

THE GLOBALIZATION OF LEGAL EDUCATION: IMPLICATIONS FOR BAR ADMISSIONS

by James P. White

Editor's Note: The following is an essay by James P. White, Professor of Law Emeritus at Indiana University Robert H. McKinney School of Law and Consultant Emeritus on Legal Education to the American Bar Association. These are his personal observations regarding changes in legal education—in particular, the globalization of the practice of law and the expansion of international legal education—and the resulting implications for bar admissions. (This article is derived from Professor White's published comments on the ABA's website in response to the July 2010 report from the ABA Section of Legal Education and Admissions to the Bar's Special Committee on Foreign Law Schools Seeking Approval under ABA Standards, which he refers to in his essay.)

A FEW WORDS ABOUT JIM WHITE

—Hulett H. Askew, Consultant on Legal Education, American Bar Association

To say that Jim White is an icon in American legal education raises the possibility of understatement. Considering his 40-year career as a law professor and national leader in legal education, I have difficulty thinking of anyone who has had more of a positive and long-lasting impact on American legal education than Jim White.

Jim retired in 2000 after 26 years as Consultant on Legal Education to the American Bar Association but continues to serve as Consultant Emeritus. As Consultant, and under the direction of the Council of the ABA Section of Legal Education and Admissions to the Bar, Jim was responsible for the ABA's law school accreditation project for more than a quarter century. In this capacity, Jim played a leading role in the positive and dramatic changes in legal education over that period, which range from increased diversity in law schools to an improved student-faculty ratio. Unquestionably, the quality of legal education improved significantly as a direct result of Jim's serving as the ABA Consultant. During this time period, the number of women attending law school increased 130 percent, minority enrollment increased 150 percent, and the student-faculty ratio was substantially improved.

Jim is a life fellow of the American Bar Foundation, a life member of the American Law Institute, a distinguished fellow of the Indianapolis Bar Foundation, and a life member of the Order of the Coif. He has received honorary degrees from 13 universities and law schools and has served as a member of the former China-United States Commission on Legal Education. The Association of American Law Schools, the Law School Admission Council, the ABA Central and Eastern European Law Initiative, and the ABA Board of Governors passed special resolutions of appreciation for his leadership in legal education. The ABA and friends have established an annual endowed lecture on legal education at Indiana University Robert H. McKinney School of Law in his honor.

I am but one of many lawyers and legal educators who have benefited directly from Jim White's mentoring and friendship.

In June 2010, the American Bar Association Section of Legal Education and Admissions to the Bar ("the Section") appointed the Special Committee on Foreign Law Schools Seeking Approval under ABA Standards. The committee's charge was to report to the Section Council on the policy questions involved in whether law schools located outside the United States and its territories should be allowed to seek accreditation under the ABA Standards and Rules of Procedure for Approval of Law Schools ("the Standards").¹ The committee's report, issued in July 2010, stated policy considerations for and against this expansion of ABA law school accreditation. It is a useful and thoughtful report responding to current pressures on the ABA Accreditation Committee and Section Council to consider the approval of foreign law schools.²

In reflecting on the changes of the past 30 years relating to legal education and the legal profession, it is clear that globalization of the practice of law is perhaps the most significant development that has taken place. For example, the growth of the European Union, now comprising 27 countries, has resulted in the free movement of members of the legal profession within the Union, transcending different languages and both civil and common law, and in the corresponding reciprocity of the ability to engage in the practice of law.

Globalization of law involves global connections, global interdependence, global information, global finance, global governance, and global rights, and it introduces new challenges into the legal profession. As then-ABA-President Carolyn Lamm stated at the opening of the 87th Annual Meeting of the American Law Institute in 2010, "Certainly globalization has changed the parameters within which we practice law. We obviously are not going to give up our core values, and we will do all in our power to protect the public, to maintain a strong and independent self-regulating legal profession."³

PAST ABA INITIATIVES FOSTERING GLOBALIZATION

The ABA Section has a long history of responding to the phenomenon of the globalization of the legal profession. For instance, in 1985, during my tenth year as ABA Consultant on Legal Education, the Section developed criteria for foreign study by students enrolled in ABA-approved law schools. The underlying premise of these criteria was to foster foreign study while ensuring academic quality of the study. The approval process was devised to ensure both program quality and a comparative and international component to foreign programs conducted by ABA-approved law schools.

These criteria have been expanded and refined during the past two decades. Now there are some 200 foreign summer programs, semester- and year-long study-abroad programs, dual-degree programs, and a variety of other programs abroad for students at ABA-approved law schools. The ABA Section Council and its Accreditation Committee have encouraged the growth of these programs in

recognition of the globalization of the practice of law. The ABA Standards ensure that there is quality control of the foreign programs of study by the parent ABA-approved law school and that there is full disclosure to students of the nature of the programs.

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prepare their graduates to practice in a global environment. The ABA has provided assistance in many ways. For instance, in 1990 it began CEELI, the Central and Eastern European Law Initiative, reaching out to the newly free countries of Central and Eastern Europe, and ultimately the countries of the former Soviet Union, linking

American law schools with law schools in these newly emerging democracies. It has since begun similar programs in Africa, Latin America, and Asia. These programs have stimulated new courses in both comparative and international law in American law schools, as well as bringing comparative law into many of the traditional American law school courses, a phenomenon that has only taken place in the last 15 years. These programs have made law schools much more cognizant, and their curricula much more reflective, of the globalization of legal practice.

THE ABA STANDARDS AND THE ABA AS CENTRAL ACCREDITING BODY

While the ABA proposed rules and standards for approval of law schools at its initial 1878 meeting and periodically reiterated them, it was not until 1921 that the ABA adopted and implemented its

first Standards for Legal Education (as they were then called). The 1921 Section bylaws provided the following:

Article I – Section 3. *Purposes.* The purposes of the Section shall be to consider, discuss, recommend to the Association, and effectuate measures for the improvement of the systems of pre-legal and legal education in the United States; methods for inculcating in law students the sincere regard for the ethics and morals of the profession necessary to its high calling; and means for the establishment and maintenance in the several states of adequate and proper standards for general education, legal training, and moral character of applicants for admission to the Bar, including the manner of testing their qualifications.

Pursuant to these objectives, and in order to provide the public with reliable information as to what constitutes a sound legal education, the Section Council drafted the Standards for Legal Education.

Regulation of legal education in the United States is unique among all nations. Under the doctrine of separation of powers, authority for bar admissions and licensure principally resides in the highest courts of the admitting jurisdictions. The interests of the various admitting jurisdictions in a competent bar are great. Since the 1920s the vast majority of jurisdictions have relied upon the ABA accreditation process. Reliance upon a nationally recognized accrediting agency relieves each state from the burden of annually assessing the merits of each applicant's educational qualifications and those of his or her law school. The role that the ABA plays as a central accrediting body has allowed accreditation to become national in scope rather than fragmented among the 50 states and the U.S. territories.

It is useful to compare legal education in civil law countries with current American legal education. Legal education in the civil law world is a kind of general education. Legal education in the United States is post-baccalaureate professional education, taken after completion of an undergraduate degree requirement. In the United States, legal education is undertaken at a professional educational institution—one with adequate resources, university affiliation (or at least the advantages of university affiliation), and an obligation of service to the practicing bar and the judiciary in such areas as continuing legal education. The role of the ABA as a national accrediting body in the United States is paramount in ensuring the entry of qualified applicants into the profession.

IN CONSIDERATION OF FOREIGN LAW SCHOOL ACCREDITATION

We must consider certain issues affecting the globalization of legal education and the proposed expansion of ABA law school accreditation. First, the level of resources of the institutions in different countries may vary widely. Second, the indirect resources for supporting the educational goals in those institutions may likewise not be similar. Third, the forces favoring the internationalization of legal education sometimes clash with forces seeking to protect specifically national-level interests that may also have a valid space in the life of some institutions. Fourth, the differences in the organizational structure of departments within the law schools also tend to impede interrelations.

The July 2010 Report of the Special Committee on Foreign Law Schools Seeking Approval under ABA Standards discusses additional policy implications and arguments for and against expanding the accreditation role of the ABA to encompass law

schools located outside the United States and its territories. It also considers what special concerns might need to be addressed, and what special rules might be needed, should the Section Council determine to proceed with consideration of applications coming from such law schools.

The current Standards provide foreign-trained lawyers the opportunity to receive credit toward a J.D. degree at an ABA-approved law school. I believe that this method of access to an ABA-approved legal education is one that should be more carefully examined and encouraged, as it provides flexibility for credit of foreign study, while limiting accreditation only to those law schools located within the United States and its territories.

Assuming that a foreign law school can comply with all the requirements of the Standards, the question remains whether a graduate of such a school would be allowed to take, and would seek to take, a bar examination in an admitting U.S. jurisdiction. The Report of the Special Committee on Foreign Law Schools Seeking Approval under ABA Standards correctly states that foreign students who do not study in the United States “will not have the benefit of the acculturation process that naturally occurs when study is accomplished here and that provides context for understanding the development of U.S. law and professional ethics.”⁴ Legal education abroad, even when based upon the American model, is not the same as legal education in the United States. Different cultures make for different education.

The ABA began the law school approval process in 1921 to assure the highest courts of the jurisdictions that a graduate of an ABA-approved law school meets minimum qualifications to sit for the bar. I have serious reservations about whether this assessment can be made on a similar basis for a graduate

from a foreign law school seeking ABA approval. In the Section Council’s 1987 Report on Long-Range Planning for Legal Education in the United States, the following recommendation was made:

The seal of American Bar Association approval is, and must remain, the universally recognized stamp of quality.

In this connection, it is proper for the Council and the American Bar Association to continue to assert the importance of graduation from the American Bar Association-approved law school as a condition for taking state bar examinations. The process for determining admission to practice law is a public licensing function of vital importance.⁵

I do not believe that an approval process for foreign law schools can give the jurisdictions’ highest courts the assurance of minimum qualifications to sit for the bar. My conclusion is that the ABA should not extend its approval process to law schools located outside the United States and its territories.


The question of granting ABA accreditation to a foreign law school is a different matter from reviewing the process by which a foreign-trained lawyer may be allowed to sit for an American bar examination. Options such as the completion of an American LL.M. degree for foreign-trained lawyers would have to be considered.⁶ Could a method such as the Qualified Lawyers Transfer Test used in England and Wales⁷ or the European Union freedom of establishment directive⁸ be modified for the United States? Should the Standards be amended to increase the current credit limit toward an American J.D. degree for a foreign-educated lawyer from one-third to two-thirds? These are questions for discussion by the Section Council.

LAW SCHOOL PROGRAMS FOSTERING GLOBALIZATION

For over a decade, ABA-approved law schools have devised programs to foster the globalization of the study of law. The University of Puerto Rico was a pioneer in developing a dual-degree program with the University of Barcelona. Students at each institution spend one or more additional years at the other institution. They receive a degree from both the University of Puerto Rico and the University of Barcelona and are then eligible to qualify for practice in both the United States and Spain. The commonality of heritage and language enhances this program. Columbia University Law School and Cornell Law School have similar programs with the University of Paris 1–Panthéon-Sorbonne.

Recently I visited a dual-degree program offered by American University Washington College of Law and Paris West University Nanterre La Défense. What originally was a program of semester- or year-long study in Paris or Washington by American or French students has grown into a dual-degree program. American University students spend one or two years at Nanterre. Upon successful completion of a Master I degree (J.D. equivalent), they are eligible to qualify for membership in the Paris bar. They also have the opportunity to enroll in the Master II degree program, a highly prestigious specialization, in any of the areas offered by Nanterre. The American student must be fluent in French. The dual-degree program relates to the academic program and mission of American University Washington College of Law by promoting international law and by offering an opportunity for students to compare the American legal system and legal education with those of France.⁹

My view is that the programs of Puerto Rico, Columbia, Cornell, and others are the sensible

approach to American bar admissions for lawyers principally trained in other countries as well as for American law school graduates who wish to qualify as lawyers in a foreign country. Accreditation of law schools located outside the United States is not in the interest of the ABA in its law school accreditation process. 

NOTES

1. The 2010 report follows a July 2009 Report of the ABA Section Special Committee on International Issues, which examined the impact of international issues on legal education and admissions to the bar and the ways in which the Section could respond to resulting pressures, including the accreditation of non-U.S. law schools. The 2009 report is available on the ABA website at http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html (last visited March 21, 2012).
2. The 2010 report recommended that the Section Council authorize the accreditation project to go forward. The Section Council subsequently adopted a resolution in December 2010 to continue with its consideration of the approval of foreign law schools and to engage appropriate public and private stakeholders in such consideration. The Report of the Special Committee on Foreign Law Schools Seeking Approval under ABA Standards, and the Council Resolution on Accreditation of Foreign Law Schools, are available on the ABA website at http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html (last visited March 21, 2012).
3. Carolyn B. Lamm, President, American Bar Association, Opening Session Remarks at the 87th Annual Meeting of the American Law Institute (May 17, 2010) (transcript *available at* <http://2010am.ali.org/> [last visited March 14, 2012]).
4. American Bar Association Section of Legal Education and Admissions to the Bar, REPORT OF THE SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS SEEKING APPROVAL UNDER ABA STANDARDS (2010), *available at* http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html (last visited March 21, 2012).
5. American Bar Association Section of Legal Education and Admissions to the Bar, REPORT ON LONG-RANGE PLANNING FOR LEGAL EDUCATION IN THE UNITED STATES (1987). The report is available at the ABA Section's Office of the Consultant.
6. At its meeting in March 2011, the Section Council approved a Proposed Model Rule on Admission of Foreign Educated Lawyers and Proposed Criteria for ABA Certification of an LL.M. Degree for the Practice of Law in the United States. The proposed model rule and criteria were distributed for comment, after which the Section Council plans to submit the proposed model rule and criteria to the ABA House of Delegates. According to the report, "[t]he purpose of the . . . Model Rule is to aid state courts and bar examiners in identifying LL.M. programs that meet specific criteria designed to prepare graduates of foreign law schools to take the bar examination and to practice law in the United States." American Bar Association Section of Legal Education and Admissions to the Bar, REPORT OF THE INTERNATIONAL

LEGAL EDUCATION COMMITTEE (2011), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20110420_model_rule_and_criteria_foreign_lawyers.authcheckdam.pdf (last visited March 9, 2012).

7. The Qualified Lawyers Transfer Test (QLTT) is a test that enables certain foreign-trained lawyers to qualify as solicitors in England and Wales. See <http://www qltt.co.uk/> (last visited March 9, 2012). See also Susan M. Case, *The Testing Column: Testing Foreign-Trained Lawyers: A New Exam in England and Wales*, 80(3) THE BAR EXAMINER 34–37 (Sept. 2011).
8. The European Union freedom of establishment directive facilitates the practice of EU lawyers in other EU member states. See http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/123023_en.htm (last visited March 9, 2012). See also Julian Lonbay, *The Education, Licensing, and Training of Lawyers in the European Union, Part I: Cross-Border Practice in the Member States*, 77(4) THE BAR EXAMINER 6–17 (Nov. 2008) and Julian Lonbay, *The Education, Licensing, and Training of Lawyers in the European Union, Part II: The Emerging Common Qualifications Regime and Its Implications for Admissions in Europe*, 79(4) THE BAR EXAMINER 25–35 (Nov. 2010).
9. For more information about American University Washington College of Law’s dual-degree program with Paris West University Nanterre La Défense, visit <http://www.wcl.american.edu/dualdegree/parisx/>.



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