

UCB-JFBA Visiting Scholar Program

Reports of Japanese Visiting Scholars

1999-2008

Japan Federation of Bar Associations

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Training of Criminal Defence Attorneys in Japan

Azusa Shidara

1. Shortage of "Criminal Defence Attorneys"

In Japan, it has historically been rare to find attorneys practicing in a specialized area, and there are few attorneys who are currently doing so. The area of criminal defence is no exception, and the only distinction had been that there were attorneys who completely declined to accept criminal cases merely recognizing their marked difference from civil cases, and those who accepted criminal cases as well as civil cases. This is an unfortunate situation for suspects and defendants, considering the fact that public prosecutors are dealing with criminal cases as specialists.

2. Prospects for the Office of Public Counsel for Defence in Japan

During my stay in California, I had the opportunity to visit the Office of Public Counsel for Defence in Alameda County, and to personally communicate with the members of the judiciary as well as citizens who had served as jurors in the local Berkeley area. It was my impression that to establish offices of public counsel for defence like those in the US in various regions of Japan and to train criminal defence specialists would prove extremely difficult. At the risk of oversimplifying my impression was that this was due to a difference in "perception of justice in the judiciary." For American citizens, justice in court seems to mean that the court renders its decision based on a sufficient representation of the defendant's rights; on the other hand, justice to Japanese citizens means that the person who engaged in wrongdoing is unfailingly and strictly punished. This difference in perception has resulted in the apparent contrast in whether or not the citizens of each country would agree to support an office and compensation for criminal defence counsel backed by significant levels of public funds. Of course, American and Japanese citizens share the basic principle that criminals must be appropriately punished and that innocent parties must not be punished; however, there seems to be a disparity in the values commonly held, or the values that should be commonly held towards criminal justice and criminal trials, as described above.

3. The Prospect of Law Schools

There are various other obstacles placed in front of training attorneys specializing in criminal defence in Japan. One of the obstacles is that there is no social status to be achieved by relying solely on one's experience as a criminal defence attorney. For example, it is extremely rare for an attorney who acquires experience and expertise in criminal trial advocacy after overcoming the various hurdles facing them, to become a criminal court judge in Japan (while the route to being made a judge is becoming more available for attorneys, it is currently limited to the areas of civil

and family law).

On the other hand, the position of practicing educators is becoming more established as graduate level law schools take root, and this may provide a motivation for attorneys to focus their practice on criminal law.

4. Prospects and Issues for Staff Attorneys

From October 2006, the Japan Legal Support Center is sending staff attorneys to various regions as court-appointed attorneys and legal aid staff members. Many of these staff attorneys are engaged in criminal cases with a strong level of commitment. While the term of service may impose certain limitations, the staff attorney system may act as a trigger for young attorneys to become aware of the possibility presented by specializing as criminal trial attorneys, or to consider the feasibility of such action. I will not go into the details of the history of the Center and its positioning within the justice system, but I believe that for the Japan Legal Support Center to position the training of highly capable criminal defence attorneys as its mission and to develop a suitable training system provides the only plausible solution for effectively training criminal defence attorneys.

Providing Legal Support and Legal Clinics in Developing and Post-dispute Countries

Masayuki Honda

1. Motivation for studying abroad

Prior to becoming a visiting scholar at University of California Berkeley, I was a member of the Sub-Committee on International Cooperation of the Japan Federation of Bar Associations' Committee on International Relations, and had an opportunity to visit Cambodia and Laos in April 2000 as a member of the Cambodia and Laos Legal System Research Team. Through this experience, I became interested in providing legal support to countries in need of reconstruction and peace after war as well as developing countries, which is an activity that contributes to international public interest. Around this time, the Sub-Committee was preparing for a project involving establishment and support of operation of the Center for Lawyer Training and Legal Professional Improvement (LTC) in Cambodia, which led to my main motivation for studying abroad: to study the environment in the U.S., where legal support and legal clinic services are abundant, and to apply the findings to the future legal support activities.

2. Research activities at UCB

At UCB, in addition to attending lectures, researching documents, and visiting courts, I participated in a legal clinic offered by the East Bay Community Law Center (EBCLC), an office of public counsel.

Legal clinics are being incorporated in Japanese law school curriculums now, but they weren't well known back then.

There are many forms of legal clinics, but typically, a faculty of a law school will hold weekly seminars to teach basic legal principles as well as practical knowledge and skills, and provide practical education by providing legal counseling service or representing a client with students by accepting a small number of cases, from an office set up within the school. It is a method that may serve as a bridge between academism and practice.

University of California Berkeley's law school was relatively late to adopt the above system among the US law schools. Subsequent to establishment of EBCLC by the law school students to respond to the legal needs of the poor and homeless in the local community in 1986, UCB held the first legal clinic in 1988 as part of the curriculum for the law school, which was run by the EBCLC. Now, there are various other legal clinics including the International Human Rights Law Clinic and the Death Penalty Clinic, and many engage in public interest related advocacy.

In addition, externships are also being offered. As opposed to legal clinics being incorporated

into the law school curriculum as an elective subject, externships are not part of the curriculum, but may be credited if certain conditions are met by participating in activities at accredited organizations during school holidays such as summer vacation or school terms. This system lacks the above-mentioned advantages of the legal clinics as they do not sufficiently provide the systematic practical training offered by the law school faculty, because external professionals, not the law school faculty, will oversee the students without much involvement from the law school. However, it provides the students with options that meet their interest, as they will participate in various public interest organizations that handle a myriad of issues actually existing in society, see many actual cases, and experience various foreign environments. Credits may also be acquired from unaccredited organizations subject to approval by the school, and conditions may include participation in activities with international public interest organizations such as the UN and UNDP, or overseas public interest organizations and law firms. Participation in such international activities is encouraged by the UCB. One of the students I met stated that he was due for an externship at an office of public counsel in Cambodia during the summer break, and I also met other externship students in Cambodia.

3. Legal Clinics at EBCLC

Legal clinics by EBCLC will provide basic and systematic education through weekly seminars held on school premises taught by an attorney who is providing public defense services at the EBCLC as adjunct faculty, using materials accumulated from the previous terms. In addition, they provide students with an opportunity to work with attorneys at the EBCLC office on certain number of actual cases with certain degree of independence. As such, EBCLC's legal clinic embodies the advantages of typical legal clinics and externships.

In parallel with the weekly seminars held at the law school, lectures are held at the EBCLC's office, beginning by providing explanation to all students on duties of confidentiality and conflict of interest, precautionary matters, how to prepare documents related to the offices or cases that each student was or is involved in, and how to maintain records. These were conducted very carefully, not only to teach the students about ethics and responsibility as attorneys, but to ensure that the students do not cause harm to the clients' interests, as students will be given as much independence as possible in dispute resolution as stated below.

After the orientation, each student will be assigned to major projects that the EBCLC is engaged in according to the service agreements with endowments, foundations or the government (in addition to projects involving legal issues related to employment and housing of the poor, there are projects that promote resolution of the issues of poverty through development of the community themselves), attend weekly lectures on topics including the necessary basic

knowledge, how to contact clients and conduct interviews with clients specific to each project, and on how to prepare the necessary documents. The students will be trained on basic knowledge and advocacy techniques through these lectures, and apply such knowledge by actually participating in dispute resolution. I was quite impressed about how much independence the supervisors are willing to give to the students in conducting the interview and making decision on the issues and directionality related to the case, and play only supportive roles. It seemed that the students were stimulated by being involved in social issues that they have not personally experienced, and explored the nature of the problems and attorney ethics issues thoroughly, with a sense of achievement that they are contributing to public interest. In handling public interest issues, EBCLC can provide the students with independence as it is operated with funds from foundations and donations rather than compensation from its clients. EBCLC is also a necessary organization for handling areas with shortage of legal resources.

4. Activities after returning to Japan

After returning to Japan, I was involved in a project in Cambodia as stated above, and was engaged mainly in the operation of the legal clinic.

One of the objectives of the project was to establish a legal aid system in Cambodia, but we also focused on the above-mentioned function of legal clinics in fostering public interest attorneys, which was incorporated in the system of the LTC. We decided to adopt this format, as we thought that it would support establishment of a mechanism that provides access to the legal system in Cambodia. Through participation in the legal clinics at the LTC, Cambodian students will become aware of the social issues existing in the country; this would enable training attorneys who practice in the public interest area, and providing legal aid service through the clinic at the same time.

From September 2002, the project started selection of legal clinic staff for the LTC, determined the format and contents of the clinic, divided the students into classes, prepared the schedule, and provided technical instruction on preparation of lecture text material. In addition, the legal aid division members provided complementary lectures, moot court using actual past cases that the staff had participated in, observation of cases at court, visiting prison, legal counseling on actual clients of cases accepted by the staff attorneys, and advice by each staff attorney on processing real cases.

From June 16, 2003, externship positions were made available for about two months, where the students made their own choice of training at courts, government agencies or NGOs, and the staff attorneys provided periodical supervision and instruction.

In addition, a summer camp was held in Sihanouk Ville, a regional city.

The main purpose of the summer camp was to provide legal service by the students to the local citizens in a regional city where legal service was even more insufficient than Phnom Penh, and to make the students aware of the situation in the regional societies outside of urban area.

My experience at EBCLC proved very useful in selecting the clinic format, establishing the externship system, and creating a system that guaranteed protection of the clients' interests. On the other hand, operating a sophisticated legal clinic like EBCLC in Cambodia where the number of attorneys is small and the legal system is not functioning sufficiently proved extremely difficult, and various issues became apparent in the process. The position of the attorneys is quite weak in Cambodia, and the inability of providing sufficient advocacy services affected the effectiveness of the clinic. Insufficient understanding of the legal clinic resulted in some hesitation by the staff attorneys to delegate actual cases to the students, and a system to provide stable supply of actual cases was also lacking. The ABA became a donor from 2003, which resulted in some friction with the Cambodian side, as they tend to provide support to developing countries in Asia applying western thinking and supporting methods. Issues particular to legal aid such as coordination of the aid recipient and provider, and political conflicts being brought into the bar association also became apparent.

5. International human rights and humanitarian law trainings for Iraqi attorneys

Subsequently, I participated in a project that provided training on international human rights law and humanitarian laws to Iraqi attorneys, held from March 22, 2009, in Prague.

At the Cambodian legal clinic, Japanese attorneys providing aid had numerous opportunities to get indirectly involved in Cambodian human rights issues; however, when discussing human rights, we encountered dilemmas, as discussions based on experiences in Japan will not lead to a useful advice due to the difference in laws of Japan and Cambodia, or that there were no means to resolve the situation because the laws were not appropriately enforced in practice. Similarly, at this project, Iraqi attorneys raised numerous questions on how to respond to serious human rights infringement by the US military personnel, etc., despite the existing Iraqi laws. Therefore, we took an approach to introduce the use of international human rights protection mechanism in response to the human rights issues they are currently facing. This is a mechanism that can be applied in Japan, and the explanation was based on the actual experience of Japanese attorneys and bar associations with this system. The "International Human Rights Law" is a common rule that goes beyond national borders, and a common tool against human rights infringement. It is a shared "language" among legal professionals that allows discussion on human rights issues, and I realized through this project that such approach is an effective measure in legal aid in human

rights area.

6. Future outlook

I was able to apply the legal clinic system to legal aid in a post-dispute country owing to my experience in UCB. I would like to continue to leverage on the experience through providing legal clinics on international human rights in post-dispute nations, and other ways.

“Trial Advocacy for ‘Saiban-in’ (Lay-Judge) System”

Hiroshi Kawatsu

1. Theme of Research

“Trial Advocacy for ‘Saiban-in’ (Lay-Judge) System”

Active participation by citizens in the justice system had not been implemented in Japan since 1943, and fact finding and sentencing were performed only by professional judges during that time. However, the Justice System Reform Council proposed implementation of the *Saiban-in* system in 2001, paving the way for the realization of citizens' participation in criminal trials. I chose the topic of the appropriate trial advocacy adopted in the US, which has a long history of utilizing the jury system, to explore trial advocacy for the *Saiban-in* and enable Japanese attorneys to perform effective defense activities under the new criminal trial system which encompasses the participation of citizens.

2. Research Activity

At the University of California, Berkeley, I studied the trial advocacy used in the US and explored practical techniques for the *Saiban-in* system through observing law school classes (“Criminal Trial Practice” and “Evidence Advocacy”); visiting the public defender's office; attending jury trials; exchanging opinions with professors at the Center for the Study of Law and Society and Psychology Department; and attending a Law and Society Association meeting held in Chicago.

3. Activities after returning to Japan

After returning to Japan in 2004, I was appointed as a staff attorney at the Research Office for Judicial Reform of the Japan Federation of Bar Associations (JFBA) and a member of the JFBA Central Board on the *Saiban-in* System, to study activities of attorneys towards the implementation of the *Saiban-in* (lay judge) system in 2009. Also I served as a member of the Legislative Council of the Ministry of Justice in 2006 and the Advisory Committee on Establishment of Rule of Criminal Procedure for the Supreme Court in 2007, and participated in discussions on the partial amendment of the *Saiban-In* Act and establishment of the *Saiban-in* Rules. I was appointed as the Director of the JFBA Research Office for Judicial Reform in 2008 and the Deputy Secretary of the JFBA Central Board on *Saiban-In* System in 2009, continuing the studies on attorneys' activities in *Saiban-in* trials.

The results of research conducted during this period, mainly on trial advocacy under the *Saiban-in* system, have been published as follows: "Opinion on public prosecutor requested evidence and stipulation" (*Jiyu to Seigi* (Liberty & Justice) Vol.56 No.8, 2005); "Opening and Closing Statements

by Defence Attorneys" (*Quarterly KEIJI-BENGO* (Criminal Defence Quarterly) No.43, 2005); "Saiban-in System and Fact Finding" (*Horitsu jiho* (The Law Journal) Vol.77 No.11, 2005); *Gaidobukku Saiban-in seido* (Guidebook on the Saiban-in System) (Hougakushoin, co-author, 2006); "Act of Opening Statement " (*Jiyu to Seigi* (Liberty & Justice) Vol. 57 No.6, 2006); "The Role of Court-Appointed Attorneys under the Saiban-in System" (*Shimin to shiho* (Citizens and the Judicial System), Japan Legal Aid Association, 2007); "Methods for Teaching Trial Advocacy" (*Jiyu to Seigi* (Liberty & Justice) Vol.59 No.6, 2008); "Case Theories in Saiban-in Trials" (*Jiyu to Seigi* (Liberty & Justice) Vol.59. No.8, co-author, 2008); "Issues Identified in Closing Statements for Moot-Court" (*Quarterly KEIJI-BENGO* (Criminal Defence Quarterly) Vol.55, 2008); and "Persuasion in Court and Distribution of Defence Documents" (*Jiyu to Seigi* (Liberty & Justice), Vol.60, No.5, 2009). The first edition of the *Hotei bengo gijutsu* (The Art of Trial Advocacy) (Nippon Hyoronsha, contributing author) was published in 2007. It was the first systematic textbook on defence techniques in Japan, and the second edition was published in 2009.

To encourage the new style of attorney activities under the *Saiban-in* system, particularly trial advocacy techniques, the JFBA planned and held training sessions aimed at attorneys. I have participated as a lecturer for the JFBA Summer Training (2005 and 2008); JFBA Trial Attorney Instructor Training Program (2008); JFBA Trial Attorney Instructor Training (2008); JFBA Special Training for *Saiban-in* Trials (2009); JFBA Advocacy Technique Workshop for *Saiban-in* Trials (2009); as well as trial advocacy technique training sessions including those sponsored by the Kinki Federation of Bar Associations, Sapporo Bar Association, Yamagata Bar Association, Gunma Bar Association, Dai-Ichi Tokyo Bar Association, Daini Tokyo Bar Association, Shiga Bar Association, Osaka Bar Association, and Yamaguchi Bar Association. I have also been an adjunct lecturer of the Criminal Law Clinic in Waseda Law School, from 2007.

Overseas activities include publication of "A Mixed Jury System for Japan" at the annual meeting of the Law and Society Association in 2005; participation in the round table session of the "International Lay Participation in Law: Research Questions" held at the annual meeting of the Law and Society Association in 2006, and obtained opportunities to exchange opinions with scholars from various countries on the topic of citizens' participation in the justice system. Further, I attended the "Advocacy Teacher Training" session held by the National Institute for Trial Advocacy in 2008 to learn methods for teaching trial advocacy, and applied these methods to subsequent training sessions.

Comparison and Issues Concerning Legal Aid in Japan and the US: with Thanks to the University of California, Berkeley

Tomoki Ikenaga

1. From my days as a visiting scholar at UC Berkeley during the judicial reforms period to present

The US has a population of approximately 304,000,000 (2008), including 1,084,396 attorneys (December 2007). It has a history of judicial supremacy, and more than a million attorneys are in action in various areas of society. In the area of legal aid, the Legal Services Corporation (LSC), an organization that allocates legal aid budgets, was established in 1974 by the Congress; it now allocates an annual budget of approximately US\$400 million to well over a hundred programs across the country, and full-time staff attorneys employed by each program engage in civil legal aid activities. Legal aid in the US is multi-dimensional, with a large number of legal aid programs existing outside the scope of the LSC budget, and pro bono activities incorporating the funding and resources of large law firms also being present. In criminal litigation, since the *Gideon* ruling in 1963, the number of cases involving the assignment of public defenders has increased drastically, prompting the establishment of public defenders' offices in each state. The public defenders are the foundation of the criminal legal aid system.

Japan has a population of approximately 127,692,000 (2008), which is less than half that of the US, and 26,958 attorneys (April 2009), which is about one-fortieth that of the US. Despite the adoption of judicial supremacy after WWII through the transplant of a constitutional review system in the style of the US (Article 81 of the Constitution), the actual post-war history indicates that it was more of an administrative supremacy society, with the administration supporting the political, social and economic aspects of post-war Japan hand-in-hand with the legislature and industries, through convoy style regulation. On the other hand, the role of the judiciary was small, and as there was basically no public funding except in a highly limited area of criminal legal aid, legal aid was operated on a small scale with funds allocated from membership fees paid by the attorneys.

However, as economic globalization gradually intensified market competition, this added pressure towards deregulation and increased criticism of the aforementioned convoy system. Abolishment of various administrative rules which protected employers and regions, and reduction of fiscal expenditures were also promoted.

I was admitted to the bar in 1997, during this transformation of the post-war system in Japan. As

stated above, judicial reform in Japan started in the 1990s for purposes including the abolishment of administrative rules and establishment of an after-the-fact remedy system. I became a visiting scholar at UC Berkeley amid this reform, and had the opportunity to access the US judicial system including the system of legal aid. After my return to Japan, the Japan Legal Support Center was established in 2006 as one of the fruits of the judicial reform, in order to establish the foundation of the Japanese legal aid system for both civil and criminal cases. To date, I have been engaged in its operation, building on my experience in the US. There is no doubt that what I learned at UC Berkeley is greatly beneficial in aiding in my current work, and I would like to express my sincere gratitude to Professor Scheiber and others who supported me.

2. Legal aid system in Japan and the US as a support for the poor

There is much to be learned from the US legal aid system, and in September 2009, I visited Washington DC and New York as a member of the JFBA Legal Access Center US research team to study various legal aid related organizations including the LSC headquarters. The legal aid systems in both the US and Japan have strong characteristics as measures to support the poor, involving means testing. They are not generous and comprehensive legal aid systems that include the middle class, particularly in comparison with those provided in western and northern European countries.

Basically, the US and Japan have structural problems in that their social security expenditures tend to be small overall. The US has led the global economy, but it is seen as the poster-child for small welfare nations, with the lowest levels of social expenditure among the developed nations in the OECD indicator. This trend has become stronger since the Reagan administration which rallied for "small government," creating headwinds for legal aid and freezing the LSC budget. On the other hand, pro bono activities became widespread, with the number of pro bono programs between 1980 and 1990 (a period roughly overlapping with the Reagan administration) increasing more than 12 fold from 50 to over 600. The number of pro bono programs has now reached 900, but the absolute shortage of public funding is undeniable, and in 2005 the LSC announced in "Documenting the Justice Gap in America 2005" that half of the poor that satisfied the means test were still being turned away at the gate.

Japan's social expenditure level is slightly higher than that of the US in the OECD indicator, but it is far from the over 25% levels found in Western Europe, and belongs in the same group as the US as a small social expenditure nation. However, in the past, the Japanese society and economy were in a state of pre-established harmony supported by the convoy style administrative rules, with a virtual life-time employment guarantee and the promotion of public projects on a large scale and the protection/regulation of small to medium-sized enterprises, which had been effectively playing the

alternative role of a public social welfare system, keeping poverty and disparity in check. With increased economic globalization and deregulation, the abolishment of various administrative rules and a reduction in fiscal expenditures which protected the employers and regional economies were promoted, highlighting the issues of poverty and disparity in Japan. One of the purposes for the establishment of the Japan Legal Support Center was to provide a safety net in response to such deregulations; however, its budget remains small in comparison with those of the western countries, and it does not provide a “sufficient” safety net. Although it is not as significant as in the US, poverty and disparity is certainly expanding in Japan, and there is an urgent need to take measures to combat it.

3. Reform and outlook

In a severe economic environment, both countries experienced political turning points with the Obama administration in the US, and the DPJ government in Japan being the results. The Obama government aimed for 21st century social integration, and submitted the draft Civil Access to Justice Act of 2009 which included a doubling of the federal legal aid budget. In Japan, enhancement of the social safety net is being proposed under the slogan of “from concrete to people,” but the details of the vision remain unclear, including the positioning and outlook of the legal aid system. Japan must clarify its vision while paying constant attention to the direction of both the legal aid and public policies in the US. For this purpose, we should cherish and maintain our relationship with UC Berkeley. I would like to provide further reports on the comparisons between and issues facing the legal aid systems in Japan and the US, including future developments in both administrations.

Methods of Coping with Criminal Organizations in the US; Corporate Compliance

Mayumi Ikawa

1. Theme of Research:

I had been a member of the Anti-Racketeering Special Committee of the Tokyo Bar Association since I was admitted to the bar in 2000, and worked on providing relief to victims of crime-organizations. As I learned more about the realities of these organizations, which have a long and dark history in Japanese society, I came to contemplate how they could be eliminated. In the US, mafia activities were rampant in the past, but now they have lost much of their former influence. This brought me to think that Japan may be able to learn from the experience of the US in this area.

In addition, I had dealt with the issue of corporate compliance in the Anti-Racketeering Special Committee, and was interested in the leading-edge approaches utilized by the US in this area, such as the Sarbanes-Oxley Act and Corporate Social Responsibility.

2. Research Activities: Observation of classes and lectures, research of documents, visiting related organizations, attending academic conferences, etc.

As the mafia was influential only until the 1980s, my studies mainly involved documentary research. The lack of faculty members familiar with the field of criminal organizations made the research difficult in some aspects; however, the ample resources available at the UC Berkeley library provided sufficient support.

I had been under the impression that the US criminal justice system was more intent on the protection of the human rights of suspects compared to that in Japan; however, in reality, the investigating authorities have significant levels of authorization such as making arrests in public places without a warrant even if the suspect is not caught in the act of committing a crime, or intercepting communications for the purpose of investigation. In addition, the existence of systems that enabled the exposure of higher ranking personnel through the protection of members of criminal organizations such as plea-bargaining and witness protection programs also helped the US win the war against organized crime.

Another interesting point was that while the arrest of the head of a criminal organization in Japan mostly led to charges as a co-principal for crimes such as illegal possession of guns, most arrests in the US were made for alleged tax-evasion. Furthermore, the US mafias were

characterized by growth leveraging on their relationship with labor unions, and it was surprising for me to find a system under the Racketeer Influenced and Corrupt Organizations Act (RICO Act, an anti-racketeering law in the US) which called for an appointment of a trustee selected by a court to oversee organizations under the influence of the mafia in order to clean them up, which was actually used in many cases and proved to be effective.

With respect to corporate compliance, I was able to access informative leading-edge discussions through classes and academic conferences, as the timing was immediately after the implementation of the Sarbanes-Oxley Act in response to the Enron case.

3. Publications

No particular articles have been published on the topic of coping with organized crime, but regarding corporate compliance, I was able to publish an article on the comparison of executive compensation between Japan and US in an American law journal. A summary version was published in Japanese, in JIYU TO SEIGI [LIBERTY & JUSTICE], the main journal of the JFBA.

Mayumi Ikawa Tani, *Proposals for Better Executive Pay-Setting Frameworks: A Comparative Study of the United States and Japan*, 18 TRANSNAT'L L & CONTEMP. PROBX. 317-351 (2008)

Mayumi Ikawa, *Yakuin Houshu ni Kansuru Beikoku no Houseido to Saikin no Doukou, [A Comparative Study of Executive Pay-Setting in United States and Japan and Recent Developments]*, 713 JIYU TO SEIGI 134-142 (2008)

4. Subsequent Activities

My husband, who works for a Japanese corporation, was studying at a business school for two years around the same time, so I extended my stay in the US for another year after my visiting scholarship was completed at UC Berkeley, and completed an LLM program at the same graduate school as my husband. I was fortunate to receive a kind welcome at the second law school, as the dean had taught for a long time in UC Berkeley. I was subsequently admitted to the bar of the State of New York.

In addition, I had my first child during my second year of stay in the US. Childbirth gave me an invaluable opportunity to access the real American society outside of a school environment.

After returning to Japan in August 2007, I had my second child, and have returned to work only

this April. I would like to build on my experience from studying in the US in my future activities as an attorney.

5. Musings

At Berkeley, I lived in a dormitory for international students called the "International House." Living under the same roof with people from various countries gave us a wonderful experience to better understand each other, and overcome differences in values or culture. I came to realize the narrow perspectives I had had until then, through becoming friends with other residents. Especially, I learned a lot from friends with disabilities, and friends who were homosexual.

The magnificence of UC Berkeley is manifold, but its significant charm lies in its liberal and innovative atmosphere. I would like to express my sincere gratitude to the University of California, Berkeley, Professor Scheiber, and the JFBA for offering me the opportunity to develop as a person, in addition to the support provided for my studies.

Programs for Providing Legal Services in Regions with Shortages of Attorneys in the State of California

Mika Matsumoto

1. Programs for providing legal services in regions with shortages of attorneys in the State of California

It is easy to imagine that there are attorneys everywhere in the US providing legal services in every corner of the country, and that it has no problems such as shortages or high concentrations of attorneys in specific areas.

However, I discovered that in the State of California, attorneys are concentrated in large coastal cities such as Los Angeles and San Francisco, leaving inland rural areas in the Central Valley with shortages of attorneys, and that the lack of legal services available to the poor in such regions is becoming a serious problem. The increase in the number of attorneys has not resolved the issue of regional and economic concentration of attorneys. This was an intriguing issue for me, as I have taken initiatives in tackling the same issue in Japan, and served in a community with a shortage of attorneys.

My research mainly involved fieldwork through interviews, to understand the actual situation in the State of California and to collect materials about details of relevant programs. I visited the headquarters of the various aid organizations in large cities, as well as their branch offices in regions with populations only in the tens of thousands, and had talks with attorneys working there. I would like to report the results of my research by summarizing a selection of interview results which portray the typical characteristics of measures taken to combat regional shortages of attorneys.

2. Interviews with aid organizations

(1) CRLA (California Rural Legal Assistance)

(i) CRLA San Francisco Headquarters

CRLA is a legal aid organization established in 1966 and was the first to provide State-wide legal services to the poor, mainly consisting of farmers, and it was one of the pioneers of opening offices in regions facing a shortage of attorneys. More than 20 offices have been opened mainly in rural regions in the inland, bringing about results for tens of thousands of clients, on issues such as the improvement of labor conditions for immigrant farmers, housing, and winning a decision which resulted in amendment of the law to provide for barrier-free access. It has overcome funding cut crises due to policy changes a number of

times, trained many talented staff attorneys and has been producing specialists on attorney shortage issues in the State of California to this day. The comment by Jose Padilla, its Executive Director, that "it is not enough to lend a helping hand to a drowning person drifting down the river. Our mission is to find out what is happening upstream, why the people are drifting down the river, and to resolve the problem" was very thought-provoking. I was also surprised to find that part of its activities were being supported from both an economic and staffing perspective by the pro bono activities of attorneys belonging to large corporate law firms.

(ii) CRLA Madera Office

I visited the Madera Office of CRLA. Madera is an inland rural village where Latinos constitute about 70% of the population. Staff attorneys had worked in government related positions prior to this appointment. The office was involved mainly in representing individual civil cases free of charge, as well as acting on immigrant education issues, and I felt that the words of Jose Padilla were being put into practice here.

(2) LSNC (Legal Services of Northern California)

(i) LSNC Sacramento Headquarters

The LSNC was established in 1956 by a full-time attorney as the "Legal Aid Society of Sacramento." It currently has over ten offices, mainly covering northern California. Because the jurisdiction spreads on both sides of the Sierra Nevada, residents living to the east of the mountains tend to be alienated from legal services. LSNC has been providing services taking into consideration these regional issues, such as by introducing the first telephone consulting system for clients who have difficulty crossing the mountains. Many attorneys who have graduated with outstanding academic results from top law schools including UC Berkeley compete to join this organization, and are appointed to regional offices after serving at the headquarters.

At the headquarters, managers and experienced counsel take the main responsibility for its operation. Staff attorneys take on civil cases, and as an organization, it manages the pro bono activities of 600 sole practitioners in cooperation with the local bar association. To support the immigrant and Native American clients, there are staff members who can speak various languages at the headquarters, and the regional offices all have at least one Spanish speaking member of personnel.

(ii) LSNC Auburn Office

Auburn is a town located some tens of kilometers inland from Sacramento. The full-time staff attorney was an experienced lawyer who had worked on an isolated island in the Pacific to provide support to its residents. In a unique attempt, it was focusing on a self-represented litigation support program called "Pro Per," which is periodically held at a fixed location to help clients prepare documents to be submitted to court. It is a system designed to supplement efforts to combat the shortages of attorneys, but is believed to lead to the independence and empowerment of the clients involved.

(iii) Observations from visiting the legal aid organizations

The attorneys busily working with a mission in various places seemed to have a lot in common with the Japanese attorneys at the public defenders' office and staff attorneys at Houterasu. It was a borderless, sympathetic and inspiring experience. Their standard approach to work was not to act on assigned cases reactively, but to have constant radar working to understand what the poor, who didn't have a grasp of their legal rights, were seeking, as well as what was needed for the region, and to establish systems in cooperation with the administration and NGOs. That the member attorneys see their activities beyond handling cases as their natural mission rather than as an option, regardless of mounting obstacles such as the ban on class action lawsuits, seemed to be remarkably different from the views held in Japan and is something we must learn from.

3. Other research activities

I was fortunate to meet an attorney specializing in civil legal aid from the UK at the Center for the Study of Law and Society which I belonged to at that time. He commented that the measures taken to combat regional attorney shortages in which I was involved in Japan were groundbreaking and highly interesting, and explained that in the UK, attorneys were concentrated in London and that there was a significant gap between the legal services available in London and those in regional areas, especially for those on low incomes, and introduced me to various valuable reference materials. In this generous research environment, I learned that the issue of providing legal services to regions with shortages of attorneys is a common one around the world.

Mary Louise Frampton, who taught "Law & Social Justice," which was one of the classes I attended, had worked as a staff attorney at the CRLA in regions with shortages of attorneys for a few years before opening her own practice in Fresno, one of the main regional cities in California, and had fought for the poor for almost 30 years. She provided advice on my research from time to time.

At the case study presentation in class, I was given the opportunity to report using a Japanese

documentary program on my activities to resolve regional shortages of attorneys in Japan. Ms Frampton commented that the US should not only be interested in itself, but be willing to learn from abroad about designing a new system.

My academic life was made even more fruitful through these various means of support.

4. Results of Studying Abroad

It was an invaluable significant achievement to be able to obtain materials concerning the actual status and programs regarding the framework for the provision of legal services to regions with attorney shortages through these interviews, as the information available in Japan was limited to studies on the structure of US legal aid in general.

After returning to Japan, I again started working in a region with a shortage of attorneys, in order to apply the results of my experience in the US in practice. With Jose Padilla's words in mind, I worked on creating a system that allows attorneys to pick up the legal issues that arise locally, through cooperation with regional institutions such as the Council of Social Welfare. I believe that what I learned in the US has greatly benefited my activities in Japan.

I would like to express my deepest gratitude to Professor Scheiber and the UC Berkeley personnel for offering me the opportunity to conduct this research. Professor Scheiber has been very kind, and mentioned at parties and other occasions that I had been interviewed by the Los Angeles Times while working in Japan.

As the overall society continues its process of globalization, not only private practice attorneys, but also attorneys involved in public-interest activities, should absorb as much as they can from other countries. I would hope for this program to develop further, and offer many more public-interest attorneys an opportunity to study abroad.

My Studies at the University of California, Berkeley: Comparison of Privacy in Japan and the United States

Junichiro Makita

My main focus since admission to the bar had been on the promotion of democratic society, through related litigation and committee activities at the bar association. Along this line, I decided to further my studies in the US, where information disclosure and privacy issues have been debated for a long time. During my stay at the University of California, Berkeley, I was able to experience the realities of information disclosure and the protection of privacy in the US through my attendance of law school lectures, seminars, academic conferences and practitioners' seminars. I would like to express my deep gratitude to UC Berkeley and related parties for offering this invaluable opportunity. Following is a partial summary of my research on privacy issues. At the 2010 Convention on the Protection of Human Rights, issues regarding privacy will be discussed, and I am participating in the preparation committee. I am also chairing the Information Disclosure/Privacy Protection Committee in the Daini Tokyo Bar Association. I would like to build on the knowledge and experience I gained at UC Berkeley, and share them as broadly as possible.

1. Use of highly personal information in the US

(1) Use in the private sector

In the US, consumer reporting agencies (private corporations) collect information on individuals such as detailed credit payment histories, borrowing histories, financial account information, major debts, bankruptcy histories and collateral information, and evaluate the economic creditworthiness of individuals in the form of a three digit credit score. The use of individual credit information is regulated by the Fair Credit Reporting Act (FCRA) and other laws, and the information is frequently used in various aspects of life such as employment, house renting, and application for loans. A poor credit score will put the individual at a disadvantage, and the situation could be made worse by identity theft. Identity theft typically involves application for a credit card under a false identity and shopping with the card. As the payments due on the credit card are not made, the victim will be deemed to have defaulted and the credit score will deteriorate significantly, causing grave consequences. Laws have been enacted to mitigate this situation, but it remains a serious social problem. The information industry, which specializes in the collection, accumulation and analysis of personal information, is growing rapidly. The industry has information on the family relationships, professions, estimated annual incomes, asset ownership, religions, races, hobbies and interests, and other life style choices of virtually all American citizens, and sells this information to consumer reporting

agencies, retailers and financial institutions.

(2) Use by the government

The USA Patriot Act was enacted subsequent to the 9/11 terrorist attacks, relaxed the contents of the existing privacy protection laws to a large extent, allowing investigative agencies to easily access personal information compiled by the private sector. Wire tapping and review of e-mails can easily be performed under a shroud of secrecy. As a result, the US federal government is now able to acquire an extremely broad range of personal information. Even without the Patriot Act, personal information database providers have provided the government with the vast volume of personal information they have collected and accumulated. In the US, the Privacy Act (equivalent of the Japanese Act on the Protection of Personal Information Held by Administrative Organs) was enacted in 1974, placing strict restrictions on the treatment of personal information held by the government. However, through using purchased personal information compiled by the private sector database providers for purposes such as criminal investigations, the government is able to use a wide range of personal information without being subject to the Privacy Act.

2. Japan closer to the panopticon than the US

I learned the word "panopticon" at a lecture on the Privacy Act at UC Berkeley. It is a type of prison building with cells built in a circular format, with the observer located at the center. The word is also used as a metaphor to refer to a situation where the distribution of personal information is restricted in the private sector, whereas the government at the center can unilaterally acquire and utilize personal information.

(1) The overreaction problem

Despite existing privacy issues, the US private sector mainly relies on self-regulation rather than comprehensive legislation because it believes that personal information is public property belonging to the society, and intends to protect its distribution. In Japan, the Act on the Protection of Personal Information, which applies comprehensively to the private sector, has been established. However, since the enforcement of this Act, an overreaction occurred and excessive secrecy has been applied to personal information. Examples include refusal by a railway company to provide information on the whereabouts of train accident casualties, and an inability to prepare emergency communication networks at schools. A society where necessary personal information is not distributed impedes the formation of human relationships, and makes it difficult to cooperate. The distribution of personal information is inextricably linked to the freedom of expression, and is essential for any truly effective democratic society to function.

The Japanese Act on the Protection of Personal Information is written in a way that makes it easy to make excuses for concealing personal information, and this overreaction can be seen as a harmful result of the comprehensive regulation of the treatment of personal information by the Act.

(2) Personal information exclusive to the government

On the other hand, the Japanese government is getting close to a situation where it will be able to acquire and use a broad range of personal information on its citizens. With the implementation of the Basic Resident Register network, the foundation for creating a database of personal information on citizens has been established. In addition, early implementation of the taxpayer identification number system is being reviewed, allowing collection of comprehensive information on individual income and expenses. In addition, an increasing number of surveillance cameras have been installed in towns around Japan and it is becoming technically possible to track the activities of a chosen individual. With respect to driving automobiles, automatic number plate readers (the N system) have already been installed on main roads, and the data collected is automatically recorded by the police. Furthermore, there are risks that a large volume of information held by the private sector such as credit card use histories and website access information may be provided to the government on the grounds of counter-terrorism purposes and the like.

The collection and usage of personal information by the government has a significant effect on the public value in maintaining and developing a democratic society in that it may have a chilling effect on citizens' activities. As the distribution of personal information in the private sector is being excessively restricted and access is becoming exclusive to the government, we should realize that Japan is moving towards a more dangerous situation, closer to the panopticon than the US.