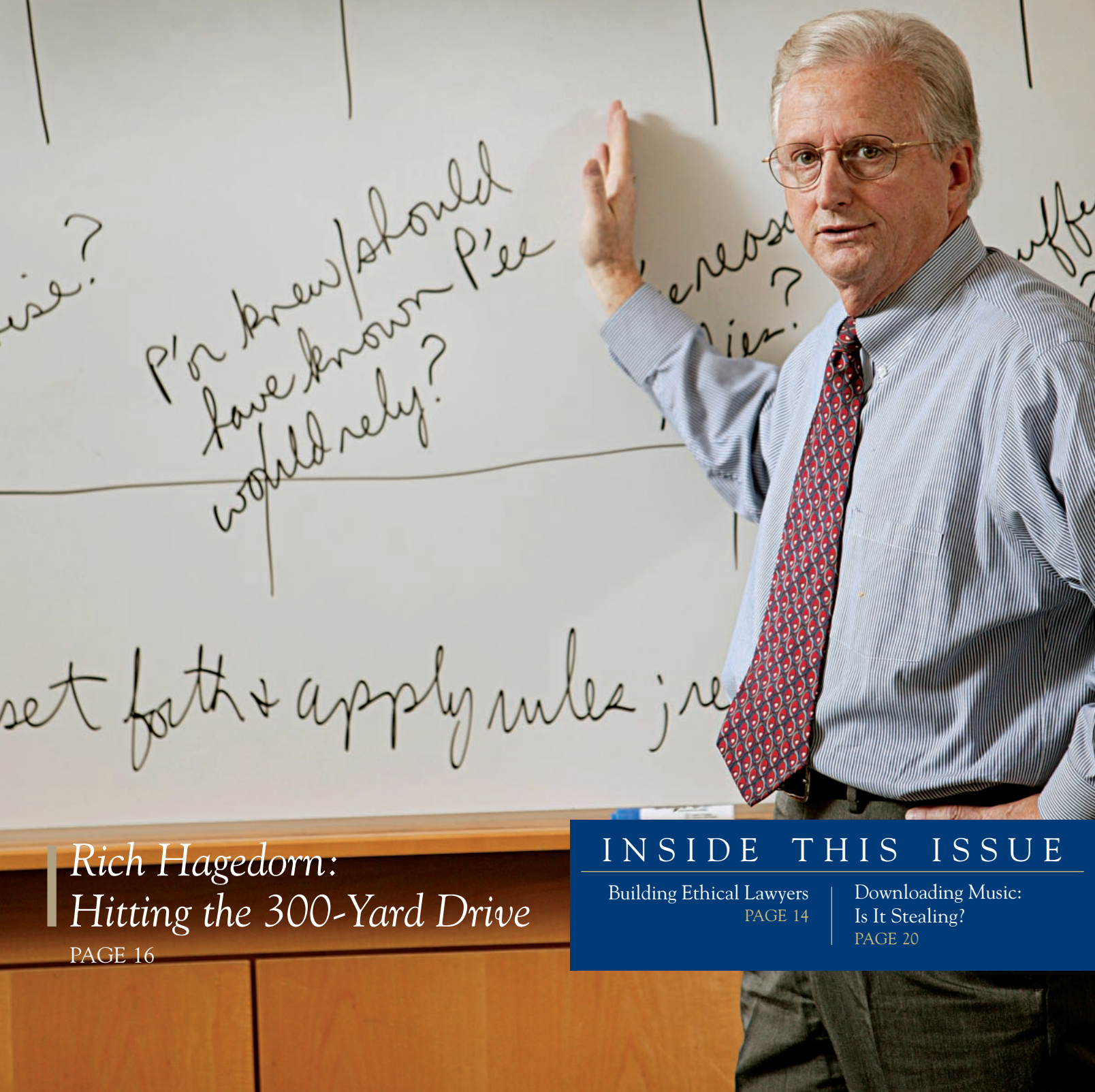


WILLAMETTE LAWYER

The magazine of the first law school in the Pacific Northwest

Spring 2004



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Hitting the 300-Yard Drive*

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WILLAMETTE LAWYER

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RICH HAGEDORN: HITTING THE 300-YARD DRIVE

Award-winning teacher and scholar, Rich Hagedorn, caps 30 years of teaching by being appointed the Rosalind Van Winkle Professor of Law.



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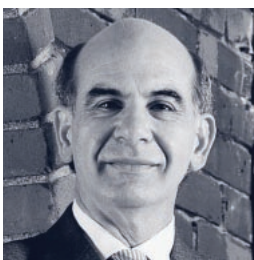
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COVER PHOTO: Professor Rich Hagedorn, the Rosalind Van Winkle Melton Professor of Law. Photography by Frank Miller.

DEAN'S MESSAGE

Dear Alumni and Friends,



It is with great sadness that I must report that our beloved colleague Professor Robert C. Art passed away unexpectedly on January 8, following a brief illness. He succumbed to Amyloidosis,

a rare disease caused by abnormal levels of proteins in vital organs.

This is a devastating loss for our Willamette family. Bob Art has been a mainstay of our faculty for 24 years. He was a talented, hard-working, caring and meticulously fair teacher. He was also a reliable and generous colleague, and a productive scholar who contributed to the improvement of Oregon law by drafting legislation on corporations and partnerships. The faculty resolution and Dean Graham's eulogy (p. 13), as well as the letters and emails that so many of you sent are a small testimonial of our admiration and affection for Bob. Indeed, throughout his life, Bob had only friends and admirers and no critics.

Bob's memory will live forever with those of us whose lives he has enriched. To preserve his memory among the future generations of Willamette students, we have established the Robert C. Art Memorial Scholarship. If you would like to honor this great man with a contribution, you can send a check to the **Willamette University College of Law/Robert C. Art Memorial Fund, 245 Winter St., S.E., Salem, OR 97301.**

Despite this heartbreaking loss, Willamette's faculty remains strong and vibrant. In previous issues of the *Willamette Lawyer*, we featured some of our newest colleagues. In this issue, we feature a colleague who

has been here for awhile and who is a genuine Willamette product. Professor Rich Hagedorn graduated from the College of Law in 1973 and earned tenure and three teaching awards in three other law schools before joining the Willamette faculty in 1984. Rich is a true master teacher and scholar. He exemplifies the best of the Willamette tradition that produces some of the very best in the legal profession.

Ethics is the theme of this magazine. We have always tried to inculcate our students with the highest ethical standards, because it's our job, and because – as with our children's upbringing – we hope that this training will protect our graduates from the temptation to cut corners. Mike Rodgers JD'68, Lorenzo Williams JD'77 and Nicki Hancock JD'02, profiled in this issue, represent three generations of Willamette graduates who surpassed this minimum standard while also being highly successful. This issue also contains brief reflections from three of our faculty on some of today's tough ethical issues. Professor Yvonne Tamayo talks about the tension between ethical practice and the business of lawyering. Professor Vincent Chiappetta discusses downloading music from the Internet. And Professor Peter Letsou goes head-to-head with the SEC's deputy general counsel, Meyer Eisenberg, on the Sarbanes-Oxley Act.

We hope you enjoy the lively exchange of ideas and opinions. We're constantly endeavoring to improve the magazine. I encourage you to fill out the reader survey card in this issue and let us know what you think.

With my best regards,

A handwritten signature in dark ink, appearing to read "Symeon C. Symeonides".

Symeon C. Symeonides
Dean and Professor of Law

NEWS AND NOTES

WILLAMETTE LAWYER PHOTO
WINS GOLD

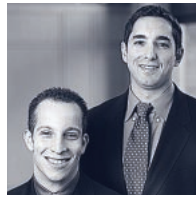
The dramatic photo of alumnus Clyde MacIver BA'59, JD'61, and his motorcycle, which appeared in the fall 2003 issue of the

Willamette Lawyer, has won a Gold Award at the 22nd Annual Council for the Advancement and Support of Education (CASE) District VIII Awards Competition. Taken by WU photographer, Frank Miller, the photo was judged best of 35 photographs submitted by CASE member colleges in Oregon, Washington, Idaho, Alaska, Montana and Western Canada. Judges this year included the photography staff at Montana's largest newspaper. Miller's photo will go onto the international CASE competition.

Miller, whose work has appeared at the Portland Art Museum, has previously won CASE Awards and Western New York Awards for Creative Excellence. Before coming to Willamette, Miller was the photographer at the State University of New York (SUNY) at Buffalo. He has also worked at a number of daily newspapers and has taught photography at Willamette, the University of Texas and in Kochi, Japan. His work has appeared in the *New York Times*, the *Detroit Free Press* and in publications for The Discovery Channel. He holds an MA in photojournalism from the University of Texas, Austin.

WILLAMETTE WINS ABA COMPETITION

Willamette law students Robert Zarkos JD'04 and Justin Reiner JD'04 have won the American Bar Association's Regional Competition in Negotiations. It's Willamette's second regional victory. Twenty schools from the West competed in November in Spokane, Wash. Four teams advanced to the semi-finals. Zarkos and Reiner received the highest overall score to win. Three superior court judges and one U.S.



District Court judge adjudicated the competition. Judging was based on flexibility, teamwork and creativity. Regional winners go onto the national competition in San Antonio, Texas.

Reiner (pictured left) and Zarkos (pictured right) have competed together six times. Zarkos, whose hometown is Bellevue, Wash., is studying corporate/transactional law and is interested in foreign investment in China by U.S. corporations. Reiner, who is from Gaithersburg, Md., is interested in sports law and hopes to become a sports agent or in-house counsel for a professional sports team.

DEAN PUBLISHES TWO BOOKS



Willamette Law Dean Symeon C. Symeonides' prolific output continues with two new books published this year. The first book, entitled *The American Choice-of-Law Revolution in the*

Courts: Today and Tomorrow, is a 448-page monograph published by the Hague Academy of International Law. It represents the lectures Symeonides delivered at the Academy in July 2002. Symeonides is one of only 17 American authors to deliver these prestigious lectures in the Academy's 80-year history. The book is now part of the Academy's Collected Courses series, which is found in virtually every law library in the world.

The second book, entitled *Conflict of Laws: American, Comparative International*, is a 911-page textbook published by West Publishing Company. It is the second edition of a popular book used in teaching the course Conflict of Laws in 48 American law schools. It is co-authored by Professor Wendy Perdue of Georgetown, and Symeonides' law-school mentor, Professor Arthur von Mehren of Harvard.

ALUMNI PROFILES

LORENZO WILLIAMS: VALUES-DRIVEN

by Brad Millay BA'97

Don't underestimate attorney Lorenzo Williams JD'77. A cadre of corporate heavyweights – and their big-city, Ivy-league lawyers – have paid handsomely to learn that lesson.

For the past 25 years, Williams has been a partner with Gary, Williams, Parenti, et al., a Stewart, Fla., law firm known for going toe-to-toe – and winning – against big name defendants with well-financed defense teams. As personal injury and corporate law specialists, Williams and his colleagues have successfully litigated more than 150 cases with awards exceeding \$1 million.

Like a modern-day David, Williams relishes the role of underdog fighting giant Goliaths. “I enjoy looking across the table at lawyers who think that they are smarter, tougher and more skilled than me,” he says, smiling broadly.

In person, his easy carriage suggests an old-fashioned country lawyer. It's a style that's both appealing to

juries and disarming for opponents. However, beneath Williams' affable demeanor, lurks a skilled legal tactician. It's a winning combination in the courtroom.

Williams is the second of seven children born to working class parents in rural South Florida. His was a life anchored in work, honesty, respect and responsibility. His parents were strict, insisting the children attend church and do their chores and homework without question. Despite never attending college themselves, his mother and father saw to it that every single one of their seven children received a college degree.

“There were three things my parents stressed: citizenship, education and religion,” he says.

Law was not Williams' first career choice. Like a lot of young men, Williams craved adventure, excitement and glamour. “I wanted to be a fighter pilot,” he says, laughing at the memory.

However, life's hard lessons showed him the impact law could make. As a young man working and living on his uncle's farm in Georgia during the 1960s, Williams felt the sting of Southern segregation. He remembers separate bathrooms and waiting areas, second-hand schoolbooks and having to wait for the white kids to finish using the gym so he could practice basketball. He combated this kind of racism not through anger or militancy, but by setting an example.

“If you look people square in the eyes and speak to them with respect, eventually they realize that there is no harm in speaking to you. In a quiet way, you encourage your fellow man to respect and appreciate you.”

As the Civil Rights Movement unfolded around him, Williams saw many examples of individuals employing that kind of quiet courage. The idea of using his mind



in the pursuit of equality and justice suddenly became very appealing. “I liked the idea of using words, of using one’s presence and knowledge of the law to help affect social change.”

After graduating in 1974 from Shaw University, a historically black college, Williams found few law schools willing to provide the financial aid he needed. One small, private Pacific Northwest law school, Willamette University College of Law, was willing to make the investment. When Williams arrived at the Portland Airport, Carlton Snow, both a professor and dean at the College of Law, was there to welcome him personally. Snow’s greeting made an unforgettable impression on the young Williams. “That planted the first seed for me that Willamette is a first class university,” he says.

Williams calls his experience at Willamette “one of the best decisions of my life.” He was challenged to grow both socially and intellectually. As one of five African Americans in his class – and one of only a handful in the entire Salem community – Williams was out of his element. He and his classmates – both black and white – formed a bond of collegiality and friendship that transcended racial, cultural or geographic differences. “They were all top-of-the-ladder, first-class human beings,” he says.

After graduating from Willamette in 1977, Williams returned to Florida and reunited with a young lawyer

friend and Shaw alumnus named Willie Gary. In many ways, the partnership forged between these two African American attorneys was groundbreaking. At that time, African Americans represented only a small fraction of practicing law professionals. African American law firms were almost unheard-of. Williams and Gary were well aware that it would take incredible effort for them to succeed.

“As the products of Southern farms, both Willie and I knew that it’s the person who gets up the earliest and works the hardest who reaps the greatest rewards.”

Williams and Gary succeeded by sticking to one simple philosophy – take on cases you can believe in. Most of their early work came through the local public defender’s office.

Their clients were

poor, often uneducated minorities who couldn’t afford legal representation on their own. Williams had almost no money himself to hire experts or investigators, so he did all of the investigation and information gathering on his own. The workload was immense, but it taught him how to build an effective case from the ground up. “It really helped me hone my skills as a trial lawyer.”

Those skills were on full display in what became the defining case for Williams and his partners – O’Keefe vs. Loewen. The case involved Jeremiah O’Keefe, owner of a small Biloxi, Miss., funeral home who was being driven out of business by Loewen Group Inc., a



WILLIAMS WAS AMONG THOSE HONORED AT THE 2003 ALUMNI BANQUET

ALUMNI PROFILES

large Canadian-based funeral home chain. It was the first big test of commercial litigation for Williams and his colleagues. Loewen's attorneys mistakenly assumed that a couple of small time lawyers from South Florida couldn't put up much of a fight. They were dead wrong. The jury awarded the plaintiff more than \$600 million – a verdict that remains one of the largest single awards in U.S. history.

"To this day, if you put one of Loewen's lawyers under oath," says Williams, "they'd admit that they underestimated our ability to practice law."

O'Keefe vs. Loewen was more than just a tale of the underdog winning against all odds. The case affirmed William's belief that the law can be a great counterweight to injustice.

"In many ways, lawyers are like social surgeons," he says. "When we do our jobs correctly, we help keep the system, and the people that system is supposed to protect, healthy. We should not let anybody, for any political reason, tamper with the Constitution, which forms the basic fiber of American justice."

Today, Gary, Williams, Parenti, et al., has a staff of more than 130 and a national reputation. Williams has helped clients win judgments against some of the biggest corporations in the world, including Walt Disney World, Anheuser-Busch and Hewlett Packard.

Despite his success, one thing remains the same for Williams. "I never take a case I can't believe in. I will never go to bed at night worrying about whether my credibility is intact. Whether I win or lose a case, all I have as a lawyer is my credibility."

Today, as a father, Williams sees the values that shaped his life and his legal career, coming full circle. With their children, Williams and his wife stress the importance of hard work and a reverence for citizenship. He has also set up a scholarship fund through his local church to provide money for students who are good students and contribute to their community.

"I try to encourage kids and let them know that no matter their background, if they work hard and treat others with respect, there are people out there pulling for them."


Coming to Willamette was "one of the best decisions of my life."

– Lorenzo Williams JD'77

For someone with his skill and integrity, a judgeship might seem a certainty for Williams in the future. However, he's considering becoming a teacher instead. Williams believes

strongly in public education. He encourages professionals like himself to volunteer in the school system as mentors and role models.

"I think the presence of strong professional people in the classroom has a very positive impact on students," says Williams. "There are three things that run parallel across all successful people – work ethic, integrity and good citizenship. In a student's education, those three things should be non-negotiable."

As he talks about the future, Williams' voice carries the same intensity we hear from him in the courtroom. He's clearly excited about the possibility of passing on his experience and values in the classroom. There's no doubt that he'd make an inspiring teacher. But there'd be a lot of change and new challenges to face. It wouldn't be a problem. If there's one thing we've learned about Lorenzo Williams, it's that you shouldn't underestimate him. 

NICKI HANCOCK: HARD WORK PAYS OFF

by Mike Bennett BA'70



JUDGE T.G. NELSON, U.S. COURT OF APPEALS
AND NICOLE HANCOCK

Nicole Hancock JD'02 knows a lot about hard work. While attending community college and Western Oregon University, she juggled school and multiple jobs. In 1999 when she came to Willamette University College of Law, she knew little about the law or the rigors of law school. She soon found out. WUCL Professor Rich Hagedorn JD'73, who is known for his high standards, taught her first law school class. Today, less than two years after graduating, Hancock is sure all the hard work was worth it. She's completed a year as a law clerk for Judge T.G. Nelson at the U.S. Court of Appeals (9th Circuit). She's working as an associate attorney for Stoel Rives, one of the West's largest and most prestigious law firms. And she and husband Jon are celebrating the first birthday of their child, Joshua.

In a recent conversation, Hancock shared some observations on her clerkship, her work and her experience at Willamette.

"My son, Joshua, was born part way into my 12-month clerkship at the U.S. Court of Appeals," she recalled. "While life got more complicated, Judge Nelson allowed me to bring Joshua with me to work for my last seven months at the court. I had a bassinet in my

office and Judge Nelson became a kind of surrogate grandfather to our son."

Hancock was one of two clerks hired for the 9th Circuit from a pool of several hundred applicants. The other clerk came from Cornell Law. Her work on *Willamette Law Review* (WLR), where she served as editor-in-chief, proved great preparation for the 9th Circuit. "I was surprised by the amount of autonomy I had as a clerk. The responsibility, leadership experience and the detailed work involved in publishing the *Law Review* served me well. Legal citations and research are done the same way."

After completing her clerkship, Hancock was hired in August 2003 to work in the Stoel Rives office in Boise, Idaho. She focuses on commercial litigation.

THE WILLAMETTE DIFFERENCE

Because she was a strong student, Hancock had the opportunity to go to other law schools. She chose Willamette for several reasons. "I liked that the State Capitol was across the street. The biggest difference, though, was that Willamette was warm and personal. Larry Seno [assistant dean for admissions] was upbeat and positive. The other schools seemed colder and made me feel anonymous."

The personal nature of her education at Willamette was embodied in the late Professor Bob Art who served as faculty advisor to WLR. "Professor Art was a genuine, caring person. He helped ease the tension for us when we had to publish two years of the *Law Review* in one year."

Hancock now recognizes the value of a great education. She advises current law students to work hard and do all the work because it'll pay off in the end. "Law school gives you the key to understanding why and how society works, or should work. It can kick the doors of the world open for you." 🏠

ALUMNI PROFILES

MR. RIGHT-OF-WAY

by Bobbie Hasselbring



The government is going to bulldoze your house in 90 days to make way for a new freeway. They offer you an insultingly small amount of money for your precious home. But you can't fight the government – or can you? Top Washington condemnation attorney Mike Rodgers JD'68 says you can fight back and win big.

“Private property owners have some important constitutional rights that need to be protected,” says Rodgers, the founding partner of the Bellevue, Wash., condemnation law firm of Rodgers, Deutsch & Turner. “We make sure property owners get full and adequate compensation for their property or damage to their property.”



While he's been incredibly successful as a condemnation attorney, his start in law was less than auspicious. As an undergraduate, he attended Washington State University where he readily admits, “I played around.” He took the LSAT, but his scores were only so-so. “As far as qualified candidates go, I was probably near the bottom,” he says. “So I was very pleased when Willamette said I was accepted in '66.”

Rodgers has been a condemnation attorney since 1968 and has personally represented clients in more than 1,500 condemnation cases. His firm has only three attorneys, yet they successfully conclude 40 to 50 condemnation cases each year, three to four times more than any law firm in the state. In most instances, when the government slates land for condemnation, private property owners can't stop the taking of their property. However, with the help of Rodgers and his partners, they can often double or even triple the amount of money they get paid for it. One of Rodgers' clients, for instance, was an 80-year-old man who faced condemnation of his home by a local school district that needed the property for expansion. His family had owned the land for a hundred years. The elderly man was born and raised there. The school district offered him \$350,000. With Rodgers' help, the school district paid him \$1 million.

“It was very satisfying for us because this was a retired fellow who didn't have any resources other than his real estate,” says Rodgers. “He was one happy property owner.”

A month passed and then the unthinkable happened. Willamette sent a letter saying the class was oversubscribed and there was no room for him. “My girlfriend, Marcia, [now his wife] helped me write a detrimental reliance letter to Dean Seward Reese,” he says. “I told him how important it was for me to come to Willamette. I'd made plans to move to Salem. I urged him to reconsider his decision.”

Rodgers' natural persuasive skills prevailed. Dean Reese wrote back, saying that due to Rodgers' strong commitment to Willamette, they'd add another chair to the class. The first day he arrived on campus, Rodgers says, “seating was arranged in a way that looked like it had been that way for years. Sure enough, there was a chair that was different. It looked like it had no place in the class. Needless to say, I didn't sit in that chair.”

Rodgers determined to prove he was worthy of his class seat. He roomed with Steve Thomas JD'68, an academically strong student. “I became Steve's shadow,” Rodgers recalls. “Every time Steve picked up a

book, I picked up a book. When grades came out the first quarter, I was in the top third of my class.”

His career has rocketed skyward ever since. Rodgers’ uncle, also a condemnation attorney, advised him to seek out a government job for the practical experience and industry contacts. After graduating, Rodgers signed on as an assistant attorney general with the Washington State Department of Transportation. He condemned private property for highway projects across the state. “It gave me the opportunity to be in court all the time trying cases, perfecting my trial techniques, learning what works and what doesn’t in front of a jury,” he says.

The experience also made him realize the value of his education at Willamette. “The Socratic method of teaching at Willamette was

really challenging and stressful for me during law school, but it was also the biggest benefit. It teaches you to analyze cases, answer questions and think on your feet in front of your classmates. That’s exactly how you have to think and perform when you’re in court.”


At the end of four years, Rodgers was ready to branch out into his own firm. One of his early successes came with the father of Daryl Deutsch JD’80. Daryl would later become a partner in the firm. “When I was with

the state, we’d condemned some of Daryl’s dad’s property,” he explains. “He was a large landowner and, when I went into private practice, he retained my services. We had a big condemnation result for him the year after I started in private practice.”

That early success became one of many and necessitated expanding the firm. In 1978, Deutsch started clerking for Rodgers. When he graduated two years later, he joined the firm. In 1991, Rodgers kept the Willamette connection going when he hired John

Paul Turner JD’91 to become the firm’s third partner. All three practice condemnation law exclusively.

After more than 30 years in condemnation law, Rodgers admits he spends a little more time playing golf and enjoying his grandchildren

than when he started out. But the fire hasn’t gone out of his belly. He still gets excited about protecting the rights of private property owners. “It’s my hot button,” he says. “I love getting a great result for private property owners who don’t think they have the ability to stand up to the governmental agency taking the property. It’s satisfying to see a property owner walk away from the process fully compensated and knowing that the Constitution works.” 



MIKE RODGERS JD’68 PROTECTS THE RIGHTS OF PROPERTY OWNERS

LAW SCHOOL BRIEFS

LIKE FATHER, LIKE DAUGHTER

by Kathy Graham

Jocelyn West JD'04 credits her father, Judge Greg West JD'72, with influencing her to go to law school. Judge West graduated from Willamette, practiced law in Salem and recently retired from the Marion County Circuit Court. Jocelyn says she was impressed that, "Dad really liked what he did and people really respect him because he's a judge."

Judge West didn't tell Jocelyn she should go to law school. He was smarter than that. Instead, he piqued her interest by helping her get positions in the legal community that allowed her to see for herself what the law could do. For instance, before going to law school, she worked for Dissolution Resource Services at the courthouse. She liked what she saw and loved helping people solve their problems. She decided to follow in her father's footsteps and attend law school.

However, after her first semester, Jocelyn says she thought about dropping out of school. "I didn't see the connection between what I was learning and my original motivation to go to law school to help people," she says.

What changed her mind is a meeting that her father arranged for her with Chief Justice Wallace Carson JD'62 of the Oregon Supreme Court. Carson convinced Jocelyn that she had lost sight of her end goal of helping others. She decided to stay in law school.


Jocelyn has not regretted her decision. She's done well academically and says she's made some of her best

friends here at Willamette. Two of her favorite law faculty are Professors Carlton Snow and Leroy Tornquist. During her first semester, she took Contracts and Civil Procedure from them. Both men have become mentors and role models for her. They've helped her see that fundamental change in

society is possible through the law. Jocelyn says, at some point, she'd like to study divinity like Snow. Tornquist, who she says taught her how law should be practiced, helped her obtain a clerkship with Miller Nash in Portland, Ore.

After graduation, Jocelyn's goal is to practice law with Miller Nash doing corporate transactional work. She has accepted an offer from them because of the wonderful people she's met at the firm and because of the quality of law they practice. She says she wants to learn from the firm's lawyers and

become the best lawyer she can be. She will start with the firm in October after she passes the Oregon State Bar this summer.

In the meantime, Jocelyn's parents continue to be two of her biggest cheerleaders. They also are two of the most important influences in her life. Her mom, a career woman, taught her to value the professional life. Her dad encouraged her to pursue her career in law. Without them, she says, she wouldn't be where she is today, getting ready to pursue an exciting career in law. 



IN MEMORIAM: ROBERT C. ART

by Kathy Graham

Professor Robert C. Art, friend, colleague, teacher and scholar passed away on Jan. 8, 2004, following a brief illness. He is survived by his wife, Karen; his children, Brian and Emily; as well as his mother Bernice, his brother, James; and other family members.



Professor Art began his career at Willamette University College of Law in fall 1981. He quickly established himself as a hardworking and capable professor. During his early years as a teacher, he taught Business Organizations to the entire class as well as other business courses. When he died, he had taught more than 2,500 Willamette alums.

Students knew and loved Professor Art for his detailed and thorough presentation of course material and his willingness to help students understand difficult concepts. He prepared a supplement for his property class that contained questions and problems designed to help students better understand property law and help prepare them for the bar exam. Most recently, Professor Art ran a pre bar review course for third year students. They recognized and appreciated all the work he put into it.

He will be fondly remembered by his many property students as the professor who, when explaining the feudal origins of estates in land, referred to William the Conqueror as "Bill." His dry wit and sense of humor made him a favorite.

In addition to teaching, Professor Art made a substantial contribution to legal scholarship. In 2003, he lectured in Hong Kong as a visiting professor at the University of Hong Kong. His topic was "The Regulatory Reaction to Enron: New Rules from Congress, the SEC and Stock Exchanges." He had planned to collaborate on a book on Chinese corporate law with his friend and colleague, Minkang Gu, a professor at City University of Hong Kong. Professor Art wrote several articles on Chinese corporate law and was looking forward to writing more.

Professor Art made substantial contributions to law improvement in Oregon. He presented numerous programs around the state on corporate law. He chaired the Corporate Act Revision Committee from 2001 until his death. He authored numerous articles, CLE presentations and books on Oregon corporation and partnership law. In recognition of his many years of service on bar legislative drafting committees, in September 2001 the Oregon State Bar honored him with a Membership Service Award for "skillful leadership and high standards of professionalism."

Professor Art enjoyed learning about different cultures and their laws. He taught in Willamette's summer school program in Shanghai, China, at the East China University of Politics and Law. He also received a Fulbright Scholarship to teach in Sofia, Bulgaria.

Professor Art will be greatly missed by his family, friends, colleagues, students and alumni. As Dean Symeonides wrote in a note to the community, "Bob was a person of admirable qualities who, throughout his life, had only admirers and not even a single critic." ■

FACULTY PERSPECTIVES

BUILDING ETHICAL LAWYERS

by Yvonne A. Tamayo



A trend in the legal community is to bemoan the decline of law as a profession and the ascent of law as a business. Whether you're a first-year associate in a small law office or a senior partner in a large multi-state firm, you're likely being impacted by a legal marketplace that's increasingly focused on competitive rates, greater efficiency and getting positive – and profitable – results for clients. As we've seen from the many business scandals making headlines, some lawyers have yielded to the economic pressures with unethical behavior. The question is: how do we lawyer ethically in a changing world? And how do law schools build lawyers who will remain ethical in the face of strong currents that threaten to pull them under?

The unrelenting economic pressure facing lawyers and law firms is, in large part, due to the escalating cost of attorney and staff salaries, office space, technology and malpractice insurance. Likewise, fierce competition from an increasing number of lawyers, many of whom advertise, guarantees that unsatisfied clients will swiftly seek new counsel.

In response to escalating costs, many law firms seek to increase profits by raising their associates' yearly billable hours requirement. A decade ago, many firms expected an average of 1,800 yearly billable hours. Today, it's not uncommon for firms to demand 2,000+ hours of annual billable time. This heightened expectation, while enhancing a firm's output, can pose a quandary for young lawyers striving to practice law ethically while generating profits for their firms.

During the late 1980s and early 1990s, I was a litigator in the private sector. During that time, I was keenly aware of my firm's billable hours requirement and knew the importance of meeting those expectations. Today, as a law professor, I teach a course in professional responsibility. I know both sides of the difficult tightrope that lawyers must walk.

Since each state and the American Bar Association maintain rules governing lawyers' conduct, examining the ethics of lawyering should be an easy task. It is – in theory. For example, the American Bar Association's Model Rules of Professional Conduct require that a lawyer charge a reasonable fee, and prohibit "conduct involving fraud, deceit or misrepresentation," as well as "false and misleading" communications about legal services. The rules also require that a lawyer "keep the client reasonably informed about the status of the matter," "promptly comply with reasonable requests for information," and "make reasonable efforts to expedite litigation consistent with the interests of the client." Although these rules provide guidance towards ethical billing practices, they don't address pressures today's lawyers face in meeting often-crushing billable hours expectations.

The business of lawyering requires that a firm's legal services generate profits. The business paradigm in law firms often renders a lawyer's billable hours as the measure of success. Anthony T. Kronman, author of *The Lost Lawyer: Failing Ideals of the Legal Profession*, aptly describes the culture of many law firms: "The increased emphasis on hours billed as a criterion for measuring associate performance – which reflects, in part, the cultural devaluation of other attributes less directly connected to the external good of moneymaking and, in part, the administrative need for a uniform quantitative standard of evaluation ... makes more qualitative criteria unworkable (and) has, in turn, propelled competition of associates more and more in this direction. Increasingly, associates at large firms themselves equate success – promotion and prestige – with hours billed." Ironically, billable hours to gauge a lawyer's worth creates conflicts of interest that may ultimately hinder the business of lawyering.

Measuring productivity solely by the number of hours billed serves as an enticement to sacrifice work quality to increase the quantity of billable hours. Lawyers may reduce the attention they give to a client's matter. They may over-work or "churn" case files. They may overstate the amount of actual work performed. An attorney who refuses to engage in such unethical billing practices is at a disadvantage against others who routinely cut corners and "pad" their time to survive in the highly competitive law firm culture. Ultimately, a young lawyer learns that placing self-interest before a client's can be rewarding and indeed profitable. In contrast, the ethical lawyer who submits actually-worked time may face difficulty in progressing towards partnership. This can cause firms to lose hard-working, competent lawyers whose only failing is a moral compass at odds with the "performance" requirements of the competitive culture in which they work.


Often, "the business of law" is deemed concomitant with profit at the expense of professional integrity. Some see it as a "necessary evil" of our economic times. I don't agree. I believe that the business of lawyering is not incompatible with ethical lawyering. Shrewd management and efficient business practices, while necessary for profitability, should not require compromised ethical standards. In fact, the profession as a whole benefits each time a law firm increases its clients' loyalty by producing reasonable billings for lawyers' time spent on client matters. Likewise, a firm

will likely fortify its associates' loyalty by ensuring that its expectations do not exceed realistic performance goals.

As a professor teaching professional responsibility, my role is to ingrain in law students the

ethical and professional values to law practice. This includes recognizing that the responsibility to generate revenue does not usurp their duty to avoid crossing ethical lines. I challenge law students to resist thinking that "the profession of law" and "the business of law" are mutually exclusive. In fact, private practice is, and always has been, a professional business. Finally, I strive to impart my unwavering conviction that despite the ethical dilemmas that may confront them, lawyers need not dull their consciences to succeed in law.

The delicate balance of ethical, yet profitable lawyering is neither easy nor obvious. It requires an accurate internal compass on the part of lawyers and shrewd

business practices on the part of law firms. The law profession is, in my opinion, capable of both. 

Yvonne A. Tamayo is an associate professor of law at Willamette.

"Measuring productivity solely by the number of hours bills services as an enticement to sacrifice work quality ..."

—Yvonne Tamayo





*“A teacher affects eternity; he can never
tell where his influence stops.”*

— Henry Brooks Adams, 1838-1918

RICH HAGEDORN: MASTER TEACHER AND SCHOLAR



Hitting the 300-Yard Drive

by Bobbie Hasselbring

Willamette roots run deep and strong in Rich Hagedorn's JD'73 life. It's no wonder he's one of the few Willamette College of Law graduates to become a tenured professor at the law school – and one of the most beloved and celebrated teacher/scholars in the school's history.

Hagedorn, who has taught law since 1975, has been teaching at Willamette College of Law for 19 years. He's taught an estimated 3,000 students, arguably more than any other Willamette law professor. Over the years, he's been honored with numerous awards, including Willamette's Teacher of the Year, the United Methodist Teaching Award and Professor of the Year at the University of Oregon. Most recently, his excellence in teaching and scholarship was recognized with his appointment as the Rosalind Van Winkle Melton Professor of Law.

Willamette Law was a natural choice for Hagedorn. His parents, both native Oregonians, had attended Willamette in the 1930s. A black and white photo of Hagedorn's father playing baseball for the Bearcats sits proudly on a file cabinet in the professor's office. Although neither of his parents graduated, he says "they loved Willamette" and encouraged him to attend. His sister and brother-in-law both attended Willamette in the 1960s.

Hagedorn points to a "dedicated faculty" during his Willamette law school years. He reels off the names of Willamette greats like Henry "Bill" Bailey, John Paulus, Ted Butler, Courtney Arthur, Carlton Snow, Jack Mylan, Ross Runkle, Dallas Isom, Don Turner and Claudia Burton, among others, as teachers and scholars who challenged and inspired him.

When Hagedorn graduated from Willamette in 1973, he wanted to be a small-town lawyer. He'd been raised in Albany, Ore., and was certain he'd fit right in as an attorney in a modest-size firm on Main Street. He joined the long-established firm of Weatherford, Thompson, Horton and Jordan in Albany, representing a number of different types of clients, including banks. However, it wasn't long before the day-to-day drudgery of practicing law began to chafe.

"When you practice law, you learn what the expression 'the devil is in the details' means," he says. "There is a great deal of administrative, almost clerical detail that I don't care for."

He also missed the "broader and somewhat theoretical perspective on the law" he'd enjoyed during his days as a law student at Willamette. He decided to pursue a job teaching law. At the recruitment conference for new law school professors held annually in Chicago (now in Washington, D.C.), he interviewed with the University of Missouri-Kansas City, which was looking for someone to teach commercial law. They liked Hagedorn's banking background and hired him.

Hagedorn moved his wife and his new family (his oldest was just three) to Kansas City and began teaching. He thrived in his new job. "I knew right away that writing and teaching law was for me," he says. "I loved it."

What he didn't love quite as much was the heat and humidity of Kansas City. "Kansas City is very nice, but my wife and I got homesick for the Northwest really quickly."

After two years, serendipity smiled on the Hagedorns and their young growing family (they now had two young sons). Gonzaga University School of Law School in Spokane, Wash., had an opening. He jumped at the chance to return to the Northwest.

Hagedorn taught at Gonzaga for five years. He was one of their most popular professors. The law school student body voted him the Most Outstanding Teacher Award in 1979-80.

While he loved the students and the faculty at Gonzaga, Spokane wasn't home. When an opportunity came in the fall of 1982 to teach as a visiting professor at the University of Oregon, he packed up his family and returned to his beloved

Willamette Valley. He was named U of O's Professor of the Year, unprecedented for a visiting professor.

Two years later, a similar visiting opportunity arose at Willamette and he returned to his alma mater. At last, he was where he belonged. "Willamette has always fit for me," he says. "It's well-regarded by the legal community, especially here in the Northwest. I like its small law school atmosphere. The students and faculty here are truly a community."

In 1988, Willamette had to make a decision about whether or not to hire Hagedorn full time as a tenure-track professor. It's almost unheard of for law schools to hire their own graduates. "We don't like to do it," says Willamette College of Law Dean Symeon Symeonides. "It's considered inbreeding. You have to be really extraordinary both as a teacher and as a scholar like Rich Hagedorn is for that to happen."

When Willamette hesitated, dozens of colleagues as well as current and former students rallied and sent persuasive and heartfelt letters urging the school to hire Hagedorn. One alumni even threatened to pull his financial support and sever all ties with the school. "Professor Hagedorn was unquestionably one of the finest professors I had during my college years, both in undergraduate and law school ... if Professor

Hagedorn is not retained by the law school in a teaching position, I will discontinue all my support for the University."

Hagedorn's widespread popularity as a teacher certainly isn't because he teaches the glamour courses. He teaches difficult, technical classes like contracts, payment systems and secured transactions. He makes what might otherwise be deadly dry material, clear, interesting and even fun. One law student wrote, "Hagedorn renders the amorphous opacity of commercial law transparent. He is a true gem."

As students will attest, Hagedorn is not above telling a corny joke or using a pun to get his point across. "Humor is attention getting," he says. "I have classes of 100 to 130 students. Often my students have no background in the material I'm teaching. I have to make it sexy and interesting. I do whatever I have to do, including using absolute silliness, to get their attention and create a personal connection with them."

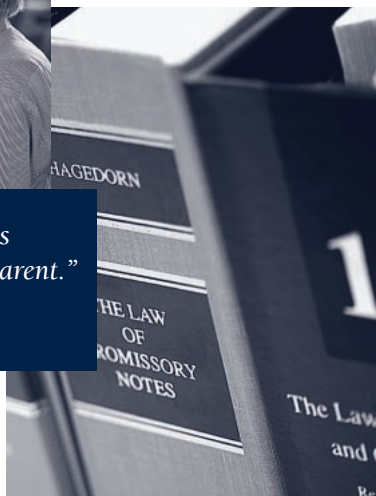
While Hagedorn uses a certain amount of levity, he's serious about students being prepared. "Students in law school are preparing to represent people in their legal affairs. That's important. I tell my students to walk into my classroom with the same level of seriousness and preparation that they'd walk into a courtroom with. They need to be prepared to present cases, discuss problems and ask and respond to questions."

To get across difficult principles, Hagedorn uses a teaching style he adapted and embellished upon from his former Willamette law professor Jack Mylan. He begins each segment of material with a lecture highlighting issues and principles. Then he uses a modified Socratic method to review cases. He concludes the segment with another lecture to give students the "big picture" and help them see how the material fits into the rest of the course. Finally, he has students apply what they've learned to a hypothetical fact pattern, which they must work through to solution.

One of his students commented about his unique teaching style: "Professor Hagedorn presents class material in a logical, organized manner. Concepts seem to flow and build upon one another. Because of his teaching style, I have never felt overwhelmed even though he covers a lot of material. His enthusiasm makes it difficult for his students not to become excited as well."



"Hagedorn renders the amorphous opacity of commercial law transparent."
— former student



Another wrote, "Professor Hagedorn is what every law student wants in a professor. Someone who expects you to know the material and does what it takes to make sure that expectation is fulfilled."

He's also an effective teacher because he adapts his teaching style to fit different learning styles. "Everybody's different. If I have a class of 120 students, I have 120 different individuals. I try to use different teaching techniques that will reach different students."

Perhaps most importantly, Hagedorn insists that his students learn to "think like lawyers." He insists that every student develop the ability to identify the issues involved in a problem and then be able to resolve the issue or problem.

"Law school is not just a memorization game," he says. "You need to be able to apply the rules and principles we're learning. I teach them to analyze the problem on the macro level – identifying the issues – and on the micro level – resolving those issues."

When Hagedorn isn't teaching, he's a prolific scholar. His book, *The Law of Debtors and Creditors*, which he co-authored in 1986, still sells well. He co-authors one supplement a year

for this book. He's the co-author (with his former Willamette teacher Henry "Bill" Bailey) of *Brady on Checks*, an authoritative two-volume work that's used by both the legal community and by banking institutions. He and Bailey co-author three

Brady supplements per year, reporting and analyzing the 120 or so legal cases that impact the checking laws.

To assist students, Hagedorn co-authored two editions of a study guide entitled *Secured Transactions in a Nutshell*. He's also the author of the book, *The Law of Promissory Notes*.

The writing, he says, keeps him on the cutting edge of his field. "Scholarship informs teaching," he says. "The law is constantly changing, which allows me to always be adding new material to my courses."

After nearly 30 years teaching law, how does Hagedorn keep it fresh for himself? "I don't want to sound corny, but I love

teaching so it's easy to stay fresh. If I could hit a 300-yard drive every time I played golf, it would never get old to me. That's what I try to do in my classroom. I don't always hit the 300-yard drive, but I sure try."



"“Professor Hagedorn was unquestionably one of the finest professors I had during my college years ...”"

– former student

HAGEDORN – JUST THE FACTS



Born: 1948, Portland, Ore. Parents both attended Willamette University in the 1930s. Raised in Albany, Ore.

Family life: Married to Claudia for 34 years. They have three children: Andrew, a Portland attorney/lobbyist; Scott, a medical student at the Chicago Medical School; and Karen, a high school senior and stand-out soccer player.

Undergraduate studies: Bachelor of Science, politics, Oregon State University, 1970. Honor Graduate, Phi Kappa Phi Honor Society.

Law School: Member Editorial Board *Willamette Law Review*. First-year Moot Court Group Champion. Clerk for the Oregon Supreme Court (for the late Honorable Justice Edward H. Howell), 1972. Graduated 1973, Cum Laude.

Private Practice: Weatherford, Thompson, Horton and Jordan, Albany, Ore, 1973-77.

Teaching: Willamette University College of Law, 1984-present.

East China University of Politics and Law, Shanghai, China, May 1994.

University of Oregon School of Law, Eugene, Ore., 1982.

Gonzaga University School of Law, Spokane, Wash., 1979 to 1984.

University of Missouri-Kansas City School of Law, Kansas, City, Mo., 1977 to 1979.

Teaches: Secured Transactions
Payment Systems
Contracts I and II

Honors/Awards: Rosalind Van Winkle Melton Professorship, Willamette University, 2003.

Willamette University United Methodist Exemplary Teaching Award, 1996.

Teacher of the Year, Willamette University, 1994.

Professor of the Year Award, University of Oregon, 1982-83.

Lewis Halsey Orland Award for Most Distinguished Teacher, Gonzaga University Law School, 1979-80.

Special Award for Teaching Excellence, University of Missouri-Kansas City School of Law, 1977-79.

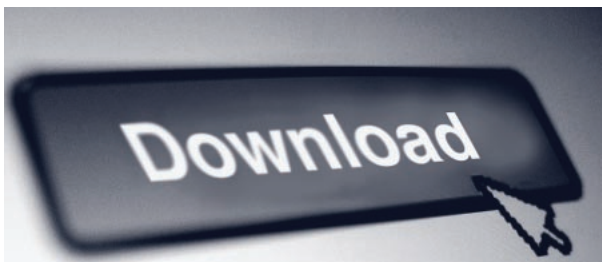
Books authored: *Brady on Bank Checks* (with H.J. Bailey), two volumes, A.S. Pratt & Sons Group, Rev. Ed. He also writes three supplements per year for Brady.

The Law of Debtors and Creditors (with Smith and Dickerson), two volumes, Thomson-West, Rev. Ed. He also writes an annual supplement for this book.

Secured Transactions in a Nutshell (with H.J. Bailey), West Group, 4th Ed., 2000.

The Law of Promissory Notes, Warren, Gorham & Lamont, 1992.

FACULTY PERSPECTIVES



Music Downloading: *Is It Really Stealing?*

by Vincent Chiappetta

You have just successfully navigated the technological frontier and downloaded a newly released song using file-sharing software. You may feel a sense of electronic age triumph, but the music industry (in the form of the Recording Industry Association of America or RIAA) says you're a shoplifter. What's the truth – are you a newly anointed maven of technology or just a brazen thief?



VINCENT CHIAPPETTA

The United States copyright laws provide the technical, legal answer. They grant the owner of a valid copyright in the song you just downloaded, the right to prevent others from reproducing the work – including in electronic form. “Others” clearly includes, as the early no-pay version of Napster and MP3.com discovered, those knowingly facilitating unauthorized electronic downloading. As the RIAA is presently in the process of demonstrating, that right also includes the individual “downloaders” themselves, whether they are adept 12-year-old computer wizards or solid, upright members of the legal community experimenting with the marvels of Internet distribution. Although unauthorized downloading generally falls short of a criminal offense, under the copyright statute, miscreant downloaders under the statute are subject to damages either as proven or in “liquidated” form (\$750 to as much as \$150,000). Obviously, United States copyright law takes the “property” part of intellectual property quite seriously.

So why all the fuss over downloading? Shouldn't we all just cheer as the “good guys” fire up the engines of justice, shut down the online file-sharing “pirates,” round up individual violators and dish out punishment to deter such vile, anti-social behavior? Perhaps. But that would ignore the music publishing industry's energetic legislative drive to maximize their bundle of ownership rights. Ensuring comprehensive legal compliance (no child left unsued) has lead the law astray. By focusing so passionately on private property interests, copyright law may be drifting away from the social policy goals it was intended to promote.

A brief bit of history helps illuminate the problem: Jefferson and Madison, two notables of our Nation's founding, engaged in a passionate and little known debate over the necessity of monopolies to control economic resources. Eventually, Jefferson overcame the considerable bad taste left by the English experience with “monopolies of the crown.” He signed onto Madison's proposal to create certain specific but limited legal monopolies that promised to generate investment in creative endeavors deemed beneficial to society as a whole. The result was the Constitution's Intellectual Property Clause granting Congress the

power to promote the progress of the sciences and the useful arts, by securing for limited times to authors and inventors, the exclusive right to their respective writings and inventions.” (In the 18th century, English sciences meant “knowledge,” so music really isn’t that much of a stretch). With the great debate concluded, Congress wasted no time in passing the copyright laws, granting authors (which today includes music composers and performers) limited rights over their writings. The Constitutional provision makes the quid pro quo logic clear: copyright law’s objective is to “progress the sciences,” not merely create personal fortunes. The law does not set out to explicitly reward the individual, but rather to provide incentives that will ultimately benefit society as a whole. Or, in more formal policy terms, copyright law should only grant a sufficient individual legal control (copyright) to encourage optimal individual investment and then release the creation for use by others.

The music downloading “problem” arises from the increasing emphasis on protecting the creator’s ownership rights “at all costs,” thus untethering the copyright regime from its social policy moorings. Although increased protection pleases music publishers, it must be “funded” by the public, which must suffer, in Jefferson’s words, the “embarrassment” of the monopoly beyond its incentive value.

Unlike the owner of a private home, a copyright owner is more appropriately viewed in the eyes of the law as a contractor encouraged to make park improvements for the common good by the guarantee of a fair return. To allow more risks the socially harmful monopolies that Jefferson argued against in his debate with Madison. In short, too much protection deprives the public of the use and enjoyment in the creations

in which it has invested through the grant of a legal monopoly.

The solution does not, however, lie in simply letting “music be free.” Madison’s logic that incentives are needed in our market economy is unassailable. Even if composers and performers would create music anyway (for the love of art and all that), the prospect of sufficient return to eat and pay rent substantially increases the amount and quality of effort applied to the creative task. Similarly, publishing companies’ legitimate objective of delivering profits for their shareholders requires that their assistance in the distribution

process generate a reasonable return on those investments.

The appropriate response – and the solution to our current downloading music

“problem” – lies in compromise. All parties have a stake in accommodating the legitimate interests of the others. Music consumers must understand that free music in a market economy will certainly mean less, and more questionable quality music (doubters should note a similar outcome in the French Post-revolutionary experiment that eliminated copyright on writings). Music creators and distributors should, however, recognize that even robust markets cannot prosper when the primary supplier-customer relationship involves lawsuits by the former against the latter.

Some self-examination on the part of the music industry provides the vehicle for change. Until very recently, the publishing industry’s legal maneuvers were more about slowing the transition from physical to electronic distribution. That, in effect, makes copyright a tool for impeding rather than fostering progress. Whether a consequence of thick-headedness or, more likely, based on previously invested money

“Too much protection deprives the public use and enjoyment in the creations.”

– Vincent Chiappetta

FACULTY PERSPECTIVES

SEC RULES: NO PANACEA

by Peter Letsou

Corporate scandals involving companies such as Enron, WorldCom, Adelphia and Tyco have been front-page news since fall 2001. These scandals, together with the bursting of the dot-com bubble, have left investors with trillions in losses and policymakers scrambling to prevent future financial disasters. Congress responded to the scandals of the last two years with the Sarbanes-Oxley Act of 2002 (SOXA), one of the most sweeping revisions to the nation's securities laws in decades. But SOXA is no panacea.

SOXA greatly enhances penalties for financial fraud, dramatically boosts funding for the U.S. Securities and Exchange Commission, mandates new rules to address securities analysts' conflicts of interest, and creates the Public Company Accounting Oversight Board to regulate the nation's accounting industry. SOXA also strengthens corporate governance – traditionally a matter of state law – by requiring independent audit committees, compelling CEOs and CFOs to personally certify the corporation's financial results and internal controls, and barring specific problematic practices, such as corporate loans to executives.

There is reason to doubt SOXA's capacity to prevent future financial disasters. SOXA is based on the premise that the post-March 2000 meltdown of the nation's financial markets was caused primarily by frauds by greedy managers, conflicted securities analysts and unethical accountants. According to this view, the dramatic run-up in stock prices during the 1990s resulted from corporate fraud, unduly optimistic research reports and flawed audits.

But the SOXA view ignores a less cynical and more probable explanation for the recent boom and bust:

that unanticipated business reversals triggered the financial meltdown. The now infamous frauds at Enron, WorldCom and others were by-products, not causes, of the collapse.

Under this view, the dramatic run-up in securities prices during the 1990s was driven primarily by the widely shared and honestly held belief that advances in technology and the Internet would change everything. Traditional brick and mortar businesses would

decay and die and firms that made the most effective use of technology would enjoy unbounded prosperity.

But this new economy never arrived. Not because those

who promoted it were lying, but because the future is impossible to predict. Firms that bet heavily on the new economy therefore faltered, with many disappearing long before the financial scandals of 2001-02 hit the front pages.

(continued on p. 25)

"There is reason to doubt SOXA's capacity to prevent future financial disasters."

– Peter Letsou



Peter Letsou is the Roderick & Carol Wendt Professor in Business Law and director of Willamette's Law and Business Program

THE SARBANES-OXLEY ACT IS WORKING

by Meyer Eisenberg

Is the Sarbanes-Oxley Act (SOXA) badly flawed or, even worse, legislative folly because the reforms imposed by the Act upset the pre-Enron allocation of corporate law between the federal government and the states? Critics like our colleague Professor Peter Letsou assert that SOXA is wrong-headed. They say it was mainly wrong business choices, not widespread fraud, that brought the financial meltdown. These critics insist that Enron, WorldCom and other frauds were merely incidental, not causes of the collapse. Therefore, they say, Sarbanes-Oxley will do little good and may well harm business by imposing burdensome federal governance and standards.

More than a year after SOXA was enacted, none of these assertions have proved valid. Meanwhile, some states have actively held managements to higher standards of governance. Delaware, for example, recently tightened its view of the qualifications required of independent directors.

SOXA has already played a role in reforming corporate governance of public companies in areas crucial to

restoring public confidence. It has tightened standards for the independence of auditors, required certifications by senior management to help assure the integrity of corporate financial statements, established the Public Company Accounting Oversight Board (PCAOB), implemented rules regarding the responsibilities of attorneys of public companies and strengthened the role of independent directors and corporate audit committees.

Critics allege that SOXA has failed to restore investor confidence and that the financial markets have shown few signs of life. Here we are in 2004 and the Dow has broken 10,000 and the NASDAQ index is over 1,900 – the highest in 20 months. If the market is a barometer of SOXA's success – a questionable premise at best – then SOXA is certainly a success.

Regardless of market fluctuations, the record shows that SOXA is working and having a significant effect on the corporate governance of American companies and, to some extent, on foreign corporations.

Letsou states: “[SOXA] is based on the premise that the post-March 2000 meltdown of the nation's financial markets was caused primarily by frauds perpetrated by greedy managers, conflicted securities analysts and unethical accountants.”

Exactly so! The “meltdown” was indeed “primarily” caused by the frauds perpetrated by greedy managers, unprincipled securities analysts, investment bankers and accountants – and I would add lawyers who eagerly served the interests of management over those of their clients and shareholders. We should also include media only too willing to hype the latest “hot” stock, the initial congressional reluctance to rein in accountants' dependence on consulting contracts, and yes, the failure of self-regulators and a resource-starved SEC to uncover Enron and other corporate frauds.



Meyer Eisenberg is the deputy general counsel of the Securities and Exchange Commission (SEC) in Washington, D.C.

FACULTY PERSPECTIVES

The succession of corporate and Wall Street scandals of the past two years has now reached the \$7 trillion mutual fund industry, to which nearly half of American households have entrusted their savings. Investors and employees of failed companies have seen their retirement plans gutted by the Enron and other corporate scandals. The corporate culture of greed and disregard of fiduciary responsibility has infected a wide array of broadly held and actively traded public companies. The string of scandals where senior executives are alleged to have defrauded investors while directors, accountants, investment bankers and lawyers were ineffective or, in some cases, complicit, includes Enron, Tyco, Adelphia, Waste Management, Health South and many other public companies.

Following the corporate scandals came the Wall Street analysts, who worked for 10 of the previously most respected Wall Street investment banks – Merrill Lynch, Morgan Stanley, et al. Their analysts lauded firm-sponsored stocks in research reports and the financial media, while privately denigrating some of these same issues as junk – and worse.

The collapse of WorldCom put an end to the accounting industry's attempt to scuttle SOXA. In the end it passed by virtually unanimous votes of both the House and Senate and was embraced by President Bush as the most important financial reform legislation since the New Deal.

SOXA federalized a significant segment of corporate governance for public companies. The patchwork of state corporate laws was plainly ineffective to prevent the kind of widespread national corporate misconduct that was uncovered. Several recent independent surveys confirm that boards of directors and corporate audit committees meet more often, for longer periods of time, ask for – indeed demand – justification for

and greater disclosure of management actions. CEOs and CFOs are now required to certify the accuracy of their company's financial statements. Accountants are less conflicted by consulting work that too frequently affected their impartial review of company financials.

Sec. 307 of the act requires attorneys who “appear and practice” before the Commission (e.g. by preparing SEC filings or by advising on matters involving the federal securities laws) to report credible evidence of fraud “up the ladder” to the chief legal officer and/or CEO of the public company and, if they fail to take satisfactory action, to the audit committee or to the full board. If reporting up within the company doesn't work, lawyers should consider reporting to the Commission. Under SOXA, an attorney for a public

company (inside or outside), knowing of such evidence, can no longer sit silently by and watch corporate officers defraud their company.

SOXA will not eradicate corporate fraud or guaranty the continuing

rise of stock prices. It will – and already has – significantly reduced the opportunities for self-dealing managers to game the system. SOXA effectively deters corporate managers and the professionals who serve public corporations from engaging in fraudulent activity and requires the adoption of mechanisms and standards that will aid in the discovery of illegal schemes that victimize investors.

SOXA is a work in progress. It's not perfect, but it's already been effective. 

Meyer Eisenberg was law clerk to Chief Justice William McAllister of the Supreme Court of Oregon (1958-59). His daughter, Ellen Eisenberg, is a professor of history at Willamette. The views expressed in this article are Eisenberg's own and not necessarily those of the Commission or other SEC staff members.

“[SOXA is] the most important financial reform legislation since the New Deal.”

– Meyer Eisenberg

(NO PANACEA, continued from p. 22)

This is not to say that fraud played no role in the financial crisis. Far from it. As the tech bubble began to deflate in the late 1990s, some managers attempted to stave off financial failure by doctoring the books to maintain an appearance of profitability, perhaps hoping the business might recover. Others cashed out their own investments before markets and ordinary investors learned the truth. But these actions merely delayed – not caused – the financial collapse that ultimately ensued.


Unanticipated business reversals triggered the financial meltdown.

– Peter Letsou

If this view is correct, then SOXA may provide only limited benefits.

SOXA ensures that investors learn about future financial bubbles more quickly, but it won't stop new bubbles from forming. And it won't stop them from bursting.

The new regulatory regime ushered in by SOXA could prove costly. High penalties for fraud (20 years in prison and fines of up to \$5 million per violation) can deter both the honest and the dishonest alike. With the benefit of 20-20 hindsight, a failed, but good faith, effort to commercialize a new technology may look very much like a fraud, particularly when regulators obtain email messages showing that some of the firm's employees had doubts about the new technology from day one (even if more expected it to succeed).


Additionally, SOXA represents a significant expansion of the federal role in regulating corporate conduct. For 70 years, the federal government has largely limited itself to regulating corporate disclosure, leaving the substance of corporate law to the states. SOXA alters this traditional allocation, casting aside a system that has worked well for decades to create the world's best financial markets and many of the world's best companies. All with little evidence that a single regulator – the federal government – can do a better job regulating corporate conduct than can the 50 competing states. 

(MUSIC, continued from p. 21)

and an unwillingness to change, the industry has seemed reluctant to embrace the "Betamax" lesson.

Business in a market economy runs on customer demand. One can attempt to control the tides, in this case with copyright law, however, the sea of consumers will ultimately prevail. Luckily for the movie industry, their effort to stop Sony's new Betamax video recording technology on the grounds it meant ruination for their industry, went down to narrow Supreme Court defeat. This decision permitted the bonanza of the home video market, which has not harmed, but has stimulated the movie industry.

Similarly, the solution for the music industry lies in embracing of the undeniable benefits of electronic distribution. That does not mean a grudging, unwieldy venture driving frustrated customers back to the admittedly profitable but now anachronistic model of exclusive store distribution of hardcopy CDs and tapes. It means shifting the paradigm and offering a wide selection of music, supplementary services such as pre-purchase sampling, ease of use and a fair price.

There's no question those invested in the buggy-whips of music distribution will feel transitional pain. There always is in a market economy. However, in the long run, society will be far better off if copyright law operates as Madison and Jefferson envisioned it – providing a reasonable incentive in the existing commercial context. So as we technological novices turn our energies to developing relevant computer skills, we should support the change by giving the new generation of pay online music distribution services a try. It will move us out of the problematic area of illegal music downloading. Most importantly, it will help the market itself make the transition to an environment, which opens rather than limits the field to a broader range of artists. It will ensure the music doesn't die. 

Vincent Chiappetta teaches Intellectual Property; Antitrust; Business Lawyering and Science, Technology and Law at Willamette College of Law.

CLASS ACTION

1950s

Ross B. Fortner LLB'58 of Portland, Ore., was asked by the Center for Mental Health Services (CMHS) of the Substance Abuse and Mental Health Services Administration to participate in a roundtable on Stigma in Mental Health and Aging. This is the second of two roundtables convened by CMHS to provide an opportunity to recommend how best to establish national public education/awareness initiatives and foster collaboration with other interested organizations.

1960s



Daniel H. Skerritt BA'65, JD'68 of Portland, Ore., was

named a Fellow in the American College of Trial Lawyers. Membership is by invitation only and is offered only after careful investigation of experienced trial lawyers. Skerritt is a partner in the Tonkon Torp law firm.

1970s

Ronald A. Shellan JD'75 of Portland, Ore., joined the board of Capital Pacific Bank, which opened for business in September 2003. Shellan, a partner of Miller Nash LLP, leads the firm's affordable



housing practice group and also specializes in tax, business and corporate

law. In addition, Shellan is a certified public accountant. Shellan has chaired the Oregon State Bar tax section, and has twice served on the board of directors of the Oregon Society of Certified Public Accountants. Capital Pacific Bank serves Portland and Vancouver-area businesses, professionals and high-net worth individuals.

Bruce M. Botelho BA'71, JD'76 of Juneau, Alaska, was elected as Mayor of Juneau in October. He served once before as Juneau's mayor, followed by nine years as Alaska's attorney general.

Diana I. Stuart JD'77 of Portland, Ore., was elected in August as a director of the Multnomah Bar Association. She is with the firm of Goldberg, Mechanic, Stuart & Gibson LLP and practices in the areas of litigation, family law, labor and employment. Stuart has participated in the MBA Mentoring Program since 1997 and in the Domestic Violence Project for the Multnomah County Legal Aid Services of Oregon. She has served on the MBA Court Liaison Committee and chaired it in 2000. She has also served on the OSB Indigent Defense Task Force III and the OSB Judicial Administration Committee. Diana has lectured in areas as diverse as criminal law issues, employment discrimination and litigation ethical considerations.

Teresa L. Foster JD'78 of Fairbanks, Alaska, assistant attorney general for Alaska, has been appointed as the statewide coordinator for sexual assault and sexual abuse cases, policies and training. Foster was formerly with the district attorney's office in Fairbanks.

1980s

Gerald L. Warren BS'78, JD'81 of Salem, a colonel in the Army National Guard and the state judge advocate for the Oregon Guard since his appointment by Governor Kitzhaber in August 2001, recently graduated from the Army War College in Carlisle, Pa., where he was awarded a masters of strategic studies degree for his successful completion of the two-year distance education program.

Ronald L. Bohy JD'82 of Portland, Ore., is a partner with Radler, Bohy, Replogle & Miller, specializing in workers' compensation defense. He lives with his wife, Debbie, and son, Scott, in Beaverton, Ore.

Christopher G. Palmer BA'82, JD'85 of Bucharest, Romania, is serving as a political officer at the American Embassy. Chris and his daughter, Storey, lived for six consecutive years in "la francophonie" – under-the-palm-trees (West Africa and Haiti) – before moving to Bucharest. Palmer recently concluded a six-month course of studies at the Romanian National Defense College, where the course of studies included political science, modern

European history and visiting Romanian wineries. After 10 years in the Foreign Service, Palmer can order coffee in several languages and has an intimate acquaintance with airport waiting rooms on several continents.

P. Gregory Frey JD'86 of Honolulu, Hawaii, was recently elected to the Saint Louis Alumni Association, his high school alma mater, for a three-year term as a member of the board of directors. Frey also continues as a litigation partner at Coates & Frey, Hawaii's largest family law firm with 10 attorneys and approximately 20 support staff. He recently completed his term as chairperson of the family law section of the Hawaii State Bar Association. Greg and his wife, Mia, have two daughters, Samantha, 15, and Alie, 13.

1990s

Michelle S. Druce JD'90, CDR'90 of Portland, Ore., joined the Farleigh Wada and Witt, PC, law firm.

Barry C. Bartel JD'91, CDR'91 of Denver, Colo., has become associated with the law firm of Holland & Hart and will engage in private practice with a special emphasis on litigation, natural resources law and environmental law. Before joining Holland & Hart, Bartel was co-director for the Mennonite Central Committee Program in Santa Cruz, Bolivia, where he directed a multinational staff of about 70 workers. He also worked at the Denver firm of Davis, Graham and Stubbs LLP

and has been involved in pro bono legal work, volunteered as a mediator and has lead conflict management workshops in Denver area churches.

Douglas R. Pahl JD'91 of Portland, Ore., was elected into partnership in the Portland office of the Perkins Coie law firm. Pahl specializes in litigation and labor.



S. Brent Thompson JD'92, CDR'92 of Fort Worth, Texas, has

been named associate director of communications for Southwestern Baptist Theological Seminary. Thompson practiced law in Alaska and Texas for eight years prior to entering the master of divinity program at Southwestern in 2000. Thompson previously worked at Wayland Baptist University's Alaska Center, where he taught U.S. government, and also supervised safety compliance for United Parcel Service's Fort Worth hub. In Alaska, Thompson helped develop labor law when he argued before the Alaska Supreme Court in the case of the Anchorage Police Department Employee's Association v. Feichtinger. Thompson will oversee the publication of *Southwestern News*, the seminary's alumni relations magazine. He and his wife, Paula, have three sons, Sam, Ray and Quinn.

Lisette F. Carter JD'93, CDR'93 of Spokane, Wash., is a partner with Evans, Craven & Lackie. Carter sends greetings to all her classmates!

W. Todd Cleek JD'94 of Portland, Ore., is president-elect of the Multnomah Bar Association Young Lawyers Section (YLS). Cleek is with Dunn Carney Allen Higgins & Tongue LLP law firm and practices in the areas of business and estate planning. He has been a member of the YLS board of directors since 2000 and was previously a member of the YLS Service to the Public Committee as well as its chair. He has been YLS board liaison to the MBA Professionalism Committee and a speaker on the professionalism panel. He has volunteered for the Senior Law Project and the Nonprofit Project. He is a member of the Oregon State Bar New Lawyer Division, a member of its CLE Committee and has been a speaker for CLEs.

Edward J. Wurtz JD'94 of Deming, Wash., was appointed general counsel to the Nooksack Indian Tribe in September.

Jennifer K. Oetter JD'95 of Portland, Ore., was elected president of the Multnomah Bar Association Young Lawyers Section and in that position also serves as a new MBA director. She has been with Hoffman Hart & Wagner since 1998. Oetter is a trial lawyer, specializing in insurance defense, including medical malpractice. She has also served on the Oregon Lawyers Against Hunger Board and most recently as its president in 2001-02. She has volunteered with the Domestic Violence Project for Legal Aid Services of Oregon and has served on the YLS Membership,

CLASS ACTION

Service to the Public and Service to the Bar Committees. She speaks at the professionalism panels that rotate around MBA firms and is a member of Oregon Association of Defense Counsel.

Joe R. Traylor JD'96, CDR'96 of Portland, Ore., is a partner with the Hoffman Hart & Wagner LLP law firm. His practice specializes in insurance defense litigation with an emphasis in defending insurance fraud.

Michael A. Kristof JD'97 and **Michelle M. Hull BS'94, JD'98** of Las Vegas, Nev., are happy living in the land of eternal sun. Kristof has been with the firm of Schreck Brignone practicing ERISA and employment litigation for the past year and a half. He was appointed to the Nevada Fee Dispute Arbitration Panel where he arbitrates disputes over fees between lawyers and clients. Hull recently passed the Nevada Bar Examination and continues to advise the Las Vegas Justice Court regarding issues of domestic violence. They have two children, Kennedy, 9, and Gabe, 2. Kennedy was accepted to the gifted and talented program at her school so look out Willamette for another Bearcat, Class of 2012.

Jason E. Whitehead JD'97 of Los Angeles, Calif., is a doctoral candidate at the University of Southern California, in the Department of Political Science. He teaches undergraduate courses in Constitutional Law, Criminal Procedure, Judicial Process and Introduction to Government. His most recent publications include biographical essays

on Ishmael Jaffree and Robert Mack Bell. The essays are part of an edited volume on famous Supreme Court litigants, which will be published by Congressional Quarterly Press this spring.

Kevin B. Dull MBA/JD'99 of Portland, Ore., is now the labor & employee relations manager with Metro.

Patrick S. Egan JD'00, CDR'00 of Salem, left the Governor's office to join the Port of Portland as their State Affairs Manager at the end of January. Egan will represent the Port before the legislature and state agencies and will aid in transportation and business development projects. Egan joined the Governor's office in 1999 as the Assistant to the Chief of Staff for former Governor John Kitzhaber and subsequently served as Kitzhaber's Economic and Transportation Policy Director. Prior to joining the Kitzhaber administration, Egan served as the Director of Policy and Research and Chief of Staff for the House Democratic Caucus office.

Christian C. Stephens JD'00 of Salt Lake City, Utah, is an assistant attorney general in the Utah Attorney General's office, defending the state's vested property rights to roads over federal public land within the state. Stephens graduated in 2002 with an MBA from the David Eccles School of Business at the University of Utah.

Taryn C. (Fuchs) Burnett MBA/JD'01, C'01 of Calgary, Alberta, is an attorney at the Gowling Lafleur Henderson LLP law

firm, practicing in the areas of commercial litigation and intellectual property.

Jeffrey R. Jones MBA/JD'01 of Portland, Ore., an attorney with Schwabe Williamson & Wyatt PC, in a case related to the Enron bankruptcy, prevailed on behalf of his client, Powerex Corp., in a \$100 million law suit against Alcan Inc., the world's second-largest aluminum producer. Jones was second chair in the case, one of the largest (if not the largest) arbitration awards ever approved in Oregon.

Juan J. Aguiar MBA/JD'02 of Quito, Ecuador, has been putting his CDR to good use by teaching Dispute Resolution to government officials in Ecuador. The program is offered jointly by George Washington University's Graduate School of Political Management and the Pontifical Catholic University of Ecuador. Aguiar stated that it was a great experience, which he would not have been able to do without the training and experience he acquired in the CDR program.

Jason A. Heym MBA/JD'02 of Portland, Ore., had an Aug. 1, 2003, grand opening of his general practice law office. Jason A. Heym Attorney at Law is located at 1020 S.W. Taylor Street, Suite 300, in Portland.

Monica A. Atiyeh-Whitaker BA'00, JD'03 of Portland, Ore., married Ben Whitaker, a mechanical engineer who graduated from Oregon State University. Atiyeh-Whitaker became a member of the Oregon Bar in September.

Travis R. Marker JD'03, CDR'03 of Isle of Capri, Australia, passed the Utah Bar in July 2003.

David L. Mistachkin BA'99, JD'03 of Aberdeen, Wash., is an associate with the law firm of Ingram, Zelasko & Goodwin LLP. Mistachkin has a general practice with an emphasis in criminal, family and employment law. Along with six other lawyers in the firm, Mistachkin joins partners **Gary A. Morean JD'81** and **Erik M. Kupka BA'93** at the firm.

Joanna M. Harbour JD'03 and **Kathryn R. Streed JD'03** of Salem, celebrated in November, 2003, the opening of their practice, Harbour & Streed, P.C., Attorneys at Law, 845 N.W. Monroe Avenue in Corvallis, Ore. Harbour has a general practice with emphasis in business transactions, wills and trusts. Streed's general practice has an emphasis in criminal defense, juvenile law, family law and personal injury.

FAMILY ADDITIONS

To **James L. Stepovich JD'89** and wife Sonia of San Diego, Calif., a son, James Alexander, born June 10, 2003. He joins big sisters Melissa, 7, Sydney, 4, and Nicole, 2.

To **Angela M. Stewart JD'91** and partner Deborah Pruitt of Portland, Ore., a son, Henry Jackson Stewart, born Aug. 9, 2003.

To **Lisette F. Carter JD'93, CDR'93** and husband Tim Durkin

of Spokane, Wash., a son, Matthew Edward, born Sept. 9, 2003.

To **Caroline F. Wiley-Gonzales JD'93, MAT'97** and husband Garin Gonzales of Portland, Ore., twins, born Sept. 21, 2003. A son, Mitch Wiley, and a daughter, Grace Anne.

To **B. Lynne Freeman JD'94** and husband Trent Baer of Anchorage, Alaska, a son, Kristian Aidan, born Dec. 21, 2002.

To **S. Amanda Marshall JD'95** and husband Ladd Wiles of West Linn, Ore., a son, Samuel Donald, born June 5, 2003. He joins big brother Eli.

To **Bret S. Simmons JD'95** and wife Gretchen of Bellingham, Wash., a son, Quentin Dell, born March 29, 2003. He joins big brother Toby, 3.

To **Julianna K. (Jones) Strong JD'95** and husband Eric of Grand Terrace, Calif., a son, August Robert, born Sept. 3, 2003. He joins big brother Roy.

To **Joe R. Traylor JD'96, CDR'96** and wife Erica of Portland, Ore., a son Bryson Jon, on Feb. 13, 2003.

To **Amy L. (Smith) O'Donnell JD'99, CDR'99** and husband Kevin of Littleton, Colo., a son, Jacob Thomas, born July 11, 2003.

To **Christopher T. L. Brown BA'94, JD'00** and wife **Fumiko (Ueda) Brown BA'95** of Beaverton, Ore., a daughter, Miya Kathryn Ueda, born April 5, 2003.

To **Jason A. Heym MBA/JD'02** and wife **Mayland C. (Chan) Heym BS'00** of Portland, Ore., a daughter, Lily Rose, born Oct. 14, 2002.

OBITUARIES

J. Ray Rhoten, LLB'36
Alex M. Byler, JD'58
Cash R. Perrine, LLB'58
A. Everett Graybil, JD'65
Martin W. Van Zeipel, JD'68
William L. Sisemore, JD'70
William W. Heylman, JD'79
Timothy G. Garlock, JD'82
James A. Boon, JD'84
Joseph E. Monaco, JD'89

GUIDELINES

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 or email wu-lawyer@willamette.edu

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It is the practice of Class Action not to print pregnancy or engagement announcements, nor candidacies for political offices due to the lag time between receiving such information and the publication dates. The *Lawyer* reserves the right to edit or omit any information submitted.

We welcome photographs for possible use, depending on space and photograph quality. Black and white photos are preferred. Please send a self-addressed, stamped envelope if you would like your photo returned.

KEY

JD = Doctor of Jurisprudence
 LLB = Bachelor of Law (equivalent of JD)
 LLM = Master of Law
 MM = Master of Management, Master of Administration
 MBA = Master of Business Administration
 H = Honorary Degree
 CDR = Certificate in Dispute Resolution
 BA = Bachelor of Arts
 BS = Bachelor of Science
 BM = Bachelor of Music

IN THE STACKS



THE LAWYERS' CURSE

The flip side of perception is reality and the reality is that since the dawn of the legal profession ethical lawyers have often borne the cross of unflattering perception. Representation of unpopular clients and causes has seldom been perceived by the public as noble. Alas, the ancient Latin maxim, “bonus jurista, malus christa” (good lawyer, bad Christian). No doubt this was derived from Luke, chapter 11, v. 46 in the New Testament, “Woe to you lawyers also! For you load men with burdens hard to bear, and you yourselves do not touch the burdens with one of your fingers.”


Adding fuel to the fire, in the 15th century, the Dutch scholar and satirist Erasmus ridiculed lawyers as “a most learned species of profoundly ignorant men.” In the 18th century, a clever old lady, responding to the comment that solicitors are almost always brave men, stole a line from Hamlet and quipped, “Conscience makes cowards of us all, and as lawyers mostly have no conscience, why of course they haven’t anything to make them cowardly.” She may have been unaware that Saint Evona of Brittany was both a saint and a lawyer.

Throughout history we, the virtuous lawyers, have suffered the slings and arrows of the uninformed. We have also suffered grievously at the hands of one of our own, Charles Dickens, noted British novelist, legal historian, and commentator of the 19th century. He spent his early years as a law student, attorney’s clerk and court reporter. To our detriment, little good was to come of it.

In fact, before Dickens retired his quill pen, lawyers were as welcome in society as the funeral horse. The typical lawyer in a Dickens novel, such as *Bleak House* or *David Copperfield*, was mercenary, corrupt or just plain evil. As a result, the reading public naturally views lawyers with suspicion. After all, in the world of literature an ethical, well-behaved lawyer is rather prosaic, while an unethical lawyer makes for a colorful villain. Listen to this description by Dickens of the Practitioners in the High Court of Chancery:

“[A]s here they are mistily engaged in one of the ten-thousand stages of an endless cause, tripping one another up on slippery precedents, groping knee-deep in technicalities, ... and making a pretense of equity ...”

Ah, those deceitful lawyers of times past – all prologue to the present public perception of lawyer trickery, thanks to the likes of authors like John Grisham (*The Brethren* and *The Firm*).

Acting as both refuge from and counterweight to centuries of stinging criticisms of lawyers stands the law library, a mighty beacon for the rule of law and ethical conduct. The law library is home to the great legal systems of civilization including the civil law, the canon law and the common law and their accompanying ethical directives; Justinian’s edict to “Live honestly, hurt no one, and render to everyone his just due,” the Ten Commandments, and the Oregon Code of Professional Responsibility. For further information on law and ethics, visit our library webpage at www.willamette.edu/wucl/lawlib/. 

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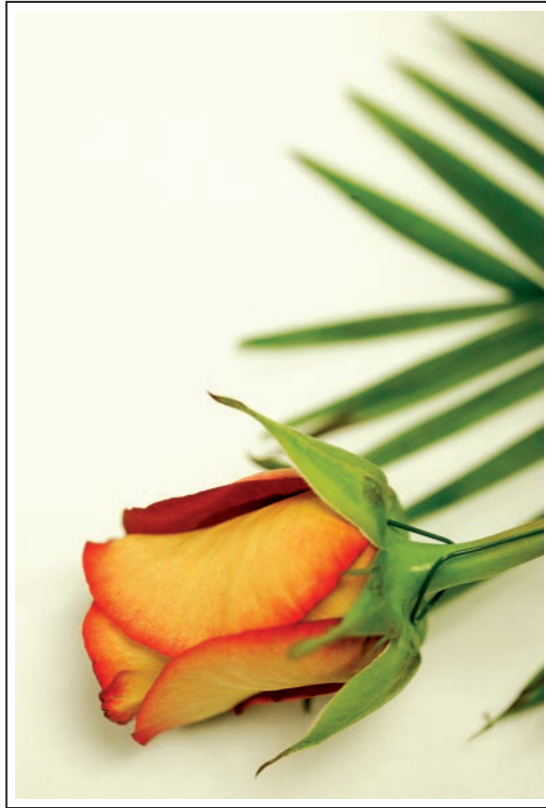
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