A World of Lawyers: The Internationalization of Legal Practice

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Executive Summary

Since the late 1960s, a number of U.S. and British law firms have quietly and successfully gone global. Traipsing after their far-flung corporate clients, these law firms have slowly but steadily established their own global networks. Unlike manufacturing firms that preceded them abroad, law firms are essentially service firms, selling the ephemeral products of information, skills, and advice. As such, they rank among the first global providers of information-based services.

This report takes a brief, preliminary look at the internationalization of the legal practice. It explores how law firms have entered the international economy and highlights issues particularly relevant to their success and sustainability. The four factors that have contributed most directly to their success—size, reputation, "walking assets," and a balance between global and local interests—are not specific to the legal profession but are applicable also to other information-based industries.

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One

Introduction: Law as Commercial Enterprise

Generally, business articles about lawyers begin with a joke, or at least a disparaging comment. Sharks or vultures or Shakespeare's oft-cited suggestion are mentioned.[1] A usual focus is on law's relationship to business: how managers deal with cross-border legal conflicts, for instance, or how particular legislation shapes the contours of competition within an industry.[2] This paper takes a different tack. It looks at law not as a backdrop to or tool of commerce but as a commercial enterprise in its own right. It looks at lawyers not as advisors or negotiators but as managers of large, complex, and often very successful multinational enterprises.

Since the late 1960s, a number of U.S. and British law firms have quietly, successfully gone global. Traipsing after far-flung corporate clients, these firms have slowly and steadily established their own global networks. In the mid-1990s, they together employ thousands of people and have created management structures that control and coordinate expanding clusters of relationships. Several of the largest firms are multinationals in their own right—with one critical distinction. Unlike the manufacturing firms that preceded them abroad, law firms are essentially service firms, selling the ephemeral products of information, skills, and advice. As such, they rank among the first global providers of information-based services, and in this role they have had to grapple with many of the issues facing other information-based firms. They have not always been successful, and most of them still concentrate on the domestic aspects of their work. The major international law firms, however, such as White & Case, Cleary, Gottlieb, and Clifford Chance, have built organizations whose strengths extend considerably beyond their home bases.

This paper analyzes the internationalization of the legal practice. It does not attempt a full-fledged account of the international practice of law nor dwell at any length on the score of internal management issues law firms face once they stretch across national borders. It doesn't explain how law firms should go abroad or what techniques might be most appropriate for managing the internationalization process. Rather, the aim is solely to explore how law firms have entered the international economy and to flag the issues that seem most relevant to their success and sustainability. Accordingly, after a brief history of legal practice in the United States, the bulk of the paper describes how U.S. and British law firms have gradually

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[1] "First thing we do, let's kill all the lawyers." William Shakespeare, *Henry VI, Part 2*, Act IV, 2, l. 64.

[2] See, for example, Martin Q. C. Lee, "Business and the Rule of Law in Hong Kong," *Columbia Journal of World Business* **30** (Summer 1995), 28-32; and Ann Elizabeth Nayer, "The ABC of Russian Business Law," *Columbia Journal of World Business* **29** (Spring 1994), 87.

expanded abroad, following first on the tracks of home-based clients and then developing independent foreign practices. It concludes by describing how law firms have wrestled with the challenges of globalization and what their experiences seem to have in common with managers in other information-based industries. It points, in particular, to four lessons: (1) the value of size; (2) the value of reputation; (3) the importance of "walking assets"; and (4) the need to balance global and local interests.

Two

The Evolution of Legal Practice in the United States

Like accountants, doctors, consultants, and advertising agencies, lawyers have always sold a somewhat awkward product. They sell an information-based service, something customers can't really see, or feel, or "drop on their foot," as some describe it. They sell a product whose value lies in its customization, a product difficult to stockpile or resell, one based on inherently human, rather than physical, capital. They sell services, but of a very specific sort. Unlike the services of fast-food restaurants, those of a law firm vary substantially from one customer to the next. Essentially, lawyers sell the promise of a product—the promise that they will create a contract, or a will, or a business arrangement that best suits the customer's needs.[1] With every sale they sell the services of their assets: their lawyers and their expertise.

For a long time, these distinctive characteristics set law apart from the rugged world of commerce. In the young United States as elsewhere, law was a profession, not a job. As a small[2] and highly educated minority, lawyers enjoyed a distinctive social status, one linked directly to the information and knowledge they possessed. Writing in 1853, de Tocqueville described American lawyers as forming "the highest political class and the most cultivated circle of society," a position bestowed upon them, he explained, by "the special information which lawyers derive from their studies."[3] The possession of this information, and the reputational value that accompanied it, allowed lawyers to perform a wide range of services; they generally argued cases, advised clients, copied documents, and delivered papers personally. During this heyday of independent practice, advocacy before the bench was viewed as the lawyer's core competency. In this capacity the lawyer would gain public stature as an orator and bringer of justice.

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[1]A vast literature defines differences between goods and services and the further distinctions of information-based services. See, for instance, T. P. Hill, "On Goods and Services," *The Review of Income and Wealth* **23** (December 1977), 315-331; Geza Feketekuty, *International Trade in Services* (Cambridge, Mass.: Ballinger, 1988); Jagdish Bhagwati, "International Trade in Services and Its Relevance for Economic Development," in *The Emerging Service Economy*, edited by Orio Giarini (N.Y.: Pergamon Press, 1987); and Gary Sampson and Richard Snape, "Identifying the Issues in Trade in Services," *The World Economy* **8** (June 1985), 171-182.

[2]In 1743, for example, there were only eight lawyers in New York City. See Roscoe Pound, *The Lawyer from Antiquity to Modern Times* (St. Paul, Minn.: West Publishing Co., 1953), 141. Some of Pound's most provocative insights come from John Adams's diary; see John Adams, *The Works of John Adams* (Boston: Little, Brown, 1850–1856).

[3]Alexis de Tocqueville, cited in James W. Hurst, *The Growth of American Law* (Boston: Little, Brown, 1950), 251.

Not until after the Civil War did law in the United States move away from the bench and the single proprietorship and become instead a collegial venture. Between 1870 and 1890, the legal practice underwent a milder form of the consolidation mania then sweeping American industry. Two-person partnerships rapidly gave way to four-, five-, and six-member firms, often specializing for the first time in particular aspects of the law.[4] Unlike manufacturing firms, which developed corporate structures to manage expanding business activities, law firms still adhered to a partnership structure, remaining small and without formal managerial ranks. Yet, as **Table 1** indicates, by the turn of the century, large law firms were multiplying rapidly across the country.

Table 1

Total Number of Large Law Firms by City, 1872–1914

Cities	1872	1882	1892	1903	1914
New York	10	23	39	64	85
Chicago	2	2	4	23	41
Boston	0	2	2	13	18
Cleveland	0	0	2	8	13
Detroit	0	1	3	6	12
Philadelphia	0	0	1	5	12
Kansas City	0	0	1	8	13
Buffalo	0	0	3	4	7
Milwaukee	1	2	1	4	7
Cincinnati	1	1	2	6	8
Total	**14**	**31**	**58**	**141**	**216**

Source: Hobson, Table 8, 168. "Large" here refers to firms of at least four members (including partners and associates).

Driving this change was not just an emulation of industry trends (although that undoubtedly played some part) but also a potent blend of political, technological, and commercial change. Technologically, the era witnessed the introduction of critical

[4]Two other structural changes occurred in the legal profession during this phase: the growing importance of law schools and the growing reach and role of bar associations. For more on these linked developments, see Wayne K. Hobson, *The American Legal Profession and the Organizational Society 1890-1930* (N.Y.: Garland Publishing, Inc., 1986), 76. For a discussion, see Robert Pinansky, "The Emergence of Law Firms in the American Legal Profession," *University of Arkansas at Little Rock Law Journal* 9 (1986-87), 593-640.

information-processing devices. Typewriters, telegraphs, stenography, and telephones transformed the potential productivity of the law office—and, according to contemporary observers, destroyed forever the profession's tolerance for genial relations.[5] Politically, the late nineteenth century also saw the beginnings of modern governance and a corresponding flood of legislation. Prior to this time, in the United States as elsewhere, law was limited. Practitioners could learn it through independent apprenticeships and could base advice on intuition and accumulated experience. Once that flood of legislation and regulation was let loose, however, lawyers needed books and libraries for almost constant reference and the practice of law revolved increasingly around formal arguments of adjudged cases.[6]

Initially, older practitioners of the time resisted both the technological and political changes. Sullivan & Cromwell, for instance, prestigious New York partners, refused to install desk phones until 1900 and even then preferred for another decade to communicate only by written message.[7] Eventually, though, the new demands of commerce forced law firms to transform their mode of business. With the expansion of railroads, oil companies, and other industrial giants, law firms faced a powerful demand for their services. They also faced clients who, for the first time, needed a substantially wider range of services and expertise than any single practitioner could provide. Although at the start of the nineteenth century lawyers had undoubtedly been involved in their clients' commercial and financial transactions, the size and complexity of these multiplied rapidly toward the end of the century, as did the regulations seeking to guide and constrain them. Such changes drove a need for larger firms. As Pinansky noted, "When the quantity of litigation reached the volume of Jay Gould's, one lawyer became unable to handle properly all of the client's affairs.... Natural divisions of labor resulted and the first firms, complete with formal agreements, emerged."[8] As big business expanded across the American economy, law firms saw personal relationships give way to dealings with corporate clients.[9] Lawyers shifted their focus from courtroom argument to the preventive and more lucrative use of "office" law, and the volume of services exploded. By the 1920s, increasing numbers of U.S. lawyers practiced in large firms, and many apparently recognized themselves in Judge Learned Hand's observation that "sometimes

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[5]See, for instance, Marc Galanter and Thomas Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (Chicago: University of Chicago Press, 1991), 7-8. Their work builds upon Theron Strong, *Landmarks of a Lawyer's Lifetime* (N.Y.: Dodd, Mead, 1914), and Charles Chamberlayne, "The Soul of the Profession," *Green Bag* **18** (1906), 396-401.

[6]See Hurst (1950), 308; and Pinansky (1986-87), 606-608, 612-614.

[7]Hobson (1986), 150-152.

[8]Pinansky (1986-87), 611.

[9]For a classic discussion of the rise of the corporate structure in U.S. industry, see Alfred D. Chandler, Jr., "The Beginnings of 'Big Business' in American Industry," in *The Essential Alfred Chandler: Essays Toward a Historical Theory of Big Business*, edited by Thomas K. McCraw (Boston: Harvard Business School Press, 1988), 47-73.

I feel sorry for lawyers, they seem to me to be so earnest and to work so hard, and when all is said and done to get very little out of life, except, perhaps, money."[10]

Miserable or not, the lawyers Learned Hand observed practiced a new kind of law. No longer law-as-general-information, it was law-as-business, law as collective enterprise. A turning point was the "Cravath system," instituted in 1900 by Paul D. Cravath, a new partner at the Seward firm of New York City. At Seward, Cravath broke the tradition of hiring friends or colleagues and, instead, hired only graduates from elite east coast law schools, preferably Phi Beta Kappa and with "high strung, tense, and driving personalities."[11] Once at the firm, associates were expected to develop a finely honed sense of loyalty to the firm and its clients; in turn, the firm trained them not merely as lawyers but also as specialists within a particular, narrow field. The system was soon embraced by other leading law firms, and was further institutionalized after World War I, when the managing clerks of such firms entered into a gentlemen's agreement that established uniform salaries for promising young associates and prohibited firms from luring away one another's attorneys.[12]

Under the Cravath system, law became simultaneously a business and a profession—even for lawyers outside the world of corporate law.[13] Lawyers earned high salaries, were marked by a particular specialty, and fit into a hierarchy that clearly recorded and rewarded achievement. They had regular incomes and all the trappings of professional status, but only in exchange for loyalty to the firm and a subordination of professional autonomy. With the emergence of large-scale law practice, attorneys effectively transferred their assets—skills and information—to the firm, and as a result, the firms gained both those skills and the scale economies demanded by an increasingly competitive legal profession. Along with their industrial contemporaries, corporate law firms grew in the nineteenth and twentieth centuries to reap the benefits of specialization and enhanced productivity. But the nature of their growth and the means of capturing these benefits were different. Unlike manufacturing firms, law firms could grow only by acquiring skills, experience, information, and contacts—that is, by

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[10]Quoted in Hobson (1986), 152. The original source is Learned Hand to Felix Frankfurter, July 27, 1921, Frankfurter MSS, Box 63, Library of Congress.

[11]Hobson (1986), 196-198. For more on the Cravath system, see Robert L. Nelson, *Partners with Power: The Social Transformation of the Large Law Firm* (Berkeley: University of California Press, 1988), 71-73; Robert T. Swaine, *The Cravath Firm and Its Predecessors 1819-1947: Volume I, The Predecessor Firms 1819-1906* (N.Y.: Ad Press, Ltd., 1946). For a similar decision made by the du Pont family with regard to the management of their firm, E. I. du Pont de Nemours & Co., see Alfred D. Chandler, Jr., *Strategy and Structure: Chapters in the History of the American Industrial Enterprise* (Cambridge, Mass.: MIT Press, 1991), 64.

[12]Hobson (1986), 201. Cited also in Erwin O. Smigel, *The Wall Street Lawyer: Professional Organizational Man?* (Bloomington: Indiana University Press, 1969), 58; and Martin Mayer, *The Lawyers* (N.Y.: Harper & Row, 1966), 332.

[13]And many did indeed remain outside. Structurally, in fact, the legal profession was comprised largely of single practitioners. But the patterns and styles of corporate firms set norms for the profession. See Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (N.Y.: Oxford University Press, 1976), 22.

acquiring lawyers. Thus, the sole route to growth was a professional bargain between the formerly autonomous practitioner and the newly powerful law firm. The outcome was the modern corporate law firm. Individual lawyers gave up their independence, but law firms did not. On the contrary, the bargain strengthened the firms' competitive position over smaller rivals, because it provided the larger firms with a storehouse of information, experience, and legal contacts.

Not all lawyers, of course, made this transition from individual to large-scale practice. And not all early law firms developed into professional behemoths. Those that did, however, evolved along these lines. In transforming themselves from small-scale generalists into large-scale agglomerations, the most successful U.S. law firms adapted quite ingeniously to the shifting context of the era. Four changes, in particular, hastened the evolution of the most successful firms. First, their lawyers specialized, converting the traditional identity of generalist lawyers into thin wedges of functional expertise. Second, the firms that adapted effectively realized—even, perhaps, created—advantages of size: even in an industry of nonexistent plants and of intensely intellectual capital, they made large firms efficient and profitable. Third, even as these firms maintained their professional standing, they fundamentally changed their core professional activities. Where the practice of law had centered on oration, litigation, and the practical affairs of individuals, for corporate firms law was centered on the business of corporations.

Arguably, neither law nor business needed this transition. Law might have stayed within its previous professional confines, and other specialists (accountants, academics, engineers) might have dominated the growing field of business consulting. But they didn't. Instead, by claiming the new territory for themselves, corporate law firms extended their professional reach and, to use business terminology, redefined their core competencies.

Finally, critical to the law firms' adaptation was their expanding capacity to manage information—not just through technical systems but also by controlling and managing the people—the lawyers—who directly possessed the most valuable stores of information.

All four factors—specialization, size, shifting focus, and management of information—facilitated the transition of legal practice from individuals to corporate firms. Similar factors would be critical in easing the next phase of evolution, from local firm to multinational practice.

Three

The Growth of Global Law

During the 1940s and 1950s, U.S. law firms expanded in scale and scope, but not in geographical space. Instead, they stayed remarkably fixed, to the extent that many automatically identified themselves in part by their location: the New York firm of Kelley Drye & Warren, for instance, or the Washington, D.C., firm of Covington & Burling.

It wasn't until the 1960s that geographical expansion began in earnest. Initially, firms expanded to a small and selective group of cities, chosen for particular, often idiosyncratic, reasons. They moved to Washington to be closer to rulemakers and political power, and to New York to gain access to dealmakers and the financial elite. They moved, apparently, to follow retiring clients (between 1974 and 1980, twenty-nine New York firms opened branch offices in Florida)[1] and to keep pace with the economic growth of sunbelt states and suburban industrial parks. Most expansion involved mergers, rather than establishing new practices, and nearly all of it involved the existing large firms. By 1980, eighty-seven of the hundred largest legal practices in the United States had branch offices and 24 percent of large-scale firms had a presence in three or more locations.[2]

International expansion occurred more slowly—and with good reason. From the outset, firms realized that expanding abroad was far trickier than building either a corporate firm or a regional network. To do it well, firms would have to change not only how they ran their practices but also how they defined their professional competence.

The first complication lay with the apparent contradiction of global law.[3] The assets U.S. law firms controlled—their information, expertise, and experience—were distinctly American. At home, these assets had considerable value, especially because law firms retained a virtual monopoly over them. The assets were also useful to U.S. corporations abroad insofar as they needed to stay within the confines of U.S. law and remain comfortable with the

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[1]Richard Abel, *American Lawyers* (N.Y.: Oxford University Press, 1989), 189.

[2]Galanter and Palay (1991), 47.

[3]Throughout this paper, the terms "global" and "international" are used interchangeably, despite several excellent descriptions of implied differences. See, for instance, Christopher A. Bartlett and Sumantra Ghoshal, *Managing Across Borders: The Transnational Solution* (Boston: Harvard Business School Press, 1989), and Yves L. Doz and C. K. Prahalad, *The Multinational Mission: Balancing Local Demands and Global Vision* (N.Y.: Free Press, 1989). Here, "global" or "international" law refers to the overseas activities of law firms rather than to the formal body of public international law, which is primarily concerned with relations between sovereign states. To practitioners, by contrast, as Flood notes, international law means advising on transactions or litigation involving more than one jurisdiction. See John Flood, "Megalawyering in the Global Order: The Cultural, Social and Economic Transformation of Global Legal Practice," *International Journal of the Legal Profession* 3 (March 1996), 189.

standards of commercial practice in their home market. But what use was knowledge of U.S. law for foreign clients in overseas markets? And what, if anything, could U.S. law firms hope to sell to these clients?

In grappling with these questions, law firms encountered a fundamental characteristic of information. To be of commercial value, information must be relevant to the purchaser. No enterprise buys information for its own sake, any more than it purchases unnecessary raw materials or components. Enterprises buy the information they need and the services that help them fulfill their particular business functions. This specific demand provided the niche that law firms grew to fill. Over the course of their evolution, legal practices had accumulated knowledge and expertise that business enterprises considered crucial to their own success. According to some analysts, the prominence of U.S. law firms derived from their ability to monopolize, or, at least, hoard, valuable stores of information.[4] Only lawyers knew the intricacies of their legal specialty; only lawyers could argue before the court. Thus, when individuals or corporations encountered these circumstances, they had few options but to call in the lawyers.[5] This necessity gave rise to the power and prestige of U.S. law firms, and it compelled U.S. corporations to take their lawyers with them as they expanded abroad: to write contracts that would stand up in U.S. courts and arrange cross-border deals that maximized advantages under U.S. tax law. It did not, however, extend to foreign corporations or individuals. On the contrary, insofar as law firms' knowledge rested on U.S. law, foreign entities, presumably concerned with their own laws, had no apparent need for the services of U.S. law firms, which controlled information-based assets that would seem to have little value outside the borders of the United States.

Basic issues of legality also were involved. Because law is so inherently, so deeply political, nearly all states restricted the practice of law to their own nationals. Foreign lawyers, presumably unfamiliar with the intent of local law, were generally forbidden from practicing or at least severely limited in the services they could legitimately provide.[6]

Specific regulations varied. France, for instance, allowed only members of the legal and judicial professions *in* France to give legal advice.[7] Hong Kong permitted foreign lawyers to

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[4]See, for instance, Nelson (1988), 266, and Pinansky (1986-87), 634-635.

[5]One obvious alternative for corporations is to create in-house legal staffs, thereby reducing both financial and transaction costs.

[6]For a discussion of current developments concerning the future of "foreign legal consultants," see Sydney M. Cone III, "FLCs Face Licensing Hurdles in Host Countries," *The National Law Journal* **19**, 6 (Oct. 7, 1996), C2.

[7]The European Union Schedule on Professional Services; cited in Kenneth S. Kilimnik, "Lawyers Abroad: New Rules for Practice in a Global Economy," *Dickinson Journal of International Law* **12** (Winter 1994), 269-325.

practice, but only if they confined their advice to the laws of their home states.[8] Hong Kong law also prohibited local solicitors from employing any employee of a foreign law firm, or even from sharing office space with one.[9] In Japan, foreign lawyers were allowed to practice, but only on issues that concerned the law of their home state and only after receiving approval from the Japanese bar association.[10]

Even the most open regimes typically restricted foreign lawyers from practicing in at least five areas: litigation, domestic relations, the transfer of real property, wills and trusts, and advice on local law.[11] Occasionally, lawyers also felt the pinch of peripheral regulation. In Germany, deutsche mark–denominated securities had to be managed by a German bank, granting German lawyers an almost insurmountable advantage. In Sweden, restrictions on foreign banks allowed local lawyers to control nearly all of the country's banking work.[12]

Not all the constraints were regulatory. In most parts of the world, law was (and remains) a business of relationships in which contacts are all-important and informal rules dictate codes of conduct. In a clubby environment of client links that frequently ran over generations or along family ties, any foreign lawyer was, by definition, an outsider. And American lawyers, with their orientation toward corporate law and penchant for aggressive dealmaking, stood as nearly a separate breed—too greedy, too businesslike, and far too American. First in Europe, then in Asia, local politicians made clear their intent to resist, at least publicly, any encroachment by U.S. firms. Sometimes resistance came purely from statutory prohibitions; sometimes it was the effect of barely disguised commercial rivalry; sometimes it was a subtle form of cultural differentiation. Law, as practiced by Americans, was a different type of activity, and many Europeans and Asians were eager to prevent its establishment on their soil. Although many of the early entrants had not built their U.S.

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[8]See Janice Fuhrman, "Hong Kong Is Adjusting to the '1997 Jitters,'" *The National Law Journal* **5**, 44 (July 11, 1983), 26. In the spring of 1996, regulations on foreign lawyers in Hong Kong were liberalized.

[9]The Hong Kong regulations have been particularly despised by U.S. firms, because they treat British law firms as local, rather than foreign, entities. See Joan M. Cheever, "U.S.-Hong Kong Deals Shaky?" *The National Law Journal*, Aug. 20, 1990, 3; Simon Ip, "Legal Skills Cannot Cross National Boundaries," *Far Eastern Economic Review*, Nov. 17, 1988, 44-46.

[10]Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers, art. 10(3). See also generally Amelia Porges, "Introduction to Japan: Law and Ministerial Order Relating to the Handling of Legal Business by Foreign Lawyers," *International Legal Materials* **26** (1987), 881-920. Foreign law offices were also not permitted to hire Japanese attorneys. In 1987, Japan liberalized its laws somewhat, permitting foreign lawyers to petition to become "foreign legal consultants" (and thereby practice home-jurisdiction law) under certain conditions.

[11]See Richard L. Abel, "Symposium: The Future of the Legal Profession: Transnational Law Practice," *Case Western Reserve Law Review* **49** (1994), 737-870.

[12]Both examples are from Abel (1994), 754. Germany changed its law in 1985, allowing German-based subsidiaries of foreign banks to deal in Deutschmark-denominated bonds.

practice around the business of lobbying, the perceived connection between the American law firm and American lobbying marked them nonetheless. "Their way of lobbying U.S. congressmen or senators cannot be of use here," declaimed a spokesman for the European Parliament, "It's really too pushy for Europeans."[13]

Much of the perceived "pushiness" came from the (understandable) connection between American lawyers and American-style lobbying. In most of the world, lobbying was a private affair, with deals arranged quickly through diplomatic links based on long-standing and deeply entrenched relationships. American lawyers, however, approached lobbying as a public game of persuasion—a raucous and expansive game, in which fees and networking muscle might enter and affect the political arena. To those accustomed to a quieter world, this form of lawyering was a direct assault. To Europeans, explained one Brussels insider, lobbying was a "nasty" word: "It means dirty money, dirty laundry, sex, all the stereotypes—persuasion beyond the point where you should be persuaded."[14] The thought was echoed by a spokesman for the European Commission: "Americans pressure people...[and] we don't like to be pressured."[15] Similar sentiments emerged in Japan, eastern Europe, China, and Latin America—indeed, nearly everywhere and every time that U.S. law firms began to do business in foreign markets.[16]

Even without such daunting legal and cultural resistance, investing abroad was an expensive and high-risk option for U.S. law firms. The luxurious offices that had become hallmarks of their trade were costly to establish and costlier to maintain. The price tag for an expatriate lawyer was also relatively high, because it inevitably included living quarters for the lawyer and usually for a family, school tuition if the lawyer had children, and the like. Because the success of a legal practice depended critically on relationships, law firms didn't feel they could afford to skimp on niceties awarded their lawyers or to rotate them through short-term assignments. Each new overseas office generally meant finding a competent lawyer, ensuring that he or she had complete mastery of the language, then shipping that lawyer off for an extended period of time. Again, the importance of relationships usually dictated that the new office be run by a partner, thus depriving the home office of one of its most valuable assets. Unlike manufacturing firms, law firms (until recently)[17] promoted

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[13]Quoted in Sheila Kaplan, "Backlash in Brussels," *Legal Times*, Dec. 3, 1990, Report from Europe, 1.

[14]Ibid.

[15]Ibid.

[16]See, for instance, Steve Albert, "Looking South of the Border," *The Recorder*, May 28, 1991, 12; Joan M. Cheever, "The Legal Community Withdraws Its Welcome in Hong Kong," *The National Law Journal* (Jan. 9, 1989), 22.

[17]In the late 1980s, the reluctance to hire laterally gave way to a scramble to snatch the field's top "rainmakers." See Saundra Torry and B. H. Lawrence, "Star Lawyers Become Field's 'Free Agents,'" *The Washington Post*, Feb. 27, 1989, A1.

entirely from within, disdaining lateral hires that had not "grown up" within the culture of the firm's practice. For this reason, moving partners abroad was extremely difficult—especially if their clients remained at home. Moving partners abroad also meant diluting the central relationship of the law practice—the partnership, which, even in its most rigid incarnation, ran by relatively informal, personal coordination. Once a partnership was geographically dispersed, it would have to develop different ways of organizing internal affairs. Thus, most partnerships decided early on not to go abroad, or at least to restrict overseas activities to perhaps a handful of small offices, following closely in the footsteps of key clients. To most firms, quipped one New York partner, "Foreign had always meant New Jersey."[18]

Yet, despite this reluctance, and despite the hassles and the central incongruity of their mission, U.S. law firms did go abroad. The migration began in the mid-1960s, when the corporate clients of U.S. law firms launched their own international expansion. This was, in retrospect, a period of peak concern about the overseas activities of U.S. multinationals. It was also a time when corporations relied extensively on single providers of legal services. As U.S. companies ventured abroad, therefore, they logically took "their" legal advisors with them: to negotiate, to protect, and to help them navigate through tangles of unfamiliar regulation. Some firms performed these functions reluctantly, maintaining arms' length relationships with their clients' overseas subsidiaries and preferring to concentrate on American business and American law. Others went and stayed.

By 1989, the 250 largest firms based in the United States had established 180 overseas offices, up from 124 in 1985.[19] By 1991, that number hit 252.[20] By 1994, nearly 2,000 U.S. lawyers were plying their trade from overseas offices, and U.S. exports of legal services hit $1.6 billion.[21] Most of these lawyers and most of these exports were concentrated in a few exceedingly large firms: in 1992, U.S. law firms accounted for seven of the ten largest firms in the world, and twenty-five of the forty largest. The remaining three largest firms were British, as were most of the remaining top forty.[22] Few firms from any other country had achieved the global reach and prominence that increasingly defined the leading U.S. law

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[18]Quoted in Benjamin Weiser, "204 Miles and a World Apart," *The Washington Post,* Feb. 10, 1994, D11.

[19]Sherry Sontag, "Opening Offices Overseas: Does the Payoff Warrant the Huge Expense?" *The National Law Journal* (Feb. 12, 1990), 1.

[20]Calculated from Abel (1994), Table 23, 859.

[21]The export figure includes only payments by foreign-based sources to U.S.-based firms, thus capturing only a portion of total U.S. legal revenues sourced abroad. See John E. Morris, "Capitalizing on Global Capitalism," *The American Lawyer* (April 1996), 5. As Abel notes, the overseas activities of U.S. lawyers still constitute only a tiny fraction of the total revenues for the profession, but the growth rate and absolute number are remarkable. See Abel (1994), 738.

[22]See Abel (1994), 741; and Robert Budden, "The IFLR Top 40: The World's Largest Law Firms," *International Financial Law Review* **11**, 10 (October 1992), 13. The remaining firms in the top 40 include four Australian and one Canadian practice.

practices and a handful of their British counterparts. By the mid-1990s, these firms could claim to have converted the parochial profession of law into a global business. And they dominated the field.

Such rapid and dramatic expansion raises at least two questions of managerial relevance. First, why did U.S. and British firms move so decisively into the global marketplace, given the many obstacles and their own reluctance to do so? And, second, what made some firms more successful than others in establishing and maintaining an overseas network?

The first question is easier to answer, especially for the U.S. firms. They went abroad, it appears, in two distinct waves. During the first wave, from 1965 to 1985, firms went solely to service long-standing U.S. multinational clients. Minnesota's Oppenheimer, Wolff, for instance, went to Belgium in 1969 at the behest of Control Data Corporation[23]; Shearman & Sterling, New York-based advisor to Citibank, opened a Paris office in 1967, just as Citibank was completing a decade of unprecedented overseas expansion[24]; and Sullivan & Cromwell built a topnotch international practice almost entirely by following its premier client, Goldman Sachs, around the world.[25] Some U.S. firms that went abroad matured past their initial clients, building sizeable independent practices in their new-found locations. Most, though, did not, leaving their overseas posts once their clients' work was completed.

During the second wave, from the early 1980s to the mid-1990s, law firms ventured abroad even without clients' encouragement—just to be there, just in case. San Francisco's Morrison & Foerster opened a Hong Kong practice in 1983, even though it had no existing clients in the region nor any international experience aside from a single London office; and Sidley & Austin of Chicago moved to Singapore in 1982 without a single client commitment.[26] These firms were drawn by the possibility of commercial demand and were scrambling to service new, often foreign, clients.

Frequently, especially for later movers, expansion into foreign markets was largely a defensive move. Worried about losing even a portion of their core clientele, firms went abroad to ensure that they could meet the full range of their clients' expanding needs. In Europe, in particular, anxious anticipation about the arrival of the European Single Market drew firms in, compelling some to inflate their size and areas of expertise by merging or

[23]Deborah Graham, "Two Decades See Growth in Overseas Branching," *Legal Times*, May 28, 1984, 9.

[24]Some time later Shearman followed Citibank to Latin America to advise the bank on its massive restructuring of country debt, and, subsequently, the firm's Latin American practice took off. See Sam Adler, "Hola Latino-america," *Manhattan Lawyer* (September 1991), 22.

[25]See Karen Dillon, "Brand Names at the Brink," *The American Lawyer* (May 1995), 5.

[26]Graham (1984), 9. Some have noted that Sidley may actually have been moving in anticipation of serving one of its lead clients, AT&T.

rapidly affiliating with new-found European partners.[27] Once established in Europe, many U.S. firms turned their sights on Asia, especially Japan, where a high yen and soaring economy seemed to herald opportunity. Surveying the legal landscape in 1987, one American lawyer in Japan noted that "There seems to be somewhat of a frenzy. The same firms that 14 years ago had no interest in international practice, much less Asia, are now rushing to Japan."[28]

Contributing to this frenzy was growing competition within the U.S. legal profession. The more firms went abroad, the more others itched to follow. Part of this desire was probably noneconomic, fueled simply by a perceived need to track the competition, to be "at the party," as one analyst described the trend.[29] Reportedly, many firms even lost sizeable sums at their overseas offices, keeping them open simply in the hope of turning profits sometime in the future.

Eventually, being at the party became integral to staying competitive. When only a few firms were abroad, serving just their core customers, the rules of the competitive game were straightforward. The bulk of U.S. law firms handled their clients' overseas work from traditional home offices and referred any substantial foreign business to foreign firms with which they maintained informal relations. These foreign firms, reciprocally, referred U.S.-based work to their American colleagues. But as soon as U.S. firms started to hustle their own work overseas, they no longer needed foreign partners. Referrals dried up. This angered foreign firms, which often stopped referring domestic clients to firms in the United States. Thus, the cycle of competition accelerated.

Further hastening its pace was a strange but powerful multiplier effect. Once even a few firms established sizeable international practices, they achieved a critical mass that made them particularly attractive to multinational clients. Rather than ask multinational clients to spread their legal advising among a number of far-flung firms, multinational law firms could offer coordinated and consolidated service—one-stop shopping in a high-tech world.[30] To prevent their steadiest clients from taking this lure, even staunchly domestic firms were compelled to compete, at least partially, in terms of geographic scope. Each firm entering the competition upped the ante for the others.

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[27]One analyst observing this movement attributes it to the Thomas Theorem: that "trends become real, because people believe them to be real." See Erhard Blankenburg, "The Thomas Theorem of Mega-Lawyering," in *Law and Technology in the Pacific Community*, edited by Philip S. C. Lewis (Boulder: Westview Press, 1994), 28. See also Timothy Harper, "Going Global: Big Law Firms Expand Overseas," *ABA Journal* (September 1989), 68-72.

[28]Quoted in Deborah L. Jacobs, "Firms in Frenzy to Court Japan," *Manhattan Lawyer* (Nov. 10-16, 1987), 1.

[29]Abel (1994), 741.

[30]As Galanter and Palay note, "one-stop-shopping" benefits the corporate buyer by reducing both transaction costs and search costs. See Galanter and Palay (1991), 50.

Just as this rivalry was gaining momentum, a new form of competition in the marketplace emerged. Along with manifold political and economic consequences, the transition from communist rule in eastern Europe had stimulated a tremendous demand for accountants: to value assets undergoing privatization, settle the accounts of firms accustomed to Soviet-style bookkeeping, and teach the rudiments of market capitalism. Accordingly, the Big Six U.S. accounting firms were among the first businesses to rush behind the fallen Iron Curtain. Once in place, they expanded their range of service offerings, using relationships with their business and government clients to diversify into advising, consulting, and general deal brokering. Without the regulatory obstacles placed before lawyers, accounting firms were soon taking on work that law firms had come to see as their own. Lawyers, mired in the U.S. depression of the early 1990s, resented the trespass and began to compete directly against international accounting firms, tracking them across eastern Europe and into opening markets in Asia.[31] If competition from other lawyers could drag U.S. law firms out of domestic complacency, competition from *accountants* catapulted them into action. The threat inherent in the accountants' move was that, devoid of domestic licensing requirements, they might actually be able to do the lawyers' work, sneaking up on the hoard of information and expertise that was the legal profession's most valuable commodity.

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[31]For more on the emerging market squabbles between accountants and lawyers, see Sheila Kaplan, "Eastern Europe: Dealmakers Rush to a New Frontier," *The American Lawyer* (April 1991), Corporate Scorecard 1990, 6; and Chris Klein, "Gold Rush, Thin Stakes," *The National Law Journal* (Aug. 12, 1996), A1.

Four

Expanding Abroad: Drivers, Pitfalls, and the Factors of Success

If competition and client services drove U.S. lawyers abroad, they also created a faster paced and potentially more hostile environment for practice. Echoing the earlier transition from small-scale to larger scale firms, the expansion into international practice forced change upon the legal profession. Some firms adapted rapidly, seizing the international marketplace as profitable new territory and a source of competitive advantage. Others disdained foreign practice completely. Still others ventured abroad—either at clients' behest or their own initiative—and floundered.[1] Thus, the emergence of global law has not made all firms global, nor made all global firms successful. Which again raises the second question: What has made some law firms more successful than others in establishing and maintaining an overseas practice?

One immediate observation is that country of origin matters greatly. Nearly all the major international law firms are U.S. or British; all are from Anglo-American, English-speaking countries that practice common, as opposed to civil, law. In explaining this phenomenon, lawyers occasionally refer to the inherent superiority of common law, or to the "better service" or "longer hours" that prevail in British and U.S. firms. Despite the obvious parochialism, there may be some truth to such assertions. Yet there are also historical reasons for why U.S. and British law firms were the first to expand internationally and why the major international firms remain overwhelmingly Anglo-American.[2]

Recall that in the United States, law went corporate at an early stage. It happened, as described above, toward the end of the nineteenth century, when the rapid industrialization and consolidation of American business compelled lawyers to consolidate themselves and to focus their energies increasingly on providing business services and corporate law. Initially, this specialization mattered only in the domestic market, but in the aftermath of World War II, U.S. corporations and U.S. styles of corporate practice (activist and strategic, in contrast with the litigation-oriented practice found elsewhere) gradually spread across the international economy, eventfully shaping the predominant modes of international business practice. By the end of the 1980s, the sheer weight of the U.S. economy and the size and liquidity of U.S. capital markets meant that virtually any foreign business would be forced, eventually, into contact with U.S. business practices and U.S. law.

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[1]In at least some cases, however, poor performance of foreign offices turns out to be a challenge, not a death blow. See Emily Barker, "Making Milbank Over," *The American Lawyer* (October 1996), 48.

[2]See "Red Tape Around the World," *The Economist* (Nov. 23, 1996), 77.

This necessity thrust U.S. law firms into an exceedingly strong position. Not only did they have specific knowledge of U.S. law, but they also had a deep understanding of U.S.-style financial transactions. Having grown up in the U.S. economy, U.S. law firms knew how to establish and structure foreign investments; they knew how to arrange joint ventures; they were familiar with financial products pioneered by Wall Street investment banks. As the U.S. economy grew to prominence, all these skills became immensely attractive outside the borders of the United States. Any foreign firm that wanted to do business in the United States or with a U.S. counterpart needed to have English-language capabilities and lawyers familiar with U.S. law. So did any firm hoping to sell securities or obtain bank financing in the U.S. market. And so did any firm trying to make, or avoid, a U.S.-style acquisition. Merely by virtue of specializing in corporate law, by developing a deep-seated expertise in financial and business transactions, and by speaking English, U.S. law firms stumbled upon a significant global advantage.

A similar dynamic prevailed in England, where London's position as a global financial center attracted foreign enterprises to the City and drove them to arrange transactions in line with local statutes. Accordingly, for both British and U.S. law firms, the early ascendance of large-scale capitalism, combined with the economic power of the state, created a global demand for the specific expertise of locally trained lawyers. This demand pulled U.S. and British lawyers into foreign markets and granted them the distinct advantage of moving first. It also allowed these law firms to create a second key asset for overseas practice: size.

Like the multinational clients they followed abroad, U.S. and British law firms quickly gained a considerable advantage in foreign markets by virtue of their relative size. As **Table 2** indicates, U.S. law firms with the largest overseas practices generally rank among the largest law firms in the United States. Firms do not have to be international to be big players in their home markets, but they do, it appears, have to be large at home to build even a moderate overseas practice. A similar relationship prevails in the United Kingdom, where the nine firms that rank among the forty largest practices in the world also rank among the fifteen largest in England and Wales.[3]

By itself, of course, this correlation does not mean much, because firms with overseas branches will tend naturally to be larger than those with only a single-market focus. But a closer glimpse reveals a competitive causality as well.

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[3]Drawn from data presented in John Flood, "The Cultures of Globalization: Professional Restructuring for the International Market," in *Professional Competition and Professional Power: Lawyers, Accountants and the Social Construction of Markets*, edited by Y. Dezalay and D. Sugarman (London: Routledge, 1995), Table 6.1, 151; and "The IFLR Top 40: The World's Largest Law Firms," *International Financial Law Review* (October 1992), 13.

Table 2

U.S. Law Firms with Largest Overseas Practices

Firm	Number of Overseas Lawyers[b]	Total Number of Lawyers	U.S. Rank by Gross Revenue[c]
Baker & McKenzie	1,377	1,897	2
White & Case	273	699	16
Coudert Brothers	148	348	62
Cleary Gottlieb	144	520	8
Jones, Day	82	1,204	3
Skadden, Arps	82	1,150	1
Shearman & Sterling	72	622	9
Davis Polk & Wardwell	46	515	10
Hogan & Hartson	46	459	47
Graham & James	44	406	74
Debevoise & Plimpton	41	368	24
Altheimer & Gray	40	209	n/a
Milbank, Tweed	38	350	31
Sullivan & Cromwell	35	440	4
LeBoeuf, Lamb	34	549	27
Rogers & Wells	34	440	34
Squire, Sanders & Dempsey	34	367	51
Willkie, Farr & Gallagher	32	400	29
Morgan, Lewis & Bockius	31	833	7
Weil, Gotshal & Manges	30	610	5

[a]Size based on total number of lawyers in non-U.S. offices, 1996.
[b]From *National Law Journal*, "The NLJ 250," Sept. 30, 1996.
[c]From "The AmLaw 100," *The American Lawyer*, July-August 1996.

In some respects, the competitive advantages of massive size in this industry are not obvious.[4] There is hardly any physical plant to amortize in a legal practice and not a lot of opportunity to boost productivity per employee. Law firms are profitable because of their employees's ability to generate new and sustained business through referrals, reputation, contacts, and quality of service. None of these elements appears necessarily linked to size, yet in the international arena they are.

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[4]For a slightly different opinion on economies of scale within legal practices, see S. S. Samuelson, "The Organizational Structure of Law Firms: Lessons from Management Theory" **51**, *Ohio State Law Journal* (Summer 1990), 645-673.

In foreign markets, law firms cannot offer a standard product. By law or by custom, they cannot sell basic legal services. Further, given their relatively high overhead costs, they cannot compete on price. The only way for foreign firms to woo clients in distant markets is by offering differentiated services, information, or advice unavailable from local sources. In foreign markets, law firms have to compete through specialization.

This is precisely what the successful U.S. and British firms did. As mentioned, they started with their obvious specialty, counseling foreign clients on the intricacies of U.S. law and corporate practice, then moved into increasingly specific areas of corporate strategy, advising clients on topics such as acquisitions, hostile takeovers, and debt restructuring—complicated corporate maneuvers that had all matured first in the U.S. and British markets. As these sorts of deals proliferated across the international economy, U.S. and British firms found themselves with a natural, lucrative niche.

But maintaining this niche entailed constantly refining and expanding their areas of specialization. Increasingly, clients that purchased business advice or strategic counsel wanted to complete their transactions in a single act—to rely on a central source of information rather than juggle across multiple sites. As a result of this logical preference, specialization drove an accelerating momentum for growth. Once firms had achieved a critical scale, they could begin to amortize fixed assets—their libraries, offices, information systems—more efficiently than their smaller competitors. More important, they could also offer clients a different, more encompassing product. Small firms, almost by definition, did not have sufficient resources to craft and document all the materials demanded by a complex, fast-paced transaction. Given the relationship-based structure of the industry, they also could not (under most circumstances) hire temporary employees, even if they received large projects on short notice. Nor could they push their existing work forces much beyond their already prolonged work week. Small firms could, presumably, band together for short-term jobs or outsource according to specialty, but, more and more, clients involved in complicated cross-border transactions came to prefer that all, or most, legal services pertaining to a particular deal be handled in-house, by a single firm. To maintain these clients and compete abroad, law firms had to offer an ever widening array of services. To master and deliver those services into a fast-paced and demanding market, the firms had to be big, offering a well-stocked cluster of specialties, along with a critical mass of expertise in each individual field.[5] They then took their critical mass and marketed it explicitly, gaining business by promising clients an ability

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[5]For more on this phenomenon, see Paul Hoffman, *Lions of the Eighties* (N.Y.: Doubleday, 1982), 226-233. For a discussion of how the trend toward "boutique-ing" is liable to affect the future of the legal practice, see Steven Brill, "The Law Business in the Year 2000," *The American Lawyer* (June 1989), 5.

to deliver, as one partner put it, "everything you could want under one roof: seven relevant jurisdictions and three key languages."[6]

As these massive firms grew and prospered in the late 1980s, they discovered that size brought an added, and unexpected, benefit: it created advantages of reputation, which added directly to their ability to generate new business. "Large size does not necessarily impart prestige," one lawyer noted, "but it comes very close."[7] In foreign markets, prospective clients often had no prior knowledge of individual law firms nor, barring disaster, many ways of judging objectively the quality of legal services they received. As consumers they were therefore wary and averse to risk—and particularly inclined to purchase legal services from well-known, big-name firms. With few other sources of information available, reputation became a symbol for competence and size, in itself, a measure of quality. Or, as *Business Week* reported in 1986, "ever-growing corporate clients seem to feel more comfortable with big service firms and their 'brand-name predictability.'"[8] This dynamic once again favored established firms and accelerated the rise of those already prominent.[9]

But size alone still could not rid U.S. or British firms of outsider status. So long as their lawyers were born and based at home, they remained foreigners in overseas markets, constrained by regulation, resistance, and a certain incongruity in their core competence. The only way around this obstacle was to go local, a strategy that by the late 1980s most internationally successful U.S. and British firms began to adopt. Rather than divert and dilute competence at home, firms such as New York-based White & Case and London's Clifford Chance built competence abroad, aggressively hiring local lawyers in target markets and constructing new networks of contacts and expertise around them. The firms realized, as one partner recalled, that "we had an obligation, even if we kept our mouths shut, to understand the local law, and to know if we were being told the truth."[10] So they acquired local knowledge and local lawyers and, thus, an acquired base of specific information critical to the

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[6]Interview with the author, London, October 1996.

[7]Mark Rollinson, "Small Company, Big Law Firm," *Harvard Business Review* (November-December 1985), 7. For more on the attributes of size, see also the discussion in Galanter and Palay (1991), 50.

[8]William B. Glaberson, "Megafirms Are Taking over Corporate Law," *Business Week* (Nov. 17, 1986), 104. For an expanded discussion of the factors behind the growth of law firms, see Nelson (1988), 62-63; and Arleen Leibowitz and Robert Tollison, "Free Riding, Shirking, and Team Production in Legal Partnerships," *Economic Inquiry* **18** (1980), 380-394.

[9]It also apparently increased the relative share of profits earned by the top-tier firms. See Brill (1989).

[10]Interview with the author, New York, October 1996.

law firms' success.[11] This acquired base gave the firms credibility in their target local markets and nodes of information to factor into their global networks. It eased their way around most regulatory and cultural barriers. By hiring locally trained attorneys, U.S. law firms could simultaneously be cozy and corporate, local and international. They could reap the advantages of both worlds and use them to extend their global reach.

Yet, as many firms rapidly discovered, maintaining this advantageous balance came at a cost. Each foreign office increased the centrifugal pressure within the firm, drawing energies away from the traditional locus of power. Each foreign hire diluted the firm's all-encompassing culture and raised questions of management and quality control. "The bigger you get," noted one industry analyst, "the sloppier the work is going to get."[12] In a single-city office, quality control came typically from a rigorous hierarchy of promotion and partnership shares. Even in large corporate firms, partners knew one another: their strengths, their weaknesses, and, usually, their contribution to the firm's bottom line. Partners also knew a great deal about their associates, enough so that the partners' evaluations effectively determined the associates' career with the firm.

This system, descended from Cravath's, allowed law firms to coordinate talent, information, and rewards. But it did not travel well. Once firms eroded the centrality of daily, face-to-face meetings, once they hired a heterogeneous mix of people and spread them around the world, they could no longer track and monitor their key asset: lawyers. To make global networks succeed, law firms needed to regain this ability and thus develop new modes of transnational management.

Creating these modes has not proved easy. The task has flummoxed even some of the powerhouse firms, leaving them with either too little control over their far-flung assets (and consequently with problems of reputation and quality) or too much (and a resultant lack of commitment from the overseas contingent). Intuitively, firms recognize the need for balance—to maintain sufficient control at the center without neglecting the needs and talents of the periphery.[13] But calibrating the balance is tough, particularly for firms accustomed to a rigid yet personal style of management.

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[11]The importance of hiring local attorneys in order to build relationships and generate business is a recurrent theme. See, for instance, Ed Finkel, "Altheimer Expands Boundaries Again With Move to Turkey," *Chicago Lawyer* (June 1994), 65; and David Trubek et al., "Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas," *Case Western Reserve Law Review* **44** (1994), 407-498.

[12]Mark Stevens, author of *Power of Attorney: The Rise of the Giant Law Firms* (N.Y.: McGraw-Hill, 1987), quoted in Glaberson (1986).

[13]See, for instance, Michael Oppenhoff, "Organisation of International Legal Services," Globalisation of the legal profession, International Bar Association, Section on Business Law Seminar, Amsterdam, March 14, 1995.

Accordingly, many law firms have recently pulled back from the international arena, preferring to concentrate their partners in geographical proximity and their efforts on a single, or at least a handful, of markets.[14] Anecdotally, firms report being "burned" by their overseas efforts—of monies spent without reward, of partnership squabbles, and of difficulties in recruiting and retaining sufficient foreign expertise. Others who have committed themselves to overseas practice have seen their most cherished assets—partners who have developed a strong local presence—depart abruptly, taking with them years of contacts and valuable experience. Still others have contented themselves with warily creeping along the international frontier. They promote the occasional foreign partner; they build a network of overseas affiliates perhaps; but they do not integrate their international activities into their core practice.

For those that have made the leap, however, the rewards appear substantial. As **Table 3** indicates, the U.S. firms with the largest overseas practices rank generally among the most successful legal practices. Although the data by no means suggest that the most international firms are the most profitable (they are not), they nevertheless indicate that being international does not compromise profitability. Indeed, all the largest international practices are distinctly competitively, profitable.[15] Their average profits per partner are 37 percent higher even than those of the Am Law 100—a ranking of the nation's hundred highest grossing law firms—and 9 percent higher than the average of the Am Law 50.

To be sure, being big and global is not the only recipe for success in the complex world of lawyering. Many of the most revered firms and many of the most profitable remain small, boutique firms that concentrate on a particular specialty or cater to the needs of a particular clientele. These firms do not have to be big and often have no desire to be global. For firms that *do* seek to be global, the patterns just described are telling. In order to compete successfully in the international economy, law firms need to be big, well-known, locally specialized, and managed through a delicate balancing of global and local interests. Some firms may be able to depart from this model by developing distinctive competencies in highly specific areas (aviation or environmental law, for example), but for most firms in most foreign markets these four factors seem critical to success.

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[14]For an interesting support of this position, see John Merrow, Senior Partner of Sullivan & Cromwell, transcript of presentation to the American Bar Association Annual Meeting, New Orleans, August, 1994. Some observers have noted, however, that Sullivan & Cromwell's experience in this context may be somewhat idiosyncratic.

[15]Altheimer & Gray, by far the smallest U.S. firm with a major overseas presence, is the only one that does not appear as an AmLaw 100 firm. Given that the AmLaw 100 is calculated according to gross revenue, Altheimer & Gray's failure to place in this ranking is not necessarily of consequence.

Table 3

Relative Position of U.S. Firms with Largest Overseas Practices

Firm[a]	Gross Revenue (000s)	Revenue per Lawyer	Profits per Partner
Baker & McKenzie	594,000	335,000	430,000
White & Case	246,500	445,000	565,000
Coudert Brothers	120,000	370,000	310,000
Cleary Gottlieb	286,000	650,000	910,000
Jones, Day	400,000	395,000	425,000
Skadden, Arps	635,000	635,000	885,000
Shearman & Sterling	283,500	520,000	595,000
Davis Polk & Wardwell	282,000	740,000	975,000
Hogan & Hartson	140,000	335,000	465,000
Graham & James	100,000	350,000	260,000
Debevoise & Plimpton	196,500	590,000	890,000
Altheimer & Gray	n/a	n/a	n/a
Milbank, Tweed	173,000	530,000	590,000
Sullivan & Cromwell	317,500	820,000	1,310,000
LeBoeuf, Lamb	180,000	360,000	360,000
Rogers & Wells	164,000	450,000	475,000
Squire, Sanders & Dempsey	132,000	375,000	330,000
Willkie, Farr & Gallagher	176,000	515,000	760,000
Morgan, Lewis & Bockius	296,000	405,000	405,000
Weil, Gotshal & Manges	305,500	530,000	705,000
Average	**264,610**	**492,110**	**612,890**
AmLaw 100 Average	**162,140**	**426,000**	**446,000**
AmLaw 50 Average[b]	**222,950**	**475,700**	**560,600**

[a]Firms with the largest overseas practices; see Table 2.
[b]"AmLaw 50" refers to the top 50 firms of the AmLaw 100 (measured by gross revenue).

Source: Table 2; in "The AmLaw 100 Firms," *The American Lawyer*, July-August 1996, data are most recent for completed fiscal years; in some cases, *The American Lawyer* may estimate.

What is also obvious in reviewing the lawyers' experience is that it tracks pretty closely the experience of other information-based firms. None of the factors that drive success in the legal profession is specific to the legal field; all have been cited in other industries and different contexts. For a long time, lawyers have tended to see themselves as a profession, not a business. They have claimed idiosyncrasies and public responsibilities that put them above the commercial fray and away from the base forces of the market. To some extent, the distinctions are valid. Yet once law firms begin to expand abroad, once they focus on servicing the complex transactions of multinational clients, the parallels with other industries emerge sharply. Multinational law firms are novel enterprises, but they are not unique.

Moreover, insofar as the lawyers' experience is not particular to their field, the parallels presumably run in both directions. Although lawyers may have followed a familiar path in expanding abroad, their migration also exemplifies broader issues involved in selling intangible products across an international marketplace.

Five

Selling the Unseen: Lawyers and Their Peers

The connection between law and other industries runs through their common dependence on information. Although obvious disparities exist, law, as a business, bears a strong resemblance to advertising, management consulting, accounting—to any business in which the product consists primarily of knowledge and the production process occurs largely in people's minds.[1] Where these conditions exist, parallels from the legal field are most directly applicable.

The Value of Size. The first generalizable observation is that, for firms that sell an ephemeral product in an international marketplace, size in itself has value. Its value is not infinite, and disadvantages of size will eventually surface. But up to a certain point, there is value in being big. This is not an obvious relationship. Indeed, it flies in the face of a common belief that information undermines the power of large organizations, pushing commerce into a downsized, outsourced, work-at-home world.

Evidence from the legal field contradicts this view. While many lawyers remain sole practitioners and others have grouped themselves into small but highly specialized boutique firms, many of the most profitable and highly regarded firms are big. As **Table 4** indicates, the top-tier law firms have grown substantially larger over the past decades and show no signs of slowing their pace.[2] Instead, these firms, consummate providers of information, have grown more all-encompassing, expanding their corporate presence and driving smaller firms either to consolidate or to settle into highly specialized niches. Not all firms, again, have chosen this route, and many of the smaller firms retain a particular and highly profitable cachet. But the activity, it appears, is happening at the ends of the spectrum, rather than in the middle. As a result, one partner noted, "there is no middle class left."[3]

The combination of specialization and enlargement, it appears, is neither a coincidence nor a passing phenomenon. It is a competitive and strategic response. Implicitly, law firms have realized that the proliferation of information does not necessarily subvert the power of those that provide information. Rather, proliferation demands that these providers do

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[1]Software, publishing, and media have some, but not all, of the same characteristics. For a related discussion of the problems that surround the electronic sale of information, see Debora Spar and Jeffrey J. Bussgang, "Ruling the Net," *Harvard Business Review* (May-June 1996), 125-133.

[2]This point is also confirmed in James F. Fitzpatrick, "Legal Future Shock: The Role of Large Law Firms by the End of the Century," *Indiana Law Journal* **64** (Summer 1989), 461-471.

[3]Personal interview, Washington, D.C., September, 1996.

Table 4

Largest U.S. Law Firms, 1985 and 1995

Firm	1985 Revenues ($ Millions)	1985 Number of Lawyers	1995 Revenues ($ Millions)	1995 Number of Lawyers
Skadden, Arps	169.0	526	635.0	1,001
Baker & McKenzie	128.0	751	594.2	1,776
Jones, Day	108.0	435	400.0	1,014
Sullivan & Cromwell	94.0	251	317.5	387
Weil, Gotshal & Manges	90.0	286	305.5	575
Latham & Watkins	89.0	302	299.5	575
Morgan, Lewis & Bockius	91.0	388	296.0	732
Cleary, Gottlieb	81.0	229	286.0	441
Shearman & Sterling	117.0	378	283.5	546
Davis Polk & Wardwell	118.0	278	282.0	381

Source: "The AmLaw 100," *The American Lawyer*, July-August 1996 and July-August 1986.

more with the information at their disposal. Instead of just providing legal information and advice, firms have to add value to it—sorting through facts, coordinating advice, managing and customizing an ever increasing flow of data.

They can perform these tasks in one of two ways. Either firms can become boutiques, developing deep and specific expertise in a particular area, or they can bundle separate areas of expertise into an integrated analysis. To follow the first route, firms can stay small and cozy; to pursue the second, they almost always have to be big. Only big firms can be simultaneously specific and broad, specialist and generalist, acquiring a "credible depth" to handle complex transactions.[4] Only big firms have the internal capacity, as one partner explained, to "generate vast amounts of paper and distribute it to the four corners of the world in 48 hours."[5] And although they cannot control information in an open and electronically linked environment, only big firms can develop economies of information that enable them to dominate the market for its sale. They can hoard expertise, hone it, and offer salary inducements that smaller competitors cannot possibly match. They can produce and distribute (often for free) publications that simultaneously disseminate information and market

[4]Term suggested in an interview by the author with a source that prefers to remain anonymous, New York, October 1996. For more on this point, see Saundra Torry and B. H. Lawrence, "D.C. Area Law Firms Join Wave of Mergers," *Washington Post*, April 10, 1989, E1; and a panel discussion originally titled "Is the Multicity Mega-Firm a Necessity or a Pipe Dream?" published by Joseph Flom as "Getting Big: Is Growth Unavoidable?" *American Lawyer* (December 1984), 8-15 [Supplement].

[5]Interview by the author with a source that prefers to remain anonymous, New York, September 1996.

their services. They can afford to "buy off" the time of some of their most highly valued assets, granting them sabbaticals or publishing venues or other means of replenishing and displaying their individual stores of knowledge. Big firms are also in a better position to establish and maintain increasingly sophisticated networks for managing information flows between geographically dispersed offices.

This power of size is apparent across the information-intensive industries. Not only law firms have grown bigger since the mid-1970s, but also accounting firms, media firms, advertising agencies, and banks.[6] As the pool of information expands and flows across international borders, firms that process information are intuitively recognizing the benefits of size. To compete, they must be all things to all customers. Yet the markets they serve are different, and their products, unlike manufactured goods, can be neither stockpiled nor standardized. Thus, information-based firms in a global economy often act like commercial chameleons, changing colors with context. Size helps to do this well.

Still, as implied here, the correlation between size and success is neither infinite nor perfect. Some small firms have done extremely well in overseas markets. Some large firms, such as the venerable Coudert Brothers, appear to have become victims of size, entangled by over-heavy management costs. Just where the threshold lies is difficult to determine, but both data and anecdotal testimony strongly suggest that, in the international marketplace, size provides information-based firms with a considerable competitive advantage. Despite the internal tensions to which a large global law firm is inherently prone, it is still, as one partner asserted, "clearly the wave of the future."[7]

The Value of Reputation. A second and related observation concerns the critical value of reputation. Reputation, of course, is always important to business, hence the centrality of brand equity and image marketing. But it is particularly, though perhaps less obviously, important to information-based firms.

The importance of reputation stems from the inability of customers to measure the quality of the information they receive: in the short term, at least, a corporation cannot tell whether it received the best contract, the best tax strategy, the most suitable acquisition target, or the most successful advertising campaign. It cannot objectively judge either value or competence. Thus, reputation serves as an all-important proxy. Firms buy the advice or

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[6]In a related discussion, DeAngelo argues that big accounting firms are inherently better than small ones, because they are less reliant on any single customer and thus more likely to produce objective reports. See Linda A. DeAngelo, "Auditor Size and Audit Quality," *Journal of Accounting and Economics* 3 (December 1981), 183-199. For a description of how the investment management industry also is splitting into two tiers, of very large and very small firms, see Mark P. Hurley et al., "The Coming Evolution of the Investment Management Industry: Opportunities and Strategies," Goldman Sachs & Co., Investment Management Industry Group, October 1995.

[7]Interview with the author, London, October 1996. This comment was made repeatedly in many interviews.

expertise of a particular provider because others have spoken well of its talents or because its name connotes commercial heft.[8] Objective or mechanical evaluations of information-based products are difficult to construct, so customers are forced to rely instead on the market's perception of quality. Or, as Lovelock and Yip note, "The uncertainty engendered by intangibility requires strong branding to offset it."[9]

In foreign markets, particularly less developed ones, branding, or reputation, carries particular weight. Accurate knowledge of overseas providers is scarcer, and the risk of a "bad" purchase proportionately higher. As a result, clients are warier and more anxious to buy a well-known, brand-name commodity. They want, as one partner described it, to procure a "Good Housekeeping Seal of Approval" for risky deals and, occasionally, to boost their own reputations by allying themselves with a globally recognized firm.[10] Consequently, well-known information providers can expand their global sales simply by being well-known information providers. Smaller firms, scrambling to establish their name and credentials, are liable to be left at a serious disadvantage. The preference for reputation clearly marks the record of law firms' expansion; it is evident also in accounting, management consulting, health care services, and investment banking.[11]

The Importance of "Walking Assets." One characteristic that distinguishes information-based firms from manufacturing firms is their central reliance on people—on the human capital that walks out the door each evening. This is not to imply that manufacturing firms do not need or value their employees—they do—but for information-based firms the relationship is tighter and more critical.

The difference lies with the relative weight of human versus physical or financial capital. In most information-based industries, the "factory" is little more than an agglomeration of people. There may be some real estate and computer hardware, but the firm's assets reside principally in its people. This concentration creates special challenges for information-based firms. To compete, they must acquire the most profitable and productive assets, which means hiring and retaining the most talented people. They must train these people in particular specialties, enabling them to develop the expertise critical to the firm's success, and then integrate them into a system for coordinating and consolidating their specific knowledge. Once part of this system, these "walking assets" are highly valuable and difficult to replace.

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[8]Gilson and Mnookin argue that large firms can be seen in fact as a quality assurance mechanism. See Ronald J. Gilson and Robert H. Mnookin, "Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits," *Stanford Law Review* **37** (January 1985), 313-397.

[9]Christopher H. Lovelock and George S. Yip, "Developing Global Strategies for Service Businesses," California *Management Review* **38** (Winter 1996), 64-86.

[10]Interview by the author, New York, September 1996.

[11]See, for instance, Feketekuty (1988), 48-50.

Retention is thus key, particularly in foreign markets, where local knowledge is likely to be concentrated in a handful of people. With walking assets in foreign markets, a central objective for information-based firms is to ensure that these assets don't walk too far from the firm.

The Importance of Balancing Global and Local Interests. It goes almost without saying that firms at the turn of the twenty-first century need to "think global and act local." This balance, key to the success of nearly all multinational firms, has been demonstrated and explored by many scholars of the corporation and of international business.[12] Yet, for information-based firms, this connection and its inherent tensions bear repeating.

Though information may well be a global commodity, it nevertheless manifests itself and is employed in locally specific ways. And though all firms may increasingly demand advice on a common pool of financial and business transactions, inevitably circumstances will arise in which, say, a Chinese firm needs different information, in a different format and language, from its Austrian counterpart. From the vast pool of globally available information, it wants its particular pieces and their specific implications. To obtain them, it will almost certainly need to rely on a firm with local contacts and competence.

Accordingly, any firm hoping to sell information abroad will need to develop a local as well as a global presence. It will need to hire local experts and develop local expertise. It will need language skills and a sincere, long-term commitment. This certainly applies to law firms: successful overseas practices such as White & Case and Clifford Chance "went native" from the start, either hiring local attorneys or sending partners with a personal interest in the region and the intention of spending their careers there.[13] The firms learned, as one partner wryly noted, that "You can't just parachute people in from New York"[14]—a lesson that warrants imitation by other information-based firms.

Yet insofar as legal experience demonstrates the importance of being local, it also suggests that managing across a web of local outposts is a complicated and delicate task. In the global marketplace, firms that sell information need to combine economies of scale and reputation with the specific benefits of local expertise. To do so implies pushing autonomy to local offices while maintaining control at the center—a feat far more easily described than

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[12]See Christopher A. Bartlett and Sumantra Ghoshal, "What Is a Global Manager?" *Harvard Business Review* 7 (September-October 1992), 124-132; Bartlett and Ghoshal, *Managing Across Borders* (Boston: Harvard Business School Press, 1989); Yves L. Doz and C. K. Prahalad, *Multinational Mission: Balancing Local Demands and Global Vision* (N.Y.: The Free Press, 1987).

[13]This was confirmed repeatedly in interviews conducted in the fall of 1996 with law firms in New York, Washington, D.C., and London.

[14]Interview by the author, New York, September 1996.

implemented. One firm, the Chicago-based behemoth Baker & McKenzie, claims to have created a management structure that successfully manages the tension. Nearly all the firm's lawyers work in their native countries and receive compensation based on local returns—a policy bluntly named "Eat what you kill." Local offices retain full autonomy over their operations, effectively functioning as independent firms and adapting readily to local customs. All major decisions, however, are pushed up to a cross-national policy committee, overseen by partners from across the practice.[15] According to Baker's management, this structure enables the firm to operate "as a global legal business."[16] Outsiders are far less complimentary. They deride Baker as a franchise rather than a firm, the "McLaw" of the legal world. More important, competitors and clients both cite quality control as a problem for Baker's practice. With far-flung offices and disparate styles of lawyering, the firm appears to suffer a lack of consistency that keeps it, despite its enviable global reach, from being considered among the top tier of international firms. Other firms have had even greater difficulties. Recently, for example, Coudert Brothers, one of the first firms to establish a transnational practice, has vacillated between too much and too little control at the center.[17] In the course of these vacillations, attorneys have wearied of the practice and left, taking with them considerable chunks of the firm's reputation.

The extrapolation from this case is stark. To succeed in global markets, information-based firms need simultaneously to be big and highly specialized, global and local. They must attract and retain the best talent and use it to establish an international network and a global reputation. They then have to manage this huge and fragile enterprise, composed in all likelihood of rather huge and fragile egos—the walking assets who possess the information that the firm packages and sells. If the firm cannot keep these essential assets happy, then the assets will, indeed, walk. The firm will lose both the specific expertise vested in them and, most likely, their personal cluster of contacts. Consequently, its reputation and its business will suffer.

It sounds like an unfortunate ending to a herculean task, and to some extent it is. The experience of the legal profession suggests that selling information in the international marketplace entails considerable risk and requirements. It demands a scale of activity, a level of specialization, and an organizational structure far beyond the dictates of a single domestic

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[15]Major decisions include those that involve an investment of more than $1 million or a firm commitment of more than five years. See Deborah Graham, "Baker & McKenzie Streamlines Democratically," *Legal Times*, Feb. 25, 1985, 12. For more on the practice and structure of Baker & McKenzie, see Barnaby J. Feder, "The Unorthodox Behemoth of Law Firms," *The New York Times*, March 14, 1993, 3-1; James B. Stewart, Jr., "Inside the World's Largest Law Firm: Baker & McKenzie," *The American Lawyer* (January 1980), 32; and Mark Stevens, "Chicken McLaw: The Evolution of Baker & McKenzie," *Crain's Chicago Business*, Nov. 24, 1986, 25.

[16]Donna Gill, "Baker's Unique Niche," *Chicago Lawyer* (January 1992), 1.

[17]See Nicholas Varchaver, "The Culture of Chaos," *American Lawyer* (December 1993), 52.

market. It means managing information and people to a degree unheard of in many information-based firms, especially those that see themselves as professional or creative organizations, rather than mere commercial enterprises. Yet the lawyers' experience also suggests that these requirements can be met. Not by all firms, and not easily, but the advantages of size and reputation mean that those that adapt most quickly and completely stand to gain extremely lucrative rewards.

Just how to make these adaptations is a strategic decision that can only be made on a case-by-case and firm-by-firm basis. Yet in reviewing their options, firms in other information-based industries would do well to watch, and even to learn from, the lawyers. For, as one observer noted rather ruefully, "You think 'what a dreadful way to run the world, but, gee, they're rather successful.'"[18]

[18]The observer is speaking in particular of the British response to American-style law practice. Quoted in Karen Dillon, "Can They Skaddenize Europe?" *The American Lawyer* (December 1989), 42.