

Creighton Hosts International Conference on the Japanese Legal Profession:

The Brave New World of Lawyers in Japan

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Our image of Japan is one of an insular society, which emphasizes informal consensus and where lawyers and the law do not play an important role. But deregulation and administrative reform initiated during Japan's economic malaise of the 1990s have led to surprising changes over the last decade — a new demand for corporate legal services, an increase in the supply of lawyers, the emergence of large corporate law firms, law firm mergers and increasing activities by foreign law firms. A recent conference at the Creighton University School of Law examined this brave new world of the legal profession in Japan.

The Creighton University School of Law held an international conference on Japanese law entitled “Current Trends in Japanese Law and the Legal Profession” in May. This private conference attracted more than 30 distinguished participants from two disparate groups that rarely have an opportunity to interact: leading Western specialists of Japanese law from the United States, Japan, Canada and Australia, and prominent legal practitioners from Japan.

The genesis for this conference was my desire, based partially on my experience in private practice, to provide a forum for American academic specialists in the field to interact in a small group setting with Japanese practitioners. The goal was for a “Goldilocks” conference — neither too big nor too small — where discussion between these two groups would go beyond the question-and-answer sessions of the formal panels and carry over into ongoing, informal discussions.

To facilitate this interaction, “changes in the legal profession” was chosen as the basic theme. A broad topic of common interest to both scholars and practitioners in the legal profession, Japan has witnessed very significant and surprising changes in the legal profession over the past several years, and the trend is ongoing.

The conference was made possible by the generous support of six law firms that I invited to be cosponsors: the four leading Japanese law firms in Tokyo and two prominent international law firms (one American firm and one English firm) with substantial operations in Japan.¹ All of the

firms agreed to engage in a cooperative effort involving “big picture” issues, such as the rise of large corporate law firms in Japan and the role of lawyers in Japanese society.

The overarching message from the conference, again, was change — significant, recent changes in Japan, which strongly challenge long-held skepticism concerning the role of law and lawyers in Japanese society. This skepticism stems both from popular views of Japan, which have long emphasized the importance of cultural values and the unimportance, if not active dislike, of law and lawyers in Japanese society, and from objective factors such as the small number of Japanese lawyers.

However, over the last seven years, 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 law firm mergers — both domestic and international. The issues generally discussed with respect to the legal profession in other developed countries are highly relevant to Japan today.

The first day of the conference was devoted to the main theme of the legal profession. I moderated a panel discussion by a group of eight prominent Japanese lawyers² on the broad topic of “The Growth of Corporate Law Firms and the Role of Lawyers in Japan.” The discussion covered three

principal areas: the rise of corporate law firms, internationalization of the Japanese bar and law firms, and the social role of lawyers.

With respect to the growth of large corporate law firms, the panelists noted that domestic demand for corporate legal services in Japan has increased rapidly over the past decade. Deregulation and administrative reform were cited as important catalysts. In the past, businesses likely went to a government bureaucrat for an answer as to whether a particular transaction or practice was permissible, but today businesses are much more likely to consult attorneys.

The supply of lawyers is also increasing, spurred by recent reform efforts in the education and licensing of lawyers. Japanese corporations soundly supported these measures, as past wariness of the law and lawyers has been replaced by the needs of global competition, such as the protection of intellectual property. Finally, mergers also have hit the Japanese law firms. The first merger in 2000 created the first Japanese law firm with 100 lawyers. By 2005, each of the top five firms was more than double that size, and the most recent merger this year created a law firm with nearly 320 lawyers. (See Tables 1 and 2 on pages 26 and 27)

Conference participants were interested in the impact of the liberalization of the activities of foreign attorneys and law firms in Japan, which has progressed from licensing individual foreign attorneys (1987), to establishing joint ventures between foreign law firms and Japanese firms (1995) and finally to permitting full international mergers (2005). The first significant

¹ The supporting law firms are as follows: Anderson Mori & Tomotsune, Jones Day, Linklaters Tokyo, Mori Hamada & Matsumoto, Nagashima Ohno & Tsunematsu, and Nishimura & Partners.

² The panel members were as follows: Hisashi Hara, Chairman, Nagashima Ohno & Tsunematsu; Toru Ishiguro, Managing Partner, Mori Hamada & Matsumoto; Kenichi Masuda, Administration Partner, Anderson Mori & Tomotsune; John Roebuck, Partner-in-Charge, Tokyo Office, Jones Day; Shinichi Sugiyama, Harago & Partners; Toshiro Ueyanagi, Tokyo Surugadai Law Offices; Akihiro Wani, Managing Partner, Linklaters Tokyo; and Takashi Yoneda, Senior Partner, Nishimura & Partners.

international merger occurred at the time of liberalization in 2005, and the press emphasized a close link between the two.

However, panel speakers downplayed the significance of the most recent liberalization. John Roebuck, the Tokyo head of Jones Day, 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 Akihiro Wani, head of the Japanese group which entered into the first international merger, stated that liberalization did not play a role. His motivation was to continue to emphasize a cross-border practice, rather than domestic Japanese corporate work, and to take advantage of more advanced law firm management practices at international firms.

How have all of these changes, particularly

the growth of large law firms with a corporate orientation, affected the social role of lawyers? Panelists from the large law firms 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. They also noted that they were now in a stronger position to advise clients to improve corporate practices in areas such as corporate governance, due to an increased societal emphasis on those issues and to the relatively new threat of shareholder derivative suits.

Lawyers from smaller firms who have been actively engaged in public interest activities saw no lessening of interest in public interest activities. But they 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.

Another panel on "The Legal Profession in Japan" featured presentations by leading scholars from Harvard University and the University of Washington, who took differing quantitative and qualitative approaches to the question of career and business choices by members of the Japanese legal profession today.

Also at the conference, presenters from Japan and Australia provided analyses of the results of ongoing legal reform efforts in Japan: an increase in the annual number of new lawyers (although limits remain in place), the creation of new "American-style" professional graduate-level law schools, and a new bar exam. They noted that the reforms remain controversial. The substantial number of licensed law

Largest Law Firms in Japan

1985		1998		2001		2005	
Firm names not listed for 1985	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		

Table 1

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 Horitsu Jimusho no Kanosei* [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.

Law Firm Mergers in Japan

Effective Date	Merger Partners	# 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
01-01-2004	Nishimura & Partners Tokiwaga 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	

Table 2

Note: Numbers indicate Japanese lawyers (bengoshi) only

Source: Firm announcements/websites and email confirmations with firms

schools now produce a relatively large number of graduates. Given the numerical limitation on the number of lawyers admitted each year, competition remains strong and the bar passage rate (although higher than under the old system) remains lower than anticipated at the time the reforms were planned. There is a strong possibility of a shakeout among the new law schools.

The Japanese constitution also was covered at the conference. Mike Kelly, professor of law at Creighton, made a presentation on constitutional law, and Christopher Gerteis, assistant professor of East Asian history at Creighton, acted as a commentator. Discussion included the Japanese administration's plan to amend the "peace

provision" article of their constitution, which states:

Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means of settling international disputes. (2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

The proceedings of the panel on "The Growth of Corporate Law Firms and the Role of Lawyers in Japan" are being edited

for publication. A draft of the proceedings, including my introductory note, is available online at <http://ssrn.com/abstract=1008334>, and will be published in the *Columbia Journal of Asian Law*.

About the Author: Bruce Aronson teaches business law at Creighton. He was a corporate partner at the New York City law firm of Hughes Hubbard and Reed LLP (1989-2000). Prior to joining the Creighton faculty, he was a Senior Fulbright Researcher at the University of Tokyo, an Associate Research Scholar at Columbia Law School and a visiting professor at Michigan Law School. His areas of expertise include corporate law, finance law, and international and comparative law, with a special focus on Japan. He can be reached at BruceAronson@creighton.edu.