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Preparing Students to Become Lawyers: Judicial Insights on Legal Education Today

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PREPARING STUDENTS TO BECOME LAWYERS: JUDICIAL INSIGHTS ON LEGAL EDUCATION TODAY

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It is useful sometimes to step away and view our own legal system from abroad. I have had the opportunity in the last week at an international legal conference to do just that. As I sat on panels involving lawyers from Greece, Spain, Germany, Italy, France and the United Kingdom, I was struck by the enormous respect they had for our legal system, our law schools and our courts. I was particularly impressed at one point when the representative of Spain mentioned the fact, in discussing recent changes in the United Kingdom's civil procedure[1] (which are based to a large extent on ours), that Montesquieu might have objected to some of these reforms.[2] That struck me as a poignant reference to our own American history and what Madison was studying.[3] The same books are still current. The same problems are still current. The same issues in the philosophies

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1 *See generally Halsbury's Laws of England*, CIVIL LITIGATION, May 21, 2000 (discussing amendments to Civil Procedure Rules); *Halsbury's Laws of England*, CIVIL LITIGATION, Mar. 24, 2000 (discussing provisions together with relevant subject areas); *New Rules Published Which Will Transform Civil Justice System*, HERMES DATABASE, Jan. 21, 1999 (listing new changes including greater case management by judges); District Judge Michael Walker, *Benchmarks All Change - Summary of the Latest Amendments to the Civil Procedure Rules (CPR) 1998*, 97 L. SOC'Y GAZETTE 46 (2000) (summarizing recent changes in Civil Procedure rules including: defining Defendant's home court has where he resides; Circuit Judge no longer has ability to dismiss appeal without hearing; and changes to Judicial Review).

2 *See* Howard Schweber, *The "Science" of Legal Science: The Model of the Natural Sciences in Nineteenth-Century American Legal Education*, 17 L. & HIST. REV. 421, 429-30 (1999) (stating Montesquieu's argument that laws must be understood from first principles which consisted of characteristics of each country and influence on population and that Montesquieu did not trust democratic rule). *See generally* David M. Kirkham, *European Sources of American Constitutional Thought Before 1787*, 3 U.S. A.F. ACAD. J. LEG. STUD. 1, 20-22 (1992) (discussing Montesquieu's influence in evolution of separation of powers and influence on American constitutionalism).

3 *See generally* Paul D. Carrington, *Restoring Vitality to State and Local Politics by Correcting the Excessive Independence of the Supreme Court*, 50 ALA. L. REV. 397, 421 (1999) (stating Madison's argument against removal of judges by legislature because it exposes judges to intimidation by legislatures).

that have been studied for hundreds of years are still wrestled with in our law schools.[4] I have listed on the blackboard a series of questions or subjects on which to grade modern legal education.[5] First, however, I will answer the questions posed by your moderator:

I. ARE LAW SCHOOLS GRADUATING LAWYERS WHO ARE PREPARED TO SERVE THE NEEDS OF THE PROFESSION AND SOCIETY?

This question raises the basic issue of what is meant by "are prepared." If it is asking whether young lawyers are capable of fulfilling these functions, the answer is unequivocally yes. Young lawyers are ready to work extremely vigorously and can quite easily put their knowledge and dedication to a wide range of beneficial practices. Just as they are able to serve private clients, they are also capable of improving legal practice and society in general.

The more interesting and difficult question is whether law schools are preparing lawyers to be desirous of making such an improvement. Law schools do much to attempt to encourage the desire for public service in young and idealistic law students.[6] For example, the clinical programs that are now a staple of legal education introduce lawyers to the duty we have to contribute to society.

Perhaps the biggest threat to this public spiritedness comes from

[4] *See generally,* Lewis D. Solomon, *Perspectives on Curriculum Reform in Law Schools: A Critical Assessment,* 24 U. TOL. L. REV. 1, 6 (1992) (discussing four issues to be most important in curricula reform in decades to come); John Mixon & Gordon Otto, *Continuous Quality Improvement, Law, and Legal Education,* 43 EMORY L.J. 393, 413 (1994) (discussing law teaching remaining grounded in "formalism," which focuses on rules, procedure, and legal categories).

[5] *See* Linda R. Crane, *Interdisciplinary Combined-Degree and Graduate Law Degree Programs: History and Trends,* 33 J. MARSHALL L. REV. 47, 51-53 (1999) (noting goals of law schools should include helping prospective lawyers to find right roles and provide students with quality education programs); *see also* Solomon, *supra* note 4, at 17 (discussing recommendation for improving law school curricula including: providing students with fundamental skills in legal writing, oral communication, interviewing, counseling and trial advocacy). *See generally* Robert MacCrate, *"The Lost Lawyer" Regained: The Abiding Values of the Legal Profession,* 100 DICK. L. REV. 587, 617 (1996) (indicating ABA's adoption in accreditation standard regarding law school's educational program to include schools properly preparing law students to "participate effectively in the legal profession"). *See generally* Mixon & Otto, *supra* note 4, at 436 (discussing optimization of law school by clarifying its mission).

[6] *See* Caroline Durham, *Law Schools Making a Difference: An Examination of Public Service Requirements,* 13 LAW & INEQ. J. 39, 40 (1994)(indicating law schools across United States have created public service graduation requirements and other schools have set up voluntary pro bono programs); Karen Knight, *To Prosecute is Human,* 75 NEB. L. REV. 847, 861 (1996)(discussing prosecutor's clinic as part of law school's curricula where students are introduced to obtaining justice without being paid with effect of hopefully promoting commitment to public service). *See generally* Deborah L. Rhode, *Professionalism in Professional Schools,* 27 FLA. ST. U. L. REV. 193, 197-202 (discussing what law schools could and should do to promote public service and benefits students would receive).

economic factors. Since first year associates can now make more than a federal judge,[7] the incentives to go into private practice are extremely powerful. As a result, law schools are able to charge extremely high tuition,[8] forcing students to go to firms to pay off their debts. Many law schools have attempted to break this vicious circle by adopting programs to forgive loans of graduates who take low paying public positions.[9] Such steps should be commended. While the lure of lucre will always exist, law school have a duty to maintain the public spiritedness required of members of the bar.[10] The public work of its professors and respected alumni provide major and effective role models.[11] Where professors are involved in public work, they can take a few students along or even incorporate some of this

7 *See* Robert B. Reich, *The Great Divide*, 11 AM. PROSPECT 56 (2000) (stating that large law firms raised first year associate salaries to $120,000 exclusive of signing bonuses); Jim Fisher, *Senators Take Cash from Supplicants; Why Not Judges?*, LEWINGSTON MORNING TRIB., Oct. 7, 2000, at 12A (indicating some first-year associates make more than federal judges and federal judges' salaries start at $141,300 for district judges and rise to $181,400 for Chief Justice of Supreme Court); *see also By the Numbers; Salary Scorecard*, N.Y. L.J., Nov. 3, 2000, at 23 (listing total compensation including year-end bonuses for first year associates range from $160,000 to $165,000); *Federal Judges*, NAT'L L. J., Oct. 2, 2000, at A30 (listing salaries of federal judges ranging from $129,996 for U.S. magistrates and U.S. Bankruptcy court judges to $181,400 for Chief Justice of U.S. Supreme Court).

8 *See* Abbe Smith, *For Tom Joad and Tom Robinson: The Moral Obligation to Defend the Poor*, 1997 ANN. SURV. AM. L. 869, 881 (1997) (stating that law students level of debt can reach $100,000 and persuade such students to take positions in high-paying firms); William L. Trail & William D. Underwood, *The Decline of Professional Legal Training and a Proposal for Its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201, 240 (1996) (noting cost of legal education is so high that many students graduate with debts which preclude entry into public service careers); *see also* George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091 (1998) (standing for general proposition that ABA accreditation has increased law school tuition).

9 *See* Stephanie Goldberg, *Bridging the Gap*, 76 A.B.A. J. 44 (1990) (discussing law school in 1990's and applauding law schools who forgive loans to students taking public interest positions); Smith, *supra* note 8, at 881 (stating that loan forgiveness programs are essential in ensuring that law school graduates have meaningful choice to serve poor). *See generally*, Omar J. Arcia, *Objections, Administrative Difficulties and Alternatives to Mandatory Pro Bono Legal Services in Florida*, 22 FLA. ST. U. L. REV. 771, 796 (1995) (suggesting that loan forgiveness programs would increase level and quality of services to indigent clients).

10 *See generally* Patrick R. Hugg, *Comparative Models for Legal Education in the United States: Improved Admissions Standards and Professional Training Centers*, 30 VAL. U. L. REV. 51, 53 (1995) (suggesting that legal educators and bar members should lead legal education to clearer vision common purpose); Smith, *supra* note 8, at 881 (stating law faculty could do more to model importance of service to poor); Trail & Underwood, *supra* note 8, at 210 (noting that faculty lack of interest in law field interferes with ability to teach students what they need to know to practice).

11 *See* Therese Maynard, *Preparing the Corporate Lawyer: Teaching Professionalism: The Lawyer as a Professional*, 34 GA. L. REV. 895, 925-26 (2000) (standing for general proposition that law faculty should be role models of strong professional values); Smith, *supra* note 8, at 881 (stating law faculty could do more to model importance of service to poor). *See generally* Trail & Underwood, *supra* note 8, at 210 (stating faculty members who lack significant practice experience may also fail to fully appreciate challenges confronted by lawyers and knowledge and skills needed to meet those challenges).

work into seminars or clinical classes.

A. What has been the effect or impact of the increased emphasis on skills training in legal education?

Law schools should not operate as institutions simply to teach lawyers the nuts and bolts of legal work. I am not even sure that such an education is possible due to the multitude of changing problems lawyers face.[12] Increasing international and treaty obligations were not taught when I was at law school, for example. Today there are over forty courses and seminars at Columbia on these subjects.[13] I have written some recent opinions on immigration and jurisdiction requiring knowledge of the laws of other countries.[14] We cannot predict what will be important for the next fifty years of practice.

Emphasis on theory, analysis, and application to new problems must underlie legal education. Probably almost all the basic principles that I use in court could be set out in less than a score of general tenets: for example, the reasonable person in tort, offer and acceptance in contract, and due process in criminal law.[15]

It is in law school that students have time to learn why these rules exist and what functions they serve. It is only when attorneys actually come across them in private practice that they need to understand every nuance of a particular principle. Instead of forcing students to memorize something that they will soon forget, it is more important that they know the basic principle and then struggle with it intellectually.[16]

Law schools offer a unique opportunity where the atmosphere induces analytical questioning of the framework of the law.[17] It is the

[12] *See* Goldberg, *supra* note 9 (noting that complexity of law and rate of change have accelerated in past decade making it virtual impossible to teach law). *See generally*, Thomas L. Ambro & J. Truman Bidwell, Jr., *Some Thoughts on the Economics of Legal Opinions*, 1989 COLUM. BUS. L. REV. 307, 318 (1989) (stating that federal and state laws include varied and complex statutes, many of which have developed into legal sub-specialties); Symposium, *The Modern Practice of Law: Assessing Change*, 41 VAND. L. REV. 677 (1988) (noting growth of "boutiques" as recognition of more complex legal society).

[13] *See* http://www.law.columbia.edu/courses (listing current course offerings). *See generally* Solomon, *supra* note 4, at 1 (noting increase in variety and number of elective courses); Trail & Underwood, *supra* note 8, at 217 (discussing 1987 report which noted increase in law school electives).

[14] *See, e.g.*, Maria v. McElroy, 68 F. Supp. 2d 206, 231-32 (1999) (discussing International Covenant of Civil and Political Rights).

[15] *See id.*

[16] *See generally* Trail & Underwood, *supra* note 8, at 210 (teaching students that legal doctrine is essential component of lawyer training).

[17] *See generally* Rodney J. Upholf, et al., *Preparing the New Law Graduate to Practice Law: A*

great chance that each of us has to be exposed to great minds of the law grappling with almost intractable problems in the context of real life situations. It is our opportunity to make fools of ourselves at no cost to a client. These years in law school are an inspiring intellectual discovery of challenges to the mind and spirit that will remain with each of us every day of our professional lives.

This approach to rational thinking, to cogitation, will continue to be the essence of law school training. Yet, the student must not let the mind and ruthless logic overwhelm; the law must take account of moral and psychological issues and turn a human face to the people.[18] Lawyers must never forget their sense of compassion and understanding of other people.

One recent trend in legal education I find fascinating: the use of computers and the internet.[19] Instruction via these tools is likely to zoom. It could even result in on-the-cheap home study law courses.[20] That is not necessarily bad. It is almost surely not worse for a student to watch a lecture closely at home and do problems on the internet with feedback from the instructor and his fellow students, than to have a class in a law school before a great professor with each student

View from the Trenches, 65 U. CIN. L. REV. 381 (1997) (discussing law graduates' dissatisfaction with and complaints about their legal education).

18 *See* Timothy L. Fort, *The First Man and the Company Man: The Common Good, Transcendence, and Mediating Institutions*, 36 AM. BUS. L.J. 391, 396 (1999) (urging individuals, particularly members of judiciary and intellectual elites, to replace pursuit of self-interest with concern for common good). *See generally* Naomi R. Cahn, *Responsible Lawyers*, 63 GEO. WASH. L. REV. 921, 921 (1995) (recognizing that lawyers' identification with different communities influences, either explicitly or implicitly, their perception of their own moral orientation towards lawyering responsibilities); Paul R. Tremblay, *Toward a Community Based Ethic for Legal Services Practice*, 37 UCLA L. REV. 1101, 1130-31 (1990) (advocating community norms to guide legal services lawyers).

19 *See* Henry H. Perritt, Jr., *The Internet Is Changing the Face of American Law Schools*, 33 IND. L. REV. 253, 253 (1999) (exploring how information technology, "especially as deployed by Internet's world wide web," is changing law, functioning of legal institutions, and role of lawyers); *see also* Michael A. Geist, *Where Can You Go Today?: The Computerization of Legal Education from Workbooks to the Web*, 11 HARV. J. L. & TECH. 141, 144 (1997) (noting factors such as affordability of personal computers, increasing availability and speed of network access, and relative ease of Internet, that will continue to create greater opportunities for legal educators to integrate computers into teaching and scholarship); Richard A. Matasar & Rosemary Shiels, *Repercussions on Legal Education*, 29 VAL. U. L. REV. 909, 909-13 (1995) (highlighting one law school's successful vision to integrate technology into legal education by launching many successful electronic initiatives).

20 *See* Andrea L. Johnson, *Distance Learning and Technology in Legal Education: 21st Century Experiment*, 7 ALB. L.J. SCI. & TECH. 213, 213-18 (1997)(explaining how technology can be used to facilitate distance learning in legal education); Will Sadler et al., *Teaching Law with Computers*, 24 RUTGERS COMPUTER & TECH. L.J. 107, 164-65 (1998) (weighing potential advantages and disadvantages of distance learning for legal education); *see also* Ken Myers, *Real Law in a Virtual Classroom: San Diego and Cleveland Join Up*, NAT'L L.J., Jan. 29, 1996, at A15 (discussing first distance learning course at Cal Western and Cleveland Marshall College of Law).

using his or her laptop computer to watch a World Series game or (even worse) professional wrestling.

B. What role does legal scholarship have with respect to judicial decision-making?

Everything. I have always relied on the law journals as a major source of research in preparing opinions and I cite to them liberally.[21] The printed word in journals and treatises enable the leading minds in academe and their insights to be used in solving our almost intractable legal problems.[22] They tell us when we are on the wrong or right track and what the implications are of our decisions. In a mixed common law-statutory system, the law journals are essential in helping guide intelligent development of the law to meet new conditions.[23]

The Agent Orange case[24] provides one example in which academic writing channeled my thoughts on a pending case. In the difficult issue of how the damages for this complex mass tort would be calculated, I found David Rosenberg's discussion of proportional causation in a then recently published Harvard Law Review article[25] invaluable. In the last few weeks, I have turned to law reviews for help in a major international jurisdiction question, a franchisee-franchiser dispute, questions of retroactivity of statutes dealing with immigrant rights, and a major sentencing issue involving rights of victims.

[21] *See, e.g.*, United States ex rel. Stevens v. Vermont Agency of Natural Res., 162 F.3d 195, 218, 225 (2d Cir. 1998) (Weinstein, J., dissenting); Kessler v. Grand Cent. Dist. Mgmt. Ass'n, 158 F.3d 92, 110 (2d Cir. 1998) (Weinstein, J., dissenting); Vargas v. Keane, 86 F.3d 1273, 1281-82 (2d Cir. 1996) (Weinstein, J., concurring).

[22] *See* Judith S. Kaye, *One Judge's View of Academic Law Review Writing*, 39 J. LEGAL EDUC. 313, 319 (1989) (lauding law reviews for their "newest thinking on a subject, for a sense of direction on the law and . . . for a more global yet profound perspective on the law and its social context than any individual case presents").

[23] *Compare* Stanley H. Fuld, *A Judge Looks at the Law Review*, 28 N.Y.U. L. REV. 915, 918 (1953)(admiring law review articles for scholarship, accuracy, and fairness) *with* Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 930 (1990) (lamenting that law review articles are often "overwhelming collections of minutiae, perhaps substantively relevant at some point in time to individual petitioner or two out in the hinterlands - and that almost by chance"). *See generally* Max Stier et al., *Project, Law Review Usage and Suggestions for Improvement: A Survey of Attorneys, Professors, and Judges*, 44 STAN. L. REV. 1467, 1467 (1992) (offering valuable empirical information to debate over utility of law reviews).

[24] In re Agent Orange Prod. Liab. Litig., 597 F. Supp. 740 (E.D.N.Y. 1984).

[25] David Rosenberg, *The Casual Connection in Mass Exposure Cases: A "Public Law" Vision of the Tort System*, 97 HARV. L. REV. 851 (1984).

II. DOES THE LAW SCHOOL CURRICULUM OVER-EMPHASIZE THE ROLE OF COURTS IN THE DEVELOPMENT OF LAW?

Yes, but a simple reliance on legal decisions can force students to miss numerous aspects of the law's operation. First, such an elementary approach obviously fails to acknowledge the fact that most cases do not result in a final decision by judge or jury but instead are settled.[26] Second, it ignores the importance of legislation and socioeconomic factors, which are at least as important in analyzing the law and determining what it should be. Law students should not too readily rely upon the courts as the answer for all problems.

Finally, simply looking at case law can lead students to forget that these cases involved real people with legitimate disputes. As Cardozo reminded us, every case must be decided in light of changing sociology, technology, economics, and politics.[27] If we simply read a case in the belief that it stands for universal principles without understanding the situation that produced it, we will miss critical functions of the law and the framework within which it operates.

Now for my grades on the different facets of legal education.

Problems-solving: how are you teaching problem-solving? By problem-solving, I think you mean legal problem-solving, not so much the solving of questions of institutions and people in real society, a very important difference question. As to the solving of problems legal, "A", great.

[26] *See* Samuel R. Gross & Kent D. Syverd, *Don't Try: Civil Jury Verdicts in a System Geared to Settlement*, 44 UCLA L. REV. 1, 2-3 (1996) (noting that vast majority of law suits filed in America settle and those that do not settle, most are dismissed by plaintiffs or by judges and only small percentage of cases are actually tried); Peter H. Scheck, *The Role of the Judge in Settling Complex Cases: The Agent Orange Example*, 53 U. CHI. L. REV. 337, 337 (1986) (observing that most cases settle before trial or before verdict is reached if case has made it to trial); *see also* Mark Galanter & Mia Cahill, *"Most Cases Settle": Judicial Promotion and Regulation of Settlements*, 46 STAN. L. REV. 1339 (1994) (examining current understanding of phrase "most cases settle"); Judith Resnick, *Whose Judgment? Vacating Judgments, Preferences for Settlement, and the Role of Adjudication at the Close of the Twentieth Century*, 41 UCLA L. REV. 1471, 1529 (1994)(noting trial and appellate judges' support of settlement as central component of judicial process).

[27] *See* G. Edward White, *The American Law Institute and the Triumph of Modernist Jurisprudence*, 15 L. & HIST. REV. 1, 25 (1997) (noting Cardozo's role in early twentieth century jurisprudence); *see also* John Veilleux, *The Scientific Model in Law*, 75 GEO. L.J. 1967, 1979 (1987) (commenting on Cardozo's scientific approach analyzing legal issues). *See generally* John C. P. Goldberg, *Community and the Common Law Judge: Reconstructing Cardozo's Theoretical Writings*, 65 N.Y.U. L. REV. 1324, 1355 (1990) (discussing sociology as judicial method).

Legal analysis and reasoning: Very good. This is what you have done traditionally and still do exceptionally well, "A-".

Legal research: Excellent, "A". With the use of the computers and the like, you can get the necessary legal materials to us and do your research in a jiffy. We have wonderful law clerks that are fabulous at getting this material. I say, "There is a case, I think it was about three years ago, on the issue of copyright and it involved somebody with a name beginning with A, and I think it may have been written by the 9th Circuit." In a moment my law clerk tells me, "It was written twenty years ago by you. And here it is." It is startling to realize what you learn here at law school in the first few weeks, and months, and years. It sticks with you and is the foundation of your legal careers. The basic principles and the way of handling of them are critical to your professional work.

Factual investigation: I have to give you a "C-". You are not trained well. This skill is very difficult to teach. Some instruction is possible in evidence or trial practice courses. In other courses we can open the student's mind, but this is a hands-on problem. You have to at least know what the tools are. Many of you will learn fact-ferreting later.

Communication: By communication, we mean brief writing. We mean speaking. We mean the formal transfer of information that lawyers use. We also mean speaking person-to-person, which is somewhat more difficult. I would have to give you somewhere between a "C+" and a "B-" for your writing, and a "B" for your speaking. You are not as bad as some say you are. The written materials I get are generally excellent. The oral communication skills of many of you are quite good. The "people skills" are poor because we do not try to do very much with them except in some of our seminars or clinics where the students work with people out in the field. This aspect of your work is critical. How you deal with other people, how you bring people together is essential for success. A major part of problem-solving does not necessarily embody legal analysis and reasoning, but an ability to communicate, to understand how people in our enormously diverse society live and think and react with each other, and to learn how to bring them together.

Negotiation skills: I am giving you a "C+" on that. The law schools are doing more with mediation in their labor courses and other courses.[28]

[28] *See* Sid Lezak, *Department: Parting thoughts: The Evolution of Mediation*, 60 OR. ST. B.

Formal Alternate Dispute Resolution, ADR, and mediation are things that are more and more relied upon in resolving legal disputes.[29] Adjudication in the courts is often too expensive.[30] It is generally all or nothing. What we are interested in is settling disputes, terminating disagreements leaving parties as satisfied as we can leave them. The legal system's formal litigation process often does not do that.[31]

Organization and Management: this skill is very important as we develop large law firms, as we integrate with the banks, as we integrate with the various accounting firms, as we deal with law firms all over the world in our global economy.[32] It is very difficult to teach, but it needs to be done. I gave you a "C+" on that one.

BULL., 70, 70 (2000) (discussing article which encouraged law schools to begin pilot programs to teach alternative dispute resolution and mediation); *see also* Mike Jay Garcia, *Key Trends in the Legal Profession*, 71 FLA. B.J. 16, 16 (1997) (noting trend that law schools are offering skills training courses); William Serrin, *Mediation Is Taught as Alternative to Courts*, N.Y. TIMES, Oct. 6, 1985, at 43 (pointing to growing movement of teaching negotiation skills in law schools). *See generally* Elizabeth M. Fowler, *Negotiators in Demand*, N.Y. TIMES, Oct. 22, 1985, at D28 (commenting that arbitration and mediation are being taught in law schools).

29 *See* Terence Shaw, *Mediation 'Set to Increase'*, DAILY TELEGRAPH (LONDON), Oct. 29, 1996, at 10 (noting increased use of mediation to resolve civil disputes); *see also* Bobbi Nodell, *Legal Conflicts Avoid Courtrooms as Alternatives Grow In Popularity*, LOS ANGELES BUS. J., Sept. 21, 1992, at 38 (noting trend in using alternate dispute resolution). *See generally New Alternative Dispute Resource Illuminates Key Mediation Issues*, BUS. WIRE, Sept. 17, 1998 (noting ABA handbook teaches principles of alternate dispute resolution). *But see* Cathy A. Constantino, *Resolving Disputes*, HARV. BUS. REV., July/Aug. 1994, at 144 (noting that ADR is not appropriate in all cases).

30 *See* Judith Resnik, *Many Doors? Closing Doors? Alternative Dispute Resolution and Adjudication*, 10 OHIO ST. J. ON DISP. RESOL. 211, 213 (1995) (stating that lawyers and judges complain adjudication is costly and time consuming); *see also* Kevin C. McMunigal, *The Costs of Settlement: The Impact of Scarcity of Adjudication on Litigating Lawyers*, 37 UCLA L. REV 833, 881 (1990) (arguing that ADR may make settlement more fair and less costly). *See generally* Richard Delgado, *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359, 1366 (1985) (arguing that people who cannot afford expense of traditional litigation can bring their dispute to ADR forum).

31 *See* Michael E. Weinzierl, *Wisconsin's New Court-Ordered Law: Why It Is Needed and Its Potential for Success*, 78 MARQ. L. REV. 583, 588 (1995) (commenting that parties can preserve relationships after settlement); *see also* Deborah R. Hensler, *National Mass Tort Conference: A Glass Half Full, A Glass Half Empty: The Use of Alternative Dispute Resolution in Mass Personal Injury Litigation*, 73 TEX. L. REV. 1587, 1593-94 (1995) (stating that ADR gives parties more control over proceedings, which tends to increase overall satisfaction); Paul Marcotte, *(Can't Get No) Satisfaction?: Study: Clients Focus More on Process, Less On Results*, 74 A.B.A. J. 28, 28 (1988) (noting concerns of fairness of ADR process). *See generally* Eric Anderson, *Arbitration Is Not Just for Baseball Players Anymore*, BUS. CREDIT, Mar. 1992, at 6 (arguing that ADR allows parties to settle amicably and resume business relationship).

32 *See* Mark H. McCormack, *Negotiating the Right Way Is a Skill Worth Teaching*, ARIZ. BUS. GAZETTE, Aug. 19, 1999, at 4 (arguing that negotiation skills must be taught for organizations to survive); *see also* Judith Schoolman, *Negotiating Skills Invaluable to Learn*, CHICAGO SUN TIMES, Oct. 22, 1993, at 48 (noting importance of negotiation skills for women in world of business); *see, e.g.*, Leonard L. Riskin, *Disseminating the Missouri Plan to Integrate Dispute Resolution into Standard Law School Courses: A Report on a Collaboration with Six Law Schools*, 1998 FLA. L. REV. 589, 591-94 (discussing typical calendar for first-year dispute resolution class).

Resolving Ethical Dilemmas: the courses are fairly good, but they tend to be bland and dry. Here you get a "B." It is very hard to duplicate in law school a problem where your gut is wrenched by a dilemma that involves matters of life, matters of your own professional future and the like. The law schools are doing better and better with this subject.

I have added another category based on what Judge Noonan and Judge Bellacosa referred to. It is the reason I hold both of them in such high esteem.

Advocacy for the Disadvantaged: here I can not give you more than a "B-". How are we advocating? Do we know how? We work pro bono not only on individual cases, but also with related institutions. We are unable to make available legal resources to many of the poor because legislatures have limited funds for legal services.[33] Our own State Legislature provides minuscule fees for those representing the poor.[34] Capital cases are prosecuted all over the country where the defense lawyers are getting so little[35] that they can give almost no time to the case. To the credit of New York our capital defenders are well financed.[36] Poor representation elsewhere puts the lines of the

[33] *See* Laurence E. Norton, II, *Not Too Much Justice for the Poor*, 101 DICK. L. REV. 601, 609 (1997) (arguing that state legislatures impose restrictions on poor person's ability to gain access to justice); *see also* Lisa Brennan, *Pa. Legal Services Fund Cut*, LEGAL INTELLIGENCER, June 20, 1994, at 1 (detailing budget cut for low-income Pennsylvania residents); *see, e.g., Legal Disservice*, ST. PETERSBURG TIMES, Aug. 12, 1998, at 10A (noting that Florida House of Representatives voted to reduce public funding for legal services for poor persons). *But see Measure to Provide Legal Services to Poor Wins Final Approval*, BALT. SUN, Apr. 9, 1998, at 10B (stating Maryland State Assembly approved plan to increase funding to agencies that provide legal services to poor persons).

[34] *See NYCLA Urges Support for Plan to Help Fund Legal Services for Poor*, METRO. CORP. COUNS., Apr. 1999, at 49 (noting New York County Lawyers Association proposal to amend Abandoned Property Law to create source of funding for legal services for poor persons); *see also* Matthew Goldstein, *Attorney Registration Fee Hike Proposed to Fund Legal Services*, N.Y. L.J., Nov. 5, 1996, at 1 (discussing New York City Bar Association's initiatives to fund legal services programs after budget cuts). *But see* David S. Udell, *Implications of the Legal Struggles for Other Government Grants for Lawyering for Poor*, 25 FORDHAM URB. L.J. 895, 895 n.2 (1998) (noting that New York Legal Aid Society declined funds in reaction to legislative restrictions on lawyers' activities while representing indigent clients).

[35] *See Panel Discussion: The Death Penalty of Fairness? Counsel Competency and Due Process in Death Penalty Cases*, 31 HOUS. L. REV. 1105, 1108 (1994) (noting that lawyers on capital defense cases earns on average $50 per hour); *see also* Douglas W. Vick, *Poorhouse Justice: Underfunded Indigent Defense Services and Arbitrary Death Sentences*, 43 BUFF. L. REV. 329, 380 (1995) (noting effects of resource deprivation). *See generally* Stephen B. Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer*, 103 YALE L.J. 1835, 1848 (1994) (arguing that because of inadequate compensation, defendants in capital cases receive inadequate representation).

[36] *See* Sara Rimer, *Questions of Death Row Justice for Poor People in Alabama*, N.Y. TIMES, Mar. 1, 2000, at A1 (finding New York as one of few states that has multimillion-dollar capital defender offices); *see also Prepared Testimony of Stephen B. Bright Director Southern Center For Human Rights Lecturer, Yale, Harvard and Emory Law Schools Before the House Judiciary Committee*

innocent at stake—a tragedy for the legal profession.

How we advocate, how we train our people, how we encourage our young students who come to us fresh and full of desire to help and do well for society, how we prevent them from being pressure-cooked with the love for their fellow human beings pressed out of them is, for me, the 11th, but most important question.

Fortunately, you at St. John's have, as role models, professors we all look to as guides to do the right thing, to practice in the Grand Tradition. From Cyprus you look very good.

Subcommittee on Crime, FED. NEWS SERV., June 20, 2000 (noting that New York, unlike most states, has both public and capital defender offices). *See generally The Case Against the Death Penalty*, PROGRESSIVE, Feb. 1, 2000, at 8 (claiming most capital defendants do not have funds to hire prominent attorneys and that majority of prison inmates have taxpayer-financed court-appointed counsel whose competency is questionable).