

AALS Panel – Global Legal Education – Can American Law Schools Respond to the Opportunities?

*By Larry Bakken**

[Association of American Law Schools Session on “Educating Foreign and U.S. Lawyers for Global Challenges”, Co-Sponsored by Sections on Graduate Programs for Foreign Lawyers and Post-Graduate Legal Education – AALS Annual Meeting – January 5, 2004, Atlanta, GA]

During the past decade many American law schools have identified and responded to the opportunity and necessity of training law students and lawyers for the challenges created by globalization. Opportunities are certainly available to schools with strong business, international trade and human rights programs. Opportunities are, however, also available to schools with interests and strengths in the newer disciplines such as conflict resolution, intellectual property and environment protection. Law schools which have ventured into global oriented training have recognized that the market is not simply a one-way-street for domestic students but also includes training of foreign law students and lawyers. Private foundations in the United States and abroad, foreign governments and our national government have helped finance foreign lawyer visits and training events throughout America. When international lawyers visit the United States, domestic law schools are involved as hosts, training sites, and sources of professional expertise. There has also been a simultaneous movement of domestic lawyers and law students through foreign law school programs and other study abroad opportunities. When all these international experiences are taken together one realizes the need for law schools to become more involved in the development and implementation of training and development of globally oriented legal education.

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Several factors have forced or at least encouraged the development of global legal education. First, there is the technological explosion that allows everyone, including lawyers, to be in touch with their peers and to exchange large amounts of information easily and quickly. Second, political upheaval has caused serious questioning of established governments and their associated legal systems. Since the collapse of the Soviet Union many new countries have needed assistance in establishing judicial and governmental structures capable of dealing with various forms of democracy and capitalism. Third, the near elimination of national boundaries with the creation of bodies like the European Union and the lowering of trade barriers between countries such as was accomplished by the North American Free Trade Agreement have created new and different demands for today's lawyers. These factors and others lead to greater interdependence among lawyers and they create a greater need for understanding of one another's legal systems, international norms of practice and the application of the rule of law in foreign countries. These factors have raised the awareness of lawyers and legal educators to the need for law schools to focus on the creation and development of new foreign programs and the expansion of existing study abroad opportunities for students. Because of the development of new programs and the expansion of older programs there is also a recognition that our legal profession must engage in the globalization of the profession.

Because of the advent of technology, the fall of the Soviet Union, the emerge of new countries, the elimination of national boundaries and the removal of many trade barriers, the United States has become a dominate political and economic force in the world. One aspect of the enhanced status of the United States and its political and economic systems is that our legal system has also become very popular, with foreign law students and foreign lawyers.

The popularity of the American legal system and its associated legal education system has, however, created many challenges for domestic law schools. Law schools must now be aware of integrating new cultures into their classes and into their law school culture. This means there is a greater need to consider and be sensitive to different social norms, to consider the problem that second or third languages may cause for visiting students or lawyers, and to provide, when necessary, advice and counsel to these visitors. The problems raised by foreign visitors can, however, be more than offset by the benefits created from the internationalization of the law school community, benefits that result from the presence of the foreign lawyers or students. In order to meet the increased demands of international students law schools will need to reallocate resources or find new revenue to cover the costs associated with these changes. In addition, many foreign students will find it difficult to pay the higher costs of education in the United States and as a consequence may seek financial aid from the law school they are attending. Some law

schools may find these demands too burdensome and may choose not to engage in this internationalization experience. Other law schools may choose to allocate increased costs to the foreign student by increasing non-JD tuition. Another option for some schools will be to simply use foreign student revenue to supplement the regular JD program and not provide needed services to foreign students.

Other problems which may confront law school administrations have to do with the development of certain practice-oriented skills for foreign students, such as trial practice, counseling and advising, oral advocacy, legal writing, alternative dispute resolution skills and broad-based leadership skills. These areas are important to foreign students since they enhance the skills of the visiting students and allow them, like domestic students, to learn and apply these particular skills through simulations, clinics and practicums. Mastering these skills give foreign students increased confidence in dealing with our legal system and may provide foreign students with the opportunity to develop mentor relationships with faculty members or practicing lawyers. Law schools may also encounter problems when scheduling visiting students if courses are already subscribed to their capacity by domestic students. These problems are not necessarily insurmountable but must be addressed in order to meet foreign students' needs and expectations.

If American law schools are to benefit from the globalization of our legal system they should consider undertaking activities that will create opportunities for themselves, their faculty, and their students. Institutionally it is possible for law schools to participate in international programs for visitors. These are often sponsored by offices such as USAID, the American Bar Association and various private foundations. Law school administrations might also consider encouraging their faculty to participate in government travel grants, Fulbright programs, and informal visits to foreign law schools or bar associations. These personal contacts are invaluable if longer term arrangements are to become successful. Specific encouragement should be given to those faculty members who have a comparative law curiosity and who are willing to accept the challenge of globalization. Faculty members who accept this challenge will enrich their courses, acquire a new expertise concerning their own discipline and will provide domestic students with new insights and understanding in selected areas of law. If law schools can encourage individual faculty members to build strong foreign links with international schools and with individual faculty members it is possible that benefits such as faculty exchanges, guest lectures and even student study abroad programs may result.

We know foreign students benefit from their involvement in our law schools. Our students will also benefit when they are exposed to international law students and lawyers. They will benefit from study abroad programs where they can be introduced to comparative, legal, economic, and political settings, and they will benefit

specifically from contact with foreign faculty members, lawyers, and judges. Students, of course benefit from studying specific legal topics, analyzing the legal principles and considering the differences in foreign legal systems and their own legal systems. After students have become familiar with basic legal principles it would be useful to expand their knowledge and understanding even more by providing internships that would allow students to shadow or work for foreign lawyers or to serve in international companies. The practice aspects of lawyering are of great interest to foreign law students and lawyers and they could benefit from some form of simulated practice while studying in America. The same can be said for American students who study abroad. Traditionally student and faculty exchanges have focused on substantive legal topics but in the future study abroad programs might benefit by expanding into selected practice areas and giving students an opportunity to observe foreign lawyers at work in their own professional environment. This enhancement of foreign programs may require law school faculty to make contacts outside the foreign law school and with individual foreign lawyers. Outside contacts may be necessary because many foreign law schools do not have significant practice-oriented interests.

In conclusion, our law schools must, if we are to prepare our graduates for practice in the future raise their awareness of alternative legal systems and increase their understanding of the theoretical foundations and practical applications of the law within different systems. We must also raise student awareness of the different social, economic and political realities within these systems. Law schools can contribute to the enhancement of their foreign and domestic students' understanding of the globalization of American law by providing solid, high quality comparative classes, practice opportunities that include foreign experiences, and, when possible, integrating foreign law students and lawyers into the law school community. Law schools, could also make important contributions to the international bar by making more practice opportunities available to foreign students and by encouraging these foreign students to investigate courses in alternative dispute resolution, leadership and ethics. Foreign law students should be able to learn a good deal from our traditional courses, they should rather quickly learn how we use case law and the Socratic Method and they should appreciate particular American perspectives and values regarding individual rights when they participate in courses such as constitutional law. But one of the many strengths of our legal system is the ability to change and accommodate new circumstances and situations, therefore, it seems to be incumbent upon our law schools to provide foreign students with not only our established learning but to offer our newest thinking and learning as well.