The Cabinet

List of Ministers

August 3, 2017

(Provisional Translation)
As of August 3, 2017

Shinzo ABE (R)	Prime Minister
Taro ASO (R)	Deputy Prime Minister Minister of Finance Minister of State for Financial Services Minister in charge of Overcoming Deflation
Seiko NODA (R)	Minister for Internal Affairs and Communications Minister in charge of Women's Empowerment Minister of State for the Social Security and Tax Number System
Yoko KAMIKAWA (R)	Minister of Justice
Taro KONO (R)	Minister for Foreign Affairs
Yoshimasa HAYASHI (C)	Minister of Education, Culture, Sports, Science and Technology Minister in charge of Education Rebuilding
Katsunobu KATO (R)	Minister of Health, Labour and Welfare Minister for Working-style Reform Minister in charge of the Abduction Issue Minister of State for the Abduction Issue
Ken SAITO (R)	Minister of Agriculture, Forestry and Fisheries
Hiroshige SEKO (C)	Minister of Economy, Trade and Industry Minister in charge of Industrial Competitiveness Minister for Economic Cooperation with Russia Minister in charge of the Response to the Economic Impact caused by the Nuclear Accident Minister of State for the Nuclear Damage Compensation and Decommissioning Facilitation Corporation
Keiichi ISHII (R)	Minister of Land, Infrastructure, Transport and Tourism Minister in charge of Water Cycle Policy
Masaharu NAKAGAWA (C)	Minister of the Environment

List of Abe Cabinet Members

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List of State Ministers
List of Parliamentary Vice-Ministers
List of Special Advisors to the Prime Minister

	Minister of State for Nuclear Emergency Preparedness
Itsunori ONODERA (R)	Minister of Defense
Yoshihide SUGA (R)	Chief Cabinet Secretary Minister in charge of Alleviating the Burden of the Bases in Okinawa
Masayoshi YOSHINO (R)	Minister for Reconstruction Minister in charge of Comprehensive Policy Coordination for Revival from the Nuclear Accident at Fukushima
Hachiro OKONOGI (R)	Chairperson of the National Public Safety Commission Minister in charge of Building National Resilience Minister of State for Disaster Management
Tetsuma ESAKI (R)	Minister of State for Okinawa and Northern Territories Affairs Minister of State for Consumer Affairs and Food Safety Minister of State for Ocean Policy Minister in charge of Territorial Issues
Masaji MATSUYAMA (C)	Minister for Promoting Dynamic Engagement of All Citizens Minister in charge of Information Technology Policy Minister of State for Measures for Declining Birthrate Minister of State for Gender Equality Minister of State for "Cool Japan" Strategy Minister of State for the Intellectual Property Strategy Minister of State for Science and Technology Policy Minister of State for Space Policy
Toshimitsu MOTEGI (R)	Minister in charge of Economic Revitalization Minister for Human Resources Development Minister in charge of Total Reform of Social Security and Tax Minister of State for Economic and Fiscal Policy
Hiroshi KAJIYAMA (R)	Minister of State for Regional Revitalization Minister of State for Regulatory Reform Minister in charge of Regional Revitalization Minister in charge of Administrative Reform Minister in charge of Civil Service Reform
Shunichi SUZUKI (R)	Minister in charge of the Tokyo Olympic and Paralympic Games

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Justices of the Supreme Court

Chief Justice
OTANI Naoto

Justice
OKABE Kiyoko

Justice
ONIMARU Kaoru

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Justice
YAMAMOTO Tsuneyuki

Justice
YAMASAKI Toshimitsu

Justice
IKEGAMI Masayuki

Justice
KOIKE Hiroshi

Justice
KIZAWA Katsuyuki

Justice
KANNO Hiroyuki

Justice
YAMAGUCHI Atsushi

Justice
TOKURA Saburo

Justice
HAYASHI Keiichi

Justice
MIYAZAKI Yuko

Justice
MIYAMA Takuya

Justice
MIURA Mamoru

Former Justices of the Supreme Court

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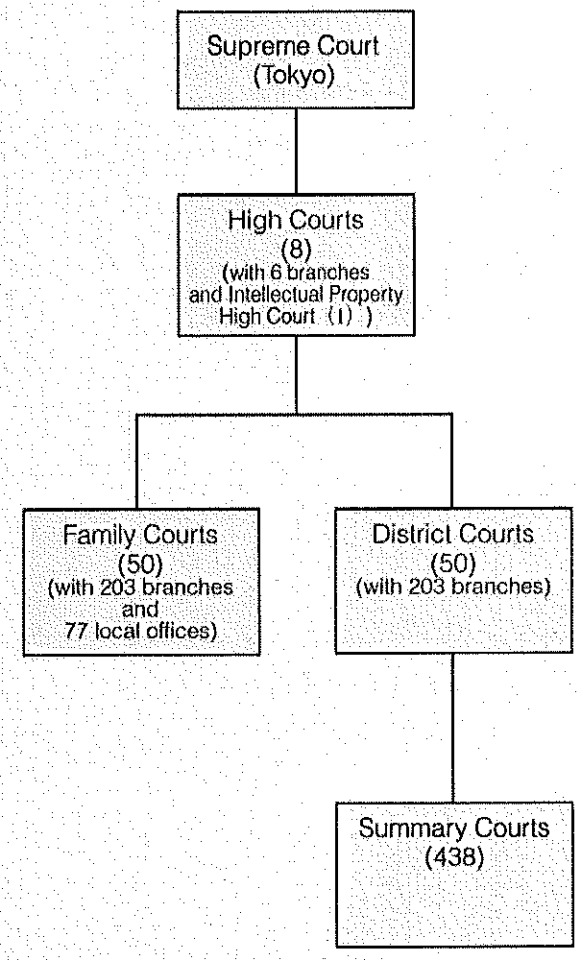
Supreme Court of Japan

Overview of the Judicial System in Japan

JUDICIAL POWER IN THE STATE

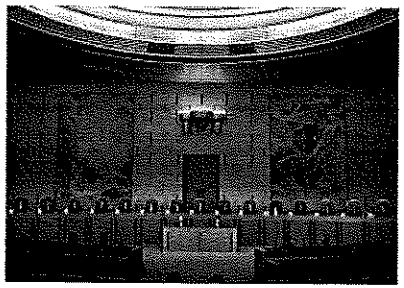
The Constitution (promulgated on November 3, 1946, and put into force on May 3, 1947) provides the democratic foundation for the separation of state powers. To be more precise, legislative power is vested in the Diet; executive power is vested in the Cabinet, the members of which are collectively responsible to the Diet in the exercise of this power. The Diet is empowered to designate the Prime Minister, the head of the Cabinet, from among the members of the Diet; and the whole judicial power is vested in the Supreme Court and lower courts established by law. The courts are the final adjudicators of all legal disputes, including those arising out of administrative actions between citizens and the state.
As shown in the chart below, the judicial system of Japan is composed of the following five types of courts: the Supreme Court, high courts, district courts, family courts, and summary courts. The respective courts have their own jurisdictions as provided for in law.

JUDICIAL SYSTEM



(As of 2010)

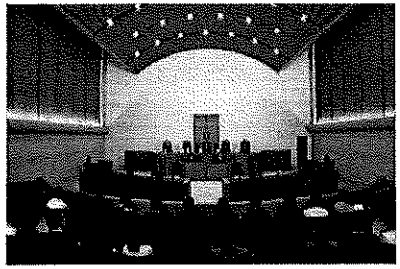
SUPREME COURT



Courtroom of the Grand Bench of the Supreme Court (Jul. 2010)

Judicial Function

The Supreme Court is the highest court in the state and is composed of the Chief Justice and fourteen Justices.
The Supreme Court exercises appellate jurisdiction of final appeal and appeals against a ruling as provided specifically in the codes of procedure. In addition, it has original and final jurisdiction in the proceedings involving the impeachment of commissioners of the National Personnel Authority.
A final appeal to the Supreme Court is permissible in the following instances: (1) an appeal lodged against a judgment rendered in the first or second instance by a high court; (2) a direct appeal sought against a judgment rendered by a district court or a family court, or a judgment in criminal cases rendered by a summary court as a court of first instance; (3) an appeal filed with a high court and transferred to the Supreme Court for a special reason; (4) a special appeal to the court of the last resort made against a judgment in a civil case rendered by a high court as the final appellate court; and (5) an extraordinary appeal to the court of the last resort lodged by the Prosecutor-General against a final and binding judgment of a criminal case.
An appeal against a ruling to the Supreme Court is permissible in the following instances: (1) an appeal filed against a ruling in a civil case or a domestic relations case either on the grounds of violation of the Constitution or with the permission of the high court that shall be given in a case that the court deems to involve an important issue concerning the construction of laws and regulations, and (2) a special appeal filed against an order or direction in a criminal case to which no ordinary appeal is permitted in the Code of Criminal Procedure or an appeal filed against an order, etc. of an intermediate appellate court in a juvenile case, on the grounds of violation of the Constitution or for the reason of a conflict with judicial precedents.
In civil and administrative cases, a final appeal to the Supreme Court may be lodged only on the grounds of violation of the Constitution and grave contraventions of provisions regarding the procedure of the lower courts, which are listed in the Code of Civil Procedure as the absolute reasons for the final appeal. The Supreme Court, however, may accept a case when the Court deems that it involves an important issue concerning the construction of laws and regulations, as the final appellate court upon a petition to do so. In criminal cases, the reasons for a final appeal are limited to those involving a possible violation of the Constitution, misconstruction of the Constitution or conflicts with the precedents of the Supreme Court or conflicts with those of the high courts in the absence of Supreme Court precedents. The Supreme Court, however, may accept a case when the Court deems that it involves an important issue concerning the construction of laws and regulations, as the final appellate court, upon a petition to do so.
Oral arguments and decisions in the Supreme Court are made either by the Grand Bench composed of all fifteen Justices sitting together or by one of the three Petty Benches, each composed of five Justices. Nine or more Justices on the Grand Bench and three or more Justices on each Petty Bench shall constitute a quorum to hear and determine cases.
The proceedings in the Supreme Court commence with the filing of a petition of final appeal by a party dissatisfied with the judgment of a lower court, generally of a high court. Since the Supreme Court primarily determines the question of law, it renders judicial decisions, as a rule, after an examination of documents alone (appellate briefs and records of the lower courts).
Where an appeal is groundless, the Supreme Court may dismiss the appeal without proceeding to oral arguments. If the Supreme Court finds it well-grounded, however, a judgment will be rendered after the oral argument is heard.
Every case on appeal is first assigned to one of the three Petty Benches. If a case proves to involve a constitutional issue, namely, an issue of the constitutionality of any law, order, rule, or disposition, except when there is a precedent upon the same issue, the Grand Bench inquires and adjudicates on it.
To assist the Justices of the Supreme Court in their judicial work, there are a certain number of Judicial Research Officials in the Supreme Court.



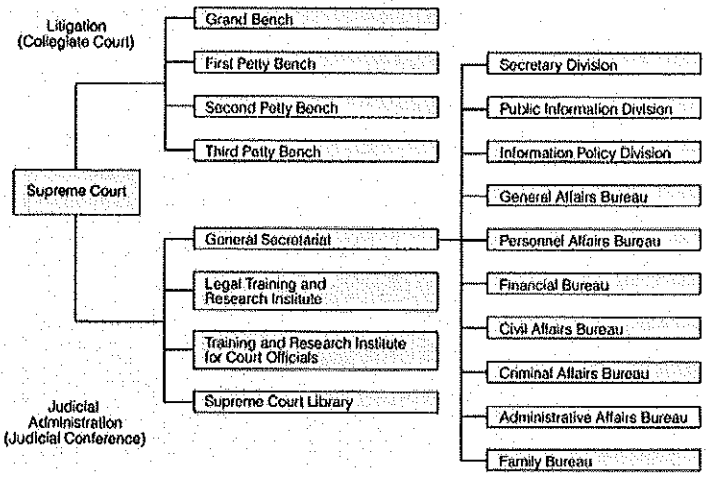
Courtroom of the Petty Bench of the Supreme Court (Jul. 2010)

Judicial Administration

Judicial Assembly Room (Jul. 2010)

In addition to the primary function of exercising judicial power, the Supreme Court is vested with rule-making power and the highest authority of judicial administration. In its conduct of these administrative affairs, the Supreme Court acts upon the resolutions of the Judicial Assembly, which consists of the fifteen Justices and is presided over by the Chief Justice.
The Judicial Assembly is held for deliberation and determination of matters of rule-making and judicial administration.
With the rule-making power, the Supreme Court may establish the rules of judicial procedure, and of matters relating to attorneys, the internal discipline of the courts, and the administration of judicial affairs.
In establishing rules on important matters, the Supreme Court, in order to establish them with deliberation, consults the Advisory Committee on Rule-Making, which is composed of judges, public prosecutors, attorneys, officers from related institutions, and persons with relevant knowledge and experience, to inquire of the necessary matters to establish rules. Then the Judicial Assembly deliberates and approves the proposed rules formulated on the basis of the Committee's report.
The designation of the Chief Justice of the Supreme Court and appointment of other Supreme Court Justices and judges of lower courts are within the purview of the Cabinet. However, the nomination of candidates of lower court judges from among whom the Cabinet appoints, including the Presidents of the high courts, and the assignment of judges to a specific court are reserved for the Supreme Court, which exercises the authority through the resolutions of the Judicial Assembly, provided that, as a rule, the nomination of candidates of lower court judges requires advice of the Advisory Committee for the Nomination of Lower Court Judges. In addition, such matters as the appointment and dismissal of court officials other than judges are within the purview of the judicial administration of the Supreme Court.
As for the budget of the courts, the Supreme Court, upon the resolution of the Judicial Assembly, submits annual estimates of revenues and expenditures directly to the Cabinet. If the Cabinet reduces the Courts' estimated expenditures, the Supreme Court may request the Cabinet to raise the reduced amounts. In this case, the Cabinet shall attach the details of the reduction concerning the estimated expenditure to the revenue and expenditure budget and clearly state the necessary fiscal resources so that the Diet can amend the figure for its deliberation.
In order to carry out these administrative affairs, the Supreme Court has the General Secretariat as its internal organization for judicial administration, the Legal Training and Research Institute, the Training and Research Institute for Court Officials, and the Supreme Court Library. The key staff of the General Secretariat may be selected from among the judges of lower courts with their consent.
Thus, the Supreme Court administers the whole judicial system independently, without any intervention by the executive branch or the legislative assembly.

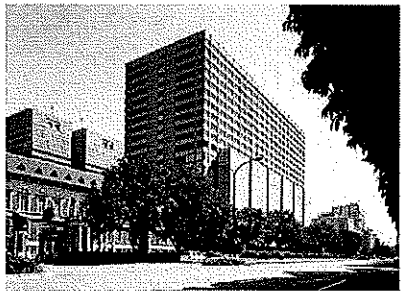
Organization Chart of the Supreme Court



(As of 2010)

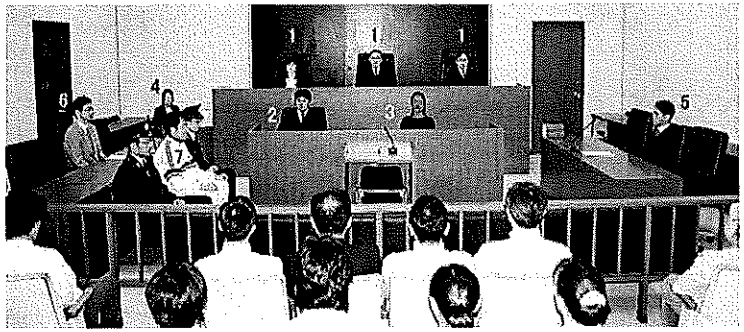
HIGH COURTS

High courts are located in eight major cities in Japan: Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo, and Takamatsu. Each high court has its own territorial jurisdiction over one of eight parts of Japan. Some high courts have branches. There are six branches throughout Japan. In addition, in April 2005, the Intellectual Property High Court was newly established as a special branch of the Tokyo High Court, which handles cases relating to intellectual property only. Each high court consists of a President and other high court judges. High courts, except for the Intellectual Property High Court, have jurisdiction over appeals filed against judgments rendered by district courts in the first instance or family courts and appeals against rulings, except those over which the Supreme Court has jurisdiction as provided specifically in the codes of procedure. However, while appeals in criminal cases originating in summary courts come directly to high courts, appeals in civil cases originating in summary courts are usually brought first to district courts and then final appeals are lodged with high courts.
In addition, a high court has original jurisdiction over administrative cases on election, insurrection cases, etc. The Tokyo High Court also has exclusive original jurisdiction over cases to revoke determinations of such quasi-judicial agencies as the Japan Marine Accident Tribunal.
The Intellectual Property High Court exclusively handles cases relating to intellectual property as appeals from district courts in civil cases relating to patent rights and actions against trial decisions made by the Japan Patent Office.
Cases in a high court are handled by a three-judge panel in principle. In addition, insurrection cases, judges' disciplinary cases, etc. are handled by a five-judge panel.

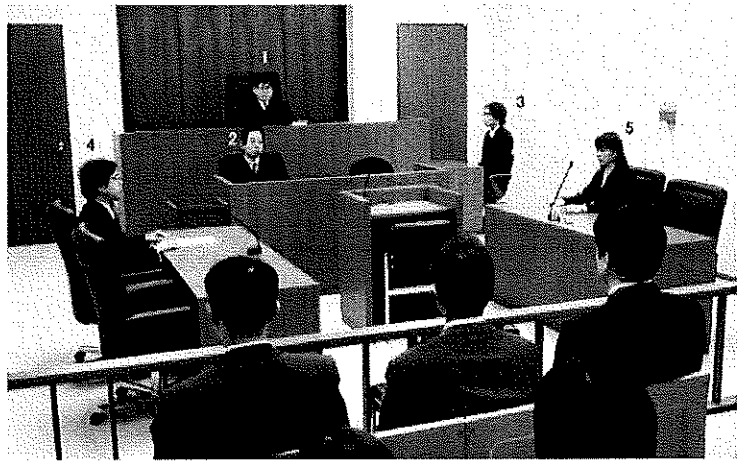


Courthouse of Tokyo High Court, Tokyo District Court, and Tokyo Summary Court

DISTRICT COURT



Three-judge courtroom (criminal case)
1 Judges
2 Court clerk
3 Court stenographer
4 Court secretary
5 Public prosecutor
6 Defense counsel
7 The accused



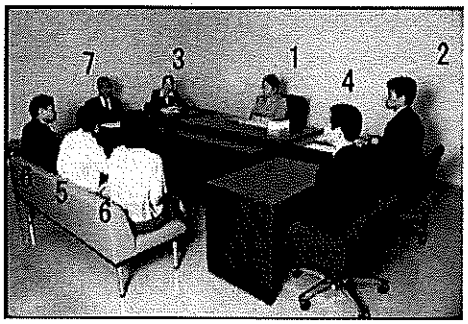
Single-judge courtroom (civil case)
1 Judge
2 Court clerk
3 Court secretary
4 Plaintiff's counsel
5 Defendant's counsel

There are 50 district courts in Japan having territorial jurisdiction over their respective districts, the area of which is identical to that of each prefecture (except Hokkaido, which is divided into four districts). The district courts have 203 branches in total.
The district court is generally the court of first instance, except for matters specifically coming under the exclusive original jurisdiction of other types of court. It also has appellate jurisdiction over appeals in civil cases lodged against judgments of summary courts and appeals lodged against orders and directions made at summary courts.
In a district court, as a rule, cases are handled by a single judge, but a three-judge panel is required in the following instances:
(1) Cases in which a panel decides that "trial and decision (of this case) shall be made by a panel."
(2) Cases of crimes punishable by the death penalty or imprisonment with or without work for life or not less than one year. Exceptions, however, are provided in cases of robbery, quasi-robbery, attempts to commit these crimes, or crimes of habitual robbery and theft with repeated convictions under the Act for Prevention

and Punishment of Robbery and Theft.
(3) Appeals against judgments in civil cases rendered by summary courts and appeals against orders and directions made at summary courts in civil cases.
(4) Cases designated as panel cases by laws other than the Court Act which provides (1), (2) and (3).
All district courts and some of their branches hold criminal trials with the participation of Saiban-ins (lay judges) in some certain serious cases. Under this system, a panel consisting of six Saiban-in and three professional judges handle such cases.

FAMILY COURT

Family courts and their branches are located at the same places of the district courts and their branches. In addition, local offices of the family courts are located at the sites of 77 summary courts.
The family court, established on January 1, 1949, under the concept of maintaining the welfare of families and seeking the sound upbringing of juveniles, is a court specialized in dealing comprehensively with domestic relations cases and juvenile cases. The family court has, in the first place, jurisdiction over all disputes within the family, as well as all domestic relations cases of legal significance. It conducts the conciliation proceedings and the adjudication proceedings. As a result of the enforcement of the Personal Status Litigation Act on April 1, 2004, the family court started to handle litigation cases regarding relationships between husband and wife, parents and children, and so forth.
Typical examples of domestic relations cases are listed as follows: guardianship of adults, permission to adopt a minor, request for the expenses of bringing up a child, designation of the person who has parental authority and alteration thereof, division of estate, marital relationship disputes, and divorce. Conciliation must be sought first for cases such as divorce, relationships between parents and children, and so forth, which are subject to the Personal Status Litigation Act. Unless agreement is reached, either party may bring an action to court. This derives from the concept that it is appropriate for a family dispute to be tried first for a settlement through proceedings closed to the public, taking reason and sentiment into consideration.
The family court also handles cases involving juvenile delinquents under 20 years of age who have committed a crime or are prone to commit crimes (14–19 years old) or who have violated penal provisions or are prone to violate them (under 14 years old). This derives from the concept that it is appropriate that protective and educational measures rather than punishment should be applied to juveniles under proceedings closed to the public.
Cases brought before the family courts are handled by a single judge or a three-judge panel fully utilizing scientific reports prepared by family court probation officers, as well as the diagnostic results of medical officers who are experts in psychiatry.

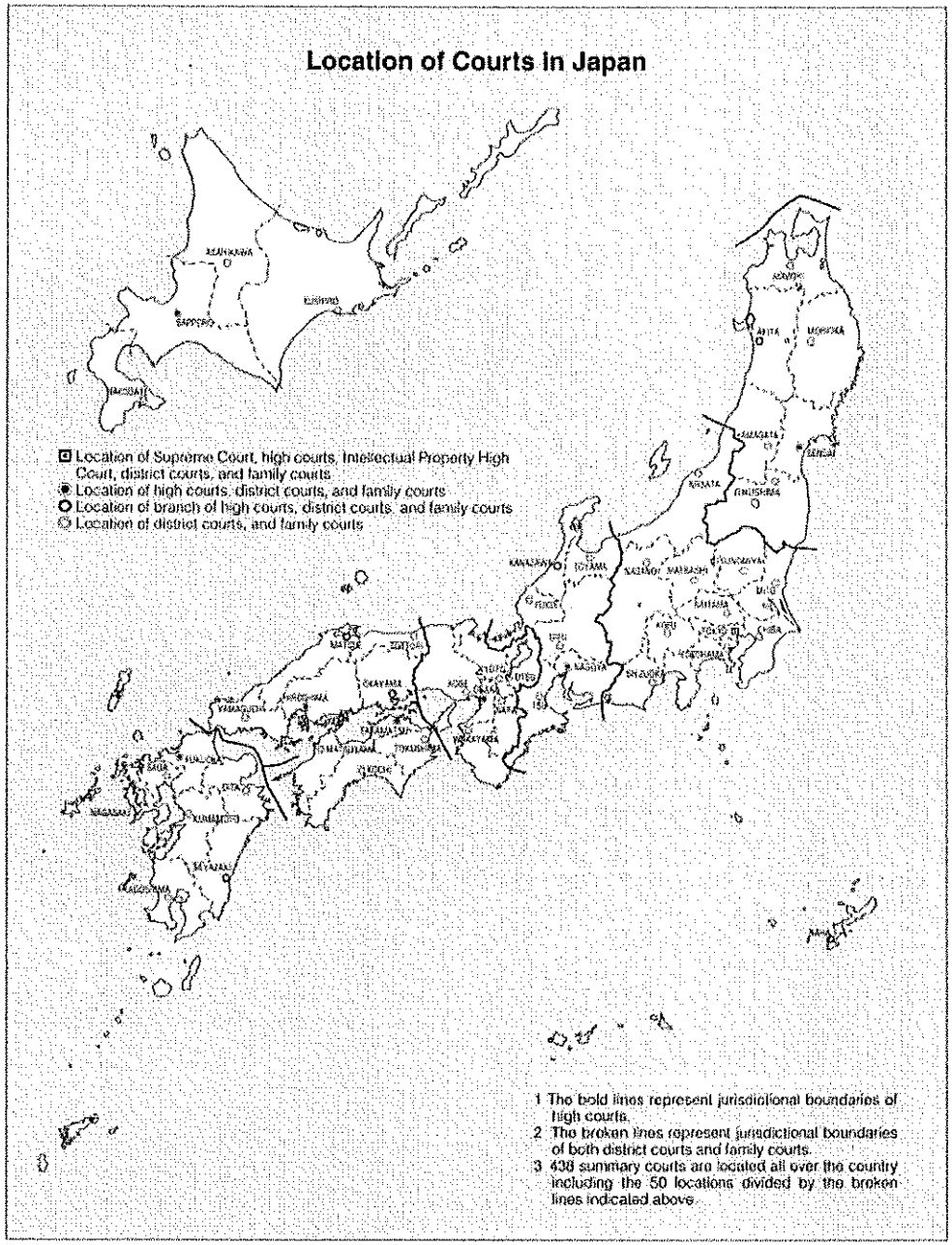


Juvenile case hearing
1 Judge
2 Court clerk
3 Family court probation officer
4 Court secretary
5 Juvenile
6 Custodians
7 Attendant

SUMMARY COURT

There are 438 summary courts throughout the country.
The summary court has the original jurisdiction over civil cases involving claims for an amount not exceeding 1,400,000 yen and criminal cases of offenses punishable by fines or lighter punishment and other offenses, such as theft and embezzlement.
The summary court cannot impose imprisonment without work or severer punishment as a general rule. However, it can impose imprisonment with work not exceeding three years with respect to cases of offenses specifically provided for by law. When the summary court deems it appropriate to impose punishment exceeding the limit, it must transfer the case to the district court.
All cases in a summary court are handled by a single summary court judge.

Consultation center in a Summary Court



(As of 2010)

JUSTICES OF THE SUPREME COURT

The Chief Justice is appointed by the Emperor as designated by the Cabinet. As the representative of the whole judiciary, the Chief Justice ranks on the same level as the Prime Minister, the representative of the Cabinet. Other Justices of the Supreme Court, whose ranks are as high as those of Ministers of the Cabinet, are appointed by the Cabinet, and then the appointment is attested by the Emperor.
Justices of the Supreme Court shall be appointed from among persons with a broad vision and extensive knowledge of law. At least ten Justices must be selected from among those who distinguish themselves as judges, public prosecutors, attorneys, and professors or associate professors of legal science in universities; the rest do not need to be jurists.
The appointment of Justices of the Supreme Court is reviewed by the people at the first general election of members of the House of Representatives following their appointment. The review continues to be held every ten years at general elections. A Justice will be dismissed if the majority of the voters favors his/her dismissal. So far, however, no Justice has ever been dismissed by the review.
Justices of the Supreme Court must retire at the age of 70.

JUDGES OF THE LOWER COURTS

Judges of the lower courts are categorized into presidents of high courts, judges, assistant judges, and summary court judges. They are all appointed by the Cabinet from a list of those who are nominated by the Supreme Court, while the appointment of the presidents of high courts is attested by the Emperor. As a rule, the nomination of lower court judges requires the advice of the Advisory Committee for the Nomination of Lower Court Judges. In number as of 2010, there are 1,782 judges, 1,000 assistant judges, and 806 summary court judges.
Assistant judges are appointed from among those who have passed the National Bar Examination, completed training at the Legal Training and Research Institute, and then passed the final qualifying examination. An assistant judge is allowed to exercise judicial power only as a member of a three-judge panel, and he/she is not qualified to preside over a single-judge court. However, at the present time, a law authorizes those who have had practical experience of more than five years as an assistant judge and who have been nominated by the Supreme Court to preside over a single-judge court.
In order to be appointed as a full-fledged judge, it is necessary for a candidate to have practical or academic experience of not less than ten years as an assistant judge, public prosecutor, attorney or law professor.
As for summary court judges, while those who have practiced law for three years or more as assistant judges, public prosecutors, or attorneys may be appointed, people of ability other than qualified jurists who have long experience in judicial practices or the academic experience necessary for the professional duty of a summary court judge may also be appointed through selection by the Selection Committee for Summary Court Judges.
The term for which judges of lower courts hold office is limited to ten years, with eligibility for reappointment.
Summary court judges are to retire at the age of 70 and other judges at the age of 65.
The status of judges is duly guaranteed by the Constitution, which provides that judges shall not be dismissed except by public impeachment, which shall be conducted by the Judge Impeachment Court composed of fourteen members of the Diet, unless judicially declared mentally or physically incompetent to perform official duties. And any disciplinary measures against a judge who has neglected his/her duties or disgraced himself/herself by his/her conduct must be taken through disciplinary action on a judge in a case on status conducted by a high court or the Supreme Court.
There is a system in which a part time judicial officer (called Chotei-kan) handles civil or domestic relations conciliation proceedings with the same level of competence as a judge. They are appointed from among attorneys who have practical experience of five years or more.

COURT OFFICIALS OTHER THAN JUDGES

Besides judges, there are officials, namely judicial research officials, court clerks, family court probation officers, court stenographers, court secretaries, and court enforcement officers working at the courts. As of 2010, the total number of these court officials is about 22,000, including approximately 9,500 court clerks, 1,600 family court probation officers, 250 court stenographers, and 9,300 court secretaries.
The Training and Research Institute for Court Officials conducts research and training for the above-mentioned officials.
In brief, the duties and responsibilities of these officials are as follows:

Judicial Research Officials

The duty of judicial research officials is to conduct research necessary for the trial and decision of a case under the instruction of the Justices or judges in charge. They are recruited from among specialists in the fields of intellectual property and other specialties as well as from among jurists.

Court Clerks

Based on a high educational background in the field of law as a legal professional, court clerks are responsible for attending the court proceedings and submitting a detailed record (duty of public certification of the court record), assisting judges in researching laws and regulations, and judicial precedents, and carrying out other duties as provided by law in order to assure due process. Moreover, the responsibility of court clerks to make preparatory arrangements between the dates of court proceedings has been recognized as very important,

and court clerks are taking an active part in administering litigation in cooperation with judges in order to realize proper and prompt justice.

Family Court Probation Officers
Family court probation officers conduct investigation into the facts and coordinate human relationships for the proper disposition of cases of domestic relations, personal status, and juvenile delinquency, and submit a report to the judge. They are specialists in the field of behavioral science such as psychology, sociology, pedagogy, and social work, and engaged in the scientific function of the family court.

Court Stenographers
Court stenographers are in charge of taking stenographic records of court proceedings and performing other related work.

Court Secretaries
Court secretaries are engaged in matters concerning judicial administration, and assist in work related to handling cases filed with the courts.

Court Enforcement Officers
Court enforcement officers execute civil judgments and serve some of the documents issued by the court.

PUBLIC PROSECUTORS AND ATTORNEYS

Public prosecutors are public officers who institute prosecution, request to the courts the proper application of the law, and supervise the execution of criminal judgments. Public prosecutors are under the general supervision and control of the Minister of Justice. However, the Minister may give directions only to the Prosecutor-General concerning investigation or disposition of each case. This is a safeguard to protect the fairness of the prosecution from political pressure. A public prosecutor is required to have the same qualifications for appointment as those necessary for an assistant judge.
Attorneys participate in judicial proceedings as the counsels of parties in civil cases and as defense counsels in criminal cases. Once a person is admitted to the bar, he/she may conduct arguments before any court and be engaged in general practice of law, there being no distinction such as that between a barrister and a solicitor in the United Kingdom. In view of the nature of their business, the qualifications for attorneys are exactly the same as those for judges and public prosecutors. Every attorney must belong to one of the local bar associations organized in each jurisdiction of the district court and at the same time to the Japan Federation of Bar Associations, which is composed of local bar associations and all individual attorneys.

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tions by written briefs, often supplemented by oral argument. Appellate courts are typically multi-member tribunals, with appeals heard before panels of the court.

In some judicial systems in the United States, including the federal system, appeals are only available after a "final decision" by a lower court. In some states, however, interlocutory appeals are permitted, and a party may appeal a procedural ruling, such as the denial of a motion, during the proceedings and before any final judgment is issued.

One of the consequences of "appeal on the record" is that appellate courts in the United States do not exercise plenary review of the findings of fact made by the judge or jury. However, they do review questions of law "de novo," giving no weight to the trial court's conclusions of law. There are some specific matters said to be within the trial court's discretion, such as a motion to grant or deny a new trial, and on those issues, the trial court's ruling will only be overturned for an "abuse of discretion." As for questions of fact, in a case tried by a jury the factual determinations of the jury cannot be reviewed. In a case tried by a judge, the judge's findings of facts will not be overturned unless they are "clearly erroneous."

An appellate court has power to affirm, reverse, vacate, or modify the judgment of the trial court. If it reverses, the court may enter judgment accordingly, or it may remand the case to the trial court for further proceedings.

Decisions are often accompanied by written opinions signed by one of the judge of the panel hearing the appeal. In some systems, provision is made for summary dispositions of appeals without opinion.

3. *Conclusion*

Procedure in the United States shares a number of traditions with other common law systems, including England—the historical source much of American procedure, including the use of juries to decide questions of fact (although England no longer uses juries in most civil cases). Perhaps most distinct, at least in respect of a comparison with civil law systems of justice, is the embrace of a more adversarial system of justice where the responsibility for both developing and presenting a case rests with the lawyers and where the lawyer's primary obligation is to frame a client's case in as favorable a light as possible. The premise of the American adversary system is that each party will discover and present evidence that will favor its own case and disclose weaknesses in the other side's case; through this bilateral presentation of facts and legal argument, truth will emerge to the impartial decisionmaker.[83] Also, in the United States, as in most common law countries, there is a division of function between pretrial and trial, and formal evidence is

83. See Silberman, Stein and Wolff, supra note 53, at 3; Chase, supra note 80, at 276–77.

introduced in what is usually one concentrated trial, even though the proceedings may take place over a number of days or weeks. However, there are a number of features of the American system of justice that are unique even when compared to other common law systems. These include the ability to finance litigation through the contingent fee system, the availability of broad party-initiated pretrial discovery that extends beyond the immediate parties to the lawsuit, the allocation of principal fact-finding to a jury of lay persons, and the relatively passive role of the judge at trial. Such tools, when combined with a philosophy that litigation is the means to develop the common law and serves to articulate social norms and regulate the behavior of both private entities and the government, give civil litigation in the United States a more prominent and substantial role in the social and governmental order than in most other countries of the world.[84]

D. JAPAN*

Civil Litigation in Comparative Context (Oscar G. Chase & Helen Hershkoff eds., 2007)

1. *Introduction and Historical Background of Japanese Civil Procedure*

As is well known, Japan is a highly industrialized modern country today. Its industrialization and modernization (or westernization) has taken place, however, during the mere past one and one-half centuries. The unique history of modern Japan has left various traces of indigenous and foreign influences on its civil procedure which are of interest from a comparative point of view. In summary, we can find in it a hybrid character of civil law and common law procedure operating in the unique dispute resolution culture of Japan. Most recently, Japan has experienced significant civil procedure reform by a new Code of Civil Procedure of 1996 and further amendments to it in 2003. Commentators see not just a reform of the rules of civil procedure but also a change in the actual practice without which any "reform" would be meaningless.[85]

84. See generally Robert A. Kagan, Adversarial Legalism: The American Way of Law (2001).

* Adapted from Yasuhei Taniguchi, Japan's Recent Civil Procedure Reform: Its Seeming Success and Left Problems, in Trocker and Varano, supra note 20, 91–113.

85. For additional references, see Yasuhei Taniguchi, The 1996 Code of Civil Procedure of Japan—A Procedure for the Coming Century?, 45 Am. J. Comp. L. 767 (1997); Yasuhei Taniguchi, Development of Civil Procedure in Japan: An Experiment to Fuse Civil Law and Common Law, in Festschrift for Prof. Németh 759 (Daisy Kiss and István Varga, eds., 2003); Yasuhei Taniguchi, Between *Verhandlungsmaxime* and Adversary System: In Search for Place of Japanese Civil Procedure, in Festschrift für Karl Heinz Schwab 487 (Peter Gottwald and Hanns Prütting, eds., 1990); Yasuhei Taniguchi, Civil Procedure: Development of Adversary System in Civil Procedure in Japan, in Japanese Law in Turning Point (Daniel Foote and Veronica Taylor, eds., forthcoming, 2007); Carl F. Goodman, The Somewhat Less Reluctant Litigant: Japan's Changing View Towards Civil Litigation, 32 Law and Pol'y Int'l Bus. 769 (2001).

For a discussion of the new Code of Civil Procedure, see also Takeshi Kojima, Japanese Civil Procedure in Comparative Law Perspective, 46 U. Kan. L. Rev. 687 (1998); Shozo Ota, Reform of Civil Procedure in Japan, 49 Am. J. Comp. L. 561 (2001); Masako Kamiya, Narrowing the Avenues to Japan's Supreme Court: The Policy Implications of Japan's Code of Civil Procedure Reforms, 4 Australian J. Asian L. 53 (2002) (dealing with the adoption by the new Code of Civil Procedure of 1996 of a certiorari-like discretionary appeal to the Supreme

Japan was closed to the outside world until 1853 when American Commodore Perry forced the then Shogunate government of Japan to open the country for commerce. This impact finally led in 1868 to the demise of the Shogun's feudal regime and creation of a new government of the Emperor. The new regime decided to modernize, among many other things, the legal system after the Western models. Students were sent to and advisors were invited from advanced Western countries. Various systems were competing to win adoption for some two decades, first English, then French and finally German. The first comprehensive Code of Civil Procedure was adopted in 1890. This Code was largely a verbatim translation of the German Code of Civil Procedure (*ZPO* of 1877). The most significant departure was the absence of a provision requiring representation of the parties by a qualified lawyer before the district court (first instance court of general jurisdiction) and above. This is explained by the small number of practicing lawyers at the time, a legacy of the previous regime which banned the legal profession as immoral and whose imprint is still noticeable today in the form of a considerable amount of *pro se* litigation.

Apart from some minor changes, the procedural system remained distinctively German as a whole through the first half of the twentieth century. Since adoption of German law occurred in all other fields of law as well, German legal doctrines, legal concepts, and legal terminologies (in Japanese translations) played a predominant role in the Japanese legal scholarship and legal education. The situation had to change in 1945 with the Japanese defeat in the Pacific War. The allied (in fact American) occupation of Japan until 1952 resulted in a considerable Americanization of the Japanese legal system. First of all, the Constitution was rewritten. The new Constitution of 1946 (enforced from 1947) abolished a typical civil law institution—the administrative court—and created an American type Supreme Court of only 15 Justices equipped with a constitutional review power and rule-making power for procedures. The Supreme Court, along with lower courts thereunder, was separated from the Ministry of Justice to become organizationally independent vis-à-vis the legislative and the executive branches. The civil law features of the lower court judiciary were not altered, however, and judges are normally appointed without any law practice experience and gradually promoted within the judiciary. Moreover, they can be posted for a varying term (3 to 10 years) in an administrative position not only within the judiciary (General Secretariat of the Supreme Court) but also in the Ministry of Justice and elsewhere within the executive branch.

2. *Post-War Reform*

Post-War reform of civil procedure in Japan was not extensive when compared with the total reform of the criminal procedure occurring at the same time. Only two provisions of the Code of Civil Procedure were

Court). See also Carl F. Goodman, Justice and Civil Procedure in Japan (2004); and Curtis J. Milhaupt, J. Mark Ramseyer, and Mark D. West, The Japanese Legal System (2006).

changed: Firstly, the provision authorizing the judge to examine evidence *ex officio* was repealed. Secondly, the provision mandating that the presiding judge first examine a witness was amended to require the party who called the witness to ask questions first to be followed by a cross-examination by the adversary party. The judge's intervention was made only supplementary. It goes without saying that the American ideology of adversarial procedure motivated the reform. The original provision—which allowed the judge to ask questions and make suggestions to the parties in an attempt to clarify the matters in dispute and so to guide them to a proper direction—was left intact perhaps because the language of the provision was not mandatory although in practice the judge's clarification was considered a duty and a failure to exercise it properly was held to be a reversible error. However, in the light of adversarialism, as expressed in the two amendments, the Supreme Court held that a failure to exercise clarification was no longer a reversible error. Such case law and these two amendments in the Code seemed to complete a transformation from a judge-dominated procedure into a party-driven adversary procedure.

The reality was not so simple. Lawyers were not ready to practice the adversary system. Moreover, as indicated above, Japanese litigants did not have to retain a lawyer to litigate. The number of lawyers did not increase to catch up with population increase. As of the 1940's and 1950's when the new adversarial ideology was introduced, there were still many litigants without lawyers. The ideal of the adversary system was quite foreign to them. A passive judge who did not exercise clarification often meant a lost case for the party without a lawyer if the other party had one. If both sides were not represented, the judge would be in limbo unless he actively intervened in the process in order to guide the lay parties through clarifications and suggestions. Having realized this reality, the Supreme Court changed its view in the mid–1950's and held that a failure to exercise the clarification power was a reversible error. Ever since, the same position has been kept and even strengthened. Today, the clarification as a judge's duty is a firmly established part of the Japanese procedure. In the light of this change, the aforementioned repeal of the explicit provision for judge's *ex officio* evidence taking must lose most of its significance because the judge may induce a party by way of clarification to produce particular evidence instead of initiating an examination of his own.

The above account may give an impression that Japanese civil procedure has returned to the pre-War state. It is not exactly so. One aspect of adversary procedure introduced during the post-War period is the principal and cross-examination of witnesses by the parties themselves. Although this new method did not at first function well, members of the bar certainly enjoyed the new privilege. As a corollary to the post-War adversary system, lawyers were now encouraged, rather than prohibited as in the pre-War period and in many other civil law countries today, to meet prospective witnesses to better prepare for questioning in court. Despite some criticism from a point of view of efficiency, the new

system has generally settled in practice. In the meantime, lawyers have trained themselves in skills of examination, if not so well as in common law countries. Thus, Japanese procedure has gained a truly hybrid character as far as a lawyer appears for both parties.

Here again, however, we must keep in mind an unchanged aspect as *basso continuo* in the tunes of Japanese civil procedure: the recurring problem of lay litigants without a lawyer. This is one of the reasons that the recent new Code of Civil Procedure of 1996 changed the system a bit by allowing the judge to change the order of witness examination with agreement of the parties, so that the judge can now initiate the questioning. The new provision on the face applies to all kinds of litigation, even to one with lawyers for both sides, but lawyers would not normally agree to a change of order. The provision will serve better *pro se* litigation. The issue of *pro se* litigation in fact adds one more element to the civil law—common law hybrid, *i.e.*, a Japanese indigenous element. A considerable amount of litigation is still conducted without any lawyer or with a lawyer for only one side, usually the plaintiff in the district courts, the first instance court of general jurisdiction. Nationwide, about one-fifth of cases have been consistently handled without any lawyer, although the rate is lower in large cities where lawyers are more available. The implication of this, along with other indigenous elements in the setting of Japanese civil procedure, will be discussed later.

It bears noting that a change in attitude among Japanese lawyers greatly contributed to the success of recent civil procedure reform. As described in Chapter 2, The Structure of the Legal Profession, the quality and prestige of the Japanese bar has increased greatly in recent decades.

3. *Civil Procedure in the Post-War Period*

The newly imported adversarial aspects of Japanese procedure mark a significant departure from civil law practice, where the judge takes responsibility for eliciting information from witnesses although witnesses must be proposed by the parties. Civil law procedures generally adopt the principle of party control or party presentation. But party control stops at presentation of allegation and evidence. In case of testimonial evidence, the party's control would not be complete unless the party is given authority to elicit desired information to support his case from the witness he presents to the court. An essential element of adversarial procedure can be found in this aspect.

Let us examine next how these hybrid characteristics of Japanese procedure are expressed in the mode of hearing in court. The original German type of procedure did not distinguish chronologically the pleading stage and evidence taking stage. These two stages were deliberately made amenable to being mingled and to come one after another as proceedings unfold. Given no constriction of time resulting from the jury system, it was certainly a good policy in order to avoid surprise by evidence and undesirable outcomes resulting from strict preclusion of late submission of new allegations or evidence, thus enabling the judge

to reach a substantively just final judgment. But, at the same time, it was accompanied by a danger of inviting delay because there was no real deadline for any procedural action for a party to take. In an attempt to assure that the preparation could be carried out efficiently and completely, a 1926 amendment made the preparatory proceedings semi-obligatory and imposed a preclusion on late factual allegations and proposals of evidence. The post-War reform pursued the same direction by encouraging the parties to prepare well by meeting prospective witnesses beforehand. But with inactive lawyers and ignorant lay litigants, the enforcement of preclusion was felt by judges as inviting only injustice. It is also pointed out that the parties, being afraid of preclusion, tended to submit an excessive amount of hypothetical allegations and evidence, which unnecessarily delayed the whole proceedings. The preparatory proceedings were not used and virtually forgotten.

The typical unfolding of civil litigation which gradually developed during the 100 years of practice is commonly referred to as the "May-rain" or "dentist" method. Hearings take place only intermittently just as the rain in May tends to fall only occasionally in Japan and the dentist treats perhaps everywhere a patient with an interval between visits. What typically happened in Japan was a long dragged out series of short hearings to complete a preliminary stage of identifying the issues to be followed by a series of short witness examination sessions. First, several sessions with an interval of several months were spent exchanging briefs and documentary evidence with clarification requested by the judge or the adversary party. When witness testimony was taken, it was again piecemeal. One witness was examined in a hearing session of 30 minutes and the next hearing would often be a couple of months later to examine a next witness or even to continue to examine the same witness (often cross-examination). As a result of the testimony, a party might wish to amend the pleadings, which was liberally allowed. Thus, the case unfolded only gradually toward a conclusion of the hearing by repeating testimony-taking and pleadings one after another.

Comparing this with American style litigation, an eminent American observer of the Japanese civil procedure, the late Professor Dan F. Henderson, once appropriately remarked that the first half of litigation process in Japan serves only the purpose of *de facto* discovery.[86] If it is so, it is not easy for the judge to narrowly identify the issues of a case in an early stage of proceedings because the parties themselves do not yet know how to formulate the case. In American procedure, an extensive discovery serves that purpose. A cause of the failure of the 1926 reform and the post-War reform is found in that a preparatory procedure was imposed on the parties without giving them a tool to gather information and evidence. Unless the parties are sufficiently informed of the facts

86. Dan F. Henderson, Civil Procedure, Code of, in 1 Kodansha Encyclopedia of Japan 318, 320 (right column 8) (1983).

and evidence to prove them, no real issues can be definitely identified so that the ensuing witness examination may finally resolve the dispute.

The 1996 Code again tried to tackle this problem. It not only reshaped the preparatory proceedings but also expanded the parties' ability to collect information and evidence. Although an adoption of American type discovery was rejected, the Code adopted a new device called "inter-party inquiry" which allows a party to ask for relevant information from the adversary and, more importantly, it expanded the scope of the document production order. The experience for some 5 years under the new Code has shown that the "inter-party inquiry" is not effective because of lack of sanction for non-compliance but the expanded document production order has been working relatively satisfactorily. Since the court is now ready to issue an order, the parties, if requested by the other party, have become generally willing to produce the demanded document voluntarily even without any court order.

A further amendment in the same direction took place in 2003 which, as explained below, enables the parties to collect information and evidence from the prospective adversary or from a third party even before instituting an action. The effectiveness of this new institution is still to be seen. But even without this new device in place, the preparatory proceedings under the new Code seem to have gained certain solid footing in actual practice. It must be remembered, however, that the reform in this respect was not really an innovation by the new legislation. It was rather a codification of a preceding practice. From the mid 1980's, some willing judges with cooperation by willing lawyers started a preparatory procedure commonly called "the argument-settlement session." This was the beginning of the recent civil procedure reform movement which is still continuing today as the next section explains.

4. A New Trend of Judge–Lawyer Cooperation—Successful Preparation and Concentration of Witness Examination

It was a common practice under the old Code that the judge held a special *in camera* session for settlement of dispute often using the technique of caucusing. In such a session, the judge helps the parties (not only lawyers but also often the parties in person) broadly discuss the situation in dispute and seek a settlement. In doing so, the judge as well as the parties often found real issues emerging which encouraged the parties to settle. Therefore, "the argument-settlement session" utilized the same opportunity and technique to find out the real issues and weed out unnecessary issues with agreement of the parties. If a settlement was reached, it was a welcome by-product.

A somewhat similar procedure had been practiced earlier in Germany under the name of "Stuttgart Model." Because of the German origin of the Japanese procedure and a continuing affinity with German procedural scholarship, the Stuttgart Model and its later codification in 1976 were much studied and discussed in Japan. The Supreme Court even

sent some young judges to Germany to observe the practice firsthand. Although the "argument-settlement session" was not a direct importation of the Stuttgart Model, it was certainly inspired by the latter. But what led the experiment of "the argument-settlement session" to certain success was a positive cooperation by willing lawyers with the judges who wanted to experiment in this new procedural idea. The judge's initiative could not have gone through without a positive cooperation by the lawyers involved. The main cause of previous failures of various preparatory proceedings was general lack of cooperation by the lawyers.

This type of constructive cooperation between the judge and the lawyer was highly unusual in Japanese legal history. As explained in Chapter 2, The Structure of the Legal Profession, the organized bar and individual lawyers gained an unprecedented self-confidence by the 1980's. The judiciary and individual judges now looked at members of the bar as on a par. The ideological antagonism and mutual mistrust which long characterized the relationship between the bar and the judiciary started to fade, if not entirely. A change in the domestic political climate since the end of the cold war in the international world also helped. Thus, there were noticeable signs that a mutual respect and understanding between the bar and the judiciary have come to existence. This is the background against which the "argument-settlement" experiment became possible. The organized bar no longer flatly rejected a proposal from the judiciary. They themselves formed study groups and made constructive proposals for better management of litigation and the judiciary was willing to listen to them because it also knew that nothing could be achieved in this field without willing cooperation by the lawyers.

The draft of the new Code of Civil Procedure of 1996 was considered by the Consultative Committee of the Ministry of Justice which for the first time included representatives of the organized bar. Their proposals were discussed and some of them were adopted. The afore-mentioned "inter-party inquiry" was one of them. The practice of "argument-settlement session" was codified in a little modified form. Under the new Code enforced from January 1998, the new preparatory procedure has proven largely successful thanks to cooperative lawyers and understanding judges, helped by the new possibility of gathering information and documentary evidence as explained earlier. Particularly noteworthy is the fact that a rather harsh rule of preclusion of late submissions under the old Code has been replaced in the new Code by a mild request by the other party for "explanation" of reason for the delay.

Good preparation is essential for making the evidence taking stage that follows efficient and conclusive. Evidence taking mainly means testimony taking in court. If this stage is conducted in a "May-rain" fashion, the value of good preparation will be largely lost. Moreover, a protracted evidence taking process will inevitably be accompanied by the judge's memory loss which is likely to undermine the correctness of the final judgment. Also, the judge in charge of the case may change before the evidence is concluded—in Japanese practice judges are transferred

from one court to another every three years or so. In theory, when this happens, the same witness can be re-examined under the new judge upon demand by a party. But such is never practiced for the sake of time. Thus, the new judge must rely on the record of testimony which is normally not a verbatim transcription but a mere summary rendered by the court clerk.

Therefore, the next problem is how to expedite the testimony taking. The new Code requires the so-called "concentrated witness examination." This means that, as in the common law trial, several witnesses are consecutively examined (and cross-examined) in one continuous hearing session, not in a piecemeal way in the May-rain style.

The importance of witness evidence in Japanese procedure should be underlined here. Traditionally, the Japanese, even those in the business, do not use writing as often and as extensively as practiced in the Western world. A contract even if rendered into a writing tends to be short and summary. A typical business contract traditionally has a last clause saying, "If a dispute arises, both parties will talk sincerely to solve it amicably." There is a feeling that to demand a detailed written agreement at the time of contracting is not a correct thing to do because it may be taken by the other party as a manifestation of distrust and an anticipation of a breach. The substantive law normally does not require a writing for a contract to be enforceable. Procedural law also does not limit evidence to a writing. Therefore, once litigation arises, testimonial evidence often plays a crucial role rather than documentary evidence, which tends to be scarce. This background leads in turn to a crucial role of witness examination in litigation.

The common law type of concentrated witness examination is possible only where the parties (lawyers) are well prepared. Successful concentration requires the cooperation and willingness of the lawyers involved. Concentration will also impose a formidable task upon the busy courts in the scheduling of hearings. Under the May-rain type hearings, literally hundreds of cases have been dealt with simultaneously by a single judge in a piecemeal fashion. If one case takes a whole day, many other cases must be delayed. It is systematically impossible for such a judge to schedule a concentrated testimony taking for one case without affecting the progress of all other cases.

Despite those practical difficulties, concentrated testimony taking is increasingly conducted in varying degrees today. Even examining only two witnesses in one session is great progress from the old practice where only one witness was normally examined in one session sometimes leaving the cross-examination for the next session two to five months later. Concentration of any degree will necessarily lead to a speeding up of the process and avoidance of possible change of the judge. There is a report that in the Tokyo District Court, the largest first instance court of general jurisdiction in Japan, concentration is already practiced by almost all judges if its definition is more than one witness being examined in one session of hearing. There are also many cases where all

adopted witnesses are examined in one day, a real common law type of concentration.

It is important, however, to notice that if the lawyers are not willing to conduct witness examination in a concentrated manner, there is no way to enforced it. However, it is said that the lawyers have in fact become more and more cooperative in the concentrated witness examination proposed by the judge as a fruit of well processed preparatory proceedings. Combined with efficient preparatory proceedings, a successful concentration of witness examination would greatly expedite the civil process. As a matter of fact, statistics show that the period from the filing of an action to the termination of the first instance proceedings has been markedly shortened during the last ten years. The following table shows the average time (months) spend between the filing of the complaint and the close of the case in all 50 district courts in Japan:

Table I: Average time (months) between the filing of a complaint and the closing of a case in all 50 district courts in Japan, including cases of default and termination by settlement or withdrawal

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Months	12.2	10.9	10.1	9.8	10.1	10.2	10.0	9.3	9.2	8.8	8.5	8.3

Table I includes cases of default and termination by settlement or withdrawal. The next table shows a more realistic picture in the same years of the average time for contested cases with witness examination:

Table II: Average time (months) between the filing of a complaint and the closing of a case in all 50 district courts in Japan in contested cases with witness examination

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Months	22.7	21.8	21.1	20.9	21.1	21.3	20.8	20.8	20.5	19.7	19.2	18.7

Medical malpractice litigation and intellectual property litigation normally require a longer period of time and they are most likely contested. The following table shows the statistics for medical malpractice cases ("MM," line 1) and intellectual property cases ("IP," line 2), both concluded most likely either by a final judgment or by a settlement:

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
MM cases	41.6	39.8	42.6	42.0	39.1	37.5	36.7	35.3	34.6	35.5	32.7	30.4
IP cases	31.1	29.6	31.9	23.7	23.7	22.7	25.0	25.7	23.1	21.6	18.3	16.8

Although the reduction of the time period can be said to be remarkable in both categories of litigation, these two types of cases still require a much longer time than ordinary cases in part because of the complicated nature of the dispute and expertise required. The court usually retains an expert witness, but this adds considerable time to the proceeding. It is not uncommon to see a battle of experts in Japanese courts, another sign of adversariness of the Japanese civil procedure.

5. Further Amendments in 2003

One of the issues dealt with by the most recent amendment to the Code of Civil Procedure, in force from April 2004, relates to the problem of expertise in court. The new institution called the "expert commissioner" was established by this amendment. The commissioners will be appointed in various fields of expertise and their participation in the proceedings in the capacity of a neutral advisor is anticipated. For example, a chemical expert would participate in the preparatory proceedings in a litigation arising from a pharmaceutical patent to help the judge and the lawyers understand the dispute better and find out the real issue more efficiently. The same rule of disqualification and challenge as those for judges apply to the expert commissioner. Various safeguards are introduced (such as consent of the parties and disclosure of information) to protect the interests of the parties from undue influence of an expert commissioner. It is expected that this new institution will considerably decrease the necessity of appointing a formal expert witness who requires a good deal of time and expense. Commissioners will be paid only a modest fee by the court for the service. However, this will not make a real expert witness unnecessary in proper cases. The amended Code has also streamlined the procedure for expert witness examination.

It would be appropriate at this juncture to explain some other significant points of the 2003 amendment of the Code. There are two more important features which are both directly related to the theme of this chapter:

1. Introduction of the obligatory "Planning of Proceedings": Where the court considers a case to be complicated as, for example, involving industrial pollution damages, medical malpractice, a large construction project, etc., it must establish a chronological agenda for the future procedural steps on the basis of consultation with the parties. The plan must fix the time frames for the preparatory proceedings and for witness examination and provisionally set the anticipated time of conclusion of the hearing and rendition of the final judgment. It is said that the idea was taken from the commercial practice of fixing a delivery date at the time of contract. When the court is retained, it should make a commitment for the delivery date of its final product, *i.e.*, the final judgment, by fixing a time table for necessary steps to be taken before reaching it. Here again a successful plan can be made and complied with only where the court can avail itself of good cooperation by the lawyers concerned. Based on a positive experience under the new Code, the expectation is that such cooperation can be obtained in a good number of important litigation, if not in all.

2. Adoption of pre-filing evidence discovery measures: The 1996 new Code expanded the scope of document production order and introduced a system of inter-party inquiry as described earlier. But these devices are only available after filing of an action. It is sometimes necessary to have sufficient information in order to formulate a complaint. Therefore, the Code now enables the prospective plaintiff to issue a questionnaire to the prospective defendant after having given a notice of the general nature of the intended action. The amendment further provides for assistance by the court for (a) collecting evidence held by a public office or a third person (such as police record of a traffic accident or weather report of a certain date), (b) securing an expert opinion on a specific matter (such as authenticity of a handwriting) or (3) verification by the sheriff of the state of a specific thing (such as present condition of land border in a border dispute). This is in addition to the pre-existing devices for preservation or perpetuation of evidence which are available before institution of an action but the requirement is more stringent because the court must recognize a danger of disappearance of the evidence sought. The fate of this new discovery measure is still to be seen, as there is no sanction for non-compliance.

Better preparation, concentrated witness examination, better scheduling, etc., all require much work and responsibility not only of the participating lawyers but also of the judge in charge. Frequent contact between the court and the lawyers becomes necessary. For that purpose, a competent administrative support system is needed so that the judges can concentrate on their proper tasks. In this respect, the new role of the court clerk should be particularly mentioned here. See the discussion of this development in Chapter 2, The Structure of the Legal Profession. The court clerks are no longer a subordinate officer but an independent role player side by side with the judges. The court clerks posted in litigation management constantly contact the parties (lawyers) for various purposes, for just a scheduling, or for a more substantive matter like clarification of allegations.

6. Prospects and Conclusion—The Need for Solid Infrastructure

From a broad comparative point of view, the trend of reform of civil procedure in Japan, both in law and practice, seems to show a direction toward a bifurcation of pre-trial and trial stages typical of common law procedure. It must be remembered, however, that it is not because of an absolute necessity as in the common law system, which was originally based, and still based largely in the United States, on the tradition of the jury trial. Where no such systemic necessity exists, a combination of good preparation and a concentrated witness examination could be brought about only by hard work and cooperation among the judge and the parties. The recent reforms seem to have attained at least a certain degree of success. A judge of the Tokyo District Court who served before and after the reform remarked in an article in 2002, "The present civil procedure in my court may look to an uninformed eye like a procedure in a foreign country. It is so fundamentally different from the situation ten years ago." Moreover, there is currently an optimistic mood and desirable enthusiasm of cooperation among the actors concerned—the judges,

the lawyers, and the clerks. But the mood and enthusiasm have a limit unless supported systematically by a necessary infrastructure.

As suggested earlier, it is physically very difficult given the present state of court congestion to conduct a concentrated witness examination because it would affect the hearing schedule of hundreds of other cases. In order to solve this problem, the case load of each judge must be reduced to a manageable size so that the judge can freely schedule concentrated witness hearings for appropriate cases. The main cause for the congestion is a small number of judges in Japan, another infrastructural difference from the German system. There are only about 2,200 judges of full qualification and about 800 summary court judges who can only serve in the lowest level court of limited jurisdiction below the district court. The number of civil cases is smaller than in most Western countries but large enough for the small number of judges and lawyers. It must be recalled, moreover, that most of these cases brought to the court are difficult cases legally and factually because for the Japanese, litigation is the last resort to be used only after all kinds of effort to solve a dispute have failed. Accordingly, the settlement rate of actual cases is only about 30 per cent. Therefore, the judge's burden to hear the cases and to write final judgments is very heavy. They usually work at night and over the weekend to write judgments.

There are numerous infrastructural problems which have been reconsidered on the basis of the 2001 report of the Justice System Reform Council[87] to the then-Prime Minister, Mr. Koizumi. It recommended making the civil justice system more "user friendly" and proposed a radical increase of judges and lawyers as the top priority matter. The organized bar has long been demanding the adoption of the common law type judiciary of lawyer-judges rather than the existing civil law type judiciary of career judges. Currently, the recruitment of judges from the bar is very limited, less than ten a year, mainly because of reluctance on the part of individual lawyers. The report of the Council took a positive posture toward a system change in this respect. If this sort of reform is adopted to staff a substantial part of the judiciary by former practitioners, the landscape of Japanese civil procedure will change drastically. But such a change does not seem to be likely in the near future.[88]

Some smaller but significant infrastructural reforms had already taken place, even before the 2001 report, in the direction of making the court "user friendly." For example, the filing fee which must be paid by the plaintiff and is pro-rated to the amount in controversy was considerably reduced in view of a criticism that it was an onerous obstacle to litigation. It was further reduced in 2003. The so-called round-table court room was introduced even prior to the 1996 Code. This type of

87. An English version of the report is available at the Prime Minister's website: http:/www.kantei.go.jp/foreign/judiciary/2001/0612report.html.

88. A small number of young judges are already sent to law firms for two years besides to administrative agencies or private enterprises. As a compromised solution, it has been proposed that every LTRI student aspiring to be a judge should be required to practice for 5 years.

court room has no high platform for the judge. Everybody participating in the proceedings sits at the same large round table, creating an informal atmosphere that facilitates exchanges of documents. Many such court rooms have since been created in district and summary courts.

It will be only after all these large and small infrastructural changes are completed that real civil procedure reform will also be completed. It will take years and hopefully the present mood and enthusiasm will continue to persist to support a lasting effort.

The recent justice system reform movement has paid little attention to the problems of *pro se* litigation. The prevailing view seems to be that *pro se* litigation is a vestige of the past and will fade away when enough lawyers and sufficient legal aid are provided. When *pro se* litigation is necessary because of a shortage of practitioners in an area, an increase of lawyers will be the solution. If a lawyer is not retained because of high cost, an expanded legal aid and the system of loser-pays-winner's-lawyer will be a solution. If a smooth and expedited procedure demands cooperation of the parties, nobody can expect of a lay litigant the same kind of cooperation as of a professional lawyer. An indigenous element of Japanese civil procedure is the existence of a sizable amount of *pro se* litigation—the question is whether this element will or should simply fade away.

This indigenous element has affected Japanese civil procedure as a whole in various ways although it has not yet attracted serious academic attention. *Pro se* litigation set the standard for Japanese civil procedure in May-rain type proceedings in the sense that lawyers were as dependent on the judge's paternalistic guidance in the conduct of litigation as a lay litigant. However, once lawyers have transformed themselves into an independent professional on par with judges, a real difference between the two types of litigation must emerge and may pose a serious practical problem to the court.

In the process of recent civil procedure reform, the problems of *pro se* litigation seem to have been avoided unconsciously or deliberately. There is a widely held simplistic assumption that it is an unnecessary burden on the judge, who therefore normally recommends the lay party to retain a lawyer as soon as possible and many litigants do so. Thus, the main stream of thought is that the *pro se* litigation is an anomaly at least in the district court and above, which should be eradicated by increasing the number of lawyers and expanding the legal aid program. There is also a strong argument that Japan should finally adopt the system of compulsory representation by a lawyer when a sufficient number of lawyers have been secured. This is certainly a possible argument. If this line of development is eventually taken, one important indigenous element of the Japanese civil procedure will disappear.

It is interesting, however, to see that a contrary argument has recently emerged inspired by American studies of law and psychology. These studies show that if a litigant has personally participated in the dispute resolution process he or she has a greater feeling of satisfaction

whether or not the outcome is favorable.[89] As a matter of common sense, we can endorse such observation. The nature of the *pro se* litigation and an empirical comparison between the two types of litigation should be studied more seriously with an empirical method and the result must be analyzed from a broader perspective than a simple point of view of efficiency. If we reach a conclusion that the *pro se* litigation is a socially useful device for dispute resolution, a more difficult problem would be how to implement such a legitimate need. Must a new type of procedural scheme be created? What kind of infrastructure is needed to support the system? Should the need instead be satisfied by a sort of ADR mechanism? It is interesting to see how this rather fundamental problem of the Japanese civil procedure will be finally resolved in the years to come.

Some pessimism about the new Code seemed appropriate when it was adopted in 1996. In particular, there was concern that the kind of enthusiasm which supported the experience of the "argument-settlement session" might not be long lasting. Fortunately, pessimism seems to have proved wrong. After six years of enforcement of the new Code, the enthusiasm is still well alive thanks to the larger justice system reform movement which followed the adoption of the new Code of Civil Procedure. A mere enthusiasm cannot support lasting changes unless a suitable infrastructure is provided to sustain the change on a permanent basis. On the other hand, there may be too much optimism about the cooperative relationship between the judiciary and the organized bar. A mutual distrust still does exist. It must exist in any legal system as long as the judge and the lawyer must play a different and often conflicting role. It is a relative matter. In the case of Japan, the present civil court practice under the new Code was made possible largely by a changed attitude of the judiciary and the bar with respect to each other.

III. OTHER SYSTEMS: AN APOLOGIA

By no means do the jurisdictions selected for treatment in this book provide an exhaustive account of the variety of dispute resolution systems found in the world. While the reader will find references to the rules of nations other than England, Italy, Japan, and the U.S. in the chapters that follow, large gaps remain. Notable by their absence are some of the world's largest nations—China, India, and the Russian Federation. Nor will the reader find anything specifically about Africa or the Islamic world. For these omissions we apologize and offer the following explanation. In large part these gaps reflect the limits of the authors' collective expertise—we have followed the time-honored writers' dictum to "write about what you know." Moreover, we contend that insofar as their formal systems of dispute resolution are concerned, many of the nations omitted have been so influenced by the systems

89. *See, e.g.*, E. Allan Lind and Tom R. Tyler, The Social Psychology of Procedural Justice (1988); Tom R. Tyler, Citizen Discontent with Legal Procedures: A Social Science Perspective on Civil Procedure Reform, 45 Am. J. Comp. L. 871 (1997).

discussed in the text that one can infer much about the basics of their approach. This is the case, for example, with India and its neighbor Pakistan. Each of them was subject to British rule and each has—with different modifications—retained the basic structure of English civil procedure as it was at the time of their independence in 1947. The same is true of many of those nations in Africa that were also English colonies, and of Israel, whose processes continue to reflect the British Mandate period (1922–1948). Then there are the many nations that are part of the "civil law world" to which we alluded earlier. These include not only South America but also countries as diverse as Senegal, Korea, Turkey, and Egypt.

The situation in the People's Republic of China and the Russian Federation is more complex. Each is developing a post-socialist legal system in the light of its own distinct traditions. With respect to China, it is said:

> While certainly there are Chinese traditions, and socialist doctrinal requirements in the legal system, the fact of its system being more inquisitorial than adversarial, its "trials" not being recognizable as a single event, its judges playing a larger role in collecting the evidence and examining witnesses, the different role of lawyers (with little cross-examination and little pre-trial discovery) and no juries, merely describes the traditional civil law approach as much as the Chinese approach. However, to be sure, the actual legal and judicial system in China has its distinct "Chinese characteristics" that distinguish it from pure civil law. And, as in all countries, law and how the law is applied in practice must be separately examined and understood.[90]

As to Russia, one contemporary observer acknowledges that "historically, Russia adhered to the continental model" but argues that "[t]he Russian style of civil procedure is not simply a continental or Anglo–Saxon system possessing classical civil and common law features, but a unique system possessing exceptional features that do not exist in either of these traditional approaches."[91] He notes that under the Code of Civil Procedure adopted in 2002 Russian civil litigation shares with the civil law model a leading role for the judge at trial, the absence of a civil jury, the lack of class actions, and the use of court-appointed experts. Like the common law process, however, the judge is not responsible for gathering the evidence and the trial process includes a preliminary session which is "manned mainly by the opposing parties." The role of the judge is unique to Russian process, he argues, because of the manner in which "the court and the disputing parties share an active role in the litigation process."

Readers interested in pursuing any system in depth have a growing number of sources available to them. In addition to the many works

90. Ronald C. Brown, Understanding Chinese Courts: Law with Chinese Characteristics xxi (1997).

91. Dmitry Maleshin, New Russian Civil Procedure in the Context of Cross–Cultural Interaction, presented at the 2006 Kyoto Congress of the International Association of Procedural Law, at 1.

executed; (2) that the recitals and agreements expressed in the instrument are accurate reports of the parties' statements and agreements; and (3) that any fact that the instruments recites to have occurred in the presence of the notary did occur, and any act the instruments recites to have been performed by the notary was in fact performed. The conclusive nature of a public act can be upset only in a *querela di falso*, a special proceeding with criminal overtones.

Successful completion of a difficult national examination is a requirement for admission to the notariat. * * * [T]he candidate must have completed law school and have served a two-year apprenticeship in the office of a notary. When a vacancy occurs in one of the approximately 4,000 notarial positions, preference is given to notaries already in service. Vacancies that are not applied for by incumbent notary are filled by the successful examination candidates * * *.

The keeping, filing, and indexing of notarial records are minutely governed by law. Ordinarily, any notary must retain the original of any instrument he prepares or that is filed with him * * * Upon demand he is required to prepare and deliver a copy of any instrument—except a will—that is in his official custody. A notarial copy * * * has the same evidentiary value as an original.

Although a notary is a public official he receives no salary. * * * The fees charged are rigidly fixed by law and fixed high * * *.

The profession offers its members generous financial rewards and performs a highly useful function. The implicit trust that is granted notaries is rarely abused. Lawyers consider the profession a dull, plodding one, but many envy it for its secure earning power and the universal respect it is accorded.

3. The Italian Judiciary in Transition. In Italy, as in any other civil law country, the judiciary is made up of several thousand career judges—8,744 presently serving, according to the latest figures published by the Superior Council of the Judiciary. This number includes the public prosecutors (precisely 2,254), who are part of the judicial organization according to the Italian Constitution (art. 107 para. 4). Access to the judiciary depends on the passing of a difficult highly competitive national examination (art. 106, para. 1)—a rule designed to assure that the selection is based only on the ascertainment of technical skills and is immune from political considerations. Successful candidates, after a period of up to two years of apprenticeship as *uditori giudiziari*, become full judges and advance in their career as judges and/or prosecutors.

The Constitution assures both the judiciary as a whole (art. 104, para. 1) and individual judges very strong guarantees of independence. They are subject only to the law (art. 101, para. 2), they are differentiated only by the diversity of their functions (art. 107, para. 4), their career has been made to depend substantially on seniority, following a number of statutes enacted between 1966 and 1979, and they cannot be removed without their consent either from office or from the functions they exercise (art. 107, para. 2). The bulwark of judicial independence, well beyond the proclamations contained in a written text, is the *Consiglio Superiore della Magistratura*, established by art. 104 of the Constitution, which is the governing body of the judiciary. It is the CSM which appoint, promote, discipline and, in general, supervise ordinary judges.

In the chapter on the machinery of justice which Professor Varano wrote in 2001 for the Introduction to Italian Law edited by J.S. Lena and U. Mattei (2002)—which the reader can be referred to for further information on judges and their independence—he anticipated that the center-right coalition led by Mr. Silvio Berlusconi, which had gained the general elections of May 2001 and a large majority in Parliament, had marked the "problem of justice" as a priority on its agenda, mainly as a reaction against the season of "clean hands", i.e. the criminal investigations of the early 1990s which revealed how politics was dominated by corruption, and practically removed from the scene an entire political ruling class and the main political parties (foremost, the Christian Democrats and the Socialists) which had governed Italy for over forty years.

The final outcome of the Legislature, characterised by the ongoing bitter contrast between the executive and the judiciary, is the Law of July 25, 2005, n. 150, which reforms deeply the law on the judiciary in force since 1941, and delegates authority to the Government to implement it through secondary legislation. The law has been criticised by the opposition, by a substantial number of scholars, and by influential associations of judges as undermining the independence of the judiciary and individual judges. The law does not succeed in separating sharply the careers of judge and prosecutor and putting the latter under a closer control of the Minister of Justice, which was the real political objective of the government, but certainly limits severely the possibility of moving from judicial to prosecutorial duties, and vice-versa, throughout a judge's career, which until now has been quite common.

The career of judges is no longer substantially based on seniority, but on a complicated system of internal evaluations and competitions which ends up in submitting the judge to a continuous scrutiny and distract her from the dispatch of judicial work; the law provides that the various judicial offices, and in particular the prosecutorial offices, are more hierarchically structured than it is the case today—to the point, for instance, that it is only the head of the office who bears the responsibility of instituting the prosecution and who is allowed to have contacts with the media. The foregoing are only some of the points of a very complex law which have been more sharply criticised. At the time of writing (October 2006), the new center-left Government which came out from the general elections of April 2006 has not repealed the law, as some observers would have expected, but has limited itself to delay the coming into effect of the implementing decrees concerned with the above mentioned crucial areas until July 2007 so as to modify them.

JAPAN

The Constitution of Japan (1946).*

Article 6

* * *

(2) The Emperor appoints the Chief Judge of the Supreme Court as designated by the Cabinet.

* Translation available in Constitutions of the Countries of the World: A Series of Updated Texts, Constitutional Chronologies and Annotated Bibliographies (A. P. Blaustein and G. H. Flanz, eds., 1971).

Article 76

* * *

(3) All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

Article 78

(1) Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties.

(2) No disciplinary action against judges is to be administered by any executive organ or agency.

Article 79

(1) The Supreme Court shall consist of a Chief Judge and such number of judges as determined by law. All such judges excepting the Chief Judge shall be appointed by the Cabinet.

(2) The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

(3) In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed.

* * *

(5) All such judges receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 80

(1) The judges of the lower courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court.

(2) All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

(3) The judges of the lower courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Yukiko Hasebe, Civil Justice Reform: Access, Cost, and Expedition. The Japanese Perspective, in Adrian A. S. Zuckerman, Civil Justice in Crisis 235–262 (1999).

2.3. The legal profession.

A would-be lawyer has to pass the National Bar Examination. It is one of the most difficult national examinations. A person who has succeeded in the National Bar Examination then has to complete two years of training at the Legal Training and Research Institute, a state-funded institution. At the end of the two years, he or she has to pass the final qualifying examination. Then, he or she is appointed as an assistant judge or a public prosecutor, or starts practising as an attorney. An assistant judge is restricted to hearing cases as one member of a three-judge panel. He or she is normally promoted to judge after ten years. At this point, he or she is qualified to hear cases as a single-judge court. Thereafter, some judges are promoted to the high court bench, and a small number of them become Supreme Court justices.

Thus, the judiciary of the district court, family court, and the high court is largely composed of so-called 'career judges'. Supreme Court justices are recruited from judges, prosecutors, attorneys, and others, including law professors and ambassadors. Summary court judges are often retired judges.

An attorney (*bengoshi*) has to enroll in one of Japan's local Bar Associations. Together, the Bar Associations constitute the Japan Federation of Bar Associations, which represents the interests of attorneys all over the country.

Yasuhei Taniguchi, Japan's Recent Civil Procedure Reform: Its Seeming Success and Left Problems in The Reforms of Civil Procedure in Comparative Perspective 91, 96–99, 108, 110 (Nicolò Trocker and Vincenzo Varano, eds., 2005).[6]

III. The Situation of the Japanese Bar

For hundreds of years, the Japanese feudal regime banned practice of law as immoral while the judiciary dealt only with the parties in person. Legal profession was officially legitimatized in the 1870s but until the end of the Second World War it did not enjoy neither a prestige nor a power vis-à-vis the judges in particular. The number of practicing lawyers was kept small and lawyers were under a strict governmental supervision. The post-War reform included liberalization of lawyers and a reform of professional training. Now the integrated bar became a fully autonomous body free from any governmental supervision and future lawyers came to be trained together with future judges and prosecutors (procurators) for two years in the Legal Training and Research Institute (LTRI) attached to the Supreme Court. But the pre-War social status of practitioners was not to be improved immediately. Number of lawyers

6. See also Yasuhei Taniguchi, The Changing Image of Japanese Practicing Lawyers (*Bengoshi*): Reflections and a Personal Memoir, in Emerging Concepts of Rights in Japanese Law 223 (Harry N. Scheiber and Laurent Mayali, eds., 2007).

has been kept small even till today due to a small *numeros clausus* of the LTRI. It was kept at 500 a year for a long time until about 10 years ago. It has become 1,000 only a couple of years ago.

For a long time since the creation of modern bar as a legitimate profession in the early 1870's, the relationship between the judges and the lawyers was not a good one. These two groups were separated and did not regard each other as partners. The judges, being professionally authoritarian and socially prestigious, formed an elitist group. The lawyers, still suffering a low social status even after being liberated from a governmental supervision after the Second World War, generally could not attract elitist sector of the society and accordingly chose to position themselves as an anti-government and anti-officialdom power. Thus, any proposal by the judiciary or by individual judges, however constructive and reasonable it might be, tended to be received as a sign of oppression and to meet a strong resistance from the organized bar and individual members thereof. The political climate in the post-War period also enhanced this tendency. There was a clear polarization of political forces with a conservative party in power on the one side and Marxist oriented opposition parties (Communist Party and Socialist Party) on the other. The organized bar always sided with the latter.

The situation began to change in the 1980's for various possible reasons. Two most important factors must be mentioned, namely, first, the effect of the post-War united training of prospective judges and lawyers and secondly a qualitative change of the bar. In the pre-War period, according to the general civil law tradition, the judges and lawyers, though studying together in the university had to take a separate entry examination and separate training although the examination was unified since 1934 in the High Civil Service Examination for Judicial Officials. One of the post-War legal reforms was the creation of LTRI mentioned before for a common two years training for prospective judges, prosecutors and lawyers. It was only in the 1980's that those judges and lawyers who went through the new system took the leading positions within the judiciary and the bar.

The mere fact that the future lawyers and the future judges are trained together would not have change the landscape. What has changed the situation was the quality of people who decided to go to practice rather than to the judiciary or to the prosecuting office. From the 1970s more and more graduates of LTRI who would have elected to become judges and prosecutors began to choose to become a practitioner. Not only the number of these people increased but also their quality improved. Many of those whom the judiciary and the prosecuting office wanted to recruit and did try to recruit to their respective organizations declined the invitation and chose the career as practitioner. It used to be the norm that promising young candidates volunteered to be a judge or prosecutor and those who had taken years to pass the extremely competitive National Legal Examination went to the practice. In the 1980's this pattern was reversed. The number of students of LTRI was gradually increased so that a sufficient number of qualified candidates could be

secured for the judiciary and prosecuting office. In my view, the change was caused primarily for two reasons.

First, the lawyers' public image started to change in the 1960's when a group of leftist lawyers won public support in pursuing large anti-air or water pollution suits. It was a political rather than legal movement for attacking the governmental policy of the controlling conservative party to push forward the country's economic developments in disregard of environmental and ecological consideration. Famous Minamata Disease case (mercury poisoning in the Minamata Bay area causing many deaths) in the 1960's was representative. This and other similar litigation led to the legislation of the Pollution Control Basic Law in 1967. This was a kind of the bar's activity that was impossible before the War without risking a severe sanction because of strict governmental control over the lawyers. It was instrumental not only for changing the public image of lawyers, but also for helping change the self-image of the lawyers themselves. What used to be a monopoly of the "progressive" leftist lawyers became a part of ordinary practice of any lawyer. The bar gained a new attractiveness as an independent profession serving social justice. This, as a matter of fact, represents another aspect of Americanization brought into Japan through the post-War reform. Though in a lesser degree, litigation in Japan sometimes has played certain political function thanks to the activism of the bar, as typically seen in the United States and elsewhere.

One of the other causes for the popularity of lawyers was, of course, financial. As the Japanese economy expanded and internationalized, a demand for competent lawyers arose and a high starting salary was promised by emerging international law firms. Although the judges and prosecutors are much better paid than ordinary civil servants of equivalent background and age in the executive branch, the income of successful practitioners well exceed that of those in the public sector. In addition, an improved social image of lawyers carried with it an air of freedom and challenge which could not be enjoyed in the bureaucratic career system of the judiciary or the prosecuting office. Thus, there are many reasons why ambitious and capable young men and women came to be attracted to the practice of law. Successful large law firms also aggressively recruited eligible young trainees in the LTRI from early days of their training. All this added a centripetal force toward the practice.

Despite all of these recent trends, the number of lawyers in Japan is still kept very small (currently only about 21,000 lawyers serving 120 million people) compared to that in other industrialized nations. Government has declared that the number will be increased to 100,000, the per capita level in France, in a couple of decades, and as the first step toward this goal the American styled "law schools" have been created. Almost 60 of these new 2–3 years graduate professional schools with more than 5,000 fresh students started operation from April, 2004. The real achievement of this development is to be seen in 10 years. At present, it is still true that the historical vestige of Japanese practicing bar has at

least so far contributed the way the Japanese civil procedure is conducted to date. At the same time, it is also true that the post-War legal training reform and the recent popularity of legal practice have had a decisive impact on the success of the recent procedural reform as discussed shortly.

* * *

VII. New Role of Court Clerks

Better preparation, concentrated witness examination, better scheduling, etc., all require much work and responsibility not only of the participating lawyers but also of the judge in charge. Frequent contact between the court and the lawyers becomes necessary. For that purpose, a competent administrative support system is needed, so that the judges can concentrate in their proper works. In this respect, the new role of the court clerk should be particularly mentioned here. Under the Code of Civil Procedure, the court clerks are given the independent authority and responsibility for keeping record of proceedings. In reality, they have been long considered as a second class court officer subordinate to the judges. In addition, under the previous political environment, the court clerks were unionized under a strong leftist orientation and often opposed to the court and the judiciary as an oppressive employer. At about the same time as the bar's attitude toward the judiciary was changing, the attitude of clerks also began to change. The judges who wanted to have more efficient preparatory proceedings and concentrated witness examination gave the clerks a greater responsibility for organizing and managing matters in cooperation with the judge.

Many willing clerks positively responded to this offer of a challenging new role and they proved in fact capable enough to conduct such works. To become a court clerk one must pass a demanding state examination comparable to the National Legal Examination and thereafter go through a rigorous training program for one (for law graduate) or two (for non-law graduate) years in the Court Clerk's Training Institute attached to the Supreme Court. Under this system which was also instituted during the post-War period, the level of the court clerks has been remarkably elevated. The 1996 Code thus transferred some of the judge's responsibilities to the court clerk. It is now the court clerk's responsibility to issue the summary payment order (German *Mahnverfahren*) and to assess the court costs after the conclusion of litigation. Court clerks are now characterized as the "court manager". A busy movie actor or actress cannot perform well in the screen without a competent manager behind him or her. The judge similarly can play his or her proper role better with a good arrangement by the court clerks. The court clerk is no longer a subordinate officer but an independent player side by side with the judge. The court clerks posted in the litigation management constantly contact the parties (lawyers) for various purposes, for just scheduling or for a more substantive matter like clarification of allegations.

Note on Developments in Japan

1. New law schools and National Legal (or Bar) Examination:

The characteristically small size of the Japanese legal profession is about to change thanks to the recent reform of the justice system. The reforms include (1) creation of more than 70 graduate level law schools, graduation from which is now a prerequisite for taking the National Legal Examination (NLE); and (2) a radical relaxation of the pass rate of the NLE, which for decades remained as low as 2 to 3 percent. Another innovation is that any applicant for the NLE can take the examination only three times in the individual's life time.

In 2006, the new law schools produced their first graduates. Starting from that year, there are two types of NLE: a new type of examination which can be taken only by graduates from one of the new law schools subject to an increasing admissions quota; and the old type of examination which will continue for 5 years, subject to a decreasing admissions quota. It is projected that the total number of successful applicants will reach 3,000 in 2010. The number of practitioners, presently about 23,000, is thus expected to reach 50,000 in 2018 and 135,000 in 2056.

Recent NLE statistics of applicants and their success rate are as follows:

Year	Applicants	Passers	Success Rate	
2005	45,885	1,464	3.2%	(old exam only)
2006	35,782	549	1.5%	(old exam)
	2,137[a]	1,009	47.0%	(new exam)
	Total	1,558		
2007[b]	28,016	300		(old exam)
	5,280	1,800~2,200	34-47%	(new exam)
	Total	2,100~2,500		

[a] The new law schools which started in April 2004 have two types of students: those who hold an undergraduate law degree and those who hold other undergraduate or graduate degrees. The former can graduate in 2 years while the latter are required to study for 3 years before taking the legal examination. Applicants for the new exam in 2006 were only those who could graduate in 2 years. Applicants in 2007 include fresh graduates who have studied for 3 years and those who failed the 2006 exam.

[b] The number of "passers" and the success rate for 2007 are estimated projections.

2. Statistics of choices by graduates from LTRI (judges, prosecutors or practitioners):

Uniform training of future practitioners and judges/prosecutors was started in 1947 as one of the post-War reforms. The training period was two years, with time allocated as follows: (1) the first 4 months for class room education; (2) 16 months in the field (8 months in the court, 4 months in the prosecuting office, and 4 months in a law office); and (3) the last 4 months again for class room education, to be concluded by a final examination. The period of training was shortened to 1.5 years in 1999 in order to accommodate an increased number of trainees; it was decreased again to one year beginning 2007 for graduates of the new law schools. Law schools are expected to provide elementary practical trainings formerly provided at the LTRI. The "1.5 year" program will continue, side by side with the new requirements, until the old examination is terminated in 2011.