

Fordham International Law Journal

Volume 13, Issue 3

1989

Article 6

R. Wohl, S. Chemtob, G. Fukushima, Practice by Foreign Lawyers in Japan

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Abstract

Book Review: Richard H. Wohl, Stuart M. Chemtob, and Glen S. Fukushima have put together a very useful volume under the auspices of the American Bar Association Section of International Law & Practice, entitled Practice by Foreign Lawyers in Japan.

BOOK REVIEW

PRACTICE BY FOREIGN LAWYERS IN JAPAN. By R. Wohl, S. Chemtob, & G. Fukushima. Washington D.C.: American Bar Association, 1989. vi + 336 pp. ISBN 0-89707-476-9. US\$90.00.†

*Reviewed by Patrick S. Kenadjian**

Richard H. Wohl, Stuart M. Chemtob, and Glen S. Fukushima have put together a very useful volume under the auspices of the American Bar Association Section of International Law & Practice, entitled *Practice by Foreign Lawyers in Japan*.¹ The book belongs on the bookshelf of anyone with a law office in Tokyo (a rather small group to which this reviewer happens to belong) or anyone who is considering opening one (a somewhat larger group, but still not quite large enough to make this volume a best seller). It should also be of considerable interest to anyone who has dealings with the Japanese government or negotiations with Japanese parties. Many books are being touted these days as giving the reader insight on "the Japanese" through examination of everything from baseball to zen Buddhism. For a lawyer who would like a short introduction to how trade negotiations work, why some issues that have been ostensibly resolved by this process do not seem to stay solved, and what it is like to do business in Japan, as applied to the practice of law, this book would be a good place to start. The book also has an added degree of topicality because the "lawyer's issue" was put back on the U.S. Trade Representative's agenda in 1989, and exploratory talks have already been held. This book will give the reader a good idea why this renewal of intergovernmental dialogue was deemed

† US\$70.00 for members of the ABA's Section of International Law.

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1. R. WOHL, S. CHEMTOB, & C. FUKUSHIMA, PRACTICE BY FOREIGN LAWYERS IN JAPAN (1989) [hereinafter PRACTICE BY FOREIGN LAWYERS IN JAPAN].

necessary less than four years after the two governments first reached an understanding in mid-1986.

The authors were the three principal U.S. participants in the first round of negotiations between the Japanese and U.S. governments over the admission of foreign lawyers to practice in Japan. Glen Fukushima was until recently the Deputy Assistant U.S. Trade Representative for Japan and China in the Office of the United States Trade Representative. Stuart Chemtob is Special Counsel for International Trade in the Antitrust Division of the Department of Justice. Richard Wohl was at the time of the U.S.-Japan negotiations Attorney-Adviser for East Asian and Pacific Affairs in the Office of the Legal Adviser at the State Department and is now in private practice.

The book itself contains 85 pages of text and almost 250 pages of exhibits, including translations of the relevant Japanese statutes, regulations of the Japanese Ministry of Justice (the "MOJ"), and rules of the Japan Federation of Bar Associations (the "JFBA"). Many of these translations are not available elsewhere and are nowhere else as conveniently collected. The exhibits also include the forms prescribed by the MOJ for applications under the foreign lawyers law as well as the MOJ's manual for approval of these applications. While there is some evidence that the MOJ's standards on certain issues are evolving, the manual and the forms are an excellent resource for anyone contemplating an application and should be studied carefully before engaging Japanese counsel to help with the application and qualification process.

The text can be divided into three parts. The first, consisting of Chapters I through III, will be of most interest to the general reader. It provides an outline of the negotiations that led to the current compromise, some fascinating background on the legal profession in Japan (and how foreign lawyers were expected to fit into it), and a general overview of the current system under which foreign lawyers may operate in Japan. The second part, encompassing Chapters IV through VI, takes the reader through the application process step by step and will be of most interest to the serious applicant. The third part, consisting of Chapters VII through XII, discusses in detail various aspects of the current system and will give the reader a good idea of why that system has failed to meet the expectations of users and practitioners alike.

I. *BACKGROUND*

From 1955 to April 1987, it was not possible for new foreign lawyers to qualify to practice law in Japan. As a result, the list of foreign lawyers in Tokyo (at least those practicing openly) included only non-renewable stock of "grandfathered" pioneers who had been allowed in under the "third *Bengoshi* Law," which was in effect between 1949 and 1955,² and one New York firm that had obtained a special status in the face of strenuous opposition from elements of the local bar.

The pioneers had succeeded in building large (by Japanese standards) firms and had an enviable client list of U.S. and other foreign blue chip firms, but they had limited manpower. Most of the purely Japanese firms were generally smaller. Meanwhile the foreign business presence in Tokyo was growing and outstripping the ability of both kinds of local firms to deliver legal services with the speed and certainty that these businesses had been accustomed to receive at home.

The most obvious problem, in 1987 as today, is sheer numbers. As the authors note in Chapter II, the Japanese government limits the number of lawyers that are admitted to practice each year by limiting enrollment at the National Legal Training and Research Institute (the "Institute" or the "Legal Training Institute"), through which all attorneys admitted to private practice (as well as all prosecutors and judges) must pass, to 500 per year, of which at least one-fifth become prosecutors and judges. The reason given for the limitation has traditionally been budgetary constraints, since the Institute is a government institution. It is also clear, however, that many private practitioners have not been particularly interested in increasing the number of potential competitors.³

2. *Id.* at 10-11.

3. It should be noted in passing that this limitation is often erroneously thought by laymen to mean that Japan is a society free from lawyers. That is a matter of definition. As it turns out, I am assured by one of my fellow foreign lawyers in Tokyo that Japanese universities graduate more students with a law degree than do U.S. universities. The difference, as the book points out, is that in Japan the law is an undergraduate course of study (as it is in England and on the European Continent), and that many law graduates turn their degrees to other uses, such as government or business, and that of those who do pursue what we would consider a legal career, those who do so within a corporation or who are patent or tax specialists or judicial or administrative scriveners do not need to be *bengoshi* who have graduated from the Institute. *Id.* at 9.

Perhaps an equally significant part of the problem for the foreign business community lies in the nature of the Japanese legal system itself. The system shares two central characteristics with many civil code systems.⁴ The first is an underlying philosophy that anything that is not expressly permitted is forbidden, rather than the other way around, which is the general approach of our common law system. The second is a fondness for expressing law and regulations in terms of general principles that are to be implemented through a system of administrative discretion rather than through detailed legislation and regulation.

Another important characteristic of the Japanese legal system is its active discouragement of litigation, both through the limitation on the number of lawyers admitted to practice and through an attitude at every level of litigation procedure which favors settlement over judicial resolution of cases actually brought by private plaintiffs.⁵ The combination of all these factors makes sources of law scarce and outcomes difficult to predict. Thus the problem of having too few lawyers to respond to inquiries from an expanding number of clients is compounded by the problem of too few sources of law. This has led to increasing pressure, primarily from the U.S. business community in Tokyo, for more lawyers like the ones back home who can answer questions fast and definitively by reference to concepts the U.S. business community can understand and who can perhaps offer another approach to problem-solving (not necessarily a more aggressive or adversarial approach, as suggested by one of the authors,⁶ but one which might be more creative, calling on a broader range of international transactional experiences in other jurisdictions).

The U.S. Government stepped into this situation in 1982, after eight years of negotiations between the American Bar Association and the JFBA failed to produce agreement.⁷ After three years of intermittent discussions, in 1985 the two governments started intensive negotiations that lasted over two years, culminating in the enactment of a new foreign lawyer's

4. *See id.* at 7-8.

5. *Id.* at 8-10.

6. *Id.* at 2-3.

7. *Id.* at 11-12.

law in 1986 (the "Foreign Lawyers Law"),⁸ which went into effect (together with the implementing MOJ ordinances and JFBA regulations) in April 1987.⁹

Briefly put, under the Foreign Lawyers Law, as so implemented, a U.S. lawyer who is a member of the bar in a state that offers reciprocal treatment to Japanese lawyers and who has practiced the law of that state for five years after admission to the bar may, upon approval by the MOJ and the JFBA, and after joining a Japanese bar association, qualify as a foreign lawyer to practice in Japan the law of that state and of certain other designated states of the United States.¹⁰ However, a foreign lawyer may not practice Japanese law or share profits with or employ a member of the Japanese bar (a *bengoshi*).¹¹ *Bengoshi*, on the other hand, may employ a foreign lawyer so qualified to enable their firms to advise on U.S. law and may also employ as "trainees" foreign lawyers who are not so qualified, but who are members of the bar in the United States.¹²

II. THE QUALIFICATION PROCESS

As very comprehensively described in Chapters IV through VI, becoming licensed to practice in Japan as a foreign lawyer (or *gaikokuho-jimu-bengoshi*) under the Foreign Lawyers Law involves a two-step process of qualification with the MOJ, followed by registration with the JFBA. It also requires membership in a local bar association. The qualifications required under both the MOJ and the JFBA procedures are essentially the same, except that the JFBA reserves the discretion to refuse to register an applicant who in its view will "damage the order or reputation" of the local or national bar.¹³ In practice, however, the JFBA has input into the MOJ screening process, so that although the JFBA's views during the MOJ process are characterized as "non-binding," it is unlikely that an applicant

8. Foreign Lawyers Law, reprinted in *PRACTICE BY FOREIGN LAWYERS IN JAPAN*, *supra* note 1, appendix 1, at 87 (providing English translation).

9. *PRACTICE BY FOREIGN LAWYERS IN JAPAN*, *supra* note 1, at 19.

10. *Id.*

11. *Id.* at 58.

12. *Id.* at 21-22.

13. Foreign Lawyers Law, art. 26, reprinted in *PRACTICE BY FOREIGN LAWYERS IN JAPAN*, *supra* note 1, appendix 1, at 100.

would ever clear the first hurdle if the JFBA had serious objections.

The text notes that the Japanese government, in its negotiations with the U.S. Government, committed that except in unusual cases the entire licensing process should not take longer than three months in any given case.¹⁴ In actual practice, however, the process currently seems to take longer. An applicant might well want to budget four or five months to allow for time to obtain supporting evidence on various aspects of his or her qualifications, to schedule a personal appearance in Tokyo at the time the formal application is submitted to the MOJ, and to obtain housing in Japan (the MOJ requires a signed lease before it will finally approve an application). Also, any case where the applicant has lived and worked in more than one jurisdiction may constitute an "unusual case," due to the intricacies of the five-year experience requirement described below.

In order to be qualified to practice law in Japan, an applicant must be admitted in a country (or, in the case of a U.S. lawyer, a state) that offers reciprocal treatment to Japanese lawyers, and must have had at least five years of experience in his or her home jurisdiction after admission to the bar.¹⁵ Various (and sometimes dazzlingly elaborate) exceptions to this five year experience requirement were agreed upon (primarily by way of bilateral "understandings," rather than in the law or regulations themselves) to enable an applicant to count time spent in government service (if in a legal capacity), in corporate legal departments and as a practicing attorney in jurisdictions (domestic or foreign) other than his or her state of admission. There is, however, one important exception. Any time spent working in Japan (even under the supervision of a *gaikokuho-jimu-bengoshi*) does not count toward the satisfaction of the five year requirement, other than in the case of foreign lawyers who happened to be employed by Japanese *bengoshi* on the date the foreign lawyers law went into effect; they were given a one time special credit of up to two years. This came

14. PRACTICE BY FOREIGN LAWYERS IN JAPAN, *supra* note 1, at 20; *see id.* at 31-40 (discussing procedures for obtaining qualification).

15. *Id.* at 18-19. *See generally id.* at 25-29 (reviewing the major prerequisites for qualification).

as quite a blow to a number of U.S. lawyers, many with excellent Japanese language skills, who had spent much of their professional careers in Japan. They are faced with the choice of leaving Japan to fill out the missing years of practice or never being more than a "trainee."

U.S. applicants wishing to be licensed to practice in Japan face an additional issue. In addition to being qualified to practice the laws of the state in which they are admitted to practice (the state of primary qualification), they may also request designation to practice the laws of any other state of the United States.¹⁶ The basic rule is that foreign attorneys may practice in Japan only the laws of those jurisdictions in which they are formally admitted; to render advice on the laws of another jurisdiction, they must establish that they possess knowledge and experience equivalent to a lawyer qualified in such jurisdiction.¹⁷ The initial Japanese position was to treat each state of the United States as a separate jurisdiction for these purposes, while the U.S. negotiators argued that lawyers trained in the laws of one common law state are typically trained to handle the laws of other common law jurisdictions within the same country.¹⁸

The resulting compromise, embodied in a letter from Ambassador Matsunaga to Ambassador Yeutter (usefully summarized as an Appendix to the book), was intended (at least by the U.S. negotiators) to result in "automatic" designation to practice the laws of all U.S. jurisdictions (except Louisiana), subject only to submission by the applicant of a statement, confirmed by the applicant's law firm, attesting to his or her competence to handle the laws of such jurisdictions. For the first wave of U.S. lawyers qualified in 1987, designation worked very much as the U.S. negotiators expected it would, though not all U.S. lawyers who initially qualified followed the authors' suggestion that they ask for designation in as many jurisdictions as possible.¹⁹ There is recent evidence that the MOJ is now requiring a statement from applicants to the effect that they possess not only some experience in each state for which

16. *Id.* at 40.

17. *Id.* at 47-56.

18. *Id.* at 49.

19. *Id.* at 50.

designation is sought, but also experience and knowledge comparable to that of an attorney admitted in such state. This seems clearly inconsistent with the U.S. understanding of how the process would work.

In addition to demonstrating the requisite experience, an applicant must provide evidence of a "business plan" (including an estimated budget) and the existence of an adequate "financial basis" to carry out such a plan, as well as sufficient resources to compensate clients for any damages caused by malpractice.²⁰ In general, for attorneys affiliated with large firms based in the United States, these requirements may be fairly easily satisfied by providing a letter of guarantee from their home office, together with a letter from their home office's accountants. Again, however, there appears to have been an evolution in the MOJ's approach here. The guarantee of operating expenses was initially required to cover only the first year's operating expenses, but in recent applications the MOJ has asked for it to be open ended. Meeting these requirements is considerably more difficult for the solo practitioner. No similar requirement applies to Japanese *bengoshi*.

III. REGULATION OF FOREIGN LAWYERS PRACTICING IN JAPAN

Once licensed in Japan, a foreign lawyer is subject to an impressive array of regulations applicable specifically to *gaikokuho-jimu-bengoshi*, covering everything from the return of the lapel pin each qualified foreign lawyer is issued, to the class of air and train accommodations to be used when travelling on business, as well as weightier matters. The most significant of these is the restriction on scope of practice, which is described extensively in Chapter VII. As noted above, a U.S. lawyer is permitted to practice the laws of the state in which he is admitted and any other states for which he or she receives "designation." According to the authors, a U.S. lawyer should also be able to handle matters of "international law," although there is uncertainty as to what this term covers.²¹ The authors note that in one of its working papers, the Government of Japan included under this term "customs concerning international

20. *Id.* at 34-36.

21. *Id.* at 21, 52-53.

transactions which have become customary laws in either the home country or jurisdiction of admission."²² While this description was not carried over into either the law or the MOJ's regulations, it may not be needed in view of the equal degree of uncertainty the authors note as to just what constitutes the "practice of law" under Japanese law.²³ As the authors point out, there is a good argument that the practice of law includes only the rendering of "legal opinions" and not other forms of legal advice.²⁴ Here, the narrowness of the law and the traditionally more limited role of the lawyer in Japan may work to the U.S. practitioner's advantage.

Perhaps the most controversial restriction on the scope of practice has been the ban on foreign lawyers not only practicing Japanese law directly themselves, but also indirectly through hiring or forming partnerships with Japanese *bengoshi*.²⁵ The latter two restrictions effectively prevent U.S. law firms from offering a full range of legal services to their U.S. clients in Japan. Japanese law firms, on the other hand, are permitted to hire *gaikokuho-jimu-bengoshi* and a number of them have done so. As a result of this difference, Japanese firms can compete on the basis of the scope of services offered, while foreign lawyers are limited to competing on the basis of skills alone. In addition, there are various restrictions (reinforced by criminal sanctions) on foreign lawyers representing clients in judicial or administrative proceedings in Japan.²⁶ Some Japanese lawyers have taken the position that this prohibits a foreign attorney from representing clients in international arbitration proceedings in Japan.

There are also a remarkable number of rules governing the day-to-day operation of a foreign law firm in Japan.²⁷ Perhaps the most irksome relates to the firm name. A foreign lawyer may not use the name of his or her home firm as the "official" name of the office in Japan. Instead, the surname of at

22. *Id.* at 53.

23. *Id.* at 54.

24. *Id.*

25. *See id.* at 57-60 (discussing restrictions on working with legal practitioners in Japan).

26. *See id.* at 79-85 (discussing various sanctions and disciplinary procedures available against foreign lawyers).

27. *See id.* at 61-77 (discussing requirements and restrictions placed on foreign lawyers regarding visas, office staffing, advertising, and maintenance of status).

least one foreign lawyer in the office coupled with “*gaikokuho jimmu-bengoshi-jimusho*” (which proves to be equally unpronounceable to most Japanese) must be included in the name of the office.²⁸ The home firm name can be used in conjunction with this official name, but it must not appear “more conspicuously” on the office plaque or letterhead. Thus the official firm name must be changed (together with office signs, letterheads, business cards, etc.) every time there is a change in one of the named licensed lawyers. Another rule requires a foreign lawyer to reside in Japan at least 180 days out of the year, and is one of the rules that the authors are charitably willing to say is “probably best explained as [a] consumer protection measure.”²⁹ This particular rule may have more to do with concern over Japan’s proximity to Hong Kong, where a number of U.S. and U.K. firms have had large offices for years.

To date, 61 foreign lawyers have been licensed in Japan under the Foreign Lawyers Law, of whom 41 are from the United States, 19 are British and one is French.³⁰ Of these, approximately 54 remain in practice in Japan today. Almost all of these lawyers are associated with very large internationally-oriented law firms whose practices tend to run to large-scale financial and commercial transactions, securities law, and mergers and acquisitions. Relations with the local bar have been much more amicable than many had feared might be the case after the stiff resistance put up by the JFBA. There appear to have been no disciplinary actions instituted against any of the foreign lawyers many cordial working relationships have developed and generally a “live and let live” attitude appears to have prevailed between the newcomers and the old timers. In fact, there was even a “welcome” party hosted for us by the local bar in Tokyo, to which we reciprocated by a “thank you” party for them.

The good relations may be due in part to the fact that the tidal wave of foreign lawyers that some Japanese lawyers had feared would wash over Tokyo never appeared. The high cost of maintaining an office in Tokyo, the difficulty in recruiting

28. *Id.* at 66-67.

29. *Id.* at 20.

30. These figures are based on information obtained by this reviewer from the *Nichibenren*.

experienced Japanese-speaking attorneys, and even such practical matters as the scarcity of available office space in downtown Tokyo have all obviously contributed to keeping numbers down. Another contributing factor may well be the limitations under which foreign lawyers may practice in Japan. While many of us newcomers have accommodated ourselves to these limits, there is once again pressure to re-examine them and, as noted above, the Foreign Lawyers Law is back on the trade agenda for 1990.

IV. *THE CURRENT TRADE AGENDA*

Five specific issues are currently on the table: the twin prohibitions on partnerships with and employment of *bengoshi*; the exclusion of legal trainee experience in Japan as credit towards the five year requirement; the use of actual home country law firm names; and the ability to participate in arbitrations in Japan. All but the last issue were extensively debated at the time of the 1986 law. The reasons for returning to the negotiating table with them are perhaps best stated by the American Chamber of Commerce in Japan (the "ACCJ"), which had also actively supported the efforts that led to the Foreign Lawyers Law. The ACCJ believes that "the variety of legal services available to foreign businesses in Japan remains inadequate, due to the severe restrictions imposed on the admission and scope of practice of foreign lawyers."³¹ In its view

American businesses are dissatisfied because the law does not permit foreign-owned law firms to provide the combination of legal services needed in Japan: the Japanese *bengoshi's* (attorney's) knowledge of Japanese law, closely coupled with the foreign lawyer's expertise in home-jurisdiction law and assistance in international transactions and business planning. Only this combination can deliver the full package of legal services, at reasonable cost, that is available in other major markets.³²

Clearly, a number of U.S. consumers of legal services in Tokyo do not think they got what they were pushing for in 1986 and 1987. This much can also be gleaned by the reader

31. THE AMERICAN CHAMBER OF COMMERCE IN JAPAN, VIEWPOINTS OF THE ACCJ (1989).

32. *Id.*

who compares the starting positions of the two governments in Chapter II of the book against the description of where the two governments compromised. The comparison shows that the Japanese side gave in on the essential point that there could be foreign lawyers practicing foreign law in Japan but did not give in on much else. The U.S. side ultimately decided that the best course was to seize on this essential point without pressing for agreement on every detail, in the hope that ambiguity could benefit both sides. One can recognize this without meaning to disparage the efforts of the U.S. Government and of the three authors, because the negotiations were tough, time-consuming, at times immensely frustrating, and in fact they got a lot further than I for one had ever believed they would. In addition, the decision to stop where they did was supported at the time by significant elements of the U.S. bar. Finally, the U.S. side served notice on the Japanese side at the time, in a letter from the U.S. Trade Representative to Ambassador Matsunaga, included as Appendix 36, that it found certain elements of the law (in particular, the prohibitions on association with and employment of *bengoshi* and the exclusion of legal trainee experience in Japan as credit toward the five year requirement) "troubling" and "regrettable," and reserved the right to revisit these issues.

However, it is tempting to think that this exercise was not all that different from the now-familiar pattern of many U.S. market opening initiatives in which the United States presses Japan to acknowledge an important abstract principle, while Japan seeks to define precisely how far it must go in concrete terms to satisfy U.S. demands. Where there is this kind of mismatch in intentions, it is not surprising that anything which was not written into the law or regulations in 1987 has not since been changed by market forces. Hence, the predictable return to the trade agenda in 1989. Nonetheless, it is only fair to note that we are not back at the negotiating table because of any massive failure by Japan to live up to the agreement reached in 1987. In the main the Japanese side has lived up to the letter of the law and the regulations. We are back at the negotiating table mainly because the U.S. side in 1986 and 1987 settled in some areas for less than a fully satisfactory resolution of the issues in the hope that the forces of the market and the passage

of time would create a more favorable environment for ultimate resolution of the remaining issues.

Nor do I think it is useful to be uniformly critical of every aspect of the Japanese position. At one extreme, it is surely hard to see any justification for the restriction on the use of the firm name (which merely confuses potential clients and prevents foreign lawyers from using hard earned name recognition in Japan) or for the exclusion of most experience gained in Tokyo—especially experience gained under the supervision of a *gaikokuho-jimu-bengoshi* (or “foreign law solicitor”)—from counting towards the five years of practice required before qualification (which excludes many fine foreign lawyers who have devoted many years to acquiring language skills and knowledge of Japan).

On the other hand, I believe we should be alert to any legitimate sources of concern there may be on the Japanese side on the issue of forms of association and try to find solutions accordingly. On these two issues one can imagine two sources of concern. First, that until the size of the Japanese bar is increased, the unrestricted freedom to associate with large firms could lead to its individual stars leaving and to the rapid disintegration of the small existing organized Japanese international commercial bar. I think one can legitimately question whether it would be in anyone’s interest for us to lose the small, organized core of that bar. Second, that there is a difference in orientation between the Japanese bar and the foreign lawyers who are coming to Japan under the Foreign Lawyers Law. We newcomers are predominantly commercial, corporate, and securities lawyers who practice in large, sometimes very large, firms. In contrast, with the exception of a small number of firms that have grown to meet the needs of international financial and commercial transactions, the largest of which, according to *Martindale-Hubbell Law Directory*, counts less than fifty lawyers, most of the Japanese bar is composed of sole practitioners or very small firms whose orientation is largely towards litigation. There could be legitimate concern that the arrival of firms counting in the hundreds (and in one case in excess of a thousand lawyers) could change the practice of law in Japan, as well as the orientation of the bar itself.

I believe, however, that the concern about the impact of foreign lawyers in Japan is largely misplaced, and is better ad-

dressed in other ways than by adhering to the positions taken in the past by the Japanese bar and government. For example, if the concern is that there are too few Japanese lawyers to allow any of them to be recruited by foreign firms, surely the first step would be to increase the size of the Legal Training Institute. That is solely within the control of the Japanese government, and the traditional excuse of budgetary constraints does not seem to carry much weight these days. I am told that in fact there have been recent indications that this number may be increased. Moreover, the members of the Japanese bar strike me as having a fiercely independent streak in them, manifested by the frequency with which talented younger lawyers leave well-established firms to start their own firms and become their own bosses. Would the best of these lawyers really want to join an international mega-firm instead? I simply doubt that that would be the case.

Finally, whatever the size of the foreign law firms in their home jurisdictions, their Tokyo outposts have generally remained small, on the order of two to six lawyers. Even if the restrictions on scope of practice and association were totally removed, it is unlikely in my view, given the cost of doing business in Tokyo, that these firms would grow exponentially here. There are a few firms that have had a long-standing cooperative relationship with a particular Japanese firm, and who would be logical candidates to seek to formalize those links if permitted to do so. Whether, in view of the traditional independence of the Japanese bar, their Japanese counterparts would agree may not be a foregone conclusion. However, my guess is that most of the foreign firms, especially the U.S. firms, would be typically cautious and conservative about expansion through lateral hiring. Some U.S. firms have acquired a reputation for expansion by mergers and extensive lateral hiring in the United States, but there are few, if any, examples of rapid international expansion on this model.

Beyond that, so many things, from the long hours put in by our colleagues in the Japanese bar to the enormous growth of Tokyo as a financial and business center, point to the need right now for an expansion and a rationalization of the delivery of legal services to businesses in Tokyo. The interests of all our clients would clearly best be met if we could work towards these goals together, rather than separately or at cross-pur-

poses. Having said that, I think we should acknowledge that the issues of association and employment appear to be deeply divisive and difficult ones for the Japanese bar that will take patience and good will on both sides to resolve.