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The Role of Law and Lawyers In Japan and the United States*

Isaac Shapiro† and Michael K. Young‡

In 1982, the United States Government added barriers to entry into Japan by foreign law firms to the list of undesirable nontariff barriers to trade with Japan. Japanese responses have been discussed in a series of inter- and intragovernmental meetings, the most recent of which followed completion of this article. In an addendum at page 43, Isaac Shapiro and Michael Young detail the consequences of those meetings through December 20, 1985 and predict the likely direction of future negotiations between the United States and Japan.—eds.

During the past few years, mixed in with all the disagreements between Japan and the United States about steel, automobiles, and computers, we have witnessed increasing friction over an unlikely issue: barriers that prevent U.S. attorneys from providing legal services in Japan. Two developments have brought this issue to the fore. First, the increasing internationalization of the yen and the beginning of elimination of barriers to foreign entry into Japanese banking and financial markets have inevitably raised the question of the availability of various services—including legal services—that are ancillary to the financial services business.¹ Second, Americans have become increasingly concerned that Jap-

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1. For examinations of the role of U.S. attorneys in international commercial and financial transactions, see Janis, *The Lawyer's Responsibility for Foreign Law and Foreign Lawyers*, 16 INT'L LAW. 693 (1982); Wilson, *International Business Transactions: A Primer for the Selection of Assisting Foreign Counsel*, 10 INT'L LAW. 325 (1976); Surrey, *American Investments Abroad: Foreign Legal Aspects for American Lawyers*, PRAC. LAW., Dec. 1961, at 13; Warren, Monahan & Duhot, *Role of the Lawyer in International Business Transactions*, 58 A.B.A. J. 181 (1972); and Ball, *The Lawyer's Role in International Transactions*, 11 REC. A. B. CITY N.Y. 61 (1956).

anese trade concessions are meaningless if Americans are not also permitted to use the specialists who traditionally have helped them navigate through the rocks and shoals of government regulatory schemes. In the much more familiar and less regulated U.S. setting, American companies have frequent recourse to legal specialists for aid in structuring transactions and corporate arrangements and developing and executing strategies for market penetration and expansion. Many Americans consider the absence of such legal services a major handicap in their efforts to accomplish similar tasks in Japan. Such assistance is particularly important in Japan, not only because the various regulatory schemes and all their procedural and substantive predicates are so foreign, but also because the regulatory activities of the government and its designated private associations are so pervasive.

The issues raised in connection with delivery of legal services in Japan are complex and best understood against the backdrop of the development of the legal profession in Japan. Part I of this article discusses the history of the Japanese legal profession, especially its recent history. Part II shows how this development has shaped the issues in the current dispute. It recounts the development of the dispute, the arguments that have been made on the Japanese and American sides, and the course of the negotiations over legal services as part of the Japan-U.S. trade agenda. This article concludes with a critical analysis of the recent Japanese proposals for regulating "foreign legal consultants."

I. HISTORY OF THE JAPANESE LEGAL PROFESSION

A. Development of the Legal Profession Prior to World War II

For reasons relating to the historical role of the legal profession in Japan, the Western legal systems that Japan has emulated, and the Japanese economy, the legal profession in Japan has developed a concept of the function of lawyers which differs from that maintained by the attorneys in the United States. Prior to the Meiji Restoration in 1868, the legal profession, as such, did not exist in Japan.² During that period, the only professional, non-interested parties involved in legal matters were specially designated inn-keepers who helped litigants properly present their cases before the *Shogunate* courts.³ Hence, the commonly understood role of a legal professional was that of the advocate or trial attorney. Following the Meiji Restoration, Japanese lawmakers charged with the task of building a new legal system included the legal profession among the institutions imported from the West. Japan did not use the U.S. model of the legal profes-

2. See Rabinowitz, *The Historical Development of the Japanese Bar*, 70 HARV. L. REV. 61, 61-68 (1956); see also Fukuhara, *The Status of Foreign Lawyers in Japan*, 17 JAPANESE ANN. INT'L L. 21, 22-23 (1973).

3. Rabinowitz, *supra* note 2, at 62-64.

sion, but rather, that of the United Kingdom and France.⁴ From the United Kingdom, the Japanese borrowed the concept of the barrister,⁵ and from France the concept of the *avocat*.⁶

Based on these concepts, Japan established the profession and appellation of *bengoshi*, a coined term regarded as the nearest equivalent of "barrister." The word *bengoshi* itself suggests the nature of the enterprise. *Bengo* is a noun that variously means defense, exculpation, or justification. Attaching *shi* to the end of that noun indicates an individual who engages in those tasks. Thus, a *bengoshi* is one who defends or advocates on behalf of another in a judicial or other formal, governmental, adjudicatory proceeding.

The early Meiji lawmakers who drafted the legislation establishing courts and legal institutions did not share the American sense of a "unified" profession. No single law or set of regulations was created to control and regulate the full range of legal services. The language of the *Bengoshi Ho*, or Barristers' Law of Japan,⁷ enacted in 1893, gives no sense that it was designed to regulate the profession as a whole. Rather, the principal object of its regulation was professionals who appeared before the courts and at least some of the professionals who actively practiced before administrative agencies.⁸

The lawmakers evidently only saw a need for lawyers to represent clients in criminal and civil cases. They made no attempt to create a separate profession analogous to the English solicitor⁹ or French *conseil juridique*¹⁰ to handle ordi-

4. See, e.g., Fukuhara, *supra* note 2, at 21–25; Rabinowitz, *supra* note 2, at 69–75.

5. Barristers specialize in advocacy. With the exception of the lowest civil and criminal courts, they have the exclusive right of audience in open court. Barristers provide legal opinions to solicitors and the clients of solicitors, whom clients must approach in the first instance.—eds., see *Appendix 3*.

6. There are several categories of legal professionals in France. *Avocats* provide the broadest range of legal services. Prior to 1971, when the professions of *avocat* and *avoué* were merged, *avocats* provided legal advice and handled all client contact, while *avoués* functioned as representatives of clients in the filing of papers and other formal matters. Presently, *avocats* fulfill both roles. *Avocats* may not, however, solicit on appeal or solicit and argue before the supreme courts. These tasks are reserved for the *avoué à la Cour d'Appel* and *avocat à la Cour de Cassation et au Conseil d'Etat*.—eds., see *Appendix 3*.

7. This act was replaced by the Barristers' Laws of 1933 and 1949. For the current version of the Barristers' Law, see *Bengoshi Ho*, 1 *ROPPO ZENSHO* 175 (1984) (in Japanese).

8. See Fukuhara, *supra* note 2, at 21–25; Rabinowitz, *supra* note 2, at 69–75.

9. English solicitors perform the ordinary legal business of their clients. They provide business advice, draft wills and deeds, and prepare instruments to convey land. Solicitors also play an instrumental role in litigation. They handle initial client contact and prepare, on the advice of barristers, cases for presentation to the courts. Solicitors may conduct pretrial proceedings and may be heard on interlocutory applications, but they may not represent their clients in open court.—eds., see *Appendix 3*.

10. *Conseils juridiques* provide legal advice to all types of clients, including individuals and large corporations. *Conseils juridiques* may not appear before French courts. Foreign lawyers who are certified to practice in France but do not meet the requirements to practice as *avocats* may become members of this profession.—eds., see *Appendix 3*.

nary legal business outside of the courtroom. The Federal Republic of Germany, the country most closely studied by the Japanese, has the *Rechtsanwalt*,¹¹ who provides legal services in and out of the courtroom. However, this profession clearly was—and, by some accounts, still generally is—closer to a trial attorney than an English solicitor.¹² Japan did eventually enact statutes regulating certain other professionals who provided quasi-legal services such as patent and tax agents, judicial and administrative scriveners, certified public accountants, and notaries,¹³ but to this day no statute regulates the giving of legal advice in a non-litigious or non-procedural setting.

Prior to World War II, this absence of regulatory control over what might be called the business lawyer did not give rise to any problems. During the early Meiji period, Japan's international trade was not sufficiently developed to require the kind of non-litigating business lawyer which by that time existed in the United States. Company employees trained in law typically handled non-litigious legal affairs, while *bengoshi* normally restricted themselves to representation of clients in connection with disputes. The few foreign lawyers who were allowed to settle in Japan primarily advised foreigners on their problems as aliens. While article 6 of the Barristers' Law of 1933 provided for a rudimentary system of regulation of these foreign lawyers, including some delineation of the permissible scope of their legal activities, in practice these foreign lawyers were unlicensed and essentially unregulated prior to 1949. They did not belong to any bar associations and operated at the sufferance of the Ministry of Justice.¹⁴

B. The Training, Structure, and Nature of the Legal Profession In Post-War Japan

The Barristers' Law of 1949 was adopted during the post-war occupation. Inspired by the notion that the bar should be autonomous and totally independent of government supervision, post-war Japanese lawmakers eliminated the supervisory jurisdiction theretofore vested in the Ministry of Justice and created the

11. Since 1879, *Rechtsanwälte* have been empowered to provide general legal advice and represent clients in West German courts of law. In civil litigation, *Rechtsanwälte* admitted to practice before a court of general jurisdiction or appellate court enjoy a monopoly over oral arguments and the submission of documents before the particular court. *Rechtsanwälte* devote the greater amount of their time to litigation. Even in highly industrialized areas of Germany, only a comparatively small group of lawyers is predominantly engaged in matters involving preventive law or legal planning.—eds., see *Appendix 3*.

12. For a discussion of legal careers in Germany, see R. SCHLESINGER, *COMPARATIVE LAW* 157–71, 183–88, 340–42 (4th ed. 1980) and Geck, *The Reform of Legal Education in the Federal Republic of Germany*, 25 *AM. J. COMP. L.* 86 (1977).

13. For a discussion of these various professions, see Young, *The Japanese Legal System: History and Structure*, in 2 *DOING BUSINESS IN JAPAN* 3-1, 3-42 to 3-45 (Z. Kitagawa ed. 1980).

14. See Herzog & Herzog, *The Reform of the Legal Profession and of Legal Aid in France*, 22 *INT'L COMP. L. Q.* 462 (1973).

Japan Federation of Bar Associations, an autonomous, self-regulatory body. The Supreme Court was given only limited power of review. For the first time, moreover, identical training was required of the three main branches of the profession—*bengoshi*, judges, and prosecutors.¹⁵

The legal training of most members of the profession begins with admission to a university and enrollment in a department of law.¹⁶ The Japanese model is more like the continental educational system than its American counterpart. The first two years are spent mainly in general education and humanities courses, with specialization in law—public or private—occurring during the last two years. Courses taken during these last two years generally consist of lectures on various topics, including administrative law, judicial administration, private international law, comparative law, and, most importantly, the basic six Codes (Constitution, Civil, Commercial, Civil Procedure, Criminal, and Criminal Procedure).¹⁷ Students study in great detail the specific code and statutory provisions as well as the principal academic theories relating to the interpretation of these Codes, their function, and their philosophical and legislative underpinnings.

After graduation, the vast majority of these students—almost 38,000 a year for the past few years—enter companies or government service.¹⁸ Those who want to become *bengoshi*, judges, or prosecutors, however, must be graduated from the Legal Training and Research Institute. Admission to the Institute is

15. Article 6 of the Barristers' Law of 1933 provided that an "alien, who is qualified as a foreign barrister, may receive validation of the Minister of Justice and perform the matters listed in Article 1 [professional activities of barristers] with respect to aliens or foreign law as long as there exists a guaranty of reciprocity." Fukuhara, *supra* note 2, at 24. Commentaries on the law explained that the activities of these foreign "barristers" were not to be restricted to their home countries' laws or citizens. See Y. KANEKO, AN EXPLANATION OF THE REVISION OF THE BARRISTERS' LAW 169 (1934) (in Japanese). This was the first time foreign lawyers were expressly regulated in Japan, despite the rather active litigious practice by some foreign attorneys prior to 1933. See E. NISHIMURA, A REPORT OF LEGAL RESEARCH 84 (1932) (in Japanese) (indicating that in the year 1929 alone four foreign lawyers in Yokohama and Kobe handled 432 trials of first instance and 59 second and third instance appeals).

This regulatory scheme never was realized in practice. As Japan moved out of the mainstream of international commerce during this difficult period of national development, treaties of reciprocity became virtually impossible and enforcement of the law in 1936 made all case-related activities undertaken by foreign attorneys illegal, at least in theory. Violators were to be prosecuted under another law, known as the Law Concerning Control of the Handling of Legal Affairs. See Fukuhara, *supra* note 2, at 25, 32. As near as can be ascertained, however, no foreign lawyer was ever prosecuted under this or any related law, despite the continued presence of foreign attorneys who handled matters involving aliens or foreign or international law, even matters that were, or were likely to become, cases in the narrowest sense of that word. *Id.*

16. For an examination of the post-World War II reforms, see Hattori, *The Legal Profession in Japan: Its Historical Development and Present State*, in LAW IN JAPAN 111, 129–38 (A. von Mehren ed. 1963).

17. See Brown, *A Lawyer By Any Other Name: Legal Advisors in Japan*, in LEGAL ASPECTS OF DOING BUSINESS IN JAPAN 1983, at 201, 232–33 (Practicing Law Inst. 1983).

18. See *id.* at 231, 245.

gained by an extremely competitive examination: of the anywhere from 30,000 to 50,000 who annually sit for the examination, less than two percent pass.¹⁹ Many, indeed almost three quarters of the successful applicants, are taking the examination for the second, third, or fourth time.²⁰

The successful 450 or 500 aspirants²¹ then enter the Legal Training and Research Institute for two years of study. Their training is divided into three terms.²² During the first term of approximately four months, apprentices attend classes at the Institute, where they receive instruction in the conduct of civil trials, criminal trials, public prosecutions, civil trial practice, and criminal trial practice. These courses are variously taught by judges, public prosecutors, and practicing *bengoshi*. The texts include actual records of cases and practical instruction manuals prepared by the Institute to illuminate judicial proceedings. Apprentices also are called upon to draft indictments, pleadings, briefs, closing arguments, and judgments based upon modified copies of actual trial records.

The second term consists of 16 months of field training, variously spread throughout the courts and the offices of both public prosecutors and practicing *bengoshi*. The third and final term is again spent at the Institute where the instructors attempt to draw together the lessons learned in the field. Students also conduct mock trials during this term, playing the roles of judges, prosecutors and *bengoshi*. After completion of this final term (and an examination which hardly anyone has failed since 1952), apprentices become practicing *bengoshi*, assistant judges, or public prosecutors. *Bengoshi* must register with a local bar association in the geographic area in which they intend to practice.²³

As the foregoing discussion indicates, the training required of would-be *bengoshi* at the Institute focuses on trial skills. This training is reflected in the professional activities of the vast majority of Japanese *bengoshi*.²⁴ Yet, this apparently straightforward and easily comprehended fact about the nature of the *bengoshi*'s training and work has complicated appreciably our understanding of the legal profession in Japan. Normally careful and astute commentators about legal systems, such as Harvard University's President and former Law School Dean, Derek Bok, have looked at the small number of *bengoshi*, uncritically assumed that *bengoshi* function in the Japanese system as attorneys function in ours, and lauded Japan for sending its best and brightest into fields other than law.²⁵ Many others, with perhaps less reason to know better,

19. See *id.* at 269–70.

20. See Abe, *Education of the Legal Profession in Japan*, reprinted in THE JAPANESE LEGAL SYSTEM: INTRODUCTORY CASES AND MATERIALS 566, 574–75 & n.16 (H. Tanaka ed. 1976).

21. See Brown, *supra* note 17, at 239.

22. See generally *id.* at 240–44; Young, *supra* note 13, at 3–29.

23. Bengoshi Ho, *supra* note 7, at arts. 8, 9.

24. See Brown, *supra* note 17, at 274–75.

25. See Bok, *A Flawed System*, HARV. MAG., May–June 1983, at 38, 41.

including Secretary of Commerce Malcolm Baldrige, have made the same mistaken assertion.²⁶

The number of *bengoshi* is indeed small, only slightly over 12,000 in a country with just less than half the population of the United States.²⁷ *Bengoshi*, however, represent only a very small part of the legal profession. Indeed, every year Japan graduates more students trained in law (approximately 38,000) than are graduated by all the law schools in the United States combined.²⁸ And by most accounts, these students are, as a group, the very best Japan has to offer.²⁹ A large percentage of these graduates, moreover, enter jobs where they perform functions that law school graduates would perform in the United States. Many of the graduates of Japanese law faculties, for example, enter corporations where they give both business and legal advice. Others enter government service, holding positions that would be occupied largely by law school graduates in the United States. Still others enter the more specialized realms of the profession, working as tax or patent agents, notaries, and judicial or administrative scriveners, although many take these jobs only after working for some years in another job to gain the requisite experience.

This is not to say that graduates of Japanese law faculties who do not become *bengoshi* perform their tasks exactly as their counterparts trained in American law schools do. Indeed, the nature of their training is quite different and one might well expect those differences in training to be reflected in the way law graduates in the two countries approach their responsibilities. Much research still needs to be done to ascertain how the training variously received in the two systems affects the way in which regulatory systems are structured and manipulated, disputes resolved, and legal problems solved.³⁰

For our purposes, however, the point is much simpler. Those with formal training as litigators—the *bengoshi*—are only a small part of what can be considered the functional equivalent of the American legal profession and constitute an even smaller percentage of the total number of people in Japan with in-depth, substantive training in law. Consequently, *bengoshi* provide only a small part of

26. See Baldrige, *Halting the LTV-Republic Steel Merger*, N.Y. Times, Mar. 11, 1984, § 3, at 2.

27. Secretariat of the Supreme Court, Statistical Summary 1984 (in Japanese) (copy on file with Michael K. Young).

28. During a recent ten year period, the number of law students graduated from U.S. law schools accredited by the American Bar Association ranged between 28,729 and 36,389. See NAT'L ASS'N FOR LAW PLACEMENT, CLASS OF 1983 EMPLOYMENT REPORT AND SALARY SURVEY II (1985).

29. Interviews conducted by Michael K. Young with officials of the Japanese Ministry of Education and universities in Japan including the University of Tokyo, Kyoto University, Nagoya University, Hokkaido University, Waseda University, and Meiji University during 1979–80 and the summers of 1981, 1983, and 1984. All of the officials interviewed indicated that the two most difficult faculties to enter were law and medicine.

30. See generally I. Shapiro, M. Young & K. Fujikura, *The Role of Law and Lawyers in Japan and the United States* 8, 9–12 (East Asia Program, Occasional Paper No. 16, The Wilson Center, 1983).

the legal services available through a variety of legal professionals in Japan and professionals with the title of attorney in the United States.³¹

An understanding of the legal profession in Japan is complicated by two additional factors. First, an increasing number of *bengoshi* are securing, apparently for the first time, some significant part of their income by departing from the traditional litigating role of the *bengoshi* to provide general business law advice to corporate clients. This trend has been especially notable in the area of international commercial transactions. Since the end of World War II, a number of *bengoshi*, along with their counterparts in corporations and government service, have studied abroad and interned in foreign firms, mainly in the United States, and thereby acquired skills beyond those possessed by the average Japanese *bengoshi*. These "international" *bengoshi* have joined with others to establish law offices specializing in the type of services more typical of English solicitors or their equivalent in the United States, non-litigating corporate or business lawyers. A recent study also suggests that even purely domestically-oriented *bengoshi* are deriving an increasingly large percentage of their income from giving advice in entirely domestic, business-oriented situations.³²

A second complicating factor has been the role of foreign attorneys in providing advice on international legal transactions. A few foreign legal professionals have been permitted to register with local bar associations, although they have not passed through the Institute. Most relevant for purposes of this article are the 70-odd foreign attorneys who chose to remain in Japan after the occupation ended or commenced their activities in Japan during the period between 1949 and 1955. With one exception, these attorneys took advantage of a special provision in the Barristers' Law allowing foreign attorneys, without examination, to be licensed by the Supreme Court, become quasi-members of the bar association, call themselves *bengoshi*, and, presumably, litigate before courts and administrative

31. In both Japan and the United States, of course, many others without formal university training in law also give advice and assistance on legally related matters. In the United States, for example, one might include tax and patent agents, accountants specializing in tax, bank employees in trust departments, real estate agents, and paralegals. In Japan, the list would include real estate agents, many bank employees other than those discussed in the text, and officials in certain government agencies. All this obviously makes a comparison of the exact number of people participating in the legal system in Japan as opposed to the United States an extremely difficult task. The point in the text is rather more simple, however. The number of people trained in law at the university level in Japan is greater than that of the United States and, while the matter is far from clear, it appears that in Japan a very large percentage of those who major in law at the university spend much of their professional time doing things that would be done in the United States by people with formal university training in law. Even more important for analysis of the issues at hand, the monopoly granted to *bengoshi* includes only a very small range of the activities that are considered within the professional province, and that engage most of the professional time of the vast majority of attorneys in the United States.

32. This is particularly true of lawyers in the Tokyo area. See Japan Fed'n of Bar Ass'ns, *Basic Report of the Study of the Actual Conditions of the Economic Base of the Barristers' Business*, 32 JIYU TO SEIGI 82-123 (1981) (in Japanese).

bodies with respect to foreign clients or matters concerning foreign law.³³ Only one foreign attorney took advantage of a separate provision permitting foreigners to engage in all activities reserved to Japanese *bengoshi* upon an oral demonstration of a knowledge of Japanese law. This demonstration is not equivalent to the examination determining admission to the Legal Training and Research Institute.

While the foreigners who have practiced in Japan under the special provisions in existence prior to 1955 are quasi-members of their respective Japanese bar associations and call themselves *bengoshi*, they have functioned not as litigators, but as business lawyers giving legal advice to multinational corporations making investments in Japan. Their activities thus are not the traditional ones of the *bengoshi*, but consist of legal consulting services that have been largely unregulated in Japan where no professional equivalent to the British solicitor or French *conseil juridique* exists.³⁴ The provisions of the Barristers' Law permitting foreigners to practice without examination were the object of much uneasiness on the part of the Japanese bar, and in 1955 they were repealed.³⁵ Foreign lawyers already admitted were permitted to continue practicing and a handful, less than ten, the youngest of whom is now 62, still practice in Tokyo, along with a small number that were grandfathered in as quasi-members of the Japanese bar when Okinawa reverted to Japanese control in 1972.³⁶

II. RECENT DEVELOPMENTS IN THE PROVISION OF LEGAL SERVICES BY FOREIGN ATTORNEYS IN JAPAN

A. *Development of a Dispute: Japanese and U.S. Views*

The issue of the provision of legal services by foreign attorneys in Japan has resulted in sharply contrasting positions. Among Japanese *bengoshi*,³⁷ some question the right of Americans to provide legal services in Japan without undergoing the same rigorous screening process required of Japanese nationals. Others express more traditional concerns, particularly over the ability of the Japanese

33. See generally Kosugi, *Regulation of Practice by Foreign Lawyers*, 27 AM. J. COMP. L. 678, 691-93 (1979); Fukuhara, *supra* note 2, at 25-26.

34. See *supra* notes 9, 10.

35. *Bengoshi ho no ichibu o kaisei suru horitsu*, Law No. 155 of 1955, Horei Zensho 114 (in Japanese) (Law Concerning Partial Amendment to the Barristers' Law); see also Kosugi, *supra* note 33, at 692-93; Fukuhara, *supra* note 2, at 31-33.

36. *Okinawa no fukki ni tomonau tokubetsu sochi ni kansuru horitsu*, Law No. 129 of 1961, Horei Zensho 26 (in Japanese) (Special Measures Law for the Return of Okinawa); see Kosugi, *supra* note 33, at 692.

37. The various Japanese positions are articulated most clearly in Committee for Measures Vis-à-Vis Foreign Barristers, *Report on the Conference Between the Japan Bar Association and the ABA Regarding the Foreign Barrister Problem*, 34 JIYU TO SEIGI 176 (1983) (in Japanese) and Matsumoto, *International Legal Practice and the Barrister Law*, 681 JURISTO 77 (1979) (in Japanese).

Government to ensure high quality legal services and competence within the legal profession. To these *bengoshi*, the various existing screening processes and self-policing mechanisms under which the Japanese Federation of Bar Associations can file a complaint with the prosecutor's office about any "unauthorized practice of law" are at best uncertain checks on foreign legal professionals.

Other *bengoshi* stand on national prerogative, claiming that few countries permit foreign attorneys any role in their indigenous legal system and that, in any event, the regulation of the legal profession is a purely internal matter.³⁸ Americans, they argue, have no claim for special relief. Some also worry about how their own countrymen might manipulate a law allowing foreign lawyers to practice in Japan. They fear some Japanese might qualify as attorneys in the United States and then work in the Japanese offices of U.S. law firms, where they will be mistaken for (or perhaps even hold themselves out as) Japanese *bengoshi* who handle international commercial transactions.³⁹ Finally, even the least cynical observer must admit that monopolists do not happily or easily abandon their advantage.

American lawyers, on the other hand, have argued that they do not intend to give advice on Japanese law and, that even if they give advice on Japanese law, their activities do not encroach on the very limited monopoly of the "practice of law" granted by the statutes that regulate the Japanese Bar.⁴⁰ They also contend that the increasing internationalization of the Japanese economy and the development of Tokyo as a world financial center has spawned an increasing demand for the type of legal and consulting services provided by the non-litigating business lawyer, including the structuring of financial transactions and the documentation of such transactions in the form of contracts. These services require knowledge of international business practices and skills in English-language draftsmanship. Training in these areas has not traditionally been part of the Japanese *bengoshi*'s education or experience. The total number of *bengoshi*, moreover, is small.⁴¹ Furthermore, Americans are increasingly interested in employing professionals in Japan who can help them surmount the myriad public and private regulatory

38. For general discussions of the various regulatory schemes for controlling the activities of foreign attorneys in both the United States and abroad, see Comm. on Comparative Procedure and Practice, Section of Int'l Law, Am. Bar Ass'n, Report on the Regulation of Foreign Lawyers (1977); Kosugi, *supra* note 33; Note, *Providing Legal Services in Foreign Countries: Making Room for the American Attorney*, 83 COLUM. L. REV. 1767 (1983); Comment, *International Legal Practice Restrictions on the Migrant Attorney*, 15 HARV. INT'L L.J. 298 (1974); and Note, *Foreign Branches of Law Firms: The Development of Lawyers Equipped to Handle International Practice*, 80 HARV. L. REV. 1284 (1967).

39. The analogy most often drawn in this context is to the common practice of Japanese (and, indeed, nationals from many other countries) of obtaining a driver's license in the United States, where the requirements are minimal, and then exchanging that license for a domestic license on their return home.

40. For a comprehensive discussion of this issue, see Fukuhara, *supra* note 2, at 31-33.

41. See Fukuda, *Japan*, in TRANSNATIONAL LEGAL PRACTICE 201, 204 (D. Campbell ed. 1982).

schemes and maneuver through the complexities of Japan's business environment.⁴² All this has resulted in pressure on the Japanese government to permit foreign legal professionals some scope of activity.

B. Legal Services as Part of the Japan-U.S. Trade Agenda

This diffuse and relatively indeterminate pressure on the Japanese Government took concrete form in March 1982 when the U.S. Government included the barrier against entry into Japan by foreign law firms on the list of nontariff barriers that it wished Japan to remove.⁴³ In May 1982, the Japanese Government responded, arguing, in effect, that this barrier resulted from differing legal systems and that regulation of the bar was largely left to the profession itself. The government promised, however, to try to expedite talks between the Japan Federation of Bar Associations, the principal regulatory authority of *bengoshi*, and the American Bar Association.⁴⁴

Subsequently, in November 1982 and again in February 1984, representatives of the Japan Federation met with a special delegation of the American Bar Association to obtain information on practices regarding foreign lawyers in various parts of the world and the views of the American Bar Association. The Japan Federation also sent a delegation to major European countries to obtain information on the experience of those countries with foreign lawyers who maintained, or wished to maintain, offices within their borders. In March 1984, the Federation issued an interim report in which it stated that it had failed to reach a consensus with respect to this issue prior to the expiration of the terms of office of the president and secretary general and that the matter would be passed on to the incoming board of officers.⁴⁵

42. See, e.g., Myerson, *Legal Services Relating to Doing Business with Japan*, in *LEGAL ASPECTS OF DOING BUSINESS IN JAPAN 1983*, at 7, 22 (Practicing Law Inst. 1983); Tell, *Firms Face Icy Welcome Overseas*, *NAT'L L.J.*, Mar. 9, 1981, at 1, 28.

43. See Tell, *U.S. Lawyers Want Japan to Open Door to Practice*, *Nat'l L.J.*, May 3, 1982, at 2. The Japanese Government has used a variety of techniques to exclude American attorneys who wish to establish offices in Japan. Government officials have refused to issue visas to those personnel who would be resident in the office. Under the Foreign Exchange and Foreign Trade Control Laws, the Ministry of Finance and Bank of Japan has limited the transfers of funds necessary to establish and run an office and the remittance of funds back to the United States. Officials also have withheld certain authorizations necessary to establish an office in Japan. Finally, the government can prosecute individuals who engage in the unauthorized practice of law. The first of these methods—denial of a visa—is the principal means of exclusion used to date. See Abrahams, *Japan's Bar to U.S. Lawyers*, *NAT'L L.J.*, July 4, 1983, at 1.

44. See *Additional Measures to Open the Japanese Market*, May 28, 1982, II, 6 (6) (copy on file, Michigan Yearbook of International Legal Studies).

45. Committee for Measures Vis-à-Vis Foreign Barristers, Japan Fed'n of Bar Ass'ns, Report on Foreign Attorneys, preamble (Dec. 7, 1984) (in Japanese) (copy on file, Michigan Yearbook of International Legal Studies) [hereinafter cited as Report].

The U.S. Government continued to press the legal services issue as part of its open trade agenda. On April 27, 1984, the Japanese Government, in a general response on measures it was taking to deal with the open trade items, stated that the Japan Federation was making efforts to come to an appropriate conclusion as early as possible and that, while respecting the initiative of the Federation, the government itself would also work to achieve an appropriate solution.⁴⁶ An internal, explanatory telegram that accompanied this April 27 announcement to the Japanese embassies and consulates indicated that the Ministry of Justice did not believe that the determination of specific rules at the governmental level was advisable at that time. Such a determination, opined the Ministry, would place too much pressure on the Japan Federation and be counterproductive.

C. The Japanese Federation of Bar Association's Proposal for Regulating "Foreign Legal Consultants"

Since that announcement the Japan Federation has considered two proposals to permit the establishment of foreign law offices in Japan. The most recent, drafted by a subcommittee of the Board of Governors of the Federation, was received by the Federation on July 25, 1985.⁴⁷ The legislative program that it suggests is somewhat more liberal than the earlier proposal, submitted in December 1984 to the President of the Federation by the Federation's "Special Committee for Measures Vis-a-Vis Foreign Barristers."⁴⁸

The legislative scheme described in the December report would have been wonderfully and most creatively restrictive, all but prohibiting even the most minimal level of activity by foreign attorneys in Japan. In the cover letter that accompanied the proposal, the Committee indicated that it stood by its original position that "foreign and domestic conditions" were not sufficiently "prepared" to permit foreign attorneys to establish offices in Japan.⁴⁹ It indicated that because of this belief, the "tentative draft," which the Committee had been "formally requested" to submit to the president, stressed (and presumably was at least partially responsive to) the problems inherent in allowing some role for foreign legal professionals.⁵⁰

Under the Committee's proposal only foreign attorneys who had practiced in their home jurisdictions for five of the seven years immediately preceding ap-

46. OFFICE OF THE U.S. TRADE REPRESENTATIVE, JAPANESE GOVERNMENT "EXTENSIVE ECONOMIC MEASURES": THE U.S. GOVERNMENT'S ASSESSMENT OF THEIR IMPLEMENTATION AND IMPACT 41 (October 1984).

47. *Severe Restrictions on Practice*, Asahi Shimbun, July 26, 1985 (morning ed.) (in Japanese) (U.S. Embassy, Tokyo trans.) (no page given).

48. Report, *supra* note 45.

49. Letter from Chairman Shunji Higuchi to Seiichi Ishii, President of the Japan Federation of Bar Associations (Dec. 7, 1984) (cover letter to Report, *supra* note 45).

50. *Id.*

plication would have been eligible for consideration.⁵¹ These attorneys would have been eligible only if they came from jurisdictions that had concluded an intergovernmental agreement that allowed for the entrance and practice of *bengoshi* from Japan.⁵² Countries that might have been precluded from concluding such an agreement because of a federal system with locally autonomous bar associations might still have been eligible, but only if a majority (or at least a substantial number) of the "major" states had accommodated Japanese *bengoshi*.⁵³

Properly admitted foreign legal consultants could have given advice only to nationals (including companies or associations) of their home country and then only on matters of the law of their home country,⁵⁴ which, in the case of a federal system, would include both the law of the state in which the attorney was qualified and federal law.⁵⁵ Foreign legal consultants could not have given even this advice, however, if it somehow concerned property located in Japan (including obligations that would be performed in Japan or industrial property rights and the like registered in Japan)⁵⁶ and the opposite party was a resident—not a citizen, but merely a resident—of Japan.⁵⁷ If the matter had involved litigation or a non-litigable matter before a court or administrative agency, moreover, the foreign legal consultant could not have provided advice, drafted documents, served as an arbitrator or consultant, or even, if the opposite party were a resident of Japan, have acted as a representative in a negotiation.⁵⁸ The Committee also advised that foreign consultants be permitted to do what little they were permitted for a period of only three years⁵⁹ and that they be required to be physically present in Japan at least nine months out of each of those years.⁶⁰

Another extremely significant limitation would have prevented foreign legal consultants from employing any foreign attorneys as trainees or legal paraprofessionals.⁶¹ Japanese *bengoshi* now employ almost one hundred young foreign attorneys as legal "trainees,"⁶² and would have been permitted to continue this

51. Report, *supra* note 45, at art. 4, § 2(a).

52. *Id.* at art. 4, § 1.

53. The Report is constructed to suggest that the majority of the Committee favored a view that would require an absolute majority of the states in a federal system to create a reciprocal licensing system. A minority of the Committee would relax that requirement to permit attorneys from a foreign country to seek approval as Foreign Legal Consultants if that country had a reciprocal system in a "substantial number of the major states" so that "reciprocity with the entirety of the other country is substantially guaranteed. . . ." *Id.*

54. *Id.* at art. 4, § 3(1)–(3).

55. *Id.* at art. 4, § 3(1).

56. *Id.* at art. 4, § 3(2).

57. *Id.*

58. *Id.* at art. 4, § 3(2), (3).

59. *Id.* at art. 4, § 4(1), (2).

60. *Id.* at art. 4, § 4(3).

61. *Id.* at art. 4, § 8. This term would be renewable "upon examination." *Id.*

62. *Id.* at art. 4, § 4(8).

practice even under the Committee's proposal.⁶³ Foreign legal consultants would not have been permitted to avail themselves of the services of these young foreign lawyers. Neither would the foreign legal consultants have been permitted to enter into any kind of employment relationship, joint operation, or office sharing arrangement with Japanese *bengoshi*, tax and patent agents, or judicial scriveners.⁶⁴ To prevent any foreign attorneys from establishing themselves in Japan dressed in other clothing, moreover, the Federation explicitly sought a regime under which a foreign lawyer seeking approval could not have even entered Japan unless the Federation first approved that person's application to become a foreign legal consultant.⁶⁵

Under the December proposal, the Federation also would have retained the right to regulate all matters and approve licenses for foreign legal consultants on the basis of a variety of factors, including the Federation's perception of the need for foreign legal consultants in Japan.⁶⁶ The Committee suggested that the Federation might evaluate or test an applicant's understanding of Japan's culture, society, language, and legal system⁶⁷ despite the prohibitions against foreign legal consultants giving advice on anything related to Japan or to anyone other than a national of their home country. The Committee also suggested that the Federation require foreign legal consultants to register with the local bar association, but that the Federation and associations give them rights and duties that differ "qualitatively" from those of the enrolled Japanese *bengoshi*.⁶⁸ The Federation and relevant local bar associations also would have been permitted to demand reports concerning the foreign legal consultants' offices and to enter and inspect these operations.⁶⁹

As one might expect, the reaction of U.S. attorneys to the Federation's December proposal was not particularly warm. Some thought it sufficiently outrageous that the United States might, if it could formulate a reasonable position and quickly present a concrete proposal to the Japanese, gain a certain momentum in negotiations over this issue. These attorneys believed that the Japanese Government could not, in good faith, present the Federation's draft to the U.S. Government. Thus, they reasoned, if the United States moved quickly, the principal negotiating document would be one drafted by the United States, an advantage that would give the Americans a decided (and long needed) edge in the negotiations.

63. *Id.* at art. 4, § 4(5).

64. *Id.* at art. 4, § 4(6).

65. *Id.* at art. 4, § 6(2).

66. For a discussion of some of the problems this practice raises, see Kosugi, *supra* note 33, at 693-94.

67. Report, *supra* note 45, at art. 4, § 6(1).

68. *Id.* at art. 4, § 5.

69. *Id.* at art. 4, § 8.

Unfortunately, however, it was not until April 9, 1985, that representatives of the Office of the United States Trade Representative finally presented the Ministry of Justice with a counterproposal, a proposal that contained its own excesses.⁷⁰ In the meantime, the Federation, realizing that it might have outflanked itself, entered into negotiations with the Ministry of Justice and indicated a willingness to compromise on many points, including a slight relaxation of the strict reciprocity requirement. They were adamant, however, that the Federation should be the principal regulatory authority regarding Foreign Legal Consultants' qualifications, screening, registration, and professional activities.⁷¹ The Federation's negotiations with the government were apparently not without effect. On the same day that the U.S. Government submitted its proposal to the Japanese, the Japanese Government released another package of "market liberalizing measures" that included a section on attorneys. This section, though brief, left little doubt that the Government still considered the Federation a major actor in these negotiations. The section read as follows:

On the question of foreign lawyer's activities in Japan, the Japanese Federation of Bar Associations made a basic policy decision on March 15, 1985 to accept foreign lawyers subject to the principle that reciprocity be practically maintained and the principle that the foreign lawyers will subscribe to the autonomy of the Japan Federation of Bar Associations. The Government will work to have an appropriate solution materialize as early as possible through full exchange of views with the Federation.⁷²

Shortly after this announcement, on July 18, 1985, the Federation subcommittee put forward its current proposal.⁷³ This proposal, which the subcommittee explicitly labeled tentative and promised would undergo further refinement through exchange of opinions with those both in and out of the Federation, dealt with many of the issues covered in the December proposal including, most importantly, reciprocity, scope of practice, and the permissibility of association with Japanese professionals.

70. At the request of the United States Trade Representative, both the authors were involved in the early stages of formulating a U.S. position, but ultimately disassociated themselves from some parts of the final product. Most troubling from the authors' perspective is the demand that Foreign Legal Consultants be permitted to employ or enter into partnership arrangements with *bengoshi* regardless of local bar association rules dealing with these matters. Other aspects of the U.S. proposal are also troubling, such as the virtual lack of an experience requirement. Detailed analysis and criticism of this proposal, however, is beyond the scope of this article.

71. See *Open Market for Foreign Attorneys*, Nihon Keizai Shimbun, Mar. 16, 1985 at 2 (in Japanese); *American Attorneys Allowed to Practice*, Yomiuri Shimbun, Mar. 16, 1985, at 3 (in Japanese).

72. Letter from U.S. Trade Representative to Isaac Shapiro and Michael Young (April 15, 1985) (letter on file with the authors). The section quoted in text was denominated in the letter as an "unofficial translation."

73. Bd. of Governors Subcomm., Japan Fed'n of Bar Assns., Draft of a System of "Foreign Barristers" (July 18, 1985) (in Japanese) [hereinafter cited as Subcommittee Draft].

Like the December 1984 proposal, the current proposal would only allow foreign attorneys with at least five years of experience in their home country to register with the Federation, establish an office in Japan and engage in specified legal business.⁷⁴ These foreign attorneys, who would be permitted to call themselves *Gaikoku Ho Bengoshi* (Foreign Law Barristers), *Gaikoku Ho Sodanshi* (Foreign Law Consultants) or *Gaikoku Bengoshi* (Foreign Barristers),⁷⁵ would also be required to register with the local bar association within the territory in which they established their office.⁷⁶

Consistent with the position taken by the Federation in all previous pronouncements on this matter, the subcommittee suggested that registration be limited to foreign attorneys from countries that have a system which allows entry to Japanese *bengoshi*.⁷⁷ As in the earlier proposal, the subcommittee would permit attorneys from federal systems in which primary authority for regulation of the bar is relegated to the states, to register if a substantial number of the major states allowed *bengoshi* to practice.⁷⁸

Again in keeping with the December proposal, the subcommittee would limit the scope of the law on which Foreign Barristers could advise to that of their home country or, in a federal system, to both federal law and the law of the state in which they are qualified to practice.⁷⁹ Regarding matters involving that law, however, Foreign Barristers would be permitted to engage in a broader variety of activities than permitted under the December proposal. With certain exceptions, they could undertake any of the legal business stipulated in article 3, section 1 of the Barristers' Law.⁸⁰ The excepted activities include acts relating to litigious and non-litigious cases, investigation requests, formal objections to administrative bodies, requests for administrative reexamination, representation of clients in administrative dispute cases,⁸¹ and actions against, or the drafting of documents for submission to administrative or public agencies.⁸² These exceptions, by and large, concern trial or quasi-trial advocacy—activities within the traditional domain of *bengoshi*.⁸³ There would be no limit on the range of clients that foreign

74. *Id.* at art. 1.

75. *Id.* at art. 3, § 4.

76. *Id.* at art. 3, § 5. No foreign barrister would be permitted to establish more than one office. *Id.*

77. *Id.* at art. 2, § 1.

78. *Id.* at art. 2, § 2.

79. *Id.* at art. 4, § 1.

80. *Id.* at art. 4, § 2. These activities include dealing with litigious and non-litigious cases, raising complaints against the administrative office, and other general legal business. See *Bengoshi Ho*, *supra* note 7, at art. 3, § 1.

81. Subcommittee Draft, *supra* note 73, at art. 4, § 2, para. 1.

82. Subcommittee Draft, *supra* note 73, at art. 4, § 2, para. 2.

83. The excluded items mentioned in the text accompanying footnotes 81 and 82 largely coincide with those types of legal business that are currently the exclusive domain of the Japanese *bengoshi*, in other words, legal matters that have crystallized into a Japanese case (*jiken*) or administrative action or are likely to become such. Cf. *Bengoshi Ho*, *supra* note 7, at art. 72. It thus remains unclear why

barristers, acting within the scope of their authority, could serve.⁸⁴ Furthermore, the current proposal would only require foreign barristers to be physically present in Japan for half of each year.

The new proposal maintains the position of the previous report regarding employment relationships between foreign lawyers and Japanese legal professionals. While acknowledging that even within the Federation itself some hold the view that Japanese *bengoshi* should be permitted to hire Foreign Barristers, the subcommittee concluded that all joint operations, employment arrangements and joint office use arrangements between Foreign Barristers and *bengoshi* should be prohibited.⁸⁵ It was no more sympathetic to similar associations between Foreign Barristers and patent agents, tax agents, judicial scriveners, certified public accountants, and other licensed professionals, and would prohibit these arrangements as well.⁸⁶

Finally, the subcommittee would once again place regulatory authority over Foreign Barristers squarely within the Federation. The initial examination of qualifications would be conducted by an examining committee, established by the Federation and composed of persons commissioned by the Federation from among *bengoshi*, judges, prosecutors, personnel from the Ministry of Justice, and persons of learning and experience.⁸⁷ Foreign Barristers would be special members of the Federation and the local bar association, though with rights and duties different from full members, but nevertheless subject to the guidance and supervision of the Federation and the local bar association.⁸⁸ The Federation and the local associations would have disciplinary power over Foreign Barristers, including the power to issue a warning, suspend business, order expulsion from the Federation, and delete the Foreign Barrister's name.⁸⁹ Foreign Barristers would have voting rights at general meetings only regarding matters directly connected to the rights and duties of Foreign Barristers.⁹⁰ They could not vote for officers, hold office, or, as a basic principle, become members of Federation

Americans must push for, and the Ministry of Justice feels compelled to require, a separate regulatory regime to permit foreigners to engage in activities that are nowhere prohibited under Japanese law as it now stands and, indeed, are commonly undertaken by large numbers of Japanese who have no professional license of any kind. For a more complete examination of this question by one of the principal draftsmen of the Barristers' Law, see Fukuhara, *supra* note 2, at 31-33. See also Opinion Letter by Tadao Fukuhara, Esq. (May 18, 1970) (copy on file with Michael K. Young); Opinion Letter by Professor Koji Shindo, Faculty of Law, University of Tokyo (Mar. 15, 1977) (copy on file with Michael K. Young). See generally T. Fukuhara, *LAWYER LAW COMMENTARY* (1976) (in Japanese); T. Fukuhara, *COMMENTARY ON THE BARRISTERS LAW* (1970) (in Japanese).

84. Subcommittee Draft, *supra* note 73, at art. 4, § 3.

85. *Id.* at art. 5, § 1.

86. *Id.* at art. 5, § 2.

87. *Id.* at art. 6, § 1.

88. *Id.* at art. 7, § 1.

89. *Id.* at art. 7, § 2.

90. *Id.* at art. 7, § 4.

committees.⁹¹ To the extent such rules and regulations are not inconsistent with their status as Foreign Barristers, moreover, they also would be generally subject to all the rules and regulations of the Barristers' Law, the Federation's rules, *bengoshi* ethical rules, and fee schedules.⁹²

Shortly after this current proposal was received by the Federation, the Japanese Government, as part of its so-called Action Program, reaffirmed its resolve to reach "appropriate solutions" to the foreign attorneys problem, while paying due respect to the autonomy of the Federation. It also articulated its expectation that the "necessary amendments" would be made to the Barristers' Law during the next regularly scheduled session of the Diet.⁹³ The Federation apparently plans to prepare a draft of a bill, based on this proposed draft, for consideration by its Directors at their extraordinary meeting, scheduled for October 22, 1985.⁹⁴

IV. CONCLUSION

This is where things stand at the moment. The Federation has indicated, for the first time, its willingness to accept the presence of foreign attorneys in Japan. The Federation, apparently in response to international and perhaps even domestic pressure, also has backed off its first position, a position that was restrictive in the extreme. Even its most recent stance, however, may not be the Federation's, or the Japanese Ministry of Justice's, final position. It remains to be seen the extent to which the current position is merely an opening shot in the negotiations, or a crafted, ultimately unchangeable compromise between various internally competing positions. In all events, after a debate that has raged in one form or another since 1949, and with real intensity for the last decade, the parties are at least talking about the matter. As a result of these discussions, the issue appears to be on its way to some sort of resolution.

91. *Id.* at art. 7, §§ 5-6.

92. *Id.* at art. 7, § 7.

93. See Memorandum from Ira Wolf, U.S. Embassy, Tokyo (July 31, 1985) (copy on file with the authors).

94. *Foreign lawyers' activity limited to their own law: Joint management with Japanese also prohibited*, Yomiuri Shimbun, July 30, 1985, at 1, 1, 2 (morning ed.) (in Japanese).

Addendum

Isaac Shapiro and Michael K. Young

On September 3, 1985 the Federation adopted, through its Board of Governors, a proposal based largely on the Subcommittee draft of July 18. In one important regard the September proposal differed, however, from the July version. The July version had provided for exclusive supervisory jurisdiction in the Federation while the September proposal called for licensing by the Ministry of Justice in consultation with the Federation, while leaving day-to-day disciplinary control of licensed foreign attorneys to the Federation. In all other major respects the September proposal followed closely the Subcommittee's version of July 2.

At a meeting held in Tokyo between the U.S. and Japanese Government negotiators, the Japanese Government officially presented the September Federation proposal as the Japanese government's position paper. Both formal and informal meetings were held between the United States and Japan in November and December, 1985.

In the meantime, at an extraordinary general meeting of the Federation held in Tokyo on December 9, 1985, the Federation voted by an overwhelming majority (5,995 for, 786 voting against, and 617 abstaining) to approve the following resolution:

1. The system shall be based on reciprocity.

It shall be provided, however, that, where the other country is a federation in which the lawyer system is within the competency of the states, qualification in our country in accordance with the following section shall be granted only in case a substantial number of the major states of such country have systems for allowing in bengoshi of our country and, even in such case, shall be granted only to a person qualified as a lawyer in a state that has a system for allowing in bengoshi of our country.

The Minister of Justice shall ask the opinion of Nichibenren in matters regarding the above points.

2. A person who has a qualification in a foreign country corresponding to that of bengoshi in our country and to whom the Minister of Justice, after asking the opinion of Nichibenren, has granted qualification to engage in our country in legal business concerning specified foreign laws shall register with Nichibenren and shall, as a foreign special member, be placed under the guidance and supervision of Nichibenren.

With respect to the title to be used within our country by a person who has effected such registration, it shall be a title that is suitable for the practice and status of handling only legal business concerning foreign laws and shall be a title that does not create confusion with bengoshi of our country.

3. A person who, in accordance with the preceding section, has registered with Nichibenren and has joined as a foreign special member:

3.1 shall, with respect to the legal business that he or she may handle, be limited to the laws of his or her home country and of any third country disig-

nated by the Minister of Justice, and shall not be able to have any involvement in procedures before our country's courts or other public agencies or in other legal business as provided by law;

3.2 shall be prohibited from employing a bengoshi of our country and from jointly operating an office with a bengoshi of our country; and

3.3 shall be able to participate in the revision of the articles of association and regulations concerning matters directly affecting his or her rights and responsibilities, such as registration (including refusal and cancellation), discipline, punishment, dues, etc.

4. The other concrete conditions shall be as determined by the Board of Governors.

Further negotiations between U.S. and Japanese government representatives are to be held in Tokyo at the end of January, 1986. Following these the Japanese Government and the Federation will hold a series of meetings designed to reach agreement on the text of a bill to be presented to the Japanese Diet sometime in late March or early April, 1986. It is anticipated that following passage of this legislation, the Japanese Ministry of Justice will, together with the Federation, agree on a set of regulations to be adopted in implementation of the legislation. The effective date is likely to be at least six months but not more than twelve months after the adoption of the new law. Therefore, it is not likely that the first foreign lawyers to be licensed since 1955 will appear before sometime during the first half of 1987.