MASSACHUSETTS SCHOOL OF LAW
ETHICS 2002 - - FINAL EXAM
Professor Olson
May 21, 2002

You **must** write your social security number on the line provided below. You **must** also circle your class section. If you do not do so, I **will** deduct points.

Student S.S.#

Class Section (circle one):  
4:30 p.m.
7:30 p.m.

You **must** also write your social security number and your class section on the front cover of your blue book(s). If you do not do so, I **will** deduct points.

SHORT ANSWER QUESTION. (ALL STUDENTS MUST ANSWER THIS QUESTION.)

Bill walks into a movie theatre in Lawrence, Massachusetts which is showing the new Hollywood feature entitled *Law Students Who Whine and Complain* (Subtitled: *It's Not About Me*). He notices his lawyer, Vagira, sitting in the back row. Although Vagira is prattling on endlessly with her friend and fellow professional Querelus, she suspends her conversation (to the great relief of her fellow moviegoers who paid to see and hear the show) to look up to see Bill gazing at her somewhat wistfully.

Scrutinizing Bill with the trained eye of a lawyer, Vagira intones, “Why Bill, it’s been so long since I’ve seen you. How’s it been going?”

Bill then positions himself very close to Vagira, leans down close to her ear, and whispers so softly as to be almost imperceptible to those around them, “When the show is over, I plan to find Joe and stab him in the eye with a sharpened pencil. When I’m finished, I’m going to tell his venture capital group he doesn’t balance his checkbook, he buys gas from Shell, not Haffner’s, and he gambles on hamster races.”
Bill then walks away in a huff, takes a seat in the front row of the theatre, and starts munching popcorn. Goobers and Twizzlers at a frenetic pace. Vagira, not sure whether Bill was serious, nervously tells Querulus what Bill had told her.

Discuss any evidentiary issues or ethical duties raised by this exchange. Use the IRAAC method to compose your answer (Issue, Rule, Application, Application [Policy] and Conclusion). You can refer to the players in shorthand form: "V," "Q," and Bill. Remember to consider any local exceptions to the Model Rules in your answer.

**ESSAY QUESTIONS**

**(ALL STUDENTS MUST ANSWER TWO OF FIVE.**

1. John Wilson has recently moved into Massachusetts and has been admitted to practice. Prior to moving here, Wilson was a plaintiff’s personal injury attorney for 15 years in California. Wilson has opened his own office and has run the following advertisement in the yellow pages:

   John R. Wilson  
   Attorney at Law  
   1438 Washington St.  
   Harbortown, Massachusetts  
   781-555-1212  

   15 years specializing in personal injury practice

Wilson also plans to have the advertisement printed and distributed by teenagers at shopping centers.

A few days ago, Wilson learned about a train derailment in which a number of passengers were injured. Wilson was able to obtain the names of several of the victims through public records. He has written each of the victims a letter. The letter is very brief and simply informs the victims that Wilson is available to handle their cases if they wish to call for an appointment. The envelope containing the letter states: “Important legal information. Please open immediately.”

Unsure whether the letters will have the desired effect, Wilson also directed a number of the teenagers on his payroll to call the victims at their hospital rooms or at home to try to schedule interviews with them.

Wilson also represents the plaintiff in a products liability action against the Doven Corporation. Doven is represented by Alice Munson. Mary Haskell is the chief engineer in charge of product design for Doven, and Russ Finegold works in the Human Resources Dept. for the company. After filing suit, Wilson calls Haskell and asks for an appointment to discuss Doven’s procedures for product design. Wilson also calls Finegold to schedule an appointment. Haskell refuses to meet with Wilson because Munson has instructed her not to give any information about the case to Wilson. Finegold never spoke with Munson about the case; he schedules an
appointment with Wilson after Wilson tells him he would like to discuss placement opportunities for lawyers in Doven Corp.

Wilson has filed various discovery requests including a request for all documents relating to the design of the product. In reviewing documents to prepare a response to this discovery request, an associate in Munson's firm, Marcy Williams, discovers a report by a product engineer that questions the safety of the product. Williams informs Munson of this document and asks whether it needs to be produced. Munson directs Williams not to produce the document. Munson tells Williams in her opinion the document does not "relate" to the design of the product because the product was redesigned based on the concerns of Haskell and others. Discuss the issues of professional responsibility (and potential malpractice claims or evidentiary issues), using the IRAAC method.

2. Al Meyers asks Marcie Jansen, a young attorney, to handle a complex tax claim. Jansen, who has been practicing for three years as a public defender, has just opened her own office. She has never handled any tax matters and only took the basic tax course in law school. However, she was very anxious to keep this new client because Meyers had offered her a generous fee and her new practice had few paying clients at this time.

Jansen rented office space from Bill Withers, an experienced tax and business lawyer. The sign outside their building reads as follows:

Bill Withers, Esq. & Associates

Marcie Jansen, Esq.

Counselors at Law

During lunch with Withers, Jansen discussed Meyers's problem in detail and asked Withers's advice. Subsequently, Jansen spent a few hours researching the tax code, but she still did not feel comfortable with some of the more complicated provisions. She concluded that she could not handle the matter alone, and she asked Withers if he would associate with her for a fair portion of the fee. Withers accepted, and without Meyers's knowledge, advised Jansen throughout the representation. Meyers's claim was eventually denied by the IRS.

In another matter, Withers was asked by Ron Brown, an important client, to represent him in a criminal fraud matter arising out of Brown's business activities. Withers initially declined to take the case because he had never handled a criminal matter before and had no desire to learn how to do so. Brown insisted that Withers represent him, and he threatened to withdraw his business from Withers's firm if Withers refused.

Withers reluctantly agreed to handle Brown's criminal case but only after Brown agreed to sign a retainer agreement which provided that Brown would not sue
Withers for malpractice arising from the representation. Withers then diligently sought to inform himself so that he could handle the matter.

As it later developed, important evidence used by the prosecutor had been illegally seized. Furthermore, Brown brought some incriminating documents to Withers’s office for safekeeping. Despite Withers’s due diligence in preparing the case, his inexperience proved costly for Brown. Withers did not investigate the circumstances surrounding the seizure and subsequently failed to move to have the illegally seized evidence suppressed. The authorities also issued a subpoena for the documents held by Withers, and Withers refused to turn them over. Brown was eventually convicted. **Discuss the issues of professional responsibility (and potential ineffective assistance claims/evidentiary issues), using the IRAAC method.**

3. International Equity, Inc., a publicly held company listed on the New York Stock Exchange, is about to borrow a large sum of money from a bank. The company, to induce the bank to lend the money, has given the bank glowing reports about its prospects.

The strength of the company has been based on its reputation for vigorous research, which thus far has resulted in a series of patents for energy saving devices. The new product, production of which will be financed by the loan, will be another patented device. All the reports that the company has shown the bank suggest glowing prospects for performance of the device. The company’s auditors have issued a report showing International Equity to be in outstanding financial health. The current draft of your firm’s opinion letter indicates new knowledge of material facts inconsistent with that optimism.

You had lunch today with your good friend, the head of research and development section of International Equity. “A great company is in real trouble,” he told you. “When our former president retired, a sense of integrity retired as well.” Your friend and his scientist colleagues (all of whom would like you and your firm to represent them in any civil or criminal actions which might arise from these facts) have great concern that the new product described in the documents given the bank has not been sufficiently tested and that its reliability and performance have been overrated.

In addition, your friend told you that the production facility for the new product was recently purchased from a shell corporation owned by the company’s new president. He said the price paid by the company was outrageously high. The auditors did not catch the problem, and thus their audit did not footnote the fact that the purchase was from a corporate officer. As a result, the balance sheet of the corporation looks significantly better than it would if the facility were carried at its true value.

Your friend has also told you that he is dying of cancer. He has not yet told most of his friends and would like the information kept confidential. Throughout his tenure with the company, his reputation as a creative engineer has been such that investors pay a premium for the company’s stock.
As if this is not enough to give you indigestion, you also regularly represent Ocean Receipts, Inc., the defendant in a case charging price fixing, a criminal violation of the federal antitrust laws. Steve Jocelyn, manager of the sprocket division at Ocean Receipts, is accused of conspiring with Lucy Mills, his counterpart at Sprocktech, Inc., a major competitor. In your first interview with Jocelyn, Jocelyn told you he was unrepresented and asked you to represent him. Jocelyn told you that Ms. Mills also needed a lawyer and thought it would be best if you represented her as well. Sprocktech, Inc. has in-house counsel and you have already been meeting with him to share information and develop a joint defense.

You confirmed Mills’s interest in retaining you, and you have now entered an appearance on behalf of Ocean Receipts, Jocelyn and Mills. The U.S. Attorney, Martin Aboud, is interested in demonstrating his commitment to consumers because he plans to run for Governor next year. Thus, he is determined to obtain convictions, although he doesn’t care who takes the fall. He contacts the press, identifies the defendants, and says that he knows Ocean Receipts has been engaged in some shady practices. He also said he didn’t know what individuals might be guilty of wrongdoing, but he knows Jocelyn can’t be trusted and Mills has been described by her husband as a conniving philterer.

Aboud proposes to you that you get Jocelyn and Mills to plead guilty to charges for which he will recommend no jail time. In exchange, he will drop the felony charge against Ocean Receipts. Because this will reduce the chance of subsequent treble damage actions against the corporation, you find the proposal attractive. You recommend that Jocelyn and Mills accept it, accurately telling them that if they were found guilty after a trial, their sentences could be more severe. Discuss the issues of professional responsibility (and evidentiary issues), using the IRAAC method.

4. You are a member of a prestigious, 100-person downtown Boston firm (B & S, P.C.) with a national clientele. Your firm’s long-time client, Joe Ferguson, recently came to your office to tell you that he expects to be sued by the person who bought his house. He had told the buyer that the house had a dry basement. Although the basement had never flooded in the five years he had lived there, Ferguson had been told by a prior owner that the basement regularly flooded after a heavy rain. There was such a rain this year, and the buyer’s furniture suffered major damage.

Shortly before his death, you were able to interview the prior owner of the house, who told you what he had told Ferguson about the tendency to flood. You have notes of that interview in which you comment on the former owner’s likely credibility at trial. In addition, while at a party at a friend’s home, Ferguson’s banker let slip that Ferguson is in bad financial condition. You mentally filed that away as important to your settlement posture in case Ferguson is sued.

The buyer has now filed suit against Ferguson. The buyer has subpoenaed you to give a discovery deposition in the case. You expect to be asked what Ferguson told you about whether his house tended to flood. You have also been asked to produce
your notes of the statement of the prior owner. Someone else has asked you informally if the rumors that Ferguson has suffered financial reverses are true.

In another venue, your firm has a wide reputation for your success in handling medical malpractice cases for plaintiffs. Your firm is in great demand and is rightfully feared by defendant doctors.

Recently, Sandy Crane came to you with a claim against Dr. Cary Sharon. You investigated the facts, found they seemed sound, and proceeded to go to work on the matter. Until you had worked on the matter for about 90 days, you had not recalled that about five years earlier, you had represented Dr. Sharon in the routine adoption of his wife's children.

You might have forgotten Dr. Sharon, but he had not forgotten you. "How could you of all people – my own lawyer – sue me?" More to the point, he had his malpractice defense counsel move to disqualify you from handling Crane's claim.

Lastly, your firm represents Willy Wonka Container Corp. in many matters, one of which is a suit by National Widget against Wonka Container for contribution in a products liability case. The case is to be tried in New Orleans, and B & S is cooperating with Jeeves & Ransom (J & R), the law firm that Wonka uses as local counsel in New Orleans.

Jeeves of J & R is the only lawyer actively working on the case. His only role is to file papers, motions, and other pleadings forwarded to him by you. National Widget has now moved to disqualify both B & S and J & R from acting as Wonka's lawyers because Jeeves (while he had been in solo practice before forming J & R) had represented National Widget in various product liability matters arising out of the same facts that led to the present suit. Jeeves learned confidential information that, if disclosed, would be useful to Wonka's defense of the present suit. B & S has never represented National Widget. Discuss the issues of professional responsibility and malpractice using the IRAAC method.

5.

Tom Arnold is the son-in-law of Harry Speight. Tom rented an apartment in one of Harry's apartment complexes. Harry has a liability insurance policy with the All-Mutual Company covering all accidents in the apartment complex up to $100,000. One cold evening in January 1999, Tom injured himself when he slipped on some ice just outside the main entrance. Harry saw the accident and rushed to help Tom, but Tom said he would "be all right." Thus, Harry did not report the accident to All-Mutual. Unknown to Harry, Tom took several weeks off from work claiming back injuries. In June 1999, Tom sued Harry, his father-in-law, for $175,000 for his alleged pain and suffering and expenses in connection with the resulting back injury.

All-Mutual's liability insurance policy has several standard clauses. First, a "Notice of Accident" clause requires the insured to notify the carrier promptly of any accident for which it will expect coverage; failure to so notify is said to be a waiver of coverage. Second, the policy requires All-Mutual to provide for and to pay for a
Procedure, using the IRAVC method.

Discuss the issues of professional responsibility and civil liability to the client and potential witnesses, and then discuss the potential for potential liability to the client. I would recommend that all attorneys take a position on this issue. If the attorney agrees with the client's position, they should be prepared to present their case to the court. If the attorney disagrees with the client's position, they should be prepared to present their case to the court.

Land also believes that Happy is not cooperating, although she also has not said this. Land also believes that Happy's failure to notify All-Mineral about the accident is the cause of the matter.

An offer of $750,000 in excess of policy coverage is not considered to be an amount that would be offered to settle for $50,000, and Happy has told Land that she would prefer necessary part of lawyer's job. He will handle and handle all to Tom, the best.

What he hasn't done much investigation, he needs really consider this to be a part of the investigation. He will need to look into the case but the policy had been dealt with the issue. So take the case, take the case, to defend All-Mineral. For this purpose, the case may be removed in federal court, the case may be removed in federal court, and this may be removed in federal court, the case may be removed in federal court, and this may be removed in federal court.

We have also had concerns about Tom's lawyer by lawyer's knowledge, and this was known.

Complications, as a last resort to this, that Tom was gone to bring a lawsuit. If the investigation has been decided and was very

Hurry's and Tom's versions of the evidence were almost identical. We have and Tom has been to court. We have and Tom has been to court. We have and Tom has been to court. We have and Tom has been to court. We have and Tom has been to court. We have and Tom has been to court. We have and Tom has been to court.

After Tom filed suit, Happy notified All-Mineral and All-Mineral rejected Sally Land.