) also allocates staff attorneys etc. Regional shortages cannot be solved merely by growing the population of attorneys. Such policies and activities of national and local governments are necessary and essential to continue to bring about improvement in this area.

*Houterasu* call centers are access points for the provision of general information on the judicial system, and regional offices have been established in each district so that more than 100 attorneys are in practice nationwide. However, the percentage of people utilizing information providing activities such as access numbers for the call center, and the number of applications for civil legal aid have increased less than expected when compared to potential legal needs.

Improvements need to be made in the human and material infrastructure of courts and prosecutors’ offices as they are still extremely inadequate. Of the legal apprentices who have completed the law school course, approximately 90% become attorneys, and the number of students appointed as judges or public prosecutors has only increased very slightly. In addition, there has been no sign of improving the problems surrounding the public’s access to justice in regional areas. Court branches and prosecutors’ offices need to be placed in a diverse range of places throughout Japan, with judges and public prosecutors stationed there. It is necessary for the government to make and take concrete measures for this to occur.

It is essential that the judicial budget, which has been kept relatively small, be increased. In Japan, the budget for the courts is merely 0.4% of the national budget. Because realization of justice system reform at this time requires adequate financial resources, the JSRC Recommendations request of the government special consideration on financial measures necessary for adopting policies on justice system reform. However, large-scale expansion and enrichment of the judicial budget have not yet come to fruition. In this area, the government need to improve institutional infrastructure and aim to bring about a larger judiciary by expanding the budgets allocated for the judiciary and legal aid.

There are approximately 186,000 people currently working in neighboring professions to the legal profession such as judicial scriveners, patent attorneys, licensed tax accountants, administrative scriveners, certified social insurance labor consultants and real-estate surveyors. Based on the JSRC Recommendations, a limited right to provide counseling and representation in ADR procedures etc. was given to some of these neighboring professions in order to meet pressing legal needs for a limited period of time. Approximately 12,700 judicial scriveners have been granted authorization to provide representation at summary courts, and approximately 1,970 patent attorneys have been granted authorization to handle specified infringement cases. These adjacent professions, however, have not completed the same process of education required of members of the legal profession. Considering that the number of legal professionals is set to rapidly increase in the future, we must reconsider the roles of neighboring professions in this area.

#### 4. Summary of the Above

As mentioned above, we can clearly say that the population of attorneys has been growing in an unbalanced manner while legal needs have not been sufficiently identified as the institutional infrastructure necessary to guarantee potential legal needs has not been improved. We feel it is important to mention that justice system reform cannot be developed in a harmonious way without systematically linking the acceleration of improving institutional infrastructure, identifying legal needs and growing the population of attorneys.

#### V. A 50,000 Population of Attorneys with a 3,000 Annual Increase

The JSRC Recommendations argued that the government must aim for approximately 3,000 successful bar examination candidates a year by 2010, while taking into consideration the conditions necessary for the provision of a new system of legal education including law schools etc. It expected that the population of attorneys in practice would reach approximately 50,000 by 2018 if such increases were realized.

We simulated the change in the population of attorneys using the figure of 3,000 fresh attorneys a year, and found that there would be approximately 55,000 attorneys in 2018, ten years from now, and 135,000 in 2056, forty eight years from now. The proposal of allowing 3,000 people to pass the bar examination each year was expected to increase the number of legal professionals to 50,000, and this took into consideration the fact that at the time of the proposal the number of legal professionals in Japan was inadequate to spread the “rule of law” throughout society. However, it did not necessarily aim to grow the population of legal professionals in Japan to the level of 130,000 people. Even if the number of successful candidates changes at the rate specified in this recommendation, it will still reach approximately 50,000 by 2020.

As discussed above, bearing in mind that the legal education system has not yet reached a sufficient level of maturity and institutional infrastructure has not been adequately developed, the government

should not stick to the first numerical target of approximately 3,000 successful applicants in 2010.

## Conclusion

The JFBA has declared the need for judicial system reform several times since the year 1990. The government has carried out every reform measure contained in the JSRC Recommendations of 2001, resulting in, among other policies, the introduction of lay judge trials from May this year and an enhanced court-appointed attorney system for suspects. As mentioned before, however, the consequence of these reforms depends on their implementation by the relevant authorities. This recommendation is based on the aim of strongly accelerating these steps.

The prior urgent recommendation aimed to grow the population of legal professionals but requested that the pace of growth be reduced. Accordingly, the JFBA has had concerns voiced by members of the public saying that this may hamper lay judge trials and the court-appointed attorney system for suspects, enhance regional shortages of attorneys, and bring about the regression of judicial reform as a whole. We are acutely aware that the citizenry have high expectations of the role of the JFBA in promoting judicial reform.

Meanwhile, the population of legal professionals has grown rapidly. This situation and the JFBA's activities have gradually brought about the correction of regional shortages of attorneys and prepared the conditions necessary to support the introduction of lay judge trials and court-appointed attorneys for suspects. This recommendation aims to ensure growth in the population of legal professionals both now and in the future and to strengthen their activities in approaching their tasks and eradicating problems surrounding the legal system. We strongly believe this recommendation should not be any cause for concern for the public.

The judiciary is the "last resort" for protecting the rights of the public, meaning that implementing additional reforms and improving access to justice is an important responsibility for the government. We request the growth in the population of legal professionals be linked to the increase of judges and public prosecutors, and the rapid establishment of the conditions required for a larger judiciary including the expansion of legal aid budgets.

Regarding the growing population of legal professionals, the JFBA has decided to make a collective effort to educate legal professionals and ensure their high level of quality in order to meet the expectations of a wide variety of citizens and to turn out legal professionals to every corner of society.