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ACCESS TO STATE BAR EXAMINATIONS FOR FOREIGN-TRAINED LAW SCHOOL GRADUATES

Douglass G. Boshkoff*

The American Bar Association believes that every candidate for admission to the bar should have graduated from a law school approved by the American Bar Association (ABA), that graduation from a law school should not alone confer the right of admission to the bar, and that every candidate for admission should be examined by public authority to determine his fitness for admission.¹

The rules of admission to practice in various American jurisdictions reflect the impact of the ABA’s strongly stated position. ABA approval is often the sole, or most significant, criterion used to measure the adequacy of an applicant’s legal education.² Since accreditation visits are made only to law schools located in the United States,³ one who has studied law abroad is ineligible to take the bar examination in many jurisdictions. Relatively few jurisdictions either specifically recognize training obtained abroad or permit a demonstration that an applicant’s legal training is equivalent to an ABA-approved legal education.⁴

The following classification of states will permit an examination of the varied rules which govern admission to the bar and the effect of such rules on the applicant, foreign or American, who has received an education abroad:

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¹ ABA, APPROVAL OF LAW SCHOOLS: AMERICAN BAR ASSOCIATION STANDARDS AND RULES OF PROCEDURE, Standard 102, at 1 (1977) [hereinafter cited as ABA STANDARDS].

² Id.

³ This article deals only with the extent to which the graduate of a foreign law school may be admitted to practice by examination. In many but not all jurisdictions, the attorney-applicant who has practiced for a number of years may be admitted on motion. Some states which would have required an ABA-approved legal education for admission by examination do not impose a similar requirement when admission is by motion. For an example of such a distinction, see Neb. Sup. Ct. R. II 4, II 5.

⁴ See text accompanying notes 5-18 infra.
Group I—Specific Recognition of Canadian or British Training

California and Delaware specifically recognize common law training obtained outside the United States. In Delaware, graduates of both Cambridge and Oxford may join graduates of ABA-approved schools in taking the bar examination. Delaware is the only jurisdiction that lists, by name, approved schools located outside the United States. California’s regulatory scheme is slightly more complicated. Law schools are divided into two categories, accredited and unaccredited. A legal education may be obtained at either type of school, assuming that certain quantitative standards are met. Certain categories of schools are prima facie deemed to be accredited, including “a recognized law school in Canada, the members of the faculty of which are eligible to membership in the Association of American Law Schools as a ‘Canadian Associate.’”

Group II—General Recognition of Equivalent Common Law Training

Two other jurisdictions, Alaska and Oklahoma, provide in more general terms for recognition of common law training pursued outside the United States. In Alaska,

graduates of law schools in which the principles of English Common Law are taught but which are located outside the United States and beyond the jurisdiction of the American Bar Association and the Association of American Law Schools, may qualify for admission upon proof that the foreign law school from which they graduated meets the American Bar Association Council of Legal Education Standards for approval . . . .

Oklahoma has a somewhat different standard. The applicant must demonstrate that he “has or will meet the requirements for

5. DEL. SUP. CT. R. 52(a)(5).
7. Id. § 182 (standards for accredited law schools); id. Rule XIX, § 193 (standards for unaccredited law schools).
8. Id. Rule XVIII, § 183(1)(b)(ii). Canadian Associate membership in the Association of American Law Schools (AALS) was established in 1969. See ASSOCIATION OF AMERICAN LAW SCHOOLS, 1969 PROCEEDINGS, pt. II, at 144-45 (1970). However, such membership is an individual membership, not a school membership; therefore, no judgment is made by the AALS as to the quality of education offered at the Canadian school where the Canadian Associate teaches. In no sense is there accreditation of the Canadian institution.
graduation from a law school accredited by the American Bar Association or from a law school determined by the Board of Bar Examiners as having submitted to it as having its curriculum based upon the Common Law of England.”\textsuperscript{10} Such rules require decisions that necessarily are difficult for the examiners to make.\textsuperscript{11} Since ABA accreditation procedures require extensive inspection of an institution spanning several years and involving more than one site inspection,\textsuperscript{12} it is unlikely that examiners many thousands of miles from the applicant’s law school can render a similar qualitative judgment within a brief time.

\textbf{Group III—ABA Approval Not the Sole Criterion}

In some jurisdictions, it is theoretically possible to prove either that an applicant’s legal education was equivalent to what could have been obtained at an ABA-approved school or, alternatively, that ABA approval is not the sole standard to be applied. Iowa, for example, requires graduation from a “reputable law school.”\textsuperscript{13} An ABA-approved school is deemed within this category,\textsuperscript{14} but there is an opportunity for the candidate to argue that an institution lacking ABA approval may also be reputable. Other states require graduation from an “approved school” and maintain a separate list of approved schools which need not necessarily be limited to ABA-approved schools.\textsuperscript{15} Tennessee alone explicitly in-

\textsuperscript{11} Undoubtedly, many examiners would welcome assistance from the ABA. In 1973, bar examiners were asked to respond to the following question: “If you do not presently permit graduates of foreign law schools to take your bar examination, would you be inclined to do so if the foreign law school were on the list of law schools approved by the American Bar Association?” Stevens, \textit{Will Study in a Foreign Country Qualify an Applicant for Admission to the Bar?}, 42 B. EXAMINER 97, 102 (1973). Thirty-nine of forty-nine responses were affirmative, while only two were negative. \textit{Id.}
\textsuperscript{14} \textit{Id.}
\textsuperscript{15} \textit{See} ILL. SUP. CT. R. 703; ME. REV. STAT. tit. 4, § 804 (1964 & Supp. 1977); MISS. CODE ANN. § 73-3-13(a)(ii) (Supp. 1977) (law school which “has been approved by the said board as an institution giving a general course of study of law reasonably equivalent to the study required in a law school accredited by the American Bar Association”).
vites proof of equivalency: "Any applicant who received his legal education in a foreign country . . . shall satisfy the Board that his undergraduate and law school education was substantially equivalent to the requirements of Section 5 . . . ."16 The major distinction between the states in this group17 and the states in Group II18 is that the states within the former category permit applicants with civil law training to ask for a ruling on the equivalency of their legal education.

Group IV—ABA Accreditation or AALS Membership Required

The largest number of jurisdictions require graduation from an ABA-approved school. A few states in this group make membership in the Association of American Law Schools (AALS) an alternative measure of quality.19 The latter does not represent any change in standards since all AALS member schools are also ABA-approved and no state mentions AALS membership without requiring ABA approval. The graduate of a foreign law school who wishes to apply for admission in these jurisdictions must pursue a period of study in the United States. However, this period of study need not be a full three years in every jurisdiction. The rules of some jurisdictions apparently can be satisfied if the applicant obtains an LL.M. degree from an ABA-approved school, a degree which may some-

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16. TENN. SUP. CT. R. 37, § 21.01. Section 5 of rule 37 sets forth the educational requirements for admission, which include graduation for an ABA-accredited law school. Id. § 5.

17. The rules and regulations of some states other than those cited notes 13-16 supra contemplate the possibility of accepting credentials from non-ABA-approved schools. However, other provisions of the same rules preclude consideration of education obtained abroad. E.g., IND. SUP. CT. ADMISSION & DISCIPLINE R. 13V(A) (law school must be located in United States); MICH. SUP. CT. BD. L. EXAMINERS R. 4 ("law school duly incorporated under the laws of this State or another State, Territory, or the District of Columbia, of the United States of America").

18. See text at pp. 808-09.

19. See Rules Governing Admission To The Bar Of Alabama, Rule IV(C), reprinted in 35 ALA. LAW. 336 (1974); FLA. SUP. CT. R. RELATING ADMISSIONS B. art. IV, § 21(b); KY. CT. APP. R. 2.070(a); W. VA. SUP. CT. R. ADMISSION PRAC. L. 1.000; P.R. SUP. CT. R. 11(a)(1) (Applicant must have graduated from "a law school accredited by the Higher Education Council, if the applicant has pursued his law studies in Puerto Rico, or by the American Bar Association or by this Court if the applicant has pursued his law studies outside of Puerto Rico." No non-ABA schools appear on this list); S.C. SUP. CT. EXAMINATION & ADMISSION PERSONS PRAC. L. R. 5(4) ("or such other law school as may be approved by the Supreme Court." No non-ABA school has been approved); Rules for Admission to the Practice of Law in the State of Washington, Rule 2(B)(1)(a) (must be "graduation from an approved law school." No non-ABA school has been approved).
times be obtained in only one year. North Dakota requires the
applicant to have received "a bachelor of laws or equivalent de-
gree." \[20\] In comparison, Arizona requires that the applicant be "a
gradient of a law school . . . approved by the American Bar
Association at the time of his graduation." \[21\] The Arizona standard is
much less specific, and it can be argued that it will be satisfied by
any degree, not only a bachelor's degree.

It is uncertain to what extent examiners are accepting a foreign
legal education plus an LL.M. from an ABA-approved school. Con-
versations and correspondence with various admitting authorities
lead to the conclusion that there currently is scattered, but not
very substantial, sentiment in favor of permitting an LL.M. recip-
ient who has received his primary legal training outside the United
States to take the bar examination.

I

Graduates of foreign law schools have been in an unenviable
position for many years. Until recently, many states excluded from
the bar examination applicants who lacked American citizenship.
That barrier to admission fell in 1973 when the United States Su-
preme Court ruled that Connecticut's citizenship requirement vi-
olated the equal protection clause of the fourteenth amendment. \[22\]
Since then, many American jurisdictions have received an increas-
ing number of applications from noncitizens who have been edu-
cated outside the United States. \[23\] The significance of state rules

20. N. D. App. Pro. R. 46(a)(2). In several other jurisdictions, a J.D. or LL.B. is
specifically required, or the rule can only be sensibly interpreted as requiring such a
degree. \(\text{See Col} \text{. Sup. Ct. R. 20}(8)(b); \text{Miss. Code Ann.} \ § 73-3-13 (Supp. 1977); \text{Neb.}
Sup. Ct. Admission Examination R. 16(b); \text{Tex. Sup. Ct. R. Governing Admission B. Va}(2); \text{Virginia Board of Bar Examiners, Rules 8B, 8C(2); Wis. Stat. Ann.} \ §
256.28(1)(a)-(b) (West Supp. 1977-1978).

21. \text{Ariz. Sup. Ct. R. Admission \\& Discipline Attorneys 28(c) IV 5. The same}
interpretation of admission rules can be advanced in other jurisdictions. \(\text{See}
\text{Guam Gov't Code} \ § 28002(7); \text{Hawaii Sup. Ct. R. 15; Idaho Sup. Ct. R. 103;}
Articles of Incorporation of the Louisiana State Bar Association, reprint in La.
Rev. Stat. Ann. ch. 4 app. art. XIV, \ § 7(B)d (West Supp. 1977); \text{Minn. Sup. Ct. R.}
II(4); \text{Mont. Sup. Ct. R. XXV B}(3); \text{N.H. Admission Examination R. 16(b); Rules}
Governing Bar Examiners, Bar Examinations, and Admission to the Bar 8(b); \text{Ohio}
Sup. Ct. R. Gover"t B. I, \ § 1(C); \text{Ore. Sup. Ct. R. Admission Attorneys 2.05(5);}
\text{S.C. Sup. Ct. Examination \\& Admission Persons Prac. L.R. 5(4); S.D. Compiled}
Laws Ann. \ § 16-16-6 (Supp. 1977).

22. \text{See In re Griffiths, 413 U.S. 717 (1973).}

23. Information on applications from foreign law school graduates is not easily
obtained. New Jersey recently reported receiving 238 petitions with the following
requiring that an applicant graduate from an ABA-approved school has consequently become more apparent.

Reasons other than elimination of the citizenship requirement can be advanced to explain the increase in applications for state bar examinations. Unstable political conditions abroad and relatively brighter economic prospects in the United States have probably been significant factors. Most of the applicants are not United States citizens who have gone abroad because they failed to gain admission to American law schools. Rather, they are persons who have taken training in their homeland and have later decided that it was necessary to move elsewhere.

Graduates of law schools outside the United States often urge that the requirement of an ABA-approved legal education be waived or that they be permitted to demonstrate that they have received the equivalent of such an education. There are considerable pressures to respond to these requests. The applicant may have graduated from a well-known school of substantial international reputation, such as Cambridge or Oxford, or may be a person of substantial professional achievement. In some cases, because an

geographic distribution: Cuba 116, Philippines 54, India 16, Egypt 8, England 6, Israel 6, Pakistan 6, Hungary 4, China 3, Brazil 3, Poland 3, USSR 2, France 2, Romania 2, Argentina 1, Portugal 1, Lithuania 1, Indonesia 1, Columbia 1, Austria 1, and Spain 1. New Jersey Supreme Court Foreign Attorneys Screening Committee, Special Report app., at 1 (Feb. 4, 1976) [hereinafter cited as Special Report]. These figures represent applications received during a period of approximately two years.

24. In this respect, the situation in law sharply contrasts with the situation in medicine. In medicine, large numbers of American citizens attend schools outside the United States. Such persons have a smaller chance of passing the certification examinations of the American Board of Internal Medicine than do United States nationals who study here. In 1975 and 1976, the pass rates for citizens who studied abroad were 18% and 16%, as compared with pass rates of 79% and 81% for those who studied domestically. The marked difference in the pass rate is not necessarily attributable to lack of quality in foreign medical education programs. The difference quite possibly results because American nationals studying abroad have inferior premedical educational credentials. Meskauskas, Benson, & Hopkins, Performance of Graduates of Foreign Medical Schools on the Examinations of the American Board of Internal Medicine, 297 NEW ENGLAND J. MED. 808 (1977). The United States government has attempted to force American medical schools to accept, as transfer students each year, a specified number of United States nationals studying abroad. See Health Professions Educational Assistance Act of 1976, Pub. L. No. 94-484, 90 Stat. 2243 (codified in scattered sections of 5, 8, 11, 20, 22, 31, 37, 42, 44 U.S.C.), conditions the granting of federal funds on the acceptance of such students. See id. § 502 (codified at 42 U.S.C.A. § 295f-1 (Supp. 1977)). This controversial law is currently under attack, and 14 schools have now chosen to forfeit federal assistance rather than admit such students. N.Y. Times, Nov. 29, 1977, at 21, col. 1. Chronicle Higher Educ., Sept. 19, 1977, at 11, col. 1.
applicant belongs to an indigent ethnic group, there may be a significant governmental interest in waiving educational requirements as a way of advancing group, as well as individual, interests. Immigrants may assert that they can more productively contribute to American society if they are permitted to participate as members of the legal profession, rather than in another occupation. An interesting article appeared in the Honolulu Star-Bulletin in 1976:

**IMMIGRANT LAWYERS PROTEST BAN**

Many immigrant lawyers have been forced to take low-paying or menial jobs in Hawaii because they are prohibited from taking the State bar examination, legislators were told yesterday.

Daniel Deocampo, chairman of the 32-member Immigrant Lawyers Association, told the Senate Judiciary Committee that the present citizenship and residency requirements have been declared unconstitutional in a U.S. Supreme Court ruling.

Hawaii has yet to amend its laws to conform to the 1973 decision, Deocampo said.

State Chief Justice William Richardson, Atty. Gen. Ronald Amemiya and the Oahu Filipino Jaycees agreed that the citizenship requirement should be dropped.

DEOCAMPO SAID he has been selling fish since emigrating from the Philippines, while other former lawyers he knows are working in more menial jobs.

Such lawyers could provide legal service to the thousands of immigrants who cannot speak English, he said.

"As they fear to even seek advice due to their incapacity to speak English they will suffer injustice and tend to hate our society," Deocampo said.

A bill introduced last session by Sen. Joseph Kuroda, D-4th Dist. (Leeward Oahu-North Shore), would repeal the citizenship requirement and have the State Supreme Court set written and oral examinations.

RICHARDSON, in written testimony, said the court is re-evaluating the present Hawaii Supreme Court rule that limits the attorney examination to graduates of law schools approved by the American Bar Association.

C. Frederick Schutte, president of the Hawaii State Bar Association, said the group has not yet taken a position on the admission of foreign law school graduates to the local bar.

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25. This was the principal justification for the New Jersey special admissions program discussed notes 36-38 *infra* and accompanying text.
A committee has tentatively recommended their admission, but the executive board has not yet received the panel's proposal which is expected next week, Schutte said.

Amemiya said he agreed with abolishing the citizenship requirement, but opposed the bill's other proposed changes.

The Supreme Court should be free to set any standards it decides are needed for local lawyers, he said.

"Immigrant lawyers, once qualified and permitted to practice in Hawaii, will be in the best possible position to assist their fellow immigrants who speak the same foreign language," Amemiya told the committee.26

One might argue that it makes no sense to accredit any law school or, indeed, to require that anyone attend law school prior to taking a bar examination.27 But once determined that prospective attorneys must satisfy some educational standard, conditioning eligibility to take the bar examination upon graduation from an ABA-approved school is a defensible state policy.28 Such accredita-

26. Takayama, Immigrant Lawyers Protest Ban, Honolulu Star-Bulletin, Feb. 19, 1976, at B-8, col. 1. See Hawaii Sup. Ct. R. 15 (Admission to the Bar), amended on May 12, 1976, now permits a person educated at a non-ABA school to qualify for examination and admission if the applicant (1) practiced before the highest court of a state, territory, or the District of Columbia for five of the six immediately preceding years, or (2) practiced in a common law jurisdiction for the same period of time. In addition, rule 15(b)(2) provides:

Notwithstanding anything to the contrary contained in subsection (b)(1) of this rule, an attorney admitted to practice and in good standing before the highest court of a foreign country, where the English common law forms substantially the basis of that country's jurisprudence, and where English is the language of instruction and practice in the courts of that jurisdiction, and who presents satisfactory proof that he is a permanent resident of the United States under applicable federal immigration laws and regulations, or an attorney admitted to practice and in good standing before the highest court of one or more states, territories or the District of Columbia, who does not qualify for examination and admission under subsection (b)(1), shall, upon presenting satisfactory proof that within five years immediately preceding his application he has attained, for each subject included in the Hawaii bar examination, a grade point of 2.0 (grade of C) or better in final law examinations on those subjects administered simultaneously or otherwise to its regular students by the University of Hawaii School of Law, be eligible for examination and admission.


28. See Kadans v. Collins, 441 F.2d 657 (9th Cir. 1971) (per curiam), appeal
tion is a significant and reasonable measure of the applicant’s legal education. Difficulties are created by the failure of the ABA accreditation function to extend to law schools outside the United States. Arguably, graduates of foreign law schools are denied the right to sit for the bar examination solely because of the geographic location of their law school, not because the law school has failed to satisfy a qualitative standard. It may well be that most foreign law schools would not meet ABA accreditation standards. However, applicants argue that since the ABA will not accredit foreign law schools, the applicant should have an opportunity to demonstrate that his legal education is equivalent to what would have been obtained at an ABA-approved school or, alternatively, that the requirement of an ABA-approved legal education be waived in his particular case. When the applicant’s academic and professional credentials are impressive, these are appealing arguments.

The following proposals would permit states to facilitate the admission of graduates of foreign institutions: (1) The ABA should change its policy and accredit law schools outside the United States. Absent accreditation, the ABA or some other institution should compile a list of distinguished foreign law schools, not accredited but of sufficiently high reputation so that their graduates would qualify for the bar examination. (2) The applicant should be given the opportunity to demonstrate that the training received abroad was equivalent to training that would have been obtained in

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29. The student-faculty ratio of the law school of Rome University is reported to be 154 to 1. Walsh, “Student Explosion” Shakes the University of Rome, N.Y. Times, Nov. 13, 1977, § 12 (Fall Survey of Education), at 26, col. 1. This would clearly be unacceptable in the United States under ABA STANDARDS, supra note 1, Standard 402, at 11. It is erroneous to assume that all nations have attitudes toward education and legal education similar to those found in the United States. An interesting comparison of common and civil law training is found in Merryman, Legal Education There and Here: A Comparison, 27 STAN. L. REV. 859 (1975). For a recent and critical appraisal of German legal education, see Geck, The Reform of Legal Education in the Federal Republic of Germany, 25 AM. J. COMP. L. 86 (1977).

30. A similar argument was made by a graduate of an American law school which had not sought ABA accreditation. The District Court in Colorado held that he should be given an opportunity to demonstrate that his school met ABA requirements. Rossiter v. Law Comm. of the State Bd. of Law Examiners, 42 U.S.L.W. 2017 (D. Colo. June 12, 1973). However, on rehearing, a three-judge court held (2-1) that such an opportunity did not have to be provided. Rossiter v. Law Comm. of the State Bd. of Law Examiners, No. C-4767 (D. Colo. Aug. 26, 1975); accord, In re Schatz, 80 Wash. 2d 604, 497 P.2d 153 (1972).
the United States at an ABA-approved school. (3) Graduates of foreign law schools should be permitted to take the bar examination without regard to the qualitative and quantitative adequacy of their legal education. (4) Graduates of foreign law schools should be permitted to take the bar examination after a period of study in the United States. A review of these alternatives will demonstrate that there is most merit in the last proposal.

II

The ABA House of Delegates grants approval to a law school following an affirmative recommendation by the Council of the Section of Legal Education and Admissions to the Bar. Such an affirmative recommendation is not forthcoming until a school has completed a detailed questionnaire and self-study and has been inspected by a team of three to six persons who spend between three and four days at the inspected school. Faculty members from other law schools and universities, law librarians, practicing lawyers, and judges serve on such inspection teams. Furthermore, approval once granted is subject to periodic review. All schools are reinspected every seven years. Since there are currently 164 ABA-approved schools, almost 25 schools a year are reinspected.

Accreditation is a costly and time-consuming process. Any serious expansion of the accreditation activity of the Section of Legal Education and Admissions to the Bar could be a serious drain on its resources. The benefit derived from such increased accreditation activity is arguably insufficient to warrant expansion. It is sensible to spend extensive time evaluating the program of a domestic law school which will graduate substantial numbers of potential attorneys each year. On the other hand, it can be expected that only a scattered number of applications for admission to practice will be received from the graduates of any particular foreign law school. Thus, the gain from possible accreditation activity of foreign law schools may simply not justify the expenditure of resources. Moreover, except in common law jurisdictions, language would be a substantial barrier to the formation of an effective inspection team. Thus, the present policy of limiting accreditation activity to domestic institutions is a wise policy which can be expected to continue in the foreseeable future.

Even if the ABA offered to extend its accreditation activities outside the United States on an optional basis, it is possible that not a single foreign law school would be willing to invite a visit

31. See note 12 supra and accompanying text.
from an inspection team. At a recent conference, Dean Daniel Soberman of Queen's University, Kingston, Canada, spoke of the political and practical difficulties that a visit from an ABA inspection team might cause:

One final matter I should like to bring to your attention—a matter that might create more of a problem for Canadians and Americans than any other aspect of foreign legal qualifications. This is the question of accreditation of Canadian law schools. It is obvious to all of us that a political problem would be created if an American Bar Association accreditation team arrived in Canada to accredit Canadian law schools. In the first place, we have not found accreditation necessary, even though the process is not unfamiliar in Canada in other disciplines such as medicine and engineering. Second, there is the inescapable observation that a foreign accrediting body would be laying down standards and suggesting changes in curriculum, staff, etc. to meet qualifications decided upon in another country. There is no doubt in my mind that this process would be politically unacceptable in all parts of Canada, and I believe it is better to say so clearly.

There is a second, more practical problem that would arise even if, without formal accreditation the ABA published a list of acceptable Canadian law schools. As I have mentioned, there are fourteen common law schools in Canada serving an English-speaking population of 17 million. We are next door to the United States with over 200 million people. If pressure for admissions in the United States continues at anything approaching the present level, what might be the effect on some or all of the fourteen Canadian schools if they were informally accredited by the American Bar Association? There is no language barrier. Our fees are much lower than in the United States since 80 percent of our support comes from the government. Most of our schools are less than 100 miles from the United States border. In many cases, they are closer to home for American students than would be law schools in other parts of the United States. For example, both Syracuse and Ithaca are about a two and one-half hour drive from my university in Kingston, Ontario. We are literally on the border of upstate New York and more accessible to people in that area than New York City, New Jersey or Ohio, not to mention Florida, Texas or California. Frankly, I do not want our faculty of law accredited by the American Bar Association because if it were accredited we might end up with serious problems about quotas, something we have managed to avoid until now.92

32. Address by Dean Daniel Soberman (Dec. 11, 1976), reprinted in ABA JOINT CONFERENCE, supra note 12, at 18, 24-25.
The ABA could compile a list of distinguished foreign law schools as an alternative to the costly and time-consuming process of accreditation. Such schools would not be approved by a vote of the ABA House of Delegates. The list could be compiled informally and could be furnished to state bar examiners for whatever use they deem appropriate. The political problem referred to by Dean Soberman would be avoided because the list could be compiled in the United States after examination of catalogs published by the institutions in consultation with American practitioners and law teachers familiar with specific institutions. Foreign law schools could be given the opportunity to furnish information about themselves without in any way conditioning eligibility for listing upon the furnishing of such information.

Some bar examiners would welcome such a list, because they are convinced that selected foreign law schools offer an education of sufficiently high quality to warrant admitting its graduates to the bar examination; thus, they seek assistance in making this judgment. Such a list would seem particularly helpful to states in Group II, which recognize equivalent common law training, and to states in Group III, which provide that the approval by the ABA House of Delegates is not the sole measure of educational adequacy. However, examiners skeptical of the merits of foreign legal education would have an additional reason for rejecting the educational credentials presented by graduates of unlisted schools. It is unlikely, for reasons of policy, that a list of distinguished foreign law schools would provide a satisfactory solution to candidate evaluation.

There would be a substantial possibility of confusing the status of listed schools with the status of ABA-approved schools. To the extent that users of the list would understand that the selection of a distinguished foreign law school is not equivalent to receiving ABA approval, the value of the list would be diminished. Such selection would not be perceived as an adequate alternative to ABA approval and would be used by few, if any, jurisdictions. If, however, users initially or after the passage of some time were to view the listing of a foreign law school by the American Bar Association as reasonably equivalent to formal approval by its House of Delegates, some American schools might logically suggest that the less costly and time-consuming approach be used to screen domestic institutions. Not everyone regards the ABA accreditation process as a benign activity. The idea of a list of approved law schools compiled from secondary sources without any actual inspection would be an attrac-
tive alternative to those interested in a less formal and rigorous measurement of educational adequacy.

The ABA is in a very difficult position. The accreditation of foreign law schools is impractical. Adoption of an alternative evaluation scheme might eventually weaken the domestic accreditation program. Therefore, it is unlikely that the ABA will deviate from its present accreditation practices.

III

Admitting authorities can attempt to find a solution without ABA assistance. Each jurisdiction might offer applicants a chance to demonstrate that the legal training they received abroad was equivalent to legal education provided at an ABA-approved school. This is a logical alternative to ABA accreditation of foreign law schools and the admission rules of states in Group II provide for such proof.33 The determination of equivalence on an individual basis is an attractive alternative because it permits examining authorities to respond to cases of individual hardship. However, it is an impractical solution to the broader problem posed by foreign law school graduates. Few applicants would be helped because the legal education offered elsewhere in the world is generally not equivalent to that obtained at an ABA-approved school. The effort to respond to individual applicants would present complex and sensitive problems. Examiners probably would be insufficiently familiar with foreign systems of legal education to be comfortable in the exercise of such decisionmaking authority.34 Thus, there is substantial objection to this approach.

An education at an ABA-approved school has both quantitative and qualitative aspects, neither of which are likely to be duplicated abroad. For instance, prior to admission a student must have completed at least three-quarters of the work required for a baccalaureate degree at an accredited institution.35 It is unlikely that any foreign applicant will have attended such an undergraduate institution. The examiner will thus be forced to examine the equiva-

33. It can be argued that it is inappropriate to permit individual foreign students to demonstrate that they have received the equivalent of an ABA-approved legal education without affording the same opportunity to graduates of unapproved law schools located in the United States. The contention that this distinction violates the equal protection clause was rejected in Murphy v. State Bd. of Law Examiners, 429 F. Supp. 16 (E.D. Pa. 1977).
34. Proof of equivalency is also a possibility for some jurisdictions in Groups III and IV, see text accompanying notes 13-21 supra.
35. ABA STANDARDS, supra note 1, Standard 502, at 14.
lency of undergraduate education also, or otherwise abandon the standard. Furthermore, the study of law is an undergraduate endeavor in most of the world. Graduate study in law is the exception, not the rule. In most instances, the lack of an undergraduate degree will have to be ignored if foreign credentials are to be considered. The New Jersey experience with an experimental foreign attorneys program confirms this conclusion.

On July 10, 1974, the Supreme Court of New Jersey approved an experimental program under which graduates of foreign law schools were to be permitted to take the New Jersey bar examination. The experimental program, discontinued after less than two years' operation, initially contemplated screening the credentials of these applicants. There were several reasons for the termination of the program after a relatively short period of operation. The Committee charged with the responsibility of administering the program offered the following comments concerning its appropriateness:

1. The program permits foreign-trained lawyers to be admitted to the bar examination, while United States trained lawyers who have not attended fully-accredited under-graduate or graduate institutions may be entirely foreclosed.
2. The program is intended in major part to meet the needs of the Spanish-speaking community of New Jersey, but is structured to admit lawyers from nations which may have little or no New Jersey population.
3. The program is intended to deal appropriately with the problems of “lawyers of other nations now resident in New Jersey”, but its opportunities are available to non-residents as well.
4. The program admits persons to the bar examination whose education is of a quality and nature which are [sic] largely beyond the capacity of the Committee to appraise and which may in fact be inadequate for the applicant to master the examination.36

This last criticism is particularly significant, since it was originally contemplated that:

“[a] foreign-trained attorney should be permitted to sit for the bar examination upon determinations (1) that his foreign legal training is of at least five-years' duration (including both undergraduate and graduate legal training, and regardless of whether the degree awarded is comparable to a graduate or un-

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dergraduate degree in the United States); and (2) that the applicant was educationally, though not necessarily experientially, qualified thereby to practice law in the nation in which he was trained. * * * Under this suggested standard (1) no additional training beyond the foreign training would be prerequisite to sitting for the bar; (2) no consideration would be given to experience as a substitute for academic training. The five-year minimum requirement is based upon what appears to be the general standard for legal training in code law countries, i.e., a five-year program leading to a degree comparable to our under-graduate degree. By permitting applicants to sit for the bar upon a showing of such a background, we would avoid the perhaps impossible and certainly subjective determination as to what additional training each individual applicant might require.”

The Committee soon found that it could not live with this standard of equivalency. Judge Geoffrey Gaulkin has described the difficulties encountered in administering this standard and the rapidity with which the standard was abandoned:

In establishing the program, we started at the very beginning by relaxing our requirement that the applicant be from a school which gave a training essentially comparable to an ABA school. We found, in looking at other trainings around the world, that we should try and establish a standard of five years of under-graduate and graduate training. We found that there were very few places, including Cuba itself, where most of our initial activity was directed, that had anything similar to our standard here of four years of college and three years of law school. . . . We also determined at that point, most reluctantly, that we had absolutely no basis upon which we could evaluate either the institution or the extent to which any graduate assimilated the information that he was supposed to be getting at that institution. So we gave up from the very beginning on the idea of trying to make judgments about the quality of the school or the quality of his training, from grades or anything else.

We did start out saying we would at least look at the curriculum required in the country, to make sure that what some-

37. Id. at 2-3 (quoting Memorandum from Judge Gaulkin to Chief Justice Hughes (Mar. 5, 1974)) (asterisks in Special Report). The New Jersey program was designed to facilitate admission by examination of persons who were already admitted to practice in a foreign country. However, the experience with equivalency is equally relevant to a discussion of admission policies when the applicant has never practiced law.
body else in another country calls a lawyer is not what we could call a carpenter or an electrician . . . . And that's about as far as we felt we could really go in evaluating the foreign training . . . .

. . . .

Let me tell you now about some of the detailed problems we ran into . . . . [We] found ourselves unable to distinguish between a comparable, or semi-comparable, training and one which is not comparable . . . . [B]ecause we had no other standard, we said, "All right, they call you a lawyer where you're from, fine, take the exam and show us whether you really are." We even found that we had to step away from the five-year requirement. We found that before 1945, I think it was, even in Cuba, the course that later became a five-year course was pressed into a four-year course. We felt we could not say, except by application of an arbitrary standard, that someone who took the same course in four years should not be able to sit when someone who took it in five years should. So we permitted that person to sit.

Then we got to situations where the law school training was only two years, but it was preceded by three or four years non-legal training. This is the situation, as I recollect, in India. Again we felt we could not say, except by being arbitrary and rigid, that four years of college and two years of law school in India would not qualify, but five years in Cuba would.

I see a couple of people shaking their heads that this is not a proper way to go about permitting people to sit for the bar. As I've indicated, that was our ultimate conclusion too.

But what I'm suggesting is that once you start down this path, unless you simply adopt and adhere to standards which are without rational justification, you end up exactly where we were, that is, saying "come in and take the bar exam and see how you do. Everybody is welcome."

. . . .

Another real problem, of course, and one that came in the form of a couple of poignant cases, was the problem of justifying what we were doing while persons trained in unapproved American schools were foreclosed from sitting for the bar exam.

Perhaps the most troubling case, and one which I think precipitated our reconsidering the whole program, was one in which a person had attended a new college in the Midwest which was about to be accredited when the library burned down. This young man, I believe, was in his senior year at that time. He graduated but the college never got the accreditation. However he went on to graduate from an ABA-accredited law school and was admitted to the bar in two states. He then applied in New
Jersey and the New Jersey Supreme Court refused his application to sit for the bar exam because the undergraduate education was not at an accredited school.

We had real problems with that one. For better or worse, the problem that was presented by that young man was not for my committee, because we were dealing only with foreign-trained lawyers. It was for the court though. The court did not relax its rules for him. But we became increasingly concerned about the disparate treatment of foreign and non-foreign attorneys.38

New Jersey is apparently the only jurisdiction which, even for a limited time, has permitted substantial numbers of foreign law school graduates to sit for the bar examination, despite their lack of training at a domestic institution. Other jurisdictions are more insistent that the legal education obtained abroad closely approximate an ABA-approved program, with the result that relatively few foreign applicants qualify for admission by examination. It is unlikely that these other jurisdictions will decide to follow New Jersey’s lead and apply less rigorous criteria when evaluating foreign legal training. The considerations which led to the termination of the New Jersey program persuasively argue against its replication elsewhere. Furthermore, the success rate of those permitted to take the New Jersey bar examination was discouragingly low.39 The statistics may confirm one’s belief in the value of an ABA-approved legal education. They also demonstrate that relaxation, or even complete waiver, of the legal education requirement is not likely to result in the admission of a substantially greater number of persons who have received their training outside the United States.40

IV

Finally, we should consider the possibility of conditioning eligibility for admission for examination upon the completion of supplementary training in the United States. The rules of two jurisdictions now specifically contemplate such study. In the District of Columbia:

An applicant who graduated from a law school not approved by the American Bar Association may be permitted admission to

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38. Address by Judge Geoffrey Gaulkin (Dec. 11, 1976), reprinted in ABA JOINT CONFERENCE, supra note 12, at 35, 38, 40, 42.
39. The overall success rate was approximately nine percent. Id. at 42.
40. The practice of ad hoc waiver of any admission requirement, including the legal education requirement, exists, but does not appear widespread.
an examination only after receiving credit for 24 semester hours of study in a law school that at the time of study was approved by the American Bar Association and with Committee approval.41

Connecticut requires that the applicant obtain a postgraduate degree. The applicant must satisfy the Committee of Bar Examiners that he has obtained a bachelor of laws or equivalent degree from a law school accredited by the committee or obtained a master of laws degree for postgraduate work acceptable to the committee at a law school accredited by the committee, having already obtained a bachelor of laws or equivalent degree at a law school for work acceptable to the committee.42

41. D.C. CT. APP. R. 46 I(b)(4). HAWAI SUP. CT. R. 15(b)(2), quoted note 26 supra, is similar to the District of Columbia rule. However, the Hawaii rule mandates instruction in bar examination subjects and applies only to persons who have been admitted to practice in another jurisdiction.

42. CONN. SUPER. CT. R. REGULATING ADMISSION B. § 8 sixth. Pennsylvania, under rules that were in effect as recently as 1976, permitted persons to demonstrate that they had obtained a legal education which, in the opinion of the State Board, was the equivalent of an ABA-approved course of study. However, no determination of equivalency was made until the applicant had completed a designated course of study at an accredited American law school. Undated form letter annexed to Letter from Desmond McTighe, Chairman, Pennsylvania State Board of Law Examiners to Douglass Boshkoff (Oct. 28, 1976) (referring to former PA. SUP. CT. R. 8-C-2). The Pennsylvania Supreme Court adopted new Pennsylvania Bar Admission Rules effective October 1977. Pennsylvania Bar Admission Rule 205 now provides:

The Board, under such standards, rules and procedures as it may prescribe, may extend the provisions of Rule 203 (relating to the admission of graduates of accredited institutions) to any applicant who has completed the study of law in a law school which at the time of such completion was not located within the geographical area encompassed by the accreditation activities of the American Bar Association and who has been admitted to practice law in and is in good standing at the bar of a foreign country, as evidenced by a certificate from the highest court or agency of such foreign country having jurisdiction over admission to the bar and the practice of law.

The Pennsylvania State Board of Law Examiners has, however, continued the policy in effect under former PA. SUP. CT. R. 8-C-2. Each graduate of a foreign law school receives the following notice upon application for permission to take the Pennsylvania Bar Examination:

Permission to Sit for Pennsylvania Bar Examination
Pennsylvania Bar Admission Rule 205

Foreign attorneys may apply to sit for the Pennsylvania Bar Examination provided they have successfully completed the study of law in an accredited American law school for 24 credit hours with a minimum of 16 credit hours in any of the following subjects: Criminal Law, Real Property, Contracts, Torts, Evidence, Constitutional Law, Corporations and Decedents' Estates.

Once a foreign-trained lawyer has met these educational requirements, the Pennsylvania Board will review his or her application to determine whether the applicant meets the other admission requirements.
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The LL.M. degree can also theoretically be accepted in satisfaction of the legal education requirement in those Group IV jurisdictions where an LL.B. or J.D. degree is not clearly required. A carefully structured and supervised program of study at an accredited school in the United States should produce a satisfactory set of educational credentials. There are two principal concerns when evaluating the educational qualifications of a student who attended law school outside the United States. It is necessary to ascertain both whether the applicant had a basically sound legal education and whether the applicant knows enough about our laws and legal system to be an effective practitioner. Successful completion of a reasonably rigorous and structured program of study at an American law school should help resolve both uncertainties. We may assume that one who has not already received a fundamentally sound legal education will be unable to compete effectively with American law students. Moreover, training in the United States should produce familiarity with those areas of state and federal law which all practitioners must master.

The significance of the rigor and structure hopefully found in the American educational experience cannot be overemphasized. Our concerns will not be allayed if the applicant presents a certificate simply showing completion of a specified number of hours of study at some ABA-approved law school. That his curricula include certain types of courses is important. Instruction in comparative law will do relatively little to prepare the graduate from a civil law jurisdiction for practice in the United States. Courses in civil procedure, federal taxation, contracts, and constitutional law, on the other hand, are valuable. Credit hours are not fungible. Finally, either an official of the school or a representative of the admitting authority would have to determine that the applicant has been properly prepared to sit for the bar examination and to practice in the United States.

The validity of the Pennsylvania practice is currently being challenged by a graduate of the University of Witwatersrand, Johannesburg, Republic of South Africa, with years of practice in that country both as corporate counsel and private practitioner. The petitioner asserts that the board is obligated to make its own determination of equivalency and may not require successful completion of a course of study in an ABA-approved school in lieu of such a determination. In re Joffe, Misc. No. 21-452 (Pa. Jan. 9, 1978) (petition for reconsideration granted).

33. See text accompanying notes 19-21 supra.
34. See notes 20 & 21 supra and accompanying text.
35. The Connecticut, but not the District of Columbia rule, contemplates approval of the course of study. Compare text accompanying note 42 supra with text accompanying note 41 supra.
Effective screening is not achieved by a simple requirement that the applicant obtain an LL.M. degree. Such degrees are no more fungible than isolated credit hours. Degree requirements, grading practices, and program goals differ markedly from institution to institution and may even vary widely within the same law school. Some programs may be too specialized to provide adequate training for a general practitioner. In others, the grading practices may be too liberal to serve as an effective screening device and cannot be compared to the grading for a J.D. degree. This ineffective screening should not be surprising. American law schools have always treated the LL.M. degree program as ancillary to the J.D. curriculum. The ABA standards, directed almost exclusively toward establishing the parameters of a sound first professional degree program, express this lack of interest in the LL.M. degree. The secondary importance of the LL.M. degree program is highlighted by language found in ABA Standard 307:

Upon request, the Council may authorize a fully approved law school to establish a course of study leading to a degree other than the first professional law degree. Programs in addition to the first professional law degree may not detract from the law school's ability to maintain a sound educational program leading to that degree. A law school shall not undertake a program in addition to the first professional law degree unless the quality of its program leading to the first professional law degree exceeds the requirements of the Standards.

The basic J.D. program at an ABA-approved school has much greater potential for assuring that the graduate is well-qualified to practice law in the United States. The foreign law school graduate should be able to obtain a J.D. degree without spending another three years studying law in this country. ABA Standard 308 allows some credit to be given for work done elsewhere:

The law school may admit with advanced standing and allow credit for studies at a law school outside the United States if the studies

46. At George Washington University, for instance, there are two degree programs for foreign students, only one of which is designed to qualify the student for an American bar examination. NATIONAL LAW CENTER, BULLETIN 22-23 (1977-78). Different degrees are awarded. Degree differentiation, if it were a widely adopted practice in American law schools, would increase confidence in the value of the LL.M. as a screening device.

47. ABA STANDARDS, supra note 1, Standard 307, at 10.
(i) either were “in residence” as provided in Section 305, or qualify for credit under Section 306, and
(ii) the content of the studies was such that credit therefor would have been allowed towards satisfaction of degree requirements at the admitting school, and
(iii) the admitting school is satisfied that the quality of the educational program at the prior school was at least equal to that required for an approved school.

The maximum advanced standing and credit allowed may not exceed one-third of the total required by these Standards for the first professional degree. 48

ABA Standard 308 could be less restrictive. It may not always be appropriate to insist upon two full years of study in an American law school. Consideration should be given to an amendment of ABA Standard 308 authorizing more extensive credit for foreign legal study. An AALS Executive Committee regulation is a more appropriate way of dealing with this matter: “Advanced standing for foreign study shall not exceed one year unless the foreign study related chiefly to a system of law basically followed in the jurisdiction [sic] in which the member school is located; and in no event shall it exceed two years.” 49

Not many graduates of foreign law schools will be admitted to J.D. programs with advanced standing. American law schools are under great admissions pressures from domestic applicants. The enrollment of foreign law students must lead to displacement of other students. Even if displacement is not on a one-for-one basis, American law schools will not likely change substantially their admissions practices to accommodate large numbers of foreign students. Nevertheless, this approach appears to be a much more attractive course of action than either admission of foreign students to the bar examination without any screening of academic credentials or attempts to evaluate the strength of a legal education obtained outside the United States. The number of successful J.D.

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48. *Id.* Standard 308, at 10. In a few jurisdictions it is possible to substitute training in a law office for formal legal education. It is also possible to combine both training and formal education, and credit may be given for training at a law school outside the United States. See Rules of Admission of Attorneys in Vermont, Rule 1, § 5 (1975), Vt. STAT. ANN. tit. 12 app. I, pt. II (Supp. 1977); Rules for Admission to the Practice of Law in the State of Washington, Rule 2(D) (undated). The Washington rule does not expressly deal with foreign graduate admission. However, applicants may be placed in the clerkship with credit for prior education.

49. ASSOCIATION OF AMERICAN LAW SCHOOLS, EXECUTIVE COMMITTEE REGULATIONS, No. 2.9 (1976).
degree recipients may be limited, but at least each will have received an education of reasonably high quality.

The New Jersey program, already referred to, was an attempt to respond to the needs of Cuban lawyers who had moved to the United States following Castro’s ascent to power. Florida shared New Jersey’s concern for this group but adopted a different approach to qualifying Cuban attorneys for the bar examination. On July 31, 1973, the Florida Supreme Court issued an order which recognized the rights of graduates of four named Cuban law schools to take the bar examination following completion of a course of study at a Florida school. The court recommended “that a special course of study be developed and admission standards established to meet the needs of said applicants (Cuban lawyers), which, upon successful completion would lead to the award of a J.D. or LL.B. degree or certification to take the Florida Bar Examination.”

Shortly thereafter, both the University of Florida and the University of Miami established special nondegree courses for the Cuban lawyers. Each program demanded substantial effort from the students. The University of Miami course called for attendance four nights per week over a six-semester period. Courses in the University of Florida program met on Saturdays only for seven quarters. Both programs appear to have been reasonably successful. They are mentioned here because they suggest an alternative to use of the basic J.D. program as the screening device for determining which foreign law school graduates should be permitted to sit for the bar examination. Large numbers of students can be accommodated at the same time, and admission to such programs would not be at the expense of traditional J.D. applicants. However, programs such as the ones developed in Florida will not be useful, except in the most unusual circumstances. They are well suited to meeting the needs of large, homogeneous groups. One would not expect to find such groups anywhere but in the largest metropolitan areas, and then only following an unusual event such as a dramatic change in the government of a particular country.

50. See notes 35-39 supra and accompanying text.
51. In re Proposed Amendment to Article IV, Section 22, Rules of the Supreme Court Relating to the Admission to the Bar, No. 43,040, slip op. at 4-5 (Fla. July 31, 1973).
52. Seventy-three percent of students completing the University of Miami program and 52.5% of those completing the University of Florida program were able to pass the bar examination. Address by Professor Rafael C. Benitez (Dec. 11, 1976), reprinted in ABA Joint Conference, supra note 12, at 49, 54.
CONCLUSION

There can be substantial human costs associated with any regulatory scheme which restricts access to a trade or profession. This is no less true in the licensing of lawyers than it is in the licensing of electricians, doctors, or real estate brokers. Some candidates for admission will fall by the wayside, because they do not possess the necessary academic credentials or cannot survive the licensing examinations. Such losses are tolerated because we believe that the public interest is well served by whatever requirements are imposed. This basic conviction is strengthened by the belief, in the case of United States nationals who do not attend ABA-approved schools, that those who are excluded are the least well qualified candidates for admission to practice. It is assumed that the most qualified students will obtain a degree at an approved school. This supporting line of reasoning cannot be advanced when the applicant is a foreign national who never had a realistic opportunity to seek admission to such an institution. Therefore, the case for holding to the requirement of an ABA-approved legal education may seem less strong.

This focus on the plight of the individual distracts our attention from the principal concern. As long as it is sensible to require all applicants as a class to have graduated from an approved law school, there should be no waiver of this requirement for individuals who have not had such an opportunity. No attempt has been made in this article to argue the wisdom of requiring graduation from an approved school or, indeed, the wisdom of requiring any legal education at all. We start with the assumption that the requirement is reasonable. The individual hardship created by such a requirement cannot be the occasion for relaxing admission standards. One may wish that there was a quick and inexpensive way for persons who have received their law training outside the United States to qualify for practice here. However, admitting authorities will find it exceedingly difficult to administer policies which call either for the ad hoc waiver of educational requirements or individual hearings on the equivalency of legal education.

The upsurge in applications for admission from foreignnationals which began after the Supreme Court struck down the citizenship requirement can be expected to continue. While the personal circumstances of these applicants cannot be used to justify the relaxation of admission criteria, it is entirely appropriate and desirable to take steps that will facilitate the admission of such persons when it can be accomplished without compromising existing stan-
dards. Some instruction in the United States, whether it be part of the traditional J.D. curriculum or in specially designed programs of instruction, is the best way to prepare foreign law students for American bar examinations. An amendment to ABA Standard 308 increasing the amount of credit which can be given for study abroad deserves serious consideration, because it would facilitate the admission of those students who have already received a substantial amount of valuable training outside the United States.