

## GETTING THE “STORY” OUT: TEACHING ADMIRALTY AT THE UNIVERSITY OF WASHINGTON

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### INTRODUCTION

I count myself fortunate indeed to be a law teacher and to have the privilege of teaching admiralty to the next generation of attorneys. My good fortune is compounded by the fact that I teach admiralty (and several other maritime law courses) at the University of Washington, a major research university with a complementary graduate level School of Marine Affairs. There is no finer venue for studying maritime law than the state of Washington. By any measure, Washington is among the most “marine” and most trade-dependent states in the nation, and it has long been home to a distinguished maritime bench and bar.

The University of Washington’s Seattle campus borders Lake Washington and the ship channel connecting Lake Washington to Lake Union and Puget Sound. For a fair number of our students, the daily commute to campus includes a brisk ride across Puget Sound on a state ferry belonging to the largest fleet of ferries in the nation. The university’s law school enrolls well over 500 J.D. students, along with more than 100 graduate (LL.M. and Ph.D.) students.<sup>1</sup> At one time, the Law School and School of Marine Affairs offered an interdisciplinary LL.M. in Law and Marine Affairs; however, declining enrollments and difficulties in finding suitable placement opportunities for the

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1. UNIV. OF WASH., GRADUATE ENROLLMENT SUMMARY-AUTUMN 2010 (2010), available at <http://www.grad.washington.edu/about/statistics/admissions/admissions10.pdf>; *About the UW School of Law*, UNIV. OF WASH. SCH. OF LAW, <http://www.law.washington.edu/about/> (last visited Feb. 23, 2011); see also UNIV. OF WASH., GRADUATE SCHOOL REPORT NO. 1, APPLICATIONS, ENROLLMENT, DEGREES 3 (2010), available at <http://www.grad.washington.edu/about/reports/gsreport1-jan2010.pdf> (showing that 2% of all graduate enrollment is in law).

program's graduates led the university to suspend the program in 2001.<sup>2</sup> Marine-minded students may, however, still enroll in a four-year joint degree program that leads to a J.D. degree and a master's degree in Marine Affairs.<sup>3</sup> The university recently established a College of the Environment (COE), and the School of Marine Affairs migrated to the COE from its former berth in the College of Ocean and Fisheries Science. My teaching has long supported programs in both the law and marine affairs schools. In addition to Admiralty and Maritime Law (and a broad variety of core and high-enrollment courses), I offer courses in International Law of the Sea, United States Ocean and Coastal Law, and a research seminar in Marine Law and Policy. Lately, the call for faculty to increase their contributions to the school's core and high-enrollment courses has forced me to rotate my marine law courses from year-to-year.<sup>4</sup>

### I. ADMIRALTY TEACHING GOALS AND LEARNING OBJECTIVES

University of Washington policy requires any course proposal and syllabus to include a course overview, the course learning goals and objectives, and a description of the method that will be used for student evaluation and grading.<sup>5</sup> The title of my course at our law school is Admiralty and Maritime Law, indicating that it incorporates aspects of both of these cognate and overlapping fields.<sup>6</sup> Admittedly, the course emphasizes private and not public law (to the extent those classifications still have meaning); however, public law questions frequently arise, drawing students into my International Law of the Sea and United States Ocean and Coastal Law courses. My admiralty course necessarily emphasizes United States law; however, international and foreign

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2. In response to inquiries regarding graduate programs in the "private" law of admiralty, I generally steer students to Tulane University Law School.

3. See *Degree Program*, UNIV. OF WASH. SCH. OF LAW, <http://www.law.washington.edu/Students/Academics/Concurrent.aspx> (last visited Feb. 23, 2011). Joint degree programs like the one leading to the J.D. and MMA degrees are one of the principal arguments made against the occasional proposals to put the law school on a semester system.

4. One would think that J.D. enrollments would be increased by offering upper level courses like admiralty every other year (combining 2Ls and 3Ls into a single offering), but the data indicate that enrollments actually decrease. See Joel K. Goldstein, *Reconceptualizing Admiralty: A Pedagogical Approach*, 29 J. MAR. L. & COM. 625, 635 n.78 (1998) (quoting Robert Jarvis, *Doctrinal Choices in the Teaching of Admiralty Law*, 6 BRIDGEPORT L. REV. 431, 432 n.6 (1985)).

5. *Curriculum Modification Procedures: Changes to Course Titles, Descriptions, & Credit Loads*, UNIV. OF WASH. SCH. OF LAW, <http://www.law.washington.edu/Students/Academics/Curriculum.aspx> (last visited Feb. 23, 2011).

6. In Justice Story's scholarly opinion in *De Lovio v. Boit*, one rationale the ardent Federalist offered in support of a broad construction of the Admiralty and Maritime Jurisdiction Clause in Article III of the Constitution was that it "not only confers admiralty jurisdiction, but the word 'maritime' is superadded, seemingly ex industria, to remove every latent doubt." *De Lovio v. Boit*, 7 F. Cas. 418, 442 (C.C.D. Mass. 1815) (No. 3776).

law frequently intervene, in spite of our nation's longstanding reluctance to become party to many of the relevant international conventions on maritime law.

For most law students, "admiralty" probably sounds like an obscure and esoteric subject of little relevance to a twenty-first century practice of law. To overcome common misconceptions about the course, I take particular care in describing it while teaching my other courses and in drafting entries for the various course information sources used by the school. When called to duty in constitutional law, torts, or civil procedure, I will often seize upon an opinion by Learned Hand, O.W. Holmes, Jr., or admiralty's early champion, Joseph Story, to get the unique admiralty "story" out to students.<sup>7</sup>

One of the course's selling points at the University of Washington is that admiralty often finds its way into the practice of Washington attorneys who do not specialize in admiralty. As a result, admiralty at the University of Washington is a course for both those who aspire to specialize in maritime law (the future "proctors" in admiralty) and the generalist looking to gain exposure to a regionally important area of law in a setting that is rich in history, relevance, and well, romanticism. It is designed to appeal to students interested in either the dispute resolution track (litigation and arbitration) or the transactions track. For the latter group, the planning aspects of charter parties, bills of lading, and the varieties of marine insurance, as well as forum selection and choice of law issues, are appealing. Finally, admiralty is an important area of federal court practice, and I encourage students aspiring to serve as federal court clerks to enroll in the course.<sup>8</sup>

7. In addition to Justice Story's circuit court decision in *De Lovio*, 7 F. Cas. at 418, most admiralty students read excerpts of his frequently-cited (though anachronistic) rationale for admiralty's special solicitude for seamen in *Harden v. Gordon*, 11 F. Cas. 480, 484 (C.C.D. Me. 1823) (No. 6047). Story's much-maligned decision for the Supreme Court in *Swift v. Tyson* is reexamined and assessed in the course of studying the leading maritime federalism cases. The editors of the casebook I use highlight the fact that Story quoted Cicero's *De Re Publica* ("There will not be different laws at Rome and at Athens . . .") in both *Swift* and *De Lovio*. NICHOLAS J. HEALY, DAVID J. SHARPE & DAVID B. SHARPE, *CASES AND MATERIALS ON ADMIRALTY* 12 n.15 (4th ed. 2006).

8. Because many of the top-tier law schools no longer offer an admiralty course, and graduates of those same schools often go on to serve as federal court clerks, it follows that many (most?) of today's federal court clerks were denied the benefits of an admiralty course before beginning their clerkship. See Steven R. Swanson, *A Survey of Admiralty Offerings in United States Law Schools*, 29 J. MAR. L. & COM. 657 (1998) (noting that as of Fall 1997, more than one-third of ABA accredited law schools do not teach admiralty); see also Goldstein, *supra* note 4 at 630 ("Many of the most highly-rated American law schools do not offer admiralty. Do not look for the course at Harvard University, for example, or at Stanford University, the University of California, the University of Chicago, the University of Michigan, the University of Pennsylvania, or Yale University. Because the elite schools exercise substantial influence, admiralty's relative absence there hurts.")

## II. ADMIRALTY AS A “MASTERY COURSE”

I first taught admiralty in 1995 as a three-credit (quarter system) course. In response to student concerns that the time allocated to the course was inadequate for the materials covered, I expanded it to four credits. Unfortunately, enrollments quickly dropped off, perhaps indicating that some otherwise interested students were unwilling to invest four hours in admiralty. In 2005, I returned to the three-hour syllabus and, moved in part by an earlier article by Professor Joel Goldstein,<sup>9</sup> reconfigured it to qualify as a “mastery” course. At the University of Washington, mastery courses differ from most other courses in that student assessments are made against specified learning objectives. A student who demonstrates a “mastery” of all of the learning objectives receives an ‘A’ in the course, without regard to the mandatory grading curve applicable in other courses. Students demonstrate their mastery by completing weekly written exercises, which we review in class, and a comprehensive final problem. To facilitate the mastery approach in a three-credit course, I alternate my year-to-year coverage emphasis between cargo liability and maritime personal injury.

My course has no prerequisites beyond the mandatory first-year courses.<sup>10</sup> Students who have taken our upper division courses in advanced civil procedure, federal courts, conflict of laws, or international civil litigation and arbitration likely have an advantage, but students fresh out of their first-year courses can and do excel in the course without the additional course work. Beyond demonstrating their mastery of admiralty, my students frequently comment that the course and the final problem helped them to clarify a number of legal issues they first encountered in torts, contracts, civil procedure, and constitutional law. For many students, admiralty also whetted their appetite to gain a better understanding of federal courts, commercial arbitration, conflict of laws, remedies, and insurance law. For third-year students it also serves as a timely tune-up in preparation for the bar exam.

The final problem is comprehensive, heavy on context, and written to serve the substantive-procedural “integration” goal of the course.<sup>11</sup> To complete it,

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Goldstein, *supra* note 4, at 630.

9. Goldstein, *supra* note 4.

10. This generally precludes non-law students from enrolling in the course for credit. Over the years, several School of Marine Affairs students have audited the course. Although they might struggle with some of the jurisdiction, civil procedure, and torts issues raised in the course, they often have a much better grasp on the maritime context than the law students. In the end, all of the marine affairs students who audited the course later indicated that the knowledge they gained enriched their understanding of marine trade and transportation and the role of law.

11. Professor Goldstein identifies three “advantages” of admiralty: it cuts across a number of legal subjects, it is an excellent review of other courses, and it provides context for students to apply procedural and substantive law doctrines in an integrated manner. Goldstein, *supra* note 4, at 636–40.

the students must exercise both reason and judgment. Forum and remedies elections must be made. In making the elections, students must confront much of the conventional thinking about the merits of the jury trial system. In answering the questions (typically around thirty), students are encouraged to adhere to the IRAC method, taking each question as the major "issue," and clearly stating the applicable rule or rules before turning to their analysis. The scope of the problem is taken directly from the course learning goals and spans virtually all of the casebook chapters we have covered. Although professional responsibility is not a prerequisite, I enrich the context of the final problem with ethical dilemmas presented as considerations but not questions.

### III. COURSE STRUCTURE AND DELIVERY

Any teacher considering admiralty as a course offering would do well to study Professor Goldstein's superb 1998 article on the subject.<sup>12</sup> He makes a compelling case for offering the course and—citing examples such as Justice O.W. Holmes, Jr. (as a Harvard faculty member), Professors Charles Black and Grant Gilmore, and even Assistant Professor (later President) William Jefferson Clinton—demonstrates why it might appeal even to faculty who would not count themselves as a specialist in the subject.<sup>13</sup> His contribution to the academy is mainly in giving voice to the reasons *why* admiralty should be taught in our law schools. My purpose here is to address the next step: one teacher's approach to *how* the course can be effectively taught. Whether configured as an ordinary lecture-exam course or a mastery course, a number of decisions must be made, beginning with the teaching materials. Because time is inevitably limited, particularly for those of us who labor under the quarter system, decisions must be made regarding breadth and depth of coverage, thematic emphasis, and methodology.

Over the years I have used several different casebooks to teach the course, eventually settling on the West<sup>®</sup> casebook<sup>14</sup> by the late Nicholas Healy (the dean of admiralty for much of the twentieth century) and George Washington University emeritus professor David J. Sharpe (Professor Sharpe's son recently joined his father on the book). Despite substantial changes in recent editions, which included elimination of the chapter on marine pollution,<sup>15</sup> the book

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12. Goldstein, *supra* note 4.

13. *Id.* at 648–49.

14. HEALY, SHARPE & SHARPE, *supra* note 7. I also require students to purchase the companion, NICHOLAS J. HEALY, DAVID J. SHARPE & DAVID B. SHARPE, HANDBOOK OF MARITIME LAWS AND FORMS (2007).

15. Regrettably, the West<sup>®</sup> casebook I use in the companion course in United States Ocean and Coastal Law has also reduced its coverage of oil and hazardous substances spills in coastal laws, which now consists of just an eight page reprint of a ten-year-old journal article. JOSEPH J. KALO ET AL., COASTAL & OCEAN LAW (3d ed. 2007). As a result, neither book adequately addresses pollution liability.

retains its distinctively salty and context-rich quality. Each year, I also prepare a packet of supplemental materials, both to provide regional context and to emphasize particular themes.

To support students in completing the required exercises and the final problem, the law library puts a number of reference materials on course reserve for the students. Typically, those include the Gilmore and Black<sup>16</sup> and Schoenbaum<sup>17</sup> treatises, the *Admiralty Anthology*<sup>18</sup> compiled by Robert Jarvis, James Buckley's *The Business of Shipping*,<sup>19</sup> Buglass's *Marine Insurance and General Average*,<sup>20</sup> and Charles Davis's *Maritime Law Deskbook*,<sup>21</sup> which emphasizes cases from the Ninth Circuit, where most of my students will practice. Students are encouraged to sign up for the Westlaw<sup>®</sup> Maritime Law Highlights service (WTH-MRT database) and to find their way to the library's multi-volume *Benedict on Admiralty* treatise and the *American Maritime Cases* reporter. Early in the course, students receive a presentation on admiralty law research methods and sources from one of the law school's expert reference librarians. Before the presentation, students are asked to review the law library's admiralty and maritime law research guide and the problem narrative that will be the focus of the research presentation. Using the problem handout, the reference librarian takes the students through the online and paper materials listed in the reference guide. Student teams are then asked to review several of the listed sources and report their findings on the strengths and weaknesses of each to the rest of the class.

#### IV. DEMONSTRATING THE UNIQUENESS OF ADMIRALTY

"In teaching the admiralty course each year I begin by highlighting what it is that makes admiralty law unique"<sup>22</sup> and worth a three-credit hour investment at a time when more "trendy" courses beckon from the law school catalog. The first week begins with the necessary context, including a brief description of vessel types, maritime trade patterns and practices, and nautical terminology. We then survey admiralty's origins, its emphasis on resolving disputes with dispatch, and its quest for a set of uniform substantive rules. The students soon learn to be alert to admiralty's capacity to displace conflicting

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16. GRANT GILMORE & CHARLES L. BLACK, JR., *THE LAW OF ADMIRALTY* (2d ed. 1975).

17. THOMAS J. SCHOENBAUM, *ADMIRALTY & MARITIME LAW* (4th ed. 2004).

18. *AN ADMIRALTY LAW ANTHOLOGY* (Robert M. Jarvis ed., 1995).

19. JAMES J. BUCKLEY, *THE BUSINESS OF SHIPPING* (8th ed. 2008). This book provides excellent coverage of shipping terminology and the tramp and liner shipping practices.

20. LESLIE J. BUGLASS, *MARINE INSURANCE AND GENERAL AVERAGE IN THE UNITED STATES: AN AVERAGE ADJUSTER'S VIEWPOINT* (3d ed. 1991).

21. CHARLES M. DAVIS, *MARITIME LAW DESKBOOK* (8th ed. 2010).

22. Craig H. Allen, *Admiralty Law in Washington, Not Just for the Specialist*, WASH. ST. BAR NEWS, Feb. 2005, at 18, available at <http://www.wsba.org/media/publications/barnews/2005/feb-05-allen.htm>.

rules of state law for claims falling within admiralty and maritime jurisdiction. We then turn to the substantive and procedural aspects of admiralty, where students learn that, although international treaties and federal statutes comprise a significant part of the substantive maritime law, much of that law is judge-made "general maritime law."

Students frequently confront the maritime federalism issues that have vexed many a judge and practitioner since the nation's founding. My supplemental materials include *Federalist No. 80*, in which Alexander Hamilton famously reports that even:

The most bigoted idolizers of State authority have not thus far shown a disposition to deny the national judiciary the cognizance of maritime causes. These so generally depend on the laws of nations and so commonly affect the rights of foreigners that they fall within the considerations which are relative to the public peace.<sup>23</sup>

Students learn that the principal reason for placing admiralty jurisdiction in the federal courts was to promote uniformity. The need for uniformity in maritime law is no less compelling today than in 1789.<sup>24</sup> In 2004, the United States Supreme Court found admiralty jurisdiction in a case involving a claim arising out of damage to cargo while being transported by rail:

[E]mphasize that, at bottom, this is a diversity case involving tort and contract claims arising out of a rail accident somewhere between Savannah and Huntsville. We think, however, borrowing from Justice Harlan, that "the situation presented here has a more genuinely salty flavor than that."<sup>25</sup>

The Court explicitly intended the decision to "protect[] the uniformity of federal maritime law."<sup>26</sup>

By the end of week two students are ready for the Silver Oar.<sup>27</sup> As I described in an earlier piece, for much of our nation's history:

[I]t was common to distinguish a federal court's "law side" from its "admiralty side" (and "equity side"). Tradition has it that when some early federal courts were exercising admiralty jurisdiction, the bailiff would signal the court's status by preceding the judge into the courtroom waving a silver oar above the judge's head. The oar was then placed in a cradle below the judge's bench, where it remained while the court was in session. Long after the courts

23. THE FEDERALIST NO. 80 at 477 (Alexander Hamilton) (Clinton Rossiter ed., 2003).

24. Allen, *supra* note 22.

25. *Norfolk S. Ry. Co. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14, 22 (2004) (quoting *Kossick v. United Fruit Co.*, 365 U.S. 731, 742 (1961)).

26. *Id.* at 29.

27. See generally Brainerd Currie, *The Silver Oar and All That: A Study of the Romero Case*, 27 U. CHI. L. REV. 1 (1959); Joseph C. Sweeney, *The Silver Oar and Other Maces of the Admiralty: Admiralty Jurisdiction in America and the British Empire*, 38 J. MAR. L. & COM. 159 (2007).

abandoned the ceremony, judges who display what Justice Harlan might have called a “genuinely salty flavor” are still honored by the admiralty bar for their contributions to field. In 1973, for example, the admiralty bar for the Western District of Washington presented the court’s nationally renowned admiralty judge, William Beeks, with a replica of the silver oar. The oar now rests in a place of honor in the chambers of the court’s chief judge, Robert Lasnik.

Since the Federal Rules of Civil Procedure (FRCP) were unified in 1966, the distinction between the civil and admiralty “sides” is no longer accurate. Even after unification, however, FRCP 9(h) preserves many of the unique remedies available only in admiralty cases. These include the *in rem* action against vessels and cargoes and a powerful maritime attachment rule that is available when the defendant cannot be found within the district. One of admiralty’s best-known features is the bench trial. When a case is brought under the federal court’s admiralty jurisdiction, there is no [constitutional] right to a jury. The Seventh Amendment’s preservation of the right to a jury trial only in “suits at *common law*” confirms this. Increasingly, however, maritime disputes are resolved through arbitration, mostly in New York or London. As the number of maritime contracts, charter parties, and ocean bills of lading with mandatory arbitration clauses grows, fewer admiralty cases are finding their way into court.<sup>28</sup>

#### V. DEMONSTRATING THE UNIQUENESS OF ADMIRALTY OUTSIDE OF THE SPECIALTY

The best teachers are shameless re-enforcers: they are ever alert for an opportunity to reinforce prior learning. Admiralty presents numerous opportunities to reinforce or clarify first year subjects. As I articulated in my previous essay, in fact:

Many law students are surprised to learn how much “admiralty” they already know from first-year courses. In contracts, students discovered there could be no “meeting of the minds” on the delivery of a cotton shipment if the parties each had in mind a different ship named the *Peerless*. In torts, they learned Judge Learned Hand’s celebrated algebraic formula for determining negligence, which he set out in an admiralty case involving a moored barge. And many studied the case involving the storm-tossed tug *T.J. Hooper*, in which Judge Hand explained why custom does not conclusively establish the standard of care for an industry. Some of the leading cases on proximate causation are admiralty cases, including the *Wagon Mound I* and *II* cases found in many torts casebooks, and the case of George Steinbrenner’s breakaway barge that triggered a massive flood on the Buffalo River at issue in *Kinsman Transit Co.* In Civil Procedure, students study the enforceability of forum selection clauses in *The Bremen v. Zapata Off-Shore Co.* and *Carnival Cruise Lines, Inc. v. Shute* (a case originally filed in Seattle). One of the leading

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28. Allen, *supra* note 22 (internal citations omitted) (emphasis added).



transnational choice of law decisions, *Lauritzen v. Larsen*, arose out of a personal-injury action by a foreign seaman.<sup>29</sup>

My students hear—they might say a bit too often—that admiralty courts have often led the way in the progressive development of the law. They were, for example, “among the first to abandon the rule of pure contributory negligence in favor of comparative fault principles and the arcane distinctions between the duties owed by property owners to invitees, licensees, and trespassers.”<sup>30</sup>

## VI. REPRISING CALABRESI

Most law students are introduced to Guido Calabresi’s *The Costs of Accidents*<sup>31</sup> in their first-year torts class. Most of them emerge from that introduction with a basic understanding of the general and specific deterrence approaches to maritime accidents.<sup>32</sup> Shipping is a heavily regulated industry, with a complex liability regime that is the product of international convention, domestic legislation, and judge-made general maritime law. Admiralty students are therefore given numerous opportunities to consider the interplay between the regulatory “specific deterrence” approach and the liability-based “general deterrence” approach to preventing accidents and reducing their costs.<sup>33</sup> The interplay of the two approaches can be forcefully presented by admiralty’s “Pennsylvania Rule,” which takes the negligence per se doctrine from torts one step further by according a strong, but theoretically rebuttable, presumption of causation to certain statutory violations by a tortfeasor.<sup>34</sup>

The final problem in the mastery version of my course requires the students to consider the regulatory dimensions of a collision or allision case. Their attention is called to the requirements for post-casualty drug and alcohol testing and the possibility that the involved mariners may face an Administrative Procedures Act-controlled agency adjudication before an administrative law judge, which might lead to suspension or revocation of their

29. *Id.* (internal citations omitted) (emphasis added).

30. *Id.* (internal citations omitted).

31. GUIDO CALABRESI, *THE COSTS OF ACCIDENTS: A LEGAL AND ECONOMIC ANALYSIS* (4th prtg. 1975).

32. *See id.* at 68–129. This page range includes chapters 5 and 6, which discuss primary accident cost avoidance.

33. *Id.*

34. In *The Pennsylvania v. The Mary Troop* (usually shortened to *The Pennsylvania*), the U.S. Supreme Court imposed the following presumption:

[W]hen, as in this case, a ship at the time of a collision is in actual violation of a statutory rule intended to prevent collisions, it is no more than a reasonable presumption that the fault, if not the sole cause, was at least a contributory cause of the disaster. In such a case the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been.

86 U.S. (19 Wall.) 125, 136 (1873).

professional license. Students may also receive extra credit on their problem for completing the Coast Guard's accident reporting form,<sup>35</sup> and they are introduced to the remedial nature of marine casualty investigations, the use of administrative subpoenas, and the admissibility of marine casualty investigation reports in related admiralty litigation.

#### VII. USING ADMIRALTY TO DEMONSTRATE THAT CHOICE OF LAW MATTERS

A recurring theme in our increasingly interstate and transnational legal practice is that choice of law matters, and admiralty provides one of the best opportunities to demonstrate conflict of laws principles (both horizontal and vertical) and their consequences to second- and third-year law students. Most students who enroll in the course have already allided with the *Erie* choice of law doctrine<sup>36</sup> during their first-year civil procedure course. Few understood it then; fewer still are anxious at first to revisit it in admiralty. Once the initial hesitation is overcome, however, they are quickly disabused of one persistent *Erie* myth: That federal judges lack the power to fashion rules through the common law method. The United States Supreme Court's decision in *East River Steamship Corp. v. Transamerica Delaval, Inc.*<sup>37</sup> is an excellent vehicle to demonstrate the continuing role (and legitimacy) of federal judge-made law to students fresh from a first-year study of the evolution of the common law of product liability.

In admiralty, students also come to appreciate the less well-known "inverse-*Erie*" choice of law doctrine.<sup>38</sup> I emphasize the consequences of that doctrine through a supplemental case that arose in Washington. The case, *Stanton v. Bayliner Marine Corp.*, was decided by the Washington Supreme Court in 1993.<sup>39</sup> As I explained in my earlier piece:

The case concerned claims against the manufacturer of two 45-foot yachts that sank after being run aground in separate incidents by their owners. The owners asserted product-liability claims against the manufacturer and distributor, arguing that the yachts were defective in design and construction. The issue on appeal was whether the owners could recover under strict product-liability theory for damage to the product itself (the yachts). Under the Washington Product Liability Act, as construed by the Washington State Supreme Court, the answer was yes. However, under a general maritime law rule established by the U.S. Supreme Court [in *East River Steamship Corp. v. Transamerica Delaval, Inc.*], such recovery is not allowed. Citing the

35. U.S. COAST GUARD, U.S. DEP'T OF HOMELAND SEC., REPORT OF MARINE ACCIDENT, INJURY OR DEATH (CG-2692), available at [http://www.uscg.mil/forms/cg/CG\\_2692.pdf](http://www.uscg.mil/forms/cg/CG_2692.pdf).

36. See *Erie R.R. Co. v. Tompkin*, 304 U.S. 64 (1938).

37. 476 U.S. 858 (1986).

38. See, e.g., *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 628 (1959).

39. 866 P.2d 15 (Wash. 1993).

“reverse-*Erie*” doctrine, and acknowledging the “longstanding desire of Congress and the judiciary to achieve uniformity in the exercise of admiralty jurisdiction,” the Washington Supreme Court [reversed the state court of appeals and held] that the federal maritime law rule controlled the claims, thus barring recovery for damage to the yachts.<sup>40</sup>

#### VIII. SHOWCASING THE ADMIRALTY “BENCH AND BAR”

Both the future maritime specialist and the generalist learn that the admiralty bench and bar has long taken pride in its distinctive practice and reputation for civility. A hundred years ago Judge Alfred Coxe, Sr. of the Second Circuit counseled:

If a student intends to be a specialist—and in the large cities all branches of the law are becoming specialized—there are many reasons which should attract him to the law of the sea. The high character of the admiralty bar, the special training of the judges, the wide range of interesting subjects with which the law deals, the certainty of the judgment being paid which results from the proceedings, in a vast majority of instances, being *in rem*, and the freedom from the delays, disagreements, compromises and miscarriages incident to jury trials, all combine to make this a peculiarly alluring field of endeavor.<sup>41</sup>

Specializing in admiralty has some other advantages as well:

Even when the attorney professional responsibility codes severely limited advertising by lawyers, attorneys who qualified as “proctors” in admiralty were permitted to advertise their qualifications to potential clients. At the national level, the Marine Law Association of the United States (MLA) brings together judges and practitioners with an interest in admiralty, . . . [as well as admiralty professors and students].<sup>42</sup>

Although the demand for admiralty specialists has declined over the past twenty-five years,<sup>43</sup> the MLA directory lists more than fifty law firms in Washington State alone, many of them admiralty boutique firms.<sup>44</sup> “The MLA prides itself on its code of professionalism, and attorneys who practice admiralty often comment that the admiralty bar is among the most civil and professional.”<sup>45</sup>

Each year, the MLA co-sponsors, with the Tulane University and University of Texas law schools, a National Admiralty Moot Court

40. Allen, *supra* note 22 (internal citations omitted) (emphasis added).

41. Alfred C. Coxe, *Admiralty Law*, 8 COLUM. L. REV. 172, 173–74 (1908).

42. Allen, *supra* note 22 (internal citations omitted).

43. See, e.g., Terry Carter, *Admiralty Law Sailing Along Despite Waves*, NAT’L L.J., Jan. 11, 1988, at 1 (noting the last great boom of American shipping occurred in the early 1970s).

44. *Membership*, MAR. LAW ASS’N OF THE U.S., <http://www.mlaus.org/> (follow “Members” hyperlink; then conduct a “Geographical Search (Members) by State,” and select “WA” from dropdown menu) (last visited Feb. 23, 2011).

45. Allen, *supra* note 22.

competition named after famed admiralty (and civil rights) Judge John R. Brown of the United States Court of Appeals for the Fifth Circuit.<sup>46</sup> University of Washington students have participated in several of the annual competitions and the school hosted the event in 2003.<sup>47</sup> The competition problems are meticulously prepared by University of Texas professors David Robertson and Michael Sturley,<sup>48</sup> and the quality of the judges is consistently superb. Our students have always found the experience rewarding. Some of our team members have done surprisingly well in the competition even before they were able to enroll in the admiralty course.

#### CONCLUSION

Admiralty provides a unique and important learning opportunity in our law schools. I am confident that the other contributors to this symposium issue would agree with me in saying that if you are ever presented with an opportunity to teach admiralty you should seize it. My experience in the course persuades me that the investment will enrich your teaching of non-admiralty courses and enhance your appreciation for legal history, international and comparative law, federalism, and the more familiar “core” legal subjects. Some of your students will likely go on to become federal or state court law clerks and, perhaps, judges, legislators, and leading members of the bar. I am convinced that, even if they never see the Silver Oar in its cradle, they will be better lawyers, clerks, judges, or legislators as a result of the time they spent in your admiralty course grappling with the injured seaman’s trilogy of remedies, the saving to suitors clause in 28 U.S.C. § 1333(1), and the FRCP 9(h) election. And, who knows? In teaching admiralty, you just might be preparing yourself to one day occupy the White House.

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46. *Id.*; Michael F. Sturley, *Judge John R. Brown Admiralty Moot Court Competition Winning Brief 2005*, 30 TUL. MAR. L.J. 467, 467 (2006) (noting that the moot court competition is set up to allow for a local host in conjunction with the University of Texas, and that by tradition, the local host is Tulane in even numbered years); *The 2011 Judge John R. Brown Admiralty Moot Court Competition*, UNIV. OF TEX. AT AUSTIN SCH. OF LAW, <http://www.utexas.edu/law/advocacy/admiralty/> (last visited Feb. 23, 2011).

47. Sturley, *supra* note 46, at 467 n.4.

48. *Id.* at 468 n.9.