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Some Comments on the Goals of Transnational Legal Education Programs

Gerald A. Sumida*

My perspective on educating lawyers for transnational challenges derives from recognizing the changing environments into which graduates of law schools will seek to pursue their legal careers. In particular, what struck me when I recently served as the General Counsel of the Asian Development Bank was the widespread aspiration of people throughout the world to live in a society based on the rule of law, and their persistent efforts to institutionalize the rule of law in the development of their own societies. We take the rule of law for granted. But seeking the rule of law has become a fundamental movement worldwide, and perpetuating the rule of law lies at the heart of our systems of legal education. The rule of law thus provides the link between the goals of legal education and the challenges to legal education posed by a vast diversity of transnational challenges. Let me make five quick points.

First, globalization has linked societies around in the world in diverse and ever-changing ways and is transforming how they interact.

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National boundaries are being eroded and lines of political and legal jurisdictions within and among societies are shifting. What skills are needed by lawyers to operate successfully within this environment and to change the nature and processes of this environment itself must be identified, and then folded into what should be the purposes of legal education.

Second—and as a counterpoint to my first point—bar examiners and other regulatory gatekeepers who control access to the practice of law in many jurisdictions often are unaware of, and do not understand, the implications of globalization for the practice of law especially in coming years. Thus, the competencies tested for admission to the bar often simply ignore knowledge of transnational legal significance. But this will, I suspect, change in coming years.

Third, who is the “market” for your graduates? Traditionally, law firms with a largely domestically-oriented legal practice were the employers. We still think of international or transnational legal practice as involving a few U.S. law firms with a significant international business and commercial clientele. Yet increasing foreign (i.e., non-U.S.) law firms and multinational corporation are seeking American lawyers or U.S.-trained lawyers. These include law firms like Linklaters, Freshfields and Clifford Chance that are truly multinational organizations, as well as the legal departments of major multinational corporations. But they now increasingly include national government agencies as well as intergovernmental and international organizations and NGOs which want lawyers with international legal backgrounds and a sensitivity to operating within multicultural contexts.

Fourth, how do you attract law students to these transnational legal educational programs? There are no ready answers to this complex question, as the discussions during this conference clearly indicate. Even foreign law schools—many of which are new and have adopted the U.S.-style of legal education—are asking these same questions, often with a clear focus on the role of lawyers in their national economic development initiatives. In part, however, an understanding by students and faculty of what the outside world requires and what knowledge and skills can be learned in legal education programs may provide some useful guidance in approaching such programs.

Finally, we must not forget that legal education programs also involves educating future citizens of this country. When—as happened recently—a question of national significance arises such as “Do the General Conventions apply?” to a particular situation involving U.S. policy, what is fundamentally more important than your particular position is how you approach and respond to that issue. It is very easy to take a position. But it is much more appropriate for a legally trained

professional to analyze critically the issues involved, identify the underlying value choices and alternative, and determine what can be the most constructive ways to approach those issues.

In summary, to answer the question “How best to educate lawyers to meet the challenges of a transnational environment” requires an understanding of the impacts of globalization on societies and on how societies interact. This understanding can then suggest what skills lawyers will to function and operate successfully and creatively in the transnational environments. Only on this basis can legal education programs begin to prepare law students to be able to meet these challenges.

I have three very brief comments.

First, where are your graduates going? Who will be hiring them and what kinds of people with what kinds of skills are those employers and potential employers seeking?

Second, many business schools in the U.S. and in foreign countries are undertaking some innovative and exciting initiatives in international business education, especially on the MBA levels. It may be useful to look at what the more innovative business schools are doing in this respect. Some of the more relevant and effective initiatives may be appropriately used in legal education programs.

Finally, there are fascinating changes that are taking place in law schools and business schools in Japan as well as in China and India, among others. Those countries have stated that, as a matter of national economic development policy, they need lawyers like American-trained lawyers but of their own nationalities and from our own institutions in order to be economically competitive with the major trading countries, especially the U.S. For them, American-trained lawyers are admired as the best in the world. There are important implications for U.S. legal education in light of these initiatives in these countries.

