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ARTICLES

Regulatory Mismatch in the International Market for Legal Services

*Carole Silver**

I. INTRODUCTION

The increasingly international reach of law owes part of its momentum to individual lawyers and law firms that function as carriers of ideas, processes and policies. U.S. lawyers are important participants in this expanding influence of law, both in the public sphere in areas such as human rights and in private areas, such as regulation of business.¹ They work as representatives of both U.S. clients and foreign organizations and governments,

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¹ The influence of the U.S. is felt in the regulation of capital markets and in the corporate governance movement around the world, as well as in particular areas of expertise, such as project finance.

bringing their basic mindset, shaped by education and practice experiences, into their dealings with foreign lawyers² as they connect in a variety of roles, from co- and opposing counsel, to employees and partners. By working alongside and across the table from each other, U.S. and foreign lawyers have opportunities to influence one another and extend the reach of their conceptions about the way law and legal practice should work. Through these interactions, they define the terms of internationalization and thereby establish the agenda for the role of law at the international level.³

This article examines the regulatory environment in which that interaction occurs. It considers the obstacles faced by law firms intent upon combining foreign and U.S. lawyers and builds on prior work that investigated the impact on U.S. law firms of the development of an international market for legal services and the roles of foreign lawyers in the U.S.⁴ Regulation within the United States concerning the interaction between foreign and U.S. lawyers shapes the ways in which U.S. firms participate in the developing international market for legal services; it may well determine the placement and extent of that participation through U.S.-based activities. Further, restrictions on the interaction of foreign and U.S. lawyers limit the influence of U.S. practice and procedures on foreign lawyers, because such restrictions limit the opportunities for foreign lawyers to learn the ways and thinking of U.S. lawyers.

This article proceeds as follows. Part II develops four models of international expansion by law firms and explains the relationship between this expansion and the need for foreign lawyers. As U.S. law firms develop their international activities, they expand their offerings of expertise across national borders as well. United States-based law firms advise not only on U.S. law, but also on local law where local regulation permits, including in England, Germany and France.⁵ Advising on foreign law requires U.S.

² "Foreign lawyer" is used here to mean an individual whose primary legal education was received outside the U.S., and who is admitted to practice in a foreign country. This includes foreign-licensed lawyers with a U.S. LL.M. degree, but excludes individuals who have earned a J.D. from a U.S. law school. Foreign lawyers may or may not be admitted to practice in a U.S. jurisdiction in addition to their home countries.

³ See, e.g., YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE* (1996) (describing the contest between U.S. lawyers and European academics).

⁴ See Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 *FORDHAM INT'L L.J.* 1039 (2002) [hereinafter Silver, *The Case of the Foreign Lawyer*]; Carole Silver, *Globalization and the U.S. Market in Legal Services—Shifting Identities*, 31 *L. & POL'Y INT'L BUS.* 1093 (2000) [hereinafter Silver, *Shifting Identities*]; Richard Abel, *Transnational Law Practice*, 44 *CASE W. RES. L. REV.* 737 (1994); 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).

⁵ Skadden Arps, for example, "advises on U.S., English, French, German and Austrian law, allowing [the firm] . . . to address the multi-jurisdictional aspects of cross-border trans-

firms to hire foreign lawyers, many of whom have not earned the three-year J.D. degree that is the foundation of U.S. legal education. While this presents no obstacle in theory, since lawyers licensed in various foreign jurisdictions can advise on foreign law while U.S. lawyers advise on U.S. law, the world of practice is neither so simple nor so cleanly divided. Lawyers performing international services routinely cross the lines between national legal systems and occasionally move from national to international law as well. The transnational practice engaged in by transaction lawyers requires familiarity with multiple national legal systems as well as the distinctions among them.⁶ The challenge for transnational lawyers rests at least in part with matters of timing; it is difficult to determine applicable law at various stages in a representation. In addition, lawyers develop expertise in particular practice areas which cut across national systems of law.⁷ Thus, in practice, it does not make sense to divide the world according to national legal system and licensing.

A more practical problem resulting from the current U.S. regulation of foreign lawyers is that, as U.S. law firms become more international and incorporate more foreign lawyers into their international practices, they must integrate these foreign lawyers into the fabric of their firms. This is a significant challenge because of the geographic and cultural distances spanned by law firms. But the problem is made more difficult by restrictive rules of practice that complicate or limit the ability of firms to move lawyers among offices and nations to expose them to practice settings, core personnel and training experiences. Global expansion brings with it concerns about uni-

actions as well as specific domestic legal issues.” Skadden, Arps, Slate, Meagher & Flom LLP, available at <http://www.skadden.com/ourPracticeContent.ihtml?ID=34> (last visited Oct. 6, 2003). National regulation regarding the right to offer legal advice is fundamental to a U.S. law firm’s ability to provide multinational advice including any particular jurisdiction. For information on the regulation of lawyers in a variety of national jurisdictions, see RICHARD L. ABEL & PHILIP S.C. LEWIS, *LAWYERS IN SOCIETY* (1988).

⁶ According to one international practitioner:

Transnational deals are often comprised of transaction documents governed by more than one jurisdiction. As a result, for example, the financing documents might be governed by New York law, an underlying contract by French law, and a security document by Russian law. Current practice is for U.S. lawyers to be involved in the drafting and negotiation of all of these contracts. Obviously, a French lawyer would review and comment on the French contract as a Russian lawyer would for the Russian security document. Nonetheless, often the U.S. lawyer is primarily responsible to make sure that the “deal” is reflected in all of the documents and the “local” lawyers responsible for ensuring that no mandatory rule will interfere with the intent of the parties. [If local rules] . . . permit a foreign lawyer to only practice home country law . . . [t]he issue then becomes whether, if a U.S. lawyer in France is directly involved in the drafting of the French and Russian contracts, has the U.S. lawyer . . .” advised on something beyond his or her home country law?

Email to author from a partner at a U.S.-based international law firm (June 3, 2003).

⁷ See Doreen J. McBarnet, *Transnational Transactions: Legal Work, Cross-Border Commerce And Global Regulation*, in *TRANSNATIONAL LEGAL PROCESSES* 98-113 (Michael Likosky ed., 2002).

form quality, and the solutions to such concerns are challenged by restrictive regulations concerning movement of professionals among office locations.

Part III examines the current U.S. regulatory environment for foreign lawyers. Professional regulation of lawyers in the U.S. is formally based on the notion that states assure the public of lawyers' competence by regulating access to the profession.⁸ To that end, licensing is conditioned upon education and examination, and states take education in a U.S. law school as the primary method of qualifying for the bar. Lawyers who are educated and licensed outside the U.S. are given varying degrees of recognition for their education and practice experience; in approximately one-third of U.S. jurisdictions, foreign lawyers are given no recognition at all and must begin their legal studies anew before they are permitted to sit for the bar examination.⁹ And in one-quarter of U.S. jurisdictions, if they do not sit for the bar examination, foreign lawyers cannot advise on U.S., foreign or international law.

Two categories of admission rules are relevant: rules governing admission of lawyers to the bar, and rules permitting lawyers admitted in another country to practice in a limited capacity under the label of "legal consultant" or "foreign legal consultant."¹⁰ There is scant recognition of the international nature of legal practice in admission rules, which generally take a one-size-fits-all approach and prefer locally-educated lawyers regardless of the nature of the lawyer's practice.¹¹ These rules and the regulatory structure of which they are a part were designed when communication was limited by geography and law practices served local needs.¹² Technological changes and economic connections have drastically changed legal practice. The admission rules stand as a relic of a former world in which practicing

⁸ This statement is not intended to obscure the clear protectionist purpose of many bar rules; rather, it is simply an attempt to articulate an acceptable rationale for restricting access to the bar. See generally Richard L. Abel, *Revisioning Lawyers*, in *LAWYERS IN SOCIETY: AN OVERVIEW 1* (Richard Abel & Phillip S.C. Lewis eds., 1995).

⁹ See *infra* list of states in Categories 5 & 6 at Figure 1.

¹⁰ A third type of rule, restricting combinations of foreign and domestically-licensed lawyers, is also relevant. See Model Rule Respecting Foreign Legal Consultants: Joint Recommendations of the Relevant Canadian, Mexican and American Professional Bodies Under Annex 1210.5, Section B § 15.b, reproduced in John E. Rogers, *Cross-Border Legal Practices: The Role of Foreign Legal Consultants*, 7 U.S.-MEX. L.J. 1, 8 (1999).

¹¹ See discussion *infra* at Part III.

¹² See Introduction to ABA: REPORT OF THE COMMISSION ON MULTIJURISDICTIONAL PRACTICE 1, available at <http://www.abanet.org/cpr/mjp/intro-over.doc> (last visited Oct. 6, 2003) ("Jurisdictional restrictions on law practice were not historically a matter of concern, because most clients' legal matters were confined to a single state and a lawyer's familiarity with that state's law was a qualification of particular importance."). See RICHARD L. ABEL, *AMERICAN LAWYERS* 113-115, 123-126 (1989).

law had smaller, local boundaries. In Part III, the tension between locally-based professional regulations and the development of international practices is examined, and a ranking of states according to their openness to international practitioners is provided.

Part IV takes a closer look at the regulatory category of the legal consultant for purposes of gaining insight into the uses made of this licensed status. The legal consultant category was developed to provide a coherent regulatory regime for foreign lawyers; the rules permit foreign lawyers to advise on their home country law and, in certain jurisdictions, on U.S. law, with the cooperation of a lawyer who is fully admitted in the appropriate jurisdiction.¹³ While the concept of a legal consultant made great sense thirty years ago when the idea was introduced in the U.S., it makes less sense today because the international market for legal services has outgrown the limited scope of practice permitted by most versions of the rules. Advising on foreign law often is insufficient. Part IV also offers evidence of the misappropriation of the legal consultant title by foreign lawyers who have not registered for and obtained the legal consultant license, yet nonetheless describe themselves as legal consultants in lawyer-listing directories and law firm websites.

Finally, a new regulatory structure for participants in the international legal services market is proposed in Part V. This includes suggestions for more coherent admission and legal consultant rules, but advances beyond these traditional frameworks to offer a regulatory overlay which takes law firms, rather than individuals, as the object of regulation. By relying on a combination of insurance and supervision of foreign lawyers by U.S. licensed lawyers, the proposal recognizes the capability and incentives of a law firm to ensure the professional competence of its lawyers.¹⁴

¹³ The following jurisdictions permit legal consultants to advise on U.S. and local law with the advice of a U.S. licensed lawyer: Arizona, the District of Columbia, Hawaii, Indiana, New Jersey, New Mexico, New York, Ohio and Oregon. The District of Columbia, Hawaii, New Jersey, Ohio and Oregon require the U.S. lawyer to be identified to the client by name, in some instances in writing. Alaska and North Carolina require that the advice of the U.S. lawyer be transmitted to the client in writing rather than form the basis for the legal consultant's advice.

¹⁴ MODEL RULES OF PROF'L CONDUCT R. 1.1 *available at* http://www.abanet.org/cpr/mrpc/rule_1_1.html (last visited Oct. 6, 2003) (imposing on lawyers the obligation to "provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."). For a discussion of the protectionist aspects of bar regulations, see Abel, *supra* note 8. On the structure of lawyer regulations generally, see David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 801 (1992).

II. THE WAYS AND MEANS OF INTERNATIONAL EXPANSION IN LEGAL SERVICES

Law firms have become participants in an international market for professional services, competing both across national borders and disciplinary boundaries. Nevertheless, law remains nationally-based, and lawyers learn the basic precepts, structures and tenets of a particular national system of law.¹⁵ Lawyers and their firms tackle the international market with various strategies, and what it means to be “international” is not uniformly understood. The nature of internationalism is contested; firms will claim to be international if they establish foreign offices, serve foreign clients, admit foreign educated and licensed attorneys to their firm, or practice law in areas affected by internationalization or emanating from an international body or offer foreign law advice.¹⁶ But which of these activities defines a firm as truly international or international enough to require a new regulatory approach to lawyer admission?

The claims of lawyers and law firms to the “international” label fall into two general categories. First are claims based upon the provision of legal services in substantive practice areas characterized as international, such as when the applicable law emanates from an international tribunal or rule-making body or when more than one national legal system is implicated in a transaction. Second, firms claim to be international because of their organizational characteristics, such as having an international client base, employing foreign lawyers in the firm and supporting international offices. These two aspects—legal work and law firm organization—are inter-related rather than distinct paths to internationalization.

A. Substantively International

Law firms identify themselves, at least in part, by their practice areas. Practice areas identify the expertise of a firm’s lawyers, and also indicate something about the firm’s clients, whose problems are served by the practice groups. The “international” label crops up in a variety of places in practice group titles. Firms specialize in international trade,¹⁷ international

¹⁵ On the local nature of much of law practice and law itself, and the contrast between this and the global practice of certain law firms, see Detlev F. Vagts, *The Impact of Globalization on the Legal Profession*, 2 EUR. J. L. REFORM 403 (2000).

¹⁶ See Abigail McWilliams et al., *Strategic Management of Human Resources for Global Competitive Advantage*, 18 J. BUS. STRATEGIES 1, n.2 (2001).

¹⁷ Firms with international trade practices include Arnold & Porter (http://www.arnoldporter.com/practice.cfm?practice_id=12) (last visited Oct. 6, 2003) and Willkie Farr & Gallagher (<http://www.willkiefarr.com/PracticeAreas/index-intltrade.html>) (last visited Oct. 6, 2003), among others.

dispute resolution, including international arbitration and litigation,¹⁸ and international project finance.¹⁹ A number of firms have organized their lawyers into particular geographic areas or country-specific groups, such as a Latin America practice group,²⁰ or a group specializing in matters related to Brazil.²¹ The international tax area is occupied both by law firms and the major accounting firms.²²

Various aspects of these practice areas contribute to an international flavor. Rules of law relating to trade, investment and commerce have generally been converging, so that it appears that many related areas of practice are governed by global standards. Nonetheless, rules of procedure have not converged at the same pace and national differences can be significant. In international commercial arbitration, for example, applicable legal rules may emanate from an international organization, such as the International Court of Arbitration of the International Chamber of Commerce. Project finance deals are standardized to a great extent because certain terms are required by the banks and other participants in the transactions; still, local law governs the construction projects being financed, and the contract law must be “squared with the local law system . . . This requires political and cul-

¹⁸ Firms with international arbitration or litigation practices include, among others, Sullivan & Cromwell (http://www.sullcrom.com/display.asp?section_id=69) (last visited Sept. 15, 2003); Debevoise & Plimpton (<http://www.debevoise.com/practices/area.asp?areaid=17&groupid=2>) (last visited Sept. 15, 2003); Latham & Watkins (http://www.lw.com/practice/practiceSpecific.asp?dept_id=4&practice_id=50) (last visited Sept. 15, 2003); Sidley Austin Brown & Wood (www.sidley.com/practice/group.asp?groupid=1515) (last visited Sept. 15, 2003); and Hughes Hubbard & Reed (<http://www.hugheshubbard.com/practice/detail.asp?PracticeAreaID=32>) (last visited Sept. 15, 2003).

¹⁹ Firms with international project finance practices include Hogan & Hartson (<http://www.hhlaw.com/site/index.asp?file=/practice/contentlist.html>) (last visited Sept. 15, 2003); Skadden Arps (<http://www.skadden.com/PracticeIndex.ihtml>) (last visited Sept. 15, 2003); and Shearman & Sterling (<http://www.shearman.com/practiceareas/pdf/pdf.html>) (last visited Sept. 15, 2003).

²⁰ Firms with Latin America practice groups include Mayer Brown Rowe & Maw (<http://www.mayerbrownrowe.com/latinamerica/practice/index.html>) (last visited Sept. 15, 2003); Curtis, Mallet-Prevost, Colt & Mosle (http://www.cm-p.com/practice_latin.htm) (last visited Sept. 15, 2003); and Vinson & Elkins (http://www.vinsonelkins.com/practice_areas/practice_areas.cfm?prac=35) (last visited Sept. 15, 2003).

²¹ Skadden Arps describes its Brazil practice group as follows: “Skadden, Arps has an active, broad-based practice involving business transactions in Brazil. We represent both Brazilian and non-Brazilian clients in international financings, mergers and acquisitions, privatizations and other types of Brazil-related transactions.” See Skadden, Arps Brazil practice at <http://www.skadden.com/PracticeIndex.ihtml> (last visited Sept. 15, 2003).

²² See generally Garth & 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* 10-1 to 10-38 (Stephen McGarry, ed., 2002).

tural sensitivity . . . to local conditions as well as ‘the patience necessary to reassure governments and companies unfamiliar with Western lawyers.’”²³ Other practice areas are considered international because the laws of more than one nation are involved. Examples include transactional practices related to securities offerings, mergers and acquisitions and the competition issues related to such transactions. Certain practice areas straddle these categories in terms of the relevance of international rules, international rule-making bodies and multiple national legal systems. International trade and intellectual property are examples of practice areas that claim an international perspective because of the relevance of international rules (GATT and NAFTA), rule-making bodies (the World Trade Organization and WIPO) and multiple national laws.

The expertise of lawyers in these international practice areas is often only one part of an overall approach to internationalization that law firms employ in their marketing. That is, law firms tend to use all possible sources that point to their international character as evidence of their identity, rather than taking a more strategic position and selecting certain attributes as important to the international identity of their firm. Hughes Hubbard & Reed’s website offers an example of this approach in its description of the firm’s international practice. The description first highlights the substantive areas of law engaged in by its lawyers, such as international dispute resolution and international corporate practice,²⁴ and then continues with information regarding the international aspects of the firm’s organization, such as its foreign offices and foreign clients.

Hughes Hubbard’s international dispute resolution practice has consistently been recognized as among the world’s best.... The Firm’s specialty practices have brought additional depth to our international practice. From its base in the Washington office, our international trade practice has provided foreign governments and U.S. and foreign companies with advice and representation on customs, trade regulation, export and commercial treaty (NAFTA, WTO) matters. Our antitrust practice, one of our oldest specialty practices, has seen rapid growth in counseling and defending foreign enterprises on matters involving the application of the Sherman and Hart-Scott-Rodino Acts to their activities in this country.... Hughes Hubbard lawyers routinely handle matters affecting every continent, and increasingly coordinate or advise on matters that involve multiple jurisdictions. Non-U.S. companies and governments, together with U.S. companies that consult us on a wide variety of their international op-

²³ J.V. Beaverstock, et al., *The Long Arm of the Law: London’s Law Firms in a Globalizing World-Economy*, 31 ENV’T & PLANNING A 1857 (1999) (citing A. Peck, *The International Practice: Market Growth*, HOBSON’S LAW CASEBOOK 28 (1997)); See McBarnet, *supra* note 7.

²⁴ See Hughes Hubbard & Reed, at <http://www.hugheshubbard.com/practice/detail.asp?PracticeAreaID=32> (last visited Oct. 6, 2003).

erations, represent a significant majority of our clients. Lawyers from over twenty countries, who collectively speak some two dozen languages, contribute to the ongoing excellence of the Firm's international practice.²⁵

The international label is not claimed only by large law firms; even small firms participate in this specialty. Murphy Ellis Weber, for example, is a three-person law firm in Washington, D.C., specializing in international business advice.²⁶ One of the firm's partners is a British solicitor who also is admitted in the District of Columbia. A two-person firm, Williams & Baerson, offers international tax advice as one of its areas of expertise from its Chicago home-base.²⁷

B. International Expansion Strategies

Scholars of organizational behavior identify four models of internationalization related to stages of participation in the international market: domestic, international, multinational, and transnational.²⁸ For law firms, these models are relevant as ideal types, stages along a continuum between the purely domestic and transnational extremes. These models provide useful analytic tools for considering the ways in which law firms operate as international organizations.

1. Domestic Firms

Domestic firms are those least connected to the international market and are firmly grounded in a single orientation. "This entails having all of the firm's facilities, employees, and customers in terms of their regional . . . orientations, the pool of employees is relatively homogeneous."²⁹ For law firms, this means having only domestic offices, domestic clients with domestic legal problems, and domestically educated and licensed lawyers as both partners and employees. One might take this a step further, since lawyers are licensed by states in the U.S. Law firms grounded locally or within a particular state or region – as distinguished from those firms that are national in respect to clients, client problems, the legal expertise offered (law-

²⁵ See *id.*, where the description includes reference to intellectual property advice delivered from the firm's Paris office and the statement in the text regarding foreign clients and international lawyers. See the similar description of the international trade practice of Sidley Austin Brown & Wood (<http://www.sidley.com/practice/group.asp?groupid=1362>) (last visited Oct. 6, 2003).

²⁶ See listing at <http://www.martindale.com>; the firm's website is <http://www.MurphyEllisWeber.com> (last visited Oct. 6, 2003).

²⁷ See listing at <http://www.martindale.com>.

²⁸ McWilliams et al., *supra* note 16.

²⁹ *Id.*

yers licensed in various states), office locations, and lawyer education and licensing – are clearly domestic firms.

One example of a truly domestic firm is Diamond and Diamond, a three-person firm with a general civil practice located in South Bend, Indiana. According to the firm's Martindale-Hubbell listing, all three of its lawyers were born in the South Bend area, all graduated from law schools in Indiana, and the practice includes such areas of local law as real estate and family relations.³⁰ Of course, if the Diamond firm is retained to represent a client in a custody dispute in which one of the parents lives outside the U.S., the divide between domestic and international will be breached.

Another way to envision the domestic firm model is to consider the historic version of any number of now-large Midwestern-based firms. Barnes & Thornburg, a firm with over 300 lawyers, is an example. Organized in 1940, in Indianapolis, Indiana, Barnes & Thornburg has grown organically and through merger, and currently has offices in the Midwest and Washington, D.C. Its link to the international market is through representation of foreign clients in their U.S. activities, representation of U.S. clients in their foreign activities and through membership in international law firm networks.³¹ The domestic firm in today's economy is as much an ideal type or temporary status as a reality, because of the high likelihood that law firms will make a connection to international clients and problems.

2. *International Firms*

One step closer to the international market are those firms which pursue international legal work as a "simple extension[]" of their domestic op-

³⁰ Information about Diamond & Diamond may be found at <http://www.martindale.com>.

³¹ Barnes & Thornburg's website, <http://www.btlaw.com/> (follow links to *Our Practices, Other Practice Areas, International Business*) (last visited Oct. 6, 2003), describes its international practice as follows:

The firm is a member of TerraLex, a large worldwide network of independent law firms, and the TechLaw Group, a network of independent law firms serving the technology market. Barnes & Thornburg represents clients ranging from U.S. headquartered multinational companies to small businesses and individuals in their international business pursuits. In addition to assisting U.S. businesses with the sale and distribution of their products abroad and the protection and licensing of their intellectual property, our lawyers select and work with foreign counsel to assist in the establishment of overseas facilities and operations, including joint ventures with foreign partners. Working through our networks and with our correspondent firms, we help our clients meet their legal needs around the world.

Barnes & Thornburg also represents many overseas clients in U.S. legal matters in Indiana and elsewhere.

erations.”³² The essence of this model is that internationalization consists of offering home country legal expertise to foreign clients. This might be accomplished in several ways. A firm might offer home country expertise to foreign clients without leaving the home office. Certain firms have an international reputation in a particular area of law or particular kind of practice and are approached by foreign clients needing their advice. Two well-known examples are the California-based Venture Law Group and New York’s Wachtell Lipton Rosen & Katz. Venture Law Group’s reputation for representing start-up technology companies has attracted foreign clients in spite of the firm having no foreign offices and no articulated strategy of hiring foreign-trained lawyers.³³ Wachtell Lipton is world known for its expertise in mergers and acquisitions, but has only one office, in New York City. The firm has hired foreign-trained lawyers, all of whom work in U.S. law.³⁴ Wachtell’s clients include foreign and multinational corporations.

Other firms fit this international model even though they support foreign offices. The focus of activities for these firms remains on U.S. law. Kirkland & Ellis, a Chicago-based firm with a single foreign office in London, provides one example. The firm describes its international practice in terms of U.S. law expertise:

International companies doing business in the United States need the support of an experienced and established law firm with a national presence. Kirkland & Ellis represents numerous Fortune 250 corporations and other significant companies based throughout the world. The Firm is strategically positioned, by capability and geography, to assist non-U.S. clients in all their U.S. dealings and to guide them through unfamiliar legal and regulatory terrain at the federal, state, and local levels.³⁵

While Kirkland’s London office includes a number of foreign lawyers on its legal staff, the firm clearly concentrates on U.S. law expertise, advising clients on “federal, state, and local levels.” It relies on relationships

³² McWilliams et al., *supra* note 16 (citing BARTLETT & GHOSHAL, *MANAGING ACROSS BORDERS* (1998)). See also Patrick E. Mears & Carol M. Sanchez, *Going Global*, *BUS. L. TODAY* 32, 35 (Mar./Apr. 2001) (defining an international firm as one which “concentrates its assets and strategies in the home country.”).

³³ See Barbara Steuart, *Foreign Interests*, *THE RECORDER*, Feb. 26, 1996, at 1; Rinat Fried, *Networking in the Global Village*, *THE RECORDER*, Aug. 21, 1996, at 1. Venture Law Group recently merged with Heller Ehrman; see <http://www.vlg.com> (last visited Oct. 22, 2003).

³⁴ See, e.g., biography for Wachtell attorney Barbara S. Kohl Gerschwer at <http://www.wlrk.com/WLRKWeb/attorneys/SearchSingle.cfm?ID=1992> (last visited Oct. 10, 2003).

³⁵ See Kirkland’s description of its International Latin America practice at <http://www.kirkland.com/practice/interdisArea.asp?ID=1266> (last visited Oct. 10, 2003).

with foreign law firms when foreign law expertise is required, as explained in its website: "When necessary, Kirkland collaborates with leading law firms from countries around the world to give clients the benefit of firms who know their respective legal territory in-depth."³⁶

Other firms with multiple foreign offices also resemble the international model. Again, the focus on U.S. law expertise as the exclusive offering of the firm is crucial. Davis Polk & Wardwell, for example, supports six foreign offices, seemingly more than the relatively marginal foreign presence characteristic of the international model. Nevertheless, throughout Davis Polk's offices the practice is focused on U.S. law. Davis Polk explains its strategy in its website description:

We primarily staff our overseas offices (London, Paris, Frankfurt, Madrid, Hong Kong and Tokyo) with corporate and tax lawyers on assignment from our New York office. Rotations to an overseas office are generally for two or more years, usually after the associate has spent one or two years in New York....

All of our overseas lawyers practice U.S. law. This means that all of our lawyers do the same type of work, get the same types of experiences and have the same opportunities. This also means that when we have 40 lawyers in an office, all of them are U.S.-trained lawyers.³⁷

The firm's international approach is characterized by its offering of U.S. law expertise to its foreign and domestic clients.³⁸

³⁶ See Kirkland's description of its International practice in Europe at <http://www.kirkland.com/practice/interdisArea.asp?ID=1265> (last visited Oct. 10, 2003).

³⁷ Davis, Polk & Wardwell describes their overseas rotation program at <http://www.dpw.com/careers/corporateoverseasrotations.htm> (emphasis added) (last visited Oct. 10, 2003).

³⁸ Firms also internationalize by affiliating with foreign law firms with expertise in the relevant foreign legal system. Affiliations might be formal and exclusive, or informal, and might involve sharing information about clients, or sharing knowledge and training regarding legal practice and law. See Tung-lung S. Chang et al., *International Collaboration of Law Firms: Modes, Motives and Advantages*, 33 J. WORLD BUS. 241-62 (1998) (describing the types of networks between international and local Taiwanese law firms, the activities of firms in these networks, and the reasons for the affiliations). Barnes & Thornberg, the Indianapolis-based firm described above, notes its membership in TerraLex, which it describes as "a large worldwide network of independent law firms." See Barnes & Thornberg's website, at <http://www.btlaw.com/> (follow links to *Our practices, Business transactions, International transactions*) (last visited Oct. 10, 2003). Other international networks of law firms include: Lex Mundi, at <http://www.lexmundi.com/> (last visited Oct. 10, 2003); Law Firm of the Americas, at <http://204.255.113.246/> (last visited Oct. 10, 2003); and Multilaw, at <http://www.multilaw.com/> (last visited Oct. 10, 2003). See Matthew Haggman, *Legal Optimism*, MIAMI DAILY BUS. REV., Apr. 9, 2002, at A1; Matthew Haggman, *Joining the Club*, BROWARD DAILY BUS. REV., Feb. 11, 2002, at A10. See also Davis Polk's description of its relationship with German firm Hengeler Mueller, at <http://www.davispolk.com/offices/>

3. *Multinational Firms*

An additional step towards internationalization is the model of multinationalism. This model involves an increase in the international connection: more foreign clients and more foreign offices housing more lawyers working on more cross-border and international matters. In addition to an increasing depth of international connection, the multinational firm offers expertise in multiple national legal systems as well as in international and U.S. law; consequently, foreign lawyers are important to these firms because of their knowledge of foreign legal systems. In spite of this multiple national expertise, however, multinational firms maintain a single-country organizational mindset that unifies much of a firm's activities, including hiring, training and knowledge management.

An example of a multinational firm is McDermott Will & Emery, a Chicago-based firm with two German offices and a London office, in addition to multiple U.S. offices. McDermott's approach is to make foreign law the only offering in its foreign offices, which are staffed almost exclusively with lawyers qualified to practice the local law of the office location.³⁹ This may be the result of a strategic choice by McDermott or the consequence of acquiring a group of German lawyers from a local firm to serve as its foreign office.⁴⁰ Since the mid-1990s, when law firms' international expansion activities made the acquisition of entire foreign firms common practice, foreign-educated lawyers have become a customary part of the legal staffs of U.S.-based international law firms.⁴¹

As part of this combination of U.S. and foreign orientation, multinational firms attempt to balance the diverse training and licensing backgrounds of their attorneys and they approach this in a variety of ways. Strategy is often not clearly articulated, but from examining lists of lawyers

frankfurt.htm (last visited Oct. 10, 2003) ("We can cover this range of transactions because we work closely with our London office and with our colleagues at Hengeler Mueller, Germany's premier corporate law firm. Together with Hengeler Mueller, several of whose lawyers have spent a year at Davis Polk, we field an integrated team of experienced German and U.S. lawyers to cover a wide variety of capital markets transactions and mergers and acquisitions.").

³⁹ See the lawyer biographies, searchable by office location, on McDermott's website, at <http://www.mwe.com> (last visited Oct. 10, 2003).

⁴⁰ McDermott's first German office in Munich was opened after it acquired five lawyers from a German firm, BBLP Beiten Burkhardt Mittl & Wegener. Press Release dated Oct. 29, 2001, available at <http://www.mwe.com/index.cfm/fuseaction/media.prlist> (following links to 10/29/2001 *McDermott, Will & Emery to Establish German Office*) (last visited Oct. 10, 2003).

⁴¹ The merger of Mayer Brown & Platt, a Chicago-based firm, with London's Rowe & Maw is an example of a large-scale combination along these same lines. See Mayer, Brown, Rowe & Maw, *Overview*, at <http://www.mayerbrownrowe.com/overview/index.asp> (last visited Oct. 10, 2003).

on firm websites, recruiting information and Martindale-Hubbell listings, it is clear that diversity of national legal expertise is a factor in staffing. The Multinational Model includes firms with numerous foreign offices in which they offer a combination of foreign and U.S. law expertise and firms like McDermott, with only a few foreign offices that are focused nearly exclusively on foreign law. Jones Day and Skadden Arps are examples of the former type of multinational firm, with substantial numbers of offices from which U.S. and foreign expertise is offered. Jones Day describes its international practice as follows:

The Firm's international practice balances U.S. lawyers posted outside the United States and foreign lawyers experienced in representing U.S.-based clients. Our lawyers are licensed in most significant jurisdictions in Europe and Asia and are fluent in virtually all principal languages relevant to international business.⁴²

Lawyers in Skadden Arps' European offices advise on the national laws of the countries in which the offices are located – France, Austria, Germany and England – in addition to offering U.S. law advice. Skadden does not offer local law expertise outside of Europe, however, and even where local law expertise is offered, the firm emphasizes the U.S. competence of the lawyers posted in its foreign offices.⁴³ Cleary Gottlieb relies even more heavily on foreign-licensed lawyers, although many of these also have some U.S. education. The firm has a long history of including foreign-educated lawyers, which distinguishes it from most other U.S. law firms. Cleary describes this international focus as follows:

Organized and operated as a single, integrated global partnership (rather than a U.S. firm with a network of overseas offices), Cleary Gottlieb employs more than 800 lawyers from more than 50 countries and diverse backgrounds who are admitted to practice in various jurisdictions around the world. Since the opening of our first European office in 1949, our legal staff has included European lawyers, most of whom have received a part of their academic legal

⁴² Jones Day, *About Us*, at <http://www1.jonesday.com/about/about.asp> (last visited Oct. 10, 2003).

⁴³ The description of Skadden's Paris office is illustrative:

In addition to handling a wide variety of matters under United States and French law, several attorneys in the Paris office have considerable experience with transactions and government projects in East Europe and the Commonwealth of Independent States. The Paris office is registered with the Paris Bar and a number of its attorneys are admitted as *avocats* with the Paris Bar. Attorneys in the Paris office are also qualified in New York.

Skadden, Arps, *Paris Office*, at <http://www.skadden.com/officesIndex.ihtml> (last visited Oct. 10, 2003).

training in the United States and many of whom have completed traineeships in one of the firm's U.S. offices. The firm was among the first international law firms to hire and promote non-U.S. lawyers as equal partners around the world.⁴⁴

The balance between U.S. and foreign law expertise also implicates how multinational firms approach marketing. Many firms resembling the Multinational Model do not declare their intentions regarding the national legal orientation of their advice. These firms refrain from identifying themselves as "U.S. law firms" even though most of their lawyers are U.S. lawyers. An example is Sidley Austin Brown & Wood, which identifies itself as an international firm⁴⁵ but describes its ability to advise on foreign law only in the context of particular practice areas or offices.⁴⁶ Chadbourne & Parke describes its lawyers' expertise in terms that embrace the possibility of local practice without proclaiming it as a goal:

Our international practice includes many lawyers who are both fluent in the languages of the countries where they work and admitted to the practice of local law. As a consequence of our familiarity with local customs, legal systems and political environments, the Chadbourne team offers innovative solutions to significant international problems.⁴⁷

In their foreign offices, both Chadbourne and Sidley mix locally-licensed lawyers with U.S. lawyers.

The Multinational Model is fundamentally founded upon the expansion of the law firm's services to incorporate expertise in multiple national legal systems. As a consequence of this expansion, multinational firms compete more directly with local law firms in the locations where their foreign offices are located. The relationship between multinational firms and foreign-based local firms gives rise to competition over hiring local lawyers, com-

⁴⁴ Cleary, Gottlieb, Steen & Hamilton, *International*, at <http://www.cgsh.com/about/about.aspx> (last visited Oct. 10, 2003).

⁴⁵ Sidley Austin Brown & Wood, *About Sidley*, at <http://www.sidley.com/about/about.asp> (last visited Sept. 11, 2003) ("In May 2001, the law firms of Sidley & Austin and Brown & Wood merged to become Sidley Austin Brown & Wood, a significant legal power in the international arena. The combination of these two legal authorities creates a new kind of law firm.").

⁴⁶ See, e.g., Sidley Austin Brown & Wood, *Hong Kong Office*, at <http://www.sidley.com/offices/hongkong.asp> (last visited Oct. 10, 2003), which explains that the office has "over 40 lawyers including eight partners who are qualified to practice Hong Kong, English and United States law."

⁴⁷ See Chadbourne & Parke, *International Presence*, at http://www.chadbourne.com/about/sub_international.html (last visited Oct. 10, 2003).

pensation and life-style issues for these lawyers, as well as competition for local clients.

4. *Transnational Firms*

The Transnational Model brings the discussion back nearly full circle to the Domestic Model, because transnational law firms are comprised of multiple nationally-based groups of lawyers specializing in their own national law systems. In addition to the national or domestic focus, transnational firms offer international expertise as the connection among the various national law specialties, although this international advisory role may not be consistently available in every location of the firm. The quintessential firm resembling the Transnational Model is Baker & McKenzie, with offices in 66 locations. Baker & McKenzie mixes its lawyers among offices that generally relate regionally, if not locally, to their license and education backgrounds.⁴⁸ The firm captures the essence of its strategy for staffing in its website description: "Since its inception in 1949, the Firm has been committed to building a seamless global network of offices staffed by locally qualified lawyers who are indigenous to the business communities in which they and their clients operate."⁴⁹ Baker also, of course, offers international law advice through lawyers sprinkled throughout the firm.

Transnational business organizations use location strategically.⁵⁰ In law, the relationship between location and the service provided is crucial. While it may be less expensive to locate lawyers in Jakarta than in London, the same group of English lawyers will attract less business if they are situated in Jakarta than if they practice in London. Partly, this is because of tradition; partly it is due to the importance of face-to-face contact; and partly it results from the importance of knowing the local scene – politically, economically and culturally – to understanding its law. Thus, the benefit of situating an English law practice in London must be incorporated into the conception of a transnational law firm.

⁴⁸ Baker & McKenzie's Hong Kong office is staffed with more than 150 lawyers (partners and associates). Partners in the Hong Kong office are licensed in the U.S., Canada, Hong Kong, Australia and England, but also include lawyers licensed in Singapore, Taiwan and Germany, among others countries. Baker & McKenzie's Milan office is similarly staffed: all of its partners are licensed in Italy, and several are dual licensed, including two who are dual licensed in Italy and New York. See Baker Mackenzie, *Baker & MacKenzie Lawyers*, at <http://www.bakernet.com/BakerNet/Lawyers/default.htm> (last visited Oct. 10, 2003).

⁴⁹ Baker & McKenzie, *Firm Profile*, at <http://www.bakernet.com/BakerNet/Firm+Profile/default.htm> (last visited Oct. 10, 2003).

⁵⁰ McWilliams et al, *supra* note 16, at 3. Transnational firms are described as organizations that "locate facilities based on the ability to effectively, efficiently, and flexibly produce a product or service, and to create synergies through the cultural differences."

The law firm networks of the international accounting firms also resemble the transnational model. Law firms based in various countries, with practices combining domestic and international law expertise, either were acquired or created by the accounting firms. The number of offices and diversity of national law expertise distinguishes these networks from multinational firms; these networks have no “home country” law from which to diversify, because the historical roots of the networks do not lay in one particular jurisdiction. Consequently, they are international in a way that is different from most firms that grew from a U.S. or other national law practice. These networks, like Baker & McKenzie, capitalize on their ability to offer expertise in multiple national law systems.⁵¹

C. The Models Reconsidered

The degree of international integration of law firms has changed significantly during the last 50 years. While the international development of certain businesses may be accomplished by direct shift from domestic to transnational, development for law firms is not in giant steps from one model to the next, but rather a continuum of small, incremental changes that result in movement across the categories. Firms have internationalized in many different ways and at various times and places, but the steady and dramatic shift towards greater internationalization is unmistakable.

The four Models of internationalization—Domestic, International, Multinational and Transnational—are perhaps more appropriately considered stages of entry into the international market, marking development from the domestic model which was the foundation of nearly all U.S. law firms,⁵² to a pattern of practice that reflects the international economy. Certain firms stop at a stage akin to the International Model, from which they specialize in offering U.S. law advice in their international work. Other firms combine expertise in multiple national legal systems to varying degrees. It is less useful to categorize particular firms according to the models than to use the models as steps for comparing firms along a continuum of internationalization.

⁵¹ Landwell, the legal arm of PriceWaterhouse Coopers, at <http://www.landwellglobal.com/> (last visited Oct. 10, 2003); Ernst & Young's law firm network hosts a website, at http://www.ey.com/global/content.nsf/International/Services_-_Law (last visited Oct. 10, 2003); Deloitte Touche Tohmatsu legal services, at http://www.deloitte.com/dtt/section_node/0,2332,sid%253D1003,00.html (last visited Oct. 10, 2003); KPMG, legal services “KLegal, International”, at <http://www.klegal.com/index.cfm> (last visited Oct. 10, 2003).

⁵² There are a few exceptions to this historical domestic orientation. For example, Couderc began as an international firm, and several New York-based firms became international at an early stage in their development. See Silver, *Shifting Identities*, *supra* note 4, at 1108-1110.

Greater internationalization can be seen in various ways. Foreign offices are both a proxy for and a function of internationalization. As part of a prior research project, I gathered information about 71 of the largest and most international law firms during the period of 1985 to 2000 for the purpose of illustrating the increased investment of U.S. firms in foreign offices.⁵³ Each of the 71 firms examined supported at least one foreign office in 2000. But in 1985, only 43 of these firms supported a foreign office, and together the group of 43 firms reported a total of 117 foreign offices in their 1985 Martindale-Hubbell listings. By 2000, these firms reported 343 foreign offices, nearly triple the number from 1985.

The growth in international investment through foreign offices occurred within firms as well as among the group of firms; that is, individual firms supported more foreign offices in 2000 than in 1985. According to the 1985 Martindale-Hubbell directory, 58% of the firms examined having a foreign office (that is, 58% of the 43 firms) had only one foreign office. By 2000, only 18% of the firms examined had just one foreign office, while more than 80% had two or more foreign offices.⁵⁴ This increase in the number of foreign offices which individual firms supported reveals the increased depth of firms' commitment to the international market.

Increased internationalization also can be demonstrated by the growth in the size of foreign offices. Larger offices are more expensive to maintain as a result of increased office space and salary expenses, but they also enable a greater variety and sophistication of legal work to be performed in the foreign location, so that revenues from a larger office may increase as the costs of the office increase. Larger offices send a message of greater legitimacy, as well as a sense of more serious investment by the firm in the particular location. Not surprisingly, firms have increased the size of their foreign offices as part of their increased investment in the international market. Between the period of 1985 and 2000, large U.S. firms flocked to London. In 1985, 29 London offices were supported by the 71 law firms examined.⁵⁵ Nearly 70% of these offices were staffed very thinly, with five

⁵³ See Carole Silver, *Lawyers on Foreign Ground*, in CAREERS IN INTERNATIONAL LAW 1, 3 (Mark Janis & Salli Schwarz eds., 2d ed. 2001); Silver, *Shifting Identities*, *supra* note 4, at 1104-1107 (Foreign office information was collected for 71 law firms drawn from the American Lawyer 100, the American Lawyer Global 50 and the International Financial Law Review's most globally focused and international law firms. The firms selected and studied were those on these lists with at least one foreign office in 2000. Appendix 1 provides the complete list of the 71 law firms studied.).

⁵⁴ Silver, *Lawyers on Foreign Ground*, *supra* note 53, at 5.

⁵⁵ This data is based upon information reported in the on-line version for the 2000 data and in the bound volumes of Martindale-Hubbell for the 1985 data. Martindale-Hubbell, at <http://www.martindale.com> (last visited Oct. 10, 2003).

or fewer lawyers.⁵⁶ Five of the 29 offices were staffed with six to ten lawyers; Baker & McKenzie was the only firm to support an office larger than 10.⁵⁷

By 2000, more than 75% of the 71 firms examined had a London office, and these offices were substantially larger than in 1985.⁵⁸ The growth in the size of the offices is due in part to an opening up of the London practice rules, which were revised in 1990 to permit multinational partnerships.⁵⁹ U.S. firms began hiring English solicitors to augment their London staffing and this is reflected in the increased size of U.S. firms' London offices. By 2000, most London offices of the firms examined had doubled in size, supporting between 11 and 30 lawyers; seven offices supported more than 30 lawyers each.⁶⁰ U.S. firms supported over 678 lawyers in their London offices in 2000, up from 148 in 1986, an increase of over 450%.⁶¹

The growth of foreign offices, both in terms of the number of such offices and their size, is evidence of movement of firms towards the Multinational and Transnational Models. A fundamental element of this growth is the increasingly common practice for such firms to hire foreign-educated and licensed lawyers. Foreign lawyers serve in foreign offices as well as in the U.S. They advise clients from their home countries and regions as well as others. Foreign lawyers also serve as evidence of their firms' international-ness in addition to providing expertise necessary for developing international opportunities.⁶²

The Multinational and Transnational Models, however, are not alone in their reliance on foreign lawyers. International firms also utilize foreign lawyers, who serve as evidence of the firms' international approach and character as well as provide special assistance to clients from the home country of the lawyer. Thus, the Latin American practices of a number of

⁵⁶ Silver, *Lawyers on Foreign Ground*, *supra* note 53, at 7. There is some uncertainty about staffing in a small number of offices because several firms did not publish complete biographical information about their associates. Information was supplemented by consulting law firm websites.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Courts and Legal Services Act, c.41, § 66 (1990) (Eng.). On the development of multinational partnerships in Europe generally, see Laurel Terry, *A Case Study of the Hybrid Model for Facilitating Cross-Border Legal Practice: The Agreement Between the American Bar Association and the Brussels Bars*, 21 *FORDHAM INT'L L.J.* 1382 (1998).

⁶⁰ Silver, *Lawyers on Foreign Ground*, *supra* note 53, at 7.

⁶¹ *Id.*

⁶² See, e.g., Aled Griffiths, *Making the Most of the Downturn*, *AM. LAW. FOCUS EUR.* 8, 12 (2003) (discussing the staffing and local law expertise for the German offices of U.S. firms and referring to dual qualified (German and U.S.) lawyers and to the lack of "local law capability at partner level" in Milbank Tweed's German office).

U.S. firms are populated with Latin American lawyers who work on transactions in which Latin American parties figure prominently, although the advice of their employing firms is based in U.S. law. Consequently, the need to hire lawyers with training in foreign law is relevant for firms with internationally integrated practices.

Foreign lawyers allow law firms to offer expertise in a number of legal systems. Prior to 1980, most U.S. law firms offered advice only in U.S. law.⁶³ For some firms, the date is much more recent; Sullivan & Cromwell, for example, began offering foreign law advice only in the late 1990s.⁶⁴ The pre-1980 limitation to U.S. legal advice was due in large part to national regulations restricting practice by nationality; these regulations have been eliminated in many countries. Today, it is common for U.S.-based firms to advise on English law in addition to U.S. law, and many also offer expertise in German and French law. By examining lawyer biographies on law firm websites and in Martindale-Hubbell, it becomes clear that most large U.S.-based international law firms house a number of lawyers with foreign law expertise and training.⁶⁵

As law firms have expanded through foreign offices and by offering legal advice to include multiple national law systems, issues of quality are implicated. Multinational firms concentrate on offering services of comparable quality and providing "standardized ... services to meet the needs of all markets simultaneously."⁶⁶ In fact, concerns about quality are common

⁶³ See generally Silver, *Shifting Identities*, *supra* note 4. The exception to this statement is that offices in France included U.S. lawyers serving as conseil juridique and advising on French law relating to business transactions. See generally Trubek et al, *supra* note 4.

⁶⁴ See Douglas McCollam, *Saving Private Goldman*, AM. LAW. Oct. 1999, at 15. Sullivan & Cromwell describes its London office's practice as follows: "S&C's London office was established in 1972 and is one of the largest offices of U.S. lawyers in London. . . . A number of our lawyers are qualified English lawyers, enabling the firm to handle projects transactions where one or more of the principal contracts is governed by English law." Sullivan & Cromwell, *Office, London*, at http://www.sullcrom.com/display.asp?section_id=227 (last visited Oct. 11, 2003).

⁶⁵ For example, by searching various law firm websites in June of 2000, I identified foreign lawyers, meaning lawyers who had not earned a J.D. from a U.S. law school (lawyers educated in Canada are included as foreign), in the following firms (office location of the individual is indicated in parenthesis): Latham & Watkins (LA) – 2 associates; Latham & Watkins (NY) – 1 associate; Morrison & Foerster (NY) – 4 partners, 4 associates; Morrison & Foerster (San Francisco) – 4 associates, 1 "other attorney;" Shearman & Sterling (NY) – 4 partners, 4 associates; Vinson & Elkins (NY) – 1 associate; Davis Polk (NY) – 25 associates; Cleary Gottlieb (NY) – 4 members, 13 associates; Weil Gotshal (NY) – 6 associates; Fried Frank (NY) – 3 associates.

⁶⁶ McWilliams et al, *supra* note 16 (citing RICKY W. GRIFFIN & MICHAEL W. PUSTAY, INTERNATIONAL BUSINESS: A MANAGERIAL PERSPECTIVE (1996)).

today among law and other professional services firms.⁶⁷ Some law firms address this concern in their marketing material with statements about training all new lawyers in the U.S. or in the firm's home office, before dispersing them among satellite offices.⁶⁸ Cravath Swaine & Moore describes its staffing of its London office in these terms:

Our London office is supervised by partners with many years of experience in our New York office and are [sic] staffed, in large measure, through associate rotations from New York. This assures clients that we will provide the same abilities in mergers and acquisitions, securities offerings, banking, tax and project finance at any location in the world.⁶⁹

Other firms stress training programs which bring together lawyers from all offices. Latham & Watkins brings lawyers together at various stages in their careers for firm-wide training programs,⁷⁰ as does Shearman & Sterling.⁷¹ The connection between quality and uniformity is significant for firms, as illustrated by this website statement of Latham & Watkins: "We are committed to providing consistent quality and creativity in our work—it is both a matter of professional pride and a central part of our identity as a firm. It also allows us to attract and retain the caliber of clients and challenging legal work we seek."⁷²

The international diversification of legal expertise in law firms requires new thinking about regulating the lawyers populating international firms. Firms resembling the International, Multinational and Transnational Models hire foreign-trained lawyers for various purposes, and these lawyers often are rendered more valuable by training for a period in the U.S. to learn

⁶⁷ The concern about quality also is implicated in the criticism of law firms with multiple offices that are characterized as franchise operations, such as is implicit in the name, "Baker & McDonalds" for the firm, Baker & McKenzie. See John Flood, *Megalawyering in the Global Order: The Cultural, Social and Economic Transformation of Global Legal Practice*, 3 INT'L J. LEGAL PROF. 169, 195 (1996).

⁶⁸ See Silver, *Shifting Identities*, *supra* note 4, at n. 198 (statements in websites of Cravath Swaine & Moore and other firms in 2000).

⁶⁹ Cravath, Swaine & Moore, Hong Kong and London offices, at <http://www.cravath.com/flash.html> (follow links to *Our Practice, Corporate & Tax, International*) (last visited Oct. 10, 2003).

⁷⁰ Latham & Watkins, *Career Development*, at <http://www.lw.com> (follow links to *Recruiting, Career Development*) (last visited Oct. 11, 2003).

⁷¹ Sherman & Sterling, *Professional Development*, at http://www.shearman.com/recruiting/career_development.html (last visited Oct. 11, 2003).

⁷² Latham & Watkins, *About the Firm*, at <http://www.lw.com/recruiting> (paragraph titled "Quality and Creativity") (last visited Oct. 11, 2003).

about U.S. law and legal practice and about the particular law firm.⁷³ In addition, firms that hire foreign lawyers even for the purpose of working in their home countries must be concerned about integrating these lawyers into the firm's fabric. Integration involves bringing lawyers together, and if the connection is to be substantive then it involves the licensing of lawyers to work outside of their home countries. Moreover, law firms hire foreign lawyers to further their own internationalism, but the foreign lawyers must find ways to contribute value to their firms through their legal services; again, licensing is implicated. Part III considers the regulatory hurdles foreign lawyers face when seeking to practice in the U.S.

III. ASSESSING COMPETENCE OR PROTECTING LOCAL PLAYERS – THE ADMISSION RULES

The enormous changes that characterize internationalization in legal services described in Part II are not reflected in the regulation of lawyers, which has remained nearly static in the U.S. since the mid-1970s. States continue to establish admission barriers for lawyers based upon a one-size-fits-all conception of the profession and its clientele. The only rational purpose for admission rules is to protect the public from incompetent lawyers.⁷⁴ They are deemed necessary because it is difficult for individuals who are both unfamiliar with the legal profession and not regular users of lawyers' services to assess the quality of professional services.⁷⁵ Admission rules also protect the integrity of the courts by limiting access to those familiar with relevant procedures and judicial expectations.

⁷³ A number of firms routinely hire foreign lawyers after they complete an LL.M. at a U.S. law school. These firms train their new graduates for a limited period in the U.S. and then send them to their home countries for work in their foreign offices. See Silver, *The Case of the Foreign Lawyer*, *supra* note 4, at 1041-2; Silver, *Lawyers on Foreign Ground*, *supra* note 53, at 10.

⁷⁴ See generally ABA Section on Legal Education and Admission to the Bar, *Bar Admissions, Basic Overview*, available at <http://www.abanet.org/legaled/baradmissions/bo.html> (last visited Oct. 11, 2003) ("Licensing involves a demonstration of worthiness in two distinct areas. The first is competence. For initial licensure, competence is ordinarily established by a showing that the applicant holds an acceptable educational credential (with rare exception, a J.D. degree) from a law school that meets educational standards, and by achieving a passing score on the bar examination."). The Florida Rules of the Supreme Court Relating to Admissions to the Bar, Rule 1-15.1 clearly states the purpose of the bar exam: "1-15.1 Purpose. The primary purpose of the bar examination is to ensure that all who are admitted to The Florida Bar have demonstrated minimum technical competence." The Florida Rules of the Supreme Court Relating to Admissions to the Bar, available at <http://www.floridabarexam.org/> (last visited Oct. 11, 2003)).

⁷⁵ See generally Bernard Black, *The Core Institutions that Support Strong Securities Markets*, 55 BUS. LAW. 1565 (2000) (discussion of the need to protect investors in securities from informational asymmetries (citing George Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q. J. ECON. 488 (1970))).

While the concern for protection against incompetence may be relevant to certain individual clients, sophisticated consumers of legal services are able to protect themselves.⁷⁶ Corporate clients are generally at least as adept at assessing the quality and value of legal services as are law firms themselves.⁷⁷ It would be surprising if sophisticated corporate clients were concerned about whether a particular lawyer was educated through a combination of U.S. and foreign schooling and practice, or admitted in New York or another U.S. jurisdiction. Instead, clients expect their law firms to screen lawyers in hiring and to provide training and supervision to assure high quality services. Moreover, law firms have every incentive to protect their reputations from incompetent practitioners; not only do law firms suffer monetary damages from malpractice determinations, but they also suffer serious harm to their reputation from negative publicity about charges of incompetence.⁷⁸ Law firms are subject to intense scrutiny by the plethora of journals and websites focused on legal practice, of which the *American Lawyer*, the *National Law Journal*, and *www.vault.com* are examples.

However, the problem with the current regulatory system in the U.S. as it applies to international legal services goes beyond the domestically-focused one-size-fits-all approach of the state bars. Law firms operating along the lines of the International, Multinational and Transnational Models need to incorporate foreign-educated lawyers into their organizations and practices. But the rules governing the practice rights of foreign lawyers in the U.S. are so varied, complex and opaque as to present a sticky web of barriers.⁷⁹ As a result of this complexity, foreign lawyers generally consider the bar admission possibilities in only a very few jurisdictions whose rules have been tested and where the draw of opportunity is simply too good to pass up. Not only does this lead to relocation of international practices into these more supportive jurisdictions, but it also leads to law firms

⁷⁶ See generally JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (1982) (on two hemispheres of legal profession). See also Marc Galanter, *Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC'Y REV. 95 (1974).

⁷⁷ Consulting firms specializing in legal services have developed strategies for corporate legal departments to assess the value of their outside counsel. See, e.g., Hildebrandt International, at http://www.hildebrandt.com/ConsultingServices.aspx?BD_ID=4858 (last visited Oct. 11, 2003).

⁷⁸ For example, Kaye Scholer LLP's role in the Lincoln Savings debacle was well-documented. See, e.g., Michael Orey, *The Lessons of Kaye Scholer: Am I My Partner's Keeper?*, AM. LAW., May 1992, at 3. See Bernard Black, *supra* note 76, at 1569 (discussing ways in which lawyers function as reputational intermediaries in the securities market).

⁷⁹ For an analysis of potential conflicts among national regulations impacting lawyers, see Detlev F. Vagts, *Professional Responsibility in Transborder Practice: Conflict and Resolution*, 13 GEO. J. L. ETHICS 677 (2000).

disregarding the rules governing rights of practice for foreign lawyers. Firms hire foreign lawyers regardless of their licensing status, though licensing may well be a reason for severing the relationship after a brief period of employment.

Regulation of entry for foreign lawyers—the rules that permit foreign-educated and licensed lawyers to practice in the U.S.—are of two types.⁸⁰ First are admission rules—those rules which define the qualifications necessary for normal admission to the bar. Foreign-educated and licensed lawyers who want to practice in the U.S. are likely to apply for bar admission in order to enjoy all of the rights and responsibilities of U.S. lawyers. Nearly all states condition bar admission upon completing specified legal education, meeting the character and fitness requirements, and passing a bar examination.⁸¹ Some states have special admission rules for foreign-educated and licensed lawyers that recognize the foreign education or experience as partial satisfaction of the requirements for bar admission. The admission rules, as they apply to foreign lawyers, are examined below.

The second way in which foreign lawyers are permitted to practice in the U.S. is through licensing as a legal consultant. Rules licensing foreign lawyers as legal consultants, or, as they are variously titled, foreign legal consultants, special legal consultants or foreign law consultants, permit foreign lawyers to practice their home country law, and, in certain jurisdictions and subject to varying conditions, also to advise on U.S. law. Under these rules, foreign lawyers' work is limited in scope; the limitations are intended to protect the public from incompetence. The idea of the foreign legal consultant originated in response to the regulatory treatment accorded foreign lawyers, including those from the U.S., by France in the 1970s.⁸² Twenty-four U.S. jurisdictions have adopted some version of foreign legal consultant rule, discussed below.⁸³ The ABA recently voted to encourage all states to adopt its Model Rule on the Licensing of Foreign Legal Consultants.

⁸⁰ A third category of regulation of lawyers, the unauthorized practice rules, also apply to foreign lawyers, providing a fundamental framework for the admission and legal consultant rules.

⁸¹ Wisconsin provides that graduates of the University of Wisconsin Law School are granted automatic admission to the bar pursuant to the so-called "diploma privilege." See WIS. SUP. CT. R. 40.03, available at <http://www.courts.state.wi.us/html/rules/chap40.htm> (last visited Oct. 11, 2003).

⁸² For a history of the foreign legal consultant rules, see Sydney M. Cone III, *INTERNATIONAL TRADE IN LEGAL SERVICES* chs. 3, 4 (1996); Louis B. Sohn, *American Bar Association Section of International Law and Practice Report to the House of Delegates Model Rule for the Licensing of Legal Consultants*, 28 INT'L LAW. 207 (1994). See also Carol A. Needham, *The Licensing of Foreign Legal Consultants in the United States*, 21 FORDHAM INTL L. J. 1126 (1998).

⁸³ See discussion at Part IV *infra*, regarding foreign legal consultant rules.

A third approach to regulating the activities of foreign lawyers is embodied in a new ABA proposal generated by the Commission on Multijurisdictional Practice.⁸⁴ Under this proposal, foreign lawyers would be permitted to work in the U.S. on a temporary basis in a variety of circumstances, including working in association with a U.S. lawyer.⁸⁵

While the essential elements of admission and legal consultant rules are relatively standard, the devil is in the details, and the details are extremely diverse.⁸⁶ Admission rules generally consist of requirements relating to education, character and fitness, and an examination.⁸⁷ Foreign lawyers generally do not satisfy the basic educational requirements,⁸⁸ states that modify the education requirements to accommodate foreign lawyers do so in a variety of ways. The basic requirements of the legal consultant license are admission in another country, experience in practice, and limitation on the scope of practice permitted in the U.S. The ABA has proposed a model rule on foreign legal consultants⁸⁹ which has been modified in the adoption process in most of the states that have taken action on the rule.

The diversity of the details in admission and legal consultant rules renders it difficult to assess their general availability to foreign lawyers; it is difficult to comprehend the rules, and there is significant uncertainty in their application. In order to make sense of the current regulations, two discrete organizing frameworks are offered. The first organizational frame-

⁸⁴ See American Bar Association Commission on Multijurisdictional Practice, *Report of the ABA Commission on Multijurisdictional Practice*, June 2003, available at <http://www.abanet.org/cpr/mjp-home.html> (last visited Oct. 11, 2003).

⁸⁵ See American Bar Association Commission on Multijurisdictional Practice, *Report 201J*, Aug. 2002, available at <http://www.abanet.org/cpr/mjp-home.html> (scroll down to *Final Reports, as adopted August 12, 2002*) (last visited Oct. 11, 2003). This proposal is the subject of current discussion by states.

⁸⁶ See Appendix 2 *infra* for a list of sources for state admission and legal consultant rules.

⁸⁷ The multistate bar examination provides some standardization to the examination portion of the requirements for 48 states and the District of Columbia. The National Conference of Bar Examiners compiles information about the multistate exams. See NCBEX, at <http://www.ncbex.org/tests.htm> (last visited Oct. 11, 2003).

⁸⁸ The basic education requirement is graduation from an ABA approved law school with a J.D. degree. The unstated assumption is that graduation from such a law school will provide an applicant with a grounding in U.S. law that will suffice as preparation for practice, and that applicants without such an education in an ABA approved law school will not be prepared for practice. Foreign law schools generally teach the law of the country in which they are located rather than U.S. or foreign law, and it is this absence of education in U.S. law that appears to underlie the exclusion of foreign-educated lawyers from the applicant pool for state bar examinations.

⁸⁹ The ABA recently recommended that the states adopt the Model Rule on Licensing Legal Consultants. See American Bar Association Commission on Multijurisdictional Practice, *Report of the ABA Commission on Multijurisdictional Practice*, *supra* note 85.

work assesses state regulations according to the ability of foreign lawyers to be admitted to the bar or licensed as legal consultants. States are grouped into six categories, ranging from the very liberal jurisdiction that recognizes foreign education and experience in satisfaction of its bar entry requirements, to the restrictive jurisdictions that refuse foreign lawyers any opportunity to practice. The second organizational framework establishes an ideal regulatory system for foreign lawyers and assesses existing state rules against that idea. In this context, existing rules are considered for their substantive provisions as well as for their clarity and objective applicability.

The first organizational framework is set out in Figure 1, which classifies state rules into six categories. Category 1 is comprised of jurisdictions which allow foreign lawyers to waive into the bar on the basis of their foreign education, admission and practice experience. Category 2 consists of jurisdictions that permit foreign lawyers to take the bar exam without completing a three-year J.D. degree from a U.S. law school. These jurisdictions establish various requirements, including up to one year of education in a U.S. law school, an assessment of the foreign legal education in comparison to U.S. legal education, and practice experience, which serve as conditions to sitting for the bar examination. Category 3 is comprised of jurisdictions that allow foreign lawyers to take the bar exam only after first being admitted in another U.S. jurisdiction. These jurisdictions essentially defer to the judgment of competence made by a sister state, and add comfort from additional practice experience gained by the applicant in that sister jurisdiction. Category 4 contains jurisdictions that permit foreign lawyers to waive into the bar, without an exam, based upon admission in another U.S. jurisdiction. Each of these jurisdictions, with the exception of Washington, requires a three-to-five year period of practice experience prior to admission on motion; Washington's rule simply states that "active legal experience" is required.⁹⁰ Category 5 consists of jurisdictions that permit foreign lawyers to advise as legal consultants but forbid them from joining the bar. Jurisdictions in Category 6 neither permit foreign lawyers to join the bar nor offer a legal consultant licensing system. Categories 1 through 4 are not mutually exclusive.

The requirements of each state are indicated after the state name according to the following legend:

- c = common law must be basis for jurisprudence in home country where first legal degree earned and where practice (if any) was accomplished
- p = practice experience is required in home country law

⁹⁰ WASH. CT. ADMIS. TO PRACTICE R. 18(b)(1) (2002), available at http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=APR (last visited Oct. 12, 2003).

a = education must be assessed for equivalence to U.S. legal education, or is otherwise required to meet certain criteria (such as duration)

e = U.S. legal education is required, not exceeding the equivalent of one year of courses

u = admitted in another U.S. jurisdiction (this is included here only as an alternative condition; see category 3, below)

FIGURE 1

States are listed according to their rules permitting foreign lawyers to join the bar through motion or examination (categories 1-4), permitting foreign lawyers to practice as legal consultants but not join the bar (category 5), or not offering foreign lawyers any possibility of practice (category 6). Those states with a foreign legal consultant licensing rule are indicated with an asterisk.		
<i>Category 1</i>	States permitting foreign lawyers to waive into the bar on the basis of their foreign education, admission and practice experience.	Massachusetts*-ap ⁹¹

⁹¹ MA. R. SUP. JUD. CT. 3:01 § 6.2 (2002), available at <http://www.state.ma.us/bbe/BarAppRulesAug2002.pdf> (last visited Oct. 12, 2003).

Category 2	States permitting foreign lawyers who have not earned a U.S. J.D. degree and are not admitted in another U.S. jurisdiction to sit for the bar examination.	Alabama-pa ⁹² Alaska*-cea California*-a Colorado-cp Connecticut*-ce District of Columbia*-e Hawaii*-cp Illinois*-pa Kentucky-pa Louisiana*-a or e Maine-a Massachusetts*-a Michigan*-e Nevada-a or pca New Hampshire-ca and either e or u New York*-ac or ae North Carolina*-e Ohio*-a Oregon*-ca Pennsylvania-pe Rhode Island-a and possibly also e Tennessee-a Texas*-pa Utah*-ce Vermont-ce ⁹³ Virginia-ea Washington*-cp West Virginia-cae
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⁹² Alabama also requires that the foreign jurisdiction give reciprocal rights to graduates of three named unaccredited Alabama law schools. R. GOVERNING ADMIS. TO ALA. ST. BAR R. IV (2003), *available at* <http://www.alabar.org/public/admissions/RulesAdmissions2003.pdf> (last visited Oct. 12, 2003).

⁹³ Vermont requires study with a lawyer in Vermont, instead of simply education in a U.S. law school. VT. SUP. CT. R. ADMIS. § 6(j) (1995), *available at* <http://www.vermontjudiciary.org/BBE/BBERulesRegs.htm> (last visited Oct. 12, 2003).

<i>Category 3</i>	States permitting foreign lawyers to take the state bar exam based on admission in another U.S. jurisdiction coupled with practice experience pursuant to that admission.	Arizona* California* Florida* ⁹⁴ Hawaii* Maryland ⁹⁵ Missouri* New Mexico* Ohio* Washington*
<i>Category 4</i>	States permitting foreign lawyers to waive into the bar (without taking the bar exam) based upon admission in another U.S. jurisdiction.	Connecticut* ⁹⁶ District of Columbia* ⁹⁷ Indiana* ⁹⁸ Kentucky ⁹⁹ Michigan* ¹⁰⁰ North Carolina* ¹⁰¹ Ohio* ¹⁰² Rhode Island ¹⁰³ Vermont ¹⁰⁴ Washington* ¹⁰⁵ West Virginia ¹⁰⁶ Wisconsin ¹⁰⁷

⁹⁴ See FLA. ST. R. OF SUP. CT. ADMIS. TO BAR 4-13.4 (2003), available at <http://www.floridabarexam.org/> (last visited Oct. 12, 2003).

⁹⁵ See MD. R. APP. CT. 4(b) (2002), available at <http://www.courts.state.md.us/ble/baradmissionrules.pdf> (last visited Oct. 12, 2003).

⁹⁶ In order to be admitted on motion after practicing in another U.S. jurisdiction, lawyers must show that their education would have qualified them to be admitted in Connecticut at the time they were admitted in the other jurisdiction or currently. For purposes of satisfying this education requirement, foreign-educated lawyers must either satisfy the Connecticut Examining Committee that they have "obtained a master of laws degree for post-graduate work acceptable to the committee at a law school approved by the committee, having already obtained a bachelor of laws or equivalent degree at a law school for work acceptable to the committee." CONN. R. SUPER. CT. GEN. ADMIS. TO BAR § 2-8(4) (2003). Alternatively, they must show that they have been admitted to practice in another jurisdiction in the U.S. or in a U.S. district court for at least 20 years, and have been practicing in that jurisdiction for at least 10 years, and intend to practice in Connecticut and "devote the major portion of the applicant's working time to the practice of the law in Connecticut." CONN. R. SUPER. CT. GEN. ADMIS. TO BAR § 2-8(8) (2003). It is not clear what work would be acceptable to the Committee for purposes of Sec. 2-8(4), but "[n]o law schools outside the United States have been approved by the Committee." State of Connecticut Judicial Branch, *Foreign Legal Education Petition: Foreign Education Approval*, at www.jud.state.ct.us/CBEC/foreign.htm (last visited Oct. 12, 2003).

⁹⁷ The District of Columbia authorizes admission on motion for lawyers educated outside of the U.S. provided they have "been a member in good standing of a Bar of a court of general jurisdiction in any state or territory of the United States for a period of five years immediately preceding the filing of the application" for admission on motion. D.C. R. APP. CT. 46(c)(3)(2001), available at http://www.dcbbar.org/for_lawyers/membership/prospective_members/index.cfm (last visited Oct. 12, 2003).

⁹⁸ Indiana does not specify the education requirements for admission on motion. See IND. ST. ADMIS. & DISCIPLINE R. 6 (1997), amended July 1, 2003. Foreign-educated lawyers may be admitted provisionally for one year, with successive approval of one-year periods thereafter for five years, at which time the admission may become permanent, upon a showing that they have been "actively engaged in the practice of law for a period of at least five (5) of the seven (7) years immediately preceding the date of application." *Id.* at 6(1)(a). In addition, applicants must show they are in good standing in the jurisdiction in which they are admitted, that they satisfy the character and fitness requirements, that they have not failed the Indiana Bar Examination in the prior two years, that they intend to practice in Indiana, and that their admission "is in the public interest." *Id.* at 6(1)(c), (d), (e), (g). There is no indication of what is required to show that admission is in the public interest.

⁹⁹ Kentucky does not specify whether the educational qualifications necessary to take the bar examination also apply to application for admission on motion, but KY. SUP. CT. R. 2.110 (2002), which governs admission on motion, states in paragraph (1) that applicants must satisfy "all requirements for admission to the Bar under these Rules." For admission by examination, foreign lawyers must show that their "legal education is the substantial equivalent of the legal education provided by approved law schools located in Kentucky." *Id.* at 2.014(3)(a). This rule further explains that the evaluation of a foreign lawyer's education may also include consideration of "admission of the applicant to the Bar of another state or the District of Columbia, . . . [and] that the school at which the applicant's legal education was received has been examined and approved by other state bar associations examining the legal qualifications of foreign law school graduates . . ." *Id.* at 2.014(3)(b) (2002).

¹⁰⁰ The education qualifications required for admission by examination in Michigan also are required for admission without examination; pursuant to Michigan Rules for the Board of Law Examiners Rule 2(B), foreign applicants with an LL.M. from an ABA approved law school need not have completed their J.D. or LL.B. at an approved law school, but all applicants must satisfy the pre-law education requirements set out in Michigan Rules for the Board of Law Examiners Rule 1(C). See MICH. R. BD. LAW. EXAMINERS R. 2(B), 1(C) (2000). See *id.* at R. 5 for details regarding admission on motion.

¹⁰¹ North Carolina permits foreign-educated lawyers who have earned an L.L.M. from an ABA approved law school to satisfy the education requirements for admission by examination and on motion. See N.C. R. ADMIS. § .0700 (2002), available at <http://www.ncble.org/RULES.htm> (last visited Oct. 11, 2003). The requirements for admission on motion are set out in N.C. R. ADMIS. § .0502 (2002).

¹⁰² In order to be admitted on motion in Ohio, applicants must satisfy the education qualifications applicable to all applicants for the bar, including a finding that foreign legal education was equivalent to that available in an ABA-accredited law school. OH. R. CT. GOV'T BAR R. I(1)(C) (2002), available at <http://www.sconet.state.oh.us/Rules/govbar> (last visited Oct. 12, 2003) and Ohio Board of Bar Examiners, *Criteria for Foreign Education Evaluation* (on file with author).

¹⁰³ Rhode Island's rule on admission on motion for lawyers licensed in other U.S. jurisdictions does not address the education requirements. See R.I. R. SUP. CT. ART. II ADMIS. R. 2 (2002). The ABA Section on Legal Education and Admission to the Bar interprets Rhode Island's admission on motion rule ambiguously, indicating both that the rule does not permit foreign educated lawyers to gain admission and that the rule does not specify whether foreign educated lawyers may be admitted on motion. See ABA, COMPREHENSIVE GUIDE TO

<i>Category 5</i>	States permitting foreign lawyers to be licensed as legal consultants, but which do not permit bar admission without a U.S. three-year law degree.	Georgia* Indiana* ¹⁰⁸ Minnesota* New Jersey*
<i>Category 6</i>	States offering no licensed role for foreign lawyers. These states do not permit foreign lawyers to join the bar	Arkansas-A Delaware Idaho Iowa ¹⁰⁹

BAR ADMISSION REQUIREMENTS 28, 31 (Erica Moeser & Margaret Fuller Corneille eds., 2003), *available at* <http://www.abanet.org/legaled/publications/compguide/compguide.html> (last visited Oct. 12, 2003).

¹⁰⁴ Vermont does not specify particular legal education requirements for lawyers admitted on motion, but does require such applicants to have completed “three-quarters of the work accepted for a bachelor’s degree in a college approved by the Court before commencing the study of law.” VT. R. ADMIS., *supra* note 93, at § 6(f). Admission on motion is conditioned upon working under the supervision of a Vermont attorney for three months. *Id.* at § 7(d). For the rules governing admission on motion, *see id.* at § 7.

¹⁰⁵ Washington State Court Rules, Admission to Practice Rule 18, provides for admission on motion on the basis of reciprocal treatment of Washington attorneys in the foreign jurisdiction; the rule does not address the practice experience required in any detail, nor does it specifically address the educational background required for lawyers seeking admission on motion. WASH. CT. ADMIS. TO PRACTICE R. 18, *supra* note 90.

¹⁰⁶ West Virginia does not specifically address whether applicants for admission on motion must satisfy the same educational requirements as applicants to take the bar examination, although Rule 4.0(b) of the Rules for Admission to the Practice of Law in West Virginia does require that an applicant for admission on motion “must demonstrate to the Board that the standards of admission in at least one of the states where he or she was previously admitted was, at the time of the applicant’s admission in that state, and is now, substantially equivalent to the standards for admission in West Virginia. R. ADMIS. PRACTICE L. W. VA. 4.0(b), *available at* <http://www.state.wv.us/wvsca/Bd%20of%20Law/lawprac.htm>. West Virginia Rule 3.0(4)(a) authorizes admission through bar examination by foreign-educated lawyers whose education was obtained in a “country where the common law of England exists as the basis of its jurisprudence.” *Id.*

¹⁰⁷ Wisconsin permits foreign-educated lawyers to gain admission on motion if admitted in a U.S. jurisdiction and accumulated practice experience there for at least 3 of the 5 years preceding application, and if the jurisdiction where the foreign-educated lawyer is admitted admits Wisconsin attorneys on motion. WIS. SUP. CT. R., *supra* note 81, at 40.05.

¹⁰⁸ Indiana Rules of Court, Rules for Admission to the Bar and the Discipline of Attorneys, Rule 13.4 requires applicants for the bar examination to have graduated from an ABA-approved law school, but does not specify that the degree earned be a J.D. IND. ST. ADMIS. & DISCIPLINE R., *supra* note 98, at 13.4. Thus, some room for argument about satisfying the education requirements exists for foreign lawyers with an LL.M. from an ABA-approved law school. Nonetheless, the interpretation offered here of Indiana’s rules, which is that a J.D. or its equivalent is required for purposes of the bar examination, is supported by the interpretation of the ABA Section of Legal Education and Admission to the Bar. ABA, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS, *supra* note 103, at 25-34.

	through examination or otherwise, and do not offer a foreign legal consultant license. An "A" indicates that the rules are ambiguous.	Kansas Mississippi-A Montana Nebraska North Dakota Oklahoma ¹¹⁰ South Carolina South Dakota-A Wyoming-A
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Figure 1 reveals that 27 states and the District of Columbia permit foreign lawyers to join the bar based in whole or in part on their foreign legal education and practice experience, and an additional seven states permit foreign lawyers admitted in another U.S. jurisdiction to join the bar. But this information does not tell the whole story, because a number of the 35 jurisdictions have erected such significant barriers to entry for foreign lawyers that the rights granted in the rules are nearly meaningless. One example will illustrate the problem. Nevada, included in Category 2, permits foreign lawyers to sit for the bar exam upon a showing that the legal education of the foreign lawyer was "functionally equivalent to an education provided by a law school accredited by the American Bar Association."¹¹¹ The Nevada State Bar provides some indication of the kind of information that will be considered in determining the functional equivalency of foreign legal education in its "Policies and Procedures of the Functional Equivalency Committee," available on the State Bar's website. The following are identi-

¹⁰⁹ IOWA CT. R. ON ADMIS. TO BAR R. 31.8. Iowa Court Rule, Rules on Admission to the Bar, rule 31.12, provides for admission without examination for attorneys licensed in other states. *Id.* at 31.12. Rule 31.12(2)(b) requires that the applicant have "been admitted to the bar of any other of the United States or the District of Columbia, and has practiced law five full years while licensed within the seven years immediately preceding the date of the application ..." No particular requirement that the applicant have graduated from an ABA-approved law school is included in Rule 31.12. *Id.* Nevertheless, the interpretation offered here, that Iowa does not permit waiving in foreign lawyers admitted elsewhere, is supported by the ABA Section on Legal Education and Admission to the Bar. ABA, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS, *supra* note 103, at 30.

¹¹⁰ R. GOVERNING ADMIS. PRACTICE L. ST. OKLA. R. 4(3), available at <http://www.okbar.org/publicinfo/admissions/rules.htm> (last visited Oct. 12, 2003). The rule on admission by motion requires only graduation from an ABA-approved law school—it does not specify that the J.D. degree is required. The rule states: "Persons who have been lawfully admitted to practice and are in good standing on active status in a reciprocal state, are graduates of an American Bar Association approved law school, and have engaged in the actual and continuous practice of law for at least five of the seven years immediately preceding application for admission under this Rule." *Id.* at 2(1).

¹¹¹ NEV. CT. R. ANN., SUP. CT. R. 51.5(1)(c), available at <http://www.leg.state.nv.us> (last visited Oct. 12, 2003).

fied as the minimum qualifications that will be considered by the committee:

1. Quality of Law School (profit vs. non-profit, correspondence vs. attendance, etc.)
2. Curriculum (courses taken, content, common law subjects, length of classes for individual sessions, ... participation required ...)
3. Faculty (number of full-time faculty members, faculty/student ratio, professional credentials, availability of faculty to students after class, etc.)
4. Admission Standards ...
5. Resources and Research Facilities ...
6. Physical Plant (size, classroom size, moot court facilities...)
7. Existing Accreditation, Prior Accreditation History or Attempt (... accreditation of foreign law school by agency analogous to ABA, etc.)¹¹²

The criteria listed as relevant to the equivalency of foreign legal education are remarkably similar to those considered relevant by the ABA in accrediting U.S. law schools.¹¹³

Foreign lawyers who cannot meet this burden of proving that their legal education was equivalent to the education in an ABA approved law school may satisfy the Nevada rule and sit for the bar if they meet two conditions. First, they must offer evidence of their admission in a country where “English common law substantially forms the basis of that country’s jurisprudence, and where English is the language of instruction and practice in the courts of that jurisdiction.” Second, the foreign lawyer must show that s/he practiced for at least ten years in her/his home jurisdiction, and that the lawyer’s “legal education, as augmented by such ... legal work experience, is now functionally equivalent to an education provided by a law school accredited by the American Bar Association.”¹¹⁴ The rule suffers from an excessive practice requirement as well as from the ambiguous “functionally equivalent” standard. Ten years is longer than generally required for practice experience as the basis for bar admission, and works to ensure that foreign lawyers who satisfy the ten year practice requirement will be unlikely to leave their practices and move from Nevada, since they already will have established valuable client relationships.¹¹⁵ In addition,

¹¹² Nevada State Bar website, at <http://www.nvbar.org/> (last visited Oct. 12, 2003).

¹¹³ *Standards for Approval of Law Schools*, 2002-03 ABA SEC. OF LEGAL EDUC. AND ADMIS. TO THE BAR.

¹¹⁴ NEV. CT. R. ANN., SUP. CT. R., *supra* note 111, at 51.5(1)(a).

¹¹⁵ Nevada does not permit lawyers admitted in another U.S. jurisdiction to waive into its bar. See ABA, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS, *supra* note 103, at 25.

even under the second condition, an assessment on functional equivalency to U.S. legal education must be made, which renders the application process uncertain and incapable of objective assessment. These regulations constitute substantial barriers. However, this requirement must not constitute a complete bar to taking the exam, since four foreign-educated individuals took the Nevada bar examination in 2001 according to statistics compiled by the National Conference of Bar Examiners (NCBEX).

Moreover, the ambiguity in state rules renders even the rudimentary organization of Figure 1 challenging. For example, three states, Oklahoma, Tennessee and Virginia, list only graduation from an ABA-approved law school as the educational requirements for admission on motion, without specifying whether the J.D. degree must have been earned. Thus, it is possible that these states would permit foreign lawyers with a one-year LL.M. degree from a U.S. law school to join the bar by motion after admission in another U.S. jurisdiction. This is unlikely, however, because these jurisdictions require the J.D. for admission through the bar examination. Iowa does not specify any particular education requirement for admission on motion. The ABA Section on Legal Education and Admission to the Bar interprets the rules of all four of these states as not permitting foreign educated lawyers to gain admission through motion.¹¹⁶ Similarly, four states, Arkansas, Mississippi, South Dakota and Wyoming, have rules that are ambiguous regarding the particular degree required for application for admission by bar examination; the rules specify neither a J.D. nor a first degree in law from an ABA-approved law school. Nonetheless, the best estimate is that these states belong in the most restrictive category, and this is consistent with the ABA's interpretation of the rules.

The existing regulatory framework suffers from three problems. First, it is comprised of too much diversity. Some standardization would allow for a more efficient analysis of the opportunities presented by these rules. Second, the rules are overly-protective and do not give sufficient recognition to the value of foreign legal education and experience. While foreign lawyers may present a real risk of harm to certain segments of the public, the likeliest users of their services are entirely capable of protecting themselves from the risk of incompetence, either directly or by relying on the firms employing them. Requiring foreign lawyers to pass a bar examination and provide liability insurance would provide protection to the public. Third, the rules are opaque, difficult to comprehend and, in some cases, impossible to apply in a way that offers transparency.

¹¹⁶ See ABA, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS, *supra* note 103, at 30.

If the regulations governing foreign lawyers were reformed to satisfy these three problems, they would begin with the determination that for foreign lawyers, the bar examination functions as the primary gatekeeper. Generally, U.S. jurisdictions rely on a combination of legal education and the bar exam to guarantee a basic level of competence across a variety of substantive areas. Traditional legal education is one way of preparing for the bar exam, but other methods also are recognized either formally by the rules or informally by practice. Vermont rules, for example, permit preparation for the bar by practicing under the direction of a Vermont lawyer.¹¹⁷ An example of an informally recognized method of preparation for the bar is a private bar preparation course offered by companies like Bar Bri.¹¹⁸ Similar courses are sufficient for qualifying for the solicitors' exam in England.¹¹⁹

Foreign lawyers are likely to find their home country practice experiences at least somewhat valuable in preparing for U.S. practice. The convergence of national law regulating commercial and financial transactions translates into practice experience in one country having relevance to practice requirements in another. Indeed, the often-articulated divide between civil and common law lawyers is related at least as much to differences in the role of lawyers in the civil and common law worlds as to differences in law. Thus, it would be appropriate for many practitioners to assess competence simply by requiring that foreign lawyers pass the bar exam in a U.S. jurisdiction. However, in certain areas of law, national differences may be substantial, and since the bar is regulated as a single profession, some educational preparation in addition to bar passage may be prudent. Two options are presented for additional assurance of competence when combined with an examination. The first option is to require foreign lawyers to complete a brief period of education in a U.S. law school before sitting for the bar exam. The one-year L.L.M. programs offered by many U.S. law schools would suffice for this purpose, or more specific content requirements might be identified. Examples of this approach include the District

¹¹⁷ VT. R. ADMIS. SUP. CT., *supra* note 93, at § 6(g) provides as follows:

(g) An applicant shall have pursued the study of law with special reference to the general practice of law: (1) for a period of not less than four years within this state under the supervision of an attorney in practice in the state who has been admitted to practice before this Court not less than three years prior to the commencement of that study, or (2) in any jurisdiction of the United States or common law jurisdiction in a law school approved by this Court which maintains a three-year course leading to a law degree.

See also *id.* at § 6(j), regarding study with a Vermont lawyer for foreign educated lawyers.

¹¹⁸ BAR/BRI website, at <http://www.barbri.com> (last visited Oct. 12, 2003).

¹¹⁹ Legal Practice Course, at <http://www.lawsoc.org.uk/> (last visited Oct. 12, 2003).

of Columbia, which permits any foreign lawyer to sit for the bar exam upon showing that s/he completed "at least 26 semester hours of study in the subjects tested in the bar examination in a law school that at the time of such study was approved by the American Bar Association."¹²⁰ Utah identifies particular courses required for qualification for its bar exam, including constitutional law and civil procedure, among others.¹²¹ Another approach would be to require foreign lawyers to complete the first year J.D. curriculum in a U.S. law school so that they share the foundation that is common to all U.S. trained lawyers.

The second option for an additional requirement to passing the bar exam for foreign lawyers desiring admission in the U.S. is to require a period of practice experience to serve as a proxy for formal education. Practice in the lawyer's home country could suffice, but it would be more appropriate if the foreign lawyer practiced in the U.S. under the tutelage of an admitted U.S. lawyer. The foreign lawyer might work as a legal consultant with a U.S. lawyer, for example, or as an intern at a U.S. firm. This would ensure that the lawyer gained experience that would add value to the foreign education and admission experience. Alternatively, practice in a substantive area comparable to a practice area in the U.S. would be useful, for example in the area of general business transactions.

The ideal regulatory system also includes the legal consultant regime. In order for legal consultant rules to provide meaningful opportunities for foreign lawyers to perform work that has value in the U.S., foreign lawyers must be able to cross the line into advising on domestic law provided they are adequately supervised by U.S. lawyers.¹²² A licensing system that permits foreign lawyers to cross this boundary between U.S. and foreign law enables foreign lawyers to work for firms resembling the International

¹²⁰ D.C. R. APP. CT., *supra* note 97, at 46(b)(4).

¹²¹ UTAH ADMIS. R. § 3-2, *available at* http://www.utahbar.org/rules/html/admissions_rule_3.html (last visited Oct. 12, 2003) provides that applicants must have graduated from a "foreign law school in a country where principles of English common law form the basis for the country's jurisprudence" and must have been admitted to practice there as well; in addition, such applicants must complete 24 semester hours in an ABA-approved law school "including no less than one (1) course each in a core or survey course of constitutional law, civil procedure, criminal procedure or criminal law, legal ethics and evidence."

¹²² *See generally* Sohn, *supra* note 82, at 209, which includes the following statement about scope of practice:

A person licensed to practice as a legal consultant under this Rule may render legal services in this State subject, however, to the limitations that he or she shall not: (e) render professional legal advice on the law of this State or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise) except on the basis of advice from a person duly qualified and entitled (otherwise than by virtue of having been licensed under this Rule) to render professional legal advice in this State . . .

Model, where they must advise on U.S. law in order to add value, as well as for firms resembling the Multinational and Transnational Models, in which a combination of foreign law and U.S. law advice will be useful. Foreign lawyers also must have the opportunity to advise on international law, especially since that is not an area assessed by existing bar examinations and thus foreign lawyers are under no particular burden of showing competence. Thus, scope of practice in the legal consultant rules is crucial.

Third, an ideal framework would include the ABA's new rule allowing foreign lawyers to provide services on a temporary basis under certain circumstances.¹²³

In order to assess where we stand now, compared to this ideal regulatory framework for foreign lawyers, the following rating system compares existing state regulation to this ideal model. The rating system credits reasonableness and transparency, and distinguishes provisions that are protectionist, obscure or subjective in their application or where uncertainty overwhelms the offer of openness. Points are allocated for rules that permit foreign lawyers to take the bar, and subtracted for excessive requirements regarding education and practice preparation. Points also are allocated for legal consultant licensing regimes, with credit awarded for liberal scope of practice provisions and subtracted for excessive qualification requirements. In the rankings that follow, the following point allocation is used:

TABLE 1 - Point Allocation

ITEM #	DESCRIPTION OF PROVISION	NUMBER OF POINTS
1	Legal Consultant ("FLC") rule, regardless of its scope of practice provisions	+ 5 points
2	FLC scope of practice provision along the lines of the Model Rule or the NY rule	+ 5 points
3	Foreign lawyers may sit for the state bar examination	+ 10 points
4	Foreign lawyers may waive into the bar without examination	+ 10 points
5	Foreign lawyers admitted in another U.S. jurisdiction may take bar examination	+ 5 points
6	Foreign lawyers admitted in an-	+ 5 points

¹²³ See *supra* note 85.

	other U.S. jurisdiction may waive into bar without examination	
7	FLC rule with excessive fees	- 1 point
8	FLC rule requiring multistate ethics exam	- 1 point
9	FLC rule requiring that all advice to clients regarding U.S. law identify by name the U.S. lawyer consulted in the matter, and in certain jurisdictions also requiring that the advice itself be transmitted in writing	- 1 point
10	FLC rule imposes extraordinary obligations	- 1 point
11	Ambiguity in admission rules	- 1 point
12	Foreign legal education must be assessed as equivalent to education offered in ABA-approved law school (or foreign education and practice experience must be so assessed)	- 2 points
13	Excessive legal education requirements (including a requirement of undergraduate education)	- 2 points
14	Excessive practice period requirements	- 2 points
15	Recognizes only common law foreign legal system	- 2 points

Figure 2 presents a ranking of jurisdictions based upon this point allocation system. A higher point total indicates a greater opportunity for foreign lawyers to practice in the jurisdiction. References in the right hand column of Figure 2 indicate the number in the Point Allocation table *supra* corresponding to a particular justification for awarding or subtracting points.

FIGURE 2

STATE NAME	POINTS	REFERENCES FOR POINT ALLOCATION (REFERENCES IN PARENTHESIS ARE NEGATIVE)
District of Co-	24	1, 2, 3, 6, (9)

lumbia		
Massachusetts	21	1, 3, 4, (12)
Michigan	20	1, 3, 6
New York	20	1, 2, 3
North Carolina	18	1, 3, 6, (10, ¹²⁴ 15)
Ohio	18	1, 2, 3, 6, (9, 12, 13, 15)
Washington	18	1, 3, 5, (15)
Hawaii	17	1, 3, 5, (9, 15)
California	16	1, 3, 5, (12)
Connecticut	16	1, 3, 6, (12, 15)
Louisiana	15	1, 3
Oregon	15	1, 2, 3, (9, 12, 15)
Arizona	14	1, 2, 5, (10, ¹²⁵ 15)
Indiana	14	1, 2, 6, (11)
New Mexico	14	1, 2, 5, (10 ¹²⁶)
Alaska	13	1, 3, (12)
Rhode Island	12	3, 6, (11, 12)
Illinois	12	1, 3, (7, 12)
Texas	12	1, 3, (7, 12)
Utah	12	1, 3, (10, ¹²⁷ 15)
Kentucky	11	3, 6, (12)
Vermont	11	3, 6, (13, 15)
Missouri	9	1, 5, (10 ¹²⁸)

¹²⁴ R. & REG. N.C. ST. B. § F.0104, places the burden of proving character and fitness on the applicant for the foreign legal consultant license, *available at* <http://www.ncbar.com/index.asp> (follow link to *Rules and Regulations*) (last visited Oct. 12, 2003).

¹²⁵ R. SUP. CT. ARIZ. ADMIS. AND DISCIPLINE OF ATTORNEYS 33(f)(9) and 33(f)(2)(D) provides that FLCs must complete the state bar course on professionalism within one year of their being licensed as FLCs "or an equivalent course on the principles of professionalism approved or licensed by the Board of Governors of the State Bar of Arizona for this purpose."

¹²⁶ N.M. R. GOVERNING FOREIGN LEGAL CONSULTANTS 26-101 appears to *require* that the foreign jurisdiction grant reciprocal rights to New Mexico licensed lawyers ("The Supreme Court, in its discretion, may issue a certificate of registration licensing to practice as a foreign legal consultant, without examination, to an applicant who: ... E. is licensed in a foreign jurisdiction that allows members of the bar of New Mexico the opportunity to render services as a foreign legal consultant under substantially similar circumstances as are provided by this rule.").

¹²⁷ UTAH ADMIS. R., *supra* note 121, at 16-1(d) & (e) require licensed FLCs to pass the MPRE and complete the one-day Utah State Bar Ethics School.

West Virginia	9	3, 5, (12, 15)
New Jersey	9	1, 2, (9)
Alabama	8	3, (13)
Colorado	8	1, 3, 5, (12, 15)
Florida	8	1, 5, (10, ¹²⁹ 14)
Maine	8	3, (12)
Pennsylvania	8	3, (14)
Tennessee	7	3, (11, 12)
Virginia	7	3, (11, 12)
Nevada	6	3, (12, 14)
Wisconsin	5	6
Georgia	4	1, (7)
New Hampshire	4	3, (12, 13, 15)
Maryland	3	5, (12)
Minnesota	3	1, (7, 10 ¹³⁰)
Delaware	0	
Idaho	0	
Kansas	0	
Montana	0	
Nebraska	0	
North Dakota	0	
South Carolina	0	
Arkansas	-1	(11)
Iowa	-1	(11)
Mississippi	-1	(11)
Oklahoma	-1	(11)
South Dakota	-1	(11)
Wyoming	-1	(11)

¹²⁸ SUP. CT. R., R. GOVERNING MO. BAR & JUDICIARY 9.05(f) requires FLCs to furnish proof of passing the Multistate Ethics Exam within one year of being certified as a legal consultant, and SUP. CT. R. 9.05(e) requires FLCs to be associated with a law office in Missouri in order to be certified.

¹²⁹ FLA. R. 16-1.3(2)(F) requires that all advice offered by an FLC must be rendered pursuant to a "written retainer agreements that shall specify in bold type that the foreign legal consultant is not admitted to practice law in the state of Florida . . ."

¹³⁰ MN. R. ADMIS. TO BAR 10(E), 10(E)(5), & (10(E)(8), *available at* <http://www.ble.state.mn.us/rules.html>, require that FLCs utilize a written retainer agreement indicating the limitations of their scope of practice stated in bold lettering for all advice offered by them.

The ranking reveals the great variety of the regulations governing foreign lawyers. The diversity in states' approaches hinders the U.S. in its ability to negotiate with foreign nations for greater opportunities for U.S. lawyers in the international market. The U.S. cannot bind itself to a comprehensible standard because the state regulations undermine such a standard. A coherent, uniform approach to regulating foreign lawyers, suggested by the ideal regulatory framework described *infra*, would be useful for negotiating purposes in trade agreements such as The General Agreement on Trade in Services ("GATS").¹³¹

Apart from external problems in trade negotiations caused by the haphazard approach to regulation, the rankings reveal that the existing rules provide meaningful opportunities for foreign lawyers in a number of jurisdictions. The top four jurisdictions—the District of Columbia, Massachusetts, Michigan and New York—permit foreign lawyers to take the bar exam with limited restrictions. The next eleven jurisdictions offer fewer but still important options for foreign lawyers, as, for example, through the legal consultant rules where there is a broad scope of practice provision as in Indiana¹³² or through relatively unrestricted access to the bar exam as in Louisiana.¹³³ However, once the point allocation reaches 13 or below, the rules tend to impose conditions so severe that it would be difficult for foreign lawyers to take advantage of the rights granted on a regular basis.

This ranking of states is revealing. There is no consistent correlation between liberal rules for foreign lawyers and the existence of international law firms in a particular state. The top four jurisdictions each provide meaningful opportunities for foreign lawyers, but they do not house similar numbers of foreign lawyers or internationally-focused law firms.

New York and the District of Columbia each have witnessed remarkable growth in international legal services. Washington, D.C. firms have made substantial strides towards internationalization, as evidenced by expansion of such firms as Wilmer Cutler & Pickering and Hogan & Hartson. Washington, D.C.-based international trade practices have especially expanded. New York has witnessed not so much the expansion of its own law firms, but the expansion and relocation to New York of U.S. firms based elsewhere, so that international practices of U.S. law firms generally are op-

¹³¹ See Laurel S. Terry, *GATS' Applicability to Transnational Lawyering and its Potential Impact on U.S. State Regulation of Lawyers*, 34 VAND. J. TRANSNAT'L L. 989 (2001), as revised in Laurel S. Terry, *GATS' Applicability to Transnational Lawyering and its Potential Impact on U.S. State Regulation of Lawyers*, 35 VAND. J. TRANSNAT'L L. 1387 (2002).

¹³² IND. CODE ANN. § 5(4)(e) (2003).

¹³³ RULES GOVERNING ADMISSION TO PRACTICE LAW IN LOUISIANA, Article XIV § 6, available at http://www.lascba.org/admission_rules.asp (last visited Oct. 26, 2003).

erated from New York.¹³⁴ In addition, many foreign law firms have opened U.S. offices since the mid-1970s, and New York is the location of choice for these offices as well.

The liberal and rational regulatory regimes in Michigan and Massachusetts, on the other hand, are not related to substantial markets for international legal services in those states. The explanation for the regulatory stance of these jurisdictions might rest with the relationship of the state to a particular business that is international in its scope; an example is the automobile industry's relationship to the state of Michigan, given the substantial international linkage of the auto industry during the last quarter of the 20th Century.¹³⁵ Alternatively, the regulatory position may reflect the interest of the state in attracting international lawyers and businesses needing their services.¹³⁶

The rankings also illustrate the absence of opportunities for foreign lawyers in the 13 lowest-ranked states. Few commercial centers are located in these states; nor are there a substantial number of large foreign lawyer programs at the law schools located in these states. The incentives for opening the legal market to foreign lawyers seem especially weak in these jurisdictions.

For the states ranked in the middle, those with between 18 and 3 points, a reasoned explanation of the regulatory approach is not possible without additional information about the existing international legal and business communities located there and the nature of the rule-making process for their rules governing foreign lawyers. The middle group includes a number of jurisdictions with important commercial centers and international communities, such as California and Florida. Both California and Florida house law firms with significant international practices and needs for foreign lawyers, yet their regulatory regimes present barriers for foreign lawyers both in the rights available and in the process necessary to obtain those rights. And reliable statistics regarding the number of foreign-

¹³⁴ See Silver, *Shifting Identities*, *supra* note 4, at 1135-40.

¹³⁵ But see Erhard Blankenburg, *The Thomas Theorem of Mega Lawyering*, in *LAW & TECHNOLOGY IN THE PACIFIC COMMUNITY* 27, 28 (Philip S.C. Lewis ed., 1994) (describing the theory that the "market for legal services seems to be pushed from the supply side more than being pulled by demand . . .").

¹³⁶ This approach of regulation preceding business development is characteristic of Singapore's approach to international legal services. As part of its effort to attract international business and participants in the financial and capital markets, the government opened its legal services sector to cooperation and competition from international law firms, on the premise that these firms will be required service providers to the international businesses the country hopes to attract. See Legal Profession Act of Singapore, Part IXA, *Foreign Law Firms, Joint Ventures and Formal Law Alliances*, at <http://statutes.agc.gov.sg/> (last visited Oct. 12, 2003).

educated lawyers working in particular jurisdictions are not available.¹³⁷ In certain jurisdictions where international law firms are present, the existence of a restrictive regulatory regime for foreign lawyers may reflect the overall approach to bar admission in the jurisdiction. Florida is an example of this; liberalizing the rules for foreign lawyers would address only part of the problem.

What explains the constricted regulatory environment? Perhaps it is related to the ways in which regulatory proposals for foreign lawyers are raised, which often is by U.S. lawyers who are concerned that the closed regulatory environment in their jurisdiction will hamper their own efforts to establish practices in foreign countries. Many practice rules include reciprocity provisions, triggering a tit-for-tat mentality: U.S. lawyers want to practice U.S. law in Country X, so they lobby their home state to adopt a regulatory regime permitting foreign lawyers to practice their home country law in their state.¹³⁸ While this may make sense from the U.S. lawyer's perspective, since advising on U.S. law is a valued service to offer from foreign locations, the corollary for foreign lawyers working in the U.S. is less true, because there is less need for advice on the law of most foreign nations in the U.S. than for U.S. law advice in those foreign nations. The lack of comparability results from the controlling role of U.S. law in financial, commercial and capital markets transactions.¹³⁹ Moreover, even U.S. firms now desire the ability to offer advice on the law of multiple nations, as discussed in Part II *supra*. Nevertheless, reciprocity was offered as an important justification for adopting legal consultant rules in Arizona and Massachusetts. A Massachusetts international lawyer explained his state's action in adopting a legal consultant rule as follows:

Supporters of the new [legal consultant] rule believe it will enable Massachusetts law firms to provide a broader range of services in an increasingly inter-

¹³⁷ The NCBEX numbers indicate that ten foreign-educated individuals took the California bar in 2001, while none took the Michigan bar that year. Nevertheless, NCBEX's categorization considers foreign lawyers with an LL.M. from an ABA-approved law school to be part of the U.S. educated group for at least certain states. See NCBEX, *supra* note 87.

¹³⁸ See Bar Briefs: *News*, 31 ARIZ. ATT'Y 27 (1995) (describing the origins of Arizona's licensing regulation for foreign lawyers:

At the request of a number of State Bar members who wish to practice in foreign countries, an ad hoc committee, chaired by Ernesto Soto and integrated by members of various Sections, the Young Lawyers Division, the Character and Fitness Committee and the Ethics Committee, was formed in 1992 to address this issue. In at least some countries, an American lawyer may not practice unless the state in which the lawyer practices permits reciprocal privileges to the lawyers of that country.).

¹³⁹ See Silver, *The Case of the Foreign Lawyer*, *supra* note 4, at 1041-42.

national business environment. In addition, the adoption of the new rule should promote easier access by U.S. law firms and lawyers to those foreign legal markets which demand reciprocal access for their lawyers to the domestic legal market.¹⁴⁰

In the adoption of bar admission rules apart from the legal consultant category, foreign lawyers generally are an afterthought. The rules are structured first to deal with U.S. educated lawyers. Foreign lawyer provisions might be added much later, as was recently the case in Illinois where the rules were loosened somewhat at the behest of a group composed of law firms with international practices and the Chicago Bar Association. The Chicago group had proposed special admission rules for foreign-educated lawyers a number of years earlier. But the group lost momentum, and no one wanted to be perceived as pushing this agenda because of fear of a protectionist backlash by Illinois lawyers, especially those based outside of Chicago. The new Illinois rule for foreign lawyers was adopted after the Illinois Supreme Court granted the request of a Canadian lawyer to sit for the state bar exam. The Canadian lawyer served as general counsel of a multinational company interested in relocating its corporate headquarters to Illinois; the company wanted its general counsel to be able to join the bar in its new state of residence.¹⁴¹ Other states have adopted special rules for corporate counsel who did not satisfy the traditional bar admission requirements.¹⁴² Illinois went one step further and modified its rules for foreign lawyers generally.

The reluctance of internationally-focused firms to push liberal admission rules to accommodate foreign lawyers also is relevant to the restrictions in most states. Internationally-focused firms may play only a marginal role in state bar politics.¹⁴³ And they may be reluctant to incite local lawyers by asking for special opportunities for foreign lawyers. Moreover, such firms may be concerned about their own bending of admission rules for lawyers who did not take the bar, but who nevertheless are employed by the firms. They may wish to avoid the threat of unauthorized

¹⁴⁰ William C. Benjamin & Michael N. Glanz, *New Option for Foreign Lawyers*, 43 BOSTON B.J. 12 No. 5, 12 (Nov./Dec. 1999) (citation omitted).

¹⁴¹ See *In re John W. Comrie, QC*, 1999 Ill. LEXIS 972 (Oct. 1, 1999).

¹⁴² These rules generally provide that corporate counsel may work in the state without joining the state bar. See information on corporate counsel rules, including links to state rules, at http://www.crossingthebar.com/corporate_counsel.htm (last visited Oct. 12, 2003). See also Jonathan Groner, *A Lobby Win for Corporate Counsel in VA: In-House Lawyers Need Not Join the Bar under New Rule*, 26 LEGAL TIMES 3 (2003).

¹⁴³ But see MICHAEL J. POWELL, FROM PATRICIAN TO PROFESSIONAL ELITE: THE TRANSFORMATION OF THE NEW YORK CITY BAR ASSOCIATION (1988).

practice actions against their own U.S. lawyers who are not admitted locally.

Finally, the bar regulatory groups are generally responsive to self-interest, but in the case of foreign lawyers, the interests at stake are more collectivist, related to national trade policy. While many jurisdictions may not witness the growth of international law markets if they liberalize their regulatory regimes, they will be supporting the existing U.S. international legal market by providing a uniformly-open regulatory approach.

IV. LICENSED AND UNLICENSED LEGAL CONSULTANTS

While there is little available data regarding the impact of admission rules on the development of international firms, we can learn quite a bit about the uses being made of the legal consultant license. The legal consultant category was created in 1974 with the adoption of the first U.S. legal consultant rule by New York; according to Sydney Cone, the term “legal consultant” was used because it is a translation of “*conseil juridique*,” which was the licensed status afforded foreign lawyers by France until the 1990s.¹⁴⁴ The legal consultant rules were intended to “create a coherent and up-to-date regulatory regime for foreign lawyers established in New York.”¹⁴⁵ They allow foreign lawyers to practice their home country law without joining the local bar as lawyers. In addition, New York and a number of other states permit legal consultants to advise on most aspects of U.S. law if they consult with a U.S. lawyer and, in certain jurisdictions, base their U.S. or state law advice on the advice of that U.S.-admitted lawyer.¹⁴⁶ In order to qualify as a legal consultant, foreign lawyers must have some practice experience and agree to avoid certain areas of law that are considered too local or too connected to the courts where local rules of practice matter. Twenty-three states and the District of Columbia have adopted legal consultant rules, and the ABA Section of International Law and Practice is encouraging all jurisdictions to adopt its model rule.

The legal consultant category is perhaps most valuable for foreign-based law firms with branch offices in the U.S. These firms serve a primarily foreign clientele; a French firm like Jeantet Associates will serve mostly clients with activities and problems in France.¹⁴⁷ The international market

¹⁴⁴ Cone, *supra* note 82, at 3:1-3:2.

¹⁴⁵ *Id.* at 3:2

¹⁴⁶ Exceptions to this right to advise on U.S. law are carved out for areas that are particularly “local,” including real estate and family law matters. See Sohn, *supra* note 82, at 226 (the exceptions “prohibit the legal consultant from preparing certain types of legal instruments which by their nature require an independent knowledge of local law.”).

¹⁴⁷ See Doyen's *Anglo-Saxon Move Shocks Paris Lawyers*, FIN. LAW., (Feb. 2001), at <http://www.euromoney.com> (Gerard Mazet, former Jeantet partner who moved to Sullivan &

for legal services, however, has outgrown the legal consultant model in a number of ways. First, international practice has evolved from the international model that relied on offering home country law advice in foreign locations, described in Part II, to more integrated forms of practice that require a combination of expertise in the laws of multiple nations and in international law. Consequently, a regulatory model that is based on the value of advising on the law of one country—the home country of the individual lawyer—as the sole activity of an international lawyer is out of date with contemporary practice. While the legal consultant regulatory paradigm may have offered a valuable right in the early period of internationalization of legal practice, it does not enable law firms to offer enough of the services they value in today's market.

A related problem with the legal consultant rules is their assumption about the boundaries between home and host country law. The rules permit legal consultants to advise clients on the law of their home countries, but only to a limited extent, if at all, on the law of the host country, and they often are silent regarding the right to advise on the law of a third country or even on international law. For example, the Illinois rule defines the general scope of practice permitted as follows:

A person licensed as a foreign legal consultant under this rule may render legal services and give professional advice within this state *only on the law of the foreign country where the foreign legal consultant is admitted to practice*. A foreign legal consultant in giving such advice *shall not quote from or summarize advice concerning the law of this state (or of any other jurisdiction)* which has been rendered by an attorney at law duly licensed under the law of the State of Illinois (or of any other jurisdiction, domestic or foreign).¹⁴⁸

This regulatory reliance on artificial boundaries between home and host country law creates tensions for practitioners attempting to stay within the boundaries and is out of step with the way law is practiced. It simply is not possible in many transactions to determine where advice on foreign law leaves off and advice on U.S. and third country legal matters begins.¹⁴⁹

Cromwell, commented, "I really feel a firm like Jeantet can do well, perhaps doing more French work," he says. "It is clear that the work has to be of high quality as it is the only way to have an interesting professional life and remain profitable.").

¹⁴⁸ ILL. SUP. CT. ART VII. R. 712(e), *available at* <http://www.state.il.us/court/SupremeCourt/Rules/> (last visited Oct. 12, 2003) (emphasis added).

¹⁴⁹ Louis Sohn described this problem aptly in the *Section Report Introducing the Model Rule on Legal Consultants*.

As a practical matter, it is simply not feasible to break that advice down into independent elements to be advised upon separately by different lawyers. Rather, the rendering of such advice is an inherently synthetic process, involving close collaboration among lawyers with the requisite experience and qualifications in dealing with the various bodies of law that are actually or potentially involved. Lawyers advise on transactions and disputes, not on laws in the abstract . . .

These artificial boundaries serve to complicate rather than simplify the obligations of foreign lawyers.

A third problem with the foreign legal consultant rules of many U.S. jurisdictions is the limited scope of practice afforded by the rules. Of the twenty-four U.S. jurisdictions with legal consultant rules, fifteen restrict legal consultants to advising on the law of their home countries. In these fifteen jurisdictions, the value of the legal consultant license is extremely limited because of the limited need for legal advice relating to the law of one particular non-U.S. jurisdiction. Even in the most international law firm, it is unusual to need continuous advice on matters involving the law of one particular foreign country. Additionally, in those jurisdictions with rules that allow for a broader scope of practice, conditions imposed on legal consultants exercising their rights to advise on U.S. law often are excessively intrusive.¹⁵⁰

Fourth, the legal consultant rules require foreign lawyers to have some experience practicing the law of their respective home countries; experience is intended to insure competence, which is important when the consultant may be working without the safety net of experienced colleagues who can monitor and review the foreign law work. The experience requirement, however, means that newly licensed foreign lawyers, or those who have completed their education but not the practice period required to gain a license, cannot come within the foreign legal consultant status. Yet these are the very people most likely to desire the advantages of the license, and who comprise the group that increasingly travels to the U.S. for education in U.S. law schools and training in U.S. law firms.¹⁵¹ The category of foreign legal consultant excludes these new graduates because their inexperience in home country law causes concern about incompetence among U.S. regulators.

Finally, foreign legal consultant licensing regimes are of limited value because of the relative importance of U.S. law and legal advice. Foreign lawyers come to the U.S. to learn about U.S. law and practice because that generates value for them in their home countries and elsewhere. The legal consultant licensing system in a majority of jurisdictions does not permit foreign lawyers to experience and learn about U.S. law directly through practice.

Sohn, *supra* note 82, at 227.

¹⁵⁰ See Figure 2 *supra*. The District of Columbia, for example, provides a wide scope of practice by legal consultants, but requires that they transmit the advice of the U.S. lawyer consulted in the particular matter to the client in writing. D.C. R. APP. CT., *supra* note 97, at 46(c)(4).

¹⁵¹ See Silver, *The Case of the Foreign Lawyer*, *supra* note 4.

The consequence of the limited value of the legal consultant license is that few foreign lawyers register under the existing legal consultant regimes. According to Pamela Steibs Hollenhorst, the number of licensed legal consultants in states with legal consultant rules in 1999 was as outlined in the following Table 2:

TABLE 2

STATE	NUMBER OF LEGAL CONSULTANTS AS OF 1999 ¹⁵²
Alaska	1
Arizona	0, 1 in progress ¹⁵³
California	11
Connecticut	0 ¹⁵⁴
District of Columbia	27
Florida	16 ¹⁵⁵
Georgia	2
Hawaii	8 ¹⁵⁶
Illinois	5
Indiana	1 ¹⁵⁷
Louisiana	0
Massachusetts	* ¹⁵⁸
Michigan	Between 5 and 10
Minnesota	2, and 2 pending

¹⁵² Pamela Steibs Hollenhorst, *Options for Foreign-Trained Attorneys: FLC Licensing or Bar Admission*, 68 B. EXAM'R 3, at 3-5 (Aug. 1999).

¹⁵³ One foreign lawyer had been licensed and a second application was pending. Interview with Arizona Supreme Court representative (Summer 1999).

¹⁵⁴ One individual had started the application process but did not complete the application. Interview with administrator responsible for foreign legal consultants in Connecticut (Summer 1999).

¹⁵⁵ Eighteen foreign lawyers had been licensed and an additional fourteen applications for foreign legal consultant licenses were pending. Interview with Florida bar representative (Summer 1999).

¹⁵⁶ Hawaii provides a list of lawyers licensed as foreign legal consultants. See <http://www.hbsa.org/members/NOADMIT.HTM> (last visited Oct. 12, 2003); in July of 1999, four individuals were listed as foreign legal consultants.

¹⁵⁷ The Indiana State Board of Bar Examiners indicated in the summer of 1999 that an additional foreign legal consultant had been licensed in Indiana but the license had lapsed. Interview with individual at the Indiana State Board of Bar Examiners (Summer 1999).

¹⁵⁸ The foreign legal consultant rule had not yet taken effect in Massachusetts at the time of Hollenhorst's article.

Missouri	0
New Jersey	7
New Mexico	1
New York	277 (184 in District 1, which includes Manhattan)
North Carolina	0
Ohio	0 ¹⁵⁹
Oregon	1 ¹⁶⁰
Texas	2 (6 have been licensed, but 4 were not then active)
Utah	0
Washington	6

My own research during the summer of 1999 revealed numbers similar to those reported by Hollenhorst (as indicated in the notes to Table 2), but perhaps equally revealing was the difficulty of finding an individual who could respond to my inquiry about the legal consultant rules. In many states, an inquiry about the rules to the Supreme Court or Board of Bar Examiners caused a stir of confusion. Even in those jurisdictions with relatively large numbers of legal consultants, information about the numbers of individuals licensed was not easily obtained because the records of legal consultants had not been computerized.

In order to learn more about the activities of legal consultants, I gathered information about legal consultants currently licensed in New York. I obtained a list of the 311 licensed legal consultants as of April 2002 ("N.Y. Licensed List"), compiled by the clerks of the Appellate Division of the four Departments of the New York Supreme Court. For each legal consultant, I examined their listing in Martindale-Hubbell,¹⁶¹ if one was available, and also ran each name through the New York Bar on-line database to determine whether any of the legal consultants had been admitted to the bar in New York.¹⁶² Through this process, I succeeded in identifying 122 individuals, or somewhat less than half of the individuals on the N.Y. Licensed

¹⁵⁹ Three individuals had been licensed as foreign legal consultants but all allowed their licenses to lapse. Interview with person responsible for licensing legal consultants in the office of the Clerk of the Ohio Supreme Court (Summer 1999).

¹⁶⁰ It has been difficult for foreign lawyers to obtain the legal insurance required by the foreign legal consultant rules. Interview with person responsible for admission in the Oregon State Bar (Summer 1999).

¹⁶¹ I used LEXIS to search Martindale-Hubbell.

¹⁶² Searchable by first, middle and last name, available at http://portal.courts.state.ny.us/pls/portal30/internetdb_dev.rpt_atty_reg.show_parms (last visited Oct. 12, 2003).

List.¹⁶³ Twenty-seven of these 122 individuals are listed as being members of the New York bar on the official list of the New York Court of Appeals; the legal consultant title, for them, is a remnant of the period before bar admission.

Employment information was available for 110 of the 122 identified legal consultants:

- 64 were working for foreign law firms in offices outside of the U.S.
- 19 were working for foreign law firms in U.S. offices
- 10 were working for U.S. law firms in offices outside the U.S.
- 15 were working for U.S. law firms in U.S. offices
- 1 was working for a U.S. company in an office outside the U.S.
- 1 was working for a U.S. company in a U.S. office

Seventy-five percent of this group of legal consultants for whom employment information was available works for foreign law firms. This use of the license is perfectly consistent with the practice environment existing at the time the legal consultant rules were adopted, by firms that wanted a way for their home country lawyers to work in foreign offices. The large number of legal consultants working for foreign firms outside of the U.S. reflects one of the principal users of the license: foreign lawyers on temporary assignment for their foreign-based firms. As lawyers rotate in and out of a firm's offices, the legal consultant license requires a smaller investment of time than does preparing for and taking the bar exam. For lawyers who can satisfy the practice experience requirement, New York's legal consultant rule offers a valuable alternative to bar admission because the liberal scope of practice provision in the rule enables meaningful practice when legal consultants work in cooperation with U.S. lawyers.¹⁶⁴ And while New York's rule provides that the applicant for legal consultant status must intend to practice in New York, the rule does not specifically require legal consultants, once licensed, to relinquish their license upon moving from the state.¹⁶⁵

¹⁶³ Martindale-Hubbell is a fee-based directory. It is not all-inclusive for lawyers in any particular location. As law firm websites have become more extensive, a number of firms have stopped submitting their information to Martindale-Hubbell, which renders the directory even less inclusive. Nevertheless, it is a useful tool for internationally-focused practitioners interested in attracting the attention of U.S. lawyers for purposes of gaining referrals.

¹⁶⁴ See generally Cone, *supra* note 82, chs. 3, 4 (on the legal consultant licensing regimes).

¹⁶⁵ See N.Y. R. Ct. § 521.1(a), available at <http://courts.state.ny.us/ctapps/521rules.htm> (last visited Oct. 12, 2003).

Fewer than 14% of the legal consultants for whom employment information was obtained were in the U.S. with U.S. firms; these were evenly divided between large and very small firms: seven were with large law firms, seven were with two- or three-person firms, and one was a sole practitioner. An additional 9% of the group were working outside of the U.S. for U.S. law firms, and most likely obtained their legal consultant licenses during tours of duty in a U.S. jurisdiction.¹⁶⁶

More can be learned about the use of the “legal consultant” category by looking outside the N.Y. Licensed List. The use of the “legal consultant” title is not limited to foreign lawyers actually registered as legal consultants and included on the N.Y. Licensed List. Others have appropriated the title without complying with the formalities of licensing. Using the N.Y. Licensed List as a basis for comparison, I was able to track the use of the title “legal consultant” in the New York Martindale-Hubbell directory and separate licensed legal consultants from those claiming the title but whose names were not on the N.Y. Licensed List.¹⁶⁷ What I found was a generic use of the legal consultant title to indicate something else, including expertise in a particular foreign legal system and the lack of bar membership in the U.S.

The New York Martindale-Hubbell directory included 193 individuals claiming to be legal consultants who did not earn a U.S. J.D. degree. Of these 193 lawyers using the “legal consultant” title, thirty are licensed according to the N.Y. Licensed List. The remaining 163 claimed the “legal consultant” label without complying with the licensing system. Their use of the term probably indicated either that they have not passed the New York bar, or that they are experts on a foreign legal system, or perhaps both. Of the 163 unlicensed foreign lawyers, fifty-two (just over 30%) work for foreign law firms in New York; 106 (65%) work for U.S. law firms, four work for investment banks and one works as corporate counsel for a U.S. publicly-traded corporation. This presents a very different picture from the group of identified licensed legal consultants on the N.Y. Licensed List. Three-quarters of the licensed legal consultants on the N.Y. Licensed List for which employment information could be identified worked for foreign law firms, where they might legitimately be engaged in advising on foreign law.¹⁶⁸ In contrast, among this group of unlicensed foreign lawyers, the majority are working for U.S. law firms, where advising on foreign law would

¹⁶⁶ See *supra* notes 160-162 (calculation of these percentages based on the results of the Martindale-Hubbell and the New York Bar on-line database searches).

¹⁶⁷ I searched Martindale-Hubbell through LEXIS, using the following search terms: “Not Admitted in U.S.” (which also captures “Not admitted in the United States”) and “law or legal w/1 consultant.”

¹⁶⁸ See *supra* notes 160-162.

be less likely. It was not possible from the Martindale-Hubbell listings to determine the nature of the work being performed by these foreign lawyers in U.S. firms, but it is likely that at least some members of the group are practicing U.S. law.¹⁶⁹ While New York permits licensed legal consultants to advise on U.S. law pursuant to consultation with a U.S. lawyer, the purpose of the rule is clearly to enable foreign lawyers to capitalize on their foreign law expertise, rather than to work as U.S. lawyers.

Most of the unlicensed legal consultants working for U.S. law firms are with large law firms: eighty-nine individuals, comprising over 80% of the group, work for firms with more than one hundred lawyers. Many of these are with the largest U.S. law firms, including Shearman & Sterling, White & Case and Davis Polk & Wardwell. At the other end of the size spectrum, three of the 106 unlicensed legal consultants work for firms with fewer than ten lawyers, and the remaining fourteen work for firms in the fifteen to thirty person range. Of the group working for large (100+) U.S. law firms, one was identified as a partner or member of the firm, three were of counsel, and sixty-two, or nearly 70% of the entire group of eighty-nine individuals working for large U.S. firms, are working as associates. In addition, a number of the unlicensed legal consultants did not indicate their law firm rank, identifying themselves only as "legal consultants."

The unlicensed legal consultants working for foreign law firms in New York include nineteen with English firms, eleven with Canadian firms, and ten with firms based in the Netherlands. In several instances, a foreign law firm's New York office houses both foreign lawyers licensed as legal consultants and listed on the N.Y. Licensed List, and foreign lawyers without such a license who have not otherwise been admitted to the local bar. One example is the Cuatrecasas office, which has three resident lawyers in New York, only one of whom is named on the N.Y. Licensed List.¹⁷⁰

A number of the unlicensed legal consultants, in fact, were admitted to the bar as lawyers. Thirty-eight members of the unlicensed group have been admitted to the New York bar, along with twenty-seven (8.7% of the

¹⁶⁹ See Silver, *The Case of the Foreign Lawyer*, *supra* note 4, (information on the nature of practices in which foreign lawyers working in the U.S. engage). See also Michael W. Gordon, *Mexican Lawyers Going North and U.S. Lawyers Going South: Interstate Legal Practice, NAFTA and U.S. State Bar Regulations*, 9 U.S.-MEX. L.J. 189 (2001) ("Some people here at this conference ... spent time in New York working with a law firm as Mexican law graduates and most would say they practiced law while in New York, not as foreign legal consultants. In Florida, there are, perhaps, two-dozen foreign legal consultants now and probably ten times that number of immigrant lawyers who are practicing law for others from their own countries, particularly within the Cuban community.").

¹⁷⁰ The Martindale-Hubbell listing for Cuatrecasas' New York office indicates that the two non-licensed foreign lawyers in New York also are resident in the firm's Barcelona office. See <http://www.martindale.com/xp/Martindale/home.xml> (last visited Oct. 12, 2003).

licensed group) of those identified on the N.Y. Licensed List.¹⁷¹ This is inconsistent with the legal consultant rule, which provides in part, that a licensed legal consultant shall not “in any way hold himself or herself out as a member of the bar of [New York].”¹⁷² The Model Rule on Legal Consultants is more explicit. It provides in Section Nine:

In the event that a person licensed as a legal consultant under this Rule is subsequently admitted as a member of the bar of this State under the provisions of the Rules governing such admission, the license granted to such person hereunder shall be deemed superseded by the license granted to such person to practice law as a member of the bar of this State.¹⁷³

Another group of the unlicensed legal consultants were at the other end of the spectrum. These individuals were unlicensed as legal consultants and in fact could not have complied with the licensing requirements because their home country bar admission was too recent to permit them to satisfy the three-year practice condition of New York’s legal consultant rule. According to the Martindale-Hubbell biographical information, at least 11 individuals working for U.S. and foreign law firms were admitted in their home countries in 1999 or subsequently, and therefore could not have met the rule’s practice experience requirement.¹⁷⁴

In addition to using Martindale-Hubbell to search for individuals claiming the legal consultant title in New York, I also searched other U.S. jurisdictions to gain some insight into the numbers of individuals claiming the title in their Martindale-Hubbell biographies. The search was accomplished in 2001, and yielded 363 individuals. This information is set out *infra* in Table 3. As a comparison, Table 3 includes the number of registered legal consultants reported by Hollenhorst in 1999 (from Table 2).

¹⁷¹ See New York Court of Appeals Attorney Directory, at http://portal.courts.state.ny.us/pls/portal30/internetdb_dev.rpt_atty_reg.show_parms (last visited Oct. 12, 2003).

¹⁷² N.Y. R. APP. CT. § 521.3(f) available at <http://courts.state.ny.us/ctapps/521rules.htm> (last visited Oct. 12, 2003).

¹⁷³ Sohn, *supra* note 82, at 212.

¹⁷⁴ Certain Martindale-Hubbell listings are incomplete, and information about date of home-country bar admission is not always included. Thus, this number may be lower than it should be.

TABLE 3

INDIVIDUALS IDENTIFIED AS LEGAL CONSULTANTS IN MARTINDALE-HUBBELL (Jurisdictions are not included if the search identified no relevant individuals in that jurisdiction)

OFFICE LOCATION INDICATED IN MARTINDALE- HUBBELL	NUMBER OF LEGAL CONSULTANTS IDENTIFIED IN MARTINDALE- HUBBELL, 2002	NUMBER OF LEGAL CONSULTANTS REPORTED AS LI- CENSED BY BAR AUTHORITIES, 1999
Alaska	1	1
Arizona	2	0, 1 in progress
California	50	11
Colorado	1	No Legal Consultant Rule
Connecticut	2	0
Delaware	2	No Legal Consultant Rule
Dist. of Columbia	30	27
Florida	13	16
Georgia	7	2
Illinois	1	5
Maine	1	No Legal Consultant Rule
Massachusetts	3	0
Michigan	2	Between 5 and 10
New Jersey	3	7
New York	193	277
Ohio	2	0
Oregon	2	1
Pennsylvania	3	No Legal Consultant Rule
Texas	10	2
Virginia	3	No Legal Consultant Rule
Washington	5	6

It is not possible to compare the individuals identified by this Martindale-Hubbell search to those actually registered in the various jurisdictions apart from New York without identifying information from each additional jurisdiction. Nevertheless, the Martindale-Hubbell information is interest-

ing if only as a very general assessment of the uses being made of the legal consultant title. Some variation between the number of registered legal consultants and the number reported using the title in Martindale-Hubbell can be explained by the fact that not all lawyers list their biographical information in Martindale-Hubbell; thus, the discrepancy between Florida's licensed number of 16 and the 13 identified in the Martindale-Hubbell search of Florida is not troubling. On the other hand, the timing of the gathering of the information in columns 2 and 3 may account for some difference in the numbers reported. For example, Arizona Bar officials reported in a telephone conversation in 1999 that one individual had been licensed as a legal consultant and a second was in the process of completing an application; this explains the difference between the information reported for Arizona in columns 2 and 3.¹⁷⁵ However, certain states that have not adopted legal consultant rules might be surprised to discover that foreign lawyers are working under the legal consultant title in their jurisdictions, and in other jurisdictions, such as California, the significant difference between the 50 legal consultants identified in Martindale-Hubbell and the 11 licensed in 1999 might indicate that foreign lawyers are claiming the title without complying with the licensing system.

The generic use of the legal consultant title is one more reason to reconsider this regulatory model for foreign lawyers. The use of the title by those not licensed is confusing and potentially misleading, both to other lawyers and to the public. A new regulatory regime that offers meaningful opportunities to international practitioners and protects the public from incompetence is required.

V. REGULATING REALITY

Professional regulation of lawyers educated outside of the U.S. is unnecessarily complicated and confusing, and it is bound to interfere with the development of international practice opportunities. While it is unlikely that states will cede their regulatory roles to a national organization, the sheer number and variety of state regulations aimed at foreign lawyers is overwhelming. States should simplify their admission and legal consultant rules by adhering to model standards, as described below. In addition, a new regulatory overlay should be adopted at the national level to permit international firms to vouch for their lawyers, regardless of their licensing credentials, provided certain safety provisions are satisfied.

Admission rules should be overhauled as described in Part III, taking into account a foreign lawyer's foreign legal education and ability to pass a bar examination in the U.S. For purposes of preparing foreign lawyers to

¹⁷⁵ Interview with Arizona Supreme Court representative (Summer 1999).

sit for a U.S. bar exam, bar authorities might consider the need for additional preparation specific to U.S. law and practice. The additional preparation should be capable of objective verification rather than the current approach of assessing comparability to U.S. education. States should permit foreign lawyers to sit for the bar exam if they have completed a minimum period of U.S. legal education, or gained practice experience for a period in the U.S.¹⁷⁶ If additional assurance of competence is required, special bar exams that more thoroughly test competence in U.S. law could be devised for foreign lawyers. In addition, to ensure that the public can assess at least the educational background and licensed status of a lawyer or legal consultant, each state should develop a searchable public database that indicates whether an individual is admitted or licensed as a legal consultant, and discloses their educational background and current employment.¹⁷⁷ The database should be available on the web as well as in print form in certain public locations, such as libraries and law schools.

Second, the legal consultant rules should be standardized along the lines of the New York and Model Rules. Practice experience should be limited to a required maximum of three years in order to make the rule available to lawyers most likely to use it, and licensed legal consultants should be permitted to advise on U.S. law with the supervision or consultation of a U.S. lawyer, subject to the limited areas of practice uniformly reserved for local lawyers.¹⁷⁸ Legal consultants also should be included in the public database of legal professionals described above. Once they are admitted to the bar, legal consultants should relinquish the legal consultant license.

Third, states should implement the proposal of the ABA Commission on Multijurisdictional Practice permitting foreign lawyers to practice temporarily in the U.S. This serves interests different than those addressed by the admission and legal consultant rules, and which are also very much at issue in the development of international practices. As technology eases long-distance communication, legal services may increasingly be delivered without implicating rights of establishment.

¹⁷⁶ This is similar to the requirement under the Establishment Directive that EU lawyers may join a host state's legal profession after practicing there for three years. See Commission Directive 98/5/EC, 1998 O.J. (L 77) 36.

¹⁷⁷ New York's public database of lawyers is a good starting point, but information should be included on legal education as well as for legal consultants.

¹⁷⁸ In fact, it might be more realistic to use the home country experience requirement as an alternative to the one-year LL.M. degree for foreign lawyers from U.S. law schools. Then, foreign lawyers could become licensed as legal consultants if they have completed the LL.M. but have practiced fewer than three years under their home country license. This would recognize the dual interests of legal consultants in advising on foreign and U.S. law.

Finally, a new regulatory approach for international practitioners is necessary. The proposal advanced here takes as its premise that different rules are necessary for international practitioners than for those whose practice is confined to a single national system. For international practitioners, the basic element of regulation – traditionally the individual lawyer – is expanded to the law firm. Firms with an international practice will be accountable for ensuring the competence of their lawyers through a combination of supervision and insurance. In addition, a full-disclosure system will supplement the regulations to provide the public with easy access to information about each foreign lawyer's education, admission, and employment status.

A national regulatory and registration system should be enacted to grant temporary bar admission to all foreign lawyers working with international law firms that opt into the regime. International law firms wishing to subject themselves to this regulatory regime would be required to satisfy three conditions. First, a firm must agree that its U.S. lawyers will supervise the work of the foreign lawyers. Firms would be required to devise the details of a supervisory organization system. Second, the firm must purchase malpractice insurance to cover the work of foreign lawyers in advising on U.S. law. And third, the firm must agree to notify bar authorities when the employment or partnership relationship with a foreign lawyer is severed, because at that time the foreign lawyer's temporary admission will be revoked.

By agreeing to these three conditions, international law firms could assume responsibility for their foreign lawyers. The firms' incentives to maintain their reputations will motivate them to provide meaningful supervision and training. Moreover, firms are more efficient regulators in such circumstances than local bar authorities, since firms have relevant knowledge of and are in a position to assess quickly a foreign lawyer's competence. Firms function as self-regulators. Furthermore, this proposal has the benefit of rendering irrelevant the existing artificial lines between home and host country law, essential to the current legal consultant paradigm.

The challenge of implementing this proposal is to determine the criteria for international law firms that could take advantage of the new regime. For the largest law firms with international practices, it is clear that sufficient supervision, insurance, and concern for reputation could make the proposed system work. But what of the smaller international practices, the two or five-person firms, in which all or nearly all of the lawyers are foreign trained? In order for supervision and training to be practicable and meaningful to satisfy the self-regulatory role, U.S. licensed lawyers must dominate the practice setting. For these purposes, any lawyer admitted to the bar in the jurisdiction where their office is located is considered a "U.S. lawyer," regardless of her/his educational background; this approach is con-

sistent with that taken by U.S. jurisdictions allowing foreign-educated lawyers to sit for the bar. One approach would allow firms to qualify if there are at least as many U.S.-licensed lawyers as foreign lawyers in the office where the foreign lawyer is stationed. This would enable one-on-one supervision.

This proposed national overlay solves several current problems. It eliminates the artificial division between home and host country law that is fundamental to the legal consultant rules and anathema to the realities of current international practice. It offers a simple, transparent regulatory regime, alleviating the need for official determinations of educational equivalency. It allows for efficient regulation through self-regulation, by placing responsibility and power to judge the capabilities of foreign lawyers with those organizations having the most intimate knowledge of foreign lawyers' abilities. It supports informed decision-making by clients and the public generally by calling for a publicly available database comprised of relevant information to allow assessment of an attorney's background and credentials. It also recognizes the need for mobility in current international practice.

The proposal leaves in place the existing state admission and legal consultant rules, hence the need for new standardized and coherent regulations, as described above. Individual foreign lawyers may utilize these rules if they are not working for firms willing or able to take advantage of the new proposal or, if they wish, to pursue licensing independent of their employment status. The existing rules would be supplemented with the public disclosure of lawyers' credentials but otherwise would remain as they are.

VI. CONCLUSION

This article has examined the development of international practices and the regulations governing them in the U.S. The international market for legal services favors law firms offering expertise in multiple legal systems. It is common today for firms to advise on U.S. law as well as the law of multiple other jurisdictions, including Germany, France and England. Internationalization in legal practice has multiple meanings, but it is clear from law firm expansion and the development of the concept of international law expertise that a one-country focus will no longer suffice for many firms in the international market.

The existing regulatory regime interferes with the growth of international practice because it takes an overly restrictive approach to preventing foreign lawyers from practicing in the U.S. This approach not only interferes with efforts by U.S.-based law firms to utilize foreign lawyers in their practices; it also places the U.S. in an unfavorable position with regard to foreign regulators' consideration of U.S. lawyers working in their countries.

GATS avoids reciprocity as a basis of regulation, but most admission rules, including the foreign legal consultant rules, include some expectation of reciprocal treatment.¹⁷⁹ Current licensing rules are also vague, ambiguous, and subjective in their application.

A new regulatory regime should be adopted. This new regulation comes in the form of an overlay to existing rules on admitting and licensing foreign lawyers, and would permit international law firms to guarantee the competence of their lawyers. In this way, the reality of international practice will enable public protection at the same time that it encourages development of international legal services.

APPENDIX 1

Firms with at Least One Foreign Office in 2000, Drawn from The American Lawyer 100, The American Lawyer's Global 50, and the International Financial Law Review 150 Leading Law Firms (original home city is identified in parenthesis)

Akin, Gump, Strauss, Hauer & Feld (Dallas)
Alzheimer & Gray (Chicago)¹⁸⁰
Arnold & Porter (Washington, D.C.)
Baker Botts (Houston)
Baker & McKenzie (Chicago)
Bingham Dana (Boston)¹⁸¹
Brobeck, Phleger & Harrison (San Francisco)¹⁸²
Brown & Wood (New York)¹⁸³
Bryan Cave (St. Louis)
Cadwalader, Wickersham & Taft (New York)
Cahill, Gordon & Reindel (New York)
Chadbourne & Parke (New York)
Cleary, Gottlieb, Steen & Hamilton (New York)

¹⁷⁹ On GATS' applicability to lawyers, see Terry, *GATS' Applicability to Transnational Lawyering*, *supra* note 131.

¹⁸⁰ Alzheimer & Gray announced the firm's closure in June 2003. See Ameet Sachdev, *Alzheimer & Gray to Close; Business Slump, Other Woes Hurt Politically Connected Firm*, CHI. TRIB., June 28, 2003, § 3, at 1.

¹⁸¹ Bingham Dana merged with McCutchen Doyle in 2002. See Matt Fleischer-Black, *A Lesson in Damage Control*, AM. LAW., Jan. 2003, at 14.

¹⁸² Brobeck dissolved in 2003. See Peter D. Zeughauser, *Your Future is at Stake*, AM. LAW., May 2003, at 49.

¹⁸³ Brown & Wood merged with Sidley & Austin in 2001. See <http://www.sidley.com/about/about.asp> (last visited Oct. 12, 2003).

Coudert Brothers (New York)
Covington & Burling (Washington, D.C.)
Cravath, Swaine & Moore (New York)
Curtis Mallet-Prevost Colt & Mosle (New York)
Davis Polk & Wardwell (New York)
Debevoise & Plimpton (New York)
Dechert Price & Rhoads (Philadelphia)
Dewey Ballantine (New York)
Dorsey & Whitney (Minneapolis)
Faegre & Benson (Minneapolis)
Foley & Lardner (Milwaukee)
Fried, Frank, Harris, Shriver & Jacobson (New York)
Fulbright & Jaworski (Houston)
Gibson, Dunn & Crutcher (Los Angeles)
Graham & James (San Francisco)¹⁸⁴
Heller Ehrman White & McAuliffe (San Francisco)
Hogan & Hartson (Washington, D.C.)
Hughes Hubbard & Reed (New York)
Hunton & Williams (Richmond)
Jones, Day, Reavis & Pogue (Cleveland)
Kaye, Scholer, Fierman, Hays & Handler (New York)
Kelley Drye & Warren (New York)
Kilpatrick Stockton (Atlanta)
Kirkland & Ellis (Chicago)
Latham & Watkins (Los Angeles)
LeBoeuf, Lamb, Greene & MacRae (New York)
Mayer, Brown & Platt (Chicago)¹⁸⁵
McCutchen, Doyle, Brown & Enersen (San Francisco)¹⁸⁶
McDermott, Will & Emery (Chicago)
McGuire Woods Battle & Boothe (Richmond)
Milbank, Tweed, Hadley & McCloy (New York)
Morgan, Lewis & Bockius (Philadelphia)
Morrison & Foerster (San Francisco)
O'Melveny & Myers (Los Angeles)

¹⁸⁴ Graham & James was acquired by Greenberg Traurig and Squire Sanders. See Susan Beck, *Graham & James's Final Chapter*, AM. LAW., Mar. 2001, at 22.

¹⁸⁵ Now Mayer Brown Row & Mawe. See <http://www.mayerbrown.com> (last visited Oct. 12, 2003).

¹⁸⁶ Now Bingham McCutchen, *supra* note 181, at 59.

Orrick, Herrington & Sutcliffe (San Francisco)
Paul, Hastings, Janofsky & Walker (Los Angeles)
Paul, Weiss, Rifkind, Wharton & Garrison (New York)
Perkins Coie (Seattle)
Pillsbury Madison & Sutro (San Francisco)¹⁸⁷
Proskauer Rose (New York)
Seyfarth, Shaw, Fairweather & Geraldson (Chicago)
Shaw Pittman (Washington, D.C.)
Shearman & Sterling (New York)
Shook, Hardy & Bacon (Kansas City)
Sidley & Austin (Chicago)¹⁸⁸
Simpson Thacher & Bartlett (New York)
Skadden, Arps, Slate, Meagher & Flom (New York)
Squire, Sanders & Dempsey (Cleveland)
Stroock & Stroock & Lavan (New York)
Sullivan & Cromwell (New York)
Vinson & Elkins (Houston)
Weil, Gotshal & Manges (New York)
White & Case (New York)
Willkie Farr & Gallagher (New York)
Wilmer, Cutler & Pickering (Washington, D.C.)
Wilson, Elser, Moskowitz, Edelman & Dicker (New York)
Winston & Strawn (Chicago)
Winthrop, Stimson, Putnam & Roberts (New York)¹⁸⁹

APPENDIX 2

Websites Where State Rules of Admission and Legal Consultant Licensing Are Available

ALABAMA

<http://www.alabar.org/ClientDoc/rulesadmissions2001%2Epdf>

ALASKA

<http://www.alaskabar.org/INDEX.CFM?ID=4981&makeback=true>

¹⁸⁷ Pillsbury Madison & Sutro merged with Winthrop Stimson in January 2001. See Carolyn Kolker, *Take Down*, AM. LAW., Feb. 2003, at 68.

¹⁸⁸ See *supra* note 183, at 59.

¹⁸⁹ See Kolker, *supra* note 187 (regarding Winthrop's merger with Pillsbury Madison & Sutro).

ARIZONA

<http://azrules.westgroup.com>

ARKANSAS

http://courts.state.ar.us/courts/ble_rules.html

CALIFORNIA

<http://www.calbar.org/admissions/doc/2admrule.htm#ii>

COLORADO

<http://www.coloradosupremecourt.com/BLE/Forms/Rules.pdf>

CONNECTICUT

<http://www.jud.state.ct.us/CBEC/BarExCom2.htm>

For Rules of Superior Ct regulating Attorney Admission

<http://www.jud.state.ct.us/CBEC/#Rules>

DELAWARE

<http://courts.state.de.us/bbe/docs/bberules.pdf>

DISTRICT OF COLUMBIA

http://www.dcbbar.org/for_lawyers/membership/prospective_members/index.cfm

FLORIDA

<http://www.floridabarexam.org/index.html>

GEORGIA

<http://www2.state.ga.us/courts/bar/barules.htm#PARTA>

<http://www2.state.ga.us/Courts/bar/barhome.htm>

HAWAII

<http://www.state.hi.us/jud/rsch.htm#%201.3>

IDAHO

http://www2.state.id.us/isb/adm/exam_info.htm

ILLINOIS

http://www.state.il.us/court/SupremeCourt/Rules/Art_VII

INDIANA

http://www.in.gov/judiciary/rules/ad_dis/index.html

IOWA

<http://www.legis.state.ia.us/rules/2002/court/gna1.pdf>

KANSAS

<http://www.kscourts.org/ctruls/atad.htm>

KENTUCKY

<http://www.kyoba.org/rules/rules%20main%20page.htm>

LOUISIANA

http://www.lsba.org/Bar_Admissions/bar_admissions_rules.html

MAINE

<http://www.mainebarexaminers.org/PDF%20Files/BarRules.pdf>

MARYLAND

<http://www.courts.state.md.us/ble/baradmissionrules.pdf>

MASSACHUSETTS

<http://www.state.ma.us/bbe/BarAppRulesAug2002.pdf>

MICHIGAN

<http://www.michbar.org/admission/ble.html>

MINNESOTA

<http://www.ble.state.mn.us/rules.htm#Rule4>

MISSISSIPPI

<http://www.mssc.state.ms.us/BarAdmissions/default.asp>

MISSOURI

<http://www.osca.state.mo.us/SUP/index.nsf/BarExamination?OpenView>

MONTANA

<http://www.montanabar.org/admission/admissionrules.html>

NEBRASKA

<http://www.nebar.com/memberinfo/nsbc/AdmissionofAttorneys.htm#Q5>

NEVADA

<http://www.leg.state.nv.us/other/cr/scr.html>

NEW HAMPSHIRE

<http://webster.state.nh.us/courts/rules/scr/scr-42.htm>

NEW JERSEY

<http://www.judiciary.state.nj.us/rules/r1-27.htm#TopOfPage>

NEW MEXICO

<http://www.nmexam.org/rules/rules103.htm>

NEW YORK

<http://www.nybarexam.org/>

<http://courts.state.ny.us/ctapps/521rules.htm>

<http://www.nybarexam.org/foreign.htm>

<http://www.nybarexam.org/>

NORTH CAROLINA

http://www.ncbar.com/rules/rul_adv.asp?type=R

<http://www.ncble.org/>

NORTH DAKOTA

<http://www.court.state.nd.us/Rules/Admission/frameset.htm>

OHIO

<http://www.sconet.state.oh.us/Rules/govbar/#rulei>

OKLAHOMA

<http://www.okbar.org/publicinfo/admissions/rules.htm>

OREGON

http://www.osbar.org/2practice/rulesregs/adm_rules.html#15

PENNSYLVANIA

http://www.pabarexam.org/Admission_Rules/rules_and_regulations/Other_Rules_Menu.HTM

RHODE ISLAND

<http://www.courts.state.ri.us/supreme/bar/rules.pdf>

SOUTH CAROLINA

<http://www.judicial.state.sc.us/courtReg/>

<http://www.judicial.state.sc.us/bar/index.cfm>

SOUTH DAKOTA

<http://www.sdjudicial.com/>

TENNESSEE

<http://www.tsc.state.tn.us/>

TEXAS

http://www.ble.state.tx.us/Rules/NewRules/rulebook_toc.htm

UTAH

http://www.utahbar.org/rules/html/admissions_rule_3.html

VERMONT

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