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The Foreign Law School Dilemma

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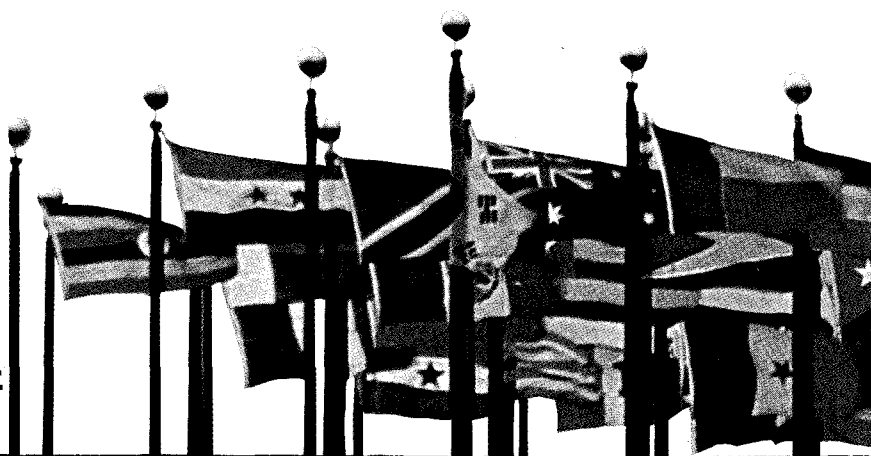
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SHOULD THE ACCREDITATION RESPONSIBILITY OF THE SECT THE FOREIGN LAW SCHOOL DILEMMA

BY DOUGLASS G. BOSHKOFF

Chairman, Bar Admissions Committee



Most American jurisdictions have both pre-legal and legal education requirements that must be satisfied before the bar examination can be taken. Many jurisdictions require graduation from an ABA approved law school, but the ABA does not accredit law schools located outside the United States. Therefore, graduates of foreign law schools—increasing numbers of whom are seeking admission to American practice—often are not eligible, under applicable rules, to take an American bar examination. The problems that arise from this situation were the subject of a conference held last year by the National Conference of Bar Examiners and the Section of Legal Education and Admissions to the Bar.

The conference did not purport to recommend one solution to the problem. It did, however, produce four general areas of agreement.

1. Initial training in a civil law jurisdiction does not provide as good a background for practice in the United States as does training in the United States. Procedures for giving credit for foreign law study should take this difference into account.

2. It makes no sense to place all the screening burden on the bar examination. There is justification for some period of training in the United States. A J.D. degree from an ABA approved American school is the best evidence of the adequacy of an applicant's legal education, but this is probably not a practical requirement in all cases. Amendment of the ABA's Standard 308 to permit credit to be given toward the J.D. degree for up to two years of study outside the United States is a possibility.

3. Special educational programs are worth investigating, at least in some states. They are expensive, at times controversial, and require a great deal of commitment on the part of all concerned parties. Nevertheless, they have some potential for equipping foreign lawyers to sit for the bar exam.

4. Lack of proficiency in English is a serious handicap for the foreign law graduate. Careful screening of applicants from foreign law schools for capability in the English language is advised.

There is more than enough work to keep inspection teams occupied in the United States. To extend the accreditation function outside the United States

would be a serious drain on the resources of everyone involved. Furthermore, the cost-benefit ratio is not as favorable as it is in the case of a domestic law school. Only a few graduates of a foreign law school may seek admission in any given year in the United States, compared with the large number of graduates coming out of any domestic law school in the same period. Finally, political considerations cannot be ignored. There is no indication that any invitations to accredit would be forthcoming from foreign law deans, even if the ABA decided to assume this responsibility.

American jurisdictions now respond in three principal ways to the application of a foreign law school graduate. First, it is possible for state admitting authorities to insist upon a J.D. degree from an ABA approved school.

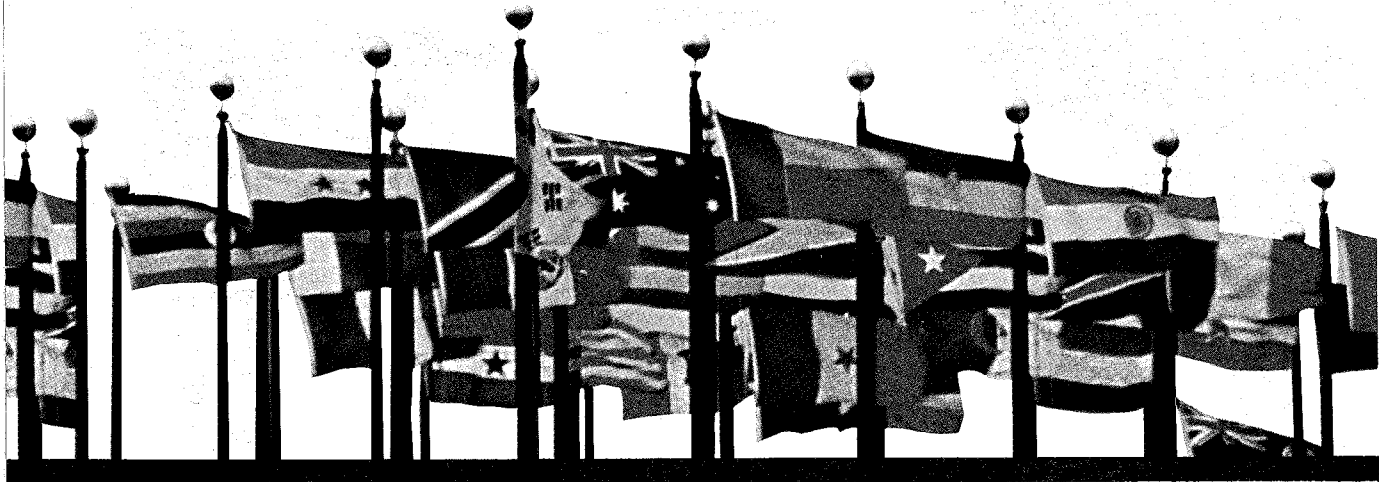
Under this alternative, persons who have received legal training outside the United States may qualify for admission to an American bar examination after two additional years of study in the United States. This approach insures that all applicants will have some substantial uniformity of training in the legal skills and knowledge presumed to be essential for the practice of law in the United States.

This approach has its drawbacks. The limitation of credit to only one year may be unrealistic in the case of well-trained foreign graduates, especially when they come to us from other common law jurisdictions. It also is questionable whether a substantial number of foreign law students can gain access to an American bar examination. Law schools are under great admissions pressures from domestic applicants, and it is unlikely that American law schools will want to displace American applicants very often.

An alternative to the J.D. degree earned in two years is a graduate degree, the L.L.M. or M.C.L. Some jurisdictions now accept these degrees as meeting the requirements of a degree from an ABA approved school. Other jurisdictions do not even require a degree, but accept a stated amount of hours of study in an American law school. Lack of uniformity of educational background distinguishes this approach from the one in which an American J.D. degree is required.

Graduate law programs vary widely in the United

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States. Some may require course work; others, course work plus a thesis. Graduate courses themselves vary widely and are tailored to the needs of each graduate student. There is no common core curriculum of the type that characterizes the J.D. degree. Therefore, the degree requirement does not perform the same screening function and training as the requirement of a J.D. degree. It would, of course, be possible to meet this objection by recognizing only certain programs of graduate study, but there appears to be no inclination on the part of state admitting authorities to draw distinctions between various graduate programs.

A third approach is to examine the academic credentials of each applicant and try to decide whether the applicant has received the equivalent of an education at an ABA approved school. Some states are now doing this, although it is difficult to secure information on how extensive the procedure is. This probably is the most unsatisfactory approach. Equivalency has both qualitative and quantitative aspects. It is necessary to ask whether the student has received as extensive and as good an education at a foreign law school as the applicant would have received at an ABA approved school. Also, no matter how technically satisfactory the training in a foreign law school may be, it will not focus on American problems.

To the uninitiated, case-by-case determination of equivalency seems to be an eminently fair way in which to proceed. And yet, the complexities of comparison either produce very few findings of equivalency, or lead to a collapse of standards.

Several years ago, the New Jersey Supreme Court approved a program in which foreign trained attorneys would be permitted to sit for the state bar examination provided they were licensed, or educationally qualified for licensing, to practice law in the country of their training. The applicant also must have had training that was substantially equivalent to training at an ABA approved law school.

From the very beginning, the committee appointed to administer the program found it difficult to insist upon equivalency. It found there were very few places in the world that had standards approaching ours—a minimum of three years of college work plus three years of law school. Initially, the committee decided to

accept a requirement of five years' total training. It also determined that, since it had absolutely no basis upon which it could evaluate the quality of the graduate schools, it would not attempt to make judgments about the quality of the school or training.

It soon became apparent it was impossible to maintain any but the most arbitrary standards. Students were presenting credits in areas not even studied in American schools. But these credits were accepted because to do otherwise would eliminate most foreign applicants.

The committee eventually admitted to the bar examination persons not fully qualified for admission in the foreign jurisdiction when it appeared that lack of qualification did not bear on the quality of the education. The New Jersey program became essentially non-selective. The program considered a total of 250 applicants; the committee approved 244 for admission to the New Jersey bar examination. The reported success rate for this group of examinees works out to approximately 9 percent. Disappointing as it may be, the figure confirms the success of the bar examination as a screening device, and provides indirect support for the requirement of graduation from an ABA approved school.

Florida, like New Jersey, attempted to respond to the large number of applications from persons—primarily Cuban refugees—receiving their training in a foreign law school. Unlike New Jersey, though, Florida conditioned eligibility to sit for the bar examination on completion of a remedial study program in a Florida law school. Both the University of Florida and the University of Miami offered such courses. The Miami program essentially consisted of resident study through the week; the Florida program utilized weekends. Both involved substantial periods of instruction. The Miami program ran four nights a week for six semesters; the University of Florida program ran for a full day on Saturdays over a period of seven quarters. The success rate for persons who had completed either one of these programs of remedial education was substantially higher than the 9 percent rate found in New Jersey. Not surprisingly, the bar examination success rate of participants seemed to be positively influenced by the programs' selective admissions procedure. L