The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession

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Keywords: legal profession, internationalization, foreign lawyers, legal education

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The practice of law is increasingly international as law firms regularly expand across national boundaries, advising public and private clients on cross-border activities. There is more mixing between national legal systems than ever before, and whether through convergence or harmonization, legal rules and practices that once were local or national are being challenged through contact with foreign systems. The agents of this interaction include lawyers and their law firms, who, along with other professional services firms, compete for the role of representative quite apart from their nationality or that of their clients. Law firms, especially those based in the U.S. and England, increasingly abandon the exclusive connection to one national legal system just as they have abandoned their local identities.1

One consequence of the increasing meeting of legal systems is that lawyers trained in different national systems interact with greater frequency. These interactions occur as a result of a variety of circumstances, including the negotiations required of lawyers working on transnational matters as well as opportunities provided by working for law firms and other organizations anchored in one national system and expanding elsewhere. The interactions resulting from these cross-border meetings provide an opportunity for national models of lawyering to influence one another, through the

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competition and cooperation of lawyers and their firms in their work on behalf of clients, both shared and competing. The responses of the national systems will vary, for reasons that include the international competitiveness of national law firms as well as national and even local regulatory limitations.²

Law schools are an additional site of interaction for lawyers trained in different national systems, and U.S. law schools are attracting increasing numbers of foreign lawyers in their one-year LL.M. degree programs. These programs have proliferated in recent years, and at the same time the number of foreign lawyers enrolling in U.S. law schools for the LL.M. degree has mushroomed. A U.S. experience is considered valuable, and in some circles even required, for foreign lawyers wishing to participate in the international legal services market. In Frankfurt, for example, where many of the top German law firms have affiliated or merged with Anglo-American law firms, opportunities are limited for German lawyers who have not studied in the U.S. or England.³ While German law expertise remains essential, the additional credential of the U.S. LL.M. degree operates as a distinction between lawyers who participate in the elite firms that serve international businesses and those who concentrate on domestic matters. Elsewhere, the U.S. law school experience provides a bridge of common terminology and experience for lawyers from other countries who increasingly must be prepared to deal with one another. “One cannot do business internationally without some sort of


commercial language, some common understanding, or some common ways of behaving.”

Thus, according to one report, a “Mexican lawyer [reports] that he cannot do business effectively with a Japanese lawyer unless the Japanese lawyer also has an advanced US law degree.”

Foreign lawyers who enroll in one-year LL.M. programs at U.S. law schools often want the additional experience of working in the U.S. for at least a short period, as a practical element of their U.S. legal education. U.S. large law firms are an important training ground for new law graduates; they are “regarded by the law schools and by the profession almost as ... graduate school[s] of law.” In fact, if these law firms could efficiently formalize their training functions they would be serious competitors of U.S. law schools in the education of foreign lawyers.

Regardless of the desirability of U.S. law firms by foreign lawyers, the firms have not reciprocated by openly welcoming foreign lawyers. Foreign lawyers represent a small fraction of the lawyers hired by U.S. law firms each year, and they are present in U.S. offices in very limited numbers. This is explained in part by the position of strength enjoyed by U.S. law firms in the international market for legal services: these firms have been so successful in capitalizing on their U.S. expertise that there has been no obvious need to complicate their approach. And the business of many U.S. firms that participate in the international legal market continues to be dominated by domestic matters, where the benefit of a foreign legal approach is ambiguous. While to German firms the


additional U.S. legal education and/or practice experience provides an advantage with regard to their participation in the international legal market, for U.S. law firms there appears to be no analogous advantage.\(^7\)

Nevertheless, the number of foreign lawyers working in U.S. law firms has multiplied since the mid-1990s. Foreign lawyers occupy two basic roles in the large U.S. law firms that traditionally have been involved in the international market for legal services: one group is comprised of lawyers who act as substitutes for U.S. lawyers, and another group is comprised of lawyers who are hired for their foreign expertise. Those in the former group may become more integrated into their employer firms and even be promoted by them, but their foreign backgrounds and expertises remain generally secondary or even irrelevant to their successes. Those in the latter group occupy roles that largely marginalize them by their focus. Increasingly, the latter group also includes foreign lawyers hired to staff the growing foreign offices of U.S. law firms. Finally, once foreign lawyers are hired by a firm, regardless of their function there, they are sometimes used as evidence of the international character of the firm itself.

The increasing presence of foreign lawyers in U.S. law schools and law firms has not attracted much scholarly attention,\(^8\) and only scant empirical information about

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\(^7\) A student of a foreign legal profession might read about the Americanization of the foreign profession occurring as a result of cooperation among foreign and domestic lawyers and competition between them as well. See, e.g., Dillon, “Can They Skaddenize Europe?” *American Lawyer* (Dec. 1989) p. 40; Galli, “Will French firms survive?” *Int'l Fin. L. Rev.* (Oct. 98). The U.S. legal profession generally is not characterized in analogous terms, at least in part because of the hegemonic role of U.S. law and lawyers in the global economy. But see Yves Dezalay and Bryant G. Garth, *Dealing in Virtue* (1996) (analyzing the impact of international commercial arbitration on the acceptance and legitimation of alternative dispute resolution in the U.S.).

\(^8\) A number of scholars, however, have considered the presence of foreign lawyers or law students as an issue ancillary to their work on related issues; see, e.g., Luz Estella Nagle, “Maximizing Legal Education:
foreign lawyers in the U.S. is available. This article offers a description of certain foreign lawyers, and while not a representative sample of those in the U.S. for education or employment, it provides an entry point for analysis. The article examines a group of approximately three hundred foreign lawyer LL.M. graduates working in New York between 1999 and 2000, and presents information about their nationality, education and employment. This information is supplemented with stories of individual foreign lawyers, as well as with the large law firm perspective as articulated by hiring partners at a number of U.S.-based elite international firms. The article considers the experiences of foreign lawyers in U.S. law schools and law firms, and explores the ways in which these organizations and the foreign lawyers come together to further their respective ends.

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9 Many U.S. law schools have not kept careful records about their foreign LL.M. alumni until recently, perhaps because their potential as future donors was uncertain. Even organizations that fund foreign lawyers in pursuit of U.S. legal education have not kept detailed records of the post-graduation activities of their donees. Nor do bar records capture this information, since those individuals who pass a U.S. state bar are grouped with other U.S. lawyers, and those who do not sit for the bar or fail the exam are not included in bar records at all.

10 In fact, the term “foreign lawyer” is a misnomer for many foreign-educated LL.M. graduates who become members of the bar in New York or another U.S. jurisdiction in addition to their foreign training and license. I use “foreign lawyer” only to distinguish them from lawyers whose only legal education is the U.S. J.D. degree.

11 This group of foreign lawyers was identified through a search of the Martindale-Hubbell New York directory on Lexis. The search identified 351 foreign-educated lawyers who had graduated from a U.S. LL.M. program and were working in New York. The search was conducted during the summer of 2000, and thus reflects lawyers working in New York between 1999 and 2000.
In thinking about internationalization and the legal profession, one could investigate a number of different populations. The analysis offered in this article is based upon a group of foreign-educated LL.M. graduates working in New York, whose names and educational backgrounds were included in the Martindale-Hubbell listing directories. This captures a variety of individuals, from the Nigerian lawyer, admitted to the New York bar, who is a member of a small New York firm; a French lawyer who attended an LL.M. program in New York, passed the New York bar exam and is working at the New York office of a Chicago-based law firm; and the Israeli-born lawyer, first educated and licensed in Switzerland who completed an LL.M. and now is a member of a medium sized law firm. Each of these individuals comes within the scope of this article.

12 This article does not address regulation of foreign lawyers. For an analysis of current regulations relevant to foreign lawyers, see Sydney M. Cone, International Trade in Legal Services (Boston: Little Brown 1996); Pamela Stiebs Hollenhorst, “Options for Foreign-Trained Attorneys: FLC Licensing or Bar Admission,” The Bar Examiner (August 1999), p. 7.

13 Alternative groups of foreign lawyers that would present interesting additions to this one include foreign law students, who increasingly are entering U.S. law schools, both in J.D. programs, for which no prior legal education is necessary, and in LL.M. programs that require prior legal education. Foreign students are enrolling in both of these degree programs in increasing numbers, although the numbers are higher in LL.M. programs than in J.D. programs. A second group of foreign lawyers that could be studied are foreign legal consultants. These are lawyers licensed in another country who provide legal expertise on their home country law and on international law generally. As of 1998, 22 states licensed foreign legal consultants, although the category is not well used by foreign lawyers in most states. New York, however, had approximately 275 licensed foreign legal consultants. Pamela Stiebs Hollenhorst, supra n. 12. Each state’s licensing rules define the parameters of permitted advice by foreign legal consultants, and the differences are significant. For a thorough analysis of each state’s licensing scheme, see Syney M. Cone, supra n. 12.

14 The study includes foreign lawyers with degrees similar to the one-year LL.M., as well, including those with a Masters in Comparative Law, offered by the University of Michigan, among others.

15 There are a variety of ways to find foreign lawyers who are in the U.S. Unfortunately, state bar records are not a ready source of information about foreign lawyers, because once foreign-educated LL.M.s pass the bar examination in a U.S. jurisdiction, they are treated as U.S. lawyers. Public records of members of bar of New York, for example, do not provide information on the educational background of lawyers. See New York State Attorney Directory, http://www.courts.state.ny.us/webdb/wdbcgi.exe/apps/INTERNETDB.attyreghome.show (visited 1/6/01). One route might be to follow a group of students in the LL.M. program at a particular law school and...
I identified 294 LL.M. graduates from 51 countries working in New York for U.S. law firms. Forty-four percent of these LL.M.s received their first legal education in a country where common law is the basis of the legal system, and an additional twenty-five percent are from continental Western Europe. Chart A (included at page 52) depicts the home countries of the LL.M.s working for U.S. law firms.\textsuperscript{16} This home country information reveals a significant advantage for LL.M.s from countries that are similar economically and culturally to the U.S., even apart from language and legal system. In addition to these LL.M.s, many foreign lawyers from common law countries join the ranks of U.S. law firms in New York and elsewhere without enrolling in U.S. LL.M. programs.\textsuperscript{17}

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\textsuperscript{16} Home country here indicates country of birth. The individuals in the database generally attended law school in their birth countries; for those born in common law countries, this was universal. For most individuals, home country corresponds to the place where they completed their primary legal education, however certain individuals obtained legal education in another country, such as England.

\textsuperscript{17} New York’s bar rules allow graduates of three-year programs in law at Oxford, Cambridge and the University of London to take the bar exam without additional U.S. legal education. Colorado and Massachusetts permit graduates of Canadian law schools to take the bar exam. See http://www.abanet.org/legaled/publications/compguide2000/cgchart8.html (visited 6/15/01).
This article proceeds as follows. Section I examines the U.S. education aspect of the foreign lawyer experience. It considers the role of foreign lawyers in U.S. law schools as well as reasons behind the increasing numbers of foreign lawyers in these programs, and presents information about the law schools attended by the foreign lawyers in the database. In Section II, the experience of searching for U.S. employment is examined. Sections III and IV describe the law firms that employ the foreign lawyers, and analyzes relationships based on nationality, law firm business, and substantive specialty in order to gain insight into the ways foreign lawyers are used by U.S. law firms. Section V considers the use of foreign lawyers by law firms as evidence of the international capabilities of the employing law firms. The conclusion suggests that U.S. law firms may be well advised to consider the extent to which foreign professionals have succeeded in non-law professional services firms, which compete with law firms for lawyers as well as for clients.

I. The Education of Foreign Lawyers

Increasing numbers of foreign lawyers are attending U.S. law schools.\textsuperscript{18} Their home countries are spread around the world, including countries closest to the U.S. as well as nations at the furthest distances geographically and developmentally.\textsuperscript{19} The one-
year LL.M. degree is the most common degree program pursued by foreign lawyers attending U.S. law schools. In 1999, at least sixty-eight U.S. law schools offered some sort of graduate degree available to foreign lawyers.\(^{20}\) More than half of these programs are available exclusively to foreign lawyers. These LL.M. programs are growing in size,\(^ {21}\) as well as in number.\(^ {22}\) Most of this growth occurred in the 1990s, and much of it in the last half of the decade.

The history of Northwestern University’s LL.M. program is illustrative. In its early period prior to 1990, the program attracted a small number of foreign students each year,\(^ {23}\) most of whom were interested in pursuing academic careers in their home

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\(^{20}\) Information from ABA Section on Legal Education and Admission to the Bar, on file with author.

\(^{21}\) For statistics on LL.M. enrollment, see http://www.abanet.org/legaled/statistics/Degrees.html (visited 7/28/00), which shows that 669 LL.M. degrees were awarded (to foreign and U.S. lawyers in LL.M. programs) in 1981, 1,690 were awarded in 1990, and 3,069 were awarded in 1999, representing an increase of more than 400% over the 1981 figure. The same website includes information on J.D. degrees awarded over the same period of time, which increased only from 35,603 (in 1981) to 39,071 (in 1999). Statistics on the number of foreign LL.M. students in each of these years are not available, but information on the percentage of foreign LL.M. students earning degrees in recent years indicates a growing presence: during the years 1996-1999, the percentage of LL.M. degrees awarded to foreign nationals increased from 39.8% to 52.7% of the total number of LL.M. degrees awarded. Information provided to author by Rick Morgan, Office of the Advisor to the Consultant on Legal Education, ABA, dated 2/28/01. Non-J.D. programs are assuming more significance in law school enrollment generally: “Total enrollment in a Juris Doctor program at ABA approved law schools in Fall 1999 was . . . 443 fewer students than . . . in 1998. Conversely, total law school enrollment increased by 443 students in 1999 . . . .” Rick L. Morgan, “Survey of Minority Group Students Enrolled in J.D. Programs in Approved Law Schools, 1971 to Present,” in Rick L. Morgan and Kurt Snyder, eds, Official American Bar Association Guide to Approved Law Schools (Foster City, CA: IDG Books Worldwide, Inc. 2001), p. 455.

\(^{22}\) According to J. Richard Hurt, then-Deputy Consultant on Legal Education for the ABA in 1999, U.S. law schools offered 217 post-J.D. programs, of which 65 were established since 1989. Comments of J. Richard Hurt at Conference on Post-JD Education for Foreign Lawyers held at Duke University School of Law in the spring of 1999. The ABA Section on Legal Education and Admission to the Bar indicates that 93 U.S. law schools offer post-J.D. programs. Certain of these programs are designed specifically for foreign lawyers, and a number of schools offer more than one post-J.D. program. See the Section’s website at http://www.abanet.org/legaled/postjdprograms/postjd.html#2foreign (visited 3/12/01). See also the list of LL.M. programs collected at the Hieros Gamos web site, at http://www.hg.org (visited 8/8/00).

\(^{23}\) LL.M. programs also have been used by U.S. law graduates to gain status by their association with a prestigious law school, especially students interested in academic careers. In addition, many U.S. law
countries. Students worked closely with faculty, wrote theses, and enrolled in approximately one semester’s worth of classes over the course of the year. Applicants were often referred to the LL.M. program by alumni. The relationship between the faculty advisor and students was a close one, often lasting well beyond the term of the LL.M. program.

In the early 1990s, Northwestern decided to expand its LL.M. program and to remodel the program around course work. An introductory class on the American legal system was created, and the thesis requirement was eliminated. Enrollment immediately grew from a handful of students to more than twenty in the initial years of the new program. In 2000-01, Northwestern enrolled 54 students in its LL.M. program and an additional nineteen students in a combined one-year law and business program for foreign lawyers.24 The shift away from an academic orientation is the hallmark of the revised LL.M. degrees now attracting increasing numbers of foreign lawyers.25

The current trend in LL.M. programs not only avoids the thesis requirement, it also avoids the prescription of a set curriculum, in contrast to the core classes common to the first year of J.D. programs. A core curriculum would require the hiring of additional faculty and also might limit the potential pool of applicants interested in the program.

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24 See http://www.law.northwestern.edu/depts/gradintl/index.htm for information on Northwestern’s two LL.M. programs (visited 6/19/01).

25 The thesis is optional in some instances, for example at University of Pennsylvania, where LL.M. students may select either the “course track” or the “thesis track.” While both tracks require some research and writing project, students in the course track complete 20 credit hours during the year, while students in the thesis track complete only 13 credit hours. The University of Pennsylvania’s description of the two options emphasizes that “Students who do not have an extensive background in American law or a related common-law system normally enroll in the Course Track.” See http://www.law.upenn.edu/ (visited 6/21/01). Other schools require some writing of their foreign students, either in a seminar or independent
But without a prescribed set of courses, LL.M. students do not share the educational experience that serves as the common denominator for U.S.-educated lawyers.

In 1999, the most recent year for which numbers are available, 1,616 foreign lawyers graduated from LL.M. programs, constituting 41% of all students enrolled in post-graduate programs at U.S. law schools. The largest foreign lawyer LL.M. programs are at NYU, Harvard, American University, and Columbia. Of the 351 foreign LL.M. graduates in the database who were working in New York between 1999 and 2000, more than one-third received their LL.M. degrees in 1997, 1998 or 1999, and nearly two-thirds of the group received their LL.M. degrees between 1990 and 2000. Foreign students also pursue the three-year J.D. degree at U.S. law schools, although there is no data available to estimate the number of such students.

Why do foreign lawyers come to U.S. law schools for the LL.M. degree? The story of one recent LL.M. graduate’s journey to the U.S. for additional legal education is from courses; it also is common to require foreign students to take a general introductory course on the U.S. legal system.

26 Information provided by ABA Section on Legal Education and Admission to the Bar, on file with author.

27 NYU awarded 174 LL.M. degrees to foreign students in 1999, according to information provided by ABA Section on Legal Education and Admission to the Bar, on file with author.

28 Harvard awarded 138 LL.M. degrees to foreign students in 1999, according to information provided by ABA Section on Legal Education and Admission to the Bar, on file with author.

29 American University awarded 131 LL.M. degrees to foreign students in 1999, according to information provided by ABA Section on Legal Education and Admission to the Bar, on file with author.

30 Columbia University awarded 126 foreign students awarded LL.M. degrees in 1999, according to information provided by ABA Section on Legal Education and Admission to the Bar, on file with author.

31 More of these foreign lawyers received their LL.M. degree in the four-year period of 1997-2000 than in the prior seven-year period of 1990-1996.

32 From information about the number of foreign students and LL.M.s at NYU, a rough estimate is that approximately 100 foreign students are in the J.D. program there. Burton Bollag, “A Law School on the Move Takes a Global Approach,” The Chronicle of Higher Education (1/12/01), p. A43; ABA Section of Legal Education and Admission to the Bar (information on file with author).
revealing for its lack of intentional design. This lawyer, whom I will call Juan, finished law school in his home country in Latin America and found a job with a law firm that represented large domestic companies, some of which had business activities in other Latin American countries. Juan pursued this cross-border work, and considered it both prestigious and interesting. He began brushing up on his English language skills as part of his effort to do the cross-border work, because certain of the transactions involved foreign investors and lawyers who worked in English. He had studied English in primary school, and he tried to vacation in English-speaking countries to give himself an opportunity to use and improve his language skills. On one of these vacations, accompanied by his girlfriend, he “passed by the door of Columbia [University]” and he decided to “take a look [at] the library, and … there was a very kind woman there, and she said, ‘Are you planning to … do an LL.M.? ’” Juan did not know what an LL.M. was, but he took a brochure as well as the advice from the “kind woman” that “the LL.M. is very big and there are a lot of people from different countries. They study pretty much what U.S. J.D.s study.”

After the vacation, Juan studied Columbia’s brochure and wrote to different U.S. law schools for information about their LL.M. programs. He began thinking seriously about pursuing the degree. In explaining his decision to apply for the LL.M., he said, “the U.S. was getting bigger and bigger in terms of economy in [my home country], and it was more and more important to have English. And … a lot of investors from the U.S. were coming to [my home country]. And … [I] realized that it was a very important matter for [me] because [I] wanted to have … like U.S. clients and the only way [I] could do it was like studying their law, like the U.S. law and talking good English.” He started
saving money for the travel and tuition, began an intensive study of English, and also
began meeting other lawyers who were interested in pursuing the LL.M. or had already
obtained the degree.

Juan’s plan was to do the LL.M. and return to his home country to pursue a
position at one of the larger firms there, where there would be more international work.
He “never, never thought about staying [in the U.S.], … working.” He distinguished
himself from many of his classmates in the U.S., who, he believed, came to the LL.M.
program “just to get a raise on their salary.” Rather, he described himself as passionate
about international law. Nevertheless, he had given serious thought to the benefits of the
LL.M. in terms of increased opportunities in his home country. Law firms in his home
country would consider the LL.M. an indication that “you are … self-motivated, … you
had the money so you come from a family that can pay [for] this. … [T]here’s a lot of
things that … really count at the time of hiring somebody. … [Y]ou talk good English
and they need people who talk in English because they have … U.S. and British,
European [clients] that speak in English because it is a universal language.”

Juan’s journey to a U.S. LL.M. program can be contrasted with others whose
paths to the U.S. were more directed. A Latin American lawyer who was working for
one of the elite firms in his home country decided to pursue the LL.M. because advanced
legal education is nearly a requirement for promotion in his law firm. In addition, he
articulated a common explanation for pursuing the LL.M.: “Most clients of the firm are
foreign, and often I had to deal with foreign legal counsel, too. The U.S. is where most
foreign investors come from. An acquaintance with the U.S. legal system, the ways
lawyers and clients think when deciding to do business in [his home country], was going
to help me get ahead.”33 A lawyer from Eastern Europe echoed this sentiment regarding the importance of understanding U.S. law and the international perspective: “I thought that it would be very important for every lawyer who is going to work, not only for his own citizens, but also for foreign investors, because it makes him understand the demands of his clients.”34

In addition to the need to understand transnational legal issues and particularly the U.S. legal system that results from the internationalization of client activity, as described above, a variety of explanations for the increased attraction of the U.S. one-year LL.M. degree are conceivable. The expansion of U.S. and English law firms, and their resulting competition with national law firms in various locations, has introduced foreign lawyers to the model of Anglo-American lawyering in an intimate and challenging manner.35 Certain foreign lawyers may attend U.S. law schools to ready themselves for this competition in their home countries. For some students, the LL.M. and the subsequent opportunity to take the bar examination in certain U.S. jurisdictions offers an escape from national systems that deny most law graduates a license to practice law. Students from Taiwan, Japan and Korea commonly fall into this category because of the extremely low bar passage rate in these countries. These students accomplish a sort of end-run around the national restrictions by becoming licensed lawyers in the U.S., for which the LL.M. is

33 Interview 12.

34 Interview 2.

35 See Robert C. Clark, “Bases and Prospects for Internationalization of Legal Education In the United States,” 18 Dickinson J. Intl Law 429, 431 (2000) (“There are various reasons for the trend [of increasing foreign applicants to U.S. law schools]. … But other factors pull more on people with policy and academic interests. United States legal education has a reputation for being more inter-disciplinary and more interactive than in many other places, and those features draw potential scholars and teachers. In addition, the U.S. legal system, for better or worse, is highly articulated. … There is a huge amount of legal doctrine, commentary, and theory. This massive existing base of normative and intellectual material is worth study.”).
a prerequisite, and then returning to their home countries with this new credential of legitimacy.\textsuperscript{36} Other students pursue the LL.M. as a way to gain substantive knowledge that they perceive is necessary for sophisticated practitioners in an international and competitive legal market. In Germany, for example, most law faculties do not offer courses on international business law; German students attend LL.M. programs in part to gain this substantive knowledge.\textsuperscript{37}

Equally important as the forces compelling foreign lawyers towards the LL.M. are the efforts of U.S. law schools to attract increasing numbers of foreign lawyers to internationalize their student bodies\textsuperscript{38} as well as to take the place of the declining J.D. enrollment. U.S. law schools no longer enjoy the bulging groups of applicants that characterized the 1980s,\textsuperscript{39} and the new foreign lawyer programs serve as substitutes for

\begin{itemize}
\item \textsuperscript{37} “[I]nternational business law [is a] field almost entirely ignored in the state curriculum” of Germany’s public universities, according to Colin Woodard, “Legal Education in Germany Faces Iconoclastic Competition,” The Chronicle of Higher Education (online), http://www.chronicle.com (6/1/01). Woodard notes that a new private law school in Germany, Bucerius Law School, offers courses on international business law.
\item \textsuperscript{38} See John Sexton, “Structuring Global Law Schools,” 18 Dickinson J. Intl Law 451, 454-5 (2000) (“It ultimately comes down to integration – full integration into the heart of the school.”); on the analogous influx of foreign students to U.S. business schools, see Cindy Skrzycki, “Japanese Rush to Garner MBAs,” The Washington Post (5/31/1987), p. H1 (“Many American business schools are … hot to have foreign students though they, too, are becoming more choosy about whom they admit as they look for candidates with a strong command of English and outgoing personalities. ‘We want them for the sake of our American students,’ said Leslie Grayson, professor of international business economics at Darden. ‘It may be the only chance a nice Protestant preppy can find out what makes a guy like Shigemori tick.’”)
\item \textsuperscript{39} See Clark, supra n. 35, at 429-30.
\end{itemize}
this dwindling enrollment. The remodeled foreign lawyer LL.M. programs attract great numbers of students at least in part because they are designed to attract them; they enable law schools to collect tuition dollars from students who do not demand much in the way of additional faculty or staff. And the law schools have been able to operate these programs without any real oversight from either the ABA or the media.

Selecting a particular U.S. law school for the LL.M. program is an important decision that may impact the opportunities available to a foreign lawyer hoping to find work in the U.S. at the end of the one-year program. U.S. law firms typically make hiring decisions about new law school J.D. graduates on the basis of two elements: the status of the law school attended and an applicant’s grades in law school. U.S. law schools are ranked in various ways, with perhaps the most publicized ranking being that published annually by U.S. News and World Report. For LL.M. hiring, it is not clear how grades and law school ranking relate to employment opportunities. They certainly are not as exclusively determinative as they are for J.D. hiring. Nevertheless, the reputation of the particular law school attended by an LL.M. seems relevant to U.S. employment prospects.

40 John Sexton, formerly dean of NYU’s law school and now president of the University, reported that NYU decreased the size of its JD population and increased the size of its LLM population for the purpose of building the “global law school.” Others interpreted this move as a way to maintain enrollment without lowering the school’s admissions statistics. See note 42, infra.

41 LL.M. program administrators at various law schools have even referred to their programs as “cash cows” for U.S. law schools, and no doubt each of the law schools that has added or beefed up such a program in the last ten years is attempting to capture its piece of the pie.

42 Law schools compete based in part on admission statistics, including LSAT scores and grade point averages, which are collected and publicized with regard to J.D. students but not with regard to LL.M. students. As a result, enrollments in LL.M. programs can contribute much needed tuition dollars without affecting admission statistics.
Each of the top fifteen schools in the U.S. News rankings is represented in the LL.M. database for sending its LL.M. graduates to New York employers, although the order of ranking does not correspond to the frequency of a school’s appearance in the database. Certain of these law schools have not developed large LL.M. programs, or have aimed their programs at students whose interests lie outside of the private commercial law world that gravitates towards large and international law firms. Table 1 presents the list of U.S. law schools attended by the LL.M.s in the database, in order of the number of LL.M. graduates in the database who attended each school. Seven of the ten schools attended by the most LL.M.s in the database are among the top ten in the U.S. News rankings; NYU, Columbia and Harvard, the top three in the LL.M. database, are in the top five of the U.S. News rankings, a fact that surely buttresses the credentials of LL.M. applicants from those schools to law firms as well as attracting top notch applicants to the LL.M. programs.

Three New York City law schools, NYU, Columbia and Fordham, were attended by nearly half of the LL.M.s in the database. NYU has built its reputation on being a global law school, and that includes enrolling a significant number of foreign students. The school sponsors one of the job fairs for foreign LL.M. students and interested potential employers, until recently the only one of its kind. It has a large LL.M. program.44 Columbia, too, has an LL.M. program that is substantial in size, with space for more than 100 students.45 In addition, in the past several years Columbia has created

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44 In 1999, NYU had 295 post-JD foreign national students enrolled at the law school, and awarded 174 LL.M. degrees to foreign students. Information from the ABA Section on Legal Education and Admission to the Bar, on file with author.
the only competing job fair for foreign LL.M. students, which is exclusive with regard to the schools allowed to participate. Hosting a job fair is a good way to help students from the host school find jobs, and at the same time build relationships between the school’s staff and potential employers.

45 According to the ABA Section on Legal Education and Admission to the Bar, Columbia had 165 post-JD foreign national students enrolled in 1999 and awarded LL.M. degrees to 126 foreign students. Id.
Table 1

U.S. Law Schools Attended by Foreign Lawyers Working for U.S.-based Law Firms

(in order of the number of LL.M.s in the database graduating from each school)

<table>
<thead>
<tr>
<th>Rank</th>
<th>Law School</th>
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<tbody>
<tr>
<td>1</td>
<td>New York University</td>
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<td>2</td>
<td>Columbia University</td>
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<td>3</td>
<td>Harvard University</td>
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<td>University of Pennsylvania</td>
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<td>5</td>
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<td>6</td>
<td>Fordham University</td>
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<td>Georgetwon University</td>
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<td>Boston University</td>
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<td>Cornell University</td>
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<td>10</td>
<td>University of Virginia</td>
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<tr>
<td>11</td>
<td>Northwestern University</td>
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<tr>
<td>12</td>
<td>University of California – Berkeley</td>
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<td>13</td>
<td>George Washington University</td>
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<td>12</td>
<td>Tulane University</td>
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<td>Yale University</td>
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<td>13</td>
<td>Indiana University</td>
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<td>13</td>
<td>McGeorge – University of the Pacific</td>
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<td>13</td>
<td>Southern Methodist University</td>
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<td>Stanford University</td>
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<td>University of Arizona</td>
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<td>University of California at Los Angeles</td>
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<td>University of Georgia</td>
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<td>University of Notre Dame</td>
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<td>13</td>
<td>Wake Forest University</td>
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</tbody>
</table>

http://law.bepress.com/nwwps-plltpt/art38
The inclusion of Fordham’s LL.M. program among the top ten in the database is revealing. Fordham’s law school is ranked 32nd by U.S. News & World Report, and it is not ranked among the top fifteen schools for its international program by U.S. News.46 But Fordham, which awarded 46 LL.M.s to foreign students in 1999,47 has the advantage of location in New York City, and several faculty members with specialties in issues related to internationalization and the legal profession matters and who may have important contacts with the New York practicing bar.48 While it is often ignored, law school location matters in law school recruiting for J.D. students, and it apparently helps New York-based LL.M. students as well.

A different way to consider the impact of a particular law school on the market for foreign lawyers in New York is to consider how widespread the law school’s reach is in placing its graduates. That is, how do these law schools compare in terms of the number of different organizations in which their LL.M.s are working? Here, NYU’s preeminence is clear. NYU foreign LL.M. graduates were listed in the database at 53 different organizations, including U.S.-based law firms, foreign law firms, corporations and sole practitioners. No other law school came close to this breadth of placement.49


47 Information from ABA Section on Legal Education and Admission to the Bar, on file with author. Fordham had enrolled 79 foreign students in post-JD programs in 1999.

48 Roger Goebel of Fordham Law School wrote one of the first articles about internationalization and rules of practice, see Roger Goebel, “Professional Qualification and Educational Requirements for Law Practice in a Foreign Country: Bridging the Cultural Gap,” 63 Tul. L. Rev. 443 (1989); Mary Daly, also at Fordham, has written widely about internationalization and ethical issues involving the legal profession, see, e.g., Mary Daly, “The Ethical Implications of the Globalization of the Legal Profession: A Challenge to the Teaching of Professional Responsibility in the Twenty-First Century,” 21 Fordham Int’l Law J. 1239 (1998); Mary Daly, “Thinking Globally: Will National Borders Matter to Lawyers a Century from Now?,” 1 J. Inst. for Study Leg. Ethics 297 (1996), as well as serving as the reporter for the ABA Commission on Multidisciplinary Practice.
NYU’s penetration of this market may well be explained by its history as sponsor of the Foreign Lawyers Job Fair. It is clear that law school matters for LL.M. placement, just as it matters for placement of J.D. graduates, although the hierarchy for foreign lawyers is obviously different than the rankings published by U.S. News.

At the same time that we consider the status of various law schools with regard to the employment results for these lawyers, it is important not to lose sight of the relationship between admissions to law school and placement. NYU’s top ranking position in placement for foreign lawyers also has a causal relationship to the kinds of students NYU attracts, and the characteristics of the students impact their success in finding employment. A variety of characteristics are relevant here, including fluency in English, a common law background, sociability or cultural similarity, and the position of a student’s home country in the global economy. The more well-known a law school is among foreign lawyers, the more likely it can be selective among applicants with regard to these characteristics. Many foreign LL.M. students report consulting the U.S. News rankings to help them decide between the various schools to which they have been admitted, but personal relationships with alumni also play an important role in this decision.

Legal education does not end with the award of a degree, either for U.S. J.D. students or for foreign lawyers in an LL.M. program. Many law graduates feel that some experience working for a U.S. law firm provides an important practical component to their education. To this end, many foreign lawyers take a bar examination in the U.S., in

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49 Columbia and Harvard have foreign LL.M. graduates at 39 and 36 organizations, respectively, followed by University of Pennsylvania (17 organizations), Fordham (13 organizations), Georgetown University (11 organizations), and Boston University, University of Chicago, and Cornell University (9 each).
the hopes that this additional credential of bar membership will distinguish them sufficiently to entice a U.S. law firm to offer employment.

New York attracts a substantial number of foreign lawyers hoping to pass the bar. In 1999, the most recent year for which information is available, 2,287 individuals who attended law school outside the U.S. sat for the New York bar examination; 43% of these students passed the exam.51

Even for those foreign lawyers who fail the exam, the process of preparing for the bar exam itself is considered useful. One lawyer at an international U.S.-based firm commented,

We generally require LLMs of civil-law lawyers, and also generally require that they take the New York Bar Exam. Passing the exam is not a requirement for those foreign lawyers, who return to their countries after their stage [practical training], but we feel that for these lawyers, mere preparation for, and sitting, the exam gives them the necessary training in basic areas of US practice (e.g. torts and contracts) and writing in English which they may not receive (or may not receive adequately) in their LLM programs, where they have a tendency to take more specialized courses.52

This advice rings true with a number of LL.M. students who have commented on the pragmatism of the bar course. They are invigorated by bar review, rather than suffering the boredom that many U.S. students feel, because their course work in the LL.M.

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50 Each of the ten schools most commonly represented in the LL.M. Martindale-Hubbell database had graduates from common law jurisdictions in the database, while certain of the other schools did not.

51 See National Council of Bar Examiners web site at http://www.ncbex.org/Statistics/Statistics2000.pdf (visited 6/11/01). The same web site reports that 2,047 foreign-educated individuals took the New York bar exam in 1998. The National Conference of Bar Examiners also reports on foreign-educated lawyers taking the bar exam in other jurisdictions; in 1999, the second most popular state for foreign-educated lawyers to sit for the bar was Virginia, where 23 individuals took the examination. However, the statistical information about California is not complete, because 1,604 individuals who took the bar in California were not categorized by the location of their education; reported information reveals that 21 foreign-educated individuals took the California bar exam at the same time that 10,420 U.S. educated individuals took the exam.

52 Interview 3.
program was not focused solely on U.S. law. Bar review, it seems, can provide another educational component to the foreign lawyer experience.

II. The U.S. Job Search

Once foreign lawyers are enrolled in U.S. LL.M. programs, the possibility of working in the U.S. is quickly raised. Juan, the Latin American lawyer introduced earlier, explained that his initial intention was to return to his home country after graduation. When his classmates sent out letters to U.S. law firms asking for interviews, he refrained, reiterating that his plans were to return home, get married, have a family, and work in a big law firm there. But later in the term, when his classmates began accepting job offers in the U.S., Juan was overcome with the competitive environment and the talk among his classmates of the importance of U.S. work experience. He recalled the advice of one classmate: “‘[I]f you … do … a global analysis of two years here [in the U.S.], one working in a law firm and one studying here, I would say that 70% of importance is working here. … [I]t’s not that important studying here.’ … And I was … thinking it over, and saying, yeah, it’d be great … learning with the professionals, with a masters, you know, with … the inventors of the law business … I’ll be … much better off with something like this. I could learn it in [my home country], but if I learn it here, it would be great.”

Many foreign lawyers undergo a similar metamorphosis during their LL.M. year in the U.S. Those who begin the year with no intention of staying beyond their nine months of course work often decide to consider temporary assignments in the U.S. Those

who begin their U.S. tour with some interest in working for a while after the LL.M. often, after graduating, become determined to find permanent work here. Many view a period of working in the U.S. as the practical side of their education. But it is not simply knowledge and experience that these lawyers seek; they also are attracted by the status of working for an international U.S. law firm, the high salaries that accompany this work, and the contacts it brings.

The decision to look for work in the U.S. sets LL.M. graduates on a challenging course. While law school recruiting for J.D. graduates is generally highly routinized and uniform, the foreign lawyer LL.M.s generally are excluded from the recruiting activities that surround J.D. students. And in many U.S. jurisdictions, the opportunities for LL.M. graduates are limited by bar admission rules that restrict the right to sit for the bar

54 Interview 1.

55 And in fact, the F-1 student visa allows up to 12 months beyond the completion of the degree for practical or vocational training. See www.ins.usdoj.gov/graphics/howdoi/academic.htm. (visited 6/20/01).

56 Compare the explanation offered for the attendance of Japanese students at U.S. business schools in the 1980s: “[F]oreigners ‘often don’t come for what is taught in class but to make the connections and to learn the culture.’” Cindy Skrzycki, “Japanese Rush to Garner MBAs,” The Washington Post (5/31/1987), p. H1 (quoting Charles Hickman, director of projects and member services with the American Assembly of Collegiate Schools of Business).

57 Many law schools allow the law firms participating in on-campus recruiting for J.D. students to indicate whether they are interested in speaking with foreign LL.M. students, and generally the firms decline the opportunity. The fall on-campus interviewing system is largely unavailable to foreign students. Certain U.S. law schools specifically discourage their LL.M. applicants from applying for the purpose of finding work in the U.S. For example, the University of Pennsylvania’s Career Office offers the following advice to LL.M. applicants: “Experience shows that only a very, very small percentage of LL.M. graduates from all United States law schools find work here. We want you to be very clear about this before enrolling in the Law School, and so we provide the following information for you to consider carefully. … While you can expect to receive an excellent education at Penn, we state again, as we did in the Admissions brochure, that it is extremely difficult to find law-related employment in the U.S. upon graduation, even for the period of practical training that is allowed under current U.S. immigration law. Unfortunately, the number of employers who are interested in hiring LL.M.s is very small. More specifically, very few U.S. legal employers are interested in hiring lawyers from abroad unless they have earned their law degree (J.D.) in the United States.” (emphasis in original) University of Pennsylvania School of Law, Career Planning Information for Prospective LL.M. Candidates, available at http://www.upenn.edu (visited 6/21/01).
exam to persons who completed the three-year J.D. degree. The job search strategy described by most of the foreign lawyers with whom I spoke includes reliance on contacts with U.S. lawyers derived from their work in their home countries, massive letter writing campaigns, and contacts with other foreign lawyers working in the U.S., through either a U.S. law school network or one based on their home country contacts.

While foreign lawyers generally do not participate in on-campus recruiting by law firms, two job fairs are held each year specifically for foreign LL.M. students. The job fairs are sponsored by the law schools of NYU and Columbia, and they are held during the same weekend in January. Many U.S. law schools coordinate their students’ participation in one of these job fairs. Employers include U.S. and foreign law firms and non-law professional services firms, such as the Big Five, consulting firms and several investment banks, and U.S. and foreign corporations. In fact, the job fair at NYU is heavily weighted towards foreign-located opportunities. Many students find success there only with firms that want them to return to their home countries upon graduation.

Foreign LL.M. students also find jobs by using their pre-existing relationships with law firms in their home countries to gain entry to U.S. law firms that have business relationships with the foreign firms. It is quite common for foreign lawyers with work

experience in their home countries to ask their foreign firms to recommend them for a position in the U.S. Sullivan & Cromwell, for example, articulates the law firm referral approach in its description of the firm’s Foreign Lawyers Program: “The firm encourages law firms around the world to propose candidates for the program . . .”60 Other U.S. firms without formal foreign lawyer programs follow this approach as well, taking on lawyers from favored foreign firms for temporary periods of training and exposure to the U.S. style of lawyering.61 In today’s climate of transnational law firm combinations, hosting foreign lawyers from favored firms even may set the scene for future firm affiliations.

An alternative approach for foreign LL.M. students is to cultivate relationships with other lawyers from the same home country who are working in the U.S., asking them to pass along a resume and recommendation to their superiors. Such an approach might work for any law graduate, foreign or not, with regard to small- and medium-sized law firms, but it is unusual for the largest U.S. firms to hire new law graduates outside of the highly-structured law school interviewing program. Nevertheless, foreign lawyers report success with this approach even in the largest law firms, with the caveat that the


61 The hiring partner at one over-500 U.S.-based law firm distinguished his firm’s willingness to host foreign lawyers as trainees from the hiring of foreign lawyers for permanent positions. This firm accepts several foreign lawyers with LL.M. degrees as trainees each year, hosting them for a maximum of six months. He indicated that his firm “does not actively recruit trainees, but we go to various job fairs each year,” including the foreign lawyers job fair sponsored by NYU. Sometimes trainees work in a foreign office of the firm after spending several months in the U.S. Certain of the trainees are recommended by another foreign law firm with which this U.S. firm has a close relationship. Interview 4.
process can be quite slow, sometimes requiring months of patience after graduation. Nevertheless, this use of contacts to gain entry to the largest firms distinguishes the foreign-trained applicant from their J.D. counterparts.

Finding other lawyers from the same home country working in the U.S. is a time-consuming task, but two groups in New York that cater to foreign lawyers may make this easier. The first group is the International Law & Practice Section of the New York State Bar Association. The Section hosts a Foreign Lawyers Committee, which includes on its website a list of foreign lawyers and law firms with a presence in New York.

The Foreign Lawyers Association of New York (Flany) is the second group that might be useful for foreign LL.M. students searching for other lawyers from their home country working in the U.S. Flany was founded several years ago by Johann Muller of De Brauw Blackstone Woestbroek, a member firm of Linklaters & Alliance. According to Muller,

The Flany Group was set up in December 1998. It always had the intention of being a group merely for foreign associates in New York. The idea was that the foreign partners of law firms in New York already had enough of their own activities at it is. The Group always had the intention of being an informal group only and not a group formally organizing all kinds of lectures . . . .

Muller explained that he borrowed the idea for Flany from a similar group, the European Union Lawyers Association, which he had encountered in London, where he worked prior to coming to New York.

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62 Thus students who have no means of supporting themselves during long waiting periods, or whose visas do not allow them to stay in the U.S. beyond graduation without employment, are unable to take advantage of this approach to job-searching.

63 See http://www.nysba.org/sections/ilp/flcsinny.html (visited 6/13/01). The list in fact includes four U.S.-based firms as well as 54 foreign law firms. Most of the lawyers on this list have not completed any U.S. legal education.
Considering the wide diversity of people in New York it seemed senseless to limit Flany to European lawyers only. I discussed the idea with a good friend of mine ... from the Swedish law firm Lagerlöf & Leman, [who also was] in New York as a foreign lawyer at that time .... In December 1998 [we] basically invited all the foreign lawyers that we knew in New York[,] in total about 30[,] to come and join us for drinks on the first Tuesday of the month. We were fortunate in that about 25 of the 30 turned up. ... By the time I left New York in February [2000] ... we had a membership of about 350 lawyers from approximately 80 different firms and companies.64

Flany’s purpose is not aimed at recruiting or even at foreign law students, although it occasionally has served these interests. The group “had a few (less than 10) students who would turn up occasionally and people did find jobs or switched jobs through contacts they made at Flany. . . . [Muller consistently attempted to exclude] headhunters, since Flany was not intended to function as a ... market place.”65

Clearly, foreign lawyers who find jobs in the U.S. do so through a variety of approaches. Some find success as a result of interviews at the foreign lawyer job fairs. Others report blanketing the field of large law firms with letters and resumes and receiving rejections from all but the one firm that eventually offers them employment. Many opportunities seem quite fortuitous. One graduate reported that he “found a job by a posting that was in an Internet job web page, and [he] sent them [his] resume in an email as an attachment. [He] ... had a telephone interview, then an interview in the firm’s office, and after that they made [him] a one-year offer for a position as a foreigner associate.”66 Another recounted that she was offered a job at one of the elite Wall Street firms more than six months after graduation, after submitting her resume through an associate at the law firm with whom she had been in contact for quite some time. And

64 Letter to author from Johann Mueller (6/13/01).
65 Letter to author from Johann Mueller (6/14/01).
she proudly announced that her position was as a “regular associate, not in the foreign associate program.”

But many foreign lawyers are not successful in their search for employment in the U.S. A European lawyer with experience at a prestigious European law firm, excellent English language skills, and a commendable U.S. law school record ultimately failed to secure work as a lawyer for a U.S. firm. This student used contacts from his former law firm as well as those from his family’s business to try to find work in the U.S., in addition to sending letters and resumes to more than 100 law firms. But neither his letters nor his contacts developed into a job as a lawyer. Eventually, as a result of a family-business relationship, he was offered a quasi-professional position as a case manager at a large firm. He accepted the position, but was frustrated by his inability to work as an associate lawyer. Another European, who graduated with top honors from his LL.M. program and was completely fluent in English, searched in vain for several months for opportunities in the U.S. before returning to his home country. In each of these cases, the foreign lawyer’s home country was small and economically insignificant from the perspective of the clients of most U.S. law firms. As a result, these lawyers could not use their home-country legal expertise to gain access to U.S. law firms. But their failure to find a position as a substitute for a U.S. J.D. was somewhat surprising, given their excellent language skills and good U.S. academic records.

This distinction for foreign lawyers between capitalizing on their foreign law training and its value to U.S. law firms and other employers, on the one hand, and

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66 Interview 13.
67 Interview 14.
presenting themselves as substitutes for U.S. lawyers based upon their LL.M. education and general legal knowledge, on the other hand, is one that besets foreign lawyers throughout their LL.M. year and beyond. Only a few U.S.-based law firms have a sufficient stream of work involving the law of a particular foreign country to provide a foreign lawyer with a steady diet, and most of these are headquartered in New York. Gaining access to these firms depends upon a combination of the role of the foreign lawyer’s home country in the global economy as well as the credentials of the individual applicant. Another approach that capitalizes on the foreign expertise of LL.M. graduates is to find positions with U.S. law firms that have offices in the lawyer’s home country, with the plan of obtaining training in the U.S. before transferring to the firm’s foreign office.

Those foreign lawyers who do not find work directly related to their foreign expertise must present themselves as having some competence for general U.S. legal practice. The source of this competence may be their U.S. law school experience, their English language ability, as well as other experiences that prepare them for practice.

Of course, these two categories are not mutually exclusive. Foreign lawyers hired by U.S. law firms for defined periods and for work on particular foreign client matters occasionally report being asked to remain with their firms in regular associate positions. The initial period and limited scope of practice serves as a way for law firms and foreign lawyers to observe each other before making more permanent commitments; given the fact that each party has less information about the other than they would without the international complication, this “look-see” period makes sense.

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68 Thus, foreign lawyers have less understanding of the U.S. law firm market than they do with regard to their home country legal practice opportunities. U.S. law firms have only one year of law school grades by
III. The Employers of Foreign Lawyers in New York

This Section describes the employers of the foreign lawyers in the database who were working in New York during the 1999-2000 period. Employing organizations are analyzed with regard to their size and specialty, as well as with regard to their identifiable relationship to the foreign and international legal market.

The foreign-educated LL.M.s in the database work for 102 U.S.-based law firms ranging in size from three to over 3,000,\(^69\) fifteen foreign-based law firms, twelve corporations or non-law professional services firms, two New York state government agencies, and the United Nations.\(^70\) An additional twelve of the LL.M.s are working as sole practitioners in New York.\(^71\)

Nearly 85% of the foreign-educated lawyers in the database work for U.S.-based law firms and sole practitioners. Approximately two-thirds of the 102 firms\(^72\) for which these foreign lawyers work are headquartered in New York. And while many of the firms employ only one foreign lawyer, an important group employs multiple foreign

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\(^{69}\) Since the search was conducted, certain of the law firms employing foreign lawyers have combined. To the extent possible, I have maintained records based on the original law firms. Thus, the number of foreign law firms represented in the database is now fewer than 15, due to several firm combinations.

\(^{70}\) Twenty-two LL.M.s in the database work for organizations that are not law firms. Eight LL.M.s work for U.S. subsidiaries of foreign corporations. Ten others hold positions at six U.S. based corporations in diverse businesses, two work for New York state agencies, and one works for the United Nations.

\(^{71}\) The twelve sole practitioners in the database are older than the average LL.M., ranging in age from 37 to 47 years. Eight of the twelve are from common law countries, including two each from India, Nigeria, and Canada. Three include litigation among their practice areas, three include immigration, three have a corporate focus, six list international law, one focuses on intellectual property issues, and one includes criminal representation among his practice offerings.

\(^{72}\) I have not included a complete list of these law firms. The larger and national firms in the database are identified in the paper. While the information in the database was collected from public sources, I have attempted to keep the identities of the small and medium-sized firms and sole practitioners confidential.
lawyers on a regular basis. For example, more than one-quarter of the 295 foreign lawyers working for U.S. law firms work for one of three New York firms\textsuperscript{73} -- Cleary Gottlieb, Sullivan & Cromwell, and Davis Polk.\textsuperscript{74} Eight additional U.S. law firms, each of which is included in the American Lawyer 100 list of the most profitable U.S. law firms, employ five or more foreign-educated lawyers.\textsuperscript{75}

The U.S.-based law firms that employ the foreign LL.M. graduates in the database can be divided into groups based upon the number of lawyers they employ (including partners and members). Chart B (included at page 53) summarizes the employment of foreign LL.M.s at firms of various sizes.

The largest U.S. law firms generally are those with the most name-recognition overseas, and tend to be the firms identified by foreign LL.M. students as organizations for which they would like to work. The 102 U.S.-based law firms in the database include 64 with more than 100 lawyers.\textsuperscript{76} Seventy-five percent of the over-100 firms also are among the American Lawyer’s 100 top grossing law firms in the U.S.\textsuperscript{77} More than 70%

\textsuperscript{73} In fact, the number of foreign-educated lawyers in the database from Davis Polk & Wardwell is fewer than the number indicated by the firm. Supplementary information gained from other international law firms indicates that additional firms support similar numbers of foreign lawyers, even though these were not included in the Martindale-Hubbell search. Shearman & Sterling, for example, hires 20 to 25 international associates for 12-month terms. See Shearman & Sterling web site, \url{http://www.shearman.com/careers/intl_assoc.html} (visited 6/12/01).

\textsuperscript{74} Nevertheless, when these three firms and their foreign LL.M.s were removed from the database, the analysis remains virtually unchanged.

\textsuperscript{75} The eight are Sidley & Austin (prior to its merger with Brown & Wood), White & Case, Kirkland & Ellis, Winthrop Simson (prior to its merger with Pillsbury), Brown & Wood (prior to its merger with Sidley & Austin), Morrison & Foerster, Curtis Mallet-Prevost, and Kelley Drye.

\textsuperscript{76} More than half of these firms are headquartered outside of New York.

of these firms support at least one foreign office, and all but four have multiple U.S. offices.\textsuperscript{78}

Foreign-educated lawyers also are working for medium-sized and small law firms in New York. The database includes thirty-five U.S.-based law firms comprised of fewer than 100 lawyers that employ at least one foreign-educated lawyer, in addition to twelve sole practitioners who are foreign-educated lawyers. Nearly fifteen percent of all foreign LL.M.s working for U.S.-based law firms are working for firms in the 2-100-size range.\textsuperscript{79} Seven U.S.-based law firms in the 2-100-size range each employed more than one foreign-educated LL.M. in the database.

Eleven U.S.-based firms employ 10 or fewer lawyers, and these firms appear to fall into three patterns. First are the small firms in which the foreign lawyers are the majority, and perhaps were the organizers of the firms.\textsuperscript{80} Second are small firms that have an international practice specialty, in which the foreign lawyers are a minority of the legal staff. Eight of the eleven firms in the ten-and-under size range include an international specialty among their practice areas, and two of these support a foreign office.\textsuperscript{81} The third pattern is comprised of small firms with no apparent reason for hiring

\textsuperscript{78} Of the U.S.firms with more than 100 lawyers, only Cravath, Pryor Cashman Sherman & Flynn, Wachtell Lipton, and Schulte Roth have a sole office in the U.S., in New York.

\textsuperscript{79} Among this 2-100 sized group, only three firms are headquartered outside of New York.

\textsuperscript{80} An example is a firm that employs two Russian LL.M. graduates and specializes in international business and the laws of Russia. Another firm consists entirely of foreign lawyers, all from the same country, whose practice is quite broad, encompassing litigation, corporate law, creditors rights, estates and trusts, real estate, and international trade.

\textsuperscript{81} Among these very small firms, one that is perhaps typical specializes in customs and international trade law. It has one foreign-educated lawyer on its nine person legal staff who serves as of counsel to the firm. Another small firm with an international focus is a seven-person law firm with two English-educated partners (neither of whom completed an LL.M. in the U.S.) and an Israeli-educated LL.M. associate lawyer.
a foreign-educated lawyer, and where the foreign lawyer might be working as a substitute for a U.S. J.D. graduate.\textsuperscript{82}

Many of the U.S.-based law firms with ten to one hundred lawyers have more than one lawyer with a foreign connection on their staffs. Half of the lawyers at one general practice fourteen-lawyer firm, for example, include an international connection in their Martindale-Hubbell biographies: a Colombian-educated partner and a Mexican-educated associate, both with LL.M. degrees; a German-educated associate; two foreign-trained of counsels; and two U.S.-educated lawyers who also studied law overseas.\textsuperscript{83} While the relationship among the lawyers with a foreign connection in these firms is not based on a particular country, the presence of multiple internationally-minded lawyers may indicate a general openness that increases opportunities.

In firms with 100 to 200 lawyers, there is a greater likelihood of finding foreign-educated LL.M.s working among U.S.-educated lawyers apart from any particular connection to the international. In these firms, the foreign lawyer seems a bit out of place. One example is a law firm specializing in municipal and public financing and related commercial areas, which employs a civil law-trained LL.M. Another general practice firm that has no international specialty employs an Israeli-educated LL.M. as an associate attorney. In these instances, it appears that the firms may be using the LL.M.s as substitutes for U.S. J.D.s, regardless of their foreign backgrounds.

\textsuperscript{82} One example is a six-person law firm with its only foreign-educated lawyer, from Ireland, serving as one of its three partners; the firm’s specialty is employment law.

\textsuperscript{83} A second general-practice firm of approximately the same size that supports a French office, includes among its legal staff a French who did not earn an LL.M., and a Colombian-educated LL.M. A somewhat larger general-practice firm, with approximately one hundred lawyers, also supports one foreign-educated partner and two foreign-educated associates, one of whom completed an LL.M. in the U.S.
The foreign LL.M.s working for foreign law firms present a much less complex story than those working for U.S. firms. Essentially, each foreign law firm headquartered in a civil law country employed only foreign lawyers whose home country was the location of the firm’s headquarters. In addition, of course, these firms might staff their New York offices with U.S. lawyers who had no particular foreign connection. But the four firms with headquarters in common law countries employed at least one LL.M. from a country outside the firm’s home nation.

In thinking about job search strategies, foreign LL.M. graduates might identify law firms with foreign offices in their home countries as good prospects for employment, on the theory that these firms will likely have business related to their home countries. In addition, the firms may hire LL.M.s with the agreement of training them for a period in the U.S., after which the LL.M. graduate returns to his or her home country to work in the firm’s foreign office there. It is difficult for U.S. firms to staff their foreign offices, and foreign offices have grown in size in recent years which only exacerbates the staffing problems. A number of law firms hire LL.M.s for brief periods of training in the U.S. before sending them to foreign offices in their home countries. Cleary Gottlieb Steen & Hamilton articulates this as one consideration in hiring for its Foreign Lawyer Internship Program.84 Other law firms share this vision without articulating it quite as publicly. One firm reported that they became more interested in hiring foreign-educated lawyers after they had experienced substantial international expansion through the opening of foreign offices:

84 See Cleary Gottlieb web site, http://www.cgsh.com/foreign.html (visited 6/11/01)(“Many of the European-trained interns return to Europe to become associates in one of our European offices, while others return to their home countries to work with clients or in local law firms.”).
Recently, we have been more interested in foreign-educated lawyers than in the past because of our international expansion. For example, we have recently hired several lawyers who have received degrees from law schools in the PRC in addition to their LL.M. or J.D. from a U.S. law school. Our hope is that such lawyers will work in one of our Asian offices after receiving appropriate training in the U.S.  

Sixty-two of the U.S.-based firms in the database support at least one foreign office, and twenty-two of these hired at least one lawyer educated in the country where the firm had a foreign office. Approximately half of the foreign-educated LL.M.s in the database working at both Cleary Gottlieb and Sullivan & Cromwell were educated in countries where these firms support offices. Other firms follow the same approach; one reported that “virtually all of the ... long-term associates [in its foreign office] spend at least a year in New York.” In addition to the twenty-two firms that hired at least one foreign lawyer from a country in which a foreign office was located, two additional firms hired LL.M.s from the same region in which they have foreign offices.

A second strategy for LL.M. graduates to find work in the U.S. is to search for firms that engage in a foreign-directed practice, aimed at the foreign lawyer’s home

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85 Interview 5.

86 In addition to Cleary and Sullivan, the large U.S.-based firms that matched home country of an LL.M. and location of a foreign office are the following: Winthrop Stimson (now Pillsbury Winthrop), Davis Polk, Kirkland & Ellis, White & Case, Jones Day, Winston & Strawn, Morrison & Foerster, Baker & McKenzie, McDermott Will & Emery, Curtis Mallet-Prevost, Gibson Dunn, Kelley Drye, Brown & Wood (now Sidley Austin Brown & Wood), Shearman & Sterling, Graham & James (now part of Greenberg Traurig in New York, see Susan Beck, Dan McAllister, Matt Fleischer, Nathan Koppel, “Bar Talk,” The American Lawyer 3/01)), Vinson & Elkins, Simpson Thacher & Bartlett, Dorsey & Whitney. Two smaller firms also matched an LL.M.’s home country and the location of a foreign office, one with fewer than 10 lawyers and an office in Switzerland, and the second with approximately 30 lawyers and affiliated offices in Italy and France.

87 Interview 8.

88 A medium sized firm with offices in China and Hong Kong, among other locations, hired two Taiwanese LL.M.s. Again, not a perfect match, but the foreign-educated lawyers may offer language ability and cultural understanding that proves useful. A second medium sized firm supports representative offices in Germany and Romania, and hired an Austrian LL.M.
country or its region, where the law firm does not support foreign offices in the particular country or region. This is the converse of the prior strategy; that is, identifying law firms that have business but no offices in the home country of the foreign lawyer. Many internationally focused U.S. firms have work in Latin America, for example, but few have offices there. Latin American lawyers often fill a specific need at these firms for locally-trained lawyers who can work in Spanish and English and bridge the relationship between the U.S. lawyers and law firm and its Latin American clients. One U.S. based international firm noted that they had “hired two Argentinian LL.M.s in the last two years because they had great credentials and they could help with the firm’s Latin American practice. [This] firm does not have an office in Argentina.”

Another firm described a similar policy for hiring foreign lawyers for the purpose of having lawyers who “generally deal with clients from their native countries and are in no particular department” in the firm. Similarly, certain countries are closed to U.S. law firms, and lawyers educated in these countries can provide a much-needed connection to work being done by a firm from New York. Korean lawyers, in particular, might be used to fill this need.

With each of these strategies, foreign lawyers may be more likely to find work in the U.S., but also may be pigeonholed by the firms with regard to work related to their

89 Interview 4. Similarly, Paul Weiss, in its web site description of its Latin American practice, allude to the importance of regional connection: “Our lawyers have the language capability, the cultural and professional experience and the benefit of extensive local contacts and networks, to deliver an effective, integrated and cost-efficient service to clients doing business anywhere in the region.”


90 Interview 9.

91 Latham & Watkins and Cleary Gottlieb each employ one Korean lawyer, for example.
home countries. This may be advantageous for foreign lawyers who intend to return home after a year or two of work in the U.S. It would permit them to maintain contact with relevant legal issues, to experience those issues from the position of the U.S. firm and its clients, and also to connect with lawyers and others working in the area. But a country focus will limit the U.S. experience of the LL.M. in a way that is unfamiliar to most U.S. trained lawyers, who may specialize in particular substantive transactions, but generally do not focus exclusively on transactions based in one nation for their entire law firm careers. For the foreign LL.M. who may not intend or be permitted to work for a U.S. law firm indefinitely and thus may well be limited to the experiences of her first few years, a country limitation may define the entire experience.

From the perspective of integration and internationalization, these two strategies thus present a double-edged sword. On the one hand, law firms that hire for these purposes are selecting foreign lawyers specifically because of their foreign expertise. But hiring for the purpose of representing the firm in one area of the world also restricts the experience and exposure of the foreign lawyer, and may marginalize them. In addition, given the possible negative consequences visited upon national economies when a

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92 Sullivan & Cromwell, however, makes it clear that it attempts to integrate foreign lawyers into the pool of associates. See http://www.sullcrom.com/display.asp?section_id=108 (visited 6/20/01) (“Foreign lawyers are generally expected to perform legal work at the level of regular U.S.-trained junior associates, and work as a part of a team of regular lawyers assigned to client matters. Foreign lawyers also participate in the firm’s formal training program for new associates, which involves twice-weekly seminars conducted by Sullivan & Cromwell lawyers.”). Another firm reported that it hires foreign lawyers for one year of work after their LL.M.s, and “[t]hey work in the regular pool of associates.” Interview 8.

93 Law firms that do not limit foreign lawyers to work related to their home countries may nevertheless restrict them to a firm’s international practice. See, e.g., Shearman & Sterling’s description of the work of its international associates as concentrated on the firm’s international practice at http://www.shearman.com/careers/intl_assoc.html (visited 6/21/01). This may make sense to the foreign lawyers, but at the same time it may result in limiting a foreign lawyer’s association with many of the attorneys in a law firm.
gloomy economic forecast is predicted in certain parts of the world, and the intimate connection among national economies today, it is likely that practices based exclusively on activity in a particular nation will sooner or later suffer contractions. In such circumstances, law firms typically move their lawyers to practice areas that remain active, but foreign lawyers hired for the purpose of advising on matters related to a particular nation may not be offered the opportunity of moving to a different specialty if their value to the firm is limited to their foreign background.

IV. Foreign Lawyers as Substitutes for U.S. J.D.s

What is new, or new at least to the extent of expanded opportunities, is the opportunity for foreign lawyers to be hired as regular associate attorneys at the large law firms in New York. One firm noted that, during the past five years, there is “[m]uch more willingness to hire foreign lawyers, in particular those from common law jurisdictions.”94 A lawyer at another firm characterized “everything …[as] more global … we need better access to foreign lawyers who are ‘home grown from within.’”95 Occasionally a lawyer hired for a foreign lawyer training program transfers to the regular associate track at a law firm, while others in these training programs find subsequent jobs at other law firms.96

There are several reasons for the increase in opportunities for foreign lawyers to work as regular associates. First, the competition for good law graduates is intense, and perhaps at no place is it more intense than at the largest law firms in New York. According to a partner at Proskauer Rose in New York,

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94 Interview 3.
95 Interview 6.
'There is an increasing demand for young lawyers by all the large firms of the world, and the demand has exceeded the traditional supply … The number of people who graduated last year from Harvard, say, is not that much greater than the number of graduates 50 years ago. And 50 years ago, there wasn’t a single law firm in the world that had more than a hundred lawyers. Now, there are 40 firms with more than 600 lawyers. So, we’ll have to recruit at more schools, and we’ll have to look deeper.'

These firms have large incoming classes of new law school J.D. graduates each year, and the attrition rate for these new lawyers is high. Staffing is a central and recurring problem. Foreign lawyers increase the potential pool of new lawyers. At least six New York offices scheduled on-campus interviews for law graduates at Canadian law schools for the fall of 2001, and LL.M.s are an additional source of talent. One firm reported that it has “aggressively recruited foreign lawyers over the last two years in

96 Occasionally, when I tried to find a foreign lawyer on the current Martindale-Hubbell database at http://www.martindale.com, I would find that the lawyer had transferred to a different U.S. firm in New York.


99 So many Canadian law graduates are accepting jobs at law firms in New York that concern over a “brain drain” has been raised. Thomas Adcock, supra n. 97 (“With regard to lawyers, it’s very hard to know what they’re going to do with experience gained in New York and other American cities – whether they’ll bring it back to Canada.”) (quoting Victoria Melkle, assistant dean for admissions and placement at McGill University Faculty of Law, Montreal). Among the U.S. law firms that recruit at Canadian law schools as part of their scheduled fall recruiting activities are Cleary Gottlieb Steen & Hamilton, Clifford Chance (Rogers & Wells), Davis Polk & Wardwell, Dewey Ballantine, Shearman & Sterling, Sidley Austin Brown & Wood, and Simpson Thacher & Bartlett, all of which have scheduled on-campus interviewing dates at McGill for the fall of 2001. All but Clifford Chance also interview at the University of Toronto and Osgoode Hall, see firm web sites (visited 6/20/01).

order to meet recruiting objectives. Most firms that were strictly against hiring foreign lawyers have relaxed this position in order to fill their entry classes.\textsuperscript{100}

This openness to foreign lawyers is not universal among New York lawyers, even among the largest U.S. firms. Several large U.S. firms expressed reluctance about hiring foreign lawyers at all.\textsuperscript{101} A hiring partner at a firm with more than 500 lawyers commented on the challenges facing foreign LL.M.s:

\begin{quote}
U.S. law school is hardly sufficient preparation for working at a U.S. law firm – there’s a substantial disconnect between law school and law firm practice, but the disconnect would be larger if the lawyer was foreign educated. That would make the work of a law firm seem even more foreign than it already does to new associates. . . . [When foreign lawyers] are hired, they tend to be a pace or two behind U.S. educated lawyers. A U.S. LL.M. degree is not a good substitute for a J.D. degree.\textsuperscript{102}
\end{quote}

This lawyer explained that his firm intended to “satisfy [its] need for associates … [by] look[ing] deeper into classes at the U.S. law schools that they recruit at, and will look at lateral hires. Looking at foreign educated lawyers isn’t fungible with U.S. graduates.”\textsuperscript{103}

Similar sentiments were expressed by the hiring partner at another 500-plus firm:

\begin{quote}
Lawyers educated in other countries don’t come to practice with the same mindset as those educated in the U.S. Lawyers educated in [a] civil law system, and even lawyers educated in Canada, do not come equipped as well as a U.S. lawyer to take assignments and run with them. … The key to the advantage of U.S. lawyers is U.S. law school education. It is intense and goes deep, and this is important.\textsuperscript{104}
\end{quote}

\textsuperscript{100} Interview 7. See also Margery Gordon, “G’Day, New York,” American Lawyer (6/30/2000)(“In the past two years, top U.S. firms have imported at least three dozen Aussie laterals, with the vast majority stationed in New York. Davis Polk & Wardwell and Milbank, Tweed, Hadley & McCloy now have eight Australian associates apiece. Sullivan & Cromwell has six, along with a lone New Zealander. Shearman & Sterling expects to have 11 Australians on board by this fall.”).

\textsuperscript{101} Each of these firms employs foreign LL.M.s, regardless of the reluctance expressed.

\textsuperscript{102} Interview 11.

\textsuperscript{103} Interview 11.

\textsuperscript{104} Interview 4.
Another firm that has a history of hiring foreign LL.M.s for its New York office is being more cautious about adding new foreign lawyers, in an effort to “ensure that they are fully occupied. Also, as associate costs have increased and their salaries have risen, it has become more important to maintain a higher level of billable activity.”105 Similarly, a Pillsbury Madison & Sutro lawyer commented on his firm’s practice of paying foreign LL.M.s lower salaries than J.D.s earn: “It's efficient because the firm pays these lawyers less than incoming associates, reflecting the learning curve they face . . . . Usually, it's more than they're making, or expect to make, in their own countries. And the firm can bill them out at lower rates than associates, even though clients are getting highly qualified lawyers.”106 As the economy constricts, this cautionary attitude may become more widespread.

The use of foreign lawyers as substitutes for U.S. lawyers is visible also in the Martindale-Hubbell data relating to New York LL.M.s. Foreign lawyers from common law countries are working in a wide variety of law firms, often without any substantial relationship to their firms’ geographic business interests.107 Large firms with challenging staffing needs have long relied on English and Canadian lawyers to fill their ranks. But the practice has become more widespread. According to a recent report by the American Lawyer, “[s]hort-handed U.S. firms have already searched Canada and Great Britain to

105 Interview 8.


107 Indeed, one 50-lawyer firm, in which an English-educated lawyer is a partner, advises foreign-educated lawyers not to apply for positions (“Similarly, we sometimes receive inquiries from lawyers in foreign countries who do not have a J.D. from an American Bar Association accredited law school, or the equivalent. While some larger firms in New York City run programs for foreign-qualified lawyers, our firm
counteract associate attrition. Now they're also going Down Under to beef up midlevel lawyer ranks. Firms are ‘now actively saying, “Yes, show us Australians, we'll look at them[.]”’

LL.M.s from developing common law countries also appear in this manner in the database. For example, one firm in the 100-200 size range with an affiliated office in Latin America employs an LL.M. from Nigeria; a mid-sized patent law firm with two European offices, one of which is in London, hired an LL.M. from Liberia; three large firms, Brobeck, Winthrop Stimson, and Weil Gotschall each employ one LL.M. from Kenya. And in my conversations with law firm hiring partners, several acknowledged a difference in their perceptions of lawyers from common law backgrounds compared to their civil law-trained lawyers. One reported that “a common law trained lawyer may be viewed as more likely to succeed over the long-term” at his firm. Another firm will “hire Canadian and other common-law lawyers without an LL.M.”

Additional evidence of the use of foreign lawyers as substitutes for U.S. lawyers is found in the practice specialties of the foreign lawyers in the database. A number of these lawyers identified their practice specialty as litigation. This is surprising since litigation is generally considered among the most local of practice areas, often reserved for locally-trained lawyers. Nevertheless, foreign lawyers working at large and small firms has not to date created such a program, and it is usually unrealistic for the firm to pursue employment inquiries from lawyers in that situation.”


109 Interview 8.

110 Interview 3.

111 Information was collected regarding the substantive area of specialization of approximately half of the foreign lawyers working for U.S. law firms, and 15% of these indicated litigation as one of their areas of specialization.
firms indicated litigation as their specialty. The LL.M. litigators include six sole practitioners, as well as LL.M.s working at four firms of fewer than twenty lawyers, two firms in the 100-200 range and eleven firms of more than 200 lawyers each. In addition, foreign LL.M.s working for two corporations, and two New York offices of foreign-based law firms also indicated their work in litigation. The LL.M.s engaged in litigation practices are overwhelmingly from common law home countries: 88% of the litigators had their first legal training in a common law system, by comparison fewer than 50% of the entire database of foreign lawyers came from common law countries.

Most foreign lawyers gravitate towards transaction work as opposed to litigation; this division is a deep one, causing many transaction lawyers to remark with pride on their ignorance of the address of the local court. Transaction work involves a great variety of substantive topics, including business deals of every sort, financings, privatizations, securitizations, commercial lending, public and private securities offerings and other capital market transactions. The work of a transaction lawyer revolves around negotiation and drafting of documents. Transaction lawyers often create much of the law governing their deals in the documentation of the transactions; to this extent, the educational backgrounds of the lawyers involved is perhaps peripheral to their deal expertise.

Transaction lawyers have been the central figures in internationalization in part because it is their transactions that push businesses and money across borders. But there is also a regulatory explanation for the connection between transaction lawyers and

internationalization. Those who regulate lawyers, in the U.S. and elsewhere, generally restrict the right to appear in court to locally trained lawyers. Other substantive areas of law also are often reserved for local lawyers, including family law and real estate matters. The thought behind this reservation is that local differences exist that render it inefficient for lawyers trained elsewhere to engage in representation in these areas; in addition, a concern for protecting the public from legal incompetence is part of the discussion in the U.S., at least.\footnote{This is true for lawyers crossing state lines in the U.S., as well as national boundaries.} Transaction lawyers are outside of these regulatory restrictions.

As a result of these factors, in examining the LL.M. database, I expected to find the foreign-educated lawyers engaged in transaction work. And in fact, more than 90\% of those LL.M.s who listed a substantive specialty\footnote{Nearly half of the LL.M.s working for U.S.-based law firms did not indicate a practice specialty.} indicated one that is either clearly transactional, such as leasing, international transactions, or capital markets, or one that could be transactional, such as derivatives and intellectual property.\footnote{Among the U.S. firms in the 2-200 size range, one group employing LL.M.s is composed of firms focused on a particular specialty, such as a 50-lawyer patent law firm, and an intellectual property, copyright and unfair trade law firm with approximately 175 lawyers. The former supports two foreign offices, which is one indication that a firm might be interested in foreign-educated lawyers.}

In addition to the basic division between litigation and transaction work, Martindale-Hubbell allows lawyers to indicate specialties related to an international or even a particular country focus. Approximately one-third of the LL.M.s working for U.S.-based law firms identified their practice as including an international element. In addition, approximately 10\% identified a particular national or regional focus of their work, including Latin American and EU law. Thus, more than half of the lawyers working for U.S.-based law firms did not identify their work as international. Again, this

\footnote{Among the U.S. firms in the 2-200 size range, one group employing LL.M.s is composed of firms focused on a particular specialty, such as a 50-lawyer patent law firm, and an intellectual property, copyright and unfair trade law firm with approximately 175 lawyers. The former supports two foreign offices, which is one indication that a firm might be interested in foreign-educated lawyers.}
indicates that these LL.M.s may serve their U.S. employers as substitutes for U.S. J.D.s, using their U.S. educations and bar admission to secure opportunities quite divorced from their foreign legal backgrounds.

Aside from the obvious advantage of a common law background, foreign lawyers working as substitutes for U.S. lawyers are often hard-pressed to identify what characteristics and preparation enabled them to secure their positions. Most are admitted to practice in New York, although this is not universal. An additional element that was identified by the hiring partners as crucial for foreign lawyers is that English language skills must be excellent. One hiring partner commented: “Language is a big factor. Foreign lawyers may be great in speaking ability, but their written ability may not be up to snuff. Writing documents requires a rigor that is not needed for writing prose, and that is not easy for non-native English speakers.”116 Without facility in English, foreign lawyers cannot work as substitutes for U.S. lawyers. In fact, their effectiveness even as foreign law experts is of limited value to most U.S. law firms unless they are entirely fluent in English.

116 Interview 4.
V. Foreign Lawyers as Marketing Agents

Quite apart from any substantive relationship between a foreign lawyer and the work s/he performs for a firm, law firms use their foreign lawyers to market their capacity for international work. Certain law firms point to the international characteristics and backgrounds of their lawyers in presenting the ability of the firm to provide high quality representation in international business matters. In such marketing material, language ability is often highlighted. In addition, several firms emphasize their lawyers’ international or foreign education as evidence of the international abilities of the firm. At least two firms allow web site visitors to search for lawyers based upon

117 One example is from the web site of a firm with fewer than 100 lawyers: “Reflecting its diverse practice and client base, [this firm] offers experienced, American-trained attorneys fluent in French, Italian, Spanish, Portuguese, Greek, German and Russian.” Other examples include Davis Polk & Wardwell, in the description of the firm’s international practice: “More than one-third of our principal clients are non-U.S. companies or governments, and our 630 lawyers come from more than 30 countries and collectively speak 26 languages.” (http://www.davispolk.com/practice/international.htm (visited 6/22/01)); Holland & Knight’s description of its international practice also includes a statement about language ability of its lawyers: “The firm’s international lawyers pride themselves on their ability to successfully conduct cross-cultural business negotiations and meetings, many times in the foreign language of the host country.” http://www.hklaw.com/practice.asp?GeneralPAID=15 (visited 6/22/01); Vinson & Elkins, in the description of the firm’s Latin American practice: “Many of our lawyers are competent in several languages as well as in the cultural aspects of living and conducting business outside the United States.” (http://www.velaw.com/practices/latinamer.asp visited 6/22/01)); Davis Wright Tremaine, in its description of the international practice group: “Our International Law practice, with a presence in each of our U.S. offices, includes attorneys and other professional staff who expertly speak, read and write Japanese, Chinese, Korean, Spanish, French, German and Russian.” (http://www.dwt.com/practc/int_law/int_law.htm (visited 6/21/01)); Thelen Reid & Priest’s description of its firm: “The firm has multilingual capabilities in more than a dozen languages, and its international attorneys have expertise in the legal, cultural and economic systems of Europe, Asia and the Pacific Rim, the Middle East, South America, Africa and Australia.” (http://www.thelenreid.com/about/about_idx.htm (visited 6/21/01)); and this description of a 10-person firm in its firm profile: “We are highly qualified attorneys fluent in English, German and French with extensive and diverse experience in complex corporate and financial transactions in the United States, Europe and Asia.”

118 See, for example, the web site description of Curtis Mallet-Prevost’s Latin American practice, at http://www.cm-p.com/practiceareas/Latin_America_Intro.html (visited 6/22/01) (“. . . most members of the practice group are at least bilingual, with many holding civil law degrees from Latin American jurisdictions”); and Reed Smith’s international practice, at http://www.reedsmith.com/services/groups.asp?groupid=15 (visited 6/22/01) (“Many of the members of the International Practice Group have lived, worked, and studied abroad and are fluent in Cantonese, French, German, Hindi, Italian, Korean, Mandarin, Russian, and Spanish. As such, in an international transaction,
the law school they attended, and include foreign schools attended by their foreign lawyers on these searchable lists. In doing so, these law firms are identifying their lawyers’ foreign characteristics as an advantage. The foreign language and education of the LL.M.s brings an important international quality to their firms.

Another “marketing tool” of the large law firms aimed at establishing their international prowess involves foreign lawyer training programs. These programs are designed to expose foreign lawyers to the U.S. approach to lawyering, and slots often are reserved for those foreign lawyers affiliated with the host firm’s “best friend” foreign firms. There have long been formal foreign lawyer training programs, lasting generally between three and twelve months, at several New York elite firms. Sullivan & Cromwell, for example, articulates the law firm referral approach in its web site description of the Foreign Lawyers Program: “The firm encourages law firms around the world to propose candidates for the program . . .”

Firms without formal foreign lawyer programs follow this approach as well, taking on lawyers from favored foreign firms for temporary periods of training and exposure to the U.S. style of lawyering. In today’s

we not only structure and negotiate the deal; we also learn about the client.”). Interestingly, however, the foreign lawyer identified in the Martindale-Hubbell dataset described in this paper specializes in another practice area.

119 Cleary Gottlieb and Shearman & Sterling both provide this option, and Cleary includes an icon for “Law Schools outside the U.S.” See http://www.cgsh.com/lawschools.html (visited 6/22/01); http://www.shearman.com/lawyers/associates/school.html (visited 6/21/01).


121 The hiring partner at one over-500 U.S.-based law firm distinguished his firm’s willingness to host foreign lawyers as trainees from the hiring of foreign lawyers for permanent positions. This firm accepts several foreign lawyers with LL.M. degrees as trainees each year, hosting them for a maximum of six months. He indicated that his firm “does not actively recruit trainees, but we go to various job fairs each year,” including the foreign lawyers job fair sponsored by NYU. Sometimes trainees work in a foreign office of the firm after spending several months in the U.S. Certain of the trainees are recommended by another foreign law firm with which this U.S. firm has a close relationship. Interview 4.
climate of transnational law firm combinations, hosting foreign lawyers from favored firms even may set the scene for future firm affiliations.

From the perspective of the foreign lawyers, the disadvantage to these programs is also their advantage – they consider foreign lawyers separately from their U.S. counterparts, which creates increased opportunities for foreign applicants but also marginalizes them. The limited duration of the programs combines with the lawyers’ identification as “foreign” to create a barrier between them and the experience of a typical American law graduate. It is simply not efficient for law firms to pour resources into new lawyers who will not be with the firm for a sufficient duration to be a source of revenue.

**Conclusion**

The foreign lawyers described in this article have capitalized on their U.S. education and licensing credentials at least as often as on their foreign backgrounds. When foreign lawyers work as U.S. substitutes, the opportunities for a substantive exchange of information in practice is quite high. The foreign lawyers learn how U.S. lawyers think about the law, and at the same time, the foreign lawyers may educate their U.S. colleagues, intentionally or not, through the give-and-take that is part of legal practice, about the ways in which foreign lawyers differ. In the same way, foreign lawyers enrich the law school classes in which they participate, as their questions and comments reveal different assumptions about the role of law and lawyers in foreign legal systems. foreign lawyers who are not hired to serve a particular group of foreign clients, generally are hired and accepted *in spite of* their foreign education, because they
otherwise meet their firms’ needs for talented and dedicated lawyers.\textsuperscript{122} They market themselves to “buy into” this valuation system, in which their foreign backgrounds and comparative approaches are secondary or insignificant. Those with a common law background can more easily blend into the fabric of the U.S. bar; for civil law trained lawyers, the LL.M. serves as an entry ticket.\textsuperscript{123}

For most of the firms included in the study, foreign lawyers are present in very limited numbers. Even U.S. law firms that regularly participate in the international legal services market seem to have little confidence that foreign legal education is adequate preparation for their lawyers, and often relegate foreign lawyers to special and temporary categories. While these firms and their hiring partners may be less than completely enthusiastic about the preparation provided by the three-year J.D. degree typically earned by U.S. lawyers, they seem to value the commonality of the experience and its attention to detail characteristic of law school in the U.S. It is as if these firms and their senior lawyers want their new lawyers to complete the three-year U.S. J.D. experience just as club members everywhere require their newest recruits to experience the challenges of pledge week. The club of U.S. lawyers has been strong enough to exclude those whose experiences are too dissimilar, who might bring different approaches and attitudes to the traditions of the legal elite.

\textsuperscript{122} The market for U.S. lawyers has been defined by three elements: (1) the needs of domestic clients doing business in the U.S. and abroad, (2) the needs of foreign clients doing business in the U.S. or with U.S. partners, and (3) the needs of U.S. or foreign clients for advice on transactions that were designed and perfected in the U.S., such as hostile tender offers. In each case, the common perception is that U.S. legal training and expertise is what provides the value.

\textsuperscript{123} Common law-trained foreign lawyers in some cases successfully gain employment in the private sector in New York without enrolling in an LL.M. program.
Nevertheless, as U.S. law firms continue to expand internationally, foreign legal education may become a more valued asset. Thus, the value of the foreign credential depends upon the audience; for domestic purposes, it is U.S. training that is most desirable, and for international purposes, the foreign training provides an indication of international acceptance and sophistication that helps U.S. law firms avoid the parochial look associated with a purely domestically educated staff. As U.S. firms increasingly compete with foreign firms, this may become more important, as there may be more mixing of nationalities and education backgrounds of their lawyers, especially among the Magic Circle firms. The competition with non-law professional services firms, where leadership roles have been occupied by foreign-educated professionals, also may push U.S. law firms towards greater acceptance and appreciation of foreign lawyers.


125 A small number of U.S. law firms even advertise the international qualities of their lawyers on web sites, through identification of foreign legal education, for example, or foreign birth. See, e.g., Cleary Gottlieb’s web site at http://www.cgsh.com/lawschools.html (visited 6/21/01); Shearman & Sterling’s web site at http://www.shearman.com/lawyers/associates/school.html (visited 6/21/01). Other firms include a more generic description in their effort to position themselves as international; see, e.g. Hughes Hubbard & Reed’s description of its international practice at http://www.hugheshubbard.com/data/PracGrp/INTERPRAC.htm (visited 6/21/01) (“Fluency in eighteen languages … Attorneys who have been trained and have practiced in more than ten countries”).


Chart A
Regional Distribution -- Home Countries of LL.M.s working for U.S. Law Firms

- UK, Canada, Australia, New Zealand, Ireland: 22%
- India, Pakistan, Singapore, Hong Kong: 7%
- Latin America: 9%
- Spain, Portugal, Morocco, Turkey, Greece: 1%
- Former Communist Countries: 4%
- Israel: 3%
- Japan: 5%
- Malaysia, Philippines, Macao: 1%
- Sub-Saharan Africa & Bangladesh: 5%
- China: 2%
- Taiwan, S. Korea: 2%
- Core Western Europe: 20%
- Unknown: 19%
Chart B
LLMs and FIRM SIZE

Firm Size ( # of Attorneys)

# of LLMs Employed

0 20 40 60 80 100 120 140 160

FIRM SIZE
Sole Practitioners 10 or less 11 TO 30 31 TO 50 51 TO 100 101 TO 200 201 TO 500 501 TO 1000 1001+

http://law.bepress.com/nwwps-plltp/art38