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The Global Legal Professional and the Challenges to Legal Education

Jonathan D. Cahn*

Good afternoon. It is a pleasure to be with you here today to discuss the global legal profession and the critical role that you—as educators of foreign degree candidates—can play in shaping that profession.

Six years ago I climbed aboard an aging Russian jet traveling from Beijing, China to Kazakhstan. At the time, I was responsible for my law firm's office in Beijing, and the trip to Central Asia was an inconvenient frolic and detour. I was to advise Kazakhstan's government on its law on foreign investments. Assuming the jet could reach its destination, this would be a brief visit. That white knuckled voyage ultimately afforded me the rarest of opportunities—the chance to participate in the birth of a new country and the transformation of its economy, the design of a legal system, and the nurturing of a fledgling legal profession. The brief visit turned into a six-year adventure. The first assignment—advance on the country's foreign investment regime—once complete, led to assisting with the privatization of Kazakhstan's major oil enterprises, advising the Government on its external debt policy, and negotiating the concession of its electrical transmission system. By 1998, my law firm, Coudert Brothers, had decided that Central Asia was important strategically. As many of you know, Central Asia, Kazakhstan in particular, is one of the world's great oil producing regions. Large oil companies, many of them our clients, were headed to Kazakhstan—so, too, would we. So, I moved my family and household to Kazakhstan as Coudert's resident managing partner.

Kazakhstan provides us as good an example as any of globalization of the legal profession. When I first arrived, there

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were few attorneys other than the most respected legal scholars who had ventured outside the country.

Even fewer spoke English. The finest legal minds in the country had only the most limited English vocabularies. We drafted numerous laws—from the civil code to the law on external debt—relying upon our translators to communicate with one another.

Initially, I cared little about the English-language skills of my colleagues. My objective was to work with the most knowledgeable attorneys, not merely attorneys who spoke English.

By 1998, when Coudert established its offices, a number of the attorneys with whom I worked had made considerable progress at understanding, and being understood by, me. Today, with one notable and cherished exception, each of my lawyers speaks and writes fluent English.

The first was to be Viktor, who hired a tutor and practiced at every spare moment. He successfully completed his LL.M. from the University of Minnesota Law School, supported by a Muskie scholarship. The next was Lina, who earned her LL.M. degree from Berkley. Then came Oleg and Aliya, who matriculated with LL.M.s from Leyden, in Holland. Sergei is now at the University of Virginia. Gulmira will apply to a program this year. I am now surrounded by young lawyers possessing masters degrees in law, speaking fluent English, and having spent more time recently in the U.S. than I.

What caused this dramatic transformation? Was it because we no longer had the luxury of an interpreter for every lawyer? Was it because there was an abiding desire to speak with me in my native language, or to curtail my primitive and embarrassing attempts at Russian?

I have come to believe that driving this progress is that our attorneys understood that to succeed in an international firm they required “international credentials.” LL.M. programs recruit only the best English-speaking attorneys from countries like Kazakhstan. They could earn those credentials, they reasoned, if they learned English and went abroad. The dedication required to master another language sufficiently to gain entrance to a law school requires the fiercest personal motivation—a belief fired by the conviction that one’s survival may be tied to the endeavor. And so, the quest for survival propelled them over obstacles I would have found nearly impossible.

This process is being played out in country after country, in every region of the world. Almost single-handedly, LL.M.

programs have created an invaluable incentive for lawyers to learn professional English, and that has led to a global legal profession—once divided by language—now, increasingly unified through the ability of its practitioners to fluently speak and write and conduct business in English.

That leads me to my first observation about the new, global legal profession—it is characterized by attorneys able to speak and write effectively in the English language.

The reasons educators place a premium on English language skills are different from the profession's ultimate rationale. But there is an important relationship. Historically, U.S. law schools employed standardized tests to measure English language proficiency, because the tests are predictive of a candidate's potential for success in LL.M. programs taught primarily, if not exclusively, in the English language. Without such skills it would have been difficult and costly to train a foreign LL.M. candidate. From your perspective, the Test of English as a Foreign Language (TOEFL) is a means of culling a student body that requires less instructional effort and that can master the English language materials you rely upon in your courses.

Foreign lawyers, of course, who have better English skills fare better, earn higher grades, and ultimately have higher survival rates. A corollary of this principle is that higher grades translate into more professional opportunities following law school, opportunities to work in one of the many international law firms such as Coudert Brothers that recruits LL.M. graduates.

The rationale for professionals, by contrast, is that the *lingua franca* of international business now is English. Their clients speak English, negotiate deals in English, and document transactions in English.

English creates an invisible line dividing the international profession from its domestic counterpart in many countries. Increasingly, in Kazakhstan there is a domestic and an international legal profession—the distinction being that attorneys in the international firms use English as their primary work language and their clients, are, by and large, international, and speak English as a primary business language. The legal challenges that these lawyers master invariably involve the international business organization. English language skills therefore are predictive not only of educational attainment and employment, but the types of clients for whom one works, the types of legal problems one confronts, and the skills one develops.

This leads me to my second observation about the global profession: the vast majority of its members are in global legal enterprises—be they law or accounting firms—with offices dotting the globe or which see a substantial portion of their business coming from international corporate relationships.

The largest international firms are US or British, where the professional culture relies on English as the primary working language. Why US or British? One reason is that the most important capital markets for global enterprise are New York and London, and the global legal enterprise is inextricably tied to global business and therefore global capital markets.

A byproduct, therefore, of English language skills is that those foreign attorneys who truly succeed in the language are tracked into global law enterprises or legal endeavors having an international dimension. English language skills, LL.M. degrees, membership in a global law enterprise—the earmarks of the global legal profession—are indicia of the global sub-culture.

Now let me turn to another key aspect of the global legal profession—the cultural matrix in which its professionals must operate. What do you imagine I do each day? Does anyone here have an image of what an international lawyer does in Kazakhstan, or China, or Thailand, or Russia for that matter? How many of you know where Kazakhstan is? Well, you have before you a “global professional.” First, although I appear to have the same physiology as do you—not true. I am missing a time zone. Every global professional—be they lawyer, currency trader, or CEO of a multinational company—hovers *above* time zones. Time has a multidimensional quality—we have twenty-four hour production, we anticipate waking hours and sleeping hours around the world, we continuously monitor the critical temporal access points—we know when in a twenty-four hour day things open and close, be they markets, offices, clients. Our organizations typically are large knowledge-based enterprises, and we relate our ability to perform a task to hours on a twenty-four hour clock that has no a.m. or p.m. It is not unusual for me to lead a transaction from Almaty in which participants are spread through four time zones. For instance, a \$300 million yen based financing, involving Japan, London, San Francisco and Kazakhstan; an aircraft lease transaction involving Moscow, Tokyo, New York, Baku and Almaty; a Canadian public offering, involving Toronto, Almaty, and New York.

Though I outline elements of the “culture” of the global legal professional, it is not possible to explicitly interpret it for you; you must immerse yourself in it to understand it. For the moment, take

my word for it, there are vast numbers of lawyers just like me around the world who exist as part of this culture, many of them marked indelibly by the US-LL.M. experience. They were your students.

But let me try to convey the three distinct capacities that I believe are necessary to navigate and to succeed in this cultural matrix:

- **English Language Skills**—First is the ability to communicate effectively in English. I’ve already mentioned this, but I want to underscore it once more—and then add an important nuance in a few moments.
- **Lawyering Skills That Translate Across National Boundaries**—Second, the global law professional is not truly bound by legal knowledge of any single jurisdiction. For instance, my young lawyers in Kazakhstan have never worked with a cross-border loan governed by the law of Kazakhstan, but they can speak with great authority about a loan governed by New York law or the law of the U.K. That knowledge—New York or English law applied to a financing—has value in virtually any jurisdiction where international capital is involved. Without “transportable” skills the global lawyer has no upward mobility in the global organization, which requires the ability to move between legal systems, and sometimes simply to move. You will find, for example, a Russian lawyer from Coudert Brothers in Japan, Australian lawyers in New York, Kazakhstani lawyers in Washington, US, French and Canadian lawyers in Moscow and Kazakhstan.
- **An Aptitude For Multi-disciplinary Problem-solving**—The final capacity that I believe is critical for the global lawyer can be summarized by saying “knowledge of the law is not enough.” The ability to think creatively, integrating knowledge from across legal fields, and from economics, corporate finance, and business is the key to “adding value.” This problem-solving exercise invariably takes place in the context of demanding client expectations.

These three abilities—one might call them “core competencies”—are the yardstick by which I evaluate an LL.M. program. Normally, what I do is simply cross my fingers and hope LL.M. graduates possess these skills, because LL.M. programs rarely are designed to impart to the professional the tools they need to survive or succeed. Indeed, many of your graduates are happy merely to gain an increased exposure to the English language and a broader understanding of certain legal subjects.

I believe, nonetheless, that the challenges your students confront in their work, ultimately will be your challenges as educators. The first challenge to legal education is to impart the global legal professional's core competencies.

Let me spend just a few minutes adding a bit more texture to each of these core elements. I want to focus particularly on how these relate to you and to the job that I believe legal educators have before them.

I've already mentioned the importance of English. But as I'm sure you know, speaking and writing English as a lawyer means not only fluency in the language, but the ability to manipulate and articulate assumptions, inferences and perspectives through subtle choices. The lawyer must have an understanding of what linguists call the "discourse community"—cultural rhetoric, hierarchical structure of argument, semantics, culturally appropriate argumentation, an understanding of language conventions, sentence structure, and vocabulary of the legal discipline. When we use English as lawyers, we make choices, subtle, strategic choices as advocates, drafters, and communicators: your students must learn to do the same. Should one use the word *imbibe*, which has a Latin root, or *drink*, with its Germanic origins? When your students arrive, they can succeed at a TOEFL exam, but that does not mean they are equipped to use English as an attorney in global commerce. *Your challenge as educators is to harness what we know about linguistics and English teaching to enable your students to work creatively inside the language: to be advocates, draft agreements, and relate to peers in a fashion comparable to native English speakers.*

Second, your students ultimately will compete in a hierarchical organization that relegates lawyers outside the capital markets of the U.S. or Europe to second-class citizenship—unless they can demonstrate mastery of a discipline that translates across national boundaries. That broader discipline must then be harnessed to a fine-grained understanding of local law applicable to a particular assignment. One example of such a discipline would be project finance, where the intellectual discipline is much the same from country to country, although the legal obstacles to any transaction differ depending on the legal system. There are some legal disciplines, which unless learned in a particular location, such as London, New York, Washington, D.C., or Brussels are not really thought to have been learned. The number of disciplines with application across borders is not as limited as might be thought. Our office in Kazakhstan, for instance, launched a Caspian

environmental project to address one of the most interesting legal challenges in the region—environmental regulation of the Caspian by its littoral states. The lawyers on that team—all Kazahstani—draw on experience in environmental economics from the U.S., U.S. and European environmental standards, Russian and Kazakh environmental law and science, and environmental expertise from the international petroleum industry. *Your challenge, as educators, is to learn enough about the global legal organization and the cross-border disciplines they rely upon, to design courses that are relevant, that give your students mobility within the culture of those organizations. Obviously, this task places an emphasis on both transferable disciplines and a capacity with comparative law that enables the lawyer to translate those competencies (and individual experiences) across national borders from one legal system to another.*

Third, your students must be creative problem solvers. Unfortunately, the training they frequently have received in their own countries teaches them to think of law as a technical, narrow discipline that renders a comparably narrow range of answers. Law, in this tradition, is as arid as the desert.

The global lawyer must be able to solve problems along two multidisciplinary axes. Along one axis are the multiple legal disciplines that impinge on the problem—corporate, tax, and regulatory law—and along the other axis are the non-legal disciplines—economics, corporate finance, science, and sociology. Creativity is crucial to the legal enterprise. Thus, I believe that your challenge as educators is *creatively* to teach *creativity*. That may sound esoteric, but I mean it in a most concrete way. In our office, we have a series of exercises that we use around problem solving, computer programs for diagramming ideas, and lots of brainstorming sessions. Your job is to find the techniques, the approaches, the tools to enable your students to learn and exercise these multi-dimensional talents in order to prepare themselves for this real-world of unpredictable, sometimes confounding, multi-dimensional legal problem-solving.

After having trained many attorneys, I would say that each of these core competencies can be taught. I dare say that if any law school designed a curriculum around these core competencies, it would win enormous support from major international law firms and would change the playing field for foreign lawyer education in an important and positive way.

But in my view, there's one more piece that still is missing—a piece that gives context and bearing to these three core

competencies Let me describe it, before I define it. At nearly the same time that I was opening Coudert's office in Kazakhstan, the globe was inching its way towards the Asian financial crisis, which soon turned into the Russian crisis, that then overflowed Russia's borders to become Kazakhstan's macroeconomic crisis. Six months later, the IMF announced that the Asian financial crisis was at an end. So said the IMF, and the world sighed relief. Markets righted themselves again, investors returned to the business of making money, and international economic and financial trends were less threatening.

But James Wolfensohn, President of the World Bank, shortly after the IMF declared victory, reminded us that a deeper crisis tied to the global economy was far from over. He pointed out that 1.3 billion people live on less than \$1 a day; 3 billion live on under \$2 a day: "The human pain of poverty is all around us." Obviously, the human crisis was not at an end, and is not at an end. Indeed, it is the best of times, and the worst of times.

This is part of the reality that I see and that I experience daily: The newly minted global economy offers hope and enormous prospects for alleviating poverty, but it is not an unalloyed good. It has brought abundance for some and poverty to many. And this brings me back to the final element that we must impart in the education of the global practitioner—a deep understanding of and respect for the social mission of law. Indeed, I believe this to be the most important challenge to US legal education of the global law professional.

The global legal profession is the product of the globalization of business, capital markets, and trade. For the most part, therefore, the global law professional, as a member of a firm, represents those with the money to pay—the banks, global corporations, and governments. What of the people for whom Mr. Wolfensohn expressed concern? This is a stickier issue—but it is one we must not overlook.

It can generally be said Americans believe in equal access to justice and to the democratic rule of law. The global legal professional, however, not only floats above time zones, but also above certain responsibilities that we in the United States associate with the legal profession. Lacking far too frequently is a commitment to a global public interest. US-LL.M. programs, which have played a central role in the creation of this professional elite, must begin to address these broader issues as part of their educational mission.

The global legal professional, if we are not alert, will be limited by a tunnel vision that fails to relate law to justice, that fails to see lawyers in the global market as protectors of equal access to justice, that fails to understand the difference between the rule of law and the democratic rule of law. What I am speaking of, simply, is the need to instill in these talented young men and women a recognition that they are not unhinged from ethical or moral responsibilities simply because their practices literally and figuratively span so many legal and political jurisdictions. Indeed, perhaps because of that, they must recognize—and be taught—that, if anything, their ethical moorings must be all the deeper, always taking into account the hopelessly simple question, “Is this the right thing to do?”

Stated somewhat differently, the global practitioner must carry more in his legal toolbox than the latest laptop or the most powerful cell phone or, for that matter, even the most finely honed set of legal skills. No, ultimately to be successful in a global practice and to operate in a global environment, these individuals also must possess a deep ethical keel to steady them so that they do not forget their ethical obligations to the fundamental public trust of the profession. And I believe that you—as legal educators who equip these individuals for the lightning-paced world of cross-border deals and 24-hour work days—also must teach these young lawyers that the mission of law is not only money, but justice.

Lawyers as guns for hire are no more than another extractive industry. Lawyers, notwithstanding the frequent jibes, play a leadership role upon which the rule of law ultimately depends. We must impart to global legal professionals an understanding of the legal profession’s public trust in the new global environment. We US lawyers practicing abroad or in the rarefied ether of international commerce, frequently forget the simple obligations of the profession, such as ABA Rule 6.1 which states that a lawyer should aspire to render at least fifty hours of pro bono legal service a year, and we frequently fail to remind our young colleagues of this obligation or the underlying social role of lawyers on which this obligation is premised.

With these concerns in mind, a month ago, several colleagues (including the Chair of this Section, Toni Fine) and I joined together to establish the Global Justice Foundation, and are now in the process of raising funds with which to endow the Foundation.

One of the prime objectives of the Foundation is to fund a practicing law and economics center jointly working with a law school in order to train a new breed of global law professional—one

possessed of the core competencies discussed above—but committed to a public interest mission and possessing the skills and access to resources necessary to make good that mission. The Foundation would fund the practicing law and economics center as well as individual attorneys and law firms to provide legal and economic representation to citizens and communities in developing countries to address issues of economic and political enfranchisement. We believe that it is possible to train a global law professional:

- Capable of and committed to pinpointing strategic opportunity for democratic participation in a highly complex, ever-changing international arena;
- Skilled in translating solutions from one legal or economic system to another;
- Capable of innovating new international forms of citizen and community legal intervention as issues overflow national boundaries; and
- Able to use private law transactions in investment, finance, trade, capital markets, privatization, and nationalization for public purposes.

Traditional “legal interventions” in the hands of the new public interest lawyer—litigation, legislation, regulation—will need to be reshaped within an understanding of the emerging global system, the interaction of national systems, and the relationship between private economic transactions and the public interest.

The language and meaning of democratic membership and the “rule of law” are now fundamentally altered, because the nation state’s role has changed and is increasingly subordinated to the international regime and private economic transactions. Globalization and its promise of economic growth have made local communities a form of endangered species in the service of the global market. Harvard economist Jeffery Sachs has written that “Without question, globalization is having a deep effect on politics at many levels. Most important, the national marketplace is losing its salience relative to international markets. This is causing a sea change in the role of the nation-state, relative to both local and regional governments on the one side, and multinational political institutions on the other.”

Thus, I come to the end of my message to you today. The emerging global system will necessitate a new international, public interest lawyer, and a new tradition and pedagogy in international public interest law. Public international law traditionally has been

the stuff of treaties, human rights pronouncements, trade agreements, the law of war, and the law of peace.

Globalization, I submit, renders a sea change in the way we define the global public interest that dictates a change in the pedagogy of international public interest law. I welcome your help in preparing the coming generations of legal practitioners for this new, dynamic, and very real world. I wish you well.

