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Educating Lawyers for the Global Economy: National Challenges

Carole Silver*

Introduction: Situating Legal Education in a Global Context

How should law schools and faculties participate in preparing their students to work in a global economy? This is the question posed by Kyung Hee University Law School as the focus of a conference for scholars, students, faculty and practitioners held in the midst of Korea's initial year of transitioning from an undergraduate to a graduate system of legal education in October of 2009.

The job of how best to educate law students for work in a global economy presents a complicated question for several reasons. First, the nature of law itself challenges the notion of educating lawyers to work in a global context. Generally, we think of globalization as exerting pressure towards convergence around a uniform standard. For example, accounting has undergone a reorientation with the emergence of global accounting standards and standard setters.¹ Law, in large part, has resisted this trend. It remains essentially national, emanating from sovereign rulemaking structures. Of course, this does not deny that globalization's influence is felt in certain substantive areas and on particular rule-makers. Nevertheless, the force of globalization with regard to law typically must meet the power of national sources to which law is firmly tied.² As one senior lawyer working in Paris for an American law firm put it, "Law really is pretty local, unlike accounting and banking - law, private practice, is much

* Visiting Professor of Law, Executive Director, Center for the Study of the Legal Profession, Georgetown University Law Center. This essay was prepared for presentation at the International Conference on the 60th Anniversary of the Foundation of Kyung Hee University: Current Issues and Future Tasks for Educating Lawyers in the Age of Globalization, held at Kyung Hee University Law School on October 29-30, 2009. I am grateful to the participants in the conference for their insight and useful discussion of the issues raised here, to the faculty, administration and students of Kyung Hee University Law School for their warm welcome, to Professor Jae Seon So, Director of Kyung Hee Institute of Legal Studies, and particularly to Professor Kwang-Jun Tsche for his invitation and helpful comments. Many thanks, also, to Christian Pangilinan and Cynthia Liu, students at Georgetown University Law Center, for excellent research assistance in the preparation of the essay, and to Jeff Bauman, John O'Hare, Christian Pangilinan and Laurel Terry for helpful comments on earlier versions. All errors are my own.

¹ See, e.g., David S. Ruder, Charles Canfield and Hudson Hollister, *Creation of World Wide Accounting Standards: Convergence and Independence*, 25 *Nw J. Int'l L. & Bus.* 513 (2005). See also, William W. Bratton and Lawrence A. Cunningham, *Treatment Differences and Political Realities in the GAAP-IFRS Debate*, 95 *Va. L. Rev.* 989 (urging the maintenance of US GAAP for US issuers rather than adoption of IFRS).

² See e.g., Mark Tushnet, *The Inevitable Globalization of Constitutional Law*, 49 *Va. J. Int'l L.* 985, 987 (2009)(describing processes of convergence but noting "differences in detail, which means that globalization does not entail uniformity"); Chao Xi, *In Search of an Effective Monitoring Board Model: Board Reforms and the Political Economy of Corporate Law in China*, 22 *Conn. J. Int'l L.* 1 (2006)("Functional convergence and hybrid convergence of national board systems now seem prevalent."). See generally Dezalay & Garth, *DEALING IN VIRTUE* (1996)(describing the influence on one another of international and national institutions and participants in the field of international commercial arbitration).

more local.”³ This local nature of law, then, means that we cannot resolve the challenge of educating lawyers to work in a global economy simply by teaching global law. And we surely cannot teach the law of each nation; there are too many and too many differences among them. We probably cannot even accurately anticipate which national legal regimes will assume importance in the career of any particular student.

A second complication arises because legal education itself plays different roles in different societies. In thinking about how legal education might best prepare students to work in a global environment, we need to anticipate the ways in which globalization will intersect with their work, which in turn requires knowledge of the roles our graduates assume. Legal education, however, produces quite different opportunities for graduates depending upon where the education occurs. So, in the US, for example, where law is a graduate course of study and nearly all of our graduates become qualified as lawyers,⁴ there is a very high expectation on the part of our students that they will engage in private practice and represent clients. In fact, approximately three-quarters of all lawyers work in private practice settings, according to the American Bar Foundation’s *Lawyer Statistical Report*.⁵ This common experience, then, informs much of our thinking about how globalization will matter in lawyers’ careers because we can focus on the private practice context. It allows us to consider categories of clients and issues likely to raise globalization’s relevance and to aim our efforts to educate in those directions. In contrast, in Korea, at least until recently, where law was taught as an undergraduate course of study and most law students realistically expect to pass the bar examination,⁶ the role of law graduates is much less uniform and determined.⁷ This calls for a different approach to thinking about how globalization might shape the curriculum in school and assume importance in the work of law graduates. It would not make as much sense in Korea to focus on the nature of global clients if too few graduates worked in representative capacities where clients were the

³ My work on legal education and globalization and the legal profession includes several sources of information, among them interviews with lawyers and law students. Interviews were conducted with an agreement that the identity of all interviewees and their employers would be kept confidential. Citations refer to the interviewee by number and provide general information consistent with maintaining confidentiality. Interview #5 (US-educated and -licensed lawyer working in the EU; Fall 2009).

⁴ The National Conference of Bar Examiners reports that 82% of first-time bar examination test takers passed, as did 38% of repeat test-takers, with an overall pass rate of 71% for all bar exam test takers in 2008. See *2008 Statistics, The Bar Examiner* (2008), avail. at http://www.ncbex.org/fileadmin/mediafiles/downloads/Bar_Admissions/2008_Stats.pdf at p.9 (80,319 individuals sat for a bar exam in 2008 (combining the July and February exams) and 56,915 passed).

⁵ In 2000, 74% of the lawyers captured in the American Bar Foundation’s *Lawyer Statistical Report* worked in private practice. See Clara Carson, *THE LAWYER STATISTICAL REPORT* at p.6 (2000). According to the *After-the-JD* study, nearly 70% of the sample of new graduates worked in private practice in law firms. *AFTER THE JD, FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* at p. 25, avail. at <http://www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf>.

⁶ On the reform of Korean legal education, see Kwang-Jun Tsche, *Establishing New Professional Law Schools in terms of Judicial Reform in Korea*, 1 *Shizuoka U. L. J.* 47 (2008); Setsuo Miyazawa, Kay-Wah Chan and Ilhyung Lee, *The Reform of Legal Education in East Asia*, 4 *Annu. Rev. Law Soc. Sci.* 333 (2008); Park Si-soo, *Law Schools Could Hamper Korean Legal System*, *Korea Times* (1/2/2008).

⁷ See generally Dohyun Kim and Seung Heum Hwang, *Career Patterns of the Korean Legal Profession*, in Dai-Kwon Choi and Kahei Rokumoto, eds., *JUDICIAL SYSTEM TRANSFORMATION IN THE GLOBALIZING WORLD* (2007).

focus of their activities. The variety of outcomes that students make of their legal education, then, complicates how globalization matters.⁸

A third challenge relates to national differences in the role of lawyers in society.⁹ In the US, lawyers assume a central role in terms of politics and governance, but this is not the norm worldwide.¹⁰ These differences set the stage for variations in how globalization infiltrates the work of lawyers. To perceive the influence of globalization on the profession, we must understand the profession from its home country context.

While these challenges complicate the question of how best to educate law students for a global economy, they do not limit or undermine the significance of globalization.¹¹ The influence of globalization reaches to the role of lawyers and legal education as well as to the nature of law itself, and instigates change at national and local levels on each front. In order to engage with the forces that exert globalization's influence and become actors on the global stage, students must become globally literate. At the same time, the national foundation of law requires that lawyers be expert in a national legal regime and language, too. This dichotomy suggests that we interpret globalization through a national lens that considers the role of law, lawyers and legal education in the particular national context.

To this end, I turn first, in Section I, to the nature of globalization's influence on legal practice, drawing on the structure of global law firms to develop a framework for understanding the demands of practicing in a global context. Section II uses this framework to develop the concept of global legal literacy¹² and tease out the variations in its meaning relating to the balance

⁸ See generally, papers presented at the Kyung Hee conference by Professors Moritz Balz and Ralf Geymayer, published also in this issue, address this issue with regard to Germany and Austria (reflecting differences in the focus of legal education).

⁹ See generally Richard Abel & Philip S.C. Lewis, *LAWYERS IN SOCIETY* (1988).

¹⁰ See generally, Yves Dezalay and Bryant G. Garth, *International Strategies and Local Transformations: Preliminary Observations of the Position of Law in the Field of State Power in Asia: South Korea*, in ; William P. Alford, ed., *RAISING THE BAR: THE EMERGING LEGAL PROFESSION IN EAST ASIA* (2007); Yves Dezalay and Bryant G. Garth, *INTERNALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES* (University of Chicago Press 2002).

¹¹ On how and why globalization matters in legal education, see Harry W. Arthurs, *Law and Learning in an Era of Globalization*, 10 *German L. J.* 629, 630 (2009), available at:

<http://www.germanlawjournal.com/article.php?id=1111> ("The question is: 'how, exactly, will that gorilla make its presence felt?' In one sense, the answer is as obvious as the gorilla itself. Globalization alters the material circumstances of states and of groups and communities within states. ... It is a more general redistribution of power and prestige within the legal profession; a new emphasis on what the profession and its regulators view as 'relevant' knowledge, valued skills and exemplary behavior; and of course a revised sense amongst legal academics of what it is important for us to be teaching and writing about.").

¹² The idea of global literacy is typically associated with literacy efforts, but also has been used to with regard to education for participation in an increasingly connected world. See generally, Donald Bragaw et al, *GLOBAL LITERACY: CHALLENGES, CULTURE AND CONNECTIONS* (1998 The American Forum for Global Education), avail. at <http://www.globaled.org/globalLiteracy/activities/glIndex.html>. "Legal literacy" is typically associated with the understanding of law and rights by the general public; see, e.g., Michael P. Gunn, *President's Law Day Message: Legal Literacy and the Bar*, *The Business Journal Serving Metropolitan Kansas City* (5/5/2000), avail. at http://www.accessmylibrary.com/coms2/summary_0286-27849348_ITM ("Being legally literate means understanding your rights and responsibilities, whether in a business environment or at home in your personal life. Legal literacy includes a decent understanding of our legal system and its role as one of the three branches of

between local and global influences in a particular national context. Global legal literacy includes elements of language and cultural fluency, as well as understanding differences in the roles of law and lawyers in national contexts. Section III considers how to teach global legal literacy. While courses in comparative, international and transnational law have proliferated in US law schools and certainly are useful background for international practice, they miss the mark in teaching global legal literacy, which requires expertise in developing and using relationships that cross borders. Finally, the conclusion suggests ways we might further investigate these issues in future research and collaboration.

I. How does globalization influence lawyers and legal practice?

While much of the influence of globalization on lawyers and legal practice requires situating in a national context, two changes related to globalization are universal. The first of these relates to developments in technology and transportation, which have revolutionized the way lawyers (and others) work. Email and the Internet enable us to develop strong relationships despite distance, and to respond to inquiries with immediacy and elaborate analyses. These are recent innovations dating back less than 20 years, but their impact on the work of lawyers is remarkable and thorough.¹³ Second, businesses and finance increasingly have shifted the boundaries of their markets to cross national borders.¹⁴ For example, according to the US Bureau of Economic Analysis, from 1985 to 2008, exports of goods and services from the United States increased from approximately \$289 billion to \$1.8 trillion, accounting for growth of more than 500%;¹⁵ during approximately the same period, exports from the US in legal services alone grew from \$97 million to more than \$6.4 billion dollars.¹⁶ Meanwhile, the US International Trade Commission reported that worldwide revenue from legal services in 2007 was estimated at \$458.2 billion. While the recent economic crisis has slowed cross-border investment activity, this reflects the downturn generally rather than indicating the erection of new or renewed barriers that might disrupt the flow of funds in the future.¹⁷

government.”); Amy J. Cohen, *Thinking With Culture in Law and Development*, 57 *Buff. L. Rev.* 511 (2009). The notion of legal literacy reaches far beyond the US; the Bharat (India) Integrated Social Welfare Agency celebrated “Legal Literacy Day” with the message that “law is equal for all as well as the provision for free legal service for poor and helpless people.” See Bharat Integrated Social Welfare Agency, avail. at <http://biswa.org/en/Legal-Literacy-Day>.

¹³ See generally, Laurel S. Terry, *The Legal World is Flat: Globalization and its Effect on Lawyers Practicing in Non-Global Law Firms*, 28 *Northwestern J. Int’l L. & Bus.* 527 (2008).

¹⁴ Even during the economic downturn, international listings on US stock markets continue; see Lynn Cowan, *Asian Companies Look to U.S. for Listings*, *Wall Street J.* (9/7/09)(reporting “a pipeline of Asian companies preparing IPO paperwork behind the scenes with the U.S. Securities and Exchange Commission”). On cross-border investment generally, see Liam Denning, *Will Cheap Dollar Bring Back Buyers?*, *Wall Street J.* (10/19/09); J. William Hicks, INTERNATIONAL DIMENSIONS OF U.S. SECURITIES LAW (2005)(discussing cross-border investment as well as the various methods of reporting on this activity).

¹⁵ BEA, *U.S. Direct Investment Position Abroad on a Historical-Cost Basis* (Sept. 22, 2008), available at <http://www.bea.gov/International/index.htm>. Historical cost measures U.S. direct investment at book value (usually at initial acquisition). BEA, *A Guide to BEA Statistics on U.S. Multinational Companies* (Mar. 1995), http://www.bea.gov/scb/account_articles/international/0395iid/maintext.htm.

¹⁶ BEA, *U.S. International Services: Cross-Border Trade 1986-2007, and Services Supplied Through Affiliates*, 1986-2006 (Oct. 24, 2008), <http://www.bea.gov/international/intlserv.htm>.

¹⁷ *Investment Brief: Road to recovery*, *American Chronicle* (11/13/2009), avail. at <http://www.americanchronicle.com/articles/yb/137695070> (“Mergers and acquisitions are inevitable as structural

The combination of technological advancement and geographic expansion of business and finance has pushed lawyers and law firms to deepen their international presence. I turn to the US as an example of this outward push. While the US story may be extreme compared to experiences in other jurisdictions, the patterns of expansion followed by US-based law firms are quite similar to those pursued by firms based outside of the US.

As noted earlier, most lawyers working in the US are engaged in private practice,¹⁸ and perhaps the most obvious evidence of globalization related to private practice, apart from the trade figures quoted above, is found in the expansion of US-based law firms.¹⁹ The global activities of the largest, most international US-based law firms offer insight into the structures law firms use to represent the actors that operate in the global economy, including multinational corporations and governments and government-funded entities, among others. Specifically, the way these firms staff their offices outside of the US reveals the strategies of the firms towards global practice. In order to detect these strategies, early on in my work I began collecting the professional biographies of lawyers working for international firms,²⁰ and recently I have focused particularly on those lawyers working outside of the US - that is, outside of the home country of the law firm. This has allowed me to identify changes in staffing practices of the firms as well as patterns of global expansion that are visible on a scale larger than the individual lawyer. In all, I have gathered biographical information on more than 8,500 lawyers working for more than 60 of the largest and most international of the top US-based law firms. The information includes where the lawyers work, their status in the firm, educational and licensing information, gender, language ability and their substantive law practice areas.²¹

change across all industries becomes apparent and these will become increasingly cross-border. Consolidation is expected to become a key issue and the recent bid by Kraft for Cadbury is a case in point.”); *Global downturn causes slump in cross-border investment, says OECD* (6/24/09), avail. at http://www.oecd.org/document/63/0,3343,en_2649_34529562_43151679_1_1_1_1,00.html (“Despite the economic crisis, major countries have so far broadly resisted rising political pressures for protectionism.”); USITC, *Recent Trends in U.S. Services Trade, 2009 Annual Report*, p. 6-1, avail. at <http://www.usitc.gov/publications/332/pub4084.pdf>, citing Datamonitor, *Industry Profile: Global Legal Services*, June 2008, at p.9, as the source of the figure.

¹⁸ See note 5, *supra* (74% of lawyers in the US work in private practice).

¹⁹ Despite the work a new law graduate pursues just after graduation, we know that new graduates move and intend to move to different jobs quite quickly after graduation. See NALP and American Bar Foundation report, *AFTER THE JD, FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* at p. 53, *supra* n. 5 (“Even though most respondents in the AJD data set were fewer than three years out of law school, more than a third had already changed jobs at least once (and 18% twice or more) during their legal careers—not counting as a job change those lawyers who obtained clerkships after law school.... The theme of relatively high mobility generally is found also in expressed intentions to move in the future. ... The data by specific sectors of practice reveal an interesting asymmetry, again revolving around the contrast between the large law firms and most of the other work settings. Respondents in large firms are less likely than anyone else to have changed jobs since law school, as noted above, but over half of them (along with government lawyers) state that they are planning to change jobs within the next two years.”). In the US, then, we must approach the question of educating for global literacy from the standpoint of uncertainty about the career path of students.

²⁰ See Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 *Fordham J. of Int'l L.* 1039-1084 (2002) (describing careers of lawyers working in the US).

²¹ The data is discussed in Silver, De Bruin Phelan & Rabinowitz, *Between Diffusion and Distinctiveness in Globalization: U.S. Law Firms Go Glocal*, 22 *Georgetown J. Leg. Ethics* 1431 (2009); the early expansion of US

While certain US-based law firms began representing foreign clients and establishing offices outside of the US before the 1970s,²² international expansion really took off during the last 20 years or so, since the mid-1980s. During this time, US firms have dramatically expanded the number and size of their presence overseas. In this analysis, I rely on foreign offices to represent this international investment. During these last 20 years or so, more US-based law firms opened offices overseas, and firms opened multiple offices and also increased the size of those offices in terms of number of lawyers. In fact, growth of the number of lawyers working overseas for the firms comprising the National Law Journal's list of 250 largest US-based law firms²³ has increased more than 1,000% during this period.²⁴ Of course, the overseas staff still is just a small fraction of the domestic legal staff of these firms.

This growth, particularly in the size of offices, was spurred by falling trade barriers, and this, in turn, initiated the transformation of the way US firms practice overseas. The earlier period, certainly until the late 1980s, was characterized by a US-centric approach in the overseas activities of the firms. This meant that US firms limited their overseas practices to US law and relied on US-educated and -licensed lawyers to staff their offices during this period. This was an expensive approach to foreign office staffing because US lawyers demanded US levels of compensation as well as hardship allowances for living overseas. In addition and more important, it was challenging for US lawyers to remain overseas for lengthy periods. This was the period before email and the Internet, before Skype, and when international telephone calls were expensive and the connections often involved echoes and dropped calls, making communication with colleagues (not to mention family) at home unsatisfactory. So firms tended to rotate lawyers into and out of international postings, but these rotations created instability for the firms with regard to client relationships.

More recently, however, the firms with international footprints - that is, those with overseas offices - have shifted from their US-centric approach to relying on host country nationals to work in their overseas offices. This change is attributable in large part to trade barriers falling away in

firms through overseas offices is chronicled in Silver, *Globalization and the U.S. Market in Legal Services – Shifting Identities*, 31 *J. L. & Pol'y in Int'l Bus.* 1093 (2000).

²² Silver, *Shifting Identities*, at p. 1111-1112 (“The 1970s brought U.S. firms to London in order to capitalize on the growing Eurobond market there. A total of twenty-three firms established London offices during the 1970s, joining the London offices of Coudert and Baker & McKenzie that had been established during the prior decade. ... The movement to London was dominated by New York-based firms during the early period of expansion. The 1970s brought fifteen New York firms to London, while only eight non-New York firms opened London offices during this decade. ... Non-New York firms established London offices in increasing numbers during the next two decades, and the 1980s and 1990s each witnessed the establishment of more London offices by non-New York firms than New York firms.”). By 1970, more than 20 US-based law firms had opened offices in Paris and nine had opened offices in Brussels. Data on the overseas office activities of US-based law firms discussed in *Shifting Identities* is based on Martindale-Hubbell listings for the firms. Note that not all of these offices were still open in 1970; some were short-lived, and many that closed eventually were reopened by the firms more recently. See *id.* at 1103-1112.

²³ For the 2008 NLJ 250, see *The NLJ 250: Annual Survey of the Nation's Largest Law Firms*, avail. at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202425778391>.

²⁴ James W. Jones, Perspectives on the Global Law Firm, presentation at Harvard Law School Program on the Legal Profession Symposium, Globalization of the Legal Profession, November 2008, avail. at <http://www.law.harvard.edu/programs/plp/pdf/Jones.pdf> (reporting data gathered from the *National Law Journal* 250, 1987, 1997, 2007).

many countries, and the resulting authorization for host country lawyers to affiliate with US lawyers and law firms as partners and employees. But in addition, the ease of travel²⁵ and communication has enabled the US-educated and -licensed lawyers to develop international practices without taking on the expatriate role. These US-based lawyers advise clients overseas on routine matters by email and phone communication, and travel when necessary for longer-term or particularly important problems. Combined, these developments allowed the firms to grow by hiring host country nationals and host country lawyers, who brought stability to the overseas office professional staffs.²⁶

Globalization in this context, then, is perhaps best understood as involving a process of glocalization.²⁷ This is the combination of globalization - convergence around a more-or-less uniform standard, in this case the US law firm approach to practice - and localization - the

²⁵ One element related to the increased investment of US enterprises (including lawyers) in overseas opportunities is the growth in revenue generated from international travel. In one year, from 1989 to 1990, revenue generated by US entities from international travel passenger fares increased from \$10,657 million to \$15,298 million. Department of Commerce, Bureau of Economic Analysis, International Economic Accounts, Table 3, avail. at <http://www.bea.gov/international/intlserv.htm>. On growth of the international air transportation in the U.S., see Kevin B. Boberg, Fredrick M. Collison, *International Air Transportation Trends in the Pacific Basin*, *Transportation Journal* 24 (Spring 1989) (“Several factors have combined over the last decade to reshape the international airline industry, perhaps no more so than in the Pacific Basin encompassing Asia and Oceania. Relative political stability and the opening of borders have spurred the demand for travel to the region for all segments of traffic. Furthermore, the Pacific encompasses some of the fastest growing economies in the world, including the four newly industrialized countries of Hong Kong, Singapore, South Korea, and Taiwan. These factors help to explain current growth rates averaging over 10 percent annually, far above world averages,’ and confirm the validity of forecasts predicting that fully one-third of all international airline operations will emanate from the Pacific by the century’s end. Technology likewise continues to spur the growth of trans-Pacific aviation. The continuing evolution of long-range aircraft gives the promise of even greater increases in trans-Pacific air travel as the economics of these services improve.”); Ralph Blumenthal, *Boom in Airline Travel Squeezes the Glamour Out*, *N.Y. Times* (1/23/1986) at A1 (“Air travel, a luxury for much of the 20th century, is losing its glamour as hotly competing airlines slash fares to lure Americans to a more mundane mass transportation. The change, unleashed by Federal airline deregulation, is providing millions of recreational travelers with airplane speed at bus prices. ... [noting] the dramatic drop in prices”); Warren Rose, *Three Years After Airline Passenger Deregulation in the United States: A Report Card on Trunkline Carriers*, 21 *Transportation Journal* 51 (Winter 1981) (“More people flew to more places than ever before. Annual increases in revenue passenger miles ranged from 10 to 16 per cent between 1978 and 1981.”).

²⁶ Since the mid-1990s, increasing numbers of foreign nationals have enrolled in US graduate law LLM programs. This has offered host country nationals an opportunity to create professional profiles that include a US law credential without investing three years for the typical JD US law degree. On the role of the LLM in global legal practice, see generally, Silver, *Local Matters: Internationalizing Strategies for U.S. Law Firms*, 14 *Indiana U. J. Global Leg. Stud.* 67 (2007); Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 *Cardozo J. Int’l & Comp. L.* 143 (2006); Silver, *Winners and Losers in the Globalization of Legal Services: Situating the Market for Foreign Lawyers*, 45 *VA J. Int’l L.* 897 (2005).

²⁷ The word “glocalization” comes from a Japanese term referring to the practice of selling or making a product for a particular market. On glocalization, see Roland Robertson, *Comments on the “Global Triad” and “Glocalization*, in *GLOBALIZATION AND INDIGENOUS CULTURE U.S.* (Inoue Nobutaka ed., 1997), <http://www2.kokugakuin.ac.jp/ijcc/wp/global/15robertson.html>; see also Silver et al., *Globalization and the Business of Law: Lessons for Legal Education*, 28 *NW. J. INT’L L. & BUS.* 399, 410 (2008) (“U.S. firms are going local through local lawyers who bring expertise in hard and soft law, including important connections to local culture, regulators, business and the state, while at the same time the firms are maintaining connection through the presence of U.S.-educated lawyers to their universal—the U.S. approach to practice, encompassing both an entrepreneurial approach to practice and problem-solving approach as well as attention to the ethical constraints on firms and their lawyers.”).

influence of local distinctions pushing back on the forces of homogenization and convergence. It captures the integration of uniquely local characteristics into an exported activity or idea.

Glocalization describes the overseas growth of US law firms because the firms have capitalized both on their US characteristics - the expansive approach to practice, expertise in US law, specialization and standards of professional conduct²⁸ - and their local characteristics - personified by host country lawyers and nationals and their language ability, familiarity with host country professional and business conduct, expertise and actors. The combination of these influences explains the approach of US firms to growth in their overseas offices. Typically, the firms have increased the size of their overseas offices by hiring host country lawyers to work alongside the one or two US-licensed lawyers who formerly staffed the offices or replaced those who came before them. Larger offices allow firms to accomplish more substantive work overseas and to diversify their areas of expertise. Generally, firms do not eliminate the US-educated and -licensed lawyers from their overseas offices. Rather, most offices in most jurisdictions include both US-educated and -licensed lawyers and host country-educated and -licensed lawyers, working side-by-side. In this way, the firms pursue simultaneous strategies of globalization - exporting US lawyers - and localization - hiring local lawyers, practicing local law and capitalizing on local relationships.²⁹ Most overseas offices of US-based firms are mixed in this way in terms of the educational backgrounds - and licenses - of their legal staff. Of course, individual firms set different limits on the ratio of US and host country lawyers, but the pattern of mixing the two is nearly universal.

While my discussion has focused on US-based law firms and their approach to international growth and practice, the same glocal pattern characterizes law firms based outside of the US that concentrate their practices on corporate - and particularly multinational corporate - clients. Whether London's Allen & Overy,³⁰ Paris's Gide Loyrette Nouel,³¹ or Beijing's King & Wood,³² the approach to global growth through the establishment of offices outside of the firm's home jurisdiction involves combining lawyers educated and licensed in the home country of the

²⁸ See generally Mary C. Daly, *The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of the General Counsel*, 46 *Emory L.J.* 1057, 1068 (1997) ("The proactive model of lawyering springs from personal and professional traits seemingly unique to U.S. lawyers. It is characterized by a "can do" attitude that focuses on problem-solving and mixes business and legal counseling with little concern for the boundaries between them. It is closely related to another distinct phenomenon of U.S. lawyering known as 'legal entrepreneurialism.'").

²⁹ See Silver et al, *supra* n. 20.

³⁰ See Allen & Overy Germany, for example, available at <http://www.allenoverly.com/AOWEB/PeopleOffices/PeopleList.aspx?sr=Y&contentTypeID=4&contentSubTypeID=20437&countryID=18722&pno=5&prefLangID=410> (professional biographies of lawyers working in Germany, showing that most lawyers are German-educated and -licensed, but including at least (biographies are available only for partners) several lawyers educated in England and who are licensed as English solicitors).

³¹ See Gide Loyrette Nouel in Moscow, for example, available at <http://www.gide.com/front/EN/associes/index.aspx> (showing professional biographies for lawyers working in Moscow, including lawyers educated and licensed in Russia and others in France).

³² See King & Wood in New York, for example, available at <http://www.kingandwood.com/people.aspx?id=Silicon-Valley&language=en> (lawyer biographies revealing individuals educated and licensed in the US, or in China, or in both jurisdictions. This is the same profile of the staffing of US firms offices in China. See Silver et al, *supra* n.20; Sida Liu, *Globalization as Boundary-Blurring: International and Local Law Firms in China's Corporate Law Market*, 42 *Law & Soc'y Rev.* 771 (2007).

firm's headquarters with host country lawyers, where permitted. Even where host country regulation prohibits foreign firms from advising on host country law and employing host country lawyers, the firms still capitalize on host country talent by hiring host country nationals who are licensed in the US or elsewhere.³³

Korea offers an example of this, although the "host country" terminology requires massaging. Since Korean regulation has prohibited foreign law firms from establishing offices in Korea, at least until quite recently,³⁴ firms based outside of Korea develop Korea-focused practices in nearby locations, such as Hong Kong.³⁵ There, they hire Korean nationals who have been educated in law in the US and elsewhere, but who bring the language skills and cultural familiarity to work with Korean clients and counterparties. The Korean nationals who work for US firms typically are US-educated and their advisory work reflects this;³⁶ many also earned the undergraduate law degree in Korea, but are not licensed to practice Korean law. Working alongside these Korean nationals are other lawyers who do not necessarily have particular language skills or experience in Korea, but who bring practical expertise that is useful to clients with business activities in Korea. Together, the teams combine legal and country expertise. Missing here are Korean-licensed lawyers; so far, for this, the firms look to their best friend law firms in Korea.

Globalization with respect to law firms serving multinational corporate clients, then, is more accurately described today as glocalization, and it offers several lessons relevant to a discussion of how to educate law students to prepare them for work in a global environment. First, the firms rely on host country nationals where possible, who may have earned their legal education in the US, in the host country, or in some combination of both. Second, where permitted, host country lawyers advise on host country law. Third, the firms have refrained from going completely local; that is, they continue to rely on lawyers educated and licensed in the home

³³ See, for example, the professional biography of Han Qimen, a partner in the Shanghai office of Gide Loyrette Nouel. China prohibits Mr. Han from advising on Chinese law because of his affiliation with a non-Chinese law firm. Mr. Han earned his bachelor of law degree in China and his doctorate of law in France; <http://www.gide.com/front/EN/associates/index.aspx?partnerId=04e4fd82-9d81-47d5-b03c-def8330cdfab&lang=FR>. See generally Sida Liu, *supra* n. 31 at 771-804.

³⁴ Through its free trade agreements, Korea has promised to slowly open its market to foreign law firms. See Park Si-soo, *Foreign Law Firms Can Open Consultant Offices Here*, Korea Times (3/3/09), avail. at http://www.koreatimes.co.kr/www/news/nation/2009/03/117_40616.html.

³⁵ See, e.g., Anthony Lin, *Seoul Proprietors*, Am. Lawyer 10/2007 ("Many American firms already regularly advise Korean clients on cross-border matters, flying in lawyers from Hong Kong and Tokyo."). In a separate study, I have gathered information, from current law firm websites, on lawyers working for US-based law firms in Hong Kong who have strong ties to Korea, either based on their noting their Korean nationality in their professional biographies, or having earned their undergraduate degree (not necessarily in law) in Korea, along with notations regarding language ability, past work experience and other factors. At least 45 lawyers working for 14 US-based firms in their Hong Kong offices have "strong ties" to Korea and are engaged in practice relating to Korean clients or activities in Korea on behalf of non-Korean clients.

³⁶ That is, they offer themselves as experts in US law. See, for example, biography of Una Cho, senior associate in the Hong Kong office of Orrick Herrington & Sutcliff, avail. at <http://www.orrick.com/lawyers/Bio.asp?ID=205774> ("Ms. Cho focuses her practice on corporate transactions, including U.S. securities law matters, and has also represented clients on international arbitration matters."). Ms. Cho earned her undergraduate degree at Yonsei University and indicates her fluency in Korean and English in her biography.

jurisdiction of the firm, in addition to host country nationals and lawyers, and together these two groups comprise most of the lawyers working outside of a firm's home jurisdiction.

Of course, large multinational law firms are not the only way that lawyers' work intersects with the forces of globalization. In the US and likely elsewhere, lawyers in any private practice setting, not just those working for global firms, might work for clients with problems that cross national borders. This might involve helping a client with employment issues relating to workers in an overseas manufacturing facility, contracting with a call center in India, or advising an individual with property overseas on estate planning. In addition, lawyers who work in corporate counsel roles also may be involved with issues and activities to which globalization are relevant depending on the business of the enterprise that is their employer. In each case, lawyers work with local counsel to help their clients,³⁷ which requires the US-educated and -licensed lawyer to engage with foreign-educated and -licensed lawyers and with a foreign legal system.

While most US lawyers work in private practice, this is not necessarily the case outside of the US. Substantial proportions of law graduates may work in corporate counsel positions or as legal advisors in businesses; they may become judges, government regulators or professors, among other things. Each of these roles might involve a global connection, whether through substantive work - such as when a judge is called upon to decide a case involving foreign parties and the potential application of foreign law - or through relationships with colleagues - such as when lawyers regulating a securities exchange interact with a foreign issuer's counsel. It is not possible to generalize about how these roles are shaped by the forces of globalization, or whether the lessons of globalization's influence in these contexts are the same as those of the private practice experience shared by most US lawyers. In Korea, with its shift to graduate legal education and the anticipated changing pattern of bar passage, the career trajectories of Korean law graduates is still unfolding. My hope is that Kyung Hee University Law School, along with other law school faculties, will study their law school graduates to learn about the role of globalization in their careers.

II. Global Legal Literacy; Glocalization and National Contexts

The glocal approach to global growth characteristic of law firms with international footprints offers four general lessons relevant to educating lawyers to work in a global environment. Together, these lessons begin to fill in the meaning of global legal literacy. In the discussion that follows, I use US-based law firms as the example, but to the extent that firms based elsewhere reflect the same approach to global growth (and they do, as described above), the lessons are equally relevant.

The way law firms staff their overseas offices requires lawyers to communicate effectively with colleagues who have little in common in terms of their professional backgrounds. Communication is key, both because lawyers in the same firm must collaborate in order to work

³⁷ For discussions of what globalization means with regard to legal services, see Silver, *What We Don't Know Can Hurt Us: The Need for Empirical Research in Regulating Lawyers and Legal Services in the Global Economy*, *Akron Law Rev.* (forthcoming 2009/2010) ("Specifically, what is meant by the terms "globalization," "global lawyering" or the "global market for legal services?" ... "Global" here denotes matters that involve multiple jurisdictions or mobility of individuals, organizations or their services across national boundaries.").

effectively, and also because lawyers must work with their counterparts who represent the merger partner, opposing litigant, investor or regulator involved in their client's activities. To be effective, then, lawyers working in a global context must master the art of communicating with lawyers and law graduates who were educated and work in foreign (non-US) jurisdictions.

As I mentioned earlier, my work on globalization includes data drawn from professional biographies of lawyers working for US-based law firms in their overseas offices. In order to prepare for this conference, I wanted to gather a bit more intelligence on the backgrounds of US lawyers who work overseas. These lawyers are on the front lines of globalization, interacting on a daily basis with business executives and professionals educated outside of the US. It seemed to me they might have insight into the necessary ingredients for global literacy for lawyers. In addition, I was curious about their international profile apart from their practice settings. In studying lawyers who work in global settings, a common theme is a general intellectual or personal connection to what might loosely be termed "international matters." This is reflected in different ways, but there are shared experiences and characteristics, too. For example, it is common for these lawyers to have an academic background in language and/or area studies from their pre-law studies. A partner with Morrison & Foerster in Shanghai, for example, who earned his bachelors, masters and JD degrees in the US, reports in his professional biography that he "studied Mandarin intensively at the Stanford University's Inter-University Program in Taipei in 1987-88."³⁸ Others are connected through work and volunteer experiences, such as the Peace Corps.³⁹ Another common characteristic is a more personal connection; one lawyer who works in Paris, for example, reported that his wife is French, and while they had not intended to remain in France indefinitely, his personal connection had cemented his professional relationship to international practice. This lawyer also revealed more international connections in his background: "As a kid, I lived in England for five years; this was before I was ten years old. My wife is French.... often, people tend to have ... international spouses. Otherwise, nowadays, certainly in Paris, ... the expat American is a smaller percentage now than 25 years ago"⁴⁰ Of course, not every US lawyer working overseas has a similar international marker. In addition to reviewing professional biographies on law firm websites, I interviewed a dozen US-educated and -licensed lawyers (all of whom earned their undergraduate degrees in the US, too) about how to prepare law students to work in a global environment. These lawyers are practicing in overseas offices of US-based law firms; their responses, described in part below, support the importance of the global approach to globalization that their law firms pursue.

The communication that informs the notion of global legal literacy involves at least four elements: language, cultural fluency, an appreciation for the role of lawyers, and law itself. I take each in turn.

³⁸ Professional biography of Charles C. Comey, avail. at http://www.mofo.com/international/CN_en/attorneys/5366/summary.html.

³⁹ See, e.g., the professional biography of Christina Del Vecchio, an associate working in London for Latham & Watkins, who earned her BA and JD in the US and notes on her biography, "Prior to attending law school, Ms. Del Vecchio served as a Peace Corps Volunteer in Ukraine from 2000 to 2002." <http://www.latham.com/Attorneys.aspx?page=AttorneyBio&attno=71651>.

⁴⁰ Interview #5.

Language cuts in two directions. On the one hand, English language ability is important for lawyers working for US and British law firms, as well as for lawyers working outside of the US in host country firms that compete and work with US and UK firms.⁴¹ The absence of English fluency can present a barrier to working with English-speaking clients. For many international law graduates who enroll in US LLM programs after earning their first degree in law outside of the US, improving their English language ability is a substantial factor in their decision to enroll in a US LLM program.⁴² One LLM alumni described improving his ability to work in English as one of “two big pillars of the advantage” of a US LLM.⁴³ Another LLM, now working in a top German law firm, described the role of English: “English . . . , . . . for us, it’s another working language, no longer a foreign language.”⁴⁴ A third LLM graduate who practices in Germany with a U.S.-based global firm explained, “[W]e really need these English language skills. And, of course, you know people spend some time abroad that helps to crossing the bridge. We advise a lot of U.S. clients, or international clients. So it helps if you have been, or spent some time in, a different country.”⁴⁵ A fourth, from Latin America, confirmed this: “English is the most important thing. You better know your English. In a law firm, it doesn’t really matter if you know the law, but you better know your English. You must be comfortable speaking and writing, especially for doing corporate law.”⁴⁶ The firms confirm that they consider English skills important in hiring decisions. A hiring partner for a global US-based firm explained, “The key element for a local hire is that they must have excellent English ability. Strong English skills is the key component for lawyers in an international firm.”⁴⁷

On the other hand, certain lawyers working in the overseas offices of US-based law firms describe host country language skills as critical. One lawyer working in the Paris office of his firm described his fluency in French as a convenience for clients: “It’s an intangible, because most clients speak English. But it’s an additional comfort factor for clients, and in a service business the client shouldn’t have to make an extra effort to speak a foreign language.”⁴⁸ Other US lawyers working overseas disagree on the need to speak a second, third or fourth language in addition to English, and while it is quite common for overseas office lawyers to speak the host

⁴¹ See Silver, *The Variable Value of U.S. Legal Education in the Global Legal Services Market*, (working paper on file with author).

⁴² In a study of graduates of US LLM programs from the years 1996, 1998 and 2000, interest in improving English language ability ranked the third most popular motivation for enrolling in a US law school LLM program. See Carole Silver, *Agents of Globalization in Law*, Law School Admission Council Research Report (2008), on file with author. The LLM graduates quoted in the text are representative of LLMs generally, and attended diverse US law schools, and not simply the top tier. That is, this need for English expertise is widespread across home-jurisdiction of LLM students and across US law schools with diverse characteristics, including their US News ranking.

⁴³ Interview #10 (LLM graduate working as corporate counsel in Germany).

⁴⁴ Interview #10 (7/2008).

⁴⁵ Interview #11 (7/2008)(LLM graduate working for US-based law firm in Germany).

⁴⁶ Interview #15 (5/2003)(LLM student from Latin America).

⁴⁷ Interview #12 (US-based lawyer in managerial role with regard to international matters and staffing for his firm). Some take this position even farther, see David E. Van Zandt, *Globalization Strategies for Legal Education*, U. TOLEDO L. REV., avail. at <http://www.law.northwestern.edu/communicate/dean/globalstrategy.pdf> (“Business English is the lingua franca of both international business and the accompanying legal practice. Finally, the role (and style) of the international lawyer has been an adaptation of that of the Anglo-American lawyer. It involves aggressive business counseling that requires the lawyer to have a strong understanding of business and his or her clients' own businesses.”).

⁴⁸ Interview #5.

country language, it is not a universal. According to one lawyer, this depends in part upon the difficulty of the language at issue; Mandarin, for example, is so challenging that it is not necessarily mandatory. Still, even Mandarin does not necessarily earn lawyers a pass. This lawyer described his experience working in Hong Kong, where most of his firm's work involved China: "For PRC-based deals, language was critical. Particularly in China-based deals, meetings, diligence, drafting sessions - either in state privatizations or smaller deals, a lot of work was conducted in Mandarin. Partners at most firms speak Mandarin or rely on associates who are native speakers. One trend in Asia is to hire associates who are native speakers, and who have [US] JDs or LL.Ms."⁴⁹

The issue of language ability is uncomfortable for Americans because we tend to lag behind much of the rest of the world in ability and fluency. But in reviewing the biographies of many US-educated and -licensed lawyers working outside of the US for US-based law firms, there is a substantial group that is fluent in the host country language, in addition to those who are obvious area studies majors. In fact, in reviewing professional biographies of US-educated and licensed lawyers working for the 60-plus largest and most international US-based firms, slightly more than half indicated that they speak a second language in addition to English.⁵⁰

Apart from the ability literally to speak the host country language is the issue of language sensitivity. Lawyers working in a global setting must be good at communicating across these barriers. For US lawyers, this means communicating with others whose first language is not English. As one international lawyer explained,

"It is more about dealing with people whose English is a second language. Simple stuff like how you interact with people. You don't speak the same with someone whose first language isn't English as you do with someone who's been raised in the US. I've often had Italians say to me, 'We don't understand Americans, but we understand every word when you're speaking.' ... I think if you spend a lot of time working with people from outside of the US, you get appreciation for how they do business, you develop a cultural sensitivity, it's the same thing. ... [P]eople [need] to go slow. They need to use more rudimentary language"⁵¹

But speaking slowly and avoiding jargon is only part of the lesson. In addition, lawyers must develop sensitivity to culture and context. One international lawyer explained, "If you are interested in an international career, you must be able to speak international, to know how to talk, communicate."⁵² To be effective in "speaking international" lawyers must know something about the particular national context of their counterpart. Another lawyer thought the issue of cross-cultural sensitivity is really more a "matter of good manners, good breeding. Get the little book on local manners," he suggested.⁵³ But communication and sensitivity also may relate to

⁴⁹ Interview #3 (US-educated and -licensed lawyer working in South America)

⁵⁰ Professional biographies were gathered for 406 lawyers who earned their undergraduate and law degrees in the US. Of these, 211 indicated that they spoke a second language in addition to English; 195 indicated only English in their professional biographies. For more information on the data, see Silver et al, *supra* n.20.

⁵¹ Interview #1 (US-educated and -licensed lawyer working in the Middle East).

⁵² Interview #4 (US-educated and -licensed lawyer working in the EU).

⁵³ Interview #5.

law firm culture in addition to national culture. For example, a lawyer working in the London office of his firm commented that lawyers in different offices may not have the same awareness and comfort with the firm: “They don’t have intuition regarding the organization - they feel so distant from the mothership.”⁵⁴

As to law itself, the challenge is in knowing how to work with lawyers who are experts in another legal system, and understanding enough about host country law to flesh out the relevant questions about the applicability of that law to the client’s activities. In order to learn enough about local law, “you rely on ... [local counsel]; it’s not rocket science, it’s just like learning something new - it could be learning a new area in US law. You talk to an expert if you’ve got an antitrust issue, and you may not become an antitrust expert but at least you have an understanding of the issues. You pay attention and ask questions.”⁵⁵ The stress on communication - and especially listening - is strong here. Other international lawyers suggested that book learning was useful as a foundation: “I had a course in law school ... regarding differences in legal systems. It was primarily focused on the English and French systems but it was a pretty good course. ... [O]ne should include systems from Asia in the mix”⁵⁶ For lawyers initially educated outside of the US or another common law jurisdiction, exposure to the common law is significant. As one US LLM graduate explained,

“I think what helped me a lot is to look at my work from a different standpoint, from a different education. This is a civil law system here [in Germany], ... and when you go to the United States even the tax law ... is common law Just having the opportunity to approach items from another viewpoint helps you a lot to think of other solutions. It also helps to communicate with foreign lawyers because you know how they are talking, what is important to them and maybe sometimes issues are important to them that are just not very important to us. And you need to communicate these issues, you need to communicate your own items to the other lawyers but you need to communicate these items also from other lawyers to your clients. Had I not done the LLM ... or at least some legal education in the United States or any other let’s say common law country, that would have been much more difficult I would say.”⁵⁷

The nuances and application of host country law to a particular issue necessarily is left to experiential learning in practice. The nature of that local or host country law also matters in terms of its development and richness. For example, one lawyer explained his approach to working with lawyers from countries in which the law governing the transaction at issue is unsettled and emerging:

⁵⁴ Interview #12 (US-educated and -licensed lawyer working in London).

⁵⁵ Interview #1.

⁵⁶ Interview #2 (US-educated and -licensed lawyer working in the Middle East).

⁵⁷ Interview #13 (LLM graduate working in Germany, small German firm). The comments of another LLM also are helpful: “[O]ne thing is to study the law, get to know the system, understand it, be able to make a comparison between one system and my system, the one I knew and the common law system. And then, I wanted to see how, in practice, U.S. attorneys thought, what was the thought process, how they worked. Because ... my plan was always to go back to Argentina, practice there, and hopefully be exposed to international deals. And I thought, well it would be great ... if I had to interact with U.S. attorneys, it would be great to know not only their law, but the way they think and the way they work.” Interview #14 (LLM graduate working in the US).

“We need to get very granular, we have to ask questions repeatedly to find out what the issues are. ... I have to ask a lot of questions and challenge the local lawyers. ... When dealing with local counsel in different jurisdictions where the law isn’t well developed or isn’t cut-and-dried, it’s much more vague And you have to really be very practical, to put things in layman’s terms. If you start talking about analogous situations in US or the UK, it doesn’t resonate with people who haven’t practiced in those jurisdictions. You just take more of a common sense approach, but also taking into account what local law is and how they operate locally. You can’t assume a similar sophistication as US or UK lawyers.”⁵⁸

This raises the last element of global literacy, relating to an appreciation of the different roles lawyers play in society. In part, such an appreciation is likely to reveal the authority of a lawyer and perhaps even the contours of her relationship to her client. As one lawyer explained, “there should be a fundamental understanding of how lawyers are trained around the world; there is a distinct difference and not understanding that difference can make for some very challenging experiences.”⁵⁹ Another described the issue a bit differently, emphasizing that a constrained role affects the quality of representation: “You can only be as good a lawyer as your client is willing or has patience to let you be. You can’t develop to the highest level ... if clients are unsophisticated. ... Today, you rarely run into a client who wants to do [a deal] on the back of an envelope.”⁶⁰ And this issue of the role of lawyers relates to law itself. This is apparent in the following explanation of the different approaches of French and US lawyers:

“For example, the French - because the US is so litigious, and damage awards are so significant compared to anywhere else, ... lawyers play a bigger role in business affairs than they do in France. The American lawyer who comes into a French context has to be careful to not be perceived as the typical verbose, nit-picking American lawyer, simply because [in France] the lawyers haven’t played such a role, the written contract was less important, less detailed, and so that sensitivity - an American lawyer has to be much more careful about attributing too much importance to his role in the process.”⁶¹

The notion of global literacy for lawyers, then, takes its outline from the glocal approach to globalization characteristic of law firm international growth. In countries where private practice is not the mainstay of lawyers’ activities, the meaning of global legal literacy may well take on different content. But from the perspective of the US, and likely the UK as well, and in other jurisdictions where law firms approach global growth through a glocal strategy, global legal literacy must include the ability to communicate with foreign lawyers, and this in turn encompasses language ability, language and cultural sensitivity, an understanding of the role of lawyers in society as well as of the fundamentals of the law itself. In the next section, the approach to teaching global legal literacy is considered.

⁵⁸ Interview #1.

⁵⁹ Interview #2.

⁶⁰ Interview #5.

⁶¹ Interview #5.

III. Teaching Global Legal Literacy: National Challenges

The elements of global legal literacy from the US perspective, then, and based on the structure of global practice pursued by large law firms specializing in representing multinational business interests, include language ability and sensitivity to the challenges of communicating with those whose first language is not English (or whatever the home language of the lawyer happens to be), cultural fluency, an appreciation for the variations in the role of lawyers in different national contexts, and some understanding of the differences characteristic of foreign legal systems, if only to reveal what is unique about the lawyer's home legal system. Some of this can be learned on the job. For example, as described earlier, it is common for lawyers to learn enough about those foreign legal regimes with which their work intersects from discussions with local counsel or locally-educated colleagues.⁶² But on-the-job learning for effective communication across borders probably is not enough, and law schools might add value here by exposing students to multinational colleagues and positioning their domestic law courses in a multinational context.⁶³

In the US, we can draw on existing student populations for these purposes. We are fortunate to have substantial numbers of international law students enrolled in US law school programs on a regular basis.⁶⁴ Many US law schools offer one-year masters degree programs culminating in an

⁶² See text at n.54, *supra*. Another international practitioner (also US-educated and -licensed) explained his approach to learning host country law: "You work with the best lawyers. I know more about [host country] law than I do about US law. ... It's about asking questions, getting answers and remembering it. That's how it works. So over time, I've worked with various local counsel, and now I know most, the questions that come up have come up earlier. So I know the answer. Sometimes I check with local counsel to make sure nothing's changed, sometimes not. That isn't very diff than learning in a New York office. What's different is that you need better managing skills; you're working with people not under same roof. More networking is involved. It's not about filtering or quality, it's about building relationships with people who don't have a contractual obligation to support you." Interview #20 (US-educated and -licensed lawyer working in Europe).

⁶³ See generally Simon Chesterman, *The Evolution of Legal Education: Internationalization, Transnationalization, Globalization*, 10 *German L.J.* 877, 883 (2009) ("To operate effectively in such a world, individual lawyers need to be comfortable in multiple jurisdictions, often simultaneously. In the words of one dean, we need to educate lawyers to be "residents" rather than "tourists" in new jurisdictions. At the same time, the students entering law school are different. In the course of the twentieth century, we moved from a tradition of a person having one job as a career to expecting to move jobs once or twice. We now deal with students who expect to move *countries* a few times, seeing themselves as part of a global elite in a worldwide market for talent." (footnotes omitted))

⁶⁴ It is difficult to assess the number of foreign law graduates enrolled in LL.M. programs or the number of LL.M. degrees granted to foreign law graduates. At least three sources offer relevant information: The American Bar Association Section of Legal Education and Admissions to the Bar, the National Conference of Bar Examiners, and the Institute for International Education. The Section of Legal Education gathers information on law schools and enrollment, including enrollment of foreign nationals (although not necessarily limited to LL.M. programs). While most of these likely are in LL.M. programs, some certainly are pursuing the JD degree. In addition, it is clear from the data that certain law schools did not report enrollment of foreign law graduates in their LL.M. programs in response to the question about foreign national enrollment. See <http://www.abanet.org/legaled/statistics/charts/OG%20Left%20Page%20202008.xls> (visited 5/20/08). The National Conference of Bar Examiners reports on bar-examination test takers based on the source of their legal education (See statistics at the NCBEX Web site, <http://www.ncbex.org/bar-admissions/stats/>). The National Conference of Bar Examiners data also is both over inclusive (because there are repeat test takers who did not recently complete the LL.M., and certain test takers may not have completed an LL.M. at all) and under inclusive (because not all LL.M. graduates sit for a bar exam in the United States). Finally, the Institute of International Education studies international student enrollment by gathering information from schools (but not limited to law schools) in the United States (See IIE Open Doors Report, FAQs, at <http://opendoors.iienetwork.org/?p=25092#faq3>

LLM degree; certain programs are specifically aimed at foreign law graduates, while others are open to them as well as to US JD graduates.⁶⁵ While LLM programs vary substantially in their frameworks and requirements, it is common for international LLM students to enroll in upper level law school courses alongside JD students.⁶⁶ Classrooms offer a useful setting for learning how to communicate, both from formal discussions in class and informal collaboration outside of class. For the LLMs, whose entry into US law schools is motivated in part by a desire to improve their English language skills,⁶⁷ interaction in class and among participants whose first language is English would satisfy important goals. As a result, classroom integration of international LLMs and American JD students offers an opportunity for both groups to benefit, and for schools to educate their JDs in the language of globalization.

Moreover, international LLMs are interested in developing relationships with American JD students. They come to the US to learn about US law and lawyers, and interacting with US law students is a common goal. Nevertheless, many international LLMs experience frustration in this regard. In my discussions with LLM graduates about their experiences in US law schools, as part of an ongoing study of the role of US legal education in the careers of international

(“surveys sent to over 2,800 accredited U.S. institutions, who report on the international students enrolled at their colleges and universities”). IIE’s number is not limited to those persons studying in a law school degree program; undergraduates pursuing “legal studies” and nondegree students also may be included in their figure).

These sources, each of which is imperfect, suggest that annual enrollment of foreign law graduates in LL.M. programs currently is likely at least 4,000 persons. The ABA reports 1969 foreign nationals enrolled in U.S. law schools for 2008 (see <http://www.abanet.org/legaled/statistics/charts/OG%20Left%20Page%202%202008.xls>). This number is almost certainly too low, since it reported 4,469 foreign nationals enrolled in 2004. See Silver, *Internationalizing U.S. Legal Education*, supra n.[10] at 149 (Data from the ABA for 200 was received from David Rosenlieb at the Section of Legal Education and Admission to the Bar). The NCBE reported 4,505 persons who completed their legal education outside of the United States sat for a bar examination in 2006 (see http://www.ncbex.org/fileadmin/mediafiles/downloads/Bar_Admissions/2006stats.pdf), and IIE reports 6,368 foreign students were in the United States studying law and legal studies in its 2007 Open Doors Report (see FIELDS OF STUDY, INTERNATIONAL STUDENTS, *Open Doors 2007, Report on International Educational Exchange*, Table 16, INTERNATIONAL STUDENTS BY FIELD OF STUDY, 2005/06 & 2006/07 <http://opendoors.iienetwork.org/?p=113124>). The 4,000 figure is approximately 10% of the number of JD degrees awarded in 2008; see <http://www.abanet.org/legaled/statistics/charts/stats%20-%201.pdf>. Although a precise number for foreign law graduate LL.M. enrollment is not available, the trend of growth is unmistakable: The number of U.S. law schools offering LL.M. degrees increased more than 50% from 1998 to 2003, and estimates of enrollment indicate growth of more than 100% during the period from 1999 to 2004. Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 *Cardozo J. Int’l & Comp. L.* 143, at 147–149 (2006). There is every indication that the size of enrollment and number of programs has continued to increase. See, e.g., Michael Goldhaber, *They Rule the World*, *Am. Lawyer* (9/05) (“The 200 students in Columbia’s 2005 LL.M. class (roughly double that school’s LL.M.s in 1995) hailed from 50 nations.”).

⁶⁵ At least 50 US law schools offer LLM programs specifically for foreign law graduates. See <http://www.abanet.org/legaled/postjdp/programs/postjdc.html#2foreign>. There is reason to believe that this does not include all US law school LLM programs open to foreign law graduates. In addition, the ABA Section of Legal Education and Admissions to the Bar lists 400 LLM programs.

⁶⁶ See, for example, the description of courses available to international LLMs at Georgetown: “Students trained outside the U.S. who wish to delve into other aspects of the U.S. legal system will find a[] ... rich curriculum in almost any area of study they can imagine. The full range of J.D. and LL.M. courses is available to them as they develop an individual course of study.” See <http://www.law.georgetown.edu/graduate/foreign.cfm#general> (Master of Laws in International Legal Studies, Curriculum).

⁶⁷ See note 29, supra (improving English language ability is the third most common motivation for enrolling in an LLM program).

lawyers,⁶⁸ I have learned that international LLMs often find it difficult to develop relationships with American JD students. One LLM graduate explained, “This is one of the sad things about the [LLM] program. I met lots of LLMs from many countries, but not enough JDs.”⁶⁹ Another reported that she was able to make some friends of JD students, but “[m]ost of my JD friends were transfer students, who also felt excluded.”⁷⁰ A third LLM graduate expressed her frustration more starkly: “The JDs have such an ambivalent attitude towards the LLMs, you know, it’s like, as far as they’re concerned, it’s like this new class of colored people come every year and then leave.”⁷¹

Despite these frustrations with regard to JDs, LLMs report developing strong relationships with their LLM classmates. Some see these as valuable professionally: “There is no doubt that my US law qualification has opened many doors in both a professional and private sense. However, the contacts and networks created by classmates are a much more effective tool than the qualification alone.”⁷² Others consider their LLM relationships as purely social and report that they do not use the relationships for business referrals or other professional development.⁷³ Nevertheless, the LLMs create strong and lasting relationships; they continue to visit one another and even attend weddings of their former classmates as long as ten years after graduating. Interacting with a multinational group is a central value of the LLM experience, both personally and professionally for graduates and also as a signal to employers.

With the willing collaboration of international LLM students, US law schools might structure a curriculum that supports meaningful interaction among domestic and international students and helps both groups gain communication experience and expertise. Classrooms might be internationalized in terms of students, apart from or in addition to the content. Interaction must be thoughtfully and carefully structured so that the home court advantage of the JDs is balanced. This is no small task, and I do not minimize the challenges of structure or implementation. Nevertheless, over years of teaching integrated groups of LLMs and JDs and working informally with international LLM students, it is clear to me that it is possible to create a framework for teaching the process of learning collaboratively in the context of teaching substantive law. Insight from international LLM program directors as well as from experts in other fields (for example, intercultural communication) would be helpful in this regard.⁷⁴

In addition, international LLM students might educate American students about the differences in their education and training compared to the US system. To the extent LLM students have worked in law prior to enrolling in the LLM, they also bring important insight into the roles

⁶⁸ The study is described in Silver, *Agents of Globalization in Law*, *supra* n.66, and has been generously funded by the Law School Admission Council.

⁶⁹ Interview #15 (LLM graduate from Latin America).

⁷⁰ Interview #16 (LLM graduate from Belgium).

⁷¹ Interview #17 (LLM graduate from India, working in the US).

⁷² Interview #18 (LLM survey respondent, comment).

⁷³ In response to my question about business referrals among LLM classmates, one LLM graduate reported “We tried that for the last seven years between my Swiss friend and my Austrian friend, we tried to refer but it never works out. It really never does.” Interview #19 (LLM graduate working in Germany).

⁷⁴ The details of such a framework are the subject of a separate and forthcoming article focused on US legal education.

lawyers play in their home countries; lessons on differences compared to US lawyers might be drawn out in discussions with JD alumni or faculty.⁷⁵

With existing resources, then, US law schools could expose their domestic students to the challenges of communicating in a global context, offer them an opportunity to learn from peers whose first degree in law was earned in the context of a different national legal system, and facilitate lessons involving variations in the role of lawyers in different countries. These lessons might be offered in any substantive law course in which American JD students and international LLM students must work together, and in which at least one part of their collaboration depends upon the knowledge of one being shared with the other. A negotiations course is the most common example of this sort of experiential learning environment, and it is the course that elicits the most positive comments from international LLMs (regardless of school), precisely because of the lessons learned about how their negotiating partners communicate and approach problem-solving.

This sort of cross-national learning is not where US law schools have directed their efforts, to date.⁷⁶ Instead, most of the discussion about globalizing law schools has focused on more traditional coursework. The typical elements of an international curriculum in US law schools include an increasing number and variety of comparative, transnational and international law courses.⁷⁷ Many schools also offer an internationally-focused clinic, study abroad opportunities and overseas intern- or externships.⁷⁸ These are useful, but in nearly every instance, curricular options maintain the borders around JD students and LLMs, American and international students. Rarely do US law schools offer a structure specifically designed to help students learn to work

⁷⁵ The details of how to implement such conversations and teaching must be left to US law schools to explore. For example, during the period that I was on the faculty of Northwestern University Law School, my interest in LLMs led me to organize a series of presentations and discussions loosely titled “Country Talks.” LLM students described the role of lawyers and their home country systems of legal education and law for the Northwestern Law community, including faculty, staff and JD students. Others who direct LLM programs have designed similar programs.

⁷⁶ For a discussion of how US law schools have responded to the need to teach about international matters, see Toni M. Fine, *Reflections on US Law Curricular Reform*, 10 *German L.J.* 717, 737 (2009).

⁷⁷ A typical example is Boalt Hall’s Comparative (<http://www.law.berkeley.edu/147.htm>) and International (<http://www.law.berkeley.edu/149.htm>) Legal Studies curricula. Both are course-based learning programs. To be sure, Boalt also offers an International Human Rights Clinic, but even is a relatively traditional clinic despite its international substantive focus. Harvard has instituted a new requirement during the first year for an international or comparative law course, but with the exception of Professor William Alford’s course, Comparative Law: Why Law? Lessons from China, the composition of students in the class is not mentioned (indicating that it remains a traditional learning experience). Alford’s course description notes that it is available to both 1Ls and LLM students; see <http://www.law.harvard.edu/academics/courses/2009-10/?id=6855>.

⁷⁸ See, e.g., Santa Clara Law School’s study abroad and internship program, avail. at <http://law.scu.edu/international/summer-abroad-programs-by-subject-area.cfm#business>; the University of Michigan’s description of its international offerings, avail. at <http://www.law.umich.edu/prospectivestudents/internationalism/Pages/default.aspx> (“Finally, students may receive one semester of credit either through study abroad at foreign law schools or through externship opportunities. Michigan offers a fall externship program with law reform agencies in South Africa, and a winter program in Geneva with leading UN agencies and international NGOs.”); the University of Texas international internship program, avail. at <http://www.utexas.edu/law/academics/international/intern.html>.

with students and/or lawyers educated and trained outside of the US.⁷⁹ The traditional substantive law focus of the international curricula, alone, does not prepare students to work in a global context.⁸⁰ Instead, students must be encouraged to develop comfort in a global environment, and this requires a shift in emphasis towards relationships, processes of learning, and the particular national characteristics of members of the learning community.

Certain schools may want to go further and actually screen for international credentials among their JD applicants. This would ensure that the entering class includes students with pre-law experiences to support global lawyering, including academic studies in area and language fields and work experience outside of the United States. These students also likely bring an

⁷⁹ There are notable exceptions at a handful of US law schools that have developed innovative programs that include some element of helping students learn in a cross-national context. One of the most promising is Georgetown's Center for Transnational Legal Studies, which was developed well before I joined the Law Center. CTLS offers Georgetown JD students an opportunity to spend one semester in London learning in a truly multinational classroom of students, drawn from partner schools and elsewhere. Faculty are also included in the cross-national experiment; partner schools send faculty to CTLS, and they teach in cross-national teams. Each course during the semester embraces a comparative or transnational framework. The importance of the diversity, nationally, of the participants in CTLS, both students and faculty, is central to the program's design. See <http://ctls.georgetown.edu/>. Fordham also has developed a promising program in its International Sustainable Development Clinic, which embraces the notion of offering its students the opportunity to work in cross-national teams, avail. at <http://law.fordham.edu/clinical-legal-education/5442.htm> ("Fordham teams are partnered with African law students to conceive, design, and implement projects in Africa designed to contribute to the achievement of the Millennium Development Goals (MDG's), the timebound set of measureable goal and targets that the international community has adopted for promoting development in the early 21st century."). Similarly, George Washington's International Human Rights Clinic offers students a chance to work with foreign lawyers ("Working under close faculty supervision, they partner with experienced attorneys at organizations engaged in domestic and international litigation to provide pro bono legal services to victims of human rights abuses in the United States and abroad."), although the disparity in students and lawyers' expertise may challenge students. The University of Michigan's International Transaction Clinic offers an interesting option and comes close to the goal of cross-national learning environment by combining a transaction focus with international issues. While students work in teams, it is not apparent that the teams themselves are cross-national. See <http://www.law.umich.edu/centersandprograms/clinical/internationaltransactionclinic/Pages/FAQsAboutTheITC.aspx>. None of these programs are available to all students in their schools, and none relies on the school's own international LLM students, although each of the four schools mentioned in this note has a healthy LLM program to draw upon; for information on the international LLM programs, see Georgetown (<http://www.law.georgetown.edu/graduate/foreign.cfm#general>); Fordham (<http://www.law.fordham.edu/admissions/471.htm>); George Washington University (<http://www.law.gwu.edu/Academics/degrees/LLM/Pages/general.aspx>); the University of Michigan (<http://www.law.umich.edu/prospectivestudents/graduate/Pages/advanced-index.aspx>).

⁸⁰ My interviews with US-educated and -licensed lawyers working outside of the US emphasized this point repeatedly. They did not discourage students from taking international, comparative or transnational courses, but simply did not see these as preparing them for practice in a global environment. One lawyer commented, "My passionate belief is that, while courses ... are all well and good, if you are interested in international practice of any sort you need hard skills and international law isn't one of them. You need to know how to do things. Even if you work in an NGO or for the government, you still need to be good at things.... I have a long resume as a litigator - that's what I'm good at." (Interview #4). Another explained, "I continue to adhere to the philosophy that law students should take courses that interest them, not what they think they will need to know when they begin the practice-- as with most predictions, they will probably guess wrong, and in any event they will do better studying something that interests them (which is important, since employers tend to care more about GPA than the courses taken). ... I had to go back to my transcript to get information on the courses I took. I was surprised that I'd taken courses that appear now to be relevant [to my practice overseas]. ... In fact, the courses weren't that important to my career They were not directly relevant." (Interview #20).

international-mindedness to their law studies and may be more inclined to integrate with international LLM students. One international practitioner who discovered a love for language and travel before entering law school illustrates this view:

“I was very close to LLM students when I was at [my law school]. Most JDs left them alone. I viewed LLMs as friends, certainly more interesting than lots of other Americans. I also viewed them as potential colleagues in my career; I can’t tell you how much work I’ve done with former LLM colleagues from [my law school]. I’ve recommended them for jobs, worked on deals with them; they recommend each other for deals. ... Get to know the LLMs, they’ll be partners in their law firms one day. They all are now.”⁸¹

Of course, this US framework is not uniformly relevant for law schools and students outside of the US. National differences in legal education and student career expectations and experiences suggest different solutions to the challenge of teaching global legal literacy. In Europe, for example, the Erasmus exchange program may facilitate the kind of multinational experiences and learning described earlier. International law students may be less a part of the solution for law schools outside of the US. In Korea, which is a substantial exporter of students to the US and elsewhere, the foreign study experiences of students may be part of the solution if these students can bring their lessons back home to share with those who are unable to study abroad.

On the other hand, outside of the US, foreign language study is a more common element of legal education and qualification. In Korea, the bar examination includes an English language exam, and traditionally has included the option of other languages, too.⁸² If such a requirement becomes widespread, perhaps it will encourage US law schools and bar regulators to reconsider their traditional ambivalence about language studies.

Finally, the ingredients of global legal literacy require students to escape traditional passive roles. The kind of learning described above as supportive of teaching students to be effective communicators in a global environment may necessitate rethinking the norms of legal education. Students must relinquish their roles as passive learners in favor of experiential learning. At the same time, the faculty must collaborate with students who bring multinational expertise, which will cause a shift in the power balance in legal education. And none of this takes into account the hurdle of bar qualification, which attracts so much attention and energy. Nevertheless, schools may discover that global literacy would enhance the prospects of all students, whether or not they ultimately work as lawyers.

IV. Conclusion

⁸¹ Interview #8 (US-educated and -licensed lawyer working in South America).

⁸² Soogeun OH, *Globalization in Legal Education of Korea*, avail. at <http://www.aals.org/international2004/Papers/Oh.pdf> (“English was adopted as a required subject in the Bar Exam. In the past, one could choose any language test among English, French, German, Japanese, Chinese and Spanish and add its score to those of six other tests in the first qualification test. Since 2004, however, the application qualification is granted only to those who acquire more than a designated score in the English test.” (footnote omitted)).

This essay is only a starting point for thinking about how to educate lawyers to work in a global environment. I have tried to identify the common themes of globalization and the challenges presented for any would-be global lawyer. But national differences are substantial and important. Lawyers first must master their domestic systems and learn to be effective within the national framework before having opportunities to contribute in a global setting. The traditional advice for US lawyers interested in working overseas was based upon the importance of being a US lawyer: get trained at home, learn about the firm's culture and clients, develop strong relationships with lawyers in the US, and only then is it beneficial - to firm and lawyer - to venture overseas. This advice is still current and was repeated by one of my international practitioner sources: "the best fundamental advice is to become the very best US or English or Chinese (whatever the case may be) lawyer you can be and then adapt to the foreign location."⁸³ It is this dichotomy between local and global that informs the approach of large multinational law firms as well as their lawyers.

In closing, I offer a couple of suggestions for future research to further our understanding of how to teach global legal literacy and what it means in different contexts. It would be useful to know more about the role of law graduates outside of the US. What roles do law graduates play, domestically and in global settings? Where private practice assumes a less substantial role in graduates' professional lives, what are the dominant career paths and what do they reveal about the influence of globalization? What is the impact of foreign legal education on their opportunities and career choices? How fluid are their careers in terms of changing roles, from private practice to corporate counsel to public figures such as judge and prosecutor, and how do the variations in opportunities affect our thinking about what global legal literacy means? Several US law schools have begun to take seriously the study of their alumni.⁸⁴ In addition, the After-the-JD research project offers a more general view of young lawyers' careers. Perhaps an investigation along similar lines, directed specifically at global issues, is possible. A second issue relates to the way lawyers practice in private firms, and whether the lessons of the global approach to expansion characteristic of US firms ring true for law practices based outside of the US. What are the challenges of working with foreign lawyers, and how do these relate to lawyers roles and to the substantive law involved? Last, are particular areas of law more significant than others in their relationship to global forces, or is the key to global practice opportunities related to client identity? The answers to these questions may well differ in different countries, and this might help us identify ways in which the content of global legal literacy must change depending upon context.

⁸³ Interview #2.

⁸⁴ In fact, Bryant Garth, Dean and Professor of Law at Southwestern Law School, has commented that it might be considered malpractice for deans to be ignorant of the careers of their school's alumni. Alumni surveys have been or are being conducted by the law schools of Georgetown University as well as the University of Michigan, Harvard, Indiana University, among others. See, e.g., Kenneth Dau-Schmidt, Marc Galanter, Kaushik Mukhopadhaya, Kathleen E. Hull, *Men and Women of the Bar: An Empirical Study of the Impact of Gender on Legal Careers*, 16 *Michigan J. Gender & Law* (2009); David L. Chambers and T. K. Adams, *Who We Were and Who We Are: How Michigan Law Students Have Changed Since the 1950s: Findings from 40 Years of Alumni Surveys*, 51 *Law Quad. Notes* 74 (2009) and *Starting Out: Changing Patterns of First Jobs for Michigan Law School Graduates*, 52 *Law Quad. Notes* 23 (2009); Kenneth Dau-Schmidt, Jeffrey Evans Stake, Kaushik Mukhopadhaya, Timothy A. Haley, 'The Pride of Indiana': *An Empirical Study of the Law School Experience and Careers of Indiana University School of Law-Bloomington Alumni*, 81 *Ind. L. J.* 1428 (2006).

While the meaning of global legal literacy may be variable, the need for law graduates to have it is not. Law graduates compete in an increasingly connected market for talent in which their competitors include graduates of business schools and other disciplines; the competition, that is, is over individuals and their abilities but also about law itself. The buyers in this market include law firms, businesses and governments, among others. To maintain a position of value in the global war for talent, law schools must prepare their graduates to capitalize on globalization and become fluent in “speaking international.”⁸⁵

⁸⁵ See text at n.51, *supra*, citing Interview #4.