

# Access to Attorneys in Japan<sup>1)</sup>

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## 1. Theme and Methodologies

(1) This paper aims to highlight issues concerning accessibility to the legal system and accessibility to attorneys in particular, based on recent empirical data.

The extent and manner in which the judicial system is used by individuals and organizations is an important theme for legal sociology as well as the fields of legal policy and practice. Access to the judicial system may include access to the judicial proceedings and out-of-court dispute resolution, but access to attorneys is the key issue. The accessibility of attorneys is a matter of concern in both the preventive legal stages such as preparation of wills and contracts, as well as in the later stage of dispute resolution. With the recent increase in empirical studies (quantitative analysis through the use of surveys in particular), new light is being shed on the use of attorneys by individuals in Japan during this latter stage.

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1) This is an English translation of the Japanese paper 「弁護士へのアクセスの現状と課題」(太田勝造 = ダニエル・H・フット = 濱野亮 = 村山真維編『法社会学の新世代』[a New Generation for Sociology of Law] (有斐閣、2009 年) 68 頁～97 頁) by the same author. SIMUL's Draft Translation was used. I must express my special thanks to Associate Professor Shawn Huizenga for his review of the English version of this paper. Of course, any mistakes that remain are the sole responsibility of the author.

(2) A survey of participants in civil litigation conducted by the Justice System Reform Council has provided interesting and significant information on the accessibility of attorneys (Shihōseido kaikaku shingikai, 2000; Hamano, 2006c: 227-229). This survey was conducted through interviews using questionnaires with a total of 1,612 respondents who were parties in ordinary civil suits and domestic cases tried in 16 district courts nationwide which resulted in a judgment, settlement or abandonment (excluding default judgments) during the month of June 2000. The response rate was 36.6%. Primary analysis was presented as a report for the Justice System Reform Council, and a secondary analysis was also performed (the author participated in this analysis, which was published as the “Civil Suits from the Users’ Perspective: Secondary Analysis of ‘Survey on Users of Civil Litigations’ by the Justice System Reform Council” (Sato, Sugawara and Yamamoto, 2006)).

Within the ordinary civil suits and domestic cases sampled from the district courts<sup>2)</sup>, attorneys represented 88% of the individual and 80% of the corporate plaintiffs, and 46% of the individual and 82% of the corporate defendants (Shihōseido kaikaku shingikai, 2000: 16). The method of finding attorneys by the represented parties was largely through prior acquaintance or introduction by relatives and acquaintances (over 60% for both plaintiffs and defendants) for individuals, and prior acquaintance or use of a corporate attorney (approximately 80%) for corporations. The survey inquired as to whether the parties faced difficulty in finding an attorney, and the majority of both individual and corporate defendants replied “No.” Seventy-six percent of the individual plaintiffs and 88% of the individual defendants, and 94% of the corporate plaintiffs and 96% of the corporate defendants responded that they did not experience difficulty (Hamano, 2006c: 223, 229). As the survey excluded cases that resulted in default judgments, the actual rate of use of attorneys by defendants should be slightly lower. However, the majority of parties who retained attorneys did not have difficulty finding one through existing personal networks.

The fact that the vast majority of plaintiffs (both natural persons and corporations) were represented by attorneys (74% according to the Annual Report of Justice Statistics for 2000) and that most of them did not have difficulty locating an attorney does not mean that the overall accessibility to the judicial system is good. Rather, it

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2) Although this is not a random sample, it is significant data indicating the status of attorney accessibility stated above.

indicates that the legal system is mainly being used by a certain group of individuals who have relatively easy access to attorneys. First, we must understand the current status of attorney accessibility for plaintiffs who are not being represented. Attorney accessibility refers to whether the party considered representation and, if so, why they ultimately did not retain an attorney. Second, we must examine attorney accessibility for all issues and disputes arising in our society. We must understand how many parties who needed an attorney were nonetheless unable to obtain one, and what caused them to fail to secure representation. The next issue is that while a vast majority of corporate defendants were represented, only about half of the individual defendants had attorneys. We must consider the conditions surrounding defendants who are not represented, particularly non-corporate defendants<sup>3)</sup>.

(3) In general, data on access to attorneys by individuals involved in civil disputes (not limited to litigation) is available from the Disputing Behavior Survey<sup>4)</sup> which constituted part of the Civil Justice Research Project. This study surveyed 25,014 randomly selected people between twenty and seventy years of age in the spring of 2005. The data related to the following analysis was obtained through interviews based on questionnaires. Respondents were asked whether they had experienced any disputes within the last five years since March 2000, falling within 55 possible topics (as well as “Other” ) categorized into ten types and inquiring about various stages of dispute behavior. The overall response rate was 49.6% (12,408 respondents), with 2,343 respondents (19% of the total) answering that they experienced one of the disputes presented.

Some observations of the status and issues concerning attorney accessibility based mainly on this Disputing Behavior Survey data are discussed below<sup>5)</sup>.

## 2. Attorney Retention by Individuals Involved in Disputes

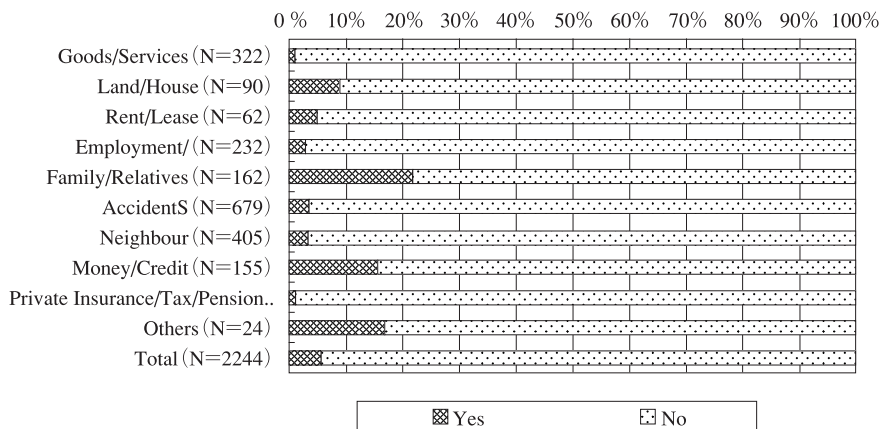
(1) According to the Disputing Behavior Survey, 5.3% of those who experienced some kind of dispute retained attorneys. “Retention” as used in the questionnaire refers to the commission of an attorney for the purpose of dispute resolution, and means

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3) This issue has been pointed out in another report (Hamano, 2006c: 223).

4) See Murayama and Matsumura (2006) for information related to the Disputing Behavior Survey in the Civil Justice Research Project.

[Figure 1] Attorney Retention Ratio



“commission of an attorney to resolve the problem, rather than simple consultation.”

As shown in Figure 1, the Attorney Retention Ratio varies significantly by dispute type ( $p < .01$ ). In the survey, ten dispute types (and “Other” ) were presented as issues that may involve the law, providing an explanation for each type of dispute using terms familiar to the lay public. Respondents were asked whether they had encountered any such disputes. The Attorney Retention Ratio was high for family/relative and monetary loan related disputes. On the other hand, the Attorney Retention Ratio was low for goods/services, employment, accident, neighbor, private insurance/tax/public pension and insurance<sup>6)</sup> related disputes.

5) The following analysis is an expansion based on the “Access to Attorneys” report presented at the international symposium “Dispute Resolution and Civil Justice in Legal Society” held at Meiji University on March 2, 2008; “The lawyer population problem and access to justice” report presented at the international seminar “Legal Reform and the Role of the Judiciary in a Comparative Perspective” held at Katholieke Universiteit Leuven on March 21, 2008; and explanation of objectives for general symposium “Socio-legal Studies of the Civil Justice Process” for the Japanese Association of Sociology of Law’s academic conference held at Kobe University on May 11, 2008.

6) In the questionnaire, private insurance and tax/public pension and insurance were presented as separate categories but they have been merged for purpose of analysis, as few people experienced disputes in this area.

Family and relative disputes involve divorce, inheritance, and nursing care among others. Twenty-two percent of the individuals who experienced family/relative disputes retained attorneys; however, none retained attorneys for nursing care related issues, and the ratio for all the other categories was approximately equal. It was understood that some attorneys mainly focus on divorce and inheritance disputes; however, it was not previously known that family related issues ranked highest among the various disputes that lead to attorney representation. The ratio of over 20% was also higher than expected.

The second highest category was monetary loan disputes, with 16% of parties surveyed retaining attorneys in these cases. Within this category, attorney retention was high for disputes involving consumer finance companies (33%).

(2) Other significant variables (measured at 5%) that relate to the Attorney Retention Ratio distinct from the dispute types presented in the questionnaire included the following: Monetary amount (the retention ratio was higher for larger sums of money involved); age (lower for parties in their thirties, higher for those in their fifties); yearly household income (low for the range between 6,000,000 and 8,000,000 yen, high for those with yearly incomes above 10,000,000 yen); residence (high in 14 large cities, low in cities with a population less than 200,000); acquaintance with legal professionals (referring to whether an individual knows someone who is an attorney/judge/prosecutor/notary public/law professor that “can be consulted in case there is a problem,” or “does not directly know someone to consult with, but knows someone who can introduce such a person.” Those who have such an acquaintance had a high Attorney Retention Ratio), and past experience with attorney retention (those with experience had a higher ratio of retention). Respondents were instructed to exclude attorneys retained for the current dispute from past retention experience.

Within these variables, it is noteworthy that low income households did not score low with respect to the Attorney Retention Ratio. We shall return to this topic later. With regard to residential address, the Attorney Retention Ratio was low for cities with populations less than 200,000, but the ratio was not low for towns and villages.

Variables that were not related (measured at the 5% level) to the Attorney Retention Ratio included gender (statistical significance at the 10% level is seen, and males have a higher tendency to retain an attorney), education (statistical significance

at the 10% level) is observed, and university and graduate school graduates have a higher tendency to retain an attorney, while junior college, high school and vocational school graduates were lower), employment status, experience in studying law, and experience in a law related occupation. The relationship between gender/education and the Attorney Retention Ratio was limited to statistical significance at the 10% level. It was also surprising to see no relationship with employment status (the four categories were: full-time employee, part-time employee, self-employed, and unemployed). Higher tendencies of attorney retention among the self-employed and lower for unemployed were expected, but this was not the case. Experience in studying law and working in a law related occupation were also not related to the retention ratio.

(3) Variables examined in sections (1) and (2) above are mutually related in a majority of cases. As a result, the task of selecting factors that determine the Attorney Retention Ratio and creating a statistical model is not an easy one<sup>7)</sup>. Therefore, this article shall select two variables, past experience with attorney retention and acquaintance with legal professionals and review their relationship with the Attorney Retention Ratio in detail.

In general, individuals who have experience in retaining attorneys should feel less intimidated than those who do not, although the experience may lead some to feel reluctant to use an attorney again. This article shall examine the data for individuals with experience retaining an attorney for private or business matters, and determine what its relationship may be to the attorney retention behavior.

In addition, as discussed in Section 1, most of the parties to civil suits obtained attorneys through prior acquaintance or introduction from relatives and friends and most respondents did not report much difficulty finding an attorney. Traditionally, it was thought that attorneys tended to avoid clients without an introduction. With the recent increase in the number of attorneys and easing of restrictions on advertising, it appears that more attorneys are making themselves available to the public. While such a

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7) Factors that may affect an individual's decision to consult an attorney may be divided into the following six categories: (i) factors related to the dispute itself; (ii) the respondent's identity; (iii) the counterparty's identity; (iv) dispute condition including mutual interaction between the parties; (v) systemic and individual factors concerning the advice agencies contacted; and (vi) systemic and individual factors concerning the attorney.

change may be possible, the majority of attorneys are still assumed to represent existing clientele and clients obtained via introduction as their main clients. Data showing statistical significance between the acquaintance with the legal profession and the Attorney Retention Ratio appears to support these traditional views but needs to be examined closer.

The policy goal of securing access to the judicial system is to support individuals who do not have easy access to attorneys for various reasons. Clarifying the status of attorney retention by individuals with no past experience or acquaintance with legal professionals is critical in reviewing the judicial access issue.

### 3. Four Types that determine Attorney Access

(1) Focusing on the two variables, i.e., experience with attorney retention and acquaintance with legal professionals<sup>8)</sup>, individuals can be divided into four types. They shall be categorized into Type 1 through Type 4: Type 1 refers to the group of individuals who have experience with attorney retention and acquaintance with legal professionals; Type 2 are those who have experience obtaining an attorney but do not have acquaintance with legal professionals; Type 3 includes those who do not have experience hiring an attorney but know legal professionals; and Type 4 are those who neither have experience obtaining an attorney nor acquaintances in the profession.

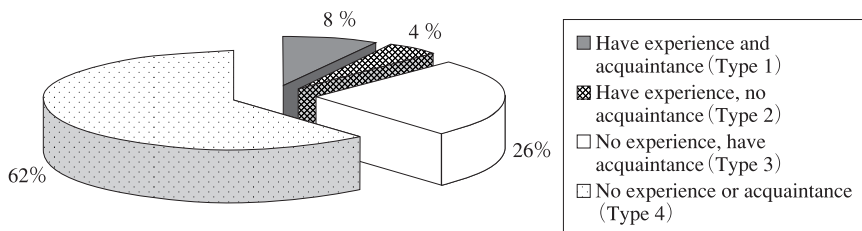
What is the proportion of these groups among the general public?

Let us investigate by considering the respondents of the Disputing Behavior Survey. The respondents are biased (non-response bias) by age and geography (Murayama and Matsumura, 2006: 21-32), but we can see the general outline. Among the respondents, Type 1 constituted 4%, Type 2 was 2%, Type 3 was 22%, and Type 4 was the majority with 72%. The data can be used to assess the status of the adult population in Japan: 6% of individuals had experience in attorney retention, and 26% had some

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8) In reference to “acquaintance with legal professionals,” “legal professionals” shall mean “attorneys/judges/prosecutors/notary public/law professors” as indicated on the questionnaire, and those who “do not directly know someone to consult, but know someone who would make an introduction” will be included in those who “have acquaintance with legal professionals.”

[Figure 2] Four Types among Individuals who experienced Disputes (N=2232)



acquaintance with legal professionals. We can assume that approximately 70% of the population has neither experience obtaining an attorney nor acquaintance with legal professionals.

Figure 2 looks at the group with dispute experience.

The distribution is approximately the same as the overall survey respondents, but Types 1 and 2 are slightly higher, with slightly fewer belonging to Type 4 (without experience or acquaintance) which constituted 62%.

Table 1 summarizes the relationship between attorney retention and each of the four types ( $p < .01$ ). Individuals with attorney retention experience (Types 1 and 2) have a higher Attorney Retention Ratio, and among those, the ratio is highest for individuals that have acquaintance with legal professionals (Type 1) at 40%. On the other hand, the ratio was extremely low for Type 4 (no experience with attorney retention, no acquaintance with legal professionals) individuals, at 0.6%.

Type 4, which accounts for the majority, has a significantly lower Attorney Retention Ratio, at 1/60 of Type 1. The difference with Type 3 is also large, at 1/7. The distribution of the four types among the 120 respondents who experienced disputes and retained attorneys is shown in Figure 3. Type 1 accounts for 56%, while only 7% fall within Type 4. By comparing Figure 2 and Figure 3, the bias concerning access to attorneys towards Type 1 and Type 2 becomes clear.

(2) What are the socio-economical identities that define the four types? From the perspective of expanding judicial access, the relationship with household income, education, employment status and residential address are of interest. Let us review the



[Table 1] The Four Types and Attorney Retention Ratio

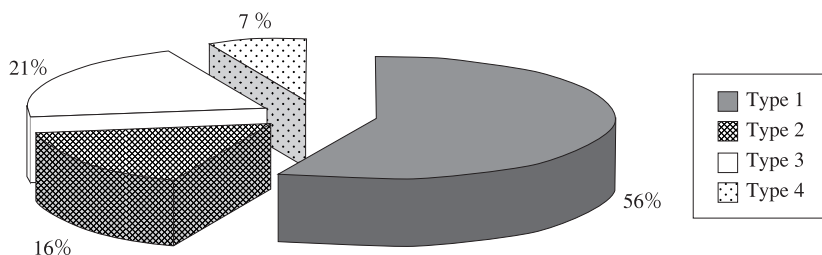
		Attorney Retention		Total
		Yes	No	
Type 1		68	110	178
		38.2%	61.8%	100.0%
	Adjusted Residual	20.2	−20.2	
Type 2		19	79	98
		19.4%	80.6%	100.0%
	Adjusted Residual	6.3	−6.3	
Type 3		25	552	577
		4.3%	95.7%	100.0%
	Adjusted Residual	−1.3	1.3	
Type 4		8	1371	1379
		.6%	99.4%	100.0%
	Adjusted Residual	−12.8	12.8	
Total		120	2112	2232
		5.4%	94.6%	100.0%

data for all respondents (12,408).

First, the variables of gender, age, education, household income, employment status and residential address all had statistical significance (at the 5% level) on whether a respondent has experience retaining an attorney. Six percent of the total respondents indicated such experience, and males were higher (7%), and those in their 50s and 60s also showed a higher ratio. University and graduate school graduates (8%), and households with income of 10,000,000 yen or more (11%) also had a higher ratio. However, households with incomes less than 2,000,000 yen did not show statistically significant lower figures, and 6% of respondents in this category had experience retaining attorneys. With regard to employment status, self-employed individuals had more experience (8%), while unemployed individuals had less (4%). Turning to residential address, residents of 14 major cities and cities with populations of 200,000 or more had more experience (7% for both), while those in smaller towns and villages had less.

Although these are all statistically significant differences, it is noteworthy that even

**[Figure 3] The Four Types among Individuals who experienced Disputes and Retained Attorneys (N=120)**



for categories with a higher Attorney Retention Ratio the scores are not extremely high. Households with income of 10,000,000 yen or more had more experience (significantly higher at 11%) but households with incomes of less than 2,000,000 yen did not score low. Economic resources and attorney access are often assumed to be closely correlated. Our data indicates that households with incomes of 10,000,000 yen or more had a higher Attorney Retention Ratio; however, an interesting characteristic was that low income households did not have a low Attorney Retention Ratio. This point shall be analyzed in more detail below.

Next, let us turn to the significance of acquaintance with legal professionals. These variables just mentioned above also have statistical significance (at the 5% level) and the result was generally similar with the attorney retention experience, but there were some differences worth noting. Among the respondents, 26% were acquainted with legal professionals: Males had a higher ratio (31%), as did individuals in their 40s (27%) and 50s (31%). Individuals in their 20s (17%) and 30s (22%) had lower ratios. This differs from attorney retention experience in that the group in their 60s had a lower ratio and those in their 40s had a higher ratio. University and graduate school graduates had a higher ratio (42%), while junior college, high school and vocational school graduates had a lower ratio (21%). Household income also presented a different result, showing a linear relationship. Households with incomes between 8,000,000 and 10,000,000 yen (35%) and incomes of 10,000,000 yen or more (47%) had a higher ratio, while households with incomes less than 2,000,000 yen (15%), those between 2,000,000 and 4,000,000 yen (19%), and those above 4,000,000 yen and less than 6,000,000 yen (24%) all had a lower ratio. With regard to the employment status, full-time employees (31%) and self-employed individuals (30%) had a higher ratio, while part-time employees

(19%) and unemployed individuals (20%) both had a lower ratio. Turning to residential address, residents of the 14 major cities (30%) and cities with a population of 200,000 or more (28%) had a higher ratio, while those in other cities (24%) and towns and villages (22%) had a lower ratio.

Acquaintance with legal professionals resulted in a significant difference in the Attorney Retention Ratio. The linear relationship with household income is also noteworthy: Households with higher incomes had a higher ratio of acquaintances in the legal profession, and almost half of those with incomes of 100,000,000 yen or more had such acquaintance. Although the lower number of town and village residents with acquaintances in the legal profession had statistical significance (22%) the figure seems rather high considering there are remote regions with an extremely small number of attorneys in various localities. This result may be due to the fact that some towns and villages are included as suburbs of major cities. On the other hand, it may suggest that there are certain groups of town and village residents with access to legal networks.

In sum, among the four types, there were significant differences in the Attorney Retention Ratio when respondents faced legal disputes. In particular, Type 4 is isolated from the other types in that the Attorney Retention Ratio is very low. The four types have significant relationship with socio-economic identities, and it is also worth noting that the types are affected by the age, education, household income, employment status and residential addresses of the respondents.

(3) As we have seen, household income resulted in a somewhat different pattern between experience in attorney retention and acquaintance with legal professionals. Let us take a closer look at the data, as the role of this variable is important to the issue of access to attorneys from both a policy and theoretical perspective.

What is the relationship between attorney retention by respondents who faced disputes and their household income?

Dividing household income into six categories, we can see a relationship with attorney retention ( $p < .01$ ). Based on residual analysis, there is a high Attorney Retention Ratio with statistical significance for households with 10,000,000 yen income or more, and while the medium range (above 6,000,000 and less than 8,000,000 yen) had a low

**[Table 2] Relationship between Household Income and Attorney Retention based on Experience**

		Attorney Retention		Total
		Yes	No	
Attorney Retention Experience	Household Income	19	48	67
	Less than ¥4 million	28.4%	71.6%	100.0%
	Adjusted Residual	−.6	.6	
	¥4 million or more, less than ¥8 million	15	58	73
		20.5%	79.5%	100.0%
	Adjusted Residual	−2.4	2.4	
	¥8 million or more	35	47	82
		42.7%	57.3%	100.0%
	Adjusted Residual	2.9	−2.9	
	Total	69	153	222
		31.1%	68.9%	100.0%
No Attorney Retention Experience	Household income	9	423	432
	Less than ¥4 million	2.1%	97.9%	100.0%
	Adjusted Residual	.6	−.6	
	¥4 million or more, less than ¥8 million	9	648	657
		1.4%	98.6%	100.0%
	Adjusted Rseidual	−1.0	1.0	
	¥8 million or more	9	423	432
		2.1%	97.9%	100.0%
	Adjusted Residual	.6	−.6	
	Total	27	1494	1521
		1.8%	98.2%	100.0%

retention ratio, low income households did not prove to have a low retention ratio with statistical significance. The result is similar to the relationship between attorney retention experience and household income.

Eleven individuals from households with incomes less than 2,000,000 yen who retained attorneys included a high number of older respondents (36% for both the 50s- and 60s-year-old age groups). In addition, unemployed individuals (46%) and part-time employees (27%) also had a higher ratio. One of the contributing factors for the Attorney Retention Ratio not being low for low income households is that older respondents are among those with experience in attorney retention, resulting in easier access to attorneys. In addition, older respondents may include those with low annual incomes but a larger percentage of their wealth in other assets.

Household income affects experience in attorney retention and whether the respondent has acquaintances in the legal profession; however, theoretically, it could directly impact attorney retention in their capacity to pay attorney fees. Therefore, let us look at the relationship of household income by controlling the two variables (attorney retention experience and acquaintance with legal professionals) separately.

First, let us look at attorney retention experience. Table 2 indicates the relationship between household income (3 categories) and attorney retention for respondents with experience and those without. The result was contrasting. For respondents with experience obtaining an attorney, household income and attorney retention was related ( $p < .05$ ); the ratio was high for households with income of 8,000,000 yen or more (43%), and low for those with incomes above 4,000,000 and less than 8,000,000 yen (21%). The ratio for households with less than 4,000,000 yen income did not differ from the average (28%). Again, we see that low income households do not have a low retention ratio, but there is a clear tendency for high income households to have a high ratio and medium income households to have a low ratio. In contrast, there was no relationship between household income and attorney retention for respondents without experience obtaining an attorney ( $p = .580$ ). For respondents without this experience, high household income did not necessarily mean a high retention ratio, and the ratio was low regardless of the household income. This indicates that household income has less significance than past attorney retention experience.

Next, let us turn to acquaintance with legal professionals. Table 3 indicates the

[Table 3] Relationship between Household Income and Attorney Retention based on Acquaintance with Legal Professionals

		Attorney Retention		Total
		Yes	No	
No Acquaintance with Legal Professionals	Household Income	10	359	369
	Less than ¥4 million	2.7%	97.3%	100.0%
	Adjusted Residual	1.9	−1.9	
	¥4 million or more, less than ¥8 million	.6%	99.4%	100.0%
	Adjusted Residual	−2.4	2.4	
	¥8 million or more	2.1%	97.9%	100.0%
	Adjusted Residual	.7	−.7	
	Total	19 1.7%	1114 98.3%	1133 100.0%
Acquaintance with Legal Professionals (including possible introduction)	Household income	18	111	129
	Less than ¥4 million	14.0%	86.0%	100.0%
	Adjusted Residual	.4	−.4	
	¥4 million or more, less than ¥8 million	8.7%	91.3%	100.0%
	Adjusted Rseidual	−2.5	2.5	
	¥8 million or more	16.5%	83.5%	100.0%
	Adjusted Residual	2.1	−2.1	
	Total	77 12.8%	525 87.2%	602 100.0%

relationship between household income (3 categories) and attorney retention based on the respondents' acquaintance with legal professionals. The result here was also contrasting. For respondents who have acquaintance with legal professionals, household income was related to the Attorney Retention Ratio ( $p < .05$ ): the retention ratio was high for households with income of 8,000,000 yen or more (17%), and low for those with incomes above 4,000,000 and less than 8,000,000 yen (9%). Households with income of less than 4,000,000 yen did not have a low Attorney Retention Ratio and were about the same as average (14%). As stated above, the pattern is the same as the attorney retention experience. Respondents who did not have acquaintance with legal professionals showed a relationship between household income and the Attorney Retention Ratio ( $p = .050$ ), however, the ratio was not high even for respondents with yearly incomes of 8,000,000 yen or more (2%), and low for those with incomes between 4,000,000 and 8,000,000 yen (1%). Households with incomes of less than 4,000,000 yen did not have a low ratio (3%). This result is also similar to the pattern seen in cases where respondents did not have attorney retention experience. The result shows that the effect of household income is smaller than that of acquaintance with legal professionals.

If the level of household income is an indicator of economic resources, the current relationship between economic resources and the Attorney Retention Ratio in Japan can be summarized as follows: Economic resources, along with other socio-economic variables, enable certain groups within the population (about a third of the population) who have experience in attorney retention and acquaintance with legal professionals to easily access attorneys and within this group higher income households have a higher Attorney Retention Ratio. However, for a majority of others, i.e., those without attorney retention experience or acquaintance with legal professionals, economic resources are not connected to their Attorney Retention Ratio. There seems to be a great disparity between these two groups. The extremely low Attorney Retention Ratio for Type 4 emphasizes this point.

#### **4. Advice Agencies and Advice Seeking Behavior<sup>9)</sup>**

(1) Let us now consider the relationship between the four types and the utilization of advice agencies in detail.

Among the advice agencies, the following three groups will be examined from the perspective of the route to accessing an attorney: The first group involves direct contact

**[Table 4] Attorney Retention Ratio and the Four Types**

		Attorney Retention		Total
		Yes	No	
Type 1		68	110	178
		38.2%	61.8%	100.0%
Adjusted Residual		19.4	−19.4	
Type 2		20	78	98
		20.4%	79.6%	100.0%
Adjusted Residual		6.4	−6.4	
Type 3		30	547	577
		5.2%	94.8%	100.0%
Adjusted Residual		−.6	.6	
Type 4		10	1369	1379
		.7%	99.3%	100.0%
Adjusted Residual		−12.9	12.9	
Total		128	2104	2232
		5.7%	94.3%	100.0%

with an attorney. The second group includes legal advice services provided by local municipalities, legal advice services provided by the bar association, and legal advice services provided by legal aid. These advice agencies are designed to connect people directly with attorneys. Currently, the Japan Legal Support Center (hereafter “Houterasu” ) is the most significant organization, but it had not been established at the time the survey was conducted. According to the survey data, the consultation with legal aid is extremely limited (only 0.2% of respondents involved in disputes). We shall refer to these as attorney related advice agencies. The third group includes more general advice agencies, comprising of services other than legal advice provided by the local municipalities, consumer affairs centers, national and prefectural organizations, and private advice organizations/services. We shall refer to these as general advice agencies.

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9) Dispute behavior by the people (hence the attorney retention behavior) is affected by the dispute type, so an analysis based on the dispute type is also required. However, as the number of cases would be small if the dispute behavior survey data is divided into dispute types, making sufficient analysis difficult.



[Table 5] Attorney Related Advice Agencies Usage and the Four Types

		Usage		Total
		Yes	No	
Type 1		156 87.6%	22 12.4%	178 100.0%
	Adjusted Residual	-5.0	5.0	
Type 2		79 80.6%	19 19.4%	98 100.0%
	Adjusted Residual	-7.0	7.0	
Type 3		563 97.6%	14 2.4%	577 100.0%
	Adjusted Residual	3.0	-3.0	
Type 4		1329 96.4%	50 3.6%	1379 100.0%
	Adjusted Residual	3.1	-3.1	
Total		2127 95.3%	105 4.7%	2232 100.0%

First, the four types have a statistically significant relationship ( $p < .01$ ) with attorney consultation, which followed the same result as the Attorney Retention Ratio (Table 4). Types 1 and 2 had high consultation ratio, and Type 4 had a markedly lower ratio.

Second, turning to the relationship between the four types and consultation with attorney related advice agencies, there was statistical significance at the 1% level, and Types 1 (12%) and 2 (19%) had a higher ratio of people consulting the organization, whereas Types 3 (2%) and 4 (4%) had a lower ratio (see Table 5). Respondents who already had experience with attorney retention showed a higher tendency to consult these attorney related advice agencies. A recent report published by the Japan Federation of Bar Associations<sup>10)</sup> also indicates that among users of the legal advice

10) It consisted of survey of visitors to the legal advice center and visitors to the law firms. The former survey was conducted through self-written responses to the questionnaire provided to individuals who visited various bar associations' legal advice centers and traffic accident advice centers, with total sample size of 1,500 and collection rate of 92% (Nihon bengoshi rengôkai bengoshi gyômu sôgô suishin sentô, 2008: 3).

[Table 6] Usage of General Advice Services and the Four

		Usage		Total
		Yes	No	
Type 1		158 88.8%	20 11.2%	178 100.0%
	Adjusted Residual	−4	.4	
Type 2		77 78.6%	21 21.4%	98 100.0%
	Adjusted Residual	−3.7	3.7	
Type 3		523 90.6%	54 9.4%	577 100.0%
	Adjusted Residual	.9	−.9	
Type 4		1244 90.2%	135 9.8%	1379 100.0%
	Adjusted Residual	1.0	−1.0	
Total		2002 89.7%	230 10.3%	2232 100.0%

center of the Japan Federation of Bar Associations (including the traffic accident advice center), 27% had past experience seeking advice from an attorney or had retained an attorney for dispute resolution which is also consistent with our results (Nihon bengoshi rengōkai, bengoshi gyōmu sōgō suishin sentā, 2008: 48). The possibility that such individuals may include those seeking a second opinion through utilization of legal counseling services has been pointed out (Id.: 69).

Table 5 indicates that for Types 1 and 2, the experience with attorney retention facilitates legal advice seeking. On the other hand, although it was expected that these organizations would be used by people who do not have experience obtaining an attorney or do not have easy access to attorneys through close personal networks, the ratio of use by individuals in Type 4 is relatively low. This indicates the limit of these attorney related advice agencies in Japan.

Third, the relationship between the retention ratio for general advice agencies and the four types showed the 1% level association and, as shown in Table 6, Type 2 had a statistically significant retention ratio (21%). The retention ratio for such advice agencies is not high for Type 1 (11%), which differs from attorney related advice

[Table 7] Attorney Retention Ratio among Users of Attorney Related Agencies and the Four Types

		Attorney Retention			Total
		Yes	Considered	No, not considered	
Type 1		14	5	3	22
		63.6%	22.7%	13.6%	100.0%
	Adjusted Residual	4.1	−2.1	−1.7	
Type 2		11	2	6	19
		57.9%	10.5%	31.6%	100.0%
	Adjusted Residual	3.1	−3.1	.3	
Type 3		3	6	5	14
		21.4%	42.9%	35.7%	100.0%
	Adjusted Residual	−.6	.0	.6	
Type 4		2	32	16	50
		4.0%	64.0%	32.0%	100.0%
	Adjusted Residual	−5.3	4.2	.7	
Total		30	45	30	105
		28.6%	42.9%	28.6%	100.0%

[Table 8] AttorneyRetentionRatio among Users of Bar Association LegalAdvice and the Four Types

		Attorney Retention		Total
		Yes	No	
Type 1		5	2	7
		71.4%	28.6%	100.0%
Type 2		9	3	12
		75.0%	25.0%	100.0%
Type 3		2	3	5
		40.0%	60.0%	100.0%
Type 4		2	13	15
		13.3%	86.7%	100.0%
Total		18	21	39
		46.2%	53.8%	100.0%

**[Table 9] Attorney Retention Ratio among Users of Municipal Legal Advice and the Four Types**

		Attorney Retention		Total
		Yes	No	
	Type 1	10 62.5%	6 37.5%	16 100.0%
	Type 2	5 45.5%	6 54.5%	11 100.0%
	Type 3	1 11.1%	8 88.9%	9 100.0%
	Type 4	1 2.4%	40 97.6%	41 100.0%
Total		17 22.1%	60 77.9%	77 100.0%

agencies. In addition, the retention ratio for Type 4 individuals is not low (10%). This corresponds to the general character of such advice agencies.

(2) Next, let us examine what degree of consultation with attorney related advice agencies lead to attorney retention. Whether the attorney who provided counseling at the organization was contacted directly, or if the relationship between counseling led to the ultimate retention of an attorney cannot be determined from the data. However, it is possible to see the role these advice agencies play as a route to accessing attorneys.

First, among the respondents who consulted an attorney related advice agency, 29% ultimately retained attorneys. However, a significant difference exists among the four types here as well ( $p < .01$ ). As indicated on Table 7, while Types 1 and 2 showed a higher ratio of retaining attorneys subsequent to consulting attorney related advice agencies (around 60%); the ratio is extremely low for Type 4 (4%). As already discussed, the retention ratio for attorney related advice agencies are high for Types 1 and 2, and extremely low for Types 3 and 4; however, among those who did consult such organizations, Type 4 has an extremely low ratio of attorney retention.

The result is the same when we look at legal advice services provided by the bar association and local municipalities separately. Among those individuals who consulted

legal advice services provided by bar associations, 71% of Type 1 and 75% of Type 2 individuals retained attorneys (the ratio was 46% for all respondents), while only 13% of Type 4 respondents did so (Table 8)<sup>11)</sup>. On the other hand, 40% of Type 3 respondents retained attorneys. The Attorney Retention Ratio for individuals who consulted legal advice services provided by local municipalities (22% overall) was 63% for individuals in Type 1 and 46% for those in Type 2, while only 2% of Type 4 respondents retained attorneys (Table 9)<sup>12)</sup>. The ratio was only 11% for Type 3. We can see that legal advice services provided by bar associations have an effect on Type 3 respondents.

From the data, we cannot determine whether consultation with these agencies leads directly to the retention of attorneys, or why the attorney retention ratio remained low even after consulting these agencies. However, the data indicates that the legal advice services provided by bar association affiliated advice agencies has a limited effect in leading individuals without previous attorney retention experience to do so. However, for Type 3 individuals (those without attorney retention experience but acquaintance with legal professionals), the legal advice services provided by the bar associations may have certain effects.

Of course, the cases brought to legal counseling would have included those inappropriate for retention of an attorney, or those lacking any economic rationale. The Attorney Retention Ratio differs depending on the type of dispute<sup>13)</sup>. Retaining an attorney may not make sense for cases with small amounts in dispute. In fact, according to a recent report compiled by the Japan Federation of Bar Associations, approximately 30% of the cases referred to bar association legal advice services resulted in retention of an attorney<sup>14)</sup>. However, 14.3% responded that they intend to continue using the legal

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11) As the cell for expected frequency of less than 5 exceeds 20%, we are unable to perform chi-square test.

12) As the cell for expected frequency of less than 5 exceeds 20%, we are unable to perform chi-square test.

13) Among the dispute types, the Attorney Retention Ratio is high for money/credit and consumer disputes (about half for both), followed by real estate and family disputes (approximately 20%). With regard to the amount in dispute, 2,000,000 yen is the threshold; Attorney Retention Ratio is 26% for disputes involving 2,000,000 yen or lower, and 43% for over 2,000,000 yen. See Nihon bengoshi rengōkai, bengoshi gyōmu sōgō suishin sentō (2008: 63).

counseling services, 7% responded that they were considering consulting another attorney, and 1.2% were considering retaining another attorney (multiple responses were permissible), so the ultimate attorney retention ratio (including those who retained a different attorney) is likely to be higher. As shown above, according to the Disputing Behavior Survey data, the attorney retention ratio among the users of legal advice services provided by the bar association was similar at 46%. From these results, the problem seems to be that although the ratio was high for Types 1 and 2, it was extremely low for Type 4.

In relation to this point, it should be noted that even among Type 4 individuals (those with a low attorney retention ratio), many had “considered” retaining an attorney when visiting an attorney related advice agency. The questionnaire asks those who did not retain an attorney whether they “considered retaining an attorney to resolve the dispute.” As shown in Table 7, Type 4 included a high ratio of those who considered retaining an attorney (64%), while the ratio was low for Types 1 (23%) and 2 (11%). That approximately 60% of Type 4 individuals considered retaining an attorney at some point, consulted an attorney related advice agency, but ultimately did not retain an attorney is a figure worth noting.

These may include cases that did not require retention of attorneys, and the circumstances and reasons for not retaining an attorney after considering doing so is not clear from the data. Type 1 and Type 2 individuals may be making better judgments than Type 4 individuals on whether a dispute requires retention of an attorney. If that is the case, it may be premature to view the high ratio of those who “considered” retention of an attorney and the low attorney retention ratio as directly representing obstacles to accessing attorneys. However, the high ratio of Type 4 individuals who considered retaining attorneys (64%) and the extremely low attorney retention ratio (4%) seems to indicate that the services provided by attorney related advice agencies may lack certain elements necessary to meet the needs of different types of individuals.

Last, let us examine the comments and opinions of the users of advice agencies.

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14) This is the sum of those who retained the counseling attorney (11.6%) and those who sought further consultation at the counseling attorney’s law firm (18.9%). See Nihon bengoshi rengôkai, bengoshi gyômu sôgô suishin sentô (2008: 37).

[Table 10] Opinions of Users of Municipal Legal Advice and the Four Types

		Useless		Total
		Yes	No	
	Type 1	8 50.0%	8 50.0%	16 100.0%
	Type 2	6 54.5%	6 45.5%	11 100.0%
	Type 3	2 22.2%	7 77.8%	9 100.0%
	Type 4	13 31.7%	28 68.3%	41 100.0%
Total		29 37.7%	48 62.3%	77 100.0%

[Table 11] Opinion of Users of Bar Association Legal Advice and the Four Types

		Useless		Total
		Yes	No	
	Type 1	2 28.6%	5 71.4%	7 100.0%
	Type 2	3 25.0%	9 75.0%	12 100.0%
	Type 3	1 20.0%	4 80.0%	5 100.0%
	Type 4	3 20.0%	12 80.0%	15 100.0%
Total		9 23.1%	30 76.9%	39 100.0%

(3) The questionnaire asks whether the respondents thought the agency they consulted was “useful for the resolution of the dispute.” Let us look at the responses concerning legal advice services provided by the local municipalities and bar associations for the four types (Tables 10 and 11). As the cell for expected frequency of less than 5 was over 20%, chi-square tests could not be performed; however, the number

**[Table 12] Opinions of Users of Municipal Advice Services other than Legal Advice and the Four Types**

	Useless		Total
	Yes	No	
Type 1	4 36.4%	7 63.6%	11 100.0%
Type 2	7 50.0%	7 50.0%	14 100.0%
Type 3	6 24.0%	19 76.0%	25 100.0%
Type 4	33 45.8%	39 54.2%	72 100.0%
Total	50 41.0%	72 59.0%	122 100.0%

of Type 1 and Type 2 respondents who replied that the consultation was not useful seems high at around 50% for users of legal advice services provided by local municipalities. Overall, 38% replied that the services were not useful. There does not seem to be much difference among the users of the legal advice services provided by the bar association with more than 20% of each type responding that the services were not useful.

In comparison, 41% of all users of advice services provided by local municipalities other than legal counseling answered that the services were not useful (Table 12), and there were no differences among the four types ( $p = .236$ ). The ratio of respondents claiming that the services were not useful was about the same for legal advice and other services provided by the local municipalities, and slightly lower for legal advice provided by bar associations.

The high rate of dissatisfaction with advice agencies requires further examination and analysis, but the large gap between the expectation of the users and available services has been previously noted (on the counseling services by municipalities, see Tamaki (2008)). Based on analysis of information presented in this paper, there is a need for measures which takes the low rate of attorney retention by individuals in Type 4 into perspective. This is an issue for future review, but it appears that an in-depth



service that goes beyond simply providing legal information is necessary.

(4) In sum, the use of attorney related advice agencies are high for Type 1 and Type 2, and low for Types 3 and 4. The Attorney Retention Ratio among respondents who used attorney related advice agencies is very high for Types 1 and 2, and very low for Type 4. For Type 3, legal counseling services provided by the bar association seems to have some effect on attorney retention. Among the users of municipal legal advice services, 38% stated that it was not useful, and the ratio appears higher among Types 1 and 2. Although 23% of the users of bar association legal advice services responded they were not useful, there seems to be little difference among the four types.

## 5. Conclusion

(1) Based on detailed interviews concerning 40 cases of residential disputes and 45 cases of automobile accident disputes between 1959 and 1965 involving residents of Bunkyo Ward, Tokyo, Professor Kahei Rokumoto presented a hypothesis that the social distance between the public and official legal mechanisms may be a factor which determines the actual function of the legal system, which may be as (or even more) significant than the difference in wealth and legal consciousness (Rokumoto, 1971: 274-278, 302-311). It was pointed out that there is a systematic difference concerning the opportunity for, the public's ability to use the legal process based on the party's "position within the social structure," (Id., at 303): First, those who use legal services regularly for business purposes (e. g., professional landlords, owners of company vehicles); and second, parties who can obtain an attorney or non-attorney legal professional through relatives, acquaintances or membership in a specific purpose group such as a company, are socially close to various legal mechanisms, and are also directly (in the case of the former) or indirectly (in the latter) connected to the legal system.

The analysis in this paper indicates that after approximately 40 years, the systemic difference among the public regarding the social distance with attorneys is still evident in the national data today. Among the criteria for categorizing the four types, experience in attorney retention is a broader concept which includes regular business users, but Types 1, 2 and 3 are the parties who are socially closer to the legal system as analyzed by Professor Rokumoto. The data indicates that at a national level, they use attorneys relatively frequently. On the other hand, the Attorney Retention Ratio by Type 4 individuals who are farther from the legal mechanisms remained extremely low,

indicating that the division between these groups has not improved.

How are we to interpret the fact that the basic pattern has not changed over 40 years? Perhaps the two main factors (regular business use and past private use of attorneys, and relatives/acquaintances/membership in a group such as a company) have an important role in the route to accessing an attorney in any society. The significant challenge in front of us is the development of a systematic framework to shorten the distance between people who do not have such a route and the legal mechanisms. First, reforms would involve enhancement of advice agencies that can be accessed universally; second, in relation to the above, we must enhance legal aid services; third, more general legal education is required; and fourth is the incorporation of the legal machinery (including attorneys) into the social networks of those who need them<sup>15)</sup>. These can all be promoted through policy based reform. However, there has not been a systemic reform promoting equalization of the systemic difference in the distance from legal mechanisms since the 1960s. Rather, the narrowness and marginality of the judicial system that existed in the 1960s characterized by the functional bias of the legal machinery continued to be structuralized and reproduced (Hamano, 2007: 163-200). Needless to say, judicial system reform aims to change this situation.

(2) For people who are socially distanced from the legal system, municipal and bar association legal advice services are expected to play the most important role as the universal route in supplementing the lack of an access network to attorneys. However, the legal advice services provided by the local municipalities and bar associations in Japan seem to have retained an implicit limit incorporated in the above stated structure. The data in this paper supports the conclusion that these legal advice services may have faced a limitation assisting the public in accessing attorneys.

In the past, many municipal and bar association legal advice services had rules which did not allow the attorney offering legal advice to be retained by the advised party. Legal advice by local municipalities was seen as a part of public administration services for the residents and was not viewed as offering legal services by an attorney for a specific party. Perhaps the majority still does not see it as such. Bar associations also seem to have poor awareness that such legal advice is actually a core access point for

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15) On Sogohouritsushien (general legal support), see Hamano (2006a).

attorney retention.

In the past, from many attorneys' perspective, legal advice provided by municipal and bar associations seems to have been viewed as a public service or a proactive business opportunity<sup>16)</sup>. While indicating that the various advice agencies were important to people distanced from the legal system at the time, Professor Rokumoto noted that "the function of these advice services were mainly limited to providing *knowledge* concerning legal rights" (emphasis from the original text), pointing out the limits of the effectiveness (Rokumoto, 1971: 310). The image of "legal consultation" unique to Japan, and the fundamental condition that most attorneys did not have the need or capacity to respond to the legal demands of Type 4 individuals due to the artificial restriction of the number of attorneys are partly to blame for this situation..

In addition to attorney related advice agencies, various advice services are provided by the government; however, they also seem to have served an insufficient function as a universalistic route to attorneys. Various government advice services were offered to absorb cases outside the judicial system, rather than as a route to the legal system. This was an important factor for maintaining the Japanese political and economic system where the number of attorneys was artificially kept small, the judicial machinery functioned narrowly and marginally, and the administrative branch played a broad and central role.

(3) General legal support (Sogo horitsu shien) was implemented as part of the judicial system reform, and aims to "realize a society where necessary information and services required for legal dispute resolution is provided on a nationwide basis" (the Act on General Law Support, Article 2) through the operation of Houterasu. Closing the distance between Type 4 individuals and the legal mechanisms should be an important goal in this. However, for the official system reform to reach the structural level, understanding of the existing structure and implementation of the reform with this awareness is critical.

This paper indicates that for Type 4 individuals who tend to be inactive and have limited use of counseling services, legal education is especially important. Knowledge

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16) Legal counseling tended to be understood from a business expansion perspective. See Maruyama, (1994: 22).

concerning measures that can be taken and organizations that can be consulted corresponding to the specific dispute type must be promoted. The general public must be better informed about Houterasu legal reform and its call centers. Currently their recognition is very low<sup>17)</sup>.

With the establishment of the Houterasu legal reforms, bar association legal advice services also need to adjust their systems in order to better cater to Type 4 individuals.

Houterasu itself is not authorized to provide legal advice except for cases that fall within civil legal aid or for cases in judicially underserved regions; hence, the legal advice centers sponsored by the bar associations are positioned to receive cases based on information provided by the call centers and Houterasu regional offices. Therefore, the business processing system and actual measures taken by bar association legal advice services becomes extremely important especially in securing the path to attorney retention in which the use by Type 4 individuals may increase.

However, these types of universal advice agencies face particular difficulties, i.e., not only are varying types of cases brought forward, but in many instances, legal issues and non-legal issues are often presented together in a disorganized manner. Under such conditions, and with limited time and resources, designing a system that provides a service with direct retention as the general rule will face limitations unless the cost of attorney services are significantly reduced. Designing a first access point with accurate and economically sound services as well as offering accurate first diagnosis is an important issue going forward<sup>18)</sup>.

Finally, after considering the conditions after establishment of Houterasu, municipal legal advice systems must be reviewed. Local municipalities may be able to satisfy residents' needs for attorneys by cooperating with the Houterasu and bar association legal advice services through employment of attorneys as limited term civil officials. Relevant regional Houterasu organizations should proactively make proposals as part of securing and enhancing cooperation with the local municipalities in reviewing the

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17) According to a survey performed by Houterasu between February and March 2008, 77% of those surveyed have "no knowledge" of Houterasu. See Sagawa (2008: 39).

18) On significance and challenges of first diagnosis by the advice agencies, see Hamano (2006a: 29, 36-37); Hamano (2008: 166-173).

desirable system for the local municipalities' legal advice services.

To realize the concept of providing general legal support (sogo horitsu shien), the relevant parties must emphasize measures that take attorney access by Type 4 individuals into consideration.

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