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

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

Carole Silver

## **Abstract**

The Article examines a group of approximately three hundred foreign layer LL.M. graduates working in New York between 1999 and 2000, and presents information about their nationality, education, and employment. This information is supplemented with stories of individual foreign lawyers, as well as with the large law firm perspective as articulated by hiring partners at a number of U.S.-based elite international firms. The Article considers the experiences of foreign lawyers in U.S. law schools and law firms, and explores the ways in which these organizations and the foreign lawyers come together to further their respective ends.

## ARTICLES

### THE CASE OF THE FOREIGN LAWYER: INTERNATIONALIZING THE U.S. LEGAL PROFESSION

*Carole Silver\**

#### INTRODUCTION

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

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

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1. See Carole Silver, *Globalization and the U.S. Market in Legal Services—Shifting Identities*, 31 LAW & POL'Y INT'L BUS. 1093 (2000).

an opportunity for national models of lawyering to influence one another, through the competition and cooperation of lawyers and their firms in work performed on behalf of clients, both shared and competing. The responses of the national systems will vary, for reasons that include the international competitiveness of national law firms as well as national and even local regulatory limitations.<sup>2</sup>

Law schools are an additional site of interaction for lawyers trained in different national systems, and U.S. law schools are attracting increasing numbers of foreign lawyers in their one-year LL.M. degree programs. These programs have proliferated in recent years, and at the same time the number of foreign lawyers enrolling in U.S. law schools for the LL.M. degree has mushroomed. A U.S. experience is considered valuable, and in some circles even required, for foreign lawyers wishing to participate in the international legal services market. In Frankfurt, for example, where many of the top German law firms have affiliated or merged with Anglo-American law firms, opportunities are limited for German lawyers who have not studied in the United States or England.<sup>3</sup> While German law expertise remains essential, the additional credential of the U.S. LL.M. degree operates as a distinction between lawyers who participate in the elite firms that serve international businesses and those who concentrate on domestic matters. Elsewhere, the U.S. law school experience provides a bridge of common terminology and experience for lawyers from other countries who increasingly must be prepared to work with one another because "[o]ne cannot do business internationally without some sort of commercial language, some common understanding, or some common ways of behaving."<sup>4</sup> Thus, according to one account, a "Mexican lawyer [reports] that he cannot do business effectively with a Japanese lawyer unless the Japanese lawyer also has an advanced U.S. law

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2. The EU's regulations, for example, have opened borders for lawyers of Member States. See generally Council Directive 89/48/EEC of Dec. 21, 1988 National Implementation Measures, O.J. L 19/1 (1988) (regulating the admission to practice of lawyers licensed in a foreign Member State); Commission Directive 98/5/EC of Mar. 14, 1998 Approximation of Laws; Freedom of Establishment and Services; Internal Market, O.J. L 77/36 (1998) (regulating admission through recognition of experience).

3. See John E. Morris, *U.S. Firms Woo Lawyers With Signing Bonuses and Above-Market Salaries*, FOCUS EUROPE (AMERICAN LAWYER SUPP.) Summer 2001, at 13.

4. Lawrence M. Friedman, *Borders: On the Emerging Sociology of Transnational Law*, 32 STAN. J. INT'L L. 65, 69 (1996).

degree.”<sup>5</sup> The U.S. LL.M. also is often crucial for foreign lawyers pursuing academic careers, a role that graduate U.S. legal education has served for years. In certain countries, legal study in the United States, especially at an elite law school, makes the difference between success and struggle for future scholars.

Foreign lawyers who enroll in one-year LL.M. programs at U.S. law schools often want the additional experience of working in the United States for at least a short period, as a practical element of their U.S. legal education. Large U.S. law firms are an important training ground for new law graduates; they are “regarded by the law schools and by the profession almost as . . . graduate school[s] of law.”<sup>6</sup> In fact, if these law firms could efficiently formalize their training functions they would be serious competitors of U.S. law schools in the education of foreign lawyers.

Regardless of the desirability of U.S. law firms by foreign lawyers, the firms have not reciprocated by openly welcoming foreign lawyers. Foreign lawyers represent a small fraction of the lawyers hired by U.S. law firms each year, and they are present in U.S. offices in very limited numbers. This is explained in part by the position of strength enjoyed by U.S. law firms in the international market for legal services: these firms have been so successful in capitalizing on their U.S. expertise that there has been no obvious need to complicate their approach. Additionally, the business of many U.S. firms that participate in the international legal market continues to be dominated by domestic matters, where the benefit of a foreign legal approach is ambiguous. While to German firms the additional U.S. legal education and/or practice experience provides an advantage with regard to their participation in the international legal market, for U.S. law firms there appears to be no analogous advantage.<sup>7</sup>

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5. Bryant Garth & Yves Dezalay, *Changing Patterns in Graduate Legal Education: Some Potential Social Implications*, Open Doors Institute at [http://www.opendoors.org/Lib%20Pages/Global/changing\\_patterns.htm](http://www.opendoors.org/Lib%20Pages/Global/changing_patterns.htm)[http://www.opendoorsweb.org/LibPages/Global/changing\\_patterns.htm](http://www.opendoorsweb.org/LibPages/Global/changing_patterns.htm).

6. ROBERT T. SWAINE, *THE CRAVATH FIRM AND ITS PREDECESSORS—1819-1947*, VOL. 1: *THE PREDECESSOR FIRMS 1819-1906* 4 (1946) (referring to Cravath, Swaine & Moore).

7. A student of a foreign legal profession might read about the Americanization of the foreign profession occurring as a result of cooperation among foreign and domestic lawyers and competition between them as well. See, e.g., Karen Dillon, *Can They Skadenize Europe?* AMERICAN LAWYER, Dec. 1989, at 40; Barbara Galli, *Will French Firms Survive?*, INT’L FIN. L. REV. (Oct. 1998). The U.S. legal profession generally is not charac-

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

The increasing presence of foreign lawyers in U.S. law schools and law firms has not attracted much scholarly attention,<sup>8</sup> and only scant empirical information about foreign lawyers in the United States is available.<sup>9</sup> This Article offers a

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terized in analogous terms, at least in part because of the hegemonic role of U.S. law and lawyers in the global economy. *But see* BRYANT G. GARTH & YVES DEZALAY, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* (1996) (analyzing the impact of international commercial arbitration on the acceptance and legitimation of alternative dispute resolution in the United States).

8. A number of scholars, however, have considered the presence of foreign lawyers or law students as an issue ancillary to their work on related issues. *See, e.g.*, Luz Estella Nagle, *Maximizing Legal Education: The International Component*, 29 STETSON L. REV. 1091 (2000); Richard L. Abel, *The Future of the Legal Profession: Transnational Law Practice*, 44 CASE W. RES. L. REV. 737 (1994); David M. Trubek et al., *The Future of the Legal Profession: Global Restructuring and the Law*, 44 CASE W. RES. L. REV. 407 (1994); Roger J. Goebel, *Professional Qualification and Educational Requirements for Law Practice in a Foreign Country: Bridging the Cultural Gap*, 63 TUL. L. REV. 443 (1989); Kiyoko Kamio Knapp, *Disdain of Alien Lawyers: History of Exclusion*, 7 SETON HALL CONST. L.J. 103 (1996). On internationalization and education generally, see PHILIP G. ALTBACH, *COMPARATIVE HIGHER EDUCATION* (1998); PHILIP G. ALTBACH ET AL., *RESEARCH ON FOREIGN STUDENTS AND INTERNATIONAL STUDY* (1985); ELINOR G. BARBER ET AL., *BRIDGES TO KNOWLEDGE: FOREIGN STUDENTS IN COMPARATIVE PERSPECTIVE* (1984). *See generally* HYAWEOL CHOI, *AN INTERNATIONAL SCIENTIFIC COMMUNITY: ASIAN SCHOLARS IN THE UNITED STATES* (1995).

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

description of certain foreign lawyers,<sup>10</sup> and while not a representative sample of those in the United States for education or employment, it provides an entry point for analysis. The Article examines a group of approximately three hundred foreign lawyer LL.M. graduates working in New York between 1999 and 2000, and presents information about their nationality, education, and employment.<sup>11</sup> This information is supplemented with stories of individual foreign lawyers, as well as with the large law firm perspective as articulated by hiring partners at a number of U.S.-based elite international firms. The Article considers the experiences of foreign lawyers in U.S. law schools and law firms, and explores the ways in which these organizations and the foreign lawyers come together to further their respective ends.<sup>12</sup>

In thinking about internationalization and the legal profession, one could investigate a number of different populations.<sup>13</sup> The analysis offered in this Article is based upon a group of foreign-educated LL.M. graduates working in New York, whose names and educational backgrounds were included in the Mar-

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grouped with other U.S. lawyers, and those who do not sit for the bar or fail the exam are not included in bar records at all.

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

11. This group of foreign lawyers was identified through a search of the Martindale-Hubbell New York directory on Lexis. The search identified 351 foreign-educated lawyers who had graduated from a U.S. LL.M. program and were working in New York. The search was conducted during the summer of 2000, and thus reflects lawyers working in New York between 1999 and 2000.

12. This Article does not address regulation of foreign lawyers. For an analysis of current regulations relevant to foreign lawyers, see SYDNEY M. CONE, *INTERNATIONAL TRADE IN LEGAL SERVICES* (1996); Pamela Stiebs Hollenhorst, *Options for Foreign-Trained Attorneys: FLC Licensing or Bar Admission*, *THE BAR EXAMINER*, Aug. 1999, at 7.

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

tindale-Hubbell listing directories.<sup>14</sup> This captures a variety of individuals: from the Nigerian lawyer, admitted to the New York bar, who is a member of a small New York firm; a French lawyer who attended an LL.M. program in New York, passed the New York bar exam, and is working at the New York office of a Chicago-based law firm; and the Israeli-born lawyer, first educated and licensed in Switzerland, who completed an LL.M. and now is a member of a medium-sized law firm. Each of these individuals comes within the scope of this Article.<sup>15</sup>

I identified 294 LL.M. graduates from fifty-one countries working in New York for U.S. law firms. Forty-four percent of these LL.M.s received their first legal education in a country where common law is the basis of the legal system, and an additional twenty-five percent are from continental Western Europe. Figure A depicts the home countries of the LL.M.s working for

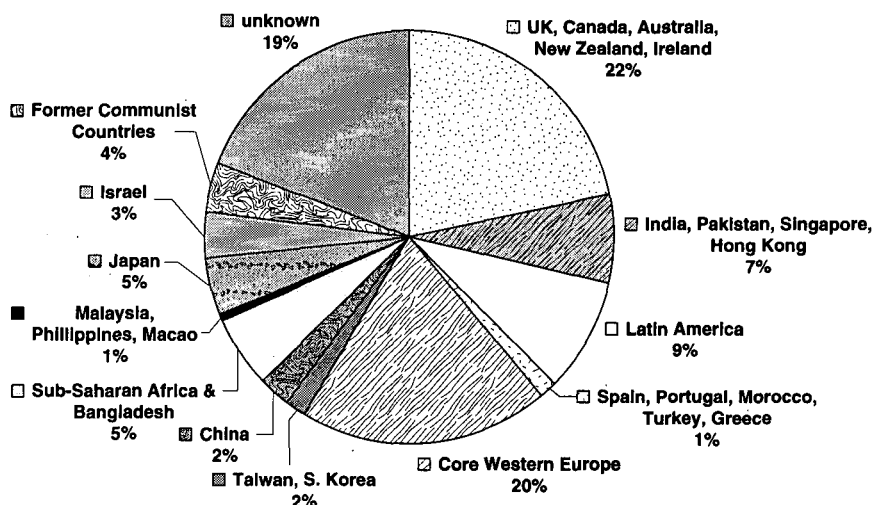
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14. The study includes foreign lawyers with degrees similar to the one-year LL.M. as well, including those with a Masters in Comparative Law, offered by the University of Michigan, among others.

15. There are a variety of ways to find foreign lawyers who are in the United States. Unfortunately, state bar records are not a ready source of information about foreign lawyers, because once foreign-educated LL.M.s pass the bar examination in a U.S. jurisdiction, they are treated as U.S. lawyers. Public records of members of the New York bar, for example, do not provide information on the educational background of lawyers. See New York State, Attorney Directory, at <http://www.courts.state.ny.us/webdb/wdbcgi.exe/apps/INTERNETDB.attyreghome.show>. One route to identifying foreign lawyers in the United States might be to follow a group of students in the LL.M. program at a particular law school and through their job searches and working years. Until recently, however, many LL.M. programs did not keep detailed and current information about their foreign graduates, according to attendees at the ABA Section of Legal Education and Admission to the Bar Conference on Post-JD Education for Foreign Lawyers held at Duke University School of Law in the spring of 1999. One also might investigate foreign lawyers at particular U.S. law firms. The international character of Baker & McKenzie or White & Case, each with myriad foreign offices, render these two law firms potential sources of information about foreign lawyers and their careers. A third approach would be to use the networks of LL.M. students, who often arrive at their U.S. law schools with a handful of names of lawyers from their home countries who are working in the United States. One might investigate these networks as they relate to employment experiences. Each of these approaches has limitations because the source of the information about the foreign lawyers may impact their practice opportunities. For example, the status of the law school attended is generally thought to have an important effect on job opportunities for J.D. law graduates, and the same may be true for foreign LL.M. graduates, so that examining one particular law school's graduates may lead to either more failure or success in cracking the job market than is experienced by graduates of other schools. Focusing on the foreign lawyers working at a particular law firm would tell the story only of successful job searches, omitting the unsuccessful from the story.



U.S. law firms.<sup>16</sup> This home country information reveals a significant advantage for LL.M.s from countries that are similar economically and culturally to the United States, even apart from language and legal system. In addition to these LL.M.s, many foreign lawyers from common law countries join the ranks of U.S. law firms in New York and elsewhere without enrolling in U.S. LL.M. programs.<sup>17</sup>



This Article proceeds as follows. Section I examines the U.S. education aspect of the foreign lawyers' experience. It considers the role of foreign lawyers in U.S. law schools as well as the reasons behind the increasing numbers of foreign lawyers in these programs and presents information about the law schools attended by the foreign lawyers in the database. In Section II, the experience of searching for U.S. employment is examined. Sections III and IV describe the law firms that employ the foreign lawyers, and analyze relationships based on nationality, law

16. "Home country" here indicates country of birth. For most individuals in the database, home country corresponds to the place where they completed their primary legal education; however, certain individuals obtained legal education in another country, such as England.

17. New York's bar rules allow graduates of three-year programs in law at Oxford, Cambridge, and the University of London to take the bar exam without additional U.S. legal education. Colorado and Massachusetts permit graduates of Canadian law schools to take their bar exam. See American Bar Association, Comprehensive Guide to Bar Admission Requirements, Chart VIII: Foreign Law School Graduates, at <http://www.abanet.org/legaled/publications/compguide2000/cgchart8.html>.

firm business, and substantive specialty in order to gain insight into the ways foreign lawyers are used by U.S. law firms. Section V considers the use of foreign lawyers by law firms as evidence of the international capabilities of the employing law firms. The conclusion suggests that U.S. law firms may be well advised to consider the extent to which foreign professionals have succeeded in non-law professional services firms, which compete with law firms for lawyers as well as for clients.<sup>18</sup>

### I. THE EDUCATION OF FOREIGN LAWYERS

Increasing numbers of foreign lawyers are attending U.S. law schools.<sup>19</sup> Their home countries are spread around the world, including countries closest to the United States, as well as nations at the furthest distances geographically and developmentally.<sup>20</sup> In 1999, at least sixty-eight U.S. law schools offered some sort of graduate degree available to foreign lawyers.<sup>21</sup> More than half of these programs are available exclusively to foreign lawyers. These LL.M. programs are growing in size,<sup>22</sup> as well as in

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18. See Bryant G. Garth & Carole Silver, *The MDP Challenge in the Context of Globalization*, 52 CASE W. RES. L. REV. (forthcoming 2002); Bryant G. Garth & Carole Silver, *Of Brain Surgeons and Barber Shops: The Economic Consequences of MDPs on the Legal Profession*, in MULTI-DISCIPLINARY PRACTICES AND PARTNERSHIPS: LAWYERS, CONSULTANTS AND CLIENTS (Stephen McGarry ed., forthcoming 2002).

19. The number of foreign students attending LL.M. programs increased so substantially that the ABA Section on Legal Education and Admission to the Bar, the group responsible for accrediting U.S. law schools, issued a letter in the spring of 1999 to the bar examiners in each U.S. jurisdiction warning them of the absence of ABA oversight with regard to foreign lawyer LL.M. programs. See Letter from Chief Justice Randall T. Shepard, Chairperson of the Section, to "all the state Chief Justices, liaison judges, and Directors of Boards of Bar Examiners, clarifying the ABA's role in Post-J.D. programs" (Apr.-May 1999), available at [http://www.abanet.org/legaled/postjdprograms/postjd\\_letter.html](http://www.abanet.org/legaled/postjdprograms/postjd_letter.html).

20. LL.M.s in the study (all, regardless of whether they work for U.S. or foreign employers) obtained their first legal education in the following countries (in order of number of LL.M.s in the study, beginning with the highest number): Germany, Canada, Israel, France, Japan, England, India, Australia, New Zealand, the Netherlands, China, Mexico, Switzerland, Brazil, Belgium, Argentina, Taiwan, Russia, Nigeria, South Africa, Northern Ireland, Scotland, Colombia, Spain, Singapore, Italy, Poland, Sweden, Austria, Kenya, Ireland, Pakistan, Chile, Venezuela, Philippines, Luxemburg, Bulgaria, Malaysia, South Korea, Greece, Turkey, Denmark, Portugal, Ghana, Yugoslavia, Benin, Peru, Hong Kong, Romania, Bangladesh, Macao, Liberia.

21. Information from ABA Section on Legal Education and Admission to the Bar (on file with author).

22. For statistics on LL.M. enrollment, see American Bar Association, Degrees Awarded 1981-2000, at <http://www.abanet.org/legaled/statistics/Degrees.html>, which shows that 669 LL.M. degrees were awarded (to foreign and U.S. lawyers in LL.M. pro-

number.<sup>23</sup> Most of this growth occurred in the 1990s, and much of it in the last half of the decade.

The history of Northwestern University's LL.M. program is illustrative. In its early period prior to 1990, the program attracted a small number of foreign students each year,<sup>24</sup> most of whom were interested in pursuing academic careers in their home countries. Students worked closely with faculty, wrote theses, and enrolled in approximately one semester's worth of classes over the course of the year. Applicants were often referred to the LL.M. program by alumni. The relationship between the faculty advisors and students was a close one, often lasting well beyond the term of the LL.M. program.

In the early 1990s, Northwestern decided to expand its LL.M. program and to remodel the program around course work. An introductory class on the American legal system was created, and the thesis requirement was eliminated. Enrollment

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grams) in 1981; 1,690 were awarded in 1990; and 3,069 were awarded in 1999, representing an increase of more than 400% over the 1981 figure. The same website includes information on J.D. degrees awarded over the same period of time, which increased only from 35,603 (in 1981) to 39,071 (in 1999). Statistics on the number of foreign LL.M. students in each of these years are not available, but information on the percentage of foreign LL.M. students earning degrees in recent years indicates a growing presence: during the years 1996-1999, the percentage of LL.M. degrees awarded to foreign nationals increased from 39.8% to 52.7% of the total number of LL.M. degrees awarded. Information provided to author by Rick Morgan, Office of the Advisor to the Consultant on Legal Education, ABA (Feb. 28, 2001). Non-J.D. programs are assuming more significance in law school enrollment generally: "Total enrollment in a Juris Doctor program at ABA approved law schools in Fall 1999 was . . . 443 fewer students than . . . in 1998. Conversely, total law school enrollment increased by 443 students in 1999 . . . ." Rick L. Morgan, *Survey of Minority Group Students Enrolled in J.D. Programs in Approved Law Schools, 1971 to Present*, in OFFICIAL AMERICAN BAR ASSOCIATION GUIDE TO APPROVED LAW SCHOOLS 455 (Rick L. Morgan & Kurt Snyder eds., 2001).

23. According to J. Richard Hurt, then-Deputy Consultant on Legal Education for the ABA in 1999, U.S. law schools offered 217 post-J.D. programs, of which 65 were established since 1989. J. Richard Hurt, Remarks at Conference on Post-J.D. Education for Foreign Lawyers held at Duke University School of Law (Spring 1999). The ABA Section on Legal Education and Admission to the Bar indicates that 93 U.S. law schools offer post-J.D. programs. Certain of these programs are designed specifically for foreign lawyers, and a number of schools offer more than one post-J.D. program. See American Bar Association, Programs for Foreign Lawyers or International Students, at <http://www.abanet.org/legaled/postjdcprograms/postjdc.html#2foreign>. See also Hieros Camos, at <http://www.hg.org> (providing list of LL.M. programs).

24. LL.M. programs also have been used by U.S. law graduates to gain status by their association with a prestigious law school, especially students interested in academic careers. In addition, many U.S. law schools offer LL.M.s in particular substantive areas, such as tax, and these programs are often filled with U.S. law graduates.

immediately grew from a handful of students to more than twenty in the initial years of the new program. In 2000-2001, Northwestern enrolled fifty-four students in its LL.M. program and an additional nineteen students in a combined one-year law and business program for foreign lawyers.<sup>25</sup> The shift away from an academic orientation is the hallmark of the revised LL.M. degrees now attracting increasing numbers of foreign lawyers.<sup>26</sup>

The current trend in LL.M. programs not only avoids the thesis requirement, it also avoids the prescription of a set curriculum, in contrast to the core classes common to the first year of J.D. programs. A core curriculum would require the hiring of additional faculty and also might limit the potential pool of applicants interested in the program. But without a prescribed set of courses, LL.M. students do not share the educational experience that serves as the common denominator for U.S.-educated lawyers.

In 1999, the most recent year for which numbers are available, 1,616 foreign lawyers graduated from LL.M. programs, earning fifty-two percent of the total number of LL.M. degrees awarded that year and constituting 41% of all students enrolled in post-graduate programs at U.S. law schools.<sup>27</sup> The largest foreign lawyer LL.M. programs are at NYU,<sup>28</sup> Harvard,<sup>29</sup> American

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25. For information on Northwestern's two LL.M. programs, see Northwestern University School of Law, Programs for International Students, *available at* <http://www.law.northwestern.edu/depts/gradintl/index.htm>.

26. The thesis is optional in some instances, for example at University of Pennsylvania, where LL.M. students may select either the "course track" or the "thesis track." While both tracks require some research and a writing project, students in the course track complete 20 credit hours during the year, while students in the thesis track complete only 13 credit hours. The University of Pennsylvania's description of the two options emphasizes that "[s]tudents who do not have an extensive background in American law or a related common-law system normally enroll in the Course Track." See University of Pennsylvania Law School, Information for Applicants LL.M. and LL.C.M., *at* <http://www.law.upenn.edu/>. Other schools require some writing of their foreign students, either in a seminar or independent of their course work; it also is common to require foreign students to take a general introductory course on the U.S. legal system.

27. Information provided by ABA Section on Legal Education and Admission to the Bar (on file with author).

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

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

University,<sup>30</sup> and Columbia.<sup>31</sup> Of the 351 foreign LL.M. graduates in the database who were working in New York between 1999 and 2000, more than one-third received their LL.M. degrees in 1997, 1998, or 1999, and nearly two-thirds of the group received their LL.M. degrees between 1990 and 2000.<sup>32</sup> Foreign students also pursue the three-year J.D. degree at U.S. law schools, although there is no data available to estimate the number of such students.<sup>33</sup>

Why do foreign lawyers enroll in U.S. law schools for graduate legal study? At least four reasons are commonly offered by foreign lawyers studying in the United States. First, foreign lawyers pursue the U.S. LL.M. degree as a means of increasing their human capital and earning power. The expansion of U.S. and English law firms, and their resulting competition with national law firms in various locations, has introduced foreign lawyers to the model of Anglo-American lawyering in an intimate and challenging manner.<sup>34</sup> Certain foreign lawyers may attend U.S. law schools to ready themselves for this competition in their home countries. For some students, the LL.M. and the subsequent opportunity to take the bar examination in certain U.S. jurisdictions offer an escape from national systems that deny most law

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

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

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

33. From information about the number of foreign students and LL.M.s at NYU, a rough estimate is that approximately 100 foreign students are enrolled in NYU's J.D. program. Burton Bollag, *A Law School on the Move Takes a Global Approach*, CHRON. OF HIGHER EDUC., Jan. 12, 2001, at A43; ABA Section of Legal Education and Admission to the Bar (information on file with author).

34. See Robert C. Clark, *Bases and Prospects for Internationalization of Legal Education in the United States*, 18 DICKINSON J. INT'L LAW 429, 431 (2000).

There are various reasons for the trend [of increasing foreign applicants to U.S. law schools] . . . But other factors pull more on people with policy and academic interests. United States legal education has a reputation for being more inter-disciplinary and more interactive than in many other places, and those features draw potential scholars and teachers. In addition, the U.S. legal system, for better or worse, is highly articulated. . . . There is a huge amount of legal doctrine, commentary, and theory. This massive existing base of normative and intellectual material is worth study.

*Id.*

graduates a license to practice law. Students from Taiwan, Japan, and Korea commonly fall into this category because of the extremely low bar passage rate in these countries. These students accomplish a sort of end-run around the national restrictions by becoming licensed lawyers in the United States, for which the LL.M. is a prerequisite, and then returning to their home countries with this new credential of legitimacy.<sup>35</sup> Second, the LL.M. enables foreign lawyers to gain substantive knowledge that they perceive is necessary for sophisticated practitioners in an international and competitive legal market. In Germany, for example, most law faculties do not offer courses in international business law; German students attend LL.M. programs in part to gain this substantive knowledge.<sup>36</sup> Third, foreign lawyers pursuing academic careers find the U.S. LL.M. and often a doctorate in law important steps; this is true for Israeli students seeking University appointments, for example. Fourth, the LL.M. in certain cases is perceived as increasing job opportunities in the foreign lawyers' home countries. This last point is occasionally a sub-conscious assumption for foreign lawyers.

The story of one recent LL.M. graduate's journey to the United States for additional legal education is revealing in this regard for its lack of intentional design. This lawyer, whom I will call Juan, finished law school in his home country in Latin America. He found a job with a law firm that represented large domestic companies, some of which had business activities in other Latin American countries. Juan pursued this cross-border work, and considered it both prestigious and interesting. He began brushing up on his English language skills, because certain

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35. New York requires U.S. law school courses for foreign lawyers from civil law countries before allowing them to sit for the bar examination. See N.Y. Ct. of App. § 520.6(b)(1)(ii) (Consol. 2000). The bar passage rate for foreign lawyers in New York in 1998 was 43%, compared to a bar passage rate of less than 5% in Japan, for example. See National Council of Bar Examiners, 1998 Statistics, available at <http://www.ncbex.org/Statistics/May%201998%20stats.pdf>; David Hood, *Exclusivity and the Japanese Bar: Ethics or Self-Interest?*, 6 PAC. RIM. L. & POL'Y 199 (1997); *Bring on the Lawyers*, ASIAN WALL ST. J., June 20, 2001, at 6. The bar passage rate was one to two percent in Korea. See Chan Jin Kim, *Korean Attitudes Toward Law*, 10 PAC. RIM L. & POL'Y 1, 27 (2000).

36. "[I]nternational business law [is a] field almost entirely ignored in the state curriculum" of Germany's public universities, according to Colin Woodard, *Legal Education in Germany Faces Iconoclastic Competition*, CHRON. OF HIGHER EDUC., June 1, 2001, available at <http://www.chronicle.com>. Woodard notes that a new private law school in Germany, Bucerius Law School, offers courses on international business law. *Id.*

of the transactions involved foreign investors and lawyers who worked in English. He had studied English in primary school, and he tried to vacation in English-speaking countries to give himself an opportunity to use and improve his language skills. On one of these vacations, accompanied by his girlfriend, he "passed by the door of Columbia [University]" and he decided to "take a look [at] the library, and . . . there was a very kind woman there, and she said, 'Are you planning to . . . do an LL.M.?' " Juan did not know what an LL.M. was, but he took a brochure as well as the advice from the "kind woman" that "the LL.M. is very big and there are a lot of people from different countries. They study pretty much what U.S. J.D.s study."

After the vacation, Juan studied Columbia's brochure and wrote to different U.S. law schools for information about their LL.M. programs. He began thinking seriously about pursuing the degree. In explaining his decision to apply for the LL.M., he said,

the U.S. was getting bigger and bigger in terms of economy in [my home country], and it was more and more important to have English. And . . . a lot of investors from the U.S. were coming to [my home country]. And . . . [I] realized that it was a very important matter for [me] because [I] wanted to have . . . like U.S. clients and the only way [I] could do it was like studying their law, like the U.S. law and talking good English.

He started saving money for the travel and tuition, began an intensive study of English, and also began meeting other lawyers who were interested in pursuing the LL.M. or had already obtained the degree.

Juan's plan was to obtain the LL.M. and return to his home country to pursue a position at one of the larger firms, where there would be more international work. He "never, never thought about staying [in the United States], . . . working." He distinguished himself from many of his classmates in the United States, who, he believed, came to the LL.M. program "just to get a raise on their salary." Rather, he described himself as passionate about international law. Nevertheless, he had given serious thought to the benefits of the LL.M. in terms of increased opportunities in his home country. Law firms in his home country would consider the LL.M. an indication that

you are . . . self-motivated, . . . you had the money so you come from a family that can pay [for] this. . . . [T]here's a lot of things that . . . really count at the time of hiring somebody. . . . [Y]ou talk good English and they need people who talk in English because they have . . . U.S. and British, European [clients] that speak in English because it is a universal language.

Juan's journey to a U.S. LL.M. program can be contrasted with others with similar motives whose paths to the United States were more directed. A Latin American lawyer who was working for one of the elite firms in his home country decided to pursue the LL.M. because advanced legal education is nearly a requirement for promotion in his law firm. In addition, he articulated a common explanation for pursuing the LL.M.

Most clients of the firm are foreign, and often I had to deal with foreign legal counsel, too. The U.S. is where most foreign investors come from. An acquaintance with the U.S. legal system, the ways lawyers and clients think when deciding to do business in [my home country], was going to help me get ahead.<sup>37</sup>

A lawyer from Eastern Europe echoed this sentiment regarding the importance of understanding U.S. law and the international perspective: "I thought that it would be very important for every lawyer who is going to work, not only for his own citizens, but also for foreign investors, because it makes him understand the demands of his clients."<sup>38</sup>

Equally important as the forces compelling foreign lawyers towards the LL.M. are the efforts of U.S. law schools to attract increasing numbers of foreign lawyers to internationalize their student bodies,<sup>39</sup> as well as to take the place of the declining J.D.

37. Interview 12.

38. Interview 2.

39. See John Sexton, *Structuring Global Law Schools*, 18 DICKINSON J. INTL. LAW 451, 454-55 (2000) ("It ultimately comes down to integration—full integration into the heart of the school."). On the analogous influx of foreign students to U.S. business schools, see Cindy Skrzycki, *Japanese Rush to Garner MBAs*, WASH. POST, May 31, 1987, at H1.

Many American business schools are . . . hot to have foreign students though they, too, are becoming more choosy about whom they admit as they look for candidates with a strong command of English and outgoing personalities. 'We want them for the sake of our American students,' said Leslie Grayson, professor of international business economics at Darden. 'It may be the only chance a nice Protestant preppy can find out what makes a guy like Shigemori tick.'



enrollment. U.S. law schools no longer enjoy the bulging groups of applicants that characterized the 1980s,<sup>40</sup> and the new foreign lawyer programs serve as substitutes for this dwindling enrollment.<sup>41</sup> The remodeled foreign lawyer LL.M. programs attract great numbers of students at least in part because they are *designed* to attract them; they enable law schools to collect tuition dollars from students who do not demand much in the way of additional faculty or staff.<sup>42</sup> And the law schools have been able to operate these programs without any real oversight from either the ABA or the media.<sup>43</sup> The credentials of admitted LL.M. students, for example, are not analyzed as part of the *U.S. News & World Report* rankings, and consequently, schools are more likely to take a flexible approach in their admission practices for LL.M.s than for J.D. applicants.

Selecting a particular U.S. law school for the LL.M. program is an important decision that may impact the opportunities available to a foreign lawyer hoping to find work in the United States at the end of the one-year program. U.S. law firms typically make hiring decisions about new law school J.D. graduates on the basis of two elements: the status of the law school attended and an applicant's grades in law school. U.S. law schools are ranked in various ways, with perhaps the most publicized ranking being that published annually by *U.S. News*.<sup>44</sup> For LL.M. hiring, it is not clear how grades and law school ranking relate to employment opportunities. While they certainly are not as exclusively determinative as they are for J.D. hiring, the reputation

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*Id.*

40. See Clark, *supra* note 34, at 429-30.

41. John Sexton, formerly Dean of NYU's law school and now President of the University, reported that NYU decreased the size of its J.D. population and increased the size of its LL.M. population for the purpose of building the "global law school." Others interpreted this move as a way to maintain enrollment without lowering the school's admissions statistics. See *infra* note 43.

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

43. Law schools compete based in part on admission statistics, including LSAT scores and grade point averages, which are collected and publicized with regard to J.D. students but not with regard to LL.M. students. As a result, enrollments in LL.M. programs can contribute much needed tuition dollars without affecting admission statistics.

44. For rankings in 2001, see *Top Law Schools*, U.S. NEWS & WORLD REP., available at <http://www.usnews.com/usnews/edu/beyond/gradrank/law/lawtables/gdlawt1.htm>.

of the particular law school attended by an LL.M. remains directly relevant to U.S. employment prospects.

Each of the top fifteen schools in the *U.S. News* rankings is represented in the LL.M. database for sending its LL.M. graduates to New York employers, although the order of ranking does not correspond to the frequency of a school's appearance in the database. Certain of these law schools have not developed large LL.M. programs, or have aimed their programs at students whose interests lie outside of the private commercial law world that gravitates towards large and international law firms. Table 1 presents the list of U.S. law schools attended by the LL.M.s in the database, in order of the number of LL.M. graduates in the database who attended each school. Seven of the ten schools attended by the most LL.M.s in the database are among the top ten in the *U.S. News* rankings; NYU, Columbia, and Harvard, the top three in the LL.M. database, are in the top five of the *U.S. News* rankings; the reputation of each of these schools surely buttresses the credentials of their LL.M. graduates in their dealings with law firms just as it serves to attract top notch applicants to the LL.M. programs. Other schools, for example Yale and Stanford, are underrepresented in the database, most likely because their LL.M. programs are aimed more towards foreign lawyers intent on working outside of corporate law firms.<sup>45</sup>

Three New York City law schools, NYU, Columbia, and Fordham, were attended by nearly half of the LL.M.s in the database. NYU has built its reputation on being a global law school, and that includes enrolling a significant number of foreign students. The school sponsors one of the job fairs for foreign LL.M. students and interested potential employers, until recently the only one of its kind. It has a large LL.M. program.<sup>46</sup> Columbia, too, has an LL.M. program that is substantial in size, with space for more than 100 students.<sup>47</sup> In addition, in the past several years Columbia has created the only competing job fair

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45. The database did not capture foreign lawyers who seek work after the LL.M. in their home countries in the areas of human rights and academia, for example.

46. In 1999, NYU had 295 post-J.D. foreign national students enrolled at the law school, and awarded 174 LL.M. degrees to foreign students. Information from the ABA Section on Legal Education and Admission to the Bar (on file with author).

47. According to the ABA Section on Legal Education and Admission to the Bar, Columbia had 165 post-J.D. foreign national students enrolled in 1999 and awarded LL.M. degrees to 126 foreign students. *Id.*

for foreign LL.M. students, which is exclusive with regard to the schools allowed to participate. Hosting a job fair is a good way to help students from the host school find jobs, and at the same time build relationships between the school's faculty and staff and potential employers.

TABLE 1

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

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

<i>Rank</i>	<i>Law School</i>
1	New York University
2	Columbia University
3	Harvard University
4	University of Pennsylvania
5	University of Chicago
	Fordham University
	Georgetown University
	University of Michigan
8	Boston University
9	Cornell University
10	University of Virginia
11	Northwestern University
	University of California—Berkeley
	University of Washington
12	George Washington University
	Tulane University
	Yale University
13	American University
	Duke University
	Indiana University
	McGeorge—University of the Pacific
	Southern Methodist University
	Stanford University
	University of Arizona
	University of California—Los Angeles
	University of Georgia
	University of Illinois
	University of Miami
	University of Minnesota
	University of Notre Dame
	Wake Forest University

The inclusion of Fordham's LL.M. program among the top ten in the database is revealing. Fordham's law school is ranked 32nd by *U.S. News & World Report*, and it is not ranked among the top fifteen schools for its international program by *U.S. News*.<sup>48</sup> But Fordham, which awarded forty-six LL.M.s to foreign students in 1999,<sup>49</sup> has the advantage of location in New York City, and several faculty members with specialties in issues related to internationalization and the legal profession matters, who may have important contacts with the New York practicing bar.<sup>50</sup> While it is often ignored, law school location matters in law school recruiting for J.D. students, and it apparently helps New York-based LL.M. students as well.

A different way to consider the impact of a particular law school on the market for foreign lawyers in New York is to consider how widespread the law school's reach is in placing its graduates. That is, how do these law schools compare in terms of the number of different organizations in which their LL.M.s are working? Here, NYU's preeminence is clear. NYU foreign LL.M. graduates were listed in the database at fifty-three different organizations, including U.S.-based law firms, foreign law firms, corporations, and sole practitioners. No other law school came close to this breadth of placement.<sup>51</sup> NYU's penetration of this market may well be explained at least in part by its history as sponsor of the Foreign Lawyers Job Fair. It is clear that law

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48. See U.S. NEWS & WORLD REPORT, available at <http://www.usnews.com/usnews/edu/beyond/gradrank/law/gdlawt1.htm>.

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

50. Roger Goebel of Fordham Law School wrote one of the first articles about internationalization and rules of practice. See Goebel, *supra* note 8. Mary Daly, also at Fordham, has written widely about internationalization and ethical issues involving the legal profession as well as served as the reporter for the ABA Commission on Multidisciplinary Practice. See, e.g., Mary Daly, *The Ethical Implications of the Globalization of the Legal Profession: A Challenge to the Teaching of Professional Responsibility in the Twenty-First Century*, 21 FORDHAM INT'L L.J. 1239 (1998); Mary Daly, *Thinking Globally: Will National Borders Matter to Lawyers a Century from Now?*, 1 J. INST. FOR STUDY LEGAL ETHICS 297 (1996).

51. The database includes Columbia and Harvard foreign LL.M. graduates at 39 and 36 organizations, respectively, followed by University of Pennsylvania (17 organizations), Fordham (13 organizations), Georgetown University (11 organizations), and Boston University, University of Chicago, and Cornell University (9 each).

school matters for LL.M. placement, just as it matters for placement of J.D. graduates, although the hierarchy for foreign lawyers is obviously different than the rankings published by *U.S. News*.<sup>52</sup>

At the same time that we consider the status of various law schools with regard to the employment results for these lawyers, it is important not to lose sight of the relationship between admissions to law school and placement. NYU's top ranking position in placement for foreign lawyers also has a causal relationship to the kinds of students NYU attracts, and the characteristics of the students impact their success in finding employment. A variety of characteristics are relevant here, including fluency in English, a common law background,<sup>53</sup> sociability or cultural similarity, and the position of a student's home country in the global economy. The more well-known a law school is among foreign lawyers, the more likely it can be selective among applicants with regard to these characteristics. Many foreign LL.M. students report consulting the *U.S. News* rankings to help them decide between the various schools to which they have been admitted, but personal relationships with alumni also play an important role in this decision.

Legal education does not end with the award of a degree, either for U.S. J.D. students or for foreign lawyers in an LL.M. program. Many law graduates feel that some experience working for a U.S. law firm provides an important practical component to their education. To this end, many foreign lawyers take a bar examination in the United States, in the hopes that this additional credential of bar membership will distinguish them sufficiently to entice a U.S. law firm to offer employment.

New York attracts a substantial number of foreign lawyers hoping to pass the bar. In 1999, the most recent year for which information is available, 2,287 individuals who attended law school outside the United States sat for the New York bar exami-

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52. Identity of law school matters for LL.M.s in the academic market, too. But here, the hierarchy follows the J.D. reputation rankings: Fordham will not do; Yale will.

53. Each of the ten schools most commonly represented in the LL.M. Martindale-Hubbell database had graduates from common law jurisdictions in the database, while certain of the other schools did not. This is consistent with reports of LL.M. enrollment differences at various schools; the higher a law school's reputation, the more common law and Western European LL.M. students it attracts.

nation; 43% of these students passed the exam.<sup>54</sup>

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

We generally require LL.M.s of civil-law lawyers, and also generally require that they take the New York Bar Exam. Passing the exam is not a requirement for those foreign lawyers, who return to their countries after their stage [practical training], but we feel that for these lawyers, mere preparation for, and sitting for, the exam gives them the necessary training in basic areas of U.S. practice (e.g. torts and contracts) and writing in English which they may not receive (or may not receive adequately) in their LL.M. programs, where they have a tendency to take more specialized courses.<sup>55</sup>

This advice rings true with a number of LL.M. students who have commented on the pragmatism of the bar course. They are invigorated by bar review, rather than suffering the boredom that many U.S. students feel, because their course work in the LL.M. program was not focused solely on U.S. law. Bar review, it seems, can provide another educational component to the foreign lawyer experience.

## II. THE U.S. JOB SEARCH

Once foreign lawyers are enrolled in U.S. LL.M. programs, the possibility of working in the United States is quickly raised.<sup>56</sup> Juan, the Latin American lawyer introduced earlier, explained that his initial intention was to return to his home country after

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

55. Interview 3.

56. On the role of education in internationalization and professional mobility generally, see Xiaonan Cao, *Debating 'Brain Drain' in the Context of Globalization*, 26 COMPARE 269 (1996) (stating that "internationalization of HSP [highly skilled personnel] usually begins with their overseas study").

graduation. When his classmates sent out letters to U.S. law firms requesting interviews, he refrained, reiterating that his plans were to return home, get married, have a family, and work in a big law firm there. But later in the term, when his classmates began accepting job offers in the United States, Juan was overcome with the competitive environment and the talk among his classmates of the importance of U.S. work experience. He recalled the advice of one classmate:

'[I]f you . . . do . . . a global analysis of two years here [in the United States], one working in a law firm and one studying here, I would say that 70% of importance is working here. . . . [I]t's not that important studying here.' . . . And I was . . . thinking it over, and saying, yeah, it'd be great . . . learning with the professionals, with the masters, you know, with . . . the inventors of the law business. . . . I'll be . . . much better off with something like this. I could learn it in [my home country], but if I learn it here, it would be great.<sup>57</sup>

Many foreign lawyers undergo a similar metamorphosis during their LL.M. year in the United States. Those who begin the year with no intention of staying beyond their nine months of course work often decide to consider temporary assignments in the United States. Those who begin their U.S. tour with some interest in working temporarily after the LL.M. often, after graduating, become determined to find permanent work here. Many view a period of working in the United States as the practical side of their education.<sup>58</sup> But it is not simply knowledge and experience that these lawyers seek; they also are attracted to the status of working for an international U.S. law firm, the high salaries that accompany this work, and the contacts it brings.<sup>59</sup>

The decision to look for work in the United States sets LL.M. graduates on a challenging course. While law school recruiting for J.D. graduates is highly routinized and uniform,

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57. Interview 1.

58. And in fact, the F-1 student visa allows up to 12 months beyond the completion of the degree for practical or vocational training. See Immigration and Naturalization Service, How Do I Become an Academic Student in the United States?, at <http://www.ins.usdoj.gov/graphics/howdoi/academic.htm>.

59. Compare the explanation offered for the attendance of Japanese students at U.S. business schools in the 1980s: "[F]oreigners 'often don't come for what is taught in class but to make the connections and to learn the culture.'" Skrzycki, *supra* note 39 (quoting Charles Hickman, Director of Projects and Member Services with the American Assembly of Collegiate Schools of Business).

the foreign lawyer LL.M.s generally are excluded from the recruiting activities that surround J.D. students.<sup>60</sup> And in many U.S. jurisdictions, the opportunities for LL.M. graduates are limited by bar admission rules that restrict the right to sit for the bar exam to persons who completed the three-year J.D. degree.<sup>61</sup> The job search strategy described by most of the foreign lawyers with whom I spoke includes reliance on contacts with U.S. lawyers derived from their work in their home countries, massive letter writing campaigns, and contacts with other foreign lawyers working in the United States, through either a U.S. law school network or one based on their home country contacts.

While foreign lawyers generally do not participate in on-campus recruiting by law firms, two job fairs are held each year specifically for foreign LL.M. students. The job fairs are spon-

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60. Many law schools allow the law firms participating in on-campus recruiting for J.D. students to indicate whether they are interested in speaking with foreign LL.M. students, and generally the firms decline the opportunity. The fall on-campus interviewing system is largely unavailable to foreign students. Certain U.S. law schools specifically discourage their LL.M. applicants from applying for the purpose of finding work in the United States. For example, the University of Pennsylvania's Career Office offers the following advice to LL.M. applicants:

Experience shows that only a very, very small percentage of LL.M. graduates from all United States law schools find work here. We want you to be very clear about this before enrolling in the Law School, and so we provide the following information for you to consider carefully. . . . While you can expect to receive an excellent education at Penn, we state again, as we did in the Admissions brochure, that it is *extremely difficult* to find law-related employment in the U.S. upon graduation, even for the period of practical training that is allowed under current U.S. immigration law. Unfortunately, the number of employers who are interested in hiring LL.M.s is *very small*. More specifically, very few U.S. legal employers are interested in hiring lawyers from abroad unless they have earned their law degree (J.D.) in the United States.

University of Pennsylvania School of Law, Career Planning Information for Prospective LL.M. Candidates, *available at* <http://www.law.upenn.edu> (emphasis in original).

61. More than 20 states and the District of Columbia permit foreign lawyers to take the bar examination, either based solely upon their foreign legal education, a combination of foreign legal education and practical experience, or after completing a U.S. LL.M. degree. Each U.S. jurisdiction has established detailed regulations about the requirements for bar admission as they relate to foreign lawyers. Arizona, Connecticut, Michigan, Montana, New York, North Carolina, Rhode Island, South Carolina, Tennessee, and Texas allow the bar examination specifically for LL.M. graduates. *See* American Bar Association, Comprehensive Guide to Bar Admission Requirements, Chart VIII: Foreign Law School Graduates at <http://www.abanet.org/legaled/publications/compguide2000/cgchart8.html>; American Bar Association, Comprehensive Guide to Bar Admission Requirements, Chart VIII: Foreign Law School Graduates Supplemental Remarks, at <http://www.abanet.org/legaled/publications/compguide2000/cgchart8.html#SupplementalRemarks>.



sored by the law schools of NYU and Columbia, and they are held during the same weekend in January. Many U.S. law schools coordinate their students' participation in one of these job fairs. Employers include U.S. and foreign law firms; non-law professional services firms, such as the Big Five, consulting firms, and several investment banks; and U.S. and foreign corporations. In fact, the job fair at NYU is heavily weighted towards foreign-located opportunities.<sup>62</sup> Many students find success at these fairs only with firms that want them to return to their home countries upon graduation.

Foreign LL.M. students also find jobs by using their pre-existing relationships with law firms in their home countries to gain entry to U.S. law firms that have business relationships with the foreign firms. It is quite common for foreign lawyers with work experience in their home countries to ask their foreign firms to recommend them for a position in the United States. Sullivan & Cromwell, for example, articulates the law firm referral approach in its description of the firm's Foreign Lawyers Program: "The firm encourages law firms around the world to propose candidates for the program . . . ."<sup>63</sup> Other U.S. firms without formal foreign lawyer programs follow this approach as well, taking on lawyers from favored foreign firms for temporary periods of training and exposure to the U.S. style of lawyering.<sup>64</sup> In today's climate of transnational law firm combinations, hosting foreign lawyers from favored firms may even set the scene for future firm affiliations.

An alternative approach for foreign LL.M. students is to cul-

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62. See Carole Silver, *Lawyers on Foreign Ground*, in CAREERS IN INTERNATIONAL LAW (Mark W. Janis & Salli A. Swartz eds., 2001).

63. See Sullivan & Cromwell, Foreign Lawyers Program, at [http://www.sullcrom.com/display.asp?section\\_id=108](http://www.sullcrom.com/display.asp?section_id=108). Kirkland & Ellis' foreign lawyer exchange program includes both foreign lawyers working for the firm in the United States and U.S. lawyers working for foreign firms. See Kirkland & Ellis, *Lawyers: Foreign Lawyers Exchange*, at <http://www.kirkland.com/firm/lawyers/exchange.asp>.

64. The hiring partner at one U.S.-based law firm with more than 500 lawyers distinguished his firm's willingness to host foreign lawyers as trainees from the hiring of foreign lawyers for permanent positions. This firm accepts several foreign lawyers with LL.M. degrees as trainees each year, hosting them for a maximum of six months. He indicated that his firm "does not actively recruit trainees, but we go to various job fairs each year," including the foreign lawyers job fair sponsored by NYU. Sometimes trainees work in a foreign office of the firm after spending several months in the United States. Certain of the trainees are recommended by another foreign law firm with which this U.S. firm has a close relationship. See Interview 4.

tivate relationships with other lawyers from the same home country who are working in the United States, asking them to pass along a resume and recommendation to their superiors. Such an approach might work for any law graduate, foreign or not, with regard to small and medium-sized law firms, but it is unusual for the largest U.S. firms to hire new law graduates outside of the highly-structured law school interviewing program. Nevertheless, foreign lawyers report success with this approach even in the largest law firms, with the caveat that the process can be quite slow, sometimes requiring months of patience after graduation. Attempts to tighten U.S. immigration practices following the September 11, 2001 attack may restrict the viability of this sort of wait-and-see approach.<sup>65</sup> The use of contacts to gain entry to the largest firms, however, distinguishes foreign-trained applicants from their J.D. counterparts.

Finding other lawyers from the same home country working in the United States is a time-consuming task, but two groups in New York that cater to foreign lawyers facilitate the search. The first group is the International Law & Practice Section of the New York State Bar Association. The Section hosts a Foreign Lawyers Committee, which includes on its web site a list of foreign lawyers and law firms with a presence in New York. Activities of the Section and Committee bring together diverse groups of foreign lawyers, while simultaneously serving the interests of U.S. lawyers involved in international law.<sup>66</sup>

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

The Flany Group was set up in December 1998. It always had the intention of being a group merely for foreign associates

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65. Students who have no means of supporting themselves during long waiting periods, or whose visas do not allow them to stay in the United States beyond graduation without employment, may be unable to take advantage of this approach to job searching.

66. See New York State Bar Association, International Law and Practice Section, Lawyers and Law Firms from Juris, at <http://www.nysba.org/sections/ilp/flcsinny.htm>. The list in fact includes four U.S.-based firms as well as 54 foreign law firms. Most of the lawyers on this list have not completed any U.S. legal education.

in New York. The idea was that the foreign partners of law firms in New York already had enough of their own activities as it is. The Group always had the intention of being an informal group only and not a group formally organizing all kinds of lectures . . . .

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

Considering the wide diversity of people in New York it seemed senseless to limit FLANY to European lawyers only. I discussed the idea with a good friend of mine . . . from the Swedish law firm Lagerlöf & Leman, [who also was] in New York as a foreign lawyer at that time. . . . In December 1998 [we] basically invited all the foreign lawyers that we knew in New York[,] in total about thirty[,] to come and join us for drinks on the first Tuesday of the month. We were fortunate in that about twenty-five of the thirty turned up. . . . By the time I left New York in February [2000] . . . we had a membership of about 350 lawyers from approximately eighty different firms and companies.<sup>67</sup>

FLANY's purpose is not aimed at recruiting, nor is it particularly interested in foreign lawyers while they are students in the United States, although occasionally it has served these interests. The group "had a few (less than ten) students who would turn up occasionally and people did find jobs or switched jobs through contacts they made at FLANY. . . . [Muller consistently attempted to exclude] headhunters, since FLANY was not intended to function as a . . . market place."<sup>68</sup>

Clearly, foreign lawyers who find jobs in the United States do so through a variety of approaches. Some find success as a result of interviews at the foreign lawyer job fairs. Others report blanketing the field of large law firms with letters and resumes and receiving rejections from all but the one firm that eventually offers them employment. Many opportunities seem quite fortuitous. One graduate reported that he "found a job by a posting that was in an Internet job web page, and [he] sent them [his] resume in an e-mail as an attachment. [He] . . . had a telephone

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67. Letter from Johann Muller to author (June 13, 2001).

68. Letter from Johann Muller to author (June 14, 2001).

interview, then an interview in the firm's office, and after that they made [him] a one-year offer for a position as a foreigner associate."<sup>69</sup> Another recounted that she was offered a job at one of the elite Wall Street law firms more than six months after graduation, after submitting her resume through an associate at the law firm with whom she had been in contact for quite some time. And she proudly announced that her position was as a "regular associate, not in the foreign associate program."<sup>70</sup>

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

This distinction for foreign lawyers between capitalizing on their foreign law training and its value to U.S. law firms and other employers, on the one hand, and presenting themselves as substitutes for U.S. lawyers based upon their LL.M. education and general legal knowledge, on the other hand, is one that besets foreign lawyers throughout their LL.M. year and beyond.

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69. Interview 13.

70. Interview 14.

Only a few U.S.-based law firms have a sufficient stream of work involving the law of a particular foreign country to provide a foreign lawyer with a steady diet, and most of these are headquartered in New York. Gaining access to these firms depends upon a combination of the role of the foreign lawyer's home country in the global economy as well as the credentials of the individual applicant. Another approach that capitalizes on the foreign expertise of LL.M. graduates is to find positions with U.S. law firms that have offices in the lawyer's home country, with the plan of obtaining training in the United States before transferring to the firm's foreign office.

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

Of course, these two categories are not mutually exclusive. Foreign lawyers hired by U.S. law firms for defined periods and for work on particular foreign client matters occasionally report being asked to remain with their firms in regular associate positions. The initial period and limited scope of practice serves as a way for law firms and foreign lawyers to observe each other before making more permanent commitments; given the fact that each party has less information about the other than they would without the international complication,<sup>71</sup> this "look-see" period makes sense.

### III. *THE EMPLOYERS OF FOREIGN LAWYERS IN NEW YORK*

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

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71. Foreign lawyers generally have less information about the U.S. law firm market than they do with regard to their home country legal practice opportunities. U.S. law firms also have less information about foreign LL.M. students than their J.D. applicants. The firms have only one year of law school grades by which to assess foreign LL.M.s compared to two or even three years for J.D. students; in addition, the firms generally have less information about particular foreign law schools LL.M.s may have attended, further complicating the firms' ability to assess an LL.M. student's credentials.

The foreign-educated LL.M.s in the database work for 102 U.S.-based law firms, ranging in size from three to over 3,000;<sup>72</sup> fifteen foreign-based law firms; twelve corporations or non-law professional services firms; two New York state government agencies; and the United Nations.<sup>73</sup> An additional twelve of the LL.M.s are working as sole practitioners in New York.<sup>74</sup>

Nearly eighty-five percent of the foreign-educated lawyers in the database work for U.S.-based law firms and sole practitioners. Approximately two-thirds of the 102 firms<sup>75</sup> for which these foreign lawyers work are headquartered in New York. And while many of the firms employ only one foreign lawyer, an important group employs multiple foreign lawyers on a regular basis. For example, more than one-quarter of the 295 foreign lawyers working for U.S. law firms work for one of three New York firms<sup>76</sup>—Cleary Gottlieb, Sullivan & Cromwell, and Davis Polk.<sup>77</sup> Eight additional U.S. law firms, each of which is included in the *American Lawyer 100* list of the most profitable U.S. law firms, employ five or more foreign-educated lawyers.<sup>78</sup> Other *American Lawyer 100* firms not included among these top employers of foreign lawyers may be absent because of their failure to provide infor-

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

73. Twenty-two LL.M.s in the database work for organizations that are not law firms, including: eight LL.M.s working for U.S. subsidiaries of foreign corporations, ten others holding positions at six U.S.-based corporations in diverse businesses, two working for New York state agencies, and one working for the United Nations.

74. The 12 sole practitioners in the database are older than the average LL.M., ranging in age from 37 to 47 years. Eight of the twelve are from common law countries, including two each from India, Nigeria, and Canada. Three include litigation among their practice areas, three include immigration, three have a corporate focus, six list international law, one focuses on intellectual property issues, and one includes criminal representation among his practice offerings.

75. I have not included a complete list of these law firms. The larger and national firms in the database are identified in the Article. While the information in the database was collected from public sources, I have attempted to keep the identities of the small and medium-sized firms and sole practitioners confidential.

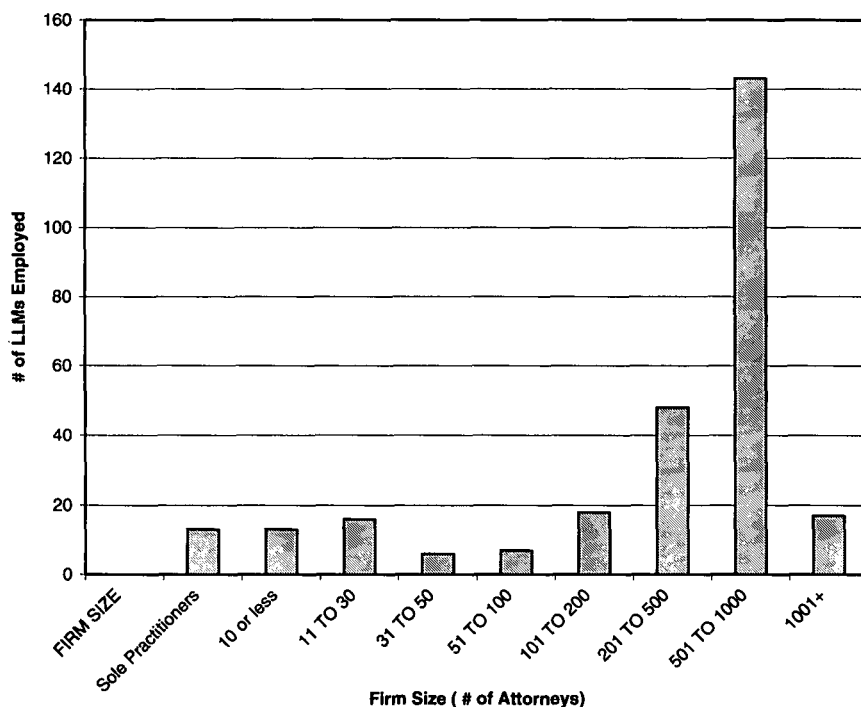
76. In fact, the number of foreign-educated lawyers in the database from Davis Polk & Wardwell is fewer than the number indicated by the firm.

77. Nevertheless, when these three firms and their foreign LL.M.s were removed from the database, the analysis remained virtually unchanged.

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

mation about associate lawyers in Martindale-Hubbell; it is clear from other sources, including information on law firm web sites and reports from foreign LL.M. students and graduates, that a number of *American Lawyer* 100 firms are consistent employers of significant numbers of foreign LL.M. graduates, although these firms are not present in large numbers in the database.<sup>79</sup>

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



The largest U.S. law firms generally are those with the most name-recognition overseas, and tend to be the firms identified by foreign LL.M. students as organizations for which they would like to work. The 102 U.S.-based law firms in the database in-

79. One example is Shearman & Sterling, which hires 20 to 25 international associates for 12-month terms. See Shearman & Sterling, Global Diversity Initiative, International Associate Program, at <http://www.shearman.com/recruiting/diversity.html>.

clude sixty-four with more than 100 lawyers.<sup>80</sup> Seventy-five percent of the over-100 firms also are among the *American Lawyer's* 100 top grossing law firms in the United States.<sup>81</sup> More than seventy percent of these firms support at least one foreign office, and all but four have multiple U.S. offices.<sup>82</sup>

Foreign-educated lawyers also are working for medium-sized and small law firms in New York. The database includes thirty-five U.S.-based law firms comprised of fewer than 100 lawyers that employ at least one foreign-educated lawyer, in addition to twelve sole practitioners who are foreign-educated lawyers. Nearly fifteen percent of all foreign LL.M.s in the database working for U.S.-based law firms are working for firms in the two-to-one hundred size range.<sup>83</sup> Seven U.S.-based law firms in the two to one hundred size range each employed more than one foreign-educated LL.M. in the database.

Eleven U.S.-based firms employ ten or fewer lawyers, and these firms appear to fall into three patterns. First are the small firms in which the foreign lawyers are the majority, and perhaps were the organizers of the firms.<sup>84</sup> Second are small firms that have an international practice specialty, in which the foreign lawyers are a minority of the legal staff. Eight of the eleven firms in the ten-and-under size range include an international specialty among their practice areas, and two of these support a foreign office.<sup>85</sup> The third pattern is comprised of small firms with no apparent reason for hiring a foreign-educated lawyer, and where the foreign lawyer might be working as a substitute for a U.S. J.D.

80. More than half of these firms are headquartered outside of New York.

81. See *American Lawyer* 100 (2000), available at [http://www.law.com/special/professionals/amlaw/amlaw100/amlaw100\\_highgross.html](http://www.law.com/special/professionals/amlaw/amlaw100/amlaw100_highgross.html).

82. Of the U.S. firms with more than 100 lawyers, only Cravath, Pryor Cashman Sherman & Flynn, Wachtell Lipton, and Schulte Roth have a sole office in the United States, in New York.

83. Among this two-to-one hundred-sized group, only three firms are headquartered outside of New York.

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

85. Among these very small firms, one that is perhaps typical specializes in customs and international trade law. It has one foreign-educated lawyer on its nine-person legal staff who serves as of counsel to the firm. Another small firm with an international focus is a seven-person law firm with two English-educated partners (neither of whom completed an LL.M. in the U.S.) and an Israeli-educated LL.M. associate lawyer.



graduate.<sup>86</sup>

Many of the U.S.-based law firms with ten-to-one hundred lawyers have more than one lawyer with a foreign connection on their staffs. Half of the lawyers at one general practice fourteen-lawyer firm, for example, include an international connection in their Martindale-Hubbell biographies: a Colombian-educated partner and a Mexican-educated associate, both with LL.M. degrees; a German-educated associate; two foreign-trained of counsels; and two U.S.-educated lawyers who also studied law overseas.<sup>87</sup> While the relationship among the lawyers with a foreign connection in these firms is not based on a particular country, the presence of multiple internationally-minded lawyers may indicate a general openness that increases opportunities.

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

The foreign LL.M.s working for foreign law firms present a much less complex story than those working for U.S. firms. Essentially, each foreign law firm headquartered in a civil law country employed only foreign lawyers whose home country was the location of the firm's headquarters. In addition, of course, these firms might staff their New York offices with U.S. lawyers who have no particular foreign connection. But the four firms with headquarters in common law countries employed at least one LL.M. from a country outside the firm's home nation.

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86. One example is a six-person law firm with its only foreign-educated lawyer, from Ireland, serving as one of its three partners; the firm's specialty is employment law.

87. A second general practice firm of approximately the same size that supports a French office, includes among its legal staff a French lawyer who did not earn an LL.M., and a Colombian-educated LL.M. A somewhat larger general practice firm, with approximately one hundred lawyers, also supports one foreign-educated partner and two foreign-educated associates, one of whom completed an LL.M. in the United States.

In thinking about job search strategies, foreign LL.M. graduates might identify law firms with foreign offices in their home countries as good prospects for employment, on the theory that these firms would likely have business related to their home countries. In addition, the firms may hire LL.M.s with the agreement of training them for a period in the United States, after which the LL.M. graduate returns to his or her home country to work in the firm's foreign office there. It is difficult for U.S. firms to staff their foreign offices, and the fact that foreign offices have grown in size in recent years only exacerbates the staffing problems. A number of law firms hire LL.M.s for brief periods of training in the United States before sending them to foreign offices in their home countries. Cleary, Gottlieb, Steen & Hamilton articulates this as one consideration in hiring attorneys for its Foreign Lawyer Internship Program.<sup>88</sup> Other law firms share this vision without articulating it quite as publicly. A partner at one law firm reported that the firm became more interested in hiring foreign-educated lawyers after it had experienced substantial international expansion through the opening of foreign offices:

Recently, we have been more interested in foreign-educated lawyers than in the past because of our international expansion. For example, we have recently hired several lawyers who have received degrees from law schools in the PRC in addition to their LL.M. or J.D. from a U.S. law school. Our hope is that such lawyers will work in one of our Asian offices after receiving appropriate training in the U.S.<sup>89</sup>

Sixty-two of the U.S.-based firms in the database support at least one foreign office, and twenty-two of these hired at least one lawyer educated in the country where the firm had a foreign office. Approximately half of the foreign-educated LL.M.s in the database working at both Cleary Gottlieb and Sullivan & Cromwell were educated in countries in which these firms support offices. Other firms follow the same approach;<sup>90</sup> one reported that

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88. See Cleary, Gottlieb, Steen & Hamilton, Recruiting, Foreign Internship, at <http://www.cgsh.com/ny-internship.htm> ("Many of the European-trained interns return to Europe to become associates in one of our European offices, while others return to their home countries to work with clients or in local law firms.").

89. Interview 5.

90. In addition to Cleary and Sullivan, the large U.S.-based firms with LL.M.s from countries in which the firms have foreign offices include the following: Winthrop Stim-

"virtually all of the . . . long-term associates [in its foreign office] spend at least a year in New York."<sup>91</sup> In addition to the twenty-two firms that hired at least one foreign lawyer from a country in which a foreign office was located, two additional firms hired LL.M.s from the same region in which they have foreign offices.<sup>92</sup>

A second strategy for LL.M. graduates to find work in the United States is to search for firms that engage in a foreign-directed practice, aimed at the foreign lawyer's home country or its region, where the law firm does not support foreign offices in the particular country or region. This is the converse of the prior strategy; that is, identifying law firms that have business but no offices in the home country of the foreign lawyer. Many internationally focused U.S. firms have work in Latin America, for example, but few have offices there. Latin American lawyers often fill a specific need at these firms for locally-trained lawyers who can work in Spanish and English and bridge the relationship between the United States firms and their Latin American clients. A hiring partner at one U.S.-based international firm noted that the firm had "hired two Argentinean LL.M.s in the last two years because they had great credentials and they could help with the firm's Latin American practice. [This] firm does not have an office in Argentina."<sup>93</sup> Another firm described a

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son (now Pillsbury Winthrop), Davis Polk, Kirkland & Ellis, White & Case, Jones Day, Winston & Strawn, Morrison & Foerster, Baker & McKenzie, McDermott Will & Emery, Curtis Mallet-Prevost, Gibson Dunn, Kelley Drye, Brown & Wood (now Sidley Austin Brown & Wood), Shearman & Sterling, Graham & James (now part of Greenberg Traurig in New York), Vinson & Elkins, Simpson Thacher & Bartlett, and Dorsey & Whitney. See Susan Beck et al., *Bar Talk*, AMERICAN LAWYER, March 2001. Two smaller firms also matched an LL.M.'s home country and the location of a foreign office, one with fewer than 10 lawyers and an office in Switzerland, and the second with approximately 30 lawyers and affiliated offices in Italy and France.

91. Interview 8.

92. A medium-sized firm with offices in China and Hong Kong, among other locations, hired two Taiwanese LL.M.s. A second medium-sized firm supports representative offices in Germany and Romania, and hired an Austrian LL.M. While not a perfect match, the foreign-educated lawyers may offer language ability and cultural understanding that proves useful.

93. Interview 4. Similarly, Paul Weiss, in its web site description of its Latin American practice, alludes to the importance of regional connection: "Our lawyers have the language capability, the cultural and professional experience, and the benefit of extensive local contacts and networks, to deliver an effective, integrated and cost-efficient service to clients doing business anywhere in the region." Paul Weiss, Practice Areas, Latin America, at <http://www.paulweiss.com/frames/frameset.asp?url=/firm/body.asp>.

similar policy for hiring foreign lawyers for the purpose of having lawyers who “generally deal with clients from their native countries and are in no particular department” in the firm.<sup>94</sup> Similarly, certain countries are closed to U.S. law firms, and lawyers educated in these countries can provide a much-needed connection to work being done by a firm from New York. Korean lawyers, in particular, might be used to fill this need.<sup>95</sup>

With each of these strategies, foreign lawyers may be more likely to find work in the United States, but also may be pigeonholed by the firms with regard to work related to their home countries.<sup>96</sup> This may be advantageous for foreign lawyers who intend to return home after a year or two of work in the United States.<sup>97</sup> It would permit them to maintain contact with relevant legal issues, to experience those issues from the position of the U.S. firm and its clients, and also to connect with lawyers and others working in the area. But a country focus will limit the U.S. experience of the LL.M. in a way that is unfamiliar to most U.S.-trained lawyers, who may specialize in particular substantive transactions, but generally do not focus exclusively on transactions based in one nation for their entire law firm careers. For the foreign LL.M. who may not intend or be permitted to work for a U.S. law firm indefinitely and thus may well be limited to the experiences of her first few years, a country limitation may define the entire experience.

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94. Interview 9.

95. Latham & Watkins and Cleary Gottlieb each employ one Korean lawyer, for example.

96. Sullivan & Cromwell, however, makes it clear that it attempts to integrate foreign lawyers into the pool of associates. See Sullivan & Cromwell, Foreign Lawyers Program, at [http://www.sullcrom.com/display.asp?section\\_id=108](http://www.sullcrom.com/display.asp?section_id=108). The website states that:

Foreign lawyers are generally expected to perform legal work at the level of regular U.S.-trained junior associates, and work as a part of a team of regular lawyers assigned to client matters. Foreign lawyers also participate in the firm's formal training program for new associates, which involves twice-weekly seminars conducted by Sullivan & Cromwell lawyers.

*Id.* Another firm reported that it hires foreign lawyers for one year of work after their LL.M.s, and “[t]hey work in the regular pool of associates.” Interview 8.

97. Law firms that do not limit foreign lawyers to work related to their home countries may nevertheless restrict them to a firm's international practice. For example, Shearman & Sterling describes the work of its international associates as concentrated on the firm's international practice. See Shearman & Sterling, Global Diversity Initiative, International Associate Program, at <http://www.shearman.com/recruiting/diversity.html>. This may make sense to the foreign lawyers, but at the same time it may result in limiting a foreign lawyer's association with many of the attorneys in a law firm.

From the perspective of integration and internationalization, these two strategies present a double-edged sword. On the one hand, law firms that hire for these purposes are selecting foreign lawyers specifically because of their foreign expertise. But hiring for the purpose of representing the firm in one area of the world also restricts the experience and exposure of the foreign lawyer, and may marginalize them. In addition, given the potential negative consequences on national economies when a gloomy economic forecast is predicted in certain parts of the world, and the intimate connection among national economies today, it is likely that practices based exclusively on activity in a particular nation will sooner or later suffer contractions. In such circumstances, law firms often move their lawyers to practice areas that remain active, but foreign lawyers hired for the purpose of advising on matters related to a particular nation may not be offered the opportunity of moving to a different specialty if their value to the firm is limited to their foreign background.

#### IV. FOREIGN LAWYERS AS SUBSTITUTES FOR U.S. J.D.s

What is new, or new at least to the extent of expanded opportunities, is the opportunity for foreign lawyers to be hired as regular associate attorneys at the large law firms in New York. One firm noted that, during the past five years, there has been "[m]uch more willingness to hire foreign lawyers, in particular those from common law jurisdictions."<sup>98</sup> A lawyer at another firm characterized "everything . . . [as] more global . . . we need better access to foreign lawyers who are 'home grown from within.'"<sup>99</sup> Occasionally a lawyer hired for a foreign lawyer training program will transfer to the regular associate track at a law firm, while others in these training programs find subsequent jobs in the United States at other law firms.<sup>100</sup>

There are several reasons for the increase in opportunities for foreign lawyers to work as regular associates. First, the competition for good law graduates is intense, and perhaps at no

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98. Interview 3.

99. Interview 6.

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

place is it more intense than at the largest law firms in New York. According to a partner at Proskauer Rose in New York:

There is an increasing demand for young lawyers by all the large firms of the world, and the demand has exceeded the traditional supply. . . . The number of people who graduated last year from Harvard, say, is not that much greater than the number of graduates fifty years ago. And fifty years ago, there wasn't a single law firm in the world that had more than a hundred lawyers. Now, there are forty firms with more than 600 lawyers. So, we'll have to recruit at more schools, and we'll have to look deeper.<sup>101</sup>

These firms have large incoming classes of new law school J.D. graduates each year, and the attrition rate for these new lawyers is high.<sup>102</sup> Staffing is a central and recurring problem. Foreign lawyers increase the potential pool of new lawyers. At least six New York offices scheduled on-campus interviews for law graduates at Canadian law schools for the fall of 2001,<sup>103</sup> and LL.M.s are an additional source of talent. One firm reported that it has "aggressively recruited foreign lawyers over the last two years in order to meet recruiting objectives. Most firms that were strictly against hiring foreign lawyers have relaxed this posi-

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101. Thomas Adcock, *The Canadians are Here, eh?*, 225 N.Y.L.J., June 8, 2001, at 16 (quoting Robert J. Kafin, Chief Operating Partner at Proskauer).

102. Three law firms, Curtis Mallet-Prevost Colt & Mosle, Dewey Ballantine, and Steel Hector & Davis, reported losing 40% of their associates during 1999. Andrew R. Dunn, *Attrition Puzzle Isn't all About Money*, NAT'L L.J., Dec. 4, 2000, at A11. The associate attrition rate for 2000 was 23.84%, compared to 18.5% for 1999, according to the *National Law Journal* Annual Survey of the 250 largest U.S. law firms. *Id.* See also Garth & Silver, *Of Brain Surgeons & Barber Shops*, *supra* note 18.

103. So many Canadian law graduates are accepting jobs at law firms in New York that there is concern over a "brain drain." See Adcock, *supra* note 101 ("With regard to lawyers, it's very hard to know what they're going to do with experience gained in New York and other American cities—whether they'll bring it back to Canada." (quoting Victoria Melkle, Assistant Dean for Admissions and Placement at McGill University Faculty of Law, Montreal)). Among the U.S. law firms that recruit at Canadian law schools as part of their scheduled fall recruiting activities are Cleary Gottlieb, Clifford Chance (Rogers & Wells), Davis Polk & Wardwell, Dewey Ballantine, Shearman & Sterling, Sidley Austin Brown & Wood, and Simpson Thacher & Bartlett, all of which had scheduled on-campus interviewing dates at McGill for the fall of 2001. All but Clifford Chance also interviewed at the University of Toronto and Osgoode Hall. See firm web sites.

For a general discussion of Canadian "brain drain," see Mahmood Iqbal, Canadian Tax Foundation, *Brain Drain: Empirical Evidence of Emigration of Canadian Professionals to the United States* (2000), available at <http://www.ctf.ca/taxreform/iqbal.pdf>.

tion in order to fill their entry classes."<sup>104</sup>

This openness to foreign lawyers is not universal among New York lawyers, even among the largest U.S. firms. Several large U.S. firms expressed reluctance about hiring foreign lawyers at all.<sup>105</sup> A hiring partner at a firm with more than 500 lawyers commented on the challenges facing foreign LL.M.s:

U.S. law school is hardly sufficient preparation for working at a U.S. law firm—there's a substantial disconnect between law school and law firm practice, but the disconnect would be larger if the lawyer was foreign-educated. That would make the work of a law firm seem even more foreign than it already does to new associates. . . . [When foreign lawyers] are hired, they tend to be a pace or two behind U.S.-educated lawyers. A U.S. LL.M. degree is not a good substitute for a J.D. degree.<sup>106</sup>

This lawyer explained that his firm intended to "satisfy [its] need for associates . . . [by] look[ing] deeper into classes at the U.S. law schools that they recruit at, and we'll look at lateral hires. Looking at foreign-educated lawyers isn't fungible with U.S. graduates."<sup>107</sup> Similar sentiments were expressed by the hiring partner at another 500-plus firm:

Lawyers educated in other countries don't come to practice with the same mindset as those educated in the U.S. Lawyers educated in [a] civil law system, and even lawyers educated in Canada, do not come equipped as well as a U.S. lawyer to take assignments and run with them. . . . The key to the advantage of U.S. lawyers is U.S. law school education. It is intense and goes deep, and this is important.<sup>108</sup>

Another firm that has a history of hiring foreign LL.M.s for

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104. Interview 7. See also Margery Gordon, *G'Day, New York*, 22 AMERICAN LAWYER, June 2000.

In the past two years, top U.S. firms have imported at least three dozen Aussie laterals, with the vast majority stationed in New York. Davis Polk & Wardwell and Milbank, Tweed, Hadley & McCloy now have eight Australian associates apiece. Sullivan & Cromwell has six, along with a lone New Zealander. Shearman & Sterling expects to have 11 Australians on board by this fall.

*Id.*

105. Each of these firms employs foreign LL.M.s, regardless of the reluctance expressed.

106. Interview 11.

107. *Id.*

108. Interview 4.

its New York office is being more cautious about adding new foreign lawyers, in an effort to "ensure that they are fully occupied. Also, as associate costs have increased and their salaries have risen, it has become more important to maintain a higher level of billable activity."<sup>109</sup> Similarly, a Pillsbury Madison & Sutro lawyer commented on his firm's practice of paying foreign LL.M.s lower salaries than J.D.s earn:

It's efficient because the firm pays these lawyers less than incoming associates, reflecting the learning curve they face. . . . Usually, it's more than they're making, or expect to make, in their own countries. And the firm can bill them out at lower rates than associates, even though clients are getting highly qualified lawyers.<sup>110</sup>

As the economy constricts, this cautionary attitude may become more widespread.

The use of foreign lawyers as substitutes for U.S. lawyers is visible also in the Martindale-Hubbell data relating to LL.M. graduates working in New York. Foreign lawyers from common law countries are working in a wide variety of law firms, often without any substantial relationship to their firms' geographic business interests.<sup>111</sup> Large firms with challenging staffing needs have long relied on English and Canadian lawyers to fill their ranks. But the practice has become even more widespread. According to a recent report by the *American Lawyer*, "[s]hort-handed U.S. firms have already searched Canada and Great Britain to 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[.]'"<sup>112</sup> LL.M.s from developing common law countries also appear in this manner in the database. For example, one

109. Interview 8.

110. Ritchenya A. Shepherd, *Foreign Law Students Help to Fill Gap*, NAT'L L. J., July 10, 2000, at A26 (quoting George P. Haley).

111. Indeed, one 50-lawyer firm, in which an English-educated lawyer is a partner, advises foreign-educated lawyers not to apply for positions: "[s]imilarly, we sometimes receive inquiries from lawyers in foreign countries who do not have a J.D. from an American Bar Association accredited law school, or the equivalent. While some larger firms in New York City run programs for foreign-qualified lawyers, our firm has not to date created such a program, and it is usually unrealistic for the firm to pursue employment inquiries from lawyers in that situation."

112. Gordon, *supra* note 104 (quoting Melinda Wallman, Director of International Recruiting for Major, Hagen & Africa).



firm in the 100-200 size range with an affiliated office in Latin America employs an LL.M. from Nigeria; a mid-sized patent law firm with two European offices, one of which is in London, hired an LL.M. from Liberia; three large firms, Brobeck, Winthrop Stimson, and Weil Gotshal each employ one LL.M. from Kenya. And in my conversations with law firm hiring partners, several acknowledged a difference in their perceptions of lawyers from common law backgrounds compared to their civil law-trained lawyers. One reported that "a common law-trained lawyer may be viewed as more likely to succeed over the long-term" at his firm.<sup>113</sup> Another firm will "hire Canadian and other common-law lawyers without an LL.M."<sup>114</sup>

Additional evidence of the use of foreign lawyers as substitutes for U.S. lawyers is found in the practice specialties of the foreign lawyers in the database. A number of these lawyers identified their practice specialty as litigation.<sup>115</sup> This is surprising since litigation is generally considered among the most local of practice areas, often reserved for locally-trained lawyers.<sup>116</sup> Nevertheless, foreign lawyers working at large and small firms indicated litigation as their specialty. The LL.M. litigators include six sole practitioners, as well as LL.M.s working at four firms of fewer than twenty lawyers, two firms in the 100-200 range and eleven firms of more than 200 lawyers each. In addition, foreign LL.M.s working for two corporations and two New York offices of foreign-based law firms also indicated their work includes litigation. The LL.M.s engaged in litigation practices are overwhelmingly from common law home countries: eighty-eight percent of the litigators had their first legal training in a common law system, by comparison fewer than fifty percent of the entire database of foreign lawyers came from common law countries.

Most foreign lawyers gravitate towards transaction work as opposed to litigation; this division is a deep one, causing many transaction lawyers to remark with pride on their ignorance of

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113. Interview 8.

114. Interview 3.

115. Information was collected regarding the substantive area of specialization of approximately half of the foreign lawyers working for U.S. law firms, and 15% of these indicated litigation as one of their areas of specialization.

116. Keith Clark, then Chairman of Clifford Chance, recently noted that "[t]he last bastion of local law lies in the courts." KEITH CLARK, *Introduction*, in *THE COMING TOGETHER OF THE COMMON LAW AND THE CIVIL LAW* 6 (Basil S. Markesinis ed., 2000).

the address of the local court. Transaction work involves a great variety of substantive topics, including business deals of every sort, financings, privatizations, securitizations, commercial lending, public and private securities offerings, and other capital market transactions. The work of a transaction lawyer revolves around negotiation and drafting. Transaction lawyers often create much of the law governing their deals in the documentation of the transactions; to this extent, the educational backgrounds of the lawyers involved is perhaps secondary to their deal expertise.

Transaction lawyers have been central figures in internationalization in part because it is their transactions that push businesses and money across borders. But there is also a regulatory explanation for the connection between transaction lawyers and internationalization. Those who regulate lawyers, in the United States and elsewhere, generally restrict the right to appear in court to locally-trained lawyers. Occasionally, other substantive areas of law, such as family law and real estate matters, also are reserved to local lawyers. These reservations are justified on the basis that local differences render it inefficient for lawyers trained elsewhere to engage in representation in these areas; in addition, a concern for protecting the public from legal incompetence is part of the discussion in the United States, at least.<sup>117</sup> Transaction lawyers generally operate outside of these regulatory restrictions.

As a result of these factors, in examining the LL.M. database, I expected to find the foreign-educated lawyers engaged in transaction work. And in fact, more than ninety percent of those LL.M.s who listed a substantive specialty<sup>118</sup> indicated one that is either clearly transactional, such as leasing, international transactions, or capital markets, or one that could be transactional, such as derivatives and intellectual property.<sup>119</sup>

In addition to the basic division between litigation and

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117. This is true for lawyers crossing state lines in the United States, as well as national boundaries.

118. Nearly half of the LL.M.s working for U.S.-based law firms did not indicate a practice specialty.

119. Among the U.S. firms in the 2-200 size range, one group employing LL.M.s is composed of firms focused on a particular specialty, such as a 50-lawyer patent law firm, and an intellectual property, copyright and unfair trade law firm with approximately 175 lawyers. The former supports two foreign offices, which is one indication that a firm might be interested in foreign-educated lawyers.

transaction work, Martindale-Hubbell allows lawyers to indicate specialties related to an international or even a particular country focus. Approximately one-third of the LL.M.s working for U.S.-based law firms identified their practice as including an international element. In addition, approximately ten percent identified a particular national or regional focus of their work, including Latin American law and the law of the European Union. Thus, more than half of the lawyers working for U.S.-based law firms did not identify their work as international. Again, this indicates that these LL.M.s may serve their U.S. employers as substitutes for U.S. J.D.s, using their U.S. educations and bar admissions to secure opportunities quite divorced from their foreign legal backgrounds.

Aside from the obvious advantage of a common law background, foreign lawyers working as substitutes for U.S. lawyers often are hard-pressed to identify what characteristics and preparation enabled them to secure their positions. Most are admitted to practice in New York, although this is not universal. An additional element identified by the hiring partners as crucial for foreign lawyers is excellent English language skills. One hiring partner commented: "Language is a big factor. Foreign lawyers may be great in speaking ability, but their written ability may not be up to snuff. Writing documents requires a rigor that is not needed for writing prose, and that is not easy for non-native English speakers."<sup>120</sup> Without facility in English, foreign lawyers cannot work as substitutes for U.S. lawyers. In fact, their effectiveness even as foreign law experts is of limited value to most U.S. law firms unless they are fluent in English.

#### V. FOREIGN LAWYERS AS MARKETING AGENTS

Quite apart from any substantive relationship between a foreign lawyer and the work she/he performs for a firm, law firms use their foreign lawyers to market their capacity for international work. Certain law firms point to the international characteristics and backgrounds of their lawyers in presenting the ability of the firm to provide high quality representation in international business matters. In such marketing material, language ability is often highlighted.<sup>121</sup> In addition, several firms empha-

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120. Interview 4.

121. One example is from the web site of a firm with fewer than 100 lawyers: "Re-

size their lawyers' international or foreign education as evidence of the international abilities of the firm.<sup>122</sup> At least two firms allow web site visitors to search for lawyers based upon the law school they attended, and include foreign schools attended by their foreign lawyers on these searchable lists.<sup>123</sup> In doing so,

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flecting its diverse practice and client base, [this firm] offers experienced, American-trained attorneys fluent in French, Italian, Spanish, Portuguese, Greek, German and Russian." Other examples include Davis Polk & Wardwell, in the description of the firm's international practice: "More than one-third of our principal clients are non-U.S. companies or governments, and our 630 lawyers come from more than 30 countries and collectively speak 26 languages." See Davis Polk & Wardwell, Practice Areas: International, at <http://www.davispolk.com/practice/international.htm>. Holland & Knight's description of its international practice also includes a statement about language ability of its lawyers: "The firm's international lawyers pride themselves on their ability to successfully conduct cross-cultural business negotiations and meetings, many times in the foreign language of the host country." See Holland & Knight, General Practice Areas: International, at <http://www.hklaw.com/practice.asp?GeneralPAID=15>. Vinson & Elkins, in the description of the firm's Latin American practice: "Many of our lawyers are competent in several languages as well as in the cultural aspects of living and conducting business outside the United States." See Vinson & Elkins, Practice Areas, Latin America Transactional, at [http://www.velaw.com/practice\\_areas/practice\\_areas.cfm?prac=35](http://www.velaw.com/practice_areas/practice_areas.cfm?prac=35). Davis Wright Tremaine, in its description of the international practice group: "Our International Law practice, with a presence in each of our U.S. offices, includes attorneys and other professional staff who expertly speak, read and write Japanese, Chinese, Korean, Spanish, French, German and Russian." See Davis Wright Tremaine, Practice Areas: International Law, at [http://www.dwt.com/practc/int\\_law/int\\_law.htm](http://www.dwt.com/practc/int_law/int_law.htm). Thelen Reid & Priest's description of its firm: "[O]ur lawyers are fluent in several languages and have lived abroad gaining familiarity with Latin American, European and Asian cultures and legal systems." See Thelen Reid & Priest, Practice Areas, International Capabilities, at [http://www.thelenreid.com/practice/practice\\_idx.htm](http://www.thelenreid.com/practice/practice_idx.htm). Finally, this description of a ten-person firm in its firm profile: "We are highly qualified attorneys fluent in English, German and French with extensive and diverse experience in complex corporate and financial transactions in the United States, Europe and Asia."

122. See, e.g., Curtis Mallet-Prevost, Colt & Mosle, Practice Areas: Latin America, at [http://www.cm-p.com/practice\\_latin.htm](http://www.cm-p.com/practice_latin.htm) ("... most members of the practice group are at least bilingual and routinely negotiate and draft agreements in Spanish and Portuguese. Various attorneys have civil law degrees from Latin American jurisdictions . . ."); Latham & Watkins, Departments and Practice Areas, International, at <http://www.lw.com/depts/int.htm> ("Our international practice attorneys have done work relating to over 50 different countries, and have lived and worked in Hong Kong, Britain, France, Germany, South America, Japan, Korea and Russia. Latham & Watkins international lawyers are competent in a host of foreign languages which include: Armenian, Arabic, Cebuano (Filipino), Cantonese, Mandarin, Danish, French, German, Greek, Hebrew, Italian, Japanese, Korean, Nepalese, Norwegian, Portuguese, Russian, Spanish and Swedish. Many have studied at leading foreign universities and some are natives of France, Germany, China, Japan, Korea, South Africa, Taiwan, the United Kingdom and Russia.").

123. Cleary, Gottlieb and Shearman & Sterling both provide this option, and Cleary includes an icon for "Law Schools Outside the U.S." See Cleary Gottlieb Steen &

these law firms are identifying their lawyers' foreign characteristics as an advantage. The foreign language and education of the LL.M.s bring an important international quality to their firms.

Another "marketing tool" of large law firms aimed at establishing their international prowess involves foreign lawyer training programs. These programs are designed to expose foreign lawyers to the U.S. approach to lawyering, and slots often are reserved for those foreign lawyers affiliated with the host firm's "best friend" foreign firms. There long have been formal foreign lawyer training programs, lasting generally between three and twelve months, at several New York elite firms. Sullivan & Cromwell, for example, articulates the law firm referral approach in its web site description of the Foreign Lawyers Program: "The firm encourages law firms around the world to propose candidates for the program . . ." <sup>124</sup> Firms without formal foreign lawyer programs follow this approach as well, taking on lawyers from favored foreign firms for temporary periods of training and exposure to the U.S. style of lawyering. <sup>125</sup>

From the perspective of foreign lawyers, the disadvantage to these programs is also their advantage—they consider foreign lawyers separately from their U.S. counterparts, which creates increased opportunities for foreign applicants but also marginalizes them. The limited duration of the programs combines with the lawyers' identification as "foreign" to create a barrier between them and the experience of a typical American law graduate. It is simply not efficient for law firms to pour resources into

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Hamilton, Lawyers, Search, at <http://www.cgsh.com/lawyersearch.cfm>; Shearman & Sterling, Lawyers, Associate Search By Law School, at <http://www.shearman.com/lawyers/associates/school.html>.

124. See Sullivan & Cromwell, Foreign Lawyers Program, at [http://www.sullcrom.com/display.asp?section\\_id=108](http://www.sullcrom.com/display.asp?section_id=108). Kirkland & Ellis' foreign lawyer exchange program includes both foreign lawyers working for the firm in the United States and U.S. lawyers working for foreign firms. See Kirkland & Ellis, Lawyers: Foreign Lawyer Exchange, at <http://www.kirkland.com/firm/lawyers/exchange.asp>.

125. The hiring partner at a U.S.-based law firm with more than 500 lawyers distinguished his firm's willingness to host foreign lawyers as trainees from the hiring of foreign lawyers for permanent positions. This firm accepts several foreign lawyers with LL.M. degrees as trainees each year, hosting them for a maximum of six months. He indicated that his firm "does not actively recruit trainees, but we go to various job fairs each year," including the foreign lawyers job fair sponsored by NYU. Sometimes trainees work in a foreign office of the firm after spending several months in the United States. Certain of the trainees are recommended by another foreign law firm with which this U.S. firm has a close relationship. Interview 4.

new lawyers who definitely will not be with the firm for a sufficient duration to be a source of revenue.

### CONCLUSION

The foreign lawyers described in this Article have capitalized on their U.S. education and licensing credentials as well as on their foreign backgrounds. When foreign lawyers work as U.S. substitutes, the opportunities for a substantive exchange of information in practice is quite high. Foreign lawyers learn how U.S. lawyers think about the law, and at the same time, they may educate their U.S. colleagues, intentionally or not, through the give-and-take that is part of legal practice, about the ways in which foreign lawyers differ. In the same way, foreign lawyers enrich the law school classes in which they participate, as their questions and comments reveal different assumptions about the role of law and lawyers in foreign legal systems. Foreign lawyers who are not hired to serve a particular group of foreign clients generally are hired and accepted in spite of their foreign education, because they otherwise meet their firms' needs for talented and dedicated lawyers.<sup>126</sup> They market themselves to "buy into" this valuation system, in which their foreign backgrounds and comparative approaches are secondary or insignificant. Those with a common law background can more easily blend into the fabric of the U.S. bar; for civil law trained lawyers, the LL.M. serves as an entry ticket.<sup>127</sup>

For most of the firms included in the study, foreign lawyers are present in very limited numbers. Even U.S. law firms that regularly participate in the international legal services market seem to have little confidence that foreign legal education is adequate preparation for their lawyers, and often relegate foreign lawyers to special and temporary categories. While these firms and their hiring partners may be less than completely enthusiastic about the preparation provided by the three-year J.D. degree

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

127. Common law-trained foreign lawyers in some cases successfully gain employment in the private sector in New York without enrolling in an LL.M. program.

earned by U.S. lawyers, they seem to value the commonality of the experience and its attention to detail characteristic of law school in the United States. It is as if these firms and their senior lawyers want their new lawyers to complete the three-year U.S. J.D. experience just as club members everywhere require their newest recruits to experience the challenges of pledge week. The club of U.S. lawyers has been strong enough to exclude those whose experiences are too dissimilar, who might bring different approaches and attitudes to the traditions of the legal elite.

Nevertheless, as U.S. law firms continue to expand internationally, foreign legal education may become a more valued asset.<sup>128</sup> Law firms position themselves to participate in the international market for legal services by identifying themselves as international organizations. One piece of evidence of this mindset is the presence of their foreign lawyers.<sup>129</sup> Thus, the value of the foreign credential depends upon the audience; for domestic purposes, it is U.S. training that is most desirable, and for international purposes, the foreign training provides an indication of international acceptance and sophistication that helps U.S. law firms avoid the parochial look associated with a purely domestically educated staff. As U.S. firms increasingly compete with foreign firms, this may become more important, as there may be more mixing of nationalities and education backgrounds of their lawyers, especially among the Magic Circle firms.<sup>130</sup> The competition with non-law professional services firms, where leadership roles have been occupied by foreign-educated profession-

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128. On the implications of the experience of U.S. law firms with regard to diversity in hiring and promotion, see David B. Wilkins, *Why Global Law Firms Should Care About Diversity: Five Lessons from the American Experience*, 2 EUR. J. L. REFORM 415 (2000).

129. A small number of U.S. law firms even advertise the international qualities of their lawyers on web sites, through identification of foreign legal education, for example, or foreign birth. See, e.g., Cleary Gottlieb Steen & Hamilton, Lawyers, Search, at <http://www.cgsh.com/lawyersearch.cfm>; Shearman & Sterling, Lawyers, Associate Search By Law School, at <http://www.shearman.com/lawyers/associates/school.html>. Other firms include a more generic description in their effort to position themselves as international. See, e.g., Hughes Hubbard & Reed, Practice Groups, International Practice, at <http://www.hugheshubbard.com/data/PracGrp/INTERPRAC.htm> (stating "[f]luency in eighteen languages. . . . Attorneys who have been trained and have practiced in more than ten countries").

130. The Magic Circle firms, all based originally in London, include Clifford Chance, Slaughter & May, Linklaters, Freshfields, and Allen & Overy. On the competition between the Magic Circle and U.S. law firms. See generally *Lawyers Go Global*, ECONOMIST, Feb. 26, 2000, at 79.

als,<sup>131</sup> also may push U.S. law firms towards greater acceptance and appreciation of foreign lawyers.

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131. Foreign-educated professionals have occupied the highest positions at McKinsey Consulting and Arthur Andersen. See Govindraj Ethiraj, *The Guts Feeling*, *ECON. TIMES* (India), Aug. 13, 1999, available at 1999 WL 23696790.