

## **Young Migrants from Big Cities: Measures for Dealing with the Shortage of Legal Services in Japan**

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### I. INTRODUCTION

After World War II, the number of Japanese lawyers gradually increased from 5,000 to 25,000 by 2007.<sup>1</sup> Since the judicial reform at the beginning of the 2000s, the number of lawyers has been growing and is expected to reach 100,000 by 2040, according to a calculation by the Japan Federation of Bar Associations (JFBA).<sup>2</sup> But the number of lawyers in Japan is not large when compared with those in the Western countries. The per capita figure for the U.S. is about eighteen times that of Japan, the U.K. eleven times, Germany nine times and France less than four times.<sup>3</sup>

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\* Funding for the research and writing of this article was provided by the Grant-in-Aid for Scientific Research of the Japan Society for the Promotion of Science. I am grateful to Kay-Wah Chan for his comment on the draft of this paper, and to Dimitri Vanoverberke and Ryo Hamano for inviting me to contribute to this volume.

1 In this paper, “lawyer” means practicing attorney, *bengo-shi* in Japanese. An overall picture of Japanese lawyers can be found in K. ROKUMOTO, *The Present State of Japanese Practicing Attorneys: On the Way to Full Professionalization?*, in: R.L. Abel / P.S.C. Lewis (eds.), *Lawyers in Society: The Civil Law World* (California, 1988) 160-199.

2 THE JAPAN FEDERATION OF BAR ASSOCIATIONS, *Bengo-shi hakusho 2007* [Lawyer White Paper 2007] (Tokyo 2007) 89. The growing number of lawyers has brought about job shortage of new lawyers especially in Tokyo and Osaka, and has become a subject of discussion. The JFBA is going to propose its plan to maintain the present number of passers of the bar exam (2,100 to 2,200 yearly) for some years since 2009 in opposition to the government plan (3,000 yearly from 2010), as reported by Asahi Shinbun, 8 February 2009, 1 and 34.

3 THE SUPREME COURT (ed.), *Saiban-sho deta bukku 2008* [Court Data Book 2008] (Tokyo 2008) 28-29. Its original source varies from 2006 to 2008 by countries. The number of lawyers per population of one hundred thousand in each country was: Japan 19.61, U.S. 356.23, England and Wales 215.94, Germany 178.47 and France 73.37.

A question may arise: Does the number of lawyers increase outside big cities? From the end of 1996 to 2005, there was an increase of more than 6,000 lawyers nationwide (from 15,900 to 22,059). However, 16,390 lawyers were in the eight cities with high courts. This represented 74.3% of the total number of lawyers in the country. Among the 16,390 lawyers, 10,699 were in Tokyo (48.5%) and 2,977 were in Osaka (13.5%). This shows that lawyers cluster within the capital and big cities.

In the famous three volumes of the book *Lawyers in Society*, Abel compared lawyers around the world and indicated two patterns of geographic distribution of lawyers.<sup>4</sup> One pattern is that lawyers generally cluster within the capital of the country; outside the capital they are concentrated in the cities and scarce in the countryside. This pattern is seen in Japan. Then, why don't lawyers come and settle in the regional areas?

Previous studies endorse that the legal profession is an externally determined social system. The well-known study by Heinz and Laumann finds that Chicago lawyers are "client driven" and are divided into two hemispheres, *e.g.*, job settings in large firms / private practice.<sup>5</sup> Landon's study on country lawyers in the U.S. concludes that they are "community driven" and mirror its homogeneity in the profession.<sup>6</sup> Do these theories hold true in Japan?

To answer these questions, it is important to understand the regional lawyers' actual lives and practices, which have rarely been studied.<sup>7</sup> To deal with the problem of uneven distribution of lawyers, the JFBA has set up bar-funded *Himawari* Foundation Law

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4 R.L. ABEL, *Comparative Sociology of Legal Professions*, in: R.L. Abel / P.S.C. Lewis (eds.), *Lawyers in Society: Comparative Theories* (California 1988) 120-121.

5 J. P. HEINZ / E. O. LAUMANN, *Chicago Lawyers: The Social Structure of the Bar* (New York 1982); J. P. HEINTZ *et al.*, *Urban Lawyers: The New Social Structure of the Bar* (Chicago 2005).

6 D. D. LANDON, *Country Lawyers: The Impact of Context on Professional Practice* (New York 1990).

7 The problem of uneven distribution of lawyers in Japan has been studied recently in KASHIMURA, *Shihô kaso to wa nani ka: tairyô chôsa to jirei chôsa o tsûjite* [What Is the Shortage of Legal Services? Inquiry through Mass Surveys and Case Studies], in: N. Hayashi / I. Sato (eds.), *Hô no seisei to minpô no taikai: Mushô kôron, hô-katei-ron, minpô taikai-ron* [Generation of Law and the System of the Civil Code: Considerations on Gratis Act, Legal Process and the System of Civil Code] (Tokyo 2007); T. II, *Kita Tôhoku no bengoshi gyômu to hô-teki nizu no aida* [A Gap between Legal Practice and Need in North Tôhoku], in: *Hô-shakai-gaku* 61 (2007). The state of legal practices in Shimane prefecture is reported in K. YONEMOTO (translated by D. H. FOOTE), *The Shimane Bar Association: All Twenty-One Members Strong*, in: *Law in Japan* 25 (1995) 115-124. The situation in the U.K. by the end of the 1980s is described in M. BLACKSELL *et al.*, *Justice outside the City: Access to Legal Services in Rural Britain* (Harlow 1992). Even the U.S. is criticized to be underrepresented in light of equal justice under the law. See D. L. RHODE, *Access to Justice* (New York 2004).

Firms (hereinafter called *Himawari* firms) in areas of lawyer scarcity since 2000.<sup>8</sup> This paper focuses on the lawyers working in the *Himawari* firms (hereinafter called *Himawari* lawyers) and tries to answer the questions raised above through an investigation based on interviews and questionnaire surveys on *Himawari* lawyers in northeast Japan (Tôhoku),<sup>9</sup> which is a typical lawyer-scarce area.

## II. MEASURES FOR DEALING WITH THE SHORTAGE OF LEGAL SERVICES

The problem of uneven distribution of lawyers in Japan was around as early as in the 1960s. In 1964, the Special Justice System Examination Council of the Cabinet recommended that the bar and the Cabinet take measures to redress the imbalance,<sup>10</sup> but, in reality, they took almost no measures until the 1990s. In the case of North Tôhoku, the shortage of legal services was partly addressed by grassroots measures, *e.g.*, free legal consultations funded by local governments and other groups.<sup>11</sup>

In the 1990s, the JFBA, in its effort toward judicial reform, tried to solve the problem of uneven distribution of lawyers. In the 1993 Judicial Symposium of the JFBA, there was a public announcement of the “zero-one regions.” The term “zero-one region” refers to a district court jurisdictional region where there is either only one or no lawyer. Among the 203 district court jurisdictional areas in Japan, there were 50 “zero-regions” and 24 “one-regions” in July 1993. In its 1996 annual meeting, the JFBA resolved to solve the “zero-one” problem by increasing the number of “Legal Consultation Centers” to which lawyers in neighboring cities make periodic visits to conduct legal counseling.

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8 *Himawari* means “sunflower” in Japanese. The pattern of the emblem of Japanese lawyers is a balance surrounded by sunflowers. *Himawari* lawyers have reported their work lives in the region serially in turn in Jiyû to Seigi since August 2003, part of which is collected in: JFBA (eds.), *Himawari kikin hôritsu jimusho dayori dai-issû* [News from *Himawari* Foundation Law Firms Part One] (Tokyo 2007). The working experience in the *Himawari* firm in Monbetsu (northeastern coast city in Hokkaido) is described in: M. MATSUMOTO, *Bengo-shi kaso chi'iki ni okeru rîgaru sâbisu no genjô to kadai: Monbetsu Himawari Kikin Hôritsu Jimu-sho o keiken shite* [The Present State and Theme of the Legal Service in a Lawyer-Scarce Area: Through My Working Experience in the Monbetsu *Himawari* Foundation Law Firm], in: *Rîgaru Eido Kenkyû* 9 (2004) 17-36; N. MURATA, *Himawari bengoshi* [*Himawari* Lawyers] (Tokyo 2004).

9 The interview was conducted in Tôhoku in the summers of 2006 and 2007 with all *Himawari* lawyers (16 at that time) in 15 *Himawari* firms. The questionnaire survey was conducted via postal mail in April 2008 to all (18 at that time) *Himawari* lawyers in 16 *Himawari* firms, of which 11 lawyers / firms answered. The response rate was 61.1%.

10 *Rinji Shihô Seido Chôsa-kai iken-sho* [Recommendations of the Ad hoc Justice System Examination Council] (1964) 75, 77-78.

11 Since around the 1970s, many local governments have held free legal counselling services once or twice a month through contracts with the local bar associations. In Iwate prefecture, the Iwate Consumer Cooperative Credit Life Society is known for its “switch loan system” that was started in 1987 to pay loans for debtors in cooperation with the local bar, financial institutions and governments.

*Himawari* firm was a further attempt by the JFBA since 2000 to solve the lawyer-scarcity problem by situating lawyers for a fixed term mainly in the “zero-one” regions. *Himawari* lawyers have a term of office of two or three years that can be renewed on their request. *Himawari* firms are funded by the *Himawari* foundation of the bar for its opening cost and working expenditure in need.<sup>12</sup> Vacant posts of the *Himawari* firms are made public on the JFBA web site page and recruited from applicants. *Himawari* lawyers are expected to carry out criminal defense, legal aid and rotating duty to visit suspects.<sup>13</sup> They can keep their profits but are prohibited from acting as advisors to companies and organizations. Eighty-six *Himawari* firms had been set up by July 2008.<sup>14</sup> In total, 120 lawyers have worked there, and 19 of those lawyers settled in the region. There are 68 *Himawari* law firms and 74 *Himawari* lawyers.

In response to the recommendations of the Justice System Reform Council (JSRC) of the Cabinet in 2001, the judicial system in Japan was reformed in three perspectives: the coordination of the institutional base, an expansion of the human base and the establishment of a popular base.<sup>15</sup> To produce legal professionals who are rich in quantity and quality, law schools were set up in 2004, and the annual number of bar examination passers is to be gradually increased from 1,000 in 2001 to 3,000 in 2010. To enhance the accessibility to legal service, the Japan Legal Support Center (JLSC) was envisioned around 2003 and opened in October 2006.

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12 Five million yen (about fifty thousand U.S. dollars) are provided to be used for the opening cost. Working expenditures are to be funded up to three million yen if the income of the *Himawari* firm does not reach a fixed amount. So far, there have been few cases where the working expenditure was funded because most *Himawari* firms earn a fair amount of money.

13 Art. 6 (1) of the Rules on Expenditure of the JFBA *Himawari* Fund. There had not been a public defense system for suspects in Japan. To tackle the lack of free legal service for suspects, the bar introduced a nationwide system of rotating duty for lawyers to visit suspects (*tôban bengo-shi*) in 1992. Under the system, registered lawyers take turns to provide suspects with legal consultation. The first consultation is free. In response to the recommendation of the JSRC, a public defense system for suspects was introduced in October 2006. Suspects having legal representation increased from about 5% to 70% in May 2009.

14 The number is based on the material delivered at the JFBA symposium to celebrate the resolution of the “zero-regions” problem, which was held on July 13, 2008.

15 Japan’s judicial reform is briefly sketched in T. Ii, *Judicial Reform in Japan: Its Outline and Characteristics*, in: Waseda Daigaku Kyôiku Gakubu Gakujutsu Kenkyû 53 (2005) 13-23, and extensively discussed in K. ROKUMOTO, *Overhauling the Judicial System: Japan’s Response to the Globalizing World*, in: ZJapanR / J.Japan.L. 20 (2005) 7-38; K. ROKUMOTO, *Justice System Reform in Japan: Its Background and Process*, in: K. Rokumoto / D. Choi (eds.), *Judicial System Transformations in the Globalizing World: Korea and Japan* (Seoul 2007) 319-349; E. A. FELDMAN, *Legal Reform in Contemporary Japan*, in: ZJapanR / J.Japan.L. 25 (2008) 5-25.

The JLSC, or *Hô-terasu* 法テラス,<sup>16</sup> is a state-funded quasi-independent administrative agency. It carries out referral service to relevant organizations, legal aid, public criminal defense, legal services in areas with lawyer scarcity and criminal victim protection. There are 50 branch offices of the JLSC in main cities and 15 local offices in areas with lawyer scarcity. The local offices provide legal services at an appropriate cost through staff lawyers who work for the JLSC.<sup>17</sup> A total of 300 staff lawyers are scheduled to be posted in the JLSC offices to conduct mainly civil legal aid and criminal defense cases on a salary basis. There were only 24 staff lawyers in the year 2006, but their number was gradually increased to 96 in the year 2007.<sup>18</sup>

As we have seen, the problem of lawyer scarcity in the region was dealt with in the current of judicial reform by the bar in the 1990s and later by the government in the 2000s. What happened in this period of time? I once discussed the topic by taking notice of the “public point of view” and the interests of the party concerned.<sup>19</sup> Judicial reform was brought about under the national slogan “from *kan* 官 (official) to *min* 民 (private)” in the neoliberal deregulation after the bubble burst of the early 1990s. In the deregulation, the public was forced to self-determine and make contracts themselves with enterprises to use services such as welfare and nursing care that had previously been directed by the government. As citizens began to make this transition and think as consumers, paradoxically, a “public point of view” began to be paid attention to by enterprises and the government. The “public point of view” seems to relate to citizens’ growing sympathy for crime victims and their bereaved during the same period of time.

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16 *Hô-terasu* is a nickname of the JLSC, which conjugates *hō* [law] and *terasu* [light up]. It is derived from the wish to “light up society with knowledge of rights” and “provide a place where people can relax in comfort, just like reclining on a sunny terrace (*terasu*).”

17 Art. 30 (1) No.4, *Sōgo hōritsu shi'en-hō* (General Law on Legal Aid), Law No. 74/2004, as amended by Law No.19/2008.

18 Since then, staff lawyers were directly recruited from new graduates of the Legal Training and Research Institute. They belong to the JLSC but start working after gaining experiences at collaborative law firms for one year. The business of the JLSC is described in its annual report. The staff lawyers report their work lives in the region serially by themselves in *Jiyū to Seigi* and *Hōgaku Seminar*. The staff lawyers system including their essays is described in: T. MOTOBAYSHI *et al.* (eds.), *Shimin to shihō no kakehashi o mezashite: Hō-terasu no sutaffu bengō-shi* [Aiming at Becoming Bridges between Citizens and the Judiciary: Staff Lawyers of the *Hō-terasu*] (Tokyo 2008).

19 T. Ii, *Shihō seido kaikaku ni okeru “kokumin no shiten”* [“Public Point of View” in the Judicial Reform], in: *Hō to Minshu Shugi* 425 (2008) 64-69.

The former Minister of Justice explained the gist of the establishment of the JSRC:

In the 21st century, the Japanese society will become more complex, varied and international, and that deregulation and other reforms shall transform our advanced-control type society into a post-check type society. Changes of the society in many ways will make the role of administration of justice more crucial than ever. It is indispensable to reform and reinforce the justice function so that it shall be able to respond to the social needs.<sup>20</sup>

As this statement shows, the judicial reform was expected to post-check the society. However, in the current of the deregulation policy, it had itself already been influenced by the society and its “public point of view.” The JFBA proposed judicial reform to realize the “judicial system to be easily used by the public.” It also agreed to increase the passers of the bar exam to try to secure “the number in need by the public” in its 2000 special meeting. “Public point of view” has promoted the three main reforms: expansion of the legal population, public participation in justice (Lay Assessor System or *Saiban-in seido*) and access to justice (the JLSC), which had not been sufficiently treated for years. In a sense, it is reasonable that the JLSC provides services of “victim support” as well as “measures for areas with limited judicial services.”

Anyway, thanks to these bar and national measures to deal with the shortage of legal services, the “zero” regions became extinct on 2 June 2008. The JFBA set a new plan in 2008 to extinguish the district court jurisdictional regions that have more than 30,000 residents per one lawyer (116 as of 16 May 2008) as well as the remaining “one-regions” (21 as of 1 October 2008).

### III. STATE OF LEGAL SERVICES IN NORTHEAST JAPAN

In northeast Japan, called Tōhoku, which includes Aomori, Akita, Iwate, Yamagata, Miyagi and Fukushima prefectures (*see* the map), the number of lawyers per resident varies by the district court branch jurisdictions (*Table 1*). Lawyers cluster in the seats of the prefectural governments (Aomori, Akita and Morioka) and middle-sized cities (Hachinohe and Hirosaki). On the other hand, other district court branches have less than or around one lawyer per 30,000 residents and thus seem to be in an extreme shortage of legal services. In fact, there are some areas with an over thirty percent rate of *pro se* litigation and/or bankruptcy application. This shows that lawyers are not very involved in legal processes in Tōhoku mainly due to the shortage of lawyers in the area.

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20 Explanation of the gist of the draft of said Law at the Judiciary Committee, the House of Representatives, the 145th session of the Diet (The English translation is a quotation from the “The Points at Issue in the Reform of the Justice System” (December 1999) of the JSRC).

Map: District Court Branch Jurisdictions in Tōhoku

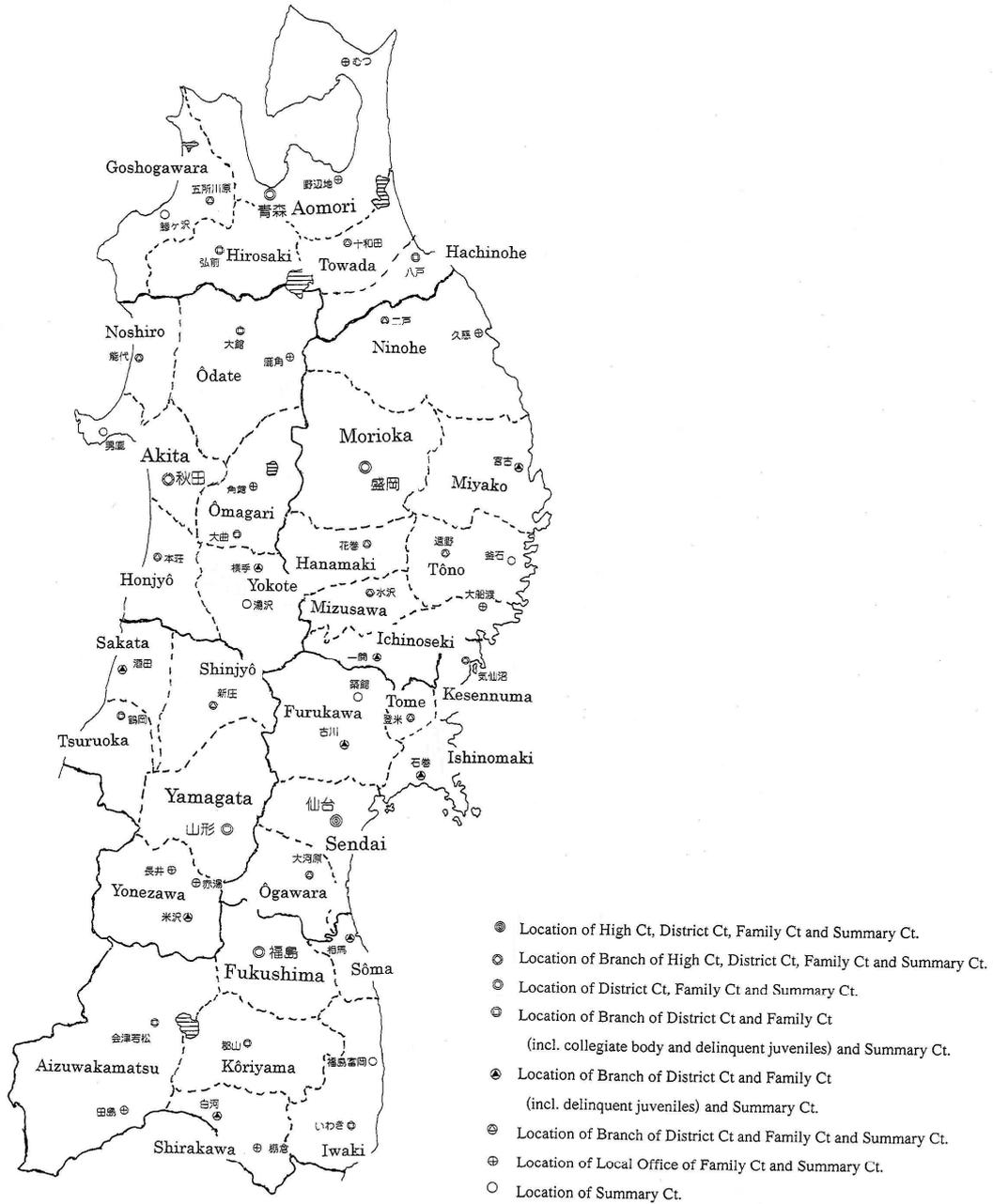


Table 1:

## Breakdown by District Court Branch Jurisdictions in Tōhoku

	<i>Number of lawyers / residents (2005)</i>	<i>Residents per one lawyer</i>	<i>Number of pro se civil litigation / cases disposed (2006)</i>	<i>Percentage of pro se civil litigation</i>	<i>Number of pro se bankruptcy application / cases dis- posed (2006)</i>	<i>Percentage of pro se bankruptcy application</i>
<i>Aomori total</i>	<i>43/1,480,563</i>	<i>34,432</i>	<i>287/873</i>	<i>32.9</i>	<i>2,018/2927</i>	<i>68.9</i>
Headquarters	22/492,888	22,404	88/338	26.0	875/1151	76.0
Hirosaki	7/330,269	47,181	67/208	32.2	369/550	67.1
Hachinohe	11/303,225	27,566	70/168	41.7	437/670	65.2
Goshogawara	2/180,157	90,079	41/101	40.6	162/289	56.1
Towada	1/174,024	174,024	21/58	36.2	175/267	65.5
<i>Akita total</i>	<i>52/1,172,464</i>	<i>22,547</i>	<i>164/908</i>	<i>18.1</i>	<i>517/1,761</i>	<i>29.4</i>
Headquarters	37/434,574	11,745	58/424	13.7	145/773	18.8
Ôdate	2/177,900	88,950	16/119	13.4	88/241	36.5
Yokote	3/180,123	60,041	30/115	26.1	123/228	53.9
Ômagari	5/155,248	31,050	37/89	41.6	102/281	36.3
Noshiro	2/102,017	51,009	12/96	12.5	37/122	30.3
Honjō	3/122,602	40,867	11/65	16.9	22/116	19.0
<i>Morioka (Iwate) total</i>	<i>58/1,400,467</i>	<i>24,146</i>	<i>216/1,086</i>	<i>19.9</i>	<i>1,007/2,227</i>	<i>45.2</i>
Headquarters	38/486,625	12,806	87/554	15.7	497/1,158	42.9
Ichinoseki	6/225,770	37,628	27/96	28.1	126/299	42.1
Hanamaki	5/196,685	39,337	46/138	33.3	123/190	64.7
Ninohe	1/140,717	140,717	9/27	33.3	47/121	38.8
Tōno	3/96,098	32,033	7/40	17.5	65/129	50.4
Miyako	2/105,444	52,722	5/98	5.1	71/143	49.7
Mizusawa	3/149,128	49,709	35/133	26.3	78/187	41.7
<i>Yamagata total</i>	<i>55/1,253,167</i>	<i>22,785</i>	<i>204/905</i>	<i>22.5</i>	<i>380/1,573</i>	<i>24.2</i>
Headquarters	37/591,232	15,979	68/503	13.5	56/698	8.0

The size of the Japanese law firms is smaller than that of American law firms (Table 2). In Japan, solo practices account for 35.09% nationwide, and Tōhoku had no firms that had more than eleven lawyers as of July 2007: there were 348 solo practices (77.7%) and 100 practices with two to ten lawyers (22.3%).<sup>21</sup>

21 The JFBA, *supra* note 2, 104-105.

Table 2:

Practice settings in the U.S. and Japan

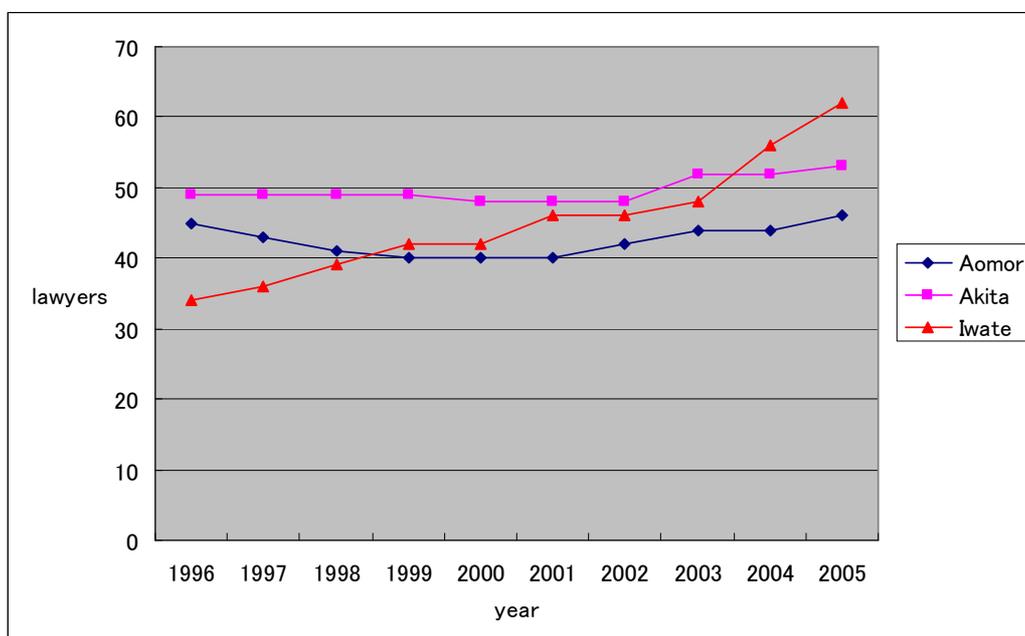
	<i>Solo practice</i>	<i>2-10 lawyers</i>	<i>11-50 lawyers</i>	<i>51-100 lawyers</i>	<i>More than 100 lawyers</i>
<i>U.S.</i>	324,903 (48.3 %)	144,784 (21.5%)	81,044 (12.0%)	26,979 (3.9%)	95,892 (14.3%)
<i>Japan</i>	8,109 (69.3%)	3,431 (29.4%)	138 (1.2%)	3 (0.03%)	5 (0.04%)

Source: CLARA N. CARSON, *The Lawyer Statistical Report: The U.S. Legal Profession in 2000* (Chicago 2004) 7-8; JFBA, *Bengo-shi hakusho 2007* (Tokyo 2007) 105.

North Tôhoku (north-northeastern Japan: Aomori, Akita and Iwate prefectures) had only 161 lawyers (0.7% of the national lawyer population) as of the end of 2005. From 1996 to 2005, there was only an increase of 33 lawyers in North Tôhoku (from 128 to 161). The breakdown reveals one in Aomori, four in Akita and the remainder in Iwate prefecture. The number of lawyers in Iwate prefecture almost doubled in the same period (*Figure 1*).

Figure 1:

Number of lawyers in North Tôhoku (1996-2005)



Source: JFBA, *Bengo-shi hakusho 2006* (Tokyo 2006) 6.

In Iwate prefecture, from 2000 to 2005 the number of newly accepted civil cases in district courts has slightly risen. The percentage of civil cases with no legal representation on one side or both sides decreased about ten percent (*Figure 2*). This shows a correlation between the increase in lawyers and the extent of legal representation in civil litigation.

Lawyers in Tōhoku have gradually increased during these years (*Table 3*). But the number of residents per one lawyer is around twenty thousand, except in Miyagi prefecture. This number is four times larger than the national average as of April 2008. In addition, within each prefecture most lawyers practice in big cities which have the headquarters of the district court: Aomori (31), Akita (42), Morioka (45), Yamagata (44), Sendai (270) and Fukushima (39) (as of April 2008). On the other hand, district court branch jurisdictional areas had less than ten lawyers, excluding Hirosaki (12), Hachinohe (14), Kōriyama (40) and Iwaki (15). Sixteen areas had four to ten lawyers: Goshogawara (5), Ōdate (4), Yokote (4), Ōmagari (5), Ichinoseki (8), Hanamaki (4), Mizusawa (4), Yonezawa (4), Tsuruoka (6), Sakata (6). Nine areas had only one to three lawyers: Towada (2), Noshiro (3), Honjō (2), Ninohe (2), Tōno (3), Miyako (2), Ōgawara (2), Tome (1) and Kesenuma (3).

*Table 3:*

Number of lawyers in Tōhoku

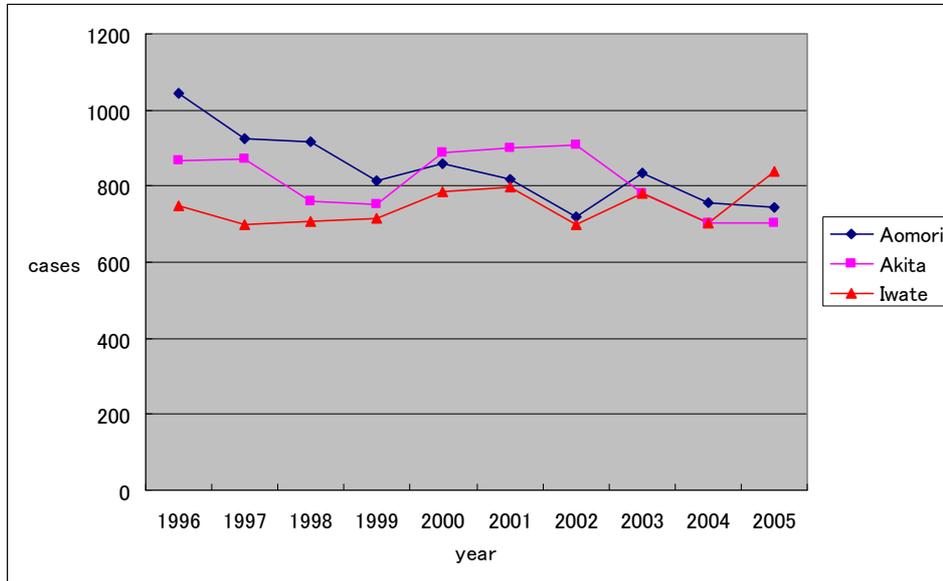
<i>Year</i>	<i>Aomori</i>	<i>Akita</i>	<i>Iwate</i>	<i>Yamagata</i>	<i>Miyagi</i>	<i>Fukushima</i>
<i>1949</i>	33	37	27	38	82	67
<i>1999</i>	40	49	41	51	210	81
<i>April 2008</i>	64	60	69	65	284	115
<i>Residents per lawyer in 2008</i>	22,587	19,064	19,966	18,525	8,241	18,169

*Source:* The number of lawyers is based on the materials of the JFBA. The numbers of 1949 and 1999 are as of the end of each year. The number of residents of each prefecture is based on the basic resident registration of 31 March 2007.

Figure 2:

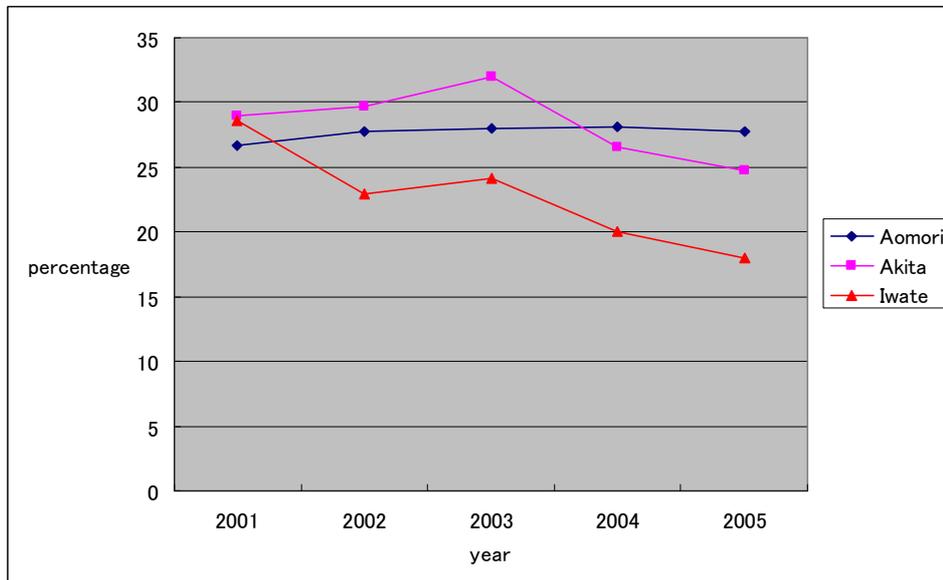
Court statistics

(a) Newly accepted civil cases in district courts (1996-2005)



Source: Annual Report of Judicial Statistics: Volume 1 Civil Cases (1996-2005).

(b) Percentage of newly accepted civil cases not represented by lawyers on one or both sides in district courts (2001-2005)



Source: Material of the Sendai High Court.

In Tōhoku, 20 *Himawari* firms had been established with 30 *Himawari* lawyers by September 2008 in the following areas: Tōnō (August 2001), Kitakami (September 2001, settled), Goshogawara (February 2002, settled), Towada (December 2002), Yokote (September 2003, settled), Miyako (March 2004), Shinjō (January 2005), Hanakita (in Hanamaki, January 2005), Noshiro (April 2005), Sōma (April 2005), Yonezawa (July 2005), Ninohe (October 2005), Tōme (July 2006, settled), Ōdate (July 2006), Kamaishi (November 2006), Mutsu (December 2006), Kesenuma (April 2007), Tsugaru (in Goshogawara, November 2007), Misawa (February 2008) and Kurihara (in Furukawa, August 2008). There are 16 *Himawari* firms with 18 *Himawari* lawyers, some of whom are the second or third generation in the firm.

The lawyers in Tōhoku can be classified into three types. *Himawari* lawyers belong to one type. *Himawari* lawyers can make a profit but are expected to perform services of legal aid and criminal defense. Another type is the staff lawyers at the JLSC. Tōhoku had four such staff lawyers in Aomori (2), Akita (1) and Fukushima (1) branch offices as of September 2008 (there are no local offices in Tōhoku). They work for a term of three years on a salary basis and perform civil legal aid and court-appointed defense counsel services.<sup>22</sup> The rest of the lawyers in Tōhoku make up the third type. Most of them are locals or their spouses were born in the region. Several lawyers come from other places, for practical training after passing the bar examination or working as associates in local law firms. The working style is varied. Most lawyers are generalists. There is no specialization except in Sendai city in Miyagi. Some middle-aged and young lawyers work hard, but experienced veterans derive their income mainly from their work as legal advisors for big companies and banks and as bankruptcy trustees. Some of them do not take legal aid cases. There are some community devotees and cause lawyers devoted to matters such as environmental pollution cases. However, their sphere of practice is limited.

These three types of lawyers are generally on good terms with one another. There is little competition due to the shortage of lawyers. They also live separately from each other to some extent. But they seem to hold negative views of each other. *Himawari* and staff lawyers are not seen favorably by the other lawyers. The latter may feel as if their territories were violated. On the other hand, some *Himawari* and staff lawyers often criticize the other lawyers' working style: "Some lawyers work well, but some lawyers limit their work and hesitate to take legal aid and criminal cases." Some *Himawari* lawyers take pity on staff lawyers: "Their work is very hard with almost only complex civil legal aid and criminal defense cases on a salary basis."

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22 Staff lawyers can prolong their term of office up to three times (nine years).

There is a quasi-legal profession called judicial scriveners. They mainly handle real estate and corporate registration, and occasionally draft and file legal documents for their clients. They received new authority to consult and represent litigation in summary courts in 2003, as recommended by the JSRC. Subject to taking an induction course and passing a certification examination, they are granted the authority to serve as representatives for litigation in summary courts. Equivalent representative authorities are also granted for mediation and pre-litigation settlement matters, using the jurisdictional limits of the summary courts (1,400,000 yen) as the boundary for the scope of matters that judicial scriveners are permitted to handle.

However, almost half of the judicial scriveners do not get the certification. Moreover, certified ones are not necessarily engaged in court-related works. According to the questionnaire survey given to certified judicial scriveners in North Tōhoku in April 2007,<sup>23</sup> the respondents (55) were classified in four patterns: “active”(12), “a bit active”(17), “a bit passive”(15) and “passive”(11) in exercising their certified powers. Some judicial scriveners work hard in debt consolidation cases, but there is almost no competition between lawyers and judicial scriveners. The fact is that they are in relatively good relationships in light of the shortage of legal services in Tōhoku, where even unlicensed legal (illegal) representations often occur.

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23 T. Ii, *Kita Tōhoku no shihō shoshi ni miru kansai dairi-ken kōshi yō'in* [Determinants of the exercise of the power to represent litigation in summary courts], in: *Shihō Shoshi-hō Akita* 68 (2008) 3-5. The survey's questionnaire response rate was 29.7%.

IV. WORKING STYLE OF *HIMAWARI* LAWYERS

There were ten *Himawari* and ex-*Himawari* lawyers in North Tōhoku as of August 2006. Ten lawyers correspond to approximately a third of the increased lawyer population of North Tōhoku in ten years. These *Himawari* lawyers were in their early thirties and did not have broad professional experience (*Table 4*). They came from big cities and worked in rural areas for a term of two or three years. Most of them returned to big cities like migrants. By April 2008, four out of twelve ex-*Himawari* lawyers were still practicing in North Tōhoku after the expiration of their term of office.<sup>24</sup>

*Table 4:**Himawari* firms in North Tōhoku as of August 2006

<i>Himawari firm (Prefecture)</i>	<i>Origin and sex of the Himawari lawyer</i>	<i>Length of practice before opening</i>	<i>Opening date of the Himawari firm</i>	<i>Number of non-lawyer staff in the firm</i>	<i>Waiting time before counseling</i>	<i>Other lawyers in the same court branch jurisdiction</i>
<i>Towada (Aomori)</i>	Tokyo, male (2 <sup>nd</sup> generation)	2.2 years in Tokyo	December 1, 2005	2	2 or 3 weeks	0
<i>Yokote (Akita)</i>	Akita, female	3.5 years in Tokyo	September 24, 2003	2	within 10 days	2
<i>Noshiro (Akita)</i>	Tokyo, male	1.6 years in Tokyo	April 22, 2005	3 (+ 1 part-timer)	within 1 week	1
<i>Tono (Iwate)</i>	Tokyo, male (2 <sup>nd</sup> generation)	1.2 years in Tokyo	December 1, 2004	3 (+ 1 part-timer, + 1 relative)	about 1 month	1
<i>Miyako (Iwate)</i>	Kagawa, male	1.4 years at Tokyo	March 1, 2004	3 (+ 1 part-timer)	about 1 month	1
<i>Hanakita (Iwate)</i>	Ibaraki, female	2.3 years in Saitama	January 16, 2005	2 (+ 1 part-timer, + 1 relative)	about 1 month	3
<i>Ninohe (Iwate)</i>	Hokkaido, female	2.1 years in Nagoya	October 26, 2005	2	about 3 weeks	1

*Source:* Interview with each *Himawari* lawyer.

<sup>24</sup> Half of the settled ex-*Himawari* lawyers are natives of the same area or prefecture.

In North Tōhoku, most *Himawari* firms are very busy with only one lawyer in an area where legal services are scarce. Clients' waiting time before counseling varies from one week to one month for the different firms. According to the questionnaire survey to *Himawari* lawyers in Tōhoku in April 2008, the waiting time then was two days (1), one week to 10 days (4), two weeks (1), three weeks (2) and 30 days or more (3). There must be potential clients who wanted counsel from lawyers but were unable to because of time constraints.

The heavy schedule of *Himawari* firms is accelerated by their openness to the residents. Some of their clients have been declined by other lawyers who take only paying cases. One *Himawari* lawyer reports that the request for consultation is so large that he takes cases in the following order: emergency, necessity to be represented by a lawyer, prospect of success, time to be taken for disposal, reserve of energy and, lastly, profitability. In addition, in lawyer-scarce areas residents tend to be unfamiliar with the law and lawyers, elderly and passive in exercising their rights. *Himawari* lawyers have to spend long hours in consultation to explain legal matters simply and diligently to these clients.

The sphere of practice is almost limited to civil and family cases, debt consolidation and criminal defense cases. There are several big companies and banks in North Tōhoku, but *Himawari* lawyers are prohibited from being retained as legal advisors. In this sense, *Himawari* lawyers' work is similar to that of the JLSC staff lawyers, although there are more restrictions on the latter. They cover various legal problems and deal with many cases of debt consolidation for private persons who borrowed heavily from consumer credit companies (*Table 5*). If the debtors have paid interest above the statutory rate for many years, they can bring a lawsuit to recover the overpayment as the Supreme Court has decided favorably for debtors in recent years. A *Himawari* lawyer in the Miyako *Himawari* firm, which was opened in March 2004 on the east coast of Iwate prefecture, counseled a total of 1,608 cases in three years and handled a number of lawsuits on recovery of overpaid interest. There were 397 of such kinds of debt-consolidation lawsuits in the first half of 2006 alone. The Miyako firm is famous for having received about 1.4 billion yen through handling lawsuits against consumer credit companies in three years. The firm had won a total of over two billion yen from such lawsuits by September 2008.

Table 5:

Caseload of *Himawari* firms in North Tōhoku in the first half of 2006:  
Counseling, (Representation), <Rotating duty to visit suspects>

<i>Himawari firm</i>	<i>Family</i>	<i>Civil</i>	<i>Debt con- solidation</i>	<i>Related procedure</i>	<i>Criminal</i>	<i>Total</i>
<i>Towada</i>	27 (5)	43 (22)	88 (70)	(9)	16 (29) <20>	174 (135)
<i>Yokote</i>	19 (6)	36 (11)	65 (52)	(68)	1 (16) <8>	121 (153)
<i>Noshiro</i>	33 (8)	31 (19)	61 (52)	(30)	1 (6) <4>	126 (115)
<i>Tono</i>	29 (4)	20 (6)	63 (52)	(60)	(10) <9>	112 (132)
<i>Miyako</i>	19 (1)	31 (38)	220 (212)	(403)	1 (29) <18>	271 (683)
<i>Hanakita</i>	36 (9)	41 (22)	113 (105)	(81)	3 (16) <16>	193 (233)
<i>Ninohe</i>	30 (14)	55 (8)	63 (53)	(10)	2 (4) <7>	150 (89)

Source: Material of each *Himawari* firm.

In the Miyako district court branch and summary court, both the newly accepted civil cases and the cases with lawyers' representation on one or both sides rapidly increased in number from 2003 on. In the three years from 2003 to 2005, the annual numbers of newly accepted civil cases in the Morioka district court Miyako branch were 26, 52 and 112 respectively. The numbers of cases with lawyers' representation were 12, 26 and 72 respectively. For the same period, the numbers of newly accepted civil cases in Miyako summary court were 197, 229 and 405 respectively. The numbers of cases with lawyers' representation were 8, 13 and 219 respectively. Presumably, the Miyako firm had some impact on the court statistics.

The work of *Himawari* lawyers certainly includes legal aid and criminal defense, but is not *pro bono* in the sense that their fees for consultation and representation are at almost the same rate as that for other lawyers. *Himawari* lawyers do not have much experience in their practice, but they could manage their own law firms and so far make a lot of money, mainly through representing debtors to file suits to recover overpaid

interest. In comparison with the *Himawari* lawyer positions,<sup>25</sup> the JLSC staff lawyer positions do not attract many applications. It might be due to the fact that the JLSC staff lawyer is a salaried position. However, applications have been growing in number since 2007, probably due to the job shortage for new lawyers.

#### V. *HIMAWARI* LAWYERS & COMMUNITY RELATIONSHIPS

Let us turn our eyes to the United States and see one lawyer's experience in a small town. Williams authored the book titled *From Metropolis to Mayberry*.<sup>26</sup> Mayberry is the name of a fictional town in North Carolina, the setting of an American television series, and is the metaphor for idyllic small-town life. Williams had worked as an associate in a large New York law firm and as an in-house counsel with a California corporation. After practicing urban law for nine years, he moved to a small town on Washington's Olympic Peninsula and started a solo practice, but he returned to North Carolina afterwards.

He outlined the advantages and disadvantages in lifestyle and law practice in his book (*Table 6 (a)(b)*). As seen in his description, intimate human relations in small-town life have advantages and disadvantages, pros and cons. He warns that you don't have to be a lawyer to enjoy the advantages of small-town living.<sup>27</sup> That means that intimate human relations often bring troubles to a law practice.

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25 The attractiveness of a post in a *Himawari* firm depends on its location. For example, a vacancy in the *Himawari* firm in Mutsu, which is situated on the northern peninsula of Aomori prefecture, was not filled for five years.

26 P. C. WILLIAMS, *From Metropolis to Mayberry...: A Lawyer's Guide to Small Town Practice* (Chicago 1996).

27 *Id.*, 12.

Table 6:

Advantages and disadvantages in the regional lifestyle and law practice  
in the U.S. and Japan

*(a) Lifestyle advantages and disadvantages (Williams)*

<i>Advantage</i>	<i>Disadvantage</i>
Spiritual values are supported Neighborhood schools	Culture and entertainment will be limited You may not have many educated friends to choose from
Lower crime rate	The quality and variety of goods and services will be limited
Traffic congestion / commuting time / parking	Peyton Place may begin to look cosmopolitan
Higher quality and greater frequency of personal contacts	Uniformity and conformity may rule
The cost of living can be lower	Lack of privacy
Miscellaneous stress reduction	Peer pressure to participate in local activities

*(b) Law practice advantages and disadvantages (Williams)*

<i>Advantage</i>	<i>Disadvantage</i>
Legal issues are more varied and general	You have to accept a host of dinky cases, and you can't afford to specialize
The practice is more personalized	Fee payment and collection can be socially awkward
Clients are more appreciative and deferential	Clients drop in without appointments
There are fewer time pressures and constraints	Conflicts of interest are subtler and far more numerous
The lawyer's impact and reward are proportionately greater and the results more noticeable	Your staff will be tempted to gossip about your practice
The small-town law firm is a high-profile business	Clients must be educated, and fools must be suffered gladly
You can get to know colleagues, judges and local bureaucrats on a first-name basis	The old-boy network is alive and well
	You'll be sucked into disputes involving your friends and neighbors
	Your litigation practice will be plaintiff-oriented, and your clients will want to win the lottery
	Lower standards among judges, lawyers, court staff and bureaucrats
	You might find yourself trapped
	Legal support services are limited
	Lower salaries

*Source:* P. C. WILLIAMS, *From Metropolis to Mayberry...: A Lawyer's Guide to Small Town Practice* (Chicago 1996) 11-21 and 23-34.

(c) *Peculiarities of the regional law practice*  
(*Himawari lawyers in Tōhoku*)

<i>Advantage</i>	<i>Disadvantage</i>
I am highly respected and relied on because there are few lawyers in the region	A lot of clients drop in without appointments
I get closely connected to the region and the local government	Citizens know my face by sight at various places and I begin to understand the worries of entertainers
Distance between the clients gets smaller and I can imagine their lives by their street address	I happen to encounter clients frequently when walking in the town
I am invited to various local events	Conflict of interest frequently occurs
I am asked to give lectures or to serve on committees	Problems of the region directly become my problem
I can do things such as collaboration with the local government that I cannot do in big cities	High responsibility
Many clients are introduced from the local government office and other organizations	Many clients are poor and elderly
I enjoy a status much like a medical practitioner	Clients are passive in realizing their rights
Former clients' friends bring cases from word of mouth	Consulting takes longer
	There are many citizens' debt cases in salary loan and credit companies
	Most cases are routine general civil cases and family cases
	There are few enterprise-related cases, no chances to use commercial law

*Source:* Questionnaire survey to *Himawari* lawyers in Tōhoku in April 2008.

Are matters different in Japan? I asked *Himawari* lawyers in Tōhoku to point out the peculiarities of the region, clients and cases in comparison to their former workplaces in urban cities. Most *Himawari* lawyers reported intimate relationships with the local people in the region (*Table 6 (c)*), as Williams experienced in a small town in the United States. However, in Tōhoku, regional lawyers seem to get a closer relationship with the local government and higher salaries than in the U.S. This might result from the fact that there are fewer lawyers in the region as well as in the local governments and other organizations and from the extent of loan sharking injuries in Japan.

Conflict of interest is a grave concern in the region, where lawyers are so scarce that residents rush to them in trouble, *e.g.*, a husband and wife in the case of divorce. I set a fictitious assertion that "It can be permitted to relax the rules of professional conduct on the conflict of interest in lawyer-scarce areas" and asked *Himawari* lawyers in Tōhoku for their opinions. Out of the ten respondents, seven disagreed; two disagreed with reservations ("It depends on the extent of the relaxation") and one agreed. The latter

wrote that “the assertion is worth listening to to some extent, though I want to keep the rules even in the scarce areas, if possible...” These answers exemplify lawyers’ sufferings in regional practice. On the other hand, the *Himawari* lawyer system might be beneficial in evading the conflict of interest problems, because most lawyers would change every two or three years.

The problem brought by an individual client often represents the problem of the community. Therefore, lawyers struggle with difficulties in dealing with a lot of civil and criminal cases and in acting diligently for their clients and their community. The close relationship with the local government shows that lawyers resemble local officials in areas with lawyer scarcity. Lawyers have great power with legal knowledge and the authority to perform legal services. Therefore, conscientious *Himawari* lawyers are meticulous in avoiding a misuse of their powers.

The types of legal cases in the region are mainly general civil cases brought by citizens on such matters as debts, divorce and succession. The economy of the region is in a bad condition in general. The clients’ income tends to be low. Besides, the defendants often cannot pay the decided damages. There are very few cases related to enterprises. One lawyer guessed that “it may be because big businesses have their consultant lawyers in big cities, and medium and small-sized enterprises don’t know how to use lawyers due to the absence of lawyers nearby for such a long period of time.”

I asked *Himawari* lawyers: “What factors will affect your decision on whether or not to settle in the region after the expiration of your term of office?” Their answers are categorized into those concerning lifestyle and those concerning law practice. Many lawyers were anxious about understanding of their families, medical services (“a variety of medical facilities and doctors, obstetric doctors in particular”), the education of their children (“environments to give children good education”) and their own enriched private life (“I am a perfect stranger to this place. I am a lawyer, busy, and it is hard to make young friends outside work.”). In terms of law practice, some lawyers wanted attractiveness in work (“a lot of enterprise legal work like in Tokyo”) and the presence of several lawyers nearby (“an atmosphere to let lawyers go in and out freely”). Among the eleven respondents to the questionnaire survey, only one lawyer answered that he might settle in the area. He wrote that “I worried, but decided to settle in the region. The greatest factor of my decision is that I cannot neglect the local people in trouble before my eyes.”

When I asked them the motives behind their applications for the posts, most of them replied that they wanted to help those people in the rural areas who were in trouble. I believe their words, but it is also true that most of them will return to big cities after the expiration of their terms of office for a few years, despite the fact that they are heavily needed in the area. For some young lawyers, the *Himawari* lawyer experience can be seen as a cornerstone to advancing or broadening their careers.

## VI. CONCLUSION

As we have seen in this article, the patterns of geographic distribution of lawyers pointed out by Abel hold true in Japan even now. On the other hand, legal needs seem to arise as lawyers increase in number, even in Tōhoku, as we saw in the case of Iwate prefecture. In Tōhoku, the *Himawari* lawyers do not have much professional experience. Ordinary lawyers, particularly the specialized experts and veterans, do not necessarily work hard for the residents' legal needs. This means that there is a gap between legal practice and legal needs, not only in quantity, but also in quality.

Williams' experience has many things in common with that of the *Himawari* lawyers in Tōhoku. It seems that, irrespective of countries (Japan or the United States), the practice of law is to some extent influenced by the community. In rural Japan, life and law practice seem to be hard. After the bubble burst recession in the 1990s, Japan experienced serious problems such as the growing gap between the poor and the rich, the disparity in urban and rural living standards and the shortage of medical and legal services.

In conclusion, the answer to this paper's first question is this: the quality of life in rural areas is not enriched, and law practice in rural areas is also hard. The shortage of legal services results in the situation that legal work for *Himawari* lawyers and the JLSC staff lawyers is mainly on routine civil and criminal cases. If lives in the region can improve and law practice becomes more attractive, new lawyers will come. But it is difficult to have a quick resolution to the above-mentioned ongoing problems in Japanese society, as well as the concentration of high rank schools in big cities.<sup>28</sup> The possible steps now include a temporary increase in lawyers in regions such as those where *Himawari* and JLSC staff lawyers work, the cultivation of local enterprises' latent legal works, or making new experiments, such as the use of grassroots support, ADR and Internet technology.<sup>29</sup>

Concerning the second question of this paper, *Himawari* lawyers' legal practice is certainly determined to some extent by "community" as Landon discussed, but the coming into existence of the *Himawari* lawyers in itself seems to be driven internally by "lawyers" and externally by the "community." The term "lawyers" here has two meanings. The first meaning concerns the "role of lawyers to serve the people in trouble."

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28 For example, if you were a resident of Tōhoku and wanted to have education to become a lawyer there, you have no option but to go to Sendai city, which is the only place with (2) law schools in the area. In Hokkaidō, (2) law schools are established, but only in Sapporo city. There are 74 law schools nationwide as of 2008, most of which are concentrated in some other big cities.

29 See Canadian Bar Association's National Magazine 17 (3) (2008) 16-22. This special issue titled "Solo Transformation: Canada's Sole Practitioners Stand at a Crossroad" features solo practitioners, including the ones in rural areas. According to the articles, solo practitioners face a perfect storm of low-cost competitors, rural population drain, and an oncoming demographic crisis in Canada. But they are also uniquely equipped to overcome these challenges through technology, flexibility, and global niche practices. Legal consultation via TV phone has been put into practice in Mutsu.

Lawyers are scarce in the region. For years the JFBA had overlooked the responsibility to serve people. The “creation” of the concept of *Himawari* lawyers seems to be, so to speak, the bar’s belated compensation to the rural residents. The second meaning concerns the “situation of lawyers.” Facing the prospect of lawyers’ expansion in number, young lawyers want to have various experiences (including the experience of working as a *Himawari* lawyer) to live through the era of competition in the future when there will be more than a hundred thousand lawyers.

The JFBA and the Tōhoku Federation of Bar Associations started a new program in 2008 to encourage lawyers to settle in the areas with lawyer scarcity: training and funding inexperienced new lawyers. In April 2008, the Yamabiko Foundation Law Firm, established in Sendai city, aimed to train and dispatch young lawyers to the district court jurisdictional regions that have more than 30,000 residents per one lawyer in Tōhoku. To cope with the shortage of legal services in rural areas, it remains an urgent task in Japan to have an increase in well-qualified lawyers, whether migrant or permanent, or to provide legal services in any other way.

#### ZUSAMMENFASSUNG

*Um die ungleiche geographische Verteilung von niedergelassenen Anwälten in Japan und die dadurch entstandene Verknappung juristischer Dienstleistungen in vielen ländlichen Gegenden anzugehen, haben die Japanische Anwaltsvereinigung und die japanische Regierung seit den 1990er Jahren vielfältige Reformmaßnahmen lanciert. Dabei wurden unter anderem Zentren zur Rechtsberatung, Anwaltskanzleien der durch die Anwaltsvereinigung unterstützten Himawari-Stiftung und lokale Büros des Japanischen Rechtsberatungszentrums gegründet. Dieser Beitrag setzt sich mit der Arbeit von Anwälten in Himawari-Kanzleien auseinander und geht dabei folgenden Fragen nach: (1) Warum lassen sich Anwälte kaum in ländlichen Gebieten nieder? (2) Trifft die Theorie, dass der Anwaltsberuf ein extern bestimmtes Sozialsystem ist, auf Japan zu? Der Autor gibt zunächst einen Überblick über die Maßnahmen gegen den Mangel an juristischen Dienstleistungen. Dann untersucht er auf der Grundlage von Interviews und Erhebungen anhand von Fragebögen die juristische Beratungspraxis und Arbeitsweise von Anwälten im Nordosten Japans (Tōhoku), einem typischen Gebiet mit Juristenmangel. Abschließend beantwortet er die erste Frage damit, dass die Lebensqualität in ländlichen Gebieten eher niedrig und auch die tägliche Arbeit der Anwälte in diesen Gegenden schwierig ist. Als Antwort auf die zweite Frage stellt er fest, dass die Rechtspraxis von Himawari-Anwälten sicherlich bis zu einem gewissen Grad von der „Gemeinschaft“ bestimmt wird, dass aber die Entstehung von Himawari-Kanzleien selbst anscheinend sowohl intern von den „Anwälten“ als auch extern von der „Gemeinschaft“ vorangetrieben wurde.*

*(Übersetzung durch d. Red.)*