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From New York to Madrid via Paris: Smaller Pond, Bigger Fish?

by Clifford J. Hendel

A. INTRODUCTION

I had an inclination toward an international career before I entered law school. As an undergraduate, I spent a semester in Madrid. After college, I considered careers with the Department of State and even was offered a job as an economic analyst with the C.I.A., but since this was during the Iran hostage crisis, these careers seemed a bit risky. So, after a year or so as a management consultant in an accounting firm's consultancy division and some time working on a state political campaign, I opted for law school instead.

In law school, I had the opportunity to spend a semester at the University of Exeter in England, where I learned the basic elements of European Economic Community law and studied some comparative law that I could not have obtained in the United States, as well as a little French and German.

B. WHAT IS MY JOB?

I now practice in Madrid as a partner of a small but growing "boutique" firm (which the local business press has characterized as one of the "jewels in the crown" of the Spanish profession) whose practice in large part is oriented

toward high-visibility mergers and acquisitions (M&A) and related work. Our firm currently has 13 lawyers; I am the only non-Spaniard.

My work involves two broad categories: Spanish and international.

The first category includes the range of work that clients bring to our firm involving Spanish investments and operations. A few examples in this area include: advising a leading U.K. chain of fitness clubs in its expansion into the Spanish market; a Scandinavian telecommunications operator as member of a consortium that was awarded a license for provision of "third-generation" mobile telephone services in Spain and as prospective purchaser of one of Spain's leading Internet portals; and a major U.S.-based Internet advertising company in the termination of a joint venture with a leading Spanish telecoms entity and the expansion of its activities in Spain. Although I refer to these matters as Spanish, they generally include important international elements; for example, the clients are frequently from other countries, and the structure or underlying "mind-set" of the transaction often reflects international practices. Thus, the clients' experience and expectations may need certain massaging or explaining in order to achieve their desired objectives in the legal/commercial context of Spain with which they may be unfamiliar, and my background and experience qualifies me to help them.

My international assignments sometimes do not have a significant nexus to Spain or Spanish law, but for a variety of reasons may reach my desk nonetheless. The nature and quantity of these matters vary—in the past year or so perhaps involving 25 to 30 percent of my time, and in peak periods at or even above 50 percent. These sorts of matters include advising a French/Swiss bottled-water giant in the establishment of a joint venture and expansion in Latin America and, subsequently, in a series of acquisitions in various regions of the globe, including Eastern Europe and the Middle East; counseling a Brazilian electrical equipment manufacturer in an international arbitration—an area that we have identified as poised for great growth in Spain and Latin America—arising out of claims from an African construction project; and advising a French bank in various international aircraft lease financings. In these matters, there is no need for me to burden my Spanish colleagues with requests for assistance.

Occasionally, my work involves matters that are hybrids and are not fairly characterized as either Spanish or international. For example, I recently advised a Spanish manufacturer and distributor of fitness equipment in connection with the possible acquisition of a U.S.-based

manufacturer and distributor of complementary equipment and the possible acquisition of certain European distribution rights from an unrelated entity in the same sector. This was done with an eye to creating a global leader in the sector.

C. HOW DID I GET TO WHERE I AM?

Upon graduation from law school at a fine but "regional" East Coast institution, I had a strong desire to do something international, and so tried to find a position with a New York firm. At the time, however, New York firms had little interest in applicants from schools that were slightly off their mainstream radar screen, particularly applicants like me whose law school grades were somewhat less than stellar. So when graduation rolled around, I had not yet found a job.

But I got lucky. A new federal district court judgeship had been created in the district in which I lived and the Senate had cleared the candidate. I applied for the two-year clerkship position and got the job. For the next two years, I observed and participated in the processing and resolution of a broad range of civil and criminal matters alongside an extremely energetic, capable, and conscientious judge. As my clerkship drew to an end, I found that the position seemed to have added enough luster to my curriculum vitae to compensate for the perceived deficiencies that had prevented me from finding a suitable position with a New York firm two years before. My choice now was between white-collar criminal work in a (now-defunct) large domestic New York firm with a prominent lawyer who is now a distinguished federal district court judge in Manhattan, and one of the most internationally active of the New York–based firms, where I could join, after a period of rotation, any department that I desired. I accepted the latter position, and, after an interesting several months in the newly created international arbitration department of the firm, decided that my international interests—still principally oriented toward Latin America and Spain—would be better served in the corporate department of the firm.

I rather quickly became specialized in asset-financing transactions, particularly involving aircraft leveraged leasing. While many of these transactions were purely domestic, a number were structured as cross-border or "double-dip" leases, in which the differing treatment for tax and/or commercial law purposes of the same transaction under different legal systems could be used to the advantage of the parties. Still, for some years I had significant trouble getting the attention of the lawyers at the firm who dealt

with Latin or Spanish matters, and found myself increasingly specialized in the asset finance practice area, where I developed the drafting, structuring, and negotiating skills that have been my key professional assets ever since.

I also had a chance to serve one night a month as arbitrator/judge in New York City's Small Claims Court.

Then I had another stroke of luck. One of the firm's Argentine clients sold a New York banking affiliate to a leading Spanish bank, and the Spaniards asked us to continue representing the affiliate. Another Spanish bank asked for help in arranging various secured and unsecured financings for their U.S. clients out of their New York branch. I began to work closely with the partner responsible for these two client relationships and to develop good relationships of my own with these clients. When a transaction arose involving the restructuring of the debt owed by a Central American country to the Pentagon, I found myself advising the central bank and the finance ministry of the country in question in their capital city. Thus, after several years of practice, I now had an asset finance "hat" and a Spanish/Latin client "hat" to wear at the firm.

These incipient relationships with Spanish banks came at a time when the firm was in a period of global expansion. Thus, the firm proposed that I spend a year or so at a Spanish firm on "loan" or "secondment" to acquaint myself with the Spanish market and foster my relationship with our existing Spanish clients. I found and arranged a secondment with one of the leading Spanish firms, one of whose associates was at the time a foreign associate at a competing major New York firm, and, with full support and subsidization from the home office, crossed the Atlantic for what I expected to be a year-long tour of duty in late 1991.

I then spent slightly over a year with a fine Spanish firm, reinventing myself to some extent as an M&A lawyer, as that was the bread-and-butter area of practice at the time in Spain and one of the strongest areas of the Spanish firm's practice. During my stay in Spain, I realized that I was actually a more complete and well-rounded lawyer than I had thought myself to be in New York, that my New York–acquired skills in negotiating and particularly in drafting would be very useful anywhere, and that my level of Spanish was actually quite a bit higher than I had thought. All of these factors contributed to making the secondment a big success, not only for me personally but for my New York firm and the Spanish firm as well.

But the secondment almost came to a premature end when I was assisting one of the New York firm's Spanish bank clients in a public offering of debt in the United States and a controversy arose between the bank and its largest shareholder, a client of the Spanish firm. This controversy placed me in a very awkward position. My access to information obtained from the Spanish firm's representation of the shareholder was, or could have been, material to the investors in the public offering but the bank may not have been aware of it or at least may not have made its advisors aware in the course of the due diligence carried out in connection with the offering. Fortunately, this particular quandary resolved itself amicably between the parties, but it was clear that I could not continue to work indefinitely for two firms at the same time: the possibility of conflict was too great.

As the secondment drew to a close, another dilemma arose: what to do with our firm's expanding relations with Spain and Spanish clients, and in particular, what to do with me. If I returned to New York, according to the original plan, there was a substantial risk that the relations that I had nurtured would grow cold. On the other hand, there was not a suitable way to keep me in Spain—the firm did not wish to open a Madrid office. This conundrum was solved in a way that, in hindsight, probably represents the greatest stroke of luck that I have had in my career: the New York firm proposed that I relocate to the firm's long-established and short-staffed Paris office, from which I could continue to be in close touch with our Spanish clients and developments in Spain generally.

Thus, in late 1992, with virtually no French-language ability and only the vaguest ideas about French history and culture, I moved to Paris, expecting that this would be a mere prelude to an early return to Spain in some fashion with the New York firm. However, the Spanish front did not develop as quickly or as promisingly as expected, so no imminent, triumphal return to Spain was in the cards. At the same time, my posting in Paris was proving to be fortuitous and quite successful. The French-based asset and project finance market was booming, my New York experience in this area was a great asset, and my experience in private European M&A transactions also was very useful in many transactions. In short, in Paris there was a large and growing market for internationally oriented, financially trained lawyers, and we U.S.-trained financial lawyers were nicely positioned to exploit the opportunities presented.

Time passed, my French reached acceptable levels, and I began to think of making Paris my permanent base, or of ways to arrange a split Paris/Madrid base. For a variety of reasons, the Spanish venture did not take wing. But I was becoming more and more settled in Paris, and more and more convinced that I would likely spend many more years in Europe.

This fact caused me to think seriously about the question of becoming admitted to practice locally. Unfortunately, at the time, the previously hospitable French rules on admission to practice of foreign lawyers had been recently and radically tightened; my timid inquiries of the Paris and French national bar authorities as to the rules and procedures for my becoming admitted under the new regime were met with such a glacial response that I quickly dropped the issue. But, since the English rules had just been greatly liberalized and were as transparent and "foreigner-friendly" as the French rules were opaque and xenophobic, I decided to prepare for the "Qualified Lawyers Transfer Test," a kind of mini–bar exam required for admission by foreign lawyers (or barristers) as an English solicitor.

I passed the exam in 1995 and became admitted as a solicitor. Shortly afterwards, I learned of a possible interpretation of the French rules by the Paris bar authorities that might permit me to become admitted as an *avocat.* Since this admission would have certain practical consequences for me—the firm had advised me that it would be probably unlawful and in any event too risky to name me a partner based in Paris when I was not locally admitted, and I had agreed to a promotion to "of counsel" pending my eventual admission—I pursued it as well. At the same time, and notwithstanding my professional success and prospects in Paris, personal reasons began to push me toward a return to Spain. I finally decided, in mid-1996, to leave the firm with which I had made my career and join a small firm in Madrid (founded two years earlier by two lawyers I knew well; one was the former New York foreign associate who had brokered my secondment several years before).

Almost simultaneously with this decision, my gambit with the Paris bar proved successful, and I proceeded with the paperwork to be admitted and was soon sworn in as an *avocat.* I only recently completed what I believe to be a unique "hat trick" of foreign admissions, and became admitted to practice as a Spanish *abogado.* This required convincing Spanish Ministry of Education officials that my common law degree was largely "homologable" (comparable) to the Spanish law degree, and passing a test in the courses in which they deemed my education to have been deficient,

including such gems as Philosophy of Law, History of Spanish Law, and Roman Law, none of which I had studied as part of my J.D.

Since January 1997, then, I have been with the small Spanish firm, which has grown from four partners and one associate to five partners and eight associates, with steady future growth a sure prospect. My practice is not that dissimilar from my former practice in New York and Paris, although clearly less financial/banking in orientation and more corporate/commercial, and generally involving smaller, which does not necessarily mean easier, transactions. Indeed, all of my partners are former big-firm lawyers too. The philosophy of our firm has always been to try to handle transactions of similar size and scope to those handled by our respective former firms, but on a more personal basis, in a more congenial setting—and with (at least slightly) friendlier fees. To date, we are satisfied that we are achieving these goals and, as noted, have earned an enviable market niche.

D. WHAT ARE THE GOOD AND BAD THINGS ABOUT MY JOB?

There is a bit of a contradiction at the core of my current job, which accounts for some of its most positive aspects and some of its occasionally frustrating aspects.

I am an international lawyer in a very national setting; the great majority of our firm's work, and the majority of my work, is local in character. While I may have been practicing in Spain for several years and in Europe for a longer period and accumulating enough foreign admissions to line the wall behind my desk, I do not feel I am, and may never be, fully proficient and self-sufficient as a foreign lawyer. I will always need the assistance of locally trained and experienced colleagues. At the same time, I occasionally feel that my international skills are slipping, that if at one point I was on or near the "cutting edge" of international practice, such may no longer be the case. Instead, I sometimes think I am the stereotypical "jack of all trades and master of none."

But the chance to work on a broad variety of high-level matters in a small-firm setting is a great luxury in an age of ever-increasing specialization, sophistication, and competition in the legal marketplace. While perhaps I cannot realistically expect to be on the cutting edge of a particular aspect of financial law practice, as might be the case if I practiced in New York, London, or Paris with a major international firm, I have daily expo-

sure to a diverse and satisfying range of work, quite likely more diverse and more satisfying than I would find in a large international firm.

E. WHAT ADVICE CAN I OFFER STUDENTS CONSIDERING INTERNATIONAL CAREERS IN LAW?

Certain things have surely changed since I set out on an international career. Globalization, the impact of the Internet, and all the related consequences have probably made it easier for one to commence an international career from any major U.S. city and with a far greater number of firms than may have been the case 15 or 20 years ago. Similarly, the number and variety of internationally active U.S. companies with legal departments that offer promising international career tracks have surely multiplied and will likely continue to increase, as U.S. companies, once their skills have been honed in the highly competitive domestic marketplace, look abroad for new markets in an increasingly uniform world. As a result, today's incipient international lawyer (or internationally active lawyer) probably has more varied points of entry available than his or her counterpart in the not-so-distant past.

In fact, U.S. lawyers have a clear competitive advantage in light of what has been referred to as the "Anglo-Saxonization" of global private practice. With English established as the international language of choice for the foreseeable future, the U.S./U.K. style of legal practice—based on proactive, commercially sensitive advice and involving detailed, carefully crafted contractual documentation—is making inroads into legal practice worldwide, even where civil code–based legal systems have historically used a much simpler approach to documentation.

At the same time, of course, the U.S. and U.K. firms, together with the giant accountancy firms and their legal affiliates, have established themselves as the most internationally aggressive players, and thus have opened more opportunities for beginning an international career.

For all of these reasons, today's law graduate may have a greater range of options available than did his or her predecessor ten or twenty years ago. But the skills and interests that such a lawyer brings to whatever post he or she finds remain unchanged and unchanging. These include, above all, an interest in understanding—and hopefully, in the interests of your clients, bridging to the extent possible—the obvious and not-so-obvious differences in approach, structure, and mind-set between U.S. law, lawyers, and their clients, on the one hand, and foreign law, foreign lawyers,

and their clients and commercial and legal cultures, on the other. A New Yorker who cannot conceive of anything east of Long Island or south of Miami is not cut out for an international legal career. A lawyer who cannot learn, or feels incapable of learning, a foreign language or two is not cut out for an international career, nor is a lawyer who is convinced that the one and only way to solve a problem, draft an agreement, or structure a society is the American way.

A lawyer, on the other hand, who can explore other ways of dealing with a legal or commercial issue than the ways that work at home, and who can bring to bear the skills in another setting that the competitive U.S. market requires a lawyer to hone, should be well positioned for a satisfying and successful international legal career.

At the end of the day, questions of personal preferences and good luck are critical, and one may lead to the other. A young lawyer who opts for a career path that truly corresponds to his or her interests and abilities is likely to find an appropriate first professional opportunity, and a young lawyer who has found an appropriate first opportunity and works earnestly and diligently at developing legal practice skills is likely to find that the first opportunity will lead directly or indirectly to other opportunities, which may be even more interesting and more suited for the lawyer than any that he or she had envisioned.

In short, set your path carefully and work diligently, and good fortune should come your way.