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# THE BRAVE NEW WORLD OF LAWYERS IN JAPAN REVISITED: PROCEEDINGS OF A PANEL DISCUSSION ON THE JAPANESE LEGAL PROFESSION AFTER THE 2008 FINANCIAL CRISIS AND THE 2011 TŌHOKU EARTHQUAKE

Bruce E. Aronson<sup>†</sup>

*Abstract:* In the United States, the 2008 financial crisis had a serious impact on a legal profession that had been growing strongly for three decades, highlighting fundamental issues concerning the business and educational models of both law firms and law schools. This raises the interesting question of how Japan, with its much shorter history of large law firms and professional law schools, has been affected by the 2008 financial crisis and the 2011 Tōhoku earthquake, tsunami, and nuclear reactor crisis.

At a recent conference sponsored by the University of Washington School of Law and the law firm of Perkins Coie, a distinguished group of legal practitioners from the leading Japanese and foreign law firms in Tokyo engaged in a panel discussion on the current state of Japan's legal profession. The panelists saw both the 2008 financial crisis and the Tōhoku earthquake as "one-time" events that will not have a significant long-term impact. The 2008 financial crisis, although it had a lesser economic impact in Japan, raised fundamental issues similar to those in the United States concerning the appropriate models for large law firms and law schools. Despite a number of current problems, the panelists supported the goals and direction of recent Japanese reforms, which have overhauled the system of legal education and increased the number of lawyers, and they explicitly embraced a new model for the legal profession: rather than the traditional small elite with a narrow societal role, the Japanese bar would be significantly expanded and compete to fill a wide range of law-related roles in society.

## I. INTRODUCTION

During the period from 2000 to 2007 observers of the Japanese legal profession grew accustomed to a new world in which lawyers and law firms played an increasingly important role in Japan. The changes during this time included 1) the rise of large corporate law firms, 2) an increase in both the demand for corporate legal services and the supply of lawyers, 3) an expansion in the range of work activities of big firm lawyers and their increasing influence with Japanese businesses and government, 4) mergers

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This panel discussion was held while the author was a Visiting Professor of Law, University of Washington School of Law, during the spring of 2011. The author gratefully acknowledges the support and cooperation of the University of Washington School of Law and Perkins Coie, and particularly wishes to thank the panelists for participating in a conference in Seattle less than two months following the Tōhoku earthquake of March 11, 2011, despite their important responsibilities and positions of leadership at their respective law firms. The author also gladly acknowledges the research assistance of Michael Swick. The panel proceedings have been edited for length and clarity.

among both domestic and international law firms, and 5) a greater presence by foreign law firms in Tokyo.<sup>1</sup>

These changes in the legal profession contradicted a long-standing image of Japan as a place where law and lawyers were of little importance. In addition, this period saw the introduction of even more ambitious legal reform. Following a broad plan adopted in 2001 (see *infra* Appendix D),<sup>2</sup> a new graduate law school system was introduced in 2004;<sup>3</sup> plans were made for the continuing expansion of the supply of lawyers, with a corresponding expansion of their role as “doctors for the people’s social lives”;<sup>4</sup> a new jury (or “lay judge”) system was instituted for serious criminal cases;<sup>5</sup> foreign law firms were allowed to form partnerships with Japanese firms and hire

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<sup>1</sup> The extent and significance of these changes were explored in a prior panel discussion of Japanese lawyers held in 2007. See Bruce E. Aronson, *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*, 21 COLUM. J. ASIAN L. 45 (2007). That article concluded that the positive aspects of an increasingly important role and new opportunities for Japanese lawyers were achieved at the cost of new competitive pressures and tradeoffs that are familiar to American lawyers, and that the prior insular and secure “beautiful world” of Japanese lawyers cited by one panelist might be giving way to a competitive “brave new world” for lawyers in Japan. *Id.* at 82.

<sup>2</sup> The Japanese Cabinet created a special legal reform council in 1999, which issued its final report in 2001. For an English translation of the final report, see JUSTICE SYSTEM REFORM COUNCIL, RECOMMENDATIONS (2001), available at <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html>. Among the report’s many recommendations were a series of targets for increasing both bar passage rates and increasing the overall number of lawyers. For an overview of the legal reform process, see, for example, Kahei Rokumoto, *Overhauling the Judicial System: Japan’s Response to the Globalizing World*, 20 J. JAPAN. L. 7 (2005).

<sup>3</sup> 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 TUL. 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).

<sup>4</sup> This is the goal quoted in the reform council’s report. See JUSTICE SYSTEM REFORM COUNCIL, *supra* note 2, ch. III, pt. 1-1.

<sup>5</sup> Saiban’in no sanko suru keiji Saiban ni kansuru hōritsu [Act Concerning Participation of Lay Assessors in Criminal Trials], Law No. 63 of 2004, translated in Kent Anderson & Emma Saint, *Japan’s Quasi Jury (Saiban-in) Law: An Annotated Translation of the Act Concerning Participation of Lay Assessors in Criminal Trials*, 6 ASIAN-PAC. L. & POL’Y J. 9, 9 (2005). Under the lay-judge system, mixed tribunals of professional judges and members of the public are called to render verdicts and determine sentences in serious criminal cases. There are varying conceptions of the role of the lay-judge system in Japanese society; some view it as an important step towards reforming a criminal justice system that is substantially unfair to criminal defendants, others as a means of educating the public about the legal system and of promoting civic engagement. For general discussion of the lay-judge system, see, for example, Matthew J. Wilson, *Japan’s New Criminal Jury Trial System: In Need of More Transparency, More Access, and More Time*, 33 FORDHAM INT’L L.J. 487 (2010). For a comparison of the lay-judge system and the American jury system, see Daniel Senger, *The Japanese Quasi-Jury and the American Jury: A Comparative Assessment of Juror Questioning and Sentencing Procedures and Cultural Elements in Lay Judicial Participation*, 2011 U. ILL. L. REV. 741 (2011).

Japanese attorneys;<sup>6</sup> and numerous other measures were undertaken to implement this vision (see *infra* Appendix E).

In the United States, the 2008 financial crisis had a serious impact on a legal profession that had been growing strongly for three decades. For the first time large firms laid off attorneys for clearly stated economic reasons rather than due to performance, and their long-standing business models were called into question.<sup>7</sup> American law schools, which had also enjoyed decades of continuous growth, faced their own challenge to their business and educational models.<sup>8</sup> With increasing student loan burdens and a tough job market, the question frequently arose whether law school was now a “bad deal” for law students.<sup>9</sup>

This raised the interesting question of how Japan, with its much shorter history of large law firms and professional law schools, has been affected by the 2008 financial crisis, or “Lehman shock.”<sup>10</sup> Has the demand for legal services dried up? Have Japanese law firms also had layoffs? Is the number of lawyers still expanding? Have attitudes toward the activities of foreign law firms changed? Are recent reforms in the legal profession and legal education over the past decade continuing, or is there retrenchment due to poor economic conditions? In addition, what is the effect of the 2011 Tōhoku earthquake and nuclear reactor crisis?

The theme of a recent panel discussion by prominent attorneys from Japan was that the Japanese legal profession demonstrated considerable resiliency in the face of these challenges. The panelists shared a basic optimism that Japan’s legal profession still has a bright future, and will adjust to the current short-term issues as necessary. However, as in the

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<sup>6</sup> See Gaikoku bengoshi ni yoru hōritsu jimu no toriatsukai ni kan suru tokubetsu sochi hō [Act on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers], Law No. 66 of 1986. Subsequent major amendments became effective on January 1, 1995 and April 1, 2005. The number of registered foreign law attorneys has grown dramatically from 87 in April of 1998 to 344 in April of 2010. JAPAN FEDERATION FED’N OF BAR ASS’NS, WHITE PAPER ON ATTORNEYS 11 (2010), available at <http://www.nichibenren.or.jp/library/en/about/data/WhitePaper2010> [hereinafter 2010 WHITE PAPER]. As of April 1, 2010, 34 foreign law joint enterprises, employing a total of 627 Japanese attorneys and 55 foreign law attorneys, have submitted notifications to the Japan Federation of Bar Associations (as required by the 2005 amendment). *Id.* at 13. For additional data, see *infra* Appendix B.

<sup>7</sup> See William D. Henderson & Rachel M. Zahorsky, *Paradigm Shift*, A.B.A. J., July 2011, at 40 (arguing that a “massive structural shift” of the balance of power in the provision of legal services from traditional law firms to clients and new “tech-savvy” legal service providers began prior to, and was significantly exacerbated by, the 2008 financial crisis, and that the business model of big law firms has permanently changed); *A Less Gilded Future*, ECONOMIST, May 7, 2011, at 74.

<sup>8</sup> See, e.g., Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598 (2010).

<sup>9</sup> See, e.g., David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011.

<sup>10</sup> Outside the U.S., the 2008 financial crisis is commonly referred to by this name. *The Lehman Shock*, NEWSWEEK, Sept. 13, 2009, available at <http://www.thedailybeast.com/newsweek/2009/09/14/the-lehman-shock.html>.

United States, the 2008 financial crisis sparked widespread discussion of fundamental issues concerning the relationships among the legal profession, the legal education system, and society.

The panel discussion covered three principal areas: the fall in demand for legal services following the 2008 financial crisis and law firms' responses to it; legal education and the supply of lawyers; and the effect of the 2011 Tōhoku earthquake and its aftermath. The panelists viewed both the 2008 financial crisis and the Tōhoku earthquake as "one-time" events that would not affect the long-term health of the legal profession in Japan.

The 2008 financial crisis affected the demand for legal services in Japan, but to a lesser extent than in the United States and the United Kingdom. Large Japanese corporate law firms continued to grow (see *infra* Appendix A). One panelist from a large firm estimated that his firm's annual rate of revenue growth slowed from twenty percent prior to the financial crisis to five percent following it, but did not turn negative as was the case for many U.S. and U.K. firms.

The suggested reasons for this difference in impact included the smaller size of Japanese law firms; the prior, ongoing restructuring efforts of Japanese corporations in the face of an extended period of low economic growth; and continuing trends related to the growing importance of lawyers in Japanese society. Within Japan, smaller law firms were even less affected than large firms due to their size and relative insulation from the downturn in cross-border transactions that occurred as foreign investors reduced their activities in Japan.

The panelists noted that even with a lesser financial impact than that suffered by U.S. and U.K. firms, large Japanese law firms nevertheless had a temporary surplus of lawyers that necessitated more active management. Unlike in the United States and the United Kingdom, there were no announced layoffs or direct firing of attorneys in Japan.<sup>11</sup> Large Japanese

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<sup>11</sup> There was, however, a significant reduction in hiring over time. For example, Nishimura & Asahi hired 46 new associates in January of 2010 and 32 new associates in January of 2011. *Topics: News Details: 46 new associates join Nishimura & Asahi on January 6*, NISHIMURA & ASAHI, [http://www.jurists.co.jp/en/topics/others\\_8248.html](http://www.jurists.co.jp/en/topics/others_8248.html) (last visited Feb. 15, 2012); *Topics: News Details: 32 new associates join Nishimura & Asahi on January 6*, NISHIMURA & ASAHI, [http://www.jurists.co.jp/en/topics/others\\_9828.html](http://www.jurists.co.jp/en/topics/others_9828.html) (last visited Feb. 15, 2012). This number continued to decline to 17 in 2012. *Topics: News Details: 17 new associates join Nishimura & Asahi on January 6*, NISHIMURA & ASAHI, [http://www.jurists.co.jp/en/topics/others\\_11564.html](http://www.jurists.co.jp/en/topics/others_11564.html) (last visited Feb. 15, 2012). This is counter to an earlier trend of larger incoming classes established in the years prior to the Financial Crisis of 2008 in which a typical incoming class of new attorneys at a major corporate law firm was somewhere in the twenties or thirties. See, e.g., Bruce E. Aronson, *Changes in the Role of Lawyers and Corporate Governance in Japan – How Do We Measure Whether Legal Reform Leads to Real Change?*, 8 WASH. U. GLOBAL STUD. L. REV. 223, 230 (2009); *Zadankai: Daikibo hōritsu jimusho no gendai to*

law firms instead undertook closer monitoring of associates' performance and assumed a larger role in career counseling in light of the diminished opportunities for advancement within firms.

There was some disagreement among the panelists as to whether this truly represented a "kinder, gentler" approach to managing associates that was significantly different from the methods commonly used by U.S. and U.K. firms. Representatives of large Japanese firms viewed their efforts as a form of career guidance and counseling, but the Tokyo head of a prominent English firm did not see a substantial difference in result between Japanese practices and outright layoffs. He noted that the small lateral attorney market in Tokyo was flooded with young Japanese lawyers who had been pressured to leave large firms and that the end result was similar to the more direct layoffs generally associated with personnel practices at English and American firms.

Panelists' comments also raised the issue whether big firm practices that resulted from the 2008 financial crisis, such as more aggressive management of associates, could become permanent features of corporate law firms. It is argued in the United States that the financial crisis and other factors may have changed the business model of big law firms,<sup>12</sup> and Japanese firms also face new concerns about cost control and lawyer quality.

The most controversial topic in the Japanese legal profession<sup>13</sup> today is the question of legal education and the supply of lawyers. The far-reaching reform program formulated in 2001 called for a significant increase in the number of newly admitted attorneys each year and a doubling of the lawyer population by 2018.<sup>14</sup> The program was intended to simultaneously improve the quality of new attorneys through a new system of graduate-level professional law schools<sup>15</sup> (accompanied by a new bar exam) that would go far beyond the traditional undergraduate law departments in providing both a broader-based and more professional legal education.

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*shōrai* [Roundtable: The Present and Future of Large-Scale Law Firms] 57 JIYŪ TO SEIGI 12, 39 (May 2006) (remarks of Akira Kosugi).

<sup>12</sup> See Henderson & Zahorsky, *supra* note 7.

<sup>13</sup> Although it was beyond the scope of the panel discussion, it should be noted that Korea has undertaken a similar fundamental reform of its legal educational system following legislation enacted in 2007. See, e.g., Yeong-Cheol K. Jeong, *Korean Legal Education for the Age of Professionalism: Suggestions for More Concerted Curricula* (working paper, July 2009), available at [http://works.bepress.com/cgi/viewcontent.cgi?article=1006&context=young\\_cheol\\_jeong&sei-redirect=1#search=Korea legal education reform](http://works.bepress.com/cgi/viewcontent.cgi?article=1006&context=young_cheol_jeong&sei-redirect=1#search=Korea%20legal%20education%20reform). For background on the parallel reform processes in Japan and Korea, see Tom Ginsburg, *Transforming Legal Education in Japan and Korea*, 22 PENN. ST. INT'L L. REV. 433 (2004).

<sup>14</sup> See JUSTICE SYSTEM REFORM COUNCIL, *supra* note 2.

<sup>15</sup> See *supra* note 3.

Over the past decade, there have been substantial increases in the number of new lawyers per year (from roughly 1,000 to 2,100) and in the total number of lawyers (from approximately 17,000 to 29,000), although both measures remain well below the ambitious reform goals of 3,000 new lawyers per year and a total of 50,000 lawyers in 2018 (see *infra* Appendix E). There are now many stories, supported by data, about new lawyers who are unable to find jobs.

The new law schools also encountered problems. The original idea was to attract a broader range of law school students, in particular those with no previous study of law, by raising the number of new attorneys each year and achieving a significantly higher bar passage rate (originally envisioned to be in the range of 70%, in contrast to 2 to 3% under the old system). However, due to a large number of law schools and law students the bar passage rate has been much lower than anticipated (27.6% in 2009; see *infra* Appendix C).<sup>16</sup> This has discouraged potential law students with non-legal backgrounds from applying to law school, and has encouraged law school students to focus their studies narrowly on bar exam courses and topics rather than pursuing a broad-based legal education.<sup>17</sup> The Japanese bar, as represented by the Japan Federation of Bar Associations [Nihon Bengoshi Rengōkai] (“Nichibenren” or “JFBA”), which initially supported both the increase in the supply of lawyers and the new law school system, has suffered internal turmoil over these issues<sup>18</sup> and has recently called for a

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<sup>16</sup> The actual bar passage rate for the first law school graduating class under the new system in 2006 was 48.3% and, as noted in the text, this percentage has fallen to 27.6% in 2009. See *infra* Appendix C. The percentage is expected to stabilize in the area of 24%. See Setsuo Miyazawa & Tatsuya Yonetani, *Nyūgaku teiin no ichiritsu 3 wari sakugen to 3,000 nin gōkaku no dōji katsu sassokuna 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 HŌGAKU SEMINĀ 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 completed the three-year law school course and began taking the bar, there was an increase in the total number of bar exam takers.

<sup>17</sup> Prior to the implementation of graduate law schools, fierce competition resulting from extremely low bar passage rates created a phenomenon known as *daigakubanare*, “the tendency to ignore university classes and focus only on preparatory schools.” JUSTICE SYSTEM REFORM COUNCIL, *supra* note 2, at ch. III, pt. 2-1. Reformers believed that because conventional legal education was “not . . . sufficient in terms of . . . specialized legal education,” and because curriculum at preparatory schools was solely focused on the bar, the quality of attorneys was seriously impacted.” *Id.* While graduate law schools were seen as a means of facilitating more broad-based and practical training for attorneys, falling bar passage rates have encouraged, if not forced, law schools to assume the role once filled by preparatory schools.

<sup>18</sup> In March of 2010, for the first time in the history of the Japan Federation of Bar Associations (“JFBA”), an outside insurgent, Kenji Utsunomiya, was elected president over the incumbent Vice President, Takeji Yamamoto. The key issue that attracted support for the challenger was reportedly a pledge to work for a more drastic reduction in the annual number of new lawyers (to 1,500) than promised by the incumbent vice president. See Setsuko Kamiya, *Reformist Bar Head Works to Raise Way Lawyers*

reduction in the annual number of new attorneys<sup>19</sup> and reform of the law school system.<sup>20</sup>

The panelists, while recognizing shortcomings in the recent reforms, were surprisingly uniform in their support for the goals of reform and the necessity of continuing to progress toward those goals. They largely attributed the problems of the new law schools to design flaws and political compromises in the original plan for law schools and to continuing bureaucratic infighting among the government agencies responsible for education and for the legal profession. There was also a consensus that the rate of growth in the number of lawyers should not be diminished but rather should continue to increase.<sup>21</sup>

Rather than debating the appropriate number of new lawyers, the panelists regarded the real issue as one of expanding the role of lawyers to address the actual and potential demand for legal services by corporations

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*Serve*, JAPAN TIMES, July 24, 2010. For a recent critical look at the postwar history of the JFBA, see generally MASAHIRO KOBAYASHI, KONNA NICHIBENREN NI DARE GA SHITA? [WHO MADE IT THIS KIND OF JFBA?] (2010).

<sup>19</sup> The JFBA maintains that questions about the efficacy of the graduate law school system and increases in the number of unemployed lawyers indicate that the growth of the population of lawyers was too drastic and sudden. To address these “institutional distortions” it urges that the “number of successful bar examination candidates [be reduced] to a significant extent from the current level.” JAPAN FED’N OF BAR ASS’NS, HOUSOU JINKOU SEISAKU NI KANSURU KINKYŪTEIGEN [URGENT RECOMMENDATIONS ON POLICIES FOR THE NUMBER OF LEGAL PROFESSIONALS] (Mar. 27, 2011), available at <http://www.nichibenren.or.jp/activity/document/opinion/year/2011/110327.html>, translated at [http://www.nichibenren.or.jp/en/document/opinionpapers/20110327\\_2.html](http://www.nichibenren.or.jp/en/document/opinionpapers/20110327_2.html) (last visited Jan. 27, 2012).

<sup>20</sup> The JFBA made a number of recommendations to address failings of the legal education system, including re-examining the preliminary exam so that it does not undermine the philosophical basis for the law school system; temporarily increasing the number of times a student can take the bar exam from three to five times; and reducing the number of law school students by abolishing or merging schools. JAPAN FED’N OF BAR ASS’NS, HŌSŌYŌSEI TEIDO NO KAIGEN HŌSAKU NI KANSURU KINKYŪTEIGEN [URGENT RECOMMENDATIONS ON IMPROVEMENT OF THE PROFESSIONAL LEGAL TRAINING AND EDUCATION SYSTEM] (Mar. 27, 2011), available at [http://www.nichibenren.or.jp/library/ja/opinion/report/data/110327\\_3.pdf](http://www.nichibenren.or.jp/library/ja/opinion/report/data/110327_3.pdf) (summary available in English at [http://www.nichibenren.or.jp/en/document/opinionpapers/20110327\\_1.html](http://www.nichibenren.or.jp/en/document/opinionpapers/20110327_1.html) (last visited Jan. 27, 2012)).

The impact on bar passage rates of allowing students to take the bar exam five times is not discussed, but it stands to reason that the increased pool of applicants would lead to a further decline in passage rates. If this measure were to be implemented alongside the recommendation to lower the numerical limit on candidates passing the bar, *see supra* note 19, the resulting low bar passage rate could potentially undermine the graduate law school system.

<sup>21</sup> How to best achieve these goals remains contentious. The most recent controversy centers on retaining a system for a limited number of law undergraduates to “bypass” graduate law schools and take the bar exam upon completion of their undergraduate legal education. A new form of bypass, the *yobi* examination, was offered for the first time in 2011. The *yobi* examination draws attention to the many shortcomings of the graduate law school system and has provided a vehicle for renewed debate about the direction of legal education reform. See Takayasu Okushima, *Ri’nen ni tachimodori hōsō wo fuyase* [Return to Ideals, Increase the Number of Lawyers], ASAHI SHINBUN, May 31, 2011, at 15; Junji Annen, *Shihōshiken no juken shikaku ni suruna* [Don’t Make Law School a Requirement for Sitting for the Bar Exam], ASAHI SHINBUN, May 31, 2011, at 15.

and government on the one hand, and by consumers on the other.<sup>22</sup> In particular, one panelist noted that it was important to remove sources of competition faced by lawyers: 1) the large numbers of undergraduate law majors who go to work for business and government directly upon graduation, and 2) a variety of quasi-lawyers who undertake examinations and receive separate licenses in areas such as tax law and intellectual property law that would be serviced by lawyers in the United States.<sup>23</sup> In addition, a panelist noted that demand for legal services remained weak among Japanese consumers.<sup>24</sup>

This led to a discussion of perhaps the most fundamental issue underlying legal reform—the philosophy behind legal education and the bar exam. The contrast between the American system and the traditional view of the bar in Japan is striking. In the United States, the premise of the bar exam is to confirm that lawyers have the minimum knowledge necessary to be competent attorneys and to compete broadly, allowing them to fulfill a wide range of social roles without regulating their numbers; the former system in Japan was intended to pick a small, elite group of highly capable lawyers for a narrow range of jobs through very difficult testing and direct regulation of their numbers. The question arose as to which model, if either,

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<sup>22</sup> By one measure, the total number of in-house lawyers increased from 64 in 2001 to 242 in 2007. Aronson, *Changes*, *supra* note 11, at 231. This number continued to grow to 412 in 2009. NIHON SOSHIKINAI BENGOSHI KYŌKAI [JAPAN IN-HOUSE LAWYERS ASSOCIATION], KIGYŌNAI BENGOSHI NO NINZŪ TO SHOZOKU KIGYŌ NI KAN SURU CHŌSA 2009 NEN SHIMOHANKI [SECOND HALF 2009 REPORT ON THE NUMBER AND CORPORATE AFFILIATION OF IN-HOUSE LAWYERS] (2009). For the central government, the number of in-house government lawyers increased from 40 in 2004 to 69 in 2006. Aronson, *supra* note 11, at 231.

<sup>23</sup> The number of lawyers in Japan, as of March of 2010 was 28,789. *See* 2010 WHITE PAPER, *supra* note 6, at 1. The number of licensed legal specialists (that is, not including undergraduate law majors) is far larger than the number of licensed lawyers. *Id.* at 22 (showing that the total number of licensed “other legal professionals” was 241,171 in 2010, of which 28,789 were attorneys). For a comparative discussion of the various categories of legal professionals in Japan, see, for example, Masanobu Kato, *The Role of Law and Lawyers in Japan and the United States*, 1987 BYU L. REV. 627. For a recent analysis of how legal reforms in Japan have affected the various groups of legal service providers, see KYOKO ISHIDA, ETHICS AND REGULATIONS OF LEGAL SERVICE PROVIDERS IN JAPAN: DEREGULATION OR RE-REGULATION? REMAINING PROBLEMS AFTER THE JUSTICE SYSTEM REFORM 25-46 (2011).

<sup>24</sup> The broad plan adopted in 2001 envisioned greater consumer access to legal services due to increases in both supply and demand, with the first pillar of reform containing planks for improving legal aid for civil cases and public defenders for criminal cases. *See* sources cited *supra* note 2; *infra* Appendix D. However, a panelist noted that the bulk of reform efforts have focused on increasing the supply of legal services. The Japanese Diet did pass a Comprehensive Legal Support Law. *See* Sōgō hōritsu shienhō [Comprehensive Legal Support Law], Law No. 74 of 2004. This law created a new Japan Legal Support Center, which engages in five areas of activities in order to support access to legal services. *See* Rokumoto, *supra* note 2, at 33-35; *Implementation of Comprehensive Legal Support by the Japan Legal Support Center*, MINISTRY OF JUSTICE, <http://www.moj.go.jp/ENGLISH/issues/issues02.html> (last visited Aug. 1, 2011). However, legal aid efforts trail those of other industrialized countries and consumers’ use of lawyers in Japan remains quite limited.

accurately describes Japan's newly emerging system, and which model is preferable for the legal profession.

One panelist noted that the planners of the new law school system favored a new philosophy that is broadly similar to that prevailing in the United States. However, this approach represents a significant departure from past practice and was neither broadly discussed nor universally accepted when the reform program was formulated.

The panelists, all of whom are highly successful lawyers, embraced the new broader, competitive approach that underlies the law school system. Several panelists expressly accepted the notion that a law license should be like a "driver's license," that is, it should result in competition among qualified license-holders to fill a wide variety of society's law-related needs rather than creating a small elite with a narrow focus. However, a panelist also expressed the concern that the low bar passage rate under the current law school system, combined with uncertain job prospects, might reduce the attractiveness of the legal profession and thereby lower the overall quality of lawyers.

Reflecting this viewpoint, another panelist characterized the law schools' recent struggles as a new system experiencing birth pains and growing pains. All the panelists accepted the notion that, despite the current difficulties there could be no return to the former "elite" system, even if the result was that legal jobs could no longer be "guaranteed" for newly minted attorneys.

The final topic was the effect of the 2011 Tōhoku earthquake and its aftermath on the Japanese legal profession.<sup>25</sup> A panelist from an American law firm described the considerations behind his firm's decision to announce the temporary closing of its Tokyo office shortly after the earthquake. Although this decision was questioned by some in Japan, public announcements and actions of the U.S. embassy in Tokyo and other institutions encouraged voluntary evacuation from Japan.<sup>26</sup> The actual

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<sup>25</sup> Japan was hit by a magnitude 9.0 earthquake on March 11, 2011. *USGS Updates Magnitude of Japan's 2011 Tohoku Earthquake to 9.0*, U.S. GEOLOGICAL SURVEY (Mar. 14, 2011) [http://www.usgs.gov/newsroom/article.asp?ID=2727&from=rss\\_home](http://www.usgs.gov/newsroom/article.asp?ID=2727&from=rss_home) (last visited Feb. 6, 2012). The earthquake, and the enormous tidal waves it triggered, devastated northern Japan, killing hundreds and doing untold amounts of property damage. Martin Fackler, *Powerful Quake and Tsunami Devastate Northern Japan*, N.Y. TIMES, Mar. 12, 2011, at A1. Recovery in the Tōhoku region, most severely affected by the quake, has been faster than expected, and some feel that the act of rebuilding has given Japan a new sense of direction. *Japan's Post-Quake Economy: Casting About for a Future*, ECONOMIST, May 19, 2011, available at <http://www.economist.com/node/18713566>.

<sup>26</sup> Beginning on March 13, 2011, the United States embassy in Tokyo began issuing a series of travel alerts. On March 16, the embassy announced authorization for the voluntary evacuation of family members of U.S. government personnel and stated that such persons should "consider departing" from Japan. *See*

decision on evacuation was left to individual attorneys, however, many of whom remained and continued to work in Tokyo. The impact of the earthquake on the activities of foreign law firms in Tokyo was expected to be temporary.<sup>27</sup>

Another panelist noted that the biggest uncertainty was the continuing concerns over nuclear reactors in Fukushima.<sup>28</sup> This had an impact on law firm activities, but was not expected to have a long-term effect. The same panelist expressed the belief that reconstruction efforts in the Tōhoku region could help stimulate the Japanese economy and the hope that recent events might also create a more “can-do,” positive mindset both domestically and with respect to trade and investment throughout Asia.

Finally, panelists noted the criticism within Japan of the government’s regulation of the nuclear power industry and the vulnerable position of the Tokyo Electric Power Company (“Tepco”), the operator of the affected nuclear reactors. Questions remain about lawsuits and potential liability, criteria for the operations of other nuclear plants and of any new plants, and, more generally, about public information and discussion concerning the safety and operations of nuclear plants.<sup>29</sup>

All of these topics—both short-term impacts and long-term fundamental issues—were covered as the panelists discussed the Japanese

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EMBASSY OF THE UNITED STATES, TOKYO, JAPAN, TRAVEL WARNING - JAPAN (Mar. 19, 2012), available at <http://japan.usembassy.gov/e/acs/tacs-20110319-travel-warning.html>.

<sup>27</sup> For a survey of a number of large law firms in Tokyo by Japan’s leading business daily, see *Hōmu juyō, gaishikei jimusho ni ankeeto—“shinsai de genshō” wa ichijiteki—chūchōki de wa kakudai kitai no koe* [Demand for Legal Services, A Survey of Foreign Law Firms—“Reduction Due to Earthquake” Is Temporary—A Voice for Anticipation of Expansion for the Medium-Long Term], Nihon Keizai Shinbun, June 20, 2011.

<sup>28</sup> The 2011 Tōhoku earthquake and related tidal waves badly damaged a number of nuclear reactors in Fukushima. In order to protect public health, the areas around the reactors were evacuated, and produce from the region was banned. Efforts to bring the reactors under control and to mitigate the effects of the radiation released by the damaged reactors have been ongoing. See generally, *Japan’s Catastrophes: Nature Strikes Back*, ECONOMIST, Mar. 17, 2011, available at [http://www.economist.com/node/18398748?story\\_id=18398748](http://www.economist.com/node/18398748?story_id=18398748); Hiroko Tabuchi, *Japan Sees Signs of 2 More Meltdowns*, N.Y. TIMES, May 25, 2011, at A10.

<sup>29</sup> As a result of the Fukushima nuclear disaster, there has been a move for stricter oversight of nuclear power. Within a few months, representatives from around thirty countries met in Paris to discuss the future of nuclear power. Matthew Saltmarsh, *Wide Support for Stricter Nuclear Oversight*, N.Y. TIMES, June 8, 2011, at B3. As a result of what are sure to be enormous damages (some estimates place the number at approximately five to ten trillion yen), Tepco’s future is uncertain, though nationalization is seen as one possibility. Taiga Uranaka, *TSE head recommends court-led Tepco restructuring, stock dives*, REUTERS (June 6, 2011), <http://www.reuters.com/article/2011/06/07/us-tecpo-idUSTRE75509I20110607>; Hiroko Tabuchi, *After Nuclear Crisis, Japan’s Biggest Utility Faces Insolvency Risk*, N.Y. TIMES, June 10, 2011, at B3. However, the Diet is currently considering a bill that would shift some of the burden of compensation to the Japanese government in an attempt to prevent the company from collapsing. Hideyuki Ioka & Chiaki Toyoda, *Compensation Bill Aims to Help TEPCO Pay Victims*, DAILY YOMIURI ONLINE (June 16, 2011), <http://www.yomiuri.co.jp/dy/national/T110615005625.htm> (last visited Feb. 6, 2012).

legal profession following the 2008 financial crisis and the Tōhoku earthquake.

II. PROCEEDINGS OF THE PANEL, MAY 9, 2011

MODERATOR:

Bruce Aronson

PANELISTS:

Hisashi Hara, Chairman, Nagashima Ohno & Tsunematsu  
Toru Ishiguro, Partner, Mori Hamada Matsumoto  
Akira Kosugi, Partner, Nishimura & Asahi  
John Roebuck, Partner, Tokyo Office, Jones Day  
Shinichi Sugiyama, Harago & Partners  
Toshiro Ueyanagi, Tokyo Surugadai Law Offices  
Akihiro Wani, Managing Partner, Tokyo Office, Linklaters

A. *Fall in Demand for Legal Services and Law Firms' Responses*

1. *Fall in Demand for Legal Services*

PROFESSOR ARONSON: Following the 2008 financial crisis, external shocks and the poor economy must have affected the demand for legal services. How would you generally describe the effect?

MR. HARA: As a general matter, before 1995 the role of Japanese lawyers was largely limited to cross-border transactions and litigation. Japanese companies did not use lawyers for domestic transactions. Starting around 1995, Japanese companies started using lawyers for their domestic transactions, and that changed the demand for lawyers very drastically. From 1995 until the Lehman shock, the major Japanese law firms probably recorded more than a twenty percent increase in their revenue every year. As a result of the Lehman shock, U.S. and U.K. law firms suffered a decrease in revenues and they initiated very substantial cost reductions, including layoffs of lawyers and staff members, to maintain their profit per partner. The affected lawyers sometimes included partners. But that was not the situation in Japan.

We were also strongly affected by the Lehman shock; however, we could still maintain an increase in revenue at a lower level. At my firm, in 2009, we only had around a five percent increase in revenue compared to the

twenty percent increase before the Lehman shock. So the situation was not terribly bad compared to U.S. or U.K. law firms, partially because we do not have as many lawyers. So we still enjoy a good balance from the viewpoint of lawyers' supply and demand. Another factor is that the Japanese economy suffered badly in the early 1990s after the economic bubble burst. Japanese companies had adjusted and were relatively prepared to overcome the situation at the time of the Lehman shock. As a result, demand in the Japanese legal market decreased, but not to the same extent as in the U.S. and UK.

PROFESSOR ARONSON: What areas of your practice have been affected the most, and what areas have been affected the least? Is there any difference between manufacturing and financial services? Has there been an increase in countercyclical work such as litigation and bankruptcy since the financial crisis?

MR. HARA: There are many differences among practice areas. For example, the capital markets practice was almost dead after the Lehman shock. Among transactions, the U.S. and U.K. markets suffered in the [mergers and acquisitions ("M&A")] area, and Japan did as well. Inbound cross-border M&A transactions, mainly from major U.S. funds coming to Japan to acquire Japanese companies, was very slow or dead. But on the other hand, Japanese companies engaged in strategic M&A transactions so that volume was maintained. Also, the insolvency practice performed better.

MR. ISHIGURO: The areas which were adversely affected at our law firm include structured finance, or the securitization field, and also private equity and other fund-related activities. M&A remained relatively healthy due to the strategic M&A activities of domestic companies, although financial M&A activities were very slow.

Litigation remained largely unaffected by the financial crisis. The general situation in the capital markets was not good, but due to the crisis many large Japanese financial institutions and corporations felt the need to strengthen their balance sheets and entered into large fund-raising transactions including global offerings of equities. The overall number of transactions in the capital markets field decreased drastically, but the total size of the offerings increased dramatically. The field of insolvency was better off. This is a general overview of our firm after the financial crisis in 2008.

PROFESSOR ARONSON: What about the effect of the 2008 financial crisis on foreign law firms in Japan?

MR. WANI: The Lehman shock seriously affected international firms which have global operations, and our firm is mainly focused on cross-border work. As Mr. Hara mentioned, domestic M&A was stable, but the motivation for non-Japanese companies to make investments in Japan was severely affected and that market was almost dead. On the other hand, the motivation of Japanese corporations to engage in overseas M&A activities strengthened. Outbound M&A transactions sound like good deals for lawyers in Tokyo, but in reality such lawyers just play the role of intermediaries and send the cases to law firms overseas. So the situation in Japan continues to be difficult with regard to international transactions. Japanese still have a great amount of money to invest, but people favor simple products. Because of that tendency, transactions continue but they require less advice from lawyers. Japan has special problems with the recent earthquake and nuclear reactor crisis, but even after taking such facts into consideration, Japan is still a bit behind in the demand for legal services compared to other economies. However, I think that we may catch up sometime in the latter half of this year.

PROFESSOR ARONSON: Is there any difference in impact between the large corporate firms and smaller law firms?

MR. UEYANAGI: The impact was less because our firm is smaller than those of other panelists. However, I think smaller firms also suffered from a decrease in the number of matters, especially those related to real estate transactions, since the value of real estate is decreasing. I am trying to think of new practice areas. For example, some Japanese consumers and small enterprises are suffering losses in transactions involving derivative financial products with major banks. Another potential field is employment law. Due to M&A transactions and the restructuring of Japanese small and medium-sized enterprises, more people are losing their jobs and so the number of employment cases is also increasing. However, these cases are somewhat time-consuming and less profitable.

PROFESSOR ARONSON: Have clients become more concerned with the costs of using lawyers? Is there any greater competition among law firms for clients?

MR. KOSUGI: The expansion of Japanese corporate law firms was caused by social changes in Japan over the past two decades. The Western-style legal system permeates Japanese society, and Western-style lawyering was adopted by Japanese law firms starting in the late 1990s. At that time, foreign investors were interested in bargain deals in Japan because of the economic crisis. Such complex deals require more corporate lawyers to conduct legal due diligence and to handle those transactions.

These trends contributed to our firm growing very fast. When I became managing partner fifteen years ago, the number of lawyers at our firm was around forty. Now we have almost five hundred lawyers. As a result, events in 2008 outside of Japan in the United States or Europe, such as the Lehman shock, affected us as well.

Returning to your question on cost consciousness, it is an issue because many of our clients are foreign financial institutions and also some are top-tier Japanese business institutions that are competing globally. Therefore, if something happens to lawyers in the United States or Europe, it will also likely have some effect on us. Now even the top-tier U.S. firms or [the five top-earning U.K.] “Magic Circle” firms are not immune from pressure from their clients to discount rates. That would have been inconceivable ten years ago. It is not unusual that many foreign investors are more cost conscious and that as a result, Japanese financial institutions also learned how to deal with lawyers. Some clients are now quite cost conscious, although it is not as direct for Japanese law firms as for foreign law firms. We are no longer neglecting the demand for cost control from clients. We must demonstrate that our services are of a quality that warrants our fees. In that sense, I think that the cost element has changed and it will never return to the old days.

PROFESSOR ARONSON: So you have lost your immunity from cost considerations. Have smaller firms been able to steal some of these sophisticated clients away from larger firms?

MR. SUGIYAMA: I am a partner in a smaller firm with twenty lawyers. From the late 1990s, there were many cases of securitized loans and invested assets in which the investors were mostly foreign investors from the U.S.A., U.K., or other countries. And this trend still continued even after the Lehman shock, but it is slowing down. Some investor deals went away, but other investors came into the market and the total number of matters is almost the same after the crisis. Cost consciousness is also almost the same. We always had a modest fee since we have a smaller number of lawyers and

staff and a smaller office than other firms, and our practice is not as expensive to maintain. Dealing with assets in Japan does not require a large number of lawyers and staff, so cost performance is very important for clients. After the Lehman, shock I heard that some larger firms tried to get involved in litigation over assets in Japan, but it seems not to have worked because they do not have our breadth of experience in this area and the cost is higher than for smaller law firms.

PROFESSOR ARONSON: Do you view the fall in demand as something that is cyclical and will recover over time, or is there a danger of a permanent loss of demand for legal services?

MR. ROEBUCK: It is a big question so I will give a big answer. I view this decrease in demand, if any, as what might be called transitory rather than permanent. It is not cyclical because I thought Lehman was a one-off event and certainly one hopes that the events of March [the Tōhoku earthquake and its aftermath] were also a one-off event. I take a rather bullish view of the prospects for continued demand for corporate work in Japan for a number of reasons. I think the drivers of legal demand are fundamentally economic growth, corporate investment and profitability, complexity of the legal environment, and, of course, how corporations use lawyers. And I think all of those trends are still pointing in a largely positive direction. Although there are some caveats, as we have already heard, such as a greater cost consciousness, I do expect that what we will see will not be a collapse in demand or net reduction in demand, but rather a change in the composition of demand.

My speculation is that because of a heightened perception of risk in Japan there may be less inbound acquisitions and foreign direct investment [(“FDI”)], perhaps counterbalanced by more alliances and joint ventures as foreign investors continue to seek greater access into Japan. There may also be more strategic outbound FDI and acquisitions, principally by smaller Japanese corporations that have not already successfully moved offshore, as they realize and respond to a heightened perception of Japan risk by Japanese corporations. I think there may be some knock-on increase in demand from the reactions of various corporate players to a heightened perception of Tokyo risk due to over-concentration in Tokyo. So I think this process will be more a change in demand rather than a gross deflation of it.

We have been through this before, after Lehman. We have already heard from other panelists that there was less real estate, less securitizations, and less capital market activities, balanced by more bankruptcy and

insolvency disputes, investigations, anti-trust, and some M&A. We heard that at least through 2010, the law firms continued to grow, and that was true in our case as well. We grew from forty to about sixty lawyers from 2007 to 2010. And I should also add that even though we are a foreign firm, we are largely Japanese in our makeup. When I joined sixteen years ago, we had two lawyers in Tokyo, and we now have sixty. So I am, in conclusion, an optimist concerning a continuing robust increase in demand, at least in the short to medium term. In the long run, one has to wonder how the various structural issues that are present in Japan may play out, but I will leave that to later generations.

## 2. *Law Firms' Response to the Financial Crisis*

PROFESSOR ARONSON: In the United States many large law firms fired attorneys for economic reasons following the financial crisis of 2008. Despite the continuing overall growth of the largest Japanese law firms [see *infra* Appendix A], there presumably were also more attorneys than needed at large firms in Japan. However, our image of Japan suggests that there would be reluctance to fire attorneys. Were there any firings? How did you deal with that situation?

MR. ISHIGURO: Since the effect of the 2008 financial crisis was not as great in Japan as in the United States, the U.K., or Europe, management of the number of lawyers in large law firms such as ours was also not as affected by the crisis as in other areas. Nevertheless, we felt the need to manage the size of the firm and the number of associates because, as Professor Aronson noted, of the rapid growth in the size of the firm throughout the last decade. There was no direct firing of associates or partners in our firm. But we felt it was necessary to monitor and evaluate associates all through the year to gauge their motivation, performance, and ability. And we are engaged in continuing discussions with them about prospects for the future, and that will naturally result in encouraging those who do not have good future prospects that can be shared with our firm to think about alternative professional careers. Fortunately, in Japan, these alternative careers are developing gradually, if slowly. I think it is an interesting situation in our firm, since although there is no direct firing there is managing of the number of associates as a whole.

PROFESSOR ARONSON: How have foreign firms been affected? Despite the continuing overall growth of foreign law firms in Tokyo [see *infra* Appendix

B], foreign firms also presumably had a surplus of attorneys and staff. Did you follow more of a “Japanese-style” response or an “American-” or “English-style” response in dealing with your attorney and staff population following the financial crisis?

MR. WANI: We had a redundancy plan. But the problem with the international firms in Tokyo is that we are just part of global organizations. Once our global management decides to reduce the number of lawyers we must also reduce from the viewpoint of fair treatment, even if it results in a loss of substantial prior investment. In Tokyo at that time, we had three kinds of lawyers: English solicitors, U.S. lawyers, and *bengoshi* [Japanese lawyers]. Based on discussions with my friends at New York law firms, British firms seem to be quite transparent and strict on such matters, and some of my English, American, and Japanese colleagues had to leave. With regard to Japanese lawyers in our Tokyo office, we were told that we should reduce the number of *bengoshi*, too, and we entered into discussions of so-called voluntary retirement, which means that we need to provide greater severance pay than usual.

We had to talk with our weaker performance people and finally they agreed to step down. It is great news that although we expected many of them to have difficulty in finding new positions, they all found new positions within two months after their departure, despite the fact that all law firms were retrenching and there was a very weak lateral market at that time. Mr. Ishiguro noted that the Japanese firms did not do any direct firing. But in fact, there are many people in the lateral market who are looking for new positions because of insecurity with their current firm and some of them say they were encouraged to leave by their current employer. So the situation seems to be quite similar to what took place in the U.S. or in the U.K.

PROFESSOR ARONSON: Have views changed on the long-term strategy, positioning, or ideal size for law firms in Japan as a result of the financial crisis?

I note that at a prior panel discussion four years ago, Nishimura & Asahi was in the midst of a big merger. There was a statement by a panelist from Nishimura & Asahi at that time that this represented the first merger in Japan that was not undertaken to acquire a specialty practice like capital markets, but rather to grow bigger and to add more breadth and depth to handle large matters for clients. Has this strategy been affected at all due to recent events?

MR. KOSUGI: I note that I just resigned as managing partner this January and so my successor will have a free hand to take measures for coping with the new situation, including human resource issues. I think the basic issue is how we deliver value to our clients, and that would be the main driving factor of our strategy.

At the time of the merger in 2007, we retained our so-called Nishimura system, but this style may need to be adjusted in the near future depending upon the circumstances surrounding us. At that time there was surplus demand for our work and we needed human resources, not only from new graduates but also from lawyers who already had enough experience to create value for our clients. That was a major reason that our merger sought primarily to enlarge our pool of talent. And specialty practice areas are being enhanced by that as well. It is not only a matter of quantity, but it also relates to the quality of our legal services.

But the current situation is that we have an increasing number of new law school graduates, some four times more than twenty years ago. So we have changed the style of our recruiting by making decisions on the hiring of new graduates two years before they enter the market. In 2008 to 2009, we recruited more than fifty new graduates each year. But the quality of those new graduates is still a big question. Many say that under the old difficult bar examination, with a passage rate of something like two percent, we were somewhat guaranteed to get good lawyers. Under the new bar examination system, there was supposed to be a passage rate of more than seventy percent in the original plan. But even at the current passage rate of around thirty percent, we have a division of opinion amongst our partners whether our new hires are the same quality as those we had ten years ago. If you have partners or senior associates who are well trained, you can deliver enough value to clients. You can persuade clients that our services are the best services that can be obtained in Japan. But it may now sometimes be difficult to say that about the services of junior associates, and this relates to how you form a team to handle cases. It would be more effective to simply take an energetic partner and some talented senior associates who can handle big matters quickly and efficiently, and create value for our clients. But to continue as an institution, we need to educate and train young associates on the ground. To do that, we must involve young associates in teams with partners and senior associates.

But under the current circumstances, there are some cases where we have difficulty in forming such teams since clients demand more efficient services from us. That means there might be some redundancy of those junior associates and we must deal with this. One way is to reduce the

number of new recruits, but we are not sure of their quality until we work together with them. That may take several years, so we have been trying to develop some kind of career exit system for our associates. If we are not satisfied with an associate, in Japan we cannot say “you are fired.” But keeping young attorneys who do not fit well in our firm it is not good for the associate or for us. So I think that we need to show such associates that there may be a better way for them to pursue their career. We also are reducing the number of new recruits to some extent. Through this combination we must keep a balance among the entire composition of attorneys within the firm. This is not particularly related to the global financial crisis, but rather related to the increasing number of lawyers coming into the market and also to the needs of our clients and how we deliver value to our clients.

*B. Legal Education and the Supply of Lawyers*

PROFESSOR ARONSON: That presents a perfect lead-in for the next topic, which is legal education and the supply of lawyers. Appendix D shows how Japan has been engaged in a very broad and far-reaching set of legal reforms over the past decade. Our focus today, which is also the area of greatest emphasis in Japan, is Pillar Two—and in particular, the expansion of the supply or population of lawyers and the introduction of a new legal educational system. Appendix E shows some of the ambitious goals set in 2001: an increase in the number of new bar passers every year from around 1,000 in 2001 to 3,000 by 2010, and an increase in the total number of lawyers from roughly 17,000 in 2001 to 50,000 by 2018. There have been significant increases in the number of lawyers over the past decade, but the numbers still fall far short of the announced goals. At the same time, we hear stories about new lawyers who cannot find work. Was the plan to increase the number of new lawyers too ambitious and mistaken, or is this just a temporary problem due to the financial crisis?

MR. UEYANAGI: I should point out that last year we had 1,800 new lawyers. As of December 2010, 214 of them did not register with the Japan Federation of Bar Associations [“JFBA”]. In other words, these 200-plus people could not find a legal job as of last December. One might therefore say there are too many lawyers, or at least too many new lawyers. However, yesterday the JFBA announced that as of April 25, [2011,] sixty-four people had not registered. In other words, 150 people have registered with the bar in the past four or five months. They presumably found law firm jobs or

chose to establish their own solo practices. On the other hand, in the Sendai area, where they were greatly affected by the earthquake and tsunami, there are almost 300 lawyers in the Sendai City Bar Association. All of the Sendai bar members are offering free legal consultation to the affected victims. To provide free legal consultation once a week, they drive one or two hours to the seashore. Even in Iwate, they have eighty lawyers and all of the lawyers are volunteering to drive three or four hours to provide legal consultation. So it is my observation that Japan needs more lawyers, at least in such rural areas.

PROFESSOR ARONSON: New graduate-level professional law schools were created in Japan in 2004. The original idea was to attract a broad range of students with different backgrounds and to introduce both U.S.-style professional legal education with small classes using the Socratic method and a broad-based legal education, not focused on the bar exam, that would include new areas such as intellectual property. Many people seem to feel that the law schools have not achieved their goal. What happened?

MR. HARA: It is a very difficult question. The Japanese law school system was introduced without careful consideration. It moved very quickly, and one of the basic issues was that the government announced that under the new law school system, the bar examination passage rate would be seventy percent. And also under the law school system, law students with an undergraduate law background have a two-year program, while those without a law background must attend a three-year program. Many people who work at companies might think that if the passage rate is seventy percent, it may be worth the challenge. In the first and second year of the new law schools' operation, many "salarymen" [corporate managers] without a legal background entered law school. But in fact, the first-year passing rate was not that high and the actual result was discouraging [see *infra* Appendix C]. As a result, people who work at companies lost interest in going to law school and the quality level of students went down. The plan for the law schools was created by the Ministry of Justice and the Supreme Court, but actual law school administration is conducted by the Ministry of Education[, Culture, Sports, Science and Technology]. The Ministry of Education permitted the opening of many law schools, and even at the initial stage there were a large total number of enrolled students, with only a fixed number who could pass the bar. As a result, the bar passage rate was not near seventy percent. So it was poor administration or a lack of coordination that led to a bad result.

This created many problems. Some law schools have only one or two students who pass the bar examination. And those law schools cannot recruit good students and may not survive. Two years ago the government realized that the total number of law school students was too large. And in my view, good law schools like the University of Tokyo should have maintained their current number of students and the worst performing law schools should disappear. However, the Ministry of Education announced that throughout Japan all law schools should decrease the number of law students by ten percent or twenty percent. The problem is that the Ministry of Education is not an expert about the legal profession but it nevertheless controls law school administration, and it sometimes makes serious mistakes. So except for the few excellent law schools, almost all law schools are very focused on how many of their students can pass the bar. However, they have a low bar passage rate and have trouble attracting excellent new students, which creates a vicious circle. It is also difficult now to create creative and challenging classes that are unrelated to the bar examination. So at regional universities it is not easy for a young college student to enter law school.

PROFESSOR ARONSON: What should be done to fix the law school system?

MR. SUGIYAMA: As Mr. Hara described, the law schools in Japan are controlled or operated by the Ministry of Education, not by the Supreme Court or by the Ministry of Justice. On the other hand, the bar examination is controlled by an independent committee for the bar examination which is actually controlled by the Ministry of Justice. So there are conflicts between the government agencies. We left too many matters undecided when we actually launched the law school system in Japan.

The basic issue that we first need to revisit is whether we need to change the image or the conception of lawyers in Japan. The traditional image of the *bengoshi* is that they are the elite with the most difficult examination among a number of law-related qualifications in Japan. Should we change this or not? If the answer is yes, we must do many things, including not only the establishment of law schools, but also seriously giving consideration to abolishing universities' undergraduate law departments. Since we continue to have undergraduate law departments in addition to law schools, it is a double system. Many smart students choose to seek employment at a Japanese corporation after they complete their undergraduate education. So demand from companies is mostly satisfied by the graduates from the undergraduate law departments, not by graduates

from law schools. That is a problem. And secondly, we must seriously discuss whether to have unified qualifications for all law-related professions. For example, in Japan we have *benrishi* [intellectual property law professionals], *zeirishi* [tax law professionals] and other categories that would all be lawyers in the United States. But in Japan each category has its own different qualifications and is controlled by a different administrative agency. So we need to seriously discuss abolishing or combining these categories. Unless we can achieve that, the law school system will not work.

PROFESSOR ARONSON: So we need to attack the issue more broadly. In the United States, law schools have faced serious issues over the past few years, as the number of students has increased and they have assumed student loans and higher debt levels to attend law school, but the job prospects are substantially diminished. This has caused some people to argue that “going to law school doesn’t pay” and bright young people should pursue other goals. What is the situation in Japan? Have law schools been losing popularity over the past few years?

MR. KOSUGI: The general motivation for those who would like to enter law school has been weakened by events over the past several years. The passage rate is not what was promised by the government. If this happened in the United States, there would be a large class action suit against the government. That is not the case in Japan. The design of the law schools may be too idealistic to some extent, but I do not think that we can go back to the old system, so we need to live with the current situation. And the problem is the level of demand for legal services that exists today. I think that the quickest fix might be to create more plaintiffs’ lawyers so that there is more litigation in Japan. But judges are not lenient or generous in granting large damage awards, and that is a hurdle to the plaintiffs’ lawyers in Japan. As Mr. Sugiyama said, once attorneys in Japan were an elite profession, but I do not think that will be the case any longer. So as an increasing number of lawyers enter the market, the easiest thing is to grant a permit to anyone who can pass the minimum qualifications—like a driver’s license.

The other problem is that the clientele in Japan who were underserved were low-income individuals and corporations. Corporate clients need sophisticated legal services and low-income individuals need day-to-day care, but for the latter legal aid is not well-established in Japan. That is a problem since more than ninety percent of Japanese lawyers are either solo practitioners or in very small firms of less than ten lawyers. In fact, the

major firms like those of some of the panelists are an extreme minority in the bar.

So how we can deal with this situation? There is no easy, reasonable solution. Businesses are trying to recruit law school graduates to some extent. But they have their own problems, due to a company career system that is focused on internal training within their organizations rather than on professional qualifications. That is another hurdle we need to overcome. Probably businesses expect us, the large corporate law firms, to educate and train some of the new law school graduates, so that after four or five years of experience they are better suited for providing legal services within corporate organizations. Our hope is that the number of lawyers within companies will increase, but that depends on the mindset of business management with regard to risk and how to cope with it in doing business.

PROFESSOR ARONSON: Mr. Kosugi and Mr. Sugiyama have both touched upon a very fundamental issue, the philosophy behind the bar exam and the legal education system, and I would like to address it more directly. In the United States, the basic purpose of the bar exam and legal education is to certify that people who are going to be lawyers have the minimal level of knowledge required to be competent attorneys. We do not attempt to directly regulate or limit their numbers, as they will all presumably compete to fill a variety of roles in society. The comment was made that in Japan, lawyers do not fill as many roles. The traditional approach in Japan has been quite the opposite, with a strong focus on limiting the number of lawyers to produce a very small elite. And there are other people with legal training, as Mr. Sugiyama mentioned, such as undergraduate law majors who will fill other roles that might be filled by lawyers in the United States. With the new law school system and the increase in the supply of lawyers in Japan, it seems that to some degree Japan is moving away from its traditional model. But are you prepared to embrace something like the U.S. model, where the number of lawyers is no longer regulated and the system simply certifies minimal competence, or are you still reluctant to do that? How would you describe the Japanese system today, and what kind of system do you think it should be in the future?

MR. ISHIGURO: It is a very good, but difficult, question. I think the publicly announced idea was to secure the minimum competence of lawyers and let them meet a variety of societal demands. However, I am afraid that when we introduced the new law school system in Japan, there really was no commonly shared philosophy among lawyers or society as a whole.

Following the introduction of the new system, the passage rate increased compared to the old system, even if it was not as much as initially promised. We have many more new entrants into the profession. But Japanese citizens still do not consult lawyers in their daily lives as U.S. citizens do, and they do not care much about the legal system. I think the quality level for new attorneys is about the same as under the old system, at least for the top ten percent of law school graduates. But I am fearful that the profession itself will lose attractiveness, as the motivation for talented young people to select the legal profession as their career will decrease. This would create a major problem for Japanese society. It is not practically and realistically possible for us to return to the old system, so I think we should consider how to make the law school system, as well as the lawyering system, attractive to young people in Japan.

MR. WANI: The new Japanese system is quite strict in that if you fail the bar exam three times, you cannot take it again unless you re-enter law school—a so-called “three strikes and you’re out” system. To our surprise, at the law school where I lecture, we saw graduates who failed the bar three times and wish to re-enter law school. Also, the number of academicians has fallen because the Ministry of Education recommended a strange rule that to be a law professor, you must graduate from law school and then enter a separate graduate program for law. Quite recently, the University of Tokyo relaxed this regulation. In the past, excellent law professors entered into academic life right after university graduation in their early twenties. But nowadays they must wait until the age of twenty-five. This situation should be improved.

I agree with Mr. Kosugi’s idea that lawyer certification should be like a driver’s license. In the past, I was told by those who passed the bar exam, “our life is now like retirement, our future is guaranteed, and there is no need to work hard.” This is no longer the case. I think that the increase of lawyers is necessary, but it is also important to monitor for malpractice and to try to keep the quality of professional practice as close to the current level as possible. Although lawyers are professionals, we do not stick to the old image of the legal profession. I think that the American style of lawyers could work in Japanese society. When we introduced the new system, we thought that after graduation and the bar exam, there is no need for additional training under the control of the Supreme Court at the Legal Research and Training Institute. But the Supreme Court insisted on keeping such training, so the current system is duplicative. The question is what

should we do to make legal training efficient and make the market more competitive?

MR. ROEBUCK: Japan may not be unique, but it is certainly among a very small number of countries that have effectuated such a deep and dramatic reform to legal education and licensing in recent years. I think it is almost unprecedented and revolutionary. I have been practicing as a lawyer in the United States for thirty-six years now, and frankly not much has changed there in these areas. In fact, compared with Japan, the number of lawyers produced annually has not changed very much in the United States. When I graduated from law school in 1975, there were some thirty thousand lawyers being created annually. It is now forty to fifty thousand. It has not been such a large increase in percentage terms. Back then, Harvard Law School already had classes of over five hundred students. We have grown a bit, but that is pretty much where we are today.

The U.S. legal profession has enjoyed an incredible run of prosperity over that period of time. The reason is that it was actually the U.S. that was limiting the number of lawyers, although not through any legal control. If you look at the results, you will see that in the U.S. the economy grew faster than the number of lawyers and certainly corporations and their profitability grew faster than the number of lawyers. There is also globalization and other new sources of demand. I like to poke fun at some of my colleagues in law offices in Japan, because I think there is a perception that, in Japan, lawyers are a very scarce commodity and in the United States they are a dime a dozen. But the reality is that over the last thirty years, at least highly-qualified, corporate U.S. lawyers have been very scarce, and it has been a very favorable market for them. That has been true in Japan until now, of course. And Japan has accomplished, to its credit, a thoroughgoing, deep reform of legal education and licensing. I think it was necessary for a number of reasons that have been mentioned, and it cannot be reversed. However, because it was so deep, and because, at least as articulated originally by those who designed it, it was philosophically different than what had come before, we are now witnessing significant birth pains and growing pains. I personally think that in the midst of this chaos, the law schools have done a reasonably good job. It is not the law schools that are failing or falling down, it is those who designed the system and those who administer the system. They continue to fail. If there is fault, I believe that is where the fault lies.

C. *Effects of the 2011 Tōhoku Earthquake and its Aftermath*

PROFESSOR ARONSON: In the immediate aftermath of the Tōhoku earthquake, a number of foreign law firms evacuated their personnel out of Tokyo, including Jones Day. What was the reasoning behind this action? Was there a greater threat perception in law firms' head offices outside of Japan than in Tokyo?

MR. ROEBUCK: As you know, that was a difficult moment in the lives of many people and, of course, it was a difficult situation for our law firm. We are the Tokyo office of a global law firm. Although our attorney population is largely Japanese and our staff is nearly entirely Japanese, we have a fairly large component of foreign attorneys who are not Japanese nationals. Therefore, all of those interest groups have to be taken into account as the law firm is managed. What happened is that a decision was made jointly by firm management in the United States and local management of the Tokyo office that the office should be closed temporarily in light of a perception of risk, both actual and potential, to the health and safety of Tokyo office personnel. It was done in a way that protected everyone, and everyone was given the option to relocate to the Kansai area. Many people in the office did relocate, but also many people did not. Although the office was closed temporarily, about half of the people actually stayed in Tokyo and worked in the office during this time, and throughout we kept the office going on a kind of virtual basis. That period of temporary closure lasted about seven or eight days.

One may question that decision in retrospect, and there has been some criticism in Japan about the behavior of some foreigners and foreign firms. I think that the decision our firm made was based on information that was obtainable at the time through the media and also on announcements by some governments. Some of you may know, for example, that the United States embassy offered to evacuate all embassy families, although not the employees themselves. A very large percentage of those people did evacuate, and my information is that a large number of them remain outside of Japan to this day. I was told a couple of weeks ago, for example, that the enrollment in the American elementary school was down about thirty percent. Some of you may know that the U.S. embassy has a website providing information about the events, and recommendations and suggestions about what to do. In the early days, that website contained a statement that U.S. nationals should consider relocating out of Japan. Some

of you may be aware that some European countries advised all of their nationals, wherever they were located, to leave Japan.

One may question the wisdom or the properness of some of those statements, but the fact is they happened. Our management in the United States, which needs to consider among other things, the health and safety of personnel, took those statements into account in making its decision. Although there will inevitably be a range of reactions and individual circumstances and opinions about such matters, that was the decision that this law firm made. But it was done in a balanced and structured way to provide equality of treatment and support to all employees—not just foreign employees or the attorneys, but to all employees—and in a way that protected client interests. And I think it was generally appreciated by the attorneys and the staff, but I will acknowledge that we did receive some questions from our clients.

PROFESSOR ARONSON: As some of you may know, the running joke in Tokyo was that the Japanese word for foreigner is “*gaijin*” and that the foreigners who fled from danger were “*flyjin*.”

How were Japanese law firms affected? Do you think that this will have a short-term impact that will not affect your long-term operations?

MR. HARA: We must distinguish the nuclear radiation problem from the earthquake and tsunami problem. At this moment, attention is focused on the radiation problem rather than on the earthquake and tsunami. After the earthquake, many deals that were near closing were suspended or postponed, but not cancelled. Foreign investors wanted to watch the situation of the Japanese market. Japanese lawyers were operating in Tokyo. They were not worried about radiation as it is sufficiently far away. We have suffered from a shortage in the electricity supply. In terms of operations, Japanese law firms are fine, and none of them moved to Osaka. However, in terms of practice, foreign investment may have suffered, and that may continue until some solution or some direction becomes clear for resolving the nuclear problem. I do not think it will be very long, perhaps one year or so.

In Japan, consumer prices have not changed during the last twenty years—except for legal fees—and that means that domestic demand never changed. But in order to reconstruct the affected areas we will need to create five or six new cities, and that reconstruction effort will greatly stimulate the Japanese domestic market. So in the long run, that may have a positive effect on the Japanese economy. It may also result in a positive mindset, not only in the domestic market, but also in terms of more

aggressive investment in Asian countries. This disaster has been a tragedy, however it will also lead to a positive change in the Japanese people's mindset over the mid- or long-term. For that reason, it may also have a beneficial effect on legal practice.

PROFESSOR ARONSON: One issue is the regulatory side. Just yesterday there was a front-page article in the *New York Times* about how the U.S. Nuclear Regulatory Commission is not really capable of effectively regulating the nuclear industry. Is there a similar discussion in Japan concerning regulation of the nuclear industry?

MR. SUGIYAMA: Yes, we have similar discussions, and some argue that the close relationship among electric and oil companies and the ministries is a problem. But in addition to this, it is also discussed that the anti-nuclear power movement and local communities' objections to nuclear plants have had the adverse effect of concentrating nuclear reactors and making plants more crowded. Another adverse effect is that the companies and ministries avoided serious discussion of, and concrete plans for dealing with, the worst case scenario, and instead merely propagated a myth of safety. All told, it is a failure of Japanese society.

PROFESSOR ARONSON: The operator of the nuclear plants, the Tokyo Electric Power Company, or Tepco, has also come under severe criticism. If a client asked you about the lessons to be learned from Tepco's response to the crisis, what would you say?

MR. KOSUGI: Again, I think that if this were in the United States, the situation would be different. But we already have received a number of questions about the legal analysis of this event, particularly in light of a Japanese special law on nuclear plant damages which calls for strict liability and unlimited liability. There are a number of issues which have not been tried before in court; there is only one similar court case about ten years ago, which was on a small scale. The amount of damages in this case would be huge. The government is required to provide necessary support to Tepco under that law. But the details of such support must be determined by a resolution of the National Diet. In that sense, I do not know if it is more of a political problem, although I believe that there are quite a few legal issues. We are forming a team to address any questions by clients relating to this incident. The big difference compared to [British Petroleum's 2010 Deepwater Horizon] oil spill situation is that in Japan, a natural disaster

caused the damage. Another issue to be considered is how to prepare for the safety and security of nuclear plants, but there is no reliable legal guidance for that problem. As lawyers we would be interested in being involved in any litigation that is brought to court. But many of our clients are probably on the defendants' side, so unless a very aggressive plaintiffs' lawyer appears, there is unlikely to be litigation. There is some demand for legal services related to this incident, but we are waiting for the development of events.

PROFESSOR ARONSON: Let us ask an aggressive plaintiffs' lawyer what he thinks should be done.

MR. UEYANAGI: Some of my clients are non-profit organizations and they are asking me about the possibility of filing shareholder litigation against Tepco and also an injunction against the Fukushima City government to protect children while they are playing on the playground. Tepco has had shareholder litigation, and some groups have been warning about the danger of tsunamis. I think Japanese corporations should have heard—and should make greater efforts to hear—such minority voices. On the other hand, such minority groups should rethink their own organization and strategies, since so far they have unfortunately been largely unsuccessful in getting attention from the general public or in effecting any change in politics or government policy.

### III. CONCLUSION

Japanese society and, in particular, its legal profession, are coping with the aftermath of both the 2008 financial crisis and the March 2011 Tōhoku earthquake and related events. Among the panelists, both are seen as “one-time” events that have temporarily reduced the demand for legal services in Japan, but will not have a significant long-term impact.

Despite a lesser economic impact on the legal profession in Japan than in the United States or the United Kingdom, the financial crisis of 2008 nevertheless acted as a catalyst to raise fundamental issues for both Japanese law firms and the new Japanese law schools—issues similar to those being debated in the United States. The period from 2000 to 2007 of high growth in the demand for legal services, law firm expansion, and confidence in undertaking ambitious, broad-ranging reforms of the legal profession has given way to a new period characterized by economic headwinds, rethinking, and adjustment.

The panelists' discussion of the reaction of the Japanese legal profession to recent events contained a number of highly significant points for all three of the principal topics: the fall in demand for legal services following the 2008 financial crisis and law firms' response, legal education and the supply of lawyers, and the effect of the 2011 Tōhoku earthquake and its aftermath.

With respect to big law firms' reaction to a period of lower growth, it is perhaps unsurprising that Japanese firms would "manage" associates more carefully rather than engage in direct firing. Large firms will continue to hire new classes of lawyers who will be actively monitored and managed.

Whereas the panel discussion four years ago highlighted changes in law firm practices under which it would no longer be possible for the majority of associates to make partner, this panel discussion suggested that new associates would be weeded out and might not be able to remain as associates. It sparked disagreement among the panelists over the question of whether big law firm practices in managing associates following the 2008 financial crisis were, in fact, significantly different from firings and layoffs experienced in the United States and the United Kingdom. This may also represent the permanent adoption of more aggressive management practices normally associated with U.S. and U.K. firms, as Japanese firms respond to clients' concerns about costs and their own concerns about lawyer quality under the new law school system.

Perhaps the most striking and potentially significant topic was the new system of legal education and the increasing number of lawyers. The panelists explicitly embraced a new and different vision of the role of lawyers in Japan. Rather than the traditional small elite with a narrow societal role, perhaps analogous to barristers in England, the new model for the Japanese bar would be much closer to practices associated with the United States: a bar exam system that certifies minimal competence for attorneys and permits the admission of large numbers of them, followed by competition among lawyers to fill a wide range of law-related roles in society.

The adoption of this new model of the legal profession is hindered by a number of compromises included in the current Japanese system, especially the continuation of the role of powerful competitors for law-related jobs such as licensed tax and intellectual property law specialists. However, the panelists were unanimous in their view that the basic course has been set, and that despite "growing pains," there could be no turning back to the prior system.

Panelists' views on the recent events surrounding the Tōhoku earthquake were necessarily more speculative. They did not see a long-term impact on the legal profession. Rather, the most significant issues appear to involve the intersection between law and broader policy issues. Specifically, under what conditions can Japan, a country with virtually no natural resources, continue its emphasis on nuclear power in the face of safety, disclosure, and liability issues?

As noted in the panel discussion four years ago, the Japanese legal profession has emerged from its insularity and limited social role. This panel discussion confirms that reform efforts in the direction of a larger number of lawyers and a greater social role for attorneys are likely to continue, despite recent challenging circumstances that might prompt some to long for the "good old days" when lawyers in Japan were a small elite and passage of the bar exam assured a comfortable life. If anything, recent events have prompted even stronger "American-style" practices at large law firms and have highlighted some of the costs to lawyers and law firms of adopting a broader model for the legal profession. However, by all indications the system is in place, the course has been set, and the voyage across uncharted waters will continue.

## APPENDIX A

## LARGEST LAW FIRMS IN JAPAN\*

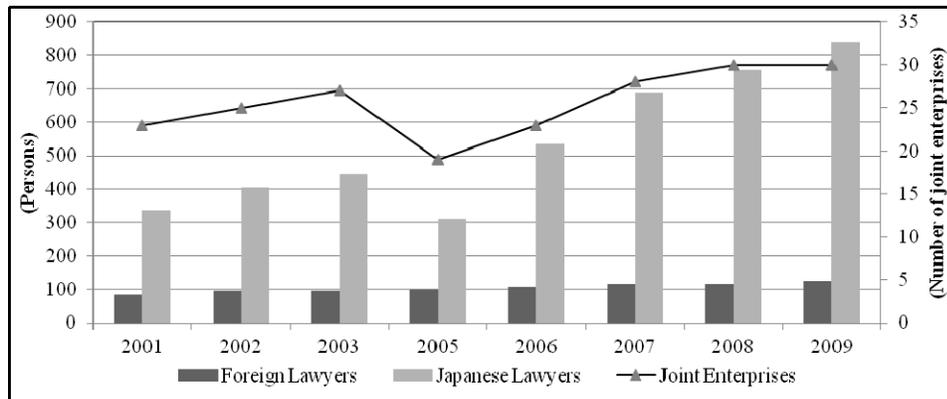
1985	1998	2001	2005	2009
26	Nishimura & Partners 63	Nagashima Ohno & Tsunematsu 149	Mori Hamada Matsumoto 198	Nishimura & Asahi 430
25	Nagashima & Ohno 62	Nishimura & Partners 112	Nagashima Ohno & Tsunematsu 197	Nagashima Ohno & Tsunematsu 320
23	Mori Sogo 62	Mori Sogo 94	Nishimura & Partners 183	Mori Hamada Matsumoto 274
20	Anderson Mori 50	Anderson Mori 91	Anderson Mori & Tomotsune 179	Anderson Mori & Tomotsune 260
20	Asahi 48	Asahi 79	Asahi Koma 140	TMI 210
20	Mitsui Yasuda 36	Mitsui Yasuda 65	TMI 87	Tokyo Aoyama Aoki Koma 113
17	TMI 33	Tokyo Aoyama Aoki 58	Tokyo Aoyama Aoki 68	City Yuwa 102
17	Matsuo Sogo 29	TMI 54	Ohebashi 64	Ohebashi 90
16	Iwata Godo 28	Hamada Matsumoto 41	City Yuwa 64	
16	Ohebashi 27	Ohebashi 40		

\* 39 JIYŪ 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 JIYŪ TO SEIGI 34, 35 (Nov. 1998); ILS PUBLICATIONS, INC., INTERNATIONAL LAWYERS 2002, 246-47 (2002); NIHON KEIZAI SHINBUN, Feb. 25, 2005, at 1; JAPAN FED'N OF BAR ASS'NS, 2009 WHITE PAPER ON ATTORNEYS 16 (2009), available at <http://www.nichibenren.or.jp/library/en/about/data/WhitePaper2009.pdf>.

NOTE 1: Numbers indicate number of Japanese lawyers (*bengoshi*) in each firm.

NOTE 2: No names of firms are available for 1985.

## APPENDIX B

FOREIGN LAW FIRMS AND LAWYERS IN JAPAN:  
AFFILIATION BY JOINT ENTERPRISE\*

	2001	2002	2003	2005	2006	2007	2008	2009
<b>FOREIGN LAWYERS</b>	83	95	95	99	109	116	116	124 81 operate joint enterprises 43 employed by others
<b>JAPANESE LAWYERS</b>	338	403	446	312	536	688	755	839 175 operate joint enterprises 664 employed by others
<b>JOINT ENTERPRISES</b>	23	25	27	19	23	28	30	30

\* FOREIGN LAWYER SYSTEM STUDY GROUP, REPORT attach. 8 (Dec. 24, 2009), available at <http://www.moj.go.jp/content/000051408.pdf>.

- NOTE 1: No data are available for 2004.
- NOTE 2: “Joint Enterprises” through 2003 include only “specified joint enterprises” (those operating under statutory practice restrictions that were lifted in 2003); starting in 2005, numbers include unrestricted “foreign law joint enterprises.”
- NOTE 3: “Japanese Lawyers” are those operating joint enterprises and those employed by Japanese lawyers or foreign lawyers operating joint enterprises.
- NOTE 4: “Foreign Lawyers” are registered foreign lawyers who operate joint enterprises or who are employed by Japanese lawyers or foreign lawyers operating joint enterprises.

## APPENDIX C

## BAR PASSAGE RATES UNDER THE LAW SCHOOL SYSTEM\*

	2006	2007	2007	2009
<b>STUDENTS WITH LAW BACKGROUND</b>				
Number Taking Bar Exam	2091	2641	3002	3274
Number Passing Bar Exam	1009	1215	1331	1266
Passage Rate	48.25%	46.01%	44.34%	38.67%
<b>STUDENTS WITHOUT LAW BACKGROUND</b>				
Number Taking Bar Exam	0	1966	3259	4118
Number Passed	0	636	734	777
Passage Rate	0.00%	32.35%	22.52%	18.87%
<b>OVERALL BAR PASSAGE RATE</b>	48.30%	40.20%	33.00%	27.60%

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\* HOSŌ YŌSEI SEIDO NI KAN SURU KENTŌ WAAKINGU CHIIMU [INVESTIGATION WORKING TEAM FOR THE TRAINING SYSTEM FOR LEGAL PROFESSIONALS], HOSŌ YŌSEI SEIDO NI KAN SURU KENTŌ WAAKINGU CHIIMU NI OKERU KENTŌ KEKKA (TORIMATOME) [SHIRYO] [INVESTIGATION RESULT OF THE INVESTIGATION WORKING TEAM FOR THE TRAINING SYSTEM FOR LEGAL PROFESSIONALS (SUMMARY) [APPENDICES], Appendix 11 (heisei 22 nen 7 gatsu 6 nichi) [July 6, 2010].

NOTE 1: “Students with Law Background” refers to law school students/graduates with a background in law from their undergraduate studies (whether or not they were law majors) who qualify for a shortened two-year course in law school (*kishūsha*).

NOTE 2: “Students Without Law Background” refers to law school students/graduates without a qualifying law background who take the regular three-year law school course (*mishūsha*).

## APPENDIX D

OUTLINE OF LEGAL REFORM IN JAPAN:  
THE “THREE PILLARS” OF LEGAL REFORM

## PILLAR ONE:

## THE JUSTICE SYSTEM – “RESPONDING TO PUBLIC EXPECTATIONS”

<i>Reform of the Civil Justice System</i>
<ul style="list-style-type: none"> <li>• Comprehensive Response to Intellectual Property Cases <ul style="list-style-type: none"> <li>○ Establishment of “patent court” divisions in Tokyo and Osaka</li> <li>○ Reforms regarding expert witnesses</li> </ul> </li> <li>• Improving Access to Justice <ul style="list-style-type: none"> <li>○ Reducing costs</li> <li>○ Making courts more accessible <ul style="list-style-type: none"> <li>▪ Geographical distribution of courts</li> <li>▪ Introduction of information technology during various phases of a court’s work</li> </ul> </li> <li>○ Strengthening the Civil Legal Aid system</li> <li>○ Considering implementation of a plaintiff class action system</li> </ul> </li> </ul>
<i>Reform of the Criminal Justice System</i>
<ul style="list-style-type: none"> <li>• Establishing a Public Defense System for Defendants</li> </ul>
<i>Accommodating Internationalization</i>

## PILLAR TWO:

## THE LEGAL PROFESSION – “SUPPORTING THE JUSTICE SYSTEM”

<i>Expand the Population of Lawyers</i>
<ul style="list-style-type: none"> <li>• Increase Supply of Lawyers</li> <li>• Secure Lawyers from Diverse Backgrounds</li> </ul>
<i>Reform the Legal Education System</i>
<ul style="list-style-type: none"> <li>• Introduction of Law Schools</li> <li>• New Bar Exam Reflecting New Legal Education System</li> </ul>
<i>Reforming the Role of Lawyers</i>
<ul style="list-style-type: none"> <li>• Social Responsibility of Lawyers: “Doctors for the People’s Social Lives”</li> <li>• Expanding Access to Lawyers <ul style="list-style-type: none"> <li>○ Make information about fees, past performance, expertise, etc. readily available</li> </ul> </li> <li>• Expanding the Expertise of Lawyers <ul style="list-style-type: none"> <li>○ Continuing education</li> <li>○ Promote cooperation with foreign firms</li> </ul> </li> </ul>

PILLAR THREE:  
THE PEOPLE – “POPULAR PARTICIPATION IN THE LEGAL SYSTEM”

<i>Increased Participation</i>
<ul style="list-style-type: none"><li>• Introduction of the “Lay Judge” (Jury) System</li><li>• Securing Conciliators from Diverse Backgrounds</li><li>• Consideration of Public Opinion in Judicial Appointments and Nominations</li></ul>
<i>Making the Legal System More Readily Understandable to the General Public</i>
<i>Improving Education of the General Public Regarding the Justice System</i>

## APPENDIX E

## CHRONOLOGY OF LEGAL REFORM IN JAPAN

1999	Training period at the Legal Research and Training Institute (“LRTI”) shortened from two years to eighteen months.
1999	Number of successful bar examinees reaches 1,000 for the first time.
Jul. 1999	Justice System Reform Council established to examine the justice system.
2000	Population of registered Japanese lawyers is 17,126
2001	990 (2.5%) examinees pass the bar exam.
Jun. 2001	The Justice System Reform Council releases its recommendations for reforms to the justice system. <ul style="list-style-type: none"> <li>• Graduates of new law schools are intended to have a 70-80% bar passage rate.</li> <li>• Goal of at least 1,500 successful bar examinees annually by 2004 under the old bar examination.</li> <li>• Goal of at least 3,000 successful bar examinees annually by 2010 under the new bar examination (with the goal of having phased out the old bar examination).</li> <li>• Goal of 50,000 practicing lawyers by 2018.</li> </ul>
Apr. 2004	Sixty-eight American-style law schools begin operation. Of 72,800 applicants, 2,792 are admitted.
May 2004	The Diet passes the law instating the <i>Saiban-in</i> (lay judge) system.
2005	Amendments to the Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers come in to effect, permitting partnerships between Japanese and foreign lawyers and allowing foreign firms to hire Japanese lawyers.
2006	The new bar exam is offered for the first time. In total, 1,009 (48.3%) examinees pass the new bar exam. The old bar exam continues to be offered.
2006	Training period at the LRTI further shortened to one year.
Apr. 2006	There are now seventy-four law schools in operation.
May 2009	The <i>Saiban-in</i> system is implemented. The first trial is held in August 2009.
2010	2,074 (25.4%) examinees pass the new bar exam.
Dec. 2010	Population of registered Japanese lawyers is 28,868.
2011	Population of Japanese lawyers exceeded 30,000.
2011	The old bar exam is scheduled to be phased out after this year’s examination.