CONCERNING THE JAPANESE PUBLIC'S EVALUATION OF SUPREME COURT JUSTICES

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I

The Japanese Election Law fixes the size of the House of Representatives (Lower House) at 480 members, with the further requirement that 300 of its members shall be elected through single-member constituencies, and the remaining 180 seats shall be filled through multidistrict elections[1] on the basis of proportional representation. For the single-constituency elections, the population effectively represented by a congressman (i.e., the population-per-constituency ratio) varies widely between districts and heavily favors rural areas and small towns over major cities. For instance, in large cities like Tokyo and Osaka, a congressman represents a group of electorates that is twice that of small towns. This amounts to dilution of voting power, effectively rendering the vote of a large-city resident worth only half a vote.

Similarly, the election law fixes the size of the House of Councilors (Upper House) at 242 members: 146 of its members are to be elected through prefectural-district elections, while the remaining 96 seats are to be filled through nationwide elections on the basis of proportional representation. For the prefectural-district elections, the population effectively represented by a councilor (i.e., the population-per-constituency ratio) varies widely between districts and favors less densely populated areas. For instance, in large cities like Tokyo and Osaka, a councilor represents constituencies that are five times the population size of those found in small towns. This, likewise, amounts to dilution of voting power, effectively making the vote of a large-city resident worth only one-fifth of a vote.

Such disparities in voting power clearly violate the equality guarantee of the Japanese Constitution.[2]

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1. Translator's note: Eleven districts are combined to form a single constituency for purposes of the multidistrict elections.

2. The relevant provisions of the Japanese Constitution read as follows: "All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin." NIHONKOKU KENPŌ [KENPŌ]

However, like the legislatures of many other nations, the Japanese Diet fails to reform the election laws on an ongoing basis in order to ensure that voting power remains evenly distributed across citizens regardless of where they live. In fact, for such reform to take place, the voters' sole recourse is to bring suit in the Supreme Court challenging the electoral malapportionment as unconstitutional.

Article 81 of the Japanese Constitution provides that "[t]he Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act."[3] Every time elections for the Lower House and the Upper House have taken place, residents of large cities have brought suit challenging the dilution of their voting power.

With respect to the apportionment of seats in the Diet, the Supreme Court has thus far deferred to the Diet's discretion in electoral matters. Specifically, the Supreme Court has ruled as follows:

> Our Constitution entrusts, in principle, the actual determination of the design of the system of election of members of both houses to the discretion of Parliament. Since Parliament is empowered to determine an appropriate structure for the electoral system in order to achieve the goal of electing fair and effective representatives to both the House of Representatives and the House of Councilors, an electoral system adopted by Parliament is unconstitutional only if its specific features violate the requirement of equal treatment under the law even after Parliament's power of discretion has been properly taken into account.[4]

The Supreme Court has further determined that, as long as vote dilution remains within certain limits, the Diet is properly exercising its discretionary powers as they relate to voting equality.[5] In fact, the Court's

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[CONSTITUTION], art. 14, para. 1. "The people have the inalienable right to choose their public officials and to dismiss them." NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 15, para. 1. "Universal adult suffrage is guaranteed with regard to the election of public officials." NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 15, para. 3. "Both Houses shall consist of elected members, representative of all the people." NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 43, para. 1. "The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income." NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 44, para. 1.

3. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 81, para. 1.

4. Saikō Saibansho [Sup. Ct.] Nov. 10, 1999, 53 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 1577 (grand bench).

5. *See, e.g.*, Saikō Saibansho [Sup. Ct.] Oct. 21, 1988, 42 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 644 (2d petty bench) (upholding a 1-to-2.92 vote dilution ratio, the largest margin upheld by the Supreme Court with respect to Lower House elections); Saikō Saibansho [Sup. Ct.] Oct. 21, 1988,

precedents indicate that vote dilution is constitutional, provided that disparities in the value of a vote do not exceed a ratio of 3:1 in elections for the Lower House[6] or 6:1 in elections for the Upper House.[7]

In my opinion, voting equality forms the foundation of democratic societies; therefore, I feel that questions of electoral apportionment that determine the value of people's votes should not be left to the broad discretion of the Diet. Moreover, in circumstances where malapportionment becomes apparent, I feel that it is the responsibility of the judiciary to correct such problems. Thus, in all three of the cases involving electoral malapportionment that I encountered during my tenure as a Supreme Court Justice,[8] I wrote a dissent that concluded there had been a constitutional violation.

II

Currently, I work at the TMI General Law Office. Within the same office, I have a sixty-eight-year-old colleague by the name of Hidetoshi Masunaga.[9] Mr. Masunaga studied abroad and performed research at Columbia Law School, and he has also studied the malapportionment jurisprudence of the United States Supreme Court. Aiming to realize a society where voters each enjoy a full vote (instead of just one-half or one-fifth of a vote), Masunaga has decided to dedicate his remaining life to bringing about a true form of democracy to Japan. Thinking in ways similar to my own, Masunaga also does not expect the Diet to voluntarily revise the election law and feels that, unless the Supreme Court finds that the current apportionment scheme is unconstitutional, the elections will continue to be administered in much the same manner. However, as

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155 SHŪMIN 65 (2d petty bench) (upholding a 1-to-5.85 vote dilution ratio, the largest margin upheld by the Supreme Court with respect to Upper House elections).

6. *See* Saikō Saibansho [Sup. Ct.] Jan. 20, 1993, 47 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 67 (grand bench) (holding that the 1-to-3.18 dilution ratio exceeds the permissible degree of the Diet's discretionary powers).

7. *See* Saikō Saibansho [Sup. Ct.] Sept. 11, 1996, 50 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 2283 (grand bench) (holding that the 1-to-6.59 dilution ratio exceeds the permissible degree of the Diet's discretionary powers).

8. Saikō Saibansho [Sup. Ct.] June 13, 2007, 61 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 1617 (grand bench); Saikō Saibansho [Sup. Ct.] Oct. 4, 2006, 60 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 2696 (grand bench); Saikō Saibansho [Sup. Ct.] Jan. 14, 2004, 58 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 56 (grand bench).

9. Editor's note: In the original Japanese version of this article, Justice Izumi consistently refers to Mr. Masunaga as "Masunaga Bengoshi" and never as "Hideotoshi Masunaga." "Bengoshi" is the title given to lawyers in Japan, not a name. To prevent confusion, "Hidetoshi Masunaga" has been substituted for "Masunaga Bengoshi."

previously described, the Supreme Court has been reluctant to limit the Diet's broad discretion over matters of electoral apportionment system. In response, Mr. Masunaga has sought to attract public attention to a practice known as the People's Evaluation of the Supreme Court Justices[10] ("Evaluation").

Article 79 of the Japanese Constitution states as follows:

> The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.
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> In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed.[11]

Not only is Evaluation one of the basic suffrage rights guaranteed to the people, but it also offers the people an indirect way to correct the vote dilution that they experience when voting for members of the Diet.[12] In these Evaluations, unlike elections for the Diet, the people enjoy truly equal voting power. Thus, in theory, if the people are informed about which Justices have approved vote dilution when they evaluate the Justices, the people can use the Evaluations to bring about changes in the Supreme Court, which may lead the Court to cure the electoral malapportionment problems in the context of elections for the Diet.

On the theory that the Evaluations could be utilized to inform voters of which Justices had opposed the "one person, one vote" principle that is the cornerstone of democracy, Masunaga gathered forty-two individuals and launched an organization called the "People's Assembly to Achieve One Person, One Vote" (the "Equal Vote Assembly," or "Assembly"). After receiving an invitation to join the movement, I became one of these forty-two members of the organization and associated my name publicly with the Assembly. While it may said that the inclusion of my name functioned as a type of public endorsement for the Assembly, it must however be noted that the extent of my participation was limited to simply signing my

10. Saikō Saibansho Saibankan Kokuminshinsahō [Law of the People's Evaluation of the Supreme Court Justices], Law No. 136 of 1947.

11. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 79, paras. 2–3.

12. Translator's note: Evaluations are conducted at the national level.

name among the proponents of the movement. Furthermore, although the movement was said to be a type of "Assembly," in reality the "movement" simply consisted of a small number of people revolving around Masunaga.

In conjunction with the Lower House elections held on August 30, 2009, an Evaluation of nine Justices was held. These nine Justices had all joined the Supreme Court subsequent to the previous Evaluation, which had been held on September 11, 2005; further, six of the nine evaluated Justices had not participated in any malapportionment cases. Among the nine Justices who faced evaluation by the voters, two—Justice Wakui and Justice Nasu—had rendered opinions in a 2007 case approving the constitutionality of voting-power disparities in excess of a two-to-one ratio.[13] In the period leading up to the Evaluation, the Equal Vote Assembly published fifteen full-page advertisements in national newspapers, informing the public of the stances taken by Justices Wakui and Nasu in this malapportionment case.

As for the process itself, the Evaluation is conducted using paper ballots, with the order in which the names are listed determined at random by a lottery managed by the Election Administration Commission. To indicate disapproval of a Justice, a voter marks an "X" in the column adjacent to and above the corresponding name; otherwise, no marks are to be made above the names of the Justices. These ballots are then deposited by the voters into a box, and the disapproval marks are subsequently tallied.

The result of the 2009 Evaluation showed that the nine Justices gathered an average disapproval rating of 6.69%.[14] The highest disapproval rate, at 7.73%, was given to Justice Wakui, and the second-highest disapproval, at 7.45%, went to Justice Nasu.[15]

Historically, the disapproval rank has correlated directly with the order in which the names appear on the ballot. That is, the Justice whose name appears first on the ballot has traditionally received the highest disapproval rate, while the Justice with his or her name placed at the bottom of the ballot has generally enjoyed the lowest disapproval rate. However, for the August 2009 Evaluation, Justice Wakui collected the highest disapproval rate, even though his name appeared third on the

13. *See* Saikō Saibansho [Sup. Ct.] June 13, 2007, 61 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 1617.

14. *Election Related Documents*, MINISTRY OF INTERNAL AFFAIRS & COMM., http://www.soumu.go.jp/senkyo/senkyo_s/data/shugiin45/index.html (last visited May 3, 2011).

15. *Id.*

ballot, and the second-highest disapproval rate belonged to Justice Nasu, despite the fact that his name appeared sixth on the ballot.

Strictly speaking, it may seem as if some proportion of the voters were affected by the Equal Vote Assembly's efforts. However, it must be pointed out that the percentage of voters who were influenced by the Assembly's extensive publicity campaign appears to have been no more than 1.2%, which translates to a mere 780,000 voters.[16]

This type of low public impact was something that I had predicted: knowing that the people do not take much interest in the Evaluation, I predicted that the Assembly's advertisements would have minimal effect on the general public.

By contrast, however, the Equal Vote Assembly's efforts may have had a greater impact on the judiciary. In fact, I feel that the Equal Vote Assembly's advertisements made it significantly apparent to the courts that it was the duty of judges—as those entrusted to uphold the law—to correct the problem of vote dilution.

Revolving around Mr. Masunaga, groups consisting of concerned citizens brought malapportionment challenges in nine high courts to the constitutionality of the Lower House elections held on August 30, 2009. Two of the high courts,[17] following Supreme Court precedent, rejected the constitutional challenges. In an unprecedented move, however, the remaining seven high courts[18] departed from Supreme Court precedent and found violations of the constitutional right to equality. It is my belief that the Equal Vote Assembly and its publicity campaign may have influenced the judges on these seven high courts.

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16. *Id.* It is critical to distinguish between an eligible voter and a valid voter. Currently, there are 103,841,491 eligible voters. However, the number of eligible voters does not necessarily reflect the number of actual valid votes; in fact, an estimated thirty-four percent of the eligible populace either (1) affirmatively chooses to abstain from voting, or (2) fails to properly follow the voting procedures. For the aforementioned Evaluation, there were—in total—66,939,295 valid votes. Among these votes, some expressed disapproval of particular Justices. Specifically, between Justice Nasu and Justice Wakui, there was an average of 5,082,326 disapproval votes; between the other Justices, the average number of disapproval votes was 4,304,348. The difference between the two averages—which represent the approximate number of voters influenced by the Equal Vote Assembly—was 777,978 votes. This final figure is roughly equal to 1.2% of all the valid votes.

17. Tokyo Kōtōsaibansho [Tokyo High Ct.] Mar. 11, 2010, 2077 HANREI JIHŌ [HANJI] 29; Sapporo Kōtōsaibansho [Sapporo High Ct.] Apr. 27, 2010 (unpublished opinion).

18. *See, e.g.*, Takamatsu Kōtōsaibansho [Takamatsu High Ct.] Apr. 8, 2010 (unpublished opinion); Nagoya Kōtōsaibansho [Nagoya High Ct.] Mar. 18, 2010 (unpublished opinion); Fukuoka Kōtōsaibansho [Fukuoka High Ct.] Mar. 12, 2010 (unpublished opinion); Fukuoka Kōtōsaibansho [Fukuoka High Ct.] Mar. 9, 2010, 1320 HANREI TAIMUZU [HANTA] 46 (Naha Branch); Tokyo Kōtōsaibansho [Tokyo High Ct.] Feb. 24, 2010 (unpublished opinion); Hiroshima Kōtōsaibansho [Hiroshima High Ct.] Jan. 25, 2010, 2075 HANREI JIHŌ [HANJI] 15; Osaka Kōtōsaibansho [Osaka High Ct.] Dec. 28, 2009, 2075 HANREI JIHŌ [HANJI] 3.

These nine lawsuits are currently being litigated before the Supreme Court.[19] I am anxiously waiting to see how the Supreme Court will rule in these cases.

III

As the body responsible for overseeing the judiciary, the Supreme Court is given the heavy responsibility, and the accompanying great authority, of exercising judicial review—should such action be deemed necessary. In light of this constitutional framework, and because the principle of democracy mandates that ultimate power be exercised by the people, I feel that the people should have an effective opportunity to express their opinions and to participate in the selection of the Justices. The Evaluations were originally designed with this democratic principle in mind, and if they are to truly operate as originally envisioned by the Constitution, they should enable the people to pass judgment upon the appropriateness of each Justice's appointment.

IV

However, I feel that the Evaluation system—in practice—fails to properly operate as a mechanism of democracy in the ways discussed above. Moreover, the Evaluations, as they are currently rendered, only

19. Saikō Saibansho [Sup. Ct.] March 23, 2011 (pending publication in SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ]). For press coverage of the decision, see *Ippyō no kakusa yōnin shisei-tenkan* [*Regarding the Voting-Power Disparity: Acknowledgement of a Changing Judicial Posture*], NIHON KEIZAI SHINBUN [NIKKEI], Mar. 24, 2011, at Morning Edition 29. Translator's note: On March 23, 2011, the Supreme Court upheld the decisions of the seven High Courts. In deciding the case, the Court articulated a constitutional standard for evaluating malapportionment cases: If (1) there is a violation of the equality principle found in the Constitution, and (2) such violation is not corrected within a reasonable time, then the apportionment scheme is unconstitutional. Based on the circumstances of the case, the Court held that the equality principle had been violated, but nevertheless refrained from ruling that the apportionment scheme was unconstitutional, because "a reasonable time" had not yet elapsed. In other words, the decision concludes that the apportionment scheme is unconstitutional in its present form. Thus, while the decision fell short of an actual ruling of unconstitutionality, the groundbreaking or "unprecedented" nature of the decision, as Justice Izumi puts it, is apparent from the reasoning of the case. Specifically, because (1) the case involved a 2.3-to-1 disparity in the value of votes, and (2) the Court determined that the equality principle had been violated, the decision implicitly concluded that constitutional violations may be found *even in situations* where the disparity in the value of votes falls short of the 3-to-1 limit established by the Court's earlier decisions. As such, the Court—in effect—partially followed Justice Izumi's dissent in the October 4, 2006, Grand Bench decision. *See* Saikō Saibansho [Sup. Ct.] June 13, 2007, 61 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 1617 (Izumi, J., dissenting). It is worth mentioning that Justice Izumi, in contrast to the March 23, 2011, decision, expressly wrote in his dissent that a violation of the equality principle—by itself, and without regard to whether a "reasonable time" had elapsed—ought to be sufficient to establish the existence of a constitutional violation.

function to highlight the Justices' high status. Therefore, since (1) conducting the Evaluations involves considerable expense, and (2) their results have minimal practical impact on the Justices, it may even be appropriate to consider discontinuing the Evaluation system altogether. Nevertheless, as (1) the Japanese Constitution expressly mandates the administration of the Evaluations, and (2) the process for amending the Constitution is extremely difficult, we may have no choice but to continue administering the Evaluations.

Approximately 93% of voters participate in the Evaluation without putting much thought into their ballots.[20] This, however, is not a sign of popular trust or confidence in the Supreme Court, but rather results from the public's general lack of interest in the Court and its members. Moreover, I presume that the remaining 7% cast disapproval votes during the Evaluation not because they disapproved of any particular Justices, but rather to express their general dissatisfaction with the national government.

There are two reasons why the Evaluations fail to function properly. First, the Supreme Court has few opportunities to decide highly contentious cases that might attract public attention. Moreover, the Supreme Court tends to voluntarily refrain from handing down decisions that might be provocative or have a considerable impact on the general public. As a consequence, the people do not show much interest in the Supreme Court.

Second, there are very few opportunities for the people to get to know the Justices. Although Justices are appointed by the Cabinet,[21] the people are not informed about the specific details concerning potential appointees; nor are they provided the reasons for why a particular Justice was appointed to the Bench. Furthermore, because Justices face evaluation in conjunction with the first general election[22] that occurs after their initial appointment, it is frequently the case that they have yet to participate in any important decisions at the time they are evaluated. As a result, voters do not have an adequate basis upon which to evaluate them. Additionally, because Justices are appointed when they are roughly sixty-five years of age and subsequently leave the Bench within the next five or six years

20. *Election Related Documents*, MINISTRY OF INTERNAL AFFAIRS & COMMC'NS, http://www.soumu.go.jp/senkyo/senkyo_s/data/shugiin45/index.html (last visited May 3, 2011).

21. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 6, para. 2; NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 79, para. 1.

22. The general election, mentioned above, is in reference to the election of the Lower House Diet-members.

(due to the mandatory retirement age that is set by statute),[23] Justices rarely encounter more than one Evaluation and have often retired before the public has a chance to become acquainted with them.

V

Although I feel that the above-outlined situation will likely remain unchanged, I have considered several ways in which the Evaluations could be improved. I would now like to comment on these points.

First, there are fifteen positions on the Supreme Court. The Judicial Office Law states that a Justice should (1) have high levels of discernment, (2) have attained and learned the fundamental concepts of law, and (3) be at least forty years of age;[24] the Law further requires that at least ten of the Justices each possess over twenty years of experience as practitioners of law.[25] While these rules govern the formal composition of the Court, in reality, it is customary to have the fifteen Justices appointed in the following manner: six career judges; four former attorneys; two former prosecutors; two from government administrative positions; and one legal scholar.

With respect to the two former administrative officials and the one legal scholar, the Cabinet—exercising its independent discretion—appoints such Justices. As for the remaining twelve positions, the Cabinet makes the appointments after consulting the Chief Justice. Specifically, the Chief Justice—in his sole discretion—nominates six candidates from the career judiciary, recommends four candidates from the bar on the advice of the Japanese Bar Association, and nominates two prosecutors in accordance with the recommendations of the Ministry of Justice.

These appointment processes take place behind closed doors, and the names of potential Justices are kept secret until an official announcement is made by the Cabinet. Following the Cabinet's disclosure, the result of the appointments is only made known to the public through small articles circulated in newspapers.

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23. Article 50 of the Judicial Office Law reads as follows:

> Justices of the Supreme Court shall retire upon the attainment of seventy years of age. Judges of High Courts, District Courts, or Family Courts shall retire upon the attainment of sixty five years of age. Judges of Summary Courts shall retire upon the attainment of seventy years of age.

Saibanshohō [Judicial Office Law], Law No. 59 of 1947, art. 50.

24. *Id.* art. 41.

25. *Id.*

Concerning the process of appointing the Justices, I feel that it would be better to first organize a selection committee—consisting of judges, prosecutors, attorneys, and scholars—and subsequently have the committee advise the Cabinet on the appointments. By proceeding in this manner, I believe that the people's interest in the Supreme Court will gradually increase, which in turn will familiarize the people with the Justices themselves.

Second, with respect to constitutional litigation, the Supreme Court does not frequently take an aggressive or assertive approach in reaching its decisions. This tendency is likely due to the shortage of Justices who have experience handling constitutional issues.

It can hardly be said that the deliberations among the Justices over constitutional issues are lively or full of vigorous debate. I believe that, among the fifteen Justices, there should be at least three scholars who specialized in either constitutional law or public law. By including one constitutional law or public law specialist on each of the three petty benches,[26] the deliberations among the Justices will likely become more lively and invigorated. It is my belief that the result will be a more assertive approach to constitutional issues that will in turn attract the interest of the general public.

Third, I feel that it is wise to appoint Justices who are under the age of sixty. In order to become well versed at composing separate opinions, it is necessary for the Justices to possess years of experience on the bench. With this in mind, it may be said that Justices, who are appointed when they are roughly sixty-five years of age, reach the mandatory retirement age of seventy before attaining the modes of thinking that are specifically attuned to resolving constitutional issues.

Fourth, there are currently thirty-seven law clerks shared by the entire Supreme Court. A law clerk, or *chousakan*, is responsible for conducting necessary research and compiling the resulting materials into reports. It must be noted that a *chousakan* does not prepare materials for any particular Justice; nor is he or she assigned to any specific Justice.

In each Justice's chambers, two specially assigned secretaries provide support, but as these secretaries do not possess legal training, the *chousakans* are the principal source of assistance for the Justices.

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26. Editor's note: The fifteen-member Supreme Court is divided into three petty benches consisting of five Justices each. The vast majority of the Court's cases are decided by the petty benches as opposed to the grand bench consisting of all fifteen justices. *See* David S. Law, *The Anatomy of a Conservative Court: Judicial Review in Japan*, 87 TEX. L. REV. 1545, 1569 (2009).

Specifically, as the Supreme Court handles roughly 7000 cases per term,[27] support from the *chousakans* becomes critical to efficient and proper processing of the docket. While their specific duties lie in preparing reports on relevant precedent, *chousakans* also play an important role in helping the Justices by preventing them from making critical judicial errors.[28]

It is the responsibility of the Justices to overrule prior decisions or, on other occasions, to devise innovative rationales that can reconcile the particularities of certain cases with precedent. To perform these tasks, they must have the opportunity to explore and test their own views. It is therefore necessary for each Justice to have individually assigned law clerks who can function as debate partners.

Currently, the Justices do not have their own law clerks, which may help to explain the dearth of separate opinions. If the Justices are enabled to express a broader range of opinions, it is conceivable that this would invigorate the Court's deliberations, which in turn could lead to an increase in the Court's production of important jurisprudence. One likely consequence is that the general public would develop a greater interest in the workings of the Supreme Court.

Finally, it is my understanding that the responsibility of the judiciary is to assertively uphold the three elements of the constitional order emphasized by Justice Stone in footnote four of *Carolene Products*[29]: the specific limitations found in the Constitution, the integrity of political processes, and the rights of minority groups. In particular, the Justices must each (1) articulate a clear and distinctive jurisprudential vision of the restraints and duties imposed by law, and (2) convey this vision to the general public in their decisions. In this way, the people will have the opportunity to learn what they need in order to evaluate the Justices properly and to have a meaningful basis for disapproving of particular Justices.

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27. *Information: Statistical Tables*, SUPREME COURT OF JAPAN, http://www.courts.go.jp/english/info/index.html (last visited May 3, 2011).

28. Editor's note: Whereas law clerks in the United States are usually recent law school graduates with little or no legal or judicial experience, a *chousakan* is a judge who already possesses years of judicial experience and is handpicked to assist the Supreme Court for several years. *See* Masako Kamiya, *"*Chōsakan*": Research Judges Toiling at the Stone Fortress*, 88 WASH. U. L. REV. 1601 (2011); Law, *supra* note 26, at 1579.

29. United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938).

VI

The goal of the Equal Vote Assembly is to bring to light the Justices' jurisprudential positions in order to make the Evaluations meaningful and effective. Putting aside the issue of the degree to which the movement actually influenced the people, I believe that the efforts made by the Equal Vote Assembly nevertheless succeeded at encouraging judges to become more aware of their responsibilities within the Japanese constitutional system.