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Educating and Qualifying Transnational Lawyers: A U.S. Perspective

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Recent years have seen an explosion of programs at American law schools designed to *educate* transnational lawyers, and this past year has seen new developments in the United States regarding *qualifying* lawyers from abroad to practice in the United States. This paper will highlight some of these developments, and, hopefully, spur or enhance your interest in this burgeoning area of legal education.

Ten years ago, Professors Peter L. Murray and Jens Drolshammer advised:

[T]o best . . . prepare young lawyers for practice on an international scale, present institutions of legal education will have to change their focus and perspective from national to global . . . Legal education would do well to focus on those fundamental norms and characteristics of the lawyer and the lawyer's function, which transcend the norms and tenets of particular national legal cultures, but are common to all legal systems. The educational assignment should be to equip the young lawyer to perform in an international, as well as national, arena. Therefore the educational efforts themselves have to be internationalized.¹

Murray and Drolshammer recommended that an international lawyer in international practice should acquire “[s]ubstantive law training in the national law of the lawyer’s home jurisdiction . . . [,] [t]raining in other legal systems . . . [,] [f]oreign and international legal research ability . . . [,] [u]nderstanding of the international legal professions . . . [,] [p]roficiency in relevant foreign languages . . . [,] [i]nterdisciplinary background knowledge . . . [,] [g]eneral educational background . . . [and e]xperience in global transactions.”² At the same time, Professor Toni Fine opined that “there is no blueprint for an

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1. Peter L. Murray & Jens Drolshammer, *The Education and Training of a New International Lawyer*, in *THE INTERNATIONALIZATION OF THE PRACTICE OF LAW* 289, 311 (Jens Drolshammer & Michael Pfeifer eds., 2001).

2. *Id.* at 302-03. Others list similar criteria for “transform[ing] the traditional, domestically-oriented legal training into training that is interconnected with the world.” Claudio Grossman, *Building the World Community Through Legal Education*, in *THE INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION* 21, 30 (Jan

ideal [program] of globalization” for providing a global legal education for U.S. law students.³

So how are American law schools preparing their students to become effective transnational lawyers? Indeed, American law schools have taken many paths to develop their own “blueprints” for the globalization of legal education—and their methods of *educating* transnational lawyers are intrinsically tied to regulation of their methods of doing so.⁴ Some of the methods for expanding law schools’ educational offerings continue to be traditional and predictable. For example, law schools have increased the number and breadth of international and comparative course offerings⁵ and study abroad opportunities. According to the American Bar Association (ABA), 113 American law schools now offer summer programs abroad (in some cases, in multiple locations),⁶ and nine offer winter intersession programs.⁷ This growth, in turn, has spurred changes in regulation by the ABA. For example, just a little more than a year ago, the ABA revised its criteria for summer programs, and expanded them to officially include intersession programs.⁸ Additionally, the ABA revised its criteria for regulating semester-long programs, and similarly expanded them to include year-long programs sponsored by ABA-approved schools.⁹ Although there are fewer numbers of semester and year-long programs, those numbers are likely to grow as American law schools seek to create programs that distinguish their schools and attract new students.

Klabbers & Mortimer Sellers eds., 2008). Dean Grossman suggests that these building blocks include “(A) establishing links between the study of domestic and international law; (B) focusing on different legal systems; (C) including cultural issues in the academic agenda; (D) incorporating the perspectives of other academic disciplines into the study of law; and (E) promoting social change and international awareness through purpose-oriented programs outside of the curriculum.” *Id.*; see also Simon Chesterman, *The Evolution of Legal Education: Internationalization, Transnationalization, Globalization*, 10 GERMAN L.J. 877, 881-83 (2009), available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=1127> (defining the first phase of transformation of legal education as internationalization, the second phase of transnationalization as a “shift” toward offering students experience abroad, and the third phase as globalization, in which “individual lawyers need to be comfortable in multiple jurisdictions, often simultaneously”). Other international discourse asks us to consider whether internationalization should be “additive, integrative [or] immersive.” James R. Maxeiner, *Learning from Others: Sustaining the Internationalization and Globalization of U.S. Law School Curriculums*, 32 FORDHAM INT’L L.J. 32, 37 (2008).

3. Toni M. Fine, *The Globalization of Legal Education in the United States*, in INTERNATIONALIZATION OF THE PRACTICE, *supra* note 1, at 329, 360.

4. See THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE (Frank S. Bloch ed., 2011).

5. Curricular development, of course, is not limited to American law schools. See, for example, the numerous examples of the globalization of clinical education discussed in THE GLOBAL CLINICAL MOVEMENT, *supra* note 4 (highlighting clinical education in the United States, Great Britain, Canada, Australia, Africa, Southeast Asia, India, Central and Eastern Europe, Latin America, China, Japan, and Spain).

6. *Foreign Summer and Winter Intersession Programs*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/foreign_study/foreign_summer_winter_programs.html (last visited Aug. 1, 2012).

7. *Id.*

8. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A.B.A., *Criteria for Approval of Foreign Summer and Intersession Programs*, in STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 101, 101-10 (2011-2012 ed. 2011), available at http://www.americanbar.org/groups/legal_education/resources/standards.html.

9. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A.B.A., *Criteria for Approval of Foreign Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools*, in STANDARDS AND RULES, *supra* note 8, at 121, 121-30.

Next up for revision by the ABA are its Criteria for Student Study at a Foreign Institution,¹⁰ arguably the organization's most "generic" set of criteria, which apply to individualized student study abroad as well as the ever-more-popular dual degree programs, in which students earn a degree from their U.S. "home" institution along with a second degree from a "host" institution abroad.¹¹ These criteria, too, are slated for review and revision, and will likely soon take into account the innovative types of programs under development around the country. Thus, as American law schools use their creativity to expand the types of programs they offer that are designed to educate transnational lawyers, these institutions should expect continuing regulatory activity, and revisions to existing criteria, by the ABA.

Of course, American law schools seek not only to educate American law students to be transnational lawyers; for years, many American law schools offer post-J.D. degrees specifically designed to educate students and lawyers *from abroad* to be transnational lawyers.¹² These degrees do not, however, guarantee bar admission in the United States,¹³ and there are many open issues regarding the topic of *qualifying* transnational lawyers. Will the ABA soon accredit any law schools *abroad*? Will U.S.-based LL.M. programs for students and lawyers from abroad be compelled to reformulate to meet bar admission requirements?¹⁴

What are American law schools to do? Do they have all the answers when it comes to answering the question: "How can we educate and qualify transnational lawyers?" Of

10. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A.B.A., *Criteria for Student Study at a Foreign Institution*, in STANDARDS AND RULES, *supra* note 8, at 111, 111-20.

11. For example, see the dual degree programs offered by Villanova University School of Law, Cornell Law School, and American University Washington College of Law. *J.D./LL.M International Studies*, VILLANOVA U.L. SCH., <http://www.law.villanova.edu/Academics/Study%20Abroad/JD-LLM%20International%20Studies.aspx> (last visited Oct. 3, 2011); *Cornell Law School: JD*, CORNELL U.L. SCH., http://www.lawschool.cornell.edu/admissions/degrees/jd/index.cfm#CP_JUMP_32581 (last visited Oct. 3, 2011); *International J.D. Dual Degree Programs*, AM. U. WASH. C.L., <http://www.wcl.american.edu/dualdegree/> (last visited Oct. 3, 2011).

12. *See Post J.D. Programs by Category*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d/programs_by_category.html (last visited Oct. 3, 2011). Graduates of law schools abroad, or students enrolled in an educational program abroad that grants a first degree in law, may also be admitted to American J.D. programs in accordance with ABA Standard 507. *See* SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A.B.A., *Standard 507: Applicants from Foreign Law Schools*, in STANDARDS AND RULES, *supra* note 8, at 40.

13. *See Post J.D. Programs by Category*, *supra* note 12; NAT'L CONFERENCE OF BAR EXAM'RS & A.B.A. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 15-20 (Erica Moeser & Claire Huisman eds., 2011), *available at* http://www.americanbar.org/content/dam/aba/migrated/legaled/publications/20110201_Comp_Guide.authcheckdam.pdf. New York, for example, has recently revised its rules that relate to admission of lawyers educated abroad. *See Foreign Legal Education*, N.Y. ST. BOARD L. EXAMINERS, <http://www.nybarexam.org/foreign/foreignlegaleducation.htm> (last visited July 4, 2012).

14. *See, e.g.*, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A.B.A., PROPOSED MODEL RULE ON ADMISSION OF FOREIGN EDUCATED LAWYERS 4-5 (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.pdf; SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A.B.A., PROPOSED CRITERIA FOR ABA CERTIFICATION OF AN LL.M. DEGREE FOR THE PRACTICE OF LAW IN THE UNITED STATES 6-7 (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.pdf; *see also* Martha Neil, *Chinese Law School Plans to Seek Accreditation from ABA*, A.B.A. J. (June 5, 2008, 7:19 PM), http://www.abajournal.com/news/article/chinese_law_school_to_seek_accreditation_from_aba/.

course not. We should take heed of the caution of National University of Singapore Vice Dean Simon Chesterman that globalization of legal education may be “primarily a discourse of the rich, and that ‘globalization’ often means ‘Americanization[.]’”¹⁵ We should share our ideas about educating and qualifying transnational lawyers at meetings like these, and via our efforts in not only “national” legal education organizations like the ABA and American Association of Law Schools, but also through transnational entities like the International Association of Law Schools.¹⁶ We should also continue to develop the already sizeable body of scholarship on the internationalization/ transnationalization/ globalization of legal education,¹⁷ and continue our professional and pedagogical dialogue about how to train and qualify our students to practice law transnationally.

15. Chesterman, *supra* note 2, at 880.

16. *International Association of Law Schools*, INT’L ASS’N L. SCHS., <http://www.ialsnet.org> (last visited Aug. 1, 2012).

17. For a selected bibliography of this material, please see http://www2.americanbar.org/calendar/section-of-international-law-2011-fall-meeting/Meeting%20Materials/Educating%20and%20Qualifying%20Future%20Transnational%20Lawyers/Edelman_Bibliography.pdf.