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## ***Damages: Using a Case Study to Teach Law, Lawyering, and Dispute Resolution***

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## SYMPOSIUM

### ***Damages: Using a Case Study to Teach Law, Lawyering, and Dispute Resolution***

*Melody Richardson Daily, Chris Guthrie & Leonard L. Riskin*

#### I. INTRODUCTION

Legal narratives put flesh on the bones of the eviscerated appellate case reports; they allow us entry into the subjective experiences of the actors (including lawyers, clients, parties, judges, clerks, victims, law enforcers and those affected by the law) and they demonstrate the “aftereffects” or consequences of legal decision-making and action.<sup>1</sup>

One of the primary goals of the Center for the Study of Dispute Resolution (CSDR) at the University of Missouri-Columbia School of Law has been to develop innovative and alternative teaching models that prepare law students to be better, more responsive lawyers and to broaden the philosophical maps (or mental models or mind sets) with which they approach their work.

Although the traditional model of legal education has many virtues, it also has limitations. Among other things, the traditional model places excessive emphasis on appellate court decisions, ignores the methods that most people use to resolve their disputes, disregards the “law in action” by downplaying the way legal regimes affect the people involved, and alienates a significant number of law students.

With funding from the William and Flora Hewlett Foundation,<sup>2</sup> seven law school faculty members<sup>3</sup> and one practicing attorney<sup>4</sup> recently developed and

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1. Carrie Menkel-Meadow, *Forward, Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 *FORDHAM L. REV.* 787, 788 (2000).

2. The grant proposal that made this project possible was written by Chris Guthrie, *infra* note 3, Leonard L. Riskin, *infra* note 3, and James Levin, Associate Director of the Center for the Study of Dispute Resolution, University of Missouri-Columbia.

3. Five of the originators currently teach at the University of Missouri-Columbia School of Law: Melody Richardson Daily, Clinical Professor of Law and Director of Legal Research & Writing; Stephen D. Easton, Associate Professor of Law; Philip G. Peters, Jr., Associate Dean for Faculty

taught a wholly new kind of law course based on an already published case study, *Damages: One Family's Legal Struggles in the World of Medicine*,<sup>5</sup> by Barry Werth, an investigative reporter who spent several years researching to write the book. *Damages*, an in-depth account of a medical malpractice case, presents the perspectives of the injured family, the defendant physician, the lawyers, and the three mediators. In this Introduction, we provide a summary of Werth's book, explain why we decided to create a course based on his book, describe the course (which we have taught twice), and suggest ways that other law schools might use the course materials we developed, which are featured in this symposium.<sup>6</sup>

## II. DAMAGES, THE BOOK

In 1998, Barry Werth published *Damages*. As the subtitle suggests, *Damages* tells the story of one family, Donna and Tony Sabia, and their heroic efforts to care for their son, Little Tony. On March 30, 1984, the nurse-midwife who conducted Donna Sabia's prenatal checkup at the Norwalk Hospital maternity clinic assured Donna that she was doing great. Two days later, Donna gave birth to twin sons. One, Michael James, was stillborn, and the other, Tony John (Little Tony), was severely brain damaged. The attending obstetrician was Dr. Maryellen Humes, who met Donna for the first time in the maternity suite.

Although Little Tony suffered profound disabilities—spastic quadriplegia, cerebral palsy, cortical blindness, grand mal seizures, and severe mental retardation—for two years his parents failed to understand the extent of his injuries and continued to hope that their son's condition would improve. Then, at a summer camp for children with disabilities, Donna met Mary Gay, a mother who had previously sued Humes because of her child's birth injuries. Gay told Donna that she had a responsibility to Little Tony to have an attorney review the case, and she referred Donna to Gay's attorneys, Koskoff, Koskoff & Bieder, the leading plaintiff's medical malpractice firm in Connecticut.

On March 2, 1987, the Koskoff law firm filed suit in the Superior Court in Bridgeport, Connecticut, on behalf of Donna and Little Tony, based on claims of negligence against Norwalk Hospital and Humes. The complaint alleged that Norwalk Hospital was negligent for failing to treat Donna's pregnancy as high-risk, for failing to have adequate procedures for twin pregnancies, and for failing to follow the procedures it did have in place. The complaint also alleged the hos-

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Research & Development and Ruth L. Hulston Professor of Law; Leonard L. Riskin, C.A. Leedy Professor of Law and Isidor Loeb Professor of Law; and Rodney J. Uphoff, Associate Dean for Academic Affairs and Elwood Thomas Missouri Endowed Professor of Law. Two of our colleagues are now at other law schools: Chris Guthrie, Professor of Law, Vanderbilt University Law School; Robert H. Jerry, II, Dean and Levin, Mabie and Levin Professor of Law, University of Florida Levin College of Law.

4. Douglas R. Richmond, Senior Vice President, Aon Risk Services—Professional Services, Chicago, IL.

5. BARRY WERTH, *DAMAGES: ONE FAMILY'S LEGAL STRUGGLES IN THE WORLD OF MEDICINE* (1988).

6. We appreciate the *Journal of Dispute Resolution's* decision to make our course materials available to others by publishing them in this symposium edition. Our special thanks go to the editors of the *Journal*, especially Alyson Carrel, Editor in Chief, whose gentle nudging and excellent editing transformed course materials into articles.

pital was negligent for providing nurse-midwives rather than physicians, for ignoring the fact that the fetal heartbeat was not audible on admission, for delaying the ultrasound and not ordering a C-section, and for not arranging to have a physician attend Donna as soon as she arrived at the hospital. The claim against Humes alleged that because she did not adequately monitor Donna and did not deliver the twins by C-section, she failed to meet the appropriate medical standard of care.

In reality, neither side knew the precise cause of Little Tony's condition, nor whether Humes or the hospital employees could have done anything to prevent the tragic outcome. The case dragged on for years as the attorneys investigated facts, deposed expert witnesses, and developed legal theories and defenses. Meanwhile, the parties on both sides suffered emotionally and financially—Tony and Donna struggling to provide Little Tony with the care he needed, and Humes fighting to clear her name and prove that she did nothing to harm Little Tony.

In an attempt to settle the lawsuit without going to trial, the lawyers engaged in a series of demands, offers, counteroffers, and negotiations. In 1991, in the case against the hospital, the Sabias' lawyers demanded a total of \$15 million; the hospital's insurance company (Travelers) offered \$5 million. Then, in February 1992, the Sabias' case against Humes settled when her insurance company (St. Paul Fire & Marine) paid \$1.35 million, which left the hospital as the only defendant. In continuing efforts to reach an agreement, the attorneys twice engaged in mediation; the first mediation was unsuccessful,<sup>7</sup> but the second mediation led to a settlement with the hospital for \$6.25 million.<sup>8</sup>

### III. CREATING THE COURSE

Shortly after *Damages* was published in 1998, Chris Guthrie proposed that the CSDR faculty create a plan to include the book in the law school curriculum, and Len Riskin enthusiastically supported the concept. Chris and Len then agreed to co-organize the new course,<sup>9</sup> seek financial support for the project, and recruit faculty to participate. Faculty recruitment was easy. Reading the book convinced us that Werth had written the perfect law school text, an extended case study that would enable students to examine a wide variety of discrete topics—narrative, client counseling, negotiation, mediation, litigation, insurance law, medical malpractice, and professional responsibility—in the context of a real case. We considered three features of the book particularly significant.

First, *Damages* provides a rare opportunity to examine dispute resolution processes other than trials, a fact that distinguishes it from two other excellent

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7. The first mediation was conducted in September 1993 by David Ferguson, a full-time non-lawyer mediator who had resolved almost 1,000 disputes (an eighty-five percent success rate) in his ten years of practice. WERTH, *supra* note 5, at 299.

8. The second mediation was conducted in December 1993 by co-mediators Stanley Jacobs and Tony Fitzgerald. *Id.* at 342-43. Stanley Jacobs was a successful New Haven plaintiffs' attorney, "best known for winning the largest birth injury verdict in state history." *Id.* at 342. Tony Fitzgerald was a respected New Haven trial lawyer best known for his corporate defense work. *Id.* at 343.

9. We owe a huge thanks to their research assistant, Donna Pavlick, who is now Assistant Dean of Admissions at the University of Missouri-Columbia School of Law, but was then a graduate student in our LL.M. Program in Dispute Resolution. Dean Pavlick prepared a proposal for structuring the course, a time line showing the events chronicled in *Damages*, and a chart identifying all the attorneys involved in the case. See Donna L. Pavlick, *Summary of Damages*, 2004 J. DISP. RESOL. 11.

legal narratives, *A Civil Action*<sup>10</sup> and *The Buffalo Creek Disaster*,<sup>11</sup> both of which have become standards in many law schools.<sup>12</sup> Because the *Sabia* case settled before trial, it is typical of the vast majority of modern lawsuits. *Damages* reflects that reality by presenting detailed descriptions of several dispute resolution processes that are now routine for attorneys (even for those who consider themselves trial attorneys)—negotiation, mediation, and settlement discussions.<sup>13</sup>

Second, *Damages* shows the human costs of a lawsuit—the damage inflicted on both plaintiffs and defendants. Because Werth was permitted to interview parties and attorneys on both sides of the dispute,<sup>14</sup> he is able to describe the case from multiple perspectives, an approach that provides an unusually balanced, complex, and realistic picture. Readers see that, like most lawsuits, the *Sabia* case is not one in which the forces of good are arrayed against the forces of evil.<sup>15</sup> Instead, good people find themselves on opposite sides of the lawsuit. On one side are the Sabias, loving parents who are nearly overwhelmed by astronomical medical bills and by the physical and emotional strain of providing around-the-clock care for a child who cannot walk, sit up, talk, or eat.<sup>16</sup> On the other side is Humes, a dedicated doctor who is confident that she did nothing to harm the Sabias' babies,<sup>17</sup> and who is devastated by the lawsuit's damage to her professional reputation. Most readers find themselves empathetic to both.<sup>18</sup>

10. JONATHAN HARR, *A CIVIL ACTION* (1995).

11. GERALD M. STERN, *THE BUFFALO CREEK DISASTER* (Vintage Books 1977) (1976).

12. Harr's book is frequently used in civil procedure courses, often in conjunction with a textbook that includes a number of case file documents. See LEWIS A. GROSSMAN & ROBERT G. VAUGHN, *A DOCUMENTARY COMPANION TO A CIVIL ACTION* (rev. ed. 2002). Two articles describing law school courses that require students to read *A Civil Action* are Raleigh Hannah Levine, *Of Learning Civil Procedure, Practicing Civil Practice, and Studying A Civil Action: A Low Cost Proposal to Introduce First-Year Law Students to the Neglected MacCrate Skills*, 31 SETON HALL L. REV. 479 (2000), and Joseph W. Rand, *Understanding Why Good Lawyers Go Bad: Using Case Studies in Teaching Cognitive Bias in Legal Decision-Making*, 9 CLINICAL L. REV. 731 (2003). Stern's book has also been featured in civil procedure courses, see, e.g., Jason M. Schmiegel, *Phrasing the Question: The Use of the Buffalo Creek Disaster in Teaching Civil Procedure*, 47 ST. LOUIS U. L.J. 149 (2003) (providing a student's perspective of the course), and in at least one pretrial litigation text, R. LAWRENCE DESSEM, *PRETRIAL LITIGATION: LAW, POLICY, AND PRACTICE* (3d ed. 2001).

13. These detailed accounts provided context for classroom discussions of questions such as these: Why did it take five years to reach a settlement with Humes and almost seven years to settle with the hospital? Why was the first mediation unsuccessful? Could the attorneys have been more effective as negotiators or as mediation advocates? Would a trial have been a better way to resolve this lawsuit?

14. Werth began his research for this book only after the Sabias had settled their cases against Humes and Norwalk Hospital. In "A Note on Sources," Werth explains how he persuaded first the Sabias, then Humes, and finally Norwalk Hospital to tell him their stories and to authorize their attorneys to discuss the case with him. WERTH, *supra* note 5, at 378-79.

15. In contrast, *A Civil Action* was written from the perspective of the plaintiffs and the plaintiffs' attorneys, and *Buffalo Creek Disaster* was written by the attorney for the plaintiffs.

16. The Sabias also have three daughters, Shannon (who is older than Little Tony), Heather Rose, and Dayna (who are both younger than Little Tony).

17. The book supports her view. Norwalk Hospital's ob-gyn peer review committee concluded that Humes' "conduct had been appropriate under the circumstances." WERTH, *supra* 5, at 50. Dr. Kurt Benirschke, a pathologist hired by the plaintiffs because he was recognized as an expert on the placentas of twins, concluded that the "damage to Little Tony was over before [Humes] arrived." *Id.* at 217. Even Donna "bore [Humes] no malice, nor did she blame her for what happened," *id.* at 210, and Tony "thought Humes was an unfortunate bystander, which made her, regrettably for her, a convenient target." *Id.* at 211.

18. Werth's focus on the Sabias and Humes led to spirited classroom responses to questions such as these: Are lawsuits the best way to compensate children born with severe disabilities? Do malpractice

Third, *Damages* presents a rare behind-the-scenes view of lawyers engaged in the representation of their clients. Readers have front-row seats at client interviews, internal law firm strategy meetings, negotiations between law firms, and other activities normally protected by confidentiality requirements. From this insider's vantage point, readers can watch experienced, successful attorneys—both plaintiff and defense—engage in the sometimes messy preparation of a high-stakes case, a process that is far less linear and inevitable than the hindsight of appellate decisions might suggest. On the plaintiffs' side, readers can see the Koskoff firm first decide whether to accept the Sabias' case, then develop (and frequently modify) a coherent theory of causation, locate expert witnesses, hire a consultant to determine the lifetime cost of caring for Little Tony, prepare Tony and Donna for depositions, file offers of judgment, and finally help Tony and Donna decide whether to accept the hospital's settlement offer or take the case to trial. On the defense side, readers can observe the complicated relationships of attorneys hired by four different parties whose interests sometimes overlap and sometimes diverge—Humes; her insurer, St. Paul Fire & Marine Insurance Company; Norwalk Hospital; and its insurer, Travelers Insurance Company. Werth also highlights the interactions between the plaintiff and defense firms by allowing readers to move back and forth between law offices<sup>19</sup> to view the strategic planning sessions where attorneys attempt (often unsuccessfully) to predict their opponents' response to a number of possible moves.<sup>20</sup>

After agreeing to teach the course, the team teachers met several times to discuss the book and consider possible models for teaching it.<sup>21</sup> Ultimately we chose to create a seminar that would enable us to focus both on specific topics (such as the medical malpractice standard of care) and on broader issues: What is justice? Does our legal system provide justice for the victims of medical malpractice? Does it provide justice for doctors accused of medical malpractice? What role should various dispute resolution processes play in the legal system?

Each of us chose a topic<sup>22</sup> and wrote course materials designed to provide additional information and raise important questions.

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suits achieve their goals—punishing doctors who are negligent, compensating victims injured by negligent doctors, and deterring future negligence? Can tort reform efforts (such as imposing caps on damages for pain and suffering) prevent the escalation of medical malpractice insurance rates and the cost of health care?

19. At one point readers learn that each side has located one or more expert medical witnesses whose testimony on the issue of causation would be perfect—for the opposing side. The Koskoff firm contacted obstetrical expert Dr. Edwin Gold, who reviewed the medical records but was unable “to find any wrongdoing” by Humes. *Id.* at 147. At the same time, the law firm representing Humes contacted a number of ob-gyns, all of whom were “uncomfortable with some part of Humes' story.” *Id.* at 148.

20. These accounts raise fascinating questions. The attorney hired by St. Paul to defend Humes clearly represents Humes, but does the attorney represent only Humes? Or does the attorney represent both Humes and St. Paul? After the trial date is set and defense attorney Bill Doyle requests a three-month continuance, does Michael Koskoff have an ethical obligation to oppose an extension that could hurt his clients?

21. One model would require all first-year students to read *Damages*, which would then be discussed in each first-year course. Another would incorporate *Damages* into one traditional course, such as Torts, Insurance Law, or Medical Malpractice.

22. One of us, Steve Easton, wrote about two topics, the litigation environment and expert witnesses. See Stephen D. Easton, *Damages: Expert Witnesses*, 2004 J. DISP. RESOL. 37 [hereinafter Easton,

## IV. TEACHING DAMAGES (YEAR ONE)

We offered the *Damages* course for the first time in the winter semester of 2002.<sup>23</sup> Chris Guthrie and Len Riskin coordinated the course, and every team teacher attended all (or nearly all) of the classes taught by our colleagues. Although faculty initially intended to sit in as silent observers, some of us could not resist contributing our views, especially when they differed from those of the presenter.<sup>24</sup>

Students were required to read *Damages* and the course materials developed by the faculty team, to participate in a number of collaborative sessions team-taught by participating faculty, and to write papers.<sup>25</sup> Class sessions focused on relevant legal topics and on dispute resolution, with a particular emphasis on the impact of the dispute on the parties and their lawyers. The course structure, which proved successful, replicates to some extent the experience of an attorney involved in a complex case, who must learn a variety of legal topics. We distributed the following course outline to our students.<sup>26</sup>

*Winter 2002 Damages Seminar*

- 1/17 Introduction (Guthrie).
- 1/24 No class held in order to allow students time to read *Damages*
- 1/31 *Damages* as Literature (Daily)—Reading Assignment: “*Damages* as Narrative,” by Melody Richardson Daily<sup>27</sup>
- 2/7 Lawyer/Client Relationship (Uphoff)—Reading Assignment: “Relations between Lawyer and Client in *Damages*: Model, Typical, or Dysfunctional?,” by Rodney J. Uphoff<sup>28</sup>
- 2/14 Medical Malpractice (Peters)—Reading Assignment: “The Reasonable Physician Standard: The New Malpractice Standard of Care?” by Philip G. Peters, Jr.<sup>29</sup>

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*Experts*]; Stephen D. Easton, *Damages: The Litigation Environment*, 2004 J. DISP. RESOL. 57. [hereinafter Easton, *Litigation*]

23. We limited class enrollment to twenty students.

24. Course evaluations indicated that students particularly enjoyed hearing faculty respectfully disagree with each other. We realized that—because most law school courses are taught by a single professor—students seldom observe any interaction between faculty members.

25. Each student submitted an argumentative paper ten to fifteen pages long that advanced and supported an original thesis related to *Damages*. Students could select from a list of topics we provided or choose their own subjects. Course grades were based on these papers.

26. The articles in this symposium are revised versions of our original course materials.

27. See Melody Richardson Daily, *Damages as Narrative*, 2004 J. DISP. RESOL. 21.

28. See Rodney J. Uphoff, *Relations between Lawyer and Client in Damages: Model, Typical, or Dysfunctional?*, 2004 J. DISP. RESOL. 145.

29. 34 J. HEALTH L. 105 (2001).

- 2/21 Insurance Coverage (Jerry/Richmond)—Reading Assignment: “The Insurance Aspects of *Damages*,” by Robert H. Jerry, II, and Douglas R. Richmond<sup>30</sup>
- 2/28 Resolving the Dispute: Litigation and Experts (Easton)—Reading Assignment: “*Damages: The Litigation Environment*,” by Stephen D. Easton,<sup>31</sup> and “*Damages: Expert Witnesses*,” by Stephen D. Easton<sup>32</sup>
- 3/7 Resolving the Dispute: Negotiation/Settlement (Guthrie)—Reading Assignment: “Understanding Settlement in *Damages* (and Beyond),” by Chris Guthrie<sup>33</sup>
- 3/14 Resolving the Dispute: Mediation (Riskin)—Reading Assignment: “Teaching and Learning from the Mediations in *Damages*,” by Leonard L. Riskin<sup>34</sup>

At the end of the semester, students completed anonymous course evaluations, and they also met with the faculty to assess the course. Both the evaluations and the discussion indicated that students considered the course amazingly successful. The faculty agreed,<sup>35</sup> and we decided to offer it again.

## V. TEACHING *DAMAGES* (YEAR TWO)

We taught the *Damages* course for the second time during the winter semester of 2003, using the same course materials, but modifying the course structure slightly. In response to students’ suggestions, we increased the credit hours from one to two. This change doubled the number of class meetings, and we used some of the additional classes for student presentations of their papers. In addition, because it was not feasible for every faculty member involved in the project to attend every class meeting, Melody Daily coordinated the course and attended all the classes, while the other faculty members taught their individual units and visited additional classes whenever possible.

We also added one important component—we invited Tony Sabia, Barry Werth, and lawyers Michael Koskoff and Bill Doyle to our law school to discuss

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30. See Robert H. Jerry, II & Douglas R. Richmond, *The Insurance Aspects of Damages*, 2004 J. DISP. RESOL. 107.

31. See Easton, *Litigation*, *supra* note 22.

32. See Easton, *Experts*, *supra* note 22.

33. See Chris Guthrie, *Understanding Settlement in Damages (and Beyond)*, 2004 J. DISP. RESOL. 89.

34. See Leonard L. Riskin, *Teaching and Learning from the Mediations in Damages*, 2004 J. DISP. RESOL. 119.

35. Perhaps the best measure of the team teachers’ enthusiasm for the course is the fact that we willingly teach it as an overload.



the case,<sup>36</sup> and all four generously accepted our invitation to participate in two separate events.<sup>37</sup> The first event was an informal question-and-answer session with the students enrolled in the *Damages* course, and the second was a roundtable discussion, “When Law, Medicine, and Insurance Collide,” a public event open to students and faculty from law, medicine, and journalism, as well as to practicing attorneys.<sup>38</sup> Our guests brought the course to life. Tony Sabia talked about his son Little Tony (who had just celebrated his nineteenth birthday),<sup>39</sup> the good times (family vacations that, despite the logistical challenges, always include Little Tony and his aide) and the bad (the many operations and hospitalizations Little Tony has endured). His stories served as a dramatic reminder that no amount of money can solve all the problems faced by the family of a brain-damaged child. Journalist Barry Werth told the fascinating story behind the story—how he wrote the book *Damages*. He described his search for a medical malpractice case that would allow him to explore the conflict between doctors and lawyers, and his efforts to persuade the parties to tell him their stories. Michael Koskoff and Bill Doyle demonstrated why they are successful trial attorneys—both are charming, intelligent, articulate, well-informed, and thoughtful advocates who explained their positions clearly and persuasively. Even more important, because they are colleagues who clearly respect each other, they modeled the kind of civility we want our students to emulate.

At the end of the second year, our students again rated *Damages* as one of the best courses they had ever taken. All mentioned that they particularly valued the opportunity to meet Tony Sabia, Barry Werth, Michael Koskoff, and Bill Doyle. Students also praised a number of other features of the course. One student noted that law school seldom offers an opportunity to “put the pieces together, which this course did amazingly well.” Another student mentioned that the course had taught him/her to appreciate the significance of facts. Several students remarked that they enjoyed the team-teaching approach, which enabled them to learn from professors with expertise in various areas of law.

We did not offer the *Damages* course during the 2003-04 academic year, but we will teach it again next year.<sup>40</sup>

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36. We also invited Donna Sabia, but she was unable to attend. She and Tony were renewing their wedding vows to celebrate their twentieth wedding anniversary, and their daughters had planned a shower that conflicted with the date we had scheduled.

37. Sandra Kubal, CSDR’s outstanding administrative assistant, organized the event. She booked airline flights, reserved hotel rooms, printed fliers advertising the presentation, distributed programs, ordered food for the reception following the roundtable, and handled all the other planning tasks.

38. With the participants’ permission, we videotaped both the informal presentation in the classroom and the public roundtable discussion. We plan to edit these tapes and produce a document that we can show in future courses and share with other law schools.

39. Determining Little Tony’s life expectancy was crucial for predicting the cost of his lifetime care. Dr. Robert Greenstein, a professor of pediatrics who Travelers paid to evaluate Little Tony, predicted that the boy (then five years old) could live to be thirty-eight. WERTH, *supra* note 5, at 128. Another defense expert, pediatric neurologist Dr. Herbert Grossman, stated that statistical studies indicate that a child with disabilities as severe as Little Tony’s probably would live only four or five more years. *Id.* at 332. Dr. Lawrence Kaplan, an expert hired by the plaintiffs to examine Little Tony, concluded that Little Tony had a normal life expectancy. *Id.* at 333.

40. Next year, near the end of the semester, we will schedule a panel presentation that includes all the team teachers, which should provide some of the faculty interaction we lost the second year.

VI. TEACHING *DAMAGES* AT OTHER LAW SCHOOLS

Those of us who taught this course found the experience rewarding. We enjoyed teaching with our colleagues and learning from them, and we were gratified by our students' enthusiastic response to the course. We encourage other law schools to teach *Damages*, a book that provides lessons seldom offered in traditional casebooks. *Damages* shows the impact of lawsuits on real people, it illustrates a variety of dispute resolution processes, it demonstrates the breadth of knowledge and range of lawyering skills that good attorneys must develop, and—by placing a dispute in context—it provides students with both a broader and deeper understanding of law.

Although we consider the *Damages* course an outstanding success, we recognize the challenges of replicating it elsewhere. Adding any new course requires a serious commitment of resources, most notably the faculty time required to plan the course, develop instructional materials, and teach the course. We hope that other faculty interested in teaching *Damages* can reduce their course preparation time by using some, or all, of the articles in this symposium. In addition, faculty can reduce each teacher's teaching time by organizing the course as we did—as a series of classes taught by several people.<sup>41</sup> That approach still requires that someone organize the course, a task that involves finding professors who want to team-teach the course, scheduling the course at a time that does not conflict with the professors' other courses, arranging a presentation schedule that works for everyone, and persuading one of the faculty to coordinate the course and grade student papers.

We, of course, think the course is well worth the effort. We hope that our experience and the materials we developed will encourage others to use *Damages*<sup>42</sup> to enhance students' understanding of law, lawyering, and dispute resolution and to stimulate a dialogue about resolving disputes without inflicting heavy emotional tolls on all the participants.

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41. Ideally, we would add an obstetrician to our teaching team. When we taught the course the second time, one of our law students, a nurse, educated all of us about medical terms, nursing protocols, and hospital procedures.

42. We are aware of three other law schools that are using *Damages*. Tom Baker, University of Connecticut, School of Law, requires the book for his Torts course to illustrate the importance of insurance in torts. Tom Baker, *Teaching Real Torts: Using Barry Werth's Damages in the Law School Classroom*, 2 NEV. L.J. 386 (2002). Christine D. Ver Ploeg, William Mitchell College of Law, uses the book in her Torts II course to examine negligence principles. She also assigns pairs of students to represent the parties (the plaintiff, the defendant doctor, and the defendant hospital) in an arbitration conducted by an upper-level student. Myra G. Orlen and Jeanne M. Kaiser, Western New England College, School of Law, use the facts and procedure described in *Damages* as the backdrop for their students' writing assignments in first-year Legal Research & Writing. For example, one assignment requires students to examine the viability of the mother's claim for negligent infliction of emotional distress, which is left unresolved in the book.

