

SHORTER ARTICLES, COMMENTS AND NOTES

The Lawyer's Responsibility for Foreign Law and Foreign Lawyers

Lawyers are increasingly called upon to advise concerning, and to assist in the structuring of, transactions touching on the laws of more than one legal system. Such duties pose special, and too often little appreciated, problems for lawyers who are, very typically, trained and certified in only a single system of laws. The fundamental difficulty is that the lawyer, a licensed specialist of one legal system, is confronted with legal questions pertaining to other (call them foreign) laws. This article addresses the responsibility of U.S. lawyers, in a non-litigation setting, for foreign law and the work of foreign lawyers.

As a framework for analysis, three choices are examined below. First, the choice of disclaiming responsibility for foreign law is rejected. Second, the choice of handling foreign law oneself is critically treated. Third, the choice of retaining foreign counsel is recommended, but hedged with suggestions that the lawyer may still have responsibilities with respect to the choice and continuing work of foreign lawyers. Finally, it is submitted that lawyers should be more regularly and extensively trained in foreign law.

The Responsibility for Foreign Law

An early case, *Fenaille & Despeaux v. Coudert*,¹ decided by the New Jersey Supreme Court in 1882, may be said to give some comfort to anyone who might say that the lawyer can simply disclaim responsibility for foreign law. The defendant New York law firm had been, allegedly, retained both to prepare plaintiff a contract for the erection of buildings in New Jersey and to file the contract in New Jersey to protect the property from mechanics' lien claims. The law firm failed to file the contract and, unprotected by a filed contract, plaintiffs were obliged to satisfy certain claims of a sub-contractor. The lower court found for plaintiff, granting damages against the New York law firm of \$100, although the settled claims of the sub-contractor were for \$4,500. Plaintiffs complained to the New Jersey

¹*Fenaille & Despeaux v. Coudert*, 44 N.J.L. 286 (1882).

Supreme Court that \$100 was only nominal damages and that they were entitled to the full sum paid to the subcontractor.²

The New Jersey court held, first, that there was insufficient evidence of an express undertaking to file the contract, and second, that attorneys who drafted a contract were not necessarily obliged to file it.³ Third, and most importantly for the purposes here, the court absolved defendants of responsibility for the loss on the grounds that defendants were New York lawyers dealing with foreign law:

In assuming the employment of plaintiffs, the skill and knowledge they professed, must be considered with reference to the locality of their practice. In the absence of any express declaration on the subject, they will be presumed to have held themselves out as possessing such skill and knowledge as attorneys practicing there might reasonably be supposed to possess, and no more. As attorneys of New York, they are not to be presumed to know the laws of a foreign state. Nor did they impliedly undertake that they had such knowledge, by accepting an employment which, as we have seen, was, in terms, limited to drawing a contract in all respects binding between the parties.⁴

Accordingly, the New York lawyers were not only not responsible for filing the contract, they were under no obligation to advise plaintiffs of the risk of not filing it. Such an obligation

must arise, if at all, out of the implied undertaking that the attorney knows the law affecting such a contract. It cannot exist where the attorney does not profess to know that law. In this case there is nothing to show that defendants professed to be at all acquainted with our laws, and they will not be presumed to have such knowledge merely because they were attorneys-at-law in New York.⁵

Fenaille might be said to represent the "ignorance is bliss" theory of responsibility for foreign law. The case's presumptions are that lawyers do not know foreign law and that clients know or should know that they cannot rely on a lawyer for matters of foreign law, even if the lawyer is already involved in major aspects of the transaction. *Fenaille* seems to say that the lawyer is better off knowing little and saying less about foreign law for in saying nothing he makes no profession of any competence in foreign law.

Ignorance of foreign law was no excuse, however, in *Degen v. Steinbrink*,⁶ a 1922 case decided by the Appellate Division, First Department, in New York. Plaintiff was an assignee of a client, Stein, of defendants, a New York law firm. Stein had guaranteed a loan of \$15,000 on the condition that the loan be secured by chattel mortgages on certain property of the borrower, located in three states, New York, New Jersey, and Connecticut. Defendants, representing Stein, prepared both the agreement of guarantee and the three chattel mortgages, one for each state, which were filed. Some

²*Id.* at 287-88.

³*Id.* at 288-91.

⁴*Id.* at 291.

⁵*Id.* at 291-92.

⁶*Degen v. Steinbrink*, 202 App. Div. 477, 195 N.Y.S. 810 (App. Div. 1922), *aff'd*, 236 N.Y. 669 (1923).

time later, the borrower was petitioned into bankruptcy. Defendants were retained by Stein to protect his interests. Borrower's property was sold and \$19,576.65 was realized.⁷ Before \$15,037.68 of that sum could be paid to the lender pursuant to the three chattel mortgages, the referee in bankruptcy held:

- (1) That the New York mortgage is invalid as against this estate because the first renewal thereof, filed in the office of the Register of the County of New York on the 30th day of October, 1914, did not have indorsed thereon the number and date of filing of the original mortgage.
- (2) That the New Jersey mortgage is invalid as against this estate because the acknowledgment of the execution thereof was defective.
- (3) That the New Haven mortgage is invalid as against this estate because the Laws of Connecticut did not permit the mortgaging of the chattels therein set forth.⁸

With the chattel mortgages held invalid, the lender became merely a general creditor and instead of receiving the full amount of \$15,037.68 that he would have had, had the mortgages been valid, received only \$6,852.42 from the bankruptcy proceeding. Plaintiff sued the defendant law firm for the difference between the two figures and for their \$750 fee as counsel in the bankruptcy proceeding.⁹

The referee, who first heard the claim against the lawyers, ruled that defendants were to be held responsible only for the failure of the New York mortgage holding, as did the court in *Fenaille*, that New York lawyers were not presumed to know the laws of other states. The Appellate Division, however, reversed, deciding that defendants could not rely on a presumed ignorance of foreign law:

When a lawyer undertakes to prepare papers in a State foreign to his place of practice, it is his duty, if he has not knowledge of the statutes, to inform himself, for, like any artisan, by undertaking the work, he represents that he is capable of performing it in a skillful manner. Not to do so, and to prepare documents that have no legal potency, by reason of their lack of compliance with simple statutory requirements, is such a negligent discharge of his duty to his client as should render him liable for loss sustained by reason of such negligence. . . . It would be a very dangerous precedent to adopt that in this State, where by reason of its being the financial center of the Union, members of the bar are called upon to advise as to large loans, and to draft instruments securing such loans, that must be filed or recorded in other States, that attorneys could escape liability for unskillful and negligent work, which had rendered the securities worthless, and could shield themselves behind the plea: "I am a New York lawyer; I am not presumed to know the law of any other State."¹⁰

Of the alternatives posed in *Fenaille* and *Degen*, it was the rule in *Degen* that was preferred by two later courts. In *In re Roel*¹¹ the New York Court

⁷*Id.* at 478-79.

⁸*Id.* at 479-80.

⁹*Id.* at 480.

¹⁰*Id.* at 481.

¹¹*In re Roel*, 3 N.Y. 2d 224, 165 N.Y.S.2d 31 (1957), *appeal dismissed*, 355 U.S. 604 (1958).

of Appeals in 1957 in a majority opinion, held:

When counsel who are admitted to the Bar of this State are retained in a matter involving foreign law, they are responsible to the client for the proper conduct of the matter, and may not claim that they are not required to know the law of the foreign state.¹²

In *Rekeweg v. Federal Mutual Insurance Co.*¹³ in 1961, a federal district court in Indiana explicitly evaluated the conflicting rules in *Fenaille* and *Degen* and chose to apply that in *Degen*. In *Rekeweg*, an Indiana lawyer, Peters, was sued for failing to file an insurance claim within a statutory nine month period in Ohio.¹⁴ Peters argued, *inter alia*, that:

he, as an attorney licensed only to practice law in the State of Indiana, cannot be negligent for his failure to know or ascertain the law of the State of Ohio, the state wherein this accident occurred, even though he had been retained to represent a person injured in that accident.¹⁵

Peters relied on *Fenaille*. The Federal court held that it was free to choose between the rule in *Fenaille* and that in *Degen*.¹⁶ Citing and quoting from New York decisions in *Degen* and *Roel*, the *Rekeweg* court held:

This Court is of the opinion that the better rule is that adopted by the Courts of New York. Since no Indiana authority can be found on this precise issue, this Court is free to hold as it believes Indiana would hold were this problem to arise in an Indiana State Court. Therefore, this Court hereby adopts the rationale and holdings of the New York cases cited above.¹⁷

It is submitted that the rule in *Degen*, *Roel*, and *Rekeweg*; i.e., that ignorance of foreign law is no excuse, is to be preferred. The client relies on the lawyer for legal advice and services. The lawyer is, generally, better able than the client to recognize when a matter involves aspects of foreign law. The lawyer should not be encouraged, as he would by the rule in *Fenaille*, to avoid alerting the client to problems of foreign law. Rather, the lawyer should be encouraged to, in the words of Canon 6 of the American Bar Association's Code of Professional Responsibility (the Code), "represent a client competently."¹⁸ Such "competent" representation, it is submitted, includes a responsibility to identify and to either handle or provide for the handling of foreign law questions.

¹²*Id.* at 232.

¹³*Rekeweg v. Federal Mutual Insurance Co.*, 27 F.R.D. 431 (N.D. Ind. 1961), *aff'd*, 324 F.2d 150 (1963), *cert. denied*, 376 U.S. 943 (1964).

¹⁴*Id.* at 433.

¹⁵*Id.* at 435.

¹⁶*Id.* at 435-36.

¹⁷*Id.* at 436.

¹⁸ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY (as amended through February, 1980), Canon 6.

Dealing with Foreign Law

Asserting that the lawyer must face and take some responsibility for questions of foreign law is an easier proposition than defining just what the lawyer's responsibility should be. I would suggest that a very general rule might be that once a lawyer recognizes or should recognize that a transaction involves foreign law, he is responsible either to deal competently with the foreign law point himself or to advise his client to retain foreign counsel. This mandate is paralleled by language in the Code:

While the licensing of a lawyer is evidence that he has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which he is not qualified. However, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client. . . . A lawyer offered employment in a matter in which he is not and does not expect to become so qualified should either decline the employment or, with the consent of his client, accept the employment and associate a lawyer who is competent in the matter.¹⁹

While this injunction is apparently directed to the situation where a lawyer may not be expert in some aspect of his own legal system, it should apply with even greater force where the lawyer is called upon to deal with a question of foreign, especially other country, law.

Of the Code's two alternatives, the first, i.e., attempting to counsel clients on matters of foreign law oneself, is the one probably fraught with the greater number of perils. The diversity of rules among the fifty states in the United States is dwarfed by the diversity of rules among the United States and the more than 150 other countries. Without proper training, it is often exceedingly difficult to reach a level of proficiency in foreign law where a lawyer can advise his client with at all the same degree of competency as could suitable foreign counsel. Furthermore, the guidance in the Code concerning "unreasonable delay or expense" should be kept in mind; foreign counsel is usually better able to advise on foreign law more quickly and, probably, at lesser expense.

There may, of course, be cases in which the lawyer should decide to advise on foreign law himself. For example, based on his own experience, the lawyer may have already acquired a specialist's acquaintance with an aspect of foreign law, e.g. European Community anti-trust law, and, therefore, be in as good a position to give advice as competently, promptly, and inexpensively as foreign counsel. Or, the foreign law question raised may be of such a preliminary kind that it would be unnecessarily complicated and expensive to involve foreign counsel at that stage. In such a situation, it would, however, be prudent for counsel to advise his client that the advice is of a preliminary kind and that if the matter were to go further, foreign counsel should be retained. Or, it may be that the client, for reasons of

¹⁹*Id.*, E.C: 6-3.

confidentiality, trust, or other things, refuses, even after plain advice to the contrary, to retain foreign counsel.

Generally, though, it is submitted that the lawyer should normally submit foreign law questions to foreign counsel and should only undertake to deal with foreign law himself when he is prepared to assume the responsibility for competent advice. To repeat the warning of *Degan*: a lawyer, "by undertaking the work, . . . represents that he is capable of performing it in a skillful manner."²⁰

The Responsibility for Foreign Lawyers

It has been argued above that the lawyer has responsibility to recognize foreign law issues, and if he chooses to handle such issues himself, to deal with them, generally, as competently, promptly and inexpensively as would suitable foreign counsel. Faced with such duties, a lawyer will often well serve his client, and himself, to advise his client to retain foreign counsel to deal with problems of foreign law. Even so advising, the lawyer may still have responsibilities in the choice and supervision of foreign counsel.

In *Wildermann v. Wachtell*,²¹ a lower New York court in 1933, considered the responsibility of defendant, a New York lawyer, who recommended a Pennsylvania lawyer to plaintiff, a client, for the purpose of collecting an unliquidated claim against the executors of a Pennsylvania estate. The Pennsylvania lawyer failed to file a timely *lis pendens* and, accordingly, a subsequent \$10,000 judgment for plaintiff was rendered worthless.²² There was no allegation that the New York lawyer had been negligent in his selection of Pennsylvania counsel:

The novel question arises, therefore, as yet undetermined in this State, whether a lawyer here who retains with due care an attorney in a foreign jurisdiction to take care of procedural matters in the foreign state, becomes *ipso facto* liable for any negligence of the foreign attorney, even though the client has been informed of the necessity and reason for the retainer and has approved the course and choice of attorney.²³

Distinguishing *Degen* because the New York attorney did not attempt to prepare and file papers for the foreign state himself, the Court held:

Here the New York attorney recognized his inability to take care of Pennsylvania procedure, and for that very reason had his client retain a Pennsylvania attorney. A lawyer should not be held to a stricter rule in foreign matters than the exercise of due care in recommending a foreign attorney. To do so would subject him to hazards which he is not qualified either to anticipate or to prevent. Must a New York lawyer assume the risk of all the acts of a correspondent in California or in China by accepting retainers involving action in such distant jurisdictions? Any principle of liability adopted in the circumstances presented in

²⁰*Degen v. Steinbrink*, 202 App. Div. 477, 481, 195 N.Y.S. 810 (App. Div. 1922), *aff'd*, 236 N.Y. 669 (1923).

²¹*Wildermann v. Wachtell*, 149 Misc. 623, 267 N.Y.S. 840 (Sup. Ct. 1933).

²²*Id.* at 623-24.

²³*Id.* at 624.

this case would impose an impossible burden upon practicing attorneys.²⁴

Although establishing that a lawyer who recommends a foreign lawyer is not, for that reason alone, responsible for the negligence of the foreign lawyer, *Wildermann* does admit the proposition that the lawyer must use due care in the recommendation of foreign counsel. Another New York case already mentioned, *In re Roel*, rather indirectly introduces a second responsibility, i.e. the duty to supervise.

Roel concerned a Mexican lawyer who, in New York City, advised the public, and lawyers on Mexican law, especially Mexican divorce law. The case centered on whether or not advising on foreign law constituted the practice of "law" in New York for purposes of section 270 of the New York penal code. The Court decided that it was and enjoined Roel from practicing or assuming to practice law.²⁵

The Court's objection to Roel's advice seemed to be that it was offered to the public:

the public is as liable to injury when an unlicensed person gives advice to an individual as to his legal rights under foreign law as it is with respect to his rights under domestic law.²⁶

The dissenting opinion underlined that lawyers were assumed to be the appropriate recipient of a foreign lawyer's advice:

It is said that such practitioners may give advice here regarding foreign law provided that they are employed to do so in conjunction with same lawyer who is admitted to practice in this State.²⁷

The difficulty with such a position is that it puts the domestic lawyer in the situation, as described in the dissent, of assuming responsibility for correctness for the foreign lawyer's advice.²⁸ Indeed, the majority opinion in *Roel* cited *Degen* and stressed that New York counsel "may not claim that they are not required to know the law of the foreign State."²⁹ This may seem to be a conclusion directly at odds with that in *Wildermann* unless one argues that *Wildermann* dealt with work done in the foreign jurisdiction and *Roel* with advice proffered in the domestic jurisdiction. However, the distinction between foreign and domestic lawyering blurs when one considers that in the typical business transaction, advice flows from many sources to structure a single integrated transaction. There may be no meaningful distinction between a foreign lawyer giving advice on foreign law on the telephone to New York or giving it in New York in person, at least if his presence in New York is occasional and only for the purpose of facilitating this specific transaction. Although directed at discouraging the unlicensed

²⁴*Id.* at 624-25.

²⁵*In re Roel*, 3 N.Y.2d 224, 227-233, 165 N.Y.S.2d 31 (1957), *appeal dismissed*, 355 U.S. 604 (1958).

²⁶*Id.* at 233.

²⁷*Id.* at 235 (Voorhis, J., dissenting).

²⁸*Id.* at 235 (Voorhis, J., dissenting).

²⁹*Id.* at 232.

practice of law in a jurisdiction, *Roel* has the indirect effect of putting a burden on the lawyer to supervise, and thereby to be, to a degree, responsible for the advice of foreign lawyers.

The potential risks for the lawyer in the selection and supervision of foreign counsel were underlined in two subsequent cases. In the 1975 federal district court decision in New Jersey, *Tormo v. Yormark*,³⁰ a New York lawyer, Devlin, was consulted by the father of Karen Tormo, a child and a citizen of New York who had been involved in a boating accident in New Jersey. Tormo's father was a business client of Devlin and now sought Devlin's advice concerning settlement of Tormo's claim. Sometime later, Yormark, a New Jersey lawyer, called and visited Devlin. Yormark said he was interested in handling the case. Two years later in 1970, the Tormo claim had still not been settled, Tormo had married, moved to Spain and assumed Spanish citizenship. Meanwhile in 1969, Yormark had been indicted for fraud, a charge on which he was convicted in 1971, and sentenced to three years in prison. Devlin, however, had not learned of the charges against Yormark and in 1970 he asked Yormark to bring suit in New Jersey. Devlin's only check of Yormark was to see that he was listed in a directory as a licensed attorney in New Jersey. Although Devlin testified he "believed his responsibilities terminated as a result of the transfer" of the case to Yormark, he continued to stay in touch with Tormo's father throughout the remainder of the case. Yormark succeeded in negotiating a \$150,000 settlement for Tormo from an insurance company, but, in 1971, embezzled the greater part of that sum.³¹

Addressing the question whether Devlin was, in part, responsible for Yormark's wrong, the court was careful not to put too great a burden of investigation on a lawyer transferring a case to a foreign lawyer:

[A duty] arose, at any rate, as a matter of law both from Devlin's duties as an agent toward his principal and from his affirmative conduct in bringing his clients into contact with a person of previously unknown character under circumstances affording the opportunity for crime. But in setting a standard of conduct required to fulfill that obligation, a distinction must be drawn between Devlin and an allegedly negligent New Jersey lawyer. Although expressing no opinion as to the latter, the Court believes it would be unfair to require a New York practitioner referring a case to New Jersey counsel to know facts concerning him which are notorious only within New Jersey.

. . . Devlin relied, in making the referral, upon the State's judgment that Yormark was fit to practice law. State regulation of the legal regulation is extensive, designed both to screen unqualified candidates at the outset, . . . and to ferret out the unfit thereafter . . . Under the circumstances, he could not be found negligent simply for failing to make further inquiries into Yormark's background.³²

³⁰*Tormo v. Yormark*, 398 F. Supp. 1159 (D. N.J. 1975).

³¹*Id.* at 1164-68.

³²*Id.* at 1170-71.

So long as the adverse publicity respecting the foreign lawyer was known only within that lawyer's jurisdiction, the other lawyer was permitted to rely upon the foreign lawyer's accreditation as proof of his fitness. On the other hand, if Yormark's indictment had been "given wider coverage," i.e. outside of New Jersey, Devlin might be "deemed negligent for failing to discover that fact."³³

With respect to the lawyer's possible second duty, supervising the work of foreign counsel, Devlin argued that he "could reasonably feel that his official involvement in the case had ended."³⁴ The Court, however, found that Devlin might well have had a continuing duty to supervise:

The Court has not been informed of any rule of law which terminates the [attorney-client] relationship automatically upon the client's ratification of his attorney's decision to consult a lawyer in a foreign jurisdiction for the purpose of instituting a suit there. Generally, absent death or legal insanity of either party, the relationship terminates only upon the accomplishment of the purpose for which the attorney was consulted, or upon mutual agreement of the parties.³⁵

The Court held that Devlin might be held responsible if it was found either that he had, as alleged, asserted to Tormo's father that the case was going well or that he had, again as alleged, promised to review certain documents in the case.³⁶

Another case illustrating the lawyer's responsibility for the selection and supervision of foreign counsel is *Bluestein v. State Bar of California*,³⁷ decided by the California Supreme Court in 1974. Bluestein, a California attorney, was charged, *inter alia*, with aiding and abetting an unlicensed person to practice law in California. The charge involved the operator of an employment agency, Lynas, who despite representations to Bluestein that he was admitted to practice in New York and had practiced in Europe, was not admitted in any place. Bluestein knew, at least, that Lynas was not a member of the California bar. Bluestein, however, included Lynas's name on his office letterhead as "Of Counsel."³⁸

In February 1970 Bluestein, in his California office, introduced Lynas to family and friends of an individual, Mitchell Walman, who had been arrested in Spain, charged with narcotics smuggling. Allegedly, Bluestein said that Lynas was his "associate" and that "Lynas was more familiar with foreign law." Bluestein admitted only that he represented that Lynas was an attorney in New York and had practiced in Europe and that he "just introduced the Walmans to . . . Lynas thinking he knew somebody that may be able to help them."³⁹

³³*Id.* at 1170.

³⁴*Id.* at 1173.

³⁵*Id.*

³⁶*Id.* at 1173-74.

³⁷*Bluestein v. State Bar of California*, 13 Cal. 3d 162, 529 P.2d 599, 118 Cal. Rptr. 175 (1974).

³⁸*Id.* at 171.

³⁹*Id.* at 171-72.

The next day, Bluestein, allegedly, told the Walmans that "Lynas would be handling our case because he knew more about Spanish law or Spanish whatever in the sense that he would be able to help us more." Bluestein claimed that he only later saw the Walmans to ask, e.g., "How are things going?" and to advise them that they should give Lynas \$1,000 for the service of an attorney in Spain.⁴⁰

Altogether, the Walmans gave Lynas \$5,000. Lynas had several conferences with the Walmans and accompanied one of them to Spain where Lynas introduced a Spanish lawyer. In April 1970, Lynas was arrested for another matter, and his "services" for the Walmans came to an end. Mitchell Walman was convicted and sentenced to prison.⁴¹

Bluestein contended he did not aid and abet an unlicensed person to practice law, because "assisting someone to obtain counsel in a foreign country is not the practice of law" and all he had done was to use Lynas to help find European counsel.⁴² The Court cited *Roel*:

Whether a person gives advice as to [local] law, Federal law, the law of a sister State, or the law of a foreign country, he is giving legal advice. . . . To hold otherwise would be to state that a member of the [State] Bar only practices law when he deals with local law, a manifestly anomalous statement.⁴³

The *Bluestein* court held: "Giving legal advice regarding the law of a foreign country thus constitutes the practice of law."⁴⁴

Turning to the question of "whether such practice is unauthorized," the Court again replying on *Roel*, held:

Whether or not Lynas in fact advised the Walmans in California regarding Spanish law, it is apparent that petitioner operated so as to lead toward Lynas' so doing by introducing Lynas to the Walmans at petitioner's law office under the circumstances heretofore recited, informing them Lynas was an attorney in New York and had practiced law in Europe, conveying to them the impression that Lynas was associated in some way with petitioner, and subsequently allowing Lynas to consult with the Walmans in California without any supervision by a member of the California Bar. Petitioner thus aided Lynas to practice law within the meaning of rule 3 [of the California Bar's Rules of Professional Conduct].⁴⁵

This finding, along with a finding that Bluestein had used an oppressive method, involving moral turpitude, in collecting an attorney's fee in a divorce action, and, taking into consideration a prior reproof involving another charge, led the Court to suspend Bluestein from the practice of law for six months.⁴⁶

The *Bluestein* case, like *Roel*, mixes problems concerning the unauthorized practice of foreign law with problems concerning supervision of work.

⁴⁰*Id.* at 172.

⁴¹*Id.* at 172-73.

⁴²*Id.* at 173.

⁴³*Id.* at 173-74.

⁴⁴*Id.* at 174.

⁴⁵*Id.* at 175.

⁴⁶*Id.* at 166-71, 175-76.

The charge against Bluestein was that he aided and abetted the unauthorized practice of law. The *Bluestein* court found that advising on foreign law was the practice of law. Following the implication about supervision in *Roel*, *Bluestein* seemed to say that proper "supervision by a member of the California Bar" might have, at least partially, cured the fault. That is, Bluestein might himself have been helped by Lynas to select Spanish counsel and to supervise the case, but was wrong to let Lynas directly advise and assist the Walmans. One wonders what, if any difference, it would have made if Lynas had been a member of the New York Bar. Strict adherence to *Roel* would put a New York-admitted Lynas in much the same position in California as he was as non-admitted. And what if Lynas had worked, not in California, but in Spain? Could Bluestein have turned the Walman case over to Lynas out-of-state and, thereby, washed his hands of the matter? *Tormo* would seem to say that Bluestein should have, at least, checked to make sure that Lynas was a member of the New York Bar and had practiced in Europe. Furthermore, *Tormo* appears to find some responsibility for continuing supervision, even for out-of-state work.

Conclusion

To attempt to specify some of the propositions dealt with above, I would begin with the initial assertion that the lawyer is responsible to his client to recognize questions of foreign law. Once such a question is recognized or should be recognized, the lawyer is obliged either to deal competently with the foreign law point himself or to advise his client that foreign counsel should be retained.

If the lawyer decides to deal with the foreign law himself, he must, generally, do so as competently, promptly and inexpensively as would foreign counsel. If the lawyer decides to advise his client to retain foreign counsel, the lawyer may be responsible to the client respecting both the selection and the supervision of foreign counsel. If the lawyer suggests foreign counsel, he may be negligent if he fails to take at least minimal steps to assure himself of the competency of foreign counsel. The lawyer may, by his statements or continuing relationship with the client, be responsible, to at least some degree, to supervise the work of the foreign lawyer. Such possible responsibilities for the selection and supervision of foreign counsel, however, do not make the lawyer absolutely responsible for the work of the foreign lawyer.

Such propositions deal, only in a very general way, with some of the duties that a U.S. lawyer may have for foreign law and foreign lawyers. As the discussion above makes plain, there is a tension between the lawyer's capability as a specialist in, usually, only one legal system and his possible responsibility for foreign laws and foreign counsel. Such a tension will never be alleviated absolutely unless the risks of dealing with foreign law and foreign lawyers are shifted from the lawyer back to the client. As suggested above, though, I feel that the lawyer is, generally, better equipped