

## **AN OPEN LETTER ON THE AMERICAN BAR ASSOCIATION'S POLICY ON FOREIGN STUDIES: A BARRIER TO THE DEVELOPMENT OF LEGAL EDUCATION**

*To All Members Of The American Bar Association*

Through its accreditation processes, the American Bar Association determines which American law schools may carry the distinguished "ABA-approved" stamp. Theoretically, the accreditation processes ensure that the schools the ABA approves will offer the highest quality of legal education available in America. However, the criteria the ABA currently uses in evaluating and approving foreign study in fact hinders the efforts of American law schools to prepare their students for the future. By requiring extensive and expensive approval procedures for foreign study programs, the ABA has imposed an unacceptable burden on law schools which desire to provide their students with an opportunity to study abroad. As a result, at a time in history when familiarity with other countries and cultures has become most critical, ABA-required approval prevents students who wish to study abroad from doing so.

The writers of this letter have first-hand experience of the importance of foreign study, from the perspective of both teacher and student. In this letter, we address the experience of Hamline University School of Law with ABA approval of foreign study programs. We discuss the problems associated with the current accreditation process. Most importantly, we offer alternatives to the current intrusive and expensive ABA approval procedures. By this letter, we pose a challenge to all members of ABA-approved law schools to join together to work for change in the ABA foreign study accreditation policy. Change is essential if American law schools are to have the freedom to develop the innovative and intellectually stimulating foreign study programs necessary to prepare today's students for their future as tomorrow's lawyers.

### **I. THE IMPORTANCE OF FOREIGN STUDY**

The experiences and learning that result from studying abroad are so positive that the American educational system must begin to encourage foreign study as a method of improving students' attitudes toward learning, as well as the United States' strength as an educated nation. Foreign study is crucial for two basic reasons.

First, foreign study provides students with exposure to a wide variety of experiences, challenges them in new ways, and expands their intellectual horizons. The greatest benefit of foreign study is the student's heightened awareness and ability to consider and appreciate new, foreign perspectives.

Second, study abroad responds to the obligation of modern Americans to gain a more accurate understanding of the world beyond its borders. The

United States interacts with, depends on, and becomes more closely connected with foreign countries every day. Despite this increasing connectedness, our familiarity with foreign cultures often does not extend beyond the knowledge necessary to accomplish particular business transactions or other limited purposes. An understanding of foreign practices, customs, and belief systems can best be gained through direct exposure to a foreign culture. Not only is this exposure vital to an individual's education, it will also have an effect on world politics, trade, economics, and the resolution of international conflicts. Studying and living abroad is the most effective means to achieving a thorough understanding of other cultures.

## II. HAMLINE UNIVERSITY SCHOOL OF LAW'S EXPERIENCE WITH THE ABA'S FOREIGN ACCREDITATION PROCEDURES

### A. *Hamline's Summer Program in Norway*

Since 1990, fifteen to twenty-five Hamline University School of Law students have spent three weeks during the summer at the Law School of the University of Oslo, Norway. The program offers a comparative study of Norwegian, European Community, and American law. In 1992 the ABA, after an on-site inspection, certified the Hamline's "Summer in Norway" program as worthy of credit. An ABA inspector spent one week in Oslo conducting an on-site review of the program and wrote a report to the ABA. On the basis of the report, the ABA allowed Hamline to give credit for the three week experience.

Like all schools, Hamline bears the costs of such on-site reviews. In 1992, the cost of an off-campus ABA Summer Program site inspection by the Council of the Section of Legal Education and Admissions to the Bar was \$2,800. The ABA has since raised the cost to \$4,500. Together with the ABA inspector's personal expenses for airfare to Oslo, meals and transportation, Hamline paid a total of \$5,829.68 for the ABA inspection of its Summer in Norway Program.

### B. *Exchange with The University of Oslo Law School*

Since 1991, the University of Oslo Law School has sent up to seven students to study at Hamline during the fall semester. In return, the University of Oslo agreed to accept an equal number of Hamline University School of Law students into its "Erasmus" Program, an exchange program between the nations of the European Union.

The objective of the Erasmus Program is to solidify the European Union by establishing contacts between its young people - the generation of future social and intellectual leaders. All of the Erasmus classes are taught in English. Students from throughout Europe come to Oslo to participate in the Erasmus classes at the University of Oslo Law School.

In the spring semester of 1993, Joseph Fuller was the first Hamline student to take advantage of the program. In the spring semester of 1994, Jason

Hoida was the second. Before Mr. Hoida left for Oslo, he had to apply to the ABA for approval of his "Student-Initiated Foreign Study." In response to his application, Mr. James White, the ABA's Consultant on Legal Education, sent Hamline a letter approving Mr. Hoida's proposed course work at the University of Oslo.

However, the letter also stated that because Hamline had sent one student to Norway during the previous year, Mr. Hoida's visit established a "regular relationship" between Hamline and the University of Oslo. Mr. White pointed out that the Accreditation Committee would view this relationship as within the jurisdiction of the Criteria for Approval of Cooperative Programs for Foreign Study. As a result, any Hamline students wishing to study at the University of Oslo after Mr. Hoida could receive credit only upon Accreditation Committee approval of a Cooperative Program.

According to Mr. White, the Criteria for Individual Student Study Abroad apply only in the case of an occasional single student wishing to study abroad on an ad hoc basis. These criteria do not apply to any ongoing program of study in a particular foreign law school.

As a result of Mr. White's letter, Hamline cannot send any more students to the University of Oslo until it is able to comply with the ABA's costly foreign approval process. That is, unless and until the ABA changes its policy or Hamline is able to comply, students from Hamline who wish to study abroad for credit in the University of Oslo Law School Erasmus Program will be denied that opportunity.

### III. THE ABA'S CRITERIA FOR APPROVAL OF FOREIGN STUDY PROGRAMS

On July 25, 1994, Mr. White sent Memorandum D9394-110 to the deans of all ABA-approved law schools. The Memorandum reported that the Council of the Section of Legal Education and Admissions to the Bar, at its June 1994 meeting, had adopted revised criteria for approval of foreign study programs. The revised schedule of fees is as follows:

Off-Campus Summer Program Site Evaluation	\$4,500
Application for Acquiescence in a Credit Granting Semester Foreign Segment of J.D. Program	\$7,500
Follow-up Site Evaluation of a Credit Granting Semester Foreign Segment of J.D. Program	\$4,500
Application for Acquiescence in a Cooperative Program for Foreign Study	\$1,500

Follow-up Site Evaluation for Acquiescence in a Cooperative Program for Foreign Study	\$1,500
Application for Acquiescence in a Student- Initiated Program for Foreign Study	\$50

The assessment of fees for site evaluations of ABA-approved law schools is based on the cost of a review, with the intent that the school bear the direct cost of the visit and preparation of materials for the site evaluators. If approved, programs are evaluated during the first year of operation. If granted further approval, the foreign program must be evaluated with a site visit every three years, unlike American law schools which must undergo inspection only every seven years.

Memorandum D9394-110 described Foreign Cooperative Programs as programs which are based on a written agreement with a foreign institution. Typically the foreign institution receives American students for a full term of study. The students study in the foreign institution and attend classes taught by the institution's own professors. Apparently, Hamline's exchange with the University of Oslo would fall under this category.

Mr. White reported that in order to encourage more American law schools to adopt such programs and due to the small numbers of students initially involved in such programs, the initial approval fee was reduced from \$4,400 to \$1,500. However, Mr. White did not mention the additional costs involved: the inspector's airfare, accommodations, meals, and transportation, which will typically add \$2,500 to \$3,000 to the costs of the inspection.

#### IV. PROBLEMS WITH THE ABA'S ACCREDITATION POLICY

In Memorandum D9394-110, Mr. White stated that the revisions to the ABA accreditation procedures were "the result of thoughtful consideration and study over the past two years" and that site evaluations to this date have demonstrated that "most of the programs are well thought out, well managed and students appear to be receiving an excellent educational experience." Although Mr. White stated that the ABA wishes to encourage foreign study by lowering some of the fees, *any* fee places an unwarranted financial burden on law schools wishing to provide their students with the opportunity to study abroad. Such burdens are difficult to justify given the small number of students who are currently interested in studying abroad.

The ABA has provided no rationale to justify the high costs of inspection and reinspection of foreign programs. Whatever the reasons may be, the ABA foreign inspection criteria represent another example of the ABA's continued and increasing desire to be involved in every move that ABA-approved law schools make. This increasing level of ABA oversight hinders the attempts of American law schools to pursue educational goals which the ABA perceives as

non-traditional.

In a letter of April 28, 1994, fourteen law school deans requested the support of deans of all ABA-approved law schools to change the ABA's accreditation procedures.<sup>1</sup> The letter described current accreditation procedures as overly intrusive, inflexible, concerned with detail not relevant to school quality, and expensive in both administrative and financial terms. The deans stressed that ABA accreditation processes evidence a "one-size-fits-all" attitude, which stifles diversity and competition among law schools. The deans stated that the ABA makes it very difficult and expensive for law schools to "pursue a vision of law and of legal education that is right for [their] particular institution[s]."

The ABA's intrusion into foreign study programs is another demonstration of the stifling effect of accreditation on legal education. For the schools with the vision to appreciate the importance of foreign study, the ABA's criteria and fees for foreign study approval present a virtually insurmountable barrier. In many cases, law school administrators have difficulty justifying the costs of ABA approval.

Even if the American law school can justify the expense, such an approval and inspection process assumes that the foreign institution will be willing to allow ABA inspectors to critique its program. The ABA's current position ignores the fact that University of Oslo is making an exception by allowing American students into an exclusively European program. To tell the University of Oslo that the ABA must now decide whether its program is good enough would be insulting and would surely jeopardize the productive relationship that has been established between Oslo and Hamline. The fact of the matter is that foreign universities have a lot to offer our students and if they are willing to let our students study there, we should not flaunt that privilege. The ABA must abandon its skepticism towards foreign universities which are approved in their own countries.

Even if the ABA insists on examining the qualifications of foreign universities to teach American students, information about the foreign program need not be obtained by expensive inspectors. Information sufficient to ensure quality programs is available through the national accreditation processes that the foreign schools meet, the credentials of the professors at the foreign university, and descriptions of how the program is run, including the conduct of lectures and examinations. To obtain that information, ABA inspectors would not even have to leave their desks.

This freely-available information provides ample evidence of the excellent and unique resources of many foreign institutions, which offer a great deal to

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1. The letter is on file with Professor Joseph Daly, Hamline University School of Law. The law school deans of Boston University, University of Chicago, Cornell University, George Mason University, Harvard University, University of Nebraska, Northwestern University, University of Pennsylvania, University of Southern California, Stanford University, University of Texas, Vanderbilt University, University of Virginia and Washington University were signatories to the letter.

American students. For Hamline University School of Law to tell the University of Oslo Law School, a school with the most renowned Institute of Maritime and Petroleum Law in Europe, that it must undergo ABA inspection is absurd. Hamline is fortunate to have the opportunity to send its students to a university with such a preeminent international reputation. It is a waste of scarce resources for Hamline to pay thousands of dollars so that the ABA may confirm this well-accepted status.

Moreover, the ABA's position ignores the fact that the benefits of living and studying in a foreign country go far beyond academics. Even if the foreign institution does not match up to the high standards of the University of Oslo Law School, the intellectual experience of studying law abroad can be so positive that the ABA should foster and encourage study at any law school around the world, rather than imposing administrative obstacles to that goal.

#### V. PROPOSED CRITERIA FOR FOREIGN APPROVAL

We do not propose that foreign programs should not be monitored. However, we do suggest that the ABA has gone too far. There are alternatives to expensive and intrusive ABA inspections which can ensure that students taking part in foreign programs will enjoy a positive intellectual experience.

The ABA could achieve the same goal by requiring a faculty member from the ABA-approved sending institution to work with the law student in deciding whether or not foreign study at a particular foreign university will be beneficial. The faculty member's role could include assisting with preparation for the semester abroad and monitoring the student during the semester. If, in the planning stage, the faculty member feels that the student lacks serious motivation for the foreign study program, the faculty member will be obligated to disapprove the student's proposed foreign study. However, if the student demonstrates a serious desire to engage in study and to broaden his or her intellectual and cultural horizons, the faculty member will approve the proposal. The faculty member will require continuing reports during the semester to monitor the student's progress. In addition, the faculty member will require a journal and research paper from the student, reflecting on his or her experiences. Finally the student should go overseas with the knowledge that if he or she does not take the semester abroad seriously, he or she could forfeit all credit.

Furthermore, the student and faculty member could submit a report or series of reports directly to the ABA and answer any questions that the ABA has about the foreign program. Professors and students at ABA-approved law schools should be allowed the discretion to evaluate the benefits of programs, without intrusive and costly ABA site inspections.

## VI. CONCLUSION

Unless the ABA changes its current policy immediately, some students will lose forever the opportunity to study abroad. At a time when internationalization in the study of law is so vital, such a loss is a serious matter. The United States is already lagging behind in the race to develop a genuine international perspective. The trend in all aspects of human affairs is towards globalization. Professional teachers of future lawyers should encourage students to expand their horizons and raise intellectual awareness through study abroad.

The 1995 American Association of Law Schools Mid-winter Meeting in New Orleans presents an opportunity for us to challenge the ABA's position on the accreditation of foreign study programs. We must take advantage of this forum to end the ABA's myopic and disappointing approach to the education of America's future lawyers. Let us compel the ABA to allow for diversity, experimentation and competition among its approved law schools. At the Mid-winter Meeting this January, let us, the members of all ABA-approved law schools, challenge the ABA to put its trust in its law schools as we strive to meet the educational needs of the future.

*Joseph L. Daly, Professor of Law*

*Jason A. Hoida, Law Student*

Hamline University School of Law  
St. Paul, Minnesota 55104