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A serious look at the admission requirements to the NY bar

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First, the citizenship requirement was struck down. Then, the requisite graduation from an American law school was relaxed. Now, under certain circumstances and in a limited capacity, foreign lawyers can acquire a legal license in New York without having to pass a written exam. Their title: legal consultant.

The privilege became effective last Jan. 9, 1974 when the four Appelate Divisions of the state approved the licensing procedures drafted by a special committee appointed by the Judicial Conference.

The seeds of the idea were contained in a memorandum drafted last year by an ad hoc committee representing three bar associations, the New York State Bar Association, Association of the Bar of the City of New York and the New York County Lawyers' Association. The memorandum pointed out: "The preeminent role of this state in international finance and commerce and its growing interest in attracting foreign investment make it obviously desirable for New York to have qualified lawyers from other countries resident here for consultation by both business and the Bar."

The New York legislature then passed the enabling legislation and then Governor Wilson promptly signed the same. The New York Court of Appeals adopted the rules and the Judicial Conference was appointed to draft specific guidelines that were later adopted uniformly by the Appelate Divisions.

Should the new rules be greeted with rejoicing by the foreign barristers? I think not. Although they do away with written exam, the privilege they accord is minimal. Foreign lawyers with the said license are not permitted to practice law. They can only serve in a consulting capacity in matters involving international finance and commerce, such as investments, international joint ventures and licensing arrangements. It would do well for the state to grant more than a token recognition of the significant roles that alien lawyers are capable of assuming in the society.

It is relevant at this point to take a close look at the admission requirements to the New York Bar which apply to foreigners. The policy of the state seems far from settled. One thing is certain, however, and that is, an alien whose only credential is his completion of law school study in his own country is not permitted to take the bar. Nor does it generally suffice to present a certificate of bar admission. Thus, recently, a law graduate with an outstanding academic record in a Philippine law school and a couple of years of law practice in said jurisdiction was not allowed to take the exams without having to undergo one year of clerkship in a US law firm.

Is this fair? With due respect to the court I beg to say no. The Filipino graduate studied law for four years, even longer than his American counterpart, who did it only for three years. Some of his mentors were even holders of LL.M from Harvard or Yale. The laws he learned were basically similar to US laws. In fact, in many instances, they were verbatim copies of federal and state statutes. This is not to mention the Philippine Constitution (at least before martial law) which, with minor variations, was but a paraphrasing of the American Constitution. Indeed, a Filipino student could be fairly compared to an American student who took up law in another state. The characterization that Philippine jurisprudence is of the civil law variety as distinguished from the American common law is a misnomer.

In the case of In Re Shoop, decided by the Philippine Supreme Court during the middle of US rule, it was noted that the Philippine laws were substantially the same as US laws. It held "(T)he bulk of present day (Philippine) Statute Law is derivative from Anglo-American sources; derivative within the sense of having been copied, and in the sense of having been enacted by Congress or by virtue of its authority. This court has repeatedly held that in dealing with the cases which arise under such statute law the Anglo-American cases (would govern) in construction and application." Should the vintage of the case strip its validity? Certainly not. The logic is convincing as it is fresh than ever. In that case, a New York lawyer was admitted to practice in the Philippines without examination.

There is an interesting dimension to the issue which may be worthwhile to ponder over by members of the bar and the bench. I am referring to the discrimination angle. Recently, the US Supreme Court ruled in Griggs v. Duke Power Co. that practices, neutral on their face, and even neutral in their intent, are discriminatory if they operate in favor of an identical group over others. By not allowing foreigners with just law degrees to take the exams, is this not in effect within the proscription of the Griggs case? Whatever objective is served by the desire to maintain certain professional and educational standards have to be outweighed by the discriminatory impact of the exclusion. After all, will not the passing of the bar exams vindicate to a great extent the alleged educational inadequacy?