Winning at All Costs: Ethics and Integrity in Law, Sports, and Film

Robert Aronson, Betts, Patterson & Mines Professor of Law
April 11, 2008

Dean Gregory Hicks: Everyone, welcome. This is the seventh of the eighth installations of endowed professorships that we'll be doing over the course of this academic year. It's wonderful just to see you all here. It's a great turnout, and very fitting, to honor our colleague and friend, Rob Aronson, who is to be installed as the Betts, Patterson, and Mines Professor of Law.

We have a number of distinguished guests here today. I'd note--in particular, Bill Gerberding, who was the 27th president of the University of Washington, serving between 1979 and 1995; Wonderful to have Bill here, members of Professor Aronson's family... his wife, Terry, and daughters, Jenny and Tammy--and extended family members as well. So I think we've got a good turnout of Aronsons. I don't know everyone who's here, but it's very good that you are.

And, distinguished alumni who are here: representatives of the Alumni Association and also the Washington Law School Foundation... and members of the legal community, both from the downtown bar and from the bench.

And I'd particularly note, again, the members of the law firm of Betts, Patterson, and Mines who are here in force--specifically James Nelson of the class of 1980, who is the chairman of the firm. And he'll be speaking in just a little bit here. And also, Mike Mines of the class of '54, another one of ours, and a founding partner of Betts, Patterson, and Mines.

As we've noted on these occasions, the creation of endowed professorships is just of huge importance for the law school. Not only to support the scholarship of those who hold the chairs, but it's a way, also, of the law school's being able to project its influence in scholarly conversation and national legal discourse.

Just the honor that comes along with having named professorships and the way in which it gives capacity to the holders of the chairs by giving them significant additional resources to support their research and to have the ability to have their voices heard in significant quarters all around the country.

And it takes a lot of vision to make these endowments. These, of course, are creations of giving structures that support activities over many, many years. And to make that type of deep, institutional commitment that's going to resonate.

You have the first Betts, Patterson, and Mines professor, and there will be a string over the many years of Betts, Patterson, and Mines professors, and each one will add to the luster of the endowment by the work that they do and what they accomplish.
And we're off, beginning really wonderfully, with Rob Aronson, and his wonderful work, especially in the fields of evidence and professional responsibility.

Another aspect of the Betts, Patterson, and Mines endowment, in particular, is that it supports not only Professor Aronson's work but also provides some money that we can put into our trial advocacy program.

This was very much at the heart of the concerns that the firm had, and we're very much committed to the training in high levels of competence and high levels of ethical practice in trial practice. And so, again, this puts some wind in our sails and allows us to do very important work.

So thanks very much to the firm, and thanks, also, to all of those who just had the foresight to create this structure for us.

So I'd like to introduce, now, James Nelson, of the class of 1980, who is the chairman of the firm, Betts, Patterson, and Mines. And he's been a trial lawyer for almost 30 years and has a diverse, complex litigation practice. He is a graduate, as I've said, of this law school, and, I guess, a Dub; a bachelor of science from the University of Oregon.

And please, James, is going to offer some remarks on Fred Betts, of the class of 1933, a founding partner of the law firm.

[applause]

James Nelson: I took legal research and writing, professional responsibility, and evidence from Professor Aronson. And I have used what he taught me in my work almost every day for 28 years. But my role here today is to introduce Fred Betts and our firm.

Fred Betts was, without a doubt, one of the finest jury trial lawyers the state of Washington ever produced. Fred tried cases in every county of our state. We estimate that he tried 1,000 civil jury cases.

Fred was a man of exceptional ability, integrity, and charm. He was, in all respects, a gentleman. Most important for present purposes, he was also extremely successful and generous. Fred cared deeply about this law school, and Fred was passionate about the concept of excellence in trial advocacy.

Betts, Patterson, and Mines, in turn, is a law firm that Fred Betts co-founded. All three named partners graduated from this law school. And as Dean Hicks pointed out, Mike Mines and his wife Phyllis are with us here today. So are most of our absolutely outstanding and talented staff.

Betts is just a mid-size, downtown law firm, and we emphasize civil litigation work. Unlike some firms, Betts lawyers still try lawsuits. We try corporate disputes. We try consumer cases. We try class actions. We defend medical devices. We try coverage cases. We try wrongful death cases. And we try malpractice cases.
Our lawyers try cases in the state and federal courts in Washington, Oregon, and Alaska. Our lawyers are in court every day. Like Fred Betts, Betts lawyers today remain passionate about the concept of excellence in trial advocacy.

Now, there are many threats to the concept of excellence in trial advocacy today. Insurance company billing guidelines are a threat to the concept of excellence in trial advocacy today. So, too, is alternative dispute resolution, congested court dockets. The federal rules of civil procedure themselves threaten the concept of excellence in trial advocacy.

It is hard to bring a case to trial in today's legal world. The road to becoming a competent trial lawyer has never been more difficult.

Betts, Patterson, and Mines has taken numerous steps to protect and further the concept of excellence in jury trial advocacy. Betts nurtures budding trial lawyers at the firm.

We routinely send promising associates to NITA and the International Academy of Defense Counsel. Senior lawyers are always available to assist more junior lawyers in preparing for trials and appellate arguments.

And Betts trial lawyers are supplied with state-of-the-art trial-related technologies and equipment. In addition, Betts's Complex Litigation Practice Group regularly holds lively and informative internal training sessions.

Lawyers with more than 30 years of trial experience and lawyers with less than three sit around our boardroom table on a regular basis and talk about how to do it better. New technologies are demonstrated, and recent developments are discussed. Virtually all of our significant trials are debriefed in this context.

It is against that background we see the Betts professorship as a key additional step in furtherance of the firm's mission. Fred Betts and the law firm he founded, Betts, Patterson & Mines, each contributed substantial funds to endow this professorship.

Fred Betts was absolutely passionate about the concept of excellence in trial advocacy while he was alive, and we still feel that way today. We are proud to fund trial advocacy related teaching and scholarship. We are also proud to establish even closer ties with the University Of Washington School Of Law. Which we see as one of the top public law schools in the country and rising.

We are eager to become more involved with the law school and particularly its trial advocacy programs, and we would be very pleased if you would send us students who want to become trial lawyers.

In closing, it is now my distinct pleasure to introduce Professor Louis Wolcher. Professor Wolcher joined the UW Law School faculty in 1986 after nine years of private practice and three years of teaching. Professor Wolcher holds an undergraduate degree from Stanford and a law degree from Harvard where he edited the Law Review and graduated magna cum laude.
An internationally recognized scholar in the fields of philosophy of law, legal and political theory and human rights, Professor Wolcher won the University of Washington's distinguished teaching award in 2005.

Ladies and gentlemen, please join me in welcoming Charles I. Stone Professor of Law, Louis Wolcher.

[applause]

**Professor Louis Wolcher:** Thank you very much for the introduction. I apologize for my hobbled status here.

It is a great honor and privilege to have been asked to give a few remarks about my colleague and friend, Rob Aronson, on the occasion of his installation as the Betts, Patterson & Mines professorship.

I have known Rob for 22 years; ever since I arrived at the University of Washington Law School from practice as an assistant professor without tenure. He was a tenured professor, and immediately we struck it off on the golf course and elsewhere. He has provided me with unquestioned guidance and mentorship throughout my career.

Throughout all the time I have noticed Rob and been aware of his accomplishments and his commitments to the law school, there are a series of fundamental principles that seem to me to have remained constant. At the top of the list I would say his unfailing commitment to his students' learning is number one.

Many law professors, and I will confess to this myself as an example, all too often teach in order to teach. In other words, we feel we have some big idea or great insight that we want to communicate. And so we take the occasion of the public forum in the school room to show how smart we are and identify our ideas and so forth.

Rob is unquestionably a brilliant mind. But of all the people in this law school from my perspective he is at the top of the list of those people who teach in order for students to learn, not in order for himself to fill the room with his own words.

His compassion and his care for his students and for colleagues over the past 30 years has been notable. Everybody who has been touched by him in the course of their career will testify to his kindness and his unfailing support. The word "no" in short is not in Rob Aronson's vocabulary.

I asked a few of his former students in preparation for today's festivities to send me some quotations that I would like to read. I got tons of them, and I had to winnow them down to just a few. Here are some of the ones that struck me as particularly insightful about Rob.

"He is brilliant, intense, incredibly hard working. He is warm, funny, generous and a great friend. He is a great teacher because he is open to all points of view. He would seriously consider any
reasoned position without the usual academic censorship of so many professors who claim to want freedom of thought but who then swim in, and demand that all swim in, a small pool of received wisdom."

Another remark: "Rob Aronson entertained all ideas with equal respect from one end of the political spectrum to the other. And then the final remark that I will read out to you today is, in a sense, my favorite. There has never been any pomposity or arrogance in Rob's open mindedness. His mind was simply open, fair, reasonable and I must say kind, above all, kind." I think this last word kind and kindness is the most important word in describing the person we are honoring today.

You need only look at the diversity and number of people who are here today to realize the number of people whose lives Rob and his kindness have touched over the years - students and former students, faculty members, administration and staff, family members, friends, even golf buddies and indeed people from the U-Dub sports community about which I will say more in just a minute.

Speaking of sports, though, I really would be remiss if I did not mention Rob's other great passion in life in addition to his family and his teaching and scholarship, the great passion of sports. And this is a theme that he will be developing in his lecture to you today.

But, speaking of sports I must tell you that he is one hell of an athlete. And you never would do well to bet against him in any sport you might happen to participate in, as many people in this room will testify to. I, for one, have almost opened a line of credit for my golf debts...

[laughter]

Professor Wolcher: ... to him on account of the regular whipping that I get from Rob Aronson on the golf course.

He was the U-Dub's faculty athletic representative for 11 years. And performed that service with inestimable high quality and helped literally hundreds of U-Dub student athletes achieve their objectives, negotiate their way through the complex rules of the university and NCAA, defend the university in a variety of contexts. In short, his public service corresponds beautifully with his service to the law school and its students.

On the scholarly side of things, Rob is far more than deserving of the honor that is being bestowed on him today. In addition to a steady stream of articles written over the years that he has been a faculty member here and elsewhere, his book "The Law of Evidence" is the locus classicus. It is the main work that every lawyer in Washington knows. It is on every desk of every judge in every law firm in the state and elsewhere in the country. It is the standard treatise on the subject.

His casebook on professional responsibility is another notable work. And moreover his work as a uniform commissioner for many, many years produced enormous benefit for the people of this country, to be honest.
In the Uniform Commission acts that he worked on, including drafting the American Academy of Matrimonial Lawyers' code of ethics... which was one of his supreme achievements for which he received the President's Award in 2000 of the AAML; the first time, if I recall correctly, that any outsider was ever given that award. As a result of that project, he provided a well-needed code for matrimonial lawyers, which is effective today.

But beyond all of this, in closing, I would like to draw attention to what I think is Rob Aronson's central intellectual passion.

It comes down to three principles, it seems to me. The first principle that I noticed time and again... not just in the classroom, not just in day-to-day conversations, and not just in faculty meetings, but in every breath he takes... is a sense that it is justice and not law that we serve in this law school, and that students ought to serve; justice and not law in the narrow sense.

The second principle is that there is a greater good beyond the narrow self-interest that seems to affect a daily life, in business and in law, to which we are all accountable. And that part of legal education means to constantly hold up this vision of a greater good to which we are accountable.

And then finally... in a sense most importantly for me... is this final principle; that fundamental decency and kindness between human being is possible. And that it can ameliorate what is otherwise, and what can otherwise, be the brutal work of law and justice.

It is my great pleasure and honor to present to you my friend and colleague, Professor Robert Aronson.

[applause]

**Dean Hicks**: Thank you, Professor Wolcher, for those really wonderful words. For all of us who have had the luck of just basking in Rob's friendship and regard over the years, these words just ring true. This is a wonderful person standing next to me.

Now it's my pleasure to confer on Professor Aronson, as a token of the professorship with which he's being invested today, this medallion which has on it simply, "Betts, Patterson and Mines Professor Robert H. Aronson." It's my distinct honor and very deep pleasure to confer this on Professor Aronson.

[applause]

**Dean Hicks**: And now just to turn the podium over to Rob Aronson.

Professor Robert Aronson. This is sort of daunting. I give talks all the time, and normally I'm not very nervous about it. In light of Lou's... I didn't quite recognize who he was talking about.

[laughter]
Professor Aronson: I appreciate it. I sort of feel more like I'm at a wake than a presentation. When I saw the crowd, I thought maybe there are some people who thought I was a warm-up act for the Dalai Lama.

[laughter]

Professor Aronson: I went in the wrong room.

I had promised myself I was just sort of going to welcome everybody and not go through individuals, as some other people have done, but then when I saw I was given a list of the people coming and felt like I had no choice but to recognize at least some people.

I noticed in the hall some people who I didn't know were coming, so if I miss you, then I apologize. If you're a former student, you can just write that on my evaluation afterwards. And if I recognize somebody who isn't here, well, then you should have showed up.

[laughter]

Professor Aronson: First of all I'd like to thank Lou, who is a colleague, a friend, a fellow whiner, a golf patsy. Not just for being a friend but being here, but for those unbelievably gracious remarks.

Greg Hicks, our outstanding dean, has been a long friend, former golf patsy before he gave up the game. We're very lucky to have him serving as our dean.

Jim Nelson, as he indicated, a former student. You can tell that I must have done something right, or despite whatever I've done, he's turned out pretty well.

My daughters, Tammy and Jenny are here. I can't help but to think about... as will be obvious from my talk and as my students know... I teach a course on law, literature and film. Law, literature and film, it's one of my passions.

I couldn't help but thinking about Scout and Jim in To Kill a Mockingbird, and how they were embarrassed that all their father did for a living was talk. That was until one day he brought down a rabid dog with a single shot. Sorry, girls, I didn't bring my gun today.

[laughter]

Professor Aronson: My many research assistants, a number of them who are here... I want to particularly recognize Britney French, who is my research assistant, who helped work on the numerous videos and other materials that I've put together.

Between us, we have booklets and booklets of quotes and cases and films and whatever, so look for my book or article on the future. I've been told that a four hour presentations is not normally acceptable for these presentations, so I'll have to leave some of them out.
Jessica Murphy, who I saw, was a research assistant last summer and did a wonderful job as well.

Of course, Betts, Patterson and Mines, without whom I wouldn't be here. Particularly Michael Mines; I have a special and somewhat ironic thank you that I'll be giving to him a little bit later in my presentation.

And most important, of course, my wife Terry... class of '82 of the law school... who's not only supported me through all my endeavors and served as my personal role model of morality and caring, but as an attorney and teacher has had an attitude that's always been, "What can I do to help others?" She's my antidote to any winning-at-all-costs tendencies.

A special thank you to our incredible development staff; they're responsible for the whole proceedings, the installation proceedings, the award winning brochures, and every other aspect.

I'd like to mention, although he's not here, Damion Koemans and Jon Larson, who work with me on the videos and getting them in a form so that somebody who's somewhat technology-challenged could still have it work out right.

And also a particular thanks to Lenny Hom, who's back in the booth somewhere and is our audio-visual person.

I use a lot of visuals and I use a lot of film clips in my teaching. But I'm sort of like the person who knows how to drive a car and can fix a few things, but if anything seriously wrong goes on calls AAA. Well, Lenny has been my AAA, who I often call five minutes before class when I can't get anything to work. So I'd like to thank him.

My former students, who did not cut this class, even though it wasn't required and they had already graduated. I'm not responsible for their ability, integrity and success, but I take credit for it whenever possible. I don't have the time to mention all of you. I wish I did.

Maybe I could avoid the rest of my speech, but there are a few people that I do feel that I should mention.

Judges Bill Downing and Bob Lasnik were in the first class I taught at UW law school. That dates both of us, I think.

Judges Mike Trickey and Marlon Applewick and Judge Trickey's wife Lois who was in the same class. They were in the next year's class, the second class that I taught at the University of Washington. And we went through a pretty turbulent era together that you can ask them about some time, if you'd like to.

[laughter].

**Professor Aronson:** Council Member Dow Constantine who graduated about 10 years later; I am not giving you any of the years for these people to protect the elderly.
Professor Aronson: I would also like to thank Kevin Swan and Gale Stone. They were research assistants and teaching assistants. And both of whom are incredibly successful. I appreciate their coming back.

There are a number of my colleagues and faculty members, but I have to particular mention Craig Allen and Maureen Howard, who are former students of mine.

Craig took more courses from me than anybody who has ever been in the law school and lived to tell the tale. And so, the fact that he would come and hear me one more time is particularly impressive.

Joe Brotherton is here and as the President of our foundation board which tells you that the seriousness with which one undergoes his legal studies is not necessarily a predictor of future success.

Professor Aronson: Joe and I had a lot of good times together at the law school.

I don't know if she's here; I didn't see her but Lesle Gallimore was going to be attending. Lesle is our women's soccer coach. She is the epitome of a good role model. I am going to be talking a little bit about role models in a minute, and she had the good sense to quit law school in order to go into coaching.

If all coaches had Lesle's integrity and concern for student athletes, I'd still be doing more in the athletics world.

I want to give a special thanks to President Emeritus, Bill Gerberding. In addition to his 16 years of incredible service to the University, we went through some very good and very bad times together, including long hours and weeks preparing the university's appeal of the football sanctions to the NCAA.

He was always supportive and most important always had a great concern for athletics and was one of the great spokesmen in the country in terms of the importance of treating student athletes better. His widely regarded and read op-ed piece is something that was way ahead of its time.

A number of my golf buddies are here. I'm not going to embarrass them by naming them individually. However, I want to thank them for keeping me sane and for contributing to my daughter's college fund.

[laughter]
**Professor Aronson:** Many thanks to the rest of my family who are all here. I am not going to go through them individually. I am going to thank them privately later. But I really appreciate a number of them came up all the way from San Diego just for this presentation.

I want to welcome the Gates Public Service Scholarship finalists who are here. I had the pleasure of several years of reading the files of the finalists. I've had several of the people who actually came as Gates Scholarship recipients in my classes. They are an incredible group of people. What I am going to talk about would be totally unnecessary if we all could have their kinds of accomplishments and devotion to the public service.

There are many others who I would like to thank, but you all came here to watch video clips.

[laughter]

**Professor Aronson:** So, I'll move on with my presentation.

I am going to start in a little more serious vein.

Imagine Sunday morning in May about 20 years ago. I receive a phone call from a local attorney who I know. He wants to know will I meet him downtown to discuss the possibility of Rule 11 sanctions that may be brought against them and he may bring against another law firm. I remind him it's Sunday morning. Not only is it Sunday morning, but it's Mother's Day; however, he tells me what the case is about and I agree to come down.

A young girl who was given asthma medicine went into a coma and ended up in a vegetative state. The parents sued the doctor and the pharmaceutical company that manufactured the drug that was given to the child but could not really find anything wrong with the drug.

After several years of discovery and nothing that appeared to have occurred out of the ordinary, one of the lawyers in the case came into his office and found an anonymously provided "dear doctor" letter from the Chief Medical Officer of the pharmaceutical company that had been sent to a number of selected doctors... but not to the majority of doctors in the country... indicating that the drug, when given to children who had had a viral infection, could cause seizures and death.

The drug company had avoided discovery of a number of these similar documents for years that indicated the life threatening side effects of the drug. Now, discovery gamesmanship, I daresay abuse, has existed for a long time. Many attorneys consider it part of the game.

In fact, in this particular case leading attorneys in the Washington Bar from many different law firms submitted affidavits suggesting that the conduct of the lawyers in this case was just good lawyering.

The Washington Supreme Court in a 9-0 decision disagreed and stated: the drug company's attorneys claim they were just doing their job, that is, they were vigorously representing their
The conflict here is between the attorney's duty to represent the client's interest and the attorney's duty as an officer of the court to use but not abuse the judicial process. Vigorous advocacy is not contingent on lawyers being free to pursue litigation tactics that they cannot justify as legitimate.

What moved me on that Mother's Day Sunday to come down and file an affidavit in behalf of the case... on a day when I could have been out playing golf... was that the effect of the conduct was to help hide information that doctors were unknowingly giving drugs to children that could cause seizures and deaths.

The case, known as Fisons versus Physicians Insurance Exchange, was a watershed case for me.

Now, there was a downside for me personally. At that particular time in that year I was asked by our then dean to be the Associate Dean. The law firm in the documents went to the dean and indicated that neither the firm nor anybody in the firm would ever give money to the law school as long as I was Associate Dean.

Subsequently, a few years later and when I was a dean finalist, the same firm went to the then president of the University, and I am told that they indicated that I would not be a suitable choice for dean because my reputation and standing in the legal community was so bad.

It is my understanding that Michael Mines who was then on the dean search committee at the time was given the task of finding out whether these stories about me were, in fact, true.

It is also my understanding that he reported back that my reputation and standing were not quite so bad as had been suggested.

[laughter]

**Professor Aronson:** This gives me an opportunity particularly in light of the tenor of my talk to thank him personally. I hope I haven't done anything in the interim to change his report.

The Fisons case caused me to pay particular attention to the win-at-all-costs mentality in the legal profession. It is my contention that that mentality has increased over time with very bad repercussions for lawyers, the legal systems and society as a whole. Shortly, I will provide a few examples.

A number of years after the Fisons case I was asked by members of the Attorney General to assist in the case of the State of Washington against the tobacco industry.

Why they needed an ethics expert was the question I asked them initially. What they said was that in Florida in their case against the tobacco company they had tried out their case on a mock jury. The mock jury had found for the defendants which they found to be hard to understand given all the information and given the misconduct that occurred by the lawyers for the tobacco industry over a period of 40 years.
When asked, the mock jurors said they couldn't understand what all this concern was about lawyers helping to engineer misinformation to the public about the addictive and carcinogenic aspects of tobacco. Isn't that what lawyers are supposed to do for their clients?

Well, the attorneys in Washington thought maybe they would like to have somebody tell the jury, "No, that's not what lawyers are supposed to do for their clients."

Not long after the Fisons case, I became the university's faculty athletic representative. I've long been a participant and a fan of athletics. Ideally, student athletes learn discipline. They learn hard work. They learn to set goals and to meet them. They learn how to overcome difficult obstacles, both physical and mental. They learn good time-management skills.

These are lessons that can be transferred to all aspects of their lives. And, to the extent that they learn those aspects and they display them in the public forum, they can serve as good role models for fans of all ages.

Coaches help instill those skills and moral standards, or they can, by words and conduct, show that winning is more important than any of those other values.

The virtues of intercollegiate athletics were aptly demonstrated by Pat O'Brien playing the famed Notre Dame coach Knute Rockne in "Knute Rockne, All American". And this'll be the first of a series of video clips that I'm going to show, hopefully.

**Pat O'Brien:** I suggested that very idea to Father Callahan, our president. He was downright interested until we...

[Audio cuts]

**Pat O'Brien:** "We are living in the 20th century. To limit a college education to books, classrooms, and laboratories is to give to education too narrow a meaning for modern times.

"Now, if I have learned any one thing in my 20 years' work with my boys, it's this one fact: The most dangerous thing in American life today is we're getting soft, inside and out.

"We're losing that forceful heritage of mind and body that was once our most precious possession. And we, these men and I, have spent our lives trying to work out that flaccid philosophy. Work it out of our boys' minds and bodies.

"We believe that the finest work of man is building the character of man. We have tried to build courage and initiative and tolerance and persistence. Without which the most educated brain of man is not worth very much.

"Now, our boys of Notre Dame have played all over the country. And they've gotten to learn that Southerners aren't lazy, Northerners aren't cold, Middle-westerners aren't hicks, and Californians aren't big and dumb."
Pat O'Brien: "They've learned from all sorts of Americans what America is. And in that process, they found themselves.

"Now, I don't know... I don't know how you'd grade a boy for learning these things, Professor; 50, 75, 90 perhaps. But wouldn't it be a good idea not to grade anybody's contribution to the national intelligence until all the results are in, maybe five or 10 years after graduation, when his record and character are not hung on the wall like a diploma but inside the man himself?"

Professor Aronson: OK. Part of my thesis as you will see as I go through is that the old images, the images of an earlier time, whether you consider them to be accurate or a mythological romanticism, were seen by many, many people, both children and adults, and set the stage for moral standards and what people should aspire to.

Part of my thesis is that popular culture films, TV, both create and reflect the view of athletes and lawyers in the legal system to the extent they've become more cynical. They've become more negative. They either reflect or they encourage negative views as well.

As faculty athletic representative I was required to monitor athletic department recruiting, admissions policies, adherence to NCA rules, and when there were allegations that we had violated NCA rules, to investigate them.

During my 11 years in that role and stints on the Pac-10 compliance and NCA management councils, I came to see the good and bad of intercollegiate athletics. I found much similarity in the value and the ills of athletics and the legal system.

One of the most significant similarities was the win-at-all-costs mentality. The pressure to win, and the media's and the public's emphasis on not finishing second or worse, has grown to epidemic proportions.

I do not need to tell any of you who've practiced law for more than six months about the aggressive, hardball, Rambo tactics of other lawyers.

As those of you who are or have been students of mine know, I've long used excerpts and scenes from popular culture to illustrate legal issues, particularly those dealing with morality, justice, and ethics.

As stated by Thomas Shaffer, a former dean of a Notre Dame Law school, whose law school text for teaching legal ethics includes studies of real life and fictional lawyers. He said, "The truth about who we are which explains our morality. Including such things as what our communities are and what our families have been, is more a matter of character, of life as we live it; of story, than of principles. Our stories are the sources of our moral notions, and our moral notions are
prior in time and in logic to our classifications, our categories, and our principles. Stories bring moral notions to light. And moral notions are prior to moral problems."

To put that another way, a moral notion becomes something we can see and talk about because of a story. A moral notion is displayed and understood in a narrative context better than it is displayed and understood in the context of issues, quandaries, decisions, acts, and principles.

Not only do good storytellers and filmmakers do a great job of raising the issues in the context of human affairs, they do it in a much more compelling and interesting way than either cases, statutes, rules of professional conduct, or even the unquestioned eloquence of law professors.

Further, books, movies, TV shows both represent and influence the public perceptions of athletes and lawyers. So in merging my long-term interests in ethics and integrity in law and sports with my passion for films, I've selected a limited number of film clips to illustrate my point.

Despite my desire to show you all of the 60 or 70 minutes of film clips that I've developed, the first rule of presentations such as this is to not overstay one's welcome. So I've cut them substantially, and hope to be done by at least 7:00.

[laughter]

**Professor Aronson:** An emphasis on winning can be a spur to many positive results and achievements. My concern's not with a winning mentality or the exertion of extreme effort to win. Rather, it's with a winning at all costs mentality, by cutting corners, cheating, or otherwise acting immorally.

Law and sports are similar in that there are opponents and rules of the game. However, they're also similar in that, by tradition and necessity, both rely heavily on the ethics of the participants to ensure the fairness of the results.

I grew up on sporting events, sports stories and movies about athletes that promoted courage, overcoming obstacles and misfortune.

I internalized those values and messages of the stories. The portrayal of the star athlete as a person of character, modesty and integrity, who does what he considers right and not because it will give him good publicity is well portrayed by contrasting Babe Ruth and Lou Gehrig in "Pride of the Yankees."

[movie clip plays]

**Man 1:** All right, Babe.

**Man 2:** All right, hold it Babe. That's it, still.

[cameras clicking]
Man 1: Hand the ball to the kid now. That's it Babe, give it us a big smile Billy.

Man 2: Can you sit up a little bit, son?

Man 1: Hold it.

Man 2: Oh, there you are kid. Now let's have one with your arm around the kid. Can you look up at Mr. Ruth, Billy?

Man 1: Hold it. That's it.

Man 3: Just one more.

Man 1: Go right ahead. Page one on every rag from coast to coast or I go back to the copy desk. Oh, that's enough boys.

Babe Ruth: That's enough boys. And what's more Billy, I'm going to hit a home run for you this afternoon. And what's more, you can pick your own field, left, center or right. What did you say; center field, OK.

[overtalk]

Man: Say Babe.

Babe: Yes.

Man: I wonder if you'd autograph this for me.

Babe: I sure will.

Woman: Mr. Ruth, would you autograph mine too please?

Babe: Absolutely.

[background noise]

Lou Gehrig: Keep your chin up Billy.

Billy: Mr. Gehrig, would you put your name on it too?

Gehrig: Sure. You're quite a fan aren't you?

Billy: Haven't missed a game this season.

Gehrig: Oh, yeah.
Billy: Thanks. I like to play baseball.

Gehrig: You'll play again.

Billy, you know there isn't anything you can't do if you try hard enough.

Billy: You think so?

Gehrig: Why sure.

Billy: Could you knock a homerun for me this afternoon?

Gehrig: Why, you've already been promised one by Babe Ruth.

Billy: Could you?

Gehrig: Well, that's a pretty tall order. OK.

Billy: Could you knock two homers?

[laughter]

Gehrig: Two homers? In a world series?

Billy: Well Mr. Gehrig, you said you could do anything if you tried hard enough.

[laughter]

Billy: That's what you said.

Gehrig: Yeah, OK. I'll hit two homers for you, if you hit one for me.

Billy: Me?

Gehrig: You've got to promise me that one of these days, you're going to get up out of this bed and go home on your own power.

Billy: But how?

Gehrig: If you want to do something hard enough, you can do it. Hey, we can both do it can't we? OK. So long Billy.

Billy: So long Mr. Gehrig.

Gehrig: Lou.
Billy: Lou.

[clip ends, commercial begins]

Professor Aronson: OK. I could live with what's happened to professional and many amateur sports since those days portrayed in "Pride of the Yankees". I could live with the flash, the self-promotion. In fact, my wife appreciates the much reduced amount of time I spend watching sports on television and in person. But what it says about our culture and what it's done to the moral fabric of society is something of great concern.

From the many examples in film clips that I could have picked including "Friday Night Lights", "He Got Game", "Blue Chips", I've chosen from one of the most cynical, "Any Given Sunday". In fact, I originally had five clips from "Any Given Sunday", but I knew you wouldn't be able to take it. So, I've just given you one that is the most in contrast from the ones that you've already seen.

[film clip]

Man 1: What are the odds?

Man 2: Well, there's no telling. It's an odontoid fracture.

Man 1: Ah wait a....

[problems with film clip]

Speaker: This is where Lenny usually comes in and saves me.

[laughter]

[film clip begins again]

Man 1: Harve.

[music and background talk]

Man 2: We've got to talk about some basics.

Man 1: You're getting ready to yell at me, right?

Man 2: No, no. Come on...

[clip skips]

Man 3: Coach? I ain't trying to disrespect nobody but winning is the only thing I respect.
Coach: OK son. I want you to listen very carefully 'cause one day you're going to realize this is
the truest thing you ever heard.

This game, this game has got to be about more than winning. You're part of something here.
Lombardi, Tiddle, Sammy Bore, Unitas, hundreds of great players, those men on the wall.
You're part of that now. Along the way I want you to cherish it because when it's gone, it's gone;
forever.

Man 3: Yeah, but when I look at them pictures, the trophies and stuff, it just makes me sad. It's
like a room full of ghosts. When I'm done with this game or the game is done with me, I don't
want to be no ghost on the wall. I want to be more than that.

Coach: Looks like Cappy's going to make it back in time for the playoffs.

Man 3: What?

Coach: I'm going to start him.

Man 3: And that's the only reason you got me here? I knew you was going to sell me out.

Coach: Cap's a leader. He's a team player.

Man 3: That's bullshit.

[overtalk]

Coach: Need a team that's going to win in the playoffs.

Man 3: That's such bullshit. He ain't half the athlete I am. You look me in the eye and tell me
that Cap is a better player.

Coach: Cap's a better player.

Man: I guess that was somebody else out there winning them last two games, huh? I put the
points on the board. He lost four in a row. I lead by doing.

Coach: You kicked ass.

Man 3: Yeah, I did.

Coach: But I'll tell you something. Cap Rudy's been doing it for years.

Man 3: And his time is over.

Coach: [sighs]
Man 3: And yours is too unless you start taking some risks and start playing this game the way it is played today. It is not about the past and the trophies on the wall.

Coach: [shouting] I owned this game for three decades kid. I know football. Now those men on the wall, they own it too.

Man 3: When?

Coach: Just like you do.

Man 3: You could be the president of affairs, that whole sacrifice, and the glory of the game, crap you do it well. But I've been there. I seen a long line of coaches just like you always coming at me with that same old bullshit half-time speech.

Coach: Bullshit?

Man 3: Yes.

Coach: Is that what it is to you?

Man 3: Yes, it's bullshit. You know what you are?

[crosstalk]

Man 3: It's always bullshit because it's about the money. Raking in the TV contracts, fat-cat boosters sitting in the sky boxes, the coaches trying to up their salaries and the whole time, what you looking for? You looking for the next black stud to take you to the top ten. Get you in a bowl game. It's the same.

[clip ends]

Professor Aronson: I had a number of other ones I could have shown you but I didn't want to depress you too greatly.

That same phenomenon has been occurring in the legal world as well. As with athletic heroes, I and many of us grew up with legal heroes. From the many examples I could have picked, I picked two short clips. The first, Atticus Finch in "To Kill a Mockingbird". I love, and those of you who have suffered through orientation with me know that I love, the closing argument in "To Kill a Mockingbird". But it's both too long and too many of you have seen it.

So I picked a different clip from that. Interestingly enough, "To Kill a Mockingbird" was in a study done by The American Film Institute of the hundred most inspiring movies. It came in second to "It's A Wonderful Life."

With respect to the greatest heroes of all time, Atticus Finch came out number one. Numbers two through five were Indiana Jones, James Bond, Rick Blaine from "Casablanca" and Will Kane
from "High Noon". You'll note that a modest, quiet lawyer being number one is something of an anomaly. I'm in that group.

But you also know the phenomenon of the many Civil Rights lawyers and people who were inspired by "To Kill a Mockingbird" and Atticus Finch. In fact, in her recent swearing in as a federal judge in the second circuit, Judge Livingston indicated that her initial reason for becoming a lawyer was due to "To Kill A Mockingbird."

**Man 2:** Ah, wait a minute...

[Plays video clip]

**Atticus Finch:** What is it, Scout?

**Scout:** Atticus, do you defend niggers?

**Atticus Finch:** Don't say niggers, Scout.

**Scout:** I didn't say it! Cecille Jacobs did. That's why I had to fight him!

**Atticus Finch:** Scout, I don't want you fighting.

**Scout:** I had to, Atticus. He...

**Atticus Finch:** I don't care what the reasons are. I forbid you to fight.

**Scout:** Yes.

**Atticus Finch:** Anyway, I'm simply defending a Negro, Tom Robinson. Scout, there are some things that you're not old enough to understand just yet. There's been some high talk around town to the effect that I shouldn't do much about defending this man.

**Scout:** If you shouldn't be defending him, then why are you doing it?

**Atticus Finch:** For a number of reasons. Main one is that if I didn't, I couldn't hold my head up in town. I couldn't even tell you or Jim not to do something again.

You're going to hear some ugly talk about this in school, but I want you to promise me one thing, that you won't get into fights over it, no matter what they say to you.

**Scout:** Yes.

**Man 3:** I object!

[End of video clip]
**Professor Aronson:** OK. For those of you who are less film buffs and more TV aficionados, you might have grown up with the incomparable Perry Mason. Mason played by Raymond Burr, starred in 271 hour long TV shows from 1957 to 1966. He always represented innocent clients and he always succeeded disclosing the identity of the real killer who usually broke down on the stand.

[laughter]

**Professor Aronson:** Although modern viewers view Perry Mason shows as a little bit campy and many lawyers groan at the mention of his name, I agree with those who believe that the show created a very positive view of the lawyers and the legal system.

The TV Perry Mason was quite different from the other pop culture heroes of the 1950s who were mostly cowboys and detectives. They were loners who achieved justice at the point of a gun.

Mason, aided by his trusty investigator, Paul Drake and secretary, Della Street, always achieved true justice through the legal process. And he never relied on gunplay or other vigilante alternatives. I couldn't resist giving you at least one taste, particularly for some of our newer people who may not have seen Perry Mason in syndication.

[Plays video clip]

**Judge:** Well, Mason, did the trial transcript interest you?

**Perry Mason:** Yes, it did, Judge. I want to thank you for digging it out for me.

**Judge:** Sit down, sit down. How come a little bird like this could interest you on an 18-year-old murder case?

**Perry Mason:** Murder is murder, wherever you find it.

**Judge:** So is justice, which was carried out.

**Perry Mason:** Was it?

**Judge:** What are you getting at?

**Perry Mason:** You didn't mention that you were the prosecutor in that case.

**Judge:** You didn't ask! Now, look, Mason, let's you and I stop beating about the bush.

**Perry Mason:** All right, I will. All through the testimony, there was reference to a Miss X. Why wasn't her identity revealed during the trial?
Judge: Because she wasn't involved in the murder or the motive. So, it was decided there was no use to have an innocent girl's name dragged through that kind of thing.

Perry Mason: And the defense counsel agreed to that?

Judge: Of course he did. Now, look here, Mason, we don't have any desire to have you come in to our community and start replaying our cases. The man is dead. What's the big game by bringing it up again?

Perry Mason: Something with which we're both familiar, justice?

[End of video clip]

[laughter]

Professor Aronson: The contrast to Perry Mason and other lawyer heroes such as Matt Loken, the defenders of an earlier period, are too numerous to list. From TV: at least, Shark, LA Law, The Practice, Boston Legal and to some extent, the prosecutors on Law and Order; from films including this year's Michael Clayton; of course, Chicago and Liar, Liar. Big firm, corporate defense counsel are portrayed in the most negative light.

Experts excerpts that I don't have time to show, but which you may want to view for fun maybe Saturday night, include James Mason in The Verdict, Sydney Pollack in Changing Lanes. And just to give equal time to nasty, overzealous women lawyers, Tilda Swinton in Michael Clayton and Glenn Close in Damages, a TV show.

The current trend portraying the overzealous, win at all cost conduct of current lawyers is exemplified in several clips that I don't have time to show, but I'll at least mention to you.

One is Jon Voight in The Rainmaker. He plays a big firm attorney who, consistent with the Fisons and other similar case, hides documents. And in the scene I was going to show, Matt Damon who's a novice plaintiff's lawyer who's trying to depose witnesses from a large insurance company, is blocked by them, firing one, sending another and hiding a third and telling him that he can't depose any of those at the time.

In addition, Robert Duvall in A Civil Action plays another big firm defense lawyer who, in a number of segments from the movie, plays a cynical, crafty lawyer who also, through various devices, blocks access to information.

In one particularly humorous scene, particularly for those of us who either teach in law school, particularly trial advocacy adjuncts. Duvall is in a scene where he's in a law school class and obviously, as a guest lecturer in the trial advocacy course, explaining that the best way to throw a plaintiff's counsel off is object at every opportunity.

And there's a little scene that's almost like something from Gilbert and Sullivan where he says, "Hearsay, object. Best evidence, object." And then, he says, "If you fall asleep..." and then the
whole class says, "Object!"

And then, they show him back in the scene, putting all of that into action at trial.

By far, the most cynical of all of these is a scene from Changing Lanes in which Ben Affleck plays a young associate in a large law firm and has gotten into a minor fender bender in which he's lost the file that contains the crucial power of attorney that he's promised the court that he will produce.

He comes back and when he tells the senior partners about it, after being outraged, they then come up with a plan to take the will of the client that they have in their files, reformat the power of attorney so that the last page... they can use the signature page from the client... and put that on the document submitted.

When Ben Affleck says, "Well, isn't that forgery and fraud," and all that, they inform him does he really want to get in trouble and lose all the business, etcetera.

He's still debating that when he's called to a lunch meeting with his wife who's also an associate in the firm and the daughter of a senior partner, in which in a scene reminiscent of Lady Macbeth tells him that if he really loves her and he really wants to be a success then he'll do what they say. She could have married a medieval English professor from Princeton who would have been moral and upright.

But really, if he wants to have a successful career he has to do what's necessary to achieve, and he says, "Well, I don't know what to do. What do I need to do?" And she says, "Well, take the page. Put it on the back of the will as they told you to or the power of attorney. Turn it in and then meet me for dinner." Again, another scene doing that.

Well, I am running out of time. Although I have lots of other clips I'd love to show you, I don't want to outstay my welcome. I want to leave you on a more positive note. Despite some of these clips, I am really not as pessimistic as I might seem.

What I would like to do is suggest or, at least, list a few proposed remedies to what I see as the win-at-all-cost mentality in sports and in law.

As the court stated in Fisons, "Misconduct once tolerated will breed more misconduct. Those who might seek relief against abuse will instead resort to it in self-defense.

Good umpires and referees must clamp down on initial hard fouls and violence to send a message that they won't be tolerated and to avoid retaliation in self-defense. Likewise, I applaud the recent trend of judges to impose severe sanctions on discovery abuse."

There was a reported sea change in the discovery practice in Washington after the Fisons case. And every time a judge takes the bold stand and the difficult stand of imposing severe sanctions... and in some cases around the country excluding witnesses or even dismissing cases... the cost benefit analysis that formerly weighed in favor of winning cases by using those kinds of tactics
shifts dramatically. Judges must continue to refuse to tolerate discovery abuse and other misconduct.

Second, the governing bodies in sports and law must promulgate and enforce stricter standards of conduct. Again, if the cost of overzealousness is outweighed by the harm and the penalty, the conduct will decrease even if it is not totally eliminated.

My experience with the NCAA management council was that virtually every effort to take dramatic change to improve the situation was watered down substantially by the concerns of those who wanted to win.

Third, we need to pay more attention to better morals and ethics education at the K-12 level. That's a critical subject that is beyond the scope of this presentation.

We also need better education and concentration on ethics and morality in law schools. I, and... I note there are several other professional responsibility professors in the room... have long advocated that legal ethics should be taught and emphasized as relevant in all law school classes.

An unintended consequence of teaching discreet subjects with skills learned and the ability to reason and apply cases regardless of which side you are on, has the unintended consequence of causing students to think that the justice of the result, the effect on the humans involved and the morality is something that is slightly less important.

Students see lawyering as involving analytical brilliance without regard to the morality of the social utility and the position's argument. And then when they get to the professional responsibility course, late in their second or third year, the small voice of the professional responsibility professor says, "But, wait you might want to consider some of these other issues".

It is my belief and the belief of not only those of us who teach professional responsibility but hopefully an increasing number of other law professors that these kinds of issues need to be raised as they arise in every class.

Law schools do a disservice to students if they fail to explore success in terms other than making technically and analytically brilliant arguments.

Next, there must be increased emphasis on basis for happiness other than materialistic winning. Study after study details the unhappiness of those involved in law in sports. And the number of lawyers leaving the legal profession after a very short time is somewhat alarming.

Finally, proselytizing at all levels concerning values, balanced lives, the importance of family and the importance of aspects other than winning cases and long hours. We must not as parents, teachers, lawyers, judges and coaches underestimate the importance of role models. The need to communicate in words and conduct that while winning is highly valued; winning at all cost is not.

Anyone who had the pleasure of seeing how Judge William Dwyer conducted trials will understand the value and effectiveness of a great role model.
And no less an icon than Abraham Lincoln in refusing to help a potential client enforce a legally warranted but morally repugnant claim stated, "Yes, we doubtless can gain your case for you. We can set a whole neighborhood at loggerheads. We can distress a widowed mother and her six fatherless children and thereby get you the $600 to which you seem to have a legal claim but which rightfully belongs, it appears, to me as much to the woman and her children as it does to you".

"You must remember that some things legally right are not morally right. We shall not take your case, but we will give you a little advice for which we will charge you nothing. You seem to be a sprightly, energetic man. We would advise you to try your hand at making $600 some other way."

[laughter]

**Professor Aronson:** This is where literature and film can play such a valuable role. That's one reason why I show Atticus Finch's closing argument every year during orientation.

A third year law student in my Law, Literature and Film class wrote in her journal two and a half years later, "I remember so vividly when you came in during our one hour orientation and played the famous courtroom scene from 'To Kill a Mockingbird'. I had just finished reading the book in an attempt to be inspired before starting school, and when the tears welled up in my eyes watching the film clip I had all the inspiration I needed".

To the extent that we provide support and positive role models of lawyers, judges, coaches and athletes and to the extent possible serve as positive role models ourselves, we can encourage present and future lawyers and athletes to aspire to more and enduring values and more responsible conduct than winning at all costs. Thank you.

[applause]

**Dean Hicks:** Thank you, Professor Aronson. As I was sitting here it was occurring to me that these two major topics we have been talking about and Rob has been talking to us about, sports and law, have in common not only the fact that each one is a passion of Professor Aronson, but each of these is in a sense one of our most important public places, public spaces; places that we meet, where we display models of our own conduct.

And they are most important to us to the extent that they become places where you have corrosive images and where they somehow seem to be reduced by the cynicism by those who are engaged in them.

We really suffer something quite serious in the way of loss, and so I just wanted to say that just to underscore the importance of the themes and to highlight again the importance of the work that Professor Aronson is doing. We are privileged to have him among us.

We are about now to go to the Perkins Coie Room down at the end of this hall all the way down
to the end of the gallery. Please stay. There will be lots of good food and drink and just looking around the room, evidently very good company. Come and stay and help us continue the celebration. Thank you.

[applause]