Our Federalism: The United States and the Regulation of Lawyers

by Michael J. Churgin

Editor's Note: *This article originally appeared in the* San Diego Law Review, *Vol. 48, No. 1, Winter 2011, and is reprinted with minor modifications with permission from the author and the* San Diego Law Review.

Author's Note: *This article dealing with an aspect of federalism and the regulation of lawyers is dedicated to the memory of Fred Zacharias, Herzog Research Professor of Law at the University of San Diego School of Law. Fred was prescient on the subject of federalism and the regulation of lawyers. Fifteen years ago, he recognized the seriousness of the problem and carefully presented the ramifications of the issue, focused mainly on contrasting rules of professional conduct. Fred's article appeared in the* Texas Law Review, *the student publication of my own law school,*[1] *and it was typical of his thoughtful writing. Fred was a remarkable person. We first met 35 years ago while I was a supervising attorney and teaching fellow at Yale Law School and Fred was a second-semester law student, interested in the clinical program at the Federal Correctional Institution at Danbury, then a men's prison. I supervised Fred in some of his early clinic work. He was serious, thoughtful, and thorough—attributes that characterized his later career as an academic. After I joined the Texas faculty that fall, Fred continued his representation of federal inmates under the student practice rule and secured important constitutional rights for his clients.*[2] *Fred kept me informed about his remarkable, prolific academic career, and along with others, I received offprints of his many publications.*

With the expansion of lawyers from the United States practicing elsewhere and with the creation of the World Trade Organization (WTO) and the accompanying negotiation for a General Agreement on Trade in Services (GATS), there has been a call for greater flexibility in the admission of non-United States lawyers in the various bars of the states. Various constituencies within the American Bar Association (ABA) have called for modifications in the qualifications for admission of foreign attorneys and have suggested that the states would have to alter their practices to recognize the globalization of legal practice. There have been some suggestions that the GATS negotiations would force changes on the states through the actions of the United States Trade Representative (USTR) as part of a resulting international agreement.[3]

Although this drumbeat has been constant, there has been only limited discussion as to whether and under what circumstances the states could be forced to admit foreign lawyers. In addition, states have been moving on their own in the direction of more flexibility in setting forth criteria for admission to the bar, although most of the activity has been to enable lawyers from different states to practice or gain admission in other states. This article will discuss these aspects of the question of the regulation of lawyers.

A 1971 United States Supreme Court decision, *Younger v. Harris,* breathed life to the term "Our Federalism."[4]

> [It] does not mean blind deference to "States' Rights" any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments . . . .[5]

Almost 30 years later, the Court noted in the context of the reach of a federal bankruptcy statute: "Although the Constitution grants broad powers to Congress, our federalism requires that Congress treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation."[6] With the increasing globalization of the legal profession, the question that remains is what is the role of the various states concerning limitations on legal practice and whether certain actions of the federal government might trump the states' role.

There are those in the organized bar who would wish away the states' power over the regulation of the admission of lawyers to practice in their respective jurisdictions. The American Bar Association continually has, at a minimum, advocated the control of practice by the states, while exhorting them to adopt model rules to broaden practice rules and maintaining its monopoly on accreditation of law schools in the United States.[7] Some states independently have taken the lead and expanded the ability of nonstate and non-United States lawyers to practice in their jurisdictions.

A series of decisions by the Supreme Court during the last several decades lend support to the basic independence of states in this area, and one might conclude that, if push came to shove, the states might even prevail against GATS and the United States Trade Representative. The starting point is a summary reversal by the Supreme Court in a situation where several prominent New York lawyers were hired by Larry Flynt to defend him against an Ohio criminal prosecution. The difficulty was the fact that these individuals were not admitted to practice in neighboring Ohio, and the Ohio courts had refused pro hac vice admission without a hearing. The United States Court of Appeals for the Sixth Circuit had affirmed an order of the federal district court directing such a hearing on their motion. However, the Supreme Court granted certiorari and, without oral argument, reversed the lower federal courts.[8]

The per curiam opinion concluded that there was no substantial federal question at issue because there "is no right of federal origin that permits such lawyers to appear in state courts without meeting that State's bar admission requirements."[9] The summary nature of the decision is all the more surprising because it involves a criminal defendant's desire to have particular counsel represent him. The Court shows little sympathy for this position. The Court rejects any notion of a right to cross-jurisdiction practice: "Such an asserted right flies in the face of the traditional authority of state courts to control who may be admitted to practice before them."[10]

In 1985, the Court reaffirmed the validity of its holding. In striking down New Hampshire's rules that limited bar admission to residents, thus excluding an adjacent Vermont resident, Justice Powell summarized

the Court's position in *Leis:* "We concluded that the States should be left free to 'prescribe the qualifications for admission to practice and the standards of professional conduct' for those lawyers who appear in its courts. . . . The nonresident who seeks to join a bar . . . must have the same professional and personal qualifications required of resident lawyers."[11]

Fast-forward 20 years to 2006. The Supreme Court was confronted with a situation where both the defendant and the United States agreed that a trial judge had erroneously disqualified pro hac vice counsel; the question was on remedy. The Court majority and dissent emphasized "[n]othing we have said today casts any doubt or places any qualification upon our previous holdings that limit the right to counsel of choice . . . . Nor may a defendant insist on representation by a person who is not a member of the bar."[12]

Thus, the Supreme Court has never retreated from its broad deference to the states in the *Leis* case. A decision from 2008 buttresses the role of the states under our federalism.[13] This time the question before the Court involved the purported authority of the President in the field of foreign affairs against the position of a state. There was no question that Texas had violated its obligations under the Vienna Convention on Consular Relations when a noncitizen defendant had not been told of his right to contact a consular official.[14] Ultimately, the defendant had been sentenced to death.[15] The International Court of Justice (ICJ) had ordered the United States to ascertain whether there had been any effect on the conviction and sentence as a result of the violation of the Convention.[16] In a formal Memorandum to the Attorney General, President George W. Bush directed the Department of Justice to secure compliance with the ICJ's judgment.[17] Upon request, the Texas Court of Criminal Appeals declined to comply, finding that the issue had been procedurally defaulted and that the President had no authority to direct Texas to modify its procedure.[18]

Speaking for the Court, Chief Justice Roberts wrote an opinion that affirmed the Texas court. Noting the broad power the President has in matters of foreign relations, he concluded that "[t]he responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress."[19] Furthermore:

> [T]he Government has not identified a single instance in which the President has attempted (or Congress has acquiesced in) a Presidential directive issued to state courts, much less one that reaches deep into the heart of the State's police powers and compels state courts to reopen final criminal judgments and set aside neutrally applicable state laws. The Executive's narrow and strictly limited authority to settle international claims disputes pursuant to an executive agreement cannot stretch so far as to support the current Presidential Memorandum.[20]

There are several parallels to the WTO and GATS situation. The WTO dispute mechanism is not a self-executing treaty. Furthermore, Section 102(b) of the Uruguay Round Agreements Act, setting in motion United States participation, states:

> No State law, or the application of such a State law, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with any of the Uruguay Round Agreements, except in an action brought by

> the United States for the purpose of declaring such law or application invalid.[21]

The reference in *Medellin* to "heart of the State's police powers"[22] finds a ready parallel with many Court statements about the power of states to regulate admission to the bar. It would seem that the USTR could not unilaterally negotiate away the requirements for admission to the bar and independently force implementation on the states.

This is not to suggest that the federal government is impotent when its own interests are at stake. I just suggest that, at minimum, it probably would take an act of Congress to override state authority for a GATS agreement. Congress has evidenced its ability to so act in another context involving cross-jurisdiction practice within the United States. For example, in 2005, Congress passed a measure as part of the Department of Defense Authorization Act that permitted military personnel to provide legal assistance to members of the armed services, their dependents, and their survivors as well as some civilian employees:

> (d)(1) Notwithstanding any law regarding the licensure of attorneys, a judge advocate or civilian attorney who is authorized to provide military legal assistance is authorized to provide that assistance in any jurisdiction, subject to such regulations as may be prescribed by the Secretary concerned.
>
> (2) Military legal assistance may be provided only by a judge advocate or a civilian attorney who is a member of the bar of a Federal court or of the highest court of a State.[23]

The Senate report noted that "questions have been raised by some as to whether attorneys providing such assistance outside the States in which they are licensed are engaging in the unauthorized practice of law. This provision would codify the long-accepted practice with respect to the provision of legal assistance."[24] The federal interest in the maintenance of its armed services trumped any state rule limiting the practice of attorneys.

The focus has been on the activities of the states in looking at GATS. However, there is another avenue. There is separate admission to the various bars of the federal district courts for each district.[25] Certainly this is an exclusively federal sphere. Just as the Supreme Court has indicated that it is not the business of the states concerning regulation of lawyers who practice exclusively under the rules of the Patent Office,[26] so too would admission to practice before the various federal bars be outside the jurisdiction of the states. The federal government could permit foreign attorney admission to the various federal bars, presumably either through Judicial Conference rulemaking[27] or by statute.

The GATS negotiations traditionally have focused on the use of foreign legal consultants (FLCs)—foreign lawyers in good standing in their home countries.[28] These individuals have a separate status but are not admitted to the bar and are limited in what they can do. They can provide advice on the law of their home countries. They may not appear in state courts—without special permission—and usually may not be involved with real estate transactions or wills.[29] Not surprisingly, despite enactment by more than half of the states, the number of FLCs in most jurisdictions is rather small. Occasionally, there are disciplinary actions where the FLC crosses the line and acts contrary to the rule as a local state lawyer.[30]

There has been a charm offensive by some foreign bars to obtain approval in the United States. For example, the organized bar of Australia, the Law Council of Australia, attended sessions of the Conference of Chief Justices and lobbied heavily to arrange some form of admission, including inviting state judges to Australia for meetings. The conference passed resolutions in 2007 urging state boards of law examiners to consider permitting Australian attorneys to sit for the bar examination in various states and in 2009 to consider some form of reciprocity.[31]

The focus for foreign attorneys and those advocating for them has been to permit temporary practice, to admit to the bar on motion, or to enable individuals to sit for a bar examination. The ABA Commission on Multijurisdictional Practice's 2002 *Report to the ABA House of Delegates* included a model rule for temporary practice by foreign lawyers[32] in addition to a model rule for admission on motion for those within the United States.[33] The latter originated in the Bar Admissions Committee of the Section of Legal Education and Admissions to the Bar, but the former never was vetted to the same extent through that section or that committee. Both passed the House of Delegates, but the former has picked up only a small number of enactments. In contrast, the latter has been approved by an increasing number of jurisdictions approaching 80 percent. Similarly, about 80 percent of the states have enacted ABA-recommended safe harbor provisions for lawyers in the United States engaged in short-term representation of clients in states in which they are not admitted.[34] The safe harbor provision does not extend to non-United States attorneys, and few states permit its application to foreign attorneys.[35]

Sitting for the bar examination has become a cottage industry for foreign attorneys in New York. About one-third of the applicants in the February 2010 cycle received their legal education outside the United States,[36] while almost 3,000 foreign-educated individuals took the July 2010 exam, representing one-quarter of all examinees.[37] New York permits individuals who have completed a graduate law degree—usually one year of study—from a common law jurisdiction to sit for the bar.[38] The pass rate is considerably lower than that for domestic applicants.[39] Many want the credential and do not follow through with the character and fitness portions of the New York bar, which take place after passage of the examination, rather than prior to the exam as in most states. LL.M. programs generally are cash cows for United States law schools.[40] There is no accreditation of LL.M. programs in the United States. Rather the only interest of the ABA Council of the Section of Legal Education and Admissions to the Bar—the accrediting body—is that the LL.M. program does not adversely affect the Juris Doctor program. There have been some calls for the ABA to accredit these programs, particularly because they have become a vehicle in some states for individuals to sit for the bar examinations.[41] There also has been some interest in the ABA becoming involved in the accreditation of non-United States law schools, and in 2009 the Conference of Chief Justices urged the ABA Section of Legal Education and Admissions to the Bar to consider developing a certification program for legal education providers in common law countries.[42] The ABA has only looked at United States programs abroad, often conducted in concert with non-United States law schools. However, accreditation would be a huge increase in jurisdiction for the ABA and would require extended and increased resources. As a first step, there has been some support for accreditation consideration of a non-United States law school that

claims to be in full compliance with existing ABA standards.[43] The council is currently considering this issue.[44]

Of course, the elephant in the room is how can states adhere to a requirement that United States bar candidates for admission be graduated from ABA-accredited schools and admit attorneys from abroad who do not have a similar accrediting body? Would not a graduate from a non-ABA-accredited school insist that she be treated in the same manner?[45] Would the whole accrediting process collapse if there would be an end run around the process?

The activity that has involved state boards of law examiners recently concerning potential multijurisdictional practice has been an effort to create a uniform bar examination. Without much fanfare, the Bar Admissions Committee of the ABA Section of Legal Education and Admissions to the Bar began discussing the possibility at its meetings in 2006 and 2007, and there was general interest and support.[46] The National Conference of Bar Examiners (NCBE) solicited interest among the states and held a meeting in January 2008 in New Orleans for the 21 jurisdictions that were already using the three components of the proposed Uniform Bar Examination at that time. There also was a presentation to the Conference of Chief Justices and another meeting in Madison, Wisconsin, in June 2009.[47] The catalyst was that increasing numbers of states were using products of NCBE as components of their respective bar exams: the Multistate Bar Examination, the Multistate Essay Examination, the Multistate Performance Test, and the Multistate Professional Responsibility Examination. A committee of NCBE came up with uniform criteria—the MBE would be weighted 50 percent.[48] Nineteen states already use all four NCBE products, and Missouri and North Dakota are in the vanguard.[49] Different states will have different cut scores, but there should be improved portability.[50]

States have taken the subject of multijurisdictional practice seriously and have taken significant strides in that regard.[51] The question of the admission of foreign lawyers has not yet galvanized the same core support. The failure to date of the Doha round on GATS[52] has lessened the effect of the clarion call for action to open up state bars to non-United States attorneys. However, the drumbeat of particularly the United States international bar has kept the issue front and center.[53] Some in ABA leadership attempted to push multidisciplinary practice a decade ago, but it fell on deaf ears.[54] It will be interesting to see how the call for the admission of foreign attorneys will play. In 2009, the ABA president created a commission, Ethics 20/20, to study globalization, technology, and the *Model Rules of Professional Conduct.* Its report is due in 2012, and it will make recommendations on many of the issues discussed in this article.[55]

NOTES

1. Fred C. Zacharias, *Federalizing Legal Ethics*, 73 TEX. L. REV. 335 (1994).
2. *See* Moskowitz v. Wilkinson, 432 F. Supp. 947 (D. Conn. 1977); Maguire v. Wilkinson, 405 F. Supp. 637 (D. Conn. 1975).
3. *See generally* Laurel S. Terry, *GATS' Applicability to Transnational Lawyering and Its Potential Impact on U.S. State Regulation of Lawyers*, 34 VAND. J. TRANSNAT'L L. 989 (2001). Professor Terry has been a prolific author on the subject of GATS.
4. Younger v. Harris, 401 U.S. 37, 44 (1971).
5. *Id.*
6. Alden v. Maine, 527 U.S. 706, 748 (1999).
7. AM. BAR ASS'N COMM'N ON MULTIJURISDICTIONAL PRACTICE, REPORT 201A (2002), http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/201a.authcheckdam.pdf ("[ABA] affirms its support for the principle of state judicial regulation of the practice of law."). *But see* AM. BAR ASS'N STANDING COMM. ON PROF'L DISCIPLINE, REPORT 105, Recommendation 2 (2006), http://www.americanbar.org/content/dam/aba/migrated/leadership/2006/annual/onehundredfive.authcheckdam.doc (supporting the USTR's participation in developing "additional disciplines on

domestic regulation that . . . do not unreasonably impinge on the regulatory authority of the states' highest courts of appellate jurisdiction over the legal profession in the United States"). The Conference of Chief Justices unsuccessfully urged that *unreasonably* be stricken from the resolution. *See Resolution 5*, CONFERENCE OF CHIEF JUSTICES (Aug. 2, 2006), http://ccj.ncsc.dni.us/IndependenceofStateJudicialSystems/resol5 GATS.html.

8. *See* Leis v. Flynt, 439 U.S. 438, 438 (1979) (per curiam). Justice White would have set the case for oral argument, and three Justices dissented. *Id.* at 445.
9. *Id.* at 443.
10. *Id.* at 444 n.5.
11. Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 283–84 n.16 (1985).
12. United States v. Gonzales-Lopez, 548 U.S. 140, 151–52 (2006); *see also id.* at 160 (Alito, J., dissenting) (citing *Leis*, 439 U.S. at 433).
13. *See* Medellin v. Texas, 552 U.S. 491 (2008).
14. *Id.* at 501.
15. *Id.*
16. *Id.* at 502–03.
17. *Id.* at 503.
18. *Id.* at 504.
19. *Id.* at 525–26.
20. *Id.* at 532.
21. 19 U.S.C. § 3512(b)(2)(A) (2006); *see also, e.g.*, JEANNE J. GRIMMETT, CONG. RESEARCH SERV., RS22154, WTO DECISIONS AND THEIR EFFECT IN U.S. LAW 4 (2005). State law "includes any provision of a state constitution, regulation, practice or other state measure." H.R. DOC. NO. 103-316, at 674 (1994).
22. 552 U.S. at 532.
23. 10 U.S.C. § 1044(d)(1)–(2) (2006).
24. S. REP. NO. 109-69, at 317 (2005) (construing section 553).
25. Local court rules, which include requirements for admission to each federal court, are collected at the United States Courts website. *Local Rules*, UNITED STATES COURTS, http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/LocalCourtRules.aspx (last visited Jan. 5, 2011).
26. Sperry v. Florida *ex rel.* Florida Bar, 373 U.S. 379, 404 (1963).
27. 28 U.S.C. § 2072 (2006).
28. *See* MARGARET MIKYUNG LEE, CONG. RESEARCH SERV., RS22949, LEGAL SERVICES IN THE WORLD TRADE ORGANIZATION (WTO) AND U.S. EFFECT (2008); *see generally* AM. BAR ASS'N COMM'N ON MULTIJURISDICTIONAL PRACTICE, REPORT 201H, at 2 (2002) [hereinafter REPORT 201H], *available at* http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/201h.authcheckdam.pdf; *Foreign Legal Consultant Rules*, AMERICANBAR.ORG (Aug. 24, 2010), http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/for_legal_consultants.authcheckdam.pdf.
29. REPORT 201H, *supra* note 28, at 3–4.
30. *See, e.g.*, Dep't Disciplinary Comm. v. Antoine, 899 N.Y.S.2d 41, 44 (N.Y. App. Div. 2010).
31. *Resolution 7*, CONFERENCE OF CHIEF JUSTICES (Feb. 7, 2007), http://ccj.ncsc.dni.us/LegalEducationResolutions/resol7AustralianLawyersStateBarExams.html; *Resolution 13*, CONFERENCE OF CHIEF JUSTICES (Aug. 2009), http://ccj.ncsc.dni.us/InternationalResolutions/resol13.html.
32. AM. BAR ASS'N COMM'N ON MULTIJURISDICTIONAL PRACTICE, REPORT 201J, at 1 (2002), *available at* http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/201j.authcheckdam.pdf.
33. AM. BAR ASS'N COMM'N ON MULTIJURISDICTIONAL PRACTICE, REPORT 201G, at 1 (2002), *available at* http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/report_201g.authcheckdam.pdf.
34. *See* AM. BAR ASS'N COMM'N ON MULTIJURISDICTIONAL PRACTICE, REPORT 201B (2002), *available at* http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/201b.authcheckdam.pdf; *see also State Implementation of ABA Model Rule 5.5*, AMERICANBAR.ORG (Jan. 25, 2010), http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/quick_guide_5_5.authcheckdam.pdf.
35. There has been a new model rule for registration of in-house counsel that originated in the Bar Admissions Committee and was passed by the House of Delegates in 2008; once again the model rule's focus is United States attorneys. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, INTERNATIONAL REPORT TO THE HOUSE OF DELEGATES 1–3 (2008), *available at* http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/in_house_registration.authcheckdam.pdf. For adoptions, see *In-House Corporate Counsel Registration Rules*, AMERICANBAR.ORG (Apr. 12, 2010), http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/in_house_rules.authcheckdam.pdf.
36. Conversation with Diane Bosse, Chair, N.Y. Bd. of Law Exam'rs, in Austin, Tex. (April 15, 2010).
37. Press Release, N.Y. State Bd. of Law Exam'rs, New York Bar Examination Pass Rates July 2010 (Nov. 5, 2010), *available at* http://www.nybarexam.org/Results 710/Jul2010Results.htm.
38. N.Y. State Bd. of Law Exam'rs, *Foreign Legal Education*, http://www.nybarexam.org/Foreign/ForeignLegalEducation.htm (last visited Jan. 5, 2011).
39. For example, the July 2010 pass rate was about 30 percentage points lower for foreign-educated exam takers. *See* Press Release, N.Y. State Bd. of Law Exam'rs, New York Bar Examination Pass Rates July 2010, *supra* note 37.
40. As one commentator has indicated:

    Law schools compete based in part on admission statistics, including LSAT scores and grade point averages, which are collected and publicized with regard to J.D. students but not with regard to LL.M. students. As a result, enrollments in LL.M. programs can contribute much needed tuition dollars without affecting admission statistics.

Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 FORDHAM INT'L L.J. 1039, 1053 n.43 (2002); *see also id.* at 1053 n.42 (describing LL.M. programs as "cash cows").

41. *See* AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES 27 (2009), *available at* http://apps.americanbar.org/legaled/accreditation/International%20Issues%20Report%20(final)%20(2).DOC.

42. *Resolution 8*, CONFERENCE OF CHIEF JUSTICES (Feb. 7, 2007), http://ccj.ncsc.dni.us/LegalEducationResolutions/resol8AccredLegalEducCommonLawCountries.html.

43. *See* AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 41, at 28 (referring to Peking University School of Transnational Law).

44. *See Council Adopts Resolution on Accreditation of Foreign Law Schools*, AM. BAR ASS'N, http://www.americanbar.org/groups/legal_education/news_announcements.html (Dec. 2010 resolution) (last visited Jan. 5, 2011).

45. For example, Minnesota currently is studying this question. *See* MINN. STATE BD. OF LAW EXAM'RS, LEGAL EDUC. COMM. OF THE MINN. BD. OF LAW EXAM'RS, http://www.ble.state.mn.us/resource-center/legal-education-committee.aspx (last visited Jan. 5, 2011).

46. The Bar Admissions Committee includes state supreme court justices, heads of boards of law examiners, deans, faculty, and members of the practicing bar. While I was on the committee, we met twice a year and worked well together.

47. [*Editor's Note:* NCBE held a third meeting about the Uniform Bar Examination in Phoenix, Arizona, in November 2009. It has also since held three regional meetings about the Uniform Bar Examination: in June 2010, in Saratoga Springs, New York, for states in the Northeast; in November 2010, in Salt Lake City, Utah, for western and mountain states; and in September 2011, in St. Louis, Missouri, for states bordering the Mississippi, Ohio, or Missouri Rivers.]

48. Jurisdictions may require a continuing legal education course as a prerequisite, some online training, or perhaps even further examination on state law.

49. [*Editor's Note:* Missouri and North Dakota first administered the Uniform Bar Examination (UBE) in February 2011. Since then, four more jurisdictions have adopted the UBE: Alabama (July 2011 administration), Colorado and Idaho (February 2012 administration), and Washington (July 2013 administration). The Nebraska Supreme Court has issued an order conditionally granting the Nebraska State Bar Commission's petition to adopt the UBE. The effective date is delayed until January 1, 2013, pending receipt by the Court of proposed rule amendments. The Montana Supreme Court has granted conditional approval of the Montana Board of Bar Examiners' petition to adopt the UBE; final approval is subject to review of an implementation plan to be prepared by the board. An effective date has not been set.]

50. *See generally*, Susan M. Case, *The Uniform Bar Examination: What's In It for Me?*, BAR EXAMINER, Feb. 2010, at 50, 50; *Essays on a Uniform Bar Examination*, BAR EXAMINER, Feb. 2009, at 6; *see also* Leigh Jones, *Uniform Bar Examination Drawing Closer to Reality*, NAT'L L.J., Oct. 12, 2009, at 1, 4. NCBE has a section on its website about the Uniform Bar Examination. *See The Uniform Bar Examination (UBE)*, NAT'L CONFERENCE OF BAR EXAM'RS, http://www.ncbex.org/multistate-tests/ube/ (last visited Jan. 5, 2011).

51. *See, e.g.*, Arthur F. Greenbaum, *Multijurisdictional Practice and the Influence of Model Rule of Professional Conduct 5.5—An Interim Assessment*, 43 AKRON L. REV. 729 (2010).

52. Editorial, *Waiting for a Trade Policy*, N.Y. TIMES, July 6, 2010, at A22 ("[T]he G-20 leaders dropped their 2009 pledge to finalize the Doha round of trade negotiations this year.").

53. *See, e.g.*, Anthony E. Davis, *Regulation of the Legal Profession in the United States and the Future of Global Law Practice*, 19 PROF. LAW, no. 2, 2009 at 1.

54. *See ABA House of Delegates Revised Recommendation 10 F by Various State and Local Bars*, AM. BAR ASS'N (July 2000), http://www.abanet.org/cpr/mdp/ (recommending dismantling the ABA Commission on Multidisciplinary Practice).

55. For commission activities to date, see *ABA Commission on Ethics 20/20*, AM. BAR ASS'N, http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20.html (last visited Jan. 5, 2011).

MICHAEL J. CHURGIN is the Raybourne Thompson Centennial Professor in Law at the University of Texas. He served for a decade on the Bar Admissions Committee of the American Bar Association's Section of Legal Education and Admissions to the Bar and was a member of subcommittees that drafted the Model Rule for Admission by Motion, which was adopted by the ABA House of Delegates in 2002; the model rule updating the Model Rule for the Licensing and Practice of Foreign Legal Consultants, which was adopted in 2006; and the Model Rule for Registration of In-House Counsel, which was adopted in 2008. (The author is no longer a member of the Bar Admissions Committee of the ABA's Section of Legal Education and Admissions to the Bar. The views expressed in this article are his own and do not reflect the opinions of the committee or the Section.)