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BUILDING CLINICAL LEGAL EDUCATION PROGRAMS IN A  
COUNTRY WITHOUT A TRADITION OF GRADUATE  
PROFESSIONAL LEGAL EDUCATION:  
JAPAN EDUCATIONAL REFORM AS A CASE STUDY

by

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INTRODUCTION

Until 2004, Japan did not have a system of graduate professional legal education. But professional law schools and clinical legal education have now arrived, part of far-reaching reforms of Japanese legal institutions. These reforms follow the 2001 recommendations of the government-created Justice System Reform Council,<sup>1</sup> and respond to major societal factors, including

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<sup>1</sup> The Japanese government created the Justice System Reform Council under the Cabinet of the Prime Minister of Japan in 1999

for the purposes of “clarifying the role to be played by justice in Japanese society in the 21st century and examining and deliberating fundamental measures necessary for the realization of a justice system that is easy for the people to utilize, participation by the people in the justice system, achievement of a legal profession as it should be and strengthening the functions thereof, and other reforms of the justice system, as well as improvements in the infrastructure of that system.”

*Recommendations of the Justice System Reform Council – For a Justice System to Support Japan in the 21st Century – at*  
<http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html> (last visited

globalization,<sup>2</sup> the collapse of the “bubble economy,”<sup>3</sup> and increasing demands for both domestic and international legal services in Japan.<sup>4</sup> Among its many recommendations, the Justice System Reform Council called for a complete overhaul of the system of legal education in Japan, creating new “professional” law schools that would “bridge . . . theoretical education and practical education,”<sup>5</sup> and provide law students with the opportunity to acquire the specialized legal knowledge, lawyering skills, and professional values “necessary for solving actual legal problems.”<sup>6</sup> Sixty-eight new Japanese professional law schools opened their doors in April 2004.<sup>7</sup> They are largely based on the graduate professional law school model in the United States.

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June 3, 2005) (quoting Article 2, Paragraph 1 of the Law concerning Establishment of the Justice System Reform Council) [hereinafter *Justice System Reform Recommendations*]. Part of the reforms began before the Council’s recommendations were made public in 2001.

<sup>2</sup> See Takao Suami, *Clinical Legal Education and the Foundation of Japanese Law Schools in the Context of Judicial System Reform* 1 (April 15, 2005) (unpublished manuscript, on file with authors).

<sup>3</sup> See Robert F. Grondine, *An International Perspective on Japan’s New Legal Education System*, 2 *ASIAN-PACIFIC L. & POL’Y J.* 1, 1 (2001).

<sup>4</sup> See *id.* Much of the pressure on the Japanese government to increase the number of and training for attorneys has come from Japanese corporations doing business in the United States. See Koichiro Fujikura, *Reform of Legal Education in Japan: The Creation of Law Schools Without a Professional Sense of Mission*, 75 *TULANE L. REV.* 941, 943 (2001). The corporations have found that few Japanese attorneys have been able to compete with American lawyers when litigation arises, and the firms have been unhappy with the high legal fees they have had to pay when they have engaged U.S. lawyers. See *id.*

<sup>5</sup> *Justice System Reform Recommendations*, *supra* note 1, at ch. III, pt. 2.

<sup>6</sup> *Id.*

<sup>7</sup> See *New Law Schools Struggling to Fill Space*, *DAILY YOMIURI*, April 16, 2004, at 4. In July of 2003, the Ministry of Education received seventy-two applications seeking approval to open the new U.S.-style graduate law schools. Fifty of the applications were for private law schools, twenty were for state-run law schools, and two were for law schools to be run by local governments. See *72 New Law Schools Eyed in Reform Drive*, *ASAHI SHIMBUN*, July 2, 2003. Although the Justice System Reform Council had recommended that the new law schools should be distributed throughout the country, the applications were concentrated in major cities, including twenty-five in Tokyo, and there were no applications for twenty-four of Japan’s forty-seven prefectures, or districts. See *id.* The Ministry of Education initially approved sixty-six of the applications, denied four for failing to meet standards, and postponed decisions on two. See

This Article examines the roles of the new professional law schools—and, particularly, clinical legal education within those law schools—as essential components of the overall justice system reforms in Japan.<sup>8</sup> Japan’s efforts are very significant within and without Japan, and other nations are watching with interest. South Korea, for example, is now considering establishing professional law schools<sup>9</sup> and delegations from South Korea have already visited Japan. We treat Japan’s experience as a case study of the issues and challenges in instituting clinical legal education programs in a country that has not previously had professional graduate legal education (much less professional legal education that includes instruction in lawyering skills and professional values). We seek to identify the types of issues that emerge as more countries consider incorporating clinical legal education into the training necessary to become a lawyer. Some of the issues we draw out in this Article include the role of local culture and institutions, the history of educational institutions, and the nation’s existing legal structure.

Moreover, as scholars explore ways to enrich already-established models of clinical legal education, it may be useful to study a system that is newly-designed, and not merely re-tooled.

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Eriko Arita, *66 Institutions Win Approval to Open U.S.-Style Law Schools*, JAPAN TIMES, Nov. 22, 2003.

In addition to the sixty-eight new law schools, Japan continues at present to have over 120 faculties of law at the undergraduate level. See Fujikura, *supra* note 4, at 942. Of these undergraduate law programs, twenty-six are publicly supported and ninety-seven are private. See *id.*

<sup>8</sup> The reforms in Japan are often called “judicial” reforms and refer to reforms of the entire justice system and legal profession and not just reforms associated with the judiciary and court system. The Council identified “three pillars” of justice system reform, including making the judicial system easier to understand, reforming the legal profession (and legal education), and introducing mechanisms for public participation in legal proceedings. See *Justice System Reform Recommendations*, *supra* note 1, at ch. I, pt. 3.

<sup>9</sup> The President of Korea and the Chief Justice of the Supreme Court of Korea formed a committee in 2003 to examine initiatives to reform the court system and the system of legal education. See *Judiciary Reform Still Has a Long Way to Go*, KOREA TIMES, Nov. 1, 2004. The first step identified for reform was a recommendation to introduce U.S.-style graduate level law schools starting in 2008. See *id.* In April of 2005, the Judicial Reform Committee adopted recommendations to open U.S.-style law schools starting in 2008. *First US-Style Law School to Debut in 2008*, KOREA TIMES, Apr. 22, 2005.

Many Japanese reformers examined American and Canadian law schools and legal professions quite carefully as they designed professional schools for Japan. One might ask what law schools in the United States would look like today had rich clinical programs been contemplated as U.S. professional schools were first established. It is interesting to reflect on those aspects of clinical legal education that have (or have not) been incorporated into the design of the new Japanese law schools.

Before we begin our detailed discussion of the new law schools in Japan, there is an important point to note, and we should also state our views from the outset. The Justice System Reform Council's recommendations focus on the education of students and the Council also stated that "in order to build a bridge between theoretical and practical education, participation of practitioner-teachers is indispensable."<sup>10</sup> Nevertheless, the Council did not explicitly require that the new law schools include clinical courses within their curricula. The Council left it to each new law school to develop its own curriculum, provided that there is a practical focus that will foster the development of "highly specialized professionals with social responsibility."<sup>11</sup>

In our view, however, clinical courses play a critical role in the reform efforts in Japan. The overarching goals of the reforms are "to reinforce and strengthen the justice system."<sup>12</sup> The Council started from the premise that in order to strengthen the justice system, "it is indispensable to achieve a legal profession that is rich both in quantity and quality."<sup>13</sup> The Justice System Reform Council also concluded that new professional law schools, and the implementation of new teaching methodologies within those law

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<sup>10</sup> *Id.* The "Requirements Regarding Professional Graduate Schools," issued by the Ministry of Education and Science, specify the ratio of the practitioner-teachers on the law school faculty to be 20%. Bulletin Notice No. 53 (March 31, 2003). With regard to the focus on educating students, the Justice System Reform Council stated; "Needless to say, it is incumbent on universities with the intention of establishing law schools to make considerable efforts to change themselves by shifting their principle from the traditional one focusing on research and study to a new one truly focusing on education of students." *Justice System Reform Recommendations*, *supra* note 1, at ch. III, pt. 2

<sup>11</sup> *Id.* at ch. III, pt. 2.

<sup>12</sup> *Id.* at introduction.

<sup>13</sup> *Id.*

schools, are necessary preconditions for the creation of a legal profession that promises to achieve both changes in the quantity and quality of the legal profession. We see clinical programs as integral to this effort. Clinical legal education can help Japan transform its legal profession by training law students in the lawyering skills and professional values necessary for the delivery of high quality legal services into the 21st century.

In Part I of this Article, we begin to analyze the challenges to implementing clinical programs in Japan. We start by describing the history of the legal profession and legal education in Japan, so to contextualize the role of the new law schools and the growth of clinical legal education. In Part II, we examine the development of the various approaches to implementing clinical programs in Japan, with a particular focus on the new courses being implemented at Waseda Law School. Waseda Law School is one of the first new professional law schools with a commitment to clinical legal education to bridge theory and practice. In Part III, we assess the promise of and difficulties faced by clinical programs in Japan. To succeed, clinics will need greater support from the judges, prosecutors and the bar. Finally, we conclude that clinical legal education is integral to meeting the goals established by the Justice System Reform Council, but that its future is as yet far from certain.

#### I. THE HISTORY OF LEGAL EDUCATION IN JAPAN, AND CHALLENGES TO IMPLEMENTING CLINICAL LEGAL EDUCATION PROGRAMS

To appreciate the challenges to implementing clinical legal education programs in Japan, one must first understand the history and development of the Japanese legal profession.

##### A. *The Legal Profession in Japan*

Prior to 1868, the legal profession did not exist as a distinct occupational group in Japan.<sup>14</sup> Administrators within the

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<sup>14</sup> See Kahei Rokumoto, *The Present State of Japanese Practicing Attorneys: On the Way to Full Professionalization?*, in *LAWYERS IN SOCIETY: THE CIVIL LAW WORLD* 160, 160 (Richard L. Abel & Philip S. Lewis eds. 1988)

government performed some judicial functions,<sup>15</sup> and litigants were denied representation in court.<sup>16</sup> As the Meiji Government seized the ruling power in place of the Tokugawa shogunate in 1868, the Government began to create a centralized legal system modeled after the German legal system, including the establishment of a court system throughout the country and prosecutors and judges who were considered distinct from other government officials by 1872.<sup>17</sup> The Ministry of Justice, which controlled both prosecutors and the judiciary, established its own law school in 1871.<sup>18</sup> Later, in 1877, the Ministry of Education founded the University of Tokyo, which was known as the Imperial University from 1886-1897 and the Tokyo Imperial University from 1897-1947.<sup>19</sup> The University of Tokyo included a Faculty of Law that educated prosecutors and judges as well as teachers for other schools in Japan.<sup>20</sup>

In 1872, formal legal representation for litigants in civil matters was recognized, and representation for the accused in criminal cases was authorized by 1882.<sup>21</sup> The distinct grouping of professionals providing representation to those appearing in court was recognized by 1876, when the Ministry of Justice issued regulations, including the requirement of passing an exam, for those providing legal representation.<sup>22</sup> Qualifications to become

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<sup>15</sup> Although there was not formal representation of individuals in court, “certain innkeepers and their clerks (called *kujishi*) were authorized to offer their knowledge of procedure and of the location of various offices to guests coming to Edo for litigation.” *Id.* at 160. Edo is the former name for Tokyo, and it was established as the seat of government in Japan in 1603.

<sup>16</sup> See Richard W. Rabinowitz, *The Historical Development of the Japanese Bar*, 70 HARV. L. REV. 61, 62 (1956). The prohibition against representation in court could be waived in instances “such as infancy, advanced age, or illness,” provided there was some special relationship between the litigant and the representative such as “kinship, vassalage, common area of residence, or incumbency in an identical status in the four-class feudal hierarchy.” *Id.*

<sup>17</sup> See Rokumoto, *supra* note 14, at 160-61.

<sup>18</sup> See Setsuo Miyazawa & Hiroshi Otsuka, *Legal Education in Japan: Legal Education and the Reproduction of the Elite in Japan*, 1 ASIAN-PACIFIC L. & POL’Y J. 2, 3 (2000).

<sup>19</sup> See The University of Tokyo, *History*, at <http://www.e.u-tokyo.ac.jp/english/enkaku-e.html> (last visited June 3, 2005).

<sup>20</sup> See Miyazawa & Ozuka, *supra* note 18, at 4.

<sup>21</sup> See Rabinowitz, *supra* note 16, at 64-67.

<sup>22</sup> See *id.* at 65.

an attorney, known as “*bengoshi*” in Japan,<sup>23</sup> were established with the passage of the first *Bengoshi ho* (“Practicing Attorney Law”) in 1893.<sup>24</sup> The key qualification was passing an examination covering legal knowledge, though graduates from Imperial Universities and the Ministry of Justice law school were exempt from taking the qualifying exam until 1926.<sup>25</sup> No formal academic training or graduation from a university or law school was required. In addition, licensed attorneys only had exclusive province in civil and criminal matters in “ordinary courts” and there was no explicit prohibition against the unauthorized practice of law.<sup>26</sup>

From the passage of the Practicing Attorney Law in 1893 through the early 1920s, the formal status of attorneys improved, and as attorneys began to fill government positions their social status rose.<sup>27</sup> The Ministry of Justice continued to control the examination process for the admission to practice, as well as the organization and discipline of the legal profession. By the late 1920s, however, the number of persons practicing law had increased dramatically and a survey of attorneys found that more than half were failing to meet living expenses.<sup>28</sup> In part, the poor economic conditions also had to do with the lack of regulation over the unauthorized practice of law. In response to these developments, many called for limiting the number of persons admitted to the practice of law, more regulation over the practice of law, and other proposals to improve the economic conditions for attorneys were considered throughout the 1930s. A law requiring a period of apprenticeship before becoming an attorney was passed

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<sup>23</sup> “*Bengoshi*” is a translation of the English word “barrister” and is used to define legal professionals who may perform all manner of legal representation of clients, including representing clients in court. For the purposes of this Article, the word “attorney” will be used interchangeably with “*bengoshi*.”

<sup>24</sup> See Rokumoto, *supra* note 14, at 161.

<sup>25</sup> The exemption was repealed in 1923, to become effective in 1926. See JOHN OWEN HALEY, *AUTHORITY WITHOUT POWER: LAW AND THE JAPANESE PARADOX* 101 (1991).

<sup>26</sup> See *id.* at 100.

<sup>27</sup> See Rabinowitz, *supra* note 16, at 71-74.

<sup>28</sup> A survey conducted by the Japan Bar Association found that “more than 2,400 lawyers out of 4,100 reporting indicated that they failed to meet living expenses, and 240 had not even managed to pay ordinary office expenses.” *Id.* at 73.

in 1933, but budgetary shortfalls prevented the Ministry of Justice from implementing the apprenticeship program until 1946.<sup>29</sup>

The legal profession in Japan was in decline during the 1930s, and not simply because of the poor economic conditions. The press commonly “portrayed the lawyer with notable contempt,” and “*bengoshi* accused of bribery, embezzlement, extortion, and other disreputable conduct were common fare.”<sup>30</sup>

The status of attorneys dramatically improved starting in the late 1940s, in large part based upon two new developments. First, the apprenticeship program was fully implemented in 1946, and contained the key feature that training for attorneys was combined with the training for prosecutors and judges through the creation of the Legal Training and Research Institute (Institute) under the control of the Supreme Court of Japan.<sup>31</sup> Second, the legal profession was made self-governing, subject to Supreme Court supervisory authority, through the passage of the *Bengoshi ho* (“Practicing Attorney Law”) in 1949.<sup>32</sup> Autonomy had long been a goal of attorneys in Japan,<sup>33</sup> and the Practicing Attorney Law of 1949 achieved autonomy by shifting regulation of the legal profession from the Ministry of Justice. In addition, the Practicing Attorney Law made clear that *bengoshi* alone had the authority to represent clients in judicial and administrative proceedings or to provide legal counseling, and others providing client representation would be subject to criminal prosecution for the unauthorized practice of law.<sup>34</sup>

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<sup>29</sup> See *id.* at 77.

<sup>30</sup> Haley, *supra* note 25, at 104.

<sup>31</sup> See Rabinowitz, *supra* note 16, at 74-77.

<sup>32</sup> See Haley, *supra* note 25, at 106 (citing the *Bengoshi ho*, Law No. 205, 1949).

<sup>33</sup> See *id.* at 100-112.

<sup>34</sup> Article 72 of the Practicing Attorney Law of 1949 stated:

A person other than a practicing attorney shall not, for payment, and as an occupation, engage in the practice of law by giving legal advice, providing legal representation, arbitrating, settling disputes amicably or performing any like acts in respect to lawsuits, non-contentious matters, or appeals filed with administrative agencies such as requests for investigation, the raising of objections, requests for the review of dispositions or similar matters, or act as an intermediary in such matters as are specified in this Article as constituting the

Judges and prosecutors have long had high social status in Japan, and combining the training of attorneys with that of judges and prosecutors improved the social status of attorneys. The Institute has also reinforced cohesiveness in the legal profession, with all attendees experiencing a uniform socialization into the practice of law. Although the Institute was designed to provide better training for all legal professionals, entrance to the Institute was again based solely on the National Bar Examination and there were no formal academic qualifications for admission. The National Bar Examination has been the key barrier to practice for would-be attorneys in Japan. Graduates of the Institute must still take a final exam before becoming an attorney, prosecutor, or judge, but virtually all attendees of the Institute pass that exam.

From the creation of law faculties at universities beginning in the 1870s until 2004, attendance at universities and the study of law have not functioned primarily as training for legal professionals, but rather have served chiefly as training for entry into government or business.<sup>35</sup> In addition, obtaining a graduate degree in law has been the path for becoming a law professor in a university law department.<sup>36</sup> As a result of this disconnect between university law training and legal practice, until 2004, the sole source of training for the practice of law has been the Legal Training and Research Institute.

As discussed previously, admission to the Institute from 1946 through 2005 has been based solely on passing the National Bar Examination, though it is important to note that most who pass the admissions examination have attended one of the undergraduate law courses of study in Japan.<sup>37</sup> Training at the

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practice of law: Provided that this shall not apply in such cases otherwise specified in this Law.

Practicing Attorney Law (Law No. 205 of 1949).

<sup>35</sup> “Japan’s undergraduate law faculties have been a very important source for Japan’s government and business leaders for decades, not just a training-ground for future lawyers and judges.” Grodine, *supra* note 3, at 2. See also Miyazawa & Ozuka, *supra* note 18, at 4-8, 13-15.

<sup>36</sup> See Eric A. Feldman, *Mirroring Minds: Recruitment and Promotion in Japan’s Law Faculties*, 41 AM. J. COMP. L. 465, 469-71 (1993).

<sup>37</sup> Most of the people who pass the National Bar Examination “are graduates of undergraduate law faculties of prestigious universities, such as Tokyo, Keio, and Waseda. It is not necessary, however, to be a college graduate, and, on

Institute has consisted of a combination of lectures and apprenticeship-like rotations through judicial, prosecution, and law offices. The period of attendance at the Institute was originally two years, but was shortened to eighteen months in 1999.<sup>38</sup> The Institute training will be shortened to twelve months in 2006, and the lecture portion will then be reduced to two months, as Japan begins to rely upon the new professional law schools as the principal preparation for those seeking admission to the practice of law.<sup>39</sup>

The Institute's apprenticeships are significantly different from the clinical experiences available to students in most law schools in the United States in at least two respects. The apprenticeships have been described by one commentator as "learning by seeing," because attendees do not perform lawyering tasks such as participating in hearings or providing legal advice to clients.<sup>40</sup> Moreover, the purpose of Institute's apprenticeship, both inside and outside the classroom, is to teach present-day legal practice. The trainees must learn, understand and follow present legal practice; they are not encouraged to think critically about it. By contrast, the hallmark of clinical legal education in the United States and in other countries is "learning by doing." Further, clinical students are taught to reflect upon their own work and upon the legal system.<sup>41</sup> Notably, at least several of the new

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occasion, widespread media attention has been placed on non-traditional persons passing the examination, such as housewives with no college education." Sabrina Shizue McKenna, *Proposal for Judicial Reform in Japan: An Overview*, 2 ASIAN-PACIFIC L. & POL'Y J. 121, 124 n.7 (2001). Professor Dan Rosen notes that of the 994 persons who passed the National Bar Examination in 2000, two-thirds graduated from five universities: 198 from University of Tokyo, 140 from Waseda University, 116 from Keio University, 108 from Kyoto University, and 102 from Chuo University. See Dan Rosen, *Schooling Lawyers*, 2 ASIAN-PACIFIC L. & POL'Y J. 66, 67 n.5 (2001).

<sup>38</sup> See Shozo Ota, *Reform of Civil Procedure in Japan*, 49 AM. J. COMP. L. 561, 562 n.4 (2001).

<sup>39</sup> See Japan Federation of Bar Associations, *Japanese Attorney System*, at <http://www.nichibenren.or.jp/en/about/system.html> (last visited June 3, 2005).

<sup>40</sup> See Takashi Takano, *Making a Criminal Justice Clinic in Japan* 1, 1-3 (April 29, 2005) (unpublished manuscript, on file with authors).

<sup>41</sup> See, e.g., *Report on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 517 (1992) (stating that "[n]o other learning experience in law school combines the extraordinarily varied and dramatic context of real cases and problems with the opportunity for intensive teaching, supervision, growth, and reflection");

clinics in Japan also follow these classic clinical methodologies, including critical reflection about present-day legal practice.<sup>42</sup>

The long-standing system of undergraduate education combined with training at the Institute has severely limited the growth of Japan's legal profession. Bar passage rates (and, hence, admission rates to the Institute) have been very low, approximately 2-3% of the total number taking the exam throughout the 1980s and 1990s.<sup>43</sup> The result is a relatively small number of full attorneys, or *bengoshi*, currently numbering 21,208 for a population of over 127 million people.<sup>44</sup> While the small number of *bengoshi* does not include judges or prosecutors or specialized legal professionals (such as the more than 67,300 tax attorneys

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Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 340-42 (1982) (describing the experiential learning component of clinical legal education); Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981) (describing clinical teaching theory); Stephen Wizner, *Beyond Skills Training*, 7 CLIN. L. REV. 327, 328-33 (2001) (explaining that clinical methods lead students to perceive and understand broader social justice issues). [zzz other citations?]

<sup>42</sup> See, e.g., Nobuo Kojima, An Experiment of the Civil Law Clinic at Waseda Law School 1, 1-2 (April 29, 2005) (unpublished manuscript, on file with authors) (describing “[s]eeking new legal practices based on the critical reflection of the past practice”); Takano, *supra* note 40, at 3 (describing a goal as knowing the problems in the legal system).

<sup>43</sup> See *Applicants and Acceptance Statistics for Japan's Legal Training and Research Institute: 1949-1998*, at <http://www.tuj.ac.jp/newsite/main/law/lawresources/TUJonline/Japan'sLegalProfession/IrtistajJapan-BarPassStats.html> (last visited June 3, 2005). “In 2002 only 1,183 passed the exam, out of 41,459 who took the exam, a passage rate of 2.85%.” Roderick H. Seeman, *2003 Japan Law: Legal Profession*, at [http://www.japanlaw.info/law-2003/2003\\_LEGAL\\_PROFESSION.html](http://www.japanlaw.info/law-2003/2003_LEGAL_PROFESSION.html) (last visited June 3, 2005). See also HALEY, *supra* note 25, at 107 tbl 5-5 (reporting the entrance exam passage rates and the number of applicants taking and passing the entrance exam from 1949-1986).

<sup>44</sup> Japan Federation of Bar Associations, *Outline of the Japan Federation of Bar Associations (JFBA)*, at <http://www.nichibenren.or.jp/en/about/index.html> (last visited August 23, 2005) (reporting 21,208 members of JFBA as of April 1, 2005; practicing attorneys are automatically members of the JFBA). Japan's projected population in April 2005 was 127,580,000. See Statistics Bureau and Statistical Research and Training Institute, Ministry of Internal Affairs and Communications, *Monthly Statistics of Japan* (tbl B-1, Population), at: <http://www.stat.go.jp/english/data/geppou/zuhyou/b01.xls> (last visited Aug. 23, 2005). This is approximately one lawyer for every 6016 people.

(*zeirishi*), 5600 patent attorneys (*benrishi*), 17,200 judicial scriveners (*shiho shoshi*), and 37,700 administrative scriveners (*gyosei shoshi*),<sup>45</sup> it is a remarkably modest figure. By contrast, there is an average overall bar passage rate in the United States of 64%, with an average passage rate of 75% for first-time test-takers,<sup>46</sup> and a longitudinal study of bar exam takers documents an eventual passage rate of 94.8% for those who retake the bar exam.<sup>47</sup> The State Bar of California has over 136,000 active members who reside in California, a state with a total estimated population of 36 million people.<sup>48</sup> The City of San Francisco

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<sup>45</sup> See *Japanese Attorney System*, *supra* note 39.

<sup>46</sup> See 72 THE BAR EXAMINER 16 (May 2005), at [http://www.ncbex.org/pubs/pdf/740205\\_2004statistics.pdf](http://www.ncbex.org/pubs/pdf/740205_2004statistics.pdf) (last visited Aug. 16, 2005) (Ten-Year Summary of Bar Passage Rates 1995-2004). The United States does not have a national bar exam; rather, each jurisdiction administers its own examination. Average passage rates among the States range from a high of 87% for overall test takers (Utah) and 91% for first-time test takers (Mississippi) to a low of 44% for overall test takers (California) and 60% for first-time test takers (also California). See *id.* at 14-16.

California's passage rate is depressed by the high number of test-takers from unaccredited law schools. The National Conference of Bar Examiners has reported a 2004 California bar passage rate of 54% for all California test-takers from ABA-approved law schools. The passage rate for test-takers from non-ABA-approved law schools was 16%. See *id.* at 8 (Persons Taking and Passing the 2004 Bar Exam by Source of Legal Education).

One State, Wisconsin, admits a significant percentage of lawyers to practice by "diploma privilege" and not by examination. See *id.* at 17 (2004 Admissions to the Bar by Examination, on Motion, and by Diploma Privilege).

<sup>47</sup> See Linda F. Wightman, LSAC National Longitudinal Bar Passage Study viii, 2 (1998) (reporting on the results of a longitudinal study that tracked students who entered law school in the fall of 1991 through three years of law school and up to five administrations of the bar examination).

<sup>48</sup> As of June 3, 2005, there were 148,863 active members of the State Bar of California, a figure that excludes judges, inactive lawyers, and attorneys who are no longer eligible to practice. See State Bar of California, *Member Demographics*, at: <http://members.calbar.ca.gov/search/demographics.aspx> (last visited June 3, 2005). Of these active lawyers, 11,959 reside out-of-state (see [http://members.calbar.ca.gov/search/demographics\\_counties.aspx](http://members.calbar.ca.gov/search/demographics_counties.aspx) (last visited June 3, 2005)); thus 136,904 active members of the California Bar live in California. The latest U.S. Census Bureau population estimates are as of July 1, 2004. The Census Bureau has estimated California's population on that date as 35,893,799. See U.S. Census Bureau, *Annual Estimates of the Population for Counties in California: April 1, 2000 to July 1, 2004*, at: <http://www.census.gov/popest/counties/tables/CO-EST2004-01-06.xls> (last visited June 3, 2005), tbl. 1. This is approximately one lawyer for every 262 residents of California.

alone, with an estimated population of 744,230, has 14,936 active members of the California Bar, more than two-thirds of the number of *bengoshi* in all of Japan.<sup>49</sup>

The Justice System Reform Council concluded that the legal profession in Japan is far too small, and is not sufficiently equipped to meet the legal needs of Japan in the 21st century.<sup>50</sup> It recommended a bar passage rate of approximately 70% to 80%.<sup>51</sup> The Council set a goal of “securing 3,000 successful candidates for the national bar examination annually” as soon as possible, but in any event by the year 2010.<sup>52</sup> Significantly, it also noted that “this number does not signify the upper limit.”<sup>53</sup>

The Justice System Reform Council also recognized that the old system of undergraduate education, combined with a tough National Bar Examination, failed to provide a sound education for those who would enter the legal profession. Because an undergraduate degree and prior formal legal studies were not even requirements for admission to the Institute, the undergraduate study of law has been distanced from the education of legal professionals. Instead, those seeking to pass the National Bar Examination prepare by attending cram schools, which are year-long programs devoted to memorization of the material likely to appear on the National Bar Examination.<sup>54</sup> Even with attendance at cram schools, some estimate that the successful exam taker must

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<sup>49</sup> See [http://members.calbar.ca.gov/search/demographics\\_counties.aspx](http://members.calbar.ca.gov/search/demographics_counties.aspx); U.S. Census Bureau, *supra* note 48. It is sometimes said that it is harder to find a plumber than a lawyer in San Francisco.

<sup>50</sup> See *Justice System Reform Recommendations*, *supra* note 1, at ch. I, pt. 2.

<sup>51</sup> See *id.* at ch. III, pt. 2.

<sup>52</sup> *Id.* at ch. III, pt. 1.

<sup>53</sup> *Id.*

<sup>54</sup> See, e.g., Setsuo Miyazawa, *Education and Training of Lawyers in Japan – A Critical Analysis*, S. TEX. L. REV. 491, 493 (2002) (stating that most applicants are undergraduate law students who “spend most of their time at cram schools” that are “full-time yearlong programs”); James R. Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools: Putting the Professional into Legal Education*, 13 PAC. RIM L. & POL’Y 303, 310 (2004) (stating that successful exam takers likely attend cram schools focusing on the Institute’s entrance exam). One journalist has stated: “More than five years of study – at cram schools, not universities – has been the norm to pass Japan’s extremely competitive bar exam.” Eriko Arita, *U.S.-Style Law Schools to Offer Practical Approach*, JAPAN TIMES, July 2, 2003.

take the exam, which is given only once a year, five times before passing.<sup>55</sup> This has also led to the unemployment and underemployment of would-be legal professionals who are unsuccessful in their attempts to gain entrance to the Institute.<sup>56</sup>

Because the real path to legal practice has been through rote memorization in cram schools rather than through serious professional school study, the Justice System Reform Council acknowledged that exam-takers focus on “acquiring techniques for passing the examination” rather than on gaining a sound education.<sup>57</sup> As the Council put it, this has led to the “‘double school phenomenon’ (trend of going to two schools, the university and the preparatory school) or the ‘phenomenon of leaving universities’ (*daigakubanare*; the tendency to ignore university classes and focus only on preparatory schools).”<sup>58</sup>

The Council’s recommendations seek to increase the number of lawyers in Japan, especially in grossly underserved rural areas, as well as instill much better preparation for practice. The creation of professional law schools and—we believe—the implementation of clinical methodologies are key to the success of the reforms. But, as the next section of this Article discusses, there are institutional and cultural issues affecting the legal profession in Japan and the development of clinical legal education in the new professional law schools. Some of the most difficult obstacles relate to the divergence between the worlds of academia and practice, the low bar passage rates, and the lack of some

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<sup>55</sup> See Maxeiner & Yamanaka, *supra* note 54, at 310.

<sup>56</sup> Professor Rosen has observed:

Bar Exam *ronin*, those who never pass the Exam even after multiple attempts, often end up working at jobs far below their real skill level. This is both a personal and social waste. Even those whose stories have happy endings may devote many years of their lives to cram school study and self-study, getting by on part-time jobs after graduation before finally passing the Exam. A substantial number of applicants do not pass until they are into their thirties and sometimes forties. Is this truly the best and highest use of their talents? Is this really the best way of producing lawyers?

Rosen, *supra* note 32, at 73.

<sup>57</sup> Justice System Reform Recommendations, *supra* note 1, at ch. III, pt. 2.

<sup>58</sup> *Id.*

institutional structures necessary for reform, such as a student practice rule or a common understanding of an accepted role for a clinical student.

*B. Institutional and Cultural Issues Affecting the Development of Clinical Legal Education in Japan*

A central goal of Japan's new professional schools is to "bridge theory and practice." The Justice System Reform Council expects Japan's new professional law schools to provide law students with "the specialized qualities and capacity required for legal professionals to take direct responsibility for the 'rule of law'."<sup>59</sup> The schools should afford students "specialized knowledge as well as foster their creative thinking ability to critically review and develop such knowledge and their capacity for legal analysis and legal discussion necessary for solving actual legal problems according to the facts."<sup>60</sup> Further, the new law schools should provide opportunities for students to develop a "basic understanding of cutting-edge legal areas . . . a broad interest in various problems arising in society and have a sense of responsibility and morals as legal professionals," as well as provide students "with opportunities for actually contributing to society."<sup>61</sup> While the prime objective of the new law school system is to provide professional legal education at the graduate level, "bridging theory and practice" in legal scholarship is also a vital goal of the new professional law school system. Yet Japan faces significant challenges in achieving both goals. It must find faculty for the new law schools who are familiar with the practice of law and also develop a model of legal scholarship that is more closely related to law practice and law reform.

A principal difficulty is that the career of Japanese law professors has, at least until now, been distinctly separate from that of law practitioners. Their two worlds rarely overlap. Though both scholars and lawyers study law at the undergraduate level, their training and career paths diverge after graduation. Those who seek to be legal scholars may proceed to graduate school without taking the bar examination, while those who wish to practice law

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

continue their study of law on their own and/or by attending a cram school where studies are narrowly focused on passing the bar examination. Would-be scholars usually take up one particular area of law as their research field of concentration. In contrast, would-be practitioners study a broad spectrum of law in order to pass the bar examination with the aim of becoming a general practitioner of law.

With these divergent paths, mobility has been limited. Once those with legal training are appointed as law professors or admitted to the bar, there have been very few opportunities to move from academia to legal practice and vice versa. The majority of law professors teaching in the new law schools in Japan do not have practical experience in law. University law professors in the pre-justice-reform-style undergraduate and graduate law departments are rarely graduates of the Institute.<sup>62</sup> In many cases, law practice was prohibited by the terms of the employment contract with the university. University administrations expected law professors to dedicate their time and efforts to research and education and not participate in litigation, except as consultants rendering expert opinions. Prior to 2003, Japanese law also prohibited practicing lawyers from assuming any paid public post, with narrow exceptions.<sup>63</sup> The rigidity of career paths in the legal

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<sup>62</sup> More than 40% of all law faculty members of the nine major national universities (Hitotsubashi, Hokkaido, Kobe, Kyoto, Kyushu, Nagoya, Osaka, Tohoku, and Tokyo universities) in Japan are graduations of the University of Tokyo and nearly 20% are graduates of Kyoto University. See Miyazaw & Otsuka, *supra* note 18, at 25.

<sup>63</sup> Prior to 2003, article 30, paragraph 1 of the former Practicing Attorney Law provided:

A practicing attorney shall not concurrently assume any paid public post; provided, however, that this shall not apply in cases where he/she assumes the post of the President or Vice President of the House of Representatives or the House of Councilors, Prime Minister, Minister of State, Deputy Chief Cabinet Secretary, Deputy Chief Cabinet Secretary for Crisis Management, Assistant Chief Cabinet Intelligence, Special Public-Relations Secretary, Director of Cabinet Intelligence, Special Advisor to the Prime Minister, Senior Vice-Minister (including Vice-Director of each agency, in cases where the law provides that the Minister of State shall be assigned as Director of such agency), Parliamentary Secretary of each ministry (including the Parliamentary Secretary of each

profession also generally reflects the low level of job mobility that prevails in Japan.

This separation has affected legal scholarship. There have been few opportunities for interaction between scholars and practitioners, as ideally there should be. Scholars pursue research related to their academic interest, which may not necessarily reflect the current state of law practice. Therefore, research themes that are eminently important for the practice of law may be ignored by scholars. In the area of international human rights law, for example, such research themes as the judicial applicability of international treaties to domestic violations of human rights have only recently gained academic attention. Another shortcoming related to the chasm dividing scholars and practitioners is that there have been almost no courses on professional ethics or lawyering skills at the undergraduate faculty of law in university. Since scholars are insulated from the practice of law, professors cannot readily teach these courses to law students. Moreover, some scholars are even unaware of their importance. The new professional schools, which will bring together legal scholars and law practitioners, may help the development of a model of scholarship that bridges theory and practice. The pedagogy of clinical legal education provides a particularly suitable vehicle for those interactions, as well as integrating theoretical studies of law and practical training of lawyering skills and values for students.

The longstanding disconnect between those who teach and those who practice law also poses a significant challenge simply in finding professional school faculty members. Not all of the law faculty are familiar with or interested in the actual practice of law. This creates a need for the new law schools to identify, recruit, and

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agency), Secretary to the Prime Minister, or Secretary to Minister of State, or where he/she becomes a member of the National Diet or assemblies of local public entities, or a chief of a local public entity, or assumes any other elected public post, or where becomes a public employee with a fixed term . . . , a self-defense official with a fixed term . . . , or in which he/she becomes a public servant of whom full-time service is not required, or performs functions relating to any specific matter at the request of the government or a public office.

Practicing Attorney Law (Law No. 205 of 1949) (amended 2002).

retain experienced attorneys to become professors, especially for courses that instill lawyering skills and professional values. Given the relatively low pay for professors compared to attorneys in Japan, the recruitment and retention issue has prompted the government to subsidize judges and prosecutors who will take leaves of absences to teach.<sup>64</sup> No such subsidies or programs exist for private attorneys who decide to teach.

By contrast, in the U.S., the differences in the training of legal scholars and practitioners are not as vast. Most tenured or tenure-track law school faculty members in the U.S. have earned at least a J.D. degree, the same basic law degree as practitioners, and the majority have earned their degrees from one of twenty elite law schools.<sup>65</sup> A 1991 study found that 79% of full-time, permanent U.S. law professors had at least some experience in the practice of

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<sup>64</sup> The Ministry of Justice and Supreme Court of Japan implemented a system to permit prosecutors and judges to teach at law schools for terms of three years, with the government supplementing their salaries so that there is no loss in income. See Maxeiner & Yamanaka, *supra* note 54, at 325-26.

<sup>65</sup> There have been two substantial empirical studies of tenure or tenure-track law professors and their educational backgrounds in the last twenty-five years, though both studies are now fairly dated. One study, published in 1980, is based upon the 1975-76 *Directory of Law Teachers*, published by the Association of American Law Schools (AALS). See Donna Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1980 AM. B. FOUND. RES. J. 501, 503 (1980). The other article, published in 1991, is based upon a sample of 872 of the 5528 assistant, associate and full professors (15.8%) profiled in the 1988-89 AALS *Directory of Law Teachers*. See Robert J. Borthwick and Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J. L. REFORM 191, 194 (1991). Some commentators lament that there is still very little known about law teachers today. See James R. P. Ogloff, David R. Lyon, Kevin S. Douglas and V. Gordon Rose, *More than "Learning to Think Like a Lawyer:" The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 129 (2000).

While neither of the two studies provides data on tenured or tenure-track faculty who possess *only* an advanced degree other than a J.D., both studies emphasize that law faculty members are J.D. graduates "in disproportionate numbers of a small, select group of law schools." Fossum, *supra*, at 507. "[B]y far the most important credential for law teachers [i]s a J.D. degree from one of 20 producer law schools." *Id.* at 527-28. Fossum reported that 59% of the faculty members received their J.D. degrees from one of twenty elite law schools, which is fewer than 15% of the accredited law schools. See *id.* A decade later, Borthwick and Schau made an almost-identical finding. See Borthwick and Schau, *supra*, at 226 ("the nation's twenty top-ranked law schools produced nearly 60% of all sampled professors").

law prior to teaching.<sup>66</sup> Of course, many faculty members (other than clinicians) only practice for a short time.<sup>67</sup> In addition, even with this practical experience, the work of many legal scholars is sometimes characterized as removed from the practice of law.<sup>68</sup> Nevertheless, there is still much more mobility between law teaching and practice in the U.S. than in Japan. Law schools in the United States do not face the same difficulties in finding clinical and non-clinical faculty members who are connected to the practice of law.

A different issue, but one which is absolutely critical to the success of the new Japanese professional schools—and to clinical legal education in Japan—is the bar passage rate. The low bar passage rate not only has contributed to a very small number of lawyers per capita, but has led to an extreme shortage of lawyers in some areas of Japan, principally the rural areas where there may be no attorneys or only one attorney within the local jurisdiction.<sup>69</sup>

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<sup>66</sup> See Borthwick and Schau, *supra* note 65, at 213. This was an increase in the percentage of law professors from Fossum's 1975-76 data. She reported that 67% of tenured or tenure-track faculty had some practice experience prior to teaching. See Fossum, *supra* note 65, at 510-11.

<sup>67</sup> Borthwick and Schau's 1991 study reports that only one-fourth of all professors had more than five years of practice experience. See Borthwick and Schau, *supra* note 65, at 219. Faculty members at the most elite schools were least likely to have substantial practice experience. See *id.* (stating that faculty sampled at the "top seven" schools had 2.7 mean years of experience, versus 4.3 mean years of experience among sampled faculty at all schools). Fossum found a median length of time of five years spent in career activities prior to teaching. See Fossum, *supra* note 65, at 511-12.

<sup>68</sup> See, e.g., Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 35 (1992) (criticizing the "impractical scholar" who "produces abstract scholarship that has little relevance to concrete issues, or addresses concrete issues in a wholly theoretical manner"); Richard A. Posner, *Legal Scholarship Today*, 45 STAN. L. REV. 1645, 1655 (1993) (noting that "[t]he law faculties of our universities now produce a formidable quantity of scholarship intended mainly to be read by other scholars rather than by lawyers and judges"); Reinhard Zimmermann, *Law Reviews: A Foray Through a Strange World*, 47 EMORY L. J. 659, 679-81 (1998) (criticizing, from a comparative perspective, the relative lack of real-world relevance of American law review writing); *United States v. Six Hundred Thirty-Nine Thousand Five Hundred and Fifty-Eight Dollars* (\$639,558) in United States Currency, 955 F.2d 712, 722 (D.C. Cir. 1992) (Silberman, J., concurring) (remarking that "that many of our law reviews are dominated by rather exotic offerings of increasingly out-of-touch faculty members").

<sup>69</sup> See Arita, *supra* note 54.

The justice system reforms seek to increase the overall number of attorneys and foster the wider dispersion of attorneys so that they are more accessible to Japanese citizens no matter where they live. Yet, at this point, there is significant uncertainty about what the bar passage rate will be.

As noted, the 2001 Justice System Reform Report called for a passage rate of approximately 70% to 80% for the new National Bar Examination.<sup>70</sup> Those wishing to take the new bar exam, which will be given for the first time in 2006, must graduate from the new professional law schools.<sup>71</sup> The Council recommended a phased increase in the numbers of successful candidates for the bar examination each year, targeting 3000 new lawyers annually by the year 2010, which was not to be an upper limit.<sup>72</sup> However, the numbers of approved new law schools and admitted students were both greater than originally expected. It has now begun to appear that some officials within the Ministry of Justice and others consider the annual targets to be rigid caps. If the annual targets are taken as fixed upper limits, with a higher-than-expected number of students in the pipeline, the bar passage rate would drop substantially below 70% to 80%. Thus, even by early 2004, many people began projecting a low bar passage rate.<sup>73</sup>

These projections are widely-known. In October 2004, a major Japanese newspaper, *Asahi Shimbun*, reported that the passage rate would be approximately 34%, much lower than had originally been recommended by the Justice System Council.<sup>74</sup>

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<sup>70</sup> See *Justice System Reform Recommendations*, *supra* note 1, at ch. III, pt. 2.

<sup>71</sup> The new bar examination requirements limits an applicant to taking the bar exam no more than three times within a five year period. See *Japanese Attorney System*, *supra* note 38. At present, persons who have not graduated from a new law school may continue to take the old exam if they pass a preliminary test. See *id.*

<sup>72</sup> See *Justice System Reform Recommendations*, *supra* note 1, at ch. III, pt. 1.

<sup>73</sup> See, e.g., Yasutaka Abe, *Law School setchi ni koredakeno mondaiten* ("Problems on the establishment of Law Schools"), Causa No. 11, 28, 32 (February 2004); Hiroyuki Kabashima, *Shihoushiken wo meguru Saishin no Jyokyou* ("Current Situation on Bar Examination"), Causa No. 11, 49, 51-52 (February 2004); Hiroyuki Kabashima, *Mietekita "Shin-Shihoushiken"*, in HOKA-DAIGAKUIN PERFECT GUIDE ("Perfect Guide to Law Schools") 47, 48-49 (Kawaijyuku License Center and Kyodo Editing Center eds.) (December 2003).

<sup>74</sup> Kanako Ida, *Hokadaigakuin no Ikkisei, Shihoshiken Gokaku 34%, Toshokoso 7, 8 wari to Taisa*, ASAHI SHIMBUN, Oct. 8, 2004, at 1 [*34% Projected Passage*]

Bar Examination Committee officials did not contradict these rumors, and speculation about new lower bar passage rates continued to persist.<sup>75</sup> Acting on these widespread rumors, in November 2004, approximately 1900 law students submitted a petition to the government, asking to increase the projected bar passage rate.<sup>76</sup> In the face of this criticism, Bar Examination Committee officials announced in March, 2005, that approximately 50%, or between 900 to 1100 law school graduates, are expected to pass the new bar exam to be given in 2006.<sup>77</sup> The number expected to pass the new bar exam in 2007 is expected to be approximately double the number in 2006 because more graduates of the new law schools will be eligible to take the bar exam.<sup>78</sup> Depending on the number passing the bar exams in 2006 and 2007, the bar passage rate may be adjusted.<sup>79</sup>

The widespread expectation of a low bar passage rate has, in our view, led to a decline in law school applications from the schools' first year, and now threatens the success of graduate professional education in Japan. When law schools were first established, many people enrolled with the expectation that they

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*Rate of the New Bar Exam for the First Graduates of Law Schools; Big Diversion from the Originally Projected Passage Rate, 70-80%].*

<sup>75</sup> See, e.g., Special Report, *Jyojyo ni Hokaisuru Riso no Kyoiku, Hoka-Daigakuin Ninenmeno Kiro* ("Gradual Collapse of Ideal Education, A Crossroad of Law School in its Second Year"), in *SHUKAN DAIAMONDO* 132, 133-134 (July 2005).

<sup>76</sup> See *Law School Students Want Higher Success Rate in Bar Exam*, JAPAN ECON. NEWSWIRE, Nov. 25, 2004.

<sup>77</sup> See *'06 Bar Exam Pass Rates Raised*, ASAHI SHIMBUN, March 2, 2005, available at <http://www.asahi.com/english/nation/TKY200503020175.html> (last visited Oct. 1, 2005); Heikojhishikkanchu no Shin-Kyu Shihoushiken gokakushasu nit suite [With respect to the figures of successful candidates of New and Old bar Examinations during the period when both examinations are implemented in parallel] available at [zzz insert Ministry of Justice website and date last visited] [hereinafter New and Old Bar Examination Rates].

<sup>78</sup> See New and Old Bar Examination Rates, *supra* note 77; *'06 Bar Exam Pass Rates Raised*, *supra* note 77. For transition purposes, the current bar exam will be continued for five years, and between 500 to 600 individuals are expected to pass the old bar exam in 2006. See also *Number Allowed to Pass New Bar Exam Upped*, DAILY YOMIURI, Mar. 2, 2005, at 4 (stating that the projected number of persons permitted to pass the old exam is projected to be lowered in 2006 to no more than 500 to 600 persons, and to no more than 300 persons in 2007; the old exam is scheduled to be phased out by 2010).

<sup>79</sup> See *'06 Bar Exam Pass Rates Raised*, *supra* note 77.

would have a realistic opportunity to pass the bar exam after incurring the time and expense of an additional two or three years of professional school education. However, law school applications have now declined by more than 50% from 2004 to 2005.<sup>80</sup> One might attribute some of the drop to a lessening of pent-up demand. But that cannot be the major cause of the decline. Notably, the number of Japanese LSAT administrations has decreased among both university graduates and *current* university students, indicating that many people with an interest in legal practice have lost trust in law schools as reliable gateways to the profession.<sup>81</sup>

It is difficult to overstate the importance of this problem. One prominent professor has predicted that if low bar passage rates persist “the system of graduate law schools will collapse.”<sup>82</sup> There are other less ominous, but still unattractive, possible reactions to the projected low bar passage rates. Law faculty at the professional schools may begin to emulate the cram schools by emphasizing memorization necessary for bar passage, rather than the legal analysis necessary to be an effective practitioner. Also, some of the law schools whose graduates have the lowest bar passage rates may be forced to close.

Even if the graduate professional schools survive a reduction in bar passage rates, the low rates will affect the students’ education. Students will likely spend their time in cram schools once again, and focus less on courses not tailored to the new bar exam. Currently, in the second year of the new professional schools, law faculty and students have expressed this

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<sup>80</sup> See Alan Brender, *Enrollment Plunges at Japan’s American-Style Law Schools*, CHRON. HIGHER EDUC., Dec. 3, 2004, at 39.

<sup>81</sup> From 2004 to 2005, the number of university graduates taking the Japanese LSAT decreased by 3313 (19.4%) and the number of current students taking the test decreased by 731 (11.6%). See <http://www.dnc.ac.jp> (last visited Sept. 10, 2005). At Waseda Law School, the average age of the students in the entering class declined from 27.0 in 2004 to 25.7 in 2005. See <http://www.waseda.jp> (last visited Sept. 10, 2005). We believe that the low expected passage rates are preventing working people from leaving their jobs to go to law school.

<sup>82</sup> Brender, *supra* note 80 (quoting Professor Setsuo Miyazawa, then Vice President of Omiya Law School).

concern.<sup>83</sup> If clinics are perceived by students as solely preparing them for practice, rather than directly helping them to pass the new National Bar Exam, there may be less demand for clinical courses among the students in the new professional schools, even if clinical courses are highly successful in teaching students to be skilled and effective professionals. Because the opportunity to practice law is still based principally on passing a National Bar Exam that focuses on legal doctrine alone and not how to apply legal knowledge to solve client problems, entrance to the Institute understandably looms as the primary, if not the sole, focus of students in the new law schools.

An additional difficulty for those who seek to introduce clinical methodologies in Japan is the lack of direction from the top. The Justice System Reform Recommendations provide little guidance beyond calling for law schools to implement “bi-directional (with give-and-take between teacher and students) or multidirectional (with interaction among students, as well)” methodologies, rather than the “one-way lectures” that have been the norm prior to the new law schools.<sup>84</sup> The report also calls upon law schools to offer courses that are not centered solely on legal theory but include skills such as fact finding and problem solving.<sup>85</sup> However, nothing in the report explicitly calls for the creation of clinical legal education programs.

By contrast, law schools that seek ABA accreditation in the U.S. are required to provide “substantial” instruction in “legal analysis and reasoning, legal research, problem solving, and oral communication,” as well as “other professional skills generally regarded as necessary for effective and responsible participation in the legal profession.”<sup>86</sup> They must afford “substantial opportunities” for “live-client or other real life practice

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<sup>83</sup> The November 2004 law students’ petition stated: “With the expected low success rate in the bar exam, many students will focus only on examination studies, making it difficult for them to acquire a broad range of general as well as expert knowledge.” *Law School Students Want Higher Success Rate in Bar Exam*, *supra* note 76 (quoting petition).

<sup>84</sup> *Justice System Reform Recommendations*, *supra* note 1, at ch. III, pt. 2.

<sup>85</sup> *See id.*

<sup>86</sup> American Bar Association, Standards for Approval of Law Schools, std. 302(a)(2), (4) (“Curriculum”) (2005).

experiences.”<sup>87</sup> The law schools in Japan that include clinical courses within their curricula do so because they see such programs as an excellent way of bridging theory and practice, and not because they are required to use clinical methodologies.

Finally, Japan lacks other institutional structures that have made clinics a success in the United States. A principal difficulty is the absence of a student practice rule or any accepted custom in the judicial system of having would-be *bengoshi* “learn by doing.” As already noted, even trainees at the Institute are usually relegated to observing rather than participating in the provision of legal services. Due to what appears to be a reluctance to allow law students to do legal work, some courts and government officials in the Justice Ministry have raised privacy concerns and have precluded law students from accessing court files, or even accompanying attorneys as they interview clients in jail.<sup>88</sup> The officials have asserted these concerns even though clients have given informed consent to clinical students assisting in the legal representation, and clinic students have signed a confidentiality oath that includes expulsion from law school as a sanction for breaching confidentiality. Practices vary, but some law students have been told that they may not attend closed court proceedings, such as those in family court.<sup>89</sup> In other courts, such as the Tokyo District Court, students may attend closed proceedings with consent of the opposing party. No court in Japan thus far permits students to sit at counsel table. Rather, they are relegated to the public parts of the courtroom.

Again, by contrast, over thirty-five years ago, the American Bar Association promulgated a Model Student Practice Rule to facilitate the growth of clinical courses in American law schools.<sup>90</sup>

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<sup>87</sup> *Id.*, std. 302(b)(1).

<sup>88</sup> See Takano, *supra* note 40, at 7-8, 14-15.

<sup>89</sup> See *id.* at 11, 15.

<sup>90</sup> See *Proposed Model Rule Relative to Legal Assistance by Law Students*, A.B.A. REP. 290, 290 (1969) [hereinafter *Proposed Model Rule*]. The ABA Model Student Practice Rule states that its purpose is to assist the bench and bar “in providing competent legal services for . . . clients unable to pay for such services and to encourage law schools to provide clinical instruction.” *Id.* Prior to the ABA adopting the Model Student Practice Rule, only fifteen jurisdictions had their own student practice rule. See Michael D. Ridberg, *Student Practice Rules and Statutes*, in CLINICAL LEGAL EDUCATION AND THE LAW SCHOOLS OF

All fifty states, plus the District of Columbia and Puerto Rico, now have adopted student practice rules.<sup>91</sup> These rules legitimize clinics and, of course, facilitate their operation. Japanese bar associations do not have a clear position on the role of students in court. The lack of a student practice rule in Japan is not necessarily fatal to the development of clinics: just as there is no rule that affirmatively *requires* courts to permit student practice, no rule expressly *prohibits* student practice. But that leaves it to clinical supervisors to advocate for the greater participation of students in courts, jails, and other settings where lawyers do their work.

The next section discusses the beginning of clinical legal education in Japan in greater depth.

## II. “BRIDGING THEORY AND PRACTICE”: THE NEW CLINICAL PROGRAMS IN JAPAN

Despite these many challenges, clinical legal education is becoming rooted in a number of Japan’s new professional schools. Waseda Law School has developed the most extensive clinical program to date. The first parts of this section describe the new programs at Waseda Law School, and highlight their essential features. We then report on developments at other professional schools in Japan.

### A. *Clinical Legal Education at Waseda Law School: Pilot Programs*

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THE FUTURE 223, 231-64 (Edmund W. Kitch ed., 1970). Six additional states adopted student practice rules in 1969. *See id.* at 235-61.

<sup>91</sup> *See* Joan W. Kuruc & Rachel A. Brown, *Student Practice Rules in the United States*, 63 B. EXAMINER, No. 3, at 40, 40-41 (1994). In addition to Kuruc’s and Brown’s article discussing the features of the various state student practice rules, other commentators have compared the requirements, privileges, and responsibilities under the student practice rules throughout the United States. *See, e.g.*, David F. Chavkin, *Am I My Client’s Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. REV. 1507, app. A, at 1546-54 (citing each state’s student practice rule and the supervisory obligations for attorneys); Peter A. Joy, *The Ethics of Law School Clinic Students as Student-Lawyers*, S. TEX. L. REV. 815, 825-28 (2004) (discussing the ethical obligations of law students certified under state student practice rules).

In 2002, Waseda law faculty members visited approximately ten American and Canadian law schools to learn about clinical legal education. What impressed them most about clinical legal education in North America was the diversity of the clinical programs. Through the experiences of the North American law schools, the Waseda faculty found that there are alternative models of clinical programs as well as critical, indispensable features to clinics.

One question for Waseda was whether to build a general legal clinic that provides training for a general practitioner or to create a specialized legal clinic that provides legal services for a specific group of people, such as neglected children, persons with disabilities, or refugees. The faculty decided that Waseda Law School is large enough to build a general clinic and specialized clinics as well. Waseda Law School has an entering class of 300 students with 70 full-time faculty members. The faculty decided to have a general civil law clinic, and a criminal law clinic. In addition, they have planned clinics in family, labor, gender, intellectual property, constitutional, and refugee and immigration law. Since the fall of 2003, they have conducted pilot programs to try out the civil law clinic, the criminal law clinic and the refugee and immigration law clinic.

With regard to the indispensable features of clinical legal education, Waseda faculty members have tried to integrate clinical and academic components together in the clinical pedagogy. What follows is a description of the pilot programs of clinical legal education at Waseda Law School, which endeavor to “bridge theory and practice.”<sup>92</sup> Unlike the Legal Training and Research Institute, where trainees engage in “learning by seeing,” the overriding approach in Waseda’s clinics is “learning by doing.”

### 1. *The Civil Law Clinic*

The Civil Law Clinic is a pilot program aimed at providing law students with the opportunity to do as much as they can in the

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<sup>92</sup> An overview of the Waseda Law Clinics is described in Peter A. Joy, *The Birth of the Waseda Law Clinics: Bridging Theory and Practice*, Keynote Address at the Opening Celebration for the Waseda Law Clinics at Waseda University (May 22, 2005) (on file with authors).

representation of clients with legal problems. The Civil Law Clinic is taught by teaching teams of academic faculty members and practicing attorneys who newly joined the law faculty at Waseda. These supervising faculty members try to put students into the role of the attorney for the client as much as possible. A short description of the process will help to explain how this occurs.

When a new client is scheduled for an appointment, the law student outlines with the supervising attorney a plan for interviewing the client. The student conducts research on the type of legal problem and consults with the supervising attorney prior to the client interview. At the interview, the student first asks questions of the client, and the faculty supervisor only asks questions if it is necessary. After the client interview, the student discusses the legal issues with the faculty supervisor, and the student explains the legal options to the client.

At each step in this process, the student receives feedback from the faculty supervisor. The student is therefore better able to understand how to improve and to become a more effective practitioner.

From June of 2004 until March of 2005, a total of sixty-six students handled seventy-nine cases. Students worked in four-person teams over a period of two months. Each team of students handled approximately five cases, and the cases ranged from landlord/tenant disputes, inheritance matters, divorce or custody, real estate, employment, accident, and money problem cases. Some cases were in litigation; others were involved in negotiation, mediation, or family court procedures. One of the faculty supervisors reported that he has received seven thank-you letters from clients in the past ten months. These are the only thank-you letters he has received in twenty-one years as an attorney! The comprehensive and excellent representation of students working with faculty has led to this high level of client satisfaction.

The Civil Law Clinic students have reflected on their experiences. Their most frequent comment is their recognition of how difficult it is to communicate effectively with clients. This can only be learned in real practice. The second most common

student comment is their realization of how important the legal theories they learn in their classroom course really are to understanding and solving concrete client problems. Finally, they noted how their experiences showed them the importance of critical thinking, and the need to evaluate the merits of each client's case in light of the actual evidence and the operation of the legal system. These are lessons that a law student can neither learn inside the traditional classroom, nor fully appreciate through simulation courses.<sup>93</sup>

## 2. *The Criminal Justice Clinic*

The Criminal Justice Clinic is an experimental clinic that started in the summer of 2004. It is taught by two clinical faculty members with some twenty years of criminal defense law practice. Prior to April 2005, when the clinic was made part of the formal curriculum, thirteen students in groups of three or four, students worked on five cases. The faculty supervisors acquired the cases through the duty attorney system.<sup>94</sup> Since the spring of 2005, sixteen students have worked in groups of four on four more cases. Three were taken through the duty attorney scheme and one from a referral from a client. The nine cases accepted through the duty attorney system were taken at the pretrial stage, and the one referral case was taken at the appellate stage.

There are four goals of the Criminal Justice Clinic: to provide basic skills instruction in criminal law advocacy; to teach students through experiential learning how the criminal justice system works; to learn how clients in the criminal justice system are treated; and to provide assistance of highly skilled counsel to clients who are unable to afford attorneys.

Although there are barriers to their participation, students truly engage in "learning by doing." Whenever permitted by the

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<sup>93</sup> See Nobuo Kojima, *An Experiment of the Civil Law Clinic at Waseda Law School* (April 29, 2005) (unpublished manuscript, on file with authors).

<sup>94</sup> The duty attorney system provides free legal advice for criminal suspects detained at detention sites by participating attorneys on duty for the call from the detainees. The system is run by the prefectural bar associations in Japan. See Masayuki Murayama, *The Role of the Defense Lawyer in the Japanese Criminal Process*, in *THE JAPANESE ADVERSARY SYSTEM IN CONTEXT: CONTROVERSIES AND COMPARISONS* 42, at 47-48 (Malcolm M. Feeley, et al. ed., 2002).

police, students attend confidential interviews in the station house with their faculty supervisors. When they attend the interviews, they are encouraged to ask questions and participate in the interviews. Students also work on pretrial motions and take action on behalf of clients to seek their release.

The results for the clients have been remarkable. In two of the nine cases taken at the pretrial level, the judge dismissed the prosecutors' warrant requests. This is a dismissal rate of 22%, which is over seventy-three times greater than the average dismissal rate of approximately 0.3%. Even though the sample is very small, the law students and faculty in the Criminal Justice Clinic are providing legal representation that is equal to or exceeds the representation of the most respected criminal defense attorneys in Tokyo.

Students in the Criminal Justice Clinic do all of the out-of-court work, such as witness interviews, drafting arguments, and any other work that an attorney would do in preparing a case for trial. Students are not permitted to conduct trials, because there is no student practice rule in Japan authorizing law students to appear in court for clients. Thus far, judges have not permitted law students to sit at counsel table at trial. Instead, students must observe the trials from the spectators' seats.

Almost all of the students who have been in the Criminal Justice Clinic have stated that it is the best method to learn the law and practice of criminal procedure. They are shocked when they see the gap between the law in books and the law in practice. Meeting with their clients motivates them to work harder than they have ever worked before. The students also develop the sense of ethical values imbedded in the legal profession. One student has commented that she found herself looking at every case disposed of as an irreplaceable case from the clients' point of view, rather than as one of many cases to be handled routinely.<sup>95</sup>

### 3. *The Refugee and Immigration Law Clinic*

The Refugee and Immigration Law Clinic is a pilot program that is jointly offered by an academic faculty member

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<sup>95</sup> See generally Takano, *supra* note 40.

who is specialized in this field of law, and an attorney with some fifteen years of law practice in this field who joined Waseda Law School as a visiting associate professor. The Clinic has been established for third-year law students to provide legal services to refugees and non-citizens with the supervision of the teaching team of the academic and clinical faculty members.

As a pre-requisite, students must take a classroom course on refugee and immigration law that is jointly taught by the same teaching team. In this course, students are introduced not only to the current theories concerning domestic immigration law and international human rights law, but also to a variety of legal practice issues and lawyering skills, such as legal draft writing and communication with foreign clients. With this preparation by way of classroom instruction, students are assigned to provide legal services for live clients.

One year before the start of the new professional law school, the Refugee and Immigration Clinic had one graduate student in law “try out” a clinical course. He was assigned to interview a refugee concerning his personal story about leaving his country and seeking refugee status. This interview required the assistance of an interpreter. The refugee was a political dissident from Burma. The student was given an opportunity to draft written testimony to be submitted to the court. This draft testimony was first submitted to the faculty supervisors for comment. The student was tasked with reconstructing the facts of his client’s story to make the testimony more persuasive to the judge. He found himself facing language and cultural barriers in trying to communicate with the client so that they could present compelling testimony about his experiences in Burma to a Japanese judge. What makes sense in one culture may not in another and how information is obtained and relayed also varies greatly. These experiences in dealing with cross-cultural communication problems have benefits extending beyond the immediate goal of assisting refugees; law students with such experiences will be in a better position to serve foreign clients not only in human rights cases but also in commercial transactions or other litigation. That is to say, the training given at the Refugee and Immigration Law Clinic is transferable to other aspects of legal practice and

sensitizes law students to foreigners' varied assumptions, expectations and perspectives about the legal process.

The Refugee and Immigration Law Clinic also aims to imbue students with academic curiosity. With the establishment of the new law school system, the training of legal scholars will shift away from the existing graduate schools of law where academic research is emphasized. By exposing students to the reality of legal practice through legal clinics and externships with NGOs and international organizations, advocates of the new system hope that students will be eager to pursue research relevant to their practical experiences that would address legal problems they have seen first hand. The student who participated in interviewing the refugee applicant wrote a case note for publication on the subject of the endless detention of non-citizens who, after being issued a deportation order, have been denied re-entry by their home country.

In building the Refugee and Immigration Law Clinic, a group of law practitioners, scholars, and NGO staff members helped the teaching team of the academic and the practitioner in many ways, such as providing externship opportunities for students and giving advice on the course. As one of fruitful results of this collaboration of academics and practitioners, they published a textbook for students who take the Refugee and Immigration Law Clinic and similar clinical courses at other law schools. This textbook<sup>96</sup> distinguishes itself from existing law school textbooks, because it is interdisciplinary in terms of contributors, including an authority on refugee law, an expert on international human rights law, a long-term member of the United Nations Human Rights Committee, an interpreter, and experienced attorneys in the field of refugee and immigration law. The list of these contributors literally represents the idea of "bridging theory and practice."<sup>97</sup>

#### 4. *Externship Programs*

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<sup>96</sup> Shigeo Miyagawa, ed., *ALIEN LAW AND CHALLENGES IN LAWYERING* (in Japanese) (2005).

<sup>97</sup> See Shigeo Miyagawa, "Bridging Theory and Practice": The Waseda Refugee Law Clinic Pilot Program (April 29, 2005) (unpublished manuscript, on file with authors).

Most of the newly established professional law schools in Japan make effective use of externships in law offices to get students involved in the real law practice. Waseda Law School also uses an externship model for clinical legal education, providing over sixty places for students' assignments. Waseda differs from other law schools in Japan, however, by encouraging students to go to sites other than law offices. These placements are, for example, with offices of NGOs, central government ministries and agencies, municipal governments, and domestic regional offices of international organizations, where there are traditionally not many lawyers employed due to the small number of lawyers in Japan, but a considerable demand exists for professionals trained with knowledge and skills in law. There are a variety of fields where legal professionals can provide legal services and take initiative in developing the law into an effective tool for shaping society and promoting reform. Lawyers can play a key role as autonomous actors relatively insulated from pressures and constraints, making them effective advocates. It is also possible that lawyers who become involved in advocacy work may find it desirable as a career and thereby contribute to the professionalization of NGOs.

As part of the overall clinical program, the Refugee and Immigration Law Clinic takes responsibility for the externships with NGOs and international organizations. In the summer of 2004, one student was sent to the office of a refugee-related NGO where staff members were all non-lawyers. They provide many kinds of services to refugees, including assistance in filling in government application forms for the refugee status, and doing research on the likelihood that the refugee would face persecution if forced to return to their home country. Through working at the NGO and providing such services to refugees, this student found herself reflecting upon the role of lawyers in non-litigation settings. She reflected on how law school education enables her to contribute to the NGOs activities in ways different than the other staff without legal training. This experience helped her appreciate what is the essential training that makes her a lawyer and what it means to be a lawyer. This type of externship experience broadens the horizons of law students in ways that lawyers trained in the government's Legal Research and Training Institute have not been exposed to. Thus, the revamping of legal training and shifting it

from a government to an academic setting carries the potential for significant transformation of the role of lawyers in society.

B. *Three Approaches to “Bridging Theory and Practice,”  
and Values Inherent in the Clinical Pedagogy*

Three critical features of the Waseda Law Clinics that “bridge theory and practice” are important to highlight here. The first is the formation of a teaching team with academic and clinical faculty members. Both academics and practitioners teach courses together, and supervise students together. The second feature concerns the relation between doctrinal and clinical courses in the law school curriculum. There are issues of timing of clinical courses and pre-requisites. The third feature involves teaching values, skills, and reflection. In Waseda Law Clinics, students get not only lawyering skills, but also engage in self-reflection about the role of the lawyer in society and professional responsibility.

With regard to a teaching team, legal academics and practitioners tend to have different analytical views on cases to be dealt in the clinics. By creating a teaching team, students benefit from a dynamic tension between teachers from different professional backgrounds. This tension and exposure to different perspectives facilitates reflection about the legal profession. This is one way of integrating theoretical considerations and practical training of professional skills and values in the clinical course offering. One fruitful result of this collaboration is the textbook for the Refugee and Immigration Law Clinic.

With regard to the sequencing of clinical courses in the curriculum, clinical courses at Waseda are offered in the third year. Students take doctrinal courses such as constitutional law, contracts, torts, civil procedure, criminal law, and criminal procedure, and some of the lawyering skills courses on the civil trial advocacy and the criminal defense advocacy in their first and second years. Thus, the clinical courses provide good opportunities for students to integrate doctrinal aspects of legal studies and practical training of skills and values in the context of live client cases. For those students who seek to enroll in specialized clinical courses such as the Refugee and Immigration Law Clinic, Waseda requires foundational courses that provide

specific preparation of theories and lawyering skills in the specialized field. Though offering clinical courses for third-year students is one way of structuring the curriculum, there is currently a discussion at Waseda to offer clinical courses earlier, such as by incorporating clinical components in the first-year survey course on the judicial process. This idea stems from the belief that clinical pedagogy provides a strong incentive for students to learn doctrine and helps them gain a good grasp of the procedural aspects of actual cases.

With regard to facilitating self-reflection on the role of the lawyer in society and issues of professional responsibility, the Waseda Law Clinics aim to instill ethics and values that will improve the legal profession and make lawyers more aware of their social responsibilities. Though the number of cases the Waseda Law Clinics have handled is small, students have acquired a good sense of professional ethics, such as the duty of confidentiality upon dealing with clients, rather than just reading what that duty means in a textbook. Students have also become more aware of the professional responsibility of the lawyer, which can be seen in the student's statement of how she began to look at cases from the view point of clients' irreplaceable lives. Most of all, the fundamental value of professional responsibility is to provide high quality legal services for clients. In this respect, services provided by Waseda law students, under the close supervision of faculty attorneys, are highly satisfactory. This is shown in the clients' appreciation for the Civil Law Clinic in the form of thank-you letters, and the high success rate of prosecutors' requests for detention warrants being denied by judges in cases handled by the Criminal Justice Clinic.

The externship programs at Waseda also provide good opportunities for students to reflect upon the role of the lawyer in society. It is particularly true of the externship to the NGO offices where there are traditionally no lawyers involved in their activities. In these settings, students can explore the broader potential of the legal profession and bring their skills to bear in new fields.

The values underlying the Waseda Law Clinics are inherently clear in the pedagogy of the Waseda Law Clinics. The fulfillment of these values, including but not limited to, the

collaboration of academics and practitioners, the reinforcement of students' understanding of law with clinical experiences, the improvement of legal practice, the critical self-reflection on the role of the lawyer and the professional responsibility, in sum, "bridge theory and practice."

### C. *Clinical Programs at Other Japanese Law Schools*

Thirty-three of the sixty-eight new Japanese law schools responded to a survey about their curricula conducted in 2004, and ten law schools responded affirmatively to the question, "Are you planning to establish a law office for clinical education in your school?"<sup>98</sup> Although these ten law schools indicated plans to begin clinical courses, to date relatively few have started offering clinical courses. Part of the delay may be explained because some law schools plan to enroll only third-year law students in clinical courses, and the new law schools are only in their second year of existence. Nonetheless, some law schools in addition to Waseda Law School have already started clinics, or have plans to begin them in 2006. The following part of the Article contains a sampling of some of the first clinical programs in law schools in Japan.<sup>99</sup> There is real diversity and experimentation in the schools' models of clinical legal education.

#### 1. *Shibuya Public Law Office: A Collaboration of the Tokyo Bar Association, Dokkyo, Kokugakuin, Meiji Gakuin, and Tokai University Law Schools*

One approach to implementing clinical legal education in Japan is a joint initiative of the Tokyo Bar Association, the largest bar association in Tokyo, and four Tokyo professional schools: Dokkyo, Kokugakuin, Meiji Gakuin, and Tokai University Law Schools. The Tokyo Bar Association contributed the funds necessary to convert space in the Kokugakuin University Law

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<sup>98</sup> E-mail from Ayumi Michi Kodama, Attorney at the Shibuya Public Law Office, to Peter A. Joy, Professor of Law, Washington University School of Law in St. Louis (June 21, 2005, 1:26:51 CT).

<sup>99</sup> A complete description of all of the clinical programs in Japan is beyond the scope of this article. The authors regret that not all of the new programs can be included here. We look forward to future scholarship on the clinical legal education movement in Japan.

School into a law office, called the Shibuya Public Law Office, and the operating expenses are supported by the legal fees earned by the attorneys in the Office. Kokugakuin University contributes the space rent free, and provides the utilities. The other law schools in the collaboration provide some support.<sup>100</sup> Clients of the Office are charged fees. The Shibuya Public Law Office is located in the Shibuya district of Tokyo, and is close by to major rail and subway connections.

The Office is the site of two practice experience courses for law students at the four law schools. The first experience is a simulation course called Beginners' Legal Clinic. In this course, law students engage in simulations in which they practice various aspects of client representation. The second course is the Advanced Legal Clinic, in which law students work with attorneys in the Office and help in providing legal representation to Office clients.

In the Advanced Legal Clinic, students work in teams of two and assist an Office attorney as he or she represents a client. The students observe the attorneys practice law and participate in some aspects of client representation. For example, law students participate in client interviews and consultations, analyze the relevant facts and identify legal issues, conduct legal research, and assist with the preparation of pleadings.<sup>101</sup>

This model of clinical legal education faces some challenges, however. At the present time, students participating in the Advanced Legal Clinic are required to spend only two hours per week working on client matters. Attorneys in the Office find that two hours per week is not enough time for the students to be

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<sup>100</sup> See Katsumasa Hirabayashi & Eishi Misawa, Shibuya Public Law Office's Approach to Clinical Legal Education: The Collaboration of the Tokyo Bar Association with Four Law Schools in the Tokyo Metropolitan Area (April 15, 2005) (unpublished manuscript, on file with authors). The description of the clinical program at the Shibuya Public Law Office is drawn from the paper presented by Dean Hirabayashi and Eishi Misawa, as well as first-hand observations of the authors, and interviews with attorneys working at the Shibuya Public Law Office.

<sup>101</sup> See *id.* at 4-5.

fully engaged in client representation, and that there is not much that students are able to do with so little time.<sup>102</sup>

In addition, the attorneys in the Office must earn their salaries through client fees, and teaching students detracts from time that could be spent earning fees. The monetary contributions of the participating law schools are not sufficient to compensate the attorneys for the time spent teaching, and the Tokyo Bar Association does not supplement the attorneys' salaries to compensate for the student supervision. This situation places the full responsibility, and most of the cost, for clinical legal education directly on the attorneys in the Office.

The limited amount of time of students spent working on client matters, and the economic arrangement for funding their education, work to create disincentives for the optimum learning environment. Rather than enabling students to make substantial contributions to client representation, the present conditions result in students learning more from observing than from doing.

## *2. Omiya Clinical Program*

Omiya Law School inaugurated its clinical program by opening two legal counseling centers in December of 2004. One counseling center is located within the Omiya Law School, which is in a suburb of Tokyo. The second counseling center is in the Shibuya district. These counseling centers are known as the "All Day Clinic" because they are opened on evenings and weekends. They are designed to accommodate law students at Omiya Law School, many of whom attend the night program, and clients who may have work or other obligations during the regular work day.<sup>103</sup>

The counseling centers currently provide free legal consultations to persons seeking legal advice. Client representation beyond legal advice and counseling is not provided

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<sup>102</sup> Interview with Eishi Misawa, Attorney with the Shibuya Public Law Office, in Tokyo, Japan (May 18, 2005).

<sup>103</sup> The description of the Omiya Law School clinical program is based on observations of the authors as well as Lawrence Repeta's manuscript, Omiya Law School and the "All Day Clinic," (April 29, 2005) (unpublished manuscript, on file with authors).

through the clinical program, but persons seeking legal advice may arrange for representation by the attorney in charge of the counseling services. Omiya Law School plans to provide full representation in civil and criminal matters starting in January of 2006, when the clinic office inside Omiya Law School opens.

When the in-house clinic at Omiya Law School becomes operational, law students will be able to enroll in either a two or four credit course for a six month period. Students in both the two and four credit options will attend a two hour seminar class component. They will work on behalf of clients for at least four hours per week in the two credit course and eight hours per week in the four credit course.<sup>104</sup>

From December of 2004, through April of 2005, the counseling centers conducted over 200 counseling sessions. At present, students receive no credit for their work at the counseling centers and the number of students involved has been small. Those students who have participated indicate that the counseling sessions have provided them with a realistic view of the law practice in real life, and that this has provided them context for their studies. Students note that participating in the counseling sessions has also provided them insights into what may be redressed through the legal system, as well as the difficulty in effectively interviewing and counseling clients.<sup>105</sup>

### 3. *Hosei University Law School Clinic*

Hosei University is one of six major universities that form the oldest baseball league in Tokyo. Hosei has an enrollment of 100 students per class. It offers “Clinic I” and “Clinic II,” each of which is an elective four-credit course. The former is offered for second-year students, and the latter for third-year students. The Hosei clinical program is unique in that it is supported by two on-campus law centers. One is the Liaison Law Office, which began operation in the spring of 2003, a year before Hosei Law School was established. The law office is titled “Liaison” because it is designed to bridge the university’s academic resources and the need for legal services for socially

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<sup>104</sup> See Repeta, *supra* note 104, at 6.

<sup>105</sup> See *id.*

disadvantaged people. The other law center is the Center of Alternative Dispute Resolutions, which provides conciliation and arbitration services for a general clientele.

In the Liaison Law Office, six attorneys on the law faculty are available for legal counseling to clients. In addition, about 10 supporting private practice attorneys (alumni of Hosei University) provide a legal counseling session once a month on campus. Legal counseling is provided free of charge, and attorneys' fees are charged only when clients need legal representation. Students participate in the legal counseling with the consent of the clients. In the ADR Center, students participate in conciliation and arbitration as observers, with the consent of the clients.

Students in the clinical courses have first-hand opportunities to watch different styles of client-attorney communication and sometimes ask supplementary questions of the clients. Though students can attend the legal counseling sessions of any attorneys on duty, a group of three to seven students is assigned to one particular faculty supervisor for a case that has developed to the point of legal representation. Students are expected to attend a roundtable session for case discussions once a week. There are not only faculty supervisors but also other professors in related academic fields who participate in the weekly roundtable sessions.

The Liaison Law Office has a specialty in representing clients with mental retardation. The office handles cases in which people with retardation are taken advantage of by loan sharks and in making contracts to purchase durable consumer goods. Many of the legal issues in these cases are the same as in cases for non-handicapped people. The difficulty of these cases often involves the social position and stereotypes of people with retardation. Handling cases of handicapped people as part of a law school education puts law students in a position to think about the case in the total context of the human life, not just in the legal framework. Having students involved in the legal counseling of these types of cases enhances their understanding of the difficulties of these clients, and of the lawyer's mission as an advocate for socially disadvantaged people.

Because these programs are just in their inception, students have remained passive observers. As part of “Clinic I” and “the Clinic II”, students are sent to law offices off campus for one week. The Hosei clinical program puts an emphasis on the students’ exposure to different types of client-attorney communication skills, and the students’ participation in case discussions with practitioners and academics with a view to making students aware of the infirmities of the current state of law practice. This critical reflection on the legal profession is something that cannot be obtained in the apprenticeship training provided by the Legal Training and Research Institute.<sup>106</sup>

#### 4. *Dokkyo University Law School Clinic*

Dokkyo University is in Soka City, Saitama Prefecture, on the outskirts of the Tokyo metropolitan area. The Law School’s clinical program is operated in cooperation with the local city government and the prefectural bar association. Though Dokkyo Law School participates in the clinical program of the Shibuya Public Law Office, the Law School offers its own program for Dokkyo students. “Legal Clinic I” is required of second-year students. “Legal Clinic II” is an elective for third year students. The Law School also offers an elective externship course for third year students.

“Legal Clinic I” is offered as part of the legal counseling services program of Soka City. The City provides this service to its citizens with the help of the Saitama Bar Association. Those citizens who consent to the students’ participation in the legal counseling are assigned to a team of a supervising attorney and two or three students. Though students are mostly limited to observing the attorney, they are sometimes allowed to give questions to counselees. After the counseling session, students discuss legal matters with the supervising attorney. As a third-year elective, “Legal Clinic II” has not yet been offered. Students in

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<sup>106</sup> The description of the Hosei Law School clinical program is based on the unpublished Japanese transcript of the speech by Yoshihiko Nakamura on the Hosei clinical program, presented at the Waseda Symposium, Comparison of the Clinical Legal Education and Medical Education (December 4, 2004) (on file with authors), and information obtained from the website of Hosei Law School at <http://www.hosei.ac.jp/pro1/law/index.html> (last visited September 10, 2005).

“Legal Clinic II” will be trained in the supervising attorneys’ law offices, the Shibuya Public Law Office, or the Kitasenju Public Law Office, which is in Tokyo.

Though students’ involvement in the legal counseling is relatively passive, Dokkyo Law School has made “Legal Clinic I” a requirement for graduation. The Law School has enrolled 50 students per graduating class. Half take the course in the spring and half in the fall. Because the clinical activities of this course are closely related to the legal counseling services of the local government and the prefectural bar association, the strong support and goodwill of these two bodies are indispensable. This close relation may in turn limit the students’ involvement in the clinic if the City and the bar association insist that the primary goal of the program is to provide pro bono legal services, rather than to further the educational mission of the school.<sup>107</sup>

##### 5. *Ritsumeikan University Law School Clinic*

Ritsumeikan University is located in Kyoto, the old capital of Japan, about 500 kilometers southwest of Tokyo. Ritsumeikan’s undergraduate faculty of law has provided legal counseling services to citizens in Kyoto for many years; the faculty has supervised students who provide counseling as an extracurricular activity. Ritsumeikan Law School now offers a specialized clinical course in the field of women and law, called “Legal Clinic II (Women and Human Rights),” as well as “Legal Clinic I (Legal Counseling)”. The Law School also offers an externship course. These three courses are for third-year students, who are required to take one of the three for graduation.

The “Legal Clinic II (Women and Human Rights)” is conducted by a teaching team of a practitioner-professor and a non-practitioner professor. Students are involved in counseling victims of domestic violence, sexual harassment, and employment discrimination. The course is designed to train

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<sup>107</sup> The description of the Dokkyo Law School clinical program is based on information presented by Dokkyo Law School at the Waseda Colloquium on Clinical Legal Education (March 15, 2005) and that obtained from the website of the Law School at <http://www.dokkyo.ac.jp/lawschool/> (last visited September 10, 2005).

students in lawyering skills such as counseling, negotiation, and identifying primary facts and legal issues of the case, as well as to instill professional values and professional ethics in the context of women and law.

This specialized clinic makes good use of the university's academic resources. Ritsumeikan University is home to the Graduate School of Science for Human Services and the Counseling Center of Psychology and Education. The Graduate School offers a course on therapeutic psychology and law. The Counseling Center handles cases of such victims as those of domestic violence, sexual harassment and learning disabilities. The "Legal Clinic II" is designed to collaborate with the Graduate School and the Counseling Center. Though actual collaborative work has not yet taken place, this interdisciplinary approach promises to give law students excellent opportunities to tackle problems in a way that is not taught at the Legal Training and Research Institute.<sup>108</sup>

#### 6. *Kagoshima University Law School Clinic*

Kagoshima University is located in the Kagoshima Prefecture, which occupies the southernmost area of the southwest island of the four main islands of Japan. Kagoshima Prefecture is one of the least well-served by attorneys in Japan. There are 90 registered attorneys in Kagoshima Prefecture for a population of 1,769,000, or one attorney for every 19,655 people. Tokyo, by contrast, has one registered attorney for every 1210 residents, or 16 times the number of lawyers per capita as in Kagoshima.<sup>109</sup>

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<sup>108</sup> The description of the Ritsumeikan Law School clinical program is based on a speech by Shuhei Ninomiya at the Waseda Open Seminar on Clinical Legal Education (July 22, 2003) that is published in *CLINICAL LEGAL EDUCATION IN LAW SCHOOL* (in Japanese) 172-78 (Shigeo Miyagawa, ed., 2003), and information obtained from the website of Ritsumeikan University at <http://www.ritsumei.ac.jp/> (last visited September 10, 2005).

<sup>109</sup> The statistical data on the population are as of October 1, 2004, obtained from the website of the Statistics Bureau at <http://www.stat.go.jp/data/jinsui/2004np/index.htm> (last visited September 10, 2005). The numbers of attorneys are as of September 1, 2005, obtained from the website of the JFBA at

Because of the scarce availability of legal services in the Prefecture, Kagoshima Law School's clinical program emphasizes service, particularly to those living in discrete small islands of Kagoshima Prefecture. The Law School's clinical program consists of "Legal Clinic 1", "Legal Clinic 2" and "Externship." "Legal Clinic 1" is a clinical course designed to send a group of supervising attorneys and students to a small island where they give legal counseling services to local residents. Due to the distance from the Law School campus as well as the student workload, the course is intensively offered for approximately one week during the winter and spring recesses. Because the course is for second-year students, it will be offered in the January and March of 2006 for the first time for academic credit.

Though it has not yet been formally offered, the Kagoshima Law School conducted a pilot program in the same format as the "Legal Clinic 1" in January 2005. Two practitioner-professors, two non-practitioner professors, and six students participated in the legal counseling for island residents. Though the legal counseling was mainly conducted by the practitioner-professors, students were allowed to ask supplementary questions, and students also took turns taking notes of counselees' case stories to prepare materials for the later roundtable discussion with the faculty members and students. Students' involvement in the legal counseling remained minimal, but they became aware of the difficulty of communicating with counselees and identifying primary facts for the application of law. The students' exposure to the reality of life in the isolated island community, where attorneys are not available, leads them to reflect on the essential role of attorneys to promote the rule of law and allow equal access to legal services.

Kagoshima Law School ambitiously requires "Legal Clinic 1" for graduation. The entering class is 30 students each year. The Law School plans to increase the number of supervising attorneys in to realize a low student-faculty ratio. The School expects strong support from the Kagoshima bar association, which will draw private practice attorneys to supervise students. The Law School has also made good efforts to raise funds from the local bar

association and business groups in order to send and accommodate students and supervising attorneys to distant islands.

“Legal Clinic 2” is an elective course, and the clinical activities will be conducted in the city of Kagoshima. This will be offered in the same format of legal counseling as the “Legal Clinic 1” with the support of the local bar association. The “Externship” course is also elective. The externship program is supported by not only the local bar association but also two other bar associations in the neighboring prefectures.<sup>110</sup>

### III. THE FUTURE OF CLINICAL LEGAL EDUCATION IN JAPAN

To begin, we should acknowledge that clinical legal education in Japan only has a future if professional graduate legal education has a future. Japan’s law schools are only a year and a half old, and already there is uncertainty about their ability to survive—or at least about their ability to succeed with a model of professional education that will accomplish the ambitious goals of the Justice System Reform Council. One goal of the Council, of course, was to increase the number of *bengoshi* and thus make legal services readily available to many more people. However, the Council also sought to transform the way in which lawyers are trained. The Council adopted the professional graduate law school model because of the need to teach new lawyers skills and values, in addition to doctrine. In our view, if bar passage rates are set significantly lower than the 70% to 80% originally recommended, the Council’s goals will be thwarted. Schools will have many fewer applicants, and some of the new professional law schools may be forced to close. Schools will begin merely “teaching to the test,” instead of ensuring that students are well-grounded in skills and values. The net effect may simply be to replicate the “cram school” experience within a university setting. The next few years will reveal whether our concerns are well-founded.

Putting this issue partly to the side, we think that clinical legal education has a promising future in Japan—at least as long as

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<sup>110</sup> The description of the Kagoshima Law School clinical program is based on information provided by the Kagoshima Law School at an interview (July 7, 2005) and that obtained from the website of the Law School at <http://www.ls.kagoshima-u.ac.jp/> (last visited September 10, 2005).

graduate professional legal education continues to exist—but that there are very substantial challenges. Many of these challenges are products of the current state of Japan’s justice system and legal culture, including the lack of a pool of legal educators with practice experience.

The story of the development of law school clinics in Japan is much different than in the United States. In the U.S., professional graduate law schools were in place long before clinical methods were accepted as an important part of a legal education. There was a limited movement to build clinics in the early part of the twentieth century. Nevertheless, clinical legal education really began to take root in the late 1960s and early 1970s, when the Ford Foundation (and the Council on Legal Education for Professional Responsibility) provided seed funds for clinics at many of the nation’s law schools.<sup>111</sup> Many clinics were initially based on two established service delivery models: public defender and legal services offices. We now have an enormous proliferation of clinical models in U.S. law schools.

Before opening graduate professional law schools in Japan, many *bengoshi* and legal scholars visited law schools in the U.S., Canada and other countries. They were exposed to a rich assortment of clinical models. Though it is perhaps disappointing that clinical legal education is not more firmly rooted in the curriculum at more of Japan’s new law schools, it is encouraging that clinical methods are being employed in more diverse ways than when clinics first became well-established in U.S. law schools. Waseda Law School offers general civil and criminal clinics, as well as a clinic specializing in immigration and refugee law. Other unique programs include the Shibuya Public Law Office, which is a four-school collaborative, and clinics in such areas as alternative dispute resolution, representation of people with mental retardation, and the provision of legal services to a remote island community. This is all good and promising news.

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<sup>111</sup> See generally Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 CLIN. L. REV. 1 (2000) (describing the development of U.S. clinical legal education).

The best of the new clinical programs in Japan are being led by people who are thinking about clinics in a very sophisticated way.

Also encouraging is that the new law school clinics all provide legal services to people who would otherwise have difficulty obtaining legal counsel, and that they provide first-rate assistance. The stories are poignant and ring true: the practitioner-professor who has received his first thank-you letters after many years in practice; the high rate of dismissals recorded in the cases of a leading criminal clinic; and the difficult and unique work done by students and faculty in the Kagoshima Prefecture, who bring legal services to residents of a remote island. All of these programs increase the amount of legal services to needy people and, at the same time, establish a public service mission for the law schools.

And there are more good tidings still: many of these programs team traditional legal scholars with practicing lawyers hired to be clinical faculty members. Not only does this approach integrate the teaching of theory and practice, it should go a long way to foster legal scholarship related to practice issues that will further the law reform goals of the Justice System Reform Council.

None of this good news is, of course, to minimize the challenges. Some of the difficulties now faced by clinical programs are due to the current structure of the legal profession, and to resistance to change.

First, there is an historical concern that a possible oversupply of attorneys may hurt the economic well-being and social status of *bengoshi*.<sup>112</sup> This underpins some of the resistance within the legal profession to a substantial increase in the number of attorneys.

Second, many of the clinical programs currently limit student participation to attending counseling sessions. These clinics are important beginnings, but the very limited expectations of what law students may be able to do is grounded in part on the experiences of prosecutors, judges, and attorneys who were largely limited to “learning by watching” during their time at the Institute.

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<sup>112</sup> See *supra* notes 28 – 43 and accompanying text.

The current members of the legal profession are all products of the Institute and, whatever its shortcomings, the Institute has been the sole locus of legal training and socialization into the legal profession prior to admission to practice. Having had no experience with professional law schools, much less clinical courses within law schools, there is a level of skepticism and resistance. Some members of the legal profession find it difficult to imagine that a student who has not even been admitted to the Institute can provide (or meaningfully participate in providing) competent legal representation to clients.

If there is to be a greater degree of experiential learning in Japan's new law schools, the new law schools and clinical legal education within those law schools must have more support from law faculty and members of the legal profession. When clinics began to flourish in the U.S. starting in the late 1960s, they had broad support from the American Bar Association and prominent players in the legal system. They also started within a system of stable (some might say entrenched) professional law schools. Although many law faculty did not support clinical legal education in its formative years, respected faculty such as John Bradway, Jerome Frank, Karl Llewellyn, and Robert Storey advocated the teaching of lawyering skills and recognized the value of clinical legal education and nurtured its growth in the first part of the 20th century.<sup>113</sup>

Today, it would be beneficial if some Japanese intellectual giants, comparable to historic American figures like Jerome Frank and Karl Llewellyn, spoke in favor of clinical legal education as have some of the pioneers of clinical education in Japanese law schools. This of course presupposes that an even larger number of prominent law faculty would support the new professional law schools. The continuation of the undergraduate old style law faculties or departments perpetuates a certain divide between legal theory and practice with many prominent academic law faculty not teaching in the new law schools, and it is not uncommon to find law faculty skeptical of the new law schools.

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<sup>113</sup> See Barry, Dubin & Joy, *supra* note 111, at 6 – 16.

In addition, it is important for some prosecutors and judges, particularly some members of the Supreme Court of Japan, not only to support clinical legal education but to advocate on behalf of the new professional law schools. While clinical programs existed in the U.S. for a number of years, it was not until the late 1960s that members of the bench and bar in the U.S. began to emphasize the importance of lawyering skills training and clinical legal education.<sup>114</sup> By the early 1990s, the essential role law of law school clinics in teaching fundamental lawyering skills and values of the legal profession was formally recognized by the ABA in its MacCrate Report.<sup>115</sup> If the new law schools, and clinical programs in those law schools, are to grow, the legal profession in Japan must endorse those efforts within a matter of a few years rather than decades in the U.S. experience.

In the U.S., a model student practice rule helped pave the way for students to truly practice law under careful supervision. In some other countries, legislation permitting student practice,<sup>116</sup> or at least a willingness of the judiciary to permit law students to participate in many aspects of providing client representation,<sup>117</sup> has spurred the development of clinical legal education. Without a student practice rule, legislation permitting student practice, or a

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<sup>114</sup> See, e.g., *Jordan v. United States Dep't of Justice*, 691 F.2d 514, 522-23 (D.C. Cir. 1982) ("This [student intern] practice has been praised by members of the judiciary and encouraged by the Judicial Conference of the United States, and we have ample reason to extend our commendation." (footnotes omitted)); Final Report of the Committee to Consider Standards for Admission to Practice in the Federal Courts of the Judicial Conference of the United States, 83 F.R.D. 215, 222 (1979) (recommending support for "student practice programs" in law schools); Final Report of the Advisory Committee on Proposed Rules for Admission to Practice, 67 F.R.D. 161, 164, 167-68 (1975) (recommending that law schools should teach trial skills); Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 *Fordham L. Rev.* 227, 233-36 (1973) (advocating more hands-on lawyering skills as a way to improve the quality of lawyering; Burger was Chief Justice of the United States from 1969 to 1987); Benjamin R. Civiletti, *Clinical Legal Education in Law School and Beyond*, A.B.A. J., May 1981, at 576, 576 (calling for more clinical legal education; Civiletti served as United States Attorney General from 1979 to 1981).

<sup>115</sup> SECTION ON LEGAL EDUC. AND ADMISSIONS TO THE BAR, AMERICAN BAR ASS'N, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM* (1992).

<sup>116</sup> [zzz complete]

<sup>117</sup> [zzz complete]

willingness on the part of judges, prosecutors, attorneys, and bar associations to permit more student involvement in providing legal representation, clinical legal education in Japan will not come close to meeting its potential.

Greater participation in legal education by practicing attorneys is also critical to the success of clinical legal education. Unlike in the U.S. and many other countries, there is no established pool of experienced practitioners as professors in Japan. The Justice System Reform Council recognized this need, and it requires more practitioner involvement in the new law schools. It is unclear, however, whether the new law schools will develop policies to attract and retain the best practitioners available. Although many new law schools have attracted a core of talented attorneys to join the faculty, these new faculty have not yet been fully integrated into the faculty. Nor have the new practitioner-teachers been given long term commitments such as tenure or long term contracts. “Without equal treatment for clinical faculty, law schools will likely find it more difficult to attract and retain attorneys who are sacrificing the opportunity to earn more money practicing law to become professors.”<sup>118</sup>

It is difficult to assess whether the new law schools will overcome these challenges. We can predict – with some confidence – that the effort will take a substantial period of time, and it would be enormously helpful to gain support from educators, lawyers, prosecutors, and judges around the world who support clinical legal education.

Other difficulties faced by the new law school clinics in Japan seem endemic to the enterprise, replicating many issues in the U.S. and other countries. Japanese law schools face challenges in funding clinics. For example, some programs, such as the Shibuya Public Law Office, are expected to raise most of their own expenses. Law schools also are addressing issues surrounding integration of the clinical and non-clinical curriculum, sequencing of courses, student course credit, questions about quality of supervision in clinics and externships, status of faculty, and how to

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<sup>118</sup> Joy, *supra* note 92, at 12.

promote scholarship that integrates theory and practice. For these issues, clinical faculty in other countries may say, “Welcome to the world of clinical legal education.” These are issues that are important to the success of law school clinics, but which are unlikely to be definitively resolved any time soon.

#### CONCLUSION

Japan’s justice system is clearly in transition. The Justice System Reform Council set ambitious goals. In our view, the development of clinical legal education in Japan is vitally important if the new law schools are to help transform the legal profession, as envisioned by the Council. If clinical legal education does not succeed because the new law schools become university-based versions of cram schools due to extremely low bar passage rates to enter the Institute, or because law schools do not resolve issues such as awarding commensurate academic credit or hiring and retaining qualified faculty, or because the legal profession does not permit student practice or at least greater participation of students in providing legal services, then the new law schools themselves will fail to achieve the goals envisioned by the Council.

In many ways, the developments in Japan are a case study instructing other countries considering the reform of their legal professions. Korea, for example, has been following developments in Japan closely as it has adopted a U.S.-style professional law school system effective in 2008.<sup>119</sup> In April of 2005, based in part upon the experience in Japan, Korea’s Judicial Reform Committee recommended that the number of new law schools in Korea be limited to ten, that enrollments in the new law schools be limited to approximately 150 per class, and that the number of graduates passing the bar exam be limited to 1200, resulting in a bar passage rate of approximately 80%.<sup>120</sup> Thus, Korea plans to limit the number of persons admitted to the new law schools in an attempt to prevent the possible reliance on cram schools and a potential

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<sup>119</sup> See *supra* note 9.

<sup>120</sup> See *Law School Measures Stir Controversy: Universities Oppose Panel’s Decision to Limit Number of Students*, KOREA HERALD, Apr. 22, 2005; Alan Brender, “New American-Style Law Schools Face Obstacles in Japan and South Korea,” CHRON. HIGHER EDUC., Aug. 12, 2005, at 42.

emphasis upon rote memorization in the new law schools, which could be brought about by a low bar passage rate. Universities and law faculty in Korea are opposed to the contemplated limits on the number of law students and new law schools.<sup>121</sup> Yet, it is possible that the limited enrollment may prove beneficial to the development of innovative curricula, such as clinical legal education and other lawyering skills courses, in the few new law schools.

In Japan, there was resistance to limiting the number of law students and new law schools among universities and law faculty. Ultimately, the Ministry of Education and Science in Japan approved every law school that met stated requirements and qualification procedures, resulting in an approved capacity of approximately 6000 students per year – twice the projected limit of 3000 new attorneys per year. This approach places the burden on the new law schools to develop quality professional legal education programs and not to become university-based versions of cram schools. For this approach to succeed, we believe that either the bar passage rate has to be higher, or, as some have argued, evaluation or accreditation bodies should favor those law schools with programs focusing on “graduating legal professionals capable of meeting new demands” and able “to think independently as professionals” rather than graduates “good at answering questions on paper” necessary to bar examination.<sup>122</sup> In either case, we believe that clinical education is essential both to prepare attorneys to meet the challenge of today’s legal profession and to reform the justice system.

As this Article is written, we have had less than two years of experience with the new law schools and clinical education in Japan. As we have discussed, there are many difficulties to face in this transformation, even assuming that the Ministry of Justice, judges, bar associations, and attorneys eventually learn about and support clinical legal education. However, we are convinced that clinical legal education is highly effective in educating future attorneys about the practice of law. Truly, only clinical programs

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<sup>121</sup> See *Law School Measures Stir Controversy: Universities Oppose Panel’s Decision to Limit Number of Students*, *supra* note 120.

<sup>122</sup> *Evaluation Organizations Is a Key for Reform*, INTERNATIONAL HERALD TRIBUNE (HERALD ASAHI), Nov. 25, 2003.

afford an opportunity for students to learn the ethos or soul of practicing attorneys by experiencing the practice of law under the close supervision of clinical faculty who are experienced practitioners. By representing real clients with legal problems, law students in Japan's clinical programs are beginning to learn how to analyze the legal issues in their client's problems, to communicate with their clients, and to solve their client's problems. There is no substitute for this clinical training, even with the continued existence of the Legal Training and Research Institute.