

Western New England Law Review

Volume 33 33 (2011)

Issue 2 SYMPOSIUM: FIDUCIARY DUTIES IN
THE CLOSELY HELD FIRM 35 YEARS AFTER
WILKES V. SPRINGSIDE NURSING HOME

Article 1

1-1-2011

MASTHEAD, LAW SCHOOL FACULTY & ADMINISTRATORS, PUBLICATION INFORMATION, TABLE OF CONTENTS

Western New England Law Review

Follow this and additional works at: <http://digitalcommons.law.wne.edu/lawreview>

Recommended Citation

Western New England Law Review, *MASTHEAD, LAW SCHOOL FACULTY & ADMINISTRATORS, PUBLICATION INFORMATION, TABLE OF CONTENTS*, 33 W. New Eng. L. Rev. (2011), <http://digitalcommons.law.wne.edu/lawreview/vol33/iss2/1>

This Prefatory Material is brought to you for free and open access by the Law Review & Student Publications at Digital Commons @ Western New England University School of Law. It has been accepted for inclusion in Western New England Law Review by an authorized administrator of Digital Commons @ Western New England University School of Law. For more information, please contact pnewcombe@law.wne.edu.

WESTERN NEW ENGLAND UNIVERSITY SCHOOL OF LAW



Western New England University, in Springfield, Massachusetts, has its origins in the Springfield division of Northeastern University founded in 1919.

The University, which became independent in 1951, is composed of Schools of Law, Business, Engineering, and Arts & Sciences. The School of Law inaugurated a full-time program in 1973. Five years later, the School of Law was fully approved by the American Bar Association, and shortly thereafter, moved to new quarters in the S. Prestley Blake Law Center. In 1981, the School of Law was elected to membership in the Association of American Law Schools.

The only law school in the Commonwealth outside of the Boston area, the School of Law offers a three-year course of study for 387 full-time students and a four-year course of study for 138 part-time students leading to the JD degree. The School of Law also offers a part-time course of study for 84 students leading to an LLM in Estate Planning and Elder Law.

A dedicated faculty is committed to teaching not only the literature of the law but also the practice of law. The Western New England University School of Law Library, the only academic law library in Western Massachusetts, has a collection of approximately 400,000 volumes.

Information concerning admission to Western New England University School of Law can be obtained by contacting the Director of Admissions, School of Law, Western New England University, Springfield, Massachusetts 01119, (413) 782-1406.

WESTERN NEW ENGLAND LAW REVIEW

Volume 33

2010-2011

Number 2

BOARD OF EDITORS

Editor-in-Chief

KARINA L. SCHRENGOYST

Managing Editor

AMELIA J. HOLSTON

Senior Note Editor

JARED J. OLINSKI

Symposium Editor

JULIE D. MCKENNA

Senior Articles Editor

ROBYN E. GALLAGHER

Business Manager

RYAN GHAZEY

*Production Editors*MICHAEL B. PRASAD
MATTHEW L. ROLLINS
COURTNEY SANDS
JASON S. SELMONT
DANIELLE WOLFENDEN*Note Editors*ADELAIDA JASPERSE
ALLYSON E. MACKENNA
ANKA D. MASON
STEPHANIE M. O'NEIL
THOMAS R. REIDY
SANDRA L. WARD*Articles Editor*

CHRISTOPHER R. FOGELSTROM

*Publishing Editors*SCOTT S. LOOMIS
ALISON N. MAHER
ZACHARY M. STEVENS*Research Editors*DEVON GRIERSON
STEPHEN L. HOLSTROM

STAFF

AMANDA ANDRESS	GEOFFREY R. FARRINGTON	CASEY D. O'CONNELL
RAQUEL E. BABEU	MICHAEL A. FENTON	ANGELINA M. PARGOFF
THOMAS P. BOYLE	RESHONA C. GEORGE	MARA SHULMAN RYAN
LAURA N. BRADRIK	TSVETELINA GEROVA-WILSON	JENNIFER A. STEARNS
CATHERINE N. CHEVALIER	MICHAEL C. GILLINGHAM	MEGAN TESONIERO
KELLY J. CORRIGAN	PHILIP H. LIETAER	MARIA J. VALENTINO
KATHRYN S. CROUSS	MELISSA LUSSIER	VITALIY N. YUSENKO
CONNOR FALLON	LAUREN MASOTTA	PETER J. ZARELLA
	CHRISTOPHER E. McDONALD	

Faculty Committee

BRUCE K. MILLER

JEANNE M. KAISER

GIOVANNA SHAY

Administrative Assistant

DONNA T. HASKINS

WESTERN NEW ENGLAND UNIVERSITY
SCHOOL OF LAW 2010-2011

ADMINISTRATIVE OFFICERS OF THE COLLEGE

Anthony S. Caprio, A.B., M.A., Ph.D., *President*
Jerry A. Hirsch, A.B., Ph.D., *Provost/Vice President for Academic Affairs*
William Kelleher, B.S. B.A., *Vice President for Finance and Administration*

FACULTY & ADMINISTRATION

Peter Adomeit, B.A., J.D., *Professor of Law*
William G. Baker, B.S., J.D., *Professor of Law*
Bridgette Baldwin, B.A., J.D., Ph.D. Candidate, *Associate Professor of Law*
Erin Buzuvis, B.S., J.D., *Associate Professor of Law*
Tina W. Cafaro, B.A., J.D., *Clinical Professor of Law*
Lauren J. Carasik, B.A., J.D., *Clinical Professor of Law*
Matthew H. Charity, A.B., J.D. *Assistant Professor of Law*
Samuel Charron, B.A., J.D., *Assistant Director of Career Services and Public Interest
Coordinator*
Terese Chenier, B.S., *Law School Registrar*
William G. Childs, B.A., J.D., *Associate Dean of External Affairs and Professor of Law*
Amy B. Cohen, B.A., J.D., *Professor of Law*
Beth D. Cohen, B.A., J.D., *Associate Dean of Academic Affairs; Associate Professor of
Law and Director of Legal Research and Writing Program*
Jocelyn M. Cuffee, B.A., J.D., *Assistant Professor, Legal Research & Writing*
Marie K. Fletcher, B.S., *Legal Clinic Coordinator*
Taylor Flynn, B.A., J.D., J.S.M., *Professor of Law*
Harris Freeman, B.A., J.D., *Associate Professor, Legal Research & Writing*
Arthur R. Gaudio, B.A., J.D., *Dean and Professor of Law*
Anne B. Goldstein, B.A., J.D., *Professor of Law*
James W. Gordon, B.A., J.D., Ph.D., *Professor of Law*
Eric J. Gouvin, B.A., J.D., LL.M., *Professor of Law and Director, Law and Business
Center for Advancing Entrepreneurship*
Leora Harpaz, B.A., J.D., LL.M., *Professor of Law*
Michael Johnson, B.A., J.D., *Assistant Dean for Law Student Affairs and Director of
Academic Support*
Jeanne M. Kaiser, B.A., M.S., J.D., *Associate Professor, Legal Research & Writing*
Howard I. Kalodner, A.B., LL.M., *Dean and Professor Emeritus of Law*
Arthur B. Leavens, A.B., J.D., *Professor of Law*
Jennifer L. Levi, A.B., J.D., *Professor of Law*
Robert A. Lusardi, A.B., J.D., *Professor of Law*
Carol A. Lynch, A.S., B.A., *Assistant to the Dean*
William D. Metzger, B.S., J.D., LL.M., *Professor of Law*
Bruce K. Miller, A.B., J.D., *Professor of Law*
Barbara Noah, B.A., J.D., *Professor of Law*
Myra G. Orlen, B.A., M.Ed., J.D., *Assistant Professor, Legal Research & Writing*
René Reich-Graefe, B.A., J.D., LL.M., Ph.D. Candidate, *Associate Professor of Law*
Karen M. Romano, B.A., J.D., *Assistant Dean and Director of Admissions*
Frederick D. Royal, B.A., J.D., LL.M., *Professor of Law and Director of the Graduate
Program in Estate Planning and Elder Law*
Sudha Setty, B.A., J.D., *Associate Professor of Law*
Giovanna Shay, B.A., M.Phil., J.D., *Associate Professor of Law*
Robert Statchen, B.A., M.B.A., J.D., LL.M., *Assistant Clinical Professor of Law*
Julie E. Steiner, B.A., J.D., *Assistant Professor of Law*
Samuel Stonefield, A.B., J.D., *Professor of Law*
Carol A. Thompson, B.A., *Law School Alumni Coordinator*
Arthur D. Wolf, A.B., LL.B., *Professor of Law*
Paula Zimmer, B.A., M.A., *Assistant Dean and Director of Career Services*

ADJUNCT FACULTY

Michael J. Agen, B.S.B.A., J.D.
Louis Aloise, A.B., J.D.
Honorable Charles S. Belsky, B.A., J.D.
Michael Blanchard, B.A., J.D.
Honorable Henry J. Boroff, A.B., J.D.
Honorable Richard J. Carey, B.A., J.D.
Scott R. Chapman, B.A., M.Ed., J.D.
Malcolm J. Chisholm, Jr., B.S., J.D.
Philmore H. Colburn II, B.S., M.B.A., J.D.
Steven Coyle, B.A., J.D.
William Delaney, A.B., M.B.A., J.D., LL.M.
Justin H. Dion, B.S., M.A., J.D.
Charles E. Dolan, D.S., J.D.
James F. Donnelly, A.B., M.A., J.D.
Michael E. Donnelly, B.A., J.D.
Timothy M. Farris, A.B., M.B.A., J.D., LL.M.
Honorable Dina Fein, B.A., M.B.A., J.D.
Alex J. Grant, B.A., J.D.
Charles Groce III, B.A., J.D.

Barbara M. Hyland, B.A., J.D.
Judy Zeprun Kalman, A.B., J.D.
Craig Kaylor, B.A., J.D.
Leah Kunkel, A.B., J.D.
Andrew E. Markowski, B.A., J.D.
Mark Mason, B.A., J.D.
Honorable Kenneth P. Neiman, B.A., J.D.
Kevin O'Brien, B.A., M.A., J.D., LL.M.
Nathan A. Olin, B.A., J.D.
Kevin O'Regan, B.A., J.D.
George A. Pelletier, Jr., B.A., J.D.
Paul E. Perachi, B.S., M.Ed., J.D.
Honorable Mark L. Powers, B.A., J.D., LL.M.
Jeanette Robertson, B.A., J.D.
Carmino J. Santaniello, B.S., M.B.A., J.D., LL.M.
Robert Sawyer, B.A., J.D.
Eileen Z. Sorrentino, B.A., M.A., J.D.
Geoffrey White, B.A., J.D.

LLM ADJUNCT FACULTY

William Baker, B.A., J.D.
Hyman Darling, B.A., J.D.
Brenda Doherty, B.A., J.D.
Michele Feinstein, B.S., J.D., LL.M.
Danielle Ferrucci, B.A., J.D., M.P.A.
Bryon Harmon, B.A., J.D.
Christopher Hug, B.A., J.D.
Leslie Madge, B.A., J.D.

Richard Martin, B.S., M.B.A., J.D., LL. M.
Kelley Cooper Miller, B.S., J.D., LL.M.
Ian Oppenheim, B.A., J.D.
Kelley Peck, B.S., J.D., LL.M.
Richard J. Wirth, B.A., J.D., LL.M.
Mark W. Worthington, B.S.EE., J.D., LL.M.

LAW LIBRARY

Christine Archambault, B.A., M.L.S., *Head of Technical Services*
Nicole Belbin, B.A., M.S.L.I.S. Candidate, *Head of Access Services*
Stephen Bobowicz, B.A., M.L.S., *Catalog Librarian*
L. Elliott Hibbler, B.A., M.S.L.I.S., J.D., *Research/Faculty Services Librarian*
Patricia K. Newcombe, B.A., M.A., M.S.L.I.S., J.D., *Associate Director*
Barbara A. West, B.A., M.A., J.D., LL.M., *Associate Dean for Library and Information Resources*

PUBLICATION INFORMATION

The *Western New England Law Review* (ISSN 0190-6593) is published three times a year at the Western New England University School of Law, located at 1215 Wilbraham Road, Springfield, Massachusetts 01119.

SUBSCRIPTION INFORMATION

The subscription price is \$25.00 per year, plus an additional \$5.00 for foreign mailing. A single issue costs \$12.00, plus shipping. Subscriptions are accepted only on per volume basis, starting with the first issue. Subscriptions are automatically renewed unless a request for discontinuance is received 30 days prior to mailing. Back issues may be ordered directly from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209. Back issues can also be found in electronic format at HeinOnline <http://www.heinonline.org>. The *Western New England Law Review* is printed by Joe Christensen, Inc., 1540 Adams Street, Lincoln, Nebraska 68521. For further information contact the *Western New England Law Review* at Western New England University School of Law, 1215 Wilbraham Road, Springfield, Massachusetts 01119. Inquiries are also accepted by telephone at (413) 782-1463 and by fax at (413) 782-1788.

PERMISSION

Copyright 2011 Western New England Law Review Association, Inc. Articles herein may be duplicated for classroom use, provided that (1) each copy is distributed at or below cost, (2) the author and the *Western New England Law Review* are identified, (3) proper notice of copyright is affixed to each copy, and (4) the *Western New England Law Review* is notified of the use.

CITATION INFORMATION

Cite as 33 W. NEW ENG. L. REV. — (2011).

Member of the National Conference of Law Reviews.

WESTERN NEW ENGLAND LAW REVIEW

Volume 33

2011

Number 2

CONTENTS

SYMPOSIUM: FIDUCIARY DUTIES IN THE CLOSELY HELD BUSINESS 35 YEARS AFTER *WILKES V.* *SPRINGSIDE NURSING HOME*

FOREWORD

René Reich-Graefe 247

WILKES V. SPRINGSIDE NURSING HOME, INC.: THE BACKSTORY

Eric J. Gouvin 269

ENDURING EQUITY IN THE CLOSE CORPORATION

Lyman Johnson 313

WILKES V. SPRINGSIDE NURSING HOME, INC.: A HISTORICAL PERSPECTIVE

Mark J. Loewenstein 339

ALLOCATING THE ROLES FOR CONTRACTS AND JUDGES IN THE CLOSELY HELD FIRM

Robert B. Thompson 369

DONAHUE'S FILS AÎNÉ: REFLECTIONS ON WILKES AND THE LEGITIMATE RIGHTS OF SELFISH OWNERSHIP

Daniel S. Kleinberger 405

THE VACUITY OF *WILKES*

Benjamin Means 433

OF *DONAHUE* AND FIDUCIARY DUTY: MUCH ADO ABOUT ... ?

Douglas K. Moll 471

INVESTING IN WORK: *WILKES* AS AN EMPLOYMENT LAW CASE

Deborah A. DeMott 497

CLOSE CORPORATION REMEDIES AND THE EVOLUTION OF
THE CLOSELY HELD FIRM

Larry E. Ribstein 531

NOTES

CONSTITUTIONAL LAW—CROSS-GENDER PAT
SEARCHES: THE BATTLE BETWEEN INMATES AND
CORRECTIONS OFFICERS ENTERS THE COURTROOM

Robyn Gallagher 567

CONSTITUTIONAL LAW—DAMNED IF YOU DO,
DAMNED IF YOU DON'T: A PUBLIC EMPLOYEE'S
TRILEMMA REGARDING TRUTHFUL TESTIMONY

Adelaida Jasperse 623

BANKRUPTCY—MIMSY WERE THE BOROGOVES: A
“RIDE-THROUGH” THE LOOKING GLASS WITH THE 2005
BANKRUPTCY ABUSE PREVENTION AND CONSUMER
PROTECTION ACT

Allyson MacKenna 657