Greetings from Columbia Law School! Another academic year will soon be upon us. Before it arrives, we wanted to update our alumni and friends on the activities of the Center for Japanese Legal Studies during the 2008-09 year. As you will see, it was a busy year!

CONFERENCES AND WORKSHOPS
Celebrating the 60th Anniversary of the Weatherhead East Asian Institute

On Wednesday June 3, the Center for Japanese Legal Studies co-sponsored a day-long conference marking the 60th anniversary of Columbia University’s Weatherhead East Asian Institute. The event was part of a three-city Asian tour celebrating the university’s long history with Asia. The Tokyo conference featured Columbia faculty from law, political science, business, and the humanities together with Japanese scholars and policy leaders. More than 200 Columbia alumni and supporters attended the event. Professor Curtis J. Milhaupt ’89, Fuyo Professor of Japanese Law, professor of Comparative Corporate Law, and the director of the Center for Japanese Legal Studies, spoke on a panel examining U.S.-Japan-China relations. In his remarks, Professor Milhaupt noted how China’s economic rise over the past 20 years has created a political climate in Washington for trade and investment very similar to the one which existed two decades ago with respect to Japan. Recalling the controversy over Japanese investment in high-profile U.S. assets and frictions over Japanese labor practices in U.S. operations, he argued that the biggest test of U.S.-China economic relations may come when China begins large-scale direct investment in the U.S. For Japan, Professor Milhaupt argued that China’s rise calls for a fundamental transformation of Japanese policy in the areas of immigration, education, and the role of women in the workforce. Only by creating a “mindset of openness,” he argued, can Japan meet the challenges posed by the global economy and China’s growing stature.

Hostile Takeovers in Japan:
CJLS Holds Symposium in Tokyo

On December 12, 2008, the Center for Japanese Legal Studies co-sponsored a conference on hostile takeovers. The two keynote speakers were Hideki Kanda, professor of law at the University of Tokyo, and Jack B. Jacobs, Justice of the Supreme Court of Delaware. Professor Milhaupt served as a commentator on the two keynote addresses.

In his talk, “Developing an Infrastructure for Hostile Takeovers: The Delaware Experience,” Justice Jacobs explained how the American institutional framework for takeovers evolved under U.S. federal securities law and Delaware fiduciary law. He explained how the Delaware courts developed standards of “intermediate scrutiny” to review defensive measures to hostile takeover bids. He expressed hope that Japanese policymakers might find Delaware’s experience useful in deciding how a Japanese institution (or institutions) should shape the future direction and form of Japan’s takeover policy.

Professor Kanda’s presentation, “Hostile Takeovers and Defenses in Japan,” summarized legal and economic developments to date, and predicted that hostile takeovers will become more popular in Japan as a quick means of reallocating resources. As stable stockholding declines and bids become more common, defenses may be widely employed by Japanese firms. Professor Kanda argued that when contests for corporate control are litigated, the courts currently face difficult questions without clear guidance from the Companies Act. The METI-MOJ Guidelines were intended to develop consensus about fair and reasonable conduct in connection with takeovers. Professor Kanda suggested that tender offer regulation under the Financial Instruments and Exchange Act may become more important in the future, while courts and stock exchanges will continue to play significant roles in resolving takeover issues.
Professor Milhaupt commented on the previous two talks in his remarks titled “Developing Takeover Policy in the United States and Japan.” He noted the diversity of national laws on hostile takeovers worldwide, pointing out that globalization has not brought about a convergence in national takeover regimes. Rather, takeover policy still seems to be deeply rooted in each country’s institutional structures. For that reason, countries have provided very different answers to the key question for any takeover regime: “Who decides whether control over a firm will be sold and for what price?” In the U.S., Delaware judicial doctrine provides the answer: the Board of Directors. Under the U.K. City Code, the answer is the shareholders. In Japan, Professor Milhaupt argued, the answer is not yet clear because fundamental debates about the purpose of the corporation have not been resolved. He suggested that Japan may need a new institution, similar to the U.K. Takeover Panel, with a sophisticated understanding of the economic and legal significance of hostile takeovers and defenses, to respond to issues posed by takeovers and defenses in real time.

The roundtable is a great example of what makes the study of Japanese law at Columbia Law School extraordinary. A Japanese judge, a Japanese prosecutor, and a Japanese academic expert on the jury system all happened to be in residence as visiting scholars on the eve of this important development, sharing their insights and unique perspectives with the Columbia community.

A detailed summary of the roundtable discussion is available on the Center for Japanese Legal Studies website (www.law.columbia.edu/japan_center).

HIGHLIGHTS FROM OUR SPEAKER SERIES
On February 19, 2009, the Center organized a lecture by Setsuo Miyazawa, professor of law at Aoyama Gakuin University Law School, titled “Japanese Legal Education in Crisis, and a Chance for a New Beginning in Korea.” Professor Miyazawa is active in promoting judicial reform in Japan and was a leading proponent of the introduction of American-style graduate-level law schools into Japan. Yet he views the reforms in Japanese legal education thus far with considerable skepticism. The objective of Japan’s legal education reform was to produce a larger number of better-educated and more diverse lawyers, but the new law schools have failed to meet this goal. Professor Miyazawa suggested introducing consumer-protection legislation to prohibit economic exploitation of students by law schools, reducing the number of admitted students, and reducing the impact of the bar exam on law school curricula. Professor Miyazawa noted that Korea is undertaking a similar set of legal education reforms, and strongly urged lawmakers in that country to reject a bill that would permit students to bypass law school and sit for the bar exam without first obtaining a law degree.

In early 2009, Japan introduced a system of lay participation in criminal trials for serious offenses. The new jury, or saiban-in, system is part of a large package of recent legal reforms in Japan aimed at increasing citizen participation in the legal system and improving governmental accountability.

On November 5, 2008, the Center hosted a roundtable discussion of the new saiban-in system, which featured perspectives from the Japanese judiciary, prosecutor’s office, and U.S. and Japanese academic commentators. Participants in the roundtable included Nanae McIlroy ’08 LL.M., a public prosecutor with the Ministry of Justice; Reiko Kaihatsu ’08 LL.M., a judge in the Saitama District Court; Takashi Maruta, professor of law at Kwansei Gakuin University Law School; and Jeffrey A. Fagan, Professor of Law and Public Health and co-director of the Center for Crime, Community and Law at Columbia Law School.

The Center also hosted Arthur Mitchell, a partner in the Tokyo office of White & Case, on Tuesday March 3, 2009. Mr. Mitchell’s talk focused on the question, “Where is the Japanese M&A Market Headed?” He noted that the global downturn has dampened M&A activity in most countries except Japan. While M&A was frowned upon in Japan in the 1970s and 1980s, attitudes have changed in recent years, especially as a result of the current financial crisis. Japanese managers today have greater cash reserves at their disposal than other foreign firms. They also have begun to recognize that M&A can be used as a strategic tool. Despite Japan’s demographic and economic challenges, he was optimistic about Japanese global competitiveness in key areas, such as green technology, and he sees the current environment as presenting opportunities for Japanese firms to expand internationally.
STUDENTS

LL.M. Class
In May, Columbia Law School graduated a remarkable class of 21 LL.M. students from Japan. They came from a wide array of professional backgrounds, ranging from lawyers specializing in corporate law, banking, and intellectual property, to investment bankers, a diplomat from the Ministry of Foreign Affairs, and a staff member of the Tokyo Stock Exchange. Many of the students had prior international experience, having lived and worked in such diverse places as India, Singapore, China, and England. The incoming class looks equally diverse and promising. The Japanese LL.M. class of 2010 will number about 33 students, comprising almost 15 percent of the entire LL.M. class at Columbia Law School.

Shapiro Fellow
The Center for Japanese Legal Studies awarded the 2008-09 Isaac and Jacqueline Weiss Shapiro Fellowship in Japanese Law to Kana Morimura '07 LL.M. The Shapiro Fellowship is awarded annually to a current or former student engaged in research related to Japanese law. Ms. Morimura was in residence at the Law School in the spring of 2009 as a visiting scholar before taking a position as an assistant professor of law at Konkuk University in Seoul, Korea. In addition to her own research, while in residence she prepared materials for Professor Milhaupt’s Japanese law course and translated an article for publication in a Japanese law journal.

Nagashima Ohno & Tsunematsu Fellow
Each year Columbia Law School awards the Nagashima Ohno & Tsunematsu Fellowship to outstanding incoming students with a strong professional interest in Japan. This year’s recipient is Frank S. Williams, Class of 2012. Frank graduated with honors from the University of California at Davis in 2007, having majored in political science with a minor in philosophy and a concentration in the Japanese language. As an undergraduate, he won a JASSO International Student Scholarship to study at Meiji Gakuin University in Yokohama. After graduation, he returned to Japan to teach English. The NO&T Fellowship is the brainchild of Ken’Tsunematsu ‘63 M.C.L., one of Japan’s most distinguished legal practitioners.

FACULTY EXCHANGE PROGRAM WITH THE UNIVERSITY OF TOKYO
Each spring, Columbia Law School welcomes two faculty members from the University of Tokyo Faculty of Law for short-term visits. While in residence, they interact with Columbia Law School faculty and guest lecture in Professor Milhaupt’s course, Japanese Law and Legal Institutions. This past spring, we welcomed Professor Shozo Ota and Professor Daniel Foote.

Professor Shozo Ota’s lectures combined an historical perspective with the results of his own extensive empirical research on four Japanese law topics: divorce, civil procedure, the saiban-in system, and the Whistle Blower Protection Act of 2004. Professor Ota found that with respect to divorce, there is a large gap between the principles underlying the case law and common perceptions of Japanese people about marital relations. For example, while Japanese courts implicitly require long periods of separation (10 years on average) before granting divorce petitions, the general public approves of divorce after a 2- to 4-year separation. His lecture on civil procedure discussed the reforms of 1998 and 2004. His research revealed that while judges believe litigants hope to restore relations with their opponents or use litigation to communicate with the other side, in fact litigants pursue litigation in order to resolve disputes with a black-and-white judgment. In his third lecture, he evaluated how Japanese feel about the saiban-in system and found that the public has a strong “law and order” attitude. Most people do not care if evidence and confessions are obtained through coercion or abuse, as long as it brings out the truth. A majority also mistrust the saiban-in system. They prefer that trials be conducted solely by professional judges rather than by lay participants. On whistle blowing, Professor Ota’s research shows that a solid majority of Japanese say they would be willing to blow the whistle on a colleague if they discovered that a serious crime was being committed. This contrasts with the common perception that Japanese employees would remain quiet to preserve harmony and group relations.

In his first lecture, Professor Daniel Foote explored recent reforms to what he has called Japan’s “nameless, faceless judiciary.” This is a system designed to ensure that like cases are treated alike by downplaying the identity of individual judges. The emphasis on uniformity and anonymity, he argued, explains the practice of unsigned opinions; the regular transfers of judges, including the replacement of judges mid-trial; and the limited information made available about judges’ selection and evaluation, disciplinary matters, and personal backgrounds. Recent reforms seek to change this mindset. Reforms aim to recruit judges with more diverse backgrounds and to inject greater transparency in the personnel process. The hope is that these changes will generate greater public understanding of, and trust in, the judiciary.
In his remaining lectures, Professor Foote addressed Japan’s criminal justice system, characterizing it as a model of “benevolent paternalism.” He described long-standing questions about how the criminal justice system treats confessions and the right to silence, the adversary system, and the death penalty. He wondered whether, given the increasingly punitive orientation of public opinion and the rise of a victims’ rights movement, the benevolent paternalism ethos would be maintained. He also examined various criminal justice reforms from the past two decades, including the large package of criminal justice reforms that grew out of the Justice System Reform Council’s final report of 2001, most notably the introduction of the saiban-in jury system.

ALUMNI NEWS

Fumihide Sugimoto Named New President of Columbia Law School’s Japan Alumni Association

This spring, Fumihide Sugimoto ’93 LL.M., a partner with Nagashima Ohno & Tsunematsu, became the president of our Japan alumni association. Mr. Sugimoto will work with the Center to maintain the Law School’s close connection to its network of alumni in Japan, which today numbers in excess of 400. The Center for Japanese Legal Studies extends sincere gratitude to Sugimoto-sensei for volunteering his valuable time and talents in the service of our community.

SAVE THE DATE


Details to follow soon.

IN MEMORIAM

Keiji Matsumoto

Columbia Law School alumnus and prominent member of the Japanese bar, Mr. Keiji Matsumoto passed away on November 8, 2008. Mr. Matsumoto completed his LL.M. at Columbia Law School in 1971 and served as a past president of the Japan alumni association. Mr. Matsumoto was a founder of Hamada & Matsumoto, and developed the firm’s reputation in the field of international finance, including cross-border financing transactions. He went on to serve as special counsel of Mori Hamada & Matsumoto and director of NPO Management Assist, a non-profit organization comprised of senior members of the Japanese legal, business, and accounting communities.

RECENT PUBLICATIONS

The prominent Japanese legal publisher Yuhikaku has just released a book co-authored by eleven Japanese LL.M. students from the Class of 2007 and edited by Professor Milhaupt. The book, titled 米国会社法 (U.S. Corporate Law) and written in Japanese, is an introduction to the subject based closely on Professor Milhaupt’s lectures and class discussions at Columbia Law School in his Corporations course. The book is designed to provide an extensive and theoretically informed overview of the structure and content of the legal rules and market institutions that govern corporations in the United States. The focus of the book is primarily on large, publicly traded corporations, but it also discusses the basic organizational structures and governance characteristics of non-corporate entities, such as partnerships and limited liability companies, as well as close corporations. The book also covers securities and proxy fraud, as well as insider trading and the implications of the Sarbanes-Oxley Act.

In the book’s preface, Professor Milhaupt notes that the project is the result of a unique collaboration between himself and a group of highly dedicated students, who continued to work hard on the project even after returning to their busy professional lives, long after graduation from Columbia Law School. A wonderful accomplishment!

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