

*“Foreign Host Perceptions of American Bar Association Revised Criteria for Foreign Summer Programs”.*

*Remarks Delivered at the AALS 2004 Conference, ‘Educating Lawyers for Transnational Challenges’.*

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## **Introduction**

I am the Resident Director of a Summer Abroad Program run by a US law school that is based in Dublin, Ireland. I also have been involved in other programs operated by US law schools, particularly programs based in Belgium, Buenos Aires, Grenada, Spain, and Geneva, Switzerland.

In order to operate a summer abroad program, a US law school must satisfy criteria established by the American Bar Association. These criteria are available at the ABA website at [www.abanet.org](http://www.abanet.org). Reporting requirements and site visits are employed by the ABA to ensure that criteria are satisfied. A US law school can lose its accreditation if it fails to satisfy these criteria.

The ABA has shown increasing flexibility in establishing criteria for approval of summer abroad programs. This flexibility largely has taken the form of less frequent site visits. The increased flexibility may reflect increased ABA confidence in the ability of schools to run such program and the value of such programs in educating lawyers for transnational challenges. This increased flexibility is to be welcomed. However, the recently revised criteria of the ABA could benefit from additional ‘cosmopolitanism’, to further reflect the reality of increasingly-popular summer programs that are not based on the paradigm of a one-country visit. I have reviewed the Revised Criteria for Foreign Summer Programs of the ABA Section of Legal Education from that perspective.

My brief remarks focus on programs, such ones as which I am involved, that feature international organizations based in foreign countries, and which are not overly concerned with the national laws of the countries in which these international

organizations are based. These remarks should also be relevant to increasingly-popular summer programs that travel to a number of different locations, such as European capital cities. Some of my comments are general in nature and apply to all summer-abroad programs. I will touch on the revised ABA criteria concerning language fluency, visits to legal institutions, counting time spent on visits and guest lectures, limitations on and disclosures of student enrolment, and distinguishing between tenured/tenure track and other full-time employees of law schools involved in summer programs.

My premise is that the American Bar Association Revised Criteria for Foreign Summer Programs are not particularly well suited for summer programs based around international institutions or programs that travel to various countries. The ABA criteria appear to be based on the assumption that summer programs are based in and primarily study the laws of a single country for the duration of a summer-abroad program. I argue for a slight revision to existing guidelines in any future review, in order to accommodate the wider range of summer programs that are available. This will advance the goal of educating the transnational lawyer.

### **Programs Based Around International Institutions**

The four-week Dublin program in which I am involved includes an optional ‘add-on’ week in Leuven, Belgium. This week may be taken alone for one credit. It may also be added on as a week preceding a four-week program in Geneva, Switzerland. My total involvement with these programs is approximately nine weeks, and, in theory, a student may participate in all nine weeks of the program.

In Dublin, students may choose to focus on EU law. When we proceed to Belgium, the week consists of presentations by officials from various European Union institutions (such as the European Commission), a visit to the European Parliament in Brussels, and, if the timing is right, a visit to see an argument before the European Court of Justice in Luxembourg.

From Belgium, we proceed to Geneva, where a student can broaden the focus of her studies from the supranational institutions of the European Union to the international organizations headquartered in Geneva, such as the United Nations and the World Trade Organization.

Another increasingly-popular type of summer program follows a ‘grand tour’ format. An example of this type of program involves students traveling to various European capital cities, spending only a few days or, perhaps, one week, in each city. The courses offered on these programs are transnational or international in nature, and may not touch on national law at all.

The revised ABA criteria do not necessarily ‘fit’ the programs I have described. The criteria themselves could benefit from a bit more cosmopolitanism.

### **Fluency of Language of Host Country**

For example, under ABA criteria Article II.C., the criteria require that at least one member of the full-time faculty must be fluent in both English and the language of the host country. However, to be technical about it, there are four official languages of Switzerland: French, Swiss German, Italian and an obscure Swiss mountain dialect. In Belgium, the two official languages are French and Dutch. While based in Dutch-speaking Leuven, our program travels to Brussels, which has been described as Dutch-speaking by day and French-speaking by night.

[I should point out that, according to the Irish constitution, the Irish language – a variant of Gaelic -- is the first and official language of Ireland, though I doubt that many of the US law school programs based there have given much thought to having a full-time member of staff fluent in the Irish language.]

In practice, however, English (with a bit of French) is the lingua franca of the international institutions based in Geneva and Belgium, and the requirement of a full-time faculty member fluent in both English and the language of the host country (which, as I’ve pointed out, can be difficult to settle on when there is more than one official language) might be tempered or reduced in light of particular circumstances.

The fluency requirement might be difficult to satisfy on a program that travels through a half-dozen foreign countries. The problem may become more acute as central and eastern Europe become increasingly popular destinations for summer programs, particularly if these programs adopt a ‘grand tour’ format. A recognition of this fact by the ABA and some flexibility in Article II.C to require fluency only as appropriate might be welcome.

### **Visits to Legal Institutions In the Host Country**

On a related note, I am assuming that the requirement of ABA Criteria III.G. for a visit to a legal institution in the host country is satisfied by visits to supranational or international organizations such as the European Parliament and the World Trade Organization, rather than requiring a visit to, for example, a municipal court proceeding in Brussels or Geneva. Again, the blanket requirement of a visit to a ‘legal institution’ of the host country appears based on the paradigm of a one-country summer-abroad program.

### **Extra-curricular Lectures and Field Trips**

Related to the issue of visits to legal institutions is a question relating to guest lectures addressed to students in more than one course on a study-abroad program. The question is whether a program may ‘double dip’ in counting time spent on relevant visits or hearing guest lecturers. For example, if a summer program offers a course on International Trade and a course on International Environmental Law, and students from both classes visit the World Meteorological Organization in Geneva to hear a guest lecturer speak on the wisdom of incorporating environmental standards into multilateral trade agreements, can the time spent in such lecture be counted towards the minimum minutes requirements for both courses? The ABA guidelines do not seem to answer this question conclusively, and I would urge flexibility on this score, to encourage innovative approaches to educating transnational lawyers through summer-abroad programs.

### **Fluency in English**

The revised guidelines also state, at II.B.3, that ‘full-time and adjunct faculty teaching in the program should be fluent in English.’

However, it is possible to conceive of a summer abroad program taught entirely in French, or Spanish, and which required fluency in the language of instruction as a condition for enrolment. Or, one course from a menu of courses might be offered in a language other than English, and there might not be the need for that one (adjunct) faculty member to be fluent in English.

Indeed, part IV.C. of the ABA ‘Foreign Summer Programs – New Program Questionnaire’ seems to anticipate such a possibility. It asks, ‘Will instruction in any course(s) be in a language other than English? If your answer is yes, will the students

enrolled on the course(s) either be fluent in the language of instruction or be provided with an explanation? Please explain.'

The requirement of fluency in English for all full-time and adjunct faculty seems unnecessary in light of the possibilities of running programs in a foreign language and/or offering translation. The criteria might be revised to admit this possibility.

### **Foreign Student Enrolment**

It is not clear to me why disclosure to students going abroad for the summer to study must include, if the program is open to students from other countries, 'the countries likely to be represented and the expected number of students from those countries.' There may be an explanation for requiring this disclosure, and it is one that I would think would promote a program to students interested in exposure to other cultures, but I cannot understand why it is mandated. See ABA Criteria Section VII.4.

### **Limitation on Enrolment of Students**

The revised guidelines, at Section IV, provide that only students who have completed one year of full- or part-time law study, may attend summer programs.

I understand this has been interpreted to mean that part-time students are allowed to attend summer programs after one academic year of study. However, it is not clear if that means the equivalent of one full-time academic year of study, or whether students who have completed one part-time academic year (the equivalent of one-half of a full-time year) are allowed to attend.

I would argue for law schools being allowed to make a decision on a case-by-case basis whether to allow .5s (part time students or those who have enrolled in the second term of an academic year) to attend summer abroad programs. As more schools incorporate international courses into the first year curriculum, it seems ironic that first year students might not be able to benefit from a summer abroad experience.

### **Distinguishing Between Tenure (Track) and Other Full-time Members of Staff**

It is not clear to me, as a foreign host, why the guidelines distinguish between tenured/tenure track faculty and other full-time faculty of the US law school. Section II.B. provides that at least one tenured/tenure-track faculty member must be assigned to full-time duties on the program. A full-time non-tenured member of the faculty may be assigned in lieu of the tenured/tenure track faculty member, but only 'if the person is well

qualified by experience with the sponsoring school, program and country where the program is located to provide leadership of the program and appropriate oversight of the program for the sponsoring school.’

It would seem sensible to have at least one person who meets the requirements for a full-time untenured ‘in lieu’ person from the home institution associated with the program, in which case it would not be necessary to distinguish in this way between tenured/tenure-track and other, full-time members of law school staff.

### **Conclusions**

These brief remarks have been meant to highlight certain questions that come to my mind in light of my experiences as a resident director of a summer abroad program. I have praised the ABA for its increased flexibility in its approach to summer-abroad programs, and I have argued for even greater flexibility to accommodate the needs of an increasingly wide range of summer programs now being offered.