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Internationalizing the Study of Law

Michael P. Scharf*

Introduction by Toni Fine:

Our next speaker, Michael Scharf, who is a Professor of Law and Director of the Center for International Law and Policy at New England School of Law in Boston, is going to talk about efforts to internationalize the curriculum that have been employed at his law school. As he says, and I quote, he is going to discuss how New England School of Law has so quickly become “the N.Y.U. of the off-Broadway law schools” without a major influx of cash or new personnel.

Remarks by Michael Scharf

Actually, I can't take credit for that quote. A professor from N.Y.U. came up with it in describing New England's international law program at a conference recently hosted by our International Law Center. Today, I'm happy to talk about how to internationalize an off-Broadway law school on a fairly modest budget.

Not too long ago, the American Bar Association published a study on the teaching of international law, which indicated that, while there is a proliferation of international law courses at the top tier law schools, the lower two tiers of law schools continue to offer very few international law courses. Although the practice of law has become internationalized throughout the country, the curricula at many law schools do not yet reflect that trend.

When I began teaching at New England eight years ago, we too, had very few international law courses. Today, in contrast, eight full-time faculty members and three adjunct professors teach fifteen international law courses at New England. Included in our international offerings are an International Law Clinic, an

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Immigration Law Clinic, and an International War Crimes Project, in which students do work for the Office of the Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and Rwanda. We have a summer abroad program at the National University of Ireland in Galway, and a student exchange program with the University of Paris X. And we have added international law components to fifteen domestic law courses, including Civil Procedure, Constitutional Law, Contracts, Criminal Law, Business Associations, Property, Torts, and Tax.

Why, you might ask, would a school like New England want to develop its international law offerings as extensively as we have in the last eight years? When we began to internationalize, there was some resistance. A few faculty members said, "if students want international law, they'll go to Harvard. And New England isn't going to be able to out Harvard, Harvard." But what we found through market research is that there are a large number of perspective law students that are history or political science majors with a concentration in the area of international relations. When these students enter law school, they are still itching to continue their education in that area. And if they are not in the top two percent of applicants that can get into Harvard or N.Y.U., they are out of luck unless lower tier schools start offering more courses in international law.

So, it is an admissions marketing issue. When I began teaching at New England, a survey of entering first year students revealed that only five percent chose international law as their primary area of interest. Last fall, twenty-eight percent of the entering students said international law was their primary area of interest. We may not be able to "out Harvard, Harvard," but our international law program is becoming a strong draw with the vast majority of law school applicants who don't have the credentials to go to Harvard.

A second reason for internationalizing the curriculum is to better prepare students to practice law in any field, since international law issues are becoming more and more common throughout the practice of law. For instance, a former student of mine recently joined a family law practice, and it turned out that one of his first cases involved inter-country adoption. A short time later, he handled a child custody dispute involving people from two different countries. And now he has a thriving international law practice at what he thought was going to be a family law firm. Let me stress that this is not a unique case. Every year, more and more young lawyers are finding that international law issues are creeping into their domestic law practice.

So what was New England's recipe for internationalizing on a modest budget? First of all, a school has to start with a core specialist in international law. I was hired from the Office of the Legal Adviser of the U.S. Department of State. I now teach many of the international law courses on a rotating basis, including public international law, international human rights law, the law of international organizations, international criminal law, and the law of war. I also supervise the international law clinic, serve as Director of the Center for International Law and Policy and Director of the Summer Abroad Program in Ireland, advise the International Law Journal and International Law Society, and coach the Jessup International Law Moot Court Team.

But as important as having a faculty member anchor the international law program is getting a large number of other faculty members to dabble in international law. At New England, the Environmental Law professor now teaches International Environmental Law, the Conflicts professor teaches European Union Law, the Tax Law professor teaches courses on International Tax Law and International Business Transactions, the Native American Law Professor teaches a course on International Indigenous Peoples Rights, and one of the Constitutional Law professors teaches a course on International Women's Issues while another teaches Comparative Constitutional Law.

The third step was to hire adjunct professors to teach some of the specialty areas that were not covered by the full-time faculty. Thus, immigration law, the immigration law clinic, military justice, and admiralty are taught at New England by adjunct professors, who are experts in these fields.

But expanding the number of international law course offerings is not, in itself, the answer. A recent ABA survey indicated that even in top tier schools with many international law course offerings, only about thirty percent of the students are going to take those courses. The rest are worried about taking the core courses that are necessary for the Bar Exam and they just do not have the time in their second and third years to take so many of the specialty courses. Recognizing this, New England decided to take steps to internationalize our entire domestic curriculum. We did this by using a financial inducement.

In 1999, the New England faculty approved an innovative stipend program. Each faculty member was offered a \$1,000 mini-stipend if they would design and incorporate an international law teaching unit into their domestic law courses to ensure that students are exposed to international law issues in required and highly

recommended courses throughout the curriculum. Nearly half of our faculty took advantage of this offer. Our unique approach was profiled in the March 2000 issue of the *National Jurist* under the headline, *The Innovators—Students at Select Pace-Setting Schools are Getting an Edge from Creative Approaches—and Law Schools are Finding that Breaking the Mold Can Yield Great Results.*

Our success with this program was due to three factors: First, I cannot overstate the value of the financial inducement. (Laughter). Second, we required the faculty to design the lesson plans themselves and to put together their own materials. We recognized that if the domestic faculty were simply fed the materials or permitted to use canned materials for this purpose, they would be less likely to continue to employ them over time. And third, the faculty had to make a written pledge that they would list the international law unit in the syllabus to signal to the students that the material is important.

Now, in the interest of full disclosure, I must tell you that there was some initial resistance to the proposal. First, some of the faculty members asked why the school should be paying teachers to do what they are supposed to be doing anyway, namely incorporating important material into their courses, be it international or otherwise. In truth, some domestic law casebooks are starting to include international law materials, and some faculty are starting to incorporate these materials on their own without prodding. But with the financial incentive, we were able to internationalize a much larger number of courses in a much shorter time.

Second, some faculty members felt that if we were going to use mini-stipends to encourage the faculty to go in a new direction, why should it be international? There are so many other very important and competing directions, such as professional responsibility and legal ethics. The idea of teaching ethics throughout the curriculum is very important in law school. And yet, very few law professors actually do it. Shouldn't the mini-stipends be used as an incentive to teach ethics rather international law, they argued. Or what about gender and race issues? Or what about inducing the faculty to incorporate high tech approaches to their teaching? In response, those who supported the internationalizing program said, if the idea of mini-stipends works, next year we can use them to try something else. This quickly mollified those raising this argument.

The third concern was that a little knowledge might be more dangerous than no knowledge, both on the part of the law professors who teach the material and the students who would be subjected to it. Our experience has proven this not to be a real

problem. We have found that even domestic law professors who never took an international law course in law school have had very little trouble mastering the international component of their domestic law course, especially if they have to come up with their own materials and design it themselves. With respect to the students, our goal was merely exposure, rather than development of expertise. A student, for example, doesn't have to leave Contracts class knowing all the nuances of the U.N. Convention on the Sale of Goods; but when she graduates from law school, she should at least know that there is a possibility that this international treaty will govern the transactions with foreign companies that she handles.

The final concern was that if the school internationalized the domestic curriculum there would be decreased support for, and interest in, the international law specialty courses, which we had been expanding. What we found in practice was that by having all of the first-year students and many of the second-year students learning about international law in their required classes, they are now starting to swarm into the international law seminars as never before. We are now topping that thirty percent threshold by quite a bit because our program has whet the students' appetites for an exciting and useful area of the law.

Thank you.

