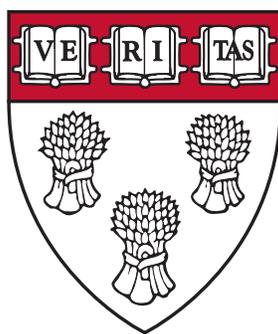


HARVARD LAW SCHOOL  
PROGRAM ON THE LEGAL PROFESSION



LEGAL EDUCATION FOR THE FUTURE  
*Global Perspectives*

*A Blue Paper*

By Daniel H. Foote

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## FOREWORD

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The Harvard Law School Program on the Legal Profession was founded in 2004 to:

- ❖ Conduct, sponsor and publish world-class empirical research on the structure, norms and evolutionary dynamics of the legal profession;
- ❖ Innovate and implement new methods and content for teaching law students, practicing lawyers and related professionals about the profession; and
- ❖ Foster broader and deeper connections bridging between the global universe of legal practitioners and the academy

This manuscript by Daniel Foote is part of a “blue paper” series of substantial essay, speech and opinion pieces on the legal profession selected by the Program for distribution beyond the format or reach of traditional legal and scholarly media channels. The following essay originally was written for a Japanese audience and was first published in Japan. We thank you for your interest and look forward to your feedback.

## OVERVIEW

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This is a report on “FutureEd 2: Making Global Lawyers for the 21<sup>st</sup> Century,” a conference on legal education held at Harvard Law School (HLS) on October 15-16, 2010, in which this author had the opportunity to participate. The conference was the second in a series of three conferences jointly organized by HLS and New York Law School (NYLS). The first conference was held at NYLS in April 2010; the third and final conference was held at NYLS, in April 2011. The goals of the conferences were to stimulate thinking and research about the future of legal education; to promote concrete action plans aimed at improving legal education; to provide a feedback mechanism for refining the action plans through the sharing of ideas among knowledgeable participants; and to aid in the implementation and spread of the most promising approaches. As explained by the chief organizers, Professor David Wilkins of HLS and Professor Elizabeth Chambliss of NYLS, the objective was not simply for legal academics to meet and discuss their ideas, but to achieve concrete results with the promise of broad impact. The first conference in the series was designed to attract a wide range of promising reform proposals. This, the second confer-

ence, was designed to help refine the proposals and identify the most promising. By the time of the final conference, it was anticipated that the most promising proposals would have taken concrete shape and would either have entered or be ready to enter the implementation phase, and while I did not have the good fortune to attend the third conference I understand this to be the case.

Interest in and expectations for the conferences were high, and the interest extended far beyond the United States. Well over 300 people contacted the organizers seeking to participate. Space and logistics made it impossible to accommodate them all, but over 100 people participated, and the level of the participants was impressive. In addition to the deans of HLS, NYLS and several other US law schools, law school deans from several other nations, including Brazil, India, and Israel, participated. They were joined by legal academics at the cutting edge of legal education reform from the US and many other nations, including nations in Europe, Asia, North and South America, and Africa.

Another notable feature of the conferences was that they were not limited to legal educators. To the contrary, a major goal was to bring a broad range of perspectives to bear on legal education reform. Recognizing that legal education today is increasingly global in nature, the organizers consciously sought to incorporate the views of participants from outside the US, as mentioned above. The organizers also recognize that legal education is deeply affected by, and at the same time deeply affects, a wide range of actors. Accordingly, a central organizing theme was that legal education can and should learn from the experiences and insights of others. To that end, the organizers consciously sought to incorporate the views of regulators, clients, and other professions. Here again, the level of participants was impressive. Participants included the current president, the president elect, the immediate past president, and another former president of the American Bar Association (ABA), as well as ABA officials involved in the regulation of legal education, accreditation, and lawyer discipline. The head of the UK Legal Services Board and regulators from Canada also participated. From other professions, participants included the dean for medical education at Harvard Medical School, a Harvard Business School professor, and experts on the management consulting and advertising industries. From the client perspective, representatives of several major businesses also participated actively. Notably, this incredibly highly positioned group of participants did not simply make token appearances and then excuse themselves, citing other commitments. Rather, the vast majority participated actively from start to finish, over two long and very full days.

## DAY 1: THEORY AND CONTEXT

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The first day consisted of four panel discussions, along with keynote speeches at lunch and dinner.<sup>1</sup>

### ***Panel 1: Global Perspectives on Legal Education***

The first panel focused on global perspectives. The panel began with observations on the key needs in legal education for a globalizing world, by the dean of a law school in Brazil, and on trends in globalization of legal education, by a French legal sociologist who has conducted extensive research on lawyers and legal education in many regions of the world. In the latter half of the panel, this author, the dean of a law school in India, and a law professor from China discussed the experiences with legal education reform in Japan, India, and China, respectively.

One important message from this panel is that the legal profession and legal education truly are becoming globalized. Although most lawyers throughout the world continue to focus primarily on local and domestic matters, the number of lawyers specializing in international affairs is rising rapidly, and even domestic-focused lawyers increasingly find themselves handling matters involving international dimensions. To meet the increasingly internationalized nature of legal practice, legal education also is becoming much more internationalized. The US legal education model is exerting strong influence in many nations; but much independent innovation is occurring throughout the world with respect to the globalization of legal education.

### ***Panel 2: Cross-Professional Comparison***

The second panel sought lessons from other professions. Speakers from Harvard Medical School (HMS) and Harvard Business School, as well as an expert on management consulting from the UK and an expert on the advertising industry from Canada, offered perspectives from education for and discussed trends in those professions and industries.

Many attendees (this author included) found the remarks of Jules Dienstag, dean of medical education at HMS, especially valuable. Dienstag was appointed to that post in 2005 in order to oversee medical education reform at HMS; and under his leadership HMS has undertaken an impressive array of reforms. One of the major issues HMS sought to address through the reforms was

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<sup>1</sup> Videos of nearly all the proceedings, including the panels, keynote addresses, and presentations of the proposals made on the morning of the second day of the conference, are available through the web site of the Harvard Law School Program on the Legal Profession, at the following address:  
<[http://www.law.harvard.edu/programs/plp/pages/future\\_ed\\_conference.php](http://www.law.harvard.edu/programs/plp/pages/future_ed_conference.php)> (as of July, 2011).

the concern that students were losing a sense of what he labeled “professionalism”—a broad term encompassing such matters as empathy, concern for patients as people, and a sense of the medical profession’s responsibility to society. Through surveys of students, moreover, HMS found that the medical education process bore some of the blame; many students had a strong sense of empathy when they entered medical school but lost it somewhere along the way.

As Dienstag explained, HMS has undertaken many reforms designed to instill professionalism and to integrate scientific and technical skills with professionalism. On the first day of medical school, students interact with a simulated patient. The first two weeks of medical school feature a strong infusion of professionalism training, by an empathetic teacher. Throughout the first two years of medical school, HMS utilizes many problem-based tutorials, including simulated patient contact and empathetic elements. Despite these efforts, HMS found that one of the key hurdles to achieving a greater sense of professionalism lay in student residencies. Once students got away from medical school and entered their residency placements, they often experienced a different culture in which the overriding objective was to maintain high turnover and dispose of cases quickly. Accordingly, HMS has undertaken great efforts to instill attention to ethical elements, emotional elements and professionalism into the residency process, as well. HMS is now developing a “capstone” course—a course at the end of the medical school process, designed to tie together the students’ education and reinforce professionalism. (Incidentally, although it was not highlighted during this panel, HLS Dean Martha Minow, who prior to becoming dean chaired the committee that designed major recent reforms to the HLS curriculum, has said she found the medical school model especially valuable when considering legal education reform.<sup>2</sup>)

### ***Panel 3: The Regulators Weigh In***

The third panel focused on regulatory perspectives. The three panelists were the policy counsel to the Law Society of Upper Canada (the governing body for lawyers in Ontario), Sophia Sperdakos; the US Ambassador to the African Development Bank, Hon. Walter Jones; and the current president of the ABA, Stephen Zack.

This panel raised several important issues. In his remarks, Zack praised the accreditation standards in the US (which, he noted, are developed and implemented by an independent ABA section, the Section of Legal Education and Admissions to the Bar) as being perhaps the most advanced in the world, and in another section of his remarks described the high cost of US legal education as a major issue. In a question to the panelists, NYLS Dean Richard Matasar tied these two themes together. He commented that high accreditation standards often entail high costs and stifle experimentation, and asked how law schools can create new models that lower costs, given the strict standards. Zack pointed to the potential for technology to help lower costs. Sperdakos acknowledged that vested interests often influence the push for standards that raise costs, as an example noting that elite law schools favor standards placing weight on the importance of research and hence sometimes oppose accreditation for lower cost law schools focused primarily on lawyer training. At the same time, Sperdakos urged academics to recognize the importance of the imperatives of regulators (which she described as ensuring lawyers’ mastery of the essential competencies and basic skills, as well as ethics and professionalism) and the sincerity of regulators. The panel chair (Prof. Todd Rakoff of HLS) added that one also must recognize that some low cost practices, such as unsupervised externships, are simply bad education.

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<sup>2</sup> For an examination of the recent curricular reforms at HLS, see Yukio Yanagida and Daniel H. Foote, *Hābādo: takuetsu no himitsu—Hābādo LS no eichi ni manabu* [Harvard: Secrets to its Preeminence—Learning from the Wisdom of Harvard Law School], Chapter 3 (Yuhikaku, Tokyo: 2010).

As a second theme related to the issue of cost, the panel highlighted transparency. Zack indicated that he has asked the Young Lawyers Division of the ABA to consider a “Truth in Law School Education” proposal, which would require law schools to provide accurate information to all accepted applicants on matters such as the law school’s cost and bar passage rates and employment statistics for graduates. And the Section of Legal Education (which already requires law schools to provide bar passage statistics annually, which the ABA announces publicly) currently is examining what employment and salary questions to include on the annual questionnaire US law schools are required to complete, and how that information should be made public.

A third set of issues related to lawyer discipline and lawyer monitoring. In the Q&A session, an ABA official who has been heavily involved in lawyer discipline noted that the great majority of calls from consumers regarding their lawyers are not related to concerns over the lawyers’ legal knowledge, but involve matters such as communication and other basic skills and practical personal issues. Sperdakos seconded this view. She agreed that the problems are not in the area of substantive law. (“Everybody can do that,” she commented.) Rather, the key issues relate to matters such as communication, law office management, interpersonal skills, and ethics. One of the efforts being undertaken in Ontario is to spell out what the expectations are for lawyers in these various areas, to ensure students attain the skills they should have before entering practice. Another approach being undertaken in Ontario is spot audits of the books and records of law firms—not, Sperdakos emphasized, in the spirit of “We’re going to punish you,” but rather “We’re going to help you.” Since problems often result from poor law office management, she said, this approach has proven much more effective in avoiding problems in the first place.

Again in this panel, globalization emerged as an important issue. In his remarks, Zack commented that he has requested the ABA Board of Governors to consider whether a mandatory semester abroad requirement should be established for all US law school students as a condition for graduation. The ABA, he explained, surveys its members every two years to determine what issues they want the ABA to address. In the past, he said, international issues routinely ranked at the bottom, because most lawyers still have local practices; but due to such trends as technological advances, the rise in “virtual law firms,” and advances by multinational firms into regional markets, concern among ABA members over international issues has been steadily increasing. Zack, who was born in Cuba and is the first Hispanic president of the ABA, expressed his view that in today’s increasingly global world it is important for law students to meet and get to know students from different nations and different cultures. Thus, while Zack did not seem to expect the Board of Governors to endorse a mandatory semester abroad requirement anytime soon, he regards it as a serious proposal warranting real consideration. (Incidentally, as Zack observed in another session, the ABA currently is considering whether to authorize accreditation of law schools located outside the United States, in response to an application for ABA accreditation by a law school in China.)

#### ***Panel 4: Globalization, Lawyers and Emerging Economies—A Theoretical Synthesis***

Returning to the theme of globalization, this panel (with six speakers, three—including a Chinese scholar—from Wisconsin Law School, two Brazilian scholars, and David Wilkins of HLS) introduced a research project now getting underway, examining developments relating to the legal professions in emerging economies, with a particular focus on China, India, and Brazil. The project seeks to integrate perspectives from three fields—law and development, sociology of the legal profession, and global studies.

As David Trubek of Wisconsin and Wilkins noted in introducing the project, despite the many differences among the three nations being studied, there are many commonalities. Among the commonalities: All three nations are developmental states undergoing very rapid change. The changes include internal transformations, but there are also extensive global aspects. All three nations have embraced the global economy. They have undertaken self-conscious promotion of innovation and are seeking to move up the value-added chain. Accordingly, Trubek observed, all are open to some degree of international competition. There has been a surge of outward investment from all three. At the same time, all three have attracted extensive foreign investment, but all three are seeking to channel the foreign investment through state-led strategies. As another commonality, all three want to bend or change global norms.

In highlighting some of the implications of these developments for law and legal education, Wilkins noted that all three nations regard investing in the legal profession as an aspect of a broader legal strategy. They view the legal profession as having an important role to play in many of the transformations they are seeking to achieve. All three nations have witnessed a great rise in the market for legal services. And all three have experienced a substantial increase in the number of law schools, with the state playing an active role in the promotion of legal education and in legal education reform.

Other speakers on the panel then discussed some of the developments and research plans in more detail.

## DAY 2: PROPOSALS FOR REFORM

The focus of the second day was on concrete proposals for reform. As full as the first day was, the second day was even more intense.

### *Morning Session: Presentations of Proposals*

The morning session lasted four and a half hours, from 8 am till 12:30. Wilkins aptly characterized the session as the “speed dating” portion of the conference. The proponents of thirty separate reform proposals were allocated seven minutes each in which to introduce their proposals, explain the status and significance of the proposals, solicit support or collaborators, seek feedback or guidance, etc. The proposals were grouped into four major categories: Professional Development Proposals (9 proposals), Technology-Related Proposals (8), Structural/Regulatory Proposals (8), and Public Sphere Proposals (5). The proposals ranged from the broad (e.g., “Comprehensive Review of Distance Learning Potential” and “Cradle to Grave Professional Development”) to the relatively narrow (e.g., “ABA Accreditation Standards Should be Revised to Prohibit Merit Scholarships in Excess of 10% of a Law School’s Total Expenditures for Financial Aid”). And they ranged from proposals still in the relatively early stages to proposals already in or near the implementation stage (an example of the latter was a proposal for creation of a “Global Professional Master of Laws (GPLLM) Specializing in Business Law,” which already has started).

The proponents (in some cases through a single spokesperson, in others with several presenters) did a remarkable job of observing the seven-minute limit. Even so, by the end of the morning session this author was no longer able to keep track of all the proposals, despite taking fairly detailed notes. The full list of proposals, with links to the proposals themselves, may be found at the conference web site.<sup>3</sup> The following is a summary of what this author regards as some of the most notable proposals and themes.

### *Professional Development Proposals*

Seven of the nine professional development proposals relate in some way to integrating skills (of various sorts) into legal education and developing greater linkages between academia and the legal profession. These include an elaborate proposal for incorporating transactional skills into the law school curriculum (with mandatory courses in contract drafting and business basics and a wide range of electives in three broad categories); an even more elaborate proposal for structuring the first year of law school on a “law office” model and allocating most of the second and

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<sup>3</sup> Harvard Law School Program on the Legal Profession, FutureEd2: Making Global Lawyers for the 21st Century: <[http://www.law.harvard.edu/programs/plp/pages/future\\_ed\\_conference.php](http://www.law.harvard.edu/programs/plp/pages/future_ed_conference.php)> (accessed November 20, 2010).

third years to full-time field placements under the supervision of practitioners; a proposal for mandatory capstone practice simulation courses integrating doctrine, skills, and professionalism, to be required for all students in their final year of law school (with students able to choose from capstones in a wide range of fields, including Advanced Commercial Transactions, Intellectual Property, Domestic Relations, Criminal Advocacy, etc.); and the “Cradle to Grave Professional Development” proposal, which posits an educational continuum in which some elements are best mastered during law school, while others are best mastered thereafter.

Underlying all of the seven proposals for integrating skills into legal education is the view that members of the legal profession must possess a wide range of “competencies” beyond simple mastery of legal knowledge and doctrine, and several of those proposals incorporate or envision mechanisms to identify the essential competencies. The remaining two proposals focus squarely on the issue of identifying the needed competencies and measuring whether they have been achieved. Of those two, one is essentially a plea for legal academics to embrace outcomes assessment; to engage the practicing bar in the effort to identify the competencies needed by graduates, on a law school-specific basis (based on the view that the necessary competencies differ depending on location and on the career paths of the law school’s graduates); and to develop mechanisms to measure achievement of those competencies. The second proposal, presented by David Oppenheimer and Kristen Holmquist of University of California-Berkeley School of Law, is more developed. As the presenters explained, over approximately the past ten years, a professor of law and a professor of psychology at Berkeley (supported by funding from the Law School Admission Council) identified and refined, through hundreds of interviews and focus groups with lawyers, students, judges and clients, a list of 26 “Effectiveness Factors” related to competent lawyering; developed tests aimed at measuring these Effectiveness Factors; and administered the tests to over 1100 alumni of Berkeley and UC-Hastings (with peer and supervisor evaluations by other lawyers utilized in addition to the self-evaluations). (In addition to analysis and reasoning, the 26 Effectiveness Factors include, for example, such factors as advocacy, creativity, listening, negotiation, practical judgment, problem solving, and stress management.<sup>4</sup>) According to the presenters, the LSAT and undergraduate GPA are useful for predicting only two or three of the Effectiveness Factors, whereas the new tests are useful for predicting nearly all of them. They argue that the new assessment instruments should be utilized in the admissions process, and suggest that the assessment instruments should also be considered in planning curriculum and pedagogical methods, and for licensing exams.

### ***Technology-Related Proposals***

Of the eight technology-related proposals, three involve distance learning, two involve practice simulation, and the other three focus on different aspects of use of technology in legal education.

The broadest of the distance learning proposals is a proposal for a comprehensive review of distance learning potential. The presenters noted that distance learning is increasingly widespread in the US at the high school and college levels and in many fields other than law. Among the bar-

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<sup>4</sup> For the proposal, see David Oppenheimer & Kristen Holmquist, “Presentation Proposal: FutureEd 2,” available at: <[http://www.nyls.edu/user\\_files/1/3/4/30/58/1053/Holmquist&Oppenheimer.pdf](http://www.nyls.edu/user_files/1/3/4/30/58/1053/Holmquist&Oppenheimer.pdf)> (as of July, 2011). For a report on the underlying research, see Marjorie Maguire Shultz & Sheldon Zedeck, “Final Report—Identification, Development and Validation of Predictors for Successful Lawyering” (Jan. 30, 2009), available at: <<http://papers.ssrn.com/abstract=1353554>>.

riers to greater utilization in legal education, they observed, are accreditation concerns and faculty resistance. (A key concern, they noted, is how to get faculty involved.) The other two distance learning proposals are more concrete: a proposal for “blended courses” in core subjects, with some sessions taught through distance learning and other sessions taught in person; and an introduction to (and plea for greater utilization of) distance learning innovations, such as a distance learning project undertaken jointly by Brigham Young University, Duke, and Penn State, in which faculty members at all three teach collaboratively utilizing videoconference facilities.

The simulated practice proposals introduce some of the recent innovations in law-related simulations, which demonstrate considerable refinement in developing effective simulations (such as awarding points to motivate students and incorporating humor to make the learning exercise more fun and thereby “trick the students into learning more”). A proposal with many parallels to the simulated practice proposals is “Law Learning by Building Software Applications.” As its title suggests, in this approach (which, the presenters explained, already is being utilized at a number of US law schools), law students themselves take responsibility for developing software applications that embody legal knowledge (such as developing Web-based explanations of legal standards and legal forms with instructions for use, aimed at low-income individuals and self-represented litigants). As the proposal explains, “By constructing useful applications, students not only (1) learn about substance (doctrine, procedure) in a given area and (2) learn how technology can be used creatively to assist in legal work (and some of the policy and ethical aspects of doing so), but (3) produce tools that they or others can bring to bear to improve access to justice. They also gain credentials for current and future employment.”

### ***Structural/Regulatory Proposals***

The eight proposals in this category vary widely. Three proposals seek to address concerns over the cost of legal education, but in three different ways. Four involve concrete proposals for restructuring aspects of legal education, with each of the four focusing on a different aspect. The eighth is a proposal to develop outcomes measures relating to ethics and professionalism.

Turning first to the cost containment proposals, the broadest is a proposal to reduce the time required to complete undergraduate and law school education from 7 to 5 years, largely by condensing the time required to satisfy the requirements for admission to law school. A second proposal seeks to limit the amount of financial aid law schools may devote to merit scholarships. The third seeks greater transparency by law schools regarding cost and employment prospects for graduates. (The latter two proposals stem in part from a similar concern: that law schools—motivated by law school ranking measures utilized by *US News and World Report* that rate law schools on the “quality” of *incoming* students—induce students with high LSAT scores and high undergraduate GPAs to enter through promises of large merit scholarships, but withdraw many of those scholarships thereafter by imposing strict requirements for continuation.)

Of the proposals for restructuring certain aspects of legal education, the proposals this author found most interesting are a proposal to introduce an “experiential third year curriculum” and a “law school without walls” proposal. Under the former proposal, all students would spend their entire third year of law school in “experiential” settings serving in the role of lawyer, with one semester devoted to an elaborate simulation and the other semester to a supervised clinical experience. The “law schools without walls” proposal (which already has entered the implementation stage) seeks to link students across institutions and countries, and to engage the students in concrete efforts to address important problems. As explained in the proposal, “Students from [four US law schools], Peking University, and University College London will be paired up with

another student, an academic mentor, and a practitioner mentor for a series of virtual conversations. The goal for each student is to conduct research to identify a problem in legal practice or education. Then, over the course of the semester, the student will develop a Project of Worth (POW) that will offer creative solutions to the identified issue. Students will also have access to an entrepreneur advisory board and a subject expert board to ensure that the POWs are practical, realistic, and desired.”

### ***Public Sphere Proposals***

All five of the public sphere proposals seek to expand public interest activities by lawyers, but approach that goal in various ways. To this author, the most interesting of the proposals are the “legal bridges” project, which seeks to achieve the “delivery of law courses ... to minority and poor college students by law school faculty members, with law students serving as teaching assistants,” and the “public service venture fund,” which aims to create a venture fund designed to provide funding for fully-funded fellowships for students and recent graduates to enter public service positions, provide funding for students and recent graduates to create new non-profits to address pressing needs, and to encourage social entrepreneurship among students and graduates.

### ***Afternoon Session: Working Group Breakout Sessions***

In the afternoon of the second day, participants interested in the respective categories gathered in separate rooms to discuss those proposals, with the aim of refining the proposals and selecting one or more key themes or proposals especially worthy of further development. This author attended the breakout session for the professional development proposals.

The moderator for the session, William Lee (co-managing partner of a major law firm and former visiting professor at HLS), began by listing five major propositions: (1) “One size does not fit all.” In other words, law schools face different needs depending on their circumstances and locations, and it would be unwise to seek a single uniform standard. (2) Taking into account competencies not tested by the LSAT and undergraduate GPA could fundamentally remake law school admissions, and through that the legal profession. (3) Paying attention to the broad range of competencies needed by the legal profession might reveal the need to teach a different set of skills than at present, such as communication skills. (4) Consideration must take into account the international/global context. (5) It is vital to measure outcomes. Failure to do so might lead to “hallucination.”

In the discussion that followed, it quickly became apparent that most of the attendees regarded the identification, development and validation of “competencies” (or “predictors of successful lawyering”) as a central concern, with important implications for admissions, curriculum, and teaching methods, as well as for continuing legal education and other matters. It also quickly became apparent, however, that many attendees regarded as unduly narrow the traditional reliance on legal educators themselves and practicing lawyers and law firms as the arbiters of what skills lawyers need. Most attendees agreed that the views of other constituencies, especially clients, should be taken into account in identifying the needed competencies. As a few other attendees pointed out, though, there already have been a number of efforts to identify the necessary competencies for lawyers, and there are substantial similarities in the resulting lists.<sup>5</sup> In their

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<sup>5</sup> For links to eight such competency lists, see The Southern California Innovation Project, Background Materials, available at: <<http://weblaw.usc.edu/centers/scip/participants/materials.cfm>> (as of July, 2011).

view, rather than devoting so much work to “reinventing the wheel,” it would be better to spend time promoting teaching of the sort that fosters the necessary competencies that already have been identified.

The group left it to Lee to integrate the discussions and report back to the full gathering.

### ***Final Session: Working Group Moderator Reports***

In the final session, moderators from the four working groups reported back on the discussions in the breakout sessions and the conclusions reached.

For the Professional Development group, Lee first listed essentially the same five basic propositions with which he began the breakout session. He then offered a four-step concrete proposal: (1) Collect information from law school alumni, practicing lawyers (of all types), clients, other professions, etc., regarding what skills are needed by lawyers today, and what skills will be needed 25 years from now. (2) Collect the lists of competencies that have been developed to date, and analyze how those lists compare to the set of skills identified in Step 1. (3) Collect and analyze information regarding measures to assess outcomes. In doing so, consider how law school teaching fits with the information developed through Steps 1 and 2. (4) Undertake concrete measures to incorporate into legal education training in the necessary competencies. In doing so, experiment with various approaches. Do not be afraid of a trial and error process. Future activities are illuminated by failures, as well as successes.

The moderator for the Technology group identified the two key goals of (1) providing legal education to segments of society where there has been less access to legal services and less enrollment in law schools and (2) producing revenue (and/or reducing costs). As major challenges, the group identified concerns over privacy, infrastructure, and the need for models and tools. As a concrete proposal, the group recommended compiling a reliable repository for information regarding technology in legal education, with links to relevant sources. These efforts, the moderator explained, should be aimed at the following audiences: (1) Faculty who already have been using technology. (For them, the efforts would serve as a community building exercise.) (2) Colleagues who are not currently using technology. (For those colleagues, concrete case studies could serve as models that might educate them and inspire use of technology.) (3) Regulators (in the US and abroad). (The moderator reported that the ABA currently is reviewing a request for renewal of a variance from the accreditation standards by Penn State, which has been a leader in the use of distance learning, and indicated that the ABA may use this as an occasion to look more broadly at distance learning.) (4) Law school administrators.

The moderator for the Structural/Regulatory group described an animated, rather contentious discussion. Some attendees sought to focus primarily on projects to promote ethics and professionalism. Some sought to promote business collaborations. Some insisted on other goals. The group was unable to agree on a single clear set of action items. They did agree that there were many potential futures for legal education. With that in mind, they evidently agreed on the need to define clear steps to pursue one mission while recognizing many other possible models (but were unable to agree on what the primary mission should be).

Finally, the moderator for the Public Interest group explained that one of the main topics of discussion was clinics. While clinics are generally well established at US law schools, the group identified a number of challenges. Among these: Skills training is well represented in clinics, but

there is not enough time for moral reflection; and clinics are overwhelmingly domestic in focus, with almost no international focus. Another major issue identified by the group was the lack of resources for public interest efforts, notwithstanding the high level of attention accorded to public interest. Given the need for resources, coupled with the desire to train students in entrepreneurial skills, concrete action items from this group included two closely related proposals to foster public interest entrepreneurship. A final goal identified by the group was the desire to foster a sense of compassion in the general student body.

## FINAL REFLECTIONS

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Above all, the FutureEd2 conference provided a graphic demonstration of the great interest in and commitment to legal education reform in the US and around the world, and the tremendous energy being devoted to reform efforts. Looking back, US legal education has changed considerably since the 1960s. Approaches have differed substantially from law school to law school; but some of the major trends include greater attention to ethics and professionalism, greater incorporation of interdisciplinary perspectives, and, most notably, a vast expansion in so-called “skills training” and clinical education. Many of those developments were reflected in and further encouraged by the 1992 report on Legal Education and Professional Development compiled by the ABA Task Force on Law Schools and the Profession (the so-called MacCrate Report).<sup>6</sup>

As the FutureEd2 conference showed quite dramatically, today is a period of even greater activity in legal education reform. One of the goals being pursued by many law schools throughout the world is internationalization. Another of the major goals currently being pursued at law schools in the US and elsewhere is integration of training in legal skills and professionalism with mastery of doctrine. That goal was strongly endorsed by a 2007 report on legal education prepared under the auspices of the Carnegie Foundation for the Advancement of Teaching.<sup>7</sup> The Carnegie report and other recent studies along similar lines have gained great attention; and, as numerous of the proposals presented at FutureEd2 reflect, many US law schools have embarked on reforms aimed at integrating training in doctrine, skills, and professionalism.

One example of such an effort at integration of the various elements of legal education may be found at HLS itself, which over the past few years has introduced the most sweeping changes to its first year curriculum in over 120 years. Within the US and abroad there has been great interest in the HLS reforms, and those reforms are likely to influence other law schools. Yet HLS is hardly alone in pursuing reforms. Innovation and experimentation are occurring widely; many law schools are rethinking curriculum, teaching methods, and, in some cases, even the fundamental structure and goals of legal education. And many models are being developed and tested, with wide variations in approach from law school to law school.

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<sup>6</sup> American Bar Association, Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development: An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (American Bar Association, Chicago, IL: 1992).

<sup>7</sup> William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, and Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (Carnegie Foundation for the Advancement of Teaching, Stanford, CA: 2007).

Just as much of the innovation in clinical and legal skills training has taken place at non-elite law schools, so too has much of the innovation and experimentation in such areas as use of technology and integration of doctrine, skills, and professionalism. Indeed it is in part precisely because of their status that non-elite law schools often have been more proactive in undertaking innovation and experimentation. Not surprisingly, elite law schools often have a tendency to stick to the approaches that have proven successful in establishing their reputation in the past; in contrast, non-elite law schools often feel they have more to gain—and at the same time less to lose—by innovating. Non-elite law schools also recognize that few of their graduates are likely to have the luxury of on-the-job training at top law firms, so they typically feel a greater need to provide their graduates with the broad range of skills and competencies needed to hit the ground running. Furthermore, some non-elite law schools have undertaken major reforms out of a sense of mission to serve low-income communities in which they are located or from which many of their students come.

NYLS itself serves as a fine example of this pattern. NYLS is by no means an elite law school. If one were to go by the most widely used set of US law school rankings, the *US News and World Reports* rankings, NYLS falls into the “third tier,” meaning it did not rank in the top 100 law schools in the US as of 2010. Yet NYLS has been one of the schools at the forefront in rethinking legal education.

This leads to another striking aspect of the FutureEd conferences. The mentality of these conferences was most decidedly not “us v. them,” “elite schools v. ‘trade’ schools.” Rather, the conferences embody the philosophy of learning from each other, but with a recognition that “one size does not fit all.” That philosophy was clearly reflected in the list of participants; again using the *US News* rankings, the conference participants included faculty members from three of the top ten law schools, from four “fourth tier” law schools (ranked 140 or below), and from every tier in between.<sup>8</sup> Perhaps an even more dramatic reflection of this philosophy lies in the fact that the conferences were co-organized by HLS and NYLS, with two of the three conferences being held at NYLS. This may be the first time in history NYLS has shared top billing with HLS for a major event of this sort.

Finally, turning to the proposals themselves, the vast majority were developed in the US setting. Accordingly, several have a decidedly US feel. Yet nearly all the broad themes raised by the conference—including the importance of considering the global dimension, perspectives from other professions, and regulatory perspectives—resonate in Japan and, I would assume, many other nations, as well. Moreover, while the details of some proposals may be US-specific, nearly all the same underlying concerns can be found in Japan and elsewhere. These include, for example, concerns over identifying and measuring the skills needed for effective lawyering, the importance of integrating training in skills and professionalism with mastery of doctrine, technology, distance learning, the impact of accreditation standards, improving quality while maintaining or lowering costs, transparency, and fostering public interest activities. Thus, there is much Japan and other nations can learn from this conference and the broader worldwide debate over the future of legal education. At the same time, for several of the topics, including professional development, skills identification and assessment, technology, and distance learning, there is much Japan can and other nations can share.

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<sup>8</sup> By this author’s count, participants included faculty members from three of the top ten law schools, three law schools ranked between 11 and 20, 7 ranked between 21 and 50, 5 ranked between 51 and 100, 6 in the “third tier” (103-139), and 4 in the “fourth tier” (140 or below), as well as one unranked online law school.

## ABOUT THE AUTHOR

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Daniel H. Foote is Professor of Law at The University of Tokyo, where he holds the chair in Sociology of Law. He is a graduate of Harvard College (A.B. 1976) and Harvard Law School (J.D. 1981). Following graduation from law school, he served as law clerk for Chief Judge Edward T. Gignoux, U.S. District Court (District of Maine) and for Chief Justice Warren E. Burger, U.S. Supreme Court. Prior to moving to the University of Tokyo in 2000, he taught at the University of Washington School of Law for twelve years, specializing in Japanese law. In 1994-95, he was Visiting Professor of Japanese Legal Studies at Harvard Law School, and in 2009-10 he was the Paul I. Terasaki Chair in U.S.-Japan Relations at the University of California, Los Angeles.

Professor Foote has written widely on numerous aspects of Japanese and comparative law, with major research interests including criminal justice, labor and employment law, the role of the judiciary, the legal profession, dispute resolution, and legal education. Recent works include *Law in Japan: A Turning Point* (D.H. Foote ed.) (University of Washington Press, 2007) and books in Japanese on the judiciary, law and society, and dispute resolution. His most recent book, *Hābādo: Takuetsu no himitsu—Hābādo LS no eichi ni manabu* [Harvard: Secrets to Its Preeminence—Learning from the Wisdom of Harvard Law School] (Yuhikaku, 2010), co-authored in Japanese with Yukio Yanagida, explores the past and present of Harvard Law School, seeking lessons for Japanese legal education.

Over the past decade, Professor Foote has been heavily involved in Japan's legal education reform process, serving on numerous government advisory councils and university committees. He also was a member of the Roundtable Discussion Group on Criminal Justice Policy, convened by the Prosecutor General of Japan, and, since 2003, has served on the Citizens' Advisory Council to the Japan Federation of Bar Associations.