



2012

A New Global Legal Order, with or without America: the Case for Accrediting Foreign Law Schools

Sabina Schiller

Follow this and additional works at: <https://scholarlycommons.law.emory.edu/eilr>

Recommended Citation

Sabina Schiller, *A New Global Legal Order, with or without America: the Case for Accrediting Foreign Law Schools*, 26 Emory Int'l L. Rev. 411 (2012).

Available at: <https://scholarlycommons.law.emory.edu/eilr/vol26/iss1/14>

This Comment is brought to you for free and open access by the Journals at Emory Law Scholarly Commons. It has been accepted for inclusion in Emory International Law Review by an authorized editor of Emory Law Scholarly Commons. For more information, please contact law-scholarly-commons@emory.edu.

**A NEW GLOBAL LEGAL ORDER, WITH OR WITHOUT AMERICA:
THE CASE FOR ACCREDITING FOREIGN LAW SCHOOLS**

[Franklin Delano] Roosevelt was the one who had the vision to change our policy from isolationism to world leadership. That was a terrific revolution. Our country's never been the same since.

—W. Averell Harriman¹

INTRODUCTION

What David Wilkins has to say might scare the bejesus out of you.² In a speech to the American Bar Association's ("ABA's") House of Delegates at the 2010 Annual Meeting, the Harvard law professor, speaking animatedly in an appropriately enthusiastic suit, admits precisely as much immediately before divulging to the crowded room that the American legal profession is currently undergoing substantial upheaval.³ The times are tumultuous, Wilkins intones.⁴ Our current but uncertain existence could ultimately reveal itself as amounting to an epic paradigm shift; alternatively, the current turmoil may just be a temporary blip, and the world may soon return to business as usual.⁵ But something big is definitely happening—and it's happening right now.

Dramatic intimations aside, few would deny Wilkins's assertion that globalization is occurring at a rapid pace and cannot be contained.⁶ That our world is quickly shrinking is familiar to everyone, but the fact that America's legal future is so inextricably intertwined with this rapid global integration is less frequently discussed. In short, America is speedily falling from its self-anointed place high atop the world economy; the legal world no longer revolves around the United States.⁷ The increasing flow of people and ideas across borders has already greatly altered the legal profession (and will

¹ W. Averell Harriman, *in* STUDES TERKEL, "THE GOOD WAR" 330 (1984).

² David Wilkins, Dir., Program on the Legal Profession, Harvard Law School, Opening Address at the ABA Annual Meeting 2010: Globalization and Technology Having Dramatic Impact on the Legal Profession (Aug. 9, 2009), <http://www.abanow.org/2010/08/globalization-and-technology-having-dramatic-impact-on-the-legal-profession>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See generally THOMAS L. FRIEDMAN, *THE WORLD IS FLAT* (2005).

⁷ Wilkins, *supra* note 2.

continue to do so) as law firms, driven by market demands, grow progressively larger and more diversified, with offices worldwide.⁸

The uncertainties inherent in this indeterminate new reality may appear quite intimidating, especially to American attorneys. An expectation of major change is always somewhat foreboding, particularly for an established profession that has customarily enjoyed global preeminence. As we grapple with the unknown, expand into foreign countries, and contemplate the integration of new, seemingly incomprehensible technologies, Wilkins argues that adjustments must be made.⁹ The likelihood that the United States will take a backseat in this future legal world might even scare the bejesus out of some people—but David Wilkins has not yet gotten to the scary part.

Toward the end of his speech, in a casual aside that can most nearly be described as a throwaway remark, the professor nonchalantly mentions a lecture he recently gave in Shenzhen, China, at a school called Peking University.¹⁰ The Chinese law school, he explains, has a three-year program of legal education, where classes are taught entirely in English.¹¹ And this school is going to seek ABA accreditation.¹² These students could then take the bar exam in most states. Wilkins pauses. The crowd appears indifferent; the man behind him unceremoniously adjusts his tie.¹³ Perhaps dismayed, or in an attempt to revive the delegates' waning attention, Wilkins quickly moves on to an apparently more invigorating topic: the potential of opening legal offices next to grocery store produce aisles in the United Kingdom.¹⁴

In this manner, with an air of disinterest, some entirely ignore the impending new reality. Others endeavor to curb its inevitable impact, while the most perceptive, like Wilkins, more astutely realize that any effort to restrain globalization's ultimate influence is an exercise in futility. As Kofi Annan, former Secretary-General of the United Nations, remarked: "[A]rguing against globalization is like arguing against the law of gravity."¹⁵ Indeed, the world will never return to business as usual. The current climate of change is not

⁸ See generally Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 *FORDHAM INT'L L.J.* 1039 (2002).

⁹ Wilkins, *supra* note 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Barbara Crossette, *Globalization Tops 3-Day U.N. Agenda for World Leaders*, *N.Y. TIMES*, Sept. 3, 2000, at A1.

merely a blip—it is, as Wilkins offers, an epic paradigm shift. And the United States should, quite simply, get with the times. Facing the continuing integration of individual nations' legal norms and our own nation's impending tumble from the top, American attorneys who attempt to cling desperately to their prior position of global preeminence, ignoring reality, will ultimately fail.

Thus, the ABA should take the lead and extend accreditation to those foreign institutions capable of meeting current standards. Ultimately, as global borders grow increasingly porous, foreign attorneys will prove viable competition for American legal jobs; therefore, rather than denying this reality, the ABA should monitor it. Accrediting foreign institutions will provide the ABA a means of ensuring that superior education standards are met—and that qualified foreign attorneys practice in the United States and in American law firms abroad. This quality assurance that necessarily accompanies ABA accreditation will provide guidance to state supreme courts, which then can simply allow all graduates of accredited law schools to sit for their state bars. Extending ABA accreditation will simultaneously expand the American legal model: more schools will follow the American education system, spreading the rule of law.

Considering the inevitability of globalization and the corresponding benefits of accrediting foreign law schools, an additional advantage remains: the process will also be simple. Foreign institutions capable of meeting current standards will receive accreditation. ABA standards are stringent; few schools will meet them. However, some schools are capable. Through an assessment of Peking University School of Transnational Law, this Comment suggests that some schools, including the former, can meet current ABA standards—and should receive accreditation.

Part I of this Comment discusses increasing globalization and its impact on legal services and legal education, as well as the ABA's historic role in standardizing American legal practice and ensuring that law schools maintain certain standards necessary to graduate capable attorneys. Part II.A addresses the significant advantages of accrediting qualified foreign law schools. Part II.B provides a brief overview of the current ABA Standards and Rules ("Standards and Rules"), and Part II.C explains that foreign institutions could theoretically meet the current Standards ("Standards"), if the ABA simply clarified the existing preface. Part II.D demonstrates that Peking University School of Transnational Law is today capable of meeting all ABA Standards and should be accredited. Even so, Part II.E suggests that further refinement is

desirable: substantive revision of the Standards and Rules is unnecessary, but the ABA should compose an appendix that specifically invites foreign institutions to apply and guides those schools in the application process. Part II.F recognizes our foreign policy interests and recommends against accrediting schools in some countries, particularly those with oppressive regimes, and further suggests that the ABA cooperate closely with the executive branch to avoid potential foreign policy difficulties. Part II.G addresses concerns regarding a sudden influx of attorneys and potential outsourcing (as well as the combined effects on the American economy). This Part suggests such concerns are valid yet overblown, but also recommends that the ABA continue to provide regulations monitoring outsourcing—and issue accreditation to qualified schools to ensure that qualified attorneys practice within new American firms abroad and within the United States itself.

I. BACKGROUND

A. *Globalization: The Trade in Legal Services and the Exchange in Legal Education*

The era of hermetically sealed¹⁶ nations is extinct. The ongoing technological revolution¹⁷ has resulted in simpler, cheaper international travel, instant global communication, and a constant exchange of ideas and commodities. Our world is determinedly growing smaller—and the law is not exempt from globalization's reach. Legal services are now exchanged regularly at the international level.¹⁸ Even the most conservative estimates recognize a “significant” international trade in legal services, which can be more accurately described as massive in scale.¹⁹ Further, more American attorneys are venturing into foreign countries, and “[f]oreign nationals are applying for admission to practice in American jurisdictions in record numbers.”²⁰ Accelerating globalization is generating a rapid cross-border trade in legal services and personnel, and this international interchange is also

¹⁶ A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES 6–8 (2009), available at <http://www.abajournal.com/files/FINAL.pdf> [hereinafter REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES].

¹⁷ See FRIEDMAN, *supra* note 6.

¹⁸ See Silver, *supra* note 8, at 1039.

¹⁹ See REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES, *supra* note 16, at 6–8.

²⁰ J. Richard Hurt, *Foreign-Trained Lawyers, American Graduate Legal Education and Bar Admissions: Should the LL.M. Satisfy the Educational Requirements To Practice Law?*, B. EXAMINER, Nov. 2000, at 35, 35.

occurring in legal education. This economic, cultural, and professional exchange is as undeniable as it is unstoppable: our world's borders are growing increasingly porous, and inward-looking, country-specific legal norms, ethics, and educational systems are a thing of the past.²¹

Since the implementation of the 1994 General Agreement on Trade in Services ("GATS"),²² legal services have been viewed as an exchangeable "service," a commodity capable of being traded internationally.²³ The accuracy of this designation is clear: a multi-billion-dollar international trade in legal services now exists, and this figure is increasing every year. In 2005, the United States exported \$4.3 billion worth of legal services and imported \$914 million worth of legal services.²⁴ Only five years later, in 2010, the United States exported \$7.3 billion in legal services and imported \$1.5 billion.²⁵ These trade statistics are impressive not only for their sheer size and the fact that legal services comprise such a large percentage of American imports and exports,²⁶ but also for the evidence that the growth is occurring so rapidly.

This increasing trade in legal services is perhaps best summarized in these substantial dollar amounts, but evidence of more internationally mobile lawyers (and law students) also exists to augment this phenomenon. Increasing numbers of foreign-educated students want to practice in the United States.²⁷ Further, American law firms and lawyers are going abroad to work and establish offices. These foreign branches hire American attorneys—and foreign-educated lawyers.²⁸ More than ten years ago, in November 2000, the *American Lawyer* reported, "[a]t least 20 American law firms now have more than 10 percent of their lawyers stationed in overseas offices."²⁹ More recently, the same organization conducted a study conclusively establishing that the

²¹ See Wilkins, *supra* note 2.

²² Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, *done* Apr. 15, 1994, 1867 U.N.T.S. 3.

²³ Laurel S. Terry, *The Future Regulation of the Legal Profession: The Impact of Treating the Legal Profession as "Service Providers,"* 2008 J. PROF. LAW. 189, 192.

²⁴ Laurel S. Terry et al., *Transnational Legal Practice*, 42 INT'L LAW. 833, 834 (2008).

²⁵ Jennifer Koncz-Bruner & Anne Flatness, *U.S. International Services: Cross-border Trade in 2010 and Services Supplied Through Affiliates in 2009*, SURV. CURRENT BUS., Oct. 2011, at 13, 20, 21.

²⁶ *Id.* (noting that, in 2008, the United States exported \$1.8 trillion and imported \$2.5 trillion in goods and services total).

²⁷ Hurt, *supra* note 20, at 35.

²⁸ See *id.*

²⁹ Alison Frankel, *Who's Going Global; The Answer: Every Big Firm*, AM. LAW., Nov. 2000, available at http://www.lexis.com/research/form/search?_m=bc88fc436d89d89bc21207001b9398f&_src=7599&_md5=46f3fbb913f89b6c39e2c81cb95902c4 (click the search button).

biggest American firms had a huge number of associates working in foreign offices.³⁰ In 2007, eight of the top 100 U.S. firms had more than a quarter of their associates working overseas.³¹ Just one year later, in 2008, this list had expanded to include twelve of the top 100 firms.³² The following year, the largest United States-based firm, Baker & McKenzie, established branch offices in thirty-eight foreign countries—with eighty-two percent of its lawyers working outside of their home nation.³³ Thus, the massive revenue generated by a growing international trade in legal services is also reflected in the increasing number of American firms establishing and cultivating foreign offices around the world.

Concordant with the reality of increasing international trade in legal services, the “trade,” or exchange, in law students and legal education is also occurring on the international level. Law schools are becoming more global in character: new, modern law schools are being established around the world,³⁴ and their programs focus on preparing students to be competitive not simply within their country, but globally. Furthermore, while international student exchange programs have existed for quite some time, increasing numbers of law students are studying abroad.³⁵ Most notably, increasing numbers of foreign students want to study in the United States. In response, American law schools are creating more one-year LL.M. programs³⁶ to serve (and attract) more foreign students.³⁷ These additional and larger programs are necessary to meet the demand: increasing numbers of foreign lawyers are attending U.S. law schools, mainly through LL.M. programs.³⁸ ABA statistics illustrate this phenomenon. In the early eighties, the first years in which U.S. law schools

³⁰ *The Global 100: Most Lawyers 2007*, AM. LAW., Oct. 2007, at 145.

³¹ *Id.*

³² *The Global 100: Most Lawyers 2008*, AM. LAW., Oct. 2008, at 171.

³³ *The Global 100: Most Lawyers 2009*, AM. LAW., Oct. 2009, at 145. Baker & McKenzie now has offices in forty-one foreign countries. BAKER & MCKENZIE, <http://www.bakermckenzie.com> (last visited Feb. 1, 2012).

³⁴ Wilkins, *supra* note 2; *see infra* Part II.C.

³⁵ ADELAIDE FERGUSON, CTR. FOR CAPACITY BLDG. IN STUDY ABROAD, MAPPING STUDY ABROAD IN U.S. LAW SCHOOLS: THE CURRENT LANDSCAPE AND NEW HORIZONS 3 (2010), *available at* http://www.nafsa.org/uploadedFiles/NAFSA_Home/Resource_Library_Assets/Networks/CCB/MappingStudyAbroadLaw.pdf.

³⁶ While LL.M. programs are, in some cases, available to U.S. law graduates to gain additional experience in areas such as tax, most LL.M. programs target foreign students. Silver, *supra* note 8, at 1047 n.24. In 1999, foreign students earned more than half of the LL.M. degrees conferred that year. *Id.* at 1047 n.22.

³⁷ *Id.* at 1047–48.

³⁸ *Id.* at 1046 n.19. Foreign students also enroll in J.D. programs, but no statistics seem to track this trend.

began awarding the LL.M. degree, only about 675 students received the degree.³⁹ In 2009, however, 5,058 students obtained LL.M. degrees⁴⁰—and this number is surely even higher today. While some LL.M. degrees are available to American students, most students receiving these degrees are foreign.⁴¹ As evidence, sixty-nine U.S. law schools now offer LL.M. programs specifically for foreign students.⁴²

B. The ABA's Role in Accrediting Law Schools and Ensuring the Quality of the Profession

The increase in foreign attorneys and the new programs created to meet this demand are closely monitored by the ABA, which also monitors all other programs at U.S. law schools. Initially founded as an organization tasked with standardizing American legal practice and promoting a national ethical standard,⁴³ the ABA's original members could not have predicted their purely domestic organization would eventually take on such a powerful role with considerable international reach. Indeed, since its 1878 conception with 100 founding lawyers,⁴⁴ the ABA has expanded to become a massive organization with twenty-three sections, five divisions, six forums, and a vast number of commissions, committees, and task forces.⁴⁵ Through this broad network, staffed by attorneys and legal experts, the ABA alone governs and controls the American legal system.⁴⁶

The ABA's most important function arguably inheres in its role in ensuring law students receive a sound legal education. In 1879, the ABA established the Committee on Legal Education and Admissions to the Bar, which was soon joined by the ABA Section of Legal Education and Admissions to the Bar.⁴⁷

³⁹ Maria J. Kruger, *An LLM Degree Meets Tomorrow's Needs*, TOPGRADSCHOOL, <http://graduateschool.topuniversities.com/articles/law/llm-degree-meets-tomorrows-needs> (last visited Feb. 10, 2012).

⁴⁰ Karen Sloan, *LL.M. Degrees Get More Popular, but Are They Worth It?*, LAW.COM (Sept. 21, 2010), <http://www.law.com/jsp/law/article.jsp?id=1202472263425>.

⁴¹ Silver, *supra* note 8, at 1043.

⁴² See *U.S. Law Schools*, INT'L L. INST., <http://www.ili.org/global-affiliates/affinity-groups/links-of-international-organizations/195-us-law-schools.html> (last visited Feb. 1, 2012) (listing the U.S. law schools offering LL.M. programs to foreign students).

⁴³ *History of the American Bar Association*, AM. B. ASS'N, http://www.americanbar.org/utility/about_the_aba/history.html (last visited Feb. 13, 2012).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ AM. BAR ASS'N, 2011–2012 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2011) [hereinafter STANDARDS AND RULES].

Together, these two divisions crafted new Standards for Approval of Law Schools and designed a process for accrediting schools in compliance with these criteria.⁴⁸ Since 1952, when the U.S. Department of Education designated the ABA as the national accrediting agency for legal education programs,⁴⁹ the Council of the Section of Legal Education and Admissions to the Bar has overseen and implemented accreditation procedures.

Today, the importance of ABA accreditation is uncontested, as attending an accredited institution has become almost essential for American students hoping to pass the bar and begin a legal career.⁵⁰ Indeed, while state judiciaries are responsible for regulating admission to their own state's bar, "[t]he majority of the highest courts of the states rely upon ABA approval of a law school to determine whether the jurisdiction's legal education requirement for admission to the bar is satisfied."⁵¹ Fewer than half of the fifty states allow graduates of non-ABA-approved law schools to even sit for the bar, and the number of these graduates taking the bar exam is quite slight in comparison to the number of graduates of ABA-approved institutions taking the bar exam.⁵² The discrepancy in bar passage rates is equally significant: seventy-four percent passage for graduates of ABA-accredited schools and only twenty-five percent for graduates of unaccredited institutions.⁵³

Thus, attaining ABA accreditation is undeniably essential for a legal institution and its graduates endeavoring to practice law in the United States. Without accreditation, a law school cannot hope to attract as many qualified students. Many U.S. states prohibit graduates of unapproved institutions from even sitting for the state bar exam.⁵⁴ Graduating from an ABA-approved

⁴⁸ *Id.*

⁴⁹ *Id.* at iv.

⁵⁰ *See id.*

⁵¹ *Id.*

⁵² An extreme example is New York, where 10,544 graduates of ABA-approved schools took the bar exam in 2009, in comparison with five graduates of non-ABA-approved schools taking the New York exam that same year. NAT'L CONFERENCE OF BAR EXAM'RS, 2009 STATISTICS 10–11 (2010), available at http://www.ncbex.org/assets/media_files/Statistics/2009Stats110111.pdf [hereinafter 2009 STATISTICS]. A total of 68,887 graduates of ABA-approved law schools took the 2009 bar exam, compared with only 3,509 graduates of non-ABA-approved schools. *Id.* at 11.

⁵³ *Id.*

⁵⁴ More than one-third of U.S. states limit eligibility to take their state bar exams to graduates of ABA-approved law schools. AM. BAR ASS'N SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR & NAT'L CONF. OF BAR EXAM'RS, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2011 8–9 (2011) [hereinafter GUIDE TO BAR ADMISSION REQUIREMENTS]. Those states refusing to sit graduates of non-ABA schools are Arkansas, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Maryland, Minnesota, Mississippi, Montana, Nebraska, New Jersey, North Carolina, North Dakota, Oklahoma, South Carolina, and South Dakota. *Id.*

institution is thus the easiest way to ensure a student is allowed to take a state bar exam—and the most effective means of ensuring that student will successfully pass.⁵⁵

Aware of the “increased pressures for foreign practice in the U.S.,”⁵⁶ and equally cognizant of its role as the sole regulator of (and gatekeeper to) American legal practice, the ABA created the Special Committee on International Issues to officially “ensure [the ABA’s] participation” in the growing international trade in legal services and, more decidedly, to guarantee the Section of Legal Education maintains a meaningful role in the international arena.⁵⁷ The Special Committee’s July 15, 2009 report recommended, among other things, that the ABA consider expanding accreditation to qualified foreign legal institutions.⁵⁸ Further research was deemed necessary, and the Special Committee on Accrediting Foreign Law Schools Seeking Approval Under ABA Standards (“Special Committee on Foreign Law Schools”) was convened.⁵⁹ The Special Committee on Foreign Law Schools issued its own report on July 19, 2010, with a stronger recommendation, urging the Council of the Section of Legal Education and Admissions to the Bar to “authorize the Accreditation Project to go forward” with foreign law schools.⁶⁰

A backlash ensued. Following the Special Committee on Foreign Law Schools’s proposal, which was revolutionary in theory but did not recommend the actual implementation of any sudden changes, the ABA received more than sixty comments⁶¹ on the issue—almost entirely negative.⁶² Thus, regardless of the existing support within the organization—and the fact that Peking University met all current substantive ABA qualifications—the ABA

⁵⁵ See 2009 STATISTICS, *supra* note 52, at 10–11.

⁵⁶ 2010 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT OF THE SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS SEEKING APPROVAL UNDER ABA STANDARDS 2 (2010), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20100719_special_committee_foreign_law_schools_seeking_approval.pdf [hereinafter REPORT OF THE SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS].

⁵⁷ REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES, *supra* note 16, at 3.

⁵⁸ *Id.* at 25–31.

⁵⁹ Martha Neil, *Should the ABA Accredit Foreign Law Schools?*, ABA J. (Aug. 18, 2010, 2:58 PM), http://www.abajournal.com/news/article/should_the_aba_accredit_foreign_law_schools.

⁶⁰ REPORT OF THE SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS, *supra* note 56, at 8.

⁶¹ Press Release, Am. Bar Ass’n, ABA Legal Education Section Delays Decision on Accrediting Foreign Law Schools (Dec. 4, 2010), <http://www.abanow.org/aba-legal-education-section-decides-to-continue-consideration-of-whether-to-accredit-foreign-law-schools>.

⁶² *ABA Holds Off on Accrediting Foreign Law Schools*, STATE BAR MICH. BLOG (Dec. 6, 2010, 4:07 AM), <http://sbmblog.typepad.com/sbm-blog/2010/12/5-reasons-why-the-aba-should-accredit-foreign-law-schools.html>.

seemingly bowed to the pressure, and the Council of the Section of Legal Education and Admissions to the Bar unanimously voted to postpone accrediting foreign law schools.⁶³

In doing so, the ABA erred. The accreditation project for foreign law schools should go forward, and the Section of Legal Education should immediately consider accrediting Peking University, which meets all current substantive ABA Standards and is entirely capable of functioning as an American law school, albeit in China.

II. ANALYSIS

A. *Why? The Pros of ABA Accreditation*

As the only real authority in regulating American legal rules and norms, whose stamp of approval automatically allows graduates of approved schools to sit for the bar exam, the ABA must take the lead in accrediting qualified foreign institutions. Accrediting foreign law schools capable of meeting the current ABA Standards will provide guidance to state courts grappling with an influx of foreign-educated students attempting to take the bar exam. Furthermore, extending accreditation could result in return benefits for American attorneys practicing abroad, would expand American legal ideals, and, most importantly, would ensure qualified attorneys are practicing within our borders.

1. *Guiding State Supreme Courts*

Because states are individually responsible for regulating admission to their own bars, current regulation regarding foreign-educated law students is inconsistent, and the various state rules are divergent and confusing.⁶⁴ Indeed, “the sheer number and variety of state regulations aimed at foreign lawyers is

⁶³ Press Release, *supra* note 61. The Council of Legal Education and Admissions to the Bar concluded: “Until the Council has fully vetted the issue as to whether to expand the accreditation role of the Section to encompass law schools located outside of the U.S. and its territories, the Section will not proceed with consideration of any application for provisional approval from a foreign law school.” Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass’n, Resolution on the Accreditation of Foreign Law Schools (Dec. 1, 2010), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20101201_resolution_on_accreditation_of_foreign_la_w_schools.pdf.

⁶⁴ GUIDE TO BAR ADMISSION REQUIREMENTS, *supra* note 54, at 14–15.

overwhelming.”⁶⁵ Almost half of our nation’s states do not allow graduates of foreign institutions to sit for the bar exam at all.⁶⁶ Of the states permitting foreign graduates to take the bar exam, the requirements vary, and may include some (or any combination of) the following: additional education at an ABA-approved school, legal education in English common law, a determination of educational equivalency, and admission in another U.S. jurisdiction.⁶⁷ These requirements differ greatly among the states, resulting in regulations that are “unnecessarily complicated and confusing.”⁶⁸ Further, only three states—Alabama, Massachusetts, and New York—recognize with regularity the sufficiency of a legal education received at a particular foreign law school.⁶⁹ These greatly varying requirements, taken in conjunction with the fact that only three states recognize the sufficiency of foreign legal education, provide evidence that state courts are confused—and understandably so.

State court judges, lacking both time and necessary resources, are not well equipped to evaluate the quality of foreign legal education, and judges have therefore voiced a desire for ABA assistance.⁷⁰ A huge increase in the number of foreign law students applying to take state bar exams has overwhelmed state courts. Indeed, over the course of roughly ten years, states have seen a 268% increase in the number of foreign-educated students sitting for the bar exam.⁷¹ The state courts lack the resources to evaluate the quality of each foreign student’s legal education; thus, those states admitting foreign-educated students have voiced a desire for additional information regarding the quality of foreign legal education and foreign admission rules, including character and fitness requirements.⁷² These courts want the ABA’s assistance: “there is strong interest by the states in having the ABA facilitate” information collection in this area.⁷³

Rather than engage in information collection, which state courts then must carefully evaluate, the ABA could help state courts most by simply accrediting

⁶⁵ Carole Silver, *Regulatory Mismatch in the International Market for Legal Services*, 23 NW. J. INT’L L. & BUS. 487, 541 (2003).

⁶⁶ Twenty-two states do not permit graduates of foreign law schools to sit for the bar exam. GUIDE TO BAR ADMISSION REQUIREMENTS, *supra* note 54, at 14–15.

⁶⁷ *Id.*

⁶⁸ Silver, *supra* note 65, at 541.

⁶⁹ GUIDE TO BAR ADMISSION REQUIREMENTS, *supra* note 54, at 14–15.

⁷⁰ REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES, *supra* note 16, at 10–11.

⁷¹ *Id.* at 11.

⁷² *Id.* at 10–11.

⁷³ *Id.* at 11.

those qualified foreign institutions. Then, states would no longer need to individually examine foreign students and institutions, and could rely on the ABA “seal of approval” to allow all graduates of accredited institutions to sit for state bar exams. State courts recognize this process would be easier; the Conference of Chief Justices asked the ABA to consider a program “to certify the quality of the legal education offered by universities in other common-law countries.”⁷⁴ Thus, states want ABA assistance, and accrediting foreign institutions would be an effective means of certifying that foreign students had received the quality of legal education necessary to take state bar exams.

ABA accreditation of foreign schools will not only guide state courts, but will also create uniformity among the states and ensure foreign attorneys are qualified to practice in the United States.⁷⁵ Assuming all states allow these graduates of ABA-approved foreign institutions to take their exams, the process will become consistent and, importantly, clear to judges and potential exam-takers.⁷⁶ Foreign-educated students will have notice that graduation from an accredited school will allow them to take any state’s bar exam. Most importantly, our current system, which forces states to individually assess “what education is good enough to allow foreign-trained individuals” to sit for the exam, results in some lawyers “with weaker and less reliable training” entering the U.S. legal profession.⁷⁷ Without a common standard, states are left to their own devices, and less-qualified foreign graduates will be allowed to sit for the bar exam—and then practice law. ABA accreditation can provide this common standard, removing the burden from state supreme courts and providing a uniform system that helps to guarantee the continued quality of our practicing professionals.

2. *Expanding American Legal Norms*

Foreign law schools are modeling their curricula on the American system at a surprisingly rapid pace.⁷⁸ ABA accreditation of qualified institutions would encourage this trend, which will result in renewed support for American legal

⁷⁴ *Id.* at 12.

⁷⁵ See REPORT OF THE SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS, *supra* note 56, at 3.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See Leigh Jones, *They Do It Our Way: Foreign Law Schools Follow the U.S. Playbook*, NAT’L L.J., Sept. 8, 2008, at 1.

ideals and increase the already-dominant U.S. legal influence worldwide.⁷⁹ In the United States, law school is solely a graduate institution—a three-year program accessible only after obtaining a degree from a four-year undergraduate institution.⁸⁰ Almost since its introduction by Harvard Professor Christopher Langdell in 1870,⁸¹ American law schools have employed the case method of instruction, frequently in conjunction with the Socratic method.⁸² The case method of teaching, which advances critical thinking through studying (and applying) prior judicial decisions and rules, is combined with actual practice, and American students hone their skills through clinics and externships.⁸³ Much attention is given to the importance of professional ethics, as well as public service and pro bono work.⁸⁴

Many foreign countries are embracing this American method of instruction, at least in part. As evidence, when Japan noted problems within its current legal system and sought to revolutionize its legal education, the nation opened sixty-eight new law schools—in the American model.⁸⁵ After touring America's most esteemed schools, taking thorough notes on teaching techniques, curricula, and even basic modes of administration, Japan “endorsed the creation of new law schools strongly resembling their American counterparts.”⁸⁶

As most countries are not currently engaged in entirely overhauling their own legal systems, Japan's move is unprecedented in scale, but not in concept. India recently opened Jindal Global Law School, which adopts many aspects of the American model and has also established a partnership with Yale and further ties with Harvard Law School, University of Michigan Law School, and Indiana University Maurer School of Law.⁸⁷ South Korea plans to open

⁷⁹ See David M. Trubek et al., *Global Restructuring and the Law: Studies of Legal Fields and the Creation of Transnational Arenas*, 44 CASE W. RES. L. REV. 407, 430 (1994); Karen Dillon, *Can They Skaddenize Europe?*, AM. LAW., Dec. 1989, at 40. See generally Silver, *supra* note 8, at 1042.

⁸⁰ Stephen R. Alton, *Roll Over Langdell, Tell Llewellyn the News: A Brief History of American Legal Education*, 35 OKLA. CITY U. L. REV. 339, 350 (2010).

⁸¹ *Id.* at 346.

⁸² *Id.* at 349–50.

⁸³ *Id.* at 352.

⁸⁴ The ABA lists as one of its goals improvement of the profession through promoting ethical conduct and “pro bono and public service by the legal profession.” *Association Goals*, AM. B. ASS'N, http://www.americanbar.org/utility/about_the_aba/association_goals.html (last visited Feb. 25, 2012); see also Trubek et al., *supra* note 79, at 417–18.

⁸⁵ Annie Murphy Paul, *Land of the Rising Lawyer?*, LEGAL AFF., July–Aug. 2005, at 1, 1–3.

⁸⁶ *Id.* at 2.

⁸⁷ See generally JINDAL GLOBAL L. SCH., http://www.jgls.org/jg_default.aspx; Kian Ganz, *Jindal Global Law School Strengthens Bond with Yale*, LEGALLY INDIA (Nov. 1, 2010, 7:33 PM), <http://www.legallyindia.com>.

twenty-five new law schools with American-style programs.⁸⁸ As Dean Lehman notes, Asian countries are embracing change in their own legal professions and education systems.⁸⁹ More accurately, Asian countries are embracing American legal education. But this trend is not confined to Asia: law schools in Europe,⁹⁰ Australia, and Canada have similarly embraced aspects of the American system.⁹¹

As foreign schools continue adopting the American method, international legal education and training will arguably improve. As the ABA notes, “[i]f we believe that the American legal education model is the ‘gold standard’ for legal education world-wide[,] . . . then a willingness to expand accreditation to schools embracing the American model is an appropriate way to improve the training of lawyers globally.”⁹² Furthermore, with an Americanized curriculum, law students will necessarily learn and accept the importance of a strong judiciary and the rule of law.⁹³ The importance of protecting human rights, and the corollary obligations of public service and providing all people with “equal access to justice,”⁹⁴ will similarly become ingrained in foreign students. While these American legal norms will not necessarily be successfully implemented in all nations experimenting with a three year J.D. program,⁹⁵ American ideals will surely prove influential and exert a positive impact where they are accepted.

3. *Potential Benefits for U.S. Attorneys Practicing Abroad*

Foreign attorneys are increasingly eager to practice in the United States, but American attorneys are also practicing abroad in record (and continually increasing) numbers.⁹⁶ Some countries, however, impose restrictions to limit or

com/201011011466/Law-schools/jindal-global-law-school-strengthens-bonds-with-yale-as-second-year-admissions-positive.

⁸⁸ Jones, *supra* note 78.

⁸⁹ *Id.*

⁹⁰ Richard Prior, *American-Style Law School a First for Europe*, FIN. NEWS & DAILY REC. (Mar. 11, 2004), http://www.jaxdailyrecord.com/showstory.php?Story_id=40469.

⁹¹ *See* Jones, *supra* note 78.

⁹² REPORT OF THE SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS, *supra* note 56, at 4.

⁹³ Trubek et al., *supra* note 79, at 455.

⁹⁴ *Id.* at 460.

⁹⁵ *Id.* at 473.

⁹⁶ *See* Barnes, *supra* note 29. Some suggest American law is our nation’s “most vital export.” Martha Neil, *Over There: Conditions Are Ripe for U.S. Lawyers To Develop Foreign Business, and the Keys to Success Are Accessible to Most Practitioners*, 89 A.B.A. J. 54, 56 (2003).

even prohibit American attorneys from practicing.⁹⁷ Other nations are more open to allowing foreign practitioners.⁹⁸ Even so, if the United States extended accreditation to foreign institutions, other nations would be more inclined to reciprocate, and allow U.S. attorneys more opportunity to practice abroad.

Our current divergent and quite restrictive approach to admitting foreign educated attorneys almost certainly results in foreign countries adopting similarly discriminatory policies when considering whether to allow U.S. attorneys to practice within their borders. As many admissions rules “include some expectation of reciprocal treatment,”⁹⁹ our current restrictive policies place the United States “in an unfavorable position with regard to foreign regulators’ consideration of U.S. lawyers working in their countries.”¹⁰⁰ Thus, accrediting foreign institutions would encourage other countries to engage in reciprocal treatment—and allow more American attorneys to practice abroad.

B. How? ABA Accreditation Standards and Rules of Procedure

The ABA can easily evaluate the quality of foreign legal institutions according to criteria the ABA already has in place. Indeed, the ABA’s current Standards and Rules of Procedure, which provide conditions law schools must fulfill in order to obtain ABA approval as well as the process by which this approval is awarded or denied, can be extended to foreign institutions.¹⁰¹ The Standards are comprised of mandatory objectives an institution must fulfill to gain and retain accreditation, and list the following categories by which to evaluate schools: organization and administration; program of legal education; the faculty; admissions and student services; library and information resources; and facilities.¹⁰² The Rules of Procedure (“Rules”), in turn, detail the process by which institutions actually apply for accreditation.¹⁰³ With only slight modification, the current Standards and Rules could be applied to foreign institutions.

⁹⁷ See Laurel S. Terry, *The GATS, Foreign Lawyers and Two Recent Developments: Could Your State’s Actions Affect U.S. Trade Policy?*, B. EXAMINER, Nov. 2002, at 20, 23.

⁹⁸ Canada and Australia have similarly established centralized, national institutions for evaluating foreign attorneys’ credentials, while England mandates a series of entrance exams for foreign-educated attorneys, based on where they were trained. REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES, *supra* note 16, at 22–24.

⁹⁹ Silver, *supra* note 65, at 545.

¹⁰⁰ *Id.* at 544.

¹⁰¹ See STANDARDS AND RULES, *supra* note 47.

¹⁰² See *id.* at 1–3.

¹⁰³ *Id.* at 71–72.

1. *The Standards*

ABA Standards ensure that all accredited law schools maintain quality educational programs and adequate resources, thereby protecting the degree-seeking student and guaranteeing a certain integrity in the American legal profession as a whole.¹⁰⁴ While the Standards are quite lengthy, the factors that would have most bearing on foreign institutions seeking accreditation can be briefly summarized.

Regarding organization and administration, the ABA mandates that all law schools maintain adequate financial resources to “sustain a sound program of legal education,”¹⁰⁵ which is directed by a dean and faculty members, who together determine educational policy.¹⁰⁶ This section also demands schools uphold equal opportunity and nondiscrimination with regard to admissions and hiring procedures, and requires a commitment to a diverse student body.¹⁰⁷ The ABA also mandates a certain program of legal education, requiring each institution to maintain an educational program that prepares its students for the bar and aids them in becoming responsible members of the profession.¹⁰⁸ With those ends in mind, a curriculum providing education in “the substantive law” and legal reasoning, analysis, research, and writing is necessary, as is instruction in “the history” of the profession.¹⁰⁹ A school must provide opportunities for “live-client” or “other real-life” practice experience, as well.¹¹⁰ An experienced, competent faculty is essential, and a school must preserve an appropriate student–faculty ratio.¹¹¹

Concerning admissions and student services, the ABA requires that schools admit only qualified applicants who have taken an entrance exam.¹¹² Significantly, the ABA will approve only schools that require for admission “a bachelor’s degree, or successful completion of three-fourths of the work acceptable for a bachelor’s degree, from an institution that is accredited by an

¹⁰⁴ *Id.* at viii.

¹⁰⁵ *Id.* at 12.

¹⁰⁶ *Id.* at 3.

¹⁰⁷ *Id.* at 15.

¹⁰⁸ *Id.* at 18.

¹⁰⁹ *Id.* at 20.

¹¹⁰ *Id.* at 21.

¹¹¹ *Id.* at 29–30. Faculty experience and competence are demonstrated by “education, experience in teaching or practice, . . . and scholarly research and writing.” *Id.* at 31. A ratio of twenty students per one faculty member assumes compliance, while a ratio of thirty students to one faculty member indicates noncompliance with this Standard. *Id.* at 32.

¹¹² *Id.* at 38.

accrediting agency recognized by the Department of Education.”¹¹³ A limited exception is allowed if the applicant’s “experience, ability, and other characteristics clearly show an aptitude for the study of law.”¹¹⁴ In this case, the admitting officer must “sign and place in the admittee’s file a statement of the considerations that led to the decision to admit the applicant.”¹¹⁵

The ABA also requires schools to achieve a certain standard in establishing and maintaining their facilities, including the law library.¹¹⁶ Law libraries must have sufficient resources to support student and faculty research needs.¹¹⁷ These resources include a continually updated collection of court decisions, codes, treaties and international agreements, congressional materials, and secondary works.¹¹⁸ Further, a law school seeking accreditation must have research and study space, offices for full-time faculty, and adequate physical facilities not only to meet its current student body’s needs, but also to be capable of accommodating any anticipated future growth.¹¹⁹

2. *The Rules*

According to the ABA Rules, the school seeking accreditation submits an application, and a team conducts a site evaluation on the school’s premises.¹²⁰ The ABA Accreditation Committee reviews the application and evaluation in conjunction with written submissions from the school and other documents in making a recommendation.¹²¹ The ABA Accreditation Council then considers this recommendation in granting or withholding provisional approval.¹²² Full approval is awarded only after at least two years of provisional approval if a school establishes full compliance with ABA Standards.¹²³ No ABA regulation prohibits applying these basic rules to evaluating a foreign institution, and the exact same process could apply. A foreign law school could similarly submit an application, and evaluators would simply travel to that nation in order to

¹¹³ *Id.* at 37.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 38.

¹¹⁶ *Id.* at 43.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 47.

¹¹⁹ *Id.* at 49.

¹²⁰ *Id.* at 74–75.

¹²¹ *Id.* at 75.

¹²² *Id.* at 77.

¹²³ *Id.* at 6.

conduct a site evaluation before granting provisional (and ultimately final) approval.

C. Permitting Foreign Institutions To Apply: Bending the Preface, Not the Rules

The ABA should accept the advice of its own Special Committee on International Issues and extend accreditation to foreign institutions capable of fulfilling current Standards and Rules.¹²⁴ Because the Standards and Rules are silent on foreign legal institutions, any foreign law school theoretically could fulfill all current Standards and also comport with current Rules—law schools outside of U.S. borders would encounter a small roadblock only in the bylaws and preface, which contemplate approving only American schools.¹²⁵ Thus, the ABA would need only to clarify (and slightly modify) the existing language in these two sections, and no substantive change to the existing Standards and Rules would be necessary.

The preface to the Standards and Rules contemplates approving only law schools located “in the United States, its territories, and possessions.”¹²⁶ This sentence can be removed or simply edited to consider approval of legal institutions “capable of meeting current ABA Standards.” The 2010 Section Bylaws list the Section of Legal Education and Admission to the Bar’s purpose: “to provide a fair, effective, and efficient accrediting system for American law schools” and “to serve . . . as the nationally recognized accrediting body for American law schools.”¹²⁷ The reviewing authorities could similarly edit this section, again replacing “American law schools” with “legal institutions capable of meeting current ABA Standards.” With these periphery modifications and slight redactions to the preface and bylaws, no barriers would exist in the current ABA regulations to specifically prevent foreign law schools from seeking accreditation.

D. Can Schools Succeed?

Applying current accreditation requirements to foreign law schools is an easy task: after the abovementioned slight modifications, foreign institutions

¹²⁴ See REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES, *supra* note 16, at 28.

¹²⁵ STANDARDS AND RULES, *supra* note 47, at vi.

¹²⁶ *Id.*

¹²⁷ Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass’n, Proposed Section Bylaws art. I, § 2 (Aug. 7, 2010), <http://apps.americanbar.org/legaled/section/Bylaws%20Final%20Approved%20August%202010.pdf> (approved by the Section Council).

could apply for accreditation. The more difficult issue remains whether any foreign institution is actually capable of meeting these high standards. The ABA's current Consultant on Legal Education, Hulett Askew, who is responsible for administering the accreditation program and ensuring schools meet the current Standards, recognizes the difficulties foreign schools may have in meeting stringent ABA requirements.¹²⁸ Indeed, such strict guidelines¹²⁹ will certainly prove impossible for many foreign schools to realize. Yet, this fact should not prevent a school from applying. As the ABA Report of the Special Committee on International Issues admits: "There may ultimately be problems in meeting all of the ABA standards[,] . . . but there is nothing that should deter a school from trying."¹³⁰ Even taking these difficulties into account, at least one school will not have any problems in meeting current ABA Standards. Peking University School of Transnational Law is capable of fulfilling the current Standards and should be accredited.

1. A Case Study: Peking University School of Transnational Law

At first blush, the law school known as STL appears to be an esteemed American law school, unique only for its quite remarkable qualifications. The chancellor and founding dean is Jeffrey Lehman, who formerly served as president of both Cornell University and the American Law Deans Association, as dean of University of Michigan Law School, and as a visiting Yale law professor.¹³¹ Associate Dean Stephen Yandle formerly served as associate dean at Northwestern University School of Law and more than seventeen years as associate dean of Yale Law School.¹³² The campus is a stunning futuristic admixture of structured steel and glass, the aesthetic softened with outdoor gathering spaces and a river view.¹³³ Supreme Court Justice Anthony Kennedy was the keynote speaker at the school's dedication.¹³⁴ The incoming class is small; classrooms are technologically updated; the campus is surrounded by a major metropolitan city offering

¹²⁸ Jones, *supra* note 78.

¹²⁹ See generally STANDARDS AND RULES, *supra* note 47.

¹³⁰ REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES, *supra* note 16, at 28.

¹³¹ *Faculty & Staff: Jeffrey Lehman*, PEKING UNIV. SCH. TRANSNAT'L L., <http://stl.pku.edu.cn/en/TeacherDetail.aspx?NodeCode=925006001&Id=100000033856256> (last visited Feb. 25, 2012).

¹³² *Faculty & Staff: Stephen Yandle*, PEKING UNIV. SCH. TRANSNAT'L L., <http://stl.pku.edu.cn/en/TeacherDetail.aspx?NodeCode=925006001&Id=100000034578123> (last visited Feb. 25, 2012).

¹³³ *About: STL Building*, PEKING UNIV. SCH. TRANSNAT'L L., <http://stl.pku.edu.cn/en/Content.aspx?NodeCode=925002005> (last visited Feb. 8, 2012).

¹³⁴ *About: Overview*, PEKING UNIV. SCH. TRANSNAT'L L. (Feb. 2010), <http://stl.pku.edu.cn/en/Content.aspx?NodeCode=925002001002>.

opportunity for both active legal study and future employment.¹³⁵ Upon a cursory glance, one would assume this school was not only ABA-accredited but also among the preeminent legal institutions in the United States. But STL is not accredited by the ABA, because STL is in China.

Established in September 2008 in Shenzhen, China, Peking University School of Transnational Law is a unique legal institution in its home country. STL offers a three-year program of legal education modeled entirely on American law, where successful graduates are awarded J.D. degrees.¹³⁶ This Comment argues that STL can fulfill the requirements listed in the current 2010–2011 ABA Standards and Rules of Procedure for Approval of Law Schools. Indeed, were STL located in the United States, any debate over its qualifications for accreditation would be unlikely. This Comment suggests the ABA focus on “quality of legal education[,] . . . not the physical location issue”¹³⁷ and, taking the necessary factors and current standards into account, offer ABA accreditation to Peking University School of Transnational Law.

a. Organization and Administration

STL fulfills the necessary organizational and financial requirements, as the school has a program led by a capable dean and faculty and has significant financial resources.¹³⁸ According to its official website, STL is financed from student tuition (approximately \$10,000 per year), university subsidies, monetary support from the city of Shenzhen, and support from the Institute for China–U.S. Law & Policy Studies (“ICUS”).¹³⁹ This financial support is augmented, according to Dean Lehman, by revenues from Peking’s executive

¹³⁵ See PEKING UNIV. SCH. TRANSNAT’L LAW, THE STL DIFFERENCE 31 (2011) [hereinafter THE STL DIFFERENCE], available at <http://stl.pku.edu.cn/UploadFiles/main/Files/2011/10/20111017135301.pdf> (describing the city of Shenzhen where STL is located); *Institute for China–US Law & Policy Studies*, PEKING UNIV. SCH. TRANSNAT’L L., http://www.china-us-law.org/institute/the_peking_university_school.html (last visited Jan. 19, 2012) (“STL’s first class comprised 53 students, all from mainland China. An additional 60 students began their studies in 2009, an additional 73 in 2010 and an addition [sic] 76 in 2011.”).

¹³⁶ *About: Overview*, *supra* note 134.

¹³⁷ Erin Coe, *ABA Bid To Accredit Foreign Schools Sparks Resistance*, LAW360 (Oct. 21, 2010, 5:21 PM), <http://www.law360.com/legalindustry/articles/187969/aba-bid-to-accredit-foreign-schools-sparks-resistance>. Paul Hastings partner Timothy Dickinson suggests, “[t]he accreditation process should be no different from Kansas City to Beijing.” *Id.*

¹³⁸ See *supra* notes 105–11.

¹³⁹ *About: Overview*, *supra* note 134 (“ICUS is an American 501(c)(3) organization that was created in 2006 to support the ongoing development of China’s legal system in the direction of international standards of clarity and predictability.”).

M.B.A. program.¹⁴⁰ This data suggests STL has the ABA's requisite adequate financial resources, an inference further supported by notable donations from the Starr Foundation, one of the largest private foundations in the United States with assets of more than \$1.25 billion.¹⁴¹ Private individuals and prominent law firms, including Paul, Hastings, Janofsky & Walker and Akin, Gump, Strauss, Hauer & Feld, have also donated large sums of money.¹⁴²

Thus, the financial requirements are fulfilled; however, STL must expressly demonstrate a commitment to a diverse student body and compliance with equal opportunity and nondiscrimination with regard to admissions and hiring procedures.¹⁴³ Because its website does not list student diversity statistics,¹⁴⁴ it is unclear whether STL is currently in compliance with this regulation. In addition, because STL opened so recently and is located in China, a nation far less diverse than the United States, its student body is currently comprised of only a few foreigners.¹⁴⁵ But foreign students are fully welcome at STL,¹⁴⁶ and the faculty hails from all over the world.¹⁴⁷ Further, STL need not maintain a multiethnic class in order to meet ABA requirements. The school merely needs to prove that its admissions and hiring procedures are nondiscriminatory, and that STL has taken "concrete action" to ensure its students and faculty are "diverse with respect to gender, race, and ethnicity."¹⁴⁸ Because STL accepts applications from any qualified student, regardless of gender, race, or ethnicity, STL fulfills the ABA's nondiscrimination and equal opportunity requirements.

b. Program of Legal Education

Because STL's curriculum is comprised of instruction in the substantive law and "live-client" opportunities, the school has a sufficient program of legal

¹⁴⁰ Andy Guess, *An American Law School in China*, INSIDE HIGHER ED (May 22, 2008, 4:00 AM), <http://www.insidehighered.com/news/2008/05/22/china>. As of this Comment's writing, STL has received \$500,000 from the M.B.A. program. *Id.*

¹⁴¹ See STANDARDS AND RULES, *supra* note 47, at 12; STARR FOUND., <http://www.starrfoundation.org/index.html> (last visited Jan. 19, 2012).

¹⁴² Jones, *supra* note 78. As of 2008, each of these firms had donated \$25,000. *Id.*

¹⁴³ STANDARDS AND RULES, *supra* note 47, at 12–15.

¹⁴⁴ See PEKING UNIV. SCH. TRANSNAT'L L., <http://stl.pku.edu.cn/en/index.aspx> (last visited Jan 19, 2011).

¹⁴⁵ Jaime Mendoza, *Peking University's New School of Transnational Law Has the Potential To Bring a New Dimension to the Chinese Legal System*, USC U.S.–CHINA INST. (July 31, 2009), http://www.uschina.usc.edu/w_usct/showarticle.aspx?articleID=14050. In 2009, STL had four foreign students, according to Chenli Zhang, director of student affairs. *Id.*

¹⁴⁶ See *id.*

¹⁴⁷ See *Faculty & Staff: Permanent*, PEKING UNIV. SCH. TRANSNAT'L L., <http://stl.pku.edu.cn/en/TeacherList.aspx?NodeCode=925006002001> (last visited Feb. 8, 2012).

¹⁴⁸ See STANDARDS AND RULES, *supra* note 43, at 16.

education.¹⁴⁹ STL maintains a core curriculum that mirrors traditional American law school courses, and the school also offers similar electives. STL requires first-year students to enroll in the same classes customarily required by American law schools: Torts, Property, Contracts, Civil Procedure, Criminal Law, and Professional Responsibility.¹⁵⁰ Along with these basic requirements, STL goes further still, requiring students to take more classes before graduation than most American schools.¹⁵¹ Indeed, STL mandates students complete 107 credits to receive a J.D. degree—a requirement much more stringent than those at the highest-ranked American law schools.¹⁵² Furthermore, STL “relies upon a set of pedagogic techniques that have been refined in American law schools over the course of the past century. These include the Socratic method of classroom instruction, as well as clinical legal education and advanced research seminars.”¹⁵³

Thus, in curriculum and instruction technique, STL’s program of legal education prepares its students for the bar exam, providing both substantive education and opportunities for real-life practice that easily fulfill ABA requirements.¹⁵⁴ Furthermore, all STL classes are taught in English, which strengthens its case for accreditation.¹⁵⁵ Not only is English instruction not required, but the ABA issued accreditation to a Puerto Rican law school that instructs students entirely in Spanish.¹⁵⁶ Thus, STL’s program of legal education exceeds current ABA requirements.

¹⁴⁹ THE STL DIFFERENCE, *supra* note 135, at 2.

¹⁵⁰ *Id.* at 3.

¹⁵¹ *Id.* at 2 (“Juris Doctor courses [at STL] take common law jurisprudence as a starting point, then push outwards to consider how non-common law countries with different legal traditions treat similar issues.”).

¹⁵² *J.D. Admissions: Policies*, PEKING UNIV. SCH. TRANSNAT’L L., <http://stl.pku.edu.cn/en/ListDetail.aspx?NodeCode=925003008&Id=100000120846873> (last visited Jan. 19, 2012). Yale and Columbia require completion of eighty-three credit hours for graduation. *See Requirements*, YALE L. SCH., <http://www.law.yale.edu/academics/jdrequirements.htm> (last visited Jan. 19, 2012); *JD Graduation Requirement Summary*, COLUM. L. SCH., <http://www.law.columbia.edu/academics/registrar/gradreq> (last visited Jan. 19, 2012). Harvard requires completion of the first-year curriculum plus fifty-two upper-level credits. *Graduation Checklist*, HARVARD L. SCH., <http://www.law.harvard.edu/academics/registrar/policies-forms/degree-requirements.pdf> (last visited Jan. 19, 2012).

¹⁵³ *About: Overview*, *supra* note 134.

¹⁵⁴ *Academics: Center for Cross-border Advocacy*, PEKING UNIV. SCH. TRANSNAT’L L., <http://stl.pku.edu.cn/en/Content.aspx?NodeCode=925005005> (last visited Feb. 25, 2012). Focusing on immigration law, the center offers students “the unique opportunity to practice law before U.S. governmental agencies and appellate courts” and to represent “real clients with real legal problems.” *Id.*

¹⁵⁵ The STL Difference, *supra* note 135, at 2 (“Juris Doctor courses are taught exclusively in English, the language of transnational legal practice.”).

¹⁵⁶ *See Alphabetical School List*, AM. B. ASS’N (2012) http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/in_alphabetical_order.html. Pontifical Catholic University of Puerto Rico, located in Ponce, Puerto Rico, is ABA-accredited—and has been since 1967. *Id.*

c. *The Faculty*

The aforementioned notable qualifications of the dean and associate dean aside,¹⁵⁷ the remaining STL faculty members are similarly experienced and competent,¹⁵⁸ and the student–faculty ratio is appropriate.¹⁵⁹ Current professors are former Supreme Court clerks, partners in transnational law firms, experienced law professors, and esteemed legal scholars and academics.¹⁶⁰ The permanent faculty members hold multiple degrees, including law degrees from top U.S. law schools: Yale, Harvard, Virginia, and Texas.¹⁶¹ Visiting faculty hold similar qualifications, and out of the entire faculty, only two members do not hold J.D. degrees—but both have taught extensively as professors in American law schools, and both hold law degrees from equally esteemed European institutions.¹⁶² The ABA Council would assuredly find this faculty experienced and competent. Further, for an entering class of only eighty students, STL has thirty professors listed as faculty members for the 2011–2012 academic year.¹⁶³ This ratio clearly satisfies ABA requirements of retaining an appropriate student–faculty ratio to ensure quality education.¹⁶⁴

d. *Admissions and Student Services*

STL similarly fulfills ABA requirements for student admission and student services.¹⁶⁵ In order to be considered for admission, prospective STL students are required to take the Law School Admission Test (“LSAT”).¹⁶⁶ Furthermore, applicants must have obtained a bachelor’s degree from a recognized university and present official English transcripts and English diplomas.¹⁶⁷ STL requires all prospective students to be fluent in English, and all non-native speakers must present evidence of such proficiency (with Test of

¹⁵⁷ See *supra* notes 131–32.

¹⁵⁸ See *infra* note 160.

¹⁵⁹ See *infra* note 163.

¹⁶⁰ *Faculty & Staff: Permanent*, *supra* note 147.

¹⁶¹ *Id.*

¹⁶² *Faculty & Staff: International Visiting*, PEKING UNIV. SCH. TRANSNAT’L L., <http://stl.pku.edu.cn/en/TeacherList.aspx?NodeCode=925006002003> (last visited Feb. 9, 2012).

¹⁶³ THE STL DIFFERENCE, *supra* note 135, at 6–14, 29.

¹⁶⁴ See STANDARDS AND RULES, *supra* note 47, at 29–32. Faculty experience and competence is demonstrated by education, experience in teaching, and scholarly writing and research. *Id.* at 31.

¹⁶⁵ See *supra* notes 108–11.

¹⁶⁶ *J.D. Admissions: Apply*, PEKING UNIV. SCH. TRANSNAT’L L., <http://stl.pku.edu.cn/en/ListDetail.aspx?NodeCode=925003001&Id=100000121571875> (last visited Feb. 10, 2012).

¹⁶⁷ *Id.* STL does not require its applicants to graduate from American universities, as the ABA Standards currently mandate. However, as this Comment later argues, this requirement is unnecessary since many universities around the world are as well regarded as their American counterparts. See *infra* note 172.

English as a Foreign Language (“TOEFL”) or International English Language Testing System (“IELTS”) scores).¹⁶⁸ The ABA does not specifically require such English fluency; thus, STL’s decision to limit its applicants to English speakers reinforces its similarity to American legal institutions (and augments its qualifications for accreditation).

e. Library and Information Resources

From its website, STL’s law library seems likely to contain sufficient resources to meet student and faculty research needs.¹⁶⁹ The library is located within the Shenzhen Science and Technology Library, a quite massive and technologically advanced complex shared by graduate students of four schools.¹⁷⁰ The library retains a collection of 1.5 million books, and with 3,000 seats and multiple offices, carrels, and conference rooms, appears to have sufficient resources.¹⁷¹ In order to fulfill this requirement, however, STL would need to submit to the ABA specific evidence concerning its collection of legal documents and resources.

f. Facilities

With significant financial resources, STL has the required physical facilities capable of meeting student body needs.¹⁷² To fulfill this fairly basic criterion, STL must simply present the ABA with specific evidence of faculty offices and student space, and demonstrate that its facilities are up to par and capable of meeting any anticipated future growth.¹⁷³

E. Inviting Foreign Institutions: Making New (Standards and) Rules

Peking University and other such qualified schools could meet the substantive ABA requirements as written, but some clarification of the Standards and Rules is necessary. If the ABA implements this Comment’s suggested periphery modifications and slight redactions to the preface and

¹⁶⁸ *Id.*

¹⁶⁹ *About the Library*, SHENZHEN LIBR. SCI. & TECH., http://eng.lib.utsz.edu.cn/news/2007-03-22/24_1174899012109.shtml (last visited Feb. 10, 2012).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *See supra* notes 134–38.

¹⁷³ STANDARDS AND RULES, *supra* note 47, at 48. “Enrollment has been steadily rising every year since 2008, when STL welcomed its first class.” *Media: STL Welcomed 74 New Students to the Campus*, PEKING UNIV. SCH. TRANSNAT’L L. (Sept. 17, 2011), <http://www.stl.pkusz.edu.cn/en/NDetail.aspx?NodeCode=925008001&Id=100000083487598>.

bylaws, no barriers would exist in the current ABA regulations to specifically prevent foreign law schools from seeking accreditation.¹⁷⁴ However, bolder action would be beneficial. Editing the two aforementioned sections so foreign institutions are implicitly considered is enough for foreign law schools to seek accreditation—however, rather than simply permitting applications, the ABA should provide guidelines that apply specifically to foreign schools.

The *2011–2012 ABA Standards and Rules* should be modified to specifically allow applications from foreign institutions. Importantly, current Standards are admittedly “premised on an understanding that the law schools being accredited were within the United States.”¹⁷⁵ As such, throughout the Standards and Rules, foreign institutions are not referenced, or even considered.¹⁷⁶ Yet, this basic assumption underlying the Standards is a historic relic, a remnant of a less globalized society that remains in existence by default. No real driving force existed to change this premise; thus, the practice of considering only American law schools for accreditation persists without real reason.

Today’s Standards evolved from ideals promulgated in the ABA’s first conception of Standards for Legal Education, published in 1921.¹⁷⁷ This nascent model has since undergone revision; nevertheless, today’s essential accreditation guidelines were adopted by the House of Delegates almost forty years ago, in February 1973.¹⁷⁸ While the ABA has implemented some amendments since 1973, none amounted to substantive modifications, and the core 1973 standards remain today.¹⁷⁹ Initially implemented and most recently revised during a time when accrediting overseas institutions was inconceivable, the Standards are outdated.

Indeed, the fact that ABA Standards do not mention accrediting foreign institutions simply reflects the historic reality in which accreditation was first formulated and then elaborated upon. The omission merely reflects the realities of a less globalized society. Further, nothing in the current Standards and Rules prohibits accrediting foreign institutions or explicitly requires an accredited

¹⁷⁴ REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES, *supra* note 16, at 30.

¹⁷⁵ REPORT OF THE SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS, *supra* note 56, at 6.

¹⁷⁶ STANDARDS AND RULES, *supra* note 47, at vi.

¹⁷⁷ See SUSAN K. BOYD, THE ABA’S FIRST SECTION: ASSURING A QUALIFIED BAR 21–28 (1993).

¹⁷⁸ *Id.* at 70.

¹⁷⁹ Henry Ramsey, Jr., Speech, The History, Organization, and Accomplishments of the American Bar Association Accreditation Process, 30 WAKE FOREST L. REV. 267, 268 (1995).

school to be located within our nation's borders.¹⁸⁰ Because no prohibition exists, and because a failure to reference foreign institutions appears to be outdated rather than an intentional omission, no tenable reason exists for continuing this insular, inward-looking policy of accrediting only American legal institutions.

Simply publishing a short appendix to the Standards and Rules, in the form of criteria specifically applicable to foreign legal institutions, would allow foreign law schools to seek accreditation without lowering current ABA Standards. The ABA already publishes similar separate criteria for foreign summer and semester programs.¹⁸¹ Thus, the ABA can easily issue Criteria for Approval of Foreign Institutions. Following the format of the Criteria for Study Abroad, this appendix would first insist that the foreign institution maintain a program "consistent with the role and scope"¹⁸² of the current Standards. To clarify, "[e]xcept as modified by these Criteria or by necessary implication, the ABA Standards . . . shall apply to study pursuant to these Criteria."¹⁸³ These two statements, taken from the Criteria for Study Abroad, simply serve to reinforce the fact that the Standards still apply—the foreign institution cannot deviate from them unless specifically allowed.

Next, the appendix would stipulate that any institution seeking accreditation must teach "U.S. substantive law"¹⁸⁴ in "the U.S. legal profession,"¹⁸⁵ and the professors must be mainly U.S.-trained.¹⁸⁶ The Standards currently omit "U.S.," but all schools hoping for ABA accreditation must model their programs entirely on the American program and teach U.S. law.¹⁸⁷ Thus, the Standards should clearly specify this requirement. Further, professors should be U.S.-educated, at least initially, as they are most capable of providing instruction on U.S. law, and the instruction should be in English. Lastly, the institution should provide evidence that its national legal structure is capable of providing students with practical experience; in short, the country

¹⁸⁰ See REPORT OF THE SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS, *supra* note 56, at 2 (noting "[t]here appears to be nothing in the current ABA *Standards and Rules of Procedure* that specifically addresses whether a law school seeking . . . approval must be located in the United States"); STANDARDS AND RULES, *supra* note 47.

¹⁸¹ STANDARDS AND RULES, *supra* note 47, at 121–30.

¹⁸² *Id.* at 111.

¹⁸³ *Id.* at 114.

¹⁸⁴ REPORT OF THE SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS, *supra* note 56, at 5 (internal quotation marks omitted).

¹⁸⁵ *Id.* (internal quotation marks omitted).

¹⁸⁶ *Id.* at 6.

¹⁸⁷ *Id.* at 5.

must have a sufficient number of law firms and government offices to provide actual clinical or externship experience, as mandated in the current Standards.

Regarding admissions, this appendix would specify that foreign-educated attorneys need not obtain American undergraduate degrees, so long as they obtained a comparable level of education within their own home country. The ABA Special Committee on International Issues already recommended the Council “consider exempting these foreign law schools from compliance with certain procedural or non-substantive standards which are peculiar to this country,” including the requirement that law students must graduate from an undergraduate school certified by the U.S. Department of Education.¹⁸⁸ Indeed, there is no reason to assume the American undergraduate standard is somehow superior to that of a foreign nation. The Standards already allow an exception from the U.S. university graduation rule if the applicant’s “experience, ability, and other characteristics clearly show an aptitude for the study of law.”¹⁸⁹ Thus, the Standards seemingly already acknowledge that an equal level of education should suffice, and should therefore be written to insist its students obtain a comparable level of education as a precondition to their enrollment in an accreditation-seeking law school.

This appendix would also address the Rules, mandating that all accreditation costs be borne by the institution seeking accreditation. Thus, the foreign school should be prepared to spend a large amount of money—perhaps more than their American counterparts—in paying for site visits and evaluations, in accordance with the Rules.¹⁹⁰ These visits would obviously incur major expenses, demanding repeated travel abroad, and the ABA should make it clear that the institution would bear such expenses.

F. Thinking Beyond the Factors: Potential Foreign Policy Difficulties

While such an appendix would clarify the Standards and Rules, specifically allowing foreign law schools to seek ABA accreditation, further challenges certainly exist in transplanting American legal education and ethics. Other nations rely on entirely dissimilar systems of governance. The laws and judicial systems in foreign countries may greatly diverge from their American counterparts. Many nations’ governing authorities would not agree with certain aspects of the ABA mission, which include “hold[ing] governments

¹⁸⁸ REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES, *supra* note 16, at 30.

¹⁸⁹ STANDARDS AND RULES, *supra* note 47, at 37.

¹⁹⁰ See *supra* Part II.B.2.

accountable under law,” working for human rights, and “preserv[ing] the independence of the legal profession and the judiciary.”¹⁹¹ Even so, the ABA should carefully evaluate each school on a case-by-case basis, and issue accreditation to those schools meeting the Standards, such as STL. The fact that an institution’s home government does not necessarily comport with the ABA mission or fulfill all democratic ideals does not necessarily preclude a school from doing so; in fact, that school may very well act as a bulwark of American ideals within that nation.

While obstacles exist in China, Stephen Yandle, Associate Dean of STL, rightly insists these challenges can be overcome, and STL should therefore receive accreditation.¹⁹² Although difficulties arise in providing an American-style education in a communist country that does not practice common law, STL is capable of meeting ABA Standards. The school does not engage in censorship, or appear to limit academic freedom.¹⁹³ Instead, STL professors teach American classes and use American cases, thereby educating their students in American legal norms.¹⁹⁴ Moreover, while vast differences between American and Chinese cultural and legal values endure, these discrepancies likely would impact a law school less. In contrast to political science or other undergraduate professors,¹⁹⁵ law professors (ideally) instruct students merely on case law, without imparting their own views on public policy or politics. Indeed, in an American-style classroom, such rhetoric would be wholly misplaced.

Moreover, while China’s record on academic freedom is not entirely laudable,¹⁹⁶ that does not suggest the Chinese government would attempt to constrain STL’s American-style program. STL has faced no known attempts to limit the academic freedom of its professors and scholars. Furthermore, China’s Ministry of Education authorized STL’s operation and its American-style education system, demonstrating governmental approval (and perhaps a

¹⁹¹ *Association Goals*, *supra* note 84.

¹⁹² See Stephen Yandle, Assoc. Dean of the Peking Univ. Sch. of Transnat’l Law, Remarks at the Joseph G. Miller and William C. Becker Center for Professional Responsibility Inaugural Symposium (Oct. 9, 2009), available at <http://www.uakron.edu/law/video/miller-becker-symposium-2009.dot>.

¹⁹³ James Parry Eyster, *Antigone in China: Teaching American Law and Lawyering in Shenzhen*, 12 ASIAN-PAC. L. & POL’Y J. 43, 56 (2010) (“Shenzhen in 2008, . . . burdened law schools with few regulatory fetters, permitting STL . . . to freely experiment with its curriculum.” (footnote omitted)).

¹⁹⁴ See *supra* notes 149–54.

¹⁹⁵ See Louisa Lim, *Case Tests Scope of Academic Freedom in China*, NPR (Dec. 30, 2008), <http://www.npr.org/templates/story/story.php?storyId=98739613>.

¹⁹⁶ *Id.*

corresponding willingness to allow STL to function independently, without state intrusion).¹⁹⁷

While China is still criticized for human rights violations, there are some signs of improvement. Increasing globalization and the resulting heightened Western influence have encouraged a more open nation,¹⁹⁸ and the government has lifted some restrictions on freedom of expression.¹⁹⁹ President Hu Jintao recently reaffirmed his commitment to cooperate closely with the United States,²⁰⁰ and insisted that China “recognizes and also respects the universality of human rights.”²⁰¹ STL will only add to this continued improvement because the school will graduate capable attorneys, educated in American legal norms, who can potentially advocate for greater freedom in China.

While STL qualifies for ABA accreditation, the ABA should issue a policy statement reinforcing its commitment to work with the U.S. government. Although the ABA is an independent institution, the organization cannot and should not abrogate American foreign policy. As the Special Committee on Foreign Law Schools notes, schools located in nations on the U.S. “Banned List”²⁰² or those designated as state sponsors of terrorism²⁰³ are unlikely to seek ABA accreditation; even so, they should clearly be “rejected out of hand.”²⁰⁴ Other foreign policy issues exist and will arise in the future; therefore, the ABA should consult with the executive branch and the State Department before accrediting a foreign law school in order to avoid potentially disrupting U.S. foreign policy.

¹⁹⁷ Matthew Erie, *Legal Education Reform in China Through U.S. Inspired Transplants*, 59 J. LEGAL EDUC. 60, 69 n.36 (2009) (“[T]he PRC Academic Degree Committee of the State Council approved STL in a record two months.”).

¹⁹⁸ See Qing Zia, *China: Academic Freedom and Public Intellectuals*, 58 INT’L HIGHER EDUC. 17, 18 (2010) (arguing that “[w]hile the government used to be viewed as an obstacle to academic freedom, it has now had to become a watchdog for the academic integrity of scholars and universities in China” because the Chinese government believes that “academic corruption could jeopardize China’s ambition of creating world-class universities”).

¹⁹⁹ See *China: Extend New Media Rules to Chinese Reporters*, HUM. RTS. WATCH CHINA (Oct. 22, 2008), http://china.hrw.org/press/news_release/china_extend_new_media_rules_to_chinese_reporters.

²⁰⁰ Michael Wines, *Subtle Signs of Progress in U.S.–China Relations*, N.Y. TIMES, Jan. 20, 2011, at A12.

²⁰¹ *Id.*

²⁰² REPORT OF THE SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS, *supra* note 56, at 7.

²⁰³ *State Sponsors of Terrorism*, U.S. DEP’T ST., <http://www.state.gov/j/ct/c14151.htm> (last visited Jan. 28, 2012). The United States currently lists Cuba, Iran, Sudan, and Syria as state sponsors of terrorism, subject to a variety of sanctions. *Id.*

²⁰⁴ REPORT OF THE SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS, *supra* note 56, at 6–7.

*G. Accreditation: Not “a huge game changer”*²⁰⁵

The aforementioned foreign policy issues aside, other concerns persist regarding a potential explosion in foreign law schools and the possibility of more foreign attorneys seeking admission to the American legal practice. As the U.S. legal system grows increasingly attractive to foreign nations²⁰⁶ and American-style law schools are established around the world, some fear that a sudden deluge of ABA-accredited law schools would result in a range of unfortunate consequences, including a swift influx of foreign attorneys and a rapid move toward outsourcing American legal work.²⁰⁷ These concerns are valid, but ultimately misplaced.

STL is entirely unique in its home country²⁰⁸—and in the rest of the world, with the exception of the United States. STL stands alone in its desire to obtain accreditation, as well as its ability to fulfill current ABA Standards. Thus, there is no imminent danger of a deluge of law schools. Furthermore, extending accreditation will impart positive results. Accrediting foreign law schools will accord the ABA power to monitor the situation by ensuring foreign attorneys are educated in the United States or in foreign ABA-approved institutions, which will result in capable attorneys—and high-quality legal work.

1. Too Many Lawyers and Not Enough Work? Protecting American Interests

Those critical of accrediting foreign law schools appear mainly concerned with the effect accreditation will have on current attorneys’ abilities to obtain and retain jobs. Specifically, they argue that accrediting foreign schools will

²⁰⁵ Coe, *supra* note 137. David K.Y. Tang, a managing partner at K&L Gates, LLP in Asia and member of the ABA committee advising the ABA to consider accrediting foreign schools, said accrediting foreign institutions would not be “a huge game changer” because foreign graduates already take the bar exam in larger numbers after training through LL.M. programs. *Id.*

²⁰⁶ See *supra* Part II.A.2.

²⁰⁷ See Jerome Kowalski, *Do We Really Have a Shortage of ABA Accredited Law Schools?*, KOWALSKI & ASSOC. BLOG (Aug. 17, 2010), <http://kowalskiandassociatesblog.com/do-we-really-have-a-shortage-of-aba-accredited-law-schools>. The author calls the ABA to task for “unwarranted continued establishment of new law schools at a time when the profession cannot even absorb the current torrent of graduates from existing law schools.” *Id.*

²⁰⁸ Letter from Jeffrey Lehman, Chancellor & Founding Dean of Peking Univ. Sch. of Transnat’l Law, to the Council of the Section of Legal Educ. & Admissions to the Bar of the Am. Bar Ass’n (Nov. 18, 2010), available at http://www.americanbar.org/content/dam/aba/migrated/legealed/accreditation/comments_on_foreign_program_accreditation/20101118_peking_university_supplemental_response.pdf (arguing that STL accreditation would not open the floodgates of foreign law school seeking ABA accreditation because “STL is unique in that it offers the only J.D. program outside the U.S.”).

result in a sudden influx of lawyers and a simultaneous wholesale outsourcing of legal work overseas. Steven J. Moore, a concerned partner at Kelley, Drye & Warren, suggests that if the ABA considers accrediting foreign law schools, he will consider canceling his ABA membership in an apparent personal repudiation of such “insanity.”²⁰⁹ Moore insists that the United States “already [has] too many lawyers” and rejects any ABA move that would “let[] even more attorneys come in.”²¹⁰ Jerome Kowalski, head of Kowalski and Associates, is similarly alarmed. Kowalski warns of a “wholesale shipment of legal jobs overseas.”²¹¹ He argues that “the inevitable result of accreditation of foreign law schools will be akin to the virtual abdication of United States preeminence in automobile production to other nations.”²¹² Considering the increasing number of law school graduates—and the present state of the American economy—such concerns about an “oversupply situation” are legitimate.²¹³ Yet, the ABA is not the governing body tasked with improving upon the present unfortunate economic situation. Further, while concerns about our economy are valid, some benefits may even accrue with continued outsourcing.

The accreditation process was established to ensure quality and uniformity among law schools and maintain integrity in the legal profession. Thus, the ABA’s mission does not include preventing qualified law schools from seeking accreditation—or barring qualified students from becoming licensed lawyers—as a means of regulating the profession and ensuring practicing attorneys retain their jobs. As David K.Y. Tang, a member of the ABA Accreditation Committee, notes, “I don’t believe accreditation is meant to be a market regulator of how many students there are that can take the bar exam.”²¹⁴ Similarly, accreditation is not meant to be a tool for keeping legal jobs in the United States. The present economic outlook for graduating law students (and practicing lawyers) is surely a matter of concern, but preventing qualified schools from obtaining ABA accreditation is not a legitimate means to combat economic problems.

²⁰⁹ Coe, *supra* note 137 (internal quotation mark omitted).

²¹⁰ *Id.* (internal quotation mark omitted).

²¹¹ Kowalski, *supra* note 207.

²¹² *Id.*

²¹³ Matt Leichter, *The Missing JDs*, LAW SCH. TUITION BUBBLE (Aug. 30, 2010), <http://lawschooltuitionbubble.wordpress.com/the-missing-j-d-s-2>.

²¹⁴ *See* Coe, *supra* note 137 (internal quotation marks omitted).

Concerns about the economy encompass outsourcing, and, in our increasingly borderless world, further outsourcing is admittedly inevitable; however, it may have some benefits, both to clients and American attorneys.²¹⁵ As long as cheaper labor can be procured abroad, outsourcing will continue; as law firms struggle to reduce costs in order to remain competitive in our current adverse economy, more work will be sent overseas.²¹⁶ The ABA Ethics Committee has already given the go-ahead to outsourcing.²¹⁷ According to the Ethics Committee, U.S. law firms are “free to outsource legal work, including to lawyers or nonlawyers outside the country, if they adhere to ethics rules requiring competence, supervision, protection of confidential information, reasonable fees and not assisting unauthorized practice of law.”²¹⁸ The American firms are ultimately held responsible for the work, and the ABA recommends they disclose any outsourcing to clients.²¹⁹ Thus, clients receive cost benefits and holding the firms responsible assures quality legal work. Furthermore, outsourcing is mainly limited to the more menial legal tasks, such as document review or discovery collection. This fact should alleviate the qualms of American attorneys who are concerned that the entire profession is suddenly moving abroad. Instead, outsourcing allows American attorneys to focus on substantive, “more lawyerly” work.²²⁰ Another benefit is perhaps less evident: outsourcing can work both ways. Indeed, Americans can also go overseas and work in newly created legal jobs.²²¹ According to the ABA,

²¹⁵ Arin Greenwood, *Manhattan Work at Mumbai Prices*, 93 A.B.A. J. 36, 38 (2007). On November 18, 2010, Thomson Reuters, owner of West Publishing, announced it was acquiring the Indian legal outsourcing company profiled in Greenwood, *supra*—proving outsourcing is not only ongoing, but is becoming accepted (and even sponsored) by American firms and corporations. *Thomson Reuters Acquires Indian Outsourcing Co. Pangea3*, ABA J. (Nov. 18, 2010, 5:25 PM), http://www.abajournal.com/news/article/report_thomson_reuters_to_acquire_indian_legal_outsourcing_co_pangea3.

²¹⁶ See Dan DiPietro & Gretta Rusanow, *Trench Warfare*, AM. LAW., Oct. 2010, at 75, 76.

²¹⁷ News Release, Am. Bar Ass’n, ABA Ethics Committee Issues Opinion Detailing Lawyer Responsibilities When Outsourcing Legal Work Domestically or Internationally (Aug. 25, 2008), http://apps.americanbar.org/abanet/media/release/news_release.cfm?releaseid=435 [hereinafter *Lawyer Responsibilities When Outsourcing*].

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Debra Cassens Weiss, *Will Outsourcing Improve Associate Retention? A Couple Experts See Benefits*, ABA J. (Aug. 23, 2010, 7:55 AM) http://www.abajournal.com/news/article/will_outsourcing_improve_associate_retention_a_couple_experts_see_benefits.

²²¹ Debra Cassens Weiss, *New Career Path for U.S. Lawyers: Outsourcing Firms*, ABA J. (Dec. 10, 2009, 9:43 AM), http://www.abajournal.com/news/article/new_career_path_for_u.s._lawyers_outsourcing_firms; see also Martha Neil, *From New York to New Delhi: US Lawyers Look for Work in India’s Outsourcing Companies*, ABA J. (Aug. 4, 2010, 11:16 AM), http://www.abajournal.com/news/article/from_new_york_to_new_delhi_us_lawyers_look_for_work_in_indias_legal_outsour.

outsourcing creates opportunities for smaller law firms to handle larger, more complex matters.²²²

The ABA cannot prevent outsourcing, but its Ethics Committee can (and should) monitor the situation in order to ensure clients receive high-quality legal services. Accrediting foreign schools will at least help to ensure that outsourced work is completed by qualified attorneys. The ABA Ethics Committee already requires firms considering outsourcing to “adhere to ethics rules requiring competence, supervision, protection of confidential information, reasonable fees and not assisting unauthorized practice of law.”²²³ Holding the law firms responsible for overseas work provides a level of quality assurance, as a law firm would be reluctant to put its name behind subpar work. By accrediting foreign institutions, the ABA could similarly monitor foreign law schools, ensuring a qualified class of lawyers exists to perform outsourced work. As the largest professional association in the world with a mission of improving the legal system for the public (and clients), the ABA aims to provide the highest possible level of service for clients.²²⁴ Monitoring foreign schools and their educational quality through accreditation would improve global legal education—resulting in better attorneys who are more capable of representing their clients.

2. No “*Deluge of Law Schools*”²²⁵

While Peking University School of Transnational Law meets current ABA Standards and, therefore, should receive accreditation, this Comment does not suggest or even contemplate opening the theoretical gates to accreditation to another foreign institution (much less to every foreign law school). Indeed, most foreign law schools are comfortable operating in their own nation or region and do not desire American accreditation. Furthermore, most foreign law schools would fail to meet ABA requirements. Thus, important limitations exist to prevent this feared sudden explosion of foreign law schools soliciting ABA accreditation.

²²² Anthony Lin, *ABA Gives Thumbs Up to Legal Outsourcing*, N.Y. L.J. (Aug. 27, 2008), <http://www.law.com/jsp/article.jsp?id=1202424085117>.

²²³ Lawyer Responsibilities When Outsourcing, *supra* note 217.

²²⁴ *Association Goals*, *supra* note 84.

²²⁵ Leigh Jones, *A Deluge of Law Schools*, NAT'L L.J. (June 2, 2008) <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202421786165>. This heading borrows its name from the article, which presents data suggesting increasing the number of (American) law schools in a tight job market is potentially “irresponsible.” *Id.*

First, as noted, the ABA Standards are very stringent.²²⁶ Any foreign legal institution seeking accreditation must have significant financial resources to establish sufficient educational standards and resources.²²⁷ The school must be capable of recruiting quality faculty members capable and willing to teach American law abroad—which is no small feat. Thus, a sudden onslaught of applications from foreign schools seeking accreditation is unlikely. As Dean Lehman notes, “I don’t think the School of Transnational Law will be the last to seek accreditation, but it’s hard work and it’s expensive.”²²⁸

The significant cost and effort has proven quite restrictive; no other law school has even voiced a desire for ABA accreditation, much less applied specifically for ABA approval. Most schools apparently appreciate the American model merely for its door-opening capabilities. They want “compatibility” with U.S. programs and endeavor to graduate students who are competitive in an increasingly globalized legal market,²²⁹ but they do not seek ABA approval.²³⁰ As an example, Dean James Hathaway of Melbourne Law School changed his school’s curriculum to offer a J.D. degree in order to prepare his students for a global legal market.²³¹ However, he pointedly declined to develop all aspects of the American model that did not fit his school’s needs—the dean wanted his program to be “a lot more inventive and thoughtful.”²³²

The growing Americanization of legal systems is also limited; mostly Asian countries have adopted American norms, and no evidence exists of any European legal institution seeking ABA approval or even attempting to adopt an American-style program. Indeed, such a development appears less than likely. Most European nations are dedicated to preserving their civil law systems, which are distinct from the U.S. system.²³³ Indeed, almost fifty European nations recently signed on to the Bologna Process, which aims to promote unity in European Higher Education.²³⁴ The signatory nations want

²²⁶ See *supra* Part I.A.

²²⁷ David Segal, *For Law Schools, a Price To Play the A.B.A.’s Way*, N.Y. TIMES (Dec. 17, 2011), <http://www.nytimes.com/2011/12/18/business/for-law-schools-a-price-to-play-the-abas-way.html>.

²²⁸ Coe, *supra* note 137 (internal quotation mark omitted).

²²⁹ Jones, *supra* note 78.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ See generally JULIE BROOME ET AL., *INTRO TO CIVIL LAW LEGAL SYSTEMS* (2009), available at <http://inprol.org/sites/default/files/publications/2011/cr09002.pdf>.

²³⁴ *Participating Countries and Organisations*, OFFICIAL WEBSITE BOLOGNA PROCESS, <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/pcao/index.htm> (last visited Feb. 10, 2012).

European recognition of degrees, so that a degree from one nation is recognized in other (signatory) nations.²³⁵ The goal is to build upon European heritage, traditions, and values, with the overall objective of “increasing the international competitiveness of the European system of higher education” in order to “ensure that the European system acquires a world-wide degree of attraction.”²³⁶ Thus, Europe is quite uninterested in embracing the American legal model. While the signatory nations take increasing globalization in higher education into account, the goal is one of promoting European educational norms, not replacing their systems with American-style programs.²³⁷ As such, a sudden onslaught of applications from European schools seeking ABA accreditation is less than likely.

Indeed, the only evidence of a school even potentially desiring future ABA approval is Jindal Global Law School (“JGLS”) in Haryana, India. The vice chancellor of JGLS recently wrote to the ABA encouraging the organization to consider accrediting foreign institutions.²³⁸ Yet Professor C. Raj Kumar merely requested, in a broad overture, that the ABA refrain from closing the door to such accreditation.²³⁹ At no point did the professor request his school be reviewed for approval, perhaps due to his own recognition that JGLS would not be successful in an application for accreditation.²⁴⁰ JGLS does not require graduation from an American university (or its equal), and the school insists applicants take an Indian LSAT.²⁴¹ The school focuses on a “global”²⁴² course of legal studies and makes no attempt to operate a J.D. program with American curriculum.²⁴³ Thus, the only other institution publicly voicing a desire to leave the door open for potential future accreditation recognizes it is incapable of

²³⁵ *Recognition of Qualifications*, OFFICIAL WEBSITE BOLOGNA PROCESS, <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/actionlines/recognition.htm> (last visited Feb. 10, 2012).

²³⁶ BOLOGNA PROCESS, EUROPEAN HIGHER EDUCATION IN A GLOBAL SETTING: A STRATEGY 1–2 (2007), available at http://www.ond.vlaanderen.be/hogeronderwijs/bologna/documents/WGR2007/Strategy_plus_possible_actions.pdf (internal quotation marks omitted).

²³⁷ *Id.*

²³⁸ Letter from C. Raj Kumar, President & Vice Chancellor of Jindal Global Law Sch., to the Special Comm. on Foreign Law Sch. Seeking Approval Under ABA Standards (Oct. 15, 2010) [hereinafter Letter from C. Raj Kumar], <http://www.abanet.org/legaled/accreditation/Comments%20on%20Foreign%20Program%20Accreditation/Jindal%20Global%20Law%20School.pdf>.

²³⁹ *See id.*

²⁴⁰ *Id.* Professor Kumar acknowledges that his school still has “work to be done” before seeking accreditation and simply suggests that “it is possible to meaningfully engage in the accreditation process as a foreign law school.” *Id.* at 3.

²⁴¹ *LSAT India Admission Test*, JINDAL GLOBAL L. SCH., http://www.jgls.org/jg_cms.aspx?this=3&mid=135 (last visited Feb. 19, 2012).

²⁴² *Id.*

²⁴³ *Id.*

obtaining it any time soon.²⁴⁴ Because there is no evidence that foreign institutions are clamoring to obtain ABA accreditation, and because nothing suggests this will change, a sudden deluge of accredited law schools is very unlikely.

CONCLUSION

Our world is growing increasingly “flatter”²⁴⁵ and as globalization steadily marches on, with technology racing ahead, the future, at times, seems quite scary. Borders that once reliably separated nations appear nonexistent; the old rules no longer apply. The practice of law, so powerfully steeped in national tradition, is nonetheless susceptible to global influence and is thus undergoing the same process of international integration: legal rules that formerly stood so resolutely, structuring legal frameworks staunchly isolated within their own nations, are emerging to confront and challenge one another. And the United States of America, the country offering the “gold standard”²⁴⁶ in legal education, the nation with the most (and most profitable) mega-firms, is suddenly facing competition from foreign attorneys—and a certain tumble from its self-anointed place atop the global legal kingdom.

Yet, American law firms and attorneys cannot cling to the past: the former model that placed the United States atop the legal profession to the exclusion of foreign nations and attorneys is simply no longer tenable. Instead, we should focus on ensuring the quality of our profession. The facts are undeniable: more foreign students are studying in the United States, and more graduates of foreign law schools want to take our bar exams. State laws are divergent and confusing, and ultimately operate to exclude qualified foreign students, while allowing some unqualified attorneys to practice. Extending ABA accreditation to qualified foreign institutions would standardize the process, guaranteeing the continued excellence of the legal profession; furthermore, accrediting foreign schools would promote American legal norms, spreading the rule of law, and would likely result in benefits for American attorneys practicing abroad.

The benefits of accrediting foreign schools are therefore abundant, the potential drawbacks are few, and the process is (almost) already in place. The argument that accreditation will result in large-scale outsourcing and incite a

²⁴⁴ See Letter from C. Raj Kumar, *supra* note 238, at 3.

²⁴⁵ See FRIEDMAN, *supra* note 6, at 27.

²⁴⁶ REPORT OF THE SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS, *supra* note 56, at 4.

sudden influx of foreign attorneys, poised to snatch American jobs, is overstated. Benefits will actually likely accrue from outsourcing more menial legal work. Further, as described, the current ABA Standards and Rules need only slight modification to allow applications from foreign institutions. As this Comment suggests, with further, non-substantive changes to the Standards, the ABA could directly invite applications from qualified foreign schools—including Peking University.

Thus, rather than bemoaning outsourcing or angrily attempting to exclude foreign attorneys, if the United States wants to compete, it must accept globalization, embrace impending changes, and accredit qualified law schools abroad, thereby ensuring the quality of the legal profession. In order to be successful, our inward-looking mentality must change: instead of pursuing isolationism or simply acquiescing to our own ignorance, content to pretend we remain atop the legal world, American lawyers must embrace progress.

The process of welcoming a new era of a more globalized legal practice should begin with ABA accreditation of foreign institutions—but the process cannot end here. In a book dauntingly yet appropriately entitled *The End of Lawyers*, Richard Susskind writes, “I predict that lawyers who are unwilling to change their working practices and extend their range of services will, in the coming decade, struggle to survive. Meanwhile, those who embrace new technologies and novel ways of sourcing legal work are likely to trade successfully.”²⁴⁷ In order to succeed (and endure), the American legal profession must not only embrace foreign attorneys and a globalized practice, but the profession must also reevaluate its practices, rather than ignore our new reality. Attorney Patrick Lamb aptly captures this strange new reality and the American legal world’s reaction, a combination of isolationist ignorance and denial resulting in total inertia, musing: “The world is changing. . . . Doesn’t it seem bizarre that everyone isn’t devoting time and study to the changing landscape to figure out how they will have to change to survive?”²⁴⁸ This

²⁴⁷ RICHARD SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES* 269 (2009).

²⁴⁸ Patrick J. Lamb, *Lawyers Have Incredible Lack of Interest in Changing Legal Marketplace*, LEGAL REBELS (Nov. 9, 2010, 8:17 AM), http://www.abajournal.com/news/article/incredible_lack_of_interest_in_the_changing_legal_marketplace.

abject refusal to acknowledge our changing legal world is bizarre, indeed, or, when more carefully considered, enough to scare the bejesus out of anyone.

SABINA SCHILLER*

* Notes & Comments Editor, *Emory International Law Review*; J.D. Candidate, Emory University School of Law (2012); B.A., *cum laude*, Tulane University (2007). The Author would like to thank Professor Charles Shanor as well as the entire staff of the *Emory International Law Review*. The Author additionally thanks her sister, Sandra, for her invaluable guidance and never-ending love and support.