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# Winners and Losers in the Globalization of Legal Services: Offshoring the Market for Foreign Lawyers

Carole Silver

*Indiana University Maurer School of Law*, [c-silver@law.northwestern.edu](mailto:c-silver@law.northwestern.edu)

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# Winners and Losers in the Globalization of Legal Services: Situating the Market for Foreign Lawyers

CAROLE SILVER\*

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## I. INTRODUCTION

Evidence of internationalization is ubiquitous in the legal services market. Greater economic interaction among national actors, including businesses, financial institutions, individuals, governments, and non-governmental organizations has stimulated growing interaction among nationally based lawyers and law firms.<sup>1</sup> The impact of this movement toward internationalization in the U.S. legal services market is at once enormous and superficial. On one hand, nearly every participant in the

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1. On the growth of the international market for legal services, see generally Barney Warf, *Global Dimensions of U.S. Legal Services*, 53 PROF. GEOGRAPHER 398 (2001); Richard Abel, *Transnational Law Practice*, 44 CASE W. RES. L. REV. 737, 750-61 (1994); David M. Trubek et al., *Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas*, 44 CASE W. RES. L. REV. 407 (1994).

U.S. legal services market, from law firms to law schools, has claimed the “international” label in recent years. On the other hand, domestic offices of U.S. law firms remain extraordinarily United States-centric, populated almost exclusively by lawyers educated solely in U.S. law schools who generally lack significant foreign law experience or expertise.<sup>2</sup> The internationalization efforts of U.S. law firms have occurred mostly offshore in foreign offices. In these offices, U.S. law firms have succeeded in going global by going local. One consequence of this globalization strategy is that the traditional power dynamics of U.S. law firms, favoring domestic lawyers to the exclusion of those with foreign expertise and experience, is often preserved.

This Article analyzes the ways in which the U.S. legal services market has changed so much by changing so little. It begins in Section II by considering the impact of developments in legal education on the internationalization of the domestic legal services market. U.S. law schools increasingly look to foreign lawyers<sup>3</sup> to fill their classrooms. One-year graduate programs aimed at foreign lawyers have proliferated in recent years. Section III focuses on the dissociation between U.S. legal education and practice opportunities in the U.S. by contrasting the experience of domestic J.D. and foreign LL.M. students. While U.S. law schools cater to J.D. students in facilitating their entry into the profession by hosting employer interviews and building relations with the profession, foreign lawyers graduating from one-year LL.M. programs are generally excluded from this process. They graduate instead with fewer opportunities, in part because of their marginal position in relation to bar membership and rights of practice. Section IV puts together the story of foreign lawyers earning U.S. law degrees and the international expansion policies of U.S. law firms. It is crucial today for U.S. law firms to claim the international label, but the ways in which they have expanded internationally have left intact much of the traditional power structures of the firms. Internationalization has been accomplished at local levels through hiring foreign-trained lawyers to work in their home jurisdictions. In this way, firms offer multinational advice but avoid taking on a multinational or transnational character in

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2. This is in contrast to the international experience of London-based, large-law firm lawyers. Jonathan V. Beaverstock, *“Managing Across Borders”: Knowledge Management and Expatriation in Professional Service Legal Firms*, 4 J. OF ECON. GEOGRAPHY 157 (2004).

3. “Foreign lawyer” is used here to mean an individual whose earliest (in time) legal education was earned outside of the United States. The term is used notwithstanding the fact that the lawyer may earn a graduate degree and pass a bar exam in the United States.

terms of firm management.<sup>4</sup> As analyzed in Section V, one consequence of this method of internationalization by localization is that the need for dual-trained lawyers is limited. While U.S. law schools attract increasing numbers of foreign lawyer students, U.S. law firms have exhibited little interest in hiring and training them; nor have the firms learned how to efficiently use LL.M. graduates in innovative positions that might allow the firms to strengthen their knowledge and relationships with local lawyers and businesses in the LL.M. students' home countries. Rather, the largest market for LL.M. graduates is more likely situated in the local foreign-based firms competing with the offshore offices of U.S. law firms.

## II. LEGAL EDUCATION

The market and regulatory forces shaping the activities of U.S. law schools have encouraged the growth of programs aimed at foreign students. Two principle outside constraints under which U.S. law schools operate are regulation by the American Bar Association (ABA) and the impact of the *U.S. News and World Report* rankings.<sup>5</sup> Each of these factors reinforces the movement toward international graduate students. This emphasis on international graduate students began at least in the mid-1990s, when market forces resulted in a decrease in the number of applicants to U.S. law schools; as a result, schools looked to foreign lawyers to enlarge their pool of potential students.

The ABA Section of Legal Education and Admission to the Bar

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4. On the differences between multinational, global, international, and transnational organizations and management strategies, see CHRISTOPHER A. BARTLETT & SUMANTRA GHOSHAL, *MANAGING ACROSS BORDERS: THE TRANSNATIONAL SOLUTION* 16 (2d ed. 1998) (stating that multinational is associated with organizations that have "developed a strategic posture and organizational capability that allows them to be very sensitive and responsive to differences in national environments around the world. In effect, these corporations manage a portfolio of multiple national entities....").

5. *U.S. News* rankings have engendered significant controversy and have been the subject of academic study by law faculty. See, e.g., *Deans Decry Magazine's Annual Ranking of Law Schools*, N.Y. TIMES ONLINE, Feb. 19, 1998, available at <http://www.law.duke.edu/news/rankings.html> (last visited Oct. 4, 2005); Nancy B. Rapoport, *Ratings, Not Rankings: Why U.S. News & World Report Shouldn't Want to be Compared to Time and Newsweek—or The New Yorker*, 60 OHIO ST. L.J. 1097 (1999); Symposium: *The Next Generation of Law School Rankings*, Indiana U. School of Law (papers forthcoming in 80 IND. L. J. (Fall 2005)); see also Abbie Willard, *Law School Rankings: Through the Education and Employment Looking Glass* (Nat'l Ass'n L. Placement 1994); *Law School Rankings Not Sanctioned*, INDIANAPOLIS STAR, Apr. 17, 2005 (letter from Susanah Mead, interim dean designate and Professor of Law, Indiana University School of Law—Indianapolis).

regulates U.S. law schools through an approval process that is linked, in most U.S. jurisdictions, to bar admission. Graduation from an ABA approved law school is the common standard qualifying graduates to sit for a bar examination.<sup>6</sup> As a regulator, the ABA is demanding; at the same time, many of its rules are ambiguous, requiring law school administrators to guess at the parameters of permitted activity.

While the ABA regulates the basic three-year J.D. degree that is the common denominator for bar admission for domestic lawyers, it does not offer its approval for one-year LL.M. graduate programs offered by many law schools.<sup>7</sup> Rather, the ABA simply “acquiesces” in the offering of LL.M. programs as long as they do not negatively impact any J.D. program offered by the school. In contrast, establishing foreign semester and summer programs of study requires U.S. law schools to obtain ABA approval, a difficult and time-consuming process.<sup>8</sup> The fact that the ABA does not engage in a full-scale approval process for LL.M. programs allows schools to experiment and offer innovative programs, but it also has resulted in an absence of disclosure about LL.M. programs.<sup>9</sup> Consequently, the LL.M. programs offered are not subject to

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6. See, e.g., NATIONAL CONFERENCE OF BAR EXAMINERS & ABA SECTION OF LEGAL EDUCATION AND ADMISSION TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2005 10 (Chart III on permitted means of legal study states that twenty jurisdictions limit eligibility to take the bar to graduates of an ABA-approved law school earning a J.D. or LL.B. degree).

7. The ABA Section of Legal Education and Admission to the Bar describes the requirements for establishing a post-J.D. program as follows:

Standard 308 of the ABA Standards for Approval of Law Schools states that an ABA-approved law school may not establish a degree program in addition to its J.D. degree program unless the school is fully approved, and the additional degree program will not detract from a law school's ability to maintain a sound J.D. degree program. The school must obtain the Council's acquiescence prior to commencing such a program. The ABA does not formally approve any program other than the first degree in law (J.D.).

American Bar Association Section of Legal Education and Admission to the Bar, *Overview of Post-J.D. Programs*, at <http://www.abanet.org/legaled/postjdprograms/postjd.html> (last visited Oct. 4, 2005).

8. The ABA Section of Legal Education and Admission to the Bar states:

Standard 307 of the ABA Standards for the Approval of Law Schools provides that an ABA-approved law school may not grant credit for studies or activities in a foreign country unless those studies or activities are approved in accordance with the Rules of Procedure and Criteria adopted by the Council. Outside of programs that meet these Criteria, an ABA-approved law school may not award credit toward the J.D. degree to an enrolled student for studies or activities outside the United States.

American Bar Association Section of Legal Education and Admission to the Bar, *Foreign Study*, at <http://www.abanet.org/legaled/studyabroad/abroad.html> (last visited Oct. 4, 2005).

9. See Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Non-U.S. Lawyers*, Address at the 2004 Annual Meeting of the Association of American Law

the same standards of transparency and uniformity that characterize J.D. programs.

U.S. law schools have capitalized on the absence of regulation of LL.M. programs by contributing to a growing pool of competitive programs that generate significant tuition income and bring an international element to their organizations.<sup>10</sup> There has been substantial growth in the number of schools offering LL.M. programs available to foreign lawyers as well as in the size of these programs. In the last five years, the number of U.S. law schools offering LL.M. programs for foreign lawyers has nearly doubled. Approximately 102 U.S. law schools currently offer LL.M. programs in which foreign lawyers may enroll; these schools are identified in Table 1. Table 2 identifies the fifty-eight Table 1 schools whose LL.M. programs are available exclusively to foreign lawyers.

The growth of one-year graduate programs for foreign lawyers coincided with the decrease in applicants for the principal three-year J.D. programs that occurred during the last five years or so of the 1990s.<sup>11</sup> During this period, law schools increased the size of existing LL.M. programs, and created new LL.M. programs that took advantage of the interest in U.S. legal education by foreign lawyers and helped compensate for the shortfall in tuition income resulting from the declining J.D. applicant pool.<sup>12</sup> Applications to law schools have been increasing since 2000, but the growth in LL.M. programs aimed at foreign lawyers has not diminished. Moreover, foreign students have increasingly applied to J.D. programs during this period.

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Schools (Jan. 3, 2004) (reporting on the range of LL.M. programs available to foreign lawyers offered by U.S. law schools) (transcript available from author).

10. LL.M. programs aimed at U.S. lawyers also are popular; in fact, more LL.M. programs are directed toward U.S.-lawyer applicants than toward foreign lawyers. *Id.*

11. Law School Admission Council, *Volume Summary Data*, at <http://www.lsac.org/LSAC.asp?url=lsac/LSAC-volume-summary.asp> (last visited Oct. 4, 2005).

12. Law schools faced several choices during this period relating to declining interest in the J.D. programs. They could lower their admission standards for the J.D. class (thus filling seats and maintaining levels of tuition income), decrease the size of the J.D. class (and lose tuition dollars) while maintaining admission standards, or create new sources of tuition income including the LL.M. and continuing legal education programs (shifting sources of tuition from the J.D. to alternative degree and non-degree programs). These options were not mutually exclusive.

TABLE 1: SCHOOLS WITH LL.M. PROGRAMS IN WHICH  
FOREIGN LAWYERS MAY ENROLL

1. Alabama, U. of	36. Hamline U.	68. San Diego, U. of
2. Albany Law School	37. Harvard U.	69. San Francisco, U. of
3. American U.	38. Hawaii, U. of	70. Santa Clara U.
4. Arizona, U. of	39. Hofstra U.	71. Seattle U.
5. Arkansas, U. of	40. Houston, U. of	72. Southern California, U. of
6. Baltimore, U. of	41. Howard U.	73. Southern Methodist U.
7. Boston U.	42. Illinois, U. of	74. St. John's U.
8. Brigham Young U.	43. Indiana U. (Bloomington)	75. St. Mary's U.
9. California Western	44. Indiana U. (Indianapolis)	76. St. Thomas U.
10. California-Berkeley	45. Iowa, U. of	77. Stanford U.
11. California-Davis	46. John Marshall School of Law	78. Stetson U.
12. California-Hastings	47. Lewis and Clark College	79. Suffolk U.
13. California-Los Angeles (UCLA)	48. Louisiana State U.	80. SUNY Buffalo
14. Capital U.	49. Loyola U. (Chicago)	81. Temple U.
15. Cardozo School of Law	50. Loyola Marymount U.	82. Texas, U. of
16. Case Western Reserve U.	51. Miami, U. of	83. Touro College
17. Chicago, U. of	52. Michigan State U.,	84. Tulane U.
18. Chicago-Kent	53. Michigan, U. of	85. Tulsa, U. of
19. Cleveland State	54. Minnesota, U. of	86. Utah, U. of
20. Columbia U.	55. Missouri, U. of (Columbia)	87. Valparaiso U.
21. Connecticut, U. of	56. Missouri, U. of (Kansas City)	88. Vanderbilt U.
22. Cornell U.	57. New England School of Law	89. Vermont Law School
23. Denver, U. of	58. New York U.	90. Villanova U.
24. DePaul U.	59. Northwestern U.	91. Virginia, U. of
25. Duke U.	60. Notre Dame, U. of	92. Wake Forest U.
26. Emory U.	61. Pace U.	93. Washington & Lee U.
27. Florida State U.	62. Pacific, U. of (McGeorge)	94. Washington U. (St. Louis)
28. Florida, U. of	63. Penn St. U.	95. Washington, U. of
29. Fordham U.	64. Pennsylvania, U. of	96. Wayne State U.
30. Franklin Pierce Law Center	65. Pepperdine U.	97. Whittier Law School
31. George Mason U.	66. Pittsburgh, U. of	98. Widener U.
32. George Washington U.	67. Saint Louis U.	99. Willamette U.
33. Georgetown U.		100. College of William & Mary
34. Georgia, U. of		101. Wisconsin, U. of
35. Golden Gate U.		102. Yale U.

TABLE 2: SCHOOLS OFFERING PROGRAMS EXCLUSIVELY FOR  
FOREIGN LAWYERS

1. University of Alabama	2. Albany Law School
3. University of Baltimore	4. Boston University
5. Brigham Young University	6. California Western University
7. University of California-Hastings	8. UCLA
9. Case Western Reserve University	10. Chicago-Kent College of Law
11. University of Connecticut	12. Cornell University
13. University of Denver	14. Duke University
15. Emory University	16. Florida State University
17. University of Florida	18. Georgetown University
19. Hamline University	20. University of Hawaii
21. Hofstra University	22. University of Houston
23. Howard University	24. University of Illinois
25. Indiana University-Indianapolis	26. John Marshall Law School
27. University of Miami	28. Michigan State University
29. University of Michigan	30. University of Minnesota
31. New England School of Law	32. New York University
33. Northwestern University	34. Pace University
35. Penn State University	36. University of Pittsburgh
37. St. Louis University	38. University of San Diego
39. University of San Francisco	40. University of Santa Clara
41. University of Seattle	42. University of Southern California
43. Southern Methodist University	44. St. Mary's University
45. Stanford University	46. Temple University
47. University of Texas	48. Touro College
49. University of Tulsa	50. Valparaiso University
51. Vanderbilt University	52. University of Virginia
53. Wake Forest University	54. Washington & Lee University
55. Washington University (St. Louis)	56. Whittier School of Law
57. College of William & Mary	58. University of Wisconsin

Interest in LL.M. programs by U.S. law schools also is fueled by the exclusion of such programs from the law school rankings assessments. As rankings such as that offered by *U.S. News & World Report* assume greater significance in the competition among U.S. law schools for qualified applicants, it becomes more attractive to generate tuition dollars from graduate law programs that are excluded from the *U.S. News* and similar rankings.<sup>13</sup> Additionally, since law schools need not

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13. See *America's Best Graduate Schools 2006*, U.S. NEWS & WORLD REP., available at



report basic data relating to their LL.M. applicants and students, the schools are able to be selective in their admission of LL.M. students on the basis of different criteria than those emphasized by the various rankings, without impacting the data relating to ranking.

Finally, U.S. law schools use their LL.M. programs that include foreign lawyers as evidence of their international character. They point to the presence of foreign lawyers and the interaction between foreign graduate and J.D. students in describing themselves as international. The international label is one part of the strategy used by U.S. law schools in competing for highly qualified applicants, and it allows schools to distinguish themselves from those whose identities are purely domestic. The increasingly international business environment in which law firms operate influences legal education as well.<sup>14</sup> U.S. law schools continue to grapple with the ways in which international and transnational law and economic globalization should impact their activities. For some, globalization is the focus of their programs,<sup>15</sup> while others integrate education regarding international law and practice into their curricula.<sup>16</sup> Most law schools have added courses on international, transnational and comparative law;<sup>17</sup> some have created centers focused

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[http://www.usnews.com/usnews/edu/grad/rankings/law/lawindex\\_brief.php](http://www.usnews.com/usnews/edu/grad/rankings/law/lawindex_brief.php) (last visited Oct. 4, 2005).

14. On the influence of and relationship between law practice and law schools, see generally Robert L. Nelson & David M. Trubek, *Arenas of Professionalism: The Professional Ideologies of Lawyers in Context*, in *LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION* 175, 186–87 (Robert L. Nelson et al. eds., 1992). The authors discuss the relationship between legal education and practice regarding professionalism, stating: “[w]hat goes on in the law schools is influenced by what is occurring in other arenas, including the collective and workplace arenas.” *Id.* at 186.

15. New York University is the most obvious example of successful marketing relating to globalization. See New York University Law School, *Prospective Students*, at <http://www.law.nyu.edu/prospective/> (last visited Oct. 4, 2005) (“New York University School of Law is the preeminent global law school featuring innovative teaching, research, and intellectual and professional development in a uniquely collegial environment.”).

16. The University of Michigan Law School recently imposed a requirement that all students complete a course on transnational law. See University of Michigan Law School, *Course Descriptions: Upper Class*, at [http://cgi2.www.law.umich.edu/\\_ClassSchedule/CourseList.asp](http://cgi2.www.law.umich.edu/_ClassSchedule/CourseList.asp) (last visited Oct. 4, 2005) (“All students who matriculated in the Summer of 2001 or after must also complete the *Transnational Law* course...”). Other law schools have increased the number and diversity of course offerings relating to international law and practice. See generally Judith Welch Wegner, *The Curriculum: Patterns and Possibilities*, 51 J. LEGAL EDUC. 431 (2001). Northwestern University has added the International Team Project courses to encourage students and faculty to study selected countries and their legal systems. See <http://www.law.northwestern.edu/itp/> (last visited Oct. 4, 2005); Carole Silver, *Adventures in Comparative Legal Studies: Studying Singapore*, 51 J. LEGAL EDUC. 75 (2001).

17. See Valerie Epps, Book Review, 87 AM. J. INT’L L., 686, 688 (1993) (reviewing JOHN

on international or foreign law, such as the Asian Law Center at the University of Washington<sup>18</sup> and the Whitney R. Harris Institute for Global Legal Studies at Washington University in St. Louis School of Law.<sup>19</sup> Many schools also support summer programs that enable American students to study law in a foreign country,<sup>20</sup> and academic exchange programs that allow students to spend a semester or longer in a foreign law school have become common.<sup>21</sup> LL.M. programs for foreign lawyers round out the international programs at many U.S. law schools by bringing the international home for the entire school population.

Prior to the early 1990s, most non-U.S. lawyers who enrolled in graduate programs at U.S. law schools intended to pursue academic careers.<sup>22</sup> But economic globalization created additional interest in U.S. legal education because of the leading role of U.S. businesses, financial institutions, law and law firms. This led to a shift in LL.M. programs toward practitioners as opposed to or in some cases in addition to

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KING GAMBLE, TEACHING INTERNATIONAL LAW IN THE 1990S (1992)). The author states:

Turning to the international law curriculum in law schools, it is clear that, compared to the situations shown by the earlier data, an increasing number of schools offer an increasing variety of international courses to an increasing percentage of their students; however, the contemporary law student is only slightly more likely to have taken the introductory course in international law than his counterpart in 1912. In about fifteen law schools, more than two-thirds of the students are currently enrolled in the basic introductory course, the international business transactions course, or both.

*Id.* at 688.

18. See University of Washington School of Law, *Asian Law Center: Academic Programs*, at <http://www.law.washington.edu/AsianLaw/teach/> (last visited Oct. 4, 2005) (describing Asian Law Center).

19. See Washington University in St. Louis School of Law, *Whitney R. Harris Institute for Global Legal Studies*, at <http://law.wustl.edu/igls/> (last visited Oct. 4, 2005) (describing the global studies program).

20. According to the ABA Section of Legal Education and Admission to the Bar, more than ninety U.S. law schools offer summer programs outside the U.S. American Bar Association Section of Legal Education and Admission to the Bar, *Annual Foreign Summer Programs*, at <http://www.abanet.org/legaled/studyabroad/foreign.html> (last visited Oct. 4, 2005).

21. Ten semester abroad programs are described by the ABA Section of Legal Education and Admission to the Bar as being approved by the ABA. American Bar Association Section of Legal Education and Admission to the Bar, *ABA-Approved Semester Abroad Programs*, at <http://www.abanet.org/legaled/studyabroad/semester.html> (last visited Oct. 4, 2005). Students also may arrange an independent foreign study plan under certain conditions; for relevant regulations, see American Bar Association Section of Legal Education and Admission to the Bar, *Criteria for Student Study at a Foreign Institution* (2003), at <http://www.abanet.org/legaled/accreditation/foreignprogramtf/studentstudycriteria.doc> (last visited Oct. 4, 2005).

22. See generally Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 FORDHAM INT'L L.J. 1039 (2002).

academics.

According to the ABA Section of Legal Education and Admission to the Bar, U.S. law schools enrolled more than 3200 foreign students in post-J.D. programs in 2004. This is a more than 50% increase over the 1998 enrollment.<sup>23</sup> In fact, the growth in foreign post-J.D. enrollment parallels the increase in the number of foreign-educated lawyers sitting for the bar examination in New York.<sup>24</sup> In 1998, 2,047 lawyers who earned their legal education outside of the U.S. sat for the New York bar exam.<sup>25</sup> In 2003, the most recent year for which data is available, this increased to 3,151 foreign-educated individuals—an increase of just over fifty percent in five years.<sup>26</sup>

Thus, U.S. law schools have multiple motivations for offering LL.M. programs for foreign lawyers. These programs offer the law schools a claim to being international by diversifying their student bodies.<sup>27</sup> LL.M. programs also enable U.S. law schools to generate tuition dollars without the complications of significant ABA regulation or

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23. J. Richard Hurt, then deputy consultant on legal education for the ABA, provided this information as part of his presentation to the Conference on Post-J.D. Education for Foreign Lawyers held at Duke University School of Law in Spring 1999 (notes on file with author). The “post-J.D.” category presumably includes S.J.D. programs as well as LL.M. or analogous one-year graduate programs.

24. Growth also was documented in the reports of more than thirty directors of LL.M. programs at U.S. law schools in the fall of 2003. See Silver, *supra* note 9, for results of conversations with these individuals and a more thorough discussion of LL.M. programs.

25. National Conference of Bar Examiners, *Total Taking and Passing by Source of Legal Education in 1998*, BAR EXAMINER, May 1999, at 4, available at <http://www.ncbex.org/stats/pdf/1998stats.pdf> (last visited Oct. 4, 2005). This number, however, almost certainly includes lawyers educated in a common law system outside of the United States who do not need to complete an LL.M. in order to sit for the bar, pursuant to Rule 520.6 of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, N.Y. COMP. CODES R. & REGS., tit. 22, § 520.6 (2000), available at <http://www.nybarexam.org/court.htm> (last visited Oct. 4, 2005).

26. National Conference of Bar Examiners, *Persons Taking and Passing by Source of Legal Education in 2003*, BAR EXAMINER, May 2004, at 9, available at <http://www.ncbex.org/stats/pdf/2003stats.pdf> (last visited Oct. 4, 2005). Moreover, the proportion of foreign-educated lawyers taking the bar in New York compared to the total New York bar applicant pool increased between 1998 and 2003. Foreign-educated applicants comprised seventeen percent of the total group of lawyers taking the New York bar in 1998, while in 2003 foreign-educated applicants comprised twenty-five percent of the total bar pool. *Id.* at 4.

27. See, e.g., University of Baltimore School of Law, *Masters of Law (LL.M.) in the Law of the United States*, at <http://law.ubalt.edu/academics/concentrations/llm.html> (last visited Dec. 26, 2003) (“The primary objectives of the [LL.M.] program are to give foreign lawyers a first-rate education in the laws of the U.S. and to broaden the experience of all law students through more interaction with international students and exposure to diverse populations.”).

consequences for purposes of the *U.S. News & World Report* rankings.<sup>28</sup> To be sure, the interests of U.S. law schools in promoting their LL.M. programs for foreign lawyers are matched by the desire of foreign lawyers for U.S. legal education, as is described more fully in Section III. The value of U.S. legal education to foreign lawyers is related to various factors, including the role of the U.S. in the world economy, the competitiveness of U.S. law firms in their home countries, the influence of U.S. law in the development of foreign law, and the use of English in transnational business.<sup>29</sup> The point here is that student demand is not solely responsible for the LL.M. market; U.S. law schools gain substantially from their LL.M. programs for foreign lawyers due to the combination of regulatory and market factors.

### III. DIVERGENT CAREER OPTIONS FOR LL.M. AND J.D. GRADUATES

Many of the foreign lawyers coming to U.S. law schools for one-year LL.M. programs are interested in securing at least a brief practice experience in the U.S. before returning to their home countries.<sup>30</sup> This practice experience is significant to foreign lawyers for a number of reasons. First, many have left jobs in their home countries and are acutely aware of the importance of practical training in the development of young lawyers. They arrive in the U.S. with the goal of obtaining a

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28. According to the director of graduate programs at one U.S. law school, U.S. law schools use their graduate programs for foreign lawyers for a variety of purposes, including to “internationalize our school of law...to raise our law school’s visibility abroad, and to earn revenue....” Silver, *supra* note 9.

29. I conducted twenty-eight interviews between March 2000 and May 2004 with lawyers originally educated outside of the United States. Each interview lasted approximately ninety minutes and gathered information on the individual’s background in their home country, motivation for studying law and studying in the United States, their academic and social experiences in school in the United States and their work after graduation. Consider the comments of one LL.M. graduate on the importance of U.S. law: “American corporate law, securities, and the ideas for corporate law, for global corporate law are a lot of times invented here in the States, for example big corporate law, the whole world looks [at] how American law evolved, with the whole Enron and Sarbanes-Oxley Act.” Interview no. 3 (2003) (date indicates date of graduation).

30. One LL.M. graduate reported that at the law firm for which he worked prior to coming to the United States for his LL.M. (and to which he intended to return), in order to be considered for partnership he was told to “get an LL.M., work for one year in a firm in the U.S., and then return and work for the firm for two years.” Interview no. 1 (2003), *supra* note 29. Another graduate reported that a U.S. LL.M. “[i]s not required to become a partner...but people in legal look at you a little harder if you’ve had an American experience, just like people will look even more differently to you if you’ve had an American law firm experience.” Interview no. 3, *supra* note 29; see also Silver, *supra* note 22, at 1058–59.

U.S. practice experience as a capstone to their legal education. Others are drawn to the search for U.S. employment because of the remunerative potential of U.S. law firms; U.S. law salaries are especially valuable because they enable students to fund their LL.M. tuition, while doing so with earnings from their home countries may take much longer due to currency and salary differences.<sup>31</sup> LL.M. students are interested in practical training in the U.S. for other reasons, as well: some want to learn about the institutional aspects of U.S. law firms which are quite distinct from the personal and family firms characteristic of certain national professions, while others see the opportunity to work in the U.S. as a means to greater prestige in their home country.<sup>32</sup>

Added to the interest of LL.M. students in obtaining practical experience in the U.S. is the focus of U.S. law schools on career opportunities for J.D. students. From the moment LL.M. students enter U.S. law school buildings, they witness the frenzy of activity surrounding the fall interviewing process for J.D. students.<sup>33</sup> This career-related attention is not lost on the LL.M. students, and it is common for LL.M. students to describe their initial hopefulness about career opportunities as relating to the first few weeks in their U.S. law schools.

Unfortunately, the hopefulness generally does not last. U.S. law schools are conflicted in their loyalties toward LL.M. students on the job front. While law schools organize and sponsor the interviewing sessions for J.D. students, most do not invest to the same extent in helping LL.M. students search for jobs.<sup>34</sup> In part, this also may relate to the *U.S. News* rankings, since placement records for J.D. students factor into a school's ranking but the LL.M. placement data do not. The

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31. Interview no. 21, *supra* note 29.

32. Interviewee no. 2 (2003), *supra* note 29, explained his reasons for enrolling in an LL.M. program:

[W]e cannot be called...lawyers in foreign law firms. So, no matter how hard I work...and no matter how high an 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 I can be called...an associate in a foreign law firm.

33. According to the Center for Career Strategy and Advancement at Northwestern University School of Law, more than 420 employers representing more than 730 offices interviewed more than 375 Northwestern students during the on-campus interviewing program in the fall of 2004. <http://www.law.northwestern.edu/career> (last visited Oct. 4, 2005).

34. The presence of an LL.M. program for foreign lawyers does not guarantee that the school will provide staff to advise LL.M. students on career opportunities. See Silver, *supra* note 9.

success of law schools in placing their J.D. graduates impacts their ability to attract new J.D. applicants; in contrast, LL.M. students rarely mention the job placement record of a particular school as a reason for choosing that school for their LL.M.<sup>35</sup> More generally, the allegiance of law schools is heavily weighted toward their J.D. graduates. It is for these graduates that the schools tangle with the ABA, it is these graduates who are eligible to sit for the bar exam throughout the United States, and it is these graduates who the law schools hope will become significant donors as their careers prosper.<sup>36</sup> But even if significant resources were devoted to career services for LL.M. students, it is unlikely that such an investment would yield substantially increased opportunities for work in the United States, as will be more fully discussed below.

A common justification for the exclusion of foreign lawyer LL.M. students from participating in on-campus interviews and related recruiting activities is that the interviewing law firms have not expressed an interest in hiring them.<sup>37</sup> Nor do most U.S. law schools necessarily encourage interviewing employers to meet their foreign LL.M. students. Even where LL.M. students are permitted to participate in on-campus interviews, the timing of this activity is suboptimal; the fall recruiting season occurs before LL.M. students have a record of achievement at their U.S. law schools. Since U.S. employers are

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35. *U.S. News* uses placement rates in assessing law schools for ranking purposes. Law Methodology, at [http://www.usnews.com/usnews/edu/grad/rankings/about/06law\\_meth\\_brief.php](http://www.usnews.com/usnews/edu/grad/rankings/about/06law_meth_brief.php) (last visited Oct. 4, 2005)

(Employment Rates for Graduates: The employment rates for 2003 graduating class. Graduates who are working or pursuing graduate degrees are considered employed. Those graduated not seeking jobs are excluded. Employment rates are measure[d] at graduation (.06) and nine months after graduation (.12). For the nine-month employment rate, 25 percent of those whose status is unknown are counted as employed.)

36. In fact, law schools may avoid endorsing LL.M. graduates to the same extent as J.D. graduates because of concern that they will take market share away from the J.D. graduates if they offer significant support for the LL.M. graduates. That is, if there are a finite number of jobs available for new law graduates, the law schools may feel compelled to push their J.D. graduates into the available jobs, rather than offering equal support to their LL.M. graduates.

37. Nearly half of a group of thirty-five law schools that shared detailed information about their LL.M. programs indicated that they prevent foreign LL.M. students from participating in on-campus interviews. Among the thirty-five surveyed schools, most law school career centers that report asking law firm recruiters if they are interested in meeting foreign lawyer LL.M. students indicated that recruiters are not interested. Of course, the recruiters have a limited amount of time at the law school and must satisfy their quotas for J.D. student recruits. See generally Silver, *supra* note 9.

accustomed to assessing law students on the basis of their academic achievements, the fact that LL.M. students do not have U.S. law school grades during the fall interviewing season decreases the chances that firms will seriously consider them at that time.

Foreign lawyers in LL.M. programs are directed to several resources for job search help. At least two schools host job fairs specifically designed for foreign lawyers in LL.M. programs, each of which attracts foreign and domestic organizations looking for lawyers to fill positions in the U.S. and abroad.<sup>38</sup> These job fairs are available for students attending law schools invited to participate. However, most of the jobs available through the job fairs are situated outside of the United States.<sup>39</sup> To the extent that LL.M. students are intent upon a practice experience in the United States, these job fairs generally do not satisfy their needs.

Despite the fact that foreign lawyers who also have studied in U.S. law schools seem to epitomize the global lawyer because of their dual training and comparative mindset, U.S. law school career advisers to LL.M. students describe limited professional opportunities in the United States. On the one hand, career advisers describe the opportunities for these students as limited by their home country connections and credentials;<sup>40</sup> that is, U.S. employers will be interested in hiring foreign LL.M. students because of who they were before arriving in the United States. These advisers urge LL.M. students to use their home-country connections to find potential opportunities in the United States.<sup>41</sup> Of

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38. These job fairs are hosted by the law schools of New York University and Columbia University respectively, and are by invitation only to students enrolled in selected law schools. They are held on the same weekend in January in New York each year. NYU describes its program as follows:

NYU School of Law hosts this one-day consortium program on campus with students from 30 law schools. This program provides foreign-trained lawyers pursuing graduate degrees in the U.S. with the opportunity to be considered for internships and permanent positions worldwide with over 125 U.S. and foreign employers in more than 36 countries. The program will be held January 2006. This program is 100 percent pre-screened by employers.

New York University School of Law, *Office of Career Services On-Campus Recruiting Services*, at <http://www.law.nyu.edu/depts/careerservices/recruiting/index.html> (last visited Oct. 4, 2005). See generally Silver, *supra* note 22, at 1060–61.

39. See Silver, *supra* note 22, at 1060–61.

40. Credentials might include substantive experience. For example, foreign lawyer LL.M. students might distinguish themselves from their U.S. classmates on the basis of their home country experience if it is transferable to U.S. practice, such as in securitization, where the transactions have some transnational standardization.

41. Students tend to have three kinds of home-country connections that might be valuable in the job hunt: connections between their home-country employers and law firms or clients in the

course, this approach takes the emphasis away from the U.S. law school career adviser. One can imagine that this advice leaves those students who had few connections when they entered the LL.M. program in a similarly marginal position. Other career advisers explain that foreign LL.M. students might be attractive to U.S. employers on the basis of their U.S. law school experiences. This approach emphasizes the achievement of LL.M. students during their year in the United States, when language and cultural differences make it difficult for them to compete with J.D. students. And certain LL.M. programs are designed in a way that makes comparison to U.S. classmates next to impossible by using different grading scales for LL.M. students or restricting LL.M. students to separate classes.<sup>42</sup> Both the home-country-connection strategy and the high-academic-achievement-in-the-LL.M.-program strategy have yielded success for some LL.M. graduates. Home-country connections may be more important in an economic downturn, when jobs for new J.D. graduates are scarce. In contrast, during the tech bubble of the late 1990s and early 2000s, LL.M. graduates were being snatched up by major law firms in order to fill their classes as a result of the spaces left by J.D. graduates taking non-law-firm jobs, and the law firms looked to typical U.S. law school academic achievement criteria in selecting which LL.M. students to hire.<sup>43</sup>

Generally, however, U.S. law offices are not absorbing substantial

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U.S., connections based on personal relationships with persons in influential positions, and connections to U.S. practitioners with whom they personally have worked when they were practicing in their home countries.

42. See generally Interpretation 304-7 of the Standards for Approval of Law Schools and Interpretations 2004–2005, at <http://www.abanet.org/legaled/standards/chapter3.html> (visited May 5, 2005) (“Interpretation 304-7: Subject to the provisions of this Interpretation...[a] law school may award credit toward a J.D. degree for work undertaken in a LL.M. or other post-J.D. program offered by it or another law school if:...(b) the law school at which the course was taken has a grading system for LL.M. students in J.D. courses that is comparable to the grading system for J.D. students in the course....”) This issue was discussed by LL.M. program directors at the AALS–ABA Conference on Graduate Programs for Foreign Lawyers held at Duke University March 6, 1999, in which I participated. Program Directors reported on different grading policies. One program, for example, changes the grading curve for LL.M. students if there are over twenty-five LL.M. students in a particular class.

43. According to a report by the *American Lawyer*, “[s]hort-handed U.S. firms have already searched Canada and Great Britain to counteract associate attrition. Now they’re also going Down Under to beef up midlevel lawyer ranks. Firms are ‘now actively saying, ‘Yes, show us Australians, we’ll look at them....’” Margery Gordon, *G’Day New York*, AM. LAW., June 2000, at 19 (quoting Melinda Wallman, director of international recruiting for Major, Hagen & Africa).



numbers of foreign lawyer LL.M. graduates.<sup>44</sup> There is not significant and widespread interest in hiring these graduates, either on the basis of their home-country expertise or their U.S. law school records, when the supply of J.D. graduates is as abundant as in the current economy. The absence of U.S. opportunities is frustrating for LL.M. graduates and perhaps surprising in light of the international position of U.S. law firms and businesses.<sup>45</sup>

The lack of interest by U.S. law firms can be attributed to several factors. For many foreign lawyer LL.M. students, their English-language ability is not sufficient to enable them to do the work of a first-year lawyer, whose efforts often are concentrated on language-intensive tasks such as document review and drafting. LL.M. students also may be interested in working in the United States for only a brief period of time, and it may be too costly for law firms to hire and train them only to lose them quickly.

More fundamentally, the LL.M. degree does not provide the same sort of filter and certification effect as does the J.D. degree. There are several reasons for this distinction. First, LL.M. students are not subjected to the same rigorous screening process during admission to U.S. law schools as are J.D. students. The only standard of comparability applied to foreign lawyer LL.M. applicants by nearly all law schools is the Test of English as a Foreign Language (TOEFL).<sup>46</sup> While nearly all law schools state on their web sites that they require a

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44. For general information on the U.S. positions occupied by LL.M. graduates, see Silver, *supra* note 22. Hiring partners in eight U.S. law firms discussed with me their firms' policies toward hiring foreign lawyers through email and telephone conversations during summer 2000. The offices, located in New York, Illinois and Texas, had hired foreign lawyers and listed them among their associates on the firms' web sites. Each firm was on the *American Lawyer* 100 list for 2000 and had at least one foreign office. The hiring partners were discouraging about hiring prospects for foreign lawyers. One of the eight indicated that the interest in hiring LL.M. graduates was decreasing because of the high cost of associate salaries and the firm's experience in failing to put foreign lawyers to good use in the past. None of the firms hired more than five foreign lawyers each year. *Id.*

45. For another indication of the rationality of assuming that U.S.-based elite law firms will employ foreign lawyers with U.S. LL.M. students, see David S. Clark, *Transnational Legal Practice: The Need for Global Law Schools*, 46 AM. J. COMP. L. 261, 274 (Supp. 1998) (referring to LL.M. graduates: "The global law school will not only provide graduates who will go to work for these American law firms.").

46. TOEFL is administered by the Educational Testing Services. It "measures English language proficiency in reading, listening and writing...." According to ETS, "more than 4,400 two- and four-year colleges and universities, professional schools, and sponsoring institutions accept TOEFL scores." See TOEFL—Test of English as a Foreign Language, <http://www.ets.org/toefl/academics/overview.html> (last visited Oct. 4, 2005).

minimum TOEFL score of 600 (paper-based exam) or 250 (computer-based exam), this standard is routinely ignored according to law school admissions officers and LL.M. directors.<sup>47</sup> Furthermore, there may be concern about the reliability of the TOEFL scores because of the absence of control over the test-taking experience.

Moreover, apart from admission criteria, LL.M. students generally do not follow a set curriculum as do first year J.D. students. Most programs permit LL.M. students to enroll mostly in upper-level courses. Thus, there is no standardization regarding their studies in the U.S. to support an expectation that the LL.M. education leads to the same set of skills and understanding as does the first year of a J.D. education, or even that LL.M. students have been exposed to foundational U.S. law school experiences, such as the Socratic method and a legal writing course. In hiring J.D. students, U.S. employers typically rely on academic achievement to help them select those students in whom they are interested, and they have some appreciation of the process that produces those academic records. LL.M. students do not uniformly participate in this experience.

U.S. law firm employers assess LL.M. students differently than they assess J.D.s, and the LL.M. does not give the same confidence to a potential employer regarding comparability and a common experience. As a result, U.S. law firms are reluctant to hire LL.M. students without another indication of quality. This other indication may take the form of an endorsement from a particularly prestigious foreign law firm with which the U.S. firm is acquainted or an expression of support from a client. Of course, an outstanding academic record during the LL.M. year also may be accepted as evidence of quality. But for many LL.M. students, academic achievement in the LL.M. courses may be either not comparable to or not competitive with the records of J.D. students, who have more time to adapt to their shared law school experience.

The organization and routinization of the J.D. career search process in which large U.S. law firms are participants makes it that much harder for LL.M. graduates to find a way into those same large firms. The firms are accustomed to hiring students through on-campus interviews during a particular time period. LL.M. students generally cannot compete during that same time period, since at that time they have no history with the law school to produce. Moreover, most large firms are reluctant to hire even J.D. students who have not previously participated

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47. See Silver, *supra* note 9.

in their summer programs. The summer experience gives the firms an opportunity to further evaluate students and also gives students an opportunity to become acquainted with and assess the firm. In theory, this leads to fewer new lawyers leaving (voluntarily or not) in the first several years of their permanent employment. For LL.M. students, there is no opportunity for the firm or the student to “try on” the other. In this sense, LL.M. students are in the unenviable position of third-year J.D. students looking for jobs.

#### IV. GOING GLOBAL BY STAYING LOCAL

U.S. law firms are engaged in their own brand of international competition that has relocated the market for foreign-educated lawyers. In the past, large U.S. firms might have hired foreign-educated lawyers to staff a “country desk” or to participate with a team advising an important foreign client from the lawyer’s home country. Today, firms have repositioned much of their foreign advising activity into their offshore offices. They have expanded into foreign markets to follow their clients as well as to position themselves as counsel for foreign enterprises. As businesses expanded internationally, law firms followed suit, satisfying their ambition to emulate clients<sup>48</sup> and safeguarding existing client relationships.<sup>49</sup>

This Section examines the limited opportunities for LL.M. graduates in the context of globalization of the U.S. market for legal services. It begins by considering the development of international identities by

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48. See generally Robert L. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 STAN. L. REV. 503 (1985) (explaining that large law firms reproduce and legitimate the interests of their clients); JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 54 (1982) (stating that the professional agendas of lawyers are inclined to mirror those of their clients).

49. Safeguarding client relationships by opening an office to serve an existing client’s offshore activities is probably the most common explanation law firms offer for opening offshore offices. See, e.g., Michael D. Goldhaber & Carlyn Kolker, *Supersonic Lawyers*, AM. LAW., May 2004, at 87. Goldhaber and Kolker state that:

Other firms have been motivated to head overseas when big manufacturers ask small, private suppliers to move their production abroad. “That is, right now, the driving growth of our practice,” says Joseph Kimmell, who heads the international group at Indianapolis-based Baker & Daniels. Baker & Daniels has opened only three offices outside Indiana since it was founded in 1863. One is in Washington, D.C.; the others, opened in 1998 and 2002, are in China. When an Indiana firm opens a branch in Qingdao, one knows the pace of globalization has moved far along.

*Id.*

U.S. law firms. As international organizations, U.S. law firms need international lawyers. The LL.M. graduates are ideal for this role since they have training in both foreign and U.S. law, experience living in at least two countries, and the awareness of cultural differences resulting from this experience that often evolves into what might be considered an international mindset. But these model global lawyers are often ignored by U.S.-based international firms. This Section concludes by analyzing the rosters of foreign offices of U.S. law firms to understand who these firms are relying upon to help them further their international activities.

Law firms generate and market their international capabilities in a variety of ways. Some leverage membership in international networks of national law firms.<sup>50</sup> Others offer geographic coverage through foreign offices.<sup>51</sup> Still others promote the international nature of their lawyers as evidenced by their legal education,<sup>52</sup> language ability<sup>53</sup> and the diversity of licensing jurisdictions.<sup>54</sup> Cleary, Gottlieb, Steen &

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50. Law firm networks can be global, such as Lex Mundi, a network of “[m]ore than 17,000 lawyers in 160 member firms, with more than 560 offices in 99 countries.” Lex Mundi, *About Lex Mundi: Selecting a Law Firm with Confidence*, at [http://www.lexmundi.com/lexmundi/About\\_Lex\\_Mundi.asp?SnID=962969410](http://www.lexmundi.com/lexmundi/About_Lex_Mundi.asp?SnID=962969410) (last visited Oct. 4, 2005). There also are regional networks, such as Lex Africa, a network of firms in more than twenty African countries. Lex Africa, *About Lex Africa*, at <http://www.lexafrica.com> (last visited Oct. 4, 2005).

51. Baker & McKenzie has accumulated the most far-reaching network of foreign offices of any U.S.-based law firm. The firm’s web site boasts sixty-nine offices in thirty-eight countries. Baker & McKenzie, *Key Facts & Figures*, at <http://www.bakernet.com/BakerNet/Firm+Profile/Key+Facts+Figures/default.htm> (last visited Oct. 4, 2005); see also Shearman & Sterling, *Firm Profile: Shearman and Sterling at a Glance*, at [http://www.shearman.com/firmprofile/profile\\_index.html](http://www.shearman.com/firmprofile/profile_index.html) (last visited Oct. 4, 2005) (“Shearman & Sterling LLP is one of the few global law firms, with more than 1000 lawyers located in all of the world’s financial capitals.”).

52. Shearman & Sterling’s web site permits visitors to search by law school; the list includes schools in France, England, Germany, Canada, and Ireland, among others. Shearman & Sterling, *Partner Search by Law School*, <http://www.shearman.com/lawyers/partners/school.html> (last visited Oct. 4, 2005).

53. See Dorsey & Whitney, *International Practices*, at [http://www.dorsey.com/services/services.aspx?FlashNavID=services\\_type](http://www.dorsey.com/services/services.aspx?FlashNavID=services_type) (last visited Oct. 4, 2005) (“Our work extends to more than 60 countries and our more than 650 lawyers collectively speak more than 30 languages.”); Jones Day, *The Firm*, [http://www.jonesday.com/files/tbl\\_s31Publications/FileUpload137/4434/Australia&NewZealand.pdf](http://www.jonesday.com/files/tbl_s31Publications/FileUpload137/4434/Australia&NewZealand.pdf) (last visited Oct. 4, 2005) (“Our lawyers are licensed to practice in most of the significant jurisdictions in Europe and Asia and are fluent in virtually all principal languages relevant to international business.”).

54. See Curtis, Mallet-Prevost, Colt & Mosle, *Offices: New York*, at [http://www.cm-p.com/offices\\_newyork.htm](http://www.cm-p.com/offices_newyork.htm) (last visited Oct. 4, 2005) (“New York attorneys, many of whom are licensed to practice not only in New York but also in other U.S. and foreign jurisdictions, travel to Curtis’s other U.S. and international offices as the client’s needs dictate.”).

Hamilton's web site description captures each of these elements:

Organized and operated as a single, integrated global partnership (rather than a U.S. firm with a network of overseas offices), Cleary Gottlieb employs more than 850 lawyers from more than 50 countries and diverse backgrounds who are admitted to practice in various jurisdictions around the world. Since the opening of our first European office in 1949, our legal staff has included European lawyers, most of whom have received a part of their academic legal training in the United States and many of whom have completed traineeships in one of the firm's U.S. offices. The firm was among the first international law firms to hire and promote non-U.S. lawyers as equal partners around the world.<sup>55</sup>

U.S.-based firms participate in the international market both from their domestic offices and through their offshore offices. The domestic offices offer cutting edge legal expertise and occasionally include specialization relating to a particular foreign market such as Latin America. In addition to international practice in U.S. offices, the offshore offices of most U.S.-based law firms have developed practices that internationalize the firms by capturing local law expertise.

The expansion over the last thirty years of foreign offices supported by U.S. law firms has been significant.<sup>56</sup> According to a recent article in *American Lawyer*, "[w]hile foreign trade grew fast in the past quarter-century, foreign investment grew even faster. And the foreign presence of U.S. law firms grew fastest of all."<sup>57</sup> By 1999, one group of sixty U.S.-based elite law firms operating in the international market supported 335 offices in seventy-five cities in forty-eight countries. By 2004, that same group of firms<sup>58</sup> supported 381 foreign offices in seventy-six cities located in forty-eight countries outside of the United States. The sixty firms are identified in Table 3. The overall number of foreign offices supported by these sixty law firms grew by

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55. Cleary, Gottlieb, Steen & Hamilton, *About the Firm*, at <http://www.cgsh.com/english/about/about.aspx> (last visited Oct. 4, 2005).

56. See Carole Silver, *Globalization and the U.S. Market in Legal Services—Shifting Identities*, 31 LAW & POL'Y INT'L BUS. 1093 (2000) for a general description of the international expansion of U.S. law firms through foreign offices.

57. Goldhaber & Kolker, *supra* note 49, at 87.

58. Firms that were independent in 1999 and merged in 2004, such as Sidley & Austin and Brown & Wood, now Sidley Austin Brown & Wood, were considered in both groups.

approximately thirteen percent during the last five years.<sup>59</sup> Much of this growth is accounted for because firms that had at least one foreign office in 1999 opened additional offices in the same locations in which other firms on the Table 3 list had already established offices.

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59. This information was calculated by comparing data about the sixty law firms identified in Table 3, analyzed in Silver, *supra* note 56, to data gathered in 2004 about these same firms.

TABLE 3: FIRMS INCLUDED IN THE STUDY

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| 1. Akin Gump Strauss Hauer & Feld            | 31. Latham & Watkins                         |
| 2. Arnold & Porter                           | 32. LeBoeuf, Lamb, Greene & MacRae           |
| 3. Baker & Botts                             | 33. Mayer Brown                              |
| 4. Baker & McKenzie                          | 34. McDermott, Will & Emery                  |
| 5. Bingham McCutchen                         | 35. McGuireWoods                             |
| 6. Bryan Cave                                | 36. Milbank Tweed                            |
| 7. Cadwalader                                | 37. Morgan Lewis & Bockius                   |
| 8. Cleary Gottlieb Steen & Hamilton          | 38. Morrison & Foerster                      |
| 9. Coudert Brothers <sup>60</sup>            | 39. O'Melveny & Myers                        |
| 10. Covington & Burling                      | 40. Orrick, Herrington & Sutcliffe           |
| 11. Curtis, Mallet-Prevost, Colt & Mosle     | 41. Paul, Hastings, Janofsky & Walker        |
| 12. Davis Polk & Wardwell                    | 42. Paul, Weiss, Rifkind, Wharton & Garrison |
| 13. Debevoise & Plimpton                     | 43. Perkins Coie                             |
| 14. Dechert Price & Rhoads                   | 44. Pillsbury Winthrop                       |
| 15. Dewey Ballantine                         | 45. Proskauer Rose                           |
| 16. Dorsey & Whitney                         | 46. Seyfarth Shaw                            |
| 17. Faegre Benson                            | 47. Shaw Pittman                             |
| 18. Foley & Lardner                          | 48. Shearman & Sterling                      |
| 19. Fried, Frank, Harris, Shriver & Jacobson | 49. Shook Hardy & Bacon                      |
| 20. Fulbright & Jaworski                     | 50. Sidley Austin Brown & Wood               |
| 21. Gibson, Dunn & Crutcher                  | 51. Simpson Thacher & Bartlett               |
| 22. Heller Ehrman White & McAuliffe          | 52. Skadden, Arps, Slate, Meagher & Flom     |
| 23. Hogan & Hartson                          | 53. Squire, Sanders & Dempsey                |
| 24. Hughes Hubbard & Reed                    | 54. Sullivan & Cromwell                      |
| 25. Hunton & Williams                        | 55. Vinson & Elkins                          |
| 26. Jones Day                                | 56. Weil Gotshal & Manges                    |
| 27. Kaye Scholer                             | 57. White & Case                             |
| 28. Kelley Drye & Warren                     | 58. Willkie Farr & Gallagher                 |
| 29. Kilpatrick & Stockton                    | 59. Wilmer Cutler Pickering Hale & Dorr      |
| 30. Kirkland & Ellis                         | 60. Winston & Strawn                         |

The size of foreign offices has increased more substantially during this period than has the number of these offices. For example, in 1999, the average size of a foreign office in London was approximately

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60. Coudert's demise in late summer 2005 is noted in *Jonathan D. Glater*, "Law Firm that Opened Borders Is Closing Up Shop," N.Y. TIMES (Aug. 30, 2005).

twenty lawyers, according to a sample of forty-seven U.S. law firms with London offices in both 1999 and 2004.<sup>61</sup> Those same firms in 2004 supported on average forty-four lawyers in their London offices, representing a more than one hundred percent increase. While the rate of growth for London was not necessarily representative of the growth of other foreign office locations,<sup>62</sup> growth in office size is characteristic of this time period generally. According to a Sullivan & Cromwell lawyer who was flying from New York to London to work on mergers and acquisitions in the early 1990s, “We had no M&A partners in London until the mid-1990s.... We were staffing international transactions the way virtually every other firm was staffing them.”<sup>63</sup> That is, they were staffing their foreign offices by sending lawyers from New York to do the work in the foreign office on a temporary basis. This has changed; today, U.S. law firms employ substantial numbers of lawyers to work in their offshore offices. One recent estimate is that “roughly 10,000 of the 110,000 lawyers at the top 250 U.S. [law] firms work overseas.”<sup>64</sup>

This growth in office size is a corollary of the increasing role of foreign offices. For many firms, foreign offices grew from very small outposts staffed by one or two U.S. lawyers to what amounts to small or medium-sized firms capable of performing local and transnational work.<sup>65</sup> Initially, U.S. law firms opened foreign offices to perform a sort of “meet and greet” function of generating name recognition for the law firm in the foreign location, which led to inbound work for the home office. Of course, it also was customary for lawyers in foreign offices to

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61. Two notable exceptions to firms included in the office size assessment are Baker & McKenzie and Sidley Austin Brown & Wood. Baker & McKenzie is unique in its approach to internationalization, while during this period Sidley’s London office resulted from a merger of Brown & Wood and Sidley & Austin. On the growth of foreign offices generally, see Carole Silver, *Lawyers on Foreign Ground*, in CAREERS IN INTERNATIONAL LAW, 1–21 (Mark W. Janis & Salli A. Swartz eds., 2001).

62. The rate of growth in London is likely to be greater than that of other cities because of London’s central role in international financial transactions. See generally J.V. Beaverstock, R.G. Smith & P.J. Taylor, *The Long Arm of the Law: London’s Law Firms in a Globalizing World-Economy*, 31 ENV’T & PLANNING A 1857 (1999) (discussing the role of London in the global expansion of law firms).

63. Goldhaber & Kolker, *supra* note 49, at 87.

64. *Id.* The article reported phenomenal growth: “[i]n 1979 the law firms tracked by the NLJ [National Law Journal] employed a mere 615 lawyers abroad—and more than half of them worked at Baker & McKenzie.” *Id.*

65. Foreign offices originate in various ways along a continuum from acquiring a stand-alone firm, on one hand, to sending a lawyer from the home office to the foreign location to set up shop, on the other hand.



advise U.S. clients active in the foreign region and local foreign clients with U.S. interests. In these early years, however, for nearly every U.S. law firm, the focus of the foreign office was on advising on the basis of U.S.-law expertise.<sup>66</sup> And in many locations, rules of practice prohibited U.S. law firms from practicing local law regardless of the expertise or licenses of lawyers on staff.<sup>67</sup> Moreover, until recently foreign offices did not support sufficient numbers of lawyers to accomplish sophisticated legal work. In contrast, today's foreign offices are more inclined to work on projects raising local law issues brought in by lawyers in the office rather than send such business back to the United States.

Today, it is unusual for foreign offices to be staffed exclusively with U.S.-educated and -licensed lawyers.<sup>68</sup> Based on my study of biographical information of the lawyers working in 381 foreign offices of the sixty U.S.-based law firms identified in Table 3, the shift from a focus on U.S. law to one emphasizing the law of the host country or region is clear. It is more common today for the lawyers staffing offshore offices to have been educated outside the United States than in a U.S. law school, and to be licensed outside the United States as well. In part this is driven by professional regulation.<sup>69</sup> In France, for

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66. See Debora Spar, *Lawyers Abroad: The Internationalization of Legal Practice*, 39 CAL. MGMT. REV. 8, 10 (1997):

They started with their obvious specialty, counseling foreign clients on the intricacies of U.S. law and corporate practice. Then they segued into increasingly specific areas of corporate strategy, advising clients on topics such as acquisitions, hostile takeovers, and debt restructuring—complicated corporate maneuvers that had all been developed first in the U.S. and British markets.

67. See generally Carole Silver, *Regulatory Mismatch in the International Market for Legal Services*, 23 NW. J. INT'L L. & BUS. 487 (2003); Roger J. Goebel, *Lawyers in the European Community: Progress Toward Community-Wide Rights of Practice*, 15 FORDHAM INT'L L.J. 556 (1991-92); Ed Finkel & Elizabeth Hawley, *Katten Insurance Group Forms Firm: It's Official, Even If the Two Sides Have Different Viewpoints*, 17 CHI. LAW. 8 (Aug. 1994) ("Sidley could add as many as 20 more lawyers in London during the next year or so.... A January 1993 rule change passed by the Law Society [of] England and Wales permitted solicitors for the first time to partner with foreign lawyers...."); Takeo Kosugi, *The Regulation of Practice by Foreign Lawyers*, 27 AM. J. COMP. L. 678 (1979).

68. Of the 381 offices studied, thirty-four, or fewer than nine percent, are staffed exclusively with lawyers who have earned a U.S. J.D. degree. All but one of these thirty-four offices have five or fewer lawyers. Six of the thirty-four offices were in Tokyo, four were in each of Riyadh and Shanghai, three were in each of London and Hong Kong, and two were in each of Singapore and Paris.

69. For a general review of rights of foreign lawyers to practice in France and other European jurisdictions, see Roger J. Goebel, *Lawyers in the European Community: Progress Toward Community-Wide Rights of Practice*, 15 FORDHAM INT'L L. J. 556, 563 (1991-92).

example, all lawyers must be licensed as *avocats*, even if their advice is based on the law of a foreign nation;<sup>70</sup> this effectively prevents foreign lawyers from offering their services in France unless they also qualify as *avocats*.<sup>71</sup>

But the shift toward the local also is driven by the type of work performed by the firms in their various locations and is evident in descriptions of the offices. Location often is a common denominator: offices of different firms in one city tend to offer advice by similarly-qualified experts in terms of education and licensing. For example, the Warsaw offices of Dewey Ballantine, Hogan & Hartson, and Weil Gotshal each aim at the local Polish business market and the lawyers in these offices are by-and-large Polish educated and licensed. Dewey Ballantine's description of the activities of the Warsaw office is illustrative: "The Polish practice is widely recognized by clients and the business community as the premier business law firm in Poland .... The Warsaw office offers full local law capability."<sup>72</sup> German offices are similarly staffed with mostly local lawyers.<sup>73</sup> Other locations offer an

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70. Examples of offices in France include LeBoeuf, which reports twenty-one non-U.S.-educated lawyers and one U.S. LL.M. graduate, Dechert, which reports twelve non-U.S.-educated lawyers and one U.S. LL.M., Mayer, Brown, Rowe & Maw, which reports twenty non-U.S.-educated lawyers and one U.S. LL.M., among others.

71. See *id.* at 563.

72. The description also notes that international and U.S. law expertise is available through liaison with lawyers in the firm's other offices: "Through resident foreign lawyers and support from specialists in the firm's other offices, the Warsaw office also offers advice on U.S., English, German, Italian and European Union law." Dewey Ballantine, Warsaw Office, at [http://www.deweyballantine.com/office.cfm?u=Warsaw&office\\_id=38](http://www.deweyballantine.com/office.cfm?u=Warsaw&office_id=38) (last visited Oct. 15, 2005); see also Weil Gotshal, Warsaw Office, at <http://www.weil.com/wgm/pages/Controllor.jsp?z=o&sz=Warsaw&db=wgm/WGMDoc.nsf&d=4C4541D06769D19285256D2100758336&f=fov> (last visited Oct. 15, 2005); Hogan & Hartson, Warsaw Office, at <http://www.hhlaw.com/site/locations.aspx?Location=23#23> (last visited Oct. 15, 2005). Nearly all of the lawyers in each of these offices are Polish-educated and -licensed.

73. See, e.g., Dewey Ballantine, Frankfurt Office, at [http://www.deweyballantine.com/office.cfm?office\\_id=48](http://www.deweyballantine.com/office.cfm?office_id=48) (last visited 10/15/05) ("Dewey Ballantine's German practice in Frankfurt provides clients with legal advice on German-related mergers and acquisitions, capital markets, acquisition finance, private equity and corporate finance transactions.") Examples of offices staffed primarily with German-educated and licensed lawyers include Gibson, Dunn & Crutcher (Munich), Hogan & Hartson (Berlin), Jones Day (Frankfurt), Latham & Watkins (Frankfurt and Hamburg), Mayer, Brown, Rowe & Maw (Cologne and Frankfurt), McDermott, Will & Emery (Dusseldorf), Milbank Tweed (Cologne and Frankfurt), Shearman & Sterling (Dusseldorf and Frankfurt), Willkie Farr & Gallagher (Frankfurt), and Wilmer Cutler Pickering Hale & Dorr (Berlin). In eight of these offices, no U.S.-licensed lawyers were present; two offices supported two U.S.-licensed lawyers each; and four offices each supported one U.S.-licensed lawyer. The number of German-licensed lawyers in these offices ranged from two to fifty-two. Note that certain of the lawyers in these offices did not report bar admission information. Of course,

approach that blends local law ability with U.S. expertise in business advising; Hogan & Hartson's Moscow office provides an example:

Our team of dedicated Russian and American lawyers provides our clients with significant advantages: outstanding knowledge and experience of the region, its unique business dynamics, and Russian law; Western business know-how and experience in structuring highly complex cross-border and domestic transactions; and an aggressive, proactive, and highly responsive attitude toward obtaining the best possible outcome for clients, whether they are new entrants into the Russian market or seasoned players.<sup>74</sup>

In order to provide this expertise in Russian law and U.S. "know-how" the office needs a combination of Russian and U.S. lawyers, and at the time this description was published, Hogan & Hartson's Moscow office supported fifteen lawyers, one-third of whom had been admitted to a bar in the U.S. and the remainder of whom were educated and licensed in Russia.<sup>75</sup>

Advising on foreign law represents a new strategy for U.S. law firms. Earlier in the process of internationalizing, U.S. law firms were careful to restrict their practices to U.S. law, whether offered from foreign or domestic offices.<sup>76</sup> But as rules of practice liberalized, firms most likely decided to add local law expertise to their offshore office offerings in order to generate revenue from these offices.<sup>77</sup> This has important

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exceptions also exist; Davis Polk's Frankfurt office was staffed by seven lawyers, five of whom earned their primary law degrees in the U.S., and the other two of whom earned U.S. LL.M. degrees.

74. Hogan & Hartson, Moscow Office, at <http://www.hhlaw.com/site/locations.aspx?Location=16#16> (last visited Oct. 15, 2005).

75. On the fifteen lawyers in the office were educated and licensed in Russia only; two earned LL.M.s in the U.S., and one of these also was admitted to the bar in New York. Four of the fifteen earned J.D. degrees in the U.S. and none of these four had been educated in Russia. Hogan & Hartson, Moscow Office, People, at <http://www.hhlaw.com/site/locations.aspx?Location=16&View=People#16> (last visited Oct. 15, 2005).

76. See generally Richard Abel, *supra* note 1, at 750–61.

77. On liberalization of rights of practice, see Roger J. Goebel, *The Liberalization of Interstate Legal Practice in the European Union: Lessons for the United States?* 34 INT'L LAW. 307 (Spring 2000) (contrasting the approach of the EU to that of the U.S.). On recent reforms to Japanese regulation of foreign lawyers, see Robert E. Lutz et al., *Transnational Legal Practice: A Survey of Developments*, 39 INT'L LAW. (forthcoming 2005).

One exception to the going global by going local approach is Davis Polk & Wardwell, according to the firm's web description of its activities:

All of our overseas lawyers practice U.S. law. This means that all of our lawyers do the

implications for the roles of foreign lawyers in these offices, because the easiest way to acquire local law expertise is to acquire local lawyers.<sup>78</sup> Moreover, as firms move from focusing primarily on U.S. clients to including local clients in their vision, local lawyers are valuable because of their relationships with local clients. By going local—shifting foreign offices from a U.S.-law focus to a local-law focus—U.S. firms have globalized their practices.<sup>79</sup>

Internationalizing by office leads to different strategies than if entire firms assume a consistently international character regardless of location. With the focus on particular locations, firms develop expertise specific to the jurisdiction and the areas of practice offered there. Staffing of an offshore office consequently involves efforts to develop a reliable and loyal outpost for the firm that is capable of generating business to support the office's lawyers as well as expand the client list for the firm's domestic offices. In addition to loyalty, firms try to ensure that the quality of legal services delivered by lawyers in offshore offices

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same type of work, get the same types of experiences and have the same opportunities. This also means that when we have 40 lawyers in an office, all of them are U.S.-trained lawyers. And while several of those 40 lawyers may well be permanently based in those offices, most will be rotating to or from New York at any given time, providing a wealth of opportunities to lawyers who want to have experience working overseas.

Davis Polk & Wardwell, *Associate Life: Corporate and Overseas Rotations*, at <http://www.davispolk.com/careers/corporateoverseasrotations.htm> (last visited Oct. 4, 2005).

78. Examples of U.S. law firms acquiring local law firms include the merger of Mayer, Brown & Platt and London's Rowe & Maw. See Mayer, Brown, Rowe & Maw, *Overview*, at <http://www.mayerbrownrowe.com/overview/index.asp> (last visited Oct. 5, 2005). The description of Coudert Brothers' Rome office is likewise instructive: "The Cannata Pierallini law firm was formed in 1986 and became associated with Coudert Schürmann in 2001." Coudert Brothers, *Rome Office*, at <http://www.coudert.com/offices/?action=officedetails&id=22> (last visited Oct. 5, 2005).

79. One exception to the global-through-local approach is notable; practices focused on Latin America often are managed from New York. See, e.g., Chadbourne & Park, *Latin America Practice*, at [http://www.chadbourne.com/practice/sub\\_LatinAmerica.html?s\\_LatinAmerica.html-mainFrame](http://www.chadbourne.com/practice/sub_LatinAmerica.html?s_LatinAmerica.html-mainFrame) (last visited Oct. 5, 2005); Dewey Ballantine, *Latin America*, [http://www.deweyballantine.com/practice.cfm?practice\\_id=62&view=attorneys](http://www.deweyballantine.com/practice.cfm?practice_id=62&view=attorneys) (last visited Oct. 5, 2005); Hughes, Hubbard, & Reed, *Latin America*, at <http://www.hugheshubbard.com/practice/detail.asp?PracticeAreaID=36> (last visited Oct. 5, 2005). For Latin American practices, firms make regular use of LL.M. graduates for staffing since the graduates are already present in the U.S. (saving on relocation expenses) and have experienced U.S. culture for at least nine months during their LL.M. programs. And lawyers perceive that it is useful in serving foreign clients to have foreign lawyers on board to communicate with the client and their home country lawyers as well as to serve as translator on cultural matters as well as language. With this exception, however, U.S. law firms have developed their international practices through strategies aimed at particular locations where the firms have or want to develop a presence.

is of the same caliber as the services offered in the home or home country offices. Indeed, the desire for high quality in foreign offices has been the justification for establishment of an offshore office instead of relying on referrals to foreign law firms.<sup>80</sup> U.S. firms can satisfy both the loyalty goal and the quality of services concern by sending home office lawyers to the offshore location, and for the first few years of many such offices this is a common strategy.

But home-office lawyers carry unwanted baggage. They want to return to the home office after a brief period offshore, which disrupts client relationships and undermines the firm's image as a long-term player in the offshore market. Home-office lawyers also want the same quality of work they enjoyed in the home office, the same compensation—and occasionally a hardship allowance to boot—and the same access to power in the firm itself. In many offshore offices, these issues can be problematic. For example, offshore offices tend to perform a combination of local and transnational work in multiple areas of expertise. The offshore lawyer is more generalist than is customary for those practicing with elite firms in the United States. Home office lawyers may be uncomfortable in such a role and dissatisfied that they may have to forego the specialized problems that formed the basis of their home office practice.<sup>81</sup>

Compensation can be thorny, as well. Firms often compensate U.S. lawyers differently than lawyers who were educated and are licensed in the jurisdiction of the offshore office.<sup>82</sup> Policies might differentiate between lawyers based upon the office in which they were hired, the location of their license to practice, or otherwise.<sup>83</sup> For home-office

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80. Interview no. 20 (2003), *supra* note 29.

81. This information is based on conversations with lawyers working in Asia-Pacific foreign offices of more than ten U.S. firms during the period from 2000 to 2002 [hereinafter Asia-Pacific Interviews]. Experiences and the importance of sophisticated expertise may be different in different locations. For example, lawyers in London most likely are engaged in work at the same level of sophistication and innovation as lawyers in Chicago, Los Angeles, and New York.

82. Asia-Pacific Interviews, *supra* note 81. For analogous differences in compensation by London-based firms in their foreign offices, see Beaverstock, *supra* note 2, at 169 (“In most cases, the term ‘programme’ was used to distinguish the cost of living adjusted remuneration package from locally hired staff rates.”).

83. For example, substantially different salaries are paid to new associates at Allen & Overy depending upon whether they are U.S. or UK lawyers. In 2000, “a first-year U.S. associate at A&O made \$160,000 with bonus, while a U.K. equivalent earned about \$84,000 with bonus.” Michael D. Goldhaber, *Global Strategy*, AM. LAW., Oct. 2001, at 71. More recently, a report on salary wars in London revealed that, “Linklaters recently raised eyebrows in the British legal community by boosting salaries for newly qualified lawyers, the equivalent of American first-

lawyers working in a foreign office, compensation almost always includes a cost-of-living adjustment and often includes subsidization of living and/or travel expenses. Such differences cause hard feelings among local lawyers in offshore offices, who may feel taken for granted by the favoritism expressed toward home-office lawyers. Moreover, compensating home-office lawyers, including salary, cost-of-living adjustment, travel and moving expenses, housing support and even a hardship allowance for an overseas assignment often makes the home-office lawyer simply too expensive to justify her spending time advising on anything but high-fees work that may not be a staple of the foreign office practice.<sup>84</sup>

Finally, the politics of working in an offshore office require lawyers to balance their desire to develop and maintain relationships with law firm management against the inevitability of the out-of-sight-out-of-mind mentality of such management. Home-office lawyers who intend to return to the home office strike a different balance than those offshore lawyers who never have experienced proximity to the power core of the firm. The latter have different, and perhaps reduced, incentives to develop close relationships with firm management.

These problems characteristic of relying on home-office lawyers to staff offshore offices lend support for law firms' increasing reliance on lawyers local to the jurisdiction of the offshore office to populate these offices. In theory, graduates of U.S. LL.M. programs are the perfect choice for staffing such offshore offices: LL.M. graduates have some understanding of U.S. law, facility with legal English, familiarity with U.S. culture, and if they had the opportunity for training in a U.S. office, would quickly gain an appreciation of the approach of lawyers in domestic offices to issues such as responsiveness to clients and colleagues, billing expectations, and other fundamentals of large law firm life. And many LL.M. graduates have relationships with local business executives and government officials that may prove supportive to the offshore office, especially as the relationships and parties mature. LL.M. graduates are eager to work in offshore offices of U.S. firms, too; for many, the ideal position would provide several months of training in a U.S. office followed by transfer to an office in their home country.

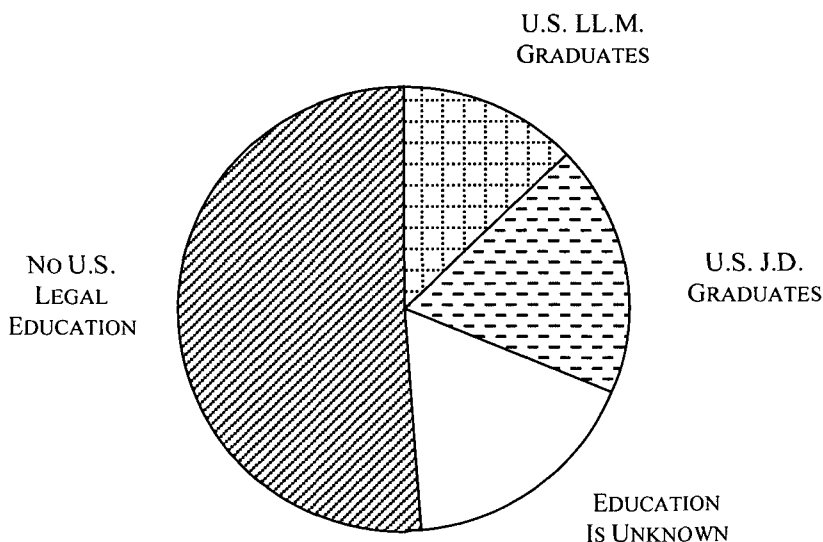
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year associates, to £51,000, or about \$88,000." Anthony Lin, *Raises in London May Signal Pay War*, 231 N.Y.L.J. 1, May 19, 2004. Linklaters is one of the "Magic Circle" firms in London.

84. On salaries for U.S. lawyers working in foreign offices, see Susan Hansen, *Lost in the Ruble*, AM. LAW., Nov. 1998, at 80.

In fact, however, LL.M. graduates are not favored by U.S. firms for these offshore positions. Based on my study of the education and licensing characteristics of lawyers working in offshore offices of the sixty Table 3 law firms, it is clear that graduates of U.S. LL.M. programs occupy a marginal role in such offices. The study reveals that nearly seventy percent of the lawyers working in the 381 foreign offices have not completed any U.S. legal education at all, whether a J.D. or an LL.M. Approximately nineteen percent of the foreign office lawyers earned a J.D. degree in the United States, and approximately thirteen percent of the total group earned an LL.M. in the United States.<sup>85</sup> Figure 1 depicts these elements of the foreign-office population relating to the issue of whether the lawyers identified themselves as having completed any U.S. legal education.

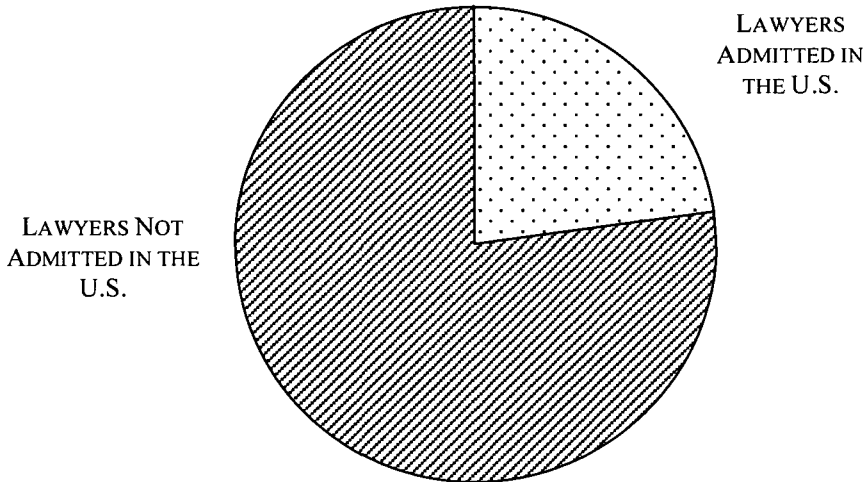
FIGURE 1: U.S. LEGAL EDUCATION CHARACTERISTICS OF LAWYERS IN FOREIGN OFFICES



85. This thirteen-percent figure does not include forty-one lawyers who also earned a U.S. J.D.

Overall, as Figure 2 shows, slightly fewer than one-quarter of the total number of lawyers working in these foreign offices have been admitted to the bar in a U.S. jurisdiction.<sup>86</sup>

FIGURE 2: BAR ADMISSION OF FOREIGN OFFICE LAWYERS



By far the largest group of lawyers working in the Table 3 offshore offices practice based solely upon their non-U.S. education and admission status.<sup>87</sup>

In part, these numbers reflect the development of the London legal market. As already discussed, the size of London offices of U.S. law firms expanded substantially in the last several years. Much of this growth appears to have been accomplished by hiring English solicitors (and to a lesser extent, barristers), which became possible only after a change in regulation allowed solicitors to enter into partnership with

86. The study showed that slightly more than half of the lawyers who earned a U.S. LL.M. degree have been admitted to a U.S. jurisdiction.

87. This does not necessarily translate into their being admitted in the country where they are employed. For example, three of the thirty-five lawyers working in London for Dewey Ballantine were admitted to practice in civil-law countries and not in the U.S. or England; White & Case's Singapore office supported twelve lawyers in all, nine of whom were admitted in a U.S. jurisdiction and six in a foreign jurisdiction, including the Netherlands, Japan, Australia, Ireland and the Philippines.



foreign lawyers. Of the 5,542 lawyers in the foreign offices studied, 1,613, or nearly thirty percent, work in London offices. If we ignore the lawyers working in these London offices, the picture changes: Of the 3,929 lawyers in the non-London offices, 2,465, or approximately sixty-three percent, were entirely foreign-educated (that is, they earned neither a U.S. J.D. nor a U.S. LL.M.); approximately eighteen percent earned a U.S. LL.M., and approximately nineteen percent earned a U.S. J.D. Compared to the entire group of lawyers working in the foreign offices of the sixty firms, the non-London office group has a higher percentage of LL.M. students; nevertheless, LL.M. students comprise a substantially smaller portion of the legal staff of all the foreign offices studied than do lawyers educated exclusively outside of the U.S.

This relatively small showing of LL.M. students in large law firm offshore offices is surprising. These law firms regularly attend job fairs for foreign lawyers in the United States, indicating their interest in hiring LL.M. graduates.<sup>88</sup> Many of the firms routinely hire relatively small numbers of LL.M. graduates for brief training positions in their U.S. offices.<sup>89</sup> But training in the U.S.—what the LL.M. graduates want most—is expensive. Cost is one factor relating to the limited interest in hiring foreign lawyer LL.M. graduates in the United States. In addition to compensation, however, LL.M. graduates may expect the same training, compensation, cutting edge work, and opportunities for promotion as J.D. graduates, especially if they spend a year or so being trained in a domestic office of a large U.S. law firm before moving to an

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88. At the 2004 International Student Interview Program hosted by NYU Law School in January 2004, eleven U.S. law firms interviewed for positions in New York (Cleary, Gottlieb, Steen & Hamilton; Davis Polk & Wardwell; Gibson, Dunn & Crutcher; Grant, Hermann, Schwartz & Klinger; Shearman & Sterling; Sidley, Austin, Brown & Wood; Simpson Thacher & Bartlett; Skadden, Arps, Slate, Meagher & Flom; Sullivan & Cromwell; White & Case; and Wuersch & Gering); one U.S.-based and one foreign firm interviewed for positions in Washington, D.C. (Coudert and Felsberg, Pedretti, Mannrich e Aldar Advogados e Consultores Legals); one accounting firm interviewed for positions in the United States (PriceWaterhouse Coopers); one corporation interviewed for positions in New York (GE Asia Pacific); and three foreign-based law firms interviewed for positions in New York (Alfaro-Abogados, Allen & Overy, Chiomenti Studio Legale). Three additional U.S.-based firms that did not interview at the program asked for resumes of students. In total, eighty-two employers interviewed at the program, at which students from thirty schools participated.

89. The following firms, for example, hire LL.M. graduates each year pursuant to formal programs, for periods of up to one year: Kirkland & Ellis, Sullivan & Cromwell, Cleary Gottlieb, and Curtis, Mallet-Prevost, Colt & Mosle. Other firms—including Sidley, Austin, Brown & Wood; Mayer, Brown, Rowe & Maw; Hughes Hubbard; and Davis, Polk & Wardwell—regularly hire LL.M. graduates but do not publicize their hiring in terms of formal training programs.

offshore office. And these aspects of large law firm life may be unavailable to offshore office lawyers. Salaries generally are lower,<sup>90</sup> opportunities to participate in formal training programs are limited due to distance and the expense (in terms of time, disruption, and direct cost) of travel for such programs, and the type of work expected of offshore lawyers may be more routine than cutting edge.<sup>91</sup> The expectations of LL.M. students, especially those who work in the United States after graduating, may be out of step with the opportunities available in offshore offices.

U.S. law firms are using the same strategies of globalization as other services firms, adapting them to the peculiarities of law. The benefit of a foreign labor force is its ability to perform the work more efficiently than U.S. workers. Efficiency includes costs associated with salaries, overhead, and—for law—education, training and licensing. Hiring LL.M. graduates increases the costs invested by the lawyers in terms of education and time; a U.S. LL.M. can easily cost between \$20,000 and \$50,000 out of pocket for tuition, books, room and board, not to mention the foregone salary of the student for the LL.M. year.<sup>92</sup> This increased investment in education compared to local lawyers may raise salary costs for LL.M. students. Moreover, the familiarity of LL.M. students with U.S. law may be considered unnecessary and perhaps counterproductive for U.S.-based global firms because many offices also house a small number of U.S. educated and licensed lawyers. Of the 381 offices studied, sixty-three percent supported at least one U.S. educated and licensed lawyer. As a result, firms may be ambivalent about a foreign lawyer's exposure to U.S. law and culture.

## V. GLOBAL CONSEQUENCES

As law firms have developed interests in combining local and transnational law practice in offshore offices, their needs for local

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90. Location matters here; London, for example, might offer salaries more commensurate to those in the U.S. than Milan. On salaries generally, see *supra* notes 83–84.

91. Despite the growth in size of offshore offices, many of these offices remain small, which indicates that the lawyers in the office will be called upon as generalists. Of the 381 offices studied, 119, or thirty-one percent, supported fewer than five lawyers at the time the data was gathered.

92. See, e.g., Indiana University School of Law, *Introduction to the Graduate Program*, at <http://www.law.indiana.edu/prospective/graduate.shtml> (last visited Oct. 5, 2005) (estimating expenses, including tuition and housing, of an LL.M. at Indiana University School of Law at more than \$45,000).

lawyers have increased. In effect, U.S. law firms are building their international practices as have other services firms, by hiring workers local to the site of the foreign operations.<sup>93</sup> The local character of law argues in favor of locally trained and licensed lawyers. Unlike non-law professional services firms, where U.S. employees can do the same job as foreign employees, lawyers who are not locally licensed may be unable to develop meaningful and economically viable practices in offshore offices because of their unfamiliarity with and in certain cases inability to practice local law.<sup>94</sup>

The consequences of this shift to a locally focused globalization strategy for offshore offices are significant. As law firms increasingly segregate their non-U.S. and U.S. lawyers in terms of the work they do and their work locations, the opportunities for exchange of information and training are reduced. Using offshore offices as outposts of foreign

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93. One consequence of internationalization is the ability to capitalize on efficiencies available by outsourcing aspects of business activities. "Outsourcing" involves contracting with an external source for goods or services that otherwise would be and previously may have been produced in-house. With regard to legal services, corporate general counsels outsource legal work to their external law firms. Outsourcing may also involve offshoring. "Offshoring" involves "the relocation of labor-intensive service industry functions to locations remote to the business center, such as India, Ireland or the Philippines." McKinsey Global Institute, *Offshoring: Is It a Win-Win Game?* (Aug. 2003), available at [http://www.mckinsey.com/mgi/publications/win\\_win\\_game.asp](http://www.mckinsey.com/mgi/publications/win_win_game.asp) (last visited Oct. 5, 2005). Offshoring "decouples the linkages between economic value creation and geographic location." David L. Levy, *Offshoring in the New Global Political Economy*, 42 J. MGMT. STUD. 685, 685 (2005). The growth in global communications and transportation networks has multiplied the gains available from outsourcing. While outsourcing has long been a symptom of economic globalization, a relatively new movement involves the exportation offshore of professional services through outsourcing arrangements. See Ashok Deo Bardhan & Cynthia A. Kroll, *The New Wave of Outsourcing*, Research Report, Fisher Center for Real Estate and Urban Economics, available at [http://www.haas.berkeley.edu/news/Research\\_Report\\_Fall\\_2003.pdf](http://www.haas.berkeley.edu/news/Research_Report_Fall_2003.pdf) (last visited Oct. 5, 2005); Anne Fisher, *Joining the March of Jobs Overseas*, FORTUNE, May 17, 2004, at 54. Legal services are included in this movement. Recent reports of U.S. businesses outsourcing aspects of their legal services to Indian lawyers have gained the attention of the legal press and ethics regulators. See, e.g., Rich Smith, *A Passage to India*, MOTLEY FOOL, Jan. 26, 2004, <http://www.fool.com/news/commentary/2004/commentary040126rs.htm> (last visited Oct. 5, 2005). See generally Jennifer Fried, *Looking Abroad for Low-Cost Lawyers*, LEGAL TIMES, Jan. 19, 2004, at 21, available at <http://www.gecfmediawatch.com/americas/Lookingabroad.shtml> (last visited Oct. 5, 2005) ("[I]n-house legal departments are cutting costs by relying less on U.S. outside counsel and more on lawyers in India, New Zealand, South Korea, and other countries where professional salaries are lower."); Legal Service India, <http://www.legalservicesindia.com> (last visited Oct. 5, 2005) (describing in general legal outsourcing to India and identifying the particular legal services outsourced).

94. Much depends on local regulation, too, since in certain countries, such as Singapore, foreign law firms may not practice local law even through locally licensed lawyers. See Statutes of the Republic of Singapore, Legal Profession Act, Ch. 161, §§ 130I–130J (2002), available at [http://www.agc.gov.sg/lps/02-LPS-LP\(1S\)Rules.htm](http://www.agc.gov.sg/lps/02-LPS-LP(1S)Rules.htm) (last visited Oct. 5, 2005).

lawyers and local practice risks isolating the domestic lawyers and practices from outsiders. To be sure, more than sixty percent of the offices studied are staffed by a combination of U.S. and foreign lawyers—with the balance tilting significantly towards the foreign lawyers. Offshore offices are moving away from a U.S.-only focus toward a focus exclusively on the jurisdiction where the office located. In a majority of the offshore offices studied, firms are at an intermediate point in this shift to the local and offices continue to house a small number of U.S.-educated and licensed lawyers. It is impossible to predict if or when this will change, although regional differences in staffing suggest that the presence of U.S. lawyers may be a temporary step in the globalization process. In jurisdictions where local legal practice is highly sophisticated and English-language ability is common, such as Germany, offices often do not house any U.S.-educated and licensed lawyers who also have not been educated and licensed in the office's jurisdiction. In contrast, where local legal practice is developing such as in China, offices typically support U.S.-educated and licensed lawyers who have not been educated in the office jurisdiction. As the movement toward localization continues, non-U.S. lawyers may increasingly be segregated by location, without the mixture that is found in many offices today, and consequently may be denied opportunities to learn about U.S. law and practice. This sort of segregation by office will limit opportunities for cross-pollination of ideas about law and practice among lawyers in and from different jurisdictions.<sup>95</sup>

A related consequence of the internationalization-by-office approach may be exclusion of non-U.S. lawyers from important training opportunities. Training in U.S. law itself may be less crucial to the practice in an offshore office staffed by local lawyers, but excluding foreign lawyers from training in U.S. law also excludes them from the informal training in firm leadership and client management integral to major law firms.<sup>96</sup> This informal training occurs through working

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95. On the importance of physical proximity to the development of relationships, see Jonathan V. Beaverstock, *supra* note 2, at 161 (“In PSFs [professional service firms], individuals must embody trust and reciprocity to succeed both intra- and inter-firm, which can only be accumulated through successful physical interaction with peer groups.” (citations omitted)).

96. See generally *Lou Dobbs Tonight: Exporting America* (CNN television broadcast, Jan. 27, 2004), available at <http://transcripts.cnn.com/TRANSCRIPTS/040127/ldt.01.html> (last visited Oct. 5, 2005) (featuring David Wilkins, a professor of Law at Harvard Law School, who commented generally on changing patterns of staffing, including offshoring: “[t]he more work that is taken away from them, either by being given to paralegals or sending it offshore to contract professionals in places like India, the less opportunity there will be for young lawyers to be

relationships with senior lawyers as well as through formal associate training programs; for foreign lawyers in offshore offices working on foreign law matters, such working relationships may be rare indeed.<sup>97</sup> As a result, if the movement toward exclusively local lawyers in offshore offices continues, offshore office lawyers may well occupy a second-class position compared to home office or home jurisdiction lawyers in terms of their opportunities for advancement, since they will lack relationships through which business is shared with a younger generation.

Third, the globalization strategy described here places offshore offices of U.S. law firms in direct competition with local firms in the same jurisdiction. The competition is for clients, of course, but also for lawyers; the terms of this competition include salaries, expectations about billable hours, and opportunities for training and advancement. U.S. firms may find it difficult to convince local lawyers of their significance to the firms, especially compared to the cherished roles such lawyers may play in smaller and more accessible local law firms. Nevertheless, the prestige and resources of U.S. law firms may be difficult for local firms to match. Globalization will increase the meeting points between U.S. and local law firms.<sup>98</sup>

It is impossible to predict the future, but one can imagine developments that would result in LL.M. graduates being less attractive for offshore office positions. Their U.S. education indicates an interruption of client relationships, which are essential for U.S. firms wishing to compete with local law firms. At the same time, LL.M. students increasingly may be sought by local firms that can point to their American education and English language abilities as evidence of

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trained.”).

97. According to David Wilkins and Mitu Gulati:

[P]artners will have a preference for associates who need little or no training.... [A]ssociates will gradually be divided into two broad categories: those who have received training (or are considered worthy of receiving training) and those who have not (and who are not considered good training prospects). Although the boundaries between these two groups are fluid, they nevertheless will tend to be self-perpetuating....

David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493, 538–39 (1996).

98. See generally Bryant G. Garth & Carole Silver, *The MDP Challenge in the Context of Globalization*, 52 CASE W. RES. L. REV. 903, 928 (2002) (“A key to the talent wars is that internationalization and the pressures of global competition have stratified the field of professional services in business and law. There is an elite sector that commands the highest fees and recruits the top talent in law and in business.”).

the firms' abilities to work with—and across the negotiating table from—U.S. businesses and lawyers. The U.S. LL.M. experience may render LL.M. graduates less “local” and consequently less attractive to U.S. firms for offshore offices. But this very factor points to greater traction for LL.M. students with the local firms that provide competition for U.S. offshore offices. Thus, it is reasonable to suspect that LL.M. students may be present in greater proportions in local elite firms than in the foreign offices of U.S. firms, as well as that increasing numbers of LL.M. graduates will result in their distribution among a more diverse group of local firms than had been the case prior to the mid-1990s, when LL.M. programs experienced dramatic growth.<sup>99</sup>

Finally, as U.S. law firms evolve into global organizations they may find LL.M. graduates increasingly appealing. If firms move toward staffing exclusively with local lawyers, the LL.M.s may assume greater importance as a bridge to U.S. law and offices. Firms also may gain the flexibility to more effectively utilize the resources offered by LL.M. graduates. While LL.M. graduates may not be perfect substitutes for J.D. graduates to serve as first-year associates, they offer significant benefits to firms that are interested in deepening their knowledge of the policies and practices of particular business and legal communities as well as developing locally oriented business referral relationships.

## VI. CONCLUSION

Internationalization has had an important impact on large U.S.-based law firms in the last couple of decades. Law firms used to limit their practices to U.S. law; now, many include some foreign law expertise in their offerings from offshore offices. Firms used to rely on U.S.-trained lawyers to staff their offshore offices and have shifted to rely primarily on lawyers educated and licensed in the foreign jurisdiction, who may have no experience at all with U.S. law or practice. Firms have developed local practices in their offshore offices to complement their transnational and U.S.-based work. The size and number of offshore offices has increased, as well.<sup>100</sup>

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99. These hypotheses are the subject of my study of the careers of LL.M. graduates. *See infra* note 102.

100. It is unclear whether firms will use their offshore offices to respond to efforts by clients to outsource legal work to foreign lawyers working apart from U.S.-based law firms. *See Stepping Up: GE's New General Counsel*, Brackett Denniston, CORPORATE COUNSEL, Apr. 2004, at 26. In this article, Brackett Denniston, GE's General Counsel, explains GE's offshoring of legal

These changes segregate lawyers initially trained outside of the United States from those initially trained in U.S. law schools. Different—and not necessarily equal—opportunities are available to each group. Non-U.S. lawyers attempt to bridge this divide by enrolling in U.S. LL.M. programs, but the evidence from hiring practices of U.S. law firms is that they do not consider one year of U.S. legal education on top of non-U.S. legal education equivalent to the typical three-year J.D. degree awarded by U.S. law schools.<sup>101</sup>

The local approach to globalization adopted by the sixty U.S. law firms studied here results in a preference for local relationships and expertise over familiarity with U.S. law. In this way, LL.M. graduates lose out. They do not comfortably fill needs in U.S. offices because of their primarily foreign-law training and the limited duration of their residence in the United States, nor do they satisfy the need for local connections in the offshore office, a fact that is made obvious by their absence from the local scene during the LL.M. year. What they gain from the LL.M. experience, however, ought to be as valuable to local firms competing with U.S. offshore offices as it is underappreciated currently by these U.S. firms—and as the local market absorbs these graduates, it may be restructured in important ways. Moreover, as U.S. firms mature into global organizations they may appreciate LL.M. graduates as links between the U.S. and foreign jurisdiction and develop mechanisms for integrating LL.M. graduates into their organizations. That story, however, is still being told.<sup>102</sup>

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services:

CC: What about offshoring? GE has sent some U.S. legal work to in-house lawyers based in India.

BD: That's very limited, and I expect it to continue to be very limited. Our first requirement is that we have to do it in a way that's ethically compliant. Second, we have to do it in areas where we can acquire the expertise to help us. And there are some opportunities, some significant opportunities. But it's not going to change fundamentally the way that we do business. We're a global company. We have to look for global brains of all kinds, and whether it's in India or Germany or New Orleans, we have to look for the best possible brains.

*Id.*

101. See Silver, *supra* note 22, for more information on the hiring practices of various U.S. law firms revealed in interviews with hiring partners of these firms.

102. I am engaged in an ongoing research project studying careers of international lawyers to generate information on graduates of U.S. LL.M. programs.