STUDIA IURIDICA

62

LEGAL EDUCATION AND LEGAL PROFESSION IN THE GLOBAL WORLD POLISH-AMERICAN PERSPECTIVES

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SIGILLUM UNIVERSITATIS VARSOVIENSIS

Studia Iuridica tom 62

LEGAL EDUCATION AND LEGAL PROFESSION IN THE GLOBAL WORLD POLISH-AMERICAN PERSPECTIVES

Materials from the Conference
at the Faculty of Law and Administration
at the University of Warsaw
commemorating the 15th anniversary
of the Center for American Law Studies,
June 16, 2014

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Wersją pierwotną czasopisma jest wersja drukowana.
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Skład i łamanie
Barbara Obrębska

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SPIS TREŚCI

INTRODUCTION

Dear Readers,

Almost 18 years ago, in 1998, the Center for American Law, was established at the Faculty of Law and Administration of the University of Warsaw. This decision of the Warsaw law faculty and the University of Florida Levin College of Law to create the Center was a consequence of the changes of the political and economic system in Poland which opened more extensive economic, cultural and academic exchanges.

Now over 1,700 students have graduated from the Center for American Law which has made an unprecedented footprint on the Polish legal profession. Many of our graduates hold high positions in law offices, public administration, and NGOs. Study in the Center gave law students the opportunity to learn about the common law system, one of the major world legal systems, but also broadened their horizons and view of legal problems. For many of them, the Center for American Law gave an opportunity to extend their education in American law through participating in the LL.M and J.D. programs at many prestigious universities in the US, including Harvard, Columbia, NYU, Emory, Indiana, and the University of Florida, which received the highest number of LL.M. and J.D. exchange students from the Center.

This issue of **Studia Iuridica** is designed to commemorate the 15th anniversary of the establishment of the Center in connection with the Conference organized at the Faculty of Law and Administration of the University of Warsaw with the participation of scholars from the University of Warsaw and the University of Florida and representatives of the legal profession from both countries. The Conference on *Legal Education and Legal Profession in the Global World – Polish-American Perspectives* took place on June 16, 2014, and consisted of four panels on the following subjects:

1. The Law School of the Future: How We Need to Change Legal Education to Adapt to the Rapidly Changing World.

2. Foreign Law and Legal Systems: To Teach or not to Teach.

3. The Changing Role of Lawyers in the Global World.

4. Comparing Polish and American Law Teaching Methods: Lessons from the Past for the Future.

In the four panels the panelists discussed issues concerning legal education and the legal profession. In spite of many differences in the legal systems and legal education, participants came to the conclusion that in both countries educators and lawyers face similar problems such as a smaller numbers of students applying to law schools, the necessity for restructuring legal education, the fact that technology advances faster than law and thus creates a new level of complexity for the legal profession, and the widening gap between legal education and the practice of law. They also discussed problems which are more characteristic for particular countries such as the lack of "market" and "competitive" forces influencing Polish legal education and the need for application those forces in Poland.

The discussion was also concerned with more philosophical problems in regard to what is nowadays the most important role of the law schools in education of future lawyers and which of three pillars – *logos, ethos* or *pathos* – law schools are primarily responsible for. Panelists also expressed the opinion that the role of law schools and lawyers today is not only to teach how to analyze and interpret the law, but also to teach how to accomplish certain missions by lawyers – to be good citizens, leaders, and defenders of the rule of law. Lawyers are in a privileged profession and their ability to learn law and how to interpret it also means that they have an obligation to use it to serve those who are less unfortunate and to provide "justice for all". As leaders, the obligation of lawyers is not only to know the law but also to have the ability to influence law and change it.

On the issue of foreign law, the panelists expressed their opinions that teaching foreign law is not only important because of globalization, but also it is the best way for lawyers to understand their own legal system. Knowing other legal systems, gives a better understanding of the legal issues and allows lawyers to understand better not only legal but also cultural differences. The rapid changes of the global world, caused by rapid communication, trade, and exchange, create more complex legal issues. In the context of the education of "new lawyers", comparative law courses and foreign law courses, such as the one offered by the Center for American Law, play an important role and fulfill the goals of legal education giving students broader perspectives for interpretation of their own law as well as knowledge of the foreign law system.

Globalization was also the topic of a broad discussion in the context of the role of law schools and the legal profession. In spite of the fact that many participants agreed that at present there is a need to educate global lawyers who have different skills necessary to adapt to different legal systems and the ability to deal with trans-border transactions, at the same time there is still a necessity for experts in national law. Participants discussed the role of lawyers in the modern world and

whether that role is actually different from what lawyers did in the past. Most expressed the opinion that because of the rapid changes the legal profession faces more challenges. Before, lawyers were lawyers, business people were taking care of business. Today more knowledge is required from lawyers and they need to have broader expertise besides the law, since they are more heavily involved in the decision making process. This change also causes many ethical issues. Additional challenges for lawyers come from new technologies, more complex cases, digitalization and internationalization of law. However, some panelists expressed the opinion that in some sense the role of a lawyer still is the same – the lawyer is someone who interprets the law, provides advice to his clients or represents them in court.

Participants also discussed different teaching methods which may be applied at law schools, for example the Socratic method of teaching which is a widely used method at American universities. They also talked about innovative methods of teaching through participation of law students in moot court competitions which gives them an opportunity to improve their skills in legal writing and research and prepares them for team work on one hand and the competitive world of the legal profession on another. One of the panelists presented also a unique class designed at the Warsaw law school called CSI Warsaw whose goal is to introduce students to the practical aspects and issues of criminal investigations, forensic techniques, and criminal procedure.

The transcripts from the dynamic panel discussions at the Conference are enriched by several articles written by US and Polish scholars on related topics. I am confident that the interesting panel discussions of legal experts from both countries during the Conference, as well as the articles published in this issue of **Studia Iuridica** will enrich the discussion of the role of legal education and the legal profession globalization and will be an important voice on that problem worldwide.

I wish you inspiring and rewarding reading.

Ewa Gmurzyńska
Center for American Law Studies

JoAnn Klein
University of Florida
Ewa Gmurzyńska
University of Warsaw

HISTORY OF THE CENTER FOR AMERICAN LAW STUDIES

The Center for American Law Studies at University of Warsaw emerged from the vision of faculty members of the University of Warsaw Faculty of Law and Administration and the Levin College of Law at the University of Florida.

Following twenty-five years of collaboration between the University of Florida and various educational and legal institutions in Poland, the Center for American Law Studies held its opening ceremonies on October 5, 1998, marking the first class of ninety-two students who were admitted to the program.

During the next eighteen years more than 1,600 students and lawyers graduated from our Program. The quality of our program is demonstrated in the fact that we now have several lawyers practicing in each of the largest law firms in Poland. Additionally, the Warsaw offices of major U.S. firms are strongly encouraging potential job applicants to complete our Center for American Law Studies before joining their firms. The Program is designed for Polish law students of the third, fourth and fifth year, Erasmus students, as well as law school graduates with particular interest in the American legal system.

The program offered by the Center is a one-year program. During each academic year the Center offers ten courses. The courses are specially designed and selected to give students the best understanding of the common law system and unique issues of the American legal system, and to introduce the legal issues and problems which may be the most common in the students' future profession. Usually courses include topics such as: Intro to American Law, Constitutional Law, Torts, Legal Writing, Contacts, Business Law, ADR, and Professional Responsibility. Also other courses are taught in the program such as: Tax Law, Securities, Criminal law and Procedure, Property, Family Law, Environmental law, Securities, Intellectual Property.

During a one academic year nine courses are taught for two weeks and one course is taught for one week, five times a week for 1.5 hours – together it is 180

teaching hours (142 full hours). The courses are taught entirely by US professors. During the course of study, students are introduced to traditional and innovative teaching methods applied at American universities to insure a dynamic professional program. All the study materials necessary for class preparation are provided by the Center. After successful completion of the one-year course of study, students are awarded a certificate of completion.

Our graduates also have pursued the public service route, with many becoming judges or prosecutors. Poland participants represent the largest number of participants in the University of Florida Levin College of Law's LL.M. in comparative law degree program for foreign lawyers. Program graduates also have attended LL.M. programs at other U.S. universities, and about one-half of the LL.M. graduates from Poland have taken and passed the New York bar examination. Many of the Center graduates also received J.D. degree at US universities. In short, the impact of the Center is felt throughout the world, and the success of the program is easily measurable.

A major contribution to the success of our program has been the sponsorship of Warsaw-based law firms who are interested in hiring lawyers trained in American law.

As we celebrate eighteen year of the program in 2015–16 here's a look back at over thirty-five year history of our activities in Poland:

Timeline of the Center for American Law Studies

Highlights include:

1968
Professors Julian Juergensmeyer and Andrzej Burzyński met during a summer program on comparative law held in England and discussed for the first time the possibility of a joint U.S.-Poland program.

1973
Andrzej Burzyński taught comparative law as a visiting professor at the University of Florida (UF) College of Law.

1973–1974
The UF College of Law, Trinity College of Cambridge University, England, and the Institute of Legal Sciences of the Polish Academy of Sciences in Warsaw jointly sponsored the Cambridge-Warsaw International Trade Law Program, the first opportunity for American law students to take law courses for credit in a European Socialist country.

1975–1976, 1978, 1982–1984
The Cambridge-Warsaw Summer Program continued. UF faculty who participated were Fletcher Baldwin, Winston Nagan, Walter Weyrauch, Roy Hunt and Scott VanAlstyne. Polish lecturers included Andrzej Burzyński, Adam Łopatka, Marek Zieliński, Ewa Łętowska, Janusz Łętowski, Stanisław Gebethner, Stanisław Sołtysiński, Michał Kulesza and Wojciech Sokolewicz.

1976
Dr. Adam Łopatka, Director of the Institute of State and Law of the Polish Academy of Sciences, visited the University of Florida and discussed the Cambridge-Warsaw International Trade Law program with Dean Richard Julin.

First conference co-sponsored by the UF College of Law's Center for Governmental Responsibility and the Institute of State and Law of the Polish Academy of Sciences was organized in Warsaw with the topic of "Parliamentary and Extra-Administrative Forms of Protection of Citizens' Rights". The conference was co-sponsored by the German Marshall Fund of the United States. Representing the UF College of Law at the Warsaw symposium were Professors Julian Juergensmeyer, Jon Mills and Fletcher Baldwin.

1980
The University of Florida granted the degree of doctor honoris causa to Adam Łopatka, formerly of the Polish Academy of Sciences, who initially supported early faculty exchanges between Warsaw and the UF College of Law.

1981
UF College of Law Professor Robert Moberly (now Dean Emeritus of the law school at the University of Arkansas) spent a sabbatical semester as a Visiting Lecturer at the Polish Academy of Sciences.

1986
A conference on "Current Legal Issues Impacting East-West Trade" was cosponsored by the UF College of Law and the Polish Chamber of Foreign Trade. Participants from UF were Dean Frank T. Read, Julian Juergensmeyer, Michael Gordon, Winston Nagan, Fletcher Baldwin and James Nicholas.

The first annual "Introduction to American Law" program, sponsored by the UF College of Law, was held. The program introduced lawyers from throughout the world (including many Polish lawyers) to the legal systems of the United States. The program was coordinated by Fletcher and Nancy Baldwin. Polish participants included Janusz Adamkowski, Piotr Szczerba, Wojciech Bialik, Maria Zawalonka, Ewa Gmurzyńska, Andrzej Wiśniewski, Joanna Tomaszek, Piotr Badura and Joanna Gomuła.

1988
The Second International Symposium on Current Legal Issues Impacting East-West Trade was held in Warsaw. UF participants included Julian Juergensmeyer, James Nicholas and Dean Jeff Lewis.

Pre-1990s
Faculty of the UF College of Law and University of Warsaw maintained an exchange program. Foreign enrichment professors who visited UF from Poland included Andrzej Burzyński, Józef Okolski, Jerzy Modrzejewski, Michał Kulesza, Stanisław Gebethner and Stanisław Sołtysiński.

1990
Polish attorney Ewa Gmurzyńska joined the staff of the Center for Governmental Responsibility (CGR) at the UF College of Law as a Staff Attorney.

The UF College of Law and Center for Governmental Responsibility sponsored the conference, "Law and International Business in Post-Socialist Poland", under partial sponsorship of the German Marshall Fund. Polish speakers included Stanisław Sołtysiński, Senator Jerzy Stępień, Michał Kulesza, Wojciech Sokolewicz and Andrzej Burzyński.

The Center for Governmental Responsibility conducted a study tour of Florida for a Polish delegation of elected officials, governmental officials and professionals, as part of the conference follow up. The delegation – which included a Polish national senator and three law professors – met with local government officials, U.S. Senator Bob Graham, authorities at two Florida ports, and Chamber of Commerce officials in two Florida cities.

Center for Governmental Responsibility Director Jon Mills served on a panel addressing "Legal Issues Related to Setting up a Joint Venture in Poland" as part of The Second Investors' Forum, held in Warsaw.

1991
The UF College of Law is designated "Sister Law School" to University of Warsaw's Faculty of Law and Administration under the American Bar Association's Central and Eastern European Law Initiative (CEELI) Program. Professors James Nicholas and Fletcher Baldwin visited Poland in the 1990s as part of the program.

The Center for Governmental Responsibility hosted three Polish officials and educators in an internship, sponsored by the Rockefeller Brothers Foundation, in cooperation with Rutgers University's Foundation in Support of Local Democracy in Poland Program. The program was coordinated by JoAnn Klein and Ewa Gmurzyńska. The interns were placed in the Florida Departments of Environ-

mental Regulation, Natural Resources, Community Affairs and Tourism, and experienced other professional opportunities to visit Florida's state parks, tourist attractions, universities and city and county governments. They were joined by three additional interns who had been assigned to placements in New Jersey through Rutgers. All six were hosted at CGR for a week to review and conclude their internships and prepare for application of their experiences to their various Polish cities and towns. Participants included elected local government officials, university professors and public employees. Among them was Marek Agopsowicz of Olsztyn Agricultural and Technical University, who subsequently would become a Polish coordinator of the local government training program. He first brought the attention of CGR to the needs of Northeastern Poland.

The Center for Governmental Responsibility, through the University of Florida Research Foundation, executed a contract with West Publishing Company, through its WESTLAW program, to translate Polish laws and treaties into an on-line, English language database. The database went on-line March 5, 1992.

The Center for Governmental Responsibility hosted two Polish local government officials for meetings with city and county officials. Their itinerary included meetings with city and county officials, and educational and cultural events.

May 1992
Ewa Gmurzyńska of the Center for Governmental Responsibility and UF College of Law Professor Julian Juergensmeyer visited Olsztyn, Poland, to continue meetings regarding establishing a cooperative agreement in the region.

1992

Center for Governmental Responsibility Director Jon Mills and UF College of Law Professor James Nicholas visited Olsztyn, Poland, to continue meetings regarding establishing a cooperative agreement in the region.

The Center for Governmental Responsibility signed an agreement of cooperation with Olsztyn Agricultural and Technical University, Olsztyn Sejmik, and the University of Central Florida (UCF) to develop a local government training program for the voivodships of Olsztyn, Elbląg and Suwałki.

1992–1993
The Center for Governmental Responsibility received a grant from the United States Information Agency, Office of Citizen Exchanges, for a "Northeastern Poland Local Government Training Program". Sixteen local government officials and staff were trained in internships and seminars in Florida. The program was coordinated by JoAnn Klein and Ewa Gmurzyńska of CGR.

1993

A University of Florida/University of Central Florida team visited Northeastern Poland and met with local government officials in eight cities and the voivodships of Olsztyn and Suwałki. Dr. Robert Denhardt of the Department of Public Administration led the UCF project team.

The Center for Governmental Responsibility signed a second agreement of cooperation with Olsztyn Agricultural and Technical University, Olsztyn Sejmik and the University of Central Florida to continue developing a local government training program, with a goal toward establishing a permanent training center for local governments in Northeastern Poland.

The "Florida/Poland Club" was organized, comprised of the first group of USIA-sponsored interns. The club began monthly meetings to offer support and plans for implementing training from the United States.

1994

The Center for Governmental Responsibility partnered with the Center for Training, Research and Education for Environmental Occupations (TREEO) at the University of Florida and the Technical University of Mining and Metallurgy (AGH) to offer the "Integrated Solid Waste Management Course for the Silesia Region of Poland", funded by the U.S. Agency for International Development. John Tucker of the Center for Governmental Responsibility participated as a lecturer. After CGR/TREEO faculty offered training in the Silesian region, funded by USAID, they traveled at their own expense to Olsztyn in Northeastern Poland to conduct training there.

A University of Florida/University of Central Florida team visited Northeastern Poland for meetings with local government officials in four cities, representing the voivodships of Olsztyn and Elbląg.

The Center for Governmental Responsibility signed a third agreement of cooperation with Olsztyn Agricultural and Technical University, Olsztyn Sejmik and UCF to continue developing the local government training center. This agreement included the Foundation in Support of Local Democracy from Olsztyn and consolidated local government training programs in the region.

The Center for Governmental Responsibility hosted Olsztyn Sejmik President Marek Żyliński for a visit to Florida to study local government operation and management and to meet with economic development officials in the region. The trip was funded by CGR and UCF.

1994–1995

The Center for Governmental Responsibility received a grant from USIA for the Northeastern Poland Local Government Center Program. Twelve local govern-

ment interns from three voivodships were trained in Florida. The program was coordinated by JoAnn Klein and Ewa Gmurzyńska of CGR.

1995

A Center for Governmental Responsibility/University of Central Florida team traveled to Northeastern Poland to offer training courses there for local government officials and staff.

The UF College of Law hosted a visiting faculty member from University of Warsaw through the Sister Law School Program.

The Center for Governmental Responsibility received approval from USIA for a no-cost extension to use remaining funds to bring three additional local government interns to Florida. The interns visited in November.

1996

A Florida team member visited Olsztyn to initiate a strategic planning program for the city.

Dr. Jerzy Modrzejewski, Vice Dean, University of Warsaw Faculty of Law and Administration, was a visiting professor at the UF College of Law and began discussions regarding establishment of an Center for American Law Studies at Warsaw.

1997

Ewa Gmurzyńska became the first Polish lawyer to graduate from the UF Levin College of Law's LL.M. Program in Comparative Law. As of 2008, twenty-seven more Polish attorneys have attended the LL.M. program in Florida.

The Center for Governmental Responsibility and UF College of Law faculty (Julian Juergensmeyer, JoAnn Klein, Ewa Gmurzyńska) conducted follow-up meetings in Warsaw regarding establishment of an Center for American Law Studies.

Professor Marek Wąsowicz, Vice President of University of Warsaw visits Gainesville to discuss possibility of further cooperation of UW and UF

1997

UF College of Law Dean Richard A. Matasar visited University of Warsaw. The invitation of Law Dean Józef Okolski, to conduct further meetings regarding establishment of an Center for American Law Studies.

1998

Ninety-two students were selected for admission to the first class at the new Center for American Law Studies.

Michał Kulesza, Secretary of State in the Polish Cabinet of Ministers and Minister of Administrative Reform and Professor at the University of Warsaw Faculty of Law and Administration, was a visiting professor of comparative law at the UF College of Law.

October 5, 1998
Opening ceremonies were held for the Center for American Law Studies, a collaborative venture between the UF Levin College of Law and the University of Warsaw Faculty of Law and Administration. Keynote speakers for the opening ceremonies were Steve Uhlfelder of Holland & Knight and U.S. Ambassador to Poland Daniel Fried. Leading University of Warsaw were Rector Włodzimierz Siwiński and Vice Rector Marek Wąsowicz, former Vice Dean of the law school.

October 12, 1998
Classes began for the Center for American Law Studies at University of Warsaw. Professor Liz Lear was the first professor, teaching Introduction of American Law. Seven additional courses were taught during the 1998–99 academic year.

Dean Józef Okolski of the University of Warsaw Faculty of Law and Administration was a visiting professor of comparative law at the UF College of Law.

The first graduation ceremony for the Center for American Law Studies in Warsaw was held. The speaker was Martha Barnett, then President of the American Bar Association.

1999 to Date
The Center for American Law Studies began collecting in 1999 an American Law Library now consisting of more than 300 volumes, named in memory of Andrzej Burzyński, a member of White & Case and long-time UF collaborator and visiting professor.

1999–2000
Five Polish students were enrolled in the University of Florida Levin College of Law's LL.M. program, a direct result of Centers program.

2000
The Center for American Law Studies organized the first Polish Moot Court team with University of Warsaw, which competed in the Jessup International Moot Court Competition in Washington, D.C. Three additional teams have competed since 2000, and have placed as high as 12th in the international competition.

Former Florida Supreme Court Justice Ben Overton was the speaker at the second graduation of the Center for American Law Studies.

Four UF law students – Michael Fackler, Stanley Galewski, Miguel Suau and David Migut – served as externs in Polish governmental agencies, including the Arbitration Court at the Polish Chamber of Commerce, Ministry of Justice, Regional Development Department at the Ministry of the Economy, and Department of Harmonization of Law.

2000–2001
Two Polish students were enrolled in the University of Florida's LL.M. program.

2001
Former Florida gubernatorial counsel Dexter Douglass was the speaker at the third graduation of the Center for American Law Studies.

2001–2002
One Polish student was enrolled in the University of Florida LL.M. program.

2002
Attorney Michael Papantonio of Levin, Papantonio & Thomas in Pensacola, Florida, was speaker at the fourth graduation of the Center for American Law Studies.

2002–2003
One Polish student was enrolled in the University of Florida LL.M. program.

2003–2004
Three UF Levin College of Law students – Ryan Cobbs, Joshua Clark and Bridie Buetell – attended exchange program at University of Warsaw

2003–2004
Three Polish students were enrolled in the University of Florida LL.M. program.

June 16, 2003
The fifth graduation ceremony of the Center for American Law Studies and a commemorative 30th anniversary of cooperation between UF and Polish institutions celebration scheduled. Florida attorney Steven Zack was keynote speaker. Presiding over the ceremonies were Dean and Professor Tadeusz Tomaszewski of University of Warsaw's Faculty of Law and Administration and Dean and Professor Jon Mills of the UF Levin College of Law.

2004
U.S. Deputy Chief of Mission Cameron Munter of the U.S. Embassy in Warsaw participate in sixth graduation.

2004–2005
Two Polish students were enrolled in the University of Florida LL.M. program.

2005
The seventh graduation ceremony of the Center for American Law Studies was held, and attorney John Upchurch of Daytona Beach, Florida, was the speaker.

2005–2006
Four Polish students were enrolled in the University of Florida LL.M. program.

October 7, 2005
Center for American Law Studies sponsors the Conference on "Mediation – New Method of Dispute Resolution in Civil Cases" at University of Warsaw with participation of Dean Jon Mills, Professor Don Peters, Justice Ben Overton, and mediator John Upchurch.

2005
Center for Dispute and Conflict Resolution established at University of Warsaw in cooperation with Center for American Law Studies and University of Warsaw Faculty of Law and Administration.

2006
The eighth graduation ceremony of the Center for American Law Studies was held, and U.S. Magistrate Judge Elizabeth A. Jenkins of Tampa was the speaker.

2006–2007
One Polish student in LL.M.

November, 2006
University of Warsaw Law School Dean Tadeusz Tomaszewski is a visitor at the University of Florida.

2007
The ninth graduation ceremony of the Center for American Law Studies was held, and attorney Andy Hall of Miami, a native of Poland, was the speaker and Dean Robert Jerry.

2007–2008
Three Polish students participate in LL.M.

2008
The tenth graduation ceremony of the Center for American Law Studies was held and commemorated with Polish-American Symposium on Current Legal Issues and Legal Education in a Global Society commemorating the 10th anniversary of the Center. Speakers from UF included: Dean Robert Jerry, Professor Henry Wihnyk, Professor Jon Mills, Professor Tom Hurst, Professor Don Peters, Professor Julian Juergensmeyer, attorney John Upchurch and attorney Andy Hall.

2009
The student exchange agreement is signed between two law schools.

2009–2010
Four Polish students are coming for the exchange program at UF.

2011
LL.M. scholarship for graduate of the Center for American law Studies is funded by the law firm of Slawomir Platta of New York, the former graduate of the Center.

September, 2011
Visit of Professor Katarzyna Chałasińska-Macukow, President of University of Warsaw and Professor Tadeusz Tomaszewski, Provost of UW at the University of Florida.

The reciprocal agreement on students exchange is signed between University of Warsaw and UF College of Liberal Arts Agreement.

2011–2012
Four Polish students are coming for the exchange program at UF.
One Polish student in LL.M.
Professor Tomasz Giaro, Vice Dean, is a visiting professor at UF.

2012
Frederic Levin visited Warsaw with several members of his family and met with the: Professor Małgorzata Gersdorf – Vice President of the University of Warsaw and Professor Tomasz Giaro – Vice Dean of Faculty of Law and Administration of the University of Warsaw.

2013
Andy Hall is a graduation speaker.
Maria Kenig-Witkowska is a visiting professor at UF.

2014–2015
One Polish student in LL.M.

Center received a one year grant from the U.S. Department of State to provide information about American law to Polish judges PAJRAP – Polish American Judicial Research Assistance Program. The program provides funds for UW and UF law students to be employed as legal research assistants, working under the supervision of UW and UF law faculty. The pilot program is based on cooperation between the Polish Ministry of Justice and both law schools to provide information about American law for Polish judges.

2015

June 16, Graduation ceremonies and Conference on Legal Education and Legal Profession in the Global World – Polish-American Perspectives. Conference commemorating the 15th anniversary of the Center for American Law Studies. Speakers from UF included: Dean Robert Jerry, Dean Emeritus Jon Mills, Professor Stuart Cohn, Professor Julian Juergenesmeyer.

Dean Jerry is awarded by the Provost of the University of Warsaw Professor Tadeusz Tomaszewski with the University of Warsaw medal which is the highest UW award.

UF Faculty and adjuncts who have taught at Center for American Law Studies

Mary Adkins
Mary Jane Angelo
Tom Ankersen
Yariv Brauner
Fletcher Baldwin
Stuart Cohn
Thomas Cotter
Phyllis Craig-Taylor
Jeffrey Davis
George Dawson
Larry DiMatteo
Alyson Flournoy
Mike Friel
Alison Gerencser
Claire Germain
Andrew Hall
Wayne Hanewicz
Jeffrey Harrison
Thomas Hurst
David Hudson
Jerry Israel
Joe Jackson
Julian Juergensmeyer
Tom Jaworski
Christine Klein
Shani King
Elizabeth Lear
Lyrissa Lidsky
Joseph Little
Larry Lokken
Tim McLendon
Martin McMahon
Jon Mills
Winston Nagan
Kenneth Nunn
Don Peters
Christopher Peterson
Leanne Pflaum
Steven Powell
Cathy Price
Teresa Rambo Read
Leonard Riskin
Tom Read
Betsy Ruff
Sharon Rush
Anne Rutledge
David Salivanchik
Michael Seigel
Christopher Slobogin
Gaylin Soponis
John Stinneford
Patricia Thompson
Mark Thurmon
Diane Thomlinson
John Upchurch
Henry Wihnyk
Steve Willis
Winton Williams
Jill Womble
Danaya Wright
Greg Yadley
Jennifer Zedalis

Faculty From other U.S. Universities
Marjorie Girth
Ray Lanier
Barry Sullivan
James Wadley
Michael Landau

Major information about the Center for American Law Studies, joint program of the Levin College of Law and the Faculty of Law and Administration of the University of Warsaw and related programs during 1998–2015

Participation of UF faculty in the Program

Since the 1998/99 through 2014/15 academic year 66 faculty members have taught at the Center for American Law Studies, including:

– 56 faculty from Levin College of Law;
– 5 adjuncts from Levin College of law;
– 5 law faculty members from other universities.

Speakers

The Center for American Law Studies has provided a venue for including UF law graduates and outstanding Florida attorneys as speakers in the annual graduation ceremonies of the Center for American Law Studies in Warsaw:
Steven J. Uhlfelder, former Chairman, Florida Board of Regions
Dexter Douglass, former Florida Gubernatorial Counsel
Michael Papantonio, Levin, Papantonio & Thomas
Ben Overton, former Florida Supreme Court Justice
Elizabeth A. Jenkins, U.S. Magistrate Judge
Martha Barnett, former President, American Bar Association, Holland & Knight
John Upchurch, Upchurch Watson White & Max
Steve Zack, former President, American Bar Association
Andy Hall, Hall, Lamb & Hall

UF and UW Students

The academic year 2015/16 is the 18th year of the Center. As of the end of the 2014/15 academic year, approximately 1,600 Polish law students have graduated from the Center.
During that time four exchange students from UF Levin College of Law participated in a one semester exchange program taught in English for foreign law students at the University of Warsaw. Two UF exchange students received internships in prestigious law firms in Warsaw. Four interns from the Levin College of Law participated in summer internships in Polish Institutions. Twelve students from the University of Warsaw have taken part in a one semester exchange program at the Levin College of Law.

LL.M program

As a result of the Center for American Law Studies, Poland law students comprise one of the largest groups of UF law LL.M students from one country. To date, 27 Polish students have graduated from LL.M in Comparative Law Program and 2 Polish students have graduated from LL.M in Tax Law at the Levin College of Law since the Center was opened in 1998.

Faculty Exchange

The following faculty from the University of Warsaw law school have taught at UF law students through a faculty exchange since 1996: Józef Okolski, Jerzy Modrzejewski, Michał Kulesza, Wojciech Kocot, Maria Kenig-Witkowska, and Tomasz Giaro.

Conferences

The Center for American Law Studies organized and co-sponsored the following conferences:

2005 – "Mediation – New Method of Dispute Resolution in Civil Cases". It was attended by more than 200 Polish judges and attorneys, with the participation of Dean Jon Mills, Professor Don Peters, Justice Ben Overton, and attorney John Upchurch

2008 – "Polish-American Symposium on Current Legal Issues and Legal Education in a Global Society commemorating the 10th anniversary of the Center". Speakers from UF included: Dean Robert Jerry, Professor Henry Wihnyk, Dean Emeritus Jon Mills, attorney John Upchurch, Professor Tom Hurst, Professor Don Peters, and attorney Andy Hall.

2014 – "Legal Education and Legal Profession in the Global World – Polish-American Perspective". Conference commemorating the 15th anniversary of the Center for American Law Studies. Speakers from UF included: Dean Robert Jerry, Dean Emeritus Jon Mills, and Professor Stuart Cohn.

Sponsors

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Conference "Legal Education and Legal Profession in the Global World Polish-American Perspectives"

PROGRAM OF THE CONFERENCE "LEGAL EDUCATION AND LEGAL PROFESSION IN THE GLOBAL WORLD – POLISH-AMERICAN PERSPECTIVES"

Commemorating the 15th anniversary of the Center for American Law Studies
a joint program of the University of Florida Levin College of Law
and the University of Warsaw, Faculty of Law and Administration
June 16, 2014
Aula A.3, Collegium Iuridicum II, Lipowa 4, Warsaw

8:30 Registration. Coffee
9:00 Opening of the Conference
Professor Krzysztof Rączka, Dean, Faculty of Law and Administration UW; Professor Tadeusz Tomaszewski, Vice-Rector, University of Warsaw; Professor Robert Jerry, Dean, Levin College of Law, UF

PANEL I
9:15 The Law School of the Future: How We Need to Change-Legal Education to be Adapted to Rapidly Changing World
Moderator: Professor Łukasz Pisarczyk, UW; Panelists: Professor Robert Jerry, Dean, Levin College of Law, UF; Professor Tomasz Giaro, Vice Dean, UW; Tomasz Wardyński, esq. Wardyński i Wspólnicy; Professor Hubert Izdebski, UW
10:45 Coffee break

PANEL II
11:00 Foreign Law and Legal Systems: To Teach or not to Teach
Moderator: Professor Julian Juergensmeyer, GSU; Panelists: Professor Maria Kenig-Witkowska, UW; Professor Stuart Cohn, UF; dr Ewa Gmurzyńska, UW/UF; Roman Rewald, esq., Weil; Witold Kowalczyk, student UW
12:45 Lunch for participants

PANEL III
13:30 The Changing Role of Lawyers in the Global World
Moderator: Professor Wojciech Kocot, UW; Panelists: Professor Jon Mills, UF; Agnieszka Stefanowicz-Barańska, esq., Dentons; Witold Daniłowicz, esq, DJW Legal; Professor Marek Wierzbowski, UW
15:00 Coffee break

PANEL IV

15:15 Comparing Polish and American Law Teaching Methods: Lessons from the Past for the Future

Moderator: Professor Stuart Cohn, UF; Panelists: Professor Adam Bosiacki, UW; Professor Tomasz Stawecki, UW; dr Rafał Morek, UW; dr Kacper Gradoń, UW

16:45 Conclusion of the Conference. Presentation of Certificates to 2013/14 graduates of the Center for American Law Studies.

BIO SKETCHES OF THE PANELISTS

Adam Bosiacki is a professor at the Faculty of Law and Administration at the University of Warsaw, Director of the Institute of Sciences on State and Law and Head of the Department of Political and Legal Doctrines at the Faculty. Bosiacki attended longer scholarships in law schools in Germany (University of Tübingen, University of Trier, Max Planck Institute in Frankfurt am Main), at University of Amsterdam, London School of Economics and Political Science, Harvard School of Law (visiting scholar), Columbia University (NY), or Hoover Institution, Stanford, California. His academic activity concentrates on comparative law (mainly public), law in Central and Eastern Europe, issues of law and history of Russia and the USSR, development of contemporary public administration, the history of science. Author and editor of several monographs and more than a hundred academic articles (published often also abroad, eg., in Russia or in Stanford University).

Stuart Cohn is the John and Mary Lou Dasburg Professor of Law at the Levin College of Law, University of Florida. His fields of specialty are company law and securities regulation, which are areas in which he practiced law as a partner in a Chicago law firm before entering the academic world. From 2001 to 2013 Professor Cohn was Associate Dean for International Studies. He is also a Senior Fellow with the United Nations Institute for Training and Research and conducts regional and online workshops throughout the world with regard to capital market development. He is the author of two treatises, one on company law and the other on securities regulation, and numerous articles, including two articles published in the University of Warsaw Law Journal. Professor Cohn has taught in the Certificate in American Law Program in Warsaw every year since its creation and has taught in numerous other countries as a visiting professor, most recently this Spring at the University of Frankfurt.

Witold Daniłowicz graduated with distinctions the Law and Administration Faculty of the Wrocław University (1977). A graduate of a postgraduate studies on international law in the Institute of Social Studies in Hague (1982). He has also graduated the law studies at the Louisiana State University Law Center, getting the degrees of Juris Doctor (J.D.) and Master of Laws (LL.M.) (1985). A partner and a legal adviser at Daniłowicz Jurcewicz Biedecki i Wspólnicy. Since 1985 he worked for the Vinson & Elkins LLP law firm in Houston, in Texas USA, and later on became the firm's partner. Since 1993 he was an associate in the international law firm White & Case LLP and a founder and a long-term partner of its branch in Warsaw. Since 2012 he has been a managing partner in the Daniłowicz Jurcewicz i Wspólnicy law firm. He is an expert on mergers and acquisitions, international commercial and financial transactions. He also specializes in invest-

ment projects. His experience includes, among others, working on investment projects in Poland, USA, Romania, Zambia, Siria, Kongo, Lithuania, Belarus and the Ukraine. At the Chambers Global 2012 and Chambers Europe 2012 rankings he comes second among Polish attorneys working on the company law and mergers and acquisitions. He was also recommended in the mergers and acquisitions category by the Legal 500 EMEA 2012, PLC Which Lawyer? and IFLR 1000 2010. He is a legal adviser and a member of the State Bar Association in the states of Louisiana and Texas in the United States of America.

Tomasz Giaro is Professor of Roman Law and European Legal History at the Law Faculty, University of Warsaw. In 1984–1985 he was fellow of the Humboldt Foundation in Bonn, Germany, and in 1990–2006 researcher at the Max Planck Institute of European Legal History in Frankfurt am Main, Germany. In 1994–1995 he was contract professor at the Law Faculty in Frankfurt am Main, chair of Gerhard Dilcher, in 1996 contract professor at the Law Faculty of the Free University of Berlin, chair of Uwe Wesel, and in 1999–2000 he held the appointment to teach „Roman Legal History" at the University of Giessen. After his re-turn to Poland in 2006–2008 he was visiting professor at the Law Faculty of Katowice, Poland, and in 2010 at the University of Florida Levin College of Law, Gainesville, USA. Since 2008 he is Deputy Dean for Legal Research and Inter-national Cooperation at the Warsaw Law Faculty and since 2009 Head of the Department of European Legal Tradition. In 2011 he won the Prize of the Foundation for Polish Science (called "Polish Nobel Prize") in the field of humanities and social sciences. Since 2013 he has been Editor in chief of the legal journal of the Warsaw Law Faculty „Studia Iuridica".

Ewa Gmurzyńska, Ph.D., associate Professor at Warsaw University Faculty of Law and Administration. Staff attorney at the Center for Governmental Responsibility at University of Florida Levin College of Law. Received J.D and Ph.D. degree at Warsaw University Law School and master degree (LL.M) at University of Florida Levin College of Law. Since 1999 director of the Center for American Studies. She has been trained as mediator in state of Florida, Georgia and Poland. She is a mediator in civil and commercial disputes and is involved in many mediation related initiatives in Poland including: presidency of the Civil Council for Alternative Dispute and Conflict Resolution at the Ministry of Justice, co-founder and member of the board of directors of the Center for Dispute and Conflict Resolution, coordinator of the Mediation Clinic at the Faculty of Law and Administration of Warsaw University. Author of books: Mediation in American Legal System (1997) and co-editor in chief and co-author of: Theory and Practice of Mediation (1st ed. 2009, 2nd ed. 2014), author of: Lawyers in Alternative Dispute Resolutions, 2014 and many articles and chapters related to mediation and negotiation topic.

Kacper Gradoń is an Associate Professor at the Faculty of Law, University of Warsaw and the Director of the Centre for Forensic Sciences (University of Warsaw). He is also a Visiting Professor at UCL Department of Security and Crime Science as well as the University College London Honorary Senior Research Associate. Both his Masters (2000) and Doctoral (2008, *Magna cum Laude*) dissertations address the issues of multiple homicide, crime prevention, criminal analysis and offender profiling. He has over 13 years of experience in research projects and teaching related to Crime Prevention, Criminology and Forensic Science that he gained in Poland, United Kingdom, Canada and United States. He has spoken at over 80 academic and Police conferences across Europe and North America. Dr. Gradoń worked for 3 years at the General Headquarters of the Polish National Police, where he participated in the creation of the Criminal Analysis and Criminal Intelligence Units. He also completed the London Metropolitan Police Specialist Operations Training of Hostage Negotiations. Dr. Gradoń is a recipient of three research scholarships funded by the Canadian International Development Agency and he was awarded three major research grants presented by the Polish Ministry of Science. His Ph.D. Thesis received the Polish Forensic Association "Scholarship for Young Experts in Forensics for Outstanding Achievements in Forensic Studies". He was also awarded the "Best Young Professor" scholarship by the Polish "Modern University" Programme. In October 2011 he has received the most prestigious award of the Polish Ministry of Science: „The Scholarship for Outstanding Academics". He is the creator and original leader of the first hands-on crime scene analysis workshops in Poland, called "CSI: Warsaw". Dr. Gradoń has previously lectured at University College London, University of Colorado at Boulder, University of Southern California, John Jay College of Criminal Justice – CUNY, University of Greenwich and Memorial University of Newfoundland and has co-operated closely with other institutions such as University of Harvard Law School: Berkman Center for the Internet & Society and Stanford University. He is an author of two academic books and several book chapters and peer-reviewed articles.

Hubert Izdebski ordinary professor at the University of Warsaw, Faculty of Law and Administration (since 1996, at the Faculty since 1969), head of the Chair of History of Political and Legal Thought (since 1988), Director of the Institute of Sciences on State and Law (since 1993); advocate, legal counsel (I&Z Attorneys-at-Law, Warsaw, established in 1989); secretary of the National Commission for Academic Degrees and Titles (since 2011). Specialized in questions of public governance, public management, and public administration; common aspects of private and administrative law, in particular relating to business activities; comparative law. Lectured in numerous universities in France, Switzerland, U.K. and USA; was/has been a lecturer of the National School of Public Administration, Warsaw (1991–1997, and since 2008) and of Collegium Civitas, Warsaw (since

2003). Since 1989 has been an author or co-author of numerous legislative drafts as well as an expert of the Government and of numerous Parliamentary committees. He is also an expert in Public Governance of OECD. Publications include 22 books, in that number Introduction to Public Administration and Administrative Law (in English, 2006, in Russian, 2008); Foundations of Contemporary States (2008); Public Administration – General Questions (with Professor Michał Kulesza, 3rd ed. 2004); Territorial Self-Government. Bases of Organization and Functioning (8 eds., 8th as the 3rd one, 2013); History of Public Administration (5th ed. 2001); History of Political and Legal Thought (5th ed. 2013).

Robert H. Jerry II is Dean and Levin, Mabie and Levin Professor of Law at the Fredric G. Levin College of Law at the University of Florida. Following graduation from the University of Michigan Law School in 1977, a clerkship with Judge George E. MacKinnon of the United States Court of Appeals for the District of Columbia Circuit, and three years of practice with an Indianapolis law firm, he joined the faculty at the University of Kansas School of Law in 1981. He was promoted to Professor in 1985 and served as Dean of the KU School of Law from 1989 to 1994. In 1994, he became the first permanent holder of the Herbert Herff Chair of Excellence at the Cecil C. Humphreys School of Law at the University of Memphis. In 1998, he became the Floyd R. Gibson Missouri Endowed Professor at the University of Missouri-Columbia School of Law, a position he held until accepting the deanship at the Levin College of Law in 2003. He is the author of numerous books (including *Understanding Insurance Law*, published by Lexis, now in its third edition), book chapters, articles, and essays in the field of insurance law, and is a frequent lecturer on insurance topics. He is a past chair of the Insurance Law Section of the Association of American Law Schools, a member of the American Law Institute, and a Fellow of the American Bar Foundation. His service activities include chairing the Faculty Executive Committee at the University of Kansas in 1988–1989, election to the Faculty Executive Committee at the University of Missouri in 2000–2001, and numerous committees and boards at every university where he has been a faculty member. He has also been active in numerous community service organizations.

His honors and awards include the Distinguished Faculty Achievement Award at the Missouri Law School in 2001, the Distinguished Alumni Award from Indiana State University, his undergraduate alma mater, in 1992, and the KU Chancellor's Award for University Service at KU in 1989.

Julian Conrad Juergensmeyer is Professor and Ben F. Johnson, Jr., Chair in Law at Georgia State University where he also serves as Director of the Center for the Comparative Study of Metropolitan Growth and Adviser to the LL.M Program for Foreign Lawyers. He is Professor of Law Emeritus at the University of Florida where he taught for 30 years and served as Director of the LL.M in Comparative Law Program. His teaching and research specialty is Land Use Planning

and Development Regulation Law and he has published more than 100 books and articles on that subject. The 2014–2015 academic year will be his 50th year of teaching law.

Maria Magdalena Kenig-Witkowska is a professor, Deputy Director of International Law Institute at the Faculty of Law and Administration, Head of Chair of European Union Law; University of Warsaw; member of Scientific Council of the University of Warsaw Center for Environmental Research; member of International Law Association; member of European Law Association; international and national expert on environmental issues (consultant to UNEP, ILO, ECA, and governmental institutions). Author of numerous publications on international and European environmental law. The Judge Manfred Lachs Prize winner, 2012 the Minister of Science and Higher Education Award for outstanding scientific achievements in environmental law. Visiting professor at European, North American, African and South-East Asian Universities. Major fields of interest: international environmental law; European environmental law.

Wojciech Kocot is a professor at University of Warsaw. He graduated from the Faculty of Law and Administration of University of Warsaw in 1992. He defended his doctoral thesis in 1997 and habilitation in 2005 on "Influence of internet on the law of contracts". He was a scholar at University of Edinburgh faculty of law and doctorate student at University of Cambridge, UK. He is a member of legal counselors bar. Mr. Kocot is an arbiter at the arbitration court at the Polish Confederation Lewiatan; arbiter at the Arbitration and Mediation Center of World Intellectual Property Organization (WIPO); arbiter at the arbitration Court of the Polish Bank Association Mr. Kocot is an expert of the Codification Commission of the Civil Law at the Ministry of Justice and partner at Barylski, Olszewski, Brzozowski.

Witold Kowalczyk is a cum laude graduate of the Faculty of Law and Administration of the University of Warsaw as well as a Master 1 – international law (Maitrise – mention droit international) graduate of the University of Paris II Panthéon-Assas. He is a member of the British Institute of International and Comparative Law and of the ICC's Young Arbitrators Forum. Witold Kowalczyk is the co-founder and Editor-in-Chief of the University of Warsaw Journal of Comparative Law. His academic interests focus on conflicts of law, international commercial arbitration, foreign investment and comparative law. Witold Kowalczyk has interned on previous occasions with law firms in Poland and abroad, including Linklaters LLP in Luxembourg and Hall, Lamb & Hall P.A. in Miami, U.S. He is also the author of various publications on such topics as international investment arbitration, French private international law or jurisdiction clauses with the EU Regulations' framework. Starting in September 2014, he will be an LL.M. candidate at the University of Chicago.

Jon Mills is Dean Emeritus, Professor of Law, and Director of Center for Governmental Responsibility at the University of Florida Fredric G. Levin College of Law. He was Dean of the Levin College of Law from 1999 to 2003. Mr. Mills served in the Florida Legislature for ten years and was Speaker of the House in 1987–1988. His major policy initiatives include water quality and environmental bills, child abuse prevention, high tech development, and the constitutional privacy protections. He has appeared in courts nationwide on issues including voting rights and various constitutional issues. He acted as a Special Assistant State Attorney in the Rolling Murder Case, and an attorney in the Versace Murder Case, and the Dale Earnhardt case representing the privacy right of victims and victims' families. Most recently he represented the family of SeaWorld trainer Dawn Brancheau in efforts to block release of video recordings of the Feb. 24, 2010 tragedy. He has been listed in *Florida Trend Magazine's "Legal Elite"* as one of the best lawyers in Florida chosen by members of the Bar. In addition to teaching at the College of Law, he has taught and lectured in Constitutional Law, International Trade and Environment in Costa Rica, Brazil, the University of Warsaw and Cambridge University. He has authored books, law review articles and reports on environmental issues, voting rights, ethics in government, and constitutional law, the most recent of which, "Privacy: the Lost Right", was published by Oxford Univ. Press.

Rafał Morek is an assistant professor at the Faculty of Law and Administration, University of Warsaw and a co-director of its Center for Amicable Dispute Resolution. He teaches courses in civil and commercial law, as well as dispute resolution. Since 2008 he has been coaching students taking part in international competitions, such as VIS or FDI. He has been a visiting lecturer at the University of Ottawa, Canada (winter semester 2010) and the Mohylanian Academy in Kyiv, Ukraine, (summer school 2013). He has been a member of the Experts' Board at the Minister of Economy for system solutions regarding amicable methods of settlement of business disputes (since 2013), and a member of the task-force of the Codification Commission of the of Civil Law at the Minister of Justice (2012–2013) working on changes to mediation laws. Being also an advocate (admitted to bar in Poland), Dr. Morek practices law with K&L Gates LLP as an of counsel. He has extensive experience in dispute resolution representing clients before both the state courts and arbitral tribunals. In the role of an arbitrator, he conducted over 35 proceedings in accordance with the arbitration rules of ICC, UNCITRAL, Polish Chamber of Commerce, Lewiatan Court of Arbitration. Dr. Morek has authored several publications on dispute resolution and private law, including most recent "Mediation: Theory and Practice" co-edited with Dr. Ewa Gmurzyńska (Wolters Kluwer 2014).

Łukasz Pisarczyk is a professor at the Warsaw University. He is Head of Doctoral Studies at the Faculty of Law and Head of Postgraduate Studies (Labour

Law). He is a graduate of Faculty of Law and Administration of the University of Warsaw; received his doctoral degree in 2001, and habilitation in 2009 (Risk of Employer). Mr. Pisarczyk specialises in field of labour law and conducts research related to the Polish and European labour law. Mr. Pisarczyk is General Secretary of the Polish Section of the International Society for Labour and Social Security Law and author of many books and articles on labour, e.g., *Board of Directors Member's Employment* ([in:] *Companies, Transfer of Undertaking, Risk of the Employer, Collective Disputes*), *Probleme der Umsetzung des europäischen Arbeitsrechts* ([in:] *Polen, Europäische Zeitschrift für Arbeitsrecht, Europäische Zeitschrift für Arbeitsrecht*), *Fixed-term Employment Contracts in Poland – in Search of Equilibrium between Flexibility and Protection* ([in:] *Labour Regulation in the 21st Century: In Search of Flexibility and Security*, Cambridge Scholar Publishing, 2012).

Roman Rewald is a Polish and US-qualified attorney admitted to practice law in the United States (State of Michigan) and listed as a foreign lawyer of the Polish Advocacy Bar in Warsaw, Poland. He is a partner of Weil Gotshal & Manges at the Warsaw office. The areas of his expertise include various aspects of commercial entities, including mergers & acquisitions, investment financing and infrastructure projects. Mr. Rewald is the Chairman of the Mediation Centre of the "Lewiatan" Confederation. He holds an International Commercial Mediation Training Certificate. He is also an arbitrator at the Polish Chamber of Commerce Arbitration Court and Arbitration Court of "Lewiatan" Confederation. Roman Rewald is Past Chairman and Member of the Board of Directors of the American Chamber of Commerce in Poland.

Krzysztof Rączka is Dean and professor at the Faculty of Law and Administration, University of Warsaw since 2008. Earlier, from 2005 he served as a vice-dean for students affairs. He is a highly respected in the field of labor law, both as an expert and researcher. His research covers individual and collective labor law particularly issues of working time and civil service. He was a negotiator in many collective bargains disputes. Together with co-authors M. Gersdorf and M. Raczkowski he is an author of the Commentary to the Labour Code. He is also an author of more than 200 publications.

Tomasz Stawecki is a professor at the Faculty of Law and Administration, University of Warsaw. Graduated in 1980. Since 2007 the head of the Chair of Legal Philosophy and Political Science. Teaching in Polish and in English: introduction to jurisprudence, legal theory and philosophy of law. Author or co-author of more than 90 publications (books and articles), including "Introduction to jurisprudence" [in Polish: *Wstęp do prawoznawstwa*], Warsaw 1992–2013 (nine editions). Member of the International Association for Legal and Social Philosophy (IVR) since 1994, in 2011 elected to be the member of the International Executive Committee.

Supervisor of four doctoral theses defended. Member of reviewing boards of respected legal journals in Poland: "Państwo i Prawo" [State & Law], "Przegląd Sejmowy" [Parliamentary Review] and "Archive for Legal and Social Philosophy". Active in legislation, including work with the Commission for Civil Law Reform. Of counsel in foreign law firms active in Poland: Dickinson, Wright, Moon, Van Dusen & Freeman (1991–1996); Baker & McKenzie (1996–2007); Squire Sanders (since 2007). Several times listed in the "Chambers Global The World's Leading Lawyers".

Agnieszka Stefanowicz-Barańska is a Partner at Dentons, Head of the Competition, Regulatory and Trade Group. For nearly 15 years, she has advised undertakings in, among others, the life sciences, motor vehicles, chemicals, consumer goods, food and beverages, telecommunications, heavy industry, power and utilities, banking and insurance sectors on merger control proceedings, anti-competitive agreements and abuses of a dominant position, as well as state aid and unfair competition law.

Recommended inter alia in: "Who's Who Legal 2014" (Law Business Research), "Chambers Europe 2014", "Guide to the World's Leading Women in Business Law 2012", "PLC Cross-border Competition Handbook 2012/2013", "The Legal 500 Europe Middle East & Africa 2014", "GCR 100" (Global Competition Review, 2014). She graduated from King's College, University of London (Postgraduate Diploma in EC Competition Law, 1999 and Postgraduate Diploma in EC Law, 2003, with distinction). She was admitted as a legal adviser in Poland in 1997. Since 2003 chairperson of the Polish Competition Law Association.

Tadeusz Tomaszewski is a professor of law; since 2008 Vice-Rector of the University of Warsaw for Education and Human Resources. He received his doctoral degree from philosophy of law in 1983 and habilitation in criminalistics in 1993. Since 1996 he is a head chair of criminalistics department at the Faculty of Law and Administration. For seven years (2001–2008) he was a dean of the Faculty of Law and Administration at the University of Warsaw. Since 2012 he is a member of the Senate of UW and play many other functions in the University administration such as: member of the Legal-Statutory Commission of the Senate of UW, Vice-President of the Senate Disciplinary Commission and Disciplinary officer at the University, as well as Disciplinary Commission Representative and a member of Disciplinary Commission of the General Council of Higher Education

Tomasz Wardyński is a founding partner of Wardyński & Partners, an independent Polish law firm operating since 1988. He specializes in arbitration and is also an expert in civil, commercial and competition law with widely recognized experience in negotiations on large public projects. He was one of the first lawyers in Poland to develop specializations in EU and competition law. Mr Wardyński is a graduate of the Law Faculty at the University of Warsaw and the College of

Europe, Bruges. He was a visiting scholar at the American Bar Foundation (1985). From 1991 to 1996, he was a member of the Advisory Council on Privatization to the prime minister of Poland. He is an honorary legal adviser to Her Britannic Majesty's Ambassador in Poland. He is the author of numerous articles in the field of arbitration and co-author of Competition Law published by LexisNexis in 2012.

Tomasz Wardyński is a member of the Warsaw Bar and the European Circuit of the Bar of England and Wales as well as the International Bar Association and the American Bar Association.

Marek Wierzbowski is professor ordinarius at Warsaw University School of Law; former vice-chancellor of Warsaw University. He has taught as a visiting professor at several American schools of law, including McGeorge School of Law in Sacramento CA,, University of St. Louis School of Law, University of San Francisco School of Law. Capital University School of Law and Indiana University Maurer School of Law in Bloomington IN. He is the founding partner of the law firm Prof. Marek Wierzbowski & Partners – Advocates and Legal Counselors. Previously he was for many years a partner of Weil, Gotshal & Manges and subsequently Linklaters, being senior partner of Warsaw offices of said firms. He is mostly known as a capital markets expert, however his expertise in some other areas like M&A, energy law, administrative procedure or international arbitration is also widely recognized. Prof. Wierzbowski as an attorney has led teams of lawyers acting on a wide range of major transactions including the major privatizations (i.e. Pekao S.A. and PKN Orlen S.A. Tauron SA) as well as a number of public offerings of securities. He was responsible for most of the GDR and ADR issues of Polish companies shares on foreign stock markets, including the London Stock Exchange. Prof. Wierzbowski is a vice-chairman of the Supervisory Board of the Warsaw Stock Exchange (from 2000 to 2004 he was the Chairman of the Board), a member of the Public Procurement Board and the President of the Arbitration Court of the Chamber of Brokerage Houses. Recently he has been appointed as a member of the Council of European Law Institute (ELI) and a member of the Board of Polish American Fulbright Commission. Polish daily Dziennik Gazeta Prawna granted in 2013 to prof. Wierzbowski award "Golden Paragraph" for being the best attorney at law. Previously he was an adviser to the Minister of Privatization, adviser to the Minister of the Treasury and to the President of the Energy Regulatory Office. He was also vice-president of the Arbitration Court of the Polish Chamber of Commerce. He is an author, co-author or co-editor of several handbooks and commentaries concerning capital markets, business law and administrative procedure.

PANEL I. THE LAW SCHOOL OF THE FUTURE: HOW WE NEED TO CHANGE LEGAL EDUCATION TO BE ADAPTED TO RAPIDLY CHANGING WORLD

Moderator: Professor Łukasz Pisarczyk
Panelists: Professor Robert Jerry, Dean, Levin College of Law, University of Florida; Professor Tomasz Giaro, Vice Dean, Faculty of Law and Administration, University of Warsaw; Tomasz Wardyński, esq. Wardyński i Wspólnicy; Professor Hubert Izdebski, Faculty of Law and Administration, University of Warsaw

Profesor Łukasz Pisarczyk, Moderator:

Good morning ladies and gentlemen. I would like to open the first session of our Conference. My name is Łukasz Pisarczyk. I am representing the Faculty of Law and Administration of the University of Warsaw. I would like to say that it is a pleasure for me to chair this session. First of all, I would like to thank the organizers and I would like to congratulate because of this conference but mainly on the 15th anniversary of the functioning of the Center for American Law Studies at our Faculty. In my opinion, it is a great success, so once again thank you very much and I would like to congratulate all those who are involved.

Now, it is my pleasure to welcome and to introduce our eminent guests. I would like to welcome Professor Robert Jerry, an eminent American lawyer and scholar, Dean of Levin College of Law of the University of Florida, expert in the area of insurance law. It is my honor and pleasure to welcome you at our conference at our University. I would like to welcome Professor Tomasz Giaro, deputy Dean of the Faculty of Law and Administration of the University of Warsaw. I would like to welcome Mr. Tomasz Wardyński – founding partner of Wardyński & Partners – an independent Polish law firm operating since 1988 and I would like to welcome Professor Hubert Izdebski, an eminent Polish scholar, ordinary professor at the University of Warsaw at our Faculty.

At the opening of this session, I would like to underline that the topic of our meeting, in my opinion, is very interesting and very important. It is also one of the most difficult problems we are facing nowadays because the structure of legal education was formed in a completely different social and economic situation. Over the recent decades we could observe significant and rapid changes concerning the structure of the society, economy and law. Consequently we have to adjust and adopt the system of legal education to the changing reality. It provokes, of course, a number of questions concerning the structure, the character, and the content of legal education. I hope that our discussion will be an important contribution to the discussion concerning the future of the legal education. The first speaker is Professor Robert Jerry – now, Professor, the floor is yours.

Professor Robert Jerry, Dean, Levin College of Law, University of Florida:

Good morning. This morning I would like to talk about disruptive forces affecting the legal profession and the implications of these forces for legal education. Let me start with bibliography and what will be the footnotes for these remarks. A presentation by Professor Debra Merritt from Ohio State University was very influential on my own thinking, as well as the 2013 report of the Georgetown Center for Study of Legal Profession, two books by the British scholar Richard Susskind, Benjamin Barton's work, and William Henderson's article.

Let's start with a quotation from the Georgetown Center Report that underscores the tremendous change occurring in the legal profession in the United States: "The market for legal services in the U.S. has changed in fundamental ways. Perhaps, it is time for us to burn the ships, to force ourselves to think outside our traditional models". Burning the ships – very strong language – suggesting that we are dealing with change that is unprecedented in our own professional careers. I like this quote from Richard Susskind's book "Tomorrow's Lawyers", published about a year ago: "The legal market is in an unprecedented state of flux. Over the next two decades the market", according to Susskind, "will change radically, an entirely new range of legal services will emerge, new providers will enter the market, and the workings of our courts will be transformed. Unless they adapt, many traditional legal businesses will fail. But on the other hand, a whole set of fresh opportunities will present themselves to entrepreneurial and creative young lawyers".

Susskind is correct that it is a time of great change, and many legal businesses will fail, but young lawyers who come to this market with innovation and entrepreneurial skills will have great opportunities in this changing world. This is another quote that I like but probably because I said it: "The risk facing legal education is that we will do an excellent job preparing our students to practice in a world that does not exist anymore and that is a part of what we need to think about". Perhaps, it is better said by Wayne Gretzky, who is certainly one of the best and maybe the best hockey player of all time, who makes the same point this way: "Do not skate to where the puck is or where it has been. Skate to where the puck is going". That is what we need to figure out – where the things are going and how we get to that place.

In the United States, here is the fundamental problem. The gap between the number of law school graduates and the number of jobs is very big. [pointing to graph] You see it is wider after the recession. There are about 46,000 law school graduates a year in the United States going into the market where there are slightly more than 25,000 jobs available each year. If we look farther out to 2016, this is going to change some but not a lot. The number of law students in the United States is going down very fast; the drop in the size of the entering class in 2013 was about 8,000 in one year. That class will graduate in 2016, but that still leaves a big gap between the number of graduates and the number of jobs. That gap is not closing

soon, and that is why we see that the percentage of graduates placed in full-time jobs has dropped dramatically from about 69% in 2007 to about 57% now. That statistic shows the mismatch between the number of law graduates in the U.S. and the number of available jobs. And this is not going to change through at least 2020. According to the U.S. Bureau of Labor Statistics, the number of new lawyer jobs is going to be about 23,000 per year, and that even accounts for the retirements of the baby boomer generation. So this gap between the number of graduates and the number of jobs is going to persist for at least the rest of this decade.

Now further out, things are going to change more. I am a poster child for what is called the boomer generation – those who were born between 1946 and 1964 – this is the common definition. This data is soft but there are about 1.1 million lawyers in the United States and by some estimates about 400,000 of these are boomers. The boomer generation is going to leave the work force; we are going to retire or we are going to die. We are going to leave the work force one way or another. This will be one of the biggest transformations in the U.S. labor market in history. So those law graduates who can make it to years 2020, 2025 or 2030 are going to see tremendous change and greater opportunities, but in the short run it is still going to be a very difficult labor market.

Why is this happening? I suggest, as many others have said, that there are four disruptive forces affecting the structure of the legal profession: technology, process, globalization, and entry of non-lawyers. Let me talk briefly about each one.

Anyone who has done legal research in the U.S. and who is over the age of 55, like I am, recognizes what this is. [pointing to screen] These volumes are called "Shepherds". When you want to check a citation from a prior case in a prior year to see if it is still good law or has been cited in a more recent case, then you have to go through each of these books, and look at columns in these books to read the codes to find out whether the case has been cited or superseded. You have to go through the red volumes for your case, then you have to go through the yellow volumes, and there is probably going to be one of the yellow volumes that is going to be missing, so you have to walk all around the library to find out where this missing yellow volume is. Then you are going to go to the little small volumes on the right. If I were to cite-check a brief as a young lawyer, it would take me hours and hours to cite-check the brief and go through all these books. Today you use a computer, you type in a cite and in less than one nanosecond you have all of the citations – for the entire brief – completely cite-checked.

Now, this does not mean that we do not need lawyers anymore for cite-checking, but it does mean that we need fewer lawyers to do the same amount of work. The reality is that for almost every facet of law practice there is something like (turning to Dean Rączka), Dean Rączka, if you feel the same way but I heard it said once that if you are a dean and you have not been sued at least once, then you have not been doing your job. I have been sued, and in one case, I never met my lawyer face-to-face. I always talked to him by e-mail or on the phone. This is

one example of how technology has fundamentally changed the way many clients interact with their lawyers. There are databases that store research in-house in firms and corporations, making it very easy to access work product from past cases and transactions. Automated research is another example. The point is that these new technologies do not eliminate the need for lawyers but they do reduce the need for as many lawyers as we have, and this is one of the key pieces of this mismatch between jobs and the number of graduates.

Another change that affects demand for lawyers is the emergence of technologies that can handle document drafting automatically. This [pointing to image on screen] is the website for Legal Zoom, which is a company in California that sells over the Internet an application that enables you to draft a contract or to draft a limited liability document. I looked at a legal filing Legal Zoom did with the U.S. Securities and Exchange Commission in 2012, and according to that filing, Legal Zoom served approximately two million customers over the prior 10 years. In 2011 Legal Zoom's gross revenue was $156 million. That number may not sound large but it equals one percent of the gross revenue of the five largest law firms in the world for that period of time. If a small, new California company can generate that amount of revenue in the legal marketplace in its young life, that company has my attention. Here is a statistic that really got my attention: In 2011 more than 20% of the new California limited liability corporations were formed with Legal Zoom. I guarantee you that Legal Zoom will not be satisfied with that percentage of market share and that they will seek to expand it.

There are other companies like Rocket Lawyer. On my cell phone (holding up cell phone) I have an application called "*Shake*" that we can use to draft one of 6 or 7 different types of contracts in about 3 minutes – on my phone. The contract it generates will not be a great contract but it will work well enough for 98% of the buy-sell agreements, confidentiality agreements and so on – in other words, for most people the output of the application is totally adequate. And the "app" is free. You do not have to pay a lawyer to draft your contract. In the future – right around the corner – consumers of legal services will not need to hire a lawyer for many of their routine, common legal needs. Why should they pay a lawyer a few hundred dollars to draft a basic contract when an application available for free on a cell phone will draft it for free? So all of these new technologies raise a question that we as lawyers need to answer: what is the value of the work we do for the consumer? What value do we add when a client retains us? What value can we provide the client in return for paying for our time that cannot be provided by these technologies? There are good answers to those questions and there are valuable things we do provide, but the question is no longer one that we can avoid.

Let's turn to process, or what we might call project management. This refers to new systems of taking cases and dividing them into pieces, dividing the tasks, automating some of the tasks, assigning the tasks to those who can do the tasks most efficiently. In other words, it is a way of concentrating or focusing on how

lawyer's work is performed and then managing the work in ways that get quality output more efficiently. The work of project managers is to create greater efficiencies in how work is processed within the law firms. This, again, does not eliminate the need for lawyers but makes it possible to do the same amount of work, or more work, with fewer lawyers.

Let me quickly mention the last two disruptive forces. Globalization refers to the global competition among law firms, to legal process outsourcing, and even global competition among law schools. The global dimensions of the change in how law is practiced are very important. We have a panel devoted to this later today. Lastly, in the United States we have a trend where there are more non-lawyers being allowed to do work on some things that have traditionally been the role of lawyers. Here is a partial list [pointing to screen] of some of those roles that are no longer considered the sole province of lawyers. Again, this puts pressure on the legal profession and on legal education by reducing the number of opportunities for the number of new law graduates.

So the question becomes: how should law schools respond to these four disruptive forces? Let me suggest a few things that we should be talking about. First, we need to think about our tuition levels – how much are we charging students to go to law school and whether we are at the right price point. Here are some data on three charts to show why this question is important. [pointing to first chart] Since 1985 law schools have increased their tuition dramatically. At the University of Florida in my eleven years as dean we have more than tripled the tuition our residents pay during those years, and what we have done is like what has occurred throughout the United States. So compare the rising tuitions to (pointing to second chart) the static starting salaries during this same period. The median starting salary for the new lawyer in the United States has remained roughly the same during this period. So if you just think about what happens in a market when the price to obtain the credential goes up and the starting salary available to those who have the credential stays the same, we would predict that demand for the credential would go down. And that is exactly what has happened. (pointing to third chart) This is the percentage of the U.S. law schools applicants measured as a percentage of the U.S. baccalaureate degrees awarded. Since 1991, there has been a steady decline in the number of undergraduates coming out of college who want to go to law school. We missed that phenomenon when it happened; those of us in legal education did not see it coming. The reason we missed the decline in interest in the study of law as a professional degree was because the number of baccalaureate degrees awarded was rising sharply, so when we had a roughly constant number of law school applicants, we thought that world was fine. But what was really happening was that the number of applicants as a percentage of the pool of potential applicants dropped from about 9% in 1991 to 3% in 2013. Because the raw number of applicants was constant and strong we missed the trend line of declining interest in law as a degree. But that is exactly what we

should expect if tuition goes up and starting salaries remain static. And that is exactly what happened – the number of students interested in the legal career has been going down for years.

The second thing we need to think about in law schools is downsizing. Back in 2003 when I became dean, I gave a talk to the local bar association in Gainesville and I mentioned that law school downsizing could be a good thing for many schools to do, but at that time there were very few examples of law schools reducing their size. After all, in 2003 placement rates were strong and it looked like everything was going just great. But when we look at 2014, more than 90% of the U.S. law schools are smaller than they were three years ago. At the University of Florida we downsized in 2009 with a 25% reduction in school size. This is what we need to do in legal education to respond to the decreasing number of students who are interested in obtaining a law degree.

Third, we need to look at ways we can better integrate our curriculum with the practice of law. There is a variety of things we can talk about here, such as more extensive internships, different types of experiential learning programs, and so on, but the key is that we need to find ways to better prepare our students to hit the ground running when they get out into the practice. In this regard, and fourth, we need to think about how we can educate problem solvers. It is sometimes said that law schools seek to teach law students to *think like a lawyer*, but we need to move closer to teaching law students to think like a lawyer along with something else, such as: *to think like a lawyer and a business manager*, or *to think like a lawyer and a human resource manager*, or *to think like a lawyer and a software programmer*. These are different from the joint degree programs we have had for years; rather, it is embedding the "something else" in the J.D. program itself. I believe we need to be thinking about what I call the "two plus one" law degree. The law degree program in the U.S. is a three-year program and should remain so, but we should think of it more as a two-plus-one program, where students work during the first two years on the basic subjects and then in the third year curriculum pursue a track that better prepares the student to go into particular fields of law. That is one thing we need to be thinking about more in the United States.

Fifth, we need to think about product innovation and diversification. The old paradigm thinks of a law degree as one static kind of thing that a law school does. A new paradigm is to think about different types of programs that a law school can do. President Obama recently talked about a two year accelerated program for law schools – I do not agree with that, but the two-plus-one and the alternative third year program make some sense. We need to think about masters programs for non-lawyers – another kind of degree product. With many law schools being revenue-challenged, we need to think about other kinds of products we can offer that add value to those who would pursue them. There is the limited-license movement underway in some states; so can we do other types of academic

programs for non-lawyers who would then obtain a limited practice license in this new world? There are other things to consider, such as on-line courses, new course concentrations that can be marketed to undergraduate students, and so on. In other words, we need to think of the law school offering a more diverse range of products, not just the one J.D. program that has been the major brand of law schools in the United States for years.

Last, we need to think about how we can leverage the new, emerging technologies. We may be able to find ways to reduce the cost of education through creative use of Skype and Zoom and other types of programs – enabling face-to-face courses across the distances; new ways of working with simulations, split classrooms, and so on; ways we can teach through distance education we can enable with Skype and Zoom and other types of programs. There are new ways we can deliver material in the classrooms. We need to think harder about how we use this distance education technology.

In conclusion, I have many ideas on what is happening and how we should respond, but I am not really sure about a lot of this, especially exactly how we should respond. It is complicated. But I am certain that the future is coming at us, and it is coming at us fast. This is a world of great change, and we need to be closely looking at ways that law schools and legal education can deal with these changes. So with that I will conclude with my remarks.

Thank you very much.

QUESTION DURING SESSION

Professor Robert Jerry:

Well, thank you for that excellent comment. I want to thank my fellow panelists for many wonderful insights. I think all the presentations get us to this basic question: what exactly is happening in the world? How do we describe what is going on? I am not completely sure, but one thing that may be happening in the U.S. will help answer this question. You know, we have had about 250 years of lawyering in the U.S., and for almost all of the last 250 years, up until the last 40 years, so-called "big law", the large law firms, the global practice did not exist; this did not exist until relatively recently in this history. Why did someone want to become a lawyer before this last era? It was because they were intrigued by the intellectual aspect of the work, they wanted to help other people against abuse, and they did not make a lot of money. And then in the last 40 years of "big law" many students were attracted to the law schools and a legal education because of rapidly rising incomes. A lot of the disruption is in "big law" and how that ripples through the profession. So maybe one thing we are seeing after 250 years is a switch back to the way law was practiced for most of the 250 years before the

last 40. And then the question becomes, what kind of law school do we need for a return to the way law used to be practiced? That is a law school that stresses those three pillars, that focuses on the rule of law, that raises those values and prepares students for a practice that is different than "big law".

Professor Łukasz Pisarczyk, Moderator:

Thank you very much for this interesting and inspiring contribution. Now we can see more in terms of the current situation, the future perspectives and, in my opinion, those future perspectives, proposals for the future, are the most important because we are all looking for some solutions depending on situation existing nowadays. How to solve our situation, how to adjust the academic program to the needs of practice, to the needs of the society? So, as I said, for us it is very interesting, inspiring, it is also a bit different perspective. What was interesting for me, for example, it was to see the gap between the results of academic education and the needs of practice. It is on one hand interesting, on the other hand it shows how dangerous this problem of the gap is nowadays. As regards rising to the issue, of course. it is one of the solutions but it could be dangerous also for us. Of course. I am kidding in some extent, but it is quite problematic and difficult to apply this solution. So once again, thank you very much for your presentation and the next speaker is Professor Tomasz Giaro.

Professor Tomasz Giaro, Vice Dean, Faculty of Law and Administration, University of Warsaw:

In the preceding presentation of Dean Jerry one aspect seems very interesting to me, namely all the figures and the high frequency of the words "market", "legal market" or "educational market" and similar. These are the words that we ignored under the previous system of real socialism. I personally spent seventeen years of my life within the German academic system. As I went there in 1990, it was a very great surprise for me to hear everybody talking about market, prices, tuitions and money, and that a law school "cannot afford" this or that. I found it slightly disgusting, since at university I expected only education, science, mind and ideal values.

In my paper I reflect, first of all, on the Polish legal education reaching the conclusion that its reform is badly needed. In this respect some comparison between Polish and American law schools may be useful, but only on a very limited scale. The reason for this restriction is that the American legal education is graduate and the Polish one is – like in the rest of Europe, including England – undergraduate. Moreover, the American legal education enjoys a leading position in the world. Due to the globalization the American model of corporate economy in form of multinationals has paved the way to the generalization of the American model of law firms and, in consequence, to the global success of the American model of legal education. This model was traditionally synthesized as "training lawyers" instead of "educating academics". However, in recent two or three decades the

leading American law schools, traditionally devoted to the professional training, became temples of legal scholarship.

In this context the concept of scholarship must be explained, because the legal scholarships of today is not the classical legal doctrine anymore. The latter dwelled on the interpretation of this or that legal provision or tried to excogitate some genial legal construction. It was characterized by national uniformity, systematic structure, clear categories, authoritative regulations and autonomy of law as deciding by rules. On the contrary, the modern model of legal scholarship, which reflects itself in the legal education, involves pluralism, incoherence, fuzzy categories, the questioning of rules and the instrumentalization of law as a means to an end. All these features secure the American advantage in global lawyering in the transnational context. This is the content of a recent paper "The American Advantage in Global Lawyering", written by Matthias Reimann, a German law professor who teaches at the same time in Michigan. The new transnational context makes the old model of legal doctrine antiquated. It is the reason why the shape of legal scholarship at American law schools changed.

From the paper of John Langbein "Scholarly and Professional Objectives in Legal Education: American Trends and English Comparisons", published in 1996, we learn that at the leading law schools of the United States the research in constitutional law as well as in law and economics dominates. However, the new constitutional scholarship is not simply a technical knowledge of rules and regulations. It requires, moreover, a previous study of several disciplines, such as philosophy, political science, legal history, even literature. Law and economics, in its turn, is not simply law enriched by economic knowledge, but nothing less than an alternative mode of legal conceptualism, since having an economic background we think about law differently.

But why did I say that comparisons and inspirations from American legal education cannot properly apply to Poland? It seems to me that Polish law faculties and American law schools must be seen against the background of the whole system of legal education. In the Polish system we have unfortunately no market which was so frequently mentioned by Dean Jerry. The market is absent from our system because in Poland teaching is still considered, like healthcare, the paramount task of the state. There are some private universities but their level is low and their importance, as compared to the public ones, scarce. So our system of higher education, not only legal education, has not been reformed during the last 25 years. Its structure remains the same as under the real socialism. The system, left centralized exactly as the system of socialist economy, is externally guided by the ministerial bureaucracy.

I do not intend to prize America as the height of perfection; there is probably too much business and entrepreneurial thinking at the American law schools, as Brian Tamanaha claims in his famous book "Failing law schools". At the end we do not know whether the tuition in the United States is growing higher because

the law schools need star professors, or because the students who pay so much demand star professors. The situation in Poland is incomparable, since we do not have the educational market in the American sense. It is a pity, because the market is a powerful tool to discover and measure scholarly values. Only the academic market can guarantee competition and mobility, because we go there where we are better paid and offered better working conditions. We can see it from comparative surveys of the faculty recruitment in the world. However, the common feature of all those systems is that new professors are hired when they are needed by the law school and not, on the contrary, when they themselves need a job. However, it is exactly the case of Poland.

We recruit new professors when one of our assistants has written his habilitation thesis. For example Mrs. Gmurzyńska will start soon her habilitation process and we will employ her as professor of our Faculty without taking care whether we need her or not. The sufficient reason is that she has completed her habilitation monograph. No matter how valuable this monograph is, it cannot change the fact that the whole system is contrary to practical needs. In most countries you cannot be given a job by a law school where you have written your qualification thesis. In Germany it is even formally forbidden. In Poland, however, everybody has a right to the professor's position at the faculty where he started his career and has written his qualification thesis.

In consequence, at the Law Faculty of the University of Warsaw some chairs are occupied by four, five or six professors of the same special field of study. Even the richest American universities could not afford such multiplication of their faculty. When these five or six people, united by the same chair, by chance do not fight against each other, at least they have to take always care not to disturb each other. It means that our system of higher education, including legal science and legal education, is anything but well organized. The fact that we have accustomed ourselves to its vices and that we acknowledge them as normal, does not make it any better. I think it is the bureaucratic nature of our system which should be discussed at our faculty.

Moreover, within our system only the ministerial bureaucracy is entitled to ultimately decide who deserves a habilitation, an academic job, and a professor title. Such is the task of a particularly superfluous institution, virtually unknown to the western civilization – the Central Commission for Scientific Degrees and Titles. It is a state agency established in Warsaw during the Stalinist period in 1951 with the scope to supervise the Polish science. This Commission, which today is mainly responsible for the low level of Polish universities, may be reasonably compared to the State Price Commission of the communist era. The Price Commission decided how much particular commodities had to cost, no matter what the market dictated. The Central Commission for Scientific Degrees and Titles decides who will be awarded the habilitation, the professor title and so on.

Presently, the declared scope of the Central Commission for Scientific Degrees and Titles is to supervise the poorly staffed and managed, ill-equipped and deeply indebted provincial universities which during the boom of the educational business sprang up like mushrooms in numerous Polish towns. Those universities are to be controlled because they use to confer the Ph.D. degrees to cousins and to grant habilitations to friends. However, in the same way as despite all the efforts of the communist Price Commission commodities were of bad quality or all together absent from the market, too much scrutiny applied by the Commission for Scientific Degrees produces, in the best case, mediocrity.

Also in the United States there are several low level universities, but – as far as I know – nobody wastes his time there to persecute them by administrative means. So let us also in Poland leave the task of eliminating them from the educational market to its autonomous forces. Let us permit bad universities to appoint their professors without state approval. They will be simply professors of Polish small towns. Needless to say that they will be somewhat different from the professors of the University of Warsaw. It is an illusion to ensure the perfect control of these *quasi* universities by expensive administrative means. The only verification method of scholarly values leads through the market, which functions also in the academic world, as I mentioned at the beginning.

I am going to close expressing my rather pessimistic private opinion. I am pessimistic about the future of Polish universities because they are still governed by the universal democracy of medieval origin. The curriculum decisions, necessary to modernize the program, are taken by the general faculty, composed at our law school of more than 90 professors. So these decisions are taken in the end by the people whose employment, as well as the employment of their collaborators and doctoral students, depends from their ability to preserve their discipline in any new curriculum or even to extend it beyond its present borders. In consequence, the decision makers will act selfishly and resist against any reasonable innovation.

In my opinion, Polish universities need a deep reform from above and, consequently, a great reformer, somebody as a new Leszek Balcerowicz in the field of higher education, including the legal one. Unfortunately, such a person is presently not in sight. Finally, another unhappy development must be noted. The Polish Constitutional Tribunal decided recently that not only the first but also the second field of study will be free of charge for the students, because it will be financed by the state. So the students can study at one, two or three faculties without paying anything. However, according to the famous saying of Milton Friedman, that there is nothing such as free lunch, somebody will pay the bill.

Thank you for your attention.

Professor Łukasz Pisarczyk, Moderator:

Thank you very much for your contribution. I have two remarks to recap this part of our discussion. Because of the ongoing changes, without a doubt we need

to remodel the structure of legal education – this is necessary. We cannot avoid changes in terms of the shape, the character, the content of legal education. The future is coming, as Professor Jerry said, without a doubt the future is coming. The question is in what direction should we go. We should look for a balance between theory and practice. It is also very important, but the question is, as I said, to what direction, what is our way. For example, one remark concerning the presentation of Professor Jerry: the American model of legal education is brilliant and we do appreciate this system, but on the other hand, we cannot copy this system. Why? Because our social structure is completely different, so to a certain extent it is possible to take some elements of this legal education system but, as I have already mentioned, it is rather impossible to copy a specific legal education system because of the changes, because of differences, in terms of the functioning of the entire social system. So once again thank you very much Professor Giaro and the next speaker is Mr. Tomasz Wardyński. Welcome.

Tomasz Wardyński, esq. Wardyński i Wspólnicy:

Thank you very much for the invitation. I am very grateful to the organizers. It is a great honor to be at the University of Warsaw where I graduated in 1970. I have written a short paper which is in your materials but I have been provoked by the addresses of Professor Jerry and Professor Giaro. I would like to start a discussion by making some remarks on the nature of the legal profession. The academia is an academia and I do not want to enter into a discussion on what it should be. I know what the legal profession is all about because I have been practicing law for 35 years, starting from criminal law, going through civil law and then getting into commercial law, something like twenty years ago. Obviously, we cannot predict the future but we can somehow analyze the present with a view, to find out whether we are prepared for it, so that the future does not destroy us. I think there is one fundamental thing when it comes to the legal profession. We, as lawyers, have to protect the rights of citizens against abuse, the abuse of the state and the abuse coming from other parties in the market. Because I think that the abuse of power and the abuse of position is inherent in the nature of the human being. So it is our duty to protect our clients against abuse, in let it be civil litigation, criminal trial, transaction or administrative proceedings – our work boils down to protecting our client against abuse.

Now, there are three fundamental pillars to our profession: *logos*, *pathos* and *ethos*. We have to remember this because without these three pillars we shall not be lawyers. If we were to discuss today the law school of the future, how we need to change the legal education to adapt it to the rapidly changing world, I would say that I do not know. But I do know how to be a good lawyer. Any law school should be able to prepare good lawyers even though not every graduate will enter the legal profession. Not every graduate will work for a law firm, and not every graduate will become a judge, a prosecutor or an advocate. Some will become

journalists, others will go to work in administration or enter politics. And some, having become totally disappointed by the profession and the changing world, will pursue other professions dismayed by the way justice is being administered.

If we were to define today what is the background of the legal profession, what is the environment in which we have to act, then certainly, it is the globalized world. Globalization is an extremely complex phenomenon. We have to understand that the development of technology is creating more and more connections and speeding the spreading of information, thus affecting the emotions of masses. In this environment jurisdictions as national states do not really coordinate their policies. Against this background, we as lawyers, have to render services to clients functioning in this globalized economy. In this "fluid" world we have to know what is permanent, what is constant as, in my opinion, abuses across the world will be similar. The development of technology tends to prevail over axiology. People, like Professor Susskind, who speak at many conferences organized by law firms (I participated in at least 10 of them), are putting emphasis on technology, sometimes on methodology but never on axiology. He gets into the point that legal profession is a service rendering profession but this is where he stops.

I think that all speculations with regard to the future of law firms are made with a view to scare lawyers. I would say the future is unknown and we tend to fear the unknown. We are also afraid that technology will develop in such a way that we might lose control over it while it might gain control over us. So I think that if we are discussing what the law firm of the future should be, we have to think in terms and in the context of the globalized world. Often this is sad because in this globalized world we have torture being legally used, we have abuse of law, we have legal systems gradually becoming more and more regulated. We are faced with a mentality of lawyers who forget what the law is and who demand recipes and ready-made solutions. I remember once we were being examined by an eminent law professor in Poland, Alfred Ohanowicz, and he asked one of the students a question which the student could not answer, because there were no legal provisions which he could match to the situation. The answer from the Professor was: "*Listen my dear friend, if there is no legal provision, it does not mean that there is no law*". So what I think characterizes the world of today is a decline of axiology and an overwhelming role of technology. Being drowned by technology we forget what it is that we should do. Technology, especially as it is being used by big law firms, produces within the lawyers a kind of cynical mercantilism, something which lies at the heart of everything that is becoming wrong with the profession, which is rotting it. If we speak about the law faculty of the futures I think that it should be a faculty which in fact teaches values, explains axiology, and gives the students an opportunity to choose what they want to be, not only with regard to the choice between administration of justice, becoming lawyers or advocates but also choosing a different path, for example, entering politics. Explaining that, I would say that the structure of what we

call *państwo prawa* – the rule of law – depends on the values, the pillars which keep the structure of the building in place. If this does not exist, then lawyers and judges will be asking for recipes, for those ready-made solutions permitting them to avoid responsibility for their decisions. So when I think of the law faculty of the future, I would like to see one teaching students how to think, how to be responsible for their own decisions, how to be creative and how to interpret laws in many different ways, but always from the point of view of their function and the role they play in the legal system as a whole. So in this I remain in a way quite conservative. I do not think that the law faculty should be a sort of a school for professionals, a kind of a postgraduate course. In many countries, such as Poland, Germany, France and even England, this is something being taught by the professions themselves – we do not need to form lawyers at the universities in the sense of providing them with ready formulas, with what methodology to use in a given case. We need universities to teach students what the profession is all about and what are the pillars of the legal system and the state of the law today. Without that, we are not going to have good lawyers able to proceed with the case in an effective manner.

On that note I shall end referring once again to technology. I think that technology is like hardware and axiology is like software. Legal thinking, the legal mind that is a software problem – not a technological problem. This is what we need to concentrate on at the level of universities and law faculties.

Professor Łukasz Pisarczyk, Moderator:

Thank you very much. I must say I am really impressed with this contribution. I have expected something very practical but this contribution was really deep, it has concerned, I would say, the role of lawyers in modern society. It was mentioned that our role is to protect clients against abuses, for example. One could go even further, saying that our task is to protect human dignity, strictly connected and our task, I am talking about high schools, universities, is to show the pillars, the foundations of the legal system to understand the idea of the law, how the law functions. So I perfectly agree that the role of a modern lawyer is much deeper, it is not only the strict interpretation of the law but the idea is to understand the idea of the law, to understand how the law works, how the law functions. So consequently it must influence the shape of the legal education, the balance between practice and theory is the answer. We have to look for something deeper, we have to form our students, we have to show the real role of the lawyers in the contemporary society. So once again thank you very much and the last speaker in this panel is Professor Hubert Izdebski – the floor is yours.

Professor Hubert Izdebski, Faculty of Law and Administration, University of Warsaw:

The essence of my contribution is posing a similar question to that what Mr. Wardyński said. I would express some similar thinking in a different way.

The question asked in the title of the panel is: "The law school of the future, how we need to change legal education to be adapted to the rapidly changing world", relates to juristic futurology. Unfortunately, I am a lawyer (moreover, interested in legal history as well), and not a legal futurologist. Nevertheless, I understand that, still more than ever, we need to reflect over the future of legal education. Our reflection should, in my opinion, be oriented towards two fields.

First, we have to search for ways of providing – here and now – law students with (if we use the terminology of the framework of qualifications for the European Higher Education Area within the so-called Bologna process) knowledge and understanding of what is law, applying that knowledge and understanding, making judgments and communicating, and the most important – learning skills, which, in particular, means skills of adaptation to the changing world, and skills of self-development. Law students we are equipping (if we can) with all those competences will work during a very long time, that of five decades; equipping them with a detailed knowledge of the law in force, without orienting towards understanding foundations of law, that is to say towards its axiology, may not be enough.

Second, education, and within it law education, is not a private business or rather, at present, not only a private business, but, in particular in Europe, is a public service, which permits to situate it within the field of public administration and policies that I am particularly interested in as a scholar and as a practicing lawyer as well. As public administration has to dispose of built-in internal mechanisms of reacting to change of conditions and needs – public administration reform is said to be an unfinished business – such mechanisms should be also taken into account in the specific position of public universities, especially in continental Europe. Law teaching reform is also an unfinished business, being the task of law faculties themselves collaborating with practitioners' milieu, but also the object of interest of national and European authorities.

Obviously, it is not possible to disregard the principle of university's autonomy (moreover, written down in the Article 70 item 5 of the Polish Constitution), but it is also indispensable to have in mind that universities are higher *schools*, and not only temples of science, financed out of the public funds and participating in public policy process; therefore, they could be, and even should be, subject to a certain public control of their capacity to provide higher education of a sufficient level. I have to notice that because of the attack of Professor Giaro on one of instruments of that control, i.e. the Central Commission of Academic Titles and Degrees being said to be a Stalinist creation "mainly responsible for the low level of Polish universities". Maybe I am too attached to the Commission as (since four years) its secretary, but I feel obliged to explain that its 1951 predecessor had existed only to 1958, and the newly created in 1973, still bureaucratic, body was changed in 1990 into an elective organ of the academia self-government, and that since 2005 it has had no competence to "decide who will be awarded the habilitation". Obviously, we can discuss whether the present status of the Commission, having its equivalents

in some other European countries, is effective, but I think that almost nobody can deny that without it the level of Polish universities would be still much worse. The market is not a sufficient regulator in this respect, and the fact that Professor Giaro may speak about a right of everybody to the professor's position at the faculty of his/her graduation is an interesting evidence that such right, contrary to market conditions, exists neither in law nor in some faculties of the University of Warsaw other than Law. In fact, though, it seems to be respected by the Law Faculty (and many faculties all over Poland) having freedom to employ those who have formal qualifications (for full professors, controlled by the Central Commission).

By the way, it is interesting that there has been no attack on the other, much more bureaucratic, body, i.e. the Polish Accreditation Commission, introduced in 2001 within the Bologna process, controlling quality of teaching in Polish higher schools.

Realizing that there must be an unfinished business of reforming legal education adapted to more and more rapidly changing world, we have to remember that any reform has its point of departure and that point is a result of, on one hand, the process of change, but on the other hand, the established tradition of legal education.

There are different respective legal traditions, even within the same legal family. Thus, within the common law, there can be an English tradition of providing law teaching for professional purposes outside the academia, and an American tradition of its postgraduate teaching at universities. As far as the civil law tradition is concerned, the German tradition is of combining university teaching, after finishing secondary school with the state professional examinations, whereas, for instance, in Poland, law teaching is divided into academic (at law faculties) and professional (after graduation – in a form of different types of apprenticeship for the respective legal professions – advocates, legal counsels, notaries, judges, public prosecutors). Tradition itself, however, is not an immovable being. It has been changed significantly even in case of England; long time ago candidates for barristers were not studying at the university and went directly to the inns of court to be trained as professionals. In Poland, many attempts were made, repeatedly and still unsuccessfully, to add some elements of professional training to the academic teaching. A recent attempt, I am not sure whether it is successful, is of providing professional education and training for two public professions in the same newly established state school for judges and prosecutors. Because of the impact of the tradition, it is not possible – at least now, may be yet – to simply transplant the American system of legal education to Poland as it is impossible to do that with respect to other European continental countries.

However, it is either impossible not to take into account and not to try to express in the system of legal education a phenomenon of technology progress examined by Dean Jerry, as well as other recent phenomenon relating to law, which is internationalization of its different aspects, relating, in particular, on one

hand, to international trade law, on the other hand, to human rights law. All over the world, internationalization means to a large extent Americanization, but for such countries as Poland it means also, and even in the first place, Europeanization of law, especially after joining the European Union. At present, only much less than 1/3 of the contents of the Polish law is fully controlled by the Polish legislative power. The talk is about a multi-level and multi-centered legal system. That is one of the reasons of changing the general approach to law – from the traditionally predominant positivist view to a judge-made law. It has to find its expression in the way law students are taught.

We should also have in mind the internationalization and Europeanization of lawyers' career within global legal market. It makes us change our approach to law teaching as, traditionally, teaching of the given national law. We should teach the foundations of law to be developed within further practice pursued, may be, in very different countries. A good example of that can be the Erasmus program. At the University of Warsaw we have quite a large number of foreign students studying during one year Polish law; I teach, for instance, Polish administrative law. Spanish, Portuguese or German students study Polish law as a part of their curriculum at their native universities – and, what I try to take into account in my teaching, they do not do that in order to obtain deep knowledge of particular foreign law, but their purpose is to learn an example of national adaptation of the European law to be applied all over Europe. It has to be borne in mind that passing in Warsaw the examination in this specific Polish administrative law means passing the examination in administrative law in the Erasmus student's native university.

All that does not mean that American experience in the legal education does not deserve to be more examined and the results of such examination are not to be compared and may be also tested or applied to some extent in our education system. As it was stated by Edmund Burke, tradition does not preclude in any way the indispensable change. What is, however, most important, is to make, as far as possible, law students think in a proper juristic way. New technologies need mastering but they do not replace the juristic thinking, combining professional art knowledge and particular axiology. Mr. Wardyński has stated that such thinking is indispensable in each lawyer's activity, and I do fully agree with him.

Thank you.

Professor Łukasz Pisarczyk, Moderator:

Thank you very much for this contribution. Now the floor is open for discussion, so if you have any questions, comments…

Thank you very much. My name is Przemysław Pałka and I am alumnus of this Faculty and currently a Ph.D. researcher at the European University Institute in Florence. I wanted to really thank all the speakers for this insightful discussion. Just as a comment and reflection I have over this subject which I think is important: I was really happy to hear all the speeches because it is always a pleasure

to listen to someone from the U.S., having American way of presentation. I fully agree with the critical picture showed by Professor Giaro and axiologicaly I agree also with two last speakers. What I would stress especially, if we are facing a question of what the law school of the future should be, which is a consequently prescriptive question, that we should before trying to answer that, try to conceptualize and fairly present what is the present situation. So what is the situation we are facing now and what is the state we want to achieve in the end and what is the method of getting there? I fully agree that axiology is something that we should concentrate on. But, my personal remark, we are teaching what the law in a sense of what is written in books. However, a distinctive dichotomy that was presented was the dichotomy between theory and practice. I am not really sure if this really addresses the dichotomy and the problem we are facing.

Definitely, there is a difference between the theory that we teach at the law school and practice. I think what we are sometimes missing in Poland is that the practice can itself be the object of research and teaching. If we started doing research and teaching not only what is written in a code or commentary but for example what the law firms are doing, and then at the university, we would critically reflect on that, then we would educate and send to real world people having not only knowledge but also skills, and not only interpretative skills that they will acquire at the market but also an instinct to be critical at what they are looking at. It would also provide them with a tool kit that would enable them to do something with this critical instinct. I would not be as pessimistic as Professor Giaro when it comes to the future, because even though I agree that our system has a lot of problems, we do not need to assume the entire system needs change. We have to assume the core of constitutionalism, the human rights and all other areas, but some things have to be change. It will probably take time but I am optimist about that.

Thank you very much.

Professor Robert Jerry:

Well, thank you for that excellent comment. I want to thank fellow panelists for many wonderful insights. I think all presentations get me to question like that: what exactly is happening in the world? How do we describe what is going on? I am not completely sure but one thing that may be happening in the U.S. will answer this question. You know 250 years of lawyering, for almost all of those 250 years till the last 40 years "big law", large law firms, global practice did not exist for about 170 years. Why did someone want to become a lawyer? Because they were intrigued by intellectual aspect of the work, they wanted to help other people against abuse, and they did not make a lot of money. And then, in the last 40 years of "big law", students were attracted to the law schools because of rapidly rising incomes. A lot of the disruption is in "big law" and how that repels through. One thing we are seeing after 250 years is a switch back from the way lawyers practiced for 170 years; and then what kind of law school do we need

for that – it is a law school that passes that three pillars, that is a law school that focuses at the rule of law, that is a law school that raises those values and teaches. So if we describe it that way, can we get a different answer than preparing for "big law"?

Professor Tomasz Stawecki, Faculty of Law and Administration, University of Warsaw:

I would like to thank my younger colleague for raising one of the most important points. I fully agree that the distinction between theory and practice is wrongly put. It is not a question, in the light of the panel's discussion, it is not a question whether we have a proper proportion between the theoretical subjects and practical ones. Most of what we teach at the law faculty is theory, but not theory in the sense of general speculation what the law is about and how it should be applied, but theory in the sense what are the provisions. It is just a descriptive presentation of different branches of law. Since the law changes very quickly, since the practice changes even more rapidly, our graduates when they leave the university walls, when they come to practice in the law firms or in other institutions, they find that the world is completely different in comparison to what they were taught at the university.

That is a problem, and that is, in my understanding, the key task to be faced or to be taken into account in the process of changing the program at our faculty. This is not a question whether historical subjects or philosophical subjects should be more or less represented in teaching, but a question how we teach civil law, how we teach criminal law, administrative law, or constitutional law – all classic subjects which are regarded as the core of the curriculum at the law faculty. Second issue that I would like to point was raised by Mr. Tomasz Wardyński who said that we have to teach values, we have to concentrate on axiology. I think this is the most difficult task not only at the law faculty but at any faculty at universities. The distinction between *logos*, *ethos* and *pathos* mentioned, is a basis for rhetoric, and a basis for the art of persuasion. I would like to refer to another classical antique distinction between three types of knowledge – *episteme* which is just a descriptive knowledge, *techne* – practice in Latin, which is practical knowledge how to do something and *phronesis* – so-called moral knowledge. Socrates who was one of the authors of this distinction said that we can easily teach *episteme* and explain how the world operates, we can also teach technical knowledge or practical knowledge meaning how someone will produce the clay vases or how to prepare such clay vases, but it is very difficult to teach moral knowledge. We cannot teach in fact moral knowledge, we can just show, give examples to our students what does it mean to be a good lawyer, how to be responsible, why I am doing that, what is the purpose of the profession in the society. Of course, I do agree that this is one of the most important tasks, however, one of the most difficult ones.

Thank you.

Mr. Tomasz Wardyński:

If I may speak – honesty, morality, values, *ethos*, this is very much a question of family upbringing. But what happens when there is a family which does not know how to bring up children? Obviously, schools should do their job and very often they do.

I never understand why, when we speak about the legal profession, discussion inevitably drifts towards law firms, especially the big law firms. I think that only a very small percentage of lawyers work in such firms. When it comes to media, I think that all this recognition comes from the fact that those large law firms are being ranked by different newspapers. Then you can see photos of people with titles. Those people who earn 5 million zlotys per year or something like that. This information is on the first page of all major newspapers in this country.

In America people see such information every day and I think that only lawyers get excited by news concerning money. Obviously, this attracts the media to the profession. They come and think everything in the legal profession is very technical, very easy to acquire. But what happens when we start practicing law, when the theory taught at law schools, as you said, turns into practice. Everything then enters a different playing field and acquires a different perspective, which is psychology. Whether you go to court, whether you speak with your client, whether you negotiate a contract for your client, everything has a psychological aspect. People need to communicate properly, having in mind what kind of emotions are there in the head of their counterpart, when you speak about a legal problem. What is it that he means or understands speaking about the same legal text. I can assure you that if you put 50 people in one room, everyone will understand the same text differently. Moreover, I think that at the origin of how each person in the room interprets it, will most likely be his or her economic interest.

When young people enter the profession they understand at this very moment that they have to go and run and they have to exercise some kind of a skill which they have never heard of. In my view, this is something that you learn only by practice. By absorbing experience you go through good or through bad, it is a learning process. I can tell you from my own experience that only after 5 years of being a qualified lawyer I understood what the profession was all about. I do not think this is something that can be taught at the university. You may have different handbooks but until you start really doing things and until you talk to people and see their reactions, until your emotional intelligence shows you what kind of influence you have on people, do you irritate them or have you managed to gain their approval. This is something that you learn only by meeting people and talking to them. Some learn it from their life experience, some get it very quickly, it depends on their personal temperament, their abilities and talent. I think that law firms know very well what they are doing and how to prepare young trainees and young lawyers. It takes a while before you become a partner and I think that there is some kind of wisdom, which is acquired this way. So, I would not even attempt

for the universities to provide this kind of skill and training because it is simply not possible. I think that what we have rightly concluded is, that when you leave law school, the law is already different comparing to what you studied two years ago, and next year it will be different again, and this is a never-ending story. So you, as a young lawyer, are somehow trying to chase a kind of vanishing point. Yet I think, that we know very well that there is a core which does not change, because if the legal system changed along with legal provisions, then there would be no state and no society. I think that the structure and axiology of the legal system do not change and this is something every lawyer should understand. And at the end of the day there will be no legal system and no state unless there is a civil society. Once we know this, then we will be able to understand the role of the civil society and the need for its existence within a state organism. And what is a civil society? Civil society is a society where members are aware of their fundamental rights and are bound by mutual trust. It means that they are motivated not only by some economic interest, but by trust that there is something that binds them together, a belief that they are pursuing a common interest. I think that the judge who sits on the bench and the lawyer pleading before him and also the audience, they should all be bound by this sense of a common interest, which is their own state and society. If I may reiterate, in my view *logos* (logic, ability to interpret), *pathos* (empathy) and *ethos* (ethics) are the three pillars of the profession. There will be no profession without ethics. And ethics can be taught at the university because legal professions do not really devote much time to it in their training programs. Now we can also teach skills of how to interpret law, but when it comes to *pathos*, this is something that you only get from your own mother, from you father, from your family and your friends. So to answer the question, I would forget about those elements of legal education which university cannot teach because it is not really prepared for it. You have legal clinics obviously and somehow this kind of education gives certain sense of how the law works. But it is only when you are really responsible for the case of your client, whether an individual or a big corporation before an antimonopoly court, that you feel that you protect the same values and there is a certain bond which exists between you and the judge. This bond are the values which both of you have to protect.

Dr. Ewa Gmurzyńska, Center for American Law Studies, University of Warsaw, University of Florida:

I would like to refer to the question of division between practice and theory a little bit, also axiology. When we look at surveys, surveys done among our law students, we see that one of the main reasons why they choose the law school is prestige. Very randomly the answer to that question: "why you choose the law school" is – to do good, to provide justice, to help people, to protect them from the abuse. So this is the question which needs to be answered: the issue why should we introduce practical teaching into teaching theory, and it is not teaching prac-

tice for practice sake but to show students what they really will do as lawyers, what kind of problems they will face, what kind of moral and ethical dilemmas they will have to solve. We need to teach them sensitivity to the problems of others. They have to learn that justice is not always for all, unfortunately, and often somebody's life may depend on their legal advice or legal help. We need to show our students, through methodology of teaching also, that as lawyers they are responsible for the human problems. The law does not exist out of the context. The law, as Mr. Wardyński said, is full of psychology, which we by the way do not emphasize at the law school, and it is full of human problems, and we also do not teach how to approach them. The students have to realize that giving legal advice is not just a matter of technical knowledge and analysis of law or simply applying the law to the factual situation of a given person. They have to realize that legal profession is about taking responsibility for somebody else and taking that in mind, we need at the law school to combine practice and theory in the sense that we need to show the students what is the purpose of legal profession and what is the idea behind the law professions. Teaching theory out of the individual situation, sometimes what we mean by practical teaching, may make students believe that law is the technical tool and, what is even more important, it can make them less sensitive to problems of others. Then they go into the real world… The other point I would like to make is about solving problems. Dean Giaro mentioned lawyers as a problem-solvers and Mr. Wardyński said that the goal of lawyers' role is to protect people from the abuse of the state and other people. Obviously, protection is a major role of lawyers but there is also the question of the approach to this task. I see the role of lawyers as a problem-solvers also. This approach is something that we need to teach our students at the law school in terms of approach to legal issues and teaching them also soft skills. We need to teach them how to help others by several different means, not only through going to the court proceeding in the adversarial system, which is traditional but also quite expensive and lengthy. Those soft skills shall include knowledge of how to listen to people, how to ask questions, how to talk to them, how to look at broad interests of the client, recognize the psychological issues, which may appear in the legal problems. Through teaching problem solving approach and soft skills we can show students how to better adapt to the fast changing world. In this sense, by teaching such approach we also help the students to adapt into different legal systems, so if they go practice law somewhere else, they can easily adapt.

Thank you very much.

Professor Łukasz Pisarczyk, Moderator:

Unfortunately, we are running out of time, so I would like to summarize our discussion but I would like to turn to our panelist. Do you have further comments, questions, would you like to add something to your statements? (panelist indicate that they reached all conclusions). Thank you very much once again, it was very

interesting, very inspiring. Your speeches will be fruitful in our searching for a better model of legal education. Trying to recap and summarize our discussion, I would like to make a few final remarks. First of all, the system of legal education must be remodeled without a doubt. This is the first point. The second point is that we have to adjust the system to the current situation. The third point is that the current situation does not mean, in my opinion, and I fully agree with other participants of this panel, that we have to adjust legal education only to the practice in the strict sense. Practice and theory go along together. We cannot separate theory and practice. Our task as professors, as employees of the university is something deeper. To show the foundations of the legal system, the idea of the law, and we cannot separate theory and practice. I would like to agree with our younger colleagues that we have to provide our students with knowledge but also with practical skills, but practical skills in this sense how to be independent and how to be critical about what we are reading, what we are hearing. We should be critical as lawyers to find a good solution. So, in my opinion, this is the way for the future. Thank you very much and now we have a coffee break.

PANEL II. FOREIGN LEGAL SYSTEMS: TO TEACH OR NOT TO TEACH?

Moderator: Professor Julian Conrad Juergensmeyer, Georgia State University
Panelists: Professor Maria Kenig-Witkowska, Faculty of Law and Administration, University of Warsaw; Professor Stuart Cohn, Levin College of Law, University of Florida; Dr. Ewa Gmurzyńska, director of the Center for American Law Studies, University of Warsaw, University of Florida; Roman Rewald, esq., Weil, Gotshal & Manges, Witold Kowalczyk, student, Faculty of Law and Administration, University of Warsaw

Professor Julian Conrad Juergensmeyer, Moderator:

Good Morning. I think it is time for us to start. In fact, we are running a little bit late and I would like to remind you that this panel has more panelists than the other panels so we have been given some extra time. With the time we have been given, we can spend 15–17 minutes per person including introductions. Since you have been given bio sketches of all of our panelists, I am not going to give detailed introductions. So, fellow panelists, please, forgive me if I make your personal introduction extremely short and refer the attendees to those bios.

I am Julian Juergensmeyer. I am delighted to be here today as a University of Florida Law School emeritus professor and as Professor and Ben F. Johnson Chair in Law at Georgia State University in Atlanta, Georgia. That is the State of Georgia, not the Republic of Georgia! These days it is even harder to keep them apart because due to recent elections the State of Georgia is often referred to as Republican Georgia!

Our panel's topic this morning is "FOREIGN LEGAL SYSYTEMS: TO TEACH OR NOT TO TEACH". I am not good at predicting the future but I predict that everyone is going to say "yes" because most of us make our living teaching foreign law. So we will see if I turn out to be right or wrong but what I think we are really going to emphasize the most is that, given that we all agree that we should teach foreign law, how should it be taught.

I will start with a few basic observations. What are the justifications for teaching foreign law? I have made a list but it is not designed to be in depth or exhaustive but just some reasons that we might be thinking about at the beginning.

The first one is the equivalent of art for art's sake, i.e. learning for learning sake. Dean Jerry, I enjoyed very much your beginning comments on the previous panel that our job is simply to teach and educate, not to look at the market. So, I would still maintain that one reason to teach foreign law is to make lawyers more educated about the world. It seems very strange to me that one could call one's self an educated lawyer and know only one's own legal system. Yes, I realize we legal educators cannot ignore the market for legal services, although I think it is

sometimes shocking how much we pay attention to it. In the U.S. we have almost weekly articles in newspapers and on the Internet giving advice on what undergraduate and graduate college students, including law students, should or should not choose as a major or specialization and advising current or potential students in regard to the "good" areas of specialization to choose. Guess, how they define "good". "Good" means what major or specialization will result in students making the most money when they graduate. So, my first thought is that it is worth teaching foreign law in order to have lawyers who are comprehensively educated members of society.

My second reason for teaching foreign law is that I think the best way to understand one's own legal system is by knowing something about other legal systems. I think when a student takes a comparative law or a comparative legal systems course or follows a curriculum such as that provided by the University of Warsaw's Center for American Law Studies, the student ends up learning even more about his own legal system than about the foreign legal system, just because in trying to understand someone else's legal system you learn about your own.

A third justification for the study of foreign law is to search for better approaches to legal issues. No legal system is perfect. What answers do other systems give? Can they be adapted to improving one's own legal system? Law reform and modernization are constant and demanding issues in all countries.

A fourth consideration is the need to train lawyers to advise clients in regard to the law of other countries. The increasing pace of economic and political globalization is making this an urgent need. Thus far, our emphasis in this regard is primarily on training lawyers to recognize situations in which the client may need to seek the assistance of foreign lawyers. But I think now we need to consider educating lawyers to practice in more than one country or legal system. Just to give a couple of interesting examples, the University of Houston has just started a program on Canadian-American law. Their students can choose to have four years of law school instead of three years. At the end of the fourth year, the student is qualified to take the exams to become a Canadian lawyer and a Texas lawyer. At Georgia State University, we are starting a new LL.M. Program for foreign lawyers and if the proper curriculum is followed, the foreign graduate of that Program will be eligible to take the Georgia Bar exam and if successful, will be admitted to practice in our state.

Again, I think the thing we can do best in this panel is to answer the question: how is it best to teach foreign law? That is what many of our panelists are going to respond to. The traditional way was through comparative law courses, which were really comparative legal systems courses. Sometimes they were taught by visiting foreign professors. Another approach is to attempt to make a course specific comparison. I teach property law and I always spend a couple of days in my American property law course teaching French property law just to give the students more perspective. Still, another approach is what we called for-

eign enrichment courses at the University of Florida College of Law where we brought foreign professors to teach a specific subject – not comparative law in general – but to teach comparative property law, comparative urban law, comparative criminal law, etc.

Also the American model of summer programs abroad is one that we have used a great deal. Those programs are controversial in some ways in terms of how much they actually accomplished from a learning stand point but certainly the model is very popular. Finally, LL.M. programs, to which I have already made reference, are a very popular way for students to learn about more than one legal system.

In regard to the various approaches to teaching foreign law, I must say that I think we are present at a Law School which has done an internationally recognized great job with its foreign law programs. The Center for American Law Studies is only one example of the foreign law programs available to students at the University of Warsaw's Faculty of Law and Administration. The University of Warsaw should be considered, and is, a model for every institution in the world in this regard.

I will now call on our distinguished panelists for their contributions. Once again, I warned you I am not going to say much about each of them. Our first panelist is Professor Maria Kenig-Witkowska from the University of Warsaw. Maria is deputy director of the International Law Institute here. I have had the pleasure of working for several years with Maria. I saw her a few days ago in Barcelona, a year ago in Istanbul, a year before she was in Atlanta. So, it is great to be here again with you, Maria, and I am going to turn it over to you. By the way, I am going to ask our panelists' forgiveness in advance for asking you to stick to the 15 minutes that was scheduled for each of us.

Professor Maria Kenig-Witkowska, Faculty of Law and Administration, University of Warsaw:

Julian, thank you very much for your kind introduction, it is very touchy you still remember me from Atlanta, thanks a lot. Before I start with my remarks, I would like to thank Dr. Ewa Gmurzyńska, Head of the Center for American Law Studies, for her kind invitation. I consider it a privilege to be invited for the 15th anniversary of the Center, and it is a pleasure to be with you today. I would like to wish you the best luck and many successes for next 15, 30, 45 years, and then we will see.

When I was talking to Dr. Gmurzyńska about one of the questions that should be answered by the panelists, we agreed that the most interesting issue was to teach or not to teach, which could then be continued as: to learn or not to learn foreign law. We considered this short Shakespearian question the right one, simple to answer, and a very inspiring for the panelists. This is why I decided to elaborate on this question in my humble intervention.

Yes, the answer is unconditionally yes, yes, yes. We do need to teach foreign law and we need to learn foreign law as well. One of the reasons, which have been already mentioned by Julian, is the interest of our students. One may compare the list of enrollment to the course of American Law, British Law, French Law, etc. with the list of candidates; and one will see that there are more of them than places. This looks very optimistic for the future of the Center. As far as I know, Polish students appreciate very much the certificate of the American School of Law, which helps them in their career, even if they have just learnt relatively small portion of the American legal system.

My short remarks will be based on my career in academic profession, teaching law in Poland. I teach European and international law, as well as environmental law. I also have some experience as a visiting professor abroad, including the U.S. universities in Atlanta and Gainesville, where I had the pleasure to teach the EU environmental law. At the very beginning of my teaching activities there, I have quickly realized that American students have perceived European Union as a political entity, somehow similar to the United States of America. When I was lecturing, I managed to find for them some points of reference in both systems, in order to be able – by them – to compare legal acts of the EU environmental law with federal legislation in the U.S. Eventually, I had to give them a short course on the EU institutional law and a short course on international environmental law, just to show them where the system is coming from and what is the place of the EU legal order in the normative system of international relations.

To conclude this part of my observation, I would say that before we start teaching foreign law, meaning European law abroad, we have to take it as a prerequisite for further teaching to provide the students with some kind of an entry course of the EU and the EU legal system.

Now, to the basic question – how to teach foreign law abroad?

Julian has already mentioned that – we have to use comparative law methods, what brings us to the topic of the role of comparative law. First, if you do not mind, I would like to comment on some elements of comparative law methodology, which is the act of comparing the law of one country to that of another. The comparison can be broader than two laws and more than two systems. The comparison can be even more than law and of course more than wording. What I learned from my experience is that for students it is important to show them how the law fits into the culture and how the law drives and influences social relations. So, we must look at the law not only as on a formally written text. We need to underline the social structure of law to understand better, what the law really is and how it actually functions within the society. This has been already discussed in the first panel. It is what Mr. Wardyński was saying, that it is never too little sociology and never too little of substractural foundation of a law. Of course, it is a very broad category – substructural forces – meaning history, geography, customs, philosophy, ideology, religion, etc.

Conclusions of this part of my remarks are that it is clear that comparative law needs to take the right position and the right place as an important legal discipline. It also links to the relatively new research movement that we can observe nowadays – which is law and economics. Dean Giaro has just mentioned in the first panel the importance of this approach to legal science, and to the so-called critical legal science approach, which started already in Poland.

Allow me now to pass on to the point, which is using comparative methods in international public law. I would like to mention the new tendencies in the international public law, which is called comparative international public law. The shortest answer to the question why to teach it is because the jurisprudence of international courts is creating and executing international law, which is, as we all know a normative system of international relations. It is obvious that the so-called foreign law in this field of law does not exist; international courts are only using national laws and national jurisprudence in interpreting international law. International courts, academics, practitioners, as well as national courts, are increasingly, and that is very visible, seeking ways to identify and interpret international law by engaging in the comparative analysis of various national court decisions. This emerging phenomenon, because it is really an emerging field of research, one can name as a comparative international public law, which tries to combine international law as a matter of substance with comparative law as a matter of process.

We all know about the role international court decisions play in the international law doctrine of sources, under which they provide evidence of the States' practice, being subsidiary means for determining international law. This is why we should teach foreign law and we should teach foreign jurisprudence. Academics, practitioners and national and international courts frequently identify and interpret international law by engaging in a comparative analysis of how domestic courts have approached the issue. We know examples as the famous Pinochet case, and decisions of the International Court of Justice and the International Criminal Tribunal concerning former Yugoslavia, just to name a few. As for methodology, comparative international public law faces as many problems as comparative law itself, including the difficulty in finding and understanding decisions in foreign languages and unfamiliar legal systems. Again, that is why we should learn foreign legal systems.

Let me, at the end, refer to the question why to teach my favorite international environmental law. The simplest answer is because it rules international governance of global environment. I hope that everybody is familiar with term *international governance of global environment*, which gradually replaces the term *international environmental law*, which can be understood as diplomacy mechanisms, as response measures aimed at steering social systems towards preventing, mitigating and adapting to the risks posed to environment. Although the international treaties making process continues to play a key role in mitigating anthropogenic and environmental changes, it now constitutes a part, if not the

biggest part, of a wider system of private and public governance initiative operating on multiple levels, starting from international, via regional, to national and even communities level. This is why we should teach international environmental law and even more, we should teach a foreign domestic law on environment since it constitutes a part of international governance of global environment.

Thank you very much, I hope I did not take too much time.

Professor Julian Juergensmeyer, Moderator:

Thank you. Our next panelist is my friend and former colleague, Stuart Cohn, from the University of Florida Law School. Stu has served as a Dean for International Programs at the University of Florida. I am sure that makes you realize how important he has been in the life and the success of the Center for American Law Studies here at the University of Warsaw. In fact, Stu – am I correct? – you have taught each of the 15 years in the Center (turns to Professor Cohn who nodded). That is right – I think that deserves a round of applause. (applause). So now – Professor Cohn.

Professor Stuart Cohn, Levin College of Law, University of Florida:

Thank you very much Julian. I appreciate your remarks Julian and opening our panel, as well as making fine points that you gave, because it totally changed all my remarks. I have to say I have been preparing notes in the meantime to figure out what I might say which you already have not covered. So, thank you for that. I would also like to say, as a personal note, that one of the reason that I was attracted to the University of Florida number of years ago was because of the faculty members like Professor Juergensmeyer. He was there before I even came to interview at the University. I read his biography and saw his great interest in the international matters and development of the Cambridge-Warsaw program which I believe – correct me if I am wrong, Julian – was the only law school in America to have a program in Eastern Europe. Is that correct? Actually, I understand that Harvard had one of the first programs but they dropped it and the University of Florida took it over. Julian was very much responsible for that. I would also like to share what Professor. Kenig-Witkowska said in terms of thanks to Dr. Gmurzyńska for putting together this conference. I also would like to thank her in my former capacity of 12 years as an associate dean for the international programs, working with her closely for the Center for American Law Studies here in Warsaw. She has done an absolutely outstanding job over those years – she is the one responsible for having made this program such a success. I also want to personally thank for all the efforts she has done, as well as thank Agnieszka who has been also wonderful in that regard. Thank you very much if I can say that publicly, Ewa.

Yes, Julian is right, I suppose most of us in this panel, if not all of us, will say yes, it is important to teach international law. This is like the question: to teach or not to teach. I have been very privileged to be able to teach in number of foreign countries over the last 20 years and I suppose, like every panelist here, I have been

personally enriched in ways that are immeasurable by my own personal experience in teaching in foreign countries. I have learned as much as I had been able to give out. I have learned from students, I have learned from my colleagues, I have learned about different systems of law and I can tell you personally that it had certainly enriched my own teaching back in the United States. I even enriched my research by understanding of what the practice of law and teaching of law is all about, so from a personal stand point it is certainly something that I think is very important. I would say that it is probably a thought of everyone in this panel. Although, as teachers we are professionally enriched by this experiences I want to change the focus of my remarks a little bit from teachers to students. Dean Jerry talked about earlier that we regard students and senses of our market and so the question is do the students regard foreign law teaching as important as we do? Do they see the importance that it has, the fundamental reasons that Julian and Maria talked about. Do they see it, do they understand it, do they realize it as we do?

I will say that from my personal experience – there is quite a difference between European students and American students. In my experience, European students have much greater understanding of the importance of studying foreign law. In part, that is because European students are surrounded by a number of different countries. They have to deal with it on a fairly regular basis. So, it is quite natural for them to realize that they need to have an understanding of their neighbors and the legal systems of their neighbors. But also it is fairly easy for the European students to understand the importance of the United States law. Their lives are entirely dominated from time to time by the United States institutions or the United States products – Microsoft, Amazon, Google,. All of the things that in today's technology we have been talking about, places to eat, etc. I walk around Warsaw and what do I see: Subway, Pizza Hut, Kentucky Fried Chicken, McDonald's and, of course, all kinds of businesses that students here in Warsaw and Europe constantly are familiar with. And, of course, not least – all major American law firms which are located in Warsaw and in other major capitals in Europe. So, I think it is fairly easy for the European students to realize the importance of understanding the Unites States and other foreign legal systems, in the way that Professor Maria Kenig-Witkowska has talked about.

What about the United States students? I will say that, with some exceptions, this is not the same case. Generally speaking, I have to say – and I am sorry to say it actually – that the factors that are present in Europe are not present in the United States. So consequently, it is a much more difficult test for us in the United States to get our students motivated to take courses that are offered to them, to take advantage of the opportunities of the foreign study that are offered to them and to listen to us as we expand to them the importance of understanding legal systems of another countries and understanding foreign law. They listen to us and, of course, they take notes because it might be on the exam. But I have a sense that it is like taking medicine. It is something they have to listen to and ok, but that is not really

internalized. Despite of our efforts, the whole importance of studying foreign law is really not internalized by American students. And, of course, we are not helped by our Supreme Court, several members of which have substantially questioned the value of looking at foreign law to answer domestic questions. It seems to me like totally irrational point of view but it was publicly stated and announced by some members of our Supreme Court. So, we are not helped by that.

This Hamlet question that Ewa has posed for us: "to teach or not to teach?", might not be so important if the globalization that we have been talking about this morning was leading to some kind of a harmonization of law. If our legal systems became more harmonious, maybe it is not so important that we focus on foreign systems so much, but that has not been the case. Despite the movement of globalization, there are still significant, substantial differences that exist among our foreign systems. We just simply can say – well, it is not so important because it all will be the same in time. Even in my own field, my field is business law, company law, securities, one would think that we would have much greater confluence of ideas and commercial practice because, after all, commercial practice cross the international boundary and should start look pretty much the same. It has not happened. So even in my field it is still extremely important to understand foreign systems and to have our students understand foreign systems. Let me just give a few examples.

When I am teaching here in Warsaw, and I have been privilege to teach Center for American Law Studies program since its inception. It is something that I very much enjoy because of the high quality of the program and the high quality of the students that I have had a chance to meet here. When I teach here, and I teach usually something connected with business law area, one of things that I speak about, and many of you are familiar with, is the fact that we do not have a national corporate law in the United States. I think we are, as far as I know, the only country in the world, that does not have a unified national corporate law. Our corporate law, because of the constitutional history, is something that is determined by states. Each state has its own corporate law. So consequently, with 50 states we have 50 different corporate laws. That would be ok if they were harmonious, but they are not. The law of Delaware is not the same as the law of Florida. The law of Florida is not the same as the law of New York, the law of New York is not the same as in California, etc.

So when I make this point one of the immediate reactions I get from the students here in Warsaw and when I teach in another countries is the same – this sounds chaotic. How can one possibly practice corporate law in the United States with this kind of arrangement? One of the articles that I assigned to the students is by Professor Roberto Romano at the Yale University. She wrote an article called "The genius of American Corporate Law". In the article she talks about the fact that we do not have a national law but she sees it as a positive, she sees it as a major advantage. The major advantage which I happen to agree with, is

that each of the states is constantly looking at other states to see what are the best commercial practices, the best corporate laws that could possibly be developed to meet the changing commercial world. What we have in a sense is an experimental laboratory among 50 states in which we look at the laws of the other states and see – should we adapt those?

I am very involved for example in the law reform in Florida and I can tell you that we spend the great deal of time looking at the laws of Delaware, New York, Ohio and other states – should we change our laws to look like theirs. Those states are looking at us and we are constantly changing laws to improve our commercial law to meet changing commercial conditions. So we do not see it as a disadvantage, we see it as an advantage.

So then I ask my students – what about the European Union? I know that there have been efforts in the European Union to create a single company law. Is that a good idea? And that is where we stop and have a discussion. That is the kind of comparative discussion that Professor Kenig-Witkowska was talking about. Because, if we look at it in the light, then is it a good thing to have a single European company law or is it better that each country continues to develop their own company law in ways that reflect their own particular culture, their own particular commercial practices, their own particular business community? It is a kind of a question that I think is valuable from the standpoint of teaching in a foreign country.

Let me talk about the United States. When I teach in the United States and I try to incorporate some foreign law for the United States students, it is a little more difficult because they do not immediately see the importance of it. But one of this subjects is "at will employment". In the United States most of our employees, except those who are members of a labor union, are called "at will employees", meaning they can be fired at any time for any reason. There are some constitutional protections that they have, so they cannot be fired for reasons that are constitutionally invalid, such as race, religion or something like that but in other cases an employee can be fired at any time, without any reason. There is no job security for an "at will employee". I asked my American students how many of you have been "at will employees" and many of them have raised their hand and it is accepted, it is something quite natural, it is just simply the way it is. And then, I asked the foreign students who were sitting in my class is this so in your country and they, of course, remarked that it is not that way at all. There is much more job security, the employees are treated in much different way, which opens up the discussion. My American students for the first time are saying: "we think there is something really valid and valuable about looking at foreign systems and looking at the employment practices in foreign system". That has always have been a valuable discussion to me and I particularly enjoy the fact that I will have foreign students in my class who are able to really remark very strongly about how they find the American employment practices, so adverse to employment protections that they have in their country.

There are other examples that I could give but simply as a matter of time, I will not, but there are number of examples that I like to use in my class in the United States where I point out the advantages of looking at what is happening in Europe or another countries. What I really wish, is that we would be able to do more to motivate our U.S. students to have the same appreciation for foreign law as I think exists in Europe, at least that has been my impression. We do a lot in the U.S. and Julian has mentioned some things we do. We do a lot, we do bring in foreign teachers to the University of Florida, for example. We have programs that we bring in foreign instructors and we have been very fortunate to have instructors from Warsaw such as: Professor Maria Kenig-Witkowska, Professor Tomasz Giaro and Professor Wojciech Kocot, who came to the University of Florida and taught in our program. But there is so much more I wish we could do and when they come I wish they had the kind of class sizes that are traditional with other classes. But still, it is hard for us to get our students to be totally motivated to take those kind of courses.

So what can we do? Do we have an answer to this? It is not "to teach or not to teach?", the question is how do we motivate our students to participate in that. One idea that has been thrown around and has been talked about is to require all of the professors to create some portion of their course devoted to the international comparative aspects. This is very similar to what happened about 20 years ago when professional responsibility and ethics became very important subjects and we were all told "add some element of ethics into your course". It did not work because all of us teach subjects that are usually so broad that we have very little time to incorporate additional materials and I do not think it will work in the international area as well. So to ask every faculty member to spend at least some time to incorporate foreign materials into their course I do not think is the answer. I think one answer will be technology. I think one answer will be an increasing use of technology to have cross-Atlantic type courses where faculty does not have to travel physically to each others' institutions but we can use technology to enhance teaching opportunities. We can have classes in which we have both – Polish and American students in the same class but obviously in different classrooms and on different sides of the Atlantic but learning the same material at the same time and talking to each other about various problems.

I think technology could be a way to reach some of this gap and to make at least American students appreciate more their foreign colleagues. Finally, and it is not too modest proposal, I would like to see the Bar exam have some questions which are foreign law oriented. Our law students are very goal oriented and their goal is to eventually get out of law school and pass the Bar exam. But there is nothing in the Bar exam that talks about foreign law, that talks about foreign legal systems, that asks them anything that they would need to know beyond American rules on evidence, American rules of criminal law, etc. Would not that be nice, would not that be refreshing if we had some portion of every Bar exam devoted to foreign law, just as we now have some portion of every Bar exam devoted to

a professional responsibility which is something new? When I took the Bar exam that was not a subject but we now have that as a required Bar subject. Would not it be nice if we had some portion of the American Bar exam and I really do not know what the Bar exam is like here in Poland but perhaps, the same would apply here. Would not it be refreshing if every student who studies for the Bar exam also wanted to study what are the differences in the European Union between a directive and regulation? What trade changes do we have in the United States with Mexico and Canada as a result of NAFTA – The North American Free Trade Act? What is the difference between the International Court of Justice and the International Criminal Court? What is the difference in their jurisdiction? How does a U.S. company protect its patterns and trade marks in Europe, in Africa, in China? This kinds of questions are very fundamental and would not that be nice if these were part of the Bar exam?

So I want to thank you for this opportunity, Dr. Gmurzyńska, for allowing me to speak and I thank all the panelists as well.

Thank you very much.

Professor Julian Juergensmeyer, Moderator:

Thank you Stu. That was very interesting and I, frankly, had not thought about putting foreign law issues on Bar exams. That is a very clever and thought provoking idea. Our next panelist is Dr. Ewa Gmurzyńska, Director of the Center for American Law Studies. I took public speaking course once and first rule of introducing people is never say that someone needs no introduction because then you have to go ahead and introduce them. But if one could say someone needs no introduction, it is our next panelist and JoAnn Klein reminded me that this is a very special day for Ewa, since she is not only celebrating the 15th anniversary of the Center and the graduation of this year's class but also her book "*The Role of Lawyers in Dispute Resolution*" has been published today.

Dr. Ewa Gmurzyńska, director of the Center for American Law Studies:

Actually, my book is at the printer right now, so it will be ready and published in a few days. Thank you very much Professor Juergensmeyer and, well, I am not going even to attempt to answer the question "to teach or not to teach comparative law?" because it is obvious for me since for almost 16 years we have promoted teaching foreign law to the Polish students. If I would say "no", then 16 years of my professional life would be wasted since I strongly believe that is very important.

I am going to make my very short remarks in a narrower view to talk about two programs in terms of teaching comparative law – the program of the Center for American Law Studies and another spin-off of that program, but this in a minute. I just would like to say that things do not happen in life without a reason. I say that because the Center did not happen in an empty space, in the middle of nowhere land. Twenty five years ago we had free elections in Poland, which opened incredible opportunities. We celebrated this event 10 days ago and we

hosted also President Barack Obama. One of the reasons why the Center was created almost 16 years ago was because we did have free elections. I just would like to mention from historical point of view that the ties of the University of Florida with Polish institutions, including the University of Warsaw, were very close for many years and they started with the Cambridge-Warsaw program in seventies. Then the University of Florida organized at the University of Warsaw and at the Polish Chamber of Commerce the conferences in 70' and 80' on East-West Trade. During that time we did not have a market economy, so extensive trade really did not exist between Poland and the U.S. or Poland and the so-called WEST through all these years, but for many, many years the University of Florida consistently organized those conferences, even though hope for change at this time was pretty small. Then when the political changes occurred at the beginning of the nineties the University of Florida was involved in one of the biggest and the most important transformations in Poland – development of local government, working mainly with Professor Michal Kulesza. The Center did not happen without a reason. It was a consequence of political and social change, but also many years of collaboration with the University of Florida and its presence in Poland through the worst political times.

I am going to make a short remark why it is important to have centers like ours and I also would like to mention that the University of Warsaw established other centers. The British Law Center, which has been actually the first one and has been opened 20 years ago, so we sort of took a path of our British colleagues from the British Center, and then other programs are with the University of Poitiers, Bonn and also we do have programs of Italian and Spanish Schools of Law. Now, when we look at the map of Poland right now, several major universities have programs similar to ours e.g. the Jagiellonian University, the University of Gdańsk, the Catholic University in Lublin, the Wroclaw University. Fortunately, this kind of teaching is becoming more and more popular in Poland. I said fortunately because this systemic approach to teach foreign law is very important and gives Polish students different perspective to look at law.

What are the benefits? First of all, it is an economical benefit. When a Polish student wants to go to the United States for an LL.M. Program, it is very costly, usually it costs around 30–40 thousand dollars which is unaffordable for most students. Our program is a one-year program and it is not an LL.M. but it could be compared to it, since it is a very comprehensive program which includes 190 hours of teaching. The obvious benefit is also that all classes are taught by American professors, so we sort of have a little bit of America here. The UF professors are bringing to our students not only the knowledge on the merits in particular fields of law but also the methodology, teaching methods and certain rules and culture which are applied at the U.S. law schools – attendance, participation and preparation for class, which in some cases is hard to follow at the University here. We are trying to introduce those rules and follow American methodology and

also ethical standards. So the implementation of the program has its challenges which concern, among others, to answer the question how much of the culture together with the legal knowledge you can bring to another environment, but the benefits for both, the students and the faculties of both universities, considerably outweigh those concerns.

I would like to talk a little bit about another program which could not exist, coming back to my thought that things do not happen without a reason, without creation of the Center for American Law Studies. It is our recent program, the program that both Universities are very proud of. It is called PAJRAP – Polish-American Judicial Research Assistance Program. This is a very interesting initiative which is based on a three party agreement between the University of Florida, the University of Warsaw and the Ministry of Justice. According to the Article 1145 of the Polish Code of the Civil Procedure, Polish courts may submit to the Ministry of Justice a request for legal information concerning foreign law. Based on this provision we developed PAJRAP. Because of the globalization and the fact that more and more cases in the Polish courts have foreign component, the judges need information about American law in the field such as family law, in field of property law, in field of corporations and general provision of the civil law. This program, in fact, is a clinical program which involves students at this side of the Atlantic – Polish students who are graduates of the Center for American Law Studies and involves American students on the other side of the Atlantic and, of course, the law professors who are supervising the work of the students. When a Polish court has a question about American law it approaches the Ministry of Justice, the Ministry of Justice passes this question to us, to our program and again it is a question about legal information not the advice and with our team consisting of American and Polish students and professors, we prepare the research. Obviously, this program could not exist without comparative component and knowledge of both systems. This kind of program shows in real life the effect of globalization of the world. Can you imagine a UF student in Gainesville working to help to find the appropriate law to be applied by Polish judge in the city of Radom or Krosno? Going further, we can imagine similar program of helping American judges to research Polish law. So the answer for me is very easy – yes, we do need to teach foreign law at the University of Florida and at the University of Warsaw because the global world is a matter of fact. The question here is a little different. No whether should we teach but can we afford this kind of programs on bigger scale? Can we afford it with sort of mass education we do have at the Warsaw law school with over 6.000 students, to educate elite groups of students, if I can use that unpopular phrase, in our "egalitarian" world. So if students are really smart and bright and they are interested in comparative law and they want to learn more and they want to be involved, should we create this kind of program even if it costs more than regular classes for 80 or 100 students? My answer to this question is yes – even if it is designed for a small group of students, it is the

obligation of our academic institutions not only to educate as many as possible, but also to educate those who in the future will be the elite of our countries. I am hoping you will give some thought to this question and I am leaving it open for the discussion. Can and should we afford to teach foreign and comparative law in this limited in numbers types of programs? This is just one example but my colleague Rafał Morek will talk about moot court competitions in the second part of our conference. So with that I am going to leave the floor.

Thank you.

Professor Julian Juergensmeyer, Moderator:

Thank you, Ewa. Our next panelist is Roman Rewald who I have had the privilege of knowing for many years and I am delighted to get to be on the panel with you again. Roman is a very important member of this panel, in my opinion. I am sure others will agree, because normally we end up sort of hypothesizing a role model of what we are talking about. But Roman is present and he is the best role model I know for teaching and the practice of foreign and comparative law. He is both an American lawyer and a Polish lawyer, well known in Warsaw for his international representations. We are especially pleased and honored to have Roman as a member of our panel.

Roman Rewald, esq., Weil, Gotshal & Manges:

Thank you very much. Yes, I had the privilege of going through both Polish law school's full program and a J.D. degree in Michigan – full program. That gives me a unique view on differences in education and what we can do afterwards. If you allow me, I will stick to my role as a practitioner. If I look at the question "to teach or not to teach", the answer is obvious – yes, but the remaining question is how to teach?

Let me just elaborate on the fact that I have been educated in the U.S. and I have a practitioner's view of differences between the American approach to law and the European Union's, Poland's particularly, approach. Actually, if we are talking about international law or foreign law in Europe, we are talking mostly about the United States, because looking at the EU as a whole, it is difficult to talk about foreign law when we are within the EU, and the EU law is quickly becoming harmonized. Looking at teaching Chinese law as foreign law is probably too early. Australia does not interest us that much, so only American law is the law that is really foreign, that needs to be considered in light of the international treaty between the U.S. and Europe that is coming up. I am going to address that issue at the end.

So I will speak about the EU law and American law, which are the ones that we need to compare. From that point of view, whether it is important to teach American law in Europe and the answer to the initial question is again yes – but how?

At the law firm, if we have a candidate who has an LL.M. diploma, and is an LL.M graduate from a university in the United States, we need to determine

whether this person can compete with other people who do not have that education. I would say that an LL.M. does not impress us that much because there is a great difference between the LL.M. (one-year master degree) and J.D. (full three-year law studies) programs. I completed the J.D. program and from that program we can bring something to Poland from the American point of view, because at the J.D. program you learn how to think like a lawyer in the first year of law school. This is a teaching instrument that makes you a lawyer in the first year. That instruction is denied to people who only take an LL.M. program. The LL.M. programs are one-year long and yes, in certain schools and states you can get an LL.M. and thereafter, take the bar exam and become a California lawyer or New York lawyer, which is fine. We have people like that in our firm. Would that give you an instant job? Probably not.

Let us look at the program that Ewa Gmurzyńska is administering at the University of Warsaw, here in Poland, which we are supporting. Tomasz Wardyński and his firm are also supporting this program. This is a very good program. Would graduation from this program guarantee a job in a law firm like mine or Tomasz's? Probably not. But it would distinguish you from other people who are competing for the same position and that is important because we understand that this person who comes to us with their application has a knowledge that is way beyond the regular law student's.

This program shows passion and for me legal profession is a matter of passion. If you are enthusiastic about your legal profession then certainly, you are going to be a good lawyer. If you are not zealous, you better be doing something else and take your legal education, as we discussed in this morning panel, as a good preparation for activity in society and go somewhere else, go to administration, go to other professions. But to be a lawyer you have to have passion about this profession. I think the University of Warsaw's program is very good. I am very glad to hear about the second program Ewa Gmurzyńska is starting because I have a war story about it that I will very quickly tell you about.

It was in the middle of the 90's and I had to register a foundation in Poland which was established by a foundation registered in Delaware. So, we filed all the applications for the registration indicating that the founder was a Delaware foundation, and we did not get any response for three months. So we went to the court. At that time it was not easy, but we did it anyway and we found out that the good judge had decided to determine whether or not this Delaware foundation was properly registered. So what did the judge do? She asked the Ministry of Foreign Affairs to send her the whole copy of the Delaware Company Code. After two months, she received the whole text of the law on her desk. Then she noticed that it was in a foreign language – in English – so she sent it back and asked the Ministry for a translation of this entire body of law. It was obviously an absolute misunderstanding of the situation because there is no way that a reading of this whole law would answer whether this registration was proper or not. So when we

found out about it, we finally resolved the issue by having a friendly American lawyer who was licensed in Delaware write an opinion that this foundation was properly registered in the United States. A program like this one would probably avoid these types of misunderstandings and make our practice much easier.

From the point of view of the employer, the law firm, what are we looking for in a candidate? Professor Giaro told us in a previous panel that we have a substantial globalization of the approach to corporate law by the expansion of the American corporate concept. It is happening all over the world. So first of all, yes, we have to look at the American way of doing business in contracts and in many other areas, but most important for law students is to understand the litigation part. American litigation is based on the concept of a jury trial and, therefore, it uses certain, very important procedural instruments which do not exist in Europe. Because of the jury trial, a lawyer must explain to a group of peers, people who are not lawyers, very complicated legal concepts. There are many ways of doing that. The way that American law protects that message to the non-lawyers is by making sure the evidence is not biased or prejudicial. For this purpose, there exists a whole body of evidence rules. The evidence rules in the United States are designed to protect juries against being bombarded by prejudicial, tainted evidence which could result in an incorrect decision. The whole field of evidence law is very important in the United States, but not so important in Europe, where the fact finder and law finder is a legally educated lawyer, judge, and he/she should be able to distinguish what is prejudicial and what is not.

Also, we need to understand the second, very important, procedural instrument which is discovery. In order to have evidence which would be properly presented to the jury, we have to have discovery. We have to get our evidence often from the opposing side. So, the whole system of rules around discovery is also very much built up in the United States and does not exist in Europe.

The third issue I will try to address in my presentation is the approach to witnesses in litigation. The American approach is that we go to a witness and we find out (discover) what the witness will say, because we need to know what will be said in court. For an American lawyer to go to court and ask a witness a question that he or she does not know the answer to in advance from discovery, is a major mistake. In Europe it is different. We cannot approach a witness in advance and, therefore, at a trial in the court we are guessing what the witness is going to say. This is a substantial difference.

Why are those issues important? They are important because international arbitration has switched from being just arbitration deciding who is right and who is wrong by a couple of specialists or common men or women, into a very much judicial process. Procedures of international arbitration are pretty much dominated by American and British lawyers, so all the people who are from Europe and are faced with an international arbitration may be surprised with the arbitrators' request for discovery. They may be surprised also by the evidence rules, with

which they are not familiar. Therefore, familiarity with the American approach in litigation could be crucial for Polish or other European lawyers to decide whether or not to go into international arbitration and how to prepare for it. This is a matter which cannot be overlooked and underappreciated.

You do not need to know the evidence rules like an American litigator, you do not need to know American discovery like the lawyers in American law firms, who would fight on every step as to whether particular evidence is discoverable or not. You need to know that such institutions exist and to understand the process. Only then you can better advise your client whether or not to get involved in international arbitration and whom to select as arbitrators. If you select common law arbitrators, they are going to be pushing for discovery and evidence rules. If you select European arbitrators, you may have different approach. So, teaching basics of both systems is very important and understanding American approach to litigation is very important.

Understanding American difference in jurisdiction is also very important. You have to understand that in Delaware, company law is a bit more liberal than in other states and that is something that could be useful for the client when you advise your client how to approach the issue of American and Polish or American-European relationships.

That brings me to the TTIP – the Transatlantic Trade and Investment Treaty which is coming up. I am sort of flabbergasted that so very few people talk about it in Poland, because this is going to be a revolution. The removal of the restrictions and regulations and differences which are existing between Europe and United States is going to open the markets on both sides to unprecedented sizes. TTIP is basically designed to remove custom barriers because they are the most damaging in the day-to-day relationships. There are differences in regulatory approaches to accomplish the same goals. Both, the United States and European societies, have the same goals – environment, protection of people, protection of labor. But they are being protected with totally different and incomparable instruments. If you unify them, if you put them together, trade between the U.S. and Europe is going to increase dramatically and that may happen in two years or so, and that is going to lead to further harmonization. So, sooner or later the encroachment of the corporate system of America – which Professor Tomasz Giaro was talking about – is going to be increased many times over, all because of the free movement of both goods and services between these two major economies. This is a great reason why common law should be taught to the extent that it is understood by an average law graduate.

The last subject (very close to Ewa Gmurzyńska and me, since we have been trying to promote mediation in Poland) is that you need to understand how a lawyer in any U.S. jurisdiction is going to respond to you if you are going to make a request for mediation. A lot of people mix mediation with arbitration or just with negotiation and, therefore, by learning foreign law, you also can learn how

disputes are being resolved in the United States. The United States is ahead of all the other jurisdictions in mediation, so you need to know it that in learning about the American approach to litigation and dispute resolution, in general, mediation is quite important. So, if a request comes from the United States when the TTIP treaty is already established, when there is a huge movement of goods and services between the United States and Poland and a counsel requests that a dispute should be mediated, you as a lawyer, educated in foreign law, should know what they mean by mediation and you can respond positively and have better resolutions.

So with that positive thought I will just sit down. Thank you very much.

Professor Julian Juergensmeyer, Moderator:

Thank you very much, Roman. That was quite interesting. So now we come to our last panelist, Witold Kowalczyk, and I think he is an appropriate person to end this panel. We have had the practitioner's perspective and now we are going to have a student's perspective and, of course, remember, academics – students are our clients. I would like to call to your attention that he is not an ordinary student – he is a Polish student, French student, and British law student and so we are very pleased to have Witold as a member of our panel.

Witold Kowalczyk, Student WPiA UW

Thank you very much for this introduction Professor Juergensmeyer. I also would like to thank Dr. Ewa Gmurzyńska for inviting me here and allowing me to share my thoughts and views on the use of comparative law as well as on the teaching foreign law at our law schools from a student's perspective. My main contention is that foreign law should, of course, be taught to students at law school and, going one step further, that it is necessary and mandatory to learn about comparative and foreign law.

I would like to address three points supporting this contention. The first one will be a presentation of some general reasons supporting the necessity to learn foreign law nowadays. The second answers the question of how it should be taught or how it can be taught to students. The third will focus on a question of using comparative law by judges. Since some students will in their future pursue a career as a judge, this point will prove useful to them.

Moving now to the first point. As it has been already pointed out, there are some general advantages and benefits of learning comparative law. I would now like to go a bit further than that and address an actual necessity that we have nowadays to use comparative law. We can see that such a necessity exists for three main reasons. First, we observe today a growing regionalization and globalization of the law, which has been mentioned previously. Its result is that some areas of law which 50 years ago were restricted only to national law, nowadays are completely governed by regional or international acts. Looking at the European Union, we have some branches of law which used to play an important role in national laws and that currently do not exist anymore.

The example of the EU law shows us the importance of comparison which allowed to create it. If we take a look at a European regulation or a European directive, we can say this is EU law, but if we take a step back, we actually see that the way in which that law was created was through the unification and convergence of initially diverging legal systems. We have regulations which both manage to encompass the differences of the common law and the civil law systems. So, in fact, in order for the modern lawyers and students to understand, interpret and work on such European regulations, it is mandatory to have knowledge of foreign laws and different legal systems. When looking at a specific regulation or a judgment of the European Court of Justice, we can see that although the court refers to the EU law, the specific question might concern a particular mechanism of English law which does not exist in other legal systems. This mechanism has to be somehow put together with the European law and the court will have to answer the question of how this English regulation should be viewed in terms of the European law. So for any lawyer in Poland, France or Germany it is mandatory, in order to understand such a "European" judgment, to look at English law and have at least some general knowledge of what English law says on this particular matter.

Furthermore, it is important to underline that beyond the on-going globalization of the law we experience also an already existing globalization of almost any other area of our lives – technology, commerce, trade, communication. All these areas are not subject nowadays to any national limits. This is a reality that lawyers and students that will go on and practice as judges or as lawyers will have to face in even more and more situations which are beyond the limits of one particular country. For example marriages, foreign international trades, foreign investments, etc. Those situations, in order to properly address them, will require the lawyers to have some knowledge of foreign law.

Finally, I would like to point out that lawyers nowadays should embrace, in my opinion, the most far-reaching unification of law as possible in order to eliminate those barriers that still exist between various national systems and which still lead to some hindrances in international commerce or trade or in other areas of life.

Coming to my second part, I would like to address the question of how we should teach foreign law. The main way of teaching it is by comparing. We start from one point that we already know and we go further to explore some other systems. We can also see nowadays, especially here at the University of Warsaw, that there are a lot of opportunities to study foreign law. We have the American, English, German, French, Italian and Spanish schools and students are free to choose a system they like and learn about it. In my opinion, however, we should also go a bit further and introduce compulsory classes which will be mandatory for every student and where every student will have to learn about some general aspects of comparative of law. To give you an example, when I was studying

in Paris we had a compulsory class. One year of comparative law. In the first semester there was a general presentation of what comparative law is along with a general overview of Japanese, Russian, Islamic law as well as Indian law. The second semester focused exclusively on common law and on the law of contracts in England. That class turned out to be very beneficial because even if I had the opportunity to study Indian law, I would probably never take it because it is not something that I might find useful in Poland or in Europe but actually, it offers you a more valuable perspective than one would initially expect.

Just to give you an example, there was a part of the course on Indian law which referred to the relationship and the reluctance of India to adopt international human rights treaties. That reluctance came mainly from the fact that the cultural and the historical background and approach to human rights in India is a lot different than in Europe. The following example will, I think, summarize this idea in the best possible way: we can say that in Europe when we look at every human right treaty, we quickly identify that the fundamental right, which is offered the most far-reaching protection, is the right to life. If you look at Indian culture and its law, the will to protect human life is not so strong and not so important. Indian culture is not so attached to the "sanctity" of the human life as we are here in Europe. There is, in turn, a far more important respect for the environment and for the connection of the human with nature. Therefore, the approach of India to international human rights treaties was to adopt them, because everyone is adopting them, but they do not actually believe that the rights protected in those treaties are the rights that should be protected. It makes you think that it is interesting to know that but actually, when you go further, it is kind of a fascinating thing to learn that a country with 1 billion citizens, that is 1/7 of the world's population, does not actually view human rights the same way we do in Europe and that this country would not extend the same protection to human life as we would.

Comparative law allows you to see the source of such cultural and legal differences which, in my view, are essential to any kind of legal career. For instance coming to mediation, if you look at the Japanese law, you will find there a very strong need to mediate a case and almost no cases go to trial. Almost all the cases are decided by mediation. Of course, it is a deeply cultural thing based on history but it offers you some valuable perspective on how to address the issues we have with mediation here in Europe.

So in order to answer the question as to how we should teach foreign law, I believe that such classes should be compulsory, they should be included in the compulsory curriculum of every law school and also that they should be, if possible, included as early as possible, during 1st and 2nd year, in order not only to have students which start to learn foreign law as soon as they master their own legal system, but in order to have students that learn foreign law along with their national system. Students that adapt to a world which is more and more unified

and more and more global and where law itself is becoming more and more global and offers more an international perspective than it used to.

Coming finally to the third point which is linked with some personal research that I have previously done, I would like to address the question of using comparative law and using foreign law by judges. I noticed that there is a question which has oftentimes led, especially in the U.S., to a heated debate between legal scholars as well as between the different justices of the Supreme Court. This question was: whether it is legitimate, whether American judges should refer to foreign cases and to foreign law when ruling on their own national cases? This question involves a lot of problems with the legitimacy of such foreign law uses – is an American court or a French court allowed constitutionally to refer to foreign cases and to foreign law when such law is clearly not considered as an actual source of law in the court's country. This problem has led to many controversies but there are actually many benefits of such uses by judges.

First of all, when we look at the ruling of the judge, whether it is in common law or civil law, the judge is for one thing interpreting the law, he is giving a meaning to some terms which are obscure, not clear in the law, but he is also a lawmaker, especially in common law but also we can see it over the European Union with the European Court of Justice, and also in some civil law countries. If we want to introduce changes, inspired by foreign law, into our national systems, those changes can be better achieved by judges which are more dynamic lawmakers as they interpret the law on a case-by-case basis. Hence, if we think of introducing a particular American regulation into Polish law, we can do so in a more dynamic and effective way by judges rather than by legislation.

The other argument that can be given in favor of such uses by judges is linked to the question that in fact all legal systems, or most of them, face the same dilemmas and problems. They have rules which may different but still address the same problems and it is natural in some way to refer to other countries and to what was decided in foreign courts in order to solve our national problems. We can see that especially in the area of public law and human rights where, for instance, the European Court of Human Rights refers to the case law of other human rights courts in the same way as many constitutional tribunals refer to the case law of other constitutional tribunals when ruling on a particular public law case. The same happens also within private law. When we look at the practice of the European Court of Justice in the 80' and 90' in Europe, where the European competition law was not very developed, there were frequent references to the U.S. anti-trust law and to the judgments to the U.S. Supreme Court in order to, in fact, create European rules on competition. Now I'm not saying everything was transferred directly from the U.S., there were some changes that were made but the U.S. and Japan were a source of inspiration in the creation of the European standards of competition law.

So in fact, there can be many benefits to such a practice and it can be clearly said that judges referring to comparative law have a broader perspective on a case and it also allows them to justify a given solution by saying that not only is this the way we do it in our country but also this is how other countries do it. The judgment hence gains an extra justification for the actions of the court.

Furthermore, as regards the question of the legitimacy of courts referring to foreign law it has to be said that in Poland, in the U.S. or wherever in the world, courts never make a judgment based only on the law. They always refer to other cases and they always refer to legal scholars – articles, books, etc. If such a reference to scholarly work can be made and is legitimate, then there is no reason to say that foreign courts' judgments will not have that legitimacy. Especially, if the case that is being dealt with is similar or even identical and especially, if the foreign judgment concerned a particular rule of law which is identical in another legal system. We often find legal systems which basically share the same rules and have almost identical provisions in their civil or criminal codes. It seems therefore natural to refer to foreign solutions. And on that I would like to conclude. Three main points should be kept in mind. Teaching comparative law to students is not only a benefit and advantage but it is also necessity and it should be mandatory to teach students foreign law in today's global world. That teaching, in my opinion, should be done by introducing mandatory classes that maybe would not allow students to be lawyers in another country but would offer a broader perspective and allow them to become better lawyers in their own country. And thirdly, as it has been underlined, there are some positive effects on the future careers when one would like to become a judge, there are many reasons to use foreign law when ruling on a case.

Professor Julian Juergensmeyer, Moderator:

Thank you, Witold. That was very good. I am sorry that a certain Justice of the U.S. Supreme Court is not here to be educated. I am afraid that we do not have time for discussion now, so I would like to thank the audience and speakers and invite you for the break.

PANEL III. THE CHANGING ROLE OF LAWYERS IN THE GLOBAL WORLD

Moderator: Professor Wojciech Kocot, Faculty of Law and Administration, University of Warsaw
Panelists: Professor Jon Mills, Levin College of Law, University of Florida; Agnieszka Stefanowicz-Barańska, esq., Dentons; Witold Daniłowicz, esq, DJBW Legal; Professor Marek Wierzbowski, Faculty of Law and Administration, University of Warsaw

Professor Wojciech Kocot, Moderator:

Good afternoon, it is a pleasure to start the third panel in our conference on "Legal education and legal profession in the global world from Polish and American perspective". I think that our discussion so far has been very fruitful and we will follow this success. What we are going to talk about? Generally speaking, the topic of our panel is: "the changing role of lawyers in the global world", so from the academic perspective the question is what do we need to teach future lawyers? We talked about this already in the former panel, so I think it is time to develop or to make our discussion more specific. I think that the main problem of our panel and the main problem to be discussed is the question what does it mean to be global lawyer? Does it mean that we are supposed to create a universal lawyer, not a universal soldier, but a universal lawyer? Do we need to teach students more than law e.g. law and economics?

I think it is a *talon d'Achille* of our education because we do not teach our students economy, our law students, of course. That is a big mistake and it is very visible during court procedures when the judges have nothing to say about economy, they do not understand economy and economic reasoning of big transaction, they are going to judge. So that is very important, I think. Similar to economics, what Professor Witkowska mentioned during her speech, we have another area which need to be considered, like sociology and psychology. Do we need to teach law students other sciences? Another problem I would like to raise – is it necessary for law students to have a full command of foreign legal systems and to what extent? Do we need, as University, to develop these universal skills or just encourage them to develop them by themselves? That is a very vital, very fundamental question. What skills should we administer? Do we need to teach them how to communicate, to negotiate, to reach a compromise – these are also very important, vital questions. So far, we do not teach them how to negotiate, how to conduct the discussions, the interview with clients, what language to use, meaning legal language, so the lawyers will be understood by others. Those are also very important problems in our discussion how to create, to use a shortcut, a universal lawyer. Of course, I think that in our panel we

have a lot of experts in these matters. I am very glad to have all of you today and I hope to discuss with you these problems from the practical point of view. Now I would like to introduce our first panelist Professor Jon Mills – Professor of Law, Dean Emeritus of Levin College of Law, from 1999 to 2003. Professor Mills served in Florida's Legislature for 10 years and was Speaker of the House in 1987 and 1988. His major policy initiatives include water quality, environmental bills, child abuse. He is very experienced and successful in representing parties, especially in constitutional cases. My point of interest was, for instance, Versace murder case, where he represented the family of the deceased in protecting their right to privacy. He is a very devoted academician and combines teaching with practice, especially in the constitutional matters and I think he will be able to share with us his practical experience. So, please, take the floor, Professor Mills. Thank you.

Professor Jon Mills, Levin College of Law, University of Florida:

Thank you very much. It is a privilege to be here. It is hard to believe that Julian Juergensmeyer and I came here 40 years ago. When we started coming to Poland we would never have thought we will be here today in this beautiful building and participating in this highly successful program. I would like to thank Dean Okolski and Dean Tomaszewski and all of the succeeding deans for keeping this program going. We have to thank Julian for his early leadership, Dean Robert Jerry for keeping this program going, and for the leadership of Ewa Gmurzyńska and JoAnn Klein who every day for 15 years have led this program, made it work and kept our students both involved and learning.

If our mission today is to describe how to create a universal lawyer, we have a tough job. I would suggest that lawyers had a higher mission than simply to practice law. Very few people have the right to practice law. With that right comes responsibility. As a lawyer, you have a duty to society, the courts and to justice. Is there a reason to believe that practicing law today is substantially different than it was 15 or 30 years ago? I would say yes. Generally, this is a different world because of technology, the level of communication, and the level of data sharing. Technology has changed the commercial world, the public world, and the world of news and communication. I suggest that technology is advancing far faster than law. We, as lawyers, are trained to look to history, to look to the past, to look to precedence. It is a new way of thinking for us to look ahead. Technology created a new level of complexity. Complexity is generally good for lawyers because somebody has to interpret that complexity. The level of complexity now has mixed among different disciplines. It is not just a technology; it is science, medicine, biology, and environment. In all of these areas the world is more complex and very different. Law is involved in all of these issues.

To be an effective environmental lawyer you have to understand something about science as well as the law. In addition, the pace of change in technology,

communication and trade all contribute to the complex environment. And Poland is in the middle of many of those important changes.

The world is different than it was when we came here forty years ago. We communicate more with each other, we trade with each other, and it is more complex for all of us. More issues are global – trade, environment, human rights, business. Some of the global issues are obvious and some are not so obvious. If someone handles a divorce in middle of Florida at the moment, you may have to know Columbian law. It is not obvious but it is important to understand.

I want to highlight four issues in particular:

1. First – both lawyers and law schools must address the global nature of the practice of law.

2. Second – we all must understand the impact of new technology increasing complexity and specialization in legal practice.

3. Third – law schools must address the issue of the difference between the practice of law and learning legal theories in law school.

4. And finally, the importance of the duty of a lawyer to be a citizen and a leader and someone who will defend a rule of law.

I think those are four important issues for us to understand.

In terms of teaching the global nature of law, we have heard a lot about changes in curriculum. I agree with the need for a more global curriculum. Of course, we need to understand curriculum issues that deal with transnational realities, trade law and issues like global harmonization of laws. Some areas of law will be harmonized easily, and some areas probably never will be. Some differences will remain because there are significant cultural differences among nations and regions and students are best served when they learn about cultures beyond their own. I suggest that in teaching and preparing lawyers for the new world it is critical that they understand more than we teach from books. That is why studying abroad in the world sense. When someone can experience the culture, the language, the values of another country it is far more valuable than reading about it in a book.

I know that the University of Florida is trying to give students that experience and so is University of Warsaw. We can change people's lives by exposing them to different cultures. I would like to give a simple example here. Everybody is familiar with traffic lights, right? They mean stop/go – so that should mean the same thing in every country, right? No, it is wrong answer! For example, in Sweden it can be 11 o'clock at night and there is no traffic. People will stop at a stop light. I know you may or you may not have driven in Brazil. I have. It does not make any difference how many cars are on the road or whether the light is green or red. Brazilians are creative in their interpretation of red and green lights. Clearly different cultures interpret laws in different ways. Direct experience in those countries will make for better citizens and better lawyers.

I recall a situation where I was one of a group of lawyers advising a company that was licensed in a European country. That company could not be easily licensed in the United States, however. It was not enough to read both laws you had to solve the situation. The culture behind the laws is different. That reality is also true in defamation cases. As you know, defamation is when somebody makes damaging and false statements about another person. You might think that law is the same in the United States and in the EU because there are many cultural similarities. Absolutely not. The United States pay so much more attention to free speech in the First Amendment when weighed against personal intrusions or defamation. Something that would clearly be defamatory in the EU is not in the United States. The EU has elevated cultural beliefs in individual dignity to higher level than has the U.S. And, by the way, in today's world, if someone distributes defamatory information on the Internet and it is available everywhere, they might decide to travel to Europe because their chances are better there. If that information was distributed both in the United States and in Europe, they may be able to do so. Therefore, we as lawyers should understand cultural and legal differences. And now, we must understand the implications of new technologies such as the Internet which make global lawyering much more complex.

This brings us to the second important area of the growing influence of technology on law. We all need to understand the new realities of global communications and new technology. Because of technology and complexity there are more areas of legal specialization than in the past: healthcare, environmental law, communication and other areas. It seems more important than ever before to have some understanding of technology, science or some technical areas. Even though you may not chose to specialize while a student, it is prudent to gain some expertise in some specific areas. You may not know if you are going to specialize in healthcare, environment or number of other issues. But I would suggest to spend some time gaining background in some of these issues so you will be capable of specializing if you choose to do so. In our environmental courses in the United States there are teachers who incorporate some biology, or various technical or scientific issues into their teaching. Clearly environmental issues are an example of a technical and global issue. Pollution is not limited by borders, so therefore, we have to work together and understand the science, technology and law relating to the environment. An interesting aspect of the increasing global exchanges on issues like the environment is the cross pollination between scientists and lawyers. In exchange programs that involved scientists and lawyers from the U.S. and Latin America the issue was dealing with environmentally endangered lands. In Brazil the endangered area is called Pantanal. It is somewhat similar to the Everglades in Florida. There were scientists and lawyers on this research project. The scientists from these two different countries had easier time talking to each other than lawyers talking to scientists in the same country. Science is a different language. But this project helped those of us who were lawyers to learn more of the

scientific language. I am suggesting to you that in the future, technology is going to be important enough so that if you learn it, you will be valuable.

The third area I mentioned was the need for real world experience. The real world is different than the books and we need to help students and new lawyers learn and experience the difference. For example, what it is like to actually talk to clients with real and serious problems. Or, if you work in public policy area, what it is like to actually experience the impact of real politics. For example, you may draft what you believe to be a perfectly good environmental bill concerning the water quality. You draft it and you give it to a Member of Parliament or Congress and they say "oh that is impossible". Why is that impossible? It is written perfectly. It is impossible because it cannot pass. You might have a policy that cleans the water perfectly but makes it impossible for farmers to grow sugar cane.

I have had an opportunity in my life to work for intelligent people, good leaders, visionaries, and I have had an opportunity to work for people who were not so intelligent and did not have a vision. I have learned from both. You have to be involved and engaged in those difficult processes, issues, and unexpected crisis. The experience will change you.

The last important issue is to understand that, as lawyers, you should be leaders and good citizens. Because you are a lawyer, people will frequently ask you questions about law – about what the law should be, or about what the law is. So you have a special privilege to advise them. With that privilege comes responsibility.

It is not enough to learn what the law is; it is not enough to learn how to analyze the law. We are not trained only to be mechanics, we are not trained just to fix the bicycle. We are trained to figure out what you can do if the bicycle cannot be fixed. People will look to you when the answers are not easy.

The fact that you have the privilege and ability to learn what the law means, also means that you have a duty to use it – particularly for those who have less chance. The poor or underrepresented people in the world deserve justice as well.

I mentioned this morning to someone, if someone went to a lawyer who was trained let's say in 1950 in the United States, he was attending a segregated school, meaning blacks were separated from whites, and they said I do not feel this is justice, I want to change this. Well, a lawyer who read the law as it existed in 1950 might say "I cannot help you, because the law says segregation is legal. The United States Supreme Court said so".

But some individuals, including Thurgood Marshall said "that is not what the law should be". Marshall later became a U.S. Supreme Court Justice. But in 1950 he and other lawyers were just that – lawyers. And they took on the cause of change.

I had a classmate of mine who is an ambassador. I mention this because I have not seen him for years until the last week. He said some of his law school training was useful but ultimately real life was a critical teacher. To make good decisions you must have the analytical skill of a lawyer but you must also have the judgment

to understand people and situations. The Muslim community in his country was upset by a man in the U.S. who was threatening to burn the Koran. He chose to go and talk directly to a Muslim leader and about the U.S. culture and law. He told them that in the U.S. the law even allowed someone to burn the American flag. And, that while most people found it offensive, the action was allowed as freedom of expression. That personal cultural explanation helped to understand why the burning of the Koran would not be stopped. So, my friend was able to use his legal training and his cultural knowledge to diffuse a potentially bad situation.

Being a lawyer in the new century is a great challenge because of global and cultural differences, technology and complexity. But being a lawyer gives each of you the ability to meet that challenge, seek justice, and provide leadership where leadership is needed. It is the obligation of Universities and professors to provide the opportunity for our students to be those leaders.

Thank you.

Professor Wojciech Kocot, Moderator:

Thank you, Professor Mills for this very inspiring points. I think that the last sentence you said: "we are obliged as academics to teach and provide an opportunity for the law students" is vital in this context. I think that this change of level of technology and specialization of profession, not only professionalization but specialization of the profession, is the most important problem. That is interesting what you told us about lawyers as leaders – that is interesting approach. I have never heard before such an approach, so it is very inspiring for me, of course. My other comment about what you just told us, is that the lawyer must be aware of the complexity of law in the fast globalized world, that is also interesting. I do not think that we talked about it in the first panel on education in America. As far as I remember, I know that in American legal studies are postgraduate studies. So, if you want to study law, you have to finish undergraduate studies, for example in biology, chemistry, accounting or linguistics. That gives students a completely, entirely different perspective of looking at the legal problems. Our students do not have such an opportunity, so that is a point of discussion, as well as a very interesting difference. Last comment what I think is important, is participation of students in public service. I think this is also a way to shape new law students and lawyers in the future.

Our next panelist is Mrs. Agnieszka Stefanowicz-Barańska, partner in Dentons, Head of Competition, Regulatory and Trade Group, for nearly 15 years and Mrs. Stefanowicz-Barańska graduated from the King's College of London and she was admitted as a legal advisor in 1997. What she wants to talk about is the influence of technology and digitalization on everyday legal work. So please, take the floor.

Agnieszka Stefanowicz-Barańska, esq., Dentons:

First of all, allow me to thank you for the invitation and the opportunity to address you today. I would like to start by quoting the ABA Committee on the

future of legal profession which in 2001 said that we are in the middle of the biggest transformation of civilization since the caveman began battering. The practice of law and the administration of justice are at the blink of change of an unprecedented and exponential kind and multitude. To those of you who shaded at the prospect of the revolutionary changes in general, and especially these revolutionary changes affecting us – lawyers, I want to offer words of comfort. The legal profession has adapted itself to changing demands of society in the past and if we have done it in the past, we can do it now too. I think that university is the best place to start thinking about how to prepare yourself for these changes. There are several factors which shape the legal practice revolution now, which are on one hand, globalization and on the other, the digital revolution.

Allow me to point out that there are synergies between these two factors. As markets go virtual, they also become inherently global. Now let us look to each of these factors individually starting with globalization. Lawyers can no longer expect their practices to be purely domestic. We need to create global lawyers who can plan to operate across legal systems, dealing with trans boarder transactions, and multinational companies. Does this however, mean that international law – whatever it may mean on this concept – will be at the center of the legal practice of the future? Well, it is a fact that globalization experts pressure to worlds conversions around a uniform standard. A case in point it is emergence of global accounting standards. The growing harmonization of global antitrust law with its inherently economic and cross-border by nature is another example. However, as long as we have independent states laws, in my opinion, laws will remain local by their very nature. This means that the world of today should be not globalization but rather globalization meaning the localization of a global product. Lawyers must become globally literate but at the same time they still need to be experts in the national legal regime. Since there are increased pressures of globalization, having the opportunity to approach legal issues from another foreign view point makes us more creative lawyers. Richard Branson once said that when he needs to find a creative solution to a problem he travels in order to change the environment. Changing old habits and finding new ways is very important to the practice of law in a cross-border context.

In the context of education of new lawyers, comparative law courses and foreign law courses, such as the one offered by the Center for American Law Studies, play exactly the same role. This is very important, given that, as I will explain later, creativity will be, besides ethical values, the main advantage which lawyers will have over on-line legal services in a digitalized world.

Let us now turn to digital revolution, the second factor shaping the legal revolution. Digitalization has big influence on the place where we live and do business. This means that on one hand, clients want faster and more efficient service while on the other, lawyers and clients, both, live and work under higher stress levels than ever before. Likely the digital revolution has also in many ways

assisted us in combining the same levels of expertise as we offered before with much faster ways of rendering advice. I am speaking, of course, not only about faster communication with clients, courts and colleagues but also about technological solutions assisting the modern lawyer in everyday business. The fast ways of business require that lawyers have to be better prepared for the answers that clients pose. This means, first of all, an increasing need for narrow specialization. This is a sign of the times that nowadays law firms expect specialization already from graduates straight out of law school. However, the modern world brings many paradoxes and one of these paradoxes is that in order to be better prepared for those answers that clients pose, lawyers need to combine specialization with interdisciplinary approach to lawyering. We cannot rest exclusively on our specialization.

In order to be able to survive in very competitive environment, we increasingly have to combine our narrow specialization with complementary skills, meaning combine so-called hard skills, such as business and financial knowledge with soft skills such as decision analysis, time management, multicultural competence and my personal favorite, writing skills.

Allow me to focus on this last point in order to illustrate a broader perspective. Just as lawyers work under unprecedented stress levels, so do our clients. This puts more emphasis on better communication skills in order to make lives easier to our clients. Simply writing skills are the most elementary step to achieving this but other soft skills such as multicultural competence or more generally, interpersonal skills, are also a must in today's practice of the law. The 21th century lawyer has to have the ability not only to advise but also to interview, communicate and strategize in action with clients. Communication skills finally, are important also because of the globalized nature of the business environment nowadays. I have noted at the outset of globalization means that lawyers can no longer expect their practices to be purely domestic. Such approach inquires lawyers to communicate effectively with client and lawyers from legal systems which are foreign to us. Communication is the key to success in this regard. This involves first of all, fluency in the foreign language preferably in English which is the *lingua franca* of the international business and legal practice. However, cultural sensitivity, cultural sensibility or even fluency in the given foreign culture are equally important. In order to develop comfort in the global environment lawyers must therefore, emphasize on a relationships and processes of learning. However, going back for a moment to the point about the need for an interdisciplinary approach, I wanted to take this opportunity to encourage law students to the unique possibility to learn the proactive model of lawyering which is typical for the U.S. lawyers. It mixes business and legal counseling with little concern for the boundaries between them. This requires the lawyers to have a strong understanding of business in general and good knowledge of his clients business, in particular. The U.S. model of lawyering is also characterized by an attitude that focuses on

problem solving and is also closely related to another distinct phenomenon of the U.S. lawyering known as legal entrepreneurship. This gives Center's students an advantage in the market because modern lawyer will more than ever before need to learn interpersonal skills, and will need to be entrepreneurial to gain clients but also to keep clients with a "can do attitude".

In this discussion let me turn to the less optimistic prospects for the legal practice arising out of the digital revolution. Let us consider that the digitalized world is a world in which non-lawyers have much greater access to legal guidance. It has been said that the Internet democratizes expertise, giving consumers access to alternatives to traditional legal services. This has been connected to the idea of getting rid of the high-cost lawyering phenomenon. The internet also means that the attorney-client relationship is no longer built by word of mouth. On-line resources are often used for referrals. The question which we start asking ourselves therefore, is: are on-line legal services actually making lawyers superfluous or will they make lawyers superfluous in the future? On one hand, legal services are too costly to significant proportion of society. On the other hand, on-line services increase accessibility to goods and services across geographical culture and time zone boundaries, thus mandating a greater need for legal services. On-line legal services relive this tension between need and accessibility. As a result, in the future public attitude to what is self-representation is likely to change. In the world full of information the lawyer may therefore, be substituted in some instances. However, lawyers trained to practice law in a technologically competent manner have the potential not only to fulfill the needs of a world which in the legal transition but also may provide lower costs of legal advice and improve access to justice.

I wanted to note that higher demand on lawyers also puts a closer focus on service and compliance with clients demands. However, it is important that, as lawyers, we do not turn into craftsmen. The difference distinguishing us from craftsmen must, in my view, besides our creativity, be the attention to ethics and independence. We must not forget to continue to put stress on those values in order to preserve our identity, as public trust professions.

Thank you.

Professor Wojciech Kocot, Moderator:

Thank you Mrs. Stefanowicz for interesting view on the influence of globalization and digitalization on the new functions and roles of the lawyer in our world. We have to agree entirely that globalization created new paths in lawyer's careers, new brands, new professions, new specializations and there is, of course, an increasing need for narrowing professionalism. So interdisciplinary knowledge is also required and expected from new lawyers. I think this multicultural skills are very interesting. Multicultural competence plays more and more important role. And the last but not least, of course, the lawyer should be prepared not

only to advise but also to communicate, to negotiate, to talk with people. He runs professional service. And the last conclusion about Internet that democratized legal world is also interesting, I think worth to think about. Thank you very much once again.

Now our next panelist – Witold Daniłowicz who is a lawyer, graduated with distinction the Faculty of Law and Administration of the University of Wroclaw, master of laws, LL.M. in 1985 at the Louisiana State University Law Center. Since 2012 he has been Managing Partner at Daniłowicz, Jurcewicz, Bielecki & Wspólnicy Law Firm. He is an expert on mergers and acquisitions in international commercial financial transactions, so in the field of law which is very sensitive as far as new trends in legal professions are concerned. So please, Mr. Daniłowicz take the floor.

Witold Daniłowicz, esq, DJBW Legal:

Thank you very much for this kind introduction and for the invitation to speak at this Conference. When I started preparing my presentation, it occurred to me that there is no other way to start other than with the words "when I was young things were different". I can say that when I was young, lawyers were lawyers and engineers were engineers and dentists were dentists. Now everything has changed. As Professor Mills has explained, lawyers work all over the world, so do engineers and even dentists are being trained abroad – everything is becoming international. So this invitation forced me to take a look back on how things were and how things are, particularly here in Poland, because the differences are tremendous. Interesting enough, when I was growing up, in the 60's and 70's, legal profession was considered as a very localized profession. Local lawyer was someone who would assist with regular – meaning local problems. There were, of course, some people here and there that were involved in international issues but normally legal profession was very local because life was local, so to say. Particularly in our part of the world international business relations were extremely limited. There was only a small group of people dealing with international issues. All of that has changed in the course of last 25 years. It is almost impossible to practice law in our country without referring to international matters. I am not even addressing the situation when someone is dealing with heritage when his uncle died abroad or someone else is marrying a lady from another jurisdiction, which are obvious examples. I was recently asked to help in changing hunting legislation in Poland. I would have thought that this area would be as local as it can get but I was obviously wrong. The main issue to be dealt with was related to the jurisprudence of the European Court of Human Rights. Thus the matter I was dealing with was an international human rights issue and not a problem of Polish legislation affecting farmers and people pursuing their interest in hunting. That is one of the fundamental changes that obviously comes to mind when you talk about the role of lawyers in the global world. Everything is becoming interna-

tional not only because of the international legislation but because new areas are opening. International human rights, international criminal law… All this matters make work of a lawyer very different in comparison with what it used to be few years ago.

But it is interesting to ask the following question: in the examples that I have just given, is the role of a lawyer actually different? And the answer to that question probably is: no. The legislation might be different, maybe it is more internationally oriented, maybe you have to deal with international treaties, maybe you have to use foreign language to access that legislation or to deal with your clients, or to deal with judges and international courts. But in those examples that I have just given, the role of a lawyer still is the same – the lawyer is someone who interprets the law, provides advice to his clients or represents them in court.

So the question arises: are there areas where the role of a lawyer has changed? From my own experience I would say that the role of a lawyer has mostly changed in business transactions. The process started in the Anglo-American world much earlier than in Europe, where the traditional role of a lawyer has been preserved until fairly recently. I started with saying that before a lawyer was a lawyer, and a businessman was a businessman. A businessman would come to a lawyer and say "tell me what the law is and then I will proceed". As times changed, however, imperceptibly lawyers started to be more and more involved in the decision making process and in business itself. I am not judging whether this is good or bad but I am just stating a fact. When I went to the United States and graduated from a law school there, this was actually what prompted me to become a practicing lawyer. Students there were taught to deal with business issues and not only to interpret legal rules. But there was a thin red line, which at least myself, I did not want to cross. I still thought of myself as a lawyer and not necessary want to be involved in decision making. I was happy to provide advice to my client. However, I saw a lot of people, as time went by, who were crossing that line. There were lawyers, and you can see that today, whom a company would send to another country to negotiate a transaction. They do not send a president or vice-president of a company with a lawyer, they just send a lawyer. They say "you go and negotiate this deal for us". That is a changing role of a lawyer. Things were different in the past. Most of you here, or maybe it would be safer to say, none of you here, remembers those days. Well, I remember my first deal, when I came here in 1990. I negotiated with a big state-owned company, and on the opposite side there was a manager of the company, president in today's terminology. When we finished he gave this negotiated agreement to his lawyer who did not even appear in the negotiations. He gave it to him for his comments. He came back with the following conclusion: from the formal standpoint this agreement is correct. I have always wondered what that meant. Basically, that it was signed, and it was in writing. What else somebody can say about formal standpoint of the agreement? But it was how he viewed his role, he did not want to get involved with the business side. He wanted

to divide the responsibility quite clearly – you, the manager, are responsible for the deal you have made.

Well, that has changed dramatically. There are very few lawyers today that can say they do not want to get involved in the business side. I see that as the biggest change of a role of lawyer in today's world. What are the consequences of this change? They are numerous. There are some ethical issues involved that are often completely overlooked. The question is: if you are involved so deeply in deal making process, is your advice really objective? And what about a situation that takes us even further? A few years ago in California during so-called dot-com bubble you had numerous young entrepreneurs starting businesses in their garages. Normally, they would pay their lawyers but instead they told them: "we have no money to pay you but you will get a share of our business, you will get 20%, 15% of the company in payment for you services. It is not worth anything at the moment but if we really make it, you will be rich". And it happened. Maybe in 100 cases, maybe in 120 cases but there are many lawyers and actually a few now famous law firms who really became very rich following this approach. But the question is – looking from the ethical standpoint – if you advise someone and you have financial interest in his success, is your advice really based on what you think is best for the client, or do you think "well, maybe I should tell him to quit what he is doing but if he quits then I would lose all my money. So, maybe I tell him to continue". This is a true but historical example. I do have a very recent example too. There was recently in our country a situation, widely reviewed in the press, involving a law firm whose lawyers as a part of their compensation received stock issued during the IPO (initial public offering) they have been working on. This raises exactly the same issues! They were working… but they had financial interest.

Ethical issues are really something that we should focus on. I do not want to leave you with an impression that all the changes in the legal profession we see happening around us are bad. I think this is absolutely not true. Today lawyers understand businessmen better and they understand their clients better and this is a very positive development. There are, of course, new areas when that is absolutely essential. It is impossible to become a patent lawyer without some engineering background. It is impossible to become a good environmental lawyer unless you really have some proper background. So, all dual degrees are becoming very popular these days. Let also not forget that for lawyers that are coming to this red line – some of them cross it, but some of them cross it completely – it means that they even stop being lawyers and they become businessmen. This is an interesting tendency. If you look at the people who start their legal career in general counsel's office, for example, most of them dread that at one point they will cross that line and join the management of a company. This is a new phenomenon, I suspect.

When we were given the materials to prepare for this Conference one of the task given to us was to leave the audience with a question that could be subject

of a later discussion. The question I would like to leave you with is the following one: are our law schools actually preparing graduates to these new challenges? Are they properly equipped not only to face them but to take advantage of these new opportunities?

Thank you.

Professor Wojciech Kocot, Moderator:

Thank you Mr. Daniłowicz for very interesting presentation. I think it was absolutely practical approach. That is point for discussion: crossing this red line – when lawyer becomes businessman and is he entitled to replace his client in negotiations for example, as far as business is concern, strict business issues. So, that is very interesting point. I think that is unfortunate changing, because it may go too far, it may go wrong way. Thank you thank you very much.

Now I would like to introduce to you Professor Marek Wierzbowski, professor *oridinarius* at University of Warsaw. For our American friends, professor *oridinarius* is professor appointed by the President of Poland, because in Poland the highest professorship is from presidential nominations. So it is a bit different in Poland than in other countries, especially in common law countries. Professor Wierzbowski is also a founding partner of the law firm Wierzbowski and Partners. He was visiting professor at several American law schools and, of course, he advised many important companies during his legal practice, so he also is very familiar with the practical problems we are talking about during our panel and the whole Conference. Recently he has been appointed member of the European Law Institute and member of the board of the Polish-American Fulbright Commission. So Professor Wierzbowski, please take the floor.

Professor Marek Wierzbowski, Faculty of Law and Administration, University of Warsaw:

Thank you for that long introduction. I am not that young, so my life story is a little bit longer than the life story of other people present here. I have a feeling that there is a common opinion that demand for lawyers will grow. Therefore, there are thousands of young people who try to enroll to law schools and because it is difficult to enroll to the best, well-known ones, so people open new law schools and students come to study law over there. As you are probably aware, in Warsaw we do have now six or seven law schools. Several years ago, it was only one, our law school at the University of Warsaw. However, I think there is differentiation of demand for graduates. People who graduate at the top of the class from good law schools, recognized law schools, have usually good job opportunities. People who graduate from newly open, unknown law schools, probably have a chance to be well educated taxi drivers or take some other professions and they are not able to enter legal profession at all because demand for lawyers is, at least in recent years, relatively limited.

I remember when I was teaching in the United States, one of my colleagues was teaching 1st year students, and this was a private, quite expensive law school, and he asked the following question to the students: ok, each of you who has visited medical doctor and paid him a fee, please rise your hand. So everybody, of course, raised their hand. Then, the next question was: everybody who visited a lawyer and paid him a fee please rise your hand. There were two or three hands. As you know, students in these professional schools are usually older than in Europe. Therefore, they may have more experience and more of them dealt with lawyers. So why did students enter law school not medical school? That answers shows some kind of demand. But there is a big difference between lawyers and doctors. Because doctors make some kind of gate way at the beginning of career. If you enter medical school there are good chances that you will be a medical doctor and wealthy person. For lawyers virtually the gate way is almost at the end, when the first client knocks to your door. I was told by a friend from the city of Białystok, that in that city more than 20 lawyers using some grants from the European Union had opened their law offices. After six months, over 80% of them have not seen a single client. So, ultimately they all failed. So, it is really very difficult to enter the legal profession. But let's assume that we have a person who is really well educated, from good law school. Such a person may enter legal profession or decide to be a civil servant or may move to business. I remember once I had a friend of mine for dinner who was professor in a U.S. law school and also a couple of law firm partners – it was long time ago. The law professor was making like 120.000 $ per year probably, two partners from the law firm, each of them was making something like a million. Two partners complained that in reality law is a very bad profession because it is predictable, profits per partner are published, so everybody knows how much you can make. If you move to business, sky is the limit. And that is reality. Some time ago when I was presiding the supervisory board of the Warsaw Stock Exchange and I discovered that half of its members were lawyers by education. But I was the only one who was a practicing lawyer and admitting that I am a lawyer. There was Mr. Stypułkowski, law school graduate who is currently president of mBank, at that time Bank Handlowy; there was Mrs. Pieronkiewicz who was president of BPH Bank, who was graduate from the law school at the Jagiellonian University; there was Mrs. Jagiełło, also law school graduate, who was civil servant but responsible for public debt.

Often it happens that even practicing lawyers decide one day to switch to business or to move with another business line. I know that law firms, which are quite successful, currently make more money on the investment fund they have opened, than they make on legal profession. They are not poorly paid, believe me. They are quite expensive lawyers. I share the opinion that future demands for legal services will be growing and they will differentiate. This will be a result of growing wealth of the society. Even average members of medium class have to

invest some of their money, to buy property and so on, so from time to time they have to use services of lawyers.

Regulation of business became more complex. We are just after crisis and in many countries, also in the European Union there are new regulations concerning protection of banks against crisis and so on. The best example is the American Dodd-Frank Act which authorizes American regulators to issue over 200 new regulations in regard to banking and securities regulations and some of them which have been already issued are like e 500 pages long. So, it is an excellent opportunity for lawyers. Believe me, you cannot survive in such a jungle of regulations without assistance of a lawyer. I do not know for sure, if you can survive with lawyers, but at least you have somebody to be blamed if things go badly. I remember when I started practicing law in the international firm. Every lawyer had a client and virtually was doing almost everything for that client: tax, labor law, contracts and so on. Today, actually, in Poland a person who is an expert in income tax may have some problems with value added tax. There is a growing specialization, so this picture has very much changed. As you probably know, I am recognized as an expert in capital market and it would be difficult to imagine doing big offering of securities without securing assistance of the law firm which will be recognized on Manhattan and in London. Actually, there are no chances of doing big offering simply because the banks will look for lawyers with whom they are familiar. You may be best-located lawyer but unless you are recognized by banks in these two localities, you have no chances to work on such a transaction. And, of course, it is growing internationalization of business, that more and more involves many jurisdictions. Currently, I am seating as an arbitrator in the arbitration case which is partially going in Russia, Poland, France and so on, and actually we have big mixture of jurisdictions and companies involved.

What will be the future? I think it will be a big differentiation of legal practice. Still there will be demand for small local offices, acting in family cases, serving small local business. There will be a room for that. On the other side, there will be room for big, global, international firms. As you know, there is a growing concentration of the law firms, never there were so many mergers of law firms as it happened a year ago. Probably this year there will be even more mergers. So the number of international law firms is growing. There will be room for local firms doing virtually big business transactions and often used by the international firms, which do not have presence in particular jurisdiction. For example, New York firm which does not have presence in Warsaw will have hard time to go to other international firm present in Warsaw with the client, because they would be afraid to lose their client. They will go to a local firm because then there is no danger of losing that client. And, of course, there will be a room for boutique firms, very highly specializing in certain area of law, such as trust law, public procurement and so on. Some time ago, I read an article and somebody says that future, at least in serving business, belongs to global firms and boutique firms.

I think that there will be still room for local lawyers. Will this world be the same as today? Probably not. Mr. Daniłowicz has already spoken about changes which took place. We noticed big changes currently going on, for example, some time ago English law firms relied on lockstep system, which means that every partner is making the same amount of money. Today that system is abandoned, changed because it does not work, particularly if you have partners in different localities, because of legal fees. Therefore, compensation of partners will be different in England, and different in Sweden, and in Poland, Germany and so on. In fact, probably Polish good lawyers will be better paid than Swedish or German. But that is a question of supply and demand.

What else can happen? There will be probably a mixing of legal advice with some other activities. As you know, some time ago accounting firms have abandoned their legal branches. Today they have reopened them, for example PricewaterhouseCoopers has a very active law firm and other accounting firms they started legal services which are linked very much to their services. So, they provide accounting services but if something is not clear from the legal point of view, they send their client to their lawyer and ask him to give the client the opinion if this was legal or if this was not legal. So there is some kind of mix of business and legal advice, and it turns that quite often lawyer must be specialized as business advisor. A lawyer cannot disregard, and Mr. Daniłowicz spoke about that, business aspects of activity of the client. That may result if further erosion of attorney-client privilege. Today it is quite common that lawyers are called as witnesses to courts, when they say "sorry, but I cannot answer the question, it is covered but this attorney-lawyer privilege". The judge will say "ok, you are exempted from that, please, answer the question". To some extent sometimes lawyers are very deeply involved in somebody's business. Nevertheless, situation is changing and will change, so probably the future world will be full of many huge firms but acting in a little bit different way. It is also the question that this market is very competitive and the clients are not that eager to accept huge fees and quite often they decide to rely on in-house lawyers than asking for external services. Also it is the question of new area for regulation developing like for example access to public documents was something actually unknown 20 years ago, today it is a big part of legal practice.

Thank you.

Professor Wojciech Kocot, Moderator:

Thank you very much, Professor Wierzbowski. There are a lot of valuable points you brought in to this discussion. First of all, that law studies open different opportunities, so we are not determined to be lawyers after graduating from the law school. That is very important option for many of our students who can go to administration, to public service, to business or politics. As Professor Wierzbowski mentioned, I think that what is important and what was interesting espe-

cially to me is that there is room for local small firms cooperating with other law firms from abroad to escape the haunting for clients. It is interesting and worth of further consideration. Anyway, thank you for your very optimistic view on legal profession, Professor Wierzbowski. I think now we can look at a bright side of lawyer's professional life because these opportunities are very open. Personally, however, I have a little less optimistic view on that. You mentioned the growing number of law schools, growing number of lawyers make not our life difficult but their life difficult and even if they obtain grants and extra money, they still have very tough life as professionals and actually, they cannot be professionals because being a professional is not only knowledge but also experience. So thank you very much all panelists for presenting your points of view and attitudes, and now we do have some time for asking questions and discussion.

Professor Stuart Cohn:

Thank you, I am Stuart Cohn from the University of Florida. Thank you, panelists, for you presentations. I would like particularly react to what you said because as a young lawyer working in Chicago, Illinois in a mergers and acquisitions field, I was too, several years ago, asked by clients what I think and I never expected this question when I was in the law school. I do not think most people getting out of law school expect their clients to ask them the business questions that they eventually ask. My initial reaction was always: "Look I am your lawyer. I will do what you want me to" but I found out that my answer was never satisfactory to them. So, it is very interesting question – the red line you talked about. I want to follow up on that by asking a question, because in law school we simply are not able in our three years or as many years as you may have here, to train our students to do the kinds of guidance in counseling that you do as practicing lawyers. I remember that when I have joined the law firm our letterhead said "attorneys and counselors" and I never knew what that word "counselor" meant. I have always thought that it is the same as attorney, but it really is not. It is exactly the kind of thing that each of you have talked about. But we have a difficulty getting this out across the law students. I am wondering at your law firm, when you bring in young lawyers, how are you training them now to do the kind of work that you see in the changing role of legal profession?

Mr. Witold Daniłowicz:

When I was at White & Case at one point, probably 8 years ago, I came up with the idea – what the law firm really needs, is a worldwide training program. There were two reasons why I came up with that idea. One was because the firm, as many others law firms at that time, was growing fast through acquiring a big number of people from different jurisdictions in various countries. We had offices in over 30 countries. I thought that the training program would integrate young people and sustain the same values. But at the same time, I thought it would be essential to compliment the training they received in law school in their respec-

tive jurisdictions by the training from some sort of practitioners, not always lawyers, that would prepare them better to serve this role. So, I started to prepare this training not on legal issues but on soft skills like negotiations, presentation, and understanding of accounting issues in business. We quickly discovered that there was a growing number of people that took these courses not in law schools but somewhere else because they figured out quickly they needed more knowledge, and a different one, in business and in law. But majority really went just to traditional law schools in Europe or in the U.S. and really needed extra education. That, of course, was an opportunity for a big law firm like White & Case. Small law firms do not have this opportunity and that is the real challenge.

Mr. Przemysław Pałka:

Thank you very much. My name is Przemysław Pałka, I would like just quickly to follow up on the technology and digitalization issue. I think this is an extremely interesting problem, especially when one asks the question: "what should we teach students in law school, in order to distinguish between: 1) the way technology changes legal profession, in a sense that we communicate with clients in different way, we can register a company in a different way; and 2) how technology changes the legal system, and actually changes the world we leave in". Just to give some brief examples. In my Ph.D. dissertation I study the legal status of the entities that exist only within on-line environments. The question is who is actually the party to this service and the contract. In concluding the contract there is a company, but not a single person actually providing the service. So when I was talking to my supervisor, wondering where should I do an internship over the summer, he told me that I should go and work for a company that produces robots and drones. And I do not mean the company's legal department. He meant "you go to these guys, you sit down, see how it all works". I have devoted much time to learn how to the code on one hand; and the metaphysics of Thomas Aquinas, the last person to seriously treat the idea that the world's existence is dependent on the action of another individual; because those are the skills that one needs to understand and conceptualize how the new reality operates, a necessary first step before any legal analysis becomes possible. So, my question would be: is there any space in the law departments' legal education to teach e.g. how technology operates, what is software, what is hardware and, how it changes law? I would say, on a philosophical level, for a long time we needed law because there were issues that there were physically possible but socially unwanted. For example, there is no point in prohibiting reading in people's minds. Even if we would find it socially undesirable assuming it was possible, we do not need to prohibit it, since it is not. But nowadays in many spheres of life we can actually make socially unwanted issues impossible. When it comes to driving, for example, there are more and more experiments on making cars actually stop if there is red. Or when it comes to fighting with speeding, putting limits on how fast a car can go. So, if that is

a sanction, one question would be: how do we, for example, encode the fact that we have a right to resistance or that there might be a necessity to break that rule to avoid a greater danger? Is there any space in a law school to teach about that?

Professor Jon Mills:

I would argue with this. I teach a course called privacy which deals with data security and technological privacy invasions. Those invasions are by government, media, businesses and individuals. A person who does not understand technology, at least to some extent, cannot understand the issues. There are firms in the United States with data and privacy security sections that are devoted solely to that issue. They are made up of some computer nerds and some lawyers and those lawyers need to be partially computer nerds to even do it. There was no real data privacy and security law one hundred years ago. Now it is a practice area.

Mrs. Agnieszka Stefanowicz-Barańska:

But the question is do you actually teach the technology or do you just ask relevant legal questions regarding technology and technological literacy is assumed?

Professor Jon Mills:

Since I am not a technology expert, I do not teach technology details. We do discuss technology a lot. And by the way, since the students are 20–25 years old there are always some students in the class who are, in fact, technology experts, because they are interested in the subject matter. I am not trying to teach coding and programming but just trying to say – yes, there is technology.

A student can read our materials for the course and see the issue of consumer advertising when he or she is texted to buy new shoes for a discount after they were searching for shoes on the internet.

We talk about cases dealing with GPS tracking location based marketing. In these instances everyone needs to understand today's technology. The U.S. Supreme Court has said that searching a cell phone is as intrusive as searching a house.

In response to your question, if it was not the technology, some of these questions would not exist. In the U.S. we are using theory of reasonable expectation of privacy as it was defined years ago and there are some justices in our Supreme Court that still communicate with each other by hand writing messages. Yet they are making judgments on what is a reasonable expectation of privacy in this new technological age. The law is still behind technology.

I think we need to discuss the technology else it would not make sense out of the new world.

Professor Wojciech Kocot:

So I would like to thank very much our panelists, please, applause them and I invite you for a coffee break now.

PANEL IV. COMPARING POLISH AND AMERICAN LAW TEACHING METHODS: LESSONS FROM THE PAST FOR THE FUTURE

Moderator: Professor Stuart Cohn; University of Florida; Panelists: Professor Adam Bosiacki, Faculty of Law and Administration, University of Warsaw; Professor Tomasz Stawecki, Faculty of Law and Administration, University of Warsaw; Dr. Rafał Morek, Faculty of Law and Administration, University of Warsaw; Dr. Kacper Gradoń, Faculty of Law and Administration, University of Warsaw

Professor Stuart Cohn, Moderator:

Good afternoon and welcome to our final session. The topic is: "Comparing Polish and American Law Teaching Methods: Lessons from the Past for the Future". I think it is an appropriate topic to end this Conference, particularly since we now are attended by some of the students of the Center for American Law Studies. They are familiar with American teaching methods since they studied in the Center in the past year. The panelists and I will be very interested in any of your questions or comments during the question period that follows if you want to make any comments about comparing our relative teaching processes between Poland and the United States.

My name is Stuart Cohn. I am a faculty member at the University of Florida, Levin College of Law. It is my honor to be moderator of this particular panel. We have a distinguished set of panelist here who all have extensive foreign experience. You may notice that, although the topic is about teaching differences, there is no American law professor who is personally in the panel. I am the moderator but I do not think that will slow down any of the comparative comments that will be made.

Let me start by just making a couple of comments from the American perspective to set the stage for what is going to follow. There is no question that when American law professors come to Poland or anywhere in the world we are stroked by differences in teaching methods. Some of those differences are the result of fundamental differences and structure of legal education. For example, in just about every place in the world, law is an undergraduate degree. So we are teaching people who are a little bit younger, who do not have a basic degree and whatever it is that they may have four years of college, so that is an immediate difference. In the U.S. we are dealing with professional school and that immediately makes a little bit of difference in the nature of the students. Secondly, you have, for example here in Warsaw, I think something like 6.000 law students. We have only 900 at the University of Florida. So that obviously makes a difference in terms of size of the class, how well you as a professor get to know students, the extent to what you can have any kind of minimal or full relationships through seminars or smaller programs with students, given the large numbers that you have. And third, of course, you have a student body, not just in Poland but around the world, which is not necessary going to end up in this profession. It is not true

in America, because it is a professional school. Almost all of our students do plan to end up in the legal profession, which makes a little bit of difference, of course, in terms of the motivation and what they are interested in. They come into my office and other offices and tell us what is their plan to do with their career, so it makes a teaching philosophy a little bit different.

Nevertheless, there are similarities as well and one of them is the quality of students. I have been very impressed being part of the Center for American Law Studies since its inception, with the quality of students that are in this program, so that is a great commonality that we have in common. But when we do come to teach in Poland or other places, there are some things that immediately strike us as different. One thing is class preparation. We are used to having students who have read all the materials in advance and we expect them to do that. I know the processes is little bit different here, so we have to adjust a little bit to that.

Secondly, there is less participation in class discussion from students by comparison in what we get in the U.S. Third, it does not tend to be as much hypotheticals in classroom here as we have in the United States, so when we give out the hypotheticals to students, we spend more time and we have a bit more of a delay before we really can get this sense of the understanding and the ability to respond to the problem. I think that our students in the United States are much more ready to respond to the hypotheticals cases since they get that a lot.

I have just finished teaching five weeks in Frankfurt and one of the things that stroke me is the lack of attendance requirements. In the United States attendance is very important. In fact, attendance is absolutely required and if you do not attend, the certain number of courses, classes, you simply cannot take the examination. In Frankfurt I never knew who my students were. They would float in and out on a daily basis. Sometimes, I never saw them through a week or so. I had one student who showed up after the course was 60% through and I asked are you going to take the exam? His answer was “of course”. I mentioned this to one of the faculty members in Frankfurt and I said this is a very mature attitude, I mean it is very mature that you have this open attitude that your students may come and go. He said that it worked well many years ago but it is not working so well today. They know it is a problem but it is just not something they are able to deal with now. It is a very great freedom of students to come in and out of class anytime they want and get credit for the course simply by taking and passing the exam. So there are obviously differences that we have.

Whatever the surprises may be for foreign teachers who come to the United States that is something that perhaps some of the panelists might come in upon. I am not able to do that so much. But bottom line is that, what we want to do, is to teach effectively. Your comments, your questions to the panelists afterwards would be interesting in this regard, in terms of what you think is effective one way, may not be in other. I know our panelists gave a lot of thought to those issues and I am looking forward to their comments.

Our first speaker is Adam Bosiacki who is a professor at the Faculty of Law here at the University of Warsaw. He is principally involved in a field of comparative law in central and Eastern Europe, as well as issues of law and history in this area and in Russia. So give a warm welcome to Professor Bosiacki.

Professor Adam Bosiacki, Facultu of Law and Administration, University of Warsaw:

Thank you, Professor Cohn. I would like to address three general questions and let me mention that some of them were already somehow posed or discussed, mainly about methods, needs and possible transformations of the future teaching. I would like to add some remarks, first of all, in the context of globalization, something that I would call convergence of legal systems rather than harmonization. No doubt, that such a change in the legal system and theory of law happened in recent years. Globalization, which takes place after the collapse of the communist system, is an extraordinary phenomenon present in many areas of social life. Globalization of law, which has lasted for several years, is one of the impacts of such institution. It makes the evolution of the scope of certain legal institutions and legal regulations, although the globalization of law leaves the fundamental legal principles unchanged. Those principles exist, I would say, since the time of Roman law, which is more than two thousand years. Such principal rules, typical mainly for private law, but partially also for criminal law and administrative law, are the expanding phenomena. It is impossible to escape from this transformation in the context of legal education. At least, we can talk about the phenomenon of convergence of legal systems, but also of convergence of legal teaching or legal education.

Globalization stimulates, then, natural convergence of both main (civil and common) legal systems. There are also other systems but they are not being under consideration, because of what we teach and what we have in mind is the transatlantic system. So both systems converge in the most natural way, which is beyond the formal, institutional nature. There is no indication that the phenomenon of globalization, including the globalization of law, has to be reduced. I think it is quite opposite: it most likely will develop more and more, so it will have more references in private and public administrative law, as well as criminal law. If we talk about the question of teaching methods now, it is obvious that in the era of globalization, in the globalization of law, a globalization of education becomes a necessity. It is associated with natural phenomena such as expansion of the internet, travel, business, or international trade, transnational or international offences, their prosecution and punishment, technology development or functioning of international organizations. It was partly discussed during the Conference and to some extent this is obvious that such questions are going to be asked very clearly now. The natural consequence of such phenomena is the exchange on educational, academic, scientific and cultural levels.

The modern lawyer must be able to move not only in the context of national law, but also of the private or public international law or the national law with a foreign element, as it was taught when I was a student. Much more than before, globalization moves legal provisions from the place of their location, so it is no longer *lex rei sitae* rule which enables to operate mostly within a single national legal system. There have been recently created wider and more comprehensive institutions, such as international franchises or implementation of foreign law, including the European Union (also in the sphere of private law relations), and the role of international economic agreements between the countries was somehow reintroduced. A well-known phenomenon is the modern system of very broad transnational human rights and civil rights. A major portion of this area depends upon precedents that are specific cases, typical for common law. New institutions are not completely coherent with domestic legal order and they start to function in a new shape. However, contrary to some political competitiveness between Europe and the United States, new institutions are formed from the bottom up, on the basis of the case precedent or broad general principles, which are connected and which is a typical approach in the common law as well.

It is obvious, of course, that the model of education must take into account all of these changes. I am not an expert in international criminal law and criminal law in general but I would say that definitely the direction here is to expand a codification of this area, including on one side, any universal norms such as *ius gentium*, which is widely accepted, as well as other unwritten standards. On the other side, many emerging penal institutions in the European Union countries may be constructed and based on individual cases and supported by written rules without any general provisions, as it is obvious for national legal system. Now we have a lot of institutions like the European Police Office (EUROPOL), or the European Anti-Fraud Office (OLAF). I cannot really imagine a contemporary lawyer which does not know such changes and the new institutions.

The first attempt to create a system of such legal norms was the so-called Nuremberg law after the WW II. It did not create a system of an international criminal law and it failed to do so. Also I would say that within the European Union the idea to create the European Public Prosecutor's Office or the attempt to prepare a European (general part) criminal code, so called *corpus iuris*, also failed. But currently numerous supranational institutions substantially operate within the framework of the European Union when it comes to criminal law. As I said, such a system is being created bottom up, which paradoxically opens a lot of potential possibilities between Europe or the European Union and the United States.

The evolution of modern legal systems requires, as I indicated, a broad knowledge of the contemporary Anglo-Saxon and continental legal systems. This is something we cannot avoid. No doubt, a modern lawyer's mission is to dynamically adapt professional knowledge and expertise to many aspects of the system

and the changing legal services market in this respect. New areas of law in the European Union already have, or are going to have, more often a *case law* character, e.g. the EU competition law. These institutions will also be of more general principles. So my first point is that as European lawyers we have to acquire a lot of knowledge in the contemporary American common law system. For instance, the European Code of Good Administrative Behavior of 2001 is an example of more case or general principles code as this is not a typical code in our (European) meaning. Also, there is an increased tendency of codification at the international level. That will apply not only to the legal system of the continental Europe, but also to the American and British systems. Similarly, the evolution of criminal law is likely to develop in the context of globalization of crime, along with criminal offenses committed with political motives. The resulting new system, therefore, is very far from classical positivism.

In conclusion, it is worth to state once again that in the era of globalization, from which there is no escape in my opinion, the convergence of the two main legal systems is gaining the momentum. Those transformations require adapting to new market legal education and legal services, and will be the subject of numerous researches and analysis of the phenomena, which can, of course, be subject to rapid obsolescence. The main research and practical issues remain, however, always the same. In our case, the education of students, which should respond to fast changes in the possession of an extensive knowledge in the theory of law. And last but not least, in this case I think the method of teaching should take into account the endured level of knowledge, at some point allowing to react to the changing conditions of the new legal systems. More and more lawyers will have to react dynamically to the widely changing context and to the necessity of legal actions. Probably the good feature of the "old" system of education was in some aspects the model presenting such a knowledge to provide an average quantity of knowledge potentially for wide number of students and pupils in lower levels, which allowed them to find themselves in the system of a market economy. I think it will probably find us in the modern, changing world, also including legal services or the question of jurisprudence.

Thank you very much.

Professor Stuart Cohn, Moderator:

Thank you very much for those comments. I was particularly stroked by your observation that we are all going to need to move quickly in this world and the days of more leisurely practice of law or study of law seems to be over. Particularly, giving the kinds of an international understanding, as you spoke about. Our next speaker is Tomasz Stawecki and I hope I get at least as much of a compliment on pronunciation of your name. Professor Stawecki is a professor of the Faculty of Law here at the University of Warsaw. Since 2007 he is chair of the legal philosophy and political science department. That itself shows the indication of a dif-

ference between the United States and European or Polish legal teaching. There are very few law schools, I do not know if there are any in the United States that actually have a chair of legal philosophy and political science. It shows the kind of difference in approach to the study of law that we have and personally, I admire that kind of approach. Professor Stawecki has been very active in legislation over the years and reform legislation in a Commission of civil law. We very much look forward to your comments.

Professor Tomasz Stawecki, Faculty of Law and Administration, University of Warsaw:

Professor Cohn, thank you very much. Ladies and gentlemen, if you do not mind I prefer to speak from that place since I can see the audience much better than just sitting on the table (he refers to the podium). Yes, we are having a discussion from early morning. The problem of methods of teaching and the problem of what lawyers or what graduates want to learn is the problem which was already mentioned by several panelists and by the members of the discussion. So, certain comments, which I want to share, were already mentioned. I do not want to repeat all important issues, however, the presentation which I prepared was without deep knowledge about other speakers presentations. I was trying to structure my speech in a more systematic way.

So what are the most important questions if we are to discuss the problem of teaching methods: what are available methods, what are the most appropriate methods and what are the most effective methods of teaching law to students? In fact, if we discuss methods, I think that we have to start with a different question which is: whom do we intend to teach, whom do we intend to educate, or what qualities and skills our students should have when they finish law faculty or when they finish University. What professionals do we want to educate? If you do not mind, I will then revers the order of the questions. I will start from the objectives of the legal education, then commenting about the context of the legal education and finally, at the end of my speech I will return to the problem of methods.

As far as objectives are concerned, there was quite lot said at this point already, but I think that the four points are the most important to be remembered when we discuss whom we are teaching and what is the world in which our students will be professionals. The four elements for the future context are the most important.

First, contemporary societies are dynamic, it was mentioned several times that the world is changing rapidly. It means that institutions, legal rules, methods of acting, both in the field of law and in the fields of economy, cultural development, and political international relations, etc. So we have to teach students that may be able to cope with such a dynamic state of facts. The second important element of the context is that the world today is global. My colleague was commenting on the globalization, so I will not develop this point. However, I am rather skeptical about the concept of convergence, about making different legal families

or systems being similar more and more. But anyway, the global character of the legal world today is undoubtful. Global character means a number of transactions organized by lawyers or transactions in which lawyers participate. Transaction I understand in very broad meaning – any relation, any enterprise within the commune, outside the commune, which is taken with the participation of lawyers. More and more of such transactions are cross-border, transnational or based on standards other than just local law or particular country standards. So we have to prepare lawyers which are open to such a wide, global context.

The third point is that lawyers have to be trained as people who understand law as the instrument. I know that instrumentalism concept in law has bad history or sometimes is interpreted as the improper form of using the law but our professions, legal professions are instrumental. We have to do the job, we are to serve the clients, we have to solve the problems, we are to protect our clients against the abuse from the state or from other co-citizens, it was told in this session several times. So, the role of the lawyer it is not a *passiflore*, it is not the kind of *vita contemplativa*, our role is not just to consider how the world should look like but our role is to change the world or make some kind of intervention into the state of facts.

Finally, probably the most important element which was not in depth presented today, is legal practice as an argumentative practice. Argumentative which means it is not self-explanatory, which is not objective in the sense of natural science, is objective and self-explanatory both in the way of legislation and in the way of broadly understood application of law. Our statements, our claims, our interests and interpretations of law have to be supported by reasons, have to be justified. If we stand in front of the court and if we work for a client, whoever it is, we have to justify our position. Without a skill to persuade others we are hopeless. Even as teachers we have to know how to persuade our students that our concept, our interpretation of legal philosophy or criminal law or decisions of the Supreme Court are correct and valid. Since we live in quite a complicated world, which is a fact, our students should have certain different skills.

I would refer here to different forms of knowledge, because if we are to determine objectives of our teaching process, I think three types of knowledge are indispensible and again, I refer to the antique ideas, not to the Roman law but to the ideas of Greek philosophy and three types of knowledge which are usually perceived as important. So-called *episteme*, which is theoretical knowledge, knowledge about the facts, knowledge about how the world looks like, how it is structured and organized; practical knowledge, *techne or praxis* in Latin, knowledge that essence of which is a possibility to answer the question how to do that, how to reach certain goal, how to make that what we want to achieve and third, so-called *phronesis*, which is moral knowledge, knowledge how to be a good man, how to live a good life, how to be honest, sensitive and hard working person. The last one, which I have mentioned in the early morning today, is probably the most

difficult to be taught, it is something which rather should be learned by students as participants of certain community but also we should not forget that type of knowledge.

Should we as teachers at the law faculty teach certain knowledge specifically? Probably not. I mean all three types of knowledge are necessary, theoretical knowledge about the law and social relations regulated by law is necessary, the practical knowledge is also necessary and the moral knowledge, the moral standards which lawyers have to meet, are necessary. But discussions, even in the previous panels, suggest that practical knowledge, knowledge how to be useful and helpful for the clients in the broadest sense of this world, has the priority. This is not only our intuition, I suppose, because I have already known the empirical studies made by psychologists. I am referring to empirical studies made by psychologists on the types of human knowledge or specifically on expert's knowledge. Studies which started in 1940's which were inspired by Gilbert Ryle, one of the most well-known philosophers researching knowledge in the United Kingdom, were continued by number of scholars. According to these studies, with regard to expert knowledge, not only experts in law, generally experts, are people who usually are able to have two types of knowledge – knowledge called knowledge of "that" – theoretical knowledge, knowledge about the facts, and knowledge of "how" – the practical knowledge. When we apply these two categories to lawyers, when we apply them to the context that I just mentioned – instrumental role of law, discursive character of law, global character of law, etc. – then practical knowledge seems to be the most important one. That is why I think we have to teach our students different courses, we have to offer them different types of courses, different types of legal knowledge, descriptive knowledge – sociology of law, history of law, criminology and delict, normative subjects where we teach different specific branches of law, which is quite obvious and it does not need to be justified in a special way.

We should also teach them so-called general subjects like legal theory, legal philosophy and delict. Of course, I can say that reason why legal philosophy is institutionalized at the law faculty is probably placed in the tradition which is routed in the medieval history of Europe, when philosophy was regarded as the crown of the knowledge, when the philosophy was regarded as the kind of the knowledge referring to all subjects. So that is probably the effect. However, after teaching 35 years at this Faculty and after 23 years in the legal practice, very demanding practice in an international law firm in Warsaw, I am pretty convinced that such general knowledge is absolutely necessary, and it is indispensable in legal education.

Why it is necessary? Because it provides students with certain unique values and certain unique facts. By teaching legal theory, legal philosophy we enable our students to understand the law – not necessarily know what legal provisions are, not to know what legal institutions, regulations are, etc. but to understand the law which is much more, which means understanding the role of a lawyer in a given

transaction, or given legal order. Also legal philosophy and legal theory is a form of teaching our students how to formulate legal arguments and finally, what is the meaning of being a lawyer in a contemporary world. I admit, and this is what I should probably say at this point, that my observation and opinion come from my practice in the law firm. One of my tasks, one of my duties is to talk to young lawyers who apply for a job and for a position of new trainees or junior lawyers in the law firm. I am not asking them for the specific issues of civil law or criminal law. I am usually giving them a kind of a problem to solve, which requires the use of theoretical knowledge. Theoretical in the sense of some understanding of legal philosophy. There is either a question of how you can interpret the legal provision or how you can argue for certain point, what counter argument you would propose and the result of it. In the law firm were I am working we accept junior lawyers who are able to pass that kind of test, not the test of the theoretical knowledge on specific regulations on a given law. To conclude, because my time is getting to the end, the whole structure of my speech shows that with respect to the methods of teaching of law my position is clear.

The most effective and most needed method of teaching law is the Socratic method. Socratic method of law is misunderstood in Poland unfortunately, because as I mentioned this morning we teach about law but we do not teach how to use the law, we do not teach how to practice the law. This is a dominating approach but Socratic method which is based on asking questions and looking or searching for answers to such questions sometimes. That is a paradox. Asking a good question is more important than giving a correct answer. Because correct answer may be found somewhere in the commentary, in the book, in the judicial decision but asking a good question, pointing what is the issue in this problem or in the given case that is probably the first and the most important step. So the Socratic method, I have no doubt, is the method which should have priority in the law school curriculum. Someone could say: "But Socratic method suggests some kind of psychological approach, suggests that we should understand another person, we should understand our competitor". I mean the Socratic method could be understood as a method teaching how to fight with other people but I do not think that this is a serious threat in our society.

Socratic method does not necessarily lead to destroying the opponent, to proving that he or she has is completely wrong and this is a method of defining the problem and solving the problem. Finally, the Socratic method might be understood in the perspective of social roles of lawyers. That was the subject of the previous panel. I think we forgot to mention however, that there are numbers of different social roles of lawyers and there is not the role of a lawyer as such. In the U.S. we can find comments on the role of the lawyer as a hired gun, lawyer working for the client and ready to kill another client. This is his role, a kind of a legal killer in a metaphorical sense. But there might be a lawyer as guru, a master or a wiseman, someone who advises the client not in order to smash

another party but to advise the most reasonable solution, the most appropriate solution. The role of lawyer is also to be a secretary. This is quite an interesting point because the role of secretary has two meanings. Secretary means someone who takes some kind of bureaucratic burden, but secretary also means someone who knows secrets. It does not necessarily sounds well in Polish but I think it is quite obvious. So, there might be different roles of lawyers and Socratic method is, I believe, the most appropriate to teach our students about different roles in a dynamically changing global world. Teaching methods which are some sort of story telling, were probably quite good in 19th century, but do not fit to the contemporary world.

Thank you very much.

Professor Stuart Cohn, Moderator:

Thank you very much, Professor Stawecki. As you know, Socratic method is something that in the United States we all think we teach but if you ask American professors, everyone of us have a slightly different idea as to what that means. So your comments were very instructive. Thank you very much. Our next speaker is Rafał Morek. I am pleased to say that he was one of my students. He was the student of the Center for American Law Studies and I was here, we were much younger in those days and it is a great pleasure and intangible pleasures as Professor Jurgensmeyer and others know very well, to see your students succeeded. It is a great thing to see somebody like Rafał Morek come up here and be a member of the panel and fifteen years ago he was a student here in this program. He is an assistant professor here at the University of Warsaw and he is a co-director of the Center for Amicable Dispute Resolution. That is also a change in teaching. When I was a student, there was no such thing as Amicable Dispute Resolution. Everything was adversarial. But things have changed these days. He teaches courses in civil and commercial law and dispute resolution and he is going to be talking about a very interesting program that he runs here, and that some of you may be very familiar with, which is called CSI Warsaw. So please, thank you, Mr. Morek.

Dr. Rafał Morek, Faculty of Law and Administration, University of Warsaw:

Thank you so much Professor Cohn for this very kind introduction. Although the person who will talk about CSI Warsaw is the next panelist Kacper Gradoń. I will be talking about moot courts as a method of teaching. Actually, this was my little confession to start with, I must say that as a former graduate of the Center for American Law Studies I can still recall how an excellent teacher Stuart Cohn was and still is, and it is really such an honor, such a privilege to stand here and be so kindly introduced by Professor Cohn. Thank you so much. Professor Bosiacki and Professor Stawecki gave highly interesting and scientifically elaborated speeches on teaching methods from comparative perspective.

My scope and the nature of this presentation will be much narrower and limited to one teaching method only. One, but important. Of course, I am not neutral saying that, but I bet it is important and close to my heart certainly, and actually close to hearts of a number of people sitting in this conference room. I will be talking about moot courts as a teaching method, which is very popular in most law schools in the United States and still unfortunately, surprisingly underestimated and insufficiently used in Poland. For those of you who have had no experience with moot courts, if anyone, moot court is a simulation of the hypothetical case but takes place in an imaginary courtroom. Students play the roles of legal counsels acting respectively for claimant and respondent in a hypothetical dispute.

The term "moot court" is now used broadly to encompass also some alternative methods of resolving disputes such as negotiation, mediation and arbitration. Speaking of them, speaking of ADR, I could not mention Dr. Ewa Gmurzyńska that has been one of the pioneers and most innovative teachers at the Warsaw law school in many areas including both ADR and moot court. I think that it is absolutely fair to say that Ewa actually introduced the very idea of moot courts to this law school, being for many years a coach of the Jesup International Moot Competition which is one of the moot courts with longest traditions, since it was established I guess in late 50's and certainly, also the most prestigious moot competition. Ewa has done a lot to make it possible for hundreds of students attending the Center for American Law Studies from late 90's to get first experience with Jessup which had some fundamental impact on their future careers in legal professions. This is another reason for which we all give Ewa enormous gratitude for her contribution to the achievements of this law school and this Faculty.

My personal experience with moot courts began in 2004 during my L.LM. course in Canada. But it actually began for good four years later when I started coaching on permanent basis here in Warsaw students taking a part in international ADR moot court competitions, such as Wilhelm C. Vis International Commercial Arbitration, Foreign Direct Investment Moot Competition or ICC International Commercial Mediation Competition. Definitely, this has been a highly rewarding experience for me and certainly one of the highlights of this part of my life as an academic. The moot court enhances some of important skills that law schools offer our students. It teaches students professionalism, ethics, how to apply law to fact, how to structure and rank a legal argument by strength and not to assert loosing propositions. It gives students opportunity to prove their fundamental skills such as legal writing, legal research, and oral advocacy, of course. Also in the moot competitions all is competitive and that prepares students for the competitive world of legal profession. At the same time, because students are one team and represent individual universities they learn how to act and react as team players. What is important, the moot court is experience that develops skill, I think every lawyer must have – advocacy. Regardless of practice

area all lawyers must learn to communicate, in a way that advances their clients needs. Moot courts help students to organize legal arguments virtually in almost all areas of legal profession. We can find moot courts with regard to for example environmental law, emigration law, human rights, children rights, bankruptcy law, or even space law. Students learn about appearing in public and thinking independently. At the same time, absolutely vast majority of them claim that they had a great time during that. So, it is just a lot of fun for students. Many of them assure that competition in moot court was their best experience in law school. This is what I have heard on many occasions. Now, it is just trivial to say that the United States law schools have long traditions and very well established traditions in using moot courts within the frame of legal education. For example, the Florida Levin College of Law moot court team was established, as I found out, in 1961. So 53 years ago. Florida students take part in more than 1,000 competitions in virtually all fields of legal practice and proudly report on their successes, sometimes also failures – it is a competition, at the website ufmootcourt.org.

Preparing to this presentation I talked to our student from this law school, who just returned from the exchange program at the Indiana University. He was just absolutely impressed by the scale and importance of the moot court competition in which he took place there at the Sherman Minton Moot Court. As he said, vast majority of the second year law students took part in this competition and everyone finds it very prestigious. So moot courts in the United States are almost everywhere part of what we could call mainstream of legal education. No doubt, this method of teaching belongs to the core of legal education, of what the law school offers to students. This is surprisingly in such a sharp contrast to the situation we have still in Poland, even in Warsaw. Roughly counting nine out of ten students of the Warsaw law school graduate without any moot court related experience while every year there are teams which are representing this University, University of Warsaw, surprisingly often successfully in some international competitions, all are in foreign languages, mostly English, of course. There are some competitions held in Polish, such as for example Zbigniew Hołda Constitutional Rights and Freedom Competition. Basically, the range of options, the exposure to this kind of teaching methods and this kind of experience is very narrow.

Unfortunately, all of those competitions available for Polish students are extra curriculum, students get no ECTS points for that and those options are available to a very small portion of the students' population. In my opinion, this calls for a change. Methods of teaching, and use of moot courts, experience of the United States based law schools, such as Florida, may be very instructive in this regard. Therefore, I would like to leave you with the following suggestion. First: basic moot court training should be included into the mainstream of the legal education with ECTS credits for students. Second: some elements of the moot court should be integrated into mandatory courses such as classes on civil procedure or criminal procedure, just to name most obvious. Third: more opportunities should be

provided for students to participate in competitions, both internally in this law school and externally, competing with other Polish law schools. I am sure that such changes will be highly beneficial and probably much appreciated by our students. I have no doubt that we could once again benefit from a great deal of help and transfer of know-how from our friends in Florida.

Thank you.

Professor Stuart Cohn, Moderator:

Thank you very much, Rafał. As the faculty member who sponsored moot court at the University of Florida I share all of your comments. It is always very interesting to see how students can achieve such high degree of competency and skill in both brief writing and oral arguments. In regular classrooms sometimes they are not nearly as excited about what they are doing. You are absolutely right moot court is a very fine way to do it, it is just an institution itself. Support the moot court by academic institution, as we do at the University of Florida is important, but also we have students who actually come to us together as a group and say we want to be in this competition, even though they have never been before. They wanted to be in this particular competition that has been held in Chicago and our institution has supported them on a regular basis. So, it is not just an official moot court teams that we have, we also have a number of unofficial teams formed for specific purposes so I share your remarks entirely.

So now we are going to hear about CSI Warsaw – my mistake I am very sorry – we will be hearing from Dr. Kacper Gradoń, who is associate professor here at the University of Warsaw, Director of the Center for Forensic Science. He is also a visiting professor at the University College of London. In 2011 he received the most prestigious award of the Polish Ministry of Science called the Scholarship for Outstanding Academics. So now, we are going to hear about CSI Warsaw.

Dr. Kacper Gradoń, Faculty of Law and Administration, University of Warsaw:

Thank you very much for introducing me so kindly. I was not aware that we are not supposed to bring any types of presentations here, which is a pity, as the topic that I am going to speak about is quite graphic in the literal sense of the word. I was just thinking that showing you a couple of photos might give you a better understanding of what we are doing at the Department of Forensic and Investigative Sciences here at the University of Warsaw Law School. We decided a couple of years ago, with my colleagues, that we shall design the course called officially "Crime Scene Analysis: facts vs. fiction" which is widely known by its nick-name: "CSI: Warsaw". We set up the new program, as for at least 10 years there has been a continuous and massive interest of our students in taking forensics and crime scene investigation courses mainly because of the so called "CSI effect" which means that people who watch various crime dramas, films and especially TV shows, have completely unrealistic expectations of the police work. On the other hand, the CSI effect has also some positive effects because the

students get really interested in what the police and investigative work is all about. So, based on my experiences, mostly with Canadian and British law schools, (as there is no such thing as practical workshops in forensic sciences across the continental Europe), we decided to set up the course that would allow the best of our students, who have already completed the basic courses in forensics, to see how this job looks like and to do so in a highly realistic environment.

So, I brought plenty of slides here and I should say that one picture is worth more than a thousand words. Actually, I have got about 200 photos here so I will jump through them really quickly. The course objectives are listed here but what we focused on mostly, especially in the last couple of years, was to introduce our students to the practical aspects and issues of not only criminal investigations but also criminal procedure. In our experience, there is a big need throughout the legal community to learn, as much as it is possible, about both the forensic techniques and tactics, as well as the proper evidence collection and interpretation. Next year (2015) after our new review of criminal procedure in Poland there will be a massive need for lawyers who are skilled in understanding of what the forensic evidence is all about. They will need to be able to ask educated questions especially to the expert witnesses and they will need to know how to properly interact with other participants of the criminal procedure in our system, especially with the judges, prosecutors or attorneys. They will need to be able to understand what the material that they deal with is all about. I do not want to sound rude but the experience in this field that we have got from the criminal law community is that people who are criminal lawyers (especially, if they deal with really high profile criminal cases and if they deal with expert witnesses), are sometimes afraid of asking questions because they do not really understand the nature of the evidence they are presented with. Since they are confronted with the expert witness, they just take what their expert witness is saying for granted and they keep away from asking further questions. So, we try to teach our students how the investigation is performed, how the evidence is collected, and how this is interpreted.

The "CSI: Warsaw" course is divided into four parts – four thematic sections throughout the semester. During one semester the students are confronted with the hyper realistic criminal scenarios, which are as convincing as possible, including the use of the lifelike exhibits and instruments, using real life forensic equipment. For example, if they need to detect blood on the crime scene, they cannot work on ketchup or red paint, they really need to work on blood, because the chemicals that they are going to use will not interact properly with ketchup, they need to interact with blood and so on. So, we create the highly realistic environment for them and we also invite the guest speakers, especially members of the police force, and expert witnesses from various sections of forensic sciences, experts in fingerprinting, forensic chemistry, physics, anthropology, and so on. During the course in the last 6 years we have got about 25 different expert witnesses visiting

us and teaching our students how to deal with certain types of evidence and how to interpret that and also what sort of questions to ask if they are confronted with such type of evidence in the court of law.

I will not stop at any of those photos because there are too many of them and some of them are really graphic, as you can see, but our students are trained to work on those crime scenes, as they would do in real life. I should rather say "real death" scenarios because most of those cases are mock homicides or sexual crimes. These cases are – so to speak – all-inclusive in terms of evidence that needs to be collected. Our students work in real time and sometimes our weekend workshops may take up to 48 hours of non-stop work, so three or rather four days of non-stop crime scene investigation was our record so far. It is not rare for the students to work for two days regardless of the weather, time of the day, and so on. What they do is they have a meticulously prepared exercise that they approach with all the forensic equipment, they use all the forensic protecting gear and they work there collecting the evidence and also using the proper video, photo and audio recording equipment and making the proper documentation for the case that they are about to solve. We put a lot of stress on the proper documentation of the crime scene in terms of protocols, tagging of the evidence, numbering the exhibits properly, making various sketches, three-dimensional models of the crime scene, taking hundreds of photographs that would be used in the court of law if this was the real case. We also teach them how to approach the tactical side of an investigation, mostly in terms of forensic psychology and interviewing witnesses and interrogating suspects. This is prepared with a huge level of detail. We use actors, semiprofessional actors or our former students who play specific roles throughout that course, so they are not just people who have the description of what their role is all about. They are dressed properly, they practice a lot with members of our team and they act almost like semiprofessional actors.

Our record-breaking interrogation would last for over ten hours; they are all video recorded and these footages are used to assess the quality of our students work. Of course, this is not the end. Once they do that, once they process the crime scene, once they tag everything, make their protocols, take those hundreds of photographs and hours of video, they need to work on the cases as they would work in real life. They have to assess all the materials that they have collected. They have to make up, collect and present their forensic versions. They have to work on their hypotheses and they are later confronted with everything that we have set up for them. Academics and teachers who are in charge of the workshop, know what the crime was all about, we know who did it, we know what type of evidence was there, but we want them to show us the nature of their work, the progress of their work, the algorithms they were using in order to prove what really happened. We have all the material, we know where and how the evidence was deposited on the crime scene, so we can find out gaps in their thinking. We can show them which types of evidence or which pieces of evidence were not col-

lected and why they were not collected – maybe because the poor quality of the work, maybe because they were tired.

The same applies to interrogations or interviews they do. This is exactly the same thing. Since we record everything on the camera and since we know that they were not able to extract some information from the people they were speaking to, we can show them the parts of that video footage to show them where their interrogation was straying away, what was not right. We try to teach them by different means and all of those trainings or workshops have an increased level of difficulty throughout the semester. We want to teach them how to do that as perfectly as possible. And of course, I know that most of them will never work for the police force but some of them will be prosecutors or criminal law judges or criminal attorneys in their future careers and it might be really beneficial for them if they understand all of these little tiny details of the police work and when they are presented with the evidence in the court, they will be able to properly evaluate that and find the gaps and problems. They will know where the mistakes are and they will know what types of questions they are supposed to ask the expert witnesses and what type of evidence they should request if it ever happens that they deal with such a scenario.

I am really sorry for speeding up like that as I could spend two hours just going through those slides slowly. This is a number 20 photo and I have 200 of them and they are all really interesting, but I think that I am already over time, so if anyone is interested, we have a website for CSI: csi.edu.pl, which has been down for years but we are just building it up again and we are going to start it over sometime, probably over the summer. It will be filled with various photographs, films and recordings of interrogations, so if you are interested, it might be worth giving it a try. And by the way, just a final remark – because I mentioned the interrogation, interviewing of witnesses and suspects, we also do that with foreign suspects and foreign witnesses because we teach our students how to perform those tactical aspects of work if they deal with the so-called "difficult subjects". If they need to interview children, we do not take a 26 year-old student who pretends to be a child, we ask our families, we pick up a child willing to have some fun and pretend that they are the witnesses. If they need to interview a foreigner who does not speak Polish, we use our colleagues from abroad or Erasmus exchange students who play the roles of witnesses who do not speak a single word in Polish, so they have to perform the interrogation or an interview with the use of an interpreter or a translator. We try to put them through the most realistic and difficult scenarios. As I said at the beginning, it is lots of fun, it is really pleasant but it is also extremely time consuming but, at least for me, it brings a huge deal of satisfaction and pleasure to work with those students. We usually select a group of about 20–22 students, mostly from the Faculty of Law but also from other faculties of the University of Warsaw such as Psychology, Biology, Physics or Chemistry. We select them really carefully from about 200 students that we deal

with every single year. That is like the *crème de la crème* group of the forensically inclined students that we have got. So again, I am sorry for speeding up and I really hope that I did not bore you above the limits, so thanks a lot, thank you very much and I am giving the floor back to you Sir.

Thank you.

Professor Stuart Cohn, Moderator:

Thank you very much, I am sure you did not bore us. I think many of us are looking forward for some more of those pictures. Your comments do indicate the great division in legal education between our traditional courses and skill courses and the great tension in legal education is in the United States is that we want to put more resources into skill training as you are doing. But it is very expensive. As you said, you only have 20 students out of obviously hundreds that would like to take this good benefit from it and the same is true in American legal education. We simply are not able to have enough sources to be able to teach all the students at the same time, provide the kind of academic objectives that the other panelists have talked about, they are so necessary for legal education. It has been an interesting panel because we have gone through full spectrum from very basic objective kind of discussions of teaching and what is necessary in this new world. We have seen a broad spectrum of approaches here. We do not have very much time before we conclude but we do want to ask if any of you have any questions or comments you would like to ask any of the panelists.

If there are no questions, let me just summarize. First of all, we have had a wonderful full day and I would like to, on behalf of all of us who have been part of this, thank the University of Warsaw and the University of Florida, the Center for American Law Studies, and in particular, of course, Dr. Ewa Gmurzyńska who has been the spirit of this all, as well as Agnieszka and others who have helped, including Ewa's daughter. I know that she wants me to thank all of the participants and all the panelists. Those of you who came late today, you missed a wonderful day of panels. We started this morning with "The Law School of the Future" and we moved from there to "Foreign Law and Legal Systems", whether we should teach or not teach foreign law in our academic environments. Then we moved to the changing role of lawyers in today's world and finally, this panel that you came for was on comparing Polish and American law teaching. It has been a full and wonderful day. I would also like to thank the interpreters for their services, thank you very much. Dziękuję bardzo. And of course, all of the participants that have been here. Following our conclusion, we are now going to have a special ceremony that all of you are invited to remain. It is the graduation ceremony of those of you who are receiving certificates from the Center for American Law. So it has been a wonderful day and thank you very much for all of you participation.

Papers

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DISRUPTIVE FORCES AT OUR DOORS: CHALLENGES FOR THE LEGAL PROFESSION AND LEGAL EDUCATION

The greatest risk we face in legal education is that we will do an excellent job preparing our students to practice in a world that does not exist anymore.

Change is the normal state of all things; that everything changes over time is an observable fact. The *status quo*, whatever it is and whenever we measure it, will be disrupted by unexpected and uncontrollable events as well as events we can anticipate and sometimes shape, provided we alertly recognize and respond to the changes that precede and produce disruptive forces and events. In our pluralistic societies, it seems rare when a clear consensus on how to interpret and assess a changing environment exists; "[t]he optimist sees the rose and not its thorns; the pessimist stares at the thorns, oblivious of the rose"[1], and invariably both sides have plenty of adherents. But when we encounter change, choices will have to be made, some will be right and some wrong, and there will be winners and losers. Our ancestors who perceived and interpreted the rustling in the brush as a tiger on the hunt fared better through those distant generations than those oblivious to the noise; those less alert suffered a lower survival rate and correspondingly had fewer opportunities to become our ancestors. The advances of our species show that we have had relative success in our choices through the millennia, and we have evolved to possess considerable skill in risk assessment and adaptation.

But our skills remain imperfect, and thus human history can be told as a story of the ups and downs in how we deal, and have dealt through the generations,

[1] This quote is widely attributed to Kahlil Gibran, but its origin is obscure. Yet illustrating that virtually no observation other than a precise statement of fact (e.g., "water freezes at zero degrees centigrade") is beyond dispute, Dr. Donald MacCoon counters the "rose quote" with this thoughtful observation: "The wise see the whole rose and thus appreciate all aspects of its beauty without injury". D. MacCoon, *A Reply to Kahlil Gibran's Observation about Optimism and the Rose*, http://oneplanetthriving.com/2013/05/a-reply-to-kahlil-gibrans-observation-about-optimism-and-the-rose, May 23, 2013 (visited Dec. 16, 2014).

with change. Many lessons from the past remind us of what happens if we miss the signals warning us of increasing risk and thereby fail, unlike our more alert ancestors who chose to put some distance between themselves and the rustling in the brush, to make midstream corrections in our course. In this essay, my thesis, presented as both a member of the legal profession and a legal educator, is that disruptive forces are present at our doors, and they signal the need for change and adaptation. Failure to heed these signals will lead to irrelevance or failure; choosing and implementing wise responses to what they tell us will lead to survival and perhaps prosperity.

The story of change, response, and success or failure is a common one repeated throughout history. On the plus side, for thousands of years humans have confronted problems, needs, and wants and have discovered breakthrough innovations that literally changed the course of subsequent history[2]. On the other side, there are many examples of humans missing the signals of significant change in their environment, succumbing to the pressures associated with change, and consequently suffering loss. This is well understood by those who have been trampled by the disruptive forces of change, such as those who previously made their livings in the chemical film industry but missed the signals about digital photography and videography[3], in the travel agency industry but missed the signals about web-based ticket distribution systems[4], in the encyclopedia publishing industry but missed the signals about collaborative writing (with millions of contributors) and the implications of free distribution of the product around the world on the Web[5], and in the slide rule industry but missed the signals about the impacts of electronic calculations and digitization. This last example is especially telling because it shows a disruptive force that quickly dismantled an industry that had been successful for four centuries.

The story of the rise and fall of the slide rule industry is a popular one for illustrating the impact of change and the consequences of failing to recognize it, so we will pause to look at it more closely. The narrative of the slide rule begins with John Napier, a sixteenth century Scottish landowner credited with the dis-

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[2] See J. Fallows, *The 50 Greatest Breakthroughs Since the Wheel*, "The Atlantic", Nov. 2013, at http://www.theatlantic.com/magazine/archive/2013/11/innovations-list/309536 (visited Dec. 17, 2014).

[3] See S. Gustin, *In Kodak Bankruptcy, Another Casualty of the Digital Revolution*, "Time", Jan. 20, 2012, at http://business.time.com/2012/01/20/in-kodak-bankruptcy-another-casualty-of-the-digital-revolution (visited Dec. 17, 2014).

[4] See E. Martin, *10 Popular Jobs That Are Quickly Disappearing*, "Business Insider", July 15, 2014, at http://www.businessinsider.com/jobs-that-are-quickly-disappearing-2014-7?op=1 (visited Dec. 17, 2014).

[5] JVG, *Encyclopedia Britannica wiped out by Wikipedia, selling final print edition*, "VB News", Mar. 13, 2012, at http://venturebeat.com/2012/03/13/encyclopaedia-britannica-wiped-out-by-wikipedia-selling-final-print-edition (visited Dec. 17, 2014).

covery of logarithms[6]. These insights made possible the invention of the slide rule in the seventeenth century; this advance is credited to the Reverend William Oughtred, who placed two logarithmic scales side by side and slid them to see the relationships[7]. During the next four centuries, numerous enhancements of the slide rule occurred[8], and tens of millions of the instruments were manufactured in the twentieth century[9]. The leading manufacturers in the United States were two New York companies, Keuffel & Esser Corporation, founded in 1867, and Dennert & Pape, a company the roots of which date back to 1862 and which started making slide rules in 1872, later under the trademark ARISTO. By 1978, the Dennert & Pape line no longer existed. Keuffel & Esser had such a booming business that it was able to go public in 1965, but by 1982 the firm declared Chapter 11 bankruptcy, ceased operations, and sold its trademarks to a company called AZON. As one summation of this history observes, "[t]he slide rule has a long and distinguished ancestry […] from William Oughtred in 1622 to the Apollo missions to the moon[,] a span of three and a half centuries […] it was used to perform design calculations for virtually all the major structures built on this earth during that long period of our history"[10]. Indeed, by the time slide rule manufacturing reached its peak in the mid-twentieth century, companies all over the world were making them. But in the 1960s the first solid state electronic calculator appeared on the scene, and the advent of the micro-processing chip in the 1970s made a pocket-size calculator with enormous power possible[11]. The ease of the calculators' use and their accuracy essentially wiped out demand for slide rules. No matter how skilled the business leaders and craftsmen in the slide rule companies, no matter how innovative the manufacturing processes, no matter how refined the new slide rule designs, and no matter how efficient the distribution systems, the highly disruptive force of the new calculator technology completely destroyed the market for slide rules. Some slide rule manufacturers adapted their businesses and survived, but without any help from slide rules. Other manufacturers who did

[6] I. Johnston, *Scots genius who paved way for Newton's discoveries*, "The Scotsman", May 14, 2005, at http://www.scotsman.com/news/sci-tech/scots-genius-who-paved-way-for-newton-s-discoveries-1-712196 (visited Nov. 25, 2014). Islamic scholars are also credited with producing logarithmic tables several centuries prior to Napier. See *Muhammad ibn Musa al-Khwarizmi*, http://en.wikipedia.org/wiki/Mu%E1%B8%A5ammad_ibn_M%C5%ABs%C4%81_al-Khw%C4%81rizm%C4%AB (visited Nov. 25, 2014).

[7] The Oughtred Society, *Slide Rule History*, http://www.oughtred.org/history.shtml (visited Nov. 25, 2014).

[8] *Ibidem.*

[9] *Slide Rules, The National Museum of American History (Smithsonian)*, http://americanhistory.si.edu/collections/object-groups/slide-rules (visited Nov. 25, 2014).

[10] The Oughtred Society, *Slide Rule*…, n. 8.

[11] P. Ament, *Hand Held Calculator*, Jan. 2005, at http://www.ideafinder.com/history/inventions/handcalculator.htm (visited Dec. 17, 2014).

not or could not adapt disappeared, even though they had been successful enterprises for in some cases over one hundred years.

Franziska Tschan, who has written extensively on the psychology of group performance in the workplace[12], contributed to our understanding of organizational dynamics and innovation in her work with Joseph McGrath in the 2000s analyzing the elements of change cycles[13]. As they explain, an event has its impact and effect, and the "system" (which can be an individual or firm[14]) responds. The response will be either to do nothing or to change or adapt in some way. The alternative of change or adaptation can be understood as a confluence of multiple continuous variables. The first is *directedness*. Change may be evolutionary or "undirected"; in this pattern, variation, selection, and retention produce a new normal which persists until the next event-response cycle. Alternatively, change may be deliberate or "directed"; in this pattern, assessment, planning, choice, implementation, and self-regulation generate the new normal. The second is *size*. Change can be large or small, transformational or incremental. The event prompting change and the size of the response are not necessarily correlated; thus, a third variable is *proportion*. This reflects the reality that change is not dictated by the event that prompts it. A small, minor event might prompt transformational change; a large, major event might only result in a slight, incremental change. Moreover, the success of change has no necessary correlation to either size or proportion; thus, a fourth variable is *effectiveness*. Whether directed or undirected, large or small, or proportional or disproportionate, change can be either effective or ineffective, with consequences that are either large or small.

The alternative to changing or adapting in some way is to "do nothing", which is, of course, a kind of response that can be assessed under the multiple continuous variables described above. As for *directedness*, inaction may be directed in the sense that doing nothing is the outcome of evaluation and weighing of alternatives and a conscious choice to hold still in the face of environmental changes being caused by one or more events. Alternatively, inaction may be undirected if it results from indifference or lack of awareness that environmental shifts are occurring – essentially obliviousness to change. By definition, the *size* of doing nothing is zero, but the *proportion* inaction bears to the event may be small or large depending on the nature of the environmental shifts surrounding the sys-

[12] See F. Tschan, professeure ordinaire, *Website, Universite de Neuchatel, Faculty of Science, Institute of Work and Organizational Psychology*, http://www2.unine.ch/ipto/page-5563.html (visited Dec. 20, 2014).

[13] See J. E. McGrath, F. Tschan, *Dynamics in Groups and Teams: Groups as Complex Action Systems*, (in:) M. S. Poole, A. H. Van de Ven (eds), *Handbook of Organizational Change and Innovation*, Oxford University Press, 2004, pp. 65–66.

[14] In this usage, "system" also includes ecological systems, political systems, etc., but for purposes of this discussion, "system" should be understood as individuals, firms, and the profession constituted by those individuals and firms.

tem. Finally, there is the matter of *effectiveness*: doing nothing may be a very effective response or it may be catastrophic.

Innovation, then, can be understood as one way a system (again, including an individual or firm) responds to change in conditions around it. When a system innovates, this can have consequences for other systems, essentially causing and delivering events that create a need for responses by other systems. On a massive scale, this construct describes the nature of our deeply interconnected global culture and economy, where the pace of change in many sectors is nearly beyond comprehension.

Like the slide rule industry, today many modern industries are being severely challenged by disruptive forces. To take just a few examples, E-delivery systems are disrupting traditional postal services, 3D printing is threatening small scale parts manufacturing, robots and smart machines are capably performing the tasks of receptionists and bank tellers, synthesized electronic music – even in the hands of amateurs – is replacing the services of professional musicians, digital wallets and mobile banking are challenging the check printing industry, and Web-based streaming services are preempting cable-delivered television. The list is virtually endless, and the scope of the disruptions in these examples and many more is close to total. Why anyone should think that the legal profession – and legal education, which rides on the same wave as the profession – is immune from the forces of change, innovation, and disruption that pervade our global economy is hard to comprehend.

Noted legal futurist Richard Susskind described the current situation in the legal profession in his 2013 book *Tomorrow's Lawyers*:

> The legal market is in an unprecedented state of flux. Over the next two decades, the way in which lawyers will work will change radically. Entirely new ways of delivering legal services will emerge, new providers will enter the market, and the workings of our courts will be transformed. Unless they adapt, many traditional legal businesses will fail[15].

The Georgetown Law Center for the Study of the Legal Profession's *2013 Report on the State of the Legal Market* struck a similar tone:

> As we enter 2013, the legal market continues in the fifth year of an unprecedented economic downturn that began in the third quarter of 2008. At this point, it is becoming increasingly apparent that the market for legal services in the United States and throughout the world has changed in fundamental ways and that, even as we work our way out of the economic doldrums, the practice of law going forward is likely to be starkly different than in the pre-2008 period[16].

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[15] R. Susskind, *Tomorrow's Lawyers*, Oxford 2013, p. 3.

[16] Georgetown University Law Center, The Center for the Study of the Legal Profession, *2013 Report on the State of the Legal Market*, p. 1, http://scholarship.law.georgetown.edu/cslp_papers/4/ (visited Nov. 26, 2014).

Like Susskind, the *Report* with a high degree of urgency underscored the importance of directed change in response to the new landscape:

> The challenge for lawyers and law firms is to understand the ways in which the legal market has shifted and to adjust their own strategies, expectations, and ways of working to conform to the new market realities. While there is certainly evidence that some firms and lawyers have begun to make these adjustments, many others seem to be in denial, believing (or perhaps hoping) that the world will go "back to normal" as soon as demand for legal services begins to grow again. […] To an unfortunate extent, many lawyers and law firms seem stuck in old models – traditional ways of thinking about law firm economics and structure, legal work processes, talent management, and client relationships – that are no longer well suited to the market environment in which they compete. Perhaps it's time for us […] to force ourselves to think outside our traditional models and, however uncomfortable it might be, to imagine new and creative ways to deliver legal services more efficiently and built more sustainable models of law firm practice[17].

When the forces of change disrupt the legal profession, those of us in legal education who are charged with the responsibility of educating students and preparing them for participation in the profession have no responsible choice but to take notice and adapt appropriately. If our students are unprepared to participate in the professional world into which they will enter, our investment in the development of their human capital will be wasted, and this will lead to future market corrections that will be highly disruptive for legal education.

Many of us who are professional legal educators find it uncomfortable to view our efforts as part of a market, and some of us resist market nomenclature when discussing where law schools now find themselves and the directions we are headed. Many of us prefer to be described as coaches of students embarked on missions of discovery, where our role is to teach students "to learn how to learn", and where we guide them toward embracing lifelong commitments to the exploration of knowledge and to developing personal, durable commitments to civic, social, and cultural participation, articulating for themselves under our expert guidance the elements of "the good life", identifying the kinds of work meaningful in such a life, and imagining possibilities and having personal transformational intellectual experiences, all in the grandest tradition of liberal education.

Despite the appeal of thinking of our roles in these ways, the fact is that for the vast preponderance of consumers of legal education in the United States, the objective is to acquire by the conclusion of the course of study the skills, knowledge, and competencies needed to join the legal profession immediately and to participate in it successfully and nearly totally. This is where we encounter the nub of the problem: potential degree-seeking students are telling us they lack confidence that legal education can deliver this product for a realistic price and with

[17] *Ibidem*.

sufficient probability that meaningful employment will be available at the end of the academic program. In other words, demand for the output of our production is down, our production greatly exceeds available jobs for our graduates (*i.e.* we have excess capacity), and structural constraints make timely adaptation to this changed environment extremely difficult.

Statistics bear out this state of things. Between 2007 and 2012, the legal services industry in the U.S. shed 56,000 jobs, a number equivalent to a five percent of all jobs in the sector[18]. By 2014, the legal services industry had restored 17,000 of these jobs, but the number of total jobs in the industry remain far below the totals of previous years[19]. These numbers are not dissimilar to the trends in other industries in the United States economy during the same period, but this is simply another way of saying that new normals are being experienced everywhere and the legal profession is not exempt from these market forces. The U.S. Bureau of Labor Statistics projections for future job openings through 2022 do not show a dramatic improvement in employment prospects either. From 2012 to 2022, new job openings for lawyers, judges, and related workers (not including legal support positions), including those created by retirements and attrition, are predicted to be 208,800, or an average of 20,800 per year[20].

Unfortunately, the supply of new law graduates significantly exceeds this number and will do so for the foreseeable future. In 2012–2013, U.S. law schools awarded 46,478 J.D. degrees, the highest number ever; this is the culmination of a generally steady upward trend dating to 2001–2002 when nearly 40,000 J.D. degrees were awarded.[21] Comparing the number of J.D. degrees awarded with the number of new lawyer jobs available explains why placement rates for law school graduates have been declining over time. In the 2002–2003 academic year, 73.7% of law graduates obtained a job for which bar passage was required within nine months of graduation,[22] but in 2012–2013 only 64.4% did so; further, in the 2012–2013 class, 4.7% of the graduates obtaining a job for which bar passage was required were placed in part-time jobs[23], meaning that fewer than 60%

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[18] Bureau of Labor Statistics, *Databases, Tables and Calculators by Subjects*, http://data.bls.gov/pdq/SurveyOutputServlet (calculation run Dec. 18, 2014).

[19] *Ibidem*.

[20] U.S. Dep't of Labor, Bureau of Labor Statistics, *Employment Projections: Employment by detailed occupation*, last modified, Dec. 19, 2013, at http://www.bls.gov/emp/ep_table_102.htm (visited Nov. 26, 2014).

[21] American Bar Association Section on Legal Education and the Bar, *Enrollment and Degrees Awarded 1963–2012 Academic Years*, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf (visited Dec. 18, 2014).

[22] National Association for Law Placement, *Employment for New Law Graduates is Nearly Steady*, July 1, 2004, at http://www.nalp.org/2004employmentfornewlaw (visited Dec. 18, 2014).

[23] National Association for Law Placement, *Class of 2013 National Summary Report*, at http://www.nalp.org/uploads/NatlSummaryChartClassof2013.pdf (visited Dec. 18, 2014).

of that year's law school graduates had a full-time job for which a law degree was required within nine months following graduation. This is not a sustainable state of things, and thus it is not surprising that applications to United States law schools dropped dramatically during this same period. In the fall of 2004, 98,700 persons sought admission to United States law schools, but in the fall of 2013, only 54,500 did so[24], a decline of 45%. As of the fall of 2014, it is not clear that the bottom has yet been reached; LSAT administrations have declined nearly 40% since 2009–2010, including declines of 13.4% in 2012–2013 and 6.2% in 2013–2014[25]. As we approach a juncture where some law schools are likely to need to admit all of their applicants in order to have sufficient revenue to sustain themselves as on-going operations, it is reasonable to suggest that United States legal education is approaching a tipping point where a dramatically different new normal awaits on the other side.

Why is this happening? What are the disruptive forces knocking at our doors? There are several, but three have especially significant impacts. One is the collective impact of the new technologies that are changing how law is practiced. Two commentators summarize it this way:

> We are now in a technology era in which computers are able to do most of what lawyers could do 15 years ago, and do it better, faster, and cheaper[.] And given that these technological capabilities, which were once only a pipedream, are now a commercial reality, clients have become exceedingly willing to switch from traditional legal service providers to alternative technology-focused providers[26].

Illustrations of these new technologies are many, but one of the most popular is how legal precedents in the United States are checked for accuracy and currency. Forty years ago lawyers checked citations by using the Shepard's system, but it was a far different one than the Shepard's system used today[27]. In the 1970s, one citechecked a case by locating the appropriate volume in a series of Shepard's hardbound books, finding the page in the volume on which the decision in question was reported, and then scanning columns to find the page number on which the decision's citation history began. At this point in the text was a list of cita-

[24] Law School Admissions Council, *End of Year Summary: ABA Applicants, Applications, Admissions, Enrollment, LSATS, CAS*, at http://www.lsac.org/lsacresources/data/lsac-volume-summary (visited Dec. 18, 2014). A report with the 2003 and 2004 years is on file with the author.

[25] *Ibidem*.

[26] A. Daws, K. M. Brown, *Sketching the Future – Axiom, Valorem, Riverview, LegalZoom: Is this the New Model?*, "Practice Innovations", Oct. 2014, at http://info.legalsolutions.thomsonreuters.com/signup/newsletters/practice-innovations/2014-oct/article1.aspx (visited Dec. 18, 2014). See also K. M. Brown, *Enter the Disrupters: How New Law Firm Rivals are Disrupting the Market for High-end Legal Services in the U.S.*, Wharton School of the U. of Pa., William and Phyllis Mack Institute of Innovation Management, May 14, 2014, at https://mackinstitute.wharton.upenn.edu/wp-content/uploads/2014/10/Brown_Enter-the-Disrupters-V2.pdf (visited Dec. 18, 2014).

[27] The link to the modern system's explanation is http://www.lexisnexis.com/en-us/products/shepards.page (visited Dec. 18, 2014).

tions, some of which would be accompanied by a code indicating the subsequent history or treatment of a decision. This process was then repeated in additional volumes and paperback releases which updated the initial Shepard's volume. The entire process was then repeated for each citation in the brief or memorandum being checked. If a code causing concern were found, one would then need to go to a different part of the library and retrieve the case with the subsequent history or treatment, and then review it to make an independent assessment of whether this more recent case is problematic for the use of the originally cited case. This process would take many hours to complete – and clients did not question paying lawyers (usually the newer ones did the citechecking) for the hours required to ensure the accuracy of briefs and memoranda. Today, this process is very different. A computer, upon receiving an instruction that takes only a few seconds to compose and deliver, can citecheck every citation in a brief or memorandum in a nanosecond, and then provide links in an instantaneously produced report that will take the lawyer immediately to the full text of any case in which the authority is cited. All of this happens with greater accuracy than was possible under the original Shepard's citechecking system. The new methodology is, despite the overhead cost of computers and licensing fees for the use of Shepard's, both faster and cheaper, and no client would knowingly or willingly pay their lawyers to do citation checking under the old system.

The evolution of Shepard's is just one example of a new time-saving, efficiency-enhancing, cost-reducing technology. The more important point is that for virtually every aspect of the practice of law, a similar technology exists that is having a similar impact. These include, for example, document assembly software for legal documents of all kinds (ranging from corporate to pleading to contracts and leases to will and trusts, and more), word processing software for drafting and editing documents, email and cell phones for rapid communications with clients and other lawyers, e-filing systems for court documents, and databases and software for the storage and retrieval of research and knowledge. The key point is this: the new technology does not eliminate the need for lawyers, but fewer lawyers can do the same amount of work in less time than before, and this means fewer jobs are available for new lawyers.

Beyond the foregoing technologies, other new technologies exist that do hope to replace lawyer services as we now know them. At www.shakelaw.com[28] one can access a free application called "Shake", download it to an iOS or Android device, and, as the home page advertises, "create, sign and send legally binding agreements in seconds". For a limited but growing set of agreements covering employment, confidentiality, buy/sell, rent/lend, and credit/debtor, and now more specialized agreements (e.g. roommates, skilled labor, video production, etc.), it is possible to create simple, functionally adequate contracts for a very large number

[28] Visited Dec. 15, 2014.

of a situations. The new technology has important limitations, most notably that a lay person will not know when he or she needs something more complex that what Shake provides. But as technology advances, the ability of computers to evaluate facts, circumstances, and options and make recommendations tailored to the individual and jurisdiction will only increase, and the range in which the computer application is deficient will decline. Now that many of us carry in our pockets and briefcases voice recognition software connected to large databases that can answer many questions instantly and accurately, and being aware that a computer named Watson has already used voice recognition, extensive databases, and raw processing power to trounce two of the best Jeopardy players of all time in a fair human-versus-machine contest where no questions were off limits, it is increasingly difficult to argue that computers of the future will be unable to dispense legal advice for many routine matters as quickly, cheaply, and accurately as human lawyers. Skeptics should be reminded that only twenty years ago, no one had even imagined half the new technologies being discussed in this paragraph, and innovation is not slowing.

A second disruptive force involves the application of project management concepts to the control and management of cases, transactions, and other legal matters. Bringing this expertise to bear on costs, human resource management, communications, procurement, quality controls, time management, and other elements of the process of accomplishing a legal task generates efficiencies and therefore savings in how work is performed, which in turn translates into a competitive advantage in the marketplace for those who utilize these concepts[29]. Bringing project management principles to bear on lawyer work also improves the lawyer's ability to identify parts of a project that can be disaggregated and outsourced to other parties with the ability to perform those portions of the work more efficiently and cheaply. These might be other law firms with niche expertise, but they also may be firms or providers that specialize in particular parts of the transaction or litigation process, such as deposition digesting, document assembly, e-discovery management, and other tasks. Again, as efficiencies increase because of improved project management, the need for lawyers does not disappear, but the number of lawyers needed to do a particular job or set of jobs declines, which means fewer jobs are available for new lawyers.

A third disruptive force involves the emergence of non-lawyer professionals who perform tasks traditionally thought to be within the province only of lawyers. The model of one-law-license-fitting-all in the United States is eroding, and what

[29] See Project Management Institute, *What is Project Management?*, http://www.pmi.org/About-Us/About-Us-What-is-Project-Management.aspx (visited Dec. 15, 2014); A. Cohen, *The Eureka Moment: How six Big Law firms stopped dithering and learned to love legal project management*, "Law Technology News", Aug. 2012, at http://www.dechert.com/files/Publication/af29e9e2-9a51-40cd-90cd-93b57556ed4f/Presentation/PublicationAttachment/9ac35b4c-0fb3-4199-bc3f-c909d97a6227/Eureka_Moment_LTN_0812.pdf (visited Dec. 15, 2014).

has arrived on the scene is the concept of a limited-license non-lawyer who has authority to advise and assist clients in specific areas of law. Leading the way in this movement is the Washington State Supreme Court, which created in 2012 a Limited License Legal Technician (LLLT) Board and authorized it to establish and administer regulations for professional conduct, exam procedures, continuing education requirements, and disciplinary procedures for limited license legal practitioners[30]. This takes a page out of the medical profession's book, where nurse practitioners, who are essentially registered nurses with advanced education and clinical training, are authorized to administer physical exams, diagnose and treat many common acute and chronic illnesses, prescribe and interpret lab results and X-rays, prescribe and manage medications, and otherwise provide individualized care for patients. Although the practice authorizations vary from state to state, the nurse-practitioner concept has existed for nearly a half-century and is now recognized in all fifty states[31]. The LLLT in the legal profession, like the nurse-practitioner in the medical profession, has the potential to replace significant amounts of lawyer work with services provided by non-lawyers.

The first steps down this path were taken in March 2013 when the Washington State Supreme Court approved the LLLT Board's recommendation that family law become a practice area in which LLLTs are licensed, with licensing expected to begin in 2015. Under the rule which authorized LLLTs, "[i]f the issue is within the defined practice area, the LLLT may undertake" to gather facts, explain their relevance to the client, inform the client about procedures for preparing and filing documents and serving process, provide the client with "self-help materials prepared by a Washington lawyer or approved by the Board", select and prepare certain forms for the client, preform legal research and draft letters and pleadings if the work is reviewed and approved by a Washington lawyer, and provide other kinds of client assistance[32]. Similar rules are being evaluated in California[33], Oregon[34], Georgia, and New York[35].

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[30] See *Limited License Legal Technician Board*, "Washington State Bar Association", http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Limited-License-Legal-Technician-Board (visited Dec. 15, 2014).

[31] Mayo School of Health Sciences, *Nurse Practitioner*, http://www.mayo.edu/mshs/careers/nurse-practitioner (visited Dec. 15, 2014).

[32] *Rule 28*, Limited Practice Rule for Limited License Legal Technicians, http://www.wsba.org/~/media/Files/WSBA-wide%20Documents/LLLT/Rules%20and%20Regulations/20130820%20APR%2028.ashx (visited Dec. 15, 2014).

[33] T. Gordon, *California Considering Licensing Non-Lawyer Legal Services*, June 14, 2013, http://www.responsivelaw.org/index.php/blog/item/25-california-considering-licensing-non-lawyer-legal-services (visited Dec. 15, 2014).

[34] Oregon State Bar, *Task Force on Limited License Legal Technicians*, http://bog11.homestead.com/LegalTechTF/meetings.pdf (visited Dec. 15, 2014).

[35] M. Tarlton, *The LLLT and the Power of Positive Thinking*, Oct. 1, 2013, http://www.attorneyatwork.com/lllt-and-the-power-of-positive-thinking (visited Dec. 15, 2014).

In short, these disruptive forces (and some others) are having enormous impact on the practice of law and are producing great change in the legal profession. That being the case, what adaptations to this new environment should legal education make?

First, law schools need to evaluate what they charge students to receive a legal education. Since the mid-1980s, average tuition in inflation-adjusted dollars has risen dramatically at both public and private law schools in the United States. In 1994, average tuition and fees for residents at United States public law schools was $5,016; by 2004, this had more than doubled to $11,860. By 2012, this number again had more than doubled to $23,214. The same has been true for private law school tuition. In 1994, average tuition and fees at United States private law schools was $10,667; by 2004 this had more than doubled to $21,905. By 2012, it did not quite double again, but it nearly did so, rising to $36,202[36]. Exactly what an average law student pays is impossible to know without data on the extent to which these numbers are discounted through financial aid programs and tuition forgiveness, but there can be no doubt but that the average has increased significantly even when discounts are taken into account. Average student debt loads attributable to borrowing to pay law school tuition have increased significantly during this period, and this would not occur if increased discount rates had offset the rise in tuition prices. In 2001–2002, average law school debt was approximately $46,500 for public law school graduates and about $70,000 for private law school graduates. By 2012, this had increased to $75,000 for public law school graduates and $125,000 for private law school graduates[37].

At the same time tuitions and debt loads have increased, reported median salaries for full-time jobs obtained by law school graduates have stagnated. This has been the case since 1985, with the exception that private practice salaries showed unusual growth from 1998 through 2001, then lost about half of that increase during the next four years, but followed that with a steep increase lasting until 2009 that took private practice salaries to a level close to twice the historic norms, which in turn was followed by a collapse during the Great Recession that returned the median to the general range that prevailed between 1985 and 1998[38]. Given rising tuition, increasing debt loads, and stagnant starting salaries, basic

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[36] American Bar Association Section of Legal Education and Admissions to the Bar, *Law School Tuition, 1985–2012*, at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf (visited Dec. 18, 2014).

[37] D. Weiss, *Average Debt of Private Law School Grads is $125K; It's Highest at These Five Schools*, "ABA Journal Blog", Mar. 28, 2012, at http://www.abajournal.com/news/article/average_debt_load_of_private_law_grads_is_125k_these_five_schools_lead_to_m/ (visited Dec. 18, 2014).

[38] National Association for Law Placement, *Trends in Median Reported Salaries-Class of 2012*, Jan. 2013, at http://www.nalp.org/trends_in_median_reported_salaries_class_of_2012 (visited Dec. 18, 2014).

economic principles predict a negative impact on demand for a legal education. This is what has occurred, as demonstrated by the plunging number of students taking the LSAT and the steep decline in law school applications, as noted earlier. Yet perhaps an even more telling statistic is the decline in undergraduates' interest in pursuing a legal education post-baccalaureate degree as revealed by the percentage law school applicants bear to recipients of baccalaureate degrees. From 1991 to 2013, the number of law school applicants as a percentage of that year's baccalaureate degrees declined almost steadily from nine percent to three percent[39], which is a staggering decline. This belies the belief that declining interest in the legal profession is a product of the Great Recession; the lack of interest in the profession dates back at least two decades.

With disruptive forces of this magnitude, one would expect legal education to respond, and it has. The unsustainable rate of increase in law school tuition has declined, and some schools have frozen or reduced tuitions[40]. This decline may be larger than tuition numbers themselves reveal if discount rates are increasing, as anecdotal information suggests. But even these significant changes have not stopped the decline in applications, which is continuing its downward drift in the 2014–2015 cycle. As of December 12, 2014, a date that marks the completion of about one-third of the annual law school admissions cycle in the United States, the number of applicants is down 9.1% from the prior year and applications are down 10.5%[41]. At some point a market correction is inevitable and the number of applications will stabilize, but how far in the future this moment awaits us remains unknown. Just as the legal profession will not return to the "old normal" that predated the current pattern of changes, it is almost impossible to conceive a scenario under which applications will return to the lofty numbers of the late 1990s and early 2000s, at least not until the retirements of the baby boomer generation cause what is likely to be the greatest transformation in the history of United States labor markets, something that we should expect to be in full swing in the 2030s. Given these market realities, the prices charged by law schools for a legal education cannot be based on "business as usual" considerations.

Second, law schools need to evaluate their enrollment targets. This is also presently occurring; in addition to changes in tuition management strategies, enrollment management strategies are being revised in law schools throughout the United States. In the fall of 2013, first-year enrollment in United States law schools dropped to 40,802[42]. Despite this significant decline, the fall 2013 enter-

[39] D. Jones Merritt, *The Twenty Year Drop*, Feb. 3, 2013, at http://insidethelawschoolscam.blogspot.com/2013/02/the-twenty-year-drop.html (visited Dec. 18, 2014).

[40] J. Vassallo, *Law Schools Slowly Reducing Tuition*, "JD Journal", Jan. 16, 2014, http://www.jdjournal.com/2014/01/16/law-schools-slowly-reducing-tuition (visited Dec. 18, 2014).

[41] Law School Admission Council, *Data: Three-Year Volume Graphs*, http://www.lsac.org/lsacresources/data/three-year-volume (visited Dec. 18, 2014).

[42] American Bar Association Data, *Law School Takeoffs*, March 24, 2014.

ing class will graduate in 2016 and the number of new lawyer jobs, as discussed earlier, is expected at that time to remain close to half the number of anticipated 2016 graduates, which means placement will continue to be very difficult for new graduates in 2016 and ensuing years. As law school enrollments are reduced in response to declining applications and the deflated employment market for new graduates, law schools will need to adjust to the new budget normals that result when revenues are reduced. Declining budgets will translate into smaller faculties, increased use of faculty sharing among law schools through distance education and other means, and increasingly entrepreneurial behaviors as law schools search for new revenue streams, such as those which might exist in continuing education offerings, new graduate degree programs at both the post-J.D. and pre-J.D. masters levels, undergraduate course offerings in the style of "law and [something]", and executive education for non-lawyers. As these alternative programs are created, consideration will be given to whether portions of this coursework should be allowed to count toward a degree; at present, cumulative counting of credits is not allowed by American Bar Association accreditation standards for the first professional law degree[43], but pressure for change will intensify as law schools struggle to balance their budgets.

Third, law schools will continue to innovate with programs that reduce the total cost of a legal education and the debt burdens which follow. Although shortening the degree program from three years to two years, as President Obama urged[44], is one approach, this is unlikely to be attractive to employers of new law graduates who consistently stress the need for graduates to be better trained with "practice ready" skill sets. Re-engineering a curriculum to achieve this goal at the same time the duration of the academic program is cut by a third is not possible without significant adverse impact on the traditional program of doctrinal instruction, which no one suggests abandoning. The possibility of allowing the first year of law school to substitute for the fourth year of baccalaureate instruction has greater promise, however, and an increasing number of law schools in cooperation with undergraduate institutions are embracing this model. Indeed, there has long been debate about whether a college degree should be a three-year or four-year program[45], so allowing the first year of professional study to count as the fourth year of the undergraduate degree program is not a difficult stretch for many colleges and universities.

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[43] *Standard 311(e), 2014-15 American Bar Association Standards and Rules of Procedure for Approval of Law Schools*, at http://www.americanbar.org/groups/legal_education/resources/standards.html (visited Dec. 22, 2014).

[44] See C. Flaherty, *2 Years for Law School?*, "Inside Higher Education", Aug. 26, 2013, at https://www.insidehighered.com/news/2013/08/26/president-obama-calls-cutting-year-law-school (visited Dec. 18, 2014).

[45] See Center for College Affordability and Productivity, *25 Ways to Reduce the Cost of College, #4, Offer three year Bachelor's Degrees*, Jan. 2010, at http://www.centerforcollegeaffordability.org/uploads/25_Ways_Ch04.pdf (visited Dec. 18, 2014).

The biggest challenge to the "three-plus-three" degree program is the prospect of students graduating from law school, taking bar examinations, and being licensed to practice law at increasingly young ages where maturities to assume client responsibilities are not adequately developed. Across the country, students in larger numbers are being allowed to double-count certain high school or community college courses for high school and college credit; there are many advantages to these programs and they are very popular. Indeed, it is not unheard of for a high school graduate to be admitted to a college or university with as much as two years of university credit already completed through dual enrollment. Hypothetically, if an individual starts elementary school at age six, skips one grade of elementary school through advanced placement, graduates from high school at age seventeen with two years of college credit, completes the baccalaureate degree through overloads in two summers and a two-semester academic year, the student could matriculate in a law school at age eighteen, complete law school on an expedited basis, and be eligible to take a state bar exam before reaching age twenty-one. Whether such individuals on average have the life experience, maturity, and emotional intelligence to assume responsibility for the affairs of their clients is debatable. But such programs could achieve their cost reduction goals with sacrificing these other values by requiring gap years or certain kinds of work experience during the overall course of study. Indeed, it is possible that such programs might actually increase the readiness of graduates to enter the world of practice.

Fourth, in the current difficult, highly selective placement markets, law schools need to evaluate their curricula to the end of making their graduates more attractive to employers. This, too, is occurring, as law school faculties design and implement enhanced, innovative curricula featuring increased use of externships, redesigned and expanded experiential learning programs, and programs that tie post-graduate hiring to successful completion of a course of study in the law school. Much criticism is leveled at the third year of law school, and thus attention will be concentrated on reforms in this part of the curriculum. The third year is well suited to a concentration of externships, clinics, and experiential programs. One can imagine re-designed third-year curricular tracks that provide specialization in a particular kind of practice, such as corporate, tax, family, wealth management (wills and trusts), advocacy, criminal law, small firm practice, or public service practice. In these programs, the skills involved with collaborative problem solving and risk management, which are increasingly important in the practice of law, can be emphasized. A major challenge is that United States law schools have built their faculties with a disproportionate number of professors who lack the skill sets necessary to deliver this kind of academic program. In revenue-deprived times, pivoting the faculty to one that is capable of teaching a more skills-intensive curriculum will not be simple for many schools in the absence of a substantial number of retirements, resignations, and other attrition among faculty members.

Steven Zack, former president of the American Bar Association, summarized this changing world well when he observed that "the practice of law will change more in the next ten years than in the last two hundred"[46]. This reality places legal education in a delicate space. In my view, the greatest risk we face in legal education is that we will do an excellent job preparing our students to practice in a world that does not exist anymore. As history tells us repeatedly, failing to adapt is not sustainable over the long run. Yet we can take some comfort in the knowledge that embedded in the challenges posed by the disruptive forces at our doors are new opportunities, and those who are the quickest to recognize them will be the ones best positioned to transition effectively into the future that awaits us all.

DISRUPTIVE FORCES AT OUR DOORS: CHALLENGES FOR THE LEGAL PROFESSION AND LEGAL EDUCATION

Summary

Change is constant, inevitable, and sometimes disruptive. This is especially evident both in the legal profession and in legal education, where unprecedented disruptive change is occurring. Disruptive change can be destructive; yet directed, proportional, and adaptive responses can produce effective, even transformational, change. Identifying and implementing the correct direction of change in legal education is challenging due to declining demand for the output of production in the educational enterprise, excess capacity in producing such output, and structural constraints that make timely adaptation to the changing market difficult. In the U.S., the supply of new graduates exceeds available employment, a mismatch that will not significantly abate soon. Simultaneously, the numbers of both applications and applicants for admission are declining, which challenges many law schools' efforts to maintain entering class quality, financial health, or both. New technologies and project management techniques steadily increase law practice efficiencies, which reduce the need for the number of lawyers needed to do relatively static or declining quantities of work. Non-lawyer professionals are increasingly entrusted with undertaking tasks traditionally understood as lawyer-only roles, which reduces the demand for lawyers to do some kinds of legal work. Legal education is responding with decreased rates of increase in, and sometimes declining, law school tuition, reductions in enrollment, innovations that reduce the net cost of legal education, and curricular reforms. In the face of disruptive change in the legal profession, legal education occupies a delicate space, where without change law schools are at risk of preparing students to practice effectively in a world that does not exist anymore. Yet disruptive forces present new opportunities, and those who are quickest to recognize them and adapt effectively will be best positioned to transition into the uncertain future.

[46] S. Zack, *ABA President Stephen Zack Visits UF Law*, Oct. 18, 2010, http://www.law.ufl.edu/flalaw/2010/10/aba-president-stephen-zack-visits-uf-law (visited Dec. 18, 2014).

NIEPOKOJĄCE ZJAWISKA U NASZYCH DRZWI: WYZWANIA DLA PROFESJI PRAWNICZYCH I DLA NAUCZANIA PRAWA

Streszczenie

Zmiany są nieuniknione, a często uciążliwe. Jest to szczególnie widoczne zarówno w zawodach prawniczych, jak i edukacji prawniczej. Zmiany bywają destrukcyjne, stosowanie natomiast proporcjonalnych środków prowadzi do skutecznej zmiany. Opracowanie i wdrożenie właściwego kierunku zmian w edukacji prawniczej jest trudne ze względu na spadek popytu na absolwentów kierunków prawniczych i ograniczenia strukturalne, które sprawiają, że dostosowanie się do zmieniającego się rynku jest bardzo trudne. W USA podaż nowych absolwentów przekracza dostępne możliwości zatrudnienia. Jednocześnie liczba ubiegających się o przyjęcie na studia prawnicze spada, co podważa wysiłki wielu uczelni, by utrzymać poziom jakości nauczania i kondycji finansowej. Nowe technologie i techniki zarządzania projektami stale zwiększają efektywność wykonywania zawodów prawniczych, co tym samym zmniejsza potrzebę osobistego zaangażowania prawników w czynności zawodowe. Osoby niewykształcone w zawodach prawniczych coraz częściej podejmują się zadań tradycyjnie rozumianych jako role prawników, co zmniejsza zapotrzebowanie na prawników. Rynek edukacji prawniczej reaguje spadkiem tempa wzrostu, spadkiem liczby zajęć uniwersyteckich, redukcją zapisów, ale także innowacjami, które zmniejszają koszty edukacji oraz reformami programowymi. Te często dokuczliwe zmiany stwarzają nowe możliwości rozwoju, a ci którzy najszybciej rozpoznają owe możliwości i efektywnie je zaadaptują, będą najlepiej usytuowani w świecie pełnym zmian.

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KEYWORDS

change, disruption, disruptive change, organization dynamics, innovation, adaptation, legal markets, legal profession, delivery of legal services, legal employment, law placement, technology, law practice technology, professional licensure, "Limited License Legal Technician", project management, legal education, tuition, costs of legal education, student debt, law school enrollment, demand for legal education, law school curricula, curricular reform

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uciążliwe zmiany, dynamika organizacji, innowacje, adaptacja, rynki prawne, zawody prawnicze, świadczenie usług prawnych, technologie, licencje zawodowe, zarządzanie projektami, wykształcenie prawnicze, koszty edukacji prawnej, zadłużenie studenta, popyt na studia prawnicze, reformy programów nauczania

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WHAT I THINK I HAVE LEARNED FROM 50 YEARS OF TEACHING AMERICAN LAW TO FOREIGNERS AND FOREIGN LAW TO AMERICANS

1. INTRODUCTION

Why should American students learn Foreign Law? Why should foreign students learn American law? I suggest that there are many reasons. Permit me to list and discuss briefly those which I consider the most important. Needless to say, they are complementary and not exclusive.

1. Learning for learning's sake

It is very popular these days to evaluate education in terms of its dollar value. The American press seems obsessed with producing articles discussing whether or not higher education or specific parts thereof are "worth" the cost of high tuitions and the need for student loans. Students are barraged with advice to choose areas of interest and study on the basis of the future income they can expect. While economic realities should never be ignored, the importance of knowledge and the societal need for an educated citizenry seems to be constantly left out of the discussion.

Can you really consider yourself an educated lawyer if you know nothing about other legal systems and laws? In our global world can a professional merit respect and trust if she knows nothing about how her profession is practiced in other countries? Educational "worth" must be more than earning power compared to educational costs. Of course, knowledge of foreign legal systems has considerable economic value but, even if it did not, should not it be considered an important goal for anyone wishing to present himself as an educated citizen and educated professional?

2. To understand your own legal system and laws better

In the process of learning about other legal systems one generally looks deeper into one's own system. I would submit that there is no better way to understand what is unique and commendable or substandard and in need of improvement about your own laws and legal system than to understand the differences from other approaches to laws and legal systems found in other countries. To evaluate

one's own values and approaches nearly always requires being able to step out and view with a perspective and the study of other legal systems gives an opportunity to experience this perspective.

3. To improve your laws and legal systems

Are the rules and approaches of your legal system the best possible? Perhaps in other countries or legal traditions there are "better" approaches. What other approaches are there around the world?

In many countries, courts look to foreign law to aid them in reaching a just resolution of issues before them. The controversy over the "relevance" of foreign law to judicial decision making in the United States is a well-known controversy[1]. The landmark case on point is the 2005 decision of the Supreme Court of the United States in *Roper v. Simmons*[2] which concerned the juvenile death penalty. The comments of the Justices in that decision give an illuminating overview of the controversy at the Supreme Court level:

Justice Stevens: "The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions"[3].

Justice O'Connor: "[T]his Nation's evolving understanding of human dignity certainly is neither wholly isolated from, nor inherently at odds with, the values prevailing in other countries. On the contrary, we should not be surprised to find congruence between domestic and international values, especially where the international community has reached clear agreement – expressed in international law or in the domestic laws of individual countries – that a particular form of punishment is inconsistent with fundamental human rights. At least, the existence of an international consensus of this nature can serve to confirm the reasonableness of a consonant and genuine American consensus"[4].

Justice Scalia: "[T]he basic premise of the Court's argument – that American law should conform to the laws of the rest of the world – ought to be rejected out of hand […] I do not believe that approval by 'other nations and peoples' should buttress our commitment to American principles any more than (what should logically follow) disapproval by 'other nations and peoples' should weaken that commitment"[5].

4. To be able to advise clients about the relevant laws and regulations of two or more countries

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[1] S. Calabresi, S. Dotson Zimdahl, *The Supreme Court and Foreign Sources of Law: Two hundred Years of Practice and the Juvenile Death Penalty Decision*, "47 Wm. & Mary L. Rev." 743, 2005–2006. See also J. Waldron, *Foreign Law and the Modern Ius Gentium*, 119 "Harv. L. Rev." 129, 2005–2006; J. O. McGinnis, *Foreign to our Constitution*, 100 "Nw. U. L. Rev." 3030, 2006.

[2] 125 S. Ct. 1183, 2005.

[3] Justice Kennedy writing for the majority, 125 S. Ct. 1183, 1200, 2005.

[4] Justice O'Connor in her dissenting opinion, 125 S. Ct. 1183, 1215-16, 2005.

[5] Justice Scalia in his dissenting opinion, 125 S. Ct. 1183, 1229, 2005.

The globalization of the world's economies and inhabitants means that an ever increasing percentage of the questions asked of lawyers in all countries involves issues of "foreign" law. Multinational issues are almost the norm in commercial matters and the relevance of foreign law in family law, property law, criminal law, inheritance law, and tort law is dramatically increasing[6]. Knowledge of foreign law and legal systems is essential for a lawyer to recognize and understand the significance of foreign laws to the issues raised by her clients[7]. Traditionally this means that the lawyer is better able to identify the need for a foreign lawyer to participate in the case or at least advise him. Such a need exists for judges as well as lawyers[8]. Many people believe that it is not enough for one's lawyer to be able to recognize the relevance of foreign law and seek advice in regard to it. There is a recent increase in the legal education world in programs which seek to prepare students to practice law – be a regular member of the Bar – in more than one jurisdiction[9]. Two quick examples. The University of Houston College of Law has recently started a four-year program in connection with the University of Calgary that prepares the graduates of that Program to be members of both an American Bar and a Canadian Bar[10]. A second example, the Georgia State Law School's new LL.M. for Foreign Lawyers Program has a curriculum that will allow successful graduates to sit for the Georgia Bar[11]. Of course, California and New York are already known in the comparative law world for allowing foreign lawyers – who meet specific requirements– to take their respective bar exams[12].

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[6] See F. A. Gevurtz, *Report Regarding the 2011 Pacific McGeorge Workshop on Promoting Intercultural Competence (The "Tahoe II" Conference)*, 26 "Pac. McGeorge Global Bus. & Dev. L.J." 63, 2013; W. M. Reisman, *Designing Law Curricula for a Transnational Industrial and Science – Based Civilization*, 46 "J. Legal Educ." 322, 1996.

[7] See S. L. DeJarnatt, M. C. Rahdert, *Preparing for Globalized Law Practice: The Need to Include International and Comparative Law in the Legal Writing Curriculum*, 17 "Legal Writing J.", Legal Writing Institute 3, 2011; A. Blackett, *Globalization and Its Ambiguities: Implications for Law School Curricular Reform*, 37 Colum. "J. Transnat'l L." 57, 1998–1999.

[8] Dr. Ewa Gmurzyńska, Director of the Center for American Law Studies, will explain an innovative program currently in operation in Poland in this regard in her discussion of the PAJRAP program recently established by the Center for American Law Studies at the University of Warsaw. See the article by Professor Maria Kenig-Witkowska, in regard to the role that various domestic laws plays in the creation of norms for international law and international environmental law.

[9] K. Hall, *Educating Global Lawyers*, 5 "Drexel L. Rev." 391, 2012–2013. See also G. M Sanchez, *A Paradigm Shift in Legal Education: Preparing Law Students for the Twenty-First Century: Teaching Foreign Law, Culture, and Legal Language of the Major U.S. American Trading Partner*s, 34 "San Diego L. Rev." 635, 1997.

[10] See http://www.law.uh.edu/academic/UHLC-Calgary-Dual-Program-Full-1.asp [University of Houston Law Center and University of Calgary Faculty of Law International Energy Lawyers Program (IELP) Dual Degree JD Program].

[11] See http://law.gsu.edu/llm/.

[12] For a discussion, including statistics, of foreign lawyers with an American LL.M. taking the New York Bar, see D. S. Clark, *American Law Schools in the Age of Globalization: A Comparative Perspective*, 61 "Rutgers L. Rev." 1037, 1062, 2008–2009.

2. HOW SHOULD WE TEACH FOREIGN LAW TO AMERICAN LAW STUDENTS

If one accepts one or more of the reasons discussed above for teaching foreign law, the key issue becomes: how should it be taught? One scholar[13] has classified the major methods into three groups: (1) additive, i.e. primarily through electives which are of course optional courses that students may take if they wish, (2) integrative, i.e. students from day one of law school study domestic, foreign and international law together, and (3) immersive, i.e. students learn foreign law by attending foreign law schools. While that classification is basically sound, I prefer a slightly different division.

1. Comparative law courses taught by domestic and/or foreign professors

At least in American law schools, the original and still most common approach is through a course – almost always elective – labeled comparative law[14]. Such a course should be – and sometimes is – labeled "Comparative Legal Systems" since it normally concentrates on comparing and contrasting legal systems or traditions – or "families" – for example a comparison of common law and civil law systems[15]. Little time is usually available to go very deeply into legal subject areas, for example, torts or contracts.

2. Domestic law courses with an element of foreign law added

A more recent trend is to add some subject specific course coverage of foreign law[16]. For example, in an American property law course the professor could include some coverage of French property law in order to allow students to compare and contrast Napoleonic code concepts of property with common law property concepts. This assumes that the professor is well enough versed in at least one foreign law system to successfully use this approach. Depending on who is teaching the course, this may or may not be the case. Usually for various reasons, including the need to cover basic material in first year courses, the amount of time devoted to foreign law issues and materials is quite short – perhaps even only the equivalent of a couple of class sessions.

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[13] J. R. Maxeiner, *Learning from Others: Sustaining the Internationalization and Globalization of U.S. Law School Curriculums*, 32 "Fordham Int'l L.J." 32, 2008–2009. One of the earliest discussions on point and still a classic – is *Roscoe Pound, The Place of Comparative Law in the American Law School Curriculum*, 8 "Tulane. L. Rev." 161, 1934.

[14] See F. A Gevurtz et al., *Report on the Pacific McGeorge Workshop on Globalizing the Law School Curriculum*, 19 "Pac. McGeorge Global Bus. & Dev. L.J." 267, 2006.

[15] The reader will have already realized that this article is written from an American perspective. Compare K. Schadbach, *The Benefits of Comparative Law: A Continental European View*, 16 "B.U. Int'l L.J." 331, 1998.

[16] Consider M. Reimann, *The End of Comparative Law as an Autonomous Subject*, 11 "Tulane Eur & Civ L.F." 49, 1996.

I had a rather unique opportunity when I was on the Tulane Law School faculty in the early 1970s to design and teach an introduction to property law first year course as a common law/civil law comparative course. The experiment seemed appropriate since both common law property and civil law property were taught in the Tulane curriculum although normally only students choosing the civil law curriculum took the civil law property course and only students taking the common law curriculum enrolled in the common law property course. I only taught the course twice and therefore, never was able to prepare appropriate and adequate course materials, nor was I able to perfect the approach and determine what topics should be covered and what areas should be left entirely for the basic civil and common law courses. It was not a popular approach with the students but my inadequacies may have been responsible. To this day I am not certain whether the concept was workable and the experiment was abandoned when I left Tulane. Perhaps we were ahead of our times. McGill has adopted a curriculum which "seeks to incorporate transnationalism into the curriculum by freeing the study of law from jurisdictional or systemic boundaries"[17].

At the University of Florida, I had the opportunity to try something in the same vein when I taught in, and directed, the Cuban American Lawyers Program. That Program was one authorized by the Supreme Court of Florida with the goal of preparing Cuban lawyers, who had fled to Florida, to take the Florida Bar exam and therefore become licensed to practice there[18]. My concept was to present as many common law legal concepts as possible in a civil law context in order to facilitate the understanding of common law. In other words, to allow the Cuban lawyers to see the differences and similarities between the law they already knew and their new legal system in the hope that this would ease and expedite their studies. Again, I am not certain the effort was successful. The Bar passage rates were quite disappointing but that does not mean that those who did pass were not aided by the "comparative" approach nor that those not successful would have done better without such an approach. One difficulty was that very few teachers in the program were versed in civil law and therefore only a limited number of topics could be taught from a comparative perspective.

3. Foreign enrichment courses

Many American law schools offer courses in specific subject areas taught by one or more foreign or foreign trained law professors. The University of Florida College of Law has been a leader in this regard since I first introduced the con-

[17] R. Jukier, *Transnationalizing the Legal Curriculum: How to Teach What We Live*, 56 "J. Leg. Educ." 172, 174, 2006 (McGill professors need to have expertise in both civil and common law and develop materials that will allow them to implement this approach). See also discussion of teaching transnational law before national law in J. Husa, *Turning the Curriculum Upside Down: Comparative Law and Educational Tool for Constructing the Pluralistic Legal Mind*, 10 "German L.J." 913, 2009.

[18] In re Proposed Amendment, 324 So.2d 33, 1975.

cept there in the 1980's. I will use a Georgia State Law School example which adopts the Florida model. We offer a course labelled International Perspectives on Urban Law and Policy. We have three foreign professors, each comes for consecutive three week periods during the spring semester to offer classes on urban law issues in their home country. The course is designed to be multidisciplinary and the enrollees normally include not only GSU law students but graduate students from other colleges at GSU and from the College of Architecture, which includes the City and Regional Planning Department, of our sister institution the Georgia Institute of Technology (Georgia Tech). Each visiting professor prepares course materials for his segment of the course and gives a take-home exam at the end of her stay. The "foreign enrichment course" approach to teaching foreign law has, in my opinion, met with considerable success in the law schools which have tried it. Needless to say, language and teaching style of the foreign visitors as well as the quality and relevance of the course materials are keys to the course's effectiveness as is their ability to explain materials so that they relate to the student's knowledge of the American law on point. Such courses are not considered a substitute for a basic comparative legal systems course and in fact, such a course should probably be considered a prerequisite for taking this kind of course. The advantage of this approach is that students are exposed to at least three foreign systems and can thereby compare them as well as make comparison with American urban law.

4. Summer Programs and "short sessions" abroad

The U.S. law schools are well known for sponsoring a large number of summer sessions abroad designed primarily for American law students but often including law students from the host country. While many such programs include "American law" courses they also feature many comparative and foreign law courses and at least include some coverage of foreign law in the standard American law offerings. The summer program faculty is usually a blend of American and foreign law professors. Many have a "clinic" element designed to give the students limited "practice" experience in the host country and an inside look at multinational law firms. A recent modification of the traditional 4–6 weeks long summer programs is a short – week to 10-day – very specialized course held in a foreign country during winter or spring break. They are often referred to as "intersession programs". Normally the stay abroad is "part" of a full semester course. For example, next year the GSU International Perspectives course, mentioned earlier, will offer students the opportunity to obtain extra credit by participating in a week of intensive lectures and field trips in Istanbul, Turkey, during spring break.

The popularity of American summer and intersession law study abroad programs is well known and well-studied[19]. They require approval by the American

[19] One of the most exhaustive discussions is L. Harmon, E. Kaufman, *Innocents Abroad: Reflections on Summer Abroad Law Programs*, 30 "T. Jefferson L. Rev." 69, 2007–2008 (over 100 pages). The authors, well experienced in directing summer abroad programs, give the following

Bar Association which also monitors and inspects them. The ABA reported in 2008, for example, that there were then about 237 programs sponsored by 115 different U.S. law schools in 49 countries[20].

5. LL. M. Programs

Graduate programs for foreign lawyers designed to allow them to obtain a Master of Laws degree from an American law school is a well-established way of offering American Law as "foreign law" for students and lawyers from other countries[21]. They usually contemplate a full academic year of residence at the host school in the U.S. and, as I mentioned earlier, some contemplate giving adequate training in American law to enable foreign law graduates to sit for a state bar exam. Many non-American law schools of course offer similar programs for American law graduates.

6. Centers of Foreign Law – the University of Warsaw approach

The University of Warsaw has one of the most impressive programs for teaching foreign law found anywhere in the world. The symposium which gave rise to these papers is because of one of them – the Center for American Law Studies. The Center offers approximately one hundred University of Warsaw law students each academic year a full year of American Law courses taught by law professors primarily from the University of Florida. What should also be noted is that the University of Warsaw Faculty Of Law has 5 other such Centers, namely British, French, German, Spanish and Italian Law Centers.

3. HOW SHOULD AMERICAN LAW PROFESSORS TEACH AMERICAN LAW TO FOREIGN LAW STUDENTS

There are many differing circumstances under which one can teach American Law to foreign students and consequently observations in regard to how to do so most effectively can only be given in general terms with a recognition of myriad exceptions. In spite of that, it seems important to attempt some common base issues[22].

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suggestions for the success of such programs: (1) Provide and test course content on the host country, (2) Tailor courses to the law and conditions of the host country, (3) Find faculty with the ability to do #2, (4) Incorporate local law students, (5) Tell students what they are getting, (6) Create a community, (7) Create an opportunity for students to engage in a public service project, and (8) Encourage and develop tourism.

[20] See http://www.americanbar.org/groups/legal_education/resources/foreign_study/foreign_summer_winter_programs.htm.

[21] See http://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d/programs_by_category.html.

[22] For an interesting discussion of teaching methods as they relate to teaching "foreign" law, see C. Valcke, *Global Law Teaching*, 54 "J. Legal Educ." 160, 2004.

1. Language ability

To start with the obvious, the most challenging and yet most frequently encountered situation is presented when the American law professor is teaching in English to students for whom English is not a first language. Occasionally one has a class whose students are all totally "fluent" in English but the definition of "fluent" is itself fluent. Often students who have excellent English language skills are not accustomed to hearing lectures in American English about legal topics. Remember that even native English speaking students often have difficulty following a lecture which involves extensive use of legal terminology. In addition, most groups of students have a range of English fluency which is often difficult for the lecturer to gauge. In that regard, it is often helpful to ask questions and even give a small "pop" quiz early in the course to evaluate how well most students are understanding one's lectures.

The approaches to remember are as obvious as the problems[23]: speak clearly, enunciate well, speak slower than one would normally do back in the States, avoid slang, and especially avoid abbreviations unless they are well explained[24]. Summarize frequently.

2. Visual aids

While power points and the like may have had some negative consequences for American professors teaching American students, I believe strongly that they are a blessing when teaching abroad. The picture worth a 1000 words is even more valid when words are difficult for the listener. Of course, power points are not just about pictures. Showing a power point with key words and the topics to be covered can go a long way to help even English challenged students follow lectures.

In many countries, students are accustomed to having the professor's class notes or at least outline of them made available at the beginning of the course so that, even if they are repeated through the use of power points, the American professor may decide, or even be required, to make them available to the class.

3. Do not go too deep or try to cover too much

Foreign students neither need nor want in depth coverage of most topics. If you are teaching property, should you even expose them to the Rule Against Perpetuities much less the fertile octogenarian example. Of course, how many topics you can cover and how deep you can go depends on how many hours of lecture you can give but unless you are preparing them to take an American Bar exam, the most important thing for you to decide is what overview will result in the foreign stu-

[23] I realize that the reader may be offended by the obviousness of the suggestions in this section. If the reader always remembers the basic approaches suggested then I offer my apologies and congratulations but I am not so lucky, after years of lecturing in many countries I still have to make myself remember things so basic as "speak slowly" and "avoid abbreviations".

[24] I usually hand out a "key" to the abbreviations used frequently in the subject matter which I am teaching.

dents learning, retaining and intellectually profiting from your coverage. Covering a small number of topics well should nearly always be the preferable plan.

4. Try to incorporate legal concepts from the student's own system. Have a local professor attend class

Using your knowledge of the students' legal system to help them grasp the significant similarities and differences between it and American law has already been advanced as a commendable comparative teaching technique. Hopefully, you will be able to do this even without the help of local professors but my experience has convinced me that if there is a key to success, it is having a comparative law astute local professor being present during your classes and helping the students relate what you say to what they already know about their legal system. My best teaching experience in this regard is teaching in Istanbul with a host professor present to give explanations in Turkish when he realizes the students need help. Team teaching has become a bit of a cliché in the States but in a foreign setting, I believe it greatly enhances the possibility of success.

4. CONCLUSIONS

Fifty years of experience teaching foreign law to American students and American law to foreign students have left me with two major conclusions. First, there is an increasing need for students from all nations to learn about the laws and legal systems of other nations. For law schools not to do so would constitute ethnocentric malpractice. In regard to teaching foreign law, it is not a question of IF but HOW. Secondly, no one approach is adequate. Legal academicians must constantly seek more effective and more innovative ways to globalize the outlook, knowledge, and skills of tomorrow's lawyers and judges.

WHAT I THINK I HAVE LEARNED FROM 50 YEARS OF TEACHING AMERICAN LAW TO FOREIGNERS AND FOREIGN LAW TO AMERICANS

Summary

The author reflects on the lessons he believes he has learned from 50 years of teaching foreign law to Americans and American law to foreigners. He first considers why students of any country should study foreign law and suggests the following reasons:

1. Learning for learning's sake, 2. To understand your own legal system and laws better, 3. To improve your laws and legal systems, and 4. To be able to advise clients about the relevant laws and regulations of two or more countries. The author next considers how we should teach foreign law to American law students and considers several models: 1. Comparative law courses taught by domestic and/or foreign professors, 2. Domestic law courses with an element of foreign law added, 3. Foreign enrichment courses, 4. Summer Programs and "short sessions" abroad, 5. LL. M Programs, 6. Centers of Foreign Law – the University of Warsaw approach. In the final section of the paper the author considers how American law professors should teach American law to foreign law students and offers several basic suggestions: 1. Consider the Language ability of the students and adjust your language accordingly, 2. Use visual aids, 3. Don't go too deep or try to cover too much, 4. Try to incorporate legal concepts from the student's own system, 5. Have a local professor attend class. The author concludes there is an increasing need for students from all nations to learn about the laws and legal systems of other nations. Secondly, no one approach is adequate. Legal academicians must constantly seek more effective and more innovative ways to globalize law teaching.

MOJA LEKCJA Z 50-CIU LAT NAUCZANIA PRAWA AMERYKAŃSKIEGO STUDENTÓW ZAGRANICZNYCH ORAZ PRAWA OBCEGO STUDENTÓW AMERYKAŃSKICH

Streszczenie

Autor rozważa swoje doświadczenia z 50-letniej praktyki akademickiej, kiedy nauczał prawa obcego Amerykanów oraz prawa amerykańskiego studentów zagranicznych. Po pierwsze, autor zastanawia się dlaczego studenci z innych krajów powinni studiować prawo obce i podaje następujące przyczyny: 1. Uczenie się przez wzgląd na sam rozwój naukowy; 2. By lepiej zrozumieć własny system prawny i panujące w nim zasady; 3. By udoskonalić własne prawo i cały system prawny; 4. By móc doradzać klientom w sprawach między dwoma lub więcej krajami odnośnie stosowanych przepisów i regulacji. Następnie autor rozważa jak powinno się uczyć prawa obcego amerykańskich studentów prawa i wyróżnia następujące modele: 1. Kursy prawno-porównawcze prowadzone przez nauczycieli krajowych, jak i zagranicznych; 2. Krajowe zajęcia prawnicze z elementami prawa obcego; 3. Zajęcia z prawa obcego; 4. Letnie kursy i zagraniczne sesje naukowe; 5. Kursy LL.M.; 6. Centra Prawa Obcego – na wzór tych na Uniwersytecie Warszawskim. W końcowej części artykułu, autor przedstawia w jaki sposób amerykańscy nauczyciele akademiccy powinni uczyć prawa amerykańskiego studentów zagranicznych i przedstawia kilka prostych sugestii: 1. Branie pod uwagę możliwości komunikacji w języku obcym studentów i dostosowanie własnego sposobu komunikacji do ich potrzeb; 2. Używanie pomocy wizualnych – prezentacji; 3. Nie zagłębianie się zbytnio w szczegóły; 4. Próba dodania elementów pochodzących z krajowych systemów

prawnych studentów; 5. Poproszenie lokalnego nauczyciela akademickiego o udział w zajęciach. Autor konkluduje, że istnieje wzrastające zapotrzebowanie wśród studentów ze wszystkich zakątków świata do studiowania obcych systemów prawnych. Co więcej, stosunek kadry akademickiej nie jest adekwatny do tych potrzeb. Nauczyciele akademiccy na kierunkach prawniczych powinni stale poszukiwać bardziej efektywnych i innowacyjnych metod „globalizacji" nauczania prawa.

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KEYWORDS

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SŁOWA KLUCZOWE

nauczanie prawa obcego w Stanach Zjednoczonych, nauczanie prawa, zajęcia z prawa państw obcych, programy LL.M

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TO TEACH OR NOT TO TEACH – WHY WE DO NEED TO TEACH FOREIGN LAW AND FOREIGN LEGAL SYSTEMS AS WELL AS COMPARATIVE LAW METHODS IN A GLOBAL WORLD?

I

This, formulated in Shakespearian style, question in the title of our session, in my view is of rhetorical type, and the answer should unconditionally be positive. Yes, we do need to teach foreign law for many reasons. I will attempt to address this complex and at the same time simple question in some brief observations[1].

One of the reasons that I place this issue on the list of important ones is the students' interest that finds its reflection in a number of schools of foreign law at Polish universities, including the Faculty of Law and Administration of the University of Warsaw. Students are ready to learn foreign law and appreciate very much the certificates of completion. They do it for many reasons, e.g. scientific curiosity, but they also perceive it as one of the major elements of legal education contributing to their professional career. Young lawyer who learned just the basics of foreign law system will certainly have more chances for professional success in a globalizing system of legal turnover.

To prove the validity of this standpoint, I would also like to refer to one of my experiences of teaching American students the European Union (EU) environmental law at the Florida University in Gainesville and at the Georgia State University in Atlanta. When I concluded my course, they underlined with satisfaction, that once they learned the basics of the EU environmental legal order, they believed they would be able to tackle any EU Member States' case when the EU environmental legal issues appear.

[1] This paper does not pretend to be an in-depth analysis of the issue. Therefore, in my view, it should be continued on a broader scale by those academics who strictly deal with methodological issues of law studies.

II

The usefulness of knowledge of foreign legal systems is obvious both for practitioners and researchers of law, and not only in the context of the flagship example of international private law which concerns relations across different legal jurisdictions between persons, and sometimes also companies, corporations and other legal entities, judges, barristers, prosecutors, but also for the administration on various levels, etc. In our increasingly globally linked world, teaching foreign law needs to take an ever more crucial role. With the rise of important new developments over the last thirty years, like the proliferation of the computer and Internet, development of global capital markets, international trade, human rights protection, global governance of environmental change etc., we are more and more linked in common ways, which makes knowledge of foreign law a must.

III

The remarks I would like to make are based on my academic career as a professor of law in Poland as well as on my experience as a visiting professor at foreign universities in Asia, Africa, including the American ones, where I had an opportunity to teach the EU environmental law.

At the start of my lecturing in the United States, I have quickly realized that American students have perceived the European Union as a political entity somehow similar to the United States of America, therefore trying to compare legal acts of the EU with the federal legislation of the USA. I also realized that, for them, such terms like directive, resolutions or decisions had different meanings based on what they understood from the American legal system, especially in the context of harmonization and unification issues of the European Union law. Although my main topic was the EU environmental law, I had to give them a short course not only of the EU institutional law but also of some international law issues, in order to show them the place of the EU legal system in the normative system of international relations. The lesson learned from this experience is that before we start teaching any specific topic of national or the EU law, especially in a country outside Europe, some lectures on the system of the European institutional law should be considered as a prerequisite for further teaching, to provide students with necessary tools for interpretation of the EU law.

IV

Having in mind this perspective, foreign law should be taught abroad and one has to do it using comparative law methods. Making the process of teaching

foreign law a productive one brings me to the topic of the role of comparative law[2]. In general, the quintessence of comparative law is to compare law of one country to that of another. However, of course, the comparison can be broader and encompass more than two laws and more than written words. In addition, perhaps, some degree of common approach, if not a measure of common understanding should be considered, because the knowledge obtained through comparative law can be taken as a door to foreign legal culture. These findings can be applied to our own legal culture, helping to understand different perspectives that may result in deeper understanding of our own legal order. From my experience as an academic and as a lawyer-practitioner it is not enough simply to compare the words written on the page, because law is deeply rooted in culture and it both derives and is influenced by the culture of the home country. Therefore, we must look at foreign law in a complex way, searching to understand better what the law really is, and how it functions within a society. To do this, we need to explore the elements of the forces that influence law, like religion, history, geography, ethics, custom, philosophy or ideology, just to name a few from among many. These short remarks on the role of comparative method reveal that comparative law has much to offer as a perspective to various solutions for vital policy issues. It can be quite useful to look outside our national legal frontiers to see if other perspectives could constitute valid points when it comes to policy questions. Alternative views on important, from the legal point of view, policy issues can, in turn, force a fruitful reassessment of these issues and therefore, lawyers need comparative law to take on these broader tasks.

To conclude this part of my humble remarks, I would like to say that it is absolutely clear for me that comparative law is an important legal tool, according to contemporary tendencies in methodology of legal sciences that have developed over the last thirty years, such as e.g. law and economics. Furthermore, comparative law must take on broader missions since we need to explore foreign cultures more deeply. It results from our own experiences that we need to step outside our own national perspective to see if we can learn more from different cultural and social patterns. Looking outside our own perspective, we might have a major influence on e.g. stewardship of the earth's resources, where comparative law as a tool has to be used to help to look insight major public policy issues to figure out what and how to act in our globalized world. Undoubtedly, comparative law has an important role to play here since we need to take on these new tasks as a way to improve our legal order, whether national, regional or international.

[2] E. J. Eberle, *The Method and Role of Comparative Law*, "Washington University Global Studies Law Review" 2009, Vol. 8, No. 3, pp. 451 and next. For the Polish approach to the issue see R. A. Tokarczyk, *Legal Comparative*, Warsaw 2008.

V

Talking about comparative law, let me say a few words on comparative international public law, the term introduced by A. Roberts, to which I would like to refer and make some remarks on the central issue when it comes to considering the use of comparative method in international public law – why to teach international public law[3].

The shortest answer why to study, to teach and to learn the comparative international public law is because of the role of national courts in creating and enforcing international law, which is a normative system of international relations. Academics, practitioners and international and national judges are increasingly seeking ways to identify and interpret international law by engaging in comparative analyses of various domestic court decisions, especially when we are dealing with the norms of *erga omnes* and *ius cogens* character. This emerging issue, known in the doctrine under the term of comparative international law, connects, as A. Roberts rightly points, international law as a matter of substance with comparative law as a matter of methodology[4]. The comparative process in this field is a very important one because of the role that national court decisions play in international law doctrine of sources, under which they provide evidence of the practice of States and, at the same time, constitute subsidiary means for determination of rules of law.

This role of national courts' decisions has a significant impact on the development of international public law. National courts in many countries are called upon to consider and resolve issues, based on the correct understanding and application of international law. This significance of international law in national courts' judgments requires consideration of the importance of domestic judicial decisions in the development and enforcement of international public law. Academics and international courts judges frequently identify and interpret international law by engaging in a comparative analysis of how domestic courts have approached and judged given issue. They have also recognized the important role that national courts could play in international law's enforcement, given their advantages of accessible jurisdiction and enforceable judgments. This is why we should teach foreign law and learn about foreign jurisprudence, having in mind that national courts frequently identify and interpret international law from the perspective of securing national legal interests[5].

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[3] See A. Roberts, *Comparative International Law? The Role of National Courts In Creating and Enforcing International Law*, "International and Comparative Law Quarterly" 2011, Vol. 60, pp. 57–92.

[4] *Ibidem*, p. 73 and next.

[5] A. Roberts rightly points on the dual role of domestic courts under international law, therefore recognizing the impact that this may have on the comparative international law process; *ibidem*, *passim*.

VI

As for methodology, comparative international law is to resolve many problems such as the difficulty of finding and understanding decisions in foreign languages and foreign legal systems. And this brings me again to the conclusion of necessity of teaching and learning foreign law. In most cases, understanding foreign judicial decision is a way to attain the perspective on domestic law, the different ways in which the rules have been formulated and interpreted. Taking the international comparative law perspective, and taking foreign jurisdiction as similar to the domestic law, there is also a sense of fairness to say that similar situations should receive similar solutions across legal systems. Foreign decisions provide us also with a perspective to observe our own system and its developments. Foreign legal arguments operate in this way because of the reputation of foreign legal system and of the fact that they concern a common endeavour between the jurisdictions to resolve what is, generally, a common social problem[6].

VII

The above is especially important in the case of international comparison in the context of international law of the protection of human rights[7]. To me, as an academic and partly a practitioner, it is unthinkable that lawyers in various countries could proceed adequately without reference to foreign law and foreign jurisprudence as far as the human rights protection is concerned, because of the principle of universality and impartiality of human rights. We should teach and we should learn that in this system of law, we go from our local system to laws common to all mankind, to which our decisions and foreign decisions are contributors, and from which at the same time we are all beneficiaries.

One of the practical arguments for the question why teaching an learning foreign law that I would like to mention is that there is always something to learn from foreign law in the field of the protection of human rights. Because human rights should be considered as common to all mankind, laws regarding human rights make resources available for learning and, as jurisprudence, contain important principles and offer means for solving difficult, and at the same time vital problems. The reference to foreign human rights law might be also considered as a way of securing consistency of human rights in the sense of treating alike cases that are alike. In my opinion, that recourse to foreign law also promotes predict-

[6] See J. Bell, *The Argumentative Status of Foreign Legal Arguments*, "Utrecht Law Review" 2012, Vol. 8, No. 2, *passim*.

[7] See G. de Burca, *After the EU Charter of Fundamental Rights: The Court of Justice as a Human Rights Adjudicator?*, New York University School of Law, Working Paper No. 13–51, *passim*.

ability of human rights. By referring to foreign law, every person has access not only to doctrinal patterns of human rights law, but also to the analyses useful for striking the balances that every legal system has to confront. I share the opinion of J. Waldrom, that for the purpose of the protection of human rights, we should consider international community as a single community[8]. It is especially true when approaching the issue of implications for the Court of Justice of the European Union (CJEU) of the growing demand for it to function as a human rights adjudicator, which requires greater openness on the part of the CJEU to the use of international and comparative law methods[9].

VIII

As we well know, the CJEU role as a human rights adjudicator is actually a relatively recent one. By comparison to the European Court of Human Rights, charged with interpreting and enforcing the European Bill of Rights of 1950, the CJEU has a limited experience of adjudicating human rights issues, despite now being tasked with applying the EU Charter of Fundamental Rights into the EU legal order. Therefore, one can say that the CJEU lacks the kind of expertise and experience that other human rights courts enjoy. The use of international and comparative law in this context would provide the CJEU with relevant information on the prevailing international and regional standards of protection of particular rights, and also on the approach of other international and regional courts to addressing comparable claims. It would also allow the CJEU to demonstrate by its rulings that the Court of Justice of the European Union has engaged itself fully with the relevant arguments[10].

IX

In the context of the necessity of teaching and learning foreign law, the consistency argument and the argument of fairness should be invoked, to the effect that it is important to treat similar cases alike, particularly on issues concerning fundamental human rights, regardless of the country or jurisdiction[11]. There is

[8] J. Waldrom, *Treating like cases alike in the World: the theoretical bases of the demand for legal unity*, (in:) S. Muller, S. Richards (eds), *Highest Courts and Globalization*, The Hague 2010, p. 119.

[9] G. de Burca, *After the EU Charter of Fundamental Rights*…, Section II.

[10] *Ibidem*.

[11] For the status of foreign legal arguments see J. Bell, *The Argumentative Status*…, pp. 8 and next.

also another argument in favor of greater reliance by the CJEU on international and comparative law, namely that the CJEU has a growing international role, and that its rulings have implications also beyond the frontiers of the Member States and of the EU. And this is the way lawyers should learn international law of the protection of human rights and we, the academics, should teach this subject.

X

Let me refer now, in a few words, to the question why to teach international environmental law[12]. The simplest answer is because it rules the international relations in the domain of environment that we, the academics, but also politicians and practitioners call international governance of global environment[13]. Generally speaking, governance of global environment consists of diplomacy, mechanisms, and response measures aimed at steering socio-economic systems towards preventing, mitigating or adapting to the risks posed to the environment. Although the inter-state treaty-making process continues to play a key role in mitigating anthropogenic environmental change[14] it now constitutes a part of a wider system of private and public governance initiatives operating on multiple levels, starting from international, regional to national and even communities level. Its tasks are of crucial importance because it has to overcome institutional inertia that hampers the development of an effective and timely response to those changes. And that is why we should teach not only international environmental law but also foreign domestic law on the environment.

XI

One of barriers that disturb the effective development and functioning of the environmental governance is the absence of effective coercion mechanisms in global policy solutions that can effectively solve the environmental problems.

[12] For the American perspective see D. A. Wirth, *Teaching and Research in International Environmental Law*, "Harvard Environmental Law Review" 1999, Vol. 23, pp. 423 and next.

[13] On the international governance of global environment see for example P. Sands, *Principles of International Environmental Law*, 2th ed., Cambridge 2003, pp. 70–123; M. M. Kenig-Witkowska, *International Environmental Law. Selected Systemic Issues*, Warsaw 2011, pp. 76–104 (M. M. Kenig-Witkowska, *Międzynarodowe prawo środowiska. Wybrane zagadnienia systemowe*, Warszawa 2011, pp. 70–104); D. Bodansky, J. Brunee, E. Hey (eds), *The Oxford Handbook of International Environmental Law*, Oxford 2007, pp. 63–85.

[14] Comp A. Kiss, D. Shelton, *Guide to International Environmental Law*, Leiden–Boston 2007, pp. 73–89; also P. Sands, *Principles*…, pp. 123–140; D. Bodansky, J. Brunee, E. Hey (eds), *The Oxford Handbook*…, pp. 457 and next.

Solutions to environmental problems will have to be defined and implemented at various levels of global environmental governance, and global collective action is quintessential for tackling them. That brings us firstly, to the problem of the democratic legitimacy of the contemporary global environmental governance which arises from axiology of national legal approach to environmental protection and, secondly, to principles governing international environmental treaties and compliance with their provisions. To understand better these complex issues, one should realize that there have been two general tendencies in the last three decades of co-operation of the States in the field of environment. On one hand, there is a growing awareness of international community about the necessity to protect the environment on the global scale, while on the other hand, we deal with the reluctance of the States to accept legally binding obligations in this field. As a result, we have in place a variety of acts of *soft law* functioning in international legal relations, and the price the international community pays for that are unclear obligations resulting from them. The legal status of these acts becomes even more essential, when it comes to a practice of national and international courts. Therefore, the usefulness of comparative law method is very easy to prove when, for example, one takes under consideration the precautionary principle or any other principles of the 1992 Rio Declaration on sustainable development.

XII

Over the past three decades there has been a dramatic increase in awareness of environmental threats that demand international responses. As the demand for policy responses has increased, the *hard* and the *soft* international law of the environment has also rapidly developed. Teaching and learning international environmental law presents for both students and teachers challenges that demand broader knowledge of the context of public international law and, at the same time, how to tackle environmental problems (another reason why to teach international public law). Understanding the complexity of interface between public international law and domestic law is crucial in the domain of environmental law. For example, a course of international environmental law is a way to demonstrate how the law and the policy issues influence international negotiations on climate change and other global environmental problems. Furthermore, teaching international environmental law is a good opportunity to address the legal issues of international organizations, especially of the United Nations system, because international environmental policy is at the frontline of many progressive developments in the international law of the United Nations Organization.

A course on international environmental law should also require students to learn, and teachers to teach, how to integrate norms and standards of international law and domestic legal structure. Therefore, as it results from my experience, a student should be trained also in some aspects of other fields like foreign relations law, domestic environmental law, domestic administrative law and constitutional law. Foreign students, and students from outside of the European Union in particular, should not avoid to be taught also the European Union legal order. As I have already mentioned above, students should be provided at least with the basic course of the EU institutional law, which is necessary to analyze some EU instruments from in-depth textual standpoint. The EU law is complex and the EU environmental law can probably only be comprehensively taught in a course dedicated to that subject.

XIII

To conclude this part of my observations on teaching/learning of international environmental law subject, I would like to say a few words about the international environmental law as a recognized academic discipline. I would like to emphasize that international environmental law presents not only challenges in terms of teaching. It presents equal challenges on research on the scale we academics have not experienced before, because of the growing awareness of the threat to the environment. As we can observe, as a result of that, there is a chain encompassing students, teachers, academics, practitioners of environmental law, as well as business people vividly disputing the best responses to environmental threats. Therefore, research in the international environmental law has recently tended toward the structure and functioning of international environmental governance issues.

Another direction of the aforesaid discussion is the issue of interface of the international environmental law with domestic law and the intersection of such areas like trade and environment, security and environment (especially security and energy issues), or development and environment. However, some academics undermine its analytical usefulness, arguing that this kind of approach contributes very little to the development of the international environmental law as an autonomous academic discipline. In my view, much more could be done in this field if the academics rethink the concept of sustainable development as an instrument overarching legal construction that encompasses a variety of public policy goals, including environment, economic, as well as social goals.

TO TEACH OR NOT TO TEACH – WHY WE DO NEED TO TEACH FOREIGN LAW AND FOREIGN LEGAL SYSTEMS AS WELL AS COMPARATIVE LAW METHODS IN A GLOBAL WORLD?

Summary

This paper addresses the issues from the following questions perspective: why do we need to teach foreign law; why do we need to teach and learn a comparative law methods; why do we need to teach comparative international law and why to teach international environmental law. The shortest common answer is: because in our increasingly globally interconnected world, with the rise of important new developments over the last thirty years, we are related in important common legal ways. The remarks made in this paper are based on academic career and experience as a professor of law in Poland, as well as from the experience as a visiting professor at the foreign universities, including the American universities, where the author have had an opportunity to teach the EU environmental law.

UCZYĆ CZY NIE UCZYĆ? DLACZEGO POWINNIŚMY UCZYĆ PRAWA OBCEGO I STOSOWAĆ METODOLOGIĘ PORÓWNAWCZĄ W NAUCZANIU PRAWA W GLOBALNYM ŚWIECIE?

Streszczenie

Artykuł odnosi się do zagadnień zawartych w tytule artykułu z perspektywy następujących pytań: dlaczego powinniśmy uczyć obcego prawa; dlaczego powinniśmy uczyć oraz sami uczyć się metod prawa porównawczego; dlaczego powinniśmy uczyć międzynarodowego prawa porównawczego i w końcu – dlaczego powinniśmy uczyć międzynarodowego prawa środowiska. Najkrótsza odpowiedź brzmi: ze względu na postępujące procesy globalizacji, w tym globalizacji przestrzeni prawnej i globalizacji obrotu prawnego. Uwagi zawarte w artykule są oparte na doświadczeniach wyniesionych z wieloletniej kariery akademickiej Autorki jako profesora prawa w Polsce oraz na zagranicznych uczelniach, również w Stanach Zjednoczonych, gdzie wykładała prawo środowiska Unii Europejskiej.

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KEYWORDS

teaching foreign law, comparative law methods, comparative international law, international environmental law

SŁOWA KLUCZOWE

nauka prawa obcego, metody prawnoporównawcze, porównawcze prawo międzynarodowe, międzynarodowe prawo środowiska

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BRINGING FOREIGN TEACHING EXPERIENCES INTO THE U.S. CLASSROOM: IS IT ENOUGH TO GENERATE STUDENT INTEREST IN FOREIGN LEGAL SYSTEMS AND LAWS?

United States professors will be in demand to provide courses, seminars and lectures in Europe and elsewhere throughout the world for the foreseeable future. The breadth and depth of the U.S. laws and regulations and the impact of common law in numerous areas will continue to provide a source of study in many countries and will necessarily lead to a continued outflow of U.S. instructors to distant places.

If the question is posed to a United States professor – what benefits are gained from teaching in a foreign country, the answer, I believe is clear. My years of teaching at the Center for American Law at the University of Warsaw have enormously enriched my knowledge and understanding of Poland, the civil law system and the relationship with the laws and policies of the European Union. I have been privileged to teach and lead workshops in many places throughout the world and the personal benefits have always been the same. I find it unfortunate that some U.S. professors and other instructors, indeed I might say "many" instead of "some", view their foreign teaching role as limited to simply expounding on U.S. law to foreign participants and therefore, are not open to experiencing the richness of cross-cultural interchange, the challenge of understanding differing legal and structural systems and the opportunities to bring such foreign experiences into their U.S. classrooms.

I can only speak for myself when I discuss what can be brought back into the U.S. classroom as a result of foreign teaching. My courses are in the business law areas, including business organizations and securities regulation. One might think that the globalization of commerce has led to a harmonization of business laws but that has not been the case. Many significant differences remain. Where relevant, I bring those differences into the classroom to challenge students to consider whether in fact the U.S. business laws are indeed superior (as is the common local assumption). Without going into details, among the subjects that we discuss, all of which come from my foreign teaching experiences, are:

– contrasting the U.S. "at will" employment concept with the more protective workers' rights in Europe and elsewhere (I once had a French student in my U.S.

class who openly expressed amazement at our lack of employment protection, a rather eye-opening experience for the students);

– contrasting the U.S. single board of directors with the European "dual-boards" model that allows for greater internal supervision of management decisions;

– contrasting the rather free-wheeling U.S. hostile takeover rules with those of the EU that much more define what a tender offer can do and what target directors can achieve by way of defenses;

– contrasting the U.S. securities laws that apply to every offer of a security regardless of number of offerees and amounts involved with laws in other countries that have *de minimis* standards below which government regulation is absent;

– contrasting the rather ambiguous criteria for formation of general partnerships in the U.S. (for which much litigation has ensued) with the formal registration of general partnerships that exists elsewhere.

Of course, I enjoy such discussion, but am I certain that my enthusiasm is matched by the students? No, I am not. Student reaction might be polite, but are they really thinking "we will humor the Professor who obviously loves foreign material, but this is not very important to us and surely will not be on the Bar exam". I have the strong feeling, unfortunately, that bringing foreign laws and policies into the U.S. classroom has not, at least in my experience, generated, with limited exceptions, an appreciation for understanding foreign laws and legal systems. Why not? There might be several reasons. One, already mentioned, is the Bar exam orientation of so many students. Another might be the feeling that the discussion is quite tangential to the basic course material. A third might be the native insularity of American students, most of whom neither speak nor read fluently a foreign language. This latter factor sharply contrasts with foreign students I have taught, who quite appropriately understand the importance of speaking more than their native tongue and understanding that globalization now requires examining basic elements of legal systems other than their own.

So, is there a way to motivate U.S. law students to develop greater appreciation for foreign laws and legal systems? Perhaps, although it must be emphasized that law school administration and faculty must be genuinely committed to increasing students' exposure to foreign legal principles and systems. Students are quick to realize what their law school regards as essential as distinguished from the required-but-non-essential. Here are several suggestions:

1. Require all students to take at least two courses that focus on international or particular foreign topics. When I first joined the faculty at the University of Florida there were required groupings of courses, of which international law was one. In recent years, law schools have moved away from requirements other than first year courses.

2. Using the tools of technology, create live-time, video-based courses in which U.S. students sit in with foreign students to discuss topics of mutual interest.

3. Again using technology, create courses taught by foreign instructors that can be accessed by U.S. students outside of regular course hours.

4. Develop a regular program of international-based courses taught by visiting foreign instructors. The University of Florida's Foreign Enrichment Program brings in 8–10 foreign instructors each year for 3-week teaching stints divided among 3–4 internationally-oriented courses. Of course, this solves only half the problem. The other requires aggressive marketing among the student body to develop adequate attendance for such courses.

Three other suggestions:

5. Law schools should develop foreign-language capacities, even at minimal levels, so that students have a basic understanding of principal terminology in foreign jurisdictions. At the University of Florida we are developing a course in Spanish legal terminology. Students will not become fluent in the language, but learning the language will necessarily entail a better understanding of the structural and legal concepts attached to such language.

6. Law schools need to create better scholarship opportunities for study abroad programs. Current loan programs help but usually will not cover the entire costs for travel, housing, meals and other expenses associated with foreign study.

7. Finally, and here is the most innovative of my suggestions, put internationally-oriented questions on each state bar exam. Although such subjects might be left by students for Bar Review courses, history shows that bar exam questions definitely drive student course selection. Questions could be based, for example, on (a) the European Union rules and their relationship to member country laws; (b) the North American Fair Trade Treaty (NAFTA); (c) the World Trade Organization's role and operation; (d) application of trade regulations to multi-national corporations; (e) the jurisdiction and role of the International Court of Justice; and (f) fundamental differences between civil law and common law countries regarding private dispute resolution.

At the faculty level, I would strongly urge that all faculties have several members native to or trained in foreign countries, with principal emphasis upon the Far East, Europe and Africa, in addition to faculty members knowledgeable and experienced in the legal systems of our closest neighbors, including Canada, Mexico and the Caribbean. Adjuncts might be necessary to fill some of these roles but in any event these are geographic and subject areas that, in my judgment, should not be overlooked.

Will any of this really help? Will it stimulate a greater desire among U.S. law students to study and appreciate foreign legal systems and laws? I do not know. What I do believe, however, is that in the absence of greater efforts within law schools we will not be creating the necessary generation of young lawyers sufficiently versed to meet the demands of our global economy and our increasingly heterogeneous society.

BRINGING FOREIGN TEACHING EXPERIENCES INTO THE U.S. CLASSROOM: IS IT ENOUGH TO GENERATE STUDENT INTEREST IN FOREIGN LEGAL SYSTEMS AND LAWS?

Summary

This article starts by invoking the value to U.S. law professors to teach in foreign countries. Among the positives is the ability to bring foreign law concepts into their U.S. teaching. However, it has been my experience that U.S. law students regard the discussion of foreign law as somewhat tangential and unimportant in their legal education. How can this attitude be changed. The article ends with several suggestions that may invoke a greater U.S. student interest in and appreciation for understanding foreign legal systems and concepts.

WPROWADZANIE NAUCZANIA PRAWA OBCEGO NA UCZELNIACH AMERYKAŃSKICH: CZY JEST TO WYSTARCZAJĄCE, ABY ZAINTERESOWAĆ AMERYKAŃSKICH STUDENTÓW OBCYMI SYSTEMAMI PRAWA?

Streszczenie

Niniejszy artykuł podkreśla korzyści dla tych amerykańskich nauczycieli akademickich, którzy uczą w innych krajach. Jedną z nich jest możliwość adaptacji i porównania zagranicznych koncepcji prawnych do ich praktyki akademickiej. Jednakże autor sam doświadczył tego, że amerykańscy studenci prawa odnoszą się do dyskusji o prawie innych państw, jako do czegoś niedotyczącego i nieważnego dla ich studiów prawniczych. Jak zatem zmienić ich nastawienie? Ten artykuł proponuje kilka rozwiązań, które mogą wpłynąć na większe zainteresowanie i uznanie wśród amerykańskich studentów dla obcych systemów prawnych i nowych instytucji prawa.

KEYWORDS

international law study, legal education in U.S., foreign law teaching, teaching business law, teaching business organizations

SŁOWA KLUCZOWE

studia prawa obcego, prawo państw obcych, studia prawnicze w Stanach Zjednoczonych, nauczanie prawa handlowego, nauczanie prawa spółek

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ON THE USE OF COMPARATIVE LAW BY JUDGES IN PRIVATE AND COMMERCIAL LAW CASES

1. INTRODUCTION

A quick overview of the practice of comparative law uses by courts around the world allows one to formulate promptly a few general observations as to this particular phenomenon. First of all, courts in general, regardless of their jurisdictions or the type of cases they handle, refer to foreign law only occasionally. Second, a majority of scholarly research is focused on the use of comparative law by courts in constitutional, human rights and generally in public law cases. This is due to the fact that if references to foreign law occur in courts, it is mainly in those areas of law. Third, the practice of using foreign law by judges is more frequent in some countries than in others. It is in particular more prevailing in the countries belonging to the common law system – especially within the Commonwealth, where different courts frequently cite each other's case law and refer in particular to English precedents.

It stems from the above that references to foreign law in private and commercial law cases are not so frequent as those in constitutional or human rights law cases. This is one of the reasons why scholars usually prefer to focus on jurisprudential uses of comparison in public law. Such references also raise important questions of legitimacy, especially in constitutional law, and often lead to a heated debate. Such a debate is taking place for instance in the U.S. where some scholars encourage the use of foreign law by the U.S. Supreme Court and find that it plays an important role in solving constitutional problems, while others view it as an inadmissible violation of American constitutional law.

Furthermore, scholars often overlook the uses of foreign law in private and commercial law cases as they deem them to be more "evident" and hence offering a less spectacular area for debate. Numerous achievements in terms of private law unification, as well as frequent uses of foreign law by courts in private international law cases lead to an oversimplification of some issues that arise around the uses of comparison in private and commercial law cases. The following article

will look at some of these issues and address them accordingly by contending that references to foreign law in private and commercial law cases have an important purpose in today's global world.

As this article will cover the issue of "uses of foreign law by judges", it is important to clarify first what is understood by "foreign law" and what is understood by "uses", in particular in light of the on-going discussion surrounding the meaning of these terms. By referring to "foreign law", this article understands case law as well as written law such as acts, constitutions and other instruments of law, which originate in another country or jurisdiction than the one solving the dispute at hand. Foreign law also means the law of international organizations, the EU law for instance, if it is applied by a court not normally bound by it. While speaking about "uses" of foreign law by judges, this article means jurisprudential quotations of and references to foreign law which are done by courts in order to solve a case. The use of foreign law is meant as the use of an extra tool which, along with national case law and scholarly research, allows a given court to reach the right conclusions while solving a dispute.

This article focuses on two main issues linked with the uses of foreign law by judges. The first part focuses on the "why" question. It will analyse the purpose, advantages and benefits of using comparative law in courts. This part will answer two main questions – first, why comparison is important in the area of private and commercial law and second, why it is important that judges in particular, and not only legislators and scholars, engage into comparative work. The second part of the article focuses on the legitimacy of foreign law uses in courts. It presents and overview of the criticism of such uses and how comparative law should be admitted as a legitimate source of law in courts all over the world.

2. THE PURPOSE

2.1. THE ADVANTAGES OF COMPARISON IN PRIVATE AND COMMERCIAL LAW

One of the first questions that needs to be addressed when explaining the purpose of comparative law uses by judges in commercial and comparative law cases is the question of the advantages and benefits that comparison can have in the area of private and commercial law in general. The arguments presented below are mostly the same as those presented in favor of comparative law in other branches of law.

The value of comparison and the advantages it presents are unprecedented in the study of law. By offering a larger perspective on it and by showing solutions adopted in other countries, comparison allows us to look back at our local law and to form a judgement as to the correctness of the rules contained therein. In

a sense, to use Plato's allegory of the cave, the lawyer who through comparison has acquired a knowledge of foreign law frees himself from the cave and from the images on the wall projected by the national lawmaker. There is no mystery in the fact that comparative law can be a beneficial tool when it comes to understanding the law and creating it. It is a common practice, used by legislatures all around the world, to refer to foreign systems while drafting new laws. Legal history offers a plethora of such examples: civil codes, constitutions, public and private law acts, judicial systems, commercial regulations and many other which were inspired by previous solutions adopted in other countries.

First of all, it has to be pointed out that beyond the possible "inspiration" that one system may draw from another, comparative law plays an important role when it comes to convergence and unification of the law. It is nothing more than the study of differences and similarities between different systems that allows us to see the areas in which two or more legal systems are identical, similar or divergent. This allows in turn, to unify the law by upholding what is identical, adjusting what is similar and modifying what is different. The developments that took place in the last couple of decades are filled with examples of convergence on national, regional or international level. The unification of laws has proved to be very beneficial for one major reason – it allows to create rules common to many countries and therefore, to eliminate legal barriers. Barriers which are often a hindrance to economic growth. An example can be made here with the law of the European Union. The unification of rules in such areas as custom duties or free movement of capital, goods and persons has led to a growth of the European economy.

Convergence and unification have, therefore, a special significance in private and commercial law since any differences in the legal systems of various countries are one of the hindrances to commerce between states. A system of unified – to an even greater extent than it currently is – commercial law would facilitate international commerce. This in turn, would generate more economic exchanges and lead to a faster economic growth. As the example of the European Union shows so far, the unification of commercial and private law can only be positive. It is, therefore, important to continue on this path and embrace even greater unification of commercial law within all of the EU Member States.

Furthermore, a similar unification of the law, as the one that has occurred on the European continent could help countries in developing regions of the world, such as Africa. Such a unification of the law would allow to address and solve many of the pressing legal and political problems that countries on the African continent are currently struggling with. A unification of African laws could also lead to an improvement of their internal commerce. The EU serves here, therefore, as an essential example of a legal system based on unified law.

Beyond the clear benefits of unification, comparative law does present also other advantages. As mentioned above, it can be an important source of inspira-

tion. Inspiration which in commercial law can be essential in improving a given legal system. Such inspirations can come from many sources. One of them can be, for instance, the annual Doing Business – Ranking of Economies created by the World Bank Group. It presents a classification of countries which, among other things, have the best legal systems to conduct business. The solutions adopted in the legal systems of those countries that are considered as the "easiest to do business in" – such as Singapore, New Zealand, Hong-Kong SAR China or Denmark – can be an important source of inspiration for many countries. In particular, those with developing economies, which are often considered as "hostile" to investors and which could benefit by turning their laws into more business-friendly ones.

It stems from the above that the use of comparative law allows to fill the lacunae in a given legal system and to improve one's legal system by taking examples from a more experienced one. Not doing so might in fact, be counter-productive for various reasons. Different laws after all face similar issues and problems. It is, therefore, justified to seek foreign solutions if they can effectively address a local problem. The benefits of such references to foreign law can be illustrated with the stellar example of the practice of the Court of Justice of the European Union and of its Advocates General in the past decades. The Court played throughout the years not only an interpretative role, but mostly an important role in creating standards and rules which laid the foundations of the current EU law. In many areas however, the inspiration to solve cases and create legal standards has come from foreign law and foreign jurisprudence. It was the case with the European competition law, which the ECJ has established throughout frequent references to the U.S. antitrust law. Similarly, the references to foreign law have helped the Court to establish fundamental principles in intellectual property law as well as in damage compensation cases.

As the above examples illustrate, comparison in the area of private and commercial law can have many benefits. It allows further unification which in turn, eliminates various legal barriers that might hinder international trade or commerce. It also serves as an important inspiration, allows to fill the gaps of one legal system or to seek better solutions that would allow improving the existing local legal framework. Such improvements can only be beneficial to the economic growth of the country, since they will facilitate the conduct of business.

2.2. THE IMPORTANCE OF THE JUDGES' COMPARATIVE ACTIVISM

The second question that needs to be addressed in this first part is the question of why it is important to demand from judges, and not only from legislators or scholars, to engage in this comparative dialogue with other countries?

The main reason for conferring this particular task of comparison upon courts, more than upon law commissions, is linked with the function of the judge.

The main task of courts is to interpret the law and apply it to a given case in order to solve the legal problem that appears in it. Nevertheless, it has to be pointed out that courts, beyond their interpretative role, are also lawmakers. It is the case, of course, in common law systems where the law making function of the judge is obvious but also, more and more recently, in civil law countries. In the latter, judges – in particular those sitting on the benches of supreme or constitutional courts – do not limit themselves to a mere interpretation of the law but create important and lasting principles which complement the written law. Whether such a law making function is desirable in a judge or not, is not important for this debate. What has to be kept in mind is that the judge is in both common law and civil law countries a lawmaker. Therefore, as a lawmaker he should be engaged in "comparative activism". He should encourage counsels and attorneys to research and cite foreign law to him. He should also himself refer to comparative law and seek to base his decisions not only on local law and local precedent but also on solutions adopted to similar problems in other countries. The advantages that a judge can offer to comparison come also from the fact that courts are flexible and dynamic lawmakers. Therefore, the changes that a judge could bring through comparative law can be brought faster, easier and better than those a legislator can offer.

In addition, even when interpreting laws, it is desirable for a judge to use foreign jurisprudence. It is so, for instance, in cases where the rule of law interpreted in one country has a similar counterpart. Such situations naturally require looking into foreign law in order to find the foreign interpretation of that identical rule. Such common rules, shared by many legal systems, come from various sources. They can be present due to shared values between the different legal systems, which historically arrived to possess similar rules in their respective civil codes. They are also frequently introduced by international conventions that aim to unify the law in a particular area and to introduce the same regulations in each country. When interpreting rules which have been transposed in a given country from and international convention, it is almost impossible and illogical to overlook foreign jurisprudence relating to those same rules in respective countries. If a given convention aims at unifying the law, then this unification should mean not only introducing common rules but also maintaining a unified interpretation among different courts. An interpretation of conventional rules that would be different in various countries would defeat the purpose of the unification aimed by the convention. In relation to those rules that are similar or identical in various systems due to the cultural and historical similarities, it can be said that it can be nothing but helpful and beneficial to interpret them together.

To summarize, it can be said that the importance of judges engaging in "comparative activism" is linked with the fact that their role, both as interpreters of the law and as lawmakers, puts them in a very suitable position in which they can make a great impact in terms of unification and convergence. Their function, and

the fact that they are close to real problems and real issues when using the law, leads to the conclusion that if they engage in "comparative activism", then comparative law can have a direct and important impact on the people's lives.

3. THE LEGITIMACY

The first part of this article has presented an answer to the question of "why?" judges and courts should engage in "comparative activism". The various benefits and advantages that stem from such an activism have been clearly illustrated. This second part aims at answering another essential question, the question of "how?" the legitimacy of such uses can be justified. It is an important question since, as it has been pointed out at the beginning of this article, references to foreign law have raised many concerns and are often criticized as being an illegitimate infringement of constitutional rules. This part will first address those arguments and try to present compelling reasons justifying the legitimacy of judicial "comparative activism".

3.1. ARGUMENTS AGAINST AND IN FAVOR OF THE LEGITIMACY OF THE JUDGES' COMPARATIVE ACTIVISM

Citing foreign courts is criticized as being undemocratic, since foreign laws do not have the same constitutional legitimacy to shape a society that national laws do. They are not deemed as a "source of national law" and hence do not benefit from the same constitutional legitimacy that the national lawmaker has accorded to its own laws. The judge, seeking to rely in his ruling on a piece of foreign jurisprudence does so, in fact, without any particular legal ground. This argument is in particular prevailing in civil law countries where the concept of a binding precedent does not exist, even in relation to national judgments. It is, therefore, harder to refer to a foreign ruling or law and use it as a basis for the solution to the problem in national law.

Various arguments come to complement the one described above regarding the lack of constitutional legitimacy. It is often pointed out that interpreting national law by references to foreign law is pointless. The main contention here is that it does not makes logical sense, nor does it bring any argumentative value to point out, for instance, that the constitutional laws of France, Germany or Zimbabwe have solved this issue in a particular way so, therefore, the U.S. constitution should be interpreted in the same way. In other words, the legal history, culture, research and scholarly as well as jurisprudential contributions of one legal system should be sufficient to solve any legal problem that may arise in that system without any use of foreign law.

In order to address such a criticism, one can say that judges often base themselves on national judgments and extensively cite the works of legal scholars. All in all, it is impossible for any court to solve a legal problem just on the basis of what is considered a legitimate source of law. In that case, if courts cite legal scholars and we attach a legitimate value to academic works and comments, why should such legitimacy not be given to foreign courts? It is only fair to deem that a foreign court, having the constitutional legitimacy in its country, can be considered as an additional "method of interpretation" or even an additional source of law. It is so especially in light of the fact that certain value is attached to the work of legal scholars which, despite their usefulness, does have less legitimacy than foreign courts.

Furthermore, as it was already pointed out in the first part, various legal systems share usually the same problems and goals. In many cases they also share similar, if not identical, functions, principles and rules. There is, therefore, nothing unnatural or illegitimate in looking into foreign law to see how it resolves a given question or problem to which a judge seeks the answer and which is not clearly addressed by national law.

3.2. THE PATH TO AN INTERNATIONAL LEGITIMACY OF COMPARATIVE LAW IN COURTS – PROJECT OF AN INTERNATIONAL CONVENTION

Despite the various arguments in favor of a judicial legitimacy to refer to foreign law, it remains true that judges in most countries lack a formal "permission" to consider foreign sources in their rulings. Only very few countries allow judges, more or less expressly, to look into foreign law. It is, for instance, the case in South Africa where references to foreign law by courts proved to be essential in "rebuilding" the legal system after years of apartheid. Another example is Switzerland. On the other hand, there are some countries that explicitly prohibit any references to foreign law (for instance in South America) or others where such uses, although not explicitly prohibited, are often criticized and judges are still reluctant to make such uses (for instance the U.S.). A beacon of hope remains in the fact that, despite any clear constitutional mandate, courts in many countries and in many jurisdictions have made at some point or the other a reference to foreign law in their case law. This proves that such references are, at least to some extent, necessary and desirable.

The important task that has to be, therefore, achieved is conferring upon judges, in as many countries as possible, a legitimate basis for the use of comparative law. This article's contention is that such a global legitimacy for judicial comparative activism could be achieved by an international convention. A convention that would offer national judges a legal basis for the use of foreign rulings and foreign law in their daily work. Drafting such a convention properly would demand addressing a number of questions as to the constitutional compatibility of such

a convention with national legal systems. Other problems that would need to be addressed in the convention include the issue of the extent to which judges would be allowed to make references to foreign law, the conditions of such references and the areas of law in which they can be made. Among other things, the convention should put on its signatory states an obligation to translate all judgements into English, which would facilitate the cross-country references to foreign law.

4. CONCLUSION

To summarize the analysis presented in this article, it has to be said that there are important advantages of the use of comparative law by judges in private and commercial law cases. Such uses will allow further unification of private law which, in turn, will allow to diminish the hindrances to international trade and commerce. It seems that to some extent, the convergence taking currently place within the law, and the ongoing globalization of the law are still one step behind the globalization of the world which we see in other areas such as communication, transport, commerce, finances or economics. In other words, the law is in a constant need to adapt and to erase national barriers in order to keep up with the economic, financial and technological convergence which the world experiences. In that sense, there is a growing need to study comparative law, to teach it and to use it as much in the process of creating it as in the process of applying it in courts. Nevertheless, the courts are sometimes criticized for making such foreign law references, as lacking legitimacy. To address this problem an international convention could be drafted which would offer judges the legitimacy of using foreign law in their rulings.

ON THE USE OF COMPARATIVE LAW BY JUDGES IN PRIVATE AND COMMERCIAL LAW CASES

Summary

The author presents an analysis of the problem of uses of comparative law by judges in private and commercial law cases. The starting point of this article is the assumption that national judges, ruling on cases, seldom make any references to law and case law of other countries. Although such uses sometimes appear in public law cases but are almost inexistent in private law. The author's contention is that such uses should be more frequent, and become common ground, since they are beneficial for the development of national law. This contention is defended in two parts. First, the author presents the purpose of comparative law uses by national judges – the advantages that such uses can

bring and a description of how such uses can contribute to a better and stronger unification of different legal systems. Second, the author focuses on the issue of the legitimacy of comparative law references in court rulings. The arguments presented defend the thesis that national judges are allowed to make reference to foreign law and that such uses are not against their national law.

ROZWAŻANIA NA TEMAT WYKORZYSTANIA PRAWA PORÓWNAWCZEGO PRZEZ SĘDZIÓW W SPRAWACH Z ZAKRESU PRAWA PRYWATNEGO I HANDLOWEGO

Streszczenie

Autor w artykule analizuje zagadnienie problemu wykorzystywania prawa porównawczego przez sędziów orzekających w sprawach cywilnych i handlowych. Założeniem wyjściowym dla analizy jest fakt, że odwołania do prawa obcego przez sędziów krajowych występują bardzo rzadko. Zdarzają się one czasem w prawie publicznym, ale nie istnieją niemalże w ogóle w prawie prywatnym. Autor stawia tezę zakładającą, że stosowanie przez sędziów prawa porównawczego przy orzekaniu w sprawach cywilnych i handlowych powinno stać się regułą. Tezę tę uzasadniono, używając dwóch argumentów. Po pierwsze, autor przedstawia zalety, jakie niesie ze sobą wykorzystywanie prawa porównawczego w orzecznictwie cywilnym oraz możliwości jakie przedstawia w kontekście coraz dalej idącego ujednolicania systemów prawnych. Po drugie, autor daje uzasadnienie prawne powoływania się przez sądy krajowe na prawo zagraniczne i wyjaśnia, dlaczego taka praktyka jest dopuszczalna *de lege lata* oraz jak można by ją rozpowszechnić *de lege ferenda*.

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KEYWORDS

comparative law, judge made law, private law comparison, uses of comparative law by judges, US Supreme Court

SŁOWA KLUCZOWE

prawo porównawcze, prawo stanowione przez sędziów, komparatystyka w prawie prywatnym, wykorzystywanie prawa obcego przez sędziów, Sąd Najwyższy Stanów Zjednoczonych

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THE LAW SCHOOL'S ROLE IN PREPARING LEADERS AND LAWYERS FOR THE NEW WORLD

1. PREPARING LAWYERS AND LEADERS FOR TOMORROW

Law schools have always been places to learn how to think critically and implement a vision of societal change. Leadership has always required that skill. It is no wonder, then, that lawyers played a pivotal role in both the creation of America and the transition in Poland to today's democracy[1]. Leaders with these types of skills taught by law schools are just as vital today to democracy as they were during these previous points in our history. One study of legal education called lawyers "architects of order"[2]. A better description would be architects of democracy, or agents of change[3]. Because the world is more complex today, the task of providing leaders for the new world is a more complex task than ever before.

Law schools need to understand that leadership for tomorrow now requires an understanding of the world in which we live today. That statement holds true for law schools worldwide. The American Bar Association has recognized that internationalization of legal practice requires law schools to better prepare their students for what they will face[4]. Perhaps fifty years ago the University of Flor-

[1] See F. C. Zacharias, *True Confessions about the Role of Lawyers in a Democracy*, "Fordham L. Rev." 2009, No. 77, p. 1592, n. 5 (out that "[t]hirty-five of the fifty-five delegates to the Constitutional Convention were lawyers"); F. Bloch, *The Global Clinical Movement: Educating Lawyers for Social Justice*, Oxford University Press 2011 (describing the role lawyers played in Eastern Europe at the demise of the U.S.S.R.).

[2] See A. Bernabe-Riefkohl, *Tomorrow's Law Schools: Globalization and Legal Education*, 32 "San Diego L. Rev." 1995, No. 32, p. 162.

[3] See J. Mills, T. McLendon, *Law Schools as Agents of Change and Justice Reform in the Americas*, "Fla. J. Int'l L." 2008, No. 20, p. 6.

[4] The recent American Bar Association Taskforce on the Future on Legal Education did not make any explicit recommendations for how law schools should prepare students for the internationalization of the legal practice, but did note that it would elect to evaluate the suggestions for doing so made by other groups studying the issue. See *ABA Taskforce on the Future of Legal*

ida could prepare their students to practice law in a small rural town and believe that it had done its job. Now, however, wherever that student practices they may encounter international complexity. A student practicing family law in central Florida may find that a divorce proceeding requires him to understand Colombian marriage laws. Another young lawyer in Miami may not only benefit from understanding the culture of the South America country where he was working on securing financing for an energy plant located in that country, but also the country's set of laws and legal culture[5].

To meet this global challenge, law schools must demand that their students take classes that provide an understanding of transnational and international law but also have the opportunity of direct experience in these fields[6]. Increasingly, exchange programs among law schools have been effective. In the past there have been academic barriers and practical barriers to exchange. Many of those have been removed and law schools must collectively seek to make this important training easier and more available. Of course, there are language and financial barriers but the institutions that surmount those barriers will be the law schools that succeed in preparing the best leaders.

Leaders must also understand reality beyond the classroom. Understanding principled public service and leadership means understanding the entire range of the human experience. Many law students have lived privileged lives. Many have not. All should be required to participate in public service activities in law school. Many colleges now require some pro bono activity and some bar associations do as well. Lawyers are given tools and a privileged position that allows them to help others. Both in law school and beyond we should represent the underrepresented and disadvantaged in our society. Some students have made that experience in law school into their life's work. They discovered that helping others was their personal calling. Whether it becomes their actual job or not, leaders must understand the role of law in the lives of everyday people. That direct experience and knowledge cannot be obtained in a classroom.

Because the world is more complex and challenging we have to make our classrooms match that challenge. Leaders in law may need to understand biology, medical science, ecology, finance or aeronautical engineering. It is not our role to make students scientists but it is our role to expose them to the complexities that will affect their lives as lawyers and leaders.

Education, Report & Recommendations, Jan. 2014, p. 13, available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf.

[5] For a good overview of how globalization affects the legal profession, see R. Michaels, *Globalization and Law: Law Beyond the State*, (in:) R. Banakar, M. Travers (eds), *Law and Social Theory,* 2nd ed., Hart 2013, p. 303.

[6] See F. Ali, *Globalizing the U.S. Law School Curriculum*, "Int'l J. L. Info" 2013, No. 41, pp. 252–253.

For instance, consider the increasing use in litigation of electronic discovery. A simple, pre-litigation discovery dispute can now require that practitioners know the intricacies of digital data storage and possess a passing knowledge of computer science.

Perhaps the most important education a law school can impart upon their students is a better understanding of a society's culture of law. The best way to do so while allowing such a culture to flourish is through exposing students to different forms of that culture throughout the world[7].

Private international law, the law that regulates private entities engaged in transnational transactions, no longer mirrors the traditional public international legal regime[8]. Globalization, lessening the importance of traditional national borders, has seen the rise of transnational non-state actors, which have required an understanding of culture.

2. LAWYERS' ROLE IN PUBLIC POLICY AND CONTEMPORARY DEMOCRACIES

Democracies worldwide require constant vigilance and the ability to evolve. After all, it was lawyers that compelled the U.S. to integrate public schools. If the lawyers in *Brown v. Board of Education* had not been skilled, visionary and persistent, they would have failed.

The task of making laws and changing policy is challenging and complex. Learning more about international law, public service realities and the complexities of the new world in practicing law and making policy are each central. Additionally, students can learn how to be leaders and policy makers by actually participating in real life issues. Democratic systems are perhaps the most difficult to maintain of all governmental systems and require the most engagement by those individuals with the training and commitment necessary to preserve the rule of law. When former Pakistani president Pervez Musharraf suspended his country's constitution in 2007, it was the country's lawyers who took to the streets in protest, making it clear to some commentators that Pakistan's lawyers were truly the "guardians of citizenship"[9]. Those lawyers risked their freedom. They even risked death. And in the process they reminded the world of the important role lawyers play in democratic and aspiring democratic societies.

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[7] See J. M. Burman, *The Role of Clinical Legal Education in Developing the Rule of Law in Russia*, "Wyo. L. Rev." 2002, No. 2, p. 100.

[8] Cf. E. Brown Weiss, *Rise or Fall of International Law*, "Fordham L. Rev." 2000, No. 69, p. 347.

[9] F. C. Zacharias, *True Confessions about*…, p. 1597, n. 1.

Today, legal education has begun to talk in terms like "experiential learning" and creating "practicums". The idea is to participate in real issues. The idea is not new or unique. Many other professions pay closer attention to practical experience and internships. Doctors spend years in a residency.

In the case of building leaders for public service nothing is more effective than exposing students to real world problems. Our college has done this kind of program over the years. A student may research a statute to protect endangered sea turtles and then watch it be enacted.

They may research a constitutional amendment that creates a higher standard for public education and see the people of the state vote to put it in the constitution. They can help write an *Amicus Curiae* brief on racial discrimination in voting practices. Those experiences are exhilarating for students and are lifelong lessons.

Further, exposing students to real world problems require exposing students to society's injustices. This exposure helps students "verify the commitment of their own societies to 'democracy'"[10]. Only by gaining an understanding the imperfections and shortcomings of a society's commitment to democracy can students begin the process of strengthening that commitment through shaping policy and informing legislation.

Knowledge can be gained in the classroom and then used in the real setting. Students may intern for legislators and Senators. They may work on a project for a city council. They may spend a semester working for a Supreme Court Justice. Invariably they will learn about how the experience of the classroom helps them but they will also learn that there is much more to the real world than the classroom can ever teach. There are personalities, politics and points of view they may not have thought of. They will experience success, failure and compromise. Those experiences are hard to replicate in a classroom.

The legal academy has not always embraced skills learning, externships and "experiential learning". Thankfully, that has changed. The collaboration between the University of Florida Levin College of Law and the University of Warsaw is a shining testament to that change. Still, leaders in both legal academia and the profession at large should continue to work toward extolling the values of experiential learning by showing students the connection between skills courses, transnational law courses, cultural exchange programs and their careers[11]. Ultimately,

[10] P. N. Phan, *Clinical Legal Education in China*, "Yale Hum. Rts. & Dev. L.J." 2005, No. 8, p. 132 (quoting F. Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, "Clinical L. Rev." 1995, No. 2, p. 51).

[11] F. Ali, *Globalizing the U.S. Law School…*, pp. 252–253, n. 6 ("Some students may also look skeptically on international law and related subjects, and might avoid taking such courses because they are wary of appearing dilatory to potential employers. In other words, students might resist efforts at legal education reform until they are made fully aware of a connection between these reforms and their careers as legal professionals").

leaders in legal academia should encourage students to not be afraid to conflate their professional lives with their personal values.

Our college and your college have worked together in the past on policy issues and we will be doing more in the future. The result is that we will provide better training, a more complete law school experience and better leaders for the future.

THE LAW SCHOOL'S ROLE IN PREPARING LEADERS AND LAWYERS FOR THE NEW WORLD

Summary

The author first notes that lawyers have traditionally played an important role in creating public policy, not only by creating the law, but also because of their political leadership. The author describes their role as "architects of democracy". Law schools around the world have risen to the challenge of educating future leaders who understand the world around them. The author explores examples of activities and initiatives to better prepare future leaders: *e.g.*, learning foreign law and international law, participating in foreign exchanges, as well as *pro bono* work, undertaking social initiatives. One major task of lawyers in modern society is the promotion of democracy and social leadership. The author claims that law schools need to prepare students for issues in contemporary democracies through practical, "experimental learning". One useful example is an internship in a public institution. The author concludes that the cooperation between the University of Warsaw and the University of Florida Levin College of Law also provides an excellent example of educating future leaders through "experimental learning", student exchanges and transnational law courses, so they can see the connection between their future careers and studies.

ROLA WYDZIAŁÓW PRAWA W PRZYGOTOWANIU LIDERÓW I PRAWNIKÓW W NOWYM ŚWIECIE

Streszczenie

Autor na wstępie zauważa, że prawnicy zawsze odgrywali istotną rolę państwotwórczą nie tylko poprzez kreowanie porządku prawnego, ale także przywództwo polityczne, stając się „architektami demokracji" zarówno w Polsce, jak i w USA. Szkoły prawnicze na całym świecie podjęły wyzwanie, by kształcić przyszłych liderów, którzy rozumieją otaczający ich świat. Autor podaje przykłady zajęć i inicjatyw wspierających przyszłych liderów: nauka prawa obcego i prawa międzynarodowego, udział w wymianach zagranicznych,

a także działalność *pro publico bono*, podejmowanie inicjatyw społecznych. Zadaniem prawników we współczesnym społeczeństwie jest wspieranie demokracji i przewodzenie inicjatywom społecznym. Zdaniem autora, rolą uczelni jest należyte zapoznanie studentów z teraźniejszymi problemami przez praktyczne, eksperymentalne nauczanie. Przykładem tego jest odbywanie praktyk w instytucjach publicznych. Autor konkluduje też, że współpraca między Uniwersytetem Warszawskim a University of Florida Levin College of Law to doskonały przykład kształcenia przyszłych liderów poprzez praktyczne zajęcia, wymianę studencką i naukę prawa obcego.

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KEYWORDS

leadership, democracy, globalization, experiential learning, public policy, law school

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przywództwo, demokracja, globalizacja, praktyczne uczenie się, polityka społeczna, szkoły prawnicze

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GLOBALIZATION OF TEACHING: SOME REMARKS ON METHODS, NEEDS AND POSSIBLE TRENDS FOR THE FUTURE

The aim of the present paper is an attempt to answer the question how globalization of law provokes necessities of changes to legal education and whether it is possible or necessary to construct a single model of educating and training in this field. It refers to prove that changes of the system of legal education, if they are necessary, do not need to be automatically introduced, although some reforms are definitely needed.

I

No doubt, that the change in legal systems and theory of law in recent years was provoked by a new process named **globalization**. It occurred after the collapse of the communist system, and is now a phenomenon in many areas of social life. Globalization of law[1] is a phenomenon that has clearly taken several years. It contributes to the evolution of the scope of certain legal institutions and legal regulations, although it leaves unchanged the fundamental legal principles, existing since the time of Roman law, i.e. for more than two thousand years. Such rules, essentially in private law, but partly also in the criminal law and in what in Europe is referred to as administrative law, are expanding their scope[2].

[1] In comprehensive publications globalization of law and convergence of two major legal systems is not kept in mind. See e.g. M. B. Steger, *Globalization. A Very Short Introduction*, 2nd ed., Oxford University Press 2013 (contrary to some extend to H. T. Shapiro, *A Large Sense of Purpose. Higher Education and Society*, Princeton U. P., Princeton–Oxford 2005, pp. 111–113).

[2] See e.g. A. Bosiacki, *Konwergencja systemów prawnych w okresie globalizacji: spostrzeżenia i możliwe perspektywy*, (in:) M. Maciejewski, M. Marszał, M. Sadowski (ed.), *Tendencje rozwojowe myśli politycznej i prawnej*, Wrocław 2014, pp. 279–287 (some thoughts of general aspects of globalization are based on this text); R. David, J. E. C. Brierley, *Major Legal Systems in the World Today. An Introduction to the Comparative Study of Law*, 2nd English ed., New York 1985, apart from common law (English law and the law of the United States of America) and

In the context of globalization, we can talk about the phenomenon of **convergence** of the two major legal systems. Globalization stimulate natural convergence of both of them, which is just the problem of most natural character, broadly existing beyond formal institutional[3]. There is no indication that the phenomenon of globalization, including the **globalization of law**, had to be reduced, on the contrary: its role constantly is likely to grow[4]. Not only is it applicable to private, administrative (public), but also to criminal law, and a lot of aspects in any other legal field.

II

It is obvious that in the era of globalization, in the era of globalization of law, **globalization of education** becomes a necessity. The aspects of globalization are associated with natural phenomena such as expansion of the internet, travel, business, or international trade, transnational private law institutions (agreements, franchises, factoring methods, etc.), criminal offences with their prosecution and punishment, technology development or functioning of international organizations. The natural consequence of such phenomena is a much wider necessity of exchange of educational, academic, scientific and cultural activities, functioning beyond national legal markets. The modern lawyer must be able to move quickly[5], not only in the context of national law, but also private and public international law (national law with a foreign element). Much more than previously globalization has provoked a departure of title from the place of its location (*lex rei sitae*). Institutions such as international franchises or implementation of foreign law, including the European Union law (also in the sphere of private law relations)

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continental systems (Romano-Germanic Family) distinguished socialist, Indian, far east, African and Madagascar legal systems. In addition, to two basic legal systems contemporarily there can be seen the Chinese, Indian, muslim and perhaps post-communist legal systems. To the present author the Chinese, Indian and muslim legal systems tend to be of much less convergence. See also e.g. H. J. Berman, *Law and the Revolution. The Formation of the Western Legal Tradition*, Harvard U. P., Cambridge Mass. 1983 (Polish ed. 1995); J. M. Kelly, *A Short History Of Western Legal Theory*, Oxford U. P. 1992 (Polish ed. 2006); etc.

[3] First of all, globalization modified the idea of government and transnational economic links. See e.g. R. La Porta, F. Lopez-de-Silanes, A. Shleifer, *The Economic Consequences of Legal Origins*, "Journal of Economic Literature" 2008, No. 46:2, pp. 285–332, and R. La Porta, F. Lopez-de-Silanes, A. Shleifer, R. Vishny, *The quality of government*, "The Journal of Law, Economics and Organizations", Oxford 1999, Vol. 15, Issue 1, pp. 222–279.

[4] *Announcement for Association of American Law Schools Conference on Educating Lawyers for Transnational Challenges*, May 26–29, 2004, cited in S. Bisom-Rapp, "Comp. Lab. L. & Pol'y. J." 2003–2004, No. 25, p. 257.

[5] Comp. J. Welch Wegner, *Reframing Legal Education's "Wicked Problems"*, "Rutgers Law Review" 2008, pp. 867–868.

are more frequent than before, and the role of international economic agreements between countries is growing. A well-known phenomenon is the modern system of widely-interpreted transnational human rights and civil rights. The exercise of these rights operates here, to considerable extent, on the basis of precedents, i.e. specific cases, typical for *common law*. New institutions are not completely coherent with domestic legal orders and they function in a new shape. Contrary to the concept of political competitiveness of Europe and the United States, they are formed from the bottom up, on the basis of the rulings in particular cases or broad general clauses, which is connected with the typical approach of common law. It is obvious that the model of education must take account of these changes.

An interesting point applies to the rules of international criminal law. Definitely, the trend is to expand a sort of codification of the branch in terms of reaping the rights of any universal norms (*ius gentium*), which are widely accepted but not written standards. On the other hand, many emerging penal institutions and formal cooperation between the countries of the European Union (the European Police Office, Europol, the European Anti-Fraud Office, Olaf, the protection of financial interests of the former communities of the possibility of disclosure of bank secrecy, even by Swiss entities) may on one hand, due to needs based on individual cases, and on the other hand, supported by rigid rules written without any general clauses – which is obvious for each of its national criminal law. The first attempt to create such a system was the so-called Nuremberg law, but of course, the attempt to create a system of international criminal law so far failed (within the EU failed for example, the concept of the European Public Prosecutor's Office and the attempt to create a general part of the so-called European Criminal Code – *Corpus Iuris* has not gone beyond the scientific framework). Currently, within the framework of the European Union, however, numerous supranational institutions of both material and formal criminal law operate. An expanded institution is also the Interpol, the International Criminal Police Office.

III

As indicated above, the evolution of modern legal systems require broad knowledge of both contemporary Anglo-Saxon and continental legal systems. Paradoxically, it is very difficult to find common principles or forecasts permeability of both systems, so, undoubtedly, a modern lawyer's mission is to dynamically adapt his professional expertise to many aspects of the system and the changing legal services market in this respect. New institutions have, or are going to have, more typical *case* character (e.g. the EU competition law). They will also be of more general clauses (e.g. the European Code of Good Administrative Behavior of 2001). Globalization will also increase a tendency of codification at

the international level. This will apply not only to the legal system of the continental Europe, but also to the American system and the British one (English, Scottish). On a similar principle, there could develop the evolution of criminal law in the context of globalization of crime, or increasing number of criminal offenses committed with a political motive. The resulting new system is therefore, far from classical positivism.

It is worth stating, I think, once again that in the era of globalization, from which escape is impossible, the convergence of the two principal legal systems is gaining momentum. The minimization requires adapting to new market needs of education[6] and legal services, and will be subject of numerous scientific studies and analysis of the phenomena, which can of course, be subject to rapid obsolescence. The main research and practical issues remain, however, always the same: in our case, the education of students, which could respond to the rapid changes in the possession of extensive knowledge in the theory of law.

IV

In the new global circumstances the main question to answer is however, whether we should **reform or transform** legal education, or should it remain the same in the basic way. For about last twenty years, i.e. approximately from the origins of globalization, there has been a discussion on necessity of **transforming** the system of education[7], but the general trend (at least in the Polish perspective) is that, paradoxically, the level of an average student's education decreased. In the practicing field of law students tend to have better skills or rather technical information than the general legal knowledge[8]. It may refer to knowledge, in comparison to skills in general, although a lot of institutional effort was made to improve the level of education[9]. In general, it is also argued that the phenomenon of mass, or boom education, caused more business – university instead of government – university relations[10].

[6] L. Menand, *The Marketplace of Ideas. Reform and Resistance in the American University*, New York–London 2010.

[7] *Ibidem*.

[8] See e.g. T. Giaro, *Kształcenie, wykształcenie i niedokształcenie polskiego prawnika*, "Pauza Akademicka. Tygodnik Polskiej Akademii Umiejętności" 2014, Vol. 270, p. 2.

[9] R. Arum, J. Roksa, *Academically Adrift. Limited Learning on College Campuses*, The University of Chicago Press, Chicago–London 2011, p. 122.

[10] This process tend to begun in US already in 1975 (see L. Menand, *The Marketplace of Ideas…*, pp. 64–65). Also, the author does not suggest that government – university relations are to dominate and this is obviously the leading opinion also in post-communist countries.

V

Traditionally, the **process of education** consists of knowledge, learning, information and skills intelligence[11]. Not all of them are automatically taught within the process of education in law schools. On the other hand, it is quite obvious that in the globalizing world the four factors should be considered in education of both theoretical and practical aspects of a legal studies, but the question arises whether all four of them are possible to be taught within the *academia*[12].

It is not possible to train completely a single abiturient for any kind of occupation based only on academic legal education. Legal schools however, offer quite a wide knowledge useful to perform various professions, also not particularly connected with specific legal knowledge.

There is no argue that academic education of a lawyer should provide with **knowledge**[13]. In the period of globalization it is said it should be quite widely enabling to adapt to various aspects of a changing world. In this context, however, there is always some general knowledge required from any single lawyer that is needed to perform any legal occupation. In the period of reforming legal schools and universities[14] this attitude is widely discussed and it is a basic argument for constant limiting the curricula to very practical legal skills, contrary to the abstract legal knowledge[15]. It is concerned that, as it is in America, general education is also provided before beginning legal studies and should be limited in legal schools. However, American students still tend to be better prepared for legal occupation than the European ones[16], whose knowledge is reported to be more narrow, as an impact of reforms in recent years in the European Union's education. On the other hand, a number of scholars alarm, that in America nowadays there are substantial similarities in this field[17].

It seems that the scheme of legal teaching should take into account ensuring knowledge on certain level, allowing students to react to the changing conditions of the legal systems, but not vice versa, as we observe young lawyers are often

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[11] R. Arum, J. Roksa, *Academically Adrift*…

[12] In the present paper I often use this term, as well as a word *university*, but it is completely applicable to American terminology of *legal schools*, which are obviously of the same character (the differences are not crutially important for the present study).

[13] As it is widely known, in American system of legal education, non-legal educational background of an initating student is more developed than in another systems. It does not obviously mean, however, that legal schools do not provide elementary legal knowledge at the beginning of educational process.

[14] L. Menand, *The Marketplace of Ideas*…, p. 14 ff.

[15] See further and compare with *ibidem*, p. 53.

[16] Compare M. Reimann, *The American Advantage in Global Lawyering*, "Rabels Zeitschrift" 2014, No. 78, p. 16, cited in T. Giaro, *Kształcenie, wykształcenie*…

[17] L. Menand, *The Marketplace of Ideas*…; H. T. Shapiro, *A Large Sense of Purpose*…; R. Arum, J. Roksa, *Academically Adrift*…

concerned to have better skills than a possibility to change the field of professional interests[18]. Definitely, modern lawyers will have to react dynamically to the widely changing context of their professional actions. Probably the only good feature of the communist system was that it provided the average quantity of knowledge potentially for a wide number of students (and pupils in lower levels). This allowed us to find ourselves in a market economy system. And probably the same will help current students find themselves in the modern, changing world, including legal services or jurisprudence.

In this context, four processes of lawyer's education are useful to be performed, but still not necessarily in a stage of academic education.

Today the core model of education, instead of the distribution model, is reported to be more efficient. The latter provides traditional "departamental" courses contrary to **extra departamental**, and then inter-disciplinary, treated as a flexible source of education, designed also for non-specialists in the field. It is concerned to be taught at Harvard or Columbia schools[19], but under the condition that at least some educational background had been obtained before. *Interdisciplinarity is disciplinarity raised to a higher power*[20]. Avoiding this condition, we face students who are theoretically flexible without some attitudes to general knowledge (not necessarily directly connected by law); there are sometimes met in various legal faculties around the world.

It has not really been proved that traditionally thought general knowledge is *too narrow or too utilitarian*[21], or – what is more important – that in fact, limiting it provides more flexibility to a student in the globalizing legal world[22]. A good legal background, provided by academia, concerning substantive and universal legal knowledge seems to fetch more possibilities to adapt oneself more flexibly to changing needs in the profession, than a lack of this background and teaching more and more subjects (or something like semi-subjects, with increasing number of sub-disciplines) of extra departmental character. The latter is traditionally used at more advanced levels of legal education. Since the nineties in the U.S. education there has been also some return to disciplinary model[23].

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[18] This rule refers also to negative implications of limited learning in general as they provoke more limited (narrow) possibilities to react in labour market for graduates in changing circumstances. See e.g., R. Arum, J. Roksa, *Academically Adrift*…, p. 122.

[19] L. Menand, *The Marketplace of Ideas*…, pp. 26–29.

[20] *Ibidem*, p. 96.

[21] Contrary *ibidem*, p. 30.

[22] For at least fifty years, discussions on liberal knowledge or liberal education have been introduced, without creating substantive definition in this matter. The question that liberal approach to educative institutions provided better prepared people in contemporary world was probably not faithfully proved. Compare L. Menand, *The Marketplace of Ideas*…, p. 53, and especially H. T. Shapiro, *A Large Sense of Purpose*…, pp. 88–89.

[23] L. Menand, *The Marketplace of Ideas*…, p. 87.

The process of **learning**, deeply connected with knowledge, focuses on acquiring it by common methods provided by the field and by at least some schools or centers of education. In legal learning a process of education concerns various aspects of dogmatic science within branches of law, as well as common methods of acquiring knowledge, connected with other fields of science, such as inference (e.g. deduction), logics or even mathematics, philosophy and ethics, or some knowledge on political science, sociology, history of law and its sub-disciplines, management studies, and some other sciences[24]. Legal education of both dogmatic and **non-dogmatic areas,** is also hard to be limited as it allows graduates to adapt to a potentially interdisciplinary work, mainly of a legal character[25]. Learning should not be confused with two other factors of (legal) education which are **information and skills**. The latter is sometimes required by students or practitioners to be taught at universities, as groups of people of primary interests of the system of learning, who are even treated (or called) as *stakeholders*. In this context not only the whole process of education is treated somehow as pure commodity, but the process of learning seems to be a kind of agreement with potentially maximum direct and quick benefits[26]. Usually, without such a radical approach, these factors provoke commercialization of universities[27]. The problem arises when the stakeholders – contrary to the contemporary idea of *governance* – are not completely able to realize the needs and requirements of adapting to the market the ideas of education they are being taught[28]. In individual legal studies it is much more possible to arrange an own students' curriculum (within academic supervision) within his/her predictions which are obviously important but sometimes the goal might be a bit difficult to realize at the early stage.

In the context of **information**, the university education's task seems to be mainly in verifying it, making possible to adapt information to legal needs in practice. It is one of crucial points of legal profession when the amount and scope of information are not possible to be verified by a single person working sometimes in a narrow field. New **skills** are introduced in this matter in legal faculties,

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[24] L. Menand (p. 56) concerns, e.g., that *future lawyers benefit from learning about the philosophical aspects of the law just as literature majors learn more about poetry by writing poems.* For question of benefit – see also a further part of the presented paper.

[25] L. Menand points (p. 57) that in the system of university education *only lawyers get to teach the law for future lawyers. In most liberal arts colleges, students cannot take a course on the law (apart from the occasional legal history course).*

[26] Compare T. Giaro, *Kształcenie, wykształcenie…*

[27] H. T. Shapiro, *A Large Sense of Purpose…*, pp. 19, 21.

[28] In this context, for instance, in Polish public universities students' representatives have their seats in faculty committees for scientific research. It is an attempt of involving them in the process of education and science although their abilities in these fields tend to be limited. On the other side, the rank of Polish law faculties depends crutially on the figure of graduates who satisfactorily entered further legal training to advocacy, legal counsellor's offices, judges and other legal professions.

where students have to acquire such orientation in information, which is needed in their further work. Most professional skills are really still obtained after graduation and this rule cannot be substantially changed. On the other hand, during university education some questions about necessity of values, morality, or even to some extent the behavior of a lawyer in a further career need to be answered. Such questions are more difficult to be put in the "practicing period", after graduation.

The mentioned crucial point of economic benefits of legal education corresponds with developing sense of **purpose**. In the last two decades academic and legal standards increased significantly but the purpose of education was sometimes limited to current economic interests as was stated before. Some critics of treating the knowledge or the whole process of education first of all in economic context, point that good education results also from the *soul of university*[29] which means community of teachers and those being taught, research and science, disciplinary, sub-disciplinary and interdisciplinary development, and a number of other factors. It also provokes closer partnership between faculties[30].

To conclude, we may say that there is a possible disadvantage of automatically innovating legal education in any kind of its four processes, which is linked to reforms or expanding the liberal concept of teaching in American and non-American universities only to some limited extent. In the globalizing world we should probably say about **adapting** instead of transforming legal education at universities. To some extent a good receipt to rapid changes is teaching process on a pattern of case studies as it is the reception of the American model of teaching. An important question is the reception of American educational system in the "older" European Union as well as in post-communist countries. Some reception in new legal institutions approach in globalizing world (e.g. case law) is important to transmit. The other ones which were treated as of a different advantage, are to be avoided resulting American experience. Some of them were stated also in this paper.

Last but not least, as an important factor of legal education would remain legal science due to the fact that – as it was already pointed out – with the process of legal globalization, a substantial figure of legal problems would also be the same.

[29] H. T. Shapiro, *A Large Sense of Purpose*…, p. 113.
[30] *Ibidem*.

GLOBALIZATION OF TEACHING: SOME REMARKS ON METHODS, NEEDS AND POSSIBLE TRENDS FOR THE FUTURE

Summary

This paper focuses on the analysis of an array of teaching methods and trends in legal education in the time of globalization. Globalization of laws as one of the effects of globalization provokes necessity of applying different legal systems to a lawyer potentially engaged in many branches and legal institutions. It implies comprehensive comparative methods in teaching which are to prepare qualified lawyers ready to dynamic changes of legal systems and to different methods of legal reasoning in their field. In such a process of education wide knowledge and skills are needed. Thus, narrowing legal education only to certain methods and domains makes graduates potentially unprepared for evolution and convergence of legal branches and institutions in contemporary world. It is, then, obviously needed to come back at least to some traditional background of legal education not only in legal dogmatic but in a wider (non-dogmatic) context of a teaching process in the school of law. In addition, however, education of a lawyer requires substantial legal practice, which is still insufficiently present in European university curricula.

GLOBALIZACJA NAUCZANIA. ROZWAŻANIA NA TEMAT METOD, POTRZEB I MOŻLIWYCH KIERUNKÓW NA PRZYSZŁOŚĆ

Streszczenie

Niniejszy artykuł koncentruje się na analizie różnych metod nauczania oraz edukacji prawniczej na świecie. Globalizacja prawa jako jeden z efektów globalizacji na świecie powoduje konieczność wykorzystania wiedzy z różnych systemów prawnych przez prawników, którzy pracują w różnych branżach i instytucjach prawnych. W związku z tym konieczne jest zastosowanie metod komparatystycznych w nauczaniu prawa, które przygotują prawników do dynamicznych zmian w systemach prawnych. W wykorzystaniu takich metod nauczania konieczne są określone umiejętności i wiedza oraz różnorodna metodologia prawnej interpretacji. Ograniczenia edukacji prawnej jedynie do określonych metod nauczania potencjalnie powodują brak przygotowania prawników w obliczu ewolucji i zbliżania się prawnych instytucji w współczesnym świecie. Jest zatem oczywiste, że konieczna jest zmiana tradycyjnego nauczania prawa. Ponadto edukacja prawnicza powinna być powiązana z praktycznymi aspektami wykonywania zawodów, co nadal nie jest szeroko stosowane na uniwersytetach europejskich.

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SŁOWA KLUCZOWE

globalizacja, zbliżanie się systemów prawnych, reforma edukacji prawniczej, niedogmatyczne metody nauczania

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"CSI: WARSAW" – CRIME SCENE INVESTIGATION TRAINING AT THE UNIVERSITY OF WARSAW

In order to clearly explain to the Readers how and why the "CSI: Warsaw" course became the flagship teaching project of the Department of Forensic and Criminalistics Studies[1] at the Faculty of Law, University of Warsaw, it is necessary to present the background information on setting such a program in the framework of the legal studies.

Teaching in-depth and hands-on Crime Scene Investigation courses to the students of Law is quite a unique idea that is not easy to be found in the curriculum of the vast majority of the Universities worldwide. Obviously, the Police Academies have such courses in their programs – that is quite natural, due to the fact that their graduates would most certainly need to use such skills in the daily routine of their work. The civilian schools however, tend to offer only the abstract knowledge with (if ever) some very basic practical exercises.

To make the overall picture of the problem even more complicated, the "forensic" courses and specializations in majority of the countries are usually the domain of the Faculties that are located in the space of Science (Chemistry, Physics, Computer Science, Archeology, Anthropology, Geography), Bio-Medical Studies (Medicine, Biology, Psychiatry), Engineering and finally, Psychology. Of course, Law Schools might have some forensically-related lectures (usually as a highly theoretical part of the Criminal Law program), but it is very rare to have them designed in a such way that would allow the students to see the full spectrum of the problems that the investigators and the actors of the entire Criminal Procedure "theater" deal with.

Poland is one of the few countries that traditionally include the "forensic" courses in their legal studies prospectus. Actually, even the name of these courses implies that they are slightly different to what the average English-speaking readers would expect (comparing the Polish syllabi to the American, Canadian, British, Australian or New Zealand ones). It is caused by the fact that Polish Universities deliberately use the term "Criminalistics", which – by English definition

[1] kryminalistyka.wpia.uw.edu.pl.

– means that it is an "application of scientific techniques in collecting and analyzing physical evidence in criminal cases"[2].

Polish definition of that term ("Criminalistics") is wider and says that it is "a practical science that sets up the rules for efficient operation and the use of tactical and technical methods of investigation and research used for the purpose of disclosure and securing of the facts that have a relevant evidential and detective value, as well as prevention of the negative social phenomena"[3]. The tactical component (which is explicitly brought forward by all of the Polish definitions[4]) of "Criminalistics" is very important for the Polish system. It explains how to lead the investigation in an effective way and includes – for example – the tactical approach to the interviewing and interrogation process, analysis of statements and testimonies, selection and application of the most operationally applicable methods, measures and techniques.

The Criminalistics program offered by the Faculty of Law of the University of Warsaw includes theoretical lectures, classroom exercises (with some practical components) and seminars and it has been very popular among students for many years. However, since around 2007 it became gradually apparent that due to the ever-increasing phenomenon (caused by the popular TV programs) called the "CSI Effect"[5] and the unrealistic expectations that the general public builds towards the investigative services[6] there is an urgent need of setting up such a project that would show the students the reality of the forensic and investigative work and would allow them to get the best quality knowledge, unbiased by the exaggerated hype caused by the television shows.

I had a privilege to co-operate closely with the Police forces of Poland, United States, Canada and United Kingdom since the end of the 1990s and such networking allowed me to participate in the law-enforcement conferences and training programs. During one of these events, in winter of 2007 (the 21st Annual Forensic Identification Conference organized by the Toronto Police and the Ontario Center for the Forensic Sciences) I came across the University of Ontario Institute of Technology (UOIT) program designed for the Science students that plan to pursue their careers in the forensic fields[7]. Their curriculum included semi-realistic scenarios that the students would work on in a controlled environment. It was planned in such a way that the students would be able to test their theoretical

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[2] *Criminalistics*, Merriam-Webster.com. Merriam-Webster, n.d. Wed. 10 Dec. 2014, http://www.merriam-webster.com/dictionary/criminalistics.

[3] E. Gruza, M. Goc, J. Moszczyński, *Kryminalistyka, czyli rzecz o metodach śledczych*, Warszawa 2008, p. 21.

[4] T. Hanausek, *Kryminalistyka. Zarys wykładu*, Kraków 2005, p. 23.

[5] See i.e. The Economist, *Forensic science: the CSI effect*, accessed Tue. 4 Nov. 2014, http://www.economist.com/node/15949089.

[6] See i.e. D. E. Shelton, *The CSI Effect: does it really exist*, "NIJ Journal", No. 259, accessed Wed. 15 Oct. 2014, http://www.nij.gov/journals/259/pages/csi-effect.aspx.

[7] http://uoit.ca/programs/science/forensic-science.php, accessed Tue. 28 Oct. 2014.

knowledge and laboratory-based experience at mock crime scenes. I learned that it is one of the very few courses of that kind offered to the civilian (but still: scientific) audience. It looked very promising, but at that time it lacked the tactical (procedural, psychological, etc.) component that I considered to be important. It was still a very unique course and it gave me the first idea of bringing such an experience to the University of Warsaw.

My second experience with a partially similar approach was during the spring of 2008 networking visit to the University of Central Lancashire (UCLan) in the United Kingdom. The School of Forensic and Investigative Sciences that I visited was at the time the first civilian institution in the UK (and the only one in Europe) that used the concept of the so-called crime scene houses[8]. These three terraced houses owned by the University were set up as permanent mock crime scenes where Science students would learn the practice of crime scene investigation. Rooms were prepared in such a way that they would imitate different locations: a residential house, a bar, a hotel room, a shop, etc. Their exterior features, such as gardens and outbuildings were also used as mock scenes for varied scenarios. It was a very interesting and professionally prepared environment that I considered an invaluable tool or teaching aid that could allow us to greatly enhance the content of our program at the University of Warsaw. I believed that such a tool would work even better if the circumstances/scenarios would have an option of being different, depending on the needs of a particular student group (the UCLan "crime houses" had permanent and repetitive layout and the consecutive groups of students – throughout the years – would work in exactly identical space). The repetitiveness factor has its advantages, especially as it allows the clear comparison of students' progress, but its methodology does not allow for circumstantial changes that might be necessary if the course was to be calibrated to the specific crime category or problem. Additionally, in my view, the house environment was not sufficient for the training of investigators and forensic technicians, as it did not allow them to practice in the open areas where the weather condition and/or terrain layout could radically influence the strategy and tactics of the investigation.

These experiences were an impulse to design an in-depth and hands-on course of crime scene investigation for the University of Warsaw. I consulted the preliminary idea with the Head of the Department of Forensic and Criminalistics Studies and we came up with a conclusion, that it would offer and unprecedented wealth of practical experience and cutting-edge knowledge to our students. The graduates of the Faculty of Law pursue a very broad spectrum of careers. Some of them become practicing lawyers; others join the Police forces or other law-enforcement agencies and justice administration institutions. We believed, that the access to the expertise and practice of investigative techniques and tactics would undoubt-

[8] http://www.uclan.ac.uk/schools/forensic_investigative_sciences/about.php, accessed Tue. 28 Oct. 2014.

edly enhance their position on the job market and in the professional environment. In our view – based partially on the experience of setting up and running the University of Warsaw Center for Forensic and Investigative Sciences[9]), there is a clear need for high quality education in forensics and criminalistics among not only Police officers, criminal lawyers (attorneys, prosecutors and judges) and expert witnesses, but also among representatives of other legal fields, as well as specialists in various scientific and engineering disciplines who might become actors in the criminal procedure throughout their careers. Hence, we decided that such a new and practical course should not be limited only to the students of Law, but also embrace students of other Faculties who might be interested in criminal investigation.

Since there were no courses of that kind ran at any of the European Universities (except of the United Kingdom), the design of a new one had to take into account the local (University of Warsaw) requirements and the Polish Criminal Procedure as well as associated legal acts (including the law enforcement operational instructions and protocols). My British and Canadian experiences were certainly helpful, but the whole structure and content of the program had to be built as an entirely new project.

The financial and administrative part of the initiative were backed up by the "Modern University Program" at the University of Warsaw[10], as well as the "Teaching Innovations Fund". The University of Warsaw "Teaching Innovations Fund" (FID)[11] is a competition-based grant system that finances the preparation and implementation of the novel and original courses, allowing the Faculties to introduce new teaching solutions without initial financial burden. The course that we designed at the Department of Forensic and Criminalistics Studies won the 5th FID Contest in January 2009 and we were awarded a grant to introduce the new program called "Crime Scene Investigation – facts vs. fiction. CSI: Warsaw" in the summer semester of 2009.

The "CSI: Warsaw" program is offered to the best students who can prove that their knowledge and interest in the area of forensic techniques and tactics is substantially above the average. We invite the students who had already completed the half-year course of Forensic Science and Criminalistics (FS&C, which consists of one lecture and one exercise workshop a week and provides the introductory theoretical information and the general orientation in practical aspects of evidence collection and interpretation, as well as the interviewing/interrogation methods and strategies). The FS&C courses are held at the Faculty of Law, but are open to students from other Faculties as well. They are elective (not obligatory), but tend to be highly popular among the students community. The FS&C

[9] http://cns.uw.edu.pl.

[10] http://www.nuw.uw.edu.pl/eng.

[11] http://www.bss.uw.edu.pl/nowa/index.php?option=com_content&task=view&id=60&Itemid=51.

classes are available to the students of the 3rd, 4th and 5th year of legal studies and to the graduate (MA/MSc) students of other Faculties. It is worth noting that at the University of Warsaw all programs have the undergraduate (Baccalaureate; 3 years) / graduate (Masters; 2 years) structure, with the exception of Law and Psychology that have the full five years Masters structure (no undergraduate option is available).

During the FS&C course, the students are carefully assessed by the instructors and they are encouraged to participate in practical exercises and role-playing activities. Throughout the semester, we try to establish which participants would be most likely to succeed in the extremely demanding and challenging environment of the "CSI: Warsaw". Each year, around 200–240 students take the FS&C courses, but only twenty of them can join the "CSI" program. The applicants submit their academic Curriculum Vitae, as well as a cover letter in which they explain how they would benefit from the "CSI" course and what kind of specific skills and knowledge they can bring in for the benefit of the group. They are encouraged to list all of the relevant experience, such as the list of other elective courses in Forensic and Investigative Science spectrum (the course offered at the Faculty of Law includes i.e. forensic psychology, investigative tactics, theory of Police operations and several others), Criminal Law and Criminal Procedure, extracurricular scientific groups or clubs, conference participation, job experience, etc.

The competition is very strong and demanding and we base our choices not only on the academic merit but also on our experience with the particular students' involvement in the FS&C courses when we check their ability to work under stress and in the challenging role-playing exercises when they need to prove their abilities. We aim to select the most diverse group in terms of individual skills and interest and we happily welcome the applicants from Science Faculties and Psychology. The successful applicants are fully aware that the course that they are about to participate in is difficult and time-consuming and that we expect them to be available for extended hours, regular lengthy field exercises and laboratory visits.

Within the general framework of the "CSI: Warsaw" course we divide the 20 students into four groups. Each group would later be responsible for the preparation and leading of one major exercise (under the guidance and care of the course instructor). There are four such exercises throughout the semester – on average once a month. In practice, this allows us to divide the semester into four sections – each of them having similar outline and structure. For the clarity of the report, the following description explains the organization of one typical section (taking approximately four to five weeks to complete, depending on the level of difficulty and complexity):

1. The group of students (five individuals) chosen to lead the particular section discusses the theme of the planned exercise with the course instructor.

They design the scenario, choose the location or locations for the exercise, plot the entire event in detail, invite actors/helpers (usually fellow students, but also friends, colleagues, family members, associates), and plan the necessary accessories and items that need to be acquired. They are obliged to keep the entire drill in absolute secrecy, so that the experience would be the most realistic (unexpected, surprising) to the rest of the class (remaining fifteen students). The course instructor leads the preparations, offers advice, helps in logistics and takes care of the necessary administrative duties. This process takes the first three weeks of the course section.

2. During the first and second week of the section, all of the "CSI: Warsaw" students participate in advanced lectures and exercises that enhance their knowledge of forensic and investigative techniques and tactics. These activities are either campus based (usually 4–5 hours a week) or have a form of the off-campus workshops or laboratory visits. Usually, students have the opportunity of meeting experts from the law enforcement community, technicians from the forensic identification services, or court expert witnesses.

3. The first two weeks of the section are also used (if necessary and justified by the scenario of the planned major exercise) to pass some "operational" data to the students. They might receive the wiretap recordings, operational photographs, case files and other documents that are related to the "case" that they would be working on in the weeks to follow.

4. The third week (in some cases: week three and four) of the section is devoted to the major exercise (so-called "Case Week"). This is when the fifteen remaining students of the "CSI: Warsaw" course are confronted with very realistic, real-time mock crime scene(s) that they need to investigate. The nature of the typical "Case Week" will be described in the following part of this article.

5. In the time that follows the major exercise but precedes the "Summary Week" (explained below) the investigative team works on the collected evidence, interprets it and has the option of sending specific questions regarding the specific evidence to the "Laboratory". The "Laboratory" is usually virtual environment, where the students who prepared the exercise offer answers to the technical questions (AFIS checks, DNA analysis, sample comparison, etc.).

6. The fourth week (in some cases: week five) of the section is the "Summary Week". This is when the students who formed the investigative team present their findings in the form of investigative versions and conclusions. Their statements must be backed by specific evidence that they collected, secured, documented and interpreted. During the "Summary week" they can also summon the witnesses and interrogate the suspects if necessary. Finally, they need to prepare their statement describing their reasoning and offer the explanation of the case that they consider to be legally viable and "usable" in terms of the further prosecution. The team that prepared the exercise for the particular section confronts the presented version/opinion with the reality of the scenario, indicating which pieces

of evidence were omitted, which were misinterpreted and what were the gaps or inconsistences in the investigative team's work. Finally, the course instructor offers a set of solutions and best practices that would mitigate the risk of such problems arising in the further exercises and real-life circumstances.

The six-step process described above forms one section of the "CSI: Warsaw" course. There are four sections like that throughout the semester, and they are designed in an increasing level of difficulty manner, where the fourth and final section usually has the most complex and challenging scenario.

The "Case Week" is the essence of the "CSI: Warsaw" course. The set-up of the mock crime scene is exceptionally realistic and we try by all means to enable our students to work in the most diverse range of circumstances. Our objective is to train our students, as we would teach the best investigators, prosecutors and forensic experts. We respect their high expectations towards the course and the time and resources that they devote. The "Case Week" exercises are performed in real time: sometimes they take eight to ten hours to complete (that is: to process the crime scene(s) and collect the necessary information from the witnesses), but it is quite normal for them to take two or three days. Some of the mock crime scenes are limited to a single location, but usually they require the students to visit several places (some of them out of Warsaw, sometimes within a range of a few-hour drive from each other). The locations could be in buildings or in open spaces. We use (with all the necessary permits) private apartments or houses, office premises, farm buildings, disused factories, public grounds and parks, forests and farms. The "Case Weeks" go on regardless of the time of the day, season of the year and the weather conditions.

The "Case Week" requires the students to be familiar with and use the real forensic equipment (full sets of tools, powders, labels, chemicals, alternate light sources, etc.). In order to avoid contamination and cross-contamination, they must wear the full protective clothing (hooded forensic overalls, gloves, masks, goggles, shoe protection). They collect the evidence samples with the use of real probes, testers and swabs. Every piece of evidence that they collect must be secured in proper packaging, sealed, described, and protected. We take the utmost care in teaching the students all of the necessary procedural algorithms, including the proper filling-in of the forms, labels and protocols. Every action and procedure must be carefully documented (forensic photography and video recording) in the same fashion, as it would happen in real life circumstances.

We tend to use mannequins if bodies or body parts are a necessary element of the crime scenario, but some exhibits or pieces of evidence require us to use the more naturalistic teaching aids. For example, detection of blood with various forensic chemicals (i.e. Kastle-Meyer test, Luminol) demands use of blood, not paints or dyes – in that case we use safe, veterinary-tested animal blood. If we need to teach the students the methods of exhumation, we use biohazard-free

(veterinary tested) animal bones and body parts. Such items are also necessary if the particular scenario requires the students to use their knowledge in forensic entomology or other specific methods and techniques that would be used in the real life criminal cases.

Sometimes our objective of confronting the students with the most realistic interpretation of the investigative work necessitates a very difficult and complex preparation of the "Case Week" exercises. For example, with the help of our associates or former students we are able to procure old/wrecked cars that are used in cases of accidents, hit and run crimes or arson. In our opinion, it is crucial to experience the most varied scenarios in a safe, secure and controlled environment but to do it in the circumstances that are as close to reality as possible.

The scenarios that we use during the "Case Weeks" are very diverse. We tend to change them frequently and calibrate them according to the students' needs and interests. The examples of staged crime scenes that we used in the "CSI: Warsaw" program include homicide, kidnapping, arson, organized crime (students were earlier trained by the Police Criminal Analysis Unit expert), cybercrime, sexual crimes, break and entry, human trafficking, narcotics crime, hostage taking (students had the opportunity of learning the basic skills of hostage negotiations from the Police Negotiator), serial sexual crimes and murder (with a help and expertise of Police psychologist and offender profiler), and staged crimes. Occasionally, we build our scenarios on the cold-case material, with meticulously prepared "old" case files (the materials include black and white analog photography and typewriter filled files and protocols printed on the vintage paper) that the students analyze and try to employ modern techniques and methods to re-open the investigation and solve the crime.

In order to make the "Case Week" settings as realistic and interdisciplinary as possible, we try to include not only the strictly forensic and investigative actions in our scripts, but we also teach our students the methods and techniques of observation, infiltration, undercover work, intelligence (including the Open Source Intelligence and social networks analysis[12]), and other measures used by the law enforcement agencies. They learn these techniques as well as the legal framework in which these measures operate.

It is critical for the success of the "CSI: Warsaw" course to enable our students to meet and consult the specialists in the field of crime scene investigation and associated areas of Police work and forensic sciences. We frequently invite guest speakers: investigators, forensic laboratory technicians, scientists and expert witnesses. The "CSI: Warsaw" students had an opportunity to work with Police psychologists and profilers, BPA (Blood Pattern Analysis) expert, DNA analyst, forensic dentist, SWAT team leader, hostage negotiator, criminal intelligence

[12] K. Gradoń, *Crime Science and the Battlefield of the Internet. Securing the Analogue World from the Digital Crime*, "IEEE Security & Privacy Magazine", Sept/Oct 2013, Vol. 11, No. 5, pp. 93–95.

officer, cybercrime investigator, firearms and ballistics investigator, and several other guests that offered us their expertise and guidance.

One of the most important aspects of the "CSI: Warsaw" program is to teach the students the techniques, tactics and art of dealing with persons who are the usual actors of the crime scene ecosystem. Our students are taught the crowd management, media management and public relations techniques. Sometimes they employ the basic skills of negotiations that they also learn throughout the course. The crucial part of their training is the psychological and tactical approach to the issues of interviewing witnesses and interrogating suspects. The students are continuously trained in that field, and if they need to use that knowledge during the "Case Week", they have to perform their duties in full accordance with the rules of the Criminal Procedure Code. They also need to document all of their actions, which are usually audio and video recorded. We use the recordings to assess the techniques that were used and we critically analyze the processes and their outcomes with all of the students and actors involved.

Some of the witnesses that are interviewed require special attention (from the procedural or tactical point of view): children need to be interviewed in the presence of their parents or trained psychologists, elderly or ill persons are usually assisted by medical personnel and non-native speakers or foreigners have to be spoken to with the help of a skilled interpreter. We try to include such "difficult" witnesses (or carefully prepared actors) in our scenarios, so that our students learn how to deal with these (sometimes unexpected) turns of the events. Sometimes, when we expect a particularly interesting interview/interrogation, we set up the interviewing room with cameras and microphones, so that the students who do not participate in the actual confrontation with a witness or suspect can watch the procedure live, without disturbing the main actors.

One of the training aids that were developed by us within the "CSI: Warsaw" program was the method that we now use in the preliminary phases of teaching our students how to interview witnesses. It enables future lawyers and investigators to understand that the witnesses' statements are very often inaccurate or biased. The simple technique that we designed requires staging a scene (scenes that we use range from very dynamic to moderately static and from obviously "suspicious" in nature to supposedly "innocent"). The actors then play out a carefully arranged and staged event. The incident is filmed simultaneously with four cameras, from four different perspectives and distances, simulating the observation points of witnesses (static, or mobile – walking, moving car). Each film is then shown to one person (the witness) who watches it only once without any commentary, explanation or clarification. Later on (hours or days later) each of the witnesses is interviewed in regard to the single video footage that they watched. Even though all four persons would see exactly the same event, they differ enormously in their description of the event. Usually, their statements are so different, that the transcripts seem to concern four totally unrelated situations. Although our witnesses

are law students who understand that they are being shown these videos for a reason (and so they tend to watch them with an above average concentration), they commonly miss important details. We found that such an exercise is a perfect way of teaching the future lawyers how to approach and assess the statements that they might analyze in the court of law. Such "CSI: Warsaw" teaching tool is now a regular part of training our students during the introductory course of Forensic Science and Criminalistics and is yet another example of enhancing the quality of professional development and education of lawyers and other actors of the justice system and law enforcement.

There is a belief that "lawyers and forensic scientists enjoy a close, yet often uneasy, relationship"[13]. I hope that the "CSI" course that we designed is a perfect method of making that relationship much more straightforward and comfortable, thanks to the increased mutual awareness and understanding. In the seventh year of running the "CSI: Warsaw" program at the Faculty of Law we have a lot of very positive feedback from our graduates who are now practicing lawyers and Police officers. Both they and their supervisors and legal partners confirm that the "CSI" course has greatly enhanced the quality of their work. Our project has been received with interest of the professional community as well as the specialist media[14].

I believe that the "CSI: Warsaw" course that I designed and that our team developed for the University of Warsaw Faculty of Law is a very successful program that both the faculty and students benefit from. It is obviously difficult and time consuming, but it allows us to teach the state of the art methods and techniques and provide our students with the highest standard of knowledge. We not only train future investigators and Police officers – in my opinion, our criminal justice system profits highly as we raise the awareness of the future judges, public prosecutors and criminal attorneys in regard to the broadest possible spectrum of the crime scene investigation and analysis trade. These lawyers will certainly perform their duties in a more educated fashion, since their knowledge is built on the evidence-based, practical and empirical research and exercises. They will be better prepared to analyze the evidence material, confront the versions, statements and opinions and understand the complexity of the criminal justice system.

[13] J. J. Nordby, *Here we stand. What a Forensic Scientist does*, (in:) S. H. James, J. J. Nordby (eds), *Forensic Science. An Introduction to Scientific and Investigative Techniques*, 3th ed., CRC Press, Boca Raton 2009, p. 4.

[14] See i.e. M. Rydel, *CSI Warsaw*, "Rzeczpospolita Legal Pages", December 2012, http://prawo.rp.pl/artykul/567750.html.

"CSI: WARSAW" – CRIME SCENE INVESTIGATION TRAINING AT THE UNIVERSITY OF WARSAW

Summary

The author presents the position of forensic and investigative sciences within the framework of legal education at Polish universities. The paper confronts the traditional scope of the highly theoretical criminalistics/forensics courses with the modern and innovative hands-on workshops designed and successfully employed at the Faculty of Law and Administration, University of Warsaw. The educational project nicknamed "CSI: Warsaw" was designed in order to mitigate the pop-culture driven and unrealistic expectations of the general public towards the potential and effectiveness of the investigative sciences (an approach known as the "CSI Effect"). The practical course of crime scene analysis, evidence collection and interpretation became and instantly popular and sought-after part of the University of Warsaw curriculum. The paper describes the outline and structure of the course, providing the description of the students' selection process, the nature of the highly realistic, hands-on and real-time exercises and their assessment, as well as the practical effects for the course graduates when they enter the job market in the legal and law-enforcement professions.

"CSI: WARSAW", WARSZTATY KRYMINALISTYCZNE NA UNIWERSYTECIE WARSZAWSKIM

Streszczenie

Autor przedstawia umiejscowienie kryminalistyki i nauk sądowych w systemie nauczania prawa na polskich uniwersytetach. W swoim artykule konfrontuje tradycyjne, wysoce teoretyczne podejście do kryminalistyki z nowoczesnym i innowacyjnym programem praktycznych warsztatów, które zostały z powodzeniem wdrożone na Wydziale Prawa i Administracji Uniwersytetu Warszawskiego. Projekt edukacyjny znany pod nazwą „CSI: Warsaw" powstał, by przeciwstawić się podsycanym przez kulturę popularną, oderwanym od rzeczywistości oczekiwaniom społecznym wobec możliwości i skuteczności nauk sądowych (podejście takie określa się mianem „Efekt CSI"). Opracowany na WPiA UW kurs praktyczny analizy miejsca zdarzenia, ujawniania, zabezpieczania i interpretacji materiału dowodowego stał się bardzo szybko popularnym elementem programu kształcenia na Uniwersytecie Warszawskim. W artykule opisano szkielet i strukturę przedmiotu zajęć, procedurę selekcji kandydatów, charakterystykę bardzo realistycznych, praktycznych i odbywających się w czasie rzeczywistym warsztatów,

a także ocenę ich skuteczności. Dodatkowo przedstawiono efekty praktyczne programu, przekładające się na pozycję zawodową absolwentów Wydziału Prawa, wchodzących na rynek pracy w profesjach związanych z wymiarem sprawiedliwości.

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KEYWORDS

crime Scene Investigation, forensic sciences, criminalistics, CSI Effect, CSI: Warsaw, workshops, law-enforcement, criminal procedure, evidence law, teaching innovations

SŁOWA KLUCZOWE

oględziny miejsca zdarzenia, nauki sądowe, kryminalistyka, Efekt CSI, CSI: Warsaw, warsztaty, organa ścigania, postępowanie karne, prawo dowodowe, innowacje dydaktyczne

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ON PHILOSOPHY OF LEGAL EDUCATION. AN ANALYTICAL SKETCH

1. INTRODUCTION

The aim of this brief essay is to offer a philosophical reflection about the character and objectives of legal education[1], with special attention given to the role that comparative law, legal history and legal theory could play in this education.

The paper consists of five parts. In the remaining part of the Introduction the character of the analysis is explained. In the first section general observations about the "nature" of legal education are offered and the role of skills in legal practice and scholarship is elaborated. In the second section a more detailed account of the role of comparative law and legal history is given. The third section contains several comments on the role of values and ethics in legal education, stressing the role that comparative law and legal theory might play in this respect. Conclusions follow.

First proposition that must be made explicit is that legal education does not have to be the way it currently is. Legal education is fully designable. Unlike the law itself, about which one can take a non-positivist position[2], legal education is a fully man-made social construct. Its current form in particular countries got determined by historical and cultural factors and might seem "natural". But the way in which we currently teach prospective lawyers "what is the law?" and "how to be a lawyer?" is not the only possible one, and is not necessarily the best one.

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[1] For the display of the current state of the art see: H. Sommerlad, S. Harris-Short, S. Vaughan, R. Young, *The Future of Legal Education and the Legal Profession*, Oxford 2015. Also compare a monograph A. W. Herringa, *Legal Education: Reflections and Recommendations*, Cambridge 2013.

[2] For the classical works advancing this position see R. Dworkin, *Law's Emprie*, Oxford 1998; J. Finnis, *Natural Law and Natural Rights*, Oxford 2011. For the contemporary discussions compare: J. Aguiar de Oliviera, S. L. Paulson, A. T. Gomes Travessoni, *Proceedings of the Special Workshop 'Alexy's Theory of Law' Held at the 26th World Congress of the International Association for Philosophy of Law and Social Philosophy in Belo Horizonte 2013*, Stuttgart 2015.

The question: "what are the possible ways to teach law?" requires an answer through the method of social science (descriptive sociology) or analytical philosophy (inquiry into potentiality); while the normative question "what is the 'best' way to teach law?" requires an argument from normative theory, based on functionalist approach, taking into account purposes that this education would aim to serve.

Starting with the latter, I claim that the purpose of legal education is to equip prospective lawyers with knowledge and skills that will allow them to best perform in a chosen legal profession on one hand, and to be of the highest possible value for the society on the other. Both terms need elaboration.

This piece is not a research paper in descriptive sociology, but an essay in analytical philosophy. I do not aim at presenting empirical data, but rather at contributing to the discussion about the design of legal education in the times of transition, like ours[3].

2. SKILLS IN LEGAL EDUCATION AND PROFESSION

The purpose of legal education is to teach students how to think like a lawyer[4]. In consequence, legal education boils down to:

– transmitting a bulk of knowledge, mostly about the substance of currently biding law; and

– transmitting certain skills[5], necessary in the legal work.

The latter are arguably more important than the previous. Laws might change. There is no possibility to learn all of them by heart. And there is no need to learn all of them by heart, for legal work nowadays, regardless of a sector, always takes place with an access to a legal database containing legal texts, case law and commentaries[6]. Skills, on the other hand, persist and enable lawyers to do their job: to deal with hard cases[7], with no obvious answer given directly in a statue; to react when reality takes form unpredicted by the lawmaker. Being a lawyer means much more than just knowing what the law is.

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[3] A fresh and interesting exposition of that claim in R. van Gestel, H. W. Micklitz, M. Poiares Maduro, *Methodology in the New Legal World*, Florence 2012.

[4] For the contemporary argument see F. F. Schauer, *Thinking like a Lawyer: A New Introduction to Legal Reasoning*, Cambridge 2009.

[5] Well exposed in G. Sartor, *Understanding and Applying Legal Concepts: An Inquiry on Inferential Meanin*g, (in:) J. C. Hage, C. Jaap (eds), *Concepts in Law*, Heidelberg 2009; J. Raz, *Between Authority and Interpretation: On the Theory of Law and Practical Reason*, Oxford 2009.

[6] In the light of this, Polish law schools' practice of not allowing legal texts into the exams, as well as of asking students explicitely what are the particular provisions of given statues, not only rises eyebrows of professors from other countries, but should be given a serious reconsideration.

[7] First explicitly demonstrated in: R. Dworkin, *Taking Rights Seriously, New impression, with a reply to critics*, London 1978.

Legal skills, at the most general level, could be divided into **vocational** and **academic**. The previous are the skills necessary for the legal practice: identification of sources, interpretation, inferring norms from norms, argumentation, legal drafting etc. The latter encompass theoretical skills of explanation, classification and critical assessment; an ability to bring an order to legislative chaos, capability of explaining why the law is the way it is, and a competence to critically examine the state of play, not just by presenting personal opinions, but within a framework of a rigid normative theory, be it internal to law constitutional morality, or external to law political or philosophical position.

Both a practicing lawyer and a legal academic need to master both types of skills. There is a temptation to say: a practitioner does not need to know philosophy, history or comparative method; what cannot be "billed" on a client is just a fancy, intellectual, but an unnecessary additive. While being a law student, one hears such opinions more than often from fellow colleagues. I want to challenge this claim, two paragraphs below.

The statement that a legal academic needs to master practical skills is much easier to be popularly accepted. One needs to understand, or at least to know, the practice of law, in order to theorize it properly. Additionally, legal academics will often teach undergraduate students, most of whom strive to be practitioners themselves.

Legal research, however, is something more than just writing commentaries on what the law is and what is the court practice. What in Polish tradition sometimes serves as a final product – a description of a legal institution X, in the light of statutory law and judicial discourse – should be a starting point for academic reflection, not the end of it. Legal research should be able to explain why the law is the way it is, to demonstrate underlying patterns, to offer a theory ordering conceptual underpinnings, to point to the inconsistencies, and to reflect upon the questions of whether the law is the way it should be. Legal scholarship requires a much wider set of skills and methods than everyday legal practice. Or it would seem.

For, as I want to argue, a legal practitioner needs to master the skills labeled here as "academic" no less than a legal scholar. Obviously, not every person practicing law will need them, and rarely are those skills indispensible from the market point of view. But what one needs to remember is that practitioners are often important actors in the public discourse regarding the positive law. They write to professional journals (like *Palestra* or *Radca Prawny* in Poland) and newspapers, they express their views in media, they directly and indirectly participate in the lawmaking process. Academic skills are what distinguish the voices being just personal opinions from rigid normative propositions[8].

[8] For a good example of the distinction consult B. Leiter, *Why Tolerate Religion?*, Princeton 2013.

From the society's point of view, the most important practitioners should be academically skilled. Society needs academically literate and reflective lawyers. To put it in grandiloquent terms: in the army of practitioners, we need artists standing above the crowd of craftsmen.

Additionally, legal practitioners do encounter provisions and practices that need to be challenged, on constitutional, European or human rights grounds. To demonstrate their invalidity or incorrectness, however, they need to understand the system much better than just knowing what the practice is. The practice might be wrong.

For this reason, I want to challenge the dichotomy of theory vs. practice, according to which, "practice is what practitioners do" and "theory is what theoreticians do". If that would be the case, law schools would not be necessary. It is not inconceivable that lawyers could learn practical skills by vocational training in a law firm, from the very beginning. The danger is, however, that the current practice, for a variety of reasons, is incorrect, to put it in purposively vague terms. Law schools prepare lawyers to grasp this, and to explain why.

Summing this section up, becoming a lawyer encompasses obtaining knowledge and skills; legal skills can be divided into vocational and academic; it is a mistake to claim that practitioners need only the previous and academics only the latter, because successful practitioners, apart from working for their clients, take part in public discourse about law, for which skills of explanation, systematization and most of all, skills of critical assessment and constructive proposing are indispensible.

3. THE ROLE OF COMPARATIVE LAW AND LEGAL HISTORY

In this section I consider the question of the comparative law's and legal history's role in the picture sketched above. Let me start with comparative law as a method[9], being potentially one of the academic skills taught as a part of the law school's curriculum.

The most important lesson one can draw from doing comparative law is: the law does not need to be the way it is. And simultaneously with that: how else could the law be, through seeing how it actually is somewhere else.

For a person trained just in the Polish legal tradition it might come as a shock that there are civil codes which do very well without a general part, to the extent that e.g. French lawyers find it hard to grasp what a general part is and why it could

[9] The difference between comparative law as substance and as a method well exposed in: G. Wilson, *Comparative Legal Scholarship*, (in:) M. McConville, Wing Hong Chui (eds), *Research Methods for Law*, Edinburgh 2007.

be useful. What is more, there are jurisdictions, like England, where they do just fine without a civil code at all. There are legal systems very much unlike ours.

One distinction to be drawn already at the beginning is between comparing legal rules and the "deeper tissue" of law: concepts and philosophy[10]. To compare rules, one does not need to be very skilled. International law firms do it all the time, creating working compilations of "rules regarding X" in, say, all twenty eight EU jurisdictions. The method for that is an Excel table-questionnaire and sending an email to department X in all jurisdictions. But comparative law is much more than that.

"What is the relation between the concept of property law in common law systems and the concept of law of things in civil law systems?"; "what is the difference between copyright approach of common law and author's rights in civil law?"; "what underlying principles explain the contrast between the freedom of speech and privacy rights between the US and the EU?" are the types of questions a comparative lawyer would be interested in.

The method needed to answer them almost inevitably draws one to legal history[11], legal philosophy and the history of legal doctrines. A lot could be elaborated on that, but the findings boiled just to one sentence will always take form of: "we do it this way because of this; they do it that way because of that". And one can come to the conclusion that the times have changed and we are much close to "that" than "this".

A complete lack of this type of approach is visible in the works the Polish Codification Committee for Civil Law, which a few years ago published a proposal for the new general part of the new Polish Civil Code[12]. And it is just the same as the old one. "No, there are differences x, y, z!" one will shout immediately. But these are just cosmetics.

The Polish Civil Code is in its structure based on the German BGB. That is common knowledge. But why is the BGB the way it is? One hundred years of debates that led to its creation are absent in the mainstream Polish private law scholarship. Only through doing comparative law can one realize that concepts seemingly obvious and natural to us, like "legal action", "declaration of intent", "private legal relationship" etc. are really only one conceptual option from many others. And only through legal history can one trace them back to German idealism, pandectist movement and Savigny's thought[13]. Instead, we try to re-copy German 19th century thought, completely forgetting that the 21st century has come, with consumer law,

[10] The distinction after M. Siems, *Comparative Law*, Cambridge 2014.

[11] The classic example of this type of analysis F. Wieacker, *A History of Private Law in Europe with Particular Reference to Germany*, Oxford 1995.

[12] The project can be accessed at www.bip.ms.gov.pl/Data/Files/_public/bip/kkpc/ksiega.rtfwww.bip.ms.gov.pl/Data/Files/_public/bip/kkpc/ksiega.rtf (last access 30th September 2015, Polish only).

[13] F. Wieacker, *A History of Private Law…*

European law, sector based regulation, separation of C2C, B2C and B2B relations, etc., possibly challenging the initial assumptions in the meantime.

Please, note that the argument above does not rely on the problem of "globalization of law" or "transnational law". It is very much national-system-centered. The role of comparative law is to make lawyers understand that the law does not have to be the way it is, to open their eyes to possible better options, and to make them think outside of the box. We need to get out of our labels and schemes if we want any progress. Other legal systems can serve as a mirror in which we see the details of our own much sharper.

This, obviously, does not undermine the importance of the globalizing world as a factor to be taken into account. The process of Europeanization, and wider processes of approximation of laws and standards (probably coming through the TTIP on the massive scale quite soon) can be more or less successful or painful. Harmonizing laws will perform better when a harmonizer understands what is to be harmonized, what the similarities are, what the differences are, and where they come from. For law does not exist in social, political and cultural vacuum. On the contrary, it is a product of all these orders, and is embedded in all these orders. To grasp this, however, one needs the tools provided by legal theory.

In addition to all the considerations above, there is a place for comparative law also among the practical skills. Nowadays the chance that a legal practitioner will need to apply foreign law, or draft a contract under foreign law, or get into a trial before a foreign court, is much higher that not such a long time ago. I would not overestimate, however, the ability to do so just after completing a comparative law course or a school of foreign law. Let us be fair, in a difficult case one will always contact a practicing lawyer (or a sister company) from a particular jurisdiction. But even "knowing what is going on" is a valuable asset.

Summing this section up, comparative law primarily demonstrates that the law of a given jurisdiction does not have to be the way it is. Comparative legal history explains why it is the way it is. Knowledge obtained through comparative and historical analysis can be useful both for national purposes, as well as the inter- and supranational processes of harmonization and approximation. For all these reasons, it is desirable that law school students undergo a training not only providing them with knowledge about substantial comparative law and legal history, but most of all, equipping them with skills to perform this type of analyses themselves.

4. VALUES AND LEGAL ETHICS

Until this point the argument of the paper has been construed as if legal scholarship and practice were completely apolitical and value-neutral enterprises.

Lawmaking might be a political process, but law's description and application are, if not automatic, then at least not political. But this is not the case.

We live in a values-driven world, where different viewpoints crush against each other on daily basis, what in liberal democracy is rightly considered a virtue. And in this world, a world of individual and social interests, a world of competing ideologies, where everyone believes in something, wants something and aims at something, the legal practice is embedded.

This might be dangerous. A reasonable person would generally agree that judges should decide the cases based on law and not their private opinions; that law professors should clearly distinguish between describing the law, stating their opinions about law, and offering a normative scientific argument about law; and that practitioners should represent the interests of their clients, but within the frames of the codes of ethics.

But if, for example, a vice-minister of justice of a given country claims that the constitution of that country does not provide reproductive rights, while the ombudsman of that country claims that it does, both of them being law professors, do they engage in a political dispute or a scientific debate? Should it matter that their scientific claims match their personal opinions? How to distinguish between a rigid doctrinal argument and a political position just pretending to be one, though backed up by a scientific title of its maker?

Or when a law professor happens to be a practicing lawyer, representing his or her clients in the court room in the morning, while aiming at scholarly truth and objectivity in the afternoon, and then happens to publish a piece in press, how to distinguish a trial argument from a doctrinal argument?

I am far from telling people what to do. The only claim I make here is: we should be aware of these dangers, and we should prepare prospective lawyers to face them. To do so, however, a rigid theoretical training is necessary, with methodological tools enabling a lawyer to detect and demonstrate that a person claims to do X, while actually doing Y.

What could be the role of comparative law in this training? Ideological background of diverging legal systems is different. For example, a law and economics argument might be an internal-to-legal-morality claim in the U.S. or the UK, where through Locke and Bentham utilitarian considerations became an integral part of the constitutional system[14]; while exactly the same argument made in Germany or Poland will be an external-to-legal-morality claim, which apart from a first level prescription about particular provision contains also a meta-prescription of "these values should be given a consideration in our legal system, even if they are not recognized as such yet".

[14] For this claim and other examples see D. J. Galligan, *Constitutions and the Classics: Patterns of Constitutional Thought from Fortescue to Bentham*, Oxford 2014.

Underlying values, however, might seem natural to a person brought up only in a single culture. Only by studying other legal systems can one critically reflect about implicit value judgments contained in her or his own legal system, or in claims made about it.

Further examples could be multiplied here, but there is no use to do so. What I wanted to make clear is: in the world of competing values, where lawyers play different (and sometimes conflicting) social roles at the same time, legal education should equip students with tools enabling them to distinguish between different types of normative claims, objective and subjective, internal and external to law, doctrinal and political. For that, a theoretical training is necessary, and the comparative law can serve as its very valuable element.

5. CONCLUSIONS

In this piece I have argued that legal education should concentrate on transmitting not only the knowledge about the currently binding law, but most of all, skills necessary for legal profession. I have distinguished between vocational and academic skills, and further argued that it is a mistake to believe that practitioners need only the previous, while scholars only the latter. On the contrary, academic skills can be very valuable for practicing lawyers, both from their own, as well as societal point of view.

Within those skills, methods of comparative law and legal history play a pivotal role. Comparative law enables lawyers to understand that a legal system could be constructed in another way, to understand characteristics of one's own legal system better, and with the help of legal history explains why the law is the way it is. That, in consequence, proves valuable both in the global context of harmonization and approximation of laws, as well as national context of legal reform and reflection about law's underlying values.

This essay aimed to be general and universally valuable. Its framework can obviously be applied to particular national models of legal education. Assessment of the Polish one, which I had a pleasure to accomplish two and a half years ago, would need a separate article of a different character. But if I were to boil it down to two sentences, it would be: it essentially does not matter what areas of law we teach as obligatory and what not; what matters is *how* we teach them. In today's world we should more than ever concentrate on skills rather than just knowledge; where comparative method, historical analysis and descriptive and normative theory should play a pivotal role.

ON PHILOSOPHY OF LEGAL EDUCATION. AN ANALYTICAL SKETCH

Summary

This essay offers a philosophical reflection about the role and objectives of legal education, with special attention given to the role that comparative law, legal theory and legal history could play in legal education.

The author argues that legal education should concentrate on transmitting not only the knowledge about the currently binding law, but most of all skills necessary for legal profession. He distinguishes between vocational and academic skills, and further argues that it is a mistake to believe that practitioners need only the previous, while scholars only the latter. On the contrary, academic skills, encompassing *inter alia* skills of explanation, systematization and of critical assessment, can be very valuable for practicing lawyers, both from their own, as well as societal point of view.

Within those skills, methods of comparative law and legal history play a pivotal role. Comparative law enables lawyers to understand that a legal system could be constructed in another way, to understand characteristics of one's own legal system better, and with the help of legal history explain why the law is the way it is. That, in consequence, proves valuable both in the global context of harmonization and approximation of laws, as well as national context of legal reform and reflection about law's underlying values.

ANALITYCZNO-FILOZOFICZNE SPOJRZENIE NA EDUKACJĘ PRAWNICZĄ

Streszczenie

Niniejszy esej stanowi próbę filozoficznej refleksji nad rolą i celem edukacji prawniczej. Szczególnie uwzględnia rolę, jaką w tej edukacji mogą odegrać metody prawa porównawczego, teorii prawa oraz historii prawa.

Autor wyraża pogląd, że edukacja prawnicza nie powinna ograniczać się jedynie do przekazywania wiedzy o aktualnie obowiązującym prawie, lecz przede wszystkim powinna przekazywać umiejętności niezbędne w pracy prawnika. Wśród nich autor wyróżnia umiejętności zawodowe i akademickie, twierdząc jednocześnie, że błędny jest pogląd, zgodnie z którym praktykom potrzebne są wyłącznie te pierwsze, a ludziom nauki te drugie. Przeciwnie, umiejętności akademickie, przede wszystkim zdolność do wyjaśniania, systematyzacji oraz krytycznej oceny prawa, mogą być nad wyraz przydatne praktykom zarówno z ich punktu widzenia, jak i punktu widzenia społeczeństwa.

Wśród tych umiejętności metody prawa porównawczego i historii prawa odgrywają nad wyraz istotną rolę. Perspektywa prawnoporównawcza pozwala prawnikom zrozumieć, że dany system prawny mógłby wyglądać zupełnie inaczej, pozwala zrozumieć szczególne cechy własnego system prawnego oraz z pomocą historii prawa wytłumaczyć dlaczego

przybrał on taki, a nie inny kształt. Zdolność do tego typu analizy jest przydatna zarówno w globalnym kontekście harmonizacji i zbliżania porządków prawnych, jak i w czysto narodowym kontekście reform prawa oraz refleksji nad wartościami leżącymi u jego podstaw.

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SŁOWA KLUCZOWE

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