REFORM OF THE LEGAL TRAINING SYSTEM IN INDONESIA

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I. INTRODUCTION

It is known among the community of legal professionals that legal training is very important for the foundation and rule of law. However we do not yet handle this properly in all of the aspects such as: organization, human resources, educational methodology, and financial allotments.

This paper will limit itself with a discussion on the legal training within the courts system. However we can be sure that the outcome of this training within other contexts, such as other law enforcement institutions will be similar.

Up until the present day in Indonesia we do not have one functional unitary legal training institute for judges, attorneys, lawyers or the police. Each individual department of the justice system has its own training regime. The outcome of which is a justice system that produces inequitable outcomes with each branch of the justice system competing for positive outcomes regardless of the impact on the rule of law as a whole. In the field the daily practice of Individual players in the justice system witnesses competitive practices that go against mutually beneficial outcomes because of the arrogance that one division displays towards the other.

II. JUDICIAL TRAINING IN INDONESIA

In Indonesia when an individual finishes the study of law in a law faculty and he/she want to be a judge, he/she must sit for an exam administered by the Justice Department. The substance of which consists of, among other things, criminal law, law of criminal procedure, civil law, law of civil procedure, administrative law, traditional law, civil/human rights and professional ethics.

In the event that a candidate is successful he/she must then enter into an eight month training program (*pusdiklat*) offered by the Justice Department. There the candidate will further study the above laws, in addition to moot court. The instructors for *pusdukalt*, are drawn primarily from the High, and Supreme courts. Upon completion of this training a candidate is accepted for internship in the primary courts (*Pengadilan Negeri*) for two years as a court administrative clerk (*panitera*). At such time when the initial internship is completed the intern is accepted as a judge, in the primary courts (*Pengadilan Negeri*).

After several years the judge will join a training program offered by the *pusdiklat* of the Supreme Court. As one may be aware the total number of judges in Indonesia is 5,600 and the number of court clerks (*panitera*) stands at 10,000.

A. In 2002 the Following were Trained

1.	*Hakim Pengadilan Negeri*	223 (Primary court)
	Hakim Pengadilan Agama	276 (Religious Court)

Hakim Tata Usaha Negara	77 (Administrative Court)
Hakim Militer	30 (Military Court)
Hakim HAM	43 (Human Rights Court)
Hakim Niaga	41+
	690 persons

2. *Panitera peradilan Umum* : 150 (Court Clerks)
   Panitera peradilan Agama: 150 + (Religious Court Clerks)
   300 persons

3. 300 persons have joined the Commercial Court and English language training offered jointly by Caltex, several NGOs, and the Bank of Indonesia.

For the year 2002, 990 judges and 300 court clerks, (1290 persons) received training under the tutorage of the Supreme Court. These training sessions last from four to six days. This total represents a decline from the year 1997 in which 2300 persons undertook training. This decline is the result of a reduction in the national budgetary allocations for training in the court.

Persons who undertook training in the year 2002 were able to participate in three training sessions respectively. Under the one roof of the judiciary system that will be implemented next year, all the training activities will be conducted only by the Supreme Court.

III. REFORM OF THE LEGAL TRAINING SYSTEM

A. Organizational Reform:

(i) A unified training program administered by the Supreme Court for all branches of the judicial system.
(ii) Classification of trainees :
- *Hakim* PN / Primary Court
- *Hakim* PT / High Court
- *Hakim* MA /Supreme Court
- Attorney / Lawyers
- Court clerk
- Police

B. Material Reform:

(i) Adjustment of the instructional materials of the one roof system training centre.
(ii) Alongside the inclusion of English language training the inclusion of Dutch language training in recognition of the genesis of Indonesian jurisprudence.

C. Reform of Judicial Direction and Goals:

(i) Training as an avenue for recruitment
(ii) Training for standardizing practice
(iii) Integrated training

D. Reform of the Judicial Training Budget:

(i) The provision for adequate finances from the government fund.

E. Reform of the Training and Methodology:

(i) *Pada awal jabatan* (Initial)
(ii) *Pada pertengahan jabatan* (intermediate)
(iii) *Kenaikan pangkat* (Progression).

IMPROVING THE LEGAL SYSTEM THROUGH CONTINUING LEGAL EDUCATION AND TRAINING

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I. INTRODUCTION

Within the criminal justice process in Indonesia, it is general knowledge and often alleged that the system has not done its job as professionally as expected. Out of the many factors alleged as contributing to this poor performance is the education and training system within the institutions, in addition to the recruitment system. However, it would be unfair to look only at the final result (i.e. the performance of the judges and prosecutors) without first probing into the basic legal education received by these lawyers. Legal education in Indonesia has played a significant role in molding the type of lawyers working in the system. I will discuss this first.

In the next part of this essay I will discuss the unit that is responsible for training the Public Prosecution Service, namely the Centre for Education and Training. Training and teaching methods, curricula and instructors are some of the issues addressed in this context. The final part of this essay consists of a set of proposed actions for enhancing capacity within the institutions to support the objective of the criminal justice system in general.

II. LEGAL EDUCATION IN INDONESIA IN A NUTSHELL

A. The Faculty of Law

On October 28, 1928, the first higher legal education institution in Indonesia was established under the name of *Rechsthogeschool*, by the colonial government. The main objective of its establishment was to fulfill the need for government lawyers to fill various positions at the Department of Justice. A degree of *Meester in de Rechten* was conferred upon those graduating from this institution after a minimum of five years of study. Various changes were made in terms of its name, curriculum and qualification during the history of the law school, the most significant being the change to the Faculty of Legal and Social Science in 1950, and the separation of this school into the Faculty of Law and Faculty of Social and Political Science in 1969.[1]

Today, the majority of private and public universities have a faculty of law, which basically requires four-years of study for a high school graduate to complete a first law degree. This might be due to the fact that establishing a faculty of law requires less than a scientific department, and there are a great number of potential students. The number of enrolled students annually for this faculty ranges from 30 (in a remote area or for a new faculty of law) to 800 (in a private faculty of law in the metropolitan area). The number of graduates from faculties of law annually is estimated to be about 13,000, the government a few years ago decided not to allow the establishment of any new faculties of law, taking into account the job market for its

1 *Harkristuti Harkrisnowo (1995). Legal Education in Indonesia in a Nutshell. A paper prepared for ELIPS Project in cooperation with the Faculty of Law, University of Indonesia.*

graduates.

In order to be enrolled in a public faculty of law, one must have passed a national examination conducted by the Consortium of Universities while a similar test is also required in private institutions[2]. Yet in many universities such examination is more a matter of form than substance, which creates a problem of quality in the future. With the establishment of the National Board of Accreditation whose assessment on each higher education institution is published, the government attempted to create a new sense of competitiveness among these schools. It is also expected that in the long run, the market, the public itself would be able to screen the qualified versus the unqualified law graduates.

B. The Curriculum and Teaching Method

In the very beginning, the curriculum within a faculty of law was very concise, consisting of 24 courses to be completed within five years, or on average, each student must pass about five course annually. Thus, it was more of a grade or class system; in order to be able to pass to a higher grade, one must pass all courses taken in that very year. Failure to pass retakes would result in staying in the same grade in the following year.

Due to the influences of the then colonial education atmosphere, most course materials were delivered in lecture form, where student participation or discussion was limited. This has changed overtime, since now lecturers tend to encourage their students to participate in critical dialogue and discussion, which trains their legal mind to work at ease and speed when they later practice.

Today, the curriculum has also developed significantly, and there is a National Curriculum[3] applicable to all faculties of law consisting of 23 main courses. At present this curriculum is being reviewed by the National Legal Science Commission of the Department of National Education, it has been seven years since its last review.

The minimum requirement to complete a law degree as stipulated in the Decree on the National Curriculum is 144 credit hours, 82 of which are allocated for mandatory courses, including 6-credit hours of legal practice[4]. A theses is required at the end of the course, where a student must defend his her work before a defense committee. In general, a minimum of four years are needed to complete this law degree.

C. Clinical Legal Education

Clinical legal education has become an inherent part in the law curriculum since 1970s. The main objective is to introduce students to the actual implementation of all the laws they learned in classes. At first, this education took the form of attendance in court proceedings only, followed by a lecture delivered by a senior judge. Today however, this method has been developed quite progressively with the introduction of, for example, the following programs:

2 At present there are about 27 public and 180 private faculties of law across the nation with different qualifications according to the assessment made by the National Accreditation Unit.

3 As stipulated in the Decree of the Minister of Education NO. 0325/U/1994.

4 In the past decade there were some people who proposed to change the theses into a shorter and more practical legal document, such as legal memorandum or legal opinion.

(i) moot court proceedings
(ii) apprenticeship (mostly in law-firms)
(iii) involvement in the actual preparation of a litigation case in the legal-aid unit
(iv) contract drafting, etc.

All the above are in addition to the conventional legal practice courses, which originated from the mere visits to the court buildings in the past. At present, the Legal Practice course is the implementation of the course on Procedural Law, involving practicing lawyers as instructors. Consequently, to achieve its objective each faculty of law must build up networks and cooperation with, at least, the court and law firms. As such the existence of the so-called 'law laboratory' within the university becomes very significant indeed, since it is here that all courses for clinical legal education are developed, for instance in the form of a legal aid Unit.

The degree conferred upon law graduates is called *Sarjana Hukum* (more widely known as SH), which is the first degree in legal education.

D. The Centre for Education and Training

Recruitment of judges and prosecutors within the Public Prosecution Service admittedly must undergo a revision, due to the lack of enthusiasm of qualified law graduates to enter these professions. Today, both the judiciary and the prosecutor's office have attempted to improve the knowledge of their personnel through establishing a Centre for Education and Training, to support their works.

The Centre in each institution is established for the sole purpose of providing training for several groups:

a. New recruits;
These new people recruited to be judges and prosecutors are designated to attend training ranging from four to six months.

b. Functioning judges and prosecutors;
Due to the ever growing problems in criminal law and criminal justice, it is felt that these functioning lawyers must keep up with recent developments. As such, continuing legal education of this sort is provided for judges and prosecutors. The duration of such programs vary from four to twelve weeks, depending upon the bulk of materials that need to be delivered, and sometimes also subject to the availability of funding.

In addition, some of this continuing legal education also serves as a stepping stone for promotion to a better position in the office.

1. The Training:

The training provided by the Centers is not limited to legal training, but also includes:

(i) administrative skills;
(ii) practical legal skills for new recruits;
(iii) practical and theoretical skills for practicing prosecutors;

Judging from the content of all training, apparently the Centres have tried to design a

curriculum which is deemed to best suit their purpose. However, according to information from various sources, there are several issues that must be given a lot of attention in the future as to the running of these programs, for example, with regard to:

(i) Lecturers are mostly retired judges and prosecutors. And they accordingly lack the ability to deliver good lectures. This is understandable since they are not equipped nor trained for teaching. No matter how good they were as lawyers, if they fail to transfer their wealth of knowledge to the participants, little can be achieved.
(ii) There is also a lack of mastering the method of teaching, since most lecturers rely heavily on lecture-type deliverance of materials, and seldom encourage in-class dialogues and discussions. Many questions are answered normatively, while many participants feel they should instead reveal more of their practical experience.
(iii) Lack of funding sometimes result in a paucity of materials being distributed, that participants (at least, the diligent ones) are compelled to find materials on their own.
(iv) Despite the practical experience possessed by the lecturers, participants are not given sufficient practical legal skills whether due to time constraints or other considerations, especially for new recruits. Such that it is possible for these new recruits to be immediately assigned as a practicing judge or prosecutor while their practical experience is still very limited.

It is also important to note that both the judiciary and the Attorney Generals' office need to network with various institutions where they can send their officers to be trained, both for degree and non-degree programs. For degree programs, cooperation with various prestigious law schools for graduate programs has been initiated (for example with the University of Indonesia and University of GajahMada), and with institutions outside Indonesia (for example for intellectual property rights, environmental crimes etc). Many of these programs actually have very beneficial prospects for the institution, but unfortunately many are just a one-time project. Efforts then, should be made to maintain its sustainability where of course, the issue of funds mostly prevails. A visionary leader is needed to make sure that education and training become the pillar of this institution.

E. Proposed Actions for Enhancing Capacity Building

1. Recruitment System of Trainees

(i) New recruits: alleged collusion and corruption in the recruitment system has been recognized as one of the contributing factors that result in the poor quality of prosecutors (both in capacity and integrity). Thus the Centres, in cooperation with the personnel office must work hand in hand to ensure that the would-be judges and prosecutors do possess certain qualifications to enter the profession. As in any other educational institutions, there are several criteria that must be satisfied by potential trainees which should not be compromised. Without these qualifications rigidly implemented, it would be very difficult to produce qualified judges and prosecutors.
(ii) Practicing judges and prosecutors elected to attend or participate in the training programs must fulfill the needed criteria, so the result of the training will bear significant fruit. The role of the Bureau of Planning is very important, since normatively they are in charge of career planning for each legal officer. The level of experience, capacity, knowledge and motivation or drive of a candidate must be weighed equally, before one is enrolled in the training program. Being in one level in the institution does not automatically warrant a judge or prosecutor to participate in training.

2. Curriculum Design

The success of training is also dependent upon the curriculum designed for a very specific purpose. This design has to take into account several indicators such as:

(i) specificity
(ii) measurability
(iii) absorbability
(iv) actuality

3. Course Material

Sometimes lecturers are not diligent enough to make efforts to compile materials that are as complete as possible in accordance with the subject matter they present. As a consequence, the participants do not receive what actually should be their due. This problem is exacerbated by the lack of sufficient funds of the Centre to duplicate these materials.

4. Practical Legal Skills

Since this training is conducted in order to improve the legal skills of judges and prosecutors in the field (especially for the new recruits), the bulk of the training must be focused on the actual work they are going to perform. To do this, experienced or retired lawyers would greatly contribute to improve the participants' skills.

5. Capacity of Lecturers

Due to the importance of this issue, rigid criteria for potential lecturers warrant special attention. Being a retired legal officer (judge or prosecutor) alone should not make one eligible to be a lecturer, since there are other requirements needed, such as the:

(i) ability to convey thoughts and experiences;
(ii) ability to conduct dialogues;
(iii) ability to provoke thoughts;
(iv) ability to produce qualified materials;
(v) ability to provide alternatives etc.

6. Teaching Method

Methods that allow an instructor to merely deliver lectures should not be used in continuing legal education as they need more than just basic information. Group dynamics, seminars, debates on how to write legal documents on certain issues might prove more beneficial for participants. Discussion and debates would make these lawyers familiar with the way laws should be argued, a skill badly needed at this time, because the public often perceive that lawyers and judges always have the upper-hand when it comes to arguing in comparison with prosecutors. Training methods should encourage participants to participate actively instead of merely serving as a listener.

7. Evaluation

No institution should boast a 100 percent pass rate for all participants. Education specialist warn us that people have different capacities for absorbing and retaining materials they receive during training. A transparent and objective evaluation mechanism should be designed for each training course, where involvement of lecturers is a must, for this is a part of their responsibility as teachers. This transparency also opens the door to correct possible cheating, while at the same time teaching discipline, honesty and hard work to participants.

III. CONCLUSION

While some people claim that saying that the fate of the supremacy of just law in Indonesia lies in the hands of the justice system, sounds like it puts too much burden on the legal officers, it is undeniable that they play a very significant role in Indonesian legal reform. The present crime ledger is so full of alleged corruption, in which the public prosecution service has the sole authority to investigate and prosecute the culprits, while the judiciary is in charge of determining their guilt or innocence. The successful prosecution of alleged corruptors and the punishment of the guilty ones appears to be the priority in this era of legal reform. However, without the necessary knowledge to bring these cases to court, all this will be to no avail.

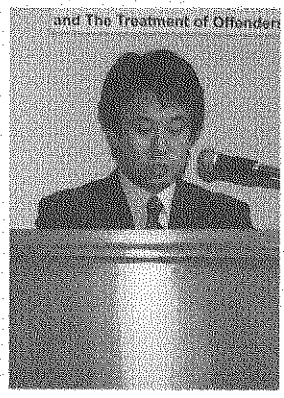
Improving the knowledge of the judges and prosecutors through training centres is of course only one avenue to alleviate further legal problems, yet their performance is in dire need of revolutionary restructuring. Since this unit should be the first hand that feeds the judge's and prosecutor's corporate culture into the new recruits, naturally its existence becomes very significant. Thus strengthening this unit should be a *conditio sine qua non* for these legal institutions, if they strive and are committed to the quality product of law enforcement. Whether they would be willing to serve this purpose, we shall wait and see.

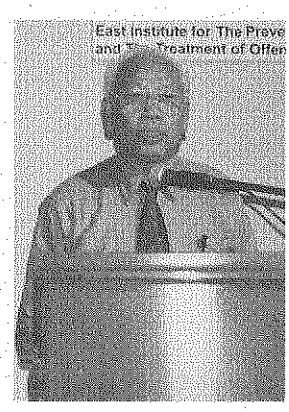
Session Four: Judicial Reform

Paper- Prof. T. Miura, UNAFEI

Paper- Prof. Dr. Bagir Manan, Supreme Court, Indonesia

Paper - Prof. Dr. R. Atmasasmita, Head of the National Law Reform Agency, Department of Justice and Human Rights, Indonesia





Please note that the following papers have not been edited for publication. The opinions expressed therein are those of the author's. They do not necessarily reflect the position of the departments or agencies that they represent.

INDEPENDENCE, TRANSPARENCY AND ACCOUNTABILITY OF THE JUDICIARY IN JAPAN

By
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I. INTRODUCTION

...While paying due heed to the independence of the judiciary, the reforms and improvements of the justice system this time must be carried out in a manner that is visible to and easily understood by the general public, with the major objectives of making clear the locus of responsibility, responding properly to social and economic conditions and to the needs of the people, and securing and strengthening accountability and transparency, without being imprisoned by past history.

Recommendations of the Justice System Reform Council
-For a Justice System to Support Japan in the 21st Century-

The Justice System Reform Council, which was established under the Cabinet of Japan in July 1999, submitted its Final Report to the Prime Minister on 12 June 2001[1]. The mission of this Council was to consider fundamental measures necessary for judicial reform and judicial infrastructure arrangement by defining the role of the judicature in Japan in the 21st Century. The Final Report includes various proposals that cover every area of the nation's legal system, and the Japanese government is endeavoring to realize these proposals in the near future.

The Final Report pointed out that Japan has been trying to transform the excessive advance-control/adjustment type society to an after-the-fact review/remedy type society and to reform the bloated administrative system. As a consequence, the role of the justice system must become dramatically more important in the Japanese society of the 21st century. In order for the people to easily secure and realize their own rights and interests, and in order to prevent those in a weak position from suffering unfair disadvantage in connection with the abolition or deregulation of advance control, a system must be coordinated to properly and promptly resolve various disputes between the people based on fair and clear legal rules.

The Final Report also pointed out that the judicial branch must also establish a popular base by meeting the demand for accountability to the people, while paying heed to judicial independence. Justice can play its role fully only if its activities are easily seen, understood, and worthy of reliance by the people.

In this regard, transparency and accountability are very important in improving the judicial system, and independence is a prerequisite of these improvements. In the whole text of the Final Report, we find the term "independence" 12 times, the term "transparency" 25 times, and the term "accountability" 15 times, which implies these three terms are of significant importance in the justice system.

However, these principles sometimes have a contradictory nature. For example, to be

1 Available on www.kantei.go.jp/foreign/judiciary/2001/0612reports.html

transparent and accountable can mean to give information to the public and to submit the courts to criticism. There may be a possibility of undermining the independence of the judiciary, especially when these criticisms involve political powers and other governmental organizations. How we can materialize these three principles in harmony is a difficult challenge in many countries. That is why the Council uses the phrase "while paying due heed to the independence of the judiciary" many times in the Final Report.

In this paper, I would like to discuss the independence, transparency and accountability of the Japanese judiciary, by reflecting on its history, briefly describing the basic structure of its system, and referring to the recent recommendations, in order to share with Indonesia our experience on how we have been and are going to be trying to accommodate these principles.

II. THE HISTORY AND DEVELOPMENT OF THE JUDICIARY IN JAPAN

1. The Meiji Constitution

Japan has had two modern constitutions, one is the Constitution of 1889 and the other is the Constitution of 1946. The Constitution of 1889 is often called the Meiji Constitution, since it established the regime of Japan following the Meiji Restoration in 1868, which lasted until the end of the Second World War[2]. This regime was characterized as a constitutional monarchy with the sovereign Emperor.

The Supreme Court in the Meiji Regime, which was called *Taishinin*, was established in 1875, ahead of the promulgation of the Meiji Constitution[3]. *Taishinin* was the highest appellate Court, and at the same time had the original jurisdiction to some important cases. Each case was heard by at least 5 judges (7 judges in principle later). There were some chambers in *Taishinin* (the number of chambers varied from time to time, but in the 1930's there were five civil chambers and four criminal chambers), and there were 45 judges in *Taishinin* at the maximum. There were High Courts, Circuit Courts and Prefectural Courts as inferior courts to *Taishinin*.

The Meiji Constitution was interpreted to guarantee judicial independence from the executive authority, while the administration of the judiciary was under the supervision of the Minister of Justice, as is common in countries in Continental Europe. Regarding how the courts in the Meiji era were independent, there was a well-known case called the *Otsu case*.

In May 1891, a policeman named *Sanzo Tsuda* on guard duty for the Crown Prince of Russia who was traveling in Japan, tried to slash the Prince with a sword in *Otsu* City. The government, fearing grave consequences, asked the President of the *Taishinin, Iken Kojima* to have *Tsuda* sentenced to death, by an analogous application of provisions concerning offences against the Japanese imperial household. However, the Penal Code then in force did not specifically regulate offences against members of a foreign royal household, no penalty heavier than imprisonment for life - the maximum punishment for an ordinary attempt at murder - was available under the code. *Kojima* rejected the government's interference, and encouraged the judges in charge of *Tsuda*'s case not to submit to the interference. *Tsuda* was given a sentence of imprisonment for life, not the death penalty.

Thus the judges dramatically guarded their independence, rejecting all governmental

2 The drafters of this Constitution referred to the German Constitution as a model of a constitutional monarchy.

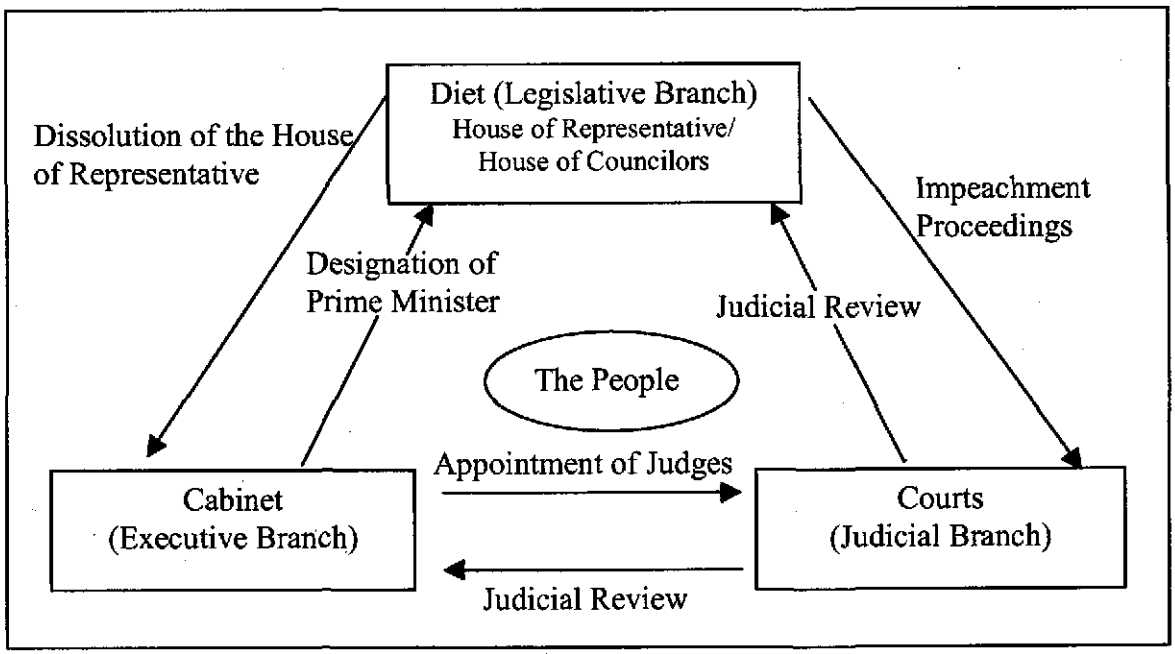
3 The influence of Cour de cassation in France was often pointed out.

pressure. However, there were remarks, on the other hand, that *Kojima* himself infringed upon judicial independence, because he was not presiding at the trial or hearing the case of *Tsuda*. There has been a lot of discussion regarding whether what *Kojima* did was justifiable. Nevertheless, the *Otsu* case has quite often cited as the monumental incident that maintained judicial independence in Japan.

2. The Present Constitution

The present Constitution of Japan was promulgated on 3 November 1946, and came into force on 3 May 1947. After the Second World War, Japan changed its legal framework as suggested by the General Headquarters of the Allied Forces occupying Japan[4]. The constitutional monarchy with the sovereign Emperor was superseded by a constitutional democracy where the sovereignty resides in the people.

The present Constitution provides for a fundamental separation of state powers. The legislative power is vested in the Diet; executive power is vested in the Cabinet; and all judicial power is vested in the Supreme Court and in other inferior courts. The Constitution provides for the means of checks and balances among these three powers, so that none of them may exercise their powers excessively.



The Constitution furthered the independence and autonomy of the judiciary. The Constitution vested the Supreme Court with rule-making powers as well as the authority of judicial administration, whereas this authority had been handled by the Minister of Justice before the Second World War. Since 1945 the Supreme Court appoints and removes all officials other than judges, and manages the financial and other administrative affairs of the courts. In order to manage affairs concerning judicial administration, the General Secretariat and other agencies are attached to the Supreme Court. The details of judicial administration will be mentioned later.

The independence of the judiciary includes independence from influence both outside and

4 Consequently, we see remarkable influences of the United States system on the Constitution and other legislation drafted in the late 1940s and early 1950s

inside the judiciary. Article 81 of the Court Organization Law stipulates that the power of supervision over judicial administration shall not influence or restrict the judicial power of judges.

The promulgation of the present Constitution was followed by cases or incidents of which the main issue was judicial independence. Among them is the *Urawa* case in 1949.

In 1948 a female defendant was sentenced to three years imprisonment with three years suspension of execution of the sentence. The court found that she had become so depressed by her husband's gambling habits, that she killed her children and attempted to kill herself.

The Committee on Judicial Affairs of the House of Councilors researched this case as exercising the Diet's investigative power in relation to the government[5], and concluded that the facts found by the courts were wrong and the sentence imposed was too lenient. The Supreme Court protested to the House of Councilors, while the Committee of the House of Councilors rebutted the Supreme Court.

There were some other cases concerning judicial independence[6].

However, in recent years there have been no major cases in which judicial independence was the main issue. It is probably because judicial independence has established a firm ground in Japanese society.

There are several other different characteristics between the present courts and the courts under the Meiji Constitution. For example, the present courts have the power to review the constitutionality of any law, etc. The number of Justices of the Supreme Court is 15, one third of the number in *Taishinin*. Not all Justices are required to be jurists, considering the important role of the Supreme Court's power to make final decisions concerning constitutionality. The Supreme Court has jurisdiction over all appellate cases including administrative litigation, while the Meiji Regime had the Administrative Court which was not incorporated into the ordinary judiciary system.

In short, the Supreme Court has a mixed character as the highest appellate court and the court that upholds the Constitution, while the *Taishinin* was basically the highest appellate court.

3. Issues on the Reform of the Supreme Court in the 1950's

As a consequence of the mixed character mentioned above, the present Supreme Court has an extremely wide range of responsibilities, such as dealing with civil, criminal and administrative cases, review of the constitutionality as well as judicial administration, while it has only 15 Justices and not all of them are jurists. Naturally, soon after its inauguration the Supreme Court was stuck with a heavy caseload, and the argument of reforming the structure of the Supreme Court arose in the 1950's. A bill to amend the Court Organization Law was submitted to the Diet in 1957[7], but this bill was shelved and died on the Diet floor.

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5 Article 62 of the present Constitution.

6 Suita Mokuto case in 1953, Heraga Letter case in 1970, etc.

7 The idea of this bill was called "the mezzanine system". This bill proposed to differentiate the Grand Bench and the Petty Benches completely, and characterize the latter as the courts between the Grand Bench and the High Courts.

Meanwhile, the situation concerning the caseload of the Supreme Court improved as the table below shows, and this argument has been suspended to date. Actually the peak of criminal cases was in 1951.

Year	Civil Cases		Criminal Cases	
	Commenced	Pending	Commenced	Pending
1949	502	370	5,014	2,096
1950	651	630	7,106	4,404
1951	1,301	1,140	10,536	8,610
1952	1,801	1,666	9,994	7,668
1953	1,982	1,983	8,505	4,894
1954	1,370	1,600	7,176	4,020
1955	1,330	1,676	6,609	3,849
1956	1,553	1,865	7,849	4,657
1957	1,619	1,927	5,875	3,296
1958	1,608	2,094	4,642	2,928
1959	1,814	2,566	3,931	2,672
1960	2,074	2,636	4,717	2,668
1961	2,074	2,288	4,691	2,282
1962	2,014	2,029	4,891	2,502
1963	2,141	1,898	5,069	2,483
1964	2,317	1,847	4,764	2,031
1965	2,354	2,004	4,493	1,899
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1995	3,027	2,057	1,331	604
1996	3,144	2,087	1,429	590
1997	2,961	1,704	1,390	546
1998	3,521	1,605	1,643	699
1999	3,980	1,617	1,720	749

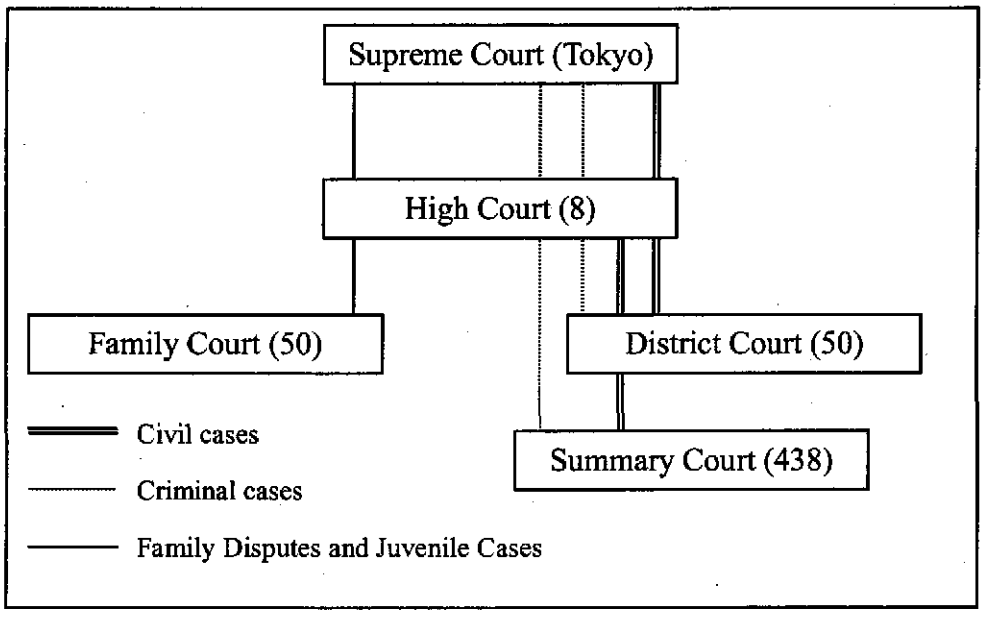
This improvement can be attributable to many factors, such as the efforts of the Supreme Court itself and the decrease of the number of criminal cases appealed to the Supreme Court. The accumulation of precedents during the first few years may have contributed a lot. As for the civil cases, there have been a couple of amendments to the laws concerned, in order to lighten the burden on the Supreme Court[8].

III. THE CURRENT JAPANESE JUDICIARY SYSTEM

A. Courts

There are five types of courts in Japan: the Supreme Court, High Court, District Court, Family Court and Summary Court.

8 The Code of Civil Procedure of 1996 is the most recent effort.



1. Supreme Court

The Supreme Court, located in Tokyo, is the highest court in Japan and consists of 15 Justices. The Supreme Court has one Grand Bench, consisting of all the Justices, and three Petty Benches, each consisting of five Justices. All cases are first distributed to Petty Benches, and then if the Petty Bench decides that the case must be adjudicated by the Grand Bench, it will transfer the case to the Grand Bench. The Supreme Court exercises appellate jurisdiction of *Jokoku* appeals and *Kokoku* appeals as provided by law. It ordinarily hears a *Jokoku* appeal from a High Court on the following grounds:

(i) a violation of the Constitution or an error in constitutional interpretation, or
(ii) adjudication contrary to precedents of the Supreme Court or High Courts.

The Supreme Court may also hear at its discretion *Jokoku* appeals of any case which involves an important point of statutory interpretation.

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[9]. They are selected from among the inferior court judges.

2. High Courts

The eight High Courts are located in eight major cities in Japan, namely; in Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo and Takamatsu. There are also six branches. The High Courts have jurisdiction over Koso appeals filed against judgments rendered by the District Courts and Family Courts, as well as the Summary Courts in criminal cases. High Court cases are heard by a collegiate body of judges.

3. District Courts

There are 50 District Courts and their 203 branch offices throughout Japan. District Courts

9 There are 33 Judicial Research Officials in the Supreme Court as of 2002.

have general jurisdiction over all civil and criminal cases in the first instance, except for those cases exclusively reserved for Summary Courts, Family Courts and High Courts.

The overwhelming majority of District Court cases are tried by a single judge. However, with regard to criminal cases, cases involving possible sentences of death, life imprisonment or "imprisonment for a minimum period of not less than one year" are handled by a collegiate court of three judges, as well as any other cases deemed appropriate. The former are called "statutory collegiate cases" and the latter "discretionary collegiate cases."

4. Family Courts

Family Courts and their branch offices are located in the same place as the District Courts and their branches. Seventy-seven local offices handle family affairs cases. The Family Courts have jurisdiction primarily over family disputes and juvenile delinquency cases (involving persons under 20 years of age). Additionally, these courts handle adult criminal cases involving offences harmful to the welfare of juveniles.

5. Summary Court

There are 438 Summary Courts throughout Japan. The Summary Courts have jurisdiction over minor civil and criminal cases. All cases are presided over by a single Summary Court judge.

B. Appointment, Qualification and Dismissal of Justices of the Supreme Court

The Justices of the Supreme Court are appointed by the Cabinet; except for the Chief Justice, who is appointed by the Emperor as designated by the Cabinet[10]. At least ten of the fifteen, including the Chief Justice, must be appointed from among those with distinguished careers as lower court judges, public prosecutors, practicing lawyers or law professors. However, the remaining five Justices need not be qualified as jurists, as long as they are learned, have an extensive knowledge of the law, and are at least 40 years of age[11]. Having non-jurists in the Supreme Court may imply that the original idea of the Supreme Court was rather closer to a Constitutional court, since it is uncommon to have these people in the appellate courts in other countries.

The appointment of the Justices is reviewed by the people at the first general election of members of the House of Representatives following their appointment, and in addition they are subject to review at the first general election of members of the House of Representatives after a lapse of ten years, and in the same manner thereafter. If the majority of the voters favour the dismissal of a justice, he/she shall be dismissed. To date no Justices have been removed by this recall system. There have been criticisms that this system was becoming a name only. The justices of the Supreme Court retire at the age of 70.

C. Categories, Appointment, Qualification and Dismissal of Judges of Inferior Courts

Inferior court judges are divided into fully-fledged judges, assistant judges and summary

10 This means the Chief Justice is of the same rank as the Prime Minister. Other Justices' ranks are as high as those of Ministers of the cabinet.

11 According to the recent practice, the backgrounds of Justices are 6 judges,4 practicing lawyers, 2 public prosecutors, 1 diplomat, 1 administrative official and 1 professor at a university.

court judges.

The assistant judge system aims to provide professional experience through on-the job training as an assistant judge before qualifying as a fully-fledged judge.

Assistant judges are appointed from among those who have passed the National Law Examination, have completed 18 months of training in the Legal Training and Research Institute of the Supreme Court, and passed the final qualifying examination.

For the first five years, the judicial authority of an assistant judge is restricted. He/she can be an associate judge of a three-judge court, but as a single judge, can decide only limited matters such as detention at the investigation stage. After five years experience, an assistant judge is qualified as a special assistant judge (or a senior assistant judge) to preside over a trial in the single judge court. However, an assistant judge can preside over a juvenile hearing and render a decision except when referring the case to the public prosecutor.

To be a fully-fledged judge, it is necessary to have practical experience of not less than ten years as an assistant judge, a public prosecutor, a practicing lawyer, a professor of law at a designated university, or equivalent related experience as prescribed by statute. However, most of them have been appointed from among the assistant judges. Currently the appropriateness of this practice and the special assistant judge system is among the hot issues, as I will mention later.

In contrast, Summary Court judges can be appointed from among individuals unqualified as jurists. In practice, they are appointed primarily from among learned and experienced court clerks who are selected by a special Supreme Court committee. Assistant judges, after three years experience, can be appointed as Summary Court judges.

All inferior court judges are appointed by the Cabinet, from a list of persons nominated by the Supreme Court. Once appointed, most judges serve until retirement, which is 65 years of age for lower court judges, and 70 years of age for Summary Court judges. In general, judges are continuously reappointed every ten years, unless judicially declared mentally or physically incompetent to perform their official duties or unless publicly impeached.

No executive organ or agency can take disciplinary action against judges. This power is vested only in the Court of Impeachment, a legislative body composed of Representatives and Councilors drawn from the Diet. As one of the check and balance systems among the three branches of government, the Court of Impeachment may dismiss a judge if he/she neglects his duties to a remarkable degree, or if there has been misconduct, whether or not it relates to official duties.

D. Judicial Administration

Under the present Constitution, the power to exercise judicial administration is vested in the Supreme Court. In its conduct of exercising administrative power, the Supreme Court acts upon the resolutions of the Judicial Conference, which consists of the fifteen Justices and is presided over by the Chief Justice. I would like to elaborate on the detail of this power.

(i) Rule-making Power

With the rule-making power, the Supreme Court may establish rules of practice and procedure, and of matters relating to attorneys, the internal discipline of the courts and the administration

of judicial affairs[12]. In establishing rules on important matters, the Supreme Court refers the matters to the Advisory Committee on Rule-making composed of judges, public prosecutors, practicing attorneys, officers from related institutions and scholars. The Supreme Court has adopted more than one hundred rules since its establishment.

(ii) Nomination of candidates to be inferior court judges

The nomination of candidates to be inferior court judges including the Presidents of the High Courts, and the assignment of judges to a specific court are within the purview of the Supreme Court, which exercises the authority through the resolutions of the Judicial Conference.

(iii) Budget

As to the budget of the courts, the Supreme Court, upon the resolution of the Judicial Conference, submits annual estimates of necessary expenditures directly to the Cabinet. In case the Cabinet does not concede, and reduces the estimates, the Court may request that the original estimates be restored. In this case, the Cabinet has to set out in the budget bill of revenues and expenditures, the full details of the matter and present it to the Diet for its deliberation.

(iv) Auxiliary machinery

In order to carry out these administrative affairs, the Supreme Court is equipped with such auxiliary machinery as the General Secretariat of the Supreme Court. Besides, the Supreme Court has the Legal Training and Research Institute, the Research and Training Institute for Court Clerks and the Research, Training Institute for Family Court Probation Officers and the Supreme Court Library as its affiliates.

The General Secretariat of the Supreme Court is an auxiliary office of the Supreme Court which renders services to the Judicial Conference, which functions as a decision-making organ of the Court in exercising the authority of judicial administration. The key staff of the General Secretariat may be selected from volunteers among the judges of the inferior courts.

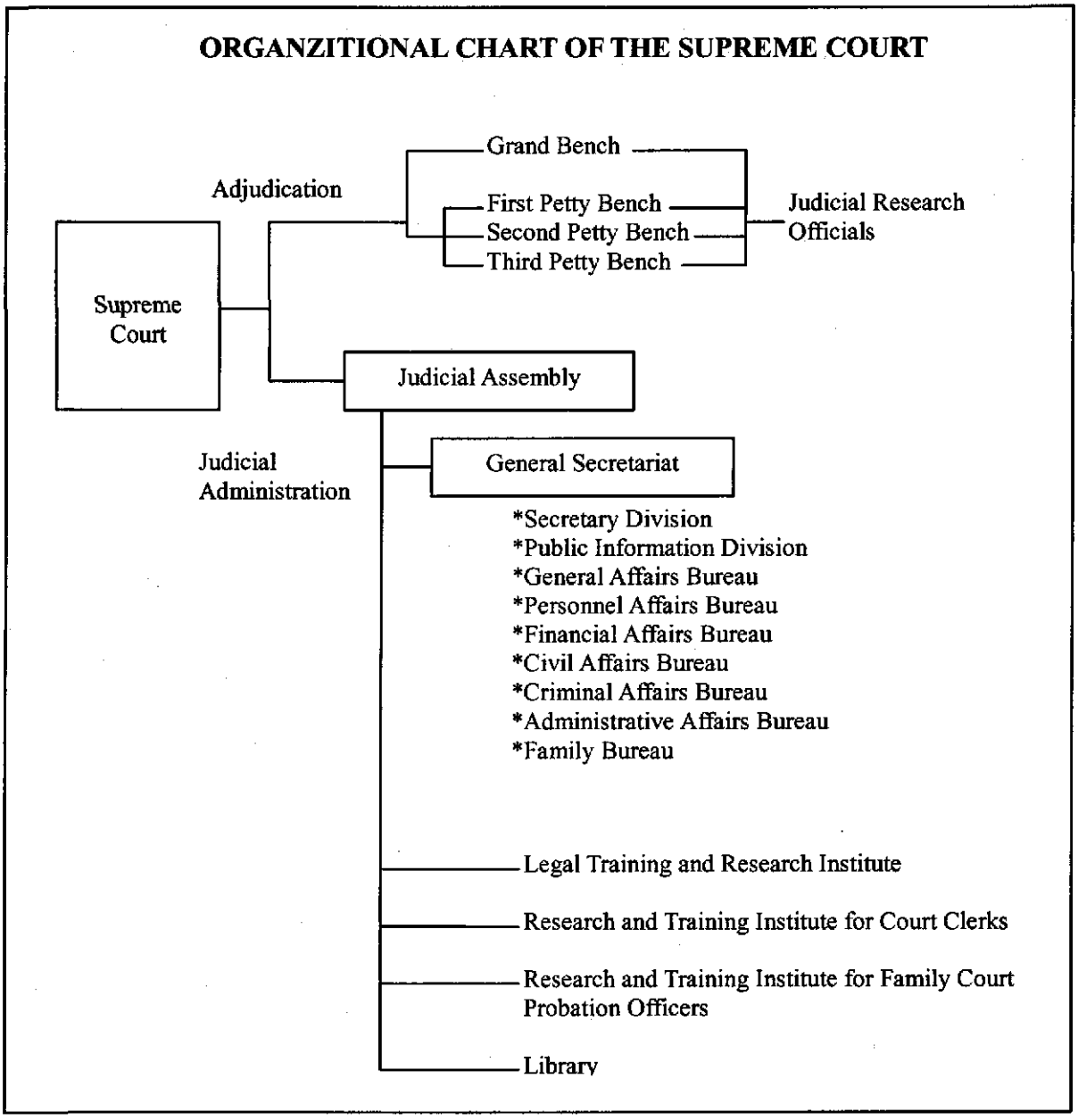
The Legal Training and Research Institute is an affiliate of the Supreme Court and provides practical training and instruction in the practice of law as well as in the theoretical aspects necessary for the legal profession (judges, public prosecutors and practicing attorneys) to the legal apprentices admitted by the Supreme Court from among those who have passed the National Law Examination. As a rule, a year and a half of training at the Institute is required to qualify to practice law. The Institute also provides advanced education for judges and assists their research programme on law and practices.

The Research and Training Institute for Court Clerks is an affiliate of the Supreme Court which trains court clerks and conducts research and education necessary for the performance of the duties of court clerks and court secretaries.

The Research and Training Institute for Family Court Probation Officers is an affiliate of the Supreme Court in charge of training the family court probation officers and conducting research and education necessary for the performance of their duties.

Thus, the Supreme Court administers the whole judicial system independently without any intervention by the executive and the legislative branches.

12 Rule-making power originates in common law countries, not in civil law countries. Japan modeled this system on the system of the United States.



E. Judicial Review of Constitutionality

Article 81 of the Constitution empowers the Supreme Court, as the court of last resort, to determine the constitutionality of any law, order, regulation or official act. All inferior courts can also determine constitutionality in the same way as the Supreme Court does. Through the exercise of this authority, the judiciary was expected to serve as the ultimate guardian of the rights and freedoms of the people and to maintain the legal order under the Constitution.

It should be noted that the courts could not exercise this power "in the abstract" as Constitutional Courts in Continental European countries, for example like Germany does. The courts only exercise this power in connection with its function to decide an actual case or controversy.[13] This system evidently reflects the influence of the system in the United States.

13 Supreme Court Judgment, 8 October 1952, 6 Minshu 783.

There are some observations that the Supreme Court has been too discreet in exercising this power[14]. The Final Report of the Justice System Reform Council discusses this issue as follows.

> *In the case of the system for reviewing the constitutionality of laws, if there are ways in which that system has not always functioned adequately, various backgrounds and circumstances may be thinkable as reasons for that. Among others, it may be pointed out that the Supreme Court, which is the court of last resort for exercising the power of constitutional review; must handle an extremely large number of appeals, so it may be difficult for that court to adopt a stance for dealing with constitutional questions. This is different, for example, from the situation of the U.S. Supreme Court. The following matters are worth considering: to what degree can the number of appeals be reduced and whether or not it is possible, by reviewing the relationship between the Grand Bench and the Petty Benches, to allow the Grand Bench to take the lead and devote its efforts to vital cases such as those involving constitutional questions. Also, there is probably room for further efforts with regard to the manner in which justices of the Supreme Court are appointed.*

IV. REFORM OF THE JUDGE SYSTEM

A. The Recommendations of the Justice System Reform Council

The members of the Justice System Reform Council were selected from among various fields of society, so as not to limit the discussion within the world of jurists[15]. The Council held over 60 meetings to discuss the issues thoroughly and heard opinions in society through various means such as holding public hearings and accepting opinions via the Internet. Therefore, the Final Report of the Justice System Reform Council is thought to reflect the opinions or feelings of the general public on the judiciary in Japan. There is no mention of corruption, which may imply that people think almost no judges in Japan are corrupt. On the other hand, the Final Report includes many recommendations concerning the judge system. This may imply people think there is something to be improved other than integrity regarding the current judges. Let us look through the Recommendations of the Final Report:

1. Diversification of the Sources of Supply

• In order to secure judges with abundant, diversified knowledge and experience, mechanisms should be established to ensure as a system that, in principle, all assistant judges gather diversified experience as legal professionals in positions other than the judiciary.

• The special assistant judge system should be phased out in stages and on a planned basis. For that purpose, as well as others, the number of judges should be increased and, so as to accomplish this, appointment of lawyers and others as judges should be promoted.

• In order to promote the appointment of lawyers and others as judges , the Supreme Court

14 There exist opinions: supporting establishing a Constitutional Court similar to the one in Germany and some other European countries. However, to establish such a Constitutional Court, would inevitablely require amendments to the Constitution.

15 A total of thirteen members were appointed of which six members had previous law practice experience or were law scholars and seven members were of academic standing in various fields.

and the Japan Federation of Bar Associations should make unified efforts and should establish continuous and effective measures, by building a constant framework and promoting consultation and collaboration.

2. Re-examination of Procedures for Appointment of Judges

• In order to reflect the views of the people in the process whereby the Supreme Court nominates those to be appointed as lower court judges, a body should be established in the Supreme Court, which, upon receiving consultations from the Supreme Court, selects appropriate candidates for nomination, and recommends the results of its consideration to the Supreme Court.

• Appropriate mechanisms should be established so that this body can make its selection of appropriate candidates meaningfully, based on sufficient and accurate information, such as, for example, establishing subsidiary bodies in each geographical region.

3. Re-examination of the Personnel System for Judges (Securing Transparency, Objectivity)

• With regard to the personnel evaluation of judges, appropriate mechanisms should be established for the purpose of securing transparency and objectivity as much as possible, by making clear and transparent who should be the evaluator and the standards for evaluation, by enriching and making clear the materials used in making the evaluation, and by disclosing the contents of the evaluation to the candidate and establishing appropriate complaint procedures in the event the candidate objects.

• Consideration should be given to what the appropriate system is for increases in compensation (raises) for judges, including possible consideration of simplification of the current compensation grades.

4. Popular Participation in the Management of the Courts

• Measures should be introduced to enable the views of the people to be reflected broadly in the management of the courts, such as reinforcing Family Court councils and newly establishing District Court bodies similar to such councils.

5. With Regard to How Supreme Court Justices Should be Appointed, etc.

• Paying due respect to the importance of the position of Supreme Court justices, appropriate measures should be considered to secure a transparent and objective process for their appointment.

• Studies should be made on measures to increase the effectiveness of the system for popular review of Supreme Court justices, such as by making efforts to reinforce the disclosure of information related to each individual justice subject to review so as to make it possible for the people to make substantive judgments.

6. Mutual Exchanges Among Legal Professions

• By promoting the mutual exchange of personnel among the legal professions (judges, public prosecutors, lawyers, and legal scholars), a justice system (legal profession) should

be built up that truly is able to meet the expectations and trust of the people.

One of the characteristic features of Japanese judges is its career system. The Court Organization Law anticipates that judges will be drawn from among a variety of sources including assistant judges, practicing lawyers and prosecutors. However, assistant judges have been the primary source of supply for judges in actual operation. The assistant judge system has merits in providing qualified and trained candidates for judges, by providing on-the job training in daily services in the judiciary, while one of the demerits is that most of them have experience only in the judiciary. Naturally judges sometimes face observations that they do not know about real life. In addition, the justice system which has less diversified ground may not cope well with various cases arising from a changing society.

One solution to this problem would be to appoint judges from among other legal professionals more and more. Although Japan has been trying to increase the number of appointments from among other legal professionals, however, the effort has not been successful so far. Then the Final Report recommends that all assistant judges should have experience other than the judiciary, and appointing judges from among other legal professionals should be strongly promoted by unified efforts of the organizations concerned.

The process by which the Supreme Court nominates candidates to be judges is not necessarily clear. In order to reflect the views of the people in this process and make this process more transparent, establishing a body in the Supreme Court is recommended by the Final Report.

The status of Japanese judges is strongly protected by the Constitution. However, Japanese judges are requested to move on a rotation basis. There exists an observation that the personnel evaluation that serves as the personnel management lacks transparency and objectivity. In order to strengthen the independence of judges establishing appropriate mechanisms is recommended by the Final Report.

The Final Report also recommends public participation in the nomination of judges and the personnel system of judges as well as the general management of the courts. Public participation is one of the most important suggestions in this Report to strengthen the judiciary by establishing a popular basis, as I will discuss later.

The Justices of the Supreme Court are appointed by the Cabinet (except the Chief Justice who is appointed by the Emperor as designated by the Cabinet). These are extremely important positions, but the processes for appointment and nomination are not necessarily transparent. Therefore, the Final Report recommends considering appropriate measures to secure a transparent and objective process for their appointment. The system of the Justice Appointment Consultation Commission was established in 1947, but later abolished in 1948, is also referred to in the Report[16].

In addition, the system for the so-called popular review of Supreme Court Justices has been observed as not working well. The Final Report recommends studying measures to increase the effectiveness of the system.

16 The reason to abolish this Commission was to clarify the responsibility of the Cabinet to appoint Justices. However, this reasoning has not been persuasive, and an attempt was made to introduce it later but this was unsuccessful.

V. ACCESS TO INFORMATION CONCERNING COURTS

Access to information concerning courts is essential for a transparent and accountable justice system. The Final Report recommends that disclosure and furnishing of information by the courts should be promoted. Information concerning courts is accessible through various ways.

A. Trial in Open Court

The Constitution stipulates that, "trials must be conducted and judgments must be declared publicly", and "in all criminal cases, the accused shall enjoy the right to a speedy and public trial". Exceptions to public trials are permitted under extremely strict conditions.

Taking memos into the courtroom by an observer was not allowed in principle in Japan, in order to avoid disturbance to the fair trial and to keep order in the courtroom. This practice was overturned by a Supreme Court precedent in 1989[17]. Since then taking memos in the courtroom is permitted in principle.

TV cameras are allowed, in general practice, for the very first few minutes of the trial before the defendant enters the courtroom. This practice aims mainly to harmonize the freedom of the press and the rights of defendants.

In 2000, a new law was enacted, which includes a provision to give the court legal grounds for giving priority to the victims in assigning observer's seats in the courtroom though this consideration was observed by most judges even before the enactment of this law.

B. Plain and Understandable Procedures and Judgments

Sometimes legal practitioners tend to rely on the same old procedure, which may be difficult for ordinary people to understand. In order to improve the transparency and accountability of the justice process, all legal practitioners should be encouraged to use plain words and explain the procedure to the people concerned as much as possible.

In recent years, judges in Japan have been consciously trying to improve and use plainer words in judgments. When Japan introduces the lay judge system, which will be discussed later in this paper, the procedure must be much plainer so that the lay judges can easily understand and fully participate in making judgments of the panel. Plain and clear procedures will also enhance public support for the justice system.

In Japan, Justices of the Supreme Court have to express their own opinions in every written decision[18]. However, judges on the panel in inferior courts are not allowed to express their own opinions[19]. Individual opinions will promote transparency and accountability of the judgments, while not expressing individual opinions in the judgment has some advantage to encourage each judge to express their opinions at the deliberation stage freely. In Japan, as far as a Supreme Court Judgment is concerned, the necessity of expressing individual opinions is

17 Supreme Court Judgment, 8 March 1989, 43 Minshu 89

18 Article 11 of the Court Organization Law stipulates, "The opinion of every judge shall be expressed in written decisions."

19 Article 75 of the Court Organization Law stipulates, "The deliberation of decisions in a collegiate court shall not take place in public.... Except as otherwise provided for in this law, strict secrecy shall be observed in respect of the proceedings of deliberation, the opinion of each judge and the number of opinions." This regulation is common in civil law countries.

thought to prevail over other interests, and this system has been functioning to make the Supreme Court accountable in deciding controversial issues.

C. Notification of the Judgment to the Victims, etc.

The people concerned in the case, especially the victims, etc. of the crime, are eager to know the decision of the court. However, the victims, etc. are not parties in the criminal trial or juvenile hearing procedure. Moreover, the juvenile hearings are held in camera. In order to improve accountability of the adjudication to the victims, Japan has made special efforts.

The Notification Programme to Victims etc. was launched in 1999 in the public prosecutors offices[20]. When the victims, etc. desire such notification, a public prosecutor has to inform them orally or in writing of the necessary information including the results of the judgment and sentencing.

Family Courts, which hear offences committed by juveniles were given legal grounds to notify the decision of the court to the victim, etc. of the offence by the Amendments to the Juvenile Law in 2000.

D. Examination and Copy of the Record of Trial

The records of trial are the most valuable documents for transparency and accountability of the justice process. The public can examine the records of criminal trials after the conclusion of the case, with some exceptions where other public interests prevail. On the other hand, the records of juvenile cases in Family Courts are not accessible to the public in consideration of the need to promote the sound upbringing of juveniles.

In 2000, a new law was enacted to make it possible for the victims, etc. of crimes to examine and copy the record of the criminal trial at the court even during the stage between the first date of trial and the conclusion of the case. In the same year amendments were made to the Juvenile Law to make it possible for the victims, etc. of crime to examine and copy the record of the juvenile case after the decision of the Family Court to hold a hearing.

E. Access to Legal Materials

(i) Statutes

In Japan, it is very easy to research legislation by consulting *Roppo*, the compendium of laws. Various versions of *Roppo* are published annually by private companies and governmental authorities. Some of them are a handy type, others are thick and comprehensive. Some of them annotate each article by citing summaries of court precedents. Each *Roppo* has an index, so that everyone can find the text without difficulty. *Roppo* is available at almost all bookstores throughout Japan.

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20 This programme promotes the transparency and accountability of the public prosecutor's decision. When the victims, a bereaved family or witnesses desire, a public prosecutor has to inform them orally or in writing of such information as 1) the disposition of the case (e.g. prosecution for the formal trial, prosecution for the summary proceedings, non-prosecution or referral to the family court), 2) in prosecuted cases, the name of the court and the date of the trial, 3) the result of the judgment, sentencing, whether to appeal to a higher court, 4) a summary of the prosecuted offences, the title and the summary of the non-prosecution, whether to detain, bail etc. Even before this programme came into force, a public prosecutor is obliged by the Code of Criminal Procedure to inform the reasons why the case was not prosecuted, on request of the complainant, accuser or claimant.

(ii) Judicial Precedents

The courts have compiled and published case reports for the Supreme Court and High Courts, containing information on decisions with presidential value. The courts also have compiled and published case reports for certain specialized fields such as intellectual property rights. In addition, some private companies publish law journals periodically.

In 1997 the Supreme Court established its own Internet home page, and at present the full text of recent major Supreme Court decisions, and the full text of decisions in intellectual property rights cases and so forth at inferior courts are promptly disclosed[21].

F. Public Participation

Public participation or community involvement in the justice process is of significant importance in increasing the transparency of the justice system and clarifying accountability. It is important not only from the democratic perspective, but also from the perspective that the system can only be effective when it is supported by public confidence and cooperation. This is why the Final Report recommends the promotion of public participation in every aspect of the justice process. I would like to discuss this issue further in the next chapter.

VI. PUBLIC PARTICIPATION IN THE JUSTICE PROCESS

The type and the extent of public participation in the justice system varies from country to country, and even within one country, it varies depending on the organization and procedure.

I would like to discuss this issue in the order of 1) civil and family cases, 2) juvenile cases, 3) criminal cases and 4) judicial administration. I will describe the current situation of public participation in each field in Japan, and then refer to the recent discussions on the enhancement of public participation in relation to the Final Report of the Justice System Reform Council.

A Participation of Laypersons in Judicial Proceedings in Civil and Family Cases

In Japan, some Laypersons who are selected by the court from among the general public take part in civil and family judicial proceedings as Conciliation Commissioners, Judicial Commissioners and Family Court Councilors.

1. Conciliation Commissioners

The Conciliation Committee of the District Courts, the Family Courts or the Summary Courts deals with various kinds of civil disputes as well as conflicts in family affairs. The Committee works to secure an amicable settlement of disputes by recommending mutual concession and compromise to both parties or persuading the parties to reconcile themselves to an appropriate compromise worked out by the committee.

The Committee is usually composed of one judge and two or more Conciliation Commissioners. Most Conciliation Commissioners are selected from citizens with broad knowledge and experience in the community. They play an important role in drawing up appropriate settlement proposals in line with the circumstances of the disputes, as well as in convincing the parties concerned to accept the proposals.

21 www.courts.go.jp

The total number of Conciliation Commissioners for civil disputes is approximately 12,000, and for conflicts in family affairs it is also approximately 12,000, including 5,400 who serve as both.

2. Judicial Commissioners (or Summary Court Councilors)

Judicial Commissioners may assist the Summary Court judge in effecting a compromise between the parties to a civil lawsuit in the Summary Court or attending a civil trial in the Summary Court to express their opinion to the judge in the case. Judicial Commissioners are specially selected from among the public, they number approximately 5,900.

3. Family Court Councilors

When the Family Court deals with such cases as guardianship for adults, change of name, support, and partition of estate, Family Court Councilors specially appointed from among the public by the court assist a judge in the determination process by offering their opinions to him/her. The total number of Family Court Councilors is approximately 6,000.

4. Introduction of an Expert Commissioner System, etc.

The Final Report recommends introduction of an expert commissioner system, as well as reinforcement of the above three systems.

The Report says "*While paying due regard to securing the neutrality and fairness of the courts in connection with matters such as the method of appointment and the manner of participation in proceedings, study should be given, according to the nature of the respective expertise involved, to how new systems should be introduced for participation in litigation procedures as expert commissioners, in which non-lawyer experts in each specialized field become involved in all or part of trials and support judges from the standpoint of their own specialized expertise.*"

Under the current law, there are no measures to utilize experts in legal proceedings other than the court-appointed experts witness system and the judicial research clerk system[22]. The Report is of the opinion that it is desirable to obtain the involvement of experts from an early stage of the proceedings in the case of litigation requiring specialized knowledge.

Some new ideas to involve experts in these proceedings were discussed in the Justice System Reform Council. One of the crucial points then was the neutrality and fairness of the experts. The Council came to the conclusion to recommend the introduction of an Expert Commissioner System with emphasis on paying due regard to securing the neutrality and fairness of the courts in matters such as the selection methods and the manner of their participation in proceedings.

22 Judicial research officials conduct research concerning the hearing or adjudication of a case under the instruction of the justices and judges in charge. Besides lawyers, experts on industrial property rights or taxes are appointed as judicial research officials, and they are assigned to courts of big cities such as Tokyo or Osaka.

B. Participation of Laypersons in Judicial Proceedings in Juvenile Cases - The Family Court has a Unique System of Public Participation in Juvenile Proceedings.

1. Attendant (Juvenile Friendship Association)

At the first opportunity, when a juvenile has no guardian or receives no proper support from his/her guardian, the Court selects a member of the public as an attendant, other than the lawyer attendant. The Court expects this attendant to take emotional care of the juvenile, assist him in finding a job or compensating the victims, and attend the hearing session. In practice there are public voluntary groups such as the "Juvenile Friendship Association" (*shounen-tomo-no-kai* in Japanese), that consist of those who are interested in the guidance and assistance of delinquent juveniles. The court often selects an attendant out of these groups.

2. Tentative Probationary Supervision (commitment of juvenile guidance and social service activities)

The second opportunity is when the judge places the juvenile under the tentative probationary supervision of the Family Court Probation Officer. This is one of the intermediate dispositions while the final disposition of the Court is held in suspension. During this period of supervision, the Family Court Probation Officer makes various educational approaches to the juveniles, utilizing the assistance and cooperation of the public. This is of two types.

One type is to commit the juvenile to a suitable institution, agency or individual for his/her guidance for a reasonable term. This system was utilized soon after the establishment of the Juvenile Law in 1948, and the institutions, agencies and individuals to which the juveniles are committed have devoted themselves to guide the juveniles, treating them as if they were a member of their family. This is especially effective for juveniles without a happy family life.

The other type is social service activities performed by juvenile offenders. This is different from the social service order that offenders are subject to in some countries. This is conducted not upon a court order but upon the recommendation of the court. Juveniles who are recommended to take part in social service activities, and consent to perform them, go several times to social welfare institutions, such as special nursing homes for the aged, with the assistance of members of the "Juvenile Friendship Associations". This is effective for juveniles who lack motivation and life experience. From the experience of nursing the aged, the juveniles are expected to reflect upon the delinquency they committed. From the close relationships they form with the staff in these institutions, watching them devotedly nurse the aged, etc., they are expected to raise their will to work.

C. Participation of Laypersons in Judicial Proceedings in Criminal Cases

Relatively speaking, the public has limited opportunities to participate in the criminal procedure in Japan. The jury and lay judge systems are typical examples of public participation in trials. However, in Japan, there are neither jury trials nor trials by lay judges. Rather, all cases are heard and tried by professional judges. Japan, in fact, enacted a Jury Trial Law in 1923. However, since the general public preferred trials by career judges to those by jury, this law was suspended in 1943. Therefore, no system exists in which laypersons can participate in fact-finding and sentencing procedures in criminal cases. Japan has only Committees for the Inquest into the

Prosecution system[23]which involve the general public at the prosecution stage.

The Recommendations of the Justice System Reform Council established the participation of laypersons in criminal trials to be one of the hottest issues currently, though this issue had long been discussed since the end of the Second World War, but had not been regarded as realizable by many people.

The systems vary throughout the world. Some countries such as India, the Philippines, Singapore, Thailand, Korea, Pakistan, Bangladesh, Israel, Turkey, Argentina, Indonesia and Japan do not have jury trials[24] nor a lay judge system[25]. Some countries such as Sri Lanka, Greece, the United Kingdom, the United States, Canada, Australia and New Zealand have jury trials. Some countries such as Malaysia, Italy, Germany, France and Finland have a lay judge system. Some countries such as Austria, Sweden, England, Denmark and Norway have both systems.

There are many arguments supporting jury trial and a lay judge system. It is unquestionable that the jury trial is a very democratic system. It is based on trust in the wisdom of common citizens to act as the conscience of the community. It makes the judicial procedure more transparent and accountable, and also helps speedy trials.

As for the lay judge system, similar merits have been pointed out, such as the democracy principle, the popular educative effect, and improvement of transparency and accountability. The participation of lay judges forces the professionals, including professional judges, to submit their argument to the critique of a non-jurist, and to deliver factual and legal deliberations in such a way that even a layperson would be able to follow them.

However, lots of practical problems for both systems have also been pointed out, such as the burden on ordinary citizens, the expensive and time consuming nature of the system, the limited right of appeal compared to the current Japanese system, the uncertainty of judgments, and so on.

During the discussion before and after the Final Report, the following are some of the points which have been examined:

- Evaluation of current trials by career judges
- Evaluation of public participation systems in other legal fields in Japan
- Evaluation of the systems and practices in foreign countries
- Evaluation of the failure of the jury system which Japan had before the Second World War

23 This system aims to act as a check on the discretionary exercise of prosecuting authority. The committee, composed of 11 ordinary citizens randomly selected from among the same voters who elect members of the House of Representatives, reviews a public prosecutor's determination not to institute prosecution, either upon application of complainants or ex officio. If the committee considers the determination unjustified, it may recommend instituting the prosecution to the chief prosecutor. However, this recommendation does not bind the prosecutor.

24 A typical jury trial is as follows. A trial jury is entrusted with deciding whether or not the defendant is guilty of the crime charged. Jurors are selected from members of the public on a case by case basis. They perform jury service as a civil duty. Jurors are given no special training in law to prepare them for their important task, but these diverse citizens are expected to sit together in the courtroom at public trials and listen carefully to the evidence the judge permits to be presented. Under the guidance of the judge, who explains the governing law, the jury determines the facts and reaches a decision (verdict) of either guilty or not guilty.

25 There are a variety of lay judge systems. For example, in Germany, one or three professional judges sit together with two lay judges. The lay judges practice their judicial function in an honorary capacity. By cooperating in court decisions like this, the lay judge has the same rights as the professional judge in principle. In other words, the lay judge has the same voting power as the professional judge. The lay judge has to co-decide on the facts and circumstances of the case, as well as in the application of the law. The lay judges are not necessarily selected, but rather appointed. The term of a lay judge is four years.

- Burdens on jurors or ordinary citizens
- Ways of selecting jurors / lay judges (random sampling, appointment)
- Number of jurors / lay judges and the method of deciding the verdict
- Matters in which laypersons participate in deciding (fact, law, sentencing)
- Applicable cases (serious cases, minor cases, contested cases, non-contested cases)
- Defendant's right to refuse the new procedure
- Cost (time and budget)
- Suitability to find the truth or the detailed facts
- Capability to deal with very complicated cases
- Possibility to be subject to sentimental reactions
- Necessity to set out the reason of fact finding in the judgment
- Effects on the appellate system
- Necessity to regulate the mass media
- Capacity of practicing lawyers to attend trials over consecutive days

The proposed system by the Final Report is an original one mixed with elements of various systems and relatively, closer to the lay judge system in Continental Europe:

A. A new system should be introduced in criminal proceedings, enabling the broad general public to cooperate with judges by sharing responsibilities, and to participate autonomously and meaningfully in deciding the outcome of trials.

B. Judges and *saiban-in* should deliberate and make decisions both on guilt and on the sentence together. In the deliberations, *saiban-in* should possess generally equivalent authority to that of judges; and in the hearing process, *saiban-in* should possess appropriate authority including the authority to question witnesses.

C. The number of judges and *saiban-in* on one judicial panel and the method of deciding the verdict should be determined appropriately, giving consideration to the need to ensure the autonomous and meaningful participation of *saiban-in* and the need to ensure the effectiveness of deliberations, and also taking into account the seriousness of the cases to which this system will apply and the significance and potential burden of the system on the general public.

D. However, a minimum requirement should be that a decision adverse to a defendant cannot be made on the basis of a majority of either the judges or the *saiban-in* alone.

E. With regard to the selection of *saiban-in*, the selection pool should be made up of persons randomly selected from among eligible voters, and further appropriate mechanisms should be established to ensure a fair trial by an impartial court. *Saiban-in* should be selected for each specific case and should serve for the entire case up to the final judgment.

F. *Saiban-in* candidates who have received a summons from the court should accept their duty to appear.

G. Applicable cases should be cases of a serious nature to which heavy statutory penalties attach.

H. No distinction should be made based on whether the defendant admits or denies the

charge.

I. Defendants should not be allowed to refuse trial by a judicial panel composed of judges and *saiban-in*.

J. Various efforts should be made in connection with the administration of trial procedures and, as necessary, the relevant laws should be modified, so as to ensure autonomous and meaningful participation by *saiban-in*.

K. The contents of judgments should fundamentally be structured in the same way as those for trials by judges alone.

L. Litigants should be allowed to appeal (*koso*) on the grounds of an error in fact finding or on the grounds of an improper sentence.

D. Other Public Participation in the Justice System

The Final Report recommends public participation in the management of the courts as well as nomination of judges by the Supreme Court as mentioned previously.

Currently, a Family Court Council is established at each Family Court, which is to express its views with respect to the entire range of management of the Family Court. The members of this Council are selected from people outside the three branches of the legal profession. The Final Report recommends that measures should be introduced to enable the views of the people to be reflected broadly in the management of the courts, such as by reinforcing the Family Court Council system and newly establishing District Courts bodies similar to the Family Court Councils. The Report also recommends similar mechanisms to the public prosecutors offices and the bar associations.

VII. SPEEDING UP JUSTICE

If a judgment is rendered after a lapse of many years from the commencement of the case, people would be disappointed in the justice system. In this case, the court cannot insist that it is really accountable.

The Final Report says "*What the people expect from the justice system is, in a word, a system that is more accessible and easier to use; proper; prompt as well as effective judicial redress in response to various needs; and the execution of accurate, proper and prompt apprehension and punishment of offenders through fair procedures so that people can live safely.*"

Generally speaking, the duration of proceedings in civil and criminal procedures on the whole has been decreasing. For instance, the average duration of proceedings for all first instance civil cases at district courts is 8.5 months (as of 2001), and that of proceedings for all first instance criminal cases at district courts is 3.3 months (as of 2001).

Average Duration of Proceedings for All First Instance Cases at District Courts		
Year	Civil cases	Criminal cases
1960	12.6	5.5
1965	12.1	5.7
1970	12.8	6.4
1975	16.3	6.3
1980	12.8	4.4
1985	12.4	3.4
1990	12.9	3.5
1995	10.1	3.3
2000	8.8	3.2
2001	8.5	3.3

However, it cannot be denied that there are some cases in which trials in the first instance alone take a considerably long period of time. The Report includes many recommendations concerning both civil and criminal procedures. Among them are as follows:

Reinforcement and Speeding Up of Civil Justice

A. The following measures should be carried out, aiming to reduce the duration of proceedings for civil cases by about half:

- In principle, for all cases, conferences to establish a proceeding plan should be made compulsory, and planned proceedings should be further promoted.

- Methods for the parties concerned to collect evidence at an early stage, including the period before instituting a suit, should be expanded

In addition to these, the Report includes specific recommendations for the improvement of the handling of cases requiring specialized knowledge, cases relating to intellectual property rights, labor-related cases, and so forth.

Reinforcement and Speeding Up of Criminal Trials

A. The following new preparatory procedures should be introduced:

- A new preparatory procedure presided over by the court should be introduced in order to sort out the contested issues and to establish a clear plan for the proceedings in advance of the first trial date.

- To achieve the thorough ordering and clarification of the contested issues, it is necessary to expand the disclosure of evidence. For that purpose, rules regarding the timing and the scope of the disclosure of evidence should be clearly set forth by law, and a framework that enables the courts to judge, as necessary, the need for the disclosure of evidence should be introduced as part of the new preparatory procedure.

B. Trials should in principle be held over consecutive days, and necessary measures should be taken in order to secure the realization of this principle.
C. Consideration should be given to how the related systems should be so as to realize the principles of directness and orality.
D. Consideration should be given to concrete measures that secure the effectiveness of trial direction by the courts in order that trials are managed in a thorough and smooth manner.
E. A system should be established that enables defense counsel to concentrate on individual criminal cases, including the establishment of the public criminal defense system; and at the same time, the human base of the courts and the public prosecutors offices should be enriched and strengthened.

In addition to these, the Report recommends expansion of the legal profession, which will contribute to speeding up of both civil and criminal justice.

VIII. CONCLUSION

As one branch of power in a democratic state, the judiciary must be supported by the public, with the consequence that it must be transparent and accountable. On the other hand, the judiciary must be independent and protected from interference in order to realize the rule of law in the state. As I pointed out in the first chapter, independence and transparency/ accountability sometimes have a contradictory nature.

In Japanese history, the courts first struggle was to establish independence by protecting the judiciary from interference from outside, seen in such cases as the *Otsu* case and the *Urawa* case. This effort can be characterized as establishment of "passive independence."

Now powers are required to be transparent and accountable more and more in a changing society. The courts are no exception. Japan has endeavored to promote transparency and accountability in various ways. The Final Report of the Justice System Reform Council, having appreciated these efforts, pointed out that these efforts were not enough to meet the needs of the 21st century and recommended many reforms, such as the reform of the system of judges, promoting public participation in every sphere of the justice process including introducing lay judges in criminal proceedings, speeding up justice, and expansion of the legal profession.

The philosophy in accommodating the principles of independence and transparency/accountability, in my view, should be to establish "positive independence" of the judiciary. The courts should have a more popular base by being more transparent and accountable. The courts with a firm popular base can be really independent from any interference. Independence, transparency, accountability as well as integrity must be pursued at the same time.

I hope the Japanese experience provides some useful information.

SUPREME COURT REFORM AND JUDICIAL INDEPENDENCE

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I. INTRODUCTION

From the normative point of view, the independence of judicial authority is assured. Before the constitution was amended, their independence was clearly stated in article 24 and 25. Soon after this the third amendment was integrated into the body of the constitution, along with the rules which manage judicial power and clarify and approve the freedom of the judicial authority.

However, some normative rules do not always meet the reality. There is a gap between '*das sollen*' and '*das sein*'. Experiences during the old and new order showed the limit of judicial power and judges. It happened because the government had influence over the administration, the organization, the manpower, and the finance of the judicial institution.

The reform that has been going on for almost five years has produced basic steps to return the state administration to the principle of democracy and a law-based country. One of the main pillars that helps guarantee a democratic country is the freedom of judicial authority.

In an effort to eliminate government interference with judicial power, an act was passed; Act No.35 of 1999. The Act is supposed to eradicate the government's influence on judicial power. However, the Act has not been implemented and the government still has authority over the judiciary.

Reform has added greatly to the freedom of judicial authority and the judges. The government and the apparatus do not interfere in the function of the judicature any longer. Although there are some comments, that can be categorized as intervention, they do not influence the judge's freedom. But, it does not mean judicial power is totally independent. Even though judicial authority is free from government or other state organs' interference, judicial power is never free from new pressures such as public pressure. This has come in the form of comments on the judicial process or on judge's decisions. These comments often make the officers annoyed especially comments regarding the work overload. In some areas, the judicial process could not function because of demonstrators asking the court to accede to their demands. The demonstrations were also, often followed by the destruction of the offices and equipment. Another pressure is in the execution process; by the mob with its threats of violence, there were some efforts to disturb the execution process.

It should be admitted that the pressure was due to their disappointment in the judicial authority. The judicial authority was accused of arbitrating a party, motivated by corruption, collusion, and nepotism and other immoral actions. On the other hand, public comments regarding the judicature came out because of the misuse of freedom, egoism (selfishness), or the feeling of being untouchable because they were part of the political elite.

Such conditions are of course not conducive to establishing the independence of judicial power in a democratic and law-based society. The problem is not just the corrupt spirit of the

judges, but also the corrupt spirit of the public itself. Restructuring of the judicature will only work in the same way as social reform to make the society transparent and responsible to a law abiding society.

II. RESTRUCTURING OF THE JUDICATURE AND DEMOCRACY

Restructuring of the judicature is commonly connected to the reform of the legal-settlement system. Some think that judicial reform is a pre-condition to the establishment of law-supremacy or law reform in general. It is accepted that the judiciary has an important role in setting up the supremacy of law. But, there is a pre-condition: This condition is the existence of democracy (in the social and political arena). The feudal social system and authoritarian political system do not give any chance for the institution to operate correctly because a healthy judicature only works within freedom and openness.

III. RESTRUCTURING OF THE JUDICATURE AND THE LAW

The Judicature is only one part of a legal system. Restructuring will be meaningful only if followed by the reform of other parts of the legal system, this covers:

A. Restructuring of Legal Education

Legal education is the resource of the judicial apparatus. The quality of the officers in the first level is determined by the graduates. Besides preparing human resources, legal education also produces concepts and theories of law that will assist the judicature to understand everything about the application of the law.

B. Restructuring of Legal Settlements

Outside of the judicature, there are some related boards such as immigration, the customs office, and correctional institutions. The legal settlements and service performed by the judicial authority sometimes reflects on the supremacy of the law itself.

C. Restructuring of Lawyers

One of the important pillars to maintain the supremacy of law are the lawyers. Problems concerning the integrity of the officers often comes up from the interaction between lawyers and judicial officers. Rules are needed which regulate lawyers to perform their functions.

D. Restructuring of the Bureaucracy

Bureaucracy is one of the trouble makers for the judicature since it is the medium of corruption, collusion, and nepotism. A clean bureaucracy will reduce the court's work and other bad effects such as bribery.

E. Restructuring of the Political Parties (Infra and Supra-Structure)

Besides the function of political parties as the spokesman of freedom and supervision, they should become the mirror of a healthy and responsible political scheme. Political parties should be clean and free from corruption, collusion, and nepotism, or other disabilities.

F. Restructuring the Rule of Law

The problems faced are not only the product of a colonial era. Even though the new rules are not completed, are not in good harmony, are unclear, and contradictory, it should not cause any problem. Such regulation will affect the process and the quality of the court's decisions. Judges are often forced to perform their acrobatic acts because of the bad or imperfect regulations.

G. The Process of the Judicature and an Integrated Criminal Justice System

Boxes of *Kuhap* often invite trouble in maximizing the court process in criminal cases. The process of the independence of each judicial institution often makes problems for an integrated criminal justice system. To build up the system, a regulation is needed on the interaction among the elements of the judicial institutions. For the judicial process, integrity is very important to avoid the presumption that the court is releasing suspects. There must be consciousness that every problem always determines the other process. The boxes of *Kuhap* must be flexible to harmonize the investigation, the tribunal before the court, the decision, and the process of correction.

H. The Process of Adjudication

It is a fact that only some offenders are taken to court. Only a limited number of thieves are caught and arrested. Some cases can be solved outside the court room. However, most cases remain unsolved because investigation is a long and expensive process. To figure out the solutions to these legal matters, it is important to help the public to get justice and ensure their rights are upheld. Therefore, it is necessary to build up the legal aid organization. Besides that, it is also important to arrange alternative resolution such as mediation.

IV. THE REFORM ASPECT OF THE SUPREME COURT

Obstacles in dealing with judicial power cover public perception, resource limitations, data and information limitations, medium and infrastructure, and the lack of implementation of Act No.35 of 1999. Trust and conviction toward the justice system in Indonesia has decreased because of slow problem solving, the perception of collusion, corruption, and nepotism, and the limited access to the justice service. Besides, there have been piles of cases caused by several factors such as the limit of resources, no limitation of in-coming cases, the shortage of professional judges, bad management systems, ineffective administration control and a lack of resources to respond to situations effectively, and also public awareness.

In the past, the Judicature was a part of the executive that worked to secure the authority's and the officers interest. So, the functions of the judicature did not work optimally. It had no freedom and independence to manage either internal or institutional affairs. Such problems were made worse by some of the judges who had no ethics, morality, integrity, and capability in distributing justice. As a consequence, the principle of law and justice in the society were pushed away, and worsened by corruption and collusion in the judicature.

In addition, the management and information systems of the judicature were not sufficient. The people were frequently complaining about the difficulty of searching for sentences issued by the court and too slow case management. Moreover, the capability of the judges was so apprehensive that arguments made did not meet the party's needs.

The Supreme Court as a state organ has the authority of dispensing justice as the highest state court over all the other judicial boards. In performing these duties, the Supreme Court is free from government intervention and other parties, and carries out the highest level of control on the practice of the judicature in the society. In meeting the people's desires and satisfaction, the Supreme Court needs to reform the institution.

A. Reducing Incoming Cases

As the highest state court, the Supreme Court is a cessation court, and its function is to keep up the uniform application of the law through the cessation court decisions and review case decisions on civil, criminal, military, religious, and administrative matters. Also, the Supreme Court works to make sure that all rules and acts in all parts of this country are applied fairly, accurately, and appropriately.

However, many cases have not been handled yet because there is no rule available to limit the cessation to the Supreme Court and the shortage of judges. As a first step towards accelerating the process of case management, previously once a case was received, checked, and decided by the court, there were 27 steps, now this has been simplified into 10 steps. Whereas, to reduce the duties of the Supreme Court from the in-coming cases, rules have been made such as requests for cessation cases which do not meet formal requirements. Also the Circular Letter of the Supreme Court on the empowerment of the first instance court to set up negotiation, and cases that are related to the *ne bis in idem* principle.

Besides that, a Decision Letter was released by the Chief Justice in regard to: cases that attract people's attention; priority to cases that fulfill some requirements; and a target of clearing as many as 10,000 cases in 2002. As an alternative the Supreme Court also supports judges to use problem solving out of the court through court connected ADR.

Concrete measures have been taken such as providing funds for crash programs for case handling, activating working overtime, case management programs (*Operasi Kikis Berkas Perkara*), proposing candidates for appointment as justices of the Supreme Court to replace retired or deceased judges, and activating periodic coordination meetings.

B. Management Effort

As regards aspects that are not regulated by the constitution, the Supreme Court released a decision to support the practice of the judicature taking responsibility for this. It is made to guarantee the laws certainty. The determinations made are such as a request for cessation cases that do not meet the requirements and class action rules. And by Circular Letter of the Supreme Court on the empowerment of the first instance court to set up negotiations, the process of delivering corruption cases to a higher level, cases that are related to the *ne bis in idem* principle, and to publish books on legal administration.

To develop human resources with a high level of integrity, the Chief Justice established a working group on a Code of Conduct to produce guidelines for the behavior of the judicial apparatus, so they can give justice to the people. The Supreme Court creates the application of the Integrated Judiciary System with other judicial apparatus in setting up the laws supremacy in Indonesia. Therefore, it has a policy of forming work groups with judicial institutions and related boards such as the House, the Police, the Attorney General, academics and lawyer's organizations. The result achieved is a set of common principles that have become the minimum standards to

run an Integrated Judiciary System. It is then used as a proposal to arrange the draft law on the Integrated Judiciary System. From the administration's point of view, the Supreme Court as a state organ has not been able to perform the function independently because organization, administration, and finances of judicial boards (public courts, religious courts, military tribunals, and administrative courts), are still managed by the related departments. Thus, administrative efforts that have been performed just gave consideration to promote a class of court and the formation of a new court.

C. Public Supervision and Access to Justice

In principle supervision is carried out by the Supreme Court. The role of the appeal court is to operate as the guardian (*voorpost*) of the Supreme Court. The method used is by inspection, and asking for periodic or special reports. In developing human resources, there is a Deputy Chief Justice and assistant for supervision.

To anticipate public reaction to any decision made by the Supreme Court and the lower courts, a clarifying team has been formed to check whether there is the possibility of bribery and to analyze whether a decision made is appropriate by law. In addition, the development of an information network system of the Supreme Court is in progress to create transparency and to give better service to the people. In the long term, this system is going to be on line to all courts in the whole country.

D. Human Resource Development

To reform the institution, the Supreme Court needs to be supported by qualified human resources through education and training such as the study of administration and management. A comparative study is also required to research judicial technique either here or overseas. In financial management, a study has been done on the government of Semarang, and overseas in cooperation with the Federal Court of Australia and other donor institutions.

Studies have also been made on: the Judicial Commission Board in the Netherlands, information technology and overcoming the backlog of cases in India; combating corruption in Japan; class action suits in the US and Australia, and to Australia for environmental law and the administration of court management.

Research has been done on contempt of court and class action topics, in order to anticipate connected in-coming cases. Research has been performed to make a blueprint of the Supreme Court by a special comparative study at the Philippine Supreme Court. It also made preparations to make a draft of the Judicial Commission and research on Court Connected ADR.

V. ASPECTS OF COOPERATION WITH OTHER JUDICIAL APPARATUS

The creation of judicial independence is not only the judge's responsibility. In performing his duties, the judge can be easily influenced by extra-judicial matters. So many cases in setting up the laws supremacy involve executors, judges, police and lawyers. Each role in running the code of conduct is an integrated part in creating an independent judicial authority. Unhealthy conditions will go against the public's desire for justice. Like the judicature board, the Supreme Court supervises the notaries and lawyers. In the development, lawyer organizations get involved in handling things connected to their members, including recruitment and registration for the lawyers' practical test.

VI. SUMMARY

From the explanation above, it can be seen that the public demand the supremacy of the law and that qualified court decisions are expected to come from the Supreme Court. Independence is the first requirement to show fairness in making judicial decision. Support from the state administration secures the independence of judicial power, the Supreme Court is supposed to implement the reform. In performing the task, the Supreme Court is assisted by other apparatus.

It is also expected that judicial power be separated from other state organs. Structural improvement through political will and the state administrator also needs support from any existing possibility to change the paradigm of political actors to the independence of the court. The professional role of judges needs to be established by making them free from other influences. It is also important to keep up the press' freedom and social control from the people as an integrated part of judicial independence.

Therefore, the Supreme Court is required to make policy and strategy to achieve the operational target. Judicial Independence in the management system of administration, includes preparation to take over the organization, administration and finance handled centrally by the Supreme Court as the first step to a good and credible judicial system. It is to establish the independence of the judges in creating a qualified judicature. The Supreme Court should be fully responsible and transparent to the public, so that it can judge cases appropriately and professionally and base its decisions on justice and fairness.

JUDICIAL REFORM[1]: PROSPECTS AND CHALLENGES OF THE JUDICIARY SYSTEM IN INDONESIA

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It's been thirty-five years since its Independence, but the struggle of the judiciary in Indonesia, and its legal reform has not been a successful one. During the 1950's political turmoils, some prominent judges of the Supreme Court and the Attorney General made tremendous efforts to try to uphold their independence, but it ended with grievencies.[3] And since then, we have not seen any success in combating corruption in the judiciary system.

The issue of independence within the judiciary has long been debated since the Suharto era, and now new issues have been added such as transparency, accountability, and public access to equal justice.[4] I believe that our CJS[5] in general and particularly, our judiciary system, faces many problems ahead because of many factors such as, lack of qualified judges, prosecutors, and the police. This is due to the recruitment process; low renumeration which is related to state budget; and a lack of commitment and leadership among criminal justice officials; and corruption within court practices involving some lawyers, most of whom are not being prosecuted. And I believe there are other factors that I cannot reveal in detail here.

Among those factors mentioned, the recruitment process of judiciary personnel is of prime importance and it should be considered the root of the problem. Recruitment has been carried out annually based on general rules of recruitment for the civil service. My opinion is that the recruitment for the CJS officials should be handled differently from that of the civil service. It should be based on certain qualifications such as legal background and a strong commitment to uphold legal certainty and justice, and to promote and protect human rights. Selection based on a quantity approach should be substituted by a quality approach.

To prevent further deterioration of such recruitment I suggest the staff development strategy should be changed totally and must define clear criteria for selection, which should be carried out consistently and without any corrupt practices.

The second factor that should be a priority is how to prevent corrupt practices within the

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1 By "Judicial Reform", I mean, the problems, challenges, and prospects within the context of the Criminal Justice System so as to need to be reformed. "Criminal Justice System" has four interrelated components: the police, public prosecutors, judges, and correctional officials. "Judiciary system" means the mechanism and procedure of investigation, prosecution, trial, and the execution of the Court's decision which intermingle between the police, prosecutors, judges, and the correctional officers

3 I recalled the tragedy of Mr. Suprapto, the then Attorney General in the 1950's who had a strong commitment of combating corruption but he had to sacrifice his right hand because of a well-planned traffic accident.

4 Debate about "judicial independence" and "judicial responsibility" has been published (1985) with a very comprehensive analysis and has been supported by distinguished scholars, such as Mauro Cappeleti (Italian), edited by Shimon Shetreet and Jules Deschenes. Cappeleti, in his paper acknowledges three models or types of judicial responsibility. These models or types are: the repressive model or dependent model; the corporative-autonomous model or separate model, and the responsive or Consumer-Oriented model. The first model basically referred to as "political-accountability", which places the judiciary and or judges in a position of subservience. It means that the judiciary or judges are accountable to the political branches, and especially to the executive. The second model is the exact opposite of the first. It represents the other extreme, i. e. "the absolutization of the independence" by making the judiciary *totally* insulated from the government and society. The third model, then, referred to as "the compromised model" which combines a reasonable degree of political and societal responsibility with a reasonable degree of legal responsibility, without, however, either *subordinating* the judges to the political branches, to political parties, and to other societal organizations, or exposing them to the vexatious suits of irritated litigants.

5 CJS stands for Criminal Justice System.

CJS. Corrupt practices have been increasing without any action or deterrent effect whatsoever. This raises strong reactions from the people of this country, especially, from lawyers and people from the business sectors of foreign countries. The government has promulgated law number 28, 1999, concerned with the registration of the wealth of government officials, and has revised law number 31, 1999 by law number 20, 2001 concerned with combating corruption. The government has also promulgated Law number 20, 2002 concerning the crime of money laundering to deter and to punish those in the private sector who have committed money laundering which indirectly could prevent further corrupt practices within the private sector.

In my observation, the efforts of combating corruption within the public sector as well as the private sector has been in vain. Combating corruption especially within the court practices in Indonesia, faces many obstacles such as interference from some members of the legislative branch as well as from the executive branch. And, yet, the problems have become worse since the on-going "trial by the press"; this has a negative effect upon the Judges' integrity as well as the trial process itself. It seems unclear, whether such conduct could be deemed as "obstruction of justice" or it might be categorized as "character-assassination".

Based on such a situation, the solution seems closer to Cappeleti's third model of judicial responsibility (see footnote 4). Taking Cappeleti's model of judicial responsibility, I suggest, the "Autonomous Model or Separation Model", is the right choice. Obviously, the court administration should be integrated into the Supreme Court of Justices' administration as it has been stipulated in Law number 35, 1999.[6]

However, from the macro-perspective of judicial reform in combating corruption, eventually we need a comprehensive national plan of action which should be supported by a high-tech infrastructure. The high-tech infrastructure will control and monitor the flow of cases of corruption, beginning with the police office, the Attorney General's office up to the Secretariat General of the Supreme Court of Justice.

Nowadays, a grand design system of monitoring and controlling the flow of cases from the district court in Kota/Kabupaten up to the Supreme Court is obvious so as to prevent corruption, collusion or nepotism within the CJS.

The same design is very urgent for the Police' office and the Attorney General's Office. The above mentioned proposal actually introduces *management by system* as opposed to *management by order*. This approach, I think, is the sole answer to Cappeleti's question, "Who watches the Watchmen?" And, the design should be made sectorally or integrated and a comprehensive approach adopted.[7] However, we still need an independent institution to control and monitor these CJS agencies such as a Judicial Commission.

The next step that has to be taken is the training of the CJS personnel for the purpose of introducing new technology and enhancing their skill in operating it. Therefore, the government needs technical assistance from donor countries in the implementation of the new system of monitoring and control within the CJS.

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6 Under Law number 35, 1999 which revokes Law number 14, 1970, the court administration should be integrated into the Supreme Court administration within 2 (two years) from promulgation. But, after two years the integration has still not been concluded.

7 Sectorally means each agency such as the head of the police office, Attorney General's office, the secretariat general of the SC office, and the Directorate General of Prisons, make each design comply to their legal regulations. The integrated and comprehensive approach means, one national system monitoring and controlling the operation of all the agencies tasks involved in CJS.

Above all, the elements of the nation (politicians, bureaucrats, president and ministers, and society) should have one vision and mission in combating corruption and beyond. There is an urgent need to survive from the current crisis of trust as well as the need to recover from the economic crisis. Even though it seems that the legal system and law enforcement are desperate, their future prospects are not hopeless.