

**THE BRAVE NEW WORLD OF LAWYERS IN
JAPAN: PROCEEDINGS OF A PANEL
DISCUSSION ON THE GROWTH OF
CORPORATE LAW FIRMS AND THE ROLE
OF LAWYERS IN JAPAN**

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I. INTRODUCTION

A long-standing image of Japan is one of a closed, informal society which functions without resort to the legal system and lawyers. This image likely results from two sets of factors. First, popular views of Japan have long emphasized the importance of cultural values and the unimportance, if not active dislike, of law and lawyers in Japanese society. Initial efforts by both Japanese commentators and Western generalists in comparative legal studies focused on cultural explanations, such as a supposed lack of "legal consciousness" in Japan, in order to explain Japan's early economic advances despite a relative lack of litigation or other use of formal law.¹ This supposed lack of law was transformed into a virtue in the 1980s, as Americans decried a "litigation explosion" in the United States and looked enviously at a Japanese system which was perceived to elevate engineers over lawyers.²

Japanese law specialists criticized this presumed cultural preference for informality over law as oversimplified and exaggerated.³ They provided a number of alternative explanations for Japan's litigation rate and the role of its legal system, such as institutional factors,⁴ economic analysis,⁵ and informal bureaucratic controls,⁶ all of which gave

¹ The best known and most frequently cited proponent of this view was Professor Takeyoshi Kawashima, a sociology of law expert at the University of Tokyo. In English, see Takeyoshi Kawashima, *Dispute Resolution in Contemporary Japan*, in *LAW IN JAPAN: THE LEGAL ORDER IN A CHANGING SOCIETY* 41 (Arthur Taylor Von Mehren ed., 1963); Takeyoshi Kawashima, *The Legal Consciousness of Contract in Japan*, 7 *LAW IN JAPAN* 1 (Charles Stevens trans., 1974).

² See, e.g., Derek Bok, *A Flawed System of Law Practice and Training*, 33 *J. LEGAL EDUC.* 570 (1983) (Originally presented as The President's Report to the Board of Overseers of Harvard University for 1981-1982), reprinted in 33 *J. LEGAL EDUC.* 570 (1983); Russell Baker, *Observer; Lawyers for Cars*, *N.Y. TIMES*, June 8, 1983.

³ For an opposing view that the supposed historical lack of legal consciousness is a myth, see Frank K. Upham, *Weak Legal Consciousness as Invented Tradition*, in *MIRROR OF MODERNITY: INVENTED TRADITIONS IN MODERN JAPAN* 48 (Stephen Vlastos ed., 1998). For a discussion of this issue with particular reference to the role of law in corporate governance, see Bruce E. Aronson, *Reconsidering the Importance of Law in Japanese Corporate Governance: Evidence from the Daiwa Bank Shareholder Derivative Case*, 36 *CORNELL INT'L L.J.* 11, 14-17 (2003).

⁴ This approach argued that court delays, a dearth of effective remedies, and a lack of lawyers created institutional barriers to litigation. See John O. Haley, *The Myth of the Reluctant Litigant*, 4 *J. JAPANESE STUD.* 359 (1978); see also JOHN O. HALEY, *AUTHORITY WITHOUT POWER: LAW AND THE JAPANESE PARADOX* (1991).

⁵ This view emphasized that the key point was not institutional barriers, but rather institutional successes, e.g., the effective and predictable functioning of the court system allowed litigants to settle claims in traffic accident cases efficiently without resorting to court. See J. Mark Ramseyer, *Reluctant Litigant Revisited: Rationality and Disputes in Japan*, 14 *J. JAPANESE STUD.* 111 (1988); J. Mark Ramseyer, *The Costs of the Consensual Myth: Antitrust Enforcement and Institutional Barriers to Litigation in Japan*, 94 *YALE L. J.* 604 (1985); J.

a greater role to formal law. However, this research had little impact on our popular image of Japan.

The popularity of this cultural image of Japan was buttressed by objective factors which were readily observable. The number of lawyers in Japan was small by any measure.⁷ A rigid numerical quota on the number of new attorneys admitted to the bar each year made it seem likely that such a situation would continue indefinitely.⁸ Throughout the 1980s businessmen who wished to confirm the permissibility of a transaction, product or policy would consult government bureaucrats on an informal basis rather than legal regulations and lawyers. The Japanese bar was initially reluctant to allow foreign lawyers to engage in even limited practice roles in Japan. In fact, during the 1980s and 1990s, two significant issues in ongoing trade negotiations between the United States and Japan were reform of traditional “administrative guidance”⁹ to

MARK RAMSEYER & MINORU NAKAZATO, *JAPANESE LAW: AN ECONOMIC APPROACH*, (The University of Chicago Press 1999).

⁶ This analysis found that bureaucrats utilized informal mechanisms to defuse and channel social conflict away from the court system. See Frank K. Upham, *Law and Social Change in Postwar Japan*, 262 (Harvard Univ. Press 1989) (1987); Takao Tanase, *The Management of Disputes: Automobile Accident Compensation in Japan*, 24 *Law & Soc’y Rev.* 651, 651-692 (1990).

⁷ The number of lawyers (*bengoshi*) in Japan, as of year-end 2005, was 22,059. See BENGOSHI HAKUSHO: 2006 NENPAN [LAWYER WHITE PAPER: 2006 EDITION] (NIHON BENGOSHI RENGOKAI ED., 2006) [JAPAN FEDERATION OF BAR ASSOCIATIONS ED.]

⁹ [hereafter “2006 White Paper”]. This is far fewer per capita than other developed countries. See *id.* at 25 (showing that in 2006 that Japan had a population of 5,792 per lawyer, while France was 1,402:1, Germany was 597:1, England was 510:1 and the United States was 289:1). However, there are large regional variations and the number of lawyers per capita in Tokyo (1,175:1) is roughly comparable to the national averages in Europe. In addition, comparisons are complicated by the existence in Japan of other categories of legal service providers (including patent attorneys and tax attorneys) and a large number of undergraduate law majors, some of whom provide legal services in-house for corporations and other organizations. For a comparative discussion of the various categories of legal professionals in Japan, see, e.g., Masanobu Kato, *The Role of Law and Lawyers in Japan and the United States*, 1987 B.Y.U.L. REV. 627. The number of licensed legal specialists (*i.e.*, not including undergraduate law majors) is far larger than the number of licensed lawyers. See 2006 White Paper, at 24 (showing that the total number of licensed “related professionals” was 171, 215 in 2006, of which 22,056 were attorneys).

⁸ See *infra* note 15 for the number of new lawyers each year. In the late 1990s, the prevailing view in Japan was still that it would be “quite difficult to expect the creation of a law firm of several hundred lawyers as seen in Europe and the U.S.” See Shoichiro Niwayama and Kazuhiko Yamagishi, *Nihon ni okeru Kyodai Hōritsu Jimusho no Kanōsei* [The Possibility of Large-scale Law Offices in Japan] 49 *JYŪ TO SEIGI* 34, 40 (Nov. 1998).

⁹ See e.g., CHALMERS JOHNSON, *MITI AND THE JAPANESE MIRACLE*, (Stanford University Press 1982). Although formulations differ, administrative guidance is generally described as government agencies obtaining informal cooperation from industries, companies or individuals to take or refrain from taking some action. See generally, Mitsuo Matsushita, *The Legal Framework of Trade and Investment in Japan*, 27 *HARV. INT’L L.J.* 361, 376 (1986).

provide greater transparency in administrative procedures and liberalization of laws which limited the activities of foreign lawyers.

In addition, for much of the postwar era the reality of legal practice in Japan seemed consistent with the image of a society which neither depended on nor highly valued lawyers. Lawyers generally practiced in small offices which provided general legal services with a focus on litigation. Big businesses utilized lawyers for corporate legal work only in the case of cross-border transactions. The limited number of Japanese law firms that engaged in this corporate work were called "international offices" (*shōgai jimusho*). The best and the brightest among law faculty undergraduates were more likely to become government bureaucrats or businessmen than they were to become lawyers.

However, the overarching message from a recent panel discussion by prominent attorneys from Japan was the surprising degree of change. New trends over the last decade have strongly challenged long-held skepticism concerning the role of law and lawyers in Japanese society. During this time Japan has seen growth in both the demand for corporate legal services and the supply of lawyers, a major revamping of the legal educational system and the bar exam, an increasing attractiveness of the legal profession over more traditional government and business jobs, the rise of large corporate law firms, an increasing presence of foreign law firms and greater competition with Japanese firms, and both domestic and international law firm mergers. The issues generally discussed with respect to the legal profession in other developed countries are highly relevant to Japan today. In addition, Japan has become a reference point—both for better and for worse—for developing countries that wish to embrace a greater role for law and lawyers as part of economic and financial market development.¹⁰

The panel discussion ranged over three principal areas: the rise of corporate law firms, internationalization of the Japanese bar and law firms, and the social role of lawyers. In addition to describing the important changes in the Japanese legal profession listed above, the

There is no clear definition of administrative guidance, as attempts to formulate a legal definition often wind up characterizing it by what it is not—it is not formal administrative action (i.e., "*shobun*" or disposition) which would be subject to judicial review. See generally John O. Haley, *Japanese Administrative Law*, 19 LAW IN JAPAN 1 (1986).

¹⁰ For example, Korea has engaged in a process of legal reform parallel to that in Japan. It began negotiations in February 2006 with the United States, concerning liberalization of the activities of foreign lawyers. See, e.g., Tom Ginsburg, *Transforming Legal Education in Japan and Korea*, 22 PENN. ST. INT'L L. REV. 433 (2004); Elizabeth Goldberg, *Closed Society: Despite a Decade-Long Globalization Push, South Korea's Legal Market Remains a Hermit Kingdom, at least for Now*, 28 (10) AM. LAW., Oct. 2006, at 113.

panelists also provided interesting insights in explaining the reasons for change in each of these areas.

The rise of large corporate law firms (see Appendix One)¹¹ requires a number of elements: at a minimum, an increase in the demand for corporate legal services and a concomitant increase in the supply of qualified lawyers. The first mergers among significant law firms in Japan (see Appendix Two) provided an additional catalyst. Each of these elements appears to be a result of a combination of market pressure and legal system reform.

The rise in demand is epitomized by a panelist's statement that the primary work of Japanese corporate law firms has shifted over the last decade from cross-border work to domestic work, with the domestic side growing rapidly and the cross-border side staying relatively constant. Panelists cited a number of factors which contributed to the development of a domestic legal market for corporate legal services: financial deregulation, administrative reform, shareholder derivative litigation, and business litigation between large Japanese companies. Government bureaucrats were no longer able to supply the answers to businesses' questions on the permissibility of transactions or policies; nowadays businesses are much more likely to consult attorneys on such matters.

The supply of lawyers, which many had viewed as the biggest barrier to the growth of law firms,¹² also increased. During the 1990s big business came to call for such an increase, as past wariness of the law and lawyers was replaced by the needs of global competition, such as the protection of intellectual property rights. This resulted in significant legal reform beginning in 1999.¹³ A doubling of the attorney population was targeted for 2018, together with the introduction of new "American-style"

¹¹ See generally Bruce E. Aronson, *Elite Law Firm Mergers and Reputational Competition: Is Bigger Really Better? An International Comparison*, 40 VAND. TRANSN'T'L L. J. 763, 810-822 (2007); *Zadankai: Daikibo Hōritsu Jimusho no Gendai to Shōrai* [Roundtable: The Present and Future of Large-scale Law Firms] 57 JIYŪ TO SEIGI 12, 46-49 (May 2006) [hereinafter *zadankai*].

¹² The founding partner of one of the leading Japanese law firms in Tokyo has written that the shortage of lawyers is "the most fundamental problem" facing Japanese law firms in light of the recent rise in demand for business lawyers. See Yasuharu Nagashima and E. Anthony Zaloom, *The Rise of the Large Business Law Firm and its Prospects for the Future*, in LAW IN JAPAN: A TURNING POINT (Daniel H. Foote, ed., forthcoming).

¹³ A special legal reform council was created in the Cabinet in 1999 and issued its final report in 2001. For an English translation of the final report, see The Justice System Reform Council, *Recommendations of the Justice System Reform Council – For a Justice System to Support Japan in the 21st Century* (June 12, 2001), available at <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html>. For an overview of the legal reform process, see, e.g., Kahei Rokumoto, *Overhauling the Judicial System: Japan's Response to the Globalizing World*, 20 J. JAPAN L. 7 (2005).

law schools to train these legal professionals¹⁴ and a new bar exam. In fact, the number of new attorneys each year has increased as scheduled (under new, higher numerical limits),¹⁵ and the goal of becoming a lawyer (particularly at one of the large corporate law firms) has attained new attention and popularity.¹⁶ As a result, the large Japanese firms have assumed more of a pyramid structure with a relatively large number of young attorneys (see Appendix Three).

However, as several panelists noted, legal reforms remain controversial. Although the number of lawyers has increased, the new law schools have begun to produce a large number of graduates. The resulting bar passage rate, although higher than under the old system, remains substantially lower than envisioned by the law reformers.¹⁷

¹⁴ See generally Setsuo Miyazawa, *Education and Training of Lawyers in Japan — A Critical Analysis*, 43 S. TEX. L. REV. 491, 493-95 (2002); James R. Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools: Putting the Professional into Legal Education*, 13 PAC. RIM. L. & POL'Y J. 303, 313 (2004). See also Koichiro Fujikura, *Reform of Legal Education in Japan: the Creation of Law Schools Without a Professional Sense of Mission*, 75 Tulane L. Rev. 941, 945 (2001) (emphasizing the shortcomings of Japan's new law schools); Mark D. West, *Making Lawyers (and Gangsters) in Japan*, 60 VAND. L. REV. 439 (2007).

¹⁵ The annual number of graduates of the Legal Research and Training Institute (the "Institute"), which all legal professionals (lawyers, prosecutors, and judges) attend following passage of the bar exam, had already doubled from about 500 in 1990 to 1,000 in the year 2000. After the year 2000, the number of Institute graduates again increased from 1,000 to 1,500 in 2006. The number of new lawyers per year increased to roughly 600 in 2001-2002, 700 in 2003 and over 900 in 2004. See White Paper 2006, at 3. The legal reform plan calls for another doubling of the number of Institute trainees from the current 1,500 to 3,000 by the year 2010. See Justice System Reform Council Report, *supra* note 111, at ch. III, pt.1-1.

¹⁶ For a study of the increasing popularity of the bar exam compared with the elite public servants' exam, See Curtis J. Milhaupt & Mark D. West, *Law's Dominion and the Market for Legal Elites in Japan* 34 LAW & POL'Y INT'L BUS. 451, 463-468 (2003). One reason for this new popularity is the increasing importance of the role of lawyers. The potential for Japanese lawyers in leading urban areas to expand their role beyond traditional litigation-oriented activities was recognized by some at an early stage. See Takao Tanase, *The Urbanization of Lawyers and its Functional Significance: Expansion in the Range of Work Activities and Change in Social Role*, 13 LAW IN JAPAN 20 (Bruce E. Aronson trans., 1980) (arguing that the high concentration of lawyers in the metropolises of Tokyo and Osaka was due to the attractive prospect of expanding their traditional range of work activities and social role). An alternative (or additional) explanation would be high income. See Minoru Nakazato et al., *The Industrial Organization of the Japanese Bar: Levels and Determinants of Attorney Incomes* (working paper, Oct. 2006), available at http://papers.ssrn.com/abstract_id=951622 (finding that the most talented young Japanese lawyers choose careers in Tokyo that involve business transactions and complex litigation, i.e., work which places a premium on their ability and produces the highest income).

¹⁷ Under the old system the passage rate for the bar exam was in the area of 2-3%. Under the new law school and new bar exam, it was originally envisioned that the bar passage rate would be in the range of 70%. However, more law schools were created than anticipated. The actual bar passage rate for the first law school graduating class under the new system (2006) was 48.3% and this percentage is anticipated to fall to 37.7% in 2007 and stabilize in the area of 24% thereafter. See Setsuo Miyazawa & Tatsuya Yonetani, *Nyūgaku Teiin no Ichiritsu 3 Wari*

Lawyers at the top firms cite a decrease in the overall quality of lawyers as the quantity increases. There is also a question as to whether there is truly sufficient demand to absorb fully the increasing supply of lawyers.

Mergers have also hit the Japanese law firm scene (see Appendix Two).¹⁸ The first merger in the year 2000 created the first Japanese law firm with 100 lawyers and ushered in a new era of rapid growth by corporate law firms.¹⁹ By 2005 each of the top five firms was more than double that size, due to a combination of mergers and increased hiring of new attorneys.

The most recent merger on July 1, 2007, created a firm with nearly 320 lawyers (see Appendix Two). And unlike past mergers, which were justified in terms of the larger firm acquiring an area of expertise that it had been lacking, a panelist noted that this time was different: firms with similar practices merged in order to get bigger and be able to increase their degree of specialization in a variety of areas.

The role of foreign lawyers and law firms in Japan was the second major topic taken up by the panel. This is another area where practice once matched our image of Japan as being both insular and anti-lawyer. The Japanese bar association has historically resisted liberalization of restrictions on foreign attorneys, citing concerns of professional autonomy and the social role of lawyers.²⁰ However, pressure from trade

Sakugen to 3,000 nin Gōkaku no dōji katsu Sassoku na Jisshi wo—shimurēshon ni yoru Kinkyū Teigen [For the Simultaneous and Rapid Implementation of an Across-the Board 30% Reduction in the Number of Entering Students and 3,000 Bar Passers—an Emergency Recommendation according to our Simulation], 628 HOGAKU SEMINA 60 (Apr. 2007). The declining pass rate is a result primarily of law school students being divided into two groups with a two-year law school course for undergraduates with law majors and a three-year course for non-law undergraduates. *Id.* As the non-law undergraduate majors complete the three-year law school course and begin taking the bar, there will be an increase in the total number of bar exam takers. In turn, this means that a significant majority of law school graduates will not pass the bar and may have difficulty securing appropriate employment. For another simulation by the Japan Federation of Bar Associations, see White Paper 2006, at 14-15.

¹⁸ See Aronson, *supra* note 11.

¹⁹ See Aronson, *id.* at 54-55. See also Yasuharu Nagashima, *Nihon no Rō Fāmu no Gappei to Daikiboka ni tsuite* [Concerning the Merger and Large-scale Growth of Japanese Law Firms], 50 JRYU TO SEIGI 14 (Dec. 1999) (explanation of the reasons for the merger by the founding partner of the larger firm).

²⁰ See, e.g., Shigeru Kobori, *Symposium: Paris Forum on Transnational Practice for the Legal Profession, Discussion Papers, Presented by the Japan Federation of Bar Associations*, 18 DICK. J. INT'L L. 109, 111-114 (1999) (examining the Japanese bar association's emphasis on the social responsibility of lawyers and the independence necessary to maintain that responsibility). See, e.g., J. Mark Ramseyer, *Lawyers, Foreign Lawyers, and Lawyer-Substitutes: The Market for Regulation in Japan*, 27 HARV. INT'L L.J. 499, 504 (1986) (observing that the argument that foreign lawyers might not be able to fulfill these obligations has often been greeted with skepticism outside Japan, and not only by self-interested lawyers at international law firms).

negotiations with the United States resulted in gradual progress from licensing individual foreign attorneys to give advice on the law of their home country (1986), to establishing joint ventures between foreign law firms and Japanese firms which could hire Japanese lawyers (1994), and finally to permitting full international mergers (2005).²¹

The impact of this liberalization was a subject of great interest, and the panel focused on both competition and cooperation between Japanese and foreign law firms. A panelist from one of the foreign firms noted that international firms were pursuing differing strategies in Japan: a majority of foreign firms seek to provide only home country advice on cross-border issues, while a smaller group among them seeks to become full-service providers of legal services in Japan by adding substantial local capacity. A Japanese attorney on the panel recognized that foreign law firms now appear to provide substantial competition to Japanese firms for cross-border transactions, however the Japanese firms continue to dominate domestic corporate work.

Although the most recent liberalization permitting full international mergers received widespread media attention, the panel speakers downplayed its significance. The Tokyo head of a major American firm stated that the main handicap in a joint venture arrangement, as opposed to a full merger, was more a question of client perception than any actual legal or administrative barrier to providing clients with a full range of legal services. And the head of the Japanese group of attorneys which entered into the first international merger stated that liberalization did not play a role;²² rather his motivation was to continue to emphasize a cross-border practice, rather than domestic

²¹ See *Gaikoku Bengoshi ni Yoru Hōritsu Jimu no Toriatsukai ni Kansuru Tokubetsu Sochi Hō* [Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers] (Law No. 66 of 1986). The law became effective April 1, 1987. The subsequent major amendments to the law cited in the text became effective on January 1, 1995 and April 1, 2005 respectively.

During the occupation years a number of Americans were licensed under Article 7 of Japan's attorney law as quasi-members of the Japanese bar ("jun-kai-in") and were permitted to practice the law of their home country. See *Bengoshi Hō* [Practicing Attorney Law] (Law No. 205 of 1949). Article 7 was abolished in 1955, however an estimated 20 or so active jun-kai-in were grandfathered and continued to practice law. No new foreign attorneys were registered in Japan until 1987, following the enactment of the above Special Measures law.

²² The press in both the West and Japan has portrayed this merger as being a direct result of liberalization of the legal restrictions on foreign law firms. See, e.g. Jill Schachner Chanen, *Konnichiwa Bengoshi! Japan is Set to Relax Foreign Partnership Rules, and Competition for Mergers is On*, ABA J., Jan. 2005 at 19; See also *Legal Entry: Japan's Lawyers Discover Globalization*, *ECONOMIST*, July 17, 2004, at 66; *Eihōritsu Jimusho, Mitsui Yasuda wo Kyūshū, Kaisei Gaikoku Bengoshihō de Hatsu* [English Firm to Absorb Mitsui Yasuda, First under the Revised Foreign Attorneys Law] *NIHON KEIZAI SHINBUN*, July 12, 2004, at 1.

Japanese corporate work, and to take advantage of more advanced law firm management practices at international firms.

With respect to this last point concerning international law firm management, there was some disagreement among the panelists about the extent to which Japanese law firms needed to match international firms in terms of profitability or management practices. A number of lawyers at Japanese firms commented that while their approach to law firm practice and management was influenced by the models of American and English firms, they did not need to focus directly on profitability; rather profits were a by-product of providing high quality legal services. A Japanese lawyer on the panel who chose to join an international English firm, however, stated his belief that Japanese legal practices lagged behind international standards. Law was becoming a business and in the future Japanese attorneys would lose their current "beautiful life."

How have all of these changes, particularly the growth of large law firms with a corporate orientation, affected the social role of lawyers? Do Japanese lawyers now devote greater time and effort to the "business" of client matters at the expense of acting in the public interest? Panelists from the large law firms insisted that although societal conditions had changed, they continued to devote substantial efforts to the public interest. They emphasized their broader roles in financial markets and regulatory matters, including the trend of seconding lawyers for defined periods to government agencies, in addition to the expansion of law firms' traditional pro bono programs. The large law firm panelists also noted that they were now in a stronger position to provide advice to clients on improving corporate practices in areas such as corporate governance, due to an increased societal emphasis on those issues and to the relatively new potential threat of shareholder derivative suits.²³

Lawyers from smaller firms who have been actively engaged in public interest activities saw no lessening of interest in such activities by young lawyers, but did note a change in the type of matters involved. Whereas a generation ago they may have represented plaintiffs in highly visible and contentious labor and environmental matters, today they are more likely to be involved in medical and health issues. Like lawyers

²³ For a general discussion of shareholder suits in Japan, see Mark D. West, *Why Shareholders Sue: The Evidence from Japan*, 30 J. LEGAL STUD. 351 (2001). The best-known court decision was the Daiwa Bank case, in which a district court awarded \$775 million in damages to the plaintiffs for directors' breaches of fiduciary duties related to a \$1.1 billion loss incurred by a rogue trader at the bank's New York branch. *Nishimura v. Abekawa* (Daiwa Bank Case), 1721 Hanrei Jiho 3 (Osaka Dist. Ct., Sept. 20, 2000). For excerpts of the decision in English, see Bruce E. Aronson, *Learning From Comparative Law in Teaching U.S. Corporate Law: Director's Liability in Japan and the U.S.*, 22 PENN ST. INT'L L. REV. 213, 227-231 (2003). For an analysis of the decision, see Aronson, *supra* note 3.

generally, they also play a larger role in government and other areas, serving, for example, as public representatives on advisory panels which recommend legislation.

However, a Japanese attorney at an international firm provided a cautionary note, offering the view that an increased emphasis on profitability and the “business” of law resulted in a somewhat lesser role for acting in the public interest.

All of these topics—and more—are covered as the panelists discuss the brave new world of Japanese lawyers.

II. PROCEEDINGS OF THE PANEL, MAY 12, 2007

Moderator—Bruce Aronson

Panelists

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III. THE RISE OF LARGE CORPORATE LAW FIRMS

A. Demand—Emergence of Demand for Domestic Corporate Legal Services

PROFESSOR ARONSON: Appendix One illustrates the growth of large Japanese law firms. In the early 1990s, any firm over ten lawyers was a large law firm. Now all large firms are well over 200 attorneys. During the period from 2000 to 2005 the major firms all virtually doubled in size.

We used to think that all corporate law in Japan was internationally oriented. The most striking point in a lengthy discussion of large corporate law firms which appeared last year in *Jiyū to Seigi*²⁴ was the very first one. The Japan Federation of Bar Associations sent out

²⁴ See *zadankai*, *supra* note 11

a questionnaire to the largest corporate law firms, which they assumed were international firms, or *shōgai jimusho* in Japanese, specializing in cross-border transactions. However, the response they received from every large law firm was “We don't use the term *shōgai jimusho*. It's obsolete.”

Is that true? What happened?

MR. HARA: The answer is yes. I will touch briefly on the history of Japanese lawyers' practice.

Other than the litigation area, we didn't have any domestic market demand for lawyers until the middle of the 1990s. This was mainly because for many years Japanese companies were very confident that they could solve any problems in domestic transactions by themselves without using lawyers.

And due to administrative guidance, if they had questions they would go to government agencies rather than lawyers. As you know, from post-World War II until the middle of the 1990s, there was the famous “Japan Inc.”--the government working together with the private sector to enhance the interests of the private sector. Legal directions to the private sector came from government agencies, not from practicing lawyers. That continued until the mid-1990s.

Until that time, the real demand for lawyers was only for cross-border transactions. Japanese companies had no confidence about how to deal with cross-border transactions, especially if they had transactions with U.S. companies.

U.S. companies use many lawyers in a wide range of areas--negotiations, government regulations, everything. Japanese companies came to regret that they did not use practicing lawyers. So at the end of this post-War era (the mid-1990s) there was a large demand and a big market for Japanese companies to use practicing lawyers.

The domestic market has expanded rapidly for the last ten years. Ten years ago maybe 80 percent of our total corporate work represented cross-border transactions. Today only about 30 percent is cross-border, and 70 percent is purely domestic.

Until the middle of the 1990s, large law firms, excluding litigation, engaged only in cross-border transactions. That is why we were called *shōgai jimusho*. But after the mid-90s, the basic framework was broken and Japanese companies started to use practicing lawyers even in domestic transactions.

MR. YONEDA: I believe the reason for the increase in our domestic corporate work is a change in the Japanese legal system.

In the late 1980s the Big Bang occurred in London and new financial services were introduced. As a result, U.K. law firms grew very

rapidly. The same situation occurred in Japan, starting in the early 1990s and is still continuing today.

As you know, Japan had a bubble era from the mid-1980s to 1991. When the bubble burst, administrative practices which contributed to that disaster were strongly criticized.

Although this is not often emphasized, a significant change in the Japanese legal system occurred in 1993 when we adopted a new administrative procedure law that provides for administrative guidance procedures.²⁵ Since the Meiji Restoration in 1868, administrative agencies guided the Japanese people and Japanese society. If there were any question with regard to the permissibility of new businesses or other matters people always asked the administrative agencies for their advice. But now the situation is gradually changing.

What we call deregulation means that rules will be set in advance, and Japanese market participants can do whatever they believe is legal. If a particular act is found to violate a regulation, only *ex post facto* sanctions will be imposed.

Beginning in the 1990s, government officials began to say that they cannot answer questions regarding legal permissibility. Rather, businesses must decide for themselves, and if they are unable to do so they should consult a lawyer. So suddenly demand increased for substantive legal advice. The situation is very similar to what happened in the U.K. in the late 1980s.

PROFESSOR ARONSON: If we have a traditional dichotomy that corporate work was international work and domestic work for smaller firms was litigation, are larger firms now engaging in litigation practice?

MR. ISHIGURO: Yes, we are engaged in a substantial litigation practice.

My firm may be a bit unique among the law firms represented here in that Mori Sogo, one of our predecessor firms, started with domestic litigation and corporate rehabilitation practices (rather than cross-border transactions). So we have a group of lawyers who have been engaged in litigation work from the beginning.

And, as previously discussed, the Japanese legal market has changed dramatically over the last 10-15 years. Before the collapse of the bubble economy, Japanese corporations pursued similar strategies and were simply competing hard for their share of the pie. As the pie itself was growing, there was no problem in doing that. It was very efficient, and the economy of Japan as a whole grew rapidly by utilizing this

²⁵ Gyōsei Tetsuzuki Hō [Administrative Procedure Act] (Law No. 88 of 1993). For an English version, see *Administrative Procedure Act*, 25 LAW IN JAPAN 141 (Mark Levin trans., 1995).

efficient model. However, when the bubble economy collapsed, Japanese corporations suddenly found it necessary to differentiate themselves from their competitors—to think independently and adopt unique business strategies. There was no one to give advice on how to do that.

At the same time, Japanese bureaucrats lost the confidence of Japanese companies due to several events such as the failure of Yamaichi Securities²⁶ and the government's inability to help avoid bankruptcy by a number of large banks. Further, I think that Japanese society as a whole began to look to the law as a last resort to resolve problems or conflicts. So litigation, which used to be called "soshō-zata"—that means only unusual people think about it as a last resort-- is now a very common method of resolving disputes.

This change in the perception of society has, in turn, affected the mindset of Japanese corporations. One recent example is litigation between Sumitomo Trust Bank and UFJ Holding which occurred in the banking industry, the most conservative industry in Japan.²⁷ It would have been unthinkable five or ten years ago. But it is now quite common for unhappy shareholders to bring suits and Japanese courts have also changed and now reach a decision in such cases within a very short time period.

So our litigation team function has changed, and is changing rapidly to meet the changing function of litigation in Japan. And I think this also affects the strategy of Japanese corporations and how we advise Japanese companies in negotiations or litigation.

PROFESSOR ARONSON: If there's an increased domestic demand for corporate legal services, are the large law firms the only beneficiaries or do small firms and Japanese lawyers generally also benefit?

MR. UEYANAGI: Yes and no. Yes, a number of cases have been referred to my office by larger firms, maybe because of conflict of interest issues. Also, I formerly represented the plaintiffs' side in most

²⁶ The failure of Yamaichi Securities Company, one of the "Big four" brokerage firms in Japan, in November 1997 was the largest business failure in Japan since the Second World War and called into question the soundness of Japan's financial system. See, e.g., Stephanie Strom, *Big Japanese Securities Firm Falls, Putting the System on Trial*, N.Y. TIMES, Nov. 24, 1997.

²⁷ UFJ Holdings signed a memorandum of agreement to sell its prized trust bank to, and enter into a business alliance with, the Sumitomo Trust group. Shortly thereafter UFJ instead negotiated a different deal to have its entire group (including the trust bank) be acquired by Mitsubishi Tokyo Financial Group. Sumitomo Trust brought suit to enjoin the transaction, which eventually reached Japan's Supreme Court. See, e.g., Todd Zaun, *Supreme Court in Japan Refuses to Stop Talks on Bank Takeover*, N.Y. TIMES, Aug. 31, 2004; Curtis J. Milhaupt, *Essay: In the Shadow of Delaware? The Rise of Hostile Takeovers in Japan*, 105 COL. L. REV. 2171, 2177-2178 (2005).

cases, but nowadays I have a number of clients on the defense side who were sued by larger firms.

But my answer should partly be no, because my clients are small businesses. I'm afraid they are even poorer than ten years ago and they now encounter difficulty paying my fees.

B. Supply of Lawyers—Legal Reform and Law Firm Growth

PROFESSOR ARONSON: In addition to an increased demand for corporate legal services, the growth of law firms also depends on the supply of lawyers.

It appears that becoming a lawyer generally, and joining one of the large business-oriented law firms in particular, is more popular now than it was ten years ago among Japanese college graduates and trainees at the Institute.²⁸ Why? What's cool about being a lawyer these days?

MR. YONEDA: The top-ranked job for law faculty graduates was to become a government official, but it has now changed to becoming a lawyer. The reason is that public officials are severally criticized and business lawyers are now viewed as a high income profession. That's one of the reasons why an increasing number of law school or law faculty graduates tend to become attorneys.

PROFESSOR ARONSON: We know that traditionally Japan had a very low number of attorneys by any measure, such as population or GDP, and that in recent years the number has been gradually increasing and is scheduled to increase further.

Do we now have enough attorneys in Japan or do the law firms perceive that there is still a problem in terms of quantity or quality? Are there enough good lawyers?

MR. MASUDA: Yes. I think the situation has dramatically changed during the last five years or so. As you mentioned, the number of lawyers has increased, and we have less difficulty hiring attorneys than five years ago. However, it has also become a large concern among law faculties that many of the graduates from the new law schools cannot find jobs in Japan. That will be a very significant problem for the legal profession in Japan.

But at the same time, I would say that because of the expanded number of graduates the overall quality of new graduates is unfortunately somewhat lower than before. So we need to spend much more time educating and training new lawyers to become good business lawyers.

PROFESSOR ARONSON: Let me make the obvious point that

²⁸ See *supra* note 15 for a discussion of the Institute and the creation of attorneys in Japan.

in every country, including the United States which is often thought to have an oversupply of lawyers, large law firms always complain that there are not enough good lawyers. I think that's universal. So is it really true, or is it just law firms complaining that they can't get the very top people of the class for prestige and reputational purposes?

MR. WANI: No, there are not enough good lawyers.

The problem is that the number of young lawyers to whom we would like to make offers remains the same (despite the huge increase in the total number of new candidate attorneys), and based on my recruiting experience most of the good candidates receive offers from other firms. The firms are very competitive against each other in terms of recruiting good candidates.

At my former firm (Mitsui, Yasuda, Wani & Maeda, which dissolved in December 2004) we competed quite fiercely with the Big Four firms and others. Our decisions on offers were not affected at all by the increase of the number of candidate lawyers.

On the other hand, the general quality of candidates under the new bar exam is getting worse. The new law school system is not operating effectively. U.S. law schools provide a professional legal education and do not prepare students to pass the bar exam.

In Japanese law schools, however, the emphasis is still on the passing rate of the bar.²⁹ On the other hand, the professors, who do not have any experience in taking the bar exam and who have been engaged solely in academic teaching and research, try to teach their students to pass the bar exam. This cannot lead to a good result.

For example, in last year's bar exam Hitotsubashi University's graduates showed great success, but the main reason is that they have an after-hours cram course in the law school. Given this, how can you expect new high-quality lawyers?

This is the reality. The law school system is not functioning well at present, and there also seems to be some difficulty in the lateral market. It appears that standardized lawyers' on-the-job training at the Big Four firms is also not working well. It would be better to receive more personal on-the-job training at a smaller firm.

So it is still very difficult to find qualified young lawyers from the lateral market. We can sometimes find good law school hires, but this market remains quite thin and it is very difficult to find good law school recruits.

²⁹ For bar passage rates, *see supra* note 17. Due to the low bar passage rate the reputations of Japanese law schools are closely linked to their students' success in the bar exam.

C. *Law Firm Mergers*

PROFESSOR ARONSON: I would like to move on to the topic of law firm mergers (see Appendix Two). I think that law firm mergers in Japan have really surprised people.

I read what I thought was a persuasive article in *Jiyū to Seigi* in 1998 by two lawyers who said there will never be a firm of several hundred lawyers in Japan.³⁰ The authors of that article never contemplated the possibility that there would be mergers among significant Japanese law firms.

So I would like to ask how did mergers occur and what were the reasons.

MR. HARA: Our firm undertook the first merger in the year 2000, and we became the first law firm with more than a hundred lawyers. Our motivation was quite simple. We had a good reputation in corporate law practice and we wanted to establish a capital markets practice. However, we were not successful on our own because the capital markets area is a small world in which the leading players know each other well, and the big securities firms (the major clients) also know which law firms are major players.

In this situation, we came up with the idea of a merger with the Tsunematsu firm, since they had a well-established practice in the capital markets area.

We had earlier thought the corporate practice and the capital markets practice were quite independent, but gradually client needs emerged in large, complicated transactions where both capabilities were required. We wished to meet this market demand.

And also, as previously mentioned, Japanese companies had to become more creative, and differentiate themselves from their competitors. As a result, they came up with many complicated new ideas and big projects.

So responding to market demand required specialization of lawyers and also depth in terms of resources. Large transactions required teams of more than 10 or 20 lawyers, and there may be two or three such matters proceeding simultaneously. That means we need not just one large team, but two or three. We knew that to respond to that kind of new demand we needed to have some size. That was our overall thinking.

PROFESSOR ARONSON: I think one reason why people were surprised by mergers was that some of us have what might be an older

³⁰ See Iwayama and Yanagishi, *supra* note 8.

image of Japanese law firms from the 1980s, or maybe even the 1990s. It was quite typical that young partners who had a good practice would break away to become the boss of their own firm, instead of amalgamating to form larger institutions. What changed? Why were such people now willing to build larger institutions?

MR. MASUDA: I'm not sure whether anything has really changed. I think many young lawyers still want to set up their own law office. I think it's a matter of the individual's taste or view of life.

But in my case, I love being in a big firm because I'm personally and intellectually interested in that type of work. As previously mentioned, corporate clients now require speed and quality and because of that we need to have big teams to handle such matters in a way which is satisfactory to the client. So in order to continue providing such type of service, I need to be in a big firm to set up a large team for the client. That is why I am at a big firm.

PROFESSOR ARONSON: The most recent merger, negotiations for which were announced about a year ago and which is scheduled for completion on July 1st, is between Nishimura & Partners and Asahi Law Offices, or at least the international group from Asahi Law Offices. How many lawyers will the combined firm have after the merger?

MR. YONEDA: We have roughly 230 attorneys now and 90 or so from Asahi will be joining us. So the result will be 320 or more.

PROFESSOR ARONSON: As Mr. Hara mentioned, one of the main reasons given to date for mergers is that a firm wished to acquire another firm with a certain specialty, such as finance. That does not appear to be a motivation in this case. Is there any value to just being bigger than other firms?

MR. YONEDA: Many attorneys, including us, view this merger as different from the mergers which took place previously. As Mr. Hara mentioned, the first merger (and other mergers to date) of large Japanese law firms was made to acquire a practice area which was lacking. However, our firm and Asahi are viewed as engaging in a similar scope of services. The reason we needed to expand our size is because, as Mr. Masuda mentioned, we need speed and quality, and to achieve this requirement we needed more attorneys. This merger is one way of accelerating the expansion of our size. Even after the merger, we will have only 300 attorneys.

In New York and London in the 1980s, the leading firms already had over 300 attorneys, and the firms I spent some time with had, for example, 50 tax attorneys. None of the large Japanese firms has such a number of tax attorneys; they have at most maybe ten or so. We decided to merge with the Asahi firm, which has a similar scope of services,

because we need more attorneys to provide good service in a variety of specialized areas.

D. Additional Issues

PROFESSOR ARONSON: I think that raises an interesting question. We've been talking a great deal in the last few minutes about mergers. Is most of the large law firm growth, that is, doubling in size in five years, due to mergers or to hiring new associates out of law school and the Institute (see Appendix Three)?

MR. ISHIGURO: The answer is both.

The merger created a larger number of attorneys at one time, but it also helped us to be more competitive in recruiting. Many new attorneys appear to be attracted to larger firms. We do not know the exact reason, but it might be that they feel safer or more comfortable relying on a larger firm.

The other reason may be, as my colleagues on the panel have mentioned, that large firms have introduced a variety of in-house training systems. New attorneys can benefit from introductory lectures given by specialists in the firm, and the more they engage in complex, challenging transactions, the more they will build experience in the firm and can exchange information on those experiences with others in the firm.

Such activities are necessary for training new attorneys, but they also enhance the overall capability of the firm and, importantly, provide a greater sense of firm unity. They feel more involved in the firm and they appreciate human relationships through these activities. There may also be other reasons why they are attracted to large firms. But, in any case, the merger made it possible for us to be more successful in recruiting and we grew through both methods.

PROFESSOR ARONSON: Looking at this table, on one hand it appears that there are a large number of young attorneys. On the other hand, it seems to be an associate-to-partner ratio of roughly three to one. This would not be considered extreme for a U.S. firm, but I assume that represents some change for Japanese firms where traditionally the partner to associate ratio was quite low, more like 1:1. Does this represent a significant change? Is it a challenge to manage a large number of young attorneys?

MR. HARA: Yes, there have been changes. First, now a young associate does not expect to become a partner. Years ago a new associate became a partner if he didn't make a big mistake, but nowadays that's not the case. And, as that has been true for the last 5 or 10 years, young lawyers' loyalty to the firm has naturally lessened and we need to change

our management style in response to that kind of change.

And associates who cannot become partners need to go somewhere else, and management must consider how to aid them in finding comfortable positions. That is another management challenge. The market has changed and the expectations of young lawyers have changed.

PROFESSOR ARONSON: How does the rise of large corporate law firms in Japan affect foreign firms? Do they need to do something different in order to be successful in Japan?

MR. ROEBUCK: I think the answer depends on what the foreign firm in question is trying to do in the Japanese market. It is a mistake to view the foreign firms operating in Japan as monolithic or one dimensional.

There are a variety of foreign firms and their strategies and practices fall into several different categories. To give you just one example, some of the foreign firms apparently are content to remain rather specialized boutiques, particularly in the financial services area, and those firms, if they have added local or domestic capacity, have probably done it simply in order to provide some limited capacity to enable them to carry out their boutique missions.

Other firms have sought to add more substantial local (domestic) capability to their practices, and some firms have done it on a fairly large scale.

Those firms that are seeking to compete effectively with the larger Japanese firms across the full spectrum of their practice, or some large portion of it, will inevitably be affected by the growth that we've just heard about. They will need to respond accordingly by increasing their own scope and scale.

But I do not think that all foreign firms in Japan have elected to follow that strategy at this point, and frankly I'm not expecting all of them, or even a large number of them, to follow it in the future because of the obvious difficulties in carrying it out.

Among other things, the large Japanese firms from whose representatives we're hearing today have in the past succeeded in obtaining the best human resources and continue to succeed, and that presents obvious challenges to the foreign firms.

So my own impression is that the foreign firms, even those that are seeking to add substantial local capability, are being selective and they are picking an area or areas that are either desirable in their own right in Japan or have some important relationship with practices that those firms have in their home markets, that is they are contenting themselves with achieving a necessary mass in those areas but not

necessarily across the full spectrum.

PROFESSOR ARONSON: Does the growth of large Japanese law firms also affect small Japanese firms. Do small firms need to grow larger or change what they do?

MR. SUGIYAMA: It is not necessary to become a big law firm in my area because we are mostly dealing with complex litigation, mainly regarding real estate matters. And we generally have three lawyers in a team, with a similar number of support staff. We don't need large teams of 10-12 lawyers or more.

So I do not think it is desirable for us to make our law firm bigger than it is now. We have only 10-12 lawyers, but we feel that is enough. As Mr. Roebuck stated with respect to foreign law firms, in the case of small firms it depends on what you want to do.

E. Question and Answer—Part I

ATTENDEE: You mentioned that the practices of the big Japanese firms are now approximately 70 percent domestic and 30 percent cross-border. How much of that do you think is the result of competition from foreign law firms for cross-border business?

MR. HARA: The volume of our domestic work has been growing very rapidly, while the volume of cross-border transactions has basically remained the same for the last ten years.

Given the growth of the economy, we should have also had an increase in our cross-border work and so I think we have lost some opportunities to the foreign firms.

Outbound work for Japanese companies engaging in investment or business overseas is increasingly going to foreign law firms, as Japanese companies see it's more direct and more efficient to go to the Tokyo branch offices of foreign law firms rather than going to domestic Japanese law firms.

The same may be true for inbound work for foreign clients doing business in Japan, because of the similarity of culture and ease of communication.

I'm not concerned about domestic work; however, in the cross-border area foreign law firms have become substantial competitors for us.

ATTENDEE: Several of you described the changes in the last decade and that these changes have influenced the growth of large Japanese law firms. To what extent is the new demand for legal services centered in financial services as opposed to manufacturing?

MR. YONEDA: I think there is increased demand from both.

The change in financial regulations is one source of substantial demand. Also, due to the rise of shareholder derivative actions management must protect itself and more often refers matters to law firms. Further, there is an increase in litigation, for example tax litigation, with taxpayers now challenging tax assessments of the tax authorities. That comes from industry (manufacturers) as well as from small taxpayers. So I believe that demand is increasing from various industries, both large and small.

ATTENDEE: Globally there seems to be a natural limit to law firm size when you compare it to other professions such as accounting. One of the explanations for that is that law is uniquely difficult in terms of the internal coordination problems that firms face as they grow increasingly larger.

And I wonder you have grown so big so quickly, that must be a tremendous management challenge to ensure quality, to hire, and to recruit; I wonder if you could just say something about how you are adjusting to this and if you see an upper limit on your ability to grow.

MR. ISHIGURO: That is one of the subjects we discuss every day.

It is quite a challenge and I think it's rather unique to Japan, compared with U.S. law firms' growth. Because of the rapid changes in Japan we have been discussing in terms of society as a whole, the legal system, and demand from clients, law firms needed to become large within a very short period of time. It is quite different from U.S. law firm growth which parallels the growth of the economy.

Law firm management concepts are not well-established in Japan. So we are struggling to build up a management system and at the same time facing many new challenges in terms of keeping our organization an intimate one, achieving efficiency, training young lawyers, and avoiding malpractice. All of these elements probably lead to an upper limit for an efficient law firm in Japan, which may be around 400 or 500 lawyers. However, I sense that Mr. Yoneda's firm (Nishimura & Partners)³¹ will reach a 400-lawyer level very soon. Our firm's pace will be much slower than Mr. Yoneda's firm, and I think it will be an interesting time to see how this evolves.

ATTENDEE: We heard about robust growth in the domestic law firms, and it all sounds fairly exciting, but Mr. Wani's earlier comments indicate that he may be a little more ambivalent than his colleagues about what's happening. Please expand on that a bit.

MR. WANI: Say 10 years ago, we would ask our office's

³¹ At the time of the panel discussion, the firm was Nishimura & Partners; following the merger on July 1, 2007, it became Nishimura & Asahi.

accounting department whether we have enough cash in our bank account to pay the salaries of our associates and staff. If we didn't, we would ask a bank to provide financing.

But once you start growing larger, you need to have a business plan and you need to assess the firm from the viewpoint of profitability.

And if we touch on this issue, we do not know to what extent the big Japanese law firms can survive.

I believe my colleagues' firms are quite financially healthy, but we still cannot be sure of the future. Lawyers may start to realize that the lawyer's life is not an easy-going "beautiful" life as it was in the past which afforded a high income and commanded respect as a professional.

IV. INTERNATIONALIZATION OF THE JAPANESE BAR AND LAW FIRMS

A. *Foreign Lawyers in Japan*

PROFESSOR ARONSON: Let's turn to the topic of the activities of registered foreign attorneys (*gaiben*) and foreign law firms in Japan.

Although *gaiben* have had the same license for the last 20 years, has, in fact, their scope of activities or the way they are utilized changed substantially over time, either in foreign firms or in Japanese firms?

MR. ROEBUCK: The legally permitted scope of activities has not changed.³² The legally permitted structures in which they may carry out those activities have changed, and as you have heard, the nature of legal practice has drastically changed over this period of time.

Taking a hint from what Mr. Hara just mentioned about what's happened in Nagashima & Ohno, I would like to mention what's happened at Jones Day as an example.

Jones Day started in Japan as a pure *gaiben* firm, and it remained in that niche until it was permitted to get out of it.³³ And when it was permitted to add domestic capability, it did so as rapidly as it could. There were *gaiben* in the *gaiben* office from the beginning, and there are *gaiben* there now.

Plainly the *gaiben* who were in the *gaiben*-only office carried out their activities in accordance with the law and that meant that their practice was, in large part, an outbound cross-border practice on behalf of

³² For a discussion of the permitted scope of activities of registered foreign lawyers in Japan, see, e.g., John O. Haley, *Redefining the Scope of Practice Under Japan's New Regime for Regulating Foreign Lawyers*, 21 LAW IN JAPAN 18 (1988).

³³ This occurred on January 1, 1995 when an amendment to the Special Measures Law went into effect. See *supra* note 21.

domestic Japanese clients and directed principally to foreign markets.

But with the addition of domestic capability, the gaiben can now work in collaboration with their Japanese *bengoshi* colleagues.

And even though the outbound work is still present and the gaiben continue to work on it, now gaiben can also work on other things such as inbound work on behalf of foreign clients in collaboration with their Japanese colleagues.

So the answer to the question is that yes, the scope of activities, in that sense, has changed quite drastically.

PROFESSOR ARONSON: How about at Japanese firms?

MR. HARA: The answer for us is that the scope of foreign lawyers' activities has not changed over 20 or 30 years. Legally speaking, foreign lawyers can register as gaiben and can advise on their home country law, but we do not allow them to do that in order to protect our firm.

We would need specialists and sufficient legal materials (to give advice on foreign law), and a single American lawyer in our office should not answer any serious questions (of foreign law) from a client.

Their work is mainly limited to English documentation. This is still very important and we need to rely upon their capability.

B. Hiring of Japanese Lawyers by Foreign Firms

PROFESSOR ARONSON: As a reminder, foreign attorneys were first licensed in Japan in 1987, and then by amendment in 1995 joint ventures between foreign firms and Japanese firms were permitted and the foreign firms were allowed to hire Japanese *bengoshi* for the first time. And then in 2005 full domestic partnerships within Japan were permitted, which essentially allows mergers between domestic Japanese firms and foreign firms.

Now that foreign firms can hire Japanese lawyers (since 1995), has that had any impact on the career path for lawyers or competition in recruiting?

MR. ISHIGURO: I think it did have some impact. For example, some U.K. firms started hiring Japanese *bengoshi* at a rather rapid pace by offering them the opportunity to practice or train through their global network. It is not a problem for us at present, as, from my point of view, this trend has not yet developed as broadly or rapidly as I feared. Nevertheless, it could make an attractive opportunity for young lawyers and allow these firms to become competitors.

C. Joint Venture Firms and International Mergers/Significance of Liberalization

PROFESSOR ARONSON: I would like to focus on the difference between the joint venture type arrangement first permitted in 1995 and the fully integrated local partnership which became available in 2005. There has been pressure for decades on Japan to liberalize the activities of foreign law firms and now we're having similar discussions with Korea and other countries.

I want to ask Mr. Roebuck. I went to your office when you were a joint venture firm. I know you had two separate firms that were in a joint venture relationship, with separate books and administration. But when I walked down the hall, it looked like one law firm to me. Japanese and American attorneys had offices next to each other; there were just two firm names at the main entrance. My question is how different is it being a joint venture and being an integrated local partnership?

MR. ROEBUCK: I believe that the principal difference is in perceptions of clients and, therefore, in effect, the presentation of services or method by which services are offered.

I think that the administrative structure and burden that was necessary for the joint venture arrangement was, as you just indicated, perhaps not much more than a paperwork kind of nuisance. However, some aspects of that arrangement were quite visible and apparent in terms of one's interactions with clients or presentations to potential clients.

And I believe that those aspects were considered to be a substantial disadvantage by those foreign firms who were seeking to penetrate the Japanese market, and my own view is that they were a substantial disadvantage, and that's primarily why people wanted to do away with them and to enter a world in which the paperwork administrative burdens were done away with.

PROFESSOR ARONSON: We have one of the leading lawyers who has entered the brave new world of international mergers, Mr. Wani, and I would like to ask him about international mergers.

His firm, or a large portion of it, merged with Linklaters in 2005 and the merger became effective on the very day (*i.e.*, April 1, 2005) that the new liberalized law allowing international mergers became effective. Newspapers in Japan, the U.S., and the U.K. all reported that this international merger was a result of liberalization (of the activities of foreign law firms).³⁴

What motivated your firm to be the first significant Japanese firm

³⁴ See *supra* note 22.

to undertake an international merger; was it really primarily a result of liberalization?

MR. WANI: No, not at all. The merger was based on two factors.

One is that after the deregulation many of the international players outside of Japan were planning to come to Tokyo and this seemed to affect the volume of work which we received from foreign clients. For example, Goldman Sachs or JPMorgan would like to use their London lawyers' affiliates rather than local Tokyo lawyers in regard to Japanese law matters.

The Big Four Japanese firms shifted to domestic work, but we wanted to stay on the cross-border transaction side. To choose that area of practice, we needed to accept internationalization.

Another reason is the law firm management issue. Although I pay due respect to my colleagues here, and the management of their firms is doing quite well, I regret to say that the domestic law firms are still five or six years behind the international ones.

So we merged based on these two reasons. But otherwise we still think of ourselves as Japanese practitioners, though we have more occasion than the Japanese Big Four firms to engage in pure cross-border transactions. It is not a substantial change from our former lives.

D. Influence of U.S. Law Firm Model on Japanese Law Firms

PROFESSOR ARONSON: We've heard references to profitability and to putting greater effort into management as a firm grows bigger. We also know that most of the leading Japanese lawyers, including probably everyone here, has an LLM from a U.S. law school, and most of them have spent a year or some time working in a U.S. law firm.

To what extent do Japanese law firms view U.S. law firms as a model for addressing their new needs and challenges? And is there any difference between practice issues and management issues?

MR. HARA: From the beginning our firm learned a great deal from the major U.S. law firms, not only in the practice areas but also in matters of management. This has been going on for quite some time. Although I am now quite senior, even back when I studied in the U.S. or worked in U.S. law firms, our Japanese firm had already adopted the U.S. system in terms of both legal practice and management.

It was the previous generation, such as Mr. Nagashima, the founder of our firm, who introduced many aspects of U.S. practice into

our firm.

MR. ISHIGURO: I agree with Mr. Hara, but also note that management of large law firms is a recent phenomenon in Japan. So in that respect, I think the U.S. model— although there is no single, established model in the United States--is an important reference point for our management, too.

PROFESSOR ARONSON: In the United States, it is often said that law firms have changed from being professional organizations to business organizations. It may be an exaggeration, but we often hear about it, usually in the form of a criticism.

We have also heard Mr. Wani mention profitability at Japanese firms, and that they will be focusing on it more. Is this generally true? Will a new emphasis on profitability affect how attorneys work, whether they make partner, and other firm activities, or are you happily going your own way?

MR. MASUDA: As the management of a big firm with more than 200 lawyers, we cannot ignore the profitability of the firm. But at the same time, I still believe that in Japan lawyers are considered to be samurai. And that means that even in big firms spending time and energy for socially beneficial work is highly respected and considered to be very important.

In our firm we, of course, are doing a great deal of work for corporate clients, but we also suggest to young associates that they spend time for pro bono work.

And we think that serving corporate clients is also good for Japanese society, and from that perspective we do not forget that lawyers are supposed to be servants of society.

MR. YONEDA: All of us would like to live in a fair, wealthy, and happy society.

Our professional mission is to help establish a new order of law, and to do this we need to offer a high level of quality services. If we can do this, we will obtain remuneration commensurate with the substance of our service. So we do not need to seek profit, but we do need to provide and maintain high quality services which meet the demands of society's members.

MR. HARA: Profitability of the large Japanese law firms has increased substantially, but that is not our intended goal. Japanese lawyers still pay attention not only to business, but also to professional tradition.

Just six months ago, LexisNexis published a monthly magazine in Japan, and they tried to model it after the American Lawyer by coming up with a law firm ranking of profitability. They asked me whether they

could do this and my reaction was that they should not. But they proceeded with their original plan. So I talked with the leaders of the Big Four firms, three or four, and we jointly (and successfully) opposed it.

PROFESSOR ARONSON: You formed an ad hoc cartel to oppose LexisNexis.

MR. HARA: One of the reasons American law firms' management focuses on profitability is because of the American Lawyer publication.

PROFESSOR ARONSON: Does it matter if you're as profitable, or less profitable, than large foreign firms if they have offices in Tokyo? As foreign firms grow larger, will you have to compete with them someday in terms of profitability to attract new lawyers, or you're not thinking about that?

MR. HARA: If the profitability of foreign law firms becomes double ours, then we will have to worry about that. But fortunately, although we did not intend to emphasize profitability, the large Japanese law firms have achieved quite good profitability. So we have never considered it, although it may arise in the future.

PROFESSOR ARONSON: Let me ask Mr. Ishiguro. He opened his firm's office in London some time ago and has good direct experience in comparing English firms with Japanese firms.

Do you need to change the way you operate in order to compete with American and English firms? Is there a global standard of how law firms operate?

MR. ISHIGURO: I think it is relevant, because the most important element of management of law firms is to keep attracting and recruiting talented lawyers in a variety of practice areas. So if we lose competitiveness in that aspect, then firm management will fail.

There are many elements which contribute to attractiveness and one of them may well be profitability. So we cannot disregard that aspect, but we also would not like to place too much emphasis on it.

And fortunately, at least at the moment, my sense is that Japanese lawyers on average are not very worried about profitability itself. This may or may not change. As I said, we should keep an eye on it but would not like to emphasize it.

PROFESSOR ARONSON: For another perspective, I would like to turn to Mr. Wani. I read the phrase "global standard" in an interview he gave with a major newspaper following the merger of his firm with Linklaters. He seemed to have a different view on whether Japanese lawyers and law firms had to adapt different practices to compete with international competitors.

MR. WANI: Law firms cannot survive without showing good

profitability and performance. My former firm's profitability was probably better than some of the Big Four. But even so, I experienced new things after our merger with Linklaters. One example is the approach that you must concentrate on particular profitable clients and practice areas, and that sometimes it is necessary to cut ties with clients in order to improve profitability. I asked the attorneys at my firm to change their mindset and our profitability jumped; the London people were pleased.

But if asked whether I'm happy, I have to say I have mixed feelings. In a sense, I think that we gave up serving the public to some degree for the sake of profitability. That said, we still engage in pro bono and public interest work.

On the other hand, we must tackle these particular issues to survive in the international markets as Japanese *bengoshi*.

Lawyers in other countries (such as in continental Europe) have had similar arguments with firm headquarters in England or the U.S. But at the end of the day, they agree to shift their practice model to achieve better profitability. The practice of law is no longer a profession, but rather it is becoming purely a business. There is a risk that our old beautiful world is collapsing, and we may need to wait some time for a new world to emerge.

V. THE SOCIAL ROLE OF LAWYERS

A. *Characterization of the Social Role of Lawyers in Japan*

PROFESSOR ARONSON: One academic characterization of the social role of lawyers in Japan divides perceptions of the social role of lawyers in Japan into three periods: (1) an early postwar confrontational period when it was thought that private practitioners should oppose the establishment, (2) a period in the 1970s and 1980s when the focus was on a professional public interest role, in which private attorneys served both clients and the public as officers of the court, and (3) a more recent "rule of law" period which emphasizes that it's a social good for lawyers simply to serve business clients, since this contributes to the development of markets and to the revitalization of Japan.³⁵

What do you think of this academic characterization of the social role of lawyers?

³⁵ In English see Ryo Hamano, *Japanese Lawyers in Transition*, 49 RIKKYO HŌGAKU, 325 (1998) (also citing a number of prominent Japanese sociology of law professors in support of this view).

MR. HARA: Although I understand the reasons why such characterization might be made, I think it's quite superficial and not substantive. Based upon my experience, the more important change, as discussed earlier, was in practice areas: the first stage was only litigation, the second stage was litigation plus cross-border transactions, and third stage for these past ten years has focused on domestic business activities.

And I think these are not a result of lawyers changing their approach or style, but rather because of changes in society.

For example, in the first stage of the so-called confrontation period, there were many employment disputes in Japanese society, and many lawyers worked for the plaintiffs because that was an important societal issue.

But nowadays, we don't have many problems concerning, for example, the environment compared to 20 or 30 years ago, and we don't have harsh disputes between employers and employees. As a result, the lawyer's role naturally changed.

I think during the last ten years the lawyer's social role has become more important.

For example, previously lawyers were never involved in business litigation or administrative activities, but these days many government agencies invite or request help from practicing lawyers. And many practicing lawyers worked substantially on recent important amendments to corporate law. So lawyers are more heavily involved in public activities and government activities, and lawyers are willing to be involved in those kinds of public interest or public activities.

As my colleagues said we are placing more emphasis on pro bono activities and we are encouraging young lawyers to be involved in those activities. The big law firms focus on private transactions, and as a matter of course we must do our best to protect our clients' interests. But at the same time because of our size we have resources that can be used for public purposes. So I think that over the last ten years big law firms have contributed more to the public interest.

MR. ISHIGURO: I wish to make the observation that for a long time the visibility of lawyers in Japan was very low, due partly to a strict limitation on the number of lawyers. With the increasing number of lawyers now and in the future, I think the public perception of lawyers might well be changing quite substantially. Lawyers have become a more familiar presence--some of them even appear on TV variety shows.

PROFESSOR ARONSON: How about lawyers in smaller firms? Is your view of the social role of lawyers any different from the views of your colleagues at the larger firms?

MR. SUGIYAMA: I agree that the change of the role of lawyers

comes from societal factors, not from the lawyers themselves.

In the early postwar period there were many serious issues such as pollution issues and labor issues which were primarily caused by the high rate of economic growth in Japan after World War II.

But nowadays we don't have many disputes on pollution issues; instead we have many other issues, such as medical or public health issues.

MR. UEYANAGI: I was admitted to the bar in 1983, so in the 1980s I did work for the opposition political parties such as the Communist Party or the Socialist Party. But from around 1995 even the ruling party invited me to work on something. My position has not changed.

I represent what I call the public interest in Japanese society, but my role has changed a bit, perhaps due to what I call the institutionalization of Japanese society. Before 1995 my colleagues and I only criticized the government, but since 1995 or so the government was willing to listen to me. So I joined the Financial System Council (as a public representative) to amend the securities law. And I worked with Japanese Foreign Affairs Ministry to do some work related to Southeast Asia.

B. Tension between Public Interest and Client Advocacy

PROFESSOR ARONSON: In the 1980s there were many general practitioners (including commercial lawyers at small firms) who participated in public interest activities such as environmental litigation. Is there less of this type of activity today?

MR. SUGIYAMA: I do not think that there are fewer lawyers who are interested in so-called public interest issues, but public interest issues themselves have changed compared to 40 or 50 years ago.

I believe that many lawyers still have a strong interest in dealing with so-called public interest issues and are still active.

MR. UEYANAGI: The quantity of such public interest work has not changed, but the percentage of their services which Japanese lawyers devote to such public interest work has decreased due to the increase in work advising large corporations in the financial sector.

My concern is that talented young people are going to large firms, like Nagashima Ohno, rather than joining my law office. More precisely, many lawyers would like to join my office, but my office cannot afford to hire them. To do public interest work requires spirit, but legal technique and experience are more important. Acquiring such experience takes a long time. Young lawyers work closely with senior lawyers.

PROFESSOR ARONSON: One of the arguments we used to hear years ago from Japanese attorneys and the bar association who opposed increased activities by foreign lawyers was that these foreign lawyers would not fulfill their social role as lawyers in Japan (as generally expressed under Article 1 of the Attorney Law).³⁶ What is the view of foreign firms operating in Japan on their social role and on how they can contribute to society?

MR. ROEBUCK: This is an evolving area for the international firms and a challenging one. As everyone can appreciate, the international firms operating in Japan are hosts to two populations of qualified professionals: The Japanese *bengoshi* population and the foreign-only qualified (*gaiben*) population; and I think that the answer has to be given with respect to each population.

Now that some international firms have started to participate in the domestic market with domestic capability, they have encouraged their *bengoshi* population to fulfill their roles as they see them. And although we, Jones Day, do not have a fully structured pro bono program that I can describe to you in detail, I am aware that all of the *bengoshi* diligently carry out their obligations, and some of them go beyond that and voluntarily give their time in various contexts and to various organizations, and Jones Day as a firm encourages that since it values pro bono activities in whatever markets it is active.

With respect to the foreign-only qualified population, it is a more difficult question because, again, as everyone can appreciate, we are not fully entitled citizens in Japan. We don't have the right to vote, for example, and I don't expect that we ever will, and I think it's also a fair statement that although we may not be transients, we're also not fully integrated into Japanese society. And those are real constraints on what foreign-only qualified professionals can contribute as a practical matter.

My own view is that foreign qualified-only professionals can and should contribute to the extent that they can, and I would welcome some guidance from the Japanese Federation of Bar Associations and others, such as the Ministry of Justice, as to what would be appropriate.

Jones Day, again, encourages foreign lawyers to seek out opportunities to do that, but at the present time, they are rather limited and primarily directed at the foreign community that is resident or working in Japan and to some extent, Japanese citizens that may have

³⁶ "A practicing attorney is entrusted with a mission to protect fundamental human rights and to realize social justice." *Bengoshi Hō* [Practicing Attorney Law], Law No. 205 of 1949, art. 1 (1). An English translation of the Practicing Attorney Law is available on the website of the Japan Federation of Bar Associations. See http://www.nichibenren.or.jp/en/about/pdf/pal_-2002.pdf. See also *supra* note 20.

legal issues in foreign markets where we are qualified to advise.

And I view it as a matter of personal obligation that foreign attorneys who are working in Japan should make an effort on an uncompensated or, perhaps, discounted basis to help people who are not major corporate clients address and solve those questions where it is within their permitted scope of activities. But as I said before, those opportunities tend to be fairly limited.

PROFESSOR ARONSON: I would like to ask more specifically whether it's enough of a social good for lawyers to represent business clients.

By way of background I note the obvious point that lawyers everywhere have two roles: working for clients and working for the public interest, and there's a balance between them. In the United States large law firms have significant pro bono programs, but a cynic might say the purpose of these programs is more for publicity and training young associates rather than for a genuine belief about their social role as lawyers.

And so I wanted to ask: Is it really enough to represent business clients? And were public interest considerations given any thought in the context of law firm mergers?

MR. HARA: After the merger we can better respond to the needs of our clients. But at the same time, by becoming a big business ourselves, we can better resist pressure from clients. Small firms may sometimes feel compelled to compromise their interests for a very important client.

But after the merger, we never did that and we can always reject an unreasonable request from a client. This may contribute to the public interest.

C. Role of Lawyers in Corporate Governance

PROFESSOR ARONSON: We are fortunate to have with us, Mr. Ueyanagi, who is the best known lawyer in Japan for representing plaintiff shareholders.

One theory in the United States is that lawyers can contribute to the public good by playing a role in corporate governance to help act as an external monitor of corporations and their boards.³⁷

Is there a sufficient plaintiffs' bar in Japan for lawyers to play a meaningful role in terms of monitoring and improving corporate

³⁷ See, e.g., Arthur R. Pinto, *Corporate Governance: Monitoring the Board of Directors in American Corporations*, 46 AM. J. COMP. L. 317 (Supp. 1998).

governance?

MR. UEYANAGI: The answer is yes and no.

Yes, we have a substantial number of lawyers in the plaintiffs' bar for shareholders litigation. But my concern is that the number has not been increasing.

One factor may be because good young lawyers have gone to other places, but another factor would be jurisprudence or court procedures. We have no class actions, no substantial discovery, and no equitable remedies. My concern is that because of such institutional restrictions we do not have room to expand.³⁸

PROFESSOR ARONSON: A related theory in the United States is that shareholder lawsuits may place corporate lawyers who advise businesses in a stronger position to reject unreasonable client demands, as Mr. Hara would say, and advise them to improve their corporate governance by holding out the threat of potential lawsuits.³⁹

Has that, in fact, been happening in Japan?

MR. MASUDA: I think Japanese business has changed. They understand that they need to be fully in compliance with Japanese laws and regulations, as the concepts of compliance and corporate governance have been emphasized during recent few years. They now understand the importance of legal advice. And they are very concerned about the possibility of lawsuits. But I don't think it's because we (lawyers) advised them about the potential for lawsuits; I rather think it is part of a broader societal trend. And in that sense, I would say the answer may be no.

PROFESSOR ARONSON: So maybe you don't have to scare them because they are already scared?

MR. MASUDA: Right.

MR. ISHIGURO: I have a different view. I agree with Mr. Masuda's general description of the change in Japanese management, but sometimes I do refer to the risk of lawsuits to the top management of corporations, including very large ones, in order to remind them that risk exists if they pursue a certain kind of decision-making process or approach to doing business. And it's quite helpful to scare them, if I may use that term.

That said, I again agree with Mr. Masuda that they are very concerned and sensitive about any breach of fiduciary duty, and there is an increasing number of requests for advice in this area from clients,

³⁸ See *supra* note 23.

³⁹ See generally Edward B. Rock, *Saints and Sinners: How Does Delaware Corporate Law Work?*, 44 UCLA L. REV. 1009 (1997).

especially when they are going to make important decisions on important transactions.

MR. WANI: These gentlemen are talking about shareholder suits, that is, management versus shareholders. But in the area of financial institutions, there is another “pressure,” the FSA, the Financial Services Agency (financial regulator). The FSA’s authority and actions pressure Japanese financial institutions to use outside lawyers to issue opinions on the appropriateness of their corporate procedures. FSA regulations also play an important role in enforcing corporate governance.

1. Question and Answer—Part II

ATTENDEE: Going back to the earlier discussion about mergers, there is a view that foreign law firms would so dominate the Japanese market that there is a substantial risk that the large Japanese law firms would disappear. According to this view, the reason for mergers is not so much profitability, but rather survival as independent entities rather than being transformed into places where even very successful and important lawyers are at the beck and call of much larger international organizations. To what extent was the merger activity defensive for that reason rather than offensive in the sense of trying to increase profitability?

MR. ISHIGURO: I think that at least we were aware of that defensive element in considering the pros and cons of our merger. We did, and will continue to, monitor carefully the policies and activities of foreign firms in Japan. They do have a very high level of management skills as well as the capital to dominate Japanese domestic markets.

If a large number of non-Japanese law firms adopted aggressive policies in Japan, young, talented lawyers might be attracted to them rather than to us. Although it was not a threat to us at the time of our merger and was not a purpose of our merger, it was a point of which we were aware when we decided to merge.

ATTENDEE: The panel has described phenomenal changes in the practice of law in Japan over the last number of years, including the growth of large law firms and the growth of the corporate practice. And I'm wondering if you see any similar changes in the positions taken by the Japanese Federation of Bar Associations. Do they reflect the interests of this new and different type of practice, or do they continue to reflect the interests and the positions of the small town lawyer or the individual practitioner?

MR. MASUDA: The Japanese bar as a whole consists of many small practitioners, and representing individual clients in everyday

matters remains very important work for them. So I think that some traditional perception about the lawyer's role remains within the Japanese bar as a whole. But at the same time, I think most lawyers in Japan have also begun noticing the change in the corporate needs in Japan. But probably our view (as corporate lawyers) is not the prevailing view of the Japanese bar association.

ATTENDEE: I'm sure that's the case, that you see that tension within the bar in the United States, too. It just seems especially pronounced in Japan, that there are a number of positions that the Japanese Federation of Bar Associations has taken that seem almost antithetical to business interests. And one recent example would be the position that they took with regard to the interest rate restriction law.⁴⁰

And so I was just wondering if factions have developed within the bar association with groups that represent predominantly business interests as opposed to those that continue to represent individuals. How do they reach these positions that they have taken vis-à-vis the different government ministries on the amendments to the securities law or the amendments to the interest rate restriction law?

MR. UYANAGI: I was in charge of an advisory committee on amending the interest rate restriction law. Individual committee members presented different views, including those from the industry side and the consumer side, and we were able to reach an understanding. Only foreign financial institutions opposed it. So for that matter the Japan Federation of Bar Associations (JFBA)⁴¹ had no hesitation or difficulty in supporting the result. I think that so far the JFBA has been successful in maintaining an integrated Japanese bar. Although this will not be a problem in the near future, it is possible that in 20 or 30 years some split within the bar might develop.

VI. CONCLUSION

⁴⁰ See *Risoku Seigen Hō* [Interest Rate Restriction Law] Law No. 100 of 1954. This law set a maximum interest rate on consumer loans at 20%, while the Investment Deposit Interest Rate Law (last amended in 2000), capped loans at 29.2% provided that interest rates over 20% required the written consent of the borrower. Consumer finance companies in Japan carried out an active business lending within this "gray zone" of 20-29.2%. A Supreme Court decision in January 2006 and a new law, the Money Lending Business Law, passed on December 13, 2006, set the cap rate at 20%. See, e.g., Federal Reserve Bank of San Francisco, *Asia Focus: Japan's New Consumer finance Law* (Feb. 2007), available at <http://www.frbsf.org/publications/banking/asiafocus2007/AsiaFocus-Feb.07.pdf>. Consumers seeking rebates on overcharges have caused serious losses in the industry, including the two large consumer finance companies owned by GE and Citigroup. See, e.g., Kathryn Kranhold, *GE May Sell Financial Unit In Japan as New Laws Hit*, WALL ST. J., Aug. 22, 2007.

⁴¹ For general information on the JFBA, see the English version of its website, <http://www.nichibenren.or.jp/en>.

The popular image of the unimportant role of law and lawyers in Japan was always exaggerated. It may now be obsolete. The panel discussion provides a clear snapshot of sweeping changes in Japan over the last decade that have elevated the role of corporate lawyers and law firms. As noted in the introduction, the issues generally discussed with respect to the legal profession in other developed countries, such as the change of the practice of law from a "profession" to a "business," are highly relevant to Japan today. It is time for considered analysis rather than reliance on unchanging, culturally based images.

The panelists' discussion of changes in the Japanese legal profession contained a number of surprises in all three of the principal topics: the rise of corporate law firms, internationalization of the Japanese bar and law firms, and the social role of lawyers. Leading corporate law firms have rapidly grown and transitioned from small internationally oriented boutiques to major domestic players. Law firm mergers have become commonplace, with the latest merger conducted for the stated purpose of increasing firm size rather than adding new practice areas. Legal reforms are producing a greater number of lawyers, but there are questions about the quality of their new legal education and even their job prospects.

With respect to internationalization, foreign law firms have already become substantial competitors to the leading Japanese firms in Tokyo for cross-border business. The major foreign law firms, with their strong capital base and global networks, may also have the potential in the future to compete for the best young Japanese attorneys and domestic business. The panel discussion also suggests that beyond a certain point (i.e., the ability to form joint ventures) liberalization of the activities of foreign lawyers may be less important to foreign law firm prospects than markets and competitive conditions.

The social role of lawyers in Japan is also under pressure at leading corporate firms. There appears to be an ongoing clash between the traditional image and social role of lawyers (as "samurai" who care about the public interest and lawyer's autonomy far more than profits) and the business realities of big firm practice. Lawyers understandably continue to provide reassurance about their traditional social roles and professionalism in a time of great change. But one important question, i.e., whether it is a sufficient social role for corporate lawyers simply to represent business clients and thereby contribute to the support of competitive markets and the revitalization of Japan, was largely unaddressed. This is an area where Japan's recent experience may also be

significant for other Asian countries trying to develop the rule of law and transparent markets.

What do all these changes mean for Japan? Japanese society now has a legal profession which fills an important role in the transition from governmental "administrative guidance" to transparent markets. This role includes providing advice on capital markets' products and services, corporate governance concerns, and policy issues. Corporate law firms in Japan face both unprecedented opportunities and challenges, as they try to meet clients' and societal expectations and manage very rapid growth. Young Japanese attorneys face tradeoffs which are well known to American lawyers: greater opportunities among large firms for the top law school graduates and greater job mobility, but less chance to make partner or to pursue individual interests.

The Japanese legal profession has emerged from its insularity and limited social role. It must now face the tradeoffs and ambiguities which have become familiar in the United States and elsewhere: a more important role in society with potentially greater financial rewards, but at the cost of increasing pressure and competition. It must also give new consideration to the appropriate balance between serving clients and society. As one of the panelists noted, Japanese attorneys are exposed to a real risk that their prior "beautiful world" is disappearing. They will now need to face the brave new world of lawyers in Japan.

VII. APPENDIX

TABLE 1
LARGEST LAW FIRMS IN JAPAN

1985	1998	2001	2005
26	Nishimura & Partners 63	Nagashima Ohno & Tsunematsu 149	Mori Hamada Matsumoto 198
25	Nagashima & Ohno 62	Nishimura & Partners 112	Nagashima Ohno & Tsunematsu 197
23	Mori Sogo 62	Mori Sogo 94	Nishimura & Partners 183
20	Anderson Mori 50	Anderson Mori 91	Anderson Mori & Tomotsune 179
20	Asahi 48	Asahi 79	Asahi Koma 140
20	Mitsui Yasuda 36	Mitsui Yasuda 65	TMI 87
17	TMI 33	Tokyo Aoyama Aoki 58	Tokyo Aoyama Aoki 68
17	Matsuo Sogo 29	TMI 54	Ohebashi 64
16	Iwata Godo 28	Hamada Matsumoto 41	City Yuwa 64
16	Ohebashi 27	Ohebashi 40	

Note: Numbers are for Japanese lawyers (*bengoshi*) only

Sources: 39 JIYU TO SEIGI, No. 13, at 61 (Supp. 1988); Shoichiro Niwayama & Kazuhiko Yamagishi, *Nihon ni okeru Kyodai Hōritsu Jimusho no Kanōsei* [The Possibility of Large-scale Law Offices in Japan] 49 JIYU TO SEIGI 34, 35 (Nov. 1998); ILS PUBLICATIONS, INC., INTERNATIONAL LAWYERS 2002, 246-47 (2002); Nihon Keizai Shinbun, Feb. 25, 2005, at 1.

TABLE 2
LAW FIRM MERGERS IN JAPAN

Effective Date	Merger Partners	No. of Lawyers	Specialty of Smaller Firm
01-01-2000	Nagashima & Ohno Tsunematsu, Yanase & Sekine	69 24	Finance
05-01-2001	Tokyo Aoyama/Baker McKenzie Aoki & Partners	42 16	Securities
10-01-2002	Asahi Law Offices Komatsu, Koma & Nishikawa	77 17	International & Corporate
01-01-2003	Mori Sogo Hamada & Matsumoto	92 42	Securities
01-01-2003	Tokyo City Yuwa Partners	27 20	Real Estate International & Corporate

Effective Date	Merger Partners	No. of Lawyers	Specialty of Smaller Firm
01-01-2004	Nishimura & Partners Tokiwa Sogo	137 14	Bankruptcy
01-01-2005	Anderson Mori Tomotsune & Kimura	134 23	Securities
04-01-2005	Linklaters Group from Mitsui Yasuda	30 30	Finance
07-01-2005	Mori Hamada & Matsumoto Max Law Offices	191 13	Intellectual Property
07-01-2007	Nishimura & Partners Group from Asahi Law Office	234 84	

Numbers indicate Japanese lawyers (*bengoshi*) only

Source: Firm announcements/websites and e-mail confirmations with firms

TABLE 3
AGE OF ATTORNEYS AND PARTNER/ASSOCIATE RATIOS
AT BIG FOUR FIRMS

Age of Attorneys	Nagashima Ohno & Tsunematsu	Mori Hamada Matsumoto	Nishimura & Partners	Anderson Mori & Tomotsune
20s	91	74	73	87
30s	86	82	100	73
40s	29	28	22	18
50s	13	13	9	9
60s	8	7	4	8
70s	3	1	2	2
Total Number	230	213	210	197
Partners	53	65	44	49
Associates	155	140	156	145

Numbers indicate Japanese lawyers (*bengoshi*) only

Adapted by Bruce Aronson from *Zadankai: Daikibo Hōritsu Jimusho no Gendai to Shōrai* [Roundtable: The Present and Future of Large-scale Law Firms] 57 JIYU TO SEIGI 12, 52-55 (May 2006) (data provided by the firms).