

JAPAN'S EXPERIENCES IN JUSTICE SYSTEM REFORM¹

Focusing on the current legal training system and lay-judge (*saiban-in*) system

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I. INTRODUCTION

An eminent Japanese law professor² made concise and impressive comments on the process of establishing and reforming the modern Japanese justice system, as follows:

- Constructing judicial workplaces imitating Western style buildings is easy, and making laws similar to Western laws is not difficult; however fostering qualified legal practitioners is rather difficult.
- Introducing Western legal systems into Japan is a grand-scale societal experiment which is unprecedented in any field in the past.
- Academics and practitioners must be free from the thoughts of their mentors, from the thoughts that prevail in the field, and from the thoughts they had in mind yesterday³.

These comments caution against clinging to the ideas of the past, and they continue to inspire the entire Japanese legal profession to make efforts to reform the justice system.

At the early stage of modernizing the Japanese justice system in the 1870s, Japan first translated Western laws into Japanese with the intention of making them Japanese law exactly as written. It was essentially transplanting one legal system into another. Although various articles were changed, downsized or simplified to

¹ The views expressed in this paper are solely those of the author, and are neither those of the Government of Japan nor other official entities, including UNAFEI.

² Dr. MIKAZUKI Akira (1921.6.20 – 2010.11.14), Professor Emeritus of the University of Tokyo, Former Minister of Justice.

³ This phrase was given to Dr. Mikazuki from a German mentor during his studying abroad in Germany. This became the “torch” that he carried throughout his academic career, and implicated the necessity of endless efforts to reform the Japanese justice system.

adjust them to the Japanese social conditions, the justice system became similar to the French system as it then existed, and later became almost identical to the German system. These changes to the criminal justice system were motivated by the desire to avoid colonization, and to abolish treaties with Western countries which were disadvantageous to Japan in terms of tariff autonomy and the extraterritoriality of foreigners, i.e., their exemption from Japanese criminal laws. A symbolic example is that Japan constructed the red-brick building of the Ministry of Justice, the façade of which was identical to European style and intended to show that Japan had a justice system similar to Western countries (Appendix, slide 2). The second big reform of the Japanese justice system took place as a result of the influence of the United States after World War II.

Nearly 60 years passed since then, and, for the first time, Japan decided to reform the justice system on its own initiative, irrespective of any direct influence from other countries. The reform has been based on the “Recommendations of the Justice System Reform Council—For a Justice System to Support Japan in the 21st Century”, issued on June 12, 2001 (hereinafter “the Recommendations”). At that time, the justice system was mainly criticized by people in the economic and commercial fields because of certain defects and inefficiencies, such as delays in entering court judgments. All the entities relating to the justice system were subject to the discussions, reforms, and needless to say, the critiques of various critics. The contents of the Recommendations are available in both Japanese and English on the Internet⁴.

The targeted goals of the reform are below: (Appendix, slide 2)

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

The justice system shall be made easier to use, easier to understand, and more reliable.

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

A legal profession that is rich both in quality and quantity shall be secured.

3) Establishment of the Popular Base

Public trust in the justice system shall be enhanced by introducing a system in which the people participate in legal proceedings and through other measures.

⁴ http://japan.kantei.go.jp/policy/sihou/singikai/990612_e.html

This paper will mainly discuss two big reforms and current challenges about:

- the legal training system—in relation to Japanese law schools—, which relates to point 2) above, and
- the lay-judge system (*saiban-in*) exemplifying public participation in the criminal justice system, which relates to point 3) above.

These are typical examples, as the eminent professor pointed out, of issues, difficulties and necessities facing the Japanese legal profession in developing the Japanese justice system.

II. REFORM OF THE LEGAL TRAINING SYSTEM

A. Overview of the Population and Qualifications of Legal Practitioners

The Japanese legal profession consists of two categories: legal practitioners and academics in the field of law. The reform mentioned here, which started in 2004, relates to the legal training of practitioners. That is because the normal career path of Japanese academics is to proceed step by step from postgraduate courses, to research associate, to associate professor and then to professor without taking the National Bar Examination and practicing law. In contrast, to become a legal practitioner (judge, prosecutor or private attorney), candidates have to pass the National Bar Examination, which is administered by the Ministry of Justice, and then complete a practical training course of the Legal Training and Research Institute (LTRI) under the supervision of the Supreme Court for a certain period (the term varies with the times) (Appendix, slide 3).

Although the Bar Examination is a qualifying examination, it has been an extremely competitive examination because the number of successful candidates had been limited to around 500 (the passage rate was around two per cent) for many years until 1990. Then, since 1991, the number gradually increased and reached 1,000 in 1999. The total number of legal practitioners was around 20,000 in 1997. The population of legal practitioners (approximately 6,300 people per legal practitioner) was rather small compared to even the smallest population among Western countries (around 2,400 in France in the same year).

Those having completed two years of university education were eligible to take the Bar Examination, which was open to those who learned through self-study. The competitiveness resulted in the prevalence of cram schools (i.e., private

schools or tutors offering “bar review courses”) merely teaching skills and techniques necessary to pass the exam. This method was ultimately deemed inappropriate because it produced practitioners who were not able to think logically like a lawyer. It is worth noting that since the 1880s the Japanese faculty of law has played an important role in producing competent personnel with legal knowledge to public and private sectors. However, the popularity of cram schools ironically showed that the legal education and training of the faculty of law at universities was less useful to pass the Bar Examination and, thus, to become legal practitioners.

Legal demands in various aspects of the people's lives are expected to increase in number and also to become more diverse and more complicated. Legal practitioners are expected to properly respond to global issues such as human rights and environmental issues, as well as international issues and crimes. Increasing the number of qualified legal practitioners is a precondition for realizing "the rule of law" throughout Japan. Thus, this competitive examination system was criticized as the "single point" of selection for the legal profession.

B. Shift to the Japanese Law School System (Appendix, slide 4)

In order to overcome these problems, a law school system was introduced in 2004 as a new legal training system. The idea is not to focus on the "single point" of selection through the Bar Examination but to organically connect legal education, the Bar Examination and legal training as a "process". Thus, professional law schools should provide education and training for the legal profession. Unlike the general education requirements at the undergraduate level, curricula for professional law schools should include advanced subjects, such as legal practices and technical skills useful for legal practitioners. To meet such requirements, many experienced legal practitioners are invited to law schools as teaching staff. The graduates from law schools are eligible to take the Bar Examination three times within five years. The practical training of the LTRI under the Supreme Court should be carried out for legal trainees by taking the legal education and training at law school into consideration. Through this reform, law school education, the Bar Examination and practical training at the LTRI are now closely connected as a “process”.

Unlike law schools in the United States, the undergraduate faculty of law still remains; thus, the current Japanese training system can be characterized as follows.

- New Japanese law schools have two tracks for graduation: a two-year track for

- those who studied law as undergraduates, and a three-year track for the others.
- With regard to lecture style, interactive Socratic debate is recommended to improve students' logical thinking, which is different from the typical lecture style at other universities.
 - Law schools should enable students to acquire specialized legal knowledge and provide them with a basic understanding of cutting-edge legal areas.

In accordance with the law school system, the Bar Examination is still expected to evaluate whether candidates are qualified, and the LTRI is also expected to provide those who pass with more practical training. These reforms were to be implemented with the aim of increasing the number of successful candidates to 3,000 by 2010. If successful, the population of legal practitioners would reach 50,000 by 2018, which means the number of people per legal professional would approach 2,400, similar to the French system. In considering the increase of successful candidates and some practical training provided by law schools, the practical training term at the LTRI was shortened to one year.

Here, I should mention that the Recommendations stated that "Law schools should provide substantial education in order for many students who have completed the course (e.g., 70 to 80% of such students) to pass the new National Bar Examination". Importance was placed on providing substantial education to law students rather than achieving any specific bar passage rate. However, some were impressed that a high ratio of the students would pass if they completed any law school course irrespective of its quality.

C. Results of the Reform

The reform has increased the number of legal practitioners, although the population of legal practitioners has not reached the levels expected under the Recommendations (Appendix, slide 5).

The reform resulted in the founding of over 70 law schools whose capacity totaled approximately 5,500 law students throughout Japan. In 2004, the number of examinees for law school was around 40,000 (7.3 applicants for each available seat). At that time, law schools were encouraged with great hope. However, the number of law school examinees has gradually decreased to nearly 12,400 in 2013, and there were only 2.9 applicants for each seat during the same year (Appendix, slides 6 and 7).

Possible reasons are as follows:

1. Establishment of many law schools

During the planning of new law schools, some opined that the number of law schools and capacity for admission should be limited, but eventually over 70 law schools were established based on the policy of free market competition. Due to the decreased number of applicants for law schools, some had to stop or downsize admission. The number of newly admitted law students has decreased from around 5,700 in 2004 to nearly 2,700 in 2013, despite a capacity of 4,200 for that year (Appendix, slides 6 and 7).

2. Fewer successful candidates than expected

The Recommendations set a target for 3,000 successful candidates per year by 2010. Although the number has exceeded 2,000 (the highest number was 2,309 in 2008), the expected figure of 3,000 was difficult to reach because of the changing climate of the economy and the needs of legal practitioners (Appendix, slides 8 and 9).

3. Lower passage rate than the expected

The passage rate in the first and second year (2006 and 2007) of the new Bar Examination was 48.3 per cent and 40.2 per cent, respectively. These rates were perceived as relatively low, compared to the expected passage rate in the Recommendations. Since 2010, the passage rate has dropped to around 25 per cent; the total passage rate for the past 9 years (up to 2014) was 21.2 per cent. In particular, the passage rate among candidates completing three years of law school (12.1 per cent) has been lower than that of candidates completing two years (32.8 per cent). The gap between the two is problematic because the new system seemingly fails to encourage the participation of those from fields other than law (Appendix, slides 8 and 9).

As for the cumulative passage rate of those who completed law school up to 2009, nearly 50 per cent of them passed. Here, the gap between the two-year and three-year students still exists: around 65 per cent of two-year students pass, whereas only 32 per cent of three-year students pass.

4. Long term and high cost necessary to become legal practitioners

Candidates normally must pursue education and legal training for four (4) years at a university, two (2) to three (3) years of education at law school and one (1) year for the LTRI practical training. A majority of the candidates have to borrow money for daily expenses and study costs. If they fail to pass the Bar Examination, they would be in great debt without having obtained a career. Thus,

pursuing a legal career is challenging and involves the assumption of great risk in terms of planning one's life.

Moreover, even after completing the practical training at the LTRI, hundreds of new private attorneys do not join any local bar association because of the inability to afford the membership. Some say this stems from overestimating the demand for private attorneys. As discussed above, the goal was to increase the number of lawyers to match the level of the French system. However, the Japanese market for legal services appear to be small.

5. Another route for taking the Bar Examination

To provide an equal opportunity, especially for people who cannot study at a law school due to financial difficulties, another path to take the Bar Examination started in 2011. Since anyone can take this examination without having to complete a law school education, this route is a shortcut to becoming a legal practitioner. Some feel that the shortcut would damage or diminish the value of the law school system as an educational “process” on which great importance has been placed.

D. Consideration of Measures to Address the Challenges

In order to solve the undesirable situation mentioned above, approaches to solving the problem have been frequently and continuously discussed. Causes and possible solutions depend on the assessment of the law school system and the Bar Examination system. However, the law school system is the core of the process of education and training. Some improvements have been made to date as follows.

- The target of 3,000 successful candidates was retracted in 2013, but no alternative number has been announced due to the difficulty of estimating the proper needs of legal practitioners (Appendix, slides 8 and 9). Considering that the desired number in the Recommendations was based on the statistics of Western countries, a scientific survey in Japan is expected.
- The limitation for taking the Bar Examination (three times in five years) was abolished in 2014 so that one is now able to take the Bar Examination every year within five years after the completion of law school.
- Reducing or eliminating funding for law schools in which applicants do not reach the designated number for admission or the expected passage rate through cutting grants-in-aid from the government.
- Efforts to expand fields in which lawyers participate and to understand the needs of attorneys such as in-house lawyers, national and local government

lawyers, international cooperation activities, etc.

Although some defects in the reform distract us, I am confident that the law school system definitely has an important advantage, that is, legal practitioners and academics have closely interacted with each other, and they have jointly and cooperatively made efforts to improve legal education and training. This could not have happened if the new system had not been introduced. I believe this interaction will bring further improvement and development in this field.

III. LAY JUDGE (SAIBAN-IN) SYSTEM

Public participation in the criminal justice system for Japanese lawyers normally means not only the involvement of citizens in crime prevention, offender rehabilitation and reintegration but also two special criminal proceedings in which citizens directly participate. One is a citizen review panel known as the Inquest of Prosecution for cases in which a prosecutor decided not to prosecute; the other is the lay judge system for serious cases tried before citizens who participate in the process alongside professional judges. The former system was introduced in 1948 with the influence of the United States, and was revised and came into force on 21 May 2009, the same date as the introduction of the lay judge system.

The lay judge system is a combination of the jury system typically found in the United States and the assessor system in Germany. Although Japan adopted a jury system for a certain portion of criminal cases since 1928, the jury system lasted only for 14 years until 1943. The reasons included that the jury's verdict was not legally binding on the courts⁵, the defendant's right to appeal fact-finding to a higher court was restricted, the high cost of jury trials during war time, defendants' preference for bench trials, etc. Except for that period, the Japanese criminal cases had always been tried by professional and qualified judges.

A. Background and Reasons for the Lay Judge (Saiban-in) System

The Recommendations stated the reasons to adopt the lay judge system:

“Looking at the existing systems for popular participation in justice, systems such as conciliation members, judicial commissioners⁶, and

⁵ The binding power of the jury's verdict was deemed to contradict the Meiji Constitution, under which any case must be tried by professional judges; this also applies to any assessor system.

⁶ This means a citizen attending a civil trial to provide advice to a judge.

Inquests of Prosecution exist, and those systems have been performing their functions quite well. Still, on the whole, opportunities for the people to be involved in the administration of justice are very limited, and the authority provided to the people in those instances in which they do participate is also limited. (See Article 3(3) of the Court Law.) In order to establish a much firmer popular base for the justice system by obtaining the autonomous participation of the people in the justice system, it is necessary to establish appropriate participation mechanisms in a variety of settings, such as trial procedures, the process for selection of judges, and the administration of the courts, the public prosecutors offices and bar associations, as well as reforms of the existing systems for popular participation systems”.

The main points are establishing a much firmer popular base for the justice system and obtaining the autonomous participation of the people in the justice system. From my perspective, additional advantages include democratizing the criminal justice system and educational effects of democracy for both legal practitioners and ordinary citizens.

B. Overview of the Lay Judge (*Saiban-in*) System

1. Composition of the panel

Saiban-in is a recently created word used to describe the “lay judges” who participate in *saiban-in* trials. *Saiban-in* trials were introduced by the Act on Criminal Trials Examined under the Lay Judge System, which came into force on 21 May 2009. *Saiban-in* cases are tried by a mixed panel consisting of three (3) professional judges and six (6) *saiban-in*.

2. Selection and duties of *saiban-in*

Saiban-in are selected randomly for each case from among the voters through a procedure similar to jury selection in some other countries. The selections described below are done by lot.

- (a) District Courts estimate the number of necessary *saiban-in* candidates for the next year and inform municipalities within their respective jurisdictions by September 1 of each year. The boards of elections of the municipalities send the list of expected candidates for *saiban-in* by October 15 each year.
- (b) District courts prepare basic name lists (basic list), selecting candidates from the lists provided by the municipalities, and notify the selected candidates that

they are on the basic list around November of each year.

- (c) Collegiate panels of the District Courts select candidates from the nomination lists for specific *saiban-in* trials and notify them of being candidates for the *saiban-in* trial. Candidates having the right or reasonable circumstances to decline serving as *saiban-in* are to be deleted from the nomination list.
- (d) Upon appearing at the District Court, six *saiban-in* and alternate *saiban-in* are selected.

Saiban-in collaborate with professional judges to decide on issues of fact-finding and sentencing. Each *saiban-in* and professional judge has equal voting power. Procedural issues and matters of legal interpretation are left to the professional judges. Verdicts and sentences are based on fact-finding on a majority basis as long as at least one professional judge agrees with the majority. In other words, if no professional judges vote that the defendant is guilty, the verdict must be not guilty. This is a compromise intended to address the concern that, without such a requirement, the *saiban-in* system might be found unconstitutional.

All *saiban-in* have to keep the discussions during the deliberations secret, such as who opined on what issues or how many votes were for or against the verdict, even after finishing their duties, except as necessary during the trial and judgment phases. This is because if the contents of the deliberations were revealed, other candidates of both the particular case and future cases would be afraid to be criticized, and for that reason, candidates would decline to serve as *saiban-in*. In order to avoid possible problems, the violation of secrecy of deliberations is punished by imprisonment with work for not more than six months or a fine of not more than 500,000 yen.

3 Serious cases targeted for *saiban-in* trial

Saiban-in trials are to be held for

- (a) offences punishable by death or imprisonment for life; or
- (b) intentional conduct resulting in the victim's death, for which a minimum term of one year's imprisonment is prescribed.

Such offences include homicide, robbery resulting in death or injury, rape resulting in death or injury, arson of an inhabited residence, and certain serious drug offences. *Saiban-in* trial is mandatory so defendants may not waive it and request a bench trial. This may be learned from the short life of the old jury system due to the

reason that defendants tended to prefer trials by professional judges. Ironically, reformers welcomed the *saiban-in* system, but were not confident that *saiban-in* trial would become popular since Japanese citizens tend to respect and trust authorities, in particular, professional judges. Moreover, victims have no right to request that a case be tried by *saiban-in*.

Approximately two to three per cent of trials have been tried by the *saiban-in* system. As of the end of December 2014, the number of *saiban-in* trials totaled 9,278 over a period of nearly five years and six months. For your reference, under the Japanese criminal justice system, even defendants who admit their guilt are tried in open court unless such cases are punishable by fine not exceeding 1,000,000 yen through a summary procedure with the defendants' consent.

In addition, *saiban-in* trials are for serious cases tried at a District Court of first instance. The appeal system in criminal cases has not been changed at all so that a higher court would be able to render a different judgment from the one decided by the *saiban-in* panel. In practice, however, higher courts have seemed to maintain the judgments of the *saiban-in* panels to date.

C. Statistics Relating to the Lay Judge (*Saiban-in*) System

The Supreme Court of Japan released preliminary figures on the lay judge system from May 2009 to February 2015; some of the figures are below:

A	Candidates for Lay Judge in the basic list	691,468
B	Candidates dismissed/excused during the first selection process	197,508
C	Candidates who received notification to attend	493,960
D	Candidates excused based on a written questionnaire	209,715
E	Candidates expected to attend	285,425
F	Candidates appeared	216,631
G	Lay Judges (Alternates included)	56,681
H	Average length for trial (including non-trial days)	6.9 days

I	Average times of trial (excluding non-trial days)	4.3 times
J	Average length of deliberation	594.1 minutes
K	Number of defendants (Judgment rendered)	7,464
L	Number of defendants in contested cases	3,222
M	Capital sentence	23
N	Acquittal	42

For row “A”, the percentage attendance is 31.3, but 75.9 per cent in the case of row “E”, which is the number of candidates finally required to attend.

The acquittal rate of *saiban-in* trials was 0.56 per cent among all defendants tried (row “K”), and 1.3 per cent for contested cases (row “L”) (Appendix, slides 10 to 12).

D. Changes Brought by the Lay Judge (*Saiban-in*) System

There were several changes and improvements realized through *saiban-in* trials.

1. Consecutive trial dates

Japanese criminal trial dates are normally designated once every two or three weeks so that several cases are held on the same day. In Japan, this system is called “dentist-style proceedings”.⁷ In cases where *saiban-in* are involved in criminal trials, this style is unrealistic because citizens cannot spare time due to official or personal engagements. As a result, *saiban-in* trials take place on consecutive business days, and intensive examination of evidence has promoted speedy trials.

2. Pre-trial proceedings improve trial preparation

In order to realize a speedy trial through intensive examination of evidence, parties and judges are required to identify the issues to be contested at trial prior to the first date of the trial. In addition, the parties have come to submit the best evidence instead of submitting duplicative evidence as was the practice in the past.

⁷ In Japan, dentists only work on one cavity at a time and require patients to return frequently for work on other teeth.

3. Tendency to shift from documentary evidence to testimony

During the investigation, much documentary evidence, such as investigators' reports and statements from victims and witnesses have been produced, and the documentary evidence are submitted to the court in cases where the defendant and his legal counsel agree with the contents. Judges find facts through reading the documents. However, requiring six *saiban-in* to read documentary evidence is unrealistic. Although documentary evidence is still used, the parties have gradually come to call more witnesses for trial.

4. Introduction of DVD-recorded interviews of suspects

Some defendants contest the case even if they confessed and admitted their guilt in their statements during investigation. A prosecutor is required to prove the voluntariness and credibility of the statements. Precisely speaking, the decision whether the statements are to be admitted is a legal matter left to professional judges. However, once *saiban-in* believe that there has been some defect in the legal process, prosecutors would face great difficulty obtaining a conviction. For this reason, the prosecution began introducing DVD-recorded interviews of suspects in 2006, if necessary and partly on the basis of prosecutors' discretion. Since then, the scope of the DVD recording has been expanded gradually, and since May 2010, as far as cases to be tried by *saiban-in*, almost all the suspects interviewed during investigation are recorded on DVD.

In addition, during the prosecution's policy shift to DVD recording, some shameful events seriously affected the public trust in the prosecution; the entire prosecution service in Japan is trying to regain and restore that trust by implementing a comprehensive reform program. These circumstances accelerated the expansion of DVD recording of suspects' interviews.

5. Plain language at trial

Among legal practitioners (judges, prosecutors and private attorneys), technical terms are enough to communicate with each other so that not only the general public but also the citizens involved with the case were unable to precisely understand what was happening in court. Legal practitioners have faced some difficulties in plain expression but gradually improved so that the trial proceedings have become understandable even to the general public.

E. Some Issues for Consideration

1. Public relations and secrecy of deliberations

Six years have passed since the introduction of the lay judge system. The observation of the majority of legal professionals is that the new system has been relatively well accepted by Japanese society without any major problems. Based on a survey of citizens who served as *saiban-in*, over 50 per cent of them were unlikely to have previously served as *saiban-in* before, but after completing their duties, around 95 per cent of them responded that they had positive experiences.

In contrast, among those who have yet to serve as *saiban-in*, around 85 per cent did not want to participate in a *saiban-in* panel. Since many citizens are still reluctant to be *saiban-in*, legal practitioners should improve efforts at public relations. In this context, sharing information and experiences of former *saiban-in* is important. A strict interpretation of the provisions requiring secrecy of the deliberations should be lessened in this regard.

2. Improving the skills of legal practitioners to communicate technical legal concepts to *saiban-in*

As stated earlier, legal practitioners now tend to use more plain language and non-documentary evidence than in the past. However, according to the *saiban-in* survey, the *saiban-in* have become less able to understand the parties' statements. This tendency may come from the routine nature of legal work once the initial enthusiasm for conducting *saiban-in* trials—one of Japan's newest legal innovations—has faded. Legal practitioners should continually improve their skills and techniques in order to properly achieve the goals of the *saiban-in* system.

3. Protection of victims

In cases involving victims, specifically rape and other sex-related crimes, the victims tend to avoid showing up at court, especially for *saiban-in* trials, because such victims are afraid that the general public will learn that they were victimized. Although some provisions relating to sex-related crimes in the Penal Code are being considered for revision, procedural provisions also should be reconsidered.

IV. RECENT DISCUSSIONS ON THE REFORM OF THE CRIMINAL JUSTICE SYSTEM

Apart from the reforms mentioned above, this part intends to briefly introduce the recent proposals to reform the criminal justice system of Japan. In September 2010, some shameful events took place that seriously affected the

public trust in prosecution. These events triggered reform and improvement of the entire prosecution. The Supreme Public Prosecutor's Office took the initiative for the reform. At the same time, many thought that further legal reforms were necessary to bring about a new era. For this reason, the "Special Working Group on the Criminal Justice System in the New Era" was established on 6 June 2011. After around four years of discussion, the working group made a proposal for reforming the criminal justice system. (Appendix, slide 13)

The main points included in the proposal are the following:

A. Provisions for DVD recording of suspects' interviews during the investigation stage

As stated earlier, DVD recording has already been carried out in practice. However, since it is done at the prosecutor's discretion, proper regulations are required. As for the scope of cases to be recorded, investigators and prosecutors must record the interviews of suspects under arrest and detention for crimes to be tried at *saiban-in* trials and in cases where investigation was initiated and completed by the prosecutors themselves⁸, subject to certain exceptions.

B. Agreements between prosecutors and suspects/defendants and immunity from criminal liability

Suspects often hesitate to speak freely and truthfully when they know that their statements are being recorded. This can make obtaining statements more difficult. Considering this difficulty, suspects/defendants are encouraged to give video-recorded statements in exchange for immunity in appropriate cases.

C. Expansion of wire-tapping as an investigative method

Wire-tapping on the basis of a warrant issued by a judge is employed for specific crimes. However, present practices are rather restricted so that expansion of the scope of wiretapping is expected.

D. Points considered in the decision of release on bail

Japanese courts seemed reluctant to grant bail in cases where a prosecutor opposed release on bail, in particular contested cases. The proposal seeks to change this attitude, as bail should be denied only when based on concrete evidence of flight risk, danger to society, etc.

⁸ Japanese prosecutors have authority of investigation by themselves, and often do so.

E. Expanding legal advice by private attorneys

Expanding the number of cases where the State provides suspects with assigned legal counsel at the cost of the State is expected.

F. Promoting and enhancing the discovery of evidence

The present system and discovery practices do not require a prosecutor to show a list of evidence to defence counsel. Thus, prosecutors should be required to disclose to defence counsel a list of all evidence expected to be offered at trial.

G. Measures to protect victims and witnesses

In order to protect vulnerable victims and witnesses, expanded use of testimony through video link is intended, and court ordered prohibitions against the public disclosure of the names of certain victims and witnesses are welcomed.

H. Measures to secure witness testimony

Statutory penalties against witnesses who do not show up to court as required should be enhanced.

I. Measures to conclude speedy trials for defendants admitting guilt

A draft bill of the reforms based on these proposals will be discussed in a future session of the Diet.

V. CONCLUSION

Japan started modernization of its criminal justice system 140 years ago, but still keeps reforming the system, especially its legal training system and laws encouraging public participation in criminal proceedings. Coincidentally and interestingly enough, major reforms took place every 60 years, first in the 1870s, next in the 1940s and then in the 2000s.

An American lawyer who is familiar with Japanese society and the legal profession pointed out the different attitude between American lawyers and Japanese lawyers. American lawyers welcome reforming legal systems because they think it creates business opportunities; however, that is not the case for Japanese lawyers because they seem to be worried that their acquired knowledge and skills would become obsolete. The attitude of the American lawyers reminds me of the words of Thomas Jefferson, the Third President of the United States:

I am not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times.

Japanese legal professionals have faced various challenges and reforms in the criminal justice system during the last two decades. If the observation of the American lawyer is correct, I believe, as Dr. Mikazuki did, that reforming the justice system in Japan will never end.