Cross-Border Legal Services between the U.S. and Mexico:
A Bi–National Study of Trade in Legal Services,
Governance of Lawyers, and Legal Education

I. Project Objective:

Since the entry into force of NAFTA in 1994, the movement of persons, goods, services and money between the United States and Mexico has increased dramatically. Mexico is the third-largest trading partner of the United States, after Canada and China;\(^1\) the United States is Mexico’s largest trading partner.\(^2\) This phenomenon has given rise to an increase in the need for cross-border legal services,\(^3\) a natural consequence of the increased economic integration of Mexico and the United States. As a result, U.S. and Mexican lawyers are increasingly asked to provide legal advice to persons and companies from the neighboring country, and to work jointly with lawyers from that country. Despite this growing exchange of legal services, little is known in either country about the regulation of the practice of law in the other, the basis and limitations of the other country’s legal practices and legal knowledge, and the enforcement of professional responsibility and professionalism in the delivery of legal services. The comparative study of lawyering in the United States and Mexico remains relatively unexplored, despite the growth of cross-border legal services; no other institution has undertaken a comprehensive research project on the issues explored.

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\(^3\) We use the term “cross-border legal services” as that term is defined under the World Trade Organization (WTO) regime set forth in the General Agreement on Trade in Services (GATS). Under article 2 of the GATS, cross-border services may be classified in four categories:

Article 2. For the purposes of this Agreement, trade in services is defined as the supply of a service:

(a) from the territory of one Member into the territory of any other Member;
(b) in the territory of one Member to the service consumer of any other Member;
(c) by a service supplier of one Member, through commercial presence in the territory of any other Member;
(d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.
The lack of familiarity is exacerbated by the fact that the United States and Mexico have marked differences in legal education, qualifications for obtaining a license to practice law, and regulation of legal services by professionals. In the United States, the admission to law practice and the governance of lawyers are primarily matters of state law, overseen by state bar associations and by state courts. Suspension and disbarment of lawyers occurs regularly, and the rules for practicing law are very specific. In Mexico, by contrast, it is relatively easy for a law school graduate to acquire a professional license. Mexico does not require admission of lawyers to any bar association. Other than criminal actions for malfeasance, which are rare, the governance of lawyers is relatively non-existent. No state has a law that specifically regulates the legal profession, which is loosely governed by general statutes applicable to most professions. Mexico does not have specific rules on conflicts of interest in the representation of clients by lawyers, or on other areas that are covered by a dense thicket of rules of professional responsibility in the United States. The result is an uneven terrain in Mexico for the provision of cross-border legal services, unevenness that leads to disparate professional standards in each country. When a client engages a lawyer in his or her community, the client can usually rely on community networks, norms and standards that will help provide assurances concerning the lawyer’s qualifications. These networks, norms and standards are not easily available in transnational and cross-border transactions, and this makes the uneven legal terrain more precarious for the user of legal services.

The Mexican legal system has undergone dramatic change in the past twenty years, and this change continues to create both opportunities and challenges for Mexico’s lawyers as well as for those who use Mexican legal services. A constitutional amendment in 2008, to be fully implemented by 2016, requires the Mexican judicial system to convert to a more modern, transparent and adversarial court procedure based on oral trials. The transformation requires an improvement of all actors of the criminal procedure: judges, prosecutors and the private bar as well. In this more transparent system, the ethical and professional shortcomings of lawyers are likely to become magnified.

The Mexico – U.S. Cross-Border Legal Services Project is being carried out in three phases: **Phase One**, currently underway, an exploratory phase, analyzes the status of cross-border legal services (CBLS) between Mexico and the United States; defines what constitutes cross-border legal services between Mexico and the United States; examines the regulatory framework for the practice of law in both countries, including the roles of bar associations and procedures for

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4 The three main bar associations in Mexico are the *Ilustre y Nacional Colegio de Abogados de México* (established in 1760), the *Barra Mexicana, Colegio de Abogados* (founded in 1922) and the *Asociación Nacional de Abogados de Empresa, Colegio de Abogados* (ANADE, established in 1970).

5 Some bar associations in Mexico, such as the *Ilustre y Nacional Colegio de Abogados* and the *Barra Mexicana Colegio de Abogados* have codes of ethics that establish rules on conflicts of interests and other areas for the protection of the public; these regulations are insufficient, because as stated *supra*, bar membership for lawyers in Mexico is voluntary, and the most stringent consequence for violators is expulsion from the voluntary bar association. Sanctions by a bar association do not lead to risk of losing the license to practice law.
enforcing professional responsibility; explores the role of foreign legal consultants in the United States in Mexico; and canvasses the reach and limitations of the practice of law by attorneys licensed in each country. Phase One’s initial rough draft has been completed, and it is currently in revision. The Center for U.S. and Mexican Law will convene a workshop of experts to review the draft report and suggest improvements. This phase will be completed by February of 2015; Phase 2 will test the hypotheses of Phase One, by gathering empirical data about cross-border legal services in both the United States and Mexico. Data gathering will include figures on the number of U.S.-licensed lawyers practicing law in Mexico, and vice versa; the number of cases of unlawful practice of law prosecuted in the U.S. against Mexico-licensed attorneys, and the number of cases of unlawful practice of law prosecuted in Mexico against U.S.-licensed attorneys, among others. The Phase Two report will be the focus of a Seminar that will present the findings to interested parties. Final draft of Phase Two will be published by November of 2015; Phase 3 will produce a comprehensive report with the hypotheses from Phase One and the data gathered in Phase Two, as well as identify areas for new research initiatives—including whether the market that hires providers of CBLS between the neighboring countries needs protection through regulation or not, potential reciprocal disciplinary mechanisms for lawyers providing CBLS, establishment of bi-national cooperation mechanisms between the judiciary of the United States and Mexico, and more. Phase Three’s initial draft will be completed in June of 2016; its final draft will be published by April of 2017. The Center for U.S. and Mexican Law will sponsor a Seminar to discuss the issues highlighted in the final draft.

The project is a collaborative effort of the Center for U.S. and Mexican Law at the University of Houston Law Center, and of the Centro de Estudios sobre la Enseñanza y el Aprendizaje del Derecho, A.C. (Center for Research in Legal Education, CEEAD), a Mexican non-profit agency with headquarters in Monterrey, Mexico.

While legal reform in Mexico will figure prominently in this project, the project will not be limited to the practice and governance of law in Mexico. Rather, our goal is to chart unexplored territory: the provision of legal services by professionals from both countries, with the goal of improving mutual understanding of the law by lawyers as well as by those who use cross-border legal services. In so doing, we will be attempting to answer the following questions:

• What are the requirements to become licensed to practice law in Mexico and in the United States? What special requirements apply to foreign lawyers in each country?

• What is the extraterritorial scope or reach of licensing and regulations governing the cross-border practice of law between Mexico and the United States?
• What relevance do the North American Free Trade Agreement (NAFTA) and the General Agreement on Trade and Services (GATS) of the World Trade Organization (WTO) have on cross-border practice between Mexico and the United States?

• How does each country license or regulate the practice of foreign legal consultants (FLC) within its territory?

• What constraints are placed on the establishment of legal offices in each country that are affiliated with law firms from the neighboring country? And are there any constraints on the number of foreign nationals that may operate from that office?

• What role do in–house attorneys play in the delivery of cross–border services between the United States and Mexico?

• How do cultural attitudes and expectations in the delivery of legal services between the United States and Mexico affect the phenomenon?

• What type of bilateral cooperation mechanism between the judiciary of the United States and Mexico can facilitate the handling of complex cross–border litigation?

• How does each country deal with the challenges of correctly applying foreign law – specifically U.S. law in Mexican courts, and Mexican law in U.S. courts?

• Does legal education in each country adequately prepare law graduates for the needs of an integrated economy and society in North America?

**Phase One** of the Project is currently underway, under the direction of U.S. Co–Director Ignacio Pinto–León (Assistant Director of the Center for U.S. and Mexican Law, and an attorney licensed in both Mexico and the United States) and Mexican Co–Director Dr. Alejandro Posadas Urtusuástegui (a former Dean of Legal Studies at CIDE University in Mexico City, and Director of the Program on Legal Education at CEEAD). During Phase One, we have undertaken the following agenda:

• To define cross–border legal services between the United States and Mexico;
• To begin to develop a database of service providers and of institutions that are engaged in cross-border legal services, both as providers and as regulators;
• To describe and analyze the requirements for licensing of lawyers in each country;
• To identify legal and ethical issues generated in this sector, and consider ways to regulate cross-border legal services that will promote and facilitate trade between the two nations.
The Phase One initial draft has been completed, and the Project Directors are in the process of organizing meetings of experts and advisers in workshops to take place in the United States and Mexico during 2014 and 2015 to review the drafts. Phase One will conclude with the publication of the Phase One Report, or White Paper, in Spring of 2015.

Subsequent phases will develop specific issues identified in Phase One, including the importance of cultural attitudes and expectations in the delivery of legal services, and policy recommendations for the establishment of a bilateral cooperation mechanism between the judiciary of the United States and Mexico.

Phase Two and Phase Three will follow a similar timeline to Phase One in developing White Papers. Phase Two will initiate its research in September of 2014 and will publish its White Paper in November of 2015. Phase Three will initiate its research in September of 2015 and will publish its White Paper in April 2017.

II. Project theoretical, practical and/or policy-related significance

This research project is significant at various levels:

a. Theoretical. The practice of law has traditionally been grounded in territorial application of laws, and in the licensing of lawyers to practice law in only one territorial jurisdiction. In the age of globalization, the territorial limitations of legal practice do not fit with the requirements of legal practice. This project will explore the particular challenges facing lawyers in serving an increasingly international scope of work, and will permit an evaluation of the governance (or lack thereof) of the legal professions in Mexico and the United States, in the context of cross-border services.

b. Practical. By the very nature of the research project, the goals of this work seek to be relevant and practice–oriented. The studies carried out will be made widely available to lawyers, law firms, government agencies, and bar associations, to help guide the development of best practices in the delivery of legal services. The database on cross-border legal services will guide clients in both countries to identify their legal provider options.

c. Policy–related. We expect this project to awaken interest in decision–makers on both sides of the border to improve the legal framework and the curriculum of law schools, in order to improve the delivery of legal services between the United States and Mexico. The seminars and workshops conducted as part of this project will give impetus towards improving the adequate preparation and governance of lawyers.
III. Background and contextual information on the issue

Mexico and the United States share a border almost 2000 miles long. Each country is the main destination for expatriates of the other. In 2011, trade between both countries exceeded $460 billion US dollars; the United States is the largest trading partner of Mexico, and Mexico is the third largest trading partner of the U.S. Thanks in part to the North American Free Trade Agreement (NAFTA), the U.S. and Mexican economies become more integrated every day. Yet cross-border legal services between Mexico and the United States remain tethered to national licensing and regulatory system designed long before North America integration became a reality. This research project will analyze how Mexican and U.S. lawyers provide legal services beyond the border that divides both countries; how cross-border legal services are regulated in each country; the challenges that lawyers and their clients face in providing cross-border legal services, and the possible solutions that would ensure effective and ethical provision of such services. The project will also assess the effectiveness of legal education in training law students to provide cross-border legal services in this new environment.

a. Plan of work

Activities will take place in phases and will include a combination of scholarly studies and bi-national workshops. Each of the studies will serve as a foundational document for a series of expert’s workshops that will be held in Houston and Mexico City. This will be an incremental process in which the first report serves as blueprint that provides broad themes and issues affecting the delivery of cross-border legal services between the United States and Mexico. The second and subsequent reports will provide more detailed analyses of specific topics such as the importance of cultural attitudes and expectations in the delivery of legal services, and recommendations for the establishment of a bilateral cooperation mechanism between the judiciary of the United States and Mexico. These activities will be guided by the Project Co-Directors, and will draw upon expertise and resources located at the University of Houston Law Center and the Centro de Estudios sobre la Enseñanza y el Aprendizaje del Derecho, A.C. (CEEAD), and on talented law students from both countries who will serve as research assistants. The project directors will draw on the legal expertise of scholars and legal practitioners Other scholars and consultants may be approached depending on the resources available for the distinct phases of the cross-border legal services research project.

b. Anticipated results

The project aims to analyze the delivery of cross-border legal services between the Mexico and in the United States, the rules and regulations applicable to lawyers delivering these services, the challenges presented by cultural attitudes and expectations of the relevant actors in both countries, to propose cooperative mechanisms between the judiciary of the United States and
Mexico for the handling of complex cross–border litigation, and the evaluation of the adequacy of legal education offered in each country adequately prepare law graduates for the needs of an integrated economy and society in North America.

One of the long–term goals of the research project is to make policy recommendations to facilitate the delivery of cross–border legal services between the United States and Mexico, while providing tools to effectively oversight the practice of law beyond the borders of both neighboring countries.

The proposed project will result in two or three studies depending on comments and advice garnered from preliminary reviews of the document and suggestions received at the first workshop. Each study will provide necessary background, a detailed description of the issues addressed, identify when applicable potential areas of policy and regulatory uncertainty and conflict, and propose potential solutions to be considered. Preliminary drafts will be submitted to an advisory committee of the Center for U.S. and Mexican Law, drawn from the binational Advisory Board of the Center for U.S. and Mexican Law, as well as other experts and bar leaders from Mexico and the United States.

In addition, we expect the project to result in the development of a database of information on U.S. – Mexico cross-border legal services. Such a database will include up-to-date information on licensing of attorneys in the United States and Mexico; figures on the number of attorneys in each country involved in cross-border legal services; and other data and information that will be of use to both countries.

At least two facilitated expert workshops will be held in Houston and Mexico City. Workshop participants will engage in bi–national dialogue to identify, synthesize and prioritize issues of concern. Further, such workshops will be attended by both U.S. and Mexican experts, lawyers, academics, bar association leaders and policy makers linked to the cross–border legal practice and legal education in the United States and Mexico.

Each study will be translated into both Spanish and English. The studies will reflect the perspectives of the U.S. and Mexican authors and contributors, as well as collective views from reviewers on opportunities to bridge legal and institutional differences in regulatory cultures as they currently exist.

c. Specific plan for dissemination of the results

The results—preliminary and final—of each phase of the research project will be propagated among the target audience—lawyers, academics, government employees, policy makers and law
students in the United States and Mexico, stimulating interaction and making use of technology—including social media. Dissemination plan could include:

- Project website – either stand–alone or hosted at the website of the Center for U.S. and Mexican Law. Preliminary and final papers will be made available to the public.

- A database of service providers and of institutions that are engaged in cross-border legal services. This database will be built on Phases Two or Three, and will be freely available to the public.

- Press releases of the events, with the assistance of the Department of Communications and Marketing of the University of Houston Law Center.

- Expert workshops to be held in Houston and Mexico City. Workshop participants will engage in bi–national dialogue to identify, synthesize and prioritize issues of concern.

- Two final conferences to discuss dissemination of results of each phase, to be held in Houston and in Mexico City.

- Publication in Law Journals in the United States in Mexico.

- Combined dissemination efforts by both co–directors.

d. Target audience.

The primary target audience consists of lawyers, academics and law students in the United States and Mexico. Secondary target audience is composed by policy makers, legislators and government employees of the United States and Mexico.