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Globalization and the Business of Law: Lessons for Legal Education

*Carole Silver, David Van Zandt & Nicole De Bruin**

Cross-border law practice is growing to serve the increasingly global business of its clients, and U.S. and U.K. firms have been leaders in this global expansion of law practice. Expansion takes several forms, including the physical—with law firms opening offices in faraway locations to serve existing and new clients¹—as well as the virtual—based on technology that supports the economics of cross-border activity by enabling practice apart from physical presence.² Whether working for global or local organizations, lawyers today are increasingly faced with the prospect of working with colleagues and competitors who are diverse in terms of nationality, education and training, and with clients whose problems may be as locally-focused as a Chicago zoning matter or as distant as the acquisition of one non-U.S. company by another.

The United States is a net exporter of legal services³ and its success in

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¹ See *The Global 100*, AM. LAWYER, Oct. 2007, which reports on the number of lawyers working outside of the home jurisdiction for the 100 highest grossing law firms worldwide. Of course, physical expansion also encompasses lawyers traveling to accommodate clients' needs, as evidenced by new regulatory approaches, such as the temporary practice rule recommended by the American Bar Association; see *ABA Model Rule for Temporary Practice by Foreign Lawyers* (Aug. 2002), available at <http://www.abanet.org/cpr/mjp/201j.doc>.

² Expansion also includes different ways of organizing the workforce of a firm, including the use of temporary or contract workers and outsourcing. See Richard Lloyd, *Home Away From Home: Outsourcing and Offshoring Gain Traction in the U.K. Legal Market*, AM. LAWYER, Sept. 2007, at 75; Jessica Jones, *Maharaja of Media: Russell Smith Represents Hollywood's Elite—From Mysore, India*, AM. LAWYER, June 2007, at 20.

³ According to the Bureau of Economic Analysis, total exports from the United States for legal services (from unaffiliated foreign persons) for 2006 were \$5,043,000,000, net exports were \$4,072,000,000. Bureau of Economic Analysis, *International Economics Accounts*,

this regard, along with that of the United Kingdom, has influenced legal practice around the world. The U.S. and U.K. style of law practice, in which lawyers provide not only specific advice on the applicable law but also add value by helping clients structure their transactions and orchestrate large cross-border teams, challenges local law firms that must compete in an increasingly global marketplace. In response to this competition, much of legal practice is converging towards a more uniform approach informed by U.S. and U.K. global law firm standards. In transnational transactional practice, for example, the common law approach of U.S. and U.K. firms to documentation is standard in certain quarters even apart from a U.S. or U.K. connection of the parties. The influence of globalization and evidence of convergence is apparent even in the area of dispute resolution, despite the continuing importance of local courts and procedure.⁴

The global forces shaping business and the practice of law are felt in legal education, too, and U.S. law schools occupy a leading role in educating domestic and non-U.S. students for practice in the transnational marketplace.⁵ Non-U.S. nationals are entering U.S. law schools in increasing numbers.⁶ Typically, such students come to the United States after earning a first degree in law in their home countries. They then enroll in nine-month masters degree programs that allow them to earn an LL.M. degree in a single academic year.⁷ Until recently, non-U.S. national students were unlikely to enroll in the basic J.D. degree program that is the mainstay of U.S. law schools, but today non-U.S. national students are

available at <http://www.bea.gov/international/xls/tab7b.xls>. The gross output for legal services for 2006 was \$264,800,000,000; see http://www.bea.gov/industry/gpotables/gpo_action.cfm?anon=64860&table_id=20848&format_type=0. Thus, for 2006, total exports for U.S. legal services constituted approximately 2% of the gross output for legal services.

⁴ On international commercial arbitration and conflicts over jurisdictional standardization, see generally YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE* (1996).

⁵ See David Van Zandt, *Globalization Strategies for Legal Education*, 36 U. TOLEDO L. REV. 213 (2005).

⁶ Northwestern University School of Law typifies the internationalization of U.S. law student bodies: non-U.S. nationals comprise 18% of our enrolled students. The Northwestern Law international student population has increased over the last four years from approximately 14% of enrolled students to slightly more than 18% in 2007–2008. If the executive LL.M. programs are included, foreign nationals account for nearly 25% of enrolled students in 2007–2008, compared to approximately 17% in 2003–2004. For a description of the executive LL.M. programs, see Northwestern University School of Law, *Executive LL.M. Programs*, <http://www.law.northwestern.edu/graduate/llmexec> (last visited May 1, 2008).

⁷ Many schools offer multiple LL.M. programs. Northwestern, for example, offers a nine-month LL.M. degree, a twelve-month joint LL.M. degree and certificate of business administration from the Kellogg School of Management, and a nine-month LL.M. in human rights.

increasingly enrolling in J.D. programs as well.⁸ The number of non-U.S. nationals who are students in U.S. law schools has increased quite dramatically over the last several decades.⁹

In addition to internationalizing the student bodies of our law schools, however, legal education has changed in recent years to reflect the importance of international issues and audiences. Schools highlight their commitment to international, transnational and global issues through courses,¹⁰ journals¹¹ and centers.¹² In addition, there is a growing emphasis on helping U.S.-national students learn about other jurisdictions, either through traditional course work or by traveling outside of the United States for purposes of study.¹³

These changes reflect the impact of practice on legal education, and of

⁸ At Northwestern University School of Law, we recently institutionalized recognition of non-U.S. legal education into a two-year JD degree program for non-U.S. students who studied law and practiced for several years in their home countries.

⁹ For example, in 1996, forty-one U.S. law schools awarded the LL.M. degree to 1,046 foreign national students; by 2004, eighty-one law schools awarded LL.M. degrees to 2,269 foreign nationals. ABA data supplied by David Rosenlieb, Data Specialist, and ABA Section of Legal Education and Admission to the Bar. The numbers cited in the text omit figures for at least one school listed as having no students/degrees conferred by the ABA data, but which in fact conferred degrees during at least the most recent year reported, 2004.

¹⁰ Foreign law is studied in traditional courses such as Islamic Law and European Business Law as well as in more innovative courses such as the International Team Project. The International Team Project is described on the Law School's website as:

[a] comparative law course [in which] students learn about the role of law and legal institutions, as well as political, economic and cultural systems in a foreign country. Each ITP course is designed by students and combines an intensive semester-long course with group research and two weeks of field research in the foreign country. Teams of students, along with a faculty advisor, develop a comprehensive semester-long curriculum and a two week international field experience. Research teams prepare a paper of publishable quality detailing their research and findings.

Northwestern University School of Law, *International Team Projects*, <http://www.law.northwestern.edu/itp> (last visited May 1, 2008). See also Carole Silver, *Adventures in Comparative Studies: Studying Singapore: Internationalizing the U.S. Law School Curriculum*, 51 J. LEGAL EDUC. 75 (2001) (describing an early version of the ITP at Northwestern). Other courses provide a transnational or global perspective without focusing on the law of a particular jurisdiction.

¹¹ This journal is one example of a non-U.S. focus. For a list of approximately 100 law reviews with an international focus, see <http://stu.findlaw.com/journals/international.html> (last visited May 1, 2008).

¹² See, e.g., Washington University in St. Louis, Institute for Global Legal Studies, available at <http://news-info.wustl.edu/group/page/normal/100.html> (last visited May 1, 2008).

¹³ See *International Team Projects*, *supra* note 10, for an example.

the business of clients, in turn, on practice.¹⁴ In spite of this, however, the core educational experience at all U.S. law schools remains distinctly domestic in terms of substantive focus. The first year curriculum generally emphasizes exclusively U.S. law, and even most “core” upper level courses are jurisdictionally limited to U.S. law. While this U.S.-centric approach may continue to be appropriate in terms of the substantive focus of the curriculum,¹⁵ it may not adequately prepare students to work across national boundaries, both as collaborators and competitors with lawyers and clients from diverse jurisdictions and disciplinary backgrounds. We think we can do more to prepare all of our students for the increasingly global legal services market.

I.

In order to consider whether and how to change our programs in light of the growing global reach of the market for legal services, we have looked to the principal consumer of our product—the law firms that employ our graduates. We have both studied the global activities of these firms and consulted with them about their views on the future of legal education. One part of our study focuses on the foreign offices of sixty-four of the largest and most international U.S.-based law firms, selected from the American Lawyer Global 100 list and similar sources.¹⁶ We examined the educational and licensing credentials of the more than 8,700 lawyers working in 385 offices supported by our firms, as well as the lawyers’ practice areas, positions in the firms and gender.¹⁷ We also conducted an extensive series of focus groups with the firm-wide managing partners of thirty-eight leading U.S. and U.K. law firms located in New York, Chicago, Los Angeles, Washington, DC, and London.¹⁸ The consultation with law firm leaders was undertaken in connection with Northwestern University School of Law’s development of strategic initiatives to guide it into the next

¹⁴ Van Zandt, *supra* note 5.

¹⁵ Evidence of convergence toward U.S. legal standards both in terms of substance and in documentation and arbitration in particular substantive areas—such as finance, mergers and acquisitions, competition law, for example—as well as the continuing importance of national law generally may justify the existing focus of the curriculum. The convergence in practice is usually also based in English, the global language of business and law.

¹⁶ We did not include in this part of the study any of the international U.K.-based law firms, but see Sigrid Quack, *Combining National Variety: Internationalisation Strategies of European Law Firms*, presented at American Bar Foundation Symposium: Lawyers and the Construction of the Rule of Law: National and Transnational Processes (Mar. 21–22, 2008) (on file with author).

¹⁷ Space permits only a summary of our findings here, and we emphasize here those aspects of the study that relate to legal education. A more complete analysis of our project is forthcoming.

¹⁸ Focus groups also were conducted with corporate general counsel and lawyers for non-profit and government organizations.

decades; these initiatives

focus on the Law School's main measure of success—its graduates. [The goal is to] further our understanding of the types of careers that our graduates face, the abilities they need to be successful in those careers, and what the Law School can do to better ensure that they have those abilities.¹⁹

II.

In the past, the traditional advice of senior partners from top U.S. law firms to those preparing to work in an international environment has focused on the need to develop skills as an excellent U.S. lawyer. The emphasis has been on training in U.S. law, which has been the mainstay of U.S. law firms. Whether a young lawyer wanted to prepare to work outside of the United States, or to work in the United States for multinational clients, the advice we have heard is the same: the best preparation is to be a top-notch *U.S.* lawyer. Anything else, whether language ability, international sensitivity, experience living overseas, or education in another discipline besides law, is icing on the cake—but not mandatory.

We test this advice against the practices of the sixty-four law firms in our study in order to assess whether it holds up in today's increasingly global world of legal services. Our study of foreign office activities and lawyers is motivated by our curiosity about what U.S. law firms are doing in their foreign branches, whether their value is in advising on U.S. law or something else, and how they promote themselves overseas. In addition, being lawyers ourselves, we are of course interested in the role of local regulation in the foreign office activities of our firms. By studying the ways U.S. law firms approach globalization, we hope to learn how better to prepare our students to participate in the increasingly global market for legal services.

Our analysis begins with a consideration of how U.S. law firms are operating globally. Our discussion here is limited to the educational credentials of lawyers working in the foreign (non-U.S.) offices of our sixty-four firms. Since the firms all are U.S.-based organizations, we might presume that their foreign offices mirror their U.S. offices, where nearly all lawyers are U.S. JD graduates whose first language is English, and where the focus of work is on U.S. law. In fact, this homogeneity accurately describes the way that U.S. firms first approached international expansion. This description from the law firm biography of Shearman & Sterling,

¹⁹ Northwestern Law Working Group Statement, *Background*, available at <http://www.law.northwestern.edu/difference/workinggroup.html> (last visited May 1, 2008) (Silver & Van Zandt are members of the Law School Strategy Working Group.)

describing the first years of the firm's Paris office in the early 1960s and written in the early 1970s, captures the idea:

The firm policy is to confine our work to United States law and not attempt to practice foreign law. The policy is based on belief that when a client needs help under local law the best practice is to retain distinguished counsel of appropriate competence. [In Paris,] . . . Ed Tuck opened the office [in 1963] and continued until 1967 when he returned to New York and Dave McGovern was put in charge.²⁰

The story today differs markedly. Rather than focusing on U.S. law and relying exclusively on U.S. lawyers (Ed Tuck and Dave McGovern in the case of Shearman & Sterling in Paris), our sixty-four firms—all U.S.-based organizations—follow the same sort of approach to globalization that guides non-law businesses: going “local” with regard to the particular jurisdiction where an office is situated.²¹ U.S. firms now routinely advise on local law (the law of the jurisdiction of the office's location), using lawyers trained and licensed in that jurisdiction.²² Approximately 80% of

²⁰ WALTER K. EARLE & CHARLES PARLIN, SHEARMAN & STERLING, 1873–1973 373–74 (1973).

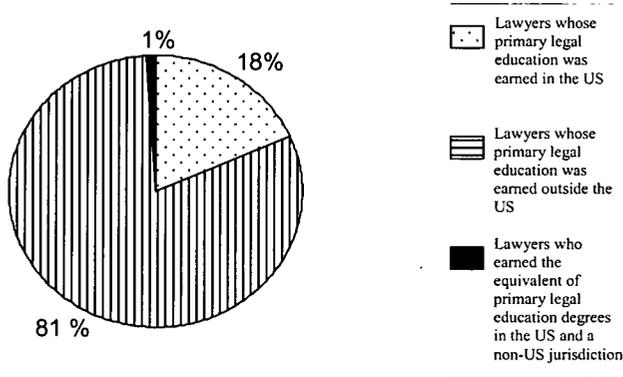
²¹ See, e.g., *Firms in China Think Globally, Hire Locally*, WALL ST. J., Feb. 27, 2006, at B1 (“According to Taihe Consulting Co., of Beijing, about 70% of foreign firms’ top positions today are filled by Chinese workers. In the mid-1990s, almost all such posts were filled by non-locals.” The article goes on to report that “[m]ultinationals in other developing countries also have localized their staff after establishing themselves in a market.”); Mary Kissel, *Career Journal: Expats May Face Culture Clash In Understanding Local Bosses*, WALL ST. J., Aug. 24, 2004, at B4 (“Today’s U.S. expatriates often report to non-U.S. managers—a new and sometimes jarring experience for those who have spent the bulk of their career in domestic offices working for American managers.”). For a general discussion of international strategies of business organizations, see Abigail McWilliams, David D. Van Fleet & Patrick M. Wright, *Strategic Management of Human Resources for Global Competitive Advantage*, 18 J. BUS. STRATEGIES 1 (2001).

²² See, e.g., Hogan & Hartson LLP, Offices—Warsaw, *Overview*, <http://www.hhllaw.com/warsaw> (last visited May 1, 2008) (“We also act as Polish general counsel to a number of multinational firms operating in Poland. We have extensive knowledge of Polish labor, tax, real estate, and customs issues, which arise in the context of day-to-day business operations We have significant insight into the Polish political system. Many of our lawyers have held high-profile positions in governmental, parliamentary, and legal institutions and were actively involved in shaping critical policies and direction. We have a team of Polish advocates, legal advisors, and U.S. lawyers with broad experience in large and complex transactions and projects. . . . Ours is a truly international team; we conduct business in Polish, English, German, French, Italian, Spanish, and Russian.”); White & Case LLP, Offices—Budapest, <http://www.whitecase.com/budapest> (last visited May 1, 2008) (“From our office in the nation’s capital of Budapest, our lawyers are involved in transactions requiring an intimate knowledge of evolving areas of Hungarian law—corporate, securities, liens, competition, intellectual property and media—and executing complex, state-of-the-art international transactions. We serve clients with a staff of Hungarian, U.S. and British-trained lawyers, as well as responsive legal and administrative

the lawyers working overseas for our sixty-four firms completed their primary legal education outside of the United States,²³ as illustrated in Figure 1, below, while approximately 18% earned a U.S. JD as their primary legal education. Figure 1 also reveals that only a very small proportion (1%) of our lawyers has been “dual educated” by earning the equivalent of a primary law degree in two or more jurisdictions. If we expand our vision to include *all* legal education, on the other hand, then the proportion of lawyers with some U.S. legal education increases from only 20% to approximately one-third of the non-U.S. office lawyers, the difference being those who earned a post-graduate one-year LL.M. degree in the United States, as illustrated in Figure 2. This still leaves fully two-thirds of all non-U.S.-office lawyers with no U.S. legal education at all.²⁴ Finally, Figure 3 sheds a bit more light on the group of lawyers who earned their primary legal education outside of the United States, revealing that 20% of this group also studied in a post-JD program in the United States.

Figure 1: Source of Primary Legal Education for All Lawyers

Source of Primary Legal Education



assistants.”).

²³ The 80% figure is based on a total that excludes lawyers for whom no educational information was available. Firms provided educational information about most of the lawyers in every office; based on the information provided, it is more likely than not that the lawyers for whom no educational information was included did not earn a U.S. JD. Slightly fewer than 75% of all lawyers, including those for whom no educational information was available, earned their primary legal education outside of the United States. Even if we exclude those lawyers working in London, home to the largest group of lawyers working for our firms outside of the United States, the proportions of lawyers who earned their primary legal education outside of the United States are the same as for the group of all lawyers.

²⁴ One percent of the lawyers in the study earned a U.S. JD and a law degree outside of the United States (we might call these “dual educated”).

Figure 2: Source of All Legal Education for All Lawyers (showing post-graduate legal education (LL.M. or JD) in the United States)

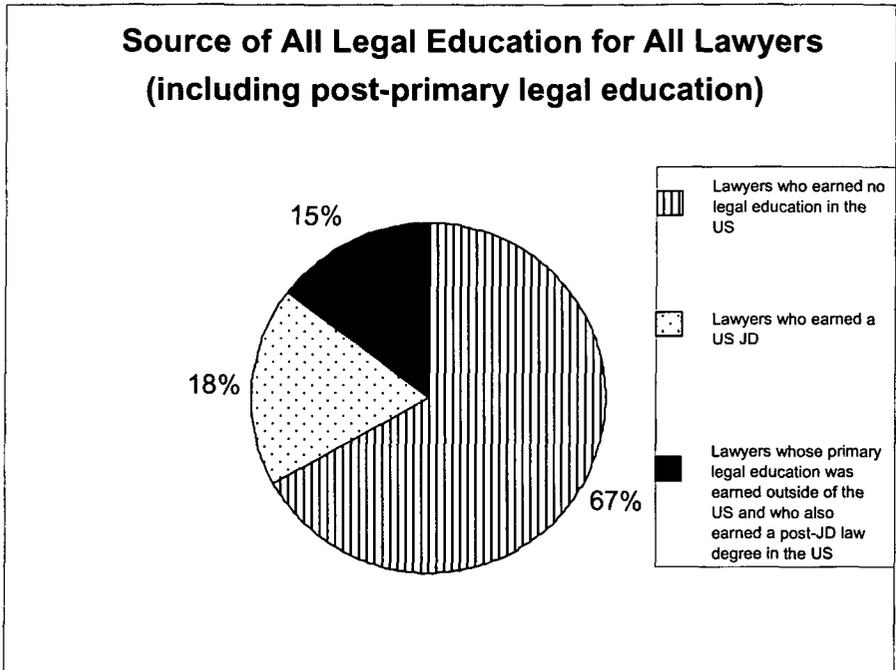
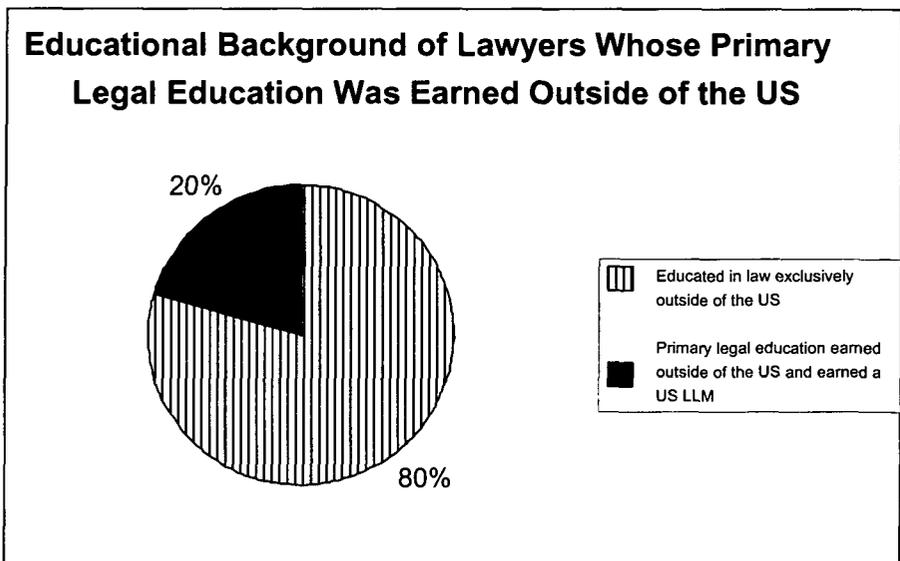
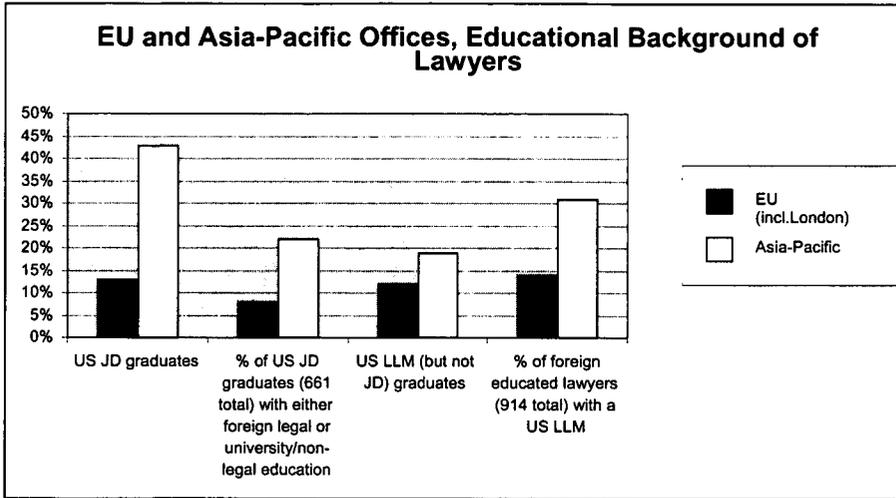


Figure 3: Educational Background of Lawyers Who Earned Their Primary Legal Education Outside of the United States



As might be expected, there are substantial jurisdictional differences to the staffing policies in foreign offices. Regulation is a factor here, as is the local jurisdiction's degree of similarity to the United States, in the training, experience and sophistication of both lawyers and business people. In Asia-Pacific offices,²⁵ U.S. JD graduates comprise more than 40% of the foreign office lawyers, while in the European Union only approximately 12% of the lawyers working in our foreign offices hold a U.S. JD.

Figure 4: Jurisdictional Differences Regarding Role of U.S. Law Graduates



The higher proportion of JD graduates in the Asia-Pacific region²⁶ is related to local regulation in certain jurisdictions that prevents locally-licensed lawyers from practicing local law in association with foreign law firms. These restrictions, which recently have been lifted in Japan (but nevertheless are likely to continue to be felt in the office staffing there for some time)²⁷ and continue in China and to some extent in Singapore, too,

²⁵ The firms support offices in the Asia-Pacific region in Australia, China, Hong Kong, India, Japan, Singapore, Taiwan, Thailand, and Vietnam. The major Asia-Pacific jurisdictions, in terms of number of lawyers, are Hong Kong, China, and Japan; these three jurisdictions account for approximately 80% of the lawyers working for the sixty-four firms in Asia-Pacific.

²⁶ U.S. JD graduates account for more than 40% of the lawyers working for our firms in each of China, Japan, and Hong Kong, and slightly less than one-third of the lawyers working in Singapore.

²⁷ See Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers, Law No.128 of 2003 (Japan), available at <http://www.moj.go.jp/ENGLISH/information/smlc-01.html> (last visited May 1, 2008); for a description of Japan's liberalization of its regulation of foreign lawyers and law firms, see Robert E. Lutz et al.,

mean that U.S. firms must justify their use of local lawyers either by those lawyers having another, perhaps U.S., licensing credential, or satisfying a role other than advising on law. In addition to regulatory differences, the data suggest that the easier the working relationship might be between U.S. and non-U.S. lawyers (because of similarity of legal education, sophistication of practice, English-language ability and general comparability of the legal systems) the lower the proportion of U.S. JD graduates in the jurisdiction. Of course, the nature of the practice in a particular jurisdiction also matters; a capital markets practice may support a higher proportion of JD graduates, for example. In addition, the way in which U.S. firms historically expanded in the jurisdiction is a factor here; in Germany, for example, firms often acquired local firms or groups of lawyers in establishing a beachhead, and this generally has resulted in offices supporting a lower proportion of U.S. JD graduates in comparison to jurisdictions in which the firms grew their offices from within.²⁸ At the same time, local firms that choose to combine with U.S. law firms likely already embrace an approach to practice that reflects a U.S.-model, and have distinguished themselves from other local firms in doing so; as a consequence, there may be less need for the presence of U.S. JD graduates because the local lawyers in the firm already have assimilated to a U.S. approach. In contrast, in China, regulation prevents U.S. firms from affiliating with foreign firms and consequently U.S. firms generally have relied on U.S. JD graduates to open offices (of course, this does not necessarily mean that the U.S. JD graduate has a longstanding relationship with the U.S. firm, and in addition, it does not mean that the U.S. JD is a U.S. national; in fact, we estimate that approximately one-third are Chinese nationals).²⁹

In addition to jurisdictional variations, the picture of foreign office staffing overall is substantially different from an office-by-office analysis. Recall that the overall picture is overwhelmingly local, with approximately

Transnational Legal Practice Developments, 39 INT'L LAW. 619, 629–30 (2005).

²⁸ German offices typically were founded upon the acquisition of groups of lawyers from local firms. See, e.g., John E. Morris, *Germany Invaded!*, AM. LAWYER, Sept. 2000, at 32; Patrick McCurry, *To Merge or Not To Merge*, EUR. VENTURE CAPITAL J., Mar. 01, 2001, at 3 (reporting on U.K. firms expanding into Germany by merger with local German firms). However, this is not the case for offices in Singapore, for example, where local regulation required non-Singaporean firms to keep their distance from Singaporean firms and lawyers. See, e.g., Douglas McCollam, *The Global 100 Leaders and Laggards, Outposts and Outlooks: A Region-by-Region Examination of the Worldwide Legal Market Asia and the Pacific Rim: At a Glance: Singapore*, AM. LAWYER, Nov. 2001, at 101 (describing liberalization of regulatory separation of local and foreign firms).

²⁹ See, e.g., Jones Day's Shanghai office in which four of the five partners resident in the office earned their first university degrees in China. Jones Day, Professionals Search—Shanghai Office, <http://www.jonesday.com/lawyers/> (search for Shanghai office by choosing Shanghai in “Offices” drop-down menu).

80% of the lawyers working overseas for our sixty-four firms earning their primary legal education outside of the United States, and the vast majority of these studied law in the same jurisdiction where they now work.³⁰ Nevertheless, in nearly three-quarters of the 385 offices supported by the sixty-four firms we studied, both U.S. JD graduates and local lawyers are present to some degree. These offices present a “mix” in terms of legal education and expertise, but the numbers of U.S. JD graduates in many offices are insufficient to actually perform sophisticated work themselves, both because of a lack of manpower and because of the inherent limitations on any individual’s substantive expertise. Of course, firms may be leveraging these U.S. JD graduates by calling on lawyers in other offices to provide the manpower and expertise. To this end, the U.S. JDs serve as managers of this manpower and provide value as organizers of the human capital of the firm. In addition, the U.S. JDs serve as bridges between the foreign lawyers and the firm’s “mother ship,” translating policies and practices, both from the mother ship to the foreign outpost and potentially also vice-versa.³¹ As a result, the U.S. JDs will be called upon to use their collaborative and managerial skills as well as their legal expertise. Falconbridge, Beaverstock, Muzio and Taylor describe a similar “bridge” role in the context of U.K. firms in their article in this symposium. In addition, our data reveal that the U.S. JDs occupy more partner positions proportionately compared to non-U.S. educated lawyers in the offices,

³⁰ In each of the EU jurisdictions in which there are substantial numbers of U.S. law firm offices, nearly all of the lawyers working in the foreign offices who were educated outside of the U.S. were educated in the country where they are now practicing. The sole exception in the European Union is Belgium, where offices tend to reflect the international character of Brussels as seat of the European Union: slightly more than one-third of the lawyers working in Brussels were educated in Belgium, and approximately 10% were educated in each of Germany, France and England. Offices in Asia-Pacific, with the exception of Hong Kong and Singapore, are similarly dominated by lawyers educated in the jurisdictions where they now practice. Hong Kong and Singapore reflect their Commonwealth roots: in Hong Kong, as many lawyers were educated in England as in Hong Kong, and a substantial group was educated in Australia, as well (29% of the lawyers working in Hong Kong offices for the 64 firms were educated in Hong Kong, 28% earned their legal education in England, 15% in Australia, and 12% in China). More of the lawyers working in Singapore were educated in England rather than in Singapore, which likely reflects local regulatory barriers as much as the former colonial status of the island (one-quarter of the lawyers working for the firms in Singapore were locally educated, compared to 41% who were educated in England and 15% in Australia). In future work, we will investigate possible relationships between common-law legal education and the substantive focus of lawyers’ work, which also may be important in explaining the substantial proportion of lawyers educated outside of their home jurisdiction in Singapore and Hong Kong.

³¹ Falconbridge et al. describe this sort of translation and bridge function, but they also describe the substantial importance of individual lawyer mobility. Our data, drawn exclusively from U.S. law firms, does not reveal substantial mobility of lawyers, and certainly in the ranks of U.S. law firm domestic offices this sort of mobility is not present in substantial numbers.

which also suggests the importance of more than simply legal skills.

We see U.S. law firms embracing a globalization strategy. This involves a “co-presence of both universalizing and particularizing tendencies.”³² That is, the U.S. firms are going local through local lawyers who bring expertise in hard and soft law, including important connections to local culture, regulators, business and the state, while at the same time the firms are maintaining connection through the presence of U.S.-educated lawyers to their universal—the U.S. approach to practice, encompassing both an entrepreneurial approach to practice and problem-solving approach as well as attention to the ethical constraints on firms and their lawyers.

III.

What, then, are the lessons of these data for U.S. legal educators? While some U.S. lawyers are working overseas, they are not the primary service providers in most of the firms’ foreign offices.³³ As a result, one lesson for U.S. law schools is that for those graduates (LLMs, but also JDs, especially as the latter increasingly include non-U.S. nationals who may wish to explore opportunities to work outside of the United States) interested in working overseas, the typical on-campus-recruiting system, comprised mainly of U.S. law firm potential employers, is likely to be inadequate to meet their demands.³⁴ Instead, career services must take a global approach along with the rest of the school. This will include inviting law firms based outside of the United States to recruit on-campus or otherwise reach our students. In reaching out to non-U.S.-based firms, we should stretch beyond the typical Magic Circle and similar multi-office firms to those elite non-U.S. firms that attract LL.M. graduates; these firms are likely to value the U.S. law graduate as a mechanism for competition against U.S.-based firms and their offshore offices.³⁵

Our study of U.S. law firms’ offshore offices suggests that most U.S. JD graduates will not work outside the United States on a permanent basis. Nevertheless, lawyers working for any of the firms we studied—and many more we have not studied but which support foreign offices—will encounter the need for knowledge about and sensitivity to the roles and

³² Roland Robertson, *Comments on the “Global Triad” and “Glocalization”* in GLOBALIZATION AND INDIGENOUS CULTURE (Inoue Nobutaka ed., 1997), available at <http://www2.kokugakuin.ac.jp/ijcc/wp/global/15robertson.html>.

³³ Of the 385 offices studied, U.S. JDs comprise a majority of the lawyers in only 13% of the offices housing more than five lawyers.

³⁴ That is, existing on-campus-interview participants are generally comprised of U.S. firms which, as this study reveals, typically do not support substantial numbers of U.S. JD graduates in their overseas offices.

³⁵ See Carole Silver, *Local Matters: Internationalizing Strategies for U.S. Law Firms*, 14 IND. J. GLOBAL LEGAL STUD. 67 (2007).

work of foreign lawyers. In order to work together in supportive and collaborative roles, as described by Flood and Sosa, as well as by Faulconbridge et al., below, the importance of being able to work effectively with lawyers from other jurisdictions cannot be overemphasized. JD graduates must understand the role their foreign colleagues play in the transaction of business in their home countries and also must be sensitive to cultural and legal differences that may interfere with or prevent good working relationships. These may take the form of ethical constraints, negotiation styles, relative reverence for written contracts, or basic terminological misunderstandings. The more exposure to foreign lawyers our U.S. graduates have early on in their education and training, the easier they will find interaction in later years. Finally, U.S. law graduates must be good managers in order to satisfy the role of cultural and policy translator. The managerial aspect of the U.S. lawyer's role may be supported in law school by experiences in leadership and teamwork, as well as some training in core financial concepts that will allow lawyers to understand the business aspects of their firms.

These lessons were echoed by the law firm managers we consulted. They need their lawyers to be effective in working across jurisdictions and cultures. They do not expect them to master either the local law or language (although having a second language can be a big plus). In thinking about what is required for success in the international legal services market, one participant in the London focus group replied, "Brains and well-trained in the home discipline. Cross-cultural sensitivity goes into their becoming outstanding."³⁶

The more U.S. and non-U.S. students work together in traditional classroom settings and also in teams and taking leadership roles, the greater their comparative sensitivity for differences in law and the role of lawyers. This will provide them with the basis for understanding the diverse cultural climate they will encounter in their practices, and it is important for all students in U.S. law schools, whether in LL.M. or JD programs and regardless of nationality. Ideally, the educational experiences of our students will reflect the "mix" of national training and approaches that is found in the offices of the firms we studied.

In addition, and unrelated to globalization per se, the law firm leaders considered it important for new law graduates to have an appreciation for the terminology and basic concepts of business analysis for purposes of better understanding clients and the legal market—and the role of law firms in it. Such familiarity cannot help but strengthen the position of U.S. firms overseas, as they compete with domestic lawyers and law firms that traditionally have maintained a fair distance from business, both in

³⁶ This focus group discussion took place on November 7, 2007.

education and practice.³⁷

The initial question of advice for a law student interested in international practice requires a more nuanced response today than it did in the earlier period of law firm expansion. Certainly, a strong education in substantive U.S. law is a necessity; this has not changed. But it is not sufficient. In addition, what we might term “global sensitivity” is crucial. This might come from a classroom, but is more likely to be learned through routine interaction among students trained in different jurisdictions, coming together in and outside of classrooms. Our challenge is to make these interactions meaningful and ensure that the U.S.-national JD students gain as much as the non-U.S.-national students. While we hope these interactions will arise in purely social contexts we cannot rely on this. Instead, we envision facilitating such interaction through procedures that will bring students together to work on projects related to coursework as well as student, pro bono and community activities. Finally, the internal growth of law firms and the importance of law firms in structuring international business transactions translate into the need for lawyers to understand business and apply its lessons in their own practices. If law schools can provide training in basic business concepts, through course work or experiential activities or both, this will strengthen the competitiveness of U.S. law graduates in the global market for legal services, as well as the value of U.S. legal education.

IV.

The focus of this symposium—the relationship of globalization to the business of law—exemplifies our approach to legal education. Contributing authors bring different disciplinary (law, of course, but also geography and sociology) and geographic (the U.K. and Germany in addition to the U.S.) perspectives to the topic. Three themes emerge from the articles in our symposium issue and they are common to the globalization literature. First, as Jonathan Goldsmith, Secretary General of the Council of Bars and Law Societies of Europe, explains, “economics rules all.” We speak today of a *market* for legal services, which emphasizes the importance of competition and, correspondingly, the decreased role and effectiveness of protective regulation. Goldsmith’s essay provides important context for the shift toward a universal and narrow focus on economics, and at the same time identifies other motivations—the core values—that exist alongside economic incentives.

Laurel Terry continues the theme of “economics rules all” in considering the impact of globalization on the work of small and medium-

³⁷ See David Trubek et al., *Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas*, 44 CASE W. RES. L. REV. 407 (1994).

sized law firms with no apparent connection to the global world of legal services. These smaller practice organizations often are ignored in the studies of globalization and legal services, and yet they house the majority of lawyers working in the United States.³⁸ Terry applies the “world flattening” factors identified by Thomas Friedman to uncover globalization’s influence, and finds a profound impact likely to result from technology, competition and opportunities for collaboration, regardless of the practice setting or its apparent insularity from global forces. In this way, she sees the impact of globalization on lawyers as much the same as its impact on other industries.

A second theme is in tension with the importance of the market: the uniqueness of law. Goldsmith discusses this in the context of core values. Falconbridge, Beaverstock, Muzio, and Taylor, experts in the study of globalization, bring their disciplinary grounding in geography to this issue in their study of large firms with international office networks. Their analysis reveals that while law firms may be driven to global expansion for many of the same reasons as other services firms, the way they globalize is different. For most firms, globalization means centralization of management power and standardization; for law firms, autonomy of lawyers’ work is crucial and generates a different path to globalization. The nuanced analysis of Falconbridge and his co-authors substantially deepens the understanding of the complexity of the global law firm.

The theme of regulation is never far from studies of lawyers, and here it is presented in two different contexts. First, John Flood and Fabian Sosa examine it in the context of what it is that lawyers do to add value. Their use of case studies highlights the roles lawyers play as stabilizers in transnational business transactions, replacing the function of national regulation in simpler, domestic transactions. These transnational transactions are puzzles for the lawyers to solve, using pieces of national law in their solution. The art or creativity, according to Flood and Sosa, comes in the way that lawyers combine bits of different national law with their prior experience in similar transactions to produce credible structures.

While globalization changes the role of regulation in lawyers’ work, it does not necessarily marginalize it. Deregulation emerges as re-regulation in the global legal services market. Sydney Cone examines the reassertion of regulatory barriers in jurisdictional battles over the form of legal practice. The United States story is complicated by the federal system of lawyer regulation, which must interact with national regulatory frameworks emerging around the world. Law firms, ever more competitive-minded,

³⁸ CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2000* tbls. 6 & 8 (2004). Seventy-four percent of all lawyers in the United States work in private practice, and 72% of all lawyers working in law firms are with firms of 100 lawyers or fewer. In addition, 48% of lawyers in private practice work in solo settings (tbl.7).

must manage regulation now for themselves as they have become adept at managing it for their clients. Cone, long a leading expert on regulatory approaches to cross-border legal practice, examines this theme of regulation by focusing on the two most significant legal markets, New York and London, and the ways in which a new regulatory regime in England may affect the shape of future law firm organization.

We are grateful to the contributors to this symposium issue as well as to the Journal's student leadership for embracing the opportunity to consider how globalization affects what lawyers do and the context—organizational and regulatory—of that activity. Our hope is that these articles spark interest in our readers to further investigate and reflect upon the important themes in the context of legal education, and lawyers' work and their organizations.