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.