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ARTICLES

The Variable Value of U.S. Legal Education in the Global Legal Services Market

CAROLE SILVER*

ABSTRACT

Many U.S. law firms now claim to be global organizations, and they seek to occupy the same high status everywhere they work. In part, simply supporting overseas offices is an indication of status for U.S.-based firms. But firms want more than this and they strive for recognition as elite advisors around the world. In this pursuit, have firms identified a set of common characteristics and credentials that define a “global lawyer?” That is, is there a uniform and universal profile, or perhaps a set of assets that comprise global professional capital, which are emerging as the indicia of credibility and legitimacy apart from location? Given the U.S. identity of the firms, perhaps U.S. legal education is an element of the professional capital necessary to succeed on a global level.

In this Article, U.S. legal education, specifically the U.S. LL.M. degree—a one-year post-graduate degree aimed at foreign law graduates—serves as an entry-point for unpacking the meaning of professional capital in the market for global legal services. This paper uses original data to develop a framework for analyzing the currency of U.S. legal education by focusing on two case studies, Germany and China. While the U.S. LL.M. signals value in each jurisdiction, the strength and shape of the signal is determined by host country context. “Global lawyers” become global only in context.

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I. INTRODUCTION

Growth in the market for legal services has been substantial in the last twenty-five years, and it has fueled enormous international expansion of elite U.S.-based law firms. Over the twenty years spanning 1988-2008, the number of law firms with overseas¹ offices on the “National Law Journal 250”² list of the largest U.S. firms nearly doubled, the number of overseas offices supported by N.L.J. 250 firms nearly quadrupled, and the number of lawyers working in the overseas offices of the firms increased by nearly twelve-fold.³ This growth has spurred a transformation for many of the largest and most profitable U.S.-based law firms from national to international organizations; in fact, many claim the “global” moniker.⁴ They have offices overseas, they serve clients based overseas

1. “Overseas” here is used to indicate outside of the United States, or other home jurisdiction for a non-U.S.-based law firm.

2. The N.L.J. 250 is comprised of U.S.-based law firms with the largest headcount in terms of the number of lawyers. Eligibility is “based on a firm’s total number of attorneys, not including contract or temporary attorneys. In order to qualify, a firm must have employed more lawyers based in the United States than in any other single country.” *The NLJ 250: Methodology*, THE NAT’L L.J., <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202435209390> (last visited Oct. 12, 2010).

3. James W. Jones, Presentation for the ABA Conference on Globalization and Regulation of the Legal Profession: Perspectives on the Global Law Firm (May 27, 2009) (on file with The Georgetown Journal of Legal Ethics).

4. Claims of being “global” are ubiquitous; the following offer clues to the way elite firms characterize themselves along these lines: *Offices*, JONES DAY, <http://www.jonesday.com> (last visited Oct. 12, 2010) (“Jones Day is a global law firm with locations in the most important centers of business and finance throughout the world.”); *Our Practice*, SIDLEY, <http://www.sidley.com/ourpractice> (last visited Oct. 12, 2010) (“Sidley’s diversified global practice encompasses the spectrum of corporate, transactional, litigation and regulatory matters.”); *About Us*, SIMPSON THACHER, <http://www.simpsonthacher.com/aboutus.htm> (last visited Oct. 12, 2010) (“Simpson Thacher & Bartlett LLP is a leading global law firm with offices in New York, Los Angeles, Palo Alto, Washington, D.C., Beijing, Hong Kong, London, Tokyo and São Paulo. Established in 1884, the Firm currently has more than 800 lawyers. On a world-wide basis, the Firm provides coordinated legal advice on the largest and most complex corporate transactions and litigation matters in industries which include financial services, insurance, power and natural resources, consumer products, services, technology, telecommunications, media, pharmaceuticals and healthcare industries. Cross-border finance, banking and bank regulation, mergers and acquisitions, securities issuance and regulation, project and asset based finance, real estate, asset management, joint ventures, taxation, litigation and dispute resolution are important aspects of the Firm’s practice.”); *Overview*, BRYAN CAVE, <http://www.bryancave.com/bryancave/overview> (last visited Oct. 12, 2010) (“It is significant that our offices are not profit centers. Each client is considered a client of the whole firm—with access to the resources that will best serve their needs. We act as one firm because it serves our clients best. We serve clients around the world, and they deserve and expect guidance from professionals with a vision, footprint and perspective as broad and global as their own.”); *About Us: Our Values*, O’MELVENY & MYERS, <http://www.omm.com/aboutus/ourvalues> (last visited Oct. 12, 2010) (“Enhancing our reputation as a global law firm through excellence in the practice of law, respected scholarship, and the effective use of modern technology.”); *Professionals*, K&L GATES, <http://www.klgates.com/professionals/detail.aspx?professional=1875> (last visited Oct. 12, 2010) (Peter J. Kalis is the firm’s “Chairman and Global Managing Partner”); *About S&C: History*, SULLIVAN & CROMWELL, <http://www.sullcrom.com/about/history> (last visited Oct. 12, 2010) (“Becoming a Global Law Firm. S&C has grown in response to the increasing volume and complexity of our clients’ affairs, developing top-ranking practices in mergers and acquisitions, banking regulation, real estate finance, derivatives and private equity, among many other areas. The Firm’s work in cross-border capital flows continues to thrive as evidenced by the Firm’s substantial involvement in foreign direct investment and project finance, the

as well as U.S.-based clients with problems and needs related to their overseas activities, and they advise on foreign law in addition to U.S. law.⁵

In their overseas activities, the firms vie for the same elite status they occupy at home. Having an international footprint of office locations itself is one element of status for law firms.⁶ But firms want more than a footprint; they seek recognition as elite advisors around the world. In doing so, they raise the question of whether the outlines of a “global lawyer” are visible, allowing insight into the credentials and characteristics that indicate elite status in the market for legal advice around the world. That is, is there a uniform and universal profile, or perhaps a set of assets that comprise global professional capital,⁷ which is emerging as the indicia of credibility and legitimacy apart from location? And given the U.S.-identity of the firms, what role does U.S. legal education—and specifically the U.S. LL.M.

development of the Euro and other global capital markets and the financial flows to Asia and Latin America. Despite its significant growth, the Firm has retained its deep commitment to remaining a unified global practice. Unlike many law firms with a multinational reach, S&C has built its international network of offices, not by acquiring other firms or hiring large numbers of lateral lawyers, but by developing offices to serve clients’ regional needs and staffing those offices with lawyers who have spent their careers at S&C.”)

5. See, e.g., *Offices: Hong Kong*, O’MELVENY & MYERS, <http://www.omm.com/hongkong> (last visited Oct. 12, 2010) (“Our Hong Kong office practices Hong Kong law and US law and serves many of our international financial institution, investment fund, and other clients operating in China and Southeast Asia.”); *Locations: Paris*, DEBEVOISE & PLIMPTON, <http://www.debevoise.com/locations/Office.aspx?id=5deef71e-abf8-4d74-a1e0-138041e13854> (last visited Oct. 12, 2010) (“Established in 1964 as our first European office, our Paris office is an essential component of our cross-border transactions practice, providing French, US and English law advice in our core practice areas. It is part of an integrated European practice, and our Paris-based lawyers work on French and cross-border transactions and litigations in close collaboration with their colleagues in London, Frankfurt and Moscow, as well as in the US and in China.”); *Offices: Moscow*, LATHAM & WATKINS, <http://www.latham.com/Offices.aspx?page=Offices&office=9> (last visited Oct. 12, 2010) (“Our Moscow office, with nearly 30 legal professionals with US, English and Russian law capabilities, has assisted multinationals and investors complete deals in Russia, as well as helped Russian companies in accessing US, UK and other capital markets around the world.”).

6. Richard L. Abel, *Transnational Law Practice*, 44 CASE W. RES. L. REV. 737, 741 (1994) (“Law firms sometimes appear to be seized by the adolescent angst that all your friends are at a party to which you haven’t been invited—it is unbearable not to be there, even if you know you would have a terrible time. For many American firms, the foreign office is a loss leader, an outpost to entertain visiting firemen, a way of showing the flag, an address to add to the letterhead and a discreet form of advertising. At the same time, it can be incredibly expensive and can dry up referrals from local lawyers, as was evidenced by the hesitant openings of continental firms in London.”) (footnote omitted).

7. “Professional capital” here is used as an umbrella term, and includes the notions of human, social, cultural and international capital. See generally Nancy J. Reichman & Joyce S. Sterling, *Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers*, 29 CAP. U. L. REV. 923, 941 n.59 (2002) (“Professional assets accrue from a combination of human capital, social capital, and cultural capital and are the ‘stuff’ from which advancement occurs. Human capital is operationalized as the specific lawyering skills acquired through both legal education and practice experience. Social capital consists of individuals’ ability to draw on relationship networks for establishing support. Although this network may initially consist of other lawyers in the firm, it may then expand to lawyers in the community and, in turn, expand to the acquisition of clients. Theorists such as Bourdieu suggest that success in careers results from the accumulation of these forms of capital.”) (internal citations omitted); YVES DEZALAY & BRYANT G. GARTH, *ASIAN LEGAL REVIVALS: LAWYER-COMPRADORS AND COLONIAL STRATEGIES IN THE RESHAPING OF ASIAN STATES* (forthcoming 2010).

degree—play in this profile?

In order to investigate these questions,⁸ this paper uses U.S. legal education as an entry point for unpacking the meaning of professional capital in the context of international practice. It draws on two sources of data about elite internationally-focused law firms and their lawyers. The first, developed as part of a study of the ways in which U.S.-based law firms approach international growth and practice, is comprised of the professional biographies of all lawyers working outside of the United States for sixty-four U.S.-based international firms.⁹ The firms were selected for study based on their revenues,¹⁰ their international footprints¹¹ and the availability of information about their lawyers through firm websites and other public sources.¹² These data, here referred to as “Law Firm Data,” use the credentials and activities of the lawyers representing the firms overseas to offer insight into the ways the firms compete for international status. They reveal that more than half (53%) of the lawyers working for the firms overseas are host country-educated lawyers¹³ with no formal U.S. law experience or expertise (another 16% also have no U.S. legal education but completed their legal education in a third country). The contribution of these host country lawyers is in their host country expertise: deep knowledge of and relationships with clients and

8. These questions are important not only with regard to elite U.S.-based firms. In their interaction with law firms, lawyers, clients and even law schools both in the United States and elsewhere, the elite participate in a process that defines professional credibility generally. See generally YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE* 197-218 (1996).

9. These data were compiled through collaboration with Nicole De Bruin Phelan, who has been a participant in the project of gathering and analyzing the data since its inception, and Mikaela Rabinowitz, who worked with us to analyze the data. See generally Carole Silver et al., *Between Diffusion and Distinctiveness in Globalization: U.S. Law Firms Go Glocal*, 22 *GEO. J. LEGAL ETHICS* 1431 (2009). For additional information on the Law Firm Data, see *infra* note 58.

10. The firms were selected based on their inclusion on the AmLaw 100 and Global 100. See, e.g., *Two Firms Pass the \$2 Billion Mark*, *AM. LAW.*, May 2008, available at <http://www.law.com/jsp/tal/PubArticle.jsp?id=1208947716661>; *2008 Global 100: Most Revenues*, *AM. LAW.*, Oct. 2008, <http://www.law.com/jsp/article.jsp?id=1202424832628>. This law firm data is discussed more fully in Silver et al., *supra* note 9; see also Carole Silver, *Local Matters: Internationalizing Strategies for US Law Firms*, 14 *IND. J. GLOBAL LEGAL STUD.* 67 (2007) [hereinafter Silver, *Local Matters*]; Carole Silver, *Winners and Losers in the Globalization of Legal Services: Situating the Market for Foreign Lawyers*, 45 *VA. J. INT'L L.* 897 (2005) [hereinafter Silver, *Winners and Losers*].

11. Firms had to have at least one overseas office to be included in the study.

12. As a result of defining the study to include analysis of law firm associates as well as partners, certain law firms were excluded despite having an international footprint, revenue, and size (number of lawyers) that otherwise would have called for inclusion. While excluded firms make available information about their partners, they do not provide information about lawyers occupying non-partner positions in their firms. In analyzing other law firms along the same lines described in the text, it became clear that the lessons from examining only partners may differ from those learned by examining all lawyers in the firm. See, e.g., Sigrid Quack, *Combining National Variety: Internationalisation Strategies of European Law Firms* (unpublished manuscript) (on file with The Georgetown Journal of Legal Ethics) (investigating professional biographies of partners at UK global and German elite law firms). Only four of the Global 100 firms for the year 2007 (when data was gathered) with at least one office outside of the United States fall into this excluded category.

13. “Host country” indicates the place where a foreign law firm or lawyer wishes to practice, outside of the home country of the firm or lawyer.

with business, professional and regulatory actors and frameworks, as well as with regard to host country law. The dominance of host country lawyers is one indication of the firms' approach to global growth: They compete locally—that is, in each market in which they are present—for a place in that market's hierarchy. These hierarchies are defined through competition among the U.S.-based firms, host country law firms, third country firms (U.K.-based firms are the dominant competitors to U.S.-based firms overseas¹⁴) and other relevant actors in a contest for clients and talent.¹⁵

The second source is comprised of original data gathered to investigate the role of U.S. legal education—specifically the U.S. LL.M. degree—in the careers of lawyers whose first degree in law was earned outside of the United States. The LL.M. is the most common U.S. law degree among foreign¹⁶ law graduates, and it serves as a lens for investigating the role of U.S. legal education as an element of professional capital. More than 100 U.S. law schools offer the LL.M. degree as a one-year course-based program.¹⁷ These data (“LL.M. Data”) include information on the backgrounds of LL.M. students, their motives for pursuing the degree, and their work settings and international connectedness several years after graduation. They were gathered through a combination of survey and interviews. The survey initially was sent to graduates of LL.M. programs offered by eleven U.S. law schools who earned their degrees in the years 1996, 1998 or 2000.¹⁸ In addition to survey responses from 360 graduates working in fifty-five countries,

14. See, e.g., *The Global 100: Most Revenue 2009*, AM. LAW., Oct. 2009, available at <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202433980888> (four of the top ten firms in terms of gross revenue are U.K.-based law firms).

15. Firms also might participate in competition over the role of law and lawyers generally. See DEZALAY & GARTH, *supra* note 7.

16. A “foreign law graduate” with regard to a U.S. law school program is an individual who earned his or her first degree in law from a law school outside of the United States. Generally, “foreign” is used to mean an individual licensed outside of the host jurisdiction, and for law firms indicates firms based outside of the host jurisdiction. Typically, the home jurisdiction for law firms is determined historically.

17. See generally ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, *Overview of Post J.D. Programs*, ABA, <http://www.abanet.org/legaled/postjdprograms/postjd.html> (last visited Oct. 12, 2010); Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 CARDOZO J. INT'L & COMP. L. 143 (2006). Georgetown offers a new two-year LL.M. that concentrates on English language ability in the first year. See *Extended LL.M. with Certificate in American Legal English*, GEO. L., <http://www.law.georgetown.edu/admissions/GradTwo-YearLL.M..htm> (last visited Oct. 12, 2010). Schools also offer LL.M.s in calendar segments to allow working students to study, typically outside of their home countries, for limited periods of time while earning the degree. See, e.g., *Executive LLM: Curriculum*, WASH. U., <http://law.wustl.edu/LL.M.Executive/index.asp?ID=7557> (last visited Oct. 12, 2010); *Executive LLM Programs*, NW. L., <http://www.law.northwestern.edu/academics/llmexec/> (last visited Oct. 12, 2010).

18. The survey initially was sent in 2005; it was delivered in hard copy by post and also available online. The data reported here is part of a larger project funded by the Law School Admission Council described in Carole Silver, *Agents of Globalization in Law: Phase 1*, in LAW SCHOOL ADMISSIONS COUNCIL GRANTS REPORT 09-01 (May 2009), available at <http://www.lsac.org/LsacResources/Research/GR/GR-09-01.pdf>. Interview and survey responses included in the text and notes of this Article are part of this project, and are referred to as “Interview #” and “Respondent to survey #”; interview location and date also are indicated. Interviews and survey comments are on file with the author.

follow-up interviews were conducted with sixty-six respondents working in the United States, Germany and other E.U. member states, South Korea and China, among other jurisdictions. To supplement the LL.M. interviews and to gain a more thorough understanding of the factors valued by international firms, interviews also were conducted with hiring partners in U.S. and U.K.-based international firms as well as elite host country law firms¹⁹ in several countries. In addition, with regard to China where the LL.M. data is limited because of the small number of China-law graduate respondents to the survey, I draw on the research of others, particularly the work of Sida Liu, on the emergence of commercial law firms.²⁰ Together, these data offer insight into the role of the LL.M. as a signal for quality and credibility in the international hiring markets in which U.S.-based law firms participate.

The paper proceeds as follows. Part II begins by reviewing the domestic hiring strategies of elite U.S. firms as a springboard for considering how these strategies are challenged when firms expand overseas. Challenges may stem from a variety of sources, including language differences, regulatory constraints, and the approach of host country competitors. As firms situate themselves in a particular legal and jurisdictional context, the significance of elements of professional capital shift. While my primary interest here is in lawyers rather than law firms, the firms also are relevant. They determine which attributes of individual lawyers are valuable as they try to piece together lawyer-participants for particular offices. Part III takes a closer look at this movement through two case studies, Germany and China. These present quite different stories of the way U.S. firms adjust to host country frameworks and hierarchies. In Germany, firms are drawn into German legal culture and its preference for German mechanisms of assessment, while in China the firms continue to focus quite extensively on the U.S. framework of credentials and expertise. Regulation plays a role in defining the ability of U.S.-based firms to employ host country-licensed lawyers and advise on host country law, and this has shaped the way firms developed their presence in each country. In Germany, for example, it was common for international U.S.- and U.K.-based firms to establish offices by acquiring entire German law firms or substantial groups of lawyers from an existing firm.²¹ In China, this path has not been available; growth there typically has been slower

19. The host country law firms were identified through internationally-focused lists such as Chambers (*see generally* CHAMBERS AND PARTNERS, <http://www.chambersandpartners.com> (last visited Oct. 12, 2010)), as well as through reports in the legal press highlighting top country and regional firms. An example of this sort of report is Michael D. Goldhaber, *L'Homme To See*, FOCUS EUR., Jan. 1, 2009, available at <http://www.law.com/jsp/article.jsp?id=1202426864213>.

20. Sida Liu, *Globalization as Boundary-Blurring: International and Local Law Firms in China's Corporate Law Market*, 42 LAW & SOC'Y REV. 771, 771-804 (2008).

21. See Susanne Lace, *Mergers, Mergers Everywhere: Constructing the Global Law Firm in Germany*, in 3 LEGAL PROFESSIONS: WORK, STRUCTURE AND ORGANIZATION 51-75 (Van Hoy ed. 2001).

and more incremental.²² The significance of U.S. legal education and particularly the LL.M. responds to the context of each country's market for lawyers and international legal advice.²³ By investigating these differences we learn something of the role of U.S. legal education in the global market for legal services and can begin to analyze the contribution of the LL.M. as a form of professional capital for lawyers practicing in an international setting. Part IV returns to the question of universals and draws on the two case studies to consider whether a single set of assets comprising professional capital is recognized in both Germany and China. Uniformity is challenged as firms create spaces for themselves within local contexts and structures. It is in the context of the particular that an evaluation of professional capital takes shape.

II. HIRING SIGNALS AND GLOBAL CHALLENGES

As law firms have evolved from national (or even local) organizations into global firms, the credentials and characteristics of their lawyers also have shifted. Evaluating these credentials and characteristics offers a window into the elements of professional capital that signify credibility and value to the firms and by the firms to their clients.

During the early period of international growth, the primary goal of overseas offices of U.S.-based firms was the management of relationships with lawyers and law firms local to the overseas market.²⁴ The firms staffed overseas offices by moving U.S.-licensed, home office lawyers abroad.²⁵ This approach was determined in part by regulatory limitations that prevented U.S. firms from employing host country lawyers, but in addition, the firms were more focused on maintaining existing relationships with current clients (primarily U.S.-based organizations) than on developing new ones. Consequently, the elements of professional capital in the United States were identical in overseas practice settings because the firms were playing to the same audience in all locations.

As regulatory barriers fell and cross-border investment increased, firms expanded their aims overseas to include host country businesses interested in

22. Liu, *supra* note 20. See generally Caroline Byrne, *China Is the Most Favored Nation for Expanding Law Firms*, INT'L HERALD TRIB., May 17, 2006, at 16.

23. Differences in the roles law serves in each jurisdiction also are crucial. See SALLY ENGEL MERRY, HUMAN RIGHTS AND GENDER VIOLENCE 204-14 (2006) (describing the reinterpretation of culture as a "layered" process). See generally DEZALAY & GARTH, *supra* note 7.

24. See, for example, the description of Shearman & Sterling's practice in Paris: "The Firm policy is to confine our work to United States law and not attempt to practice foreign law. The policy is based on belief that when a client needs help under local law the best practice is to retain distinguished counsel of appropriate competence." WALTER K. EARLE & CHARLES C. PARLIN, SHEARMAN & STERLING: 1873-1973 373-74 (2d ed. 1973). An exception to this approach, historically, was Baker & McKenzie. See generally JOHN BAUMAN, PIONEERING A GLOBAL VISION: THE STORY OF BAKER & MCKENZIE (1999).

25. For information on staffing by firms during early periods of international growth, see Silver, *Local Matters*, *supra* note 10, at 74-76; Silver et al., *supra* note 9, at 1439-40.

investing in the United States or in tapping into U.S. securities markets. Initially, the firms continued to limit themselves to advising on U.S. law, for which their homegrown U.S. lawyers were perfectly suited. While the audience had expanded, the relevant criteria by which expertise was assessed had not: The same signals of professional capital that characterized U.S. law firms domestically also were relevant overseas because the overseas work of the firms continued to rely on the U.S. context, including the hierarchy of hiring criteria. Reinforcing this, it was typical for firms during the earlier period of international growth to control overseas offices from existing U.S.-based management, and staffing decisions for overseas offices typically would reflect this, too.²⁶

In these circumstances, when relying on U.S. J.D. expatriates to advise on U.S. law from new overseas offices, the firms were not without intelligence about the host country. Rather, this intelligence was generated separately from the legal staff. Firms often gained host country knowledge through the non-lawyers in their offices. These typically were host country nationals who were thoroughly familiar with the business culture of the jurisdiction. A fortunate firm would hire an office manager who had experience working with an elite host country law firm, and in this way the U.S. firm gained important host country knowledge. The office manager might bring her Rolodex (in the days before e-mail and mobile phones) as well, to facilitate the introduction of the U.S. law firm and its U.S.-licensed lawyers to important actors in the host country legal and business community. Another path for acquiring this important host country knowledge was through personal relationships developed by the U.S.-licensed lawyers, either in the host country or before leaving the United States. These might include clients, spouses, friends and business colleagues to whom the lawyer could look for advice on maneuvering in the overseas climate.

But in the last dozen years or so, U.S.-based law firms have acquired their local intelligence about new markets and locales through more direct means. The firms' overseas growth has been fueled by expanding jurisdictional expertise to include non-U.S. law and, correspondingly, increasing their targets to include assuming power and status in overseas markets.²⁷ To accomplish the advisory work, the firms have hired lawyers licensed outside of the United States. Generally, and in nearly every location, the overseas offices of U.S.-based international firms now capture host country expertise internally by hiring host-country-licensed lawyers and lawyers with host country ties, who bring with them client relationships as well as host country know-how. This represents a marked shift from the earlier international approach of the firms. As Debora Spar explained:

26. See generally Carole Silver, *Globalization and the U.S. Market in Legal Services—Shifting Identities*, 31 LAW & POL'Y INT'L BUS. 1093, 1142 n.188 (2000) (describing management structures as fixed in the United States).

27. Silver et al., *supra* note 9, at 1469-70.

International expansion [for U.S.-based law firms] occurred more slowly—and with good reason [compared to other kinds of service organizations]. From the outset, firms realized that expanding abroad was a far trickier enterprise than building either a corporate firm or a regional network. To do it well, firms would have to change not only how they ran their practices, but also, essentially, how they defined their professional competence.²⁸

Today, for example, rather than managing relationships with independent German law firms in Frankfurt, the Frankfurt offices of U.S.-based law firms themselves are staffed by German-licensed lawyers who enable the U.S. firms to compete directly with German law firms for clients.²⁹ But the firms also compete with German firms for lawyers, and this raises the question of whether the same elements of professional capital that signal credibility for an elite German law firm are similarly interpreted and valued by U.S.-based global law firms.

While U.S.-based international firms have shifted substantially to relying on host country lawyers in their overseas offices, they have not completely abandoned their U.S. identities as they present themselves overseas. Instead, in addition to maintaining their U.S. law firm name and describing their U.S. capabilities, the firms also typically include in each overseas office a small contingent of U.S.-licensed lawyers. These lawyers bring their U.S.-law-trained mindset to the host country lawyers working in the overseas locales, and help the firms cement the connection between overseas and home country identity.³⁰ They also offer credibility for the firms in presenting themselves as U.S. entities, which helps them compete with elite host country law firms. By combining host country and U.S. expertise, the firms position themselves as both global and local; firms use both signals to compete against top host country firms and other international firms for clients and lawyers. This combination of host country and U.S.-licensed lawyers can be described as comprising a “glocal” approach.

“Glocal,” however, only scratches the surface in describing the strategies of international law firms. In pursuing the general path of glocalization, firms must build credibility in the host country—this is the “local” part of “glocal”—as well as legitimacy as advisors on the basis of their U.S. status and expertise. Success for the firms requires deep knowledge of host country markets for professional services to inform them in hiring lawyers with similarly elite status in each jurisdiction, since these necessarily will reflect on the firm’s own position in the

28. Debora L. Spar, *Lawyers Abroad: The Internationalization of Legal Practice*, CAL. MGMT. REV., Spring 1997, at 10.

29. Silver et al., *supra* note 9, at 1448-54 (German-educated lawyers constitute 93% of all lawyers working in Germany for U.S.-based law firms studied). *See generally* Liu, *supra* note 20, at 771-804 (focusing on the shift in China from collaboration or managerial relationships between global and host country law firms to competitive relationships).

30. *See generally* Silver et al., *supra* note 9.

host country hierarchy.³¹ In this way, U.S.-based and other foreign law firms participate in defining the elements of professional capital that enable individual lawyers to gain access to elite positions in the international market for legal services.³² The choices U.S.-based (and other foreign) firms make in hiring lawyers in their overseas offices are part of a competition for talent that reflects their interaction with host country law firms, clients and even regulation. These choices, as well as those of the individual lawyers vying for positions in the firms, offer insight into the elements of professional capital.³³ In effect, the firms and lawyers compete over claims of legitimacy and credibility. The firms (both foreign (including U.S.-based) and host country firms) position themselves with regard to users of their services (clients) and sources of their services (lawyers) as capable of providing the most sophisticated advice in the transnational context, and individual lawyers pursue strategies to amass assets that will indicate to the firms and to clients their readiness and worthiness to practice in a sophisticated international context. The question raised here is whether the integrative or glocal approach of the firms to global growth also is reflected in the elements of professional capital that they promote through hiring practices and promotion policies.

In considering what U.S.-based international firms look for in candidates for their overseas offices, the domestic hiring activities of the firms might offer important insight into the qualities they value and the criteria upon which they rely. In the United States, the hiring practices of top law firms coalesce around a remarkably rigid pattern. Others have analyzed how law firm hiring relates to the structure and profitability of law firms,³⁴ my focus here is on the basis for firms' selection of particular individuals. Elite firms

31. See generally Yves Dezalay & Bryant G. Garth, *Marketing and Selling Transnational "Judges" and Global "Experts": Building the Credibility of (Quasi)judicial Regulation*, 8 SOCIO-ECON. REV. 113 (2010).

32. My focus here is on those lawyers in private practice whose work focuses on commercial matters and clients. This identity presumes a level of independence from government intervention as well as from other influences that might be subsumed under conflict of interest regulation in certain jurisdictions but raises political concerns in others. See Jerome A. Cohen, *Rough Justice*, SOUTH CHINA MORNING POST, July 9, 2009, available at http://www.cfr.org/publication/19784/rough_justice.html; SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE 9 (2006) (describing "the pervasive struggles over cultural values within local communities as competitions over power").

33. Yves Dezalay & Bryant Garth, *Merchants of Law as Moral Entrepreneurs: Constructing International Justice from the Competition for Transnational Business Disputes*, 29 LAW & SOC'Y REV. 27, 34 (1995) (explaining that "[t]he results of our mapping process are organized around the themes of legitimacy and credibility. International commercial arbitration is a symbolic field, and therefore the competitive battles that take place within it are fought in symbolic terms among moral entrepreneurs. Battles fought in terms of legitimacy and credibility, moreover, serve a double role. On the one hand, they build the careers and markets for those who are successful in this competition. And on the other hand, they build the legitimacy and credibility of international legal practices and international institutions (cf. the 'schizophrenia' of the legal profession as described by Gordon 1984).").

34. See generally, e.g., MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM (1991); Marc Galanter & William D. Henderson, *The Elastic Tournament: The Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2008).

rely on law school reputation and grades as a signal³⁵ of a new graduate's ability to succeed as a lawyer.³⁶ The firms use these signals to indicate and reinforce their own prestige.³⁷ Firms look for top graduates of the highest-ranked U.S. law schools,³⁸ defining "top" according to grade point average

35. For information on signals in hiring markets, see Michael Spence, *Job Market Signaling*, 87 Q. J. ECON. 355, 374 (1973); Steffen Habermalz, *The Speed of Employer Learning and Job Market Signaling Revisited 1-2* (Northwestern Univ. Dep't of Econ. Inst. for the Study of Labor, Discussion Paper No. 2309, 2006), available at <http://ssrn.com/abstract=933040> ("[H]igh-ability workers differentiate themselves from observationally identical workers of lower ability by acquiring an educational signal which is observed by potential employers."); John T. Sweeney & Charles Bame-Aldred, *Signaling in the Accountant Labor Market 6* (unpublished manuscript), available at <http://www.business.umt.edu/seminar/seminarPapers/05-06/Signaling%20in%20the%20Accountant%20Labor%20Market%20v3.doc> ("Under the signaling framework, the primary role of education is to signal the most able candidates to the labor market.").

36. A look at the roster of schools at which the U.S.-based international firms recruit reveals the focus on law school reputation or ranking, as well as regional variation with regard to lower-ranked schools. See Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 *FORDHAM INT'L L.J.* 1039, 1056 (2002) ("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."). See generally Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the U.S. News & World Report Law School Rankings*, 83 *IND. L.J.* 791 (2008). For information on law firms' concentration on grades, see Elizabeth Goldberg, *Open Season*, *AM. LAW.*, Aug. 2007, at 92, 94 ("Firms use grades as a crutch because it gives them a false sense of limiting risk . . . Lawyers assume that if a student got the thumbs-up from a Stanford Law School professor, then she must be smart and able to succeed."); Tom Ginsburg & Jeffrey A. Wolf, *The Market for Elite Law Firm Associates*, 31 *FLA. ST. U. L. REV.* 909 (2004). A commenter to a posting regarding the value of a Chinese LL.M. for foreign lawyers interested in working in China lends support to the strength of the reputation/grade signal: "From my experience, NOTHING can outweigh your J.D. grades and J.D. school, regardless if you are fluent in one, two, or three languages or have an LL.M. from any school, US or abroad. Nothing can sanitize your grades, even years of experience, when it comes to BigLaw. I'm sure if you asked legal recruiters, they would say the same." Comment of Associate K, Chinese LL.Ms for Foreigners at 9 (Donald Clarke, ed., May 5, 2008), available at http://lawprofessors.typepad.com/china_law_prof_blog/files/chinese_llms_for_foreigners.pdf.

37. Bryant G. Garth & Joyce Sterling, *Exploring Inequality in the Corporate Law Firm Apprenticeship: Doing the Time, Finding the Love*, 22 *GEO. J. LEGAL ETHICS* 1361, 1365 (2009) ("Historically, . . . the lawyers who gained the prestigious partnership positions were from the most elite law schools, which historically and currently draw mainly from relatively advantaged social groups. Individuals who gained entry into the leading law schools would join the ranks of the associates at the large corporate law firms, and out of that pool would come a new generation of partners. Those who did not become partners would be placed at boutique firms or would become in-house counsel of businesses with strong relationships with the particular corporate firms. In this manner a network of lawyers from similar backgrounds or have an LL.M. from any school, US or abroad. Nothing can sanitize your grades, even years of experience, when it comes to BigLaw. I'm sure if you asked legal recruiters, they would say the same." Comment of Associate K, Chinese LL.Ms for Foreigners at 9 (Donald Clarke, ed., May 5, 2008), available at http://lawprofessors.typepad.com/china_law_prof_blog/files/chinese_llms_for_foreigners.pdf).

38. This is not to suggest that the rankings of U.S. News are meritorious. See Wendy Espeland & Michael Sauder, *Strength in Numbers? The Advantages of Multiple Rankings*, 81 *IND. L.J.* 205, 206-07 (2006); SPECIAL COMM. OF THE ABA SECTION ON LEGAL EDUC. AND ADMISSIONS TO THE BAR, REPORT OF THE SPECIAL COMMITTEE ON THE U.S. NEWS AND WORLD REPORT RANKINGS (2010), available at <http://www.abanet.org/legaled/nosearch/Council2010/OpenSession2010/FUSNewsFinal%20Report.pdf> (concluding that the influence of U.S. News rankings is "not entirely benign"). For information on the debate surrounding these rankings, see Peter Lattman, *The Alternative Law School Ranking Scene*, *WALL ST. J. LAW BLOG* (June 26, 2007, 9:16 AM), <http://blogs.wsj.com/law/2007/06/26/the-alternative-law-school-ranking-scene>; Bob Morse, *Inside the College Rankings: The Law School Rankings Debate Rages On*, *U.S. NEWS & WORLD REP. EDUC. BLOG*, (Apr. 30, 2009, 1:57 PM), <http://www.usnews.com/blogs/college-rankings-blog/2009/04/30/the-law-school-rankings-debate>.

and participation in certain academic-related activities, such as law review and moot court.³⁹ These criteria often lead competitor firms to the same individuals,⁴⁰ and it is common for the top students at law schools as well as students at highly ranked law schools to receive offers of employment from several firms.⁴¹ Firms generally make offers to multiple students in order to gain sufficient numbers of new lawyers; even in the declining market for new lawyers in the Fall of 2008, some AmLaw 50⁴² firms reported making more than three offers to get one acceptance.⁴³ The current economic downturn is causing firms to reconsider their hiring practices in terms of the number of new law graduates, among other things,⁴⁴ but few have strayed from the

pages-on.html. Ranking of U.S. law schools is performed annually by U.S. News & World Report. *See also Top Law Schools*, U.S. NEWS & WORLD REPORT, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools> (last visited Oct. 12, 2010).

39. Besides this quite uniform model of the ideal new hire, firms have followed a uniform schedule for hiring. This is aimed at students who are about to begin their second year of the three-year J.D. program. Recruiting begins in August with on-campus interviews and ends with acceptances being due in December on extended offers. In the context of the economic downturn, there was some discussion of altering this schedule. *See* Press Release, NALP Announces Provisional Timing Guidelines for 2010, Adopting 28-Day Rolling Response Deadline (Feb. 26, 2010), *available at* <http://www.nalp.org/provisionaltimingguidelines2010> (reviewing proposals to prohibit offers for 2L summer associates prior to late in the fall semester at the earliest); Catherine Rampell, *The Other Law School Arms Race*, *ECONOMIX* (July 26, 2010, 3:40 PM), <http://economix.blogs.nytimes.com/2010/07/26/the-other-law-school-arms-race/>. Ultimately, large law firms generally sought to retain the former time schedule.

40. *See, e.g.*, Ginsburg & Wolf, *supra* note 36, at 934-45 (“In general, larger firms have lower acceptance rates after callback interviews, since they are competing with each other over the same group of students who then receive multiple offers.”). The firms’ overlapping interest is tempered by differences in law students’ geographic preferences, which firms take quite seriously as indicative of whether the student might intend to stay with the firm over the long haul.

41. According to the managing partner of an AmLaw 100 firm, “every one of us on this list [the AmLaw 100] has got the same profile [for hiring]: top 20% of the twenty top schools. Actually . . . the top [firms on the AmLaw 100 list] . . . have a more restrictive profile which is the top 5% of the top five law schools And there aren’t enough people to fill all these jobs So with people who fit the profile, we are indiscriminate of who we hire. It’s all selling all the time. Those people will have multiple job offers from great firms. Our job is to convince them to choose [our firm], not to evaluate them on whether they will be able to be successful at a big firm environment; not to assess their personal qualities. [Although] if they can’t carry on a personal conversation . . . you do reject them.” Interview #9, United States (June 2006).

42. *See The AmLaw 100 2010—Profits Per Partner (PPP): Two Firms Fall Below \$2 Million*, *AM. LAW.*, May 2010, *available at* <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202448485135> (providing the list of AmLaw 100 firms; the reference in the text is to those firms ranked in the top fifty spots according to profits-per-partner, also reported in the article).

43. On the high side, for other firms, nearly 80% of offers were accepted. This does not account for the ratio of call-backs to offers. *See Perspectives on Fall 2008 Law Student Recruiting*, NALP, http://www.nalp.org/uploads/Perspectives_on_Fall_2008.pdf (last visited Oct. 12, 2010). According to lawyers interviewed by Ginsburg & Wolf, the ratios at one firm are as follows: “245 interviews, 116 callback offers, 74 actual callbacks, 22 offers, 6 acceptances for the summer program.” Ginsburg & Wolf, *supra* note 36, at 934. Another lawyer commented, “The process involves a lot of firms chasing the same people. Giving 100 offers means 600 hours of callback interviews, plus my time and that of the committees and interviews. Altogether 2,000 man hours, which is hundreds of thousands of dollars a year.” *Id.*

44. Certain firms are considering how to use interviews to more effectively screen students. *See* Gina Passarella, *Behavioral Interviewing Gains Momentum in Law Firm Hiring*, *LEGAL INTELLIGENCER*, Aug. 27,

traditional reliance on education (i.e., top grades from a highly-ranked law school) as the fundamental signal of quality.⁴⁵ Of course, firms also may use supplemental indicators to assess new graduates, including factors such as leadership experience; international experience; work experience generally, particularly to the extent it indicates knowledge of a specific client or, more broadly, a client industry; and foreign language ability. These are harder for potential employers to assess. They are less easily compared, which also challenges firms in using them as elements of competition.⁴⁶ In addition to hiring new graduates, firms also participate in lateral hiring markets, where they look for ways to add new clients and new practice areas. This market also is less susceptible to reliance on signals than is the market for new graduates.⁴⁷

Hiring patterns also may reflect regulatory differences. Because regulation contributes to the realm of possibilities for the way international law firms participate in overseas advising, a brief foray into the regulation of foreign lawyers and law firms might be useful to flesh out this influence. Generally, regulation of foreign-licensed lawyers responds to four questions.⁴⁸ First, may a

2010, available at http://www.law.com/jsp/article.jsp?id=1202471143630&Behavioral_Interviewing_Gains_Momentum_in_Law_Firm_Hiring (“[I]ntertwined with questions about GPA and resumes are ones that probe how attorneys will handle tough or unexpected situations. They are pretty typical for a job interview, but the goal for law firms now is to see how new attorneys can handle the sometimes stressful law firm environment and, even more, whether they can provide real world value to clients beyond just handing in strong work product.”). See generally Elizabeth Goldberg, *Is This Any Way to Recruit Associates?*, AM. LAW., Aug. 6, 2007 (discussing the differences between law firm interviewing and practices of other professional services firms). There also has been some shift in the way law firms approach training new law graduates. See, for example, the new thinking on the first years of practice as embodied in Howrey’s plan for new lawyers, discussed at Martha Neil, *‘Select’ Howrey Associates to Earn \$100K in New Training Program*, A.B.A. J., June 22, 2009, available at http://abajournal.com/news/select_howrey_associates_to_earn_100k_in_new_training_program (“In what may be a harbinger of the future for other well-known law firms, Howrey has just announced a new two-year training program that will offer ‘meaningful training’ for ‘select’ first-year associates. They will be taking a substantial pay cut from the top BigLaw starting salary of \$160,000 or so in recent years Under Howrey’s new training program, new lawyers are expected to spend only one-third of their time on billable work during their first year, and half of their time on billable work during the second year. They will also gain valuable experience by working on pro bono matters, the press release says.”); Ashby Jones, *The Early Reviews on Law Firm Apprenticeships*, WALL ST. J. LAW BLOG (June 15, 2010, 11:04 AM), <http://blogs.wsj.com/law/2010/06/15/the-early-reviews-on-law-firm-apprenticeships-so-far-so-good> (reporting on apprenticeship training programs at Drinker Biddle, Frost Brown Todd, Ford & Harrison, and Strasburger & Price, as well as at Howrey).

45. See generally Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the US News & World Report Rankings*, 83 IND. L.J. 791 (2008).

46. See generally Spence, *supra* note 35 (discussing the efficiency of investment and signal’s value).

47. See generally William Henderson & Leonard Bierman, *An Empirical Analysis of Lateral Lawyer Trends from 2000 to 2007: The Emerging Equilibrium for Corporate Law Firms* (Indiana Legal Studies Research Paper No. 136, 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1407051.

48. These questions frame the GATS approach to regulation of legal services. See *Legal Services*, WORLD TRADE ORG., http://www.wto.org/english/tratop_e/serv_e/legal_e/legal_e.htm (last visited Oct. 17, 2010); see also Laurel S. Terry, *Lawyers, GATS, and the WTO Accountancy Disciplines: The History of the WTO’s Consultation, the IBA GATS Forum and the September 2003 IBA Resolutions*, 22 PENN ST. INT’L L. REV. 695 (2004); Laurel S. Terry, *GATS’ Applicability to Transnational Lawyering and Its Potential Impact on U.S. State*

foreign-licensed lawyer establish an office in the host jurisdiction? This is the right of establishment, and determines whether a foreign law firm or lawyer may have a physical presence in another jurisdiction. Second, may foreign- and host country-licensed lawyers work together within a single law firm? Their work arrangement might take the form of a host country law firm hiring lawyers licensed in a foreign jurisdiction, or, if there is a right of establishment, a foreign law firm hiring host country-licensed lawyers. In either event, the issue goes both to employment and partnership relationships. Third, is there a monopoly on advising on the law of the host jurisdiction granted only to host country-licensed lawyers? Many jurisdictions restrict the right to advise on their law to those who have studied law and passed an entrance examination or otherwise qualify in that country, but in certain jurisdictions, including England, anyone may advise on law (subject to certain reserved areas) so long as they do not hold themselves out as licensed in the host jurisdiction. Finally, certain jurisdictions impose limitations on ownership or control of law firms related to host country-licensed actors. For example, a jurisdiction that allows foreign law firms to establish offices there might also require that the practice be owned or controlled by a majority of host country-licensed lawyers.

Regulatory choices, then, influence the paths firms take in developing particular overseas offices. In a jurisdiction that allows foreign law firms to establish offices but prohibits host country-licensed lawyers from practicing in those offices, the responsibility for developing expertise about the host country legal services market is liable to fall to the foreign firm's managers sitting miles away in the United States, and may more closely follow traditional U.S. signals.⁴⁹ Alternatively, where foreign law firms may combine forces with host country-licensed lawyers and advise on host country law, a firm might simply acquire an independent host country law firm or group of host country-licensed lawyers⁵⁰ and rely on their existing hiring strategies to refill ranks when necessary. This more liberal regulatory structure allows firms to benefit from the knowledge of host country-licensed lawyers with regard to hiring signals.⁵¹ But in deferring to host country decision makers and hiring criteria—and in this way adopting the

Regulation of Lawyers, 34 VAND. J. TRANSNAT'L L. 989 (2001). Regulation also may restrict the right of a foreign firm to use its home country name. See Laurel Terry, *German MDPs: Lessons to Learn*, 84 MINN. L. REV. 1547, 1615 n.280 (2000) (describing a name change for the Arthur Andersen law firm enabled by hiring a lawyer whose given name was "Andersen").

49. This generally is descriptive of the approach of China. See generally discussion, *infra* Part III.B; Liu, *supra* note 20.

50. This generally is descriptive of the approach of Germany. See generally discussion, *infra* Part III.A; Lace, *supra* note 21.

51. "Given short training periods and lengths of international assignments, it is difficult for expatriates to develop a deep understanding of their host country's society, culture, and workplace regulations. Yet, identifying and successfully implementing accepted HR practices requires a deep understanding of legal and cultural norms." John M. Mezas, *Identifying Liabilities of Foreignness and Strategies to Minimize their Effects: The Case of Labor Lawsuit Judgments in the United States*, 23 STRATEGIC MGMT. J. 229, 231 (2002).

host country firm's competitive strategy for status—U.S. firms also create challenges of integrating host country-licensed lawyers with the rest of the firm's lawyers and offices. Many firms approach the integration challenge by situating expatriates (typically U.S. J.D. graduates) in overseas offices to serve as a sort of glue to the mothership. Others use traveling ambassadors who bring the home office and U.S. mindset to overseas office lawyers. The reverse of this occurs in certain firms that have temporary foreign lawyer training programs, often filled by graduates of U.S. LL.M. programs, who move after completing their U.S. law studies to an office situated in their home country or region.⁵² Firms also increasingly rely on practice group training and communication as mechanisms for integrating lawyers across multiple locations.⁵³

If regulation prevents U.S.-based firms from combining directly with host country law firms, then the approach of the firms to satisfying global hiring needs is likely to be similar to the way they developed their overseas offices early on, before regulatory barriers fell, when the focus of overseas activity was still on U.S. law expertise and U.S.-licensed lawyers. Recall that early in their overseas growth, the typical overseas office was akin to a “greenfield investment” by the home office and U.S.-management of a firm.⁵⁴ Lawyers (often partners), all U.S. J.D. graduates who had worked for the firm in the United States, were sent overseas to establish new offices. These expatriates brought to their new posts intimate knowledge of their firms gained through years of practice with the same organization during a time when senior lawyers generally remained with the same firm for an entire career. The firms capitalized on their status and expertise in the United States, and primarily relied on representatives who were knowledgeable interpreters, well schooled in the hierarchy of U.S. law firms, who would be familiar to their U.S.-based clients. The firms exported advice only on U.S. law, which made the transmission of a U.S. legal approach sensible and simple. That is, the firms sent to an overseas office lawyers experienced in practicing U.S. law on behalf of sophisticated clients. While situated overseas, the primary consumers of their services used their U.S. experience to assess the work of their lawyers.

52. See, e.g., *Associate Training Program*, BAKER & MCKENZIE, <http://www.bakermckenzie.com/careers/RegionSubPage1.aspx?entry=510®ion=241> (last visited Nov. 7, 2010); *International Associate Program*, SHEARMAN & STERLING, <http://www.shearman.com/IAP/> (last visited Oct. 14, 2010); *Visiting Lawyers Program*, SULLIVAN & CROMWELL, <http://www.sullcrom.com/careers/opp/lawyers> (last visited Oct. 14, 2010); see also David Wilkins, Ronit Dinovitzer & Rishi Batra, *Urban Law School Graduates in Large Law Firms*, 36 SW. U. L. REV. 433, 457 (2007) (“data suggests that geography plays a role independent from school status in shaping the employment opportunities of today’s law school”). See generally Silver, *supra* note 36, at 1056 (“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.”).

53. See James R. Faulconbridge & Daniel Muzio, *Legal Education, Globalization and Cultures of Professional Practice*, 22 GEO. J. LEGAL ETHICS 1335, 1351 (2009).

54. Philip M. Rosenzweig & Nitin Nohria, *Influences on Human Resources Management Practices in Multinational Corporations*, 25 J. INT’L BUS. STUD. 229, 234-35 (1994) (defining “greenfield investments” as those branch or affiliate offices “founded by MNC employees who seek to replicate key features of the parent company”).

FIGURE 1
U.S. AND HOST COUNTRY LEGAL EDUCATION

	All Lawyers⁵⁵
U.S. J.D.s	18%
LL.M.s (and not a J.D.)	14%
Lawyers educated solely outside of the United States (this includes host country and non-host country law graduates)	68%
Host country law graduates (this includes the possibility of the lawyer also having earned a J.D. or LL.M. in the United States)	65%
Host country law graduates with no U.S. legal education (neither J.D. nor LL.M.)	50%
Host country law graduates who earned a U.S. LL.M. (but not a J.D.)	16%
Host country law graduates who earned a U.S. J.D. (this includes the possibility of the lawyer also having earned a U.S. LL.M.)	1%

Today, as described above, overseas offices serve host country and multinational clients and the firms typically advise on problems relating to host country, U.S., and third-country activities. The lawyers working for U.S. firms overseas reflect this breadth. The educational credentials of lawyers working in the overseas offices of the Law Firm Data firms are described generally in Figure 1. They reveal the marginal role of U.S. legal education. Fewer than 20% of the lawyers working for the firms overseas graduated with a J.D. degree from a U.S. law school. The largest group—68% of the overseas office lawyers—is comprised of lawyers with no U.S. legal education at all. A subset of this last group, comprising half of all overseas office lawyers, were educated in (and only in) the same jurisdiction where they currently practice—these are host country lawyers with no educational connection to the United States. Another 14% of all overseas office lawyers earned their primary legal education overseas but also completed one year of U.S.-legal education, graduating with a U.S. LL.M. degree.

These staffing patterns as well as those of individual offices analyzed in earlier work⁵⁶ reflect the deregulation that has characterized many overseas legal markets recently, as well as the comfort levels U.S.-based firms have developed

55. If those lawyers working in England (who account for 35% of all lawyers working for the firms outside of the United States) are excluded, the figures would be as follows: U.S. J.D.s: 18%; LL.M.s (and not a J.D.): 19%; Lawyers educated solely outside of the United States (this includes host country and non-host country law graduates): 62%; Host country law graduates (this includes the possibility of the lawyer also having earned a J.D. or LL.M. in the United States): 66%; Host country law graduates with no U.S. legal education (neither J.D. nor LL.M.): 46%; Host country law

with regard to being active outside of the United States. The firms still typically present a glocal approach by combining U.S. and host country lawyers in individual offices. But as they have shifted from practicing principally through U.S.-educated and -licensed lawyers in their overseas offices to practicing primarily through host country- (or host region-⁵⁷) licensed lawyers, they also must reevaluate their hiring in overseas offices; that is, they must reformulate the composition of professional capital to include host country signals. Using the Law Firm Data, it is possible to consider the role of U.S. legal education as an element of professional capital and signal in the overseas hiring market for lawyers.⁵⁸ These data reveal that most lawyers working in the overseas offices of U.S. firms do not have U.S. law school records, as reflected in Figure 1. Accordingly, the firms are not relying on the U.S. signal of grades and school reputation.⁵⁹ Perhaps a combination that signals credibility in the global lawyering market is emerging, too, in which professional capital is captured through a particular career trajectory that includes elements of both the host country and U.S. regimes, embodying an analogy to the glocal approach firms take to offices, but here, within an individual lawyer.

One likely mechanism for blending elements of host country and U.S. expertise is through the U.S. LL.M. degree.⁶⁰ The LL.M. is a one-year post-graduate program, and it is a non-standardized degree quite unlike the

graduates who earned a U.S. LL.M. (but not a J.D.): 14%; Host country law graduates who earned a U.S. J.D. (this includes the possibility of the lawyer also having earned a U.S. LL.M.): 2%.

56. See Silver et al., *supra* note 9.

57. Regional connections also may provide important insight, and are the subject of ongoing research.

58. The Law Firm Data firms are household names in the United States and in the global market for legal services. The data were collected during 2006 and 2007, and at that time the sixty-four firms studied supported a total of 386 offices in fifty-five cities, in which slightly more than 8,700 lawyers work. We relied first on the websites of the law firms and their lawyer biographies as the source of information. Where these were incomplete, we consulted other sources, including MARTINDALE-HUBBELL, <http://www.martindale.com>, and *Attorney Search*, N.Y. ST. UNIFIED CT. SYS., <https://iapps.courts.state.ny.us/attorney/AttorneySearch>. Our data include professional credentials relating to legal education, admission to practice, substantive area of practice, gender and position or title in the firm.

59. Moreover, many of the lawyers hired in overseas offices are more akin to laterals. In small offices, firms may be reluctant to bring on new graduates because of concerns that the office has too few senior lawyers to supervise and provide sound training for a new lawyer. See Interview #1, Singapore (March 2000). Even in larger offices where the firms legitimately can provide training for new lawyers, they are conscious of their need to develop reputationally and build client rosters, and as a result are on the lookout for seasoned lawyers who can support them in these efforts.

60. As noted in Figure 1, approximately 14% of all lawyers working in the overseas offices studied (n=8714) earned a U.S. LL.M. (but not a J.D.). Put another way, U.S. LL.M.s constitute 17% of those lawyers who earned their primary legal education outside of the United States (n=6705) and 17% of lawyers practicing in the same jurisdiction in which they earned their primary legal education (n=4929). Only approximately 1% of the lawyers who completed their primary legal education outside of the United States also earned a U.S. J.D. Note, however, that relative interest in the J.D. and LL.M. likely will shift, perhaps in response to the integration of U.S. law firms in overseas markets.

three-year J.D.⁶¹ Typically, the LL.M. either has a substantive law focus—such as tax or intellectual property—and attracts both J.D. graduates of U.S. law schools and graduates of law schools outside of the United States, or it is aimed exclusively at students who completed their first degree in law outside of the United States and who are not J.D. graduates—and these programs, too, may have a substantive focus.⁶² Only the second category is discussed here.

This version of the LL.M. is intended as an add-on to a foundational law degree earned through study outside of the United States. It differs from the J.D. in important respects that limit its ability to serve as a similarly strong signal analogous to the J.D. First, the vetting process to gain entry to an LL.M. program is different from that of the J.D. J.D. applicants must take the LSAT, which, if nothing else, provides some foundation for comparing students across different undergraduate and law schools.⁶³ There is no entrance exam for the LL.M. aside from a test of English language competency, and even that is not considered a particularly reliable screen.⁶⁴ Second, there is no common set of courses that LL.M. students take in their U.S. LL.M. programs, which means LL.M.s lack a core and comparable experience analogous to the first year law curriculum and classroom approach of the Socratic method shared by J.D. students. Third, grading for LL.M.s varies in different schools. Some schools assess LL.M.s

61. The discussion in this Article of the LL.M. is limited to the LL.M. as it is offered in the United States by ABA-accredited law schools.

62. See, e.g., *LL.M. Program*, FORDHAM U. SCH. L., <http://law.fordham.edu/llm-program/llmprogram.htm> (last visited Oct. 17, 2010) (Fordham University School of Law's description of its LL.M. programs).

63. For information on the LSAT and its predictive uses, see, for example, Marjorie M. Shultz & Sheldon Zedeck, *Identification, Development, and Validation of Predictors for Successful Lawyering*, LSAC RESEARCH REPORT, Sept. 2008, available at <http://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf> (last visited Oct. 6, 2010); Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L.J. 229 (2006); Phoebe A. Haddon & Deborah W. Post, *Misuse and Abuse of the LSAT: Making the Case for Alternative Evaluative Efforts and a Redefinition of Merit*, ST. JOHN'S L. REV. 41 (2006); William C. Kidder, *The Rise of the Testocracy: An Essay on the LSAT, Conventional Wisdom, and the Dismantling of Diversity*, 9 TEX. J. WOMEN & L. 167 (2000); William C. Kidder, *Portia Denied: Unmasking Gender Bias on the LSAT and Its Relationship to Racial Diversity in Legal Education*, 12 YALE J.L. & FEMINISM 1 (2000). On current ways law schools use the LSAT, compare, for example, *Law School Facts*, STANFORD L. SCH., http://www.law.stanford.edu/school/facts/#degrees_and_admissions (last visited Oct. 6, 2010) (LSAT range for 2011 class: 160-180) with *Admission Statistics*, U. DENVER STURM. C. L., <http://www.law.du.edu/index.php/admissions/jd-admissions/admissions-statistics> (last visited Oct. 6, 2010) (LSAT range for 2009 incoming class: 25th-75th percentile, 155-160).

64. The TOEFL exam has been subject to concerns about fraud, among other things. See, e.g., News Release, U.S. Attorney's Office, *Dozens of Foreign Students Arrested Nationwide in English Language Testing Scam* (May 7, 2002), available at http://www.usdoj.gov/usao/nj/press/files/to0507_r.htm; Louie Valencia, *U.S. Uncovers TOEFL Exam Scam*, NINER ONLINE, Oct. 25, 2002, available at <http://www.nineronline.com/2.5313/u-s-uncovers-toefl-exam-scam-1.552603>; Julie M. Spanbauer, *Lost in Translation in the Law School Classroom: Assessing Required Coursework in LL.M. Programs for International Students*, 35 INT'L J. LEGAL INFO. 396, 414-16 (2007), available at <http://scholarship.law.cornell.edu/ijli/vol35/iss3/5> (exploring the unreliability of the TOEFL). According to one U.S. law professor, the TOEFL is compromised in China, rendering its scores completely unreliable. See China Law Listserv Archives, available at <https://hermes.gwu.edu/archives/chinalaw.html> (login required).

separately from J.D.s, offering them a distinct curriculum and even a different faculty. Others combine LL.M.s with J.D.s in courses but assessment is separated for the two groups. Still other law schools combine LL.M.s and J.D.s in courses and impose a single grading scheme on all students; even here, though, LL.M. students sometimes experience different treatment by faculty in class.⁶⁵ This variety renders it very difficult for potential employers to assess LL.M. graduates, either in comparison to other LL.M.s or in comparison to J.D.s.⁶⁶ The only standards to which nearly all LL.M. programs for foreign law graduates adhere are those embodied in New York's rule on bar eligibility, which serve indirectly to shape the options offered by most U.S. law schools in programs targeting foreign law graduates. These are limited: twenty credit hours for receipt of the LL.M. degree, including a minimum amount of time spent in "basic courses in American law."⁶⁷ Consequently, the LL.M. does not have a signal analogous to the J.D.'s (of grades and school reputation) about which employers feel confident.⁶⁸ While earning a U.S. LL.M. offers an important experience to its

65. These statements about student assessment and grading for LL.M.s are drawn from interviews and informal conversations with LL.M. program directors, teaching faculty and students over the last ten years. For information on differences among LL.M. programs with regard to these and other issues, see Silver, *supra* note 17.

66. The ABA does not accredit LL.M. programs, although this has been a topic of discussion. See ABA, COUNCIL STATEMENTS 1, available at <http://www.abanet.org/legaled/standards/standardsdocuments/Council%20Statements.pdf> ("The American Bar Association's approval of a law school extends only to the first professional degree in law (J.D.) offered by a law school. ABA approval of a school's J.D. program provides bar admission authorities, students and the public assurance that the law school's J.D. program meets the Standards established by the ABA and that graduates of the school have completed an educational program that prepares them for admission to the bar and to participate effectively and responsibly in the legal profession. ABA approval does not extend to any program supporting any other degree granted by the law school. Rather the content and requirements of those degrees, such as an LL.M., are created by the law school itself and do not reflect any judgment by the ABA regarding the quality of the program. Moreover, admission requirements for such programs vary from school to school, and are not evaluated through the ABA accreditation process. The ABA Accreditation process does not evaluate in any way whether a school's post-J.D. degree program ensures that students in the program gain the basic knowledge and skills necessary to prepare the student adequately for the practice of law. It is the long-standing position of the Council of the Section of Legal Education and Admissions to the Bar that no graduate degree is or should be a substitute for the J.D., and that a graduate degree should not be considered the equivalent of the J.D. for bar admission purposes."). See generally Silver, *supra* note 17; Carole Silver & Mayer Freed, *Translating the U.S. LL.M. Experience: The Need for a Comprehensive Examination*, 101 Nw. U. L. REV. 23 (2006), available at <http://www.law.northwestern.edu/lawreview/colloquy/2006/3/>.

67. The New York rule requires that candidates have "successfully completed a full-time or part time program consisting of a minimum of 20 semester hours of credit, or the equivalent, in professional law subjects, which includes basic courses in American law, in an approved law school in the United States." N.Y. CT. APP. R. FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS AT LAW 520.6, available at <http://www.nybarexam.org/Rules/Rules.htm#520.6>; see also *Foreign Legal Education*, N.Y. STATE BD. OF BAR EXAM'RS, available at <http://www.nybarexam.org/Foreign/ForeignLegalEducation.htm> (last visited Oct. 17, 2010); Judge Howard A. Levine, *Regulation of Foreign-Educated Lawyers in New York: The Past, Present, and Future of New York's Role in the Regulation of the International Practice of Law*, 47 N.Y.L. SCH. L. REV. 631, 648 (2003).

68. Of course, even this is relative; an LL.M. from a law school that is part of a university with a strong international reputation may provide its graduate with more credibility than one from a school with less name-recognition.

graduates—including exposure to an international peer group and to English (and in particular, legal English), as well as to common law reasoning and concepts of U.S. law—these do not necessarily coalesce into one easily recognizable message that delivers the signal of professional competence to the same extent as does the J.D.⁶⁹

In sum, in their transformation into global organizations, U.S.-based law firms must satisfy a blend of host country and U.S.-based hierarchies. That is, they participate in local markets and adopt local signals of status, but add to this their U.S. overlay.⁷⁰ The manifestation of this combined approach depends upon a number of factors including regulatory constraints, and in this regard, the host country context is significant. The value of a certain experience or knowledge is not universal; it must be interpreted in a particular context, which for our purposes is easily defined by jurisdiction.⁷¹ As Ronit Dinovitzer and John Hagan explain, “the worth of a particular form of symbolic capital is based on its recognition as valuable in local settings.”⁷² With regard to U.S. legal education, and particularly the LL.M., the value accorded to the degree is predominantly in the components of the LL.M. experience, rather than in the degree itself.

III. LOCAL SIGNALS IN THE GLOBAL LEGAL SERVICES MARKET: GERMANY & CHINA

This section presents the case studies of Germany and China to reveal more clearly the role of U.S. legal education in the professional hierarchies in which U.S.-based international firms and their lawyers participate. At the time the Law Firm Data were gathered in 2006-07, thirty-eight of the sixty-four firms studied supported forty-nine offices in China, spread between Beijing and Shanghai.⁷³ A total of 356 lawyers worked in these China offices. U.S. law firms began establishing offices in China by the mid-1980s, although many of these

69. That is, the LL.M. does not carry the same significance as symbolic capital as does the J.D. *See generally* Garth & Sterling, *supra* note 37, at 1368 (“Symbolic capital is capital that has value because people through a circular logic believe it has value.”).

70. According to Spar, “lawyers have always sold a somewhat awkward product. They sell an information-based service—a product whose value lies in its customization, a product that is difficult to stockpile or resell, and a product based inherently on human, rather than physical, capital. Unlike many service businesses, the services they sell vary substantially from one customer to the next. Essentially, law firms sell the promise of a product—the promise that they will create a contract, or a will, or a business arrangement that best suits their customer’s needs.” Spar, *supra* note 28, at 9.

71. *See generally* MERRY, *supra* note 32, at 204-16 (describing “layers” of actors and meaning with regard to the terms “global” and “local”).

72. Ronit Dinovitzer & John Hagan, *Lawyers on the Move: The Consequences of Mobility for Legal Careers*, 13 INT’L J. LEGAL PROF. 119, 121 (2006).

73. *See generally* Silver, *supra* note 26; SYDNEY CONE, INTERNATIONAL TRADE IN LEGAL SERVICES (1996). Information on the date of office openings and closings was gathered by examining law firm entries in the Martindale-Hubbell directories, as described in Silver, *supra* note 26.

subsequently closed at least temporarily.⁷⁴ In Germany, the firms generally began opening offices after reunification in 1989.⁷⁵ By the time the Law Firm Data were collected, thirty-one of the sixty-four firms studied supported fifty-three offices in eight German cities;⁷⁶ in total, 1,223 lawyers worked for the firms in Germany. Interviews with lawyers working in Germany and China, including those who earned U.S. law degrees and those who make hiring decisions, were added to the mix in order to analyze the role of U.S. legal education and other elements used by elite firms to convey their status. Comparisons between Germany and China highlight the importance of context in these judgments.

A. GERMANY: STRENGTH AND NUMBERS

Liberalization in Germany with regard to the legal market occurred abruptly and resulted in foreign firms being authorized to establish and create instant offices of substantial size by combining with German law firms and groups of lawyers. Today, this same regulatory structure, put into place when the German market generally opened to foreign lawyers and law firms in 1989,⁷⁷ allows German lawyers to work (as employees and partners) with foreign lawyers and to advise on German law whether they do so from a German or foreign firm.⁷⁸

In fact, the sense in Germany from the beginning stages of globalization of the legal market was that a foreign firm could not be successful without investing in German lawyers. According to one German lawyer, as reported by Susanne Lace in her fascinating study of the German legal market,

Only those firms which were prepared to play by the rules of the market have been successful—markets are local [The firms must] practice local law, have some knowledge of it, have German lawyers, don't think that you can

74. Despite the fact that China's official authorization of local offices for foreign firms dates to 1992, Coudert Brothers, Heller Ehrman, McCutchen Doyle, and Paul Weiss each claimed offices in China in the mid-1980s. See *Firm Locations Beijing*, PAUL WEISS, <http://www.paulweiss.com/firm/locations/office.aspx?office=1> (last visited Oct. 17, 2010) ("The firm's Beijing office has been a prominent member of Beijing's legal community since 1981."). See generally Silver, *supra* note 26.

75. One firm, Baker & McKenzie, established an office in Frankfurt much earlier, in 1962. See Silver, *supra* note 26, at 111 (sources cited within). On globalization and the German legal market, see Lace, *supra* note 21, at 51-75.

76. Aled Griffiths, *A Tale of Two Business Models*, LAWYER, Nov. 24, 2003. ("Even the most casual student of the German legal market knows that it is not all about Frankfurt. A strong presence in Munich and Berlin has become essential for most major law firms").

77. See Ulrike Schultz, *Germany: Regulated Deregulation: The Case of the German Legal Profession*, in FELSTINER, REORGANISATION AND RESISTANCE: LEGAL PROFESSIONS CONFRONT A CHANGING WORLD (2005); Lace, *supra* note 21, at 54-55; Martin Henssler & Laurel S. Terry, *Lawyers Without Frontiers—A View From Germany*, 19 DICK. J. INT'L L. 269, 275-76 (2001); CONE, *supra* note 73, at 11:16 (1995).

78. See Lace, *supra* note 21, at 54-55 ("A Federal Court decision in 1989 finally sanctioned supra-local law firm mergers, which enabled firms to expand quickly. Prior to that, supra-local practices (and foreign offices) were not thought to be permissible, due to the principle of localization (whereby lawyers are admitted only to one court which they can appear before).") (footnote and citation omitted).

import the practices of other jurisdictions. You have to be top here—it doesn't help if you are top in New York or London.⁷⁹

Initially, many highly regarded German law firms and lawyers were reluctant to join forces with U.S. and other foreign law firms, and they were confident that their clients would remain loyal. By the late 1990s, however, things had started to change. Many of the top German firms had been acquired by U.K.- or U.S.-based firms that used the mergers to present themselves as sufficiently “local” to gain a strong start in the German legal market.⁸⁰ And as the economy slowed in the early 2000s, foreign-based international law firms found success in gaining a foothold among German “Mittelstand” clients:

Ask Bremen lawyers if their local clients would go to Hamburg for advice and they will choke on their herrings German clients have tended to choose their lawyers according to commonly-held regional affiliations, rather than by examining larger firms' claims of better service and more cosmopolitan advice. But the first three years of this century have put this long-established parochialism to the test [M]any mid-sized firms are being unpleasantly surprised [O]nce these clients have gone, they are gone for good.⁸¹

Meanwhile, U.S. and other international firms entered the German market by acquiring existing German law firms or portions of firms, in order to capture German law expertise and clients. A report of Paul Hastings' entry is illustrative:

U.S. firm Paul, Hastings, Janofsky & Walker has made its long-awaited German debut after brokering a deal to absorb respected 27-lawyer Frankfurt boutique Smeets Haas Wolff. All five Smeets Haas partners will join the Los Angeles-based firm as equity partners when the combination goes live on January 3, 2008. The German outfit focuses on corporate, banking and restructuring work and boasts a strong client roster that includes Credit Suisse, Deutsche Bank, Morgan Stanley, Royal Bank of Scotland and Wachovia. The Frankfurt firm was formed in 2001 by former Freshfields Bruckhaus Deringer banking and finance associates Peter Smeets and Hergen Haas plus former Hengeler Mueller corporate and M&A associate Christopher Wolff. The move

79. Lace, *supra* note 21, at 60 (quoting a “German partner”).

80. See Lace, *supra* note 21, at 60.

81. Aled Griffiths, *Mittelstand: Can Regional Firms Keep the Big Boys at Bay*, *LAWYER*, Aug. 18, 2003, available at <http://www.thelawyer.com/mittelstand-can-regional-firms-keep-the-big-boys-at-bay/?/106324>. article. Supplementing this attraction to international firms was a change in the law that lifted a restriction on who could represent a client in court. See Brendan Malkin, *German Law Reform Boosts Global Firms*, *LAWYER*, Aug. 12, 2002 (“Before the reforms, international firms were restricted from acting in the Court of Appeal unless they had offices in close proximity to where the case was taking place. If they did not, then they were restricted to acting only in the District Court—Germany’s court of First Instance—and a firm close to the Court of Appeal would take over. Now a lawyer from any part of Germany can act almost anywhere in the country. This throws up the potential for far more work for international firms, as clients will instruct a firm for its quality rather than its proximity to a court.”).

represents the end of a long search by Los Angeles-based Paul Hastings to launch in Germany.⁸²

When acquisition of an entire firm was not possible or ideal, U.S. firms cherry-picked groups of German lawyers from German firms and existing offices of competing foreign-based international firms.⁸³ According to one report, “it is almost *selbstverständlich* [meaning unmistakable, obvious, needing no explanation] now for lawyers in Germany to leave as a group rather than as individuals.”⁸⁴ Before long, U.S. and U.K. firms were the top revenue generators in the German legal market. Just fifteen years after foreign lawyers and law firms first entered Germany, the legal market had experienced a substantial tilt towards the foreign firms. By 2005, “[t]he German market [was], of course, dominated by international firms. The turnover of even the largest German independent firm, Hengeler Mueller, [was] dwarfed by the operations of the biggest international firms in Germany The domestic firms are now only a small part of the story of Germany’s legal landscape.”⁸⁵

The story of expansion into Germany, then, is one of substantial investment in German lawyers. The population of the German offices of the sixty-four U.S.-based firms bears this out. As illustrated in Figure 2, more than 90% of all lawyers working for the German offices of the Law Firm Data firms earned their primary legal education in Germany. This is extraordinarily high; outside of Germany, approximately 60% of the lawyers working for the Law Firm Data firms in all overseas offices were educated in the host country where they work. The German offices support more host country educated lawyers than almost any other jurisdiction.⁸⁶

In addition to the large group of German lawyers working for U.S. firms in Germany, there is a small group of J.D. graduates. Forty-six J.D.s are spread among twenty-six German offices, but more offices (twenty-seven) house no

82. James Illman, *Frankfurt Merger Hands Paul Hastings Long-Awaited German Debut*, LEGAL WEEK, Dec. 13, 2007, available at <http://www.legalweek.com/legal-week/news/1177427/frankfurt-merger-hands-paul-hastings-awaited-german-debut>.

83. See *Germany: DLA Piper Targets IP/IT Sector in Munich*, LAWYER, Sept. 25, 2006, available at <http://www.thelawyer.com/dla-piper-targets-ip/it-sector-in-munich/122041.article> (DLA Piper “recently took a five-man banking and finance team from EY Law Luther Menold” in Frankfurt. The firm’s “German managing partner . . . told *The Lawyer*: ‘We’re looking for a specialized team of people, probably in telecoms, media and technology.’”). Of course, not every firm in every instance sought to grow by merger or acquisition. See Vanessa Arora, *US Firms Storm German Market*, LAWYER, Sept. 25, 2006, available at <http://www.thelawyer.com/us-firms-storm-german-market/122008.article> (“Weil Gotshal & Manges['] . . . German . . . managing partner said: ‘We prefer to generate our own business rather than buy it.’”).

84. *German Market Undergoes Mass Defections*, LAWYER, May 29, 2006, available at <http://www.thelawyer.com/german-market-undergoes-mass-defections/120116.article> (italics added).

85. Husnara Begum & Helen Power, *Gleiss Ceiling*, LAWYER, Apr. 4, 2005 (under separate heading, “Bigger is better?”); see also Arora, *supra* note 83 (“There are still just three German law firms in the top 10 [in terms of turnover].”).

86. See Silver et al., *supra* note 9, at 1451 fig.7. Offices in Mexico also support 93% of host country lawyers, but Mexican regulation requires that most fee earners be Mexican-licensed.

FIGURE 2
COMPARISON OF LAWYERS' EDUCATION IN GERMAN OFFICES

	Germany (in %)
Percentage of all lawyers in German offices who earned a U.S. J.D.	4
Percentage of all lawyers in German offices who earned a U.S. LL.M. (but not J.D.)	19
Percentage of all lawyers in German offices who earned no U.S. legal education (neither J.D. nor LL.M.)	77
Percentage of all lawyers in German offices who earned their primary legal education in Germany	93
Percentage of all lawyers in German offices who earned their primary legal education in Germany and earned no U.S. legal education (neither J.D. nor LL.M.)	70
Percentage of German-educated lawyers in German offices who also earned a U.S. LL.M. (and not a J.D.)	19
Percentage of U.S. J.D.s in German offices who earned degree in Germany (all were in law)	13
Percentage of German law graduates who earned a U.S. J.D.	0.4

J.D.s than house even one J.D. Only one office is comprised solely of J.D. graduates. In nearly all other offices, the J.D.s constitute a marginal presence compared to all lawyers in the office. The presence of dual-educated lawyers in terms of primary education in law is rare: Only two individuals who earned their primary law degree in Germany also earned a U.S. J.D.

In Germany, then, the glocal approach in terms of office composition is significantly more local than not. Nevertheless, despite J.D.s being marginal in terms of their presence in particular offices and overall in Germany, they arguably serve an important role as integrators between foreign and other (including U.S.) offices; in addition, of course, they provide expertise on substantive U.S. law. Integration has been a challenge in German offices of global firms, in part because of Germany's very strong legal culture and the path of growth by acquisition of existing working groups of local lawyers who brought along their own relationships and approaches to practice. Lawyers in offices acquired directly through merger with a host country law firm generally describe the office as having a host country identity with only a remote flavor of the acquiring firm; that is, the office, while part of a U.S.-based global firm, might well identify itself as a "German firm," albeit one with a U.S. family. But integration is crucial to success for the firms. For example, in describing the split from the firm of Shearman & Sterling's Mannheim office, one commentator noted, "[S]hearman

had an extremely difficult 2008. But the problems are the firm's own doing [I]ntegration is still unsuccessful. The Mannheim office (which until 2000 was Schilling Zutt & Anschutz), worked virtually independently even before the split."⁸⁷

This issue of integration goes to access to management, too. It has been difficult for host country representatives to climb the management ranks of international firms.⁸⁸ Moreover, young host country lawyers worry about their chances for promotion in an international firm, where the adage, "out of sight, out of mind," may bear more truth than host country lawyers wish to admit.⁸⁹ There is reason for this concern. Of the lawyers working in the German offices of our sixty-four firms, a lower proportion of exclusively German-educated lawyers are partners compared to those lawyers with a U.S. J.D. or LL.M.: 35% of the German law graduates who earned no U.S. legal education are partners compared to 48% of U.S. J.D. graduates and 40% of German-educated LL.M.s.⁹⁰ Conversely, German-educated lawyers are more likely to be associates: 58% of all lawyers who completed their legal education in Germany and did not pursue any U.S. legal education are associates compared to 43% of U.S. J.D. graduates and 51% of German-educated LL.M.s.

With integration as a key concern in German offices, the LL.M. might offer an important bridge between the German and U.S. sides of a firm. The LL.M. allows foreign law graduates an opportunity to become acquainted with U.S. law students and legal education, and in this way it provides support for interaction between host country and U.S. lawyers in a practice setting. In addition, LL.M.

87. Aled Griffiths, *Germany Special Report: The Überfirms*, LAWYER, Apr. 20, 2009, available at <http://www.thelawyer.com/germany-special-report-the-%C3%BCberfirms/1000435.article> [hereinafter Griffiths, *Überfirms*]. But see Aled Griffiths, *Lovells and Camerons: Two Ways to Prosper in Germany*, LAWYER, July 14, 2003, available at <http://www.thelawyer.com/lovells-and-camerons-two-ways-to-prosper-in-germany/106419.article> (discussing Lovells' success in integrating its German offices with the firm: "[T]he private equity team is seen by some competitors as the most integrated in Europe. There's certainly no other firm on the London-Germany axis that has managed quite the same referral rate of key clients in private equity. Most investment managers in Germany have proven more stubborn than expected and don't seem interested in instructing the London or New York house firm for a German deal.").

88. Griffiths, *Überfirms*, *supra* note 87 ("[O]ver the past two years . . . European practices are by no means a burden on profits: on the contrary, they can improve them. The voices of European partners hold more sway today within firms and play a more important role within management and when it comes to expansion than ever before."); see also Bryant G. Garth & Joyce Sterling, *supra* note 37, at 1365-66 (explaining the difficulty experienced by graduates of non-elite law schools in gaining positions of power within their law firms).

89. See *Firms Reveal German Partner Promotions*, LAWYER, May 29, 2006, available at <http://www.thelawyer.com/firms-reveal-german-partner-promotions/120117.article> ("[I]t can be hard enough making it into the partnership, but for the associates of the UK-headquartered firms there is the extra challenge of reminding management that it is not only associates in London who are worried about their career prospects.").

90. In general, the German-educated partners are younger than U.S. J.D.s, and this may explain some of these differences, too. For example, J.D. partners were twenty-four years out of law school, on average, while German-educated partners were seventeen years out of school; because of the time required for the two state exams, these graduation date figures are not entirely satisfactory for purposes of estimating age or time with the firm.

students often gain some introduction to U.S. substantive law and the LL.M. in many instances serves as the basis for qualifying to sit for the bar in New York, among other U.S. jurisdictions.⁹¹ In theory, at least, lawyers who have completed an LL.M. and qualified to practice in the United States as well as in Germany could help global firms by advising both on host country law and that of their second qualification jurisdiction—in the case of the U.S. LL.M. graduate, typically New York. But even apart from the legal expertise gained in an LL.M. program, however, the experience of studying in a U.S. law school offers German law graduates a chance to familiarize themselves with the United States generally and its approach to learning about law, and this may help graduates work more effectively with colleagues whose experience is limited to the United States. Nineteen percent of the German-educated and -licensed lawyers in the sixty-four firms' German offices earned a U.S. LL.M. This is higher than the average of 15% of host country lawyers with LL.M.s in the non-German overseas offices of the sixty-four firms.

In discussing the role of the U.S. LL.M. with lawyers working in Germany for German offices of the sixty-four firms as well as with other U.S.- and U.K.-based international firms and top-tier German firms,⁹² it became clear that the significance of the LL.M. is determined by its role in the particular context of the German legal market and the typical or ideal German lawyer. Job opportunities for new German lawyers are determined by a student's scores on the first and second state examinations. These exams precede and follow the two year *referendiat*, a practical training period spent in rotations in public and private practice settings.⁹³ One lawyer explained the scoring as follows: The top score possible is an eighteen and "no one gets that."⁹⁴ Next is a score of seventeen, and "only God gets that." Third is a sixteen, which "is the score of the people who write the test and write the answers."⁹⁵ In fact, those who earn a sixteen are likely to end up as prosecutors, judges and professors. Law firm practitioners are a rank below this; each law firm has its ideal number, but most top firms (global and

91. For information on bar eligibility for graduates of foreign law schools, see NAT'L CONFERENCE OF BAR EXAM'RS & AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSIONS 2010 30 chart X, available at <http://www.ncbex.org/comprehensive-guide-to-bar-admissions>. See also Carole Silver, *Regulating International Lawyers: The Legal Consultant Rules*, 27 HOUS. J. INT'L L. 527, 529-30 (2005); Carole Silver, *Regulatory Mismatch in the International Market for Legal Services*, 23 NW. J. INT'L L. & BUS. 487, 508-31 (2003).

92. German firms were selected based on listings such as CHAMBERS & PARTNERS, <http://www.chambersandpartners.com> (last visited Oct. 17, 2010).

93. On German legal education and the referendiat, see Schultz, *supra* note 77, at 93; Abel, *supra* note 6, at 741.

94. See GERMAN-AMERICAN LAWYERS' ASS'N, GERMAN LEGAL EDUCATION 1-2, available at http://www.dajv.de/en/pdf/German_Legal_Education.pdf ("Even though the official point scale for legal exams in Germany extends from 0 to 18 points top grades are hardly ever given. Hence, candidates who achieved 9 points or more are officially considered to have passed with distinction ('Prädikatsexamen') and usually account for only about 10% of all students.").

95. Interview #3, Germany (July 2008).

German) aim to hire students who score a twelve or above.⁹⁶ One LL.M. graduate working in a U.S.-based firm in Germany explained, “I had good grades and . . . in Germany the grades in the first and second state examination are very important to get a job. I was top 2% of the grade scale in Germany with my second state examination so, yeah, it certainly was the major reason for the job offers.”⁹⁷

The emphasis on scores is not independent of means, however. One informant explained the connection:

It’s a very weird thing. In Germany you usually pay somebody who trains you, it’s like studying for the bar exam in the U.S. So you finish everything you have to do at the university . . . you get certificates that you have fulfilled all the conditions, taken all the classes and so forth and then you go to a special training where you pay lots of money in order for someone to teach you what the professors at the university haven’t taught you to be able to take your exam.⁹⁸

The filter of the exam scores, then, also indicates sufficient resources to support the preparation.

Top German and international law firms rely on these state exam scores in hiring.⁹⁹ The state exam is at least as strong as the U.S. signal of law school rank and grades, and perhaps stronger because of its simplicity and the ease of comparability.¹⁰⁰ The state exam is the entry ticket in Germany, and firms are not interested in graduates whose score is too low. But a good score (and not a top score) can be supplemented in at least two ways. First is the German Ph.D. in law, based on a doctoral thesis. Second is the LL.M. earned outside of Germany, preferably—but not necessarily—in a common law, English-speaking jurisdiction. Some lawyers spoke of the Ph.D. and LL.M. as alternatives, while others

96. Gabriele Plickert, in her study of German lawyers conducted with John Hagan, confirms the scoring. Interviewees suggested that earning an eleven or higher gives a graduate their pick of jobs. Earning a six or below generally relegates the graduate to a solo or small firm setting. A common score was between eight and ten.

97. Interview #15, Germany (July 2008).

98. Interview #33, Germany (July 2008).

99. German universities and law programs are the subject of rankings, too, but these are not accorded substantial significance in hiring decisions, according to lawyers and law faculty in Germany. For information on Die Zeit’s rankings of law programs, see *Law Compact Ranking Universities*, ZEIT MAG., available at http://ranking.zeit.de/che10/CHE_en?module=Hitliste&do=show_11&esb=5&hstyp=1&ab=.

100. Note that this is not an endorsement of the system of legal education in Germany. In fact, there is substantial controversy surrounding German higher education. See *Survey: Germany: Wasting Brains*, ECONOMIST, Feb. 11, 2006, at 75; *Survey—Higher Education: Head in the Clouds*, ECONOMIST, Sept. 10, 2005, at 72. See also Richard J. Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 GER. L.J. 823, 839 (2009); Lisa Rieder & Hanjo Hamann, *Student Participation in Legal Education in Germany and Europe*, 10 GER. L.J. 1095, 1110 (2009); Andreas Bückner & William A. Woodruff, *The Bologna Process and German Legal Education: Developing Professional Competence Through Clinical Experiences*, 9 GER. L.J. 575, 576 (2008).

(including many of the U.S. LL.M. graduates that I interviewed) did both. Each degree typically is discussed almost in terms of scheduling as opposed to—or at least in addition to—its importance as an experience and credential. For example, one LL.M. graduate explained,

[S]ince this [the *referendiat*] is a state-sponsored exercise, you have . . . to wait until you can actually start this practical training And that's very often a period of somewhere between six months and more than a year where you are not really equipped for the job market . . . but you can't really do anything else other than continuing your education [T]his is a perfect time to do the LL.M. . . . What I also did was a Ph.D., which among German lawyers is not very uncommon, actually. Germans are very title conscious, you must know. We just love . . . lots of letters on our business cards. And so I thought, if I have a doctor in front of my name and an LL.M. after my name, that looks pretty good.¹⁰¹

But with the strength of the state exam score as a guiding signal, the Ph.D. and LL.M. are limited to supporting rather than determinative roles in the German hiring market. The state exam score qualifies a candidate for consideration, and the LL.M. on its own is not an alternative means of qualification.

On top of this foundation, hiring partners in German and international (U.S. and U.K.) firms in Germany consider the LL.M. important for two reasons: First, it indicates the English language ability of an applicant,¹⁰² and second, it is evidence of exposure to a world outside of Germany that might introduce an international mindset to a German lawyer.¹⁰³ German law firm hiring partners tended to emphasize the international exposure aspect of the experience, while U.S. and U.K. law firm hiring partners consistently mentioned English language exposure. For example, one hiring partner of a German-based law firm described the LL.M. as being important because it “leads to people being flexible, knowing how to get along with people from other cultures. The LL.M. graduate has been around. This is the most important thing—not grades, what classes they took.”¹⁰⁴ The managing partner of another German firm explained, “For us, the value of the LL.M. is the experience—it's the experience that counts, that they went off and got this experience.”¹⁰⁵ This distinction between the evaluations of the two groups of firms is only relative; there is crossover as well. But the importance of the LL.M. experience has more leverage in a German firm than in the international U.S.-based firm, precisely because the international firm has other

101. Telephone Interview #10, Germany (June 2008).

102. The LL.M. indicates that an applicant is “more fluent in English, internationally-minded, more familiar with the U.S. way of studying law and of drafting.” Interview #3, Germany (July 2008).

103. Interview #4, Germany (July 2008) (“We are trying to avoid hiring 100% local persons. We want people who have seen the world and made up their minds to go abroad.”).

104. Interview #5, Germany (July 2008).

105. Interview #4, Germany (July 2008).

non-German lawyers to draw upon. As the hiring partner of a top German firm explained, “We want to get the best of the best. We are looking for foreign LL.M. experience—not really for language or for knowledge of the law, but because the LL.M. shapes personality in different ways if you are abroad for one year.”¹⁰⁶

While global firm hiring partners agreed with this assessment as a general matter, they also pointed out the marginal role of the LL.M.:

[W]e aren’t looking for in-depth knowledge of a certain area of law. Most people are working under German law [Y]ou won’t become a partner faster with an LL.M. [It is different from an] MBA, [which] allows someone to branch out to different specialties. With an LL.M., you’re still in a little box called law.¹⁰⁷

In fact, the substance of what is learned in an LL.M. program is of such slight importance, according to global firm hiring and managing partners, that the experience would be just as valuable if pursued in another English speaking, common law country, such as Australia, the U.K. or Canada. The attitude toward reputational differences among U.S. law schools reflects this general sense that the classroom experience is not the most important part of the equation. According to the hiring partner for Germany of a U.K.-based firm,

We don’t devalue an LL.M. from the University of Sheffield compared to the Ivy League We can distinguish Harvard from Sheffield, but the purpose of the LL.M.—being capable of living in another country, more or less fluency in English—we aren’t looking for in-depth knowledge of a certain area of law.¹⁰⁸

The sole distinction of the U.S. LL.M. compared to similar post-graduate degrees offered in other common law jurisdictions, according to international law firm hiring partners, relates to bar eligibility in the United States. A senior partner in a U.K.-based international firm explained, “[t]he huge advantage of the U.S. is the route to the New York bar. For the U.K., the LL.M. is not a path to qualification.”¹⁰⁹ There was no general consensus that U.S. bar qualification was a benefit in Germany, but it served to distinguish the U.S. LL.M. from otherwise competitive educational offerings of other jurisdictions. In addition, at least in theory, bar eligibility facilitates mobility among offices for international firms; in fact, business considerations may render mobility largely irrelevant.

LL.M. graduates agree with hiring and managing partners on the values of English language ability and international-mindedness gained from the LL.M. experience. Unlike the hiring partners, there was no similar distinction in emphasis between experience abroad and English-language exposure among the

106. Interview #5, Germany (July 2008).

107. Interview #6, Germany (July 2008).

108. *Id.*

109. Interview #3, Germany (July 2008).

LL.M. graduates working for German firms and those working for international firms. One LL.M. now working in a top German law firm described the role of English: “English . . . for us, it’s another working language, no longer a foreign language.”¹¹⁰ Another LL.M. graduate, who now practices in Germany with a U.S.-based global firm, emphasized the importance of an international mindset and its relationship to the LL.M. and international practice as well as language skills:

[P]eople really look at your LL.M. more, I think, because we really need these English language skills. And, of course, you know people spend some time abroad that helps to crossing the bridge. We advise a lot of U.S. clients, or international clients. So it helps if you have been, or spent some time in, a different country. So we look at resumes and if people have just stayed in Germany maybe in their very town—I did that, too . . . I have to admit, for a very long time. I stayed in . . . my home town, playing . . . ball. But if you just do that, you may not be the right person for our firm [Y]ou may, but chances are probably slim.¹¹¹

A third graduate, also working in a U.S.-based firm, clarified this issue:

[I]n Europe, people tend to stick around in their home towns I think 80% of my high school class never left the small town we went to school in [S]o that is the biggest asset of an LL.M., is really that you get outside of your country, get involved in the foreign country, because it’s long enough you learn about the people, as a lawyer you do pick up enough about the legal system to understand how they think, and if you end up practicing law, or if you end up in an international job like manager and you deal with Americans, you have a leg up on the people who haven’t done this LL.M., in dealing with them, because you just know how they think, you know how they were brought up. I mean, you don’t know it, but you have a much better feeling for it.¹¹²

But for LL.M. graduates, the value of the LL.M. went further than signifying language ability and international exposure. Several LL.M.s emphasized that exposure to the legal profession in the United States was enlightening, both in terms of students in law school (“[W]hen I look at my LL.M. colleagues, this was such a bright group of people . . . that all the discussions outside of courses were just much more helpful than anything I had in the German university. So it’s really the quality of the students rather than the quality of the teachers that make the difference.”¹¹³) and for purposes of career opportunities (“getting to know the way . . . you can handle your profession;”¹¹⁴ in Germany “we didn’t know . . .

110. Interview #7, Germany (July 2008).

111. Interview #8, Germany (July 2008).

112. Interview #11, Germany (July 2008).

113. Interview #12, Germany (July 2008).

114. *Id.*

[of] all these different law firms”¹¹⁵). Another relatively common point is that there is value in the substantive law courses of an LL.M., either because an area of law is not covered in Germany (law and economics is a common example, but also securities regulation: “[T]here was no such thing in Germany as capital markets law or securities regulation. I mean, insider dealing, for example, was not illegal.”¹¹⁶), or because familiarity with U.S. concepts help lawyers explain German concepts to American clients and vice versa.¹¹⁷

LL.M. graduates working in top German firms also noted the LL.M.’s importance in terms of bar admission, which they described as a mechanism for gaining legitimacy in the world of international legal practice. One lawyer who practices in the German office of a notable European law firm explained that U.S. lawyers

don’t take [German lawyers] seriously. And having the admission in the U.S. makes them treat you as one of themselves, and that’s pretty interesting That’s a pretty American thing actually, that American lawyers do not tend to take other lawyers from other jurisdictions seriously They know you are admitted, they realize that you speak English more or less fluently, and that you know the key words in these transactions, that you know how it works and maybe that you even sometimes [are] able to correct someone when he’s even talking about American legal stuff¹¹⁸

Another LL.M. graduate, working with a different but equally elite German firm, also emphasized the bar. This graduate sat for the New York bar at the end of his LL.M., and explained that the bar is

a good marketing instrument in Germany. If you have a German client, you can say, well, I’m not only admitted here in Germany but also in New York, and [if] there is an issue that somehow relates to the U.S.A., it’s a good selling point. Not only to German clients, but I work together with U.S. law firms a lot, especially those who do not have an office in Germany. They look for independent German firms. It’s good that you can demonstrate that you have also some experience in their area of law, law system.¹¹⁹

On the issue of U.S. bar admission, however, hiring partners disagreed; they consider this unnecessary in Germany. As the hiring partner for Germany of a U.K.-based firm explained, “An able young German lawyer who plans to work long term in Germany does not ‘need’ to be admitted to the New York bar in order

115. Interview #13, Germany (July 2008).

116. *Id.*

117. “Some of the major concepts like the concept of consideration in contract laws . . . that helped me to explain some German concepts to American clients, but I don’t apply any knowledge [of U.S. law] in my every day work . . . other than that.” Interview #14, Germany (July 2008).

118. Interview #15, Germany (July 2008).

119. Interview #7, Germany (July 2008).

to practice satisfactorily in his home jurisdiction. In this case, New York bar admission is a symbol of international experience and the ability to work effectively at the very highest level in the English language. For a German . . . it is a 'nice to have,' not a 'must have.'"¹²⁰

The difference of opinion over U.S. bar admission may reveal the beginning of a shift in Germany from the existing regime, in which German law qualification is the principal asset, to one in which U.S. bar admission serves as a signal of international competence, indicating the ability to maneuver in at least two jurisdictions. To the extent that U.S. law firms and lawyers (whether in Germany or elsewhere) are important in the working environment of lawyers in Germany, whether in international or German firms, this signal may be significant. This may change, of course, as the role of the United States in the world economy shifts and takes with it the role of U.S. lawyers in the global market for legal services. But for now, these comments provide some indication of the beginning of a possible generational shift towards recognition of a global credential. The LL.M. is not that credential, but under existing rules in New York and several other jurisdictions, it satisfies the conditions for civil law graduates to qualify as bar eligible, as well as for graduates from common law jurisdictions. In this way, then, the LL.M. may assume greater significance.

Nevertheless, today, as a result of the way international firms developed their offices in Germany and the overwhelming role of German lawyers there who are advising on German law, foreign firms compete with German firms for lawyers primarily on the basis of their German state exams. A U.K.-firm partner describes that for his firm, "The biggest question, though, is how well they've done academically in Germany prior to the LL.M.—on the first and second state exams—this is most important."¹²¹ Certain U.S. firms' German offices feel more like German firms than like local offices of global firms based elsewhere, according to those who manage the firms.¹²² Lawyers with international firms in Germany conceive of their firms as German with "global or American roots." In this context, the value of the LL.M. is constrained by the German focus on the state exam scores. In time, foreign education experience—perhaps in the form of the LL.M.—may come to be recognized generally as an alternative signal to that arising from the German state exam regime. For now, though, the role of the LL.M. (and the U.S. bar) in Germany is clearly secondary. The LL.M., then, is marginalized as a result of the strength of the German signal and the importance of participating in the German-education and licensing system for success in Germany. Recall that to succeed in Germany, practicing German law through

120. E-mail from senior partner of international firm (2009) (on file with author).

121. *Id.*

122. Interview #16, London (Oct. 2008).

German lawyers is crucial.¹²³ The consequence of this strength of the host country market is that the international credential of the LL.M. assumes less importance.

B. CHINA: DUALITY AND DEVELOPMENT

The opening of China's legal market to foreign firms contrasts with the experience in Germany. It is a story of incremental change and regulatory ambiguity. Sida Liu describes the first informal opening to foreign lawyers and law firms in his insightful analysis of China's emerging market for lawyers:

As early as 1978-1979 . . . a few American law firms already began to represent globalizing American companies in foreign investment negotiations with Chinese enterprises. At that time, there was no concept of commercial lawyering in China, and the Chinese legal profession was only formally revived in 1980, with most lawyers doing criminal and noncommercial civil work Not surprisingly, none of the foreign law firms entering China was allowed to establish a formal office—they had to do their daily work in some major hotels in Beijing and Shanghai.¹²⁴

Formal authorization for foreign law firms to work in China came in 1992, although several of the Law Firm Data firms claimed China offices even earlier.¹²⁵ Even then, some uncertainty continued, first as to the right to establish

123. See Lacey, *supra* note 21, at 60 (quoting a German partner: "Only those firms which were prepared to play by the rules of the market have been successful—markets are local [The firms must] practice local law, have some knowledge of it, have German lawyers, don't think that you can import the practices of other jurisdictions. You have to be top here—it doesn't help if you are top in New York or London.").

124. Liu, *supra* note 20, at 777 (references omitted); see also Maria Kantzavelos, *Client Needs Drive Firm Expansions on Road to China*, CHI. LAW., Apr. 2007 ("The modern legal market in China only started in the late 1970s, consultants said, and the Chinese Ministry of Justice began issuing licenses authorizing international firms to practice law in the mainland only 15 years ago Baker & McKenzie, which opened its Beijing office in 1993, was among the first wave of foreign law firms to be licensed by the Ministry of Justice to open a law office in China. Prior to that, the firm operated there as a 'consultancy company.'"); Douglas McCollam, *Let a Thousand Branch Offices Bloom*, AM. LAW., Nov. 2000, at 92 ("For most of the 1980s, Western lawyers operated in limbo: Their presence was tolerated, perhaps even welcomed, but they weren't officially licensed by the government to practice inside China."). See generally Ethan Michelson, *Lawyers, Political Embeddedness, and Institutional Continuity in China's Transition from Socialism*, 113 AM. J. SOC. 352, 352-53 (2007).

125. According to Martindale-Hubbell listings of law firms and law firm websites, several U.S.-based firms claimed offices in China prior to the 1992 official opening of the market, including Baker & McKenzie, Coudert Brothers, Heller Ehrman and Paul Weiss. See generally Silver, *supra* note 26 (describing the general research method uncovering these claims). See also Hongming Xiao, *The Internationalization of China's Legal Services Market*, 1 PERSPECTIVES, no. 6, 2000, available at http://oycf.org/Perspectives2/6_063000/internationalization_of_china.htm ("In 1979 Coudert Brothers, an American law firm, established a permanent presence in Beijing as in-house counsel to its clients but meanwhile provided legal services in its own name. In the early 1980s, the Ministry of Economy and Trade . . . promulgated a regulation permitting the establishment of consulting firms to serve foreign trade. As a result, many foreign law firms, including the United States' Coudert Brothers, Baker & McKenzie, Paul Weiss, along with several British firms, incorporated consulting firms in their home countries or Hong Kong and then set up subsidiaries in Beijing or Shanghai to provide legal services. By early 1989 there were over twenty consulting companies in China that were actually established by foreign law firms."). See also

multiple offices in China and later regarding direct collaboration with and employment of Chinese-licensed lawyers. In establishing offices in the country, foreign law firms may not practice Chinese law; they may advise generally on the “Chinese legal environment,” but must leave anything more to Chinese law firms.¹²⁶ As a result, Chinese-licensed lawyers must relinquish their practice certificates if they join a foreign law firm.¹²⁷

Foreign firms have flocked to China. By 2006-07, the sixty-four U.S.-based firms studied supported 356 lawyers in forty-nine offices situated in Beijing and Shanghai.¹²⁸ Their offices there tend to be small, which can present challenges for turning a profit.¹²⁹ The average size of the China offices of the sixty-four firms, according to the firms’ website descriptions, is slightly more than seven lawyers per office, compared to slightly more than twenty-four lawyers per office in the German offices of the same firms. At least some of the explanation for the smaller size of China offices lies with the regulatory regime governing foreign law firms, in which offices comprised exclusively of host country lawyers (as occurs in Germany) is at least theoretically impossible.¹³⁰

The initial informal entry of foreign firms into China, coupled with the ambiguity of the regulatory barrier preventing firms from practicing in China

Liu, *supra* note 20, at 777 (“In December 1992, the MOJ certified 12 foreign law firms (including eight Hong Kong firms) to set up offices in Beijing, Shanghai, and Guangzhou.”). The “political firestorm” surrounding Tiananmen Square in June of 1989 “scorched not only the nascent practice inside China but the market in neighboring Hong Kong as well.” McCollam, *supra* note 124, at 92.

126. Anthony Lin, *Walk the Line*, AM. LAW., Aug. 2006 (“Foreign law firms largely maintain that they are not practicing Chinese law, but are advising clients on the ‘Chinese legal environment,’ as permitted by both Chinese and World Trade Organization regulations. Given the still-developing nature of China’s legal system, Zee says, this is a real distinction. According to him, Western lawyers’ work in China often amounts to ‘navel-gazing’ for clients who are not as concerned with what Chinese laws are today, but what they might be in five years.”); *see also* Liu, *supra* note 20, at 795-96; Kantzavelos, *supra* note 124 (“While they’re prohibited from interpreting or practicing local Chinese law, American lawyers can advise clients on issues they might need to think about when considering aspects of local law ‘The distinction is, saying, ‘I’m not an expert and licensed to practice local law,’ but you need to be aware of this risk. You need to be aware of that regulatory process. Your permit to open a factory may be revoked in a certain amount of time,’ [Chicago-Kent College of Law professor Harold] Krent said. ‘It becomes a very fine line between practicing and just giving general advice when you consider local law issues.’”).

127. *See Law Firms in China*, ECONOMIST, Aug. 14, 1993, at 64-65 (“Foreign firms cannot appear in court or employ Chinese lawyers who can, but not much else seems barred to them provided they have a work-sharing alliance with a Chinese firm.”).

128. As of September 30, 2005, National Law Journal 250 firms supported forty-one offices in Beijing and Shanghai. Michael D. Goldhaber, *Here Comes China*, AM. LAW., Nov. 2005, at 76.

129. Interview #9, United States (June 2006) (“There are like 105 Western law firms in China. Most of them are small. The problem with small foreign offices is they take a lot of attention, they take a lot of management attention, they take a lot of money. And if they are small they don’t give you very much. And so you have that as a carry balance which a lot of people, a lot of firms there, talent pools limited, hard to get people, Americans to move.”).

130. Six of the forty-nine offices in China supported by the sixty-four firms studied housed exclusively J.D. graduates; two housed no J.D.s at all. On a related point regarding the comparison of German and China offices, only three years separate the formal opening of the markets to foreign law firms in Germany and China. This likely does not explain the differences in investment in terms of office size of the firms.

through China-licensed lawyers,¹³¹ pushed firms in the direction of the path characteristic of their early internationalization efforts: using U.S.-licensed lawyers to open and manage offices. Reinforcing this U.S. orientation was the substantial difference between Chinese legal culture compared to that of the United States and Western European countries, where the firms already had adapted by hiring host country lawyers. The firms also concentrated in China on the sort of work nicely suited to U.S. lawyers—representing U.S. clients. Initially, they focused on foreign direct investment work.¹³² Their offices grew slowly; they could not expand through merger with Chinese law firms as had occurred in Germany. In fact, Germany’s experience with liberalization has served as a warning to Chinese lawyers, as well as to lawyers in other jurisdictions, as they contemplate their own approaches to opening their markets.¹³³ According to a 2005 article on China in the legal press, “Chinese lawyers who have worked overseas have seen what can transpire after English and American law firms are given full market access. [One lawyer] saw the German office . . . where he trained, become part of Lovells [and commented,] ‘What happened in Germany cannot happen in China . . . It’s not allowed.’”¹³⁴

As the China offices of U.S.-based and other international law firms matured, they began developing Chinese clients¹³⁵ and specializing more in their advisory capabilities.¹³⁶ WTO-related work, for example, has generated substantial

131. Japan also had a staged opening of its legal market for foreign law firms, and erected similar barriers to foreign firms’ ability to hire host country lawyers directly. *See generally* Bruce E. Aronson, *The Brave New World of Lawyers in Japan*, 21 COLUM. J. ASIAN L. 45 (2007).

132. Robert Lewis, *How to Choose a China Lawyer*, CHINA BUS. REV., Jan.-Feb. 2008, at 54, 57 (“For most of the last 20 years, FDI was the main game for law firms in China, and China specialists had to be able to run investment projects in a range of industries. It was a fairly simple game, and any reasonably competent bilingual lawyer could make a decent living. Specialization was irrelevant because most deals were variations on the same simple theme. Virtually everyone was a China ‘corporate’ lawyer. In the last five years, however, the game has started to change dramatically. China deals are more sophisticated and complex, and as the economy flourishes and the regulatory environment develops, legal issues are growing more complex.”). U.S. firms also began with securities (IPOs) and M&A work for Chinese clients, but much of this was performed from a Hong Kong base, at least early on. *See* Goldhaber, *supra* note 128, at 76.

133. This concern was voiced by Korean lawyers at a discussion organized by the Seoul Bar Association and Korean In-House Counsel Forum in October 2009, who worried that their law firms not be acquired by U.K.- and U.S.-based firms upon deregulation of their market.

134. Michael D. Goldhaber, *The Bamboo Dynasty*, AM. LAW., Nov. 2005 (quoting Xu Guojian’s remarks on Voker Triebel).

135. Interview #9, United States (June 2006) (“[W]e do energy around the world . . . China is going to have twenty . . . projects in the next decade.”); *see also* Caroline Byrne, *China is the Most Favored Nation for Expanding Law Firms*, INT’L HERALD TRIB., May 17, 2006 (“It’s a high-cost environment . . . It’s very far away from our home base, and the competition is such that you have a lot of firms discounting their fees. But we cannot be a No.1 energy law firm in the world without a law firm in Asia.” (quoting Stuart Schaffer of Baker Botts)).

136. *See* Interview #2, United States (Sept. 2005) (“Foreign office opening and staffing is client driven in the sense that clients ask, ‘Do you have a securitization person there, or do you have an M&A person there?’ They are very specialization-conscious and specific. So having an office isn’t enough, you need a certain expertise that you can sell from that office to the local market. So in Asia, it’s been foreign direct investment . . . We build

attention and the Chinese government has retained U.S.-based firms to work alongside Chinese law firms in these matters. U.S. firms serve as primary advisors but also help Chinese firms develop expertise in the area. A recent article discussing the WTO work quoted lawyers at two of China's most prestigious and largest law firms, Jun He Law Offices and King & Wood,¹³⁷ explaining that Chinese law firms were "newcomers to the WTO. We still need to build up full capacity We are still learning. So we have to work with U.S. law firms."¹³⁸

This sense of immaturity permeates the contours of the Chinese market for international legal services. It is not about aptitude or innate ability, but rather about the preliminary stage of development.¹³⁹ The private, commercially-oriented arm of the Chinese profession is very young. It has been only twenty years, for example, since "Jun He, one of the first Chinese corporate law firms specializing in foreign-related work, was established."¹⁴⁰ A national profession requires time to grow and develop expertise in areas as diverse as substantive advising, legal education and law firm management.¹⁴¹ There is little doubt, however, that as Chinese law firms mature, the role of U.S. and other foreign law firms and lawyers working in China will change.¹⁴²

In the interim, as described by Sida Liu, the relationship of Chinese law firms and lawyers to foreign law firms and lawyers is one of regular and relatively intimate interaction.¹⁴³ Chinese and foreign law firms work together, typically on a non-exclusive basis. Lawyers rotate in and out of foreign and Chinese firms as

a practice expertise in an office, and the offices aren't full service and won't be."); Kantzavelos, *supra* note 124 ("David Patrick Eich, a partner in Kirkland & Ellis who heads the firm's new private equity practice expansion in Asia, put it this way: 'We don't flock-shoot. We're coming to China with a rifle,' Eich said in a telephone interview from the firm's Hong Kong office, which opened in January. 'We decided in advance that we're not going to just put up a bunch of lead and see which bird drops. Here, the practice that was most immediately affected, and the practice to which we could add the most value in Asia was the private equity practice of our large buyout clients.'").

137. For information on King & Wood's name, see Laurel S. Terry, *The Legal World is Flat: Globalization and its Effect on Lawyers Practicing in Non-Global Law Firms*, 28 NW. J. INT'L L. & BUS. 527 (2008).

138. Tina Wang, *Where Are China's WTO Lawyers?*, FORBES, Apr. 27, 2009, available at <http://www.forbes.com/2009/04/27/china-wto-law-business-economy-trade.html> (The author quotes Frank Hang Guoliang of Jun He: "Someday, as time goes by, as Chinese law firms have more cases and get more experience, I think we'll just represent the Chinese government by ourselves. But it'll still take a long time." Elsewhere, the author notes: "Chinese law firms simply do not have the buildup of skills and experience that US peers have in global trade disputes A particular challenge for China is that good WTO lawyers need strong knowledge of common law, civil law and WTO law, a solid background in economics, accounting, and other fields, and English language ability that is sophisticated enough for lengthy briefings and argumentation before the WTO court.").

139. The notion of immaturity is a common justification for protecting domestic firms in law as well as in other industries.

140. Liu, *supra* note 20, at 777.

141. This does not necessarily argue for maintaining a protectionist approach in terms of regulation; as discussed in the text, despite the rules, competition for lawyers and their expertise is fierce.

142. See Interview #9, United States (June 2006) ("In fifteen years they are going to know a lot.").

143. See Liu, *supra* note 20.

well as corporate law departments.¹⁴⁴ And in this interaction and circulation, the search for talent is informed by a common assessment of the necessary variables for success on either side of the regulatory divide. Whether in an office or an individual, the key is duality. A senior partner of a U.S.-based global firm described the ideal mix of lawyers in a China office as “half and half,” meaning half American U.S.-educated and -licensed lawyers and half Chinese-educated lawyers.¹⁴⁵ And the ideal individual lawyer working for the China office of a global firm, according to the managing director of DLA Piper’s Asia practice, has a similarly double profile: a “lawyer[] who [is] bilingual, and ha[s] Western training, but a good understanding of the way the Chinese system works as well.”¹⁴⁶ These descriptions have an almost unrealistic yearning for dual credentials and expertise: English and Mandarin, U.S. legal education and practice experience but practical knowledge of the Chinese environment, as well. The breadth of the attributes indicates the duality central to the identity of international firms in China, but the same set of attributes is sought by the most elite Chinese firms, too. The only difference between Chinese and foreign firms relates to the importance of a foreign law license, which is technically mandatory for lawyers in foreign firms and not for those working for Chinese firms; the significance of the license as a condition to gaining foreign work experience, however, lessens the importance of this distinction.

As in the early period of international expansion elsewhere, U.S.-based law firms in China need host country guidance to provide access and knowledge of how things get done. According to one managing partner of an AmLaw 100 firm, “I think in China, the wisdom, conventional or otherwise, is that in order to serve your clients well on the ground in China, you need to have a significant component of at least ethnic Chinese.”¹⁴⁷ Another stated his preference for “a local lawyer who is one with some U.S. law school education and U.S. English training, on the one hand, or a lawyer with strong client relationships but no U.S. legal education, on the other hand.”¹⁴⁸ The same sort of support was important in other services businesses, too. For example, “[n]early every Wall Street firm privately acknowledges hiring some bankers for their connections—in the past, they were the ‘princelings,’ or the sons, daughters or relatives of high-ranking

144. *See id.* at 794 (“At the partner level, exchange of personnel is not as frequent as at the associate level, though in recent years a few senior partners in leading local firms with international experiences became managing partners of new foreign law offices. This two-directional personnel flow has greatly facilitated the hybridization between local and foreign law firms, but at the same time it has made the career choices of many Chinese corporate lawyers a real dilemma.”) (internal citations omitted); Kantzavelos, *supra* note 124 (“‘There’s huge competition,’ [Nick] Seddon [of DLA Piper] said. ‘We’ve seen people come and go before—now they’re coming.’”).

145. Interview #9, United States (June 2006).

146. Kantzavelos, *supra* note 124; *see also* Lin, *supra* note 126 (describing a Western-educated lawyer with years of experience in a U.S.-based law firm joining the Chinese firm Allbright).

147. Interview #9, United States (June 2006).

148. Interview #2, United States (Sept. 2005).

Communist Party officials—to help smooth deal making.”¹⁴⁹ While law typically has not attracted the children of high government officials, the same need for advice is present, but complicated by regulation. Instead of relying on host country lawyers acting as lawyers, then, the regulatory structure in China has encouraged foreign firms to utilize Chinese law graduates and Chinese-licensed lawyers in both lawyer and non-lawyer positions.

It is common for foreign law firms to rely on Chinese-licensed lawyers and non-lawyers to facilitate access.¹⁵⁰ According to a lawyer working for Foley & Lardner in Shanghai, “In Chinese history, legal issues are not as significant as political connections”¹⁵¹ The references to connections that require Chinese advisors is both informed and complicated by the notion of *guanxi*. As one American lawyer with experience in China explained,

The term *guanxi* is difficult to translate, but it is often the most important factor in whether a transaction is consummated. *Guanxi* describes the individual link within a social network. It can be used in a negative context, to describe, say, bribery and corruption, but it is more useful in understanding a person’s influence and stature within the group. It looks at a person through his or her connections and relationships. Foreign businessmen who do not know how to address this will be unsuccessful in their dealings.¹⁵²

Even in interpreting U.S. credentials, the notion of relationship seeps in; one potential LL.M. student explained to me that he was interested in enrolling in a U.S. LL.M. program in order to join my law school’s alumni network. Of course, connections matter everywhere, not just in China.¹⁵³ According to an LL.M. graduate now working in the United States,

The way new graduates [in China] find jobs is pretty much similar with the way here in U.S. law school. First, employers including government, university, and

149. David Barboza, *The New Power Brokers; Born in China, Now Closing Deals for U.S. Firms*, N.Y. TIMES, July 19, 2005. (Note, however, that “[t]he role of relationship bankers came under greater scrutiny last year when Margaret Ren—the daughter-in-law of former Chinese leader Zhao Ziyang and considered one of the most powerful Chinese-born bankers—was dismissed by Citigroup for misconduct.”).

150. See Liu, *supra* note 20, at 798 (“[M]any foreign firms also employ some well-connected lawyers or even a few ‘government specialists’ to facilitate their exchange with government agencies.”) (internal citations omitted); see also Diego Quer, Enrique Claver & Laura Rienda, *The Impact of Country Risk and Cultural Distance on Entry Mode Choice: An Integrated Approach*, 14 CROSS CULTURAL MGMT: AN INT’L J. 74, 77 (2007) (“Additionally, taking up the resource dependency perspective again, the greater cultural distance may force the enterprise to look for local support with the aim of facilitating product adaptation, sharing risks and avoiding mistakes and also to acquire management skills on a local level and even to delegate culturally sensitive tasks.”) (citations omitted).

151. Michael Skapinker, *Legal Services: The Importance of Friends*, FIN. TIMES, Apr. 29, 2009.

152. *China: A Consistent Commitment to the Rule of Intellectual Property and Corporate Law, Part II*, METRO. CORP. COUNS., Apr. 2006, at 8 (quoting Martin Garbus); see also Michelson, *supra* note 124, at 355 (describing multiple forms of *guanxi*, including individual and organizational).

153. See Skapinker, *supra* note 151 (“Many lawyers and investors in Shanghai agree that at some point you will need government friends too.”).

law firm come to law school providing seminar introducing themselves and interviewing students. Second, [an] employer who is interested in hiring in some universities will spread their hiring information together with marketing brochure to universities, so that students get the information from school and apply for it. Third, by personal connection—it might be families' connections, friends' connection, professors' connection. Student[s] get hiring information and recommendations from these connections. Just as it is in U.S.A., employers sometimes rely heavily on both GPA and recommendations from connections.¹⁵⁴

For U.S. firms, the distance between U.S. and Chinese culture,¹⁵⁵ language, and the role of lawyers and law creates a complex environment in which it is easy to make a “misstep.”¹⁵⁶ Having Chinese experts on staff gives foreign firms confidence that they will avoid this. According to a lawyer practicing in China with U.K.-based Eversheds, “I know when I can't rely on the law any more and beyond that I need to hobnob.’ Is that different from anywhere else? ‘To an extent you have to have connections in any country to get things done. Here you have to work a lot harder[.]’”¹⁵⁷

Consistent with these various potential roles and the ambiguity of the regulatory framework governing the relationship of Chinese-licensed lawyers and international law firms, China's law graduates appear on the rosters of foreign law firms in several guises. Slightly more than 20% of the Chinese law graduates working in China for the Law Firm Data firms are working under “nontraditional” law firm titles. For these purposes, “traditional” law firm titles are partner, counsel and associate, as well as the “senior,” “junior,” and “local” versions of these categories. Nontraditional titles include “China Advisor” and “PRC Consultant,” among others. No German-educated lawyers occupy a comparable nontraditional status in the German offices of the Law Firm Data firms.

Despite the rule against foreign firms practicing local law, nearly half of all lawyers working in China offices (regardless of title)¹⁵⁸ for the Law Firm Data firms earned their primary legal education in China. An equal proportion earned a

154. Interview #32, United States (July 2009).

155. See Quer et al., *supra* note 150, at 77 (“Cultural distance has to do with the possible differences existing in relation to the way individuals from different countries observe certain behaviours, which will influence the validity of the transfer of work practices and methods from one country to another.”). See generally GEERT HOFSTEDE, GERT JAN HOFSTEDE, & MICHAEL MINKOV, *CULTURES AND ORGANIZATIONS: SOFTWARE OF THE MIND* (3d ed. 2010).

156. Interview #9, United States (June 2006) (One managing partner explained that, in anticipation of establishing an office in China, the firm had been working with “an international consultant that [has] got experience in China. And so we've been working with this group for the past couple of years as we have gone through the planning process of opening in China so that we don't make a cultural misstep.”).

157. Skapinker, *supra* note 151 (quoting Peter Corne, managing director of the Shanghai office of the firm).

158. “Lawyers” here means those individuals listed on the firms' websites as the professional legal staff with published biographies on the sites.

FIGURE 3
COMPARISON OF LAWYERS' EDUCATION IN CHINA OFFICES

	China (in %)
Percentage of all lawyers in China offices who earned a U.S. J.D.	46
Percentage of all lawyers in China offices who earned a U.S. LL.M. (but not J.D.)	24
Percentage of all lawyers in China offices who earned no U.S. legal education (neither J.D. nor LL.M.)	26
Percentage of all lawyers in China offices who earned their primary legal education in China	46
Percentage of all lawyers in China offices who earned their primary legal education in China and earned no U.S. legal education (neither J.D. nor LL.M.)	16
Percentage of China-educated lawyers in China offices who also earned a U.S. LL.M. (and not a J.D.)	42
Percentage of U.S. J.D.s in China offices who earned undergraduate or law degree in China	29
Percentage of China law graduates who earned a U.S. J.D.	19

U.S. J.D. But these two categories are not mutually exclusive, and as becomes clear from Figure 3, many of the U.S. J.D.s are not typical American expatriates.

Instead, there is a substantial Chinese connection here that reveals the strategy of duality described earlier. As reported in Figure 3, 29% of the J.D. graduates have an educational connection to China, either through having completed legal studies there (12%) or an undergraduate degree in a subject other than law (17%). We can assume from these connections to Chinese education that these U.S. J.D. graduates are Chinese nationals. In China, then, 29% of the J.D.s working for the Law Firm Data firms are Chinese nationals, while the comparable figure in Germany with regard to J.D.s earning some education in Germany is 13%. To put it another way, drawing on the last lines of Figures 2 and 3, it is twenty times more common in China to find Chinese nationals investing in a three-year graduate-level U.S. law degree and working in a U.S.-firm than to find similar connections in Germany. One reason for these differences is related to regulation: Because of the restriction on Chinese-licensed lawyers practicing with foreign law firms, Chinese nationals (law graduates and others) are more likely to invest in the J.D., which is the most certain path to U.S. bar admission and, as a result, will position them for advancement (and ultimately partnership) in a U.S. law firm. But in addition, this dual educational strategy is valuable in itself. For example, by immersing themselves in U.S. legal education, Chinese graduates

position themselves to serve as ideal advisors to U.S. firms, able to guide the firms with their knowledge of China while also interpreting and comparing to the U.S. approach by drawing on their U.S. education and experience.

The LL.M., too, offers U.S. law exposure that facilitates this cultural bridge function, and it was earned by 24% of all lawyers in the China offices of the Law Firm Data firms. These primarily are Chinese law graduates: approximately 80% of LL.M.s in the China offices of the firms earned their primary law degree in China. From another vantage point, 42% of the lawyers who earned their first legal degree in China also earned a U.S. LL.M.; in Germany, the comparable proportion was just 19%. That is, more than twice as many host country law graduates working in China earned a U.S. LL.M., compared to those working in Germany. While the LL.M. facilitates China law graduates serving as cultural translators (as well as literal translators), it also qualifies as the basis for bar eligibility in at least certain U.S. jurisdictions (notably, New York). Since Chinese-licensed lawyers cannot advise on Chinese law while working for a foreign law firm, they must “mothball”¹⁵⁹ their practice certificates when they join a U.S.-based or other foreign law firm. In these circumstances, having a second law license is a crucial step toward gaining status in a foreign law firm (including U.S.-based firms), as discussed in greater detail below.

The substantial overlap of Chinese and U.S.-legal education among the lawyers working in these offices illustrates the importance of U.S. legal education in achieving duality. This is different from Germany, where what is crucial is being a German lawyer. In China, being a Chinese lawyer is not enough for success in the international legal services market. As explained by a senior lawyer with a U.K.-based international law firm,

the Chinese lawyer “needs” admission to [a] . . . [b]ar to become a “proper” associate with the international firm [in China] because the international firm is not permitted to practice Chinese law (under domestic Chinese regulations) and so if Chinese lawyers want to progress within the international firm they need a . . . “badge.” Thus for Chinese [lawyers], [a second] . . . qualification[] is not an option or an extra but a necessity if they want to practice with an international law firm in their home jurisdiction.¹⁶⁰

Consider, for example, the view from the perspective of a Chinese lawyer in a U.S. LL.M. program, regarding her motivation for studying in the United States. She had been working for a U.S.-based international firm in China before beginning the LL.M.:

159. Interview #26, China (Nov. 2005).

160. E-mail from senior partner of international firm (2009) (on file with author) (quotation marks are in original).

Everyone in the international law firm will go for J.D. or LL.M. after two or three years working in a foreign law firm because you cannot be an associate, so they must have a foreign education. That's why foreign education is so popular in Chinese students [W]e cannot be called . . . "lawyers" in foreign law firms. So, no matter how hard I work . . . and no matter how high evaluation I get from the partners, I can only be a legal consultant or a paralegal I can never be called an associate. I think it's unfair. And the only way to change this unfair thing is to get a foreign degree and have a foreign bar, and [then] I can be called as an associate in a foreign law firm. So this is most of my reason.¹⁶¹

Because Chinese regulation requires a foreign license, foreign legal education is the crucial entry point. But the ideal candidate for an international firm (who may begin as a Chinese lawyer) has more: Practice experience outside of China also is important. A lawyer working in the China office of an international firm explained, "If someone has only an LL.M. and the bar . . . there is no big advantage. The advantage comes from working experience in the U.S."¹⁶² In China, then, legal practice experience outside of China is an essential element of professional capital.

While international law firms are constrained by regulation from relying exclusively on lawyers with Chinese credentials and expertise, Chinese law firms and corporations seeking in-house counsel are not. Nevertheless, both Chinese law firms attempting to develop an international clientele¹⁶³ and in-house counsel working in China for multinational corporations share the preferences of U.S.-based firms for overseas legal education and practice experience. A lawyer with a top Chinese firm described a general appreciation of foreign education, apart from law: "Chinese people always believe students with abroad education background has more capacity than student graduated from domestic university."¹⁶⁴ As Sida Liu explains,

[L]ocal [Chinese] firms were desperate to attract talent from . . . abroad ever since the mid-1990s For example, in Jun He, almost half of the partners have years of education and work experience in the United States, Great Britain, or other developed countries, and about 70% of their associates above third-year have at least a foreign law degree. The makeup of the personnel in . . . other leading local firms is similar.¹⁶⁵

Chinese firms want knowledge of the processes global (and foreign) law firms use in management and training:

161. Interview #18, United States (2003).

162. Interview #17, China (Nov. 2005).

163. See generally Liu, *supra* note 20.

164. Interview #19, China (Nov. 2005).

165. Liu, *supra* note 20, at 790 (internal citations omitted).

The vast majority of local Chinese law firms are composed of a loose collection of sole practitioners operating under a shared name. Offices of the same firm are, more often than not, completely independent profit centers. Not surprisingly, cross-selling is uncommon, quality control measures are weak, and staffing and coordination of larger transactions can be problematic in the absence of cohesive teams within the local law firms. Even though the top three local firms . . . have advanced management systems by local standards, their management structures have not yet fully matured to international standards. The market consensus is that they still suffer from many of the above problems to one degree or another, although they are making important strides in this regard.¹⁶⁶

In discussing the lawyer training program at King & Wood, one of the largest and most prestigious of the Chinese firms, partner Yi Zhang explained, “We do [have them at King & Wood]. But compared with international standards, we are still in the infancy stage My firm, one of the largest private Chinese law firms, was established only thirteen years ago. So we do not have a lot of accumulated experience. I think the situation will change if we continue attracting overseas-educated people and implementing training methods into our own system, but that will take time.”¹⁶⁷ Liu confirms this: “[A]lmost all leading local firms in Beijing and Shanghai actively seek to imitate the business model of foreign firms. From . . . document settings and Web site design to . . . billing method and management structure, these Chinese law firms want to look similar to the Anglo-American mega-law firms in almost every way, even in size.”¹⁶⁸ By hiring lawyers with foreign practice experience, Chinese firms can capitalize on their knowledge of the way foreign firms work internally, to reshape their own

166. Lewis, *supra* note 132, at 57-58.

167. *Legal Matters: China*, STAN. LAW., Fall 2006, at 28; *see also* Liying Zhang, *Joining PRC Firm a Smart Move, Say International Lawyers*, ALB LEGAL NEWS, Mar. 27, 2009, available at <http://asia.legalbusinessonline.com/law-firms/joining-prc-firm-a-smart-move-say-international-lawyers/989/34599> (“[I]nternational firms are still a step ahead in creating and maintaining their management structures . . . and offer regular training programs that may be of benefit to lawyers in fostering their careers.”). *But see* Jade Ng, *Portrait of a Western Lawyer in China*, ALB LEGAL NEWS, Nov. 18, 2009, available at <http://china.legalbusinessonline.com/news/features/portrait-of-a-western-lawyer-in-china/38677> (“Things are very similar [to foreign law firms]. A lot of partners at King & Wood used to work in foreign law firms in China or in foreign countries. The way they draft things and the way they do things in top-tier law firms is similar.”) (quoting Mark Schaub, described as “the first foreign lawyer to join King & Wood,” in comments about the differences between his approach and that of his partners at King & Wood).

168. Liu, *supra* note 20, at 786-87. Mobility of Chinese lawyers is a common point of discussion, and often complaint. *See* Kantzavelos, *supra* note 124 (“‘There’s huge competition,’ Seddon [of DLA Piper] said. ‘We’ve seen people come and go before—now they’re coming.’”); Kathy Wilhelm & Dan Biers, *No Place Like Home*, FAR E. ECON. REV., June 15, 2000, at 72 (“There’s a thriving market for talent—if returnees don’t like one job they can hop to another.”); Liu, *supra* note 20, at 794 (“The typical career path of young Chinese corporate lawyers becomes a broken trajectory: working in a leading local firm for three or four years, getting an LL.M. from an American or British law school, and then switching to a foreign firm, with the expectation of returning to a local firm or becoming in-house counsel in a few years. Neither foreign nor local firms can provide them a continuous and stable career trajectory.”).

identities as law firms to resemble foreign competitors.¹⁶⁹ These are important weapons in the war for talent, but they also position Chinese firms to present themselves in ways that are recognizable and acceptable to clients accustomed to working with U.S. and other international law firms.¹⁷⁰ For example, one Chinese law firm describes itself on its website as “a law firm established as a partnership by overseas repatriates. Our partners and associates have each graduated from prominent institutions in a variety of nations including the United States, the United Kingdom, Germany, France, China, Hong Kong and Canada. The majority of our lawyers have extensive legal experience in the United States, the United Kingdom, Japan, Hong Kong and Canada.”¹⁷¹ Similarly, biographies of partners of the highly regarded Fangda Partners law firm¹⁷² prominently identify their overseas experiences and affiliations with U.S.- and U.K.-based law firms.¹⁷³ The efforts of the Chinese firms to position themselves in this way have been buttressed by the recent economic crisis, as global firm lawyers have faced

169. On this issue of learning from global law firms, see generally Laurel S. Terry et al., *Transnational Legal Practice*, 43 INT'L LAW. 943, 950 n.45 (2009) (describing the International Bar Association Skills Transfer proposal).

170. This outward focus of elite Chinese firms suggests responsiveness to foreign clients. This may change as the firms focus more on Chinese clients. In the current economic downturn, we may see evidence of this. See generally Daniel Gross, *Deglobalization: The Surprisingly Steep Decline in World Trade*, SLATE, Dec. 11, 2009, available at <http://www.slate.com/id/2238188> (“China’s smart money is now looking inward and avoiding the sector that brought it so much growth in recent years highlights a surprising and spreading new trend: deglobalization.”).

171. LIU & WANG, <http://www.liuandwang.com/profile> (last visited Oct. 17, 2010).

172. See, e.g., *Corporate/M&A: China*, CHAMBERS & PARTNERS, http://www.chambersandpartners.com/Editorial.aspx?ssid=30978#org_8764 (last visited Oct. 17, 2010) (referring to Fangda Partners: “This Shanghai-based firm ‘is one of the leaders of the pack’ in China’s corporate M&A race thanks to ‘the outstanding quality of its lawyers’ and ‘high level of service that is comparable to international firms.’”).

173. See, e.g., *Richard Guo*, FANGDA PARTNERS, http://www.fangdalaw.com/images/stories/file/Fangda_Bio_RichardGuo%20ENG_100811.pdf (last visited Oct. 17, 2010) (“Before joining Fangda, Richard spent six years with two Wall Street law firms, Debevoise & Plimpton LLP and Pillsbury Winthrop LLP, in New York, Hong Kong and Shanghai respectively.”); *Michael Qi*, FANGDA PARTNERS, http://www.fangdalaw.com/images/stories/Fangda_BIO_Michael%20Qi.pdf (last visited Oct. 17, 2010) (“[F]ormerly a practicing attorney with Paul, Weiss and Milbank Tweed in New York”); *Fei Qiao*, FANGDA PARTNERS, http://www.fangdalaw.com/images/stories/Fangda_BIO_QiaoFei.pdf (last visited Oct. 17, 2010) (“Before joining Fangda Beijing office, worked with a leading Wall Street firm in New York and Beijing.”); *Yingying Wang*, FANGDA PARTNERS, http://www.fangdalaw.com/images/stories/Fangda_BIO_Wang%20Yingying.pdf (“2001–2002 Associate, International Lawyers Program, White & Case LLP (New York). 1999 Visiting lawyer, Simmons & Simmons (London)”); *Zheng Xie*, FANGDA PARTNERS, http://www.fangdalaw.com/images/stories/Fangda_BIO_Zheng%20Xie.pdf (last visited Oct. 17, 2010) (“Formerly with Clifford Chance LLP, Shanghai and London”); *Dixon H. Zhang*, FANGDA PARTNERS, [http://www.fangdalaw.com/images/stories/Fangda_BIO_Dixon%20Zhang\(1\).pdf](http://www.fangdalaw.com/images/stories/Fangda_BIO_Dixon%20Zhang(1).pdf) (last visited Oct. 17, 2010) (“1994–1998 Consultant, an international law firm”); *Chuanjie Zhou*, FANGDA PARTNERS, <http://www.fangdalaw.com/images/stories/chuanjie%20zhou%20bio%20eng%202010.7.pdf> (last visited Oct. 17, 2010) (“Counsel in the Hong Kong office of Shearman & Sterling LLP”); *Jonathan Z. Zhou*, FANGDA PARTNERS, [http://www.fangdalaw.com/images/stories/Fangda_BIO_JonathanZhou\(1\).pdf](http://www.fangdalaw.com/images/stories/Fangda_BIO_JonathanZhou(1).pdf) (last visited Oct. 17, 2010) (“Attended a practical training program in Britain and worked with a leading city firm in its London and Hong Kong offices in 1996–1997”). Fangda describes itself as “able to assist cross-border transactions. Most of our lawyers have bilingual capabilities and some of them have been educated or trained in common law jurisdictions.” ABOUT FANGDA PARTNERS,

uncertainty. At least two of China's most elite law firms have hired well-known American, U.S.-licensed lawyers.¹⁷⁴ This strategy is confirmed as one approach to helping Chinese law firms gain confidence in advising on certain high-end work:

Chinese firms have tried to strengthen their position by a wide range of strategies that include attending international seminars . . . , consulting foreign legal specialists, and visiting and associating with international firms. But such strategies are no longer sufficient in a market that is still expanding outwards at a great speed. Procuring quality lawyers from international firms is the quickest and most effective way for local firms to enhance their presence in the upper echelons of the market.¹⁷⁵

Clients, too, distinguish between Chinese-educated and -licensed lawyers and foreign-educated lawyers. For in-house positions, regulation is not a barrier. Nevertheless, the bias against lawyers who have not studied and even worked abroad persists. The long-time head of legal services in Asia for a Fortune 100 company "divides lawyers into policy and commercial lawyers. The commercial lawyers need technical competence and U.S. training; there are very few of them available. The policy people might be educated only in China."¹⁷⁶

In fact, the desire for foreign legal education is so strong that China's own legal education establishment has embarked on providing it directly.¹⁷⁷ Several existing law faculty are striving to bring U.S. substantive law and pedagogy to their students in new courses,¹⁷⁸ but the most dramatic example is an entirely new law school, situated in Shenzhen, that aims to educate Chinese students in U.S. law, in English.¹⁷⁹ Part of the plan for the school is to enable its graduates to become members of a U.S. bar; to that end, discussions are underway with the ABA's Section of Legal Education and Admissions to the Bar regarding accreditation.¹⁸⁰ If successful, this would offer an option of essentially foreign

http://www.fangdalaw.com/index.php?option=com_content&view=article&id=10&Itemid=48&lang=en (last visited Oct. 17, 2010).

174. See Anthony Lin, *Top Beijing Lawyer for Lovells Leaving for Chinese Firm*, AMLAW DAILY, Apr. 30, 2010 (reporting that Robert Lewis, former managing partner of Lovells in Beijing, has joined Allbright Law Office, where he will be "a senior international legal consultant in the Beijing office").

175. Zhang, *supra* note 167.

176. Interview #20, China (Aug. 2006).

177. On legal education in China, see generally Matthew S. Erie, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 59 J. LEGAL EDUC. 60 (2009).

178. For example, the Shanghai Jiao Tong University Law School created a "Basic American Law" curriculum for its students, taught in English by American lawyers residing in Shanghai.

179. See Julie Tiedman, *Homeschooling: The First U.S.-Style Law School in China*, AM. LAW., Sept. 2008, at 22. On the role of U.S. legal education as a template for other countries, see James E. Moliterno, *Exporting American Legal Education*, 58 J. LEGAL EDUC. 274 (2008).

180. See ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, REPORT OF SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS SEEKING APPROVAL UNDER ABA STANDARDS 7-8 (July 19, 2010), available at [http://www.abanet.org/legaled/accreditation/kanereportinternational%20\(2\).doc](http://www.abanet.org/legaled/accreditation/kanereportinternational%20(2).doc) (recommending that the "Coun-

legal education through the Chinese university system. Of course, the practice experience side of the equation will remain a challenge. But with this strategy, the seeds of recognition of a global or universal credential in the U.S. law license may be developing, similarly to the German story.

The emphasis on English as the language of instruction in the new Chinese law school is not accidental. In China's market for legal services, English is crucial. According to "[t]he CEO of a Shanghai-based headhunting firm . . . 'Of all the requirements of foreign firms in recruiting Chinese lawyers, the first is good English. People with good English would have a forty to fifty percent advantage Partners in foreign firms are all foreigners, so people who have bad English would never pass the interview. Although they don't normally say this, English is certainly the primary criterion.'"¹⁸¹ This was a significant aspect of the role of foreign legal education in the German story, and it is no less compelling here. In fact, 75% of Chinese LL.M. graduates who responded to a survey about their U.S. education experience and 67% of German respondents indicated being motivated by a desire to improve their English language ability. In each case, improving English language skills was identified as the second most important motivation for the LL.M.¹⁸²

The various participants in China's market for legal services, then, are in agreement in their focus on sources of professional capital that are external to China. This emphasis on the external will almost certainly moderate in response to ongoing changes in Chinese legal education¹⁸³ and training as well as

cil . . . authorize the Accreditation Project to go forward with considering the accreditation of law schools outside the United States borders that meet all of the prevailing Section Accreditation Standards and Rules of Procedure for the policy reasons discussed in Part I."); Karen Sloan, *Panel Recommends the ABA Accredited Overseas Law Schools*, NAT'L L.J., Aug. 17, 2010, available at <http://www.law.com/jsp/law/international/LawArticleIntl.jsp?id=1202470008986>.

181. Liu, *supra* note 20, at 791 (internal citations omitted).

182. For more information on the LL.M. survey and findings, see Silver, *supra* note 18.

183. Mark Mohr & Robert M. Hathaway, *China's First U.S.-Style Law School*, WOODROW WILSON CENT. FOR INT'L SCHOLARS (May 21, 2008), http://www.wilsoncenter.org/index.cfm?fuseaction=events.event_summary&event_id=402209 ("The new law school, noted Lehman, is the brainchild of Hai Wen, vice president of Peking University and currently head of its Shenzhen campus Several years ago, Vice President Hai was concerned that graduates of China's best law schools were not being hired by multinational corporations. He and other university officials decided to establish an American-style law school on Chinese soil The faculty will be drawn mainly from the United States, and the courses will be taught in six-week modules, rather than by semester."); Bill Henderson, *Coming Soon . . . to China: A New ABA-Accredited Law School*, LEGAL PROF. BLOG (June 3, 2008), http://lawprofessors.typepad.com/legal_profession/2008/06/new-aba-accredi.html ("There are at least three reasons why we should take notice: (1) Jeffrey Lehman, who formerly served as dean of Michigan Law and president of Cornell University, has been named the chancellor and founding dean; (2) 'the school plans to seek accreditation from the American Bar Association' so that its students can take the bar exams in all US jurisdictions; and (3) 'Like any American law school, the courses will be taught in English, the cases will be from American law—and most of the professors will be from American law schools.' What is driving the demand? Multinational law firms want foreign nationals with U.S. legal training. A well-connected law school administrator tells me that, according to Lehman and his backers, the ubiquitous LL.M. degree fails to fully socialize Asian students into U.S.-style lawyering. Moreover, the degree is now so common that it carries an increasingly weak signal of ability. Assuming that Peking University can be sufficiently selective (and the first

loosening of the rules preventing foreign law firms from participating in the local advisory market through Chinese-licensed lawyers. In the interim, the importance of a foreign law license and foreign practice experience shape the role of U.S. legal education in China.¹⁸⁴

These two factors return the focus to the U.S. market and its essential trust in the U.S. J.D. as a signal of credibility. As noted earlier, the J.D. is the basic unit of analysis in the U.S. market for lawyers. It is the common qualifying credential for state bar examinations¹⁸⁵ and is an essential ingredient in the hiring calculus of employers who hire new law graduates for work in the United States. As a result, the J.D. occupies a preferred place as an element of professional capital in China, too, because it qualifies graduates to capture the necessary credential of a U.S. law license (in at least most U.S. jurisdictions¹⁸⁶) and positions them for the greatest opportunities to work outside of China. In addition, the three years involved in obtaining a J.D. provides significant exposure to English. Finally, the longer investment of time and larger tuition price tag associated with the J.D. may filter for social and financial status in China, too.¹⁸⁷

As a means of access to the U.S. market for lawyers, the LL.M. is not as

class had 55 admits out of 210 applicants), many large American and British firms will hire its graduates for their growing China offices. If that happens, we can expect the number of applicants to skyrocket.”).

184. See Wilhelm & Biers, *supra* note 168; David Barboza, *China's Deal Makers*, N.Y. TIMES, Aug. 20, 2005, available at http://www.nytimes.com/2005/07/19/business/worldbusiness/19iht-banker.html?_r=1 (“Having the right cultural background in China and Wall Street experience: that is the most sought-after combination of skills.”).

185. See NAT'L CONF. OF BAR EXAM'RS & ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR REQUIREMENTS vii (2010), available at http://www.ncbex.org/fileadmin/mediafiles/downloads/Comp_Guide/CompGuide_2010.pdf (“The American Bar Association, the National Conference of Bar Examiners, and the Association of American Law Schools make the following recommendations to the duly constituted authorities in the several states who are vested with responsibilities and duties in respect to admission to the bar, and to lawyers and the law schools generally Each applicant should be required to have completed all requirements for graduation with a J.D. or LL.B. degree from a law school approved by the American Bar Association before being eligible to take a bar examination, and to have graduated therefrom before being eligible for admission to practice. Neither private study, correspondence study, law office training, age, nor experience should be substituted for law school education.”).

186. Certain jurisdictions may impose additional requirements that may be difficult for foreign nationals to satisfy. See, e.g., LA. SUP. CT. R. XVII(3)(B), available at http://www.lascba.org/admission_rules.asp (“Every applicant for admission to the Bar of this state shall meet all of the following requirements: . . . (B) Be a citizen of the United States or an alien lawfully admitted for permanent residence, or an alien otherwise authorized to work lawfully in the United States.”); see also *Leclerc v. Webb*, 419 F.3d 405 (5th Cir. 2005), *cert. denied*, 551 U.S. 1158 (2007) (denying review of an order interpreting an earlier version of Louisiana’s Rule XVII(3)(B) as requiring a green card (earlier language required “permanent resident status in the United States.”)).

187. See generally Yves Dezalay & Bryant G. Garth, *The Confrontation Between the Big Five and Big Law: Turf Battles and Ethical Debates as Contests for Professional Credibility*, 29 LAW & SOC. INQUIRY 615, 620 (2004) (“Law degrees generally tend to serve in this respect as the ‘degrees of the bourgeoisie,’ ratifying and legitimating those whose family backgrounds and connections allowed them to inherit positions among the national elite. In the legal profession generally, in short, family capital has historically tended to count more than scholarly merit. The situation has certainly changed, with the United States the leading example, but it would be wrong to dismiss this situation as anachronistic. It remains quite evident in many places, including Latin America and India, and all countries retain aspects of it.”).

competitive as the J.D. It does not automatically qualify graduates to sit for the bar as does the J.D., although it serves the purpose in New York and several other jurisdictions.¹⁸⁸ More important, the LL.M. is difficult for employers to interpret in their own assessments for hiring purposes. Among hiring partners responsible for China offices of international firms, the LL.M. is perceived as a weak alternative to the J.D. The managing partner of an international firm revealed his bias against the LL.M. in discussing his preference for lawyers in overseas offices generally. He looks for lawyers “trained in the U.S. . . . *Really* trained in the U.S., not as an LL.M. where they kind of went to class, didn’t learn very much but got a degree, not to belittle the LL.M. programs but it’s way different from somebody that’s in a J.D. program at a top tier law school.”¹⁸⁹ A senior lawyer with a U.K.-based firm also distinguished LL.M.s from J.D.s, explaining that his firm “make[s] a distinction within the firm between ‘real’ U.S. lawyers (with a J.D.) and ‘other’ U.S. lawyers (with an LL.M.). We would not normally expect ‘other’ U.S. lawyer[s] to be ‘go-to people’ on challenging issues of black letter U.S. law. For the ‘other’ U.S. lawyers, the U.S. qualification will be just one component in a multi-faceted C.V.”¹⁹⁰ One lawyer considered the LL.M. indicative of “TOEFL ability and test-taking ability in general,”¹⁹¹ which does not amount to a very strong endorsement of its efficiency in providing the other attributes sought by international firms. A partner in the Chinese office of a different international firm described the LL.M. as “not the most serious program in the world. The experience of being abroad for a year is important, but what they learn is less important for LL.M.s.”¹⁹² Another observer of the outflow of Chinese law graduates to the United States for LL.M.s considered the LL.M. simply a mechanism for giving Chinese graduates some exposure to the West: “Those students who work with U.S. firms prior to going to the U.S. for an LL.M., the firms are more interested in having the students spend a year in the U.S. than they are in the particular knowledge they gain from their law studies there. They want them to become familiar with U.S. culture, and of course with English.”¹⁹³ While this is consistent with the LL.M.’s role in Germany, it is insufficient for most Chinese law graduates whether for purposes of persuading foreign or Chinese law firms.

Chinese law graduates have not missed this message and they increasingly

188. Bar eligibility is determined by each state. For information on bar admission standards, see NAT’L CONF. OF BAR EXAM’RS, *supra* note 185, at 30-34. The ABA Section of Legal Education and Admissions to the Bar may consider proposals for a general rule recognizing the LL.M. as a basis for bar qualification under certain circumstances. See ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, REPORTS OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES 34-38 (July 15, 2009), available at <http://www.abanet.org/legaled/>.

189. Interview #9, United States (June 2006) (emphasis in original (in conversation)).

190. Interview #3, Germany (July 2008).

191. Interview #21, China (Nov. 2005).

192. Interview #26, China (Nov. 2005).

193. Interview #22, China (Aug. 2006).

consider the J.D. as a more secure path to a prestigious position in China. A Chinese student who had enrolled in a U.S. LL.M. program confided, “I’m thinking to get a J.D. at the very beginning. But I’m really too busy and I don’t have any time to prepare for the LSAT . . . I think most of LL.M.s, they would like to continue for J.D. just because they want to get the same pay, it’s unfair. In China there are a lot of, lot of LL.M.s, so it’s really difficult to find a job.”¹⁹⁴ Another LL.M. graduate commented on the difference between Chinese and European LL.M. students with regard to their interest both in staying in the U.S. after graduation and in pursuing the J.D.: “But even then the Europeans tend to like treat [the U.S. LL.M.] just like a foreign training and more and more people go back [home] rather than stay on. So the people actually want to stay on . . . with the greatest desire to stay on would probably be the Chinese students. Often the LL.M. students do . . . a J.D. because that is what gets you a job here [in China], basically, as a lawyer.”¹⁹⁵

Separately, a U.S. law school administrator noted, “[R]ight now, Chinese students are beginning to view LL.M. programs as a “side door” into J.D. programs. They score too low on the LSAT to be admitted in the front door, so they apply to a school’s LL.M. program, burn up the track, and then transfer into the J.D. program.”¹⁹⁶

For Chinese nationals seeking the J.D., two approaches are common. The first involves earning the degree and a U.S. state bar license and then returning to China shortly after graduation to begin working. According to one U.S. lawyer working in China, “A U.S. J.D. from a Tier 1 school almost guarantees you a position and high status in a top five Chinese firm; it will also get you in the door at U.S./U.K. firms.”¹⁹⁷ While a new J.D. graduate may not have much practice experience in the United States,¹⁹⁸ she has the related benefit of being absent from China only briefly and this may result in her maintaining the currency of her knowledge of Chinese business and legal practices. At least for foreign law firms,

194. Interview #18, United States (2003).

195. Interview #27, United States (May 2002).

196. E-mail from law school administrator (May 2009) (on file with author). U.S. LL.M. directors are wary of this sort of transfer and typically discourage LL.M. students from attempting it. On an exchange over the China Law Listserv, for example, one LL.M. director commented on using the LL.M. as a route to J.D. admissions: “I wouldn’t encourage it. Ironically, the LL.M. graduates likely to do well enough to get admitted to the J.D. program will do perfectly fine professionally without it; those who need it most are unlikely to satisfy all the requirements for admission. I have counseled a few persistent J.D. seekers to consider applying to other law schools, which some have done successfully.” Other LL.M. directors have expressed similar concerns. See Anthony Lin, *China Has Greedy Associates, Too*, AM. LAW., May 11, 2009 (reporting on a Chinese language blog that discussed, among other things, strategies for gaining admission to a U.S. J.D. program: “Several topics dwell on the ins and outs of applying from China for admission to top U.S. law schools.”).

197. B. Cheng, Comment to *ABA Accredited Law School Coming to China?*, CHINA ESQUIRE (June 10, 2008) available at <http://www.chinalawandbusiness.com/2008/06/aba-accredited-school-coming-to-china/>.

198. Even new J.D. graduates typically have some exposure to U.S. practice environments through work during their 2L summers. This may provide some practice experience even for those who return to China upon graduation.

host country knowledge and relationships are important, and this direct path back to China preserves their strength.

The second approach involves a longer stay outside of China. Affectionately known in China as “Sea Turtles,”¹⁹⁹ this path sees Chinese nationals pursue foreign legal education, often after earning a first university degree in China,²⁰⁰ followed by a substantial period of post-J.D. practice experience outside of China, as well. This path generates the alternative asset of U.S. work experience, which may be particularly important for graduates who earned their J.D. at a school with a *U.S. News* ranking below the top tier. One example of this approach is Yingxi Fu-Tomlinson, the head of Kaye Scholer’s Shanghai office: after earning her law degree in China, she later earned a J.D. in the United States at Washington University School of Law²⁰¹ and “worked a six-year stint in corporate finance in the Seattle office of Portland’s Stoel Rives.”²⁰² This sort of lengthy experience working in the United States enables “returnees [to] bring familiarity with Western business practices and help raise professional standards.”²⁰³ According to a lawyer practicing with U.S.-based Weil Gotshal & Manges, “Having the right cultural background in China and Wall Street

199. See Piset Wattanavitukul, *Hai Gui: The Sea Turtles Come Marching Home*, ASIAN BUS. STRATEGY & STREET INTELLIGENCE, Apr. 2002, available at <http://www.apmforum.com/columns/china19.htm> (“*Hai Gui*’ means the returning ‘Sea Turtles’—an abbreviation that sums up returnees from overseas. The pronunciation also suggests the Chinese phrase for sea turtles that were born on the shore, grew up at sea, but eventually returned to the shore again. The name was first used by Ren Hong, a young man returning with a degree from Yale seven years after leaving China aboard a tea freighter from Guangzhou for the U.S.”). For an interesting study of Chinese returnees as entrepreneurs, see Huiyao Wang, Presentation at the 7th Europe Asia Young Leaders Forum: The Rise of the Sea Turtles: Their Circulation and Contributions to China (Seoul, Sept. 5, 2008) (PowerPoint on file with The Georgetown Journal of Legal Ethics) (“Over 100,000 Chinese go overseas annually to study, with accumulative over 1.4 million who have studied mainly in developed countries such as USA, UK, Canada, Australia, Japan and other EU countries. To date, over 350,000 Chinese graduates have returned to China, or to be called Sea Turtles. It has estimated another 150,000 Chinese students or diasporas circulate between other countries and China or to be called Seagull . . . Successful returnee entrepreneurs have been working overseas for about five years on average. Overseas work experience will help them achieve success in starting business. This also shows that it is much more difficult to succeed in starting business for the returnees who return to China immediately after studying abroad for one or two years and obtaining an academic degree than those who have working experience.”).

200. See Min Guo, *Sea Turtles: Chinese Returnee, 1 Year After Returning To Shanghai*, CNREVIEWS, May 29, 2009, available at http://cnreviews.com/life/living-in-china/sea-turtles-chinese-returnee-shanghai_20090527.html (explaining that a “typical ‘sea turtle’ is someone who at least completes university education in China and goes abroad, thus he/she has a very strong Chinese culture and society awareness and a sense of where is the real ‘home’. Otherwise, ‘return’ doesn’t apply.”). See generally Eric Chan, Middle-aged Mutant Sea Turtles! A Case Study of Identity Formation Among Chinese Returnees in Zhonguancun, Beijing (Sept. 2007) (unpublished manuscript) available at <http://luur.lub.lu.se/luur?func=downloadFile&fileOID=1324440>.

201. See Yingxi Fu-Tomlinson, KAYE SCHOLER, available at http://www.kayescholer.com/professionals/fu_tomlinson_yingxi.

202. McCollam, *supra* note 124, at 92.

203. Wilhelm & Biers, *supra* note 168, at 73; see also Lin, *supra* note 174 (describing the Allbright firm as hoping its hiring of Robert Lewis, former managing partner in the Beijing office of Hogan & Hartson, will help “Allbright [attract] more and better talent, especially among returnee lawyers who have worked at international firms previously.”).

experience: that is the most sought-after combination of skills.”²⁰⁴ Returnees working in business have similarly high status. A report about the investment banking industry highlighted the dual nature of a returnee’s expertise:

Part of their edge, these bankers say, is that they have gained access and can meet regularly with high-level government officials and the heads of major corporations Wall Street bankers need to be led, these Chinese-born bankers say, by someone who can earn the trust and respect of Chinese officials and executives but also know how to marshal the resources of a Western investment bank.²⁰⁵

The only limitation of the Sea Turtle path is that ties to China may be lost or loosened while living overseas, but this may be balanced against the establishment of new relationships developed outside of China.

Finally, firms may approach the accumulation of local Chinese knowledge and expertise from the opposite perspective discussed above, through targeted hiring of American lawyers with ties to China. One example of this is comprised of American lawyers of ethnic-Chinese background who grew up in the United States, but with one foot in the greater-China region. An illustration of this profile was recently highlighted in a news article focused on Peter Wang, a Jones Day partner in Shanghai. Wang is described as “born and raised in Pennsylvania, while spending summers in Taiwan, went to Princeton and then the University of California at Berkeley Law School.”²⁰⁶ While the models of duality embodied in lawyers’ educational and experiential backgrounds are not equivalent, each offers firms the promise of bridging the professional cultures in which the firms operate.

Despite the emphasis on work experience in the Chinese market for lawyers, the U.S. LL.M. remains a useful asset. It is appreciated in China as a mechanism for exposing students to another legal regime, to an international group of colleagues and to the United States itself, which still holds a significant position of influence with regard to commercial activities in China. These echo the value of the LL.M. in Germany. For example, a partner in a U.K.-based firm in China

204. David Barboza, *The New Power Brokers: Born in China, Now Closing Deals for U.S. Firms*, N.Y. TIMES, July 19, 2005, at C1, available at <http://query.nytimes.com/gst/fullpage.html?res=9B0CE2DE1F30F93AA25754C0A9639C8B63&pagewanted=1> (quoting “Steve Xiang, a lawyer at Weil Gotshal & Manges and one of the few Chinese-born lawyers who worked on the Lenovo acquisition of I.B.M.’s personal computer business this year”). The article focuses on investment bankers: “The new power brokers are on the rise. They are mostly in their 40s, born in China and educated in the United States. They were raised as Communists, but were schooled in capitalism.” *Id.*

205. *Id.* at C4 (“[E]ven in the late 1990’s, the top Chinese born bankers here were seen largely as ‘relationship men,’ whose primary job was to connect the firms with high-level Chinese government and corporate officials. Nearly every Wall Street firm privately acknowledges hiring some bankers for their connections—in the past they were the ‘princelings,’ or sons, daughters or relatives of high-ranking Communist Party officials—to help smooth deal making.” Today’s returnees are not this.).

206. *China’s Antitrust Regime: A New Statute Announces the Country’s Increasing Importance in the Global Economy*, METRO. CORP. COUNS., June 2007, at 35.

described the LL.M. as providing “an enormous asset for us [because it is helpful] to have lawyers who have some familiarity with more than one system of law[;] it helps them to give an effective service to clients on cross-border matters and cases.”²⁰⁷ Like any foreign educational experience (including non-legal studies), the LL.M. exposes students to a different environment, and Chinese law graduates are eager for this: “We want a different life, feel different atmosphere, and meet different people, which will bring us not only a degree.”²⁰⁸ In addition, the United States itself is an important attraction of the LL.M.: “In P.R.C., most people admire U.S.A. degree not only because it is a degree issued by a U.S. university, but also because the degree will make people believe this student spent a certain period in U.S.A., was familiar with U.S. culture and social life in U.S.A., and can communicate with local people in U.S.A.”²⁰⁹

As in Germany, the LL.M. is a weapon in China in the recruiting arsenal of host country and international law firms, as well as other organizations hiring young law graduates. Firms promise to help fund LL.M. study in order to attract and retain talented Chinese lawyers. An international firm partner explained that “recruiting for the top-level students who can function in Chinese and English is becoming increasingly competitive. One incentive his firm offers its best young P.R.C. attorneys is support for selected ones to attend a one-year LL.M. program in the United States and the possibility to work in an overseas office [of the firm] before returning to China.”²¹⁰ A partner in the China office of another international firm commented that “young lawyers go in-house and then leave to work in international and even local firms. So a company might send them for an LL.M. as an incentive to stay at the company.”²¹¹ But the LL.M. is one of the least costly forms of exposure to foreign legal education and practice, and the low investment in time and tuition may earn only a correspondingly low return in comparison to other more costly and preferred routes.²¹²

For now, the LL.M. is relegated to a secondary, supportive role in China in comparison to the J.D. Regulatory constraints mean that U.S. firms need lawyers with a license from a jurisdiction outside of China. The LL.M. is second-best for this purpose, although it serves to qualify students to sit for the bar in New York—arguably the most important U.S. jurisdiction from the perspective of

207. E-mail from senior partner of international firm (2009) (on file with author).

208. Interview #25, China (Nov. 2005).

209. Interview #19, China (Nov. 2005).

210. K. William Gibson, *Frontline: Ask Bill*, LAW PRAC., Dec. 2007 at 10.

211. Telephone Interview #23 (April 2005).

212. In addition to J.D. and LL.M. programs, exposure may be gained through non-degree programs and individual courses, and through LL.M. programs offered by certain U.S. law schools in jurisdictions where students might continue working while studying. See, e.g., *LL.M. Singapore*, N.Y. UNIV. LAW SCH., <http://www.law.nyu.edu/llmjsd/llmsingapore/index.htm> (last visited Oct. 17, 2010) (NYU’s program offered at National University of Singapore); Silver, *supra* note 17, at 170-72.

legal practice outside of the United States.²¹³ But even apart from regulation, U.S. firms likely would pursue a path of duality in building a profile that reproduces the elite status they enjoy at home. The distance between U.S. and Chinese language and culture contributes to firms' discomfort in operating completely without U.S. participants, if only to provide the glue and cultural translation to maintain a connection between the home office of the firm and its China-based practitioners. This attitude was nicely articulated by the managing partner of one U.S.-based international firm, discussing the firm's strategy for staffing its China offices: "We can and do send over some U.S.-trained lawyers, too, to balance out the offices and provide the ability, the credibility of doing U.S. law there."²¹⁴ Regulation renders this credibility of considerable importance to firms, which risk investigation and sanctions if they rely too heavily on Chinese-licensed lawyers in their China offices.²¹⁵

Chinese firms, of course, need not comply with the regulatory restraints imposed on foreign law firms with regard to their hiring of Chinese-licensed lawyers. Nevertheless, they follow foreign firms in their preferences for overseas education and training, shaping themselves along the same lines as their foreign competition.²¹⁶ The approach of the Chinese firms likely responds also to the role of lawyers in the developing commercial framework in China, and the need for distance and independence from state influence.²¹⁷ Using the same signals of quality and credibility as foreign firms may be part of a strategy to disassociate from local influences that are seen as threatening uncertainty to overseas investors and other clients.

The combination of these forces casts a long shadow over Chinese legal education. While earning a first degree in law at an elite Chinese law school is important,²¹⁸ the substantial focus in hiring decisions is on external credentials and expertise. The LL.M. falls somewhat short in this context because it is intended to serve as an add-on to the host country legal education foundation. In China, that foundation—Chinese legal education—is insufficient to allow an

213. See generally Silver, *supra* note 26.

214. Interview #2, United States (Sept. 2005).

215. On the Shanghai Bar Association investigation into the activities of foreign law firms and their compliance with the borders between permitted and restricted advising, see Anthony Lin, *Shanghai Bar Association Goes After Foreign Firms*, N.Y. L.J., May 18, 2006, available at <http://www.law.com/jsp/llf/PubArticleLLF.jsp?id=1147856732635> ("American and British law firms have made no secret of their desire to push into the China market. But fast-growing Chinese firms are now pushing back. A fiery April 17 memo by the Shanghai Lawyers Association has accused foreign law firms of conducting 'illegal business activities' by skirting regulations prohibiting them from practicing Chinese law.")

216. For examples of Chinese firms hiring American and other Western lawyers, see *supra* note 174.

217. This is beyond the scope of this paper, but see Michelson, *supra* note 124, at 400 ("Political connections are not diminishing in significance as much as they are becoming more opaque.")

218. For an assessment of Chinese law faculties, see *Chinese Law School Rankings*, CHINA L. PROF BLOG (Feb. 12, 2007), available at http://lawprofessors.typepad.com/china_law_prof_blog/2007/02/chinese_law_sch.html (listing as the top law schools Beijing University, People's University (Beijing), Wuhan University, and Tsinghua University).

add-on to suffice. Instead, the LL.M.'s utility is limited in the external focus of the China market.

IV. CONCLUDING THOUGHTS: GLOBALIZATION IN CONTEXT

In expanding internationally, U.S. law firms interact with host country law firms and other organizations in their search for talent, business, access and prestige. This interaction generates a competition over indicia of credibility and legitimacy for the role of advisor in an international legal context.²¹⁹ We might expect this interaction to yield universal agreement on the elements necessary for a place at the table of global lawyering. For the most part, however, this has not occurred. Instead, recognition of important signals of credibility and legitimacy for the firms and their lawyers takes shape in the context of existing frameworks for providing legal services. These differ substantially depending on the history and the development of the host country legal profession and its interaction with foreign lawyers and firms.²²⁰

The case studies of Germany and China reveal the importance of host country context as an influence constraining consensus on the elements of global professional capital. This context is a crucial element in determining what is necessary to support claims of global competence by revealing the space between host country lawyers and the expectations of elite U.S. law firms. At the same time, the hierarchies in certain countries may create opportunities for lawyers to perform roles that differ from the expectations of U.S. firms based upon their U.S.-orientation, and this also explains space or distance between the two. Even differences in the kinds of clients and their reliance on host country or U.S. (or third country) law shapes the perception of necessary ingredients for global lawyering.²²¹ In Germany, where U.S. firms have been able to practice through German lawyers and create identities by acquiring existing German firms, they adapted to existing hierarchies. The firms might be ambivalent about stressing their U.S. identities in Germany given the strength of local client relationships and local German law firms; nevertheless, as work is conducted in English and in connection with non-German actors, there is an appreciation for lawyers with something more than an entirely local experience. In China, on the other hand, the first commercial Chinese law firms began only about a dozen years before U.S. law firms entered the scene, and U.S. and other foreign firms have participated in delineating the roles that lawyers play in commercial activity there. It is no surprise, then, that U.S. firms in China fall back on U.S.-oriented

219. In fact, the competition may not be limited to the international playing field. Certain U.S.-based law firms engage in local legal work, too. *See generally* Silver et al., *supra* note 9.

220. *See generally* DEZALAY & GARTH, *supra* note 7.

221. *See generally* ERIN O'HARA & LARRY RIBSTEIN, *THE LAW MARKET* (2009) (arguing for the creation of a market for governing law much like that of corporate law governing internal corporate affairs).

preferences for signals of professional competence. And Chinese law firms look to the same U.S. models as a means of persuasion that they occupy the same roles as their U.S. competitors.

The value accorded U.S. legal education as an experience and credential, then, reflects host country context, and it also will change as local participants and frameworks mature. Today, firms in Germany see little need for the U.S. J.D., while in China the U.S. J.D. is an important avenue to gaining professional status. The situation in China is likely to shift as generations of lawyers are educated and trained overseas; assuming regulatory barriers are lifted and a steady return flow to China of overseas educated actors, international (and Chinese) law firms may develop more comfort with Chinese legal education and training.

Because of the lack of standardization, the importance of the LL.M. is less about the credential itself and more about particular experiences and lessons that it enables. Even these are not uniformly relevant in each host country, and will be interpreted differently by foreign and host country firms. For example, the LL.M. may deliver lessons about substantive U.S. law, legal English, common law reasoning, U.S. legal writing and research techniques, the participatory method characteristic of U.S. legal education, and expose students to an international peer group and an international-mindedness that might be characterized as a sort of global intelligence. Certain of these lessons will be more important to Chinese law graduates than to German lawyers. This reflects the maturity of each country's legal system and profession and the sort of work performed there by law firms, among other things. Even within a single country, the LL.M. may be more important for particular reasons to one group than to others, as illustrated by the emphasis of U.S. firms in Germany on English language ability and the focus on international exposure by their counterpart German firms. And the lessons characteristic of the LL.M. are not static; as the degree becomes more common in a particular national setting, new graduates will seek to distinguish themselves by identifying fresh lessons from the experience afforded by the year of study in the United States, perhaps drawn from changes in the host country market for lawyers or from modifications in LL.M. programs.²²²

Perhaps because of this variability in the LL.M.'s message, U.S. bar membership has the potential to become a universally recognized asset. German and Chinese LL.M. graduates described gaining a sense of stature from U.S. bar membership, in large part because of their perception that American U.S.-licensed lawyer counterparts consider the credential important. Although more senior lawyers in Germany did not recognize the bar as significant, it is possible that the beginning of a divide along generational lines is emerging, in which the

222. For example, the LL.M. with a certificate in business from the Kellogg School, offered by Northwestern University Law School, became a way for Latin American students to distinguish themselves as the basic LL.M. became more commonplace. See *Graduate Program in Law and Business (LLM/Kellogg)*, NORTHWESTERN U. L. SCH., <http://www.law.northwestern.edu/academics/llmkellogg/>.

U.S. law license works as a mechanism for gaining status even for lawyers working in host country firms. Since the LL.M. is sufficient for bar eligibility in New York, among other jurisdictions, perhaps this development will buttress the position of the LL.M. as an element of professional capital, too. The comment of one LL.M. graduate described the LL.M. itself in similar terms: he described being motivated to pursue the degree not only for its ability to further his career at home or possibly in the United States, but because it “would enhance my job prospects in other countries, too.”²²³

None of this is to suggest that the LL.M. has no value—nothing could be further from the truth. But its value is variable; it is more in the nature of an “add-on,” and like the seasoning added to a well-cooked meal, it has the ability to transform or enhance, or fall between these extremes.²²⁴ The flexibility and lack of standardization of the LL.M. are attractions to foreign law graduates, but these same characteristics also reduce its strength as a signal.²²⁵

On a personal level, most LL.M. graduates, regardless of where they work, hold their experiences in the LL.M. in high regard.²²⁶ They recommend that young lawyers pursue an LL.M., they hire LL.M. graduates, they attend weddings of LL.M. classmates and convene in friendship and professional groups many years after graduation.²²⁷ The LL.M. is the ideal international mixer

223. Respondent to survey, #35.

224. See Valerie Sayers, *Children's Books*, N.Y. TIMES, Aug. 9, 1987 (quoting WILLIAM H. HOOKS, MOSS GOWN (1987), in which the youngest of three daughters expresses her love for her father as “more than meat loves salt”).

225. Flexibility also may undermine the willingness of U.S. bar regulators to accept the LL.M. as a means of bar qualification.

226. In responding to a question about motivations for pursuing the LL.M., the most common response was that the LL.M. was expected to increase professional opportunities in the graduate's home jurisdiction. In Germany and China, seeking to improve English language skills was the second most common motivation. Other reasons offered and reflected in interviews include: “Thought it was important for U.S. clients” (Respondent to survey, #36 (European Union)); “It was always my dream to study abroad and to get a scholarship.” (Respondent to survey, #37 (Asia-Pacific)); “Take a sabbatical and enjoy the ride” (Respondent to survey, #38 (South America)); “Personal growth” (Respondent to survey, #39 (North America)); “I wanted to become an international lawyer and having knowledge of one of the major legal jurisdictions in the world was perceived by me as essential. I also saw it as a challenge to study law in a foreign language.” (Respondent to survey, #40 (Europe (non-European Union))); “I wanted to study at an American law school—different teaching methods” (Respondent to survey, #41 (European Union)); “Reputation of the particular law school” (Respondent to survey, #42 (North America)); “I wanted to have more opportunities in the international market place and get a degree that would have a certain value in every country.” (Respondent to survey, #43 (European Union)); “I needed to live the great American campus experience, esp[ecially] in light of my young age endeavors at the time—twenty-two years old” (Respondent to survey, #44 (European Union)); “My company's order” (Respondent to survey, #45 (Asia-Pacific)); “I wanted to become a law professor and politician.” (Respondent to survey, #46 (Asia-Pacific)).

227. See Silver, *supra* note 17, at 169; Carole Silver, *Agents of Globalization in Law* (Georgetown Law and Econ. Research Paper No. 1406131, 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1406131.

in legal education.²²⁸ But mixing is not universally recognized as valuable, particularly by U.S. lawyers and law firms, despite it being characteristic of the way global firms operate overseas.²²⁹ This is a shame, since law schools housing LL.M. programs have within their structures opportunities to help U.S. and non-U.S. students learn to communicate and work together, and these lessons would inure to the benefit of firms that either house nationally diverse lawyers or work across borders. Neither firms nor schools have yet recognized the significance of these opportunities, however.

As a result, and for now, the LL.M.'s strength as a signal is bounded by the interpretive lens of host country. "Global lawyers" become global only in context. Certain credentials and experiences may support mobility, but the importance attributed to them varies considerably from place to place. Value is neither static nor universal.

228. In other work, I have suggested that the LL.M., through its students, may help internationalize U.S. legal education. See Carole Silver, *Educating Lawyers for the Global Economy: National Challenges*, KYUNG HEE U. L. REV. (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1519387.

229. In law, where relationships are the basis of work, the development of strong ties between international classmates might provide the basis for a future of international lawyering. In terms of business referral, however, LL.M.s do not report substantial activity or even collaboration professionally among classmates, although of course this does occur. This may change as LL.M. graduates age and grow into positions of more influence in their firms and organizations. On the other hand, perhaps LL.M.s respond differently to the notion of working with classmates than do J.D.s. This is one area for future investigation. At the same time, as U.S. law firms have grown into international organizations, they must rely on foreign-educated lawyers working effectively with U.S.-educated lawyers. In this regard, the "mixing" that is characteristic of international students in LL.M. programs might be expanded to include U.S. J.D. students and enhance the comfort of all law graduates for working in an international environment, whether within the firm or across the table. See Silver et al., *supra* note 9, at 1455-71.