

April 15, 2004

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Current and former members of  
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Assistant Attorney General  
Charitable Activities Section  
Civil Enforcement Division  
Oregon Department of Justice  
1515 SW 5<sup>th</sup> Avenue, Suite 410  
Portland, OR 97201

Prof. Billy Williamson  
c/o David G. Ellis, Esq.,  
Vice President, Secretary, and  
General Counsel  
Lewis & Clark College  
0615 SW Palatine Hill Road  
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**Re: LEONARD D. DUBOFF and MICHAEL DUBOFF v. LEWIS AND CLARK  
COLLEGE, MICHAEL MOONEY, JAMES L. HUFFMAN, WILLIAM  
WILLIAMSON**

Dear Ms. Grant, Trustees of Lewis & Clark College, Managing Partner of Stoel Rives,  
and Messrs. Ellis, Hinkle, Huffman, Mooney and Williamson:

This letter is being sent pursuant to ORCP 32 H for the purpose of providing the required notice that Leonard DuBoff will be seeking class certification on behalf of the donors of monies to the restricted fund created to honor the memory of his late sister, Candise DuBoff Jones.

On February 13, 1979, Candise DuBoff Jones, an Oregon attorney, was shot to death in Multnomah County Courthouse by the estranged husband of her client. After this tragedy, her

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friends and family established a restricted trust fund for the purpose of providing scholarships for law students. The fund was to be administered by an independent board and the scholarships were to be granted in the name of Ms. DuBoff Jones based on merit and financial need.

Articles were published in, among other publications, the State Bar *Bulletin* for purposes of identifying the fund and alerting friends, colleagues, relatives and other interested parties to the request for donations. A restricted account was established at Lewis & Clark College, and many donations were deposited into that account.

A significant amount of funds donated with the intention that they be deposited into the DuBoff Jones fund, and used for the stated purposes of that fund, have instead been diverted to other uses. It seems apparent that a number of persons acted in concert in diverting those funds. It is not possible with the limited information that has been released to Mr. DuBoff to ascertain which persons were involved in the diversion of funds, but several of the above-named individuals were in a position to do so. Significant donations were not deposited into the restricted account and, on information and belief, were diverted for other purpose or purposes unknown, violating the purpose and spirit of the restricted fund. It is not possible to ascertain from the limited evidence available to Mr. DuBoff at this time whether those funds remained in the control of the College or were converted to other, wrongful uses.

The College trustees are charged with the responsibility for overseeing the College's financial affairs, including but not limited to the administration of restricted funds. On information and belief, those trustees failed in this regard and were either negligent in the performance of their duties as trustees or acted in concert with others to divert the funds from their intended purpose.

Leonard DuBoff is the decedent's older brother and a donor to the fund. He was assured by a representative of the College that he would be kept informed regarding donations to the fund (see attached letter from Ruth Bryson). The College never honored its commitment to Mr. DuBoff and his family. On March 29, 1991, it was determined by the College that several restricted funds, including the one held in the name of Candise DuBoff Jones, should be deposited into the College's unrestricted fund (see paragraph 2 on page 2 of the attached memo from James Dorsey). Neither Mr. DuBoff nor any other donor was informed of this improper commingling and breach of trust. On several occasions, money from the fund, as well as from the unrestricted fund into which the DuBoff Jones memorial restricted funds were deposited, was disbursed, and neither Leonard DuBoff nor any other donor of these restricted funds was advised of these improper disbursements.

Leonard DuBoff has agreed to act as a representative of the class for purposes of recovering the monies that were diverted by the aforementioned individuals and their conspirators and all of its trustees (see, for example, *Stern v. Lucy Webb Hayes National Training School for Deaconesses and Missionaries*, 381 F. Supp. 1003 (D.D.C. 1974), and its progeny). The Attorney General has been contacted about this matter, and his office, in fact,

April 15, 2004

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uncovered some of the evidence disclosing the improper commingling and disbursement. It will be necessary for that office to participate in this litigation since Lewis & Clark College is a nonprofit corporation and the Attorney General's office is charged with responsibility for policing such organizations on behalf of the people of the State of Oregon.

It is also important that the Association of American Law Schools and the American Bar Association Committee on Accreditation of Law Schools be involved in evaluating the actions of Lewis & Clark College's Law School division in order to determine whether the Law School has adhered to the high accreditation standards established by those organizations. These accreditation associations may assist in restoring appropriate procedures and safeguards for restricted funds at this institution.

Several individuals as yet unknown, possibly including the individuals named above, have taken steps to cover up the improper diversion and dispersal of funds intended for the DuBoff Jones fund. These actions constitute either deliberate spoliation of evidence or rankly negligent record-keeping. This letter constitutes formal notice to Lewis & Clark College, and all of its divisions and schools, employees and agents, to refrain from any further spoliation of evidence, whether in paper format or in the form of digital data. This notice is more specifically stated in Exhibit 1 to this letter. Mr. DuBoff requires the written agreement of each of the entities and individuals named above to refrain entirely from spoliation of evidence no later than Friday, April 23, 2004. Failure to comply will result in a request for immediate court intervention to compel the cessation of spoliation. Further, suppression or spoliation of evidence can result, at a bare minimum, in an unfavorable presumption against the party or parties engaged in those acts. *Oregon Evidence Code 311(1)(c)* ("Evidence willfully suppressed would be adverse to the party suppressing it."); *Accord, Stephens v. Bohlman*, 138 Or App 381 (1996).

In order to settle this matter and avoid the necessity of going forward with this litigation, Leonard DuBoff and other members of the potential class that he has consulted would agree to the following resolution:

- Funds in the amount of \$500,000 should be transferred by the College to an independent board for purposes of administering the Candise DuBoff Jones memorial fund. This board should be made up of representatives of the three Oregon law schools, as well as representatives of the Bar and, if possible, a member of Candise DuBoff Jones' family.
- The fund would be for the purpose of providing scholarships to law students from the three Oregon law schools on the basis of merit and financial need. As initially suggested when the fund was established, preference should be given to women law students, and preference may be given to Lewis & Clark law students.
- The College and the individuals named at the beginning of this letter shall submit to an audit conducted by an independent auditor for the purpose of tracking and recovering any and all funds properly attributable to the DuBoff Jones fund.

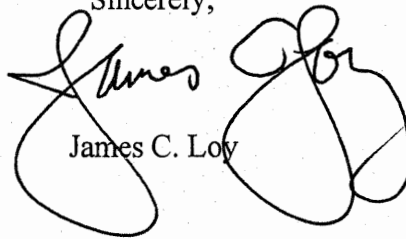
April 15, 2004

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If the aforementioned action is taken within 30 days of the date of this letter or appropriate arrangements commenced with the Attorney General's office assisting with the transition, then no action will be taken. If these demands are not satisfied within thirty (30) days, a class action seeking appropriate damages, injunctive relief, costs, and attorney fees will be filed in the Circuit Court of the State of Oregon. This demand and notice is given pursuant to ORCP 32 H.

*This matter demands your immediate attention.*

Sincerely,



James C. Loy

JCL:LDD:COK:pmr

cc: Association of American Law Schools  
American Bar Association  
Released to media

Enclosures:

Notice and demand  
*Bulletin* announcement  
DuBoff ltr 1/4/96  
Bryson ltr 2/21/79  
Dorsey memo 3/29/91

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**NOTICE AND DEMAND TO RETAIN EVIDENCE AND  
REFRAIN FROM SPOILIATION**

Exhibit A to April 15, 2004, Letter to the above-named entities  
and individuals (“the Noticed Parties”)

Leonard D. DuBoff, as class representative, and pursuant to ORCP 32 H, hereby  
demands that all Noticed Parties refrain from spoliation of evidence, and undertake affirmative  
steps to preserve evidence, including documents, related to the following categories  
 (“Categories”):

- a. The restricted fund established in or about February 1979 in remembrance of  
Candise DuBoff Jones (“The Fund”);
- b. All monies connected with or attributable to The Fund;
- c. All monies which at any time were accounted for as part of The Fund;
- d. All accounting records and actions of any kind related to The Fund and the  
monies described above;

e. All administrative records related to The Fund and such monies, including but not limited to all Board of Director records and all College President records in any way related to the Fund and the monies described above; and

f. All other evidence, of whatever description, related to The Fund and the monies described above.

For the purpose of this Notice and Demand, the following definitions and instructions apply.

### Definitions

1. "Document(s)" refers to all originals, copies, transcriptions and drafts of all written, recorded, or graphic matter, however produced or reproduced, including but not limited to the following: books, appraisal reports, advertisements, pamphlets and agreements, invoices, proposals, quotations, orders, and acknowledgments, diaries, time sheets, time records, and desk, pocket, wall and other calendars, reports, projections and forecasts, appraisals, memoranda of telephone or in-person conversations and meetings, legal memoranda, other memoranda, letters, telegrams, telexes, cables, facsimiles, and other written, typed, or printed communications, tapes, transcripts and recordings, computer printouts, diskettes, tapes, and hard disks, photographs, slides, negatives, pictures, films, bills, financial statements, accounting records, and any other graphic, recorded, written, printed or typed material of any nature whatsoever (including data stored on any computer device or any electronic storage medium, together with instructions and programs necessary to search or retrieve such data on any computer device in the custody or control of any of the Noticed Parties), and shall include all attachments and enclosures to any requested item, which shall not be separated from the items to which they are attached or enclosed.

2. "Computer device" shall include any office desktop or workstation computer, any notebook or laptop computer, any home computer if used in any way for the business of the Noticed Parties, computers of all personal assistants, secretaries and staff members of the Noticed Parties, any network file server, mainframe or mini-computers, computers used at any satellite locations, any PDA or other palm-top device, and computers used or maintained by any agent or representative of the Noticed Parties.

3. "Electronic storage medium" shall include internal and external hard drives, floppy disk drives, CD-ROMs, DVDs, Jaz and Zip drives, PC cards, Mini Discs, Magnetic Tape Drives, Digital Audio Tape drives, Flash cards, Smart cards, Micro drives, Memory Sticks, Bernoulli Drives, peripheral devices capable of storing digital data such as printers, copiers and scanners, read-only memory, and optical and magneto-optical storage devices.

4. "Related to," as used herein with reference to documents or other evidence, means any document, documents or other evidence relevant in any way to the subject matter of the Categories including, without limitation, all documents which contain any information which evidences, pertains to, concerns, relates to, exhibits, displays, manifests, summarizes, evidences, copies, reproduces, expresses, reflects, records, notes, regards, comprises, analyzes, evaluates, investigates, examines, illustrates, comments on, disputes, contradicts, transmits, discusses or accounts for the subject matter of any Category.

5. The "Noticed Parties" includes the Noticed Parties as a whole and each one separately, or in any combination.

### Instructions

1. Preserve all physical documents and other physical evidence related to any Category in a way that will prevent the destruction, alteration, degradation, loss or misappropriation of the evidence or any part of the evidence. This may include, as necessary, making true copies of such evidence, creating a repository for such evidence separate from other documents and evidence, and secure from intrusion by unauthorized persons.

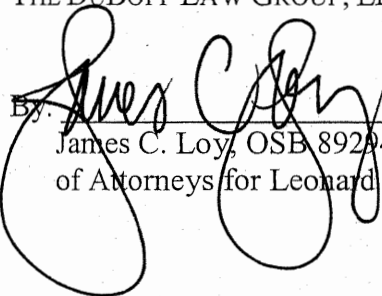
2. Preserve all evidence related to any Category which exists in digital format on any computer device or electronic storage medium in a way that will prevent the destruction, alteration, degradation, loss or misappropriation of the evidence or any part of the evidence. This may include physically preserving backup tapes or other archival data, preserving in their present stage documents that have been logically deleted but not entirely physically erased, and refraining from operating computers or electronic storage media which contain relevant evidence without altering, in any way, the original files, until an exact readable image (sometimes known as a "bitmap image") can be made of the relevant electronic information.

3. Take all additional steps as needed to preserve all evidence related to any of the Categories.

4. Direct all divisions, schools, departments, employees, agents, interns, students, attorneys, consultants and other persons or entities in the control of each Noticed Party that they are to know and comply with the contents of this Notice and Demand.

Dated: April 15, 2004

THE DUBOFF LAW GROUP, LLC

By:   
James C. Loy, OSB 89294  
of Attorneys for Leonard D. DuBoff

\\Darmok\Clients\2900-2999\2949\Corresp\Notice and Demand re Evidence Retention-Spoliation04.415.doc

## In Memoriam:

### Candise DuBoff Jones Portland — 1952-1979

A memorial fund has been established at Northwestern School of Law in the name of Portland attorney Candise DuBoff Jones, who was shot to death February 13 in the Multnomah County Courthouse. She was 26.

Jones moved to Portland from New York in 1973 and attended Northwestern School of Law. She was admitted to the Oregon State Bar in 1977 and became an associate of attorney Robert McKee in Portland.

Donations to the Candise DuBoff Jones Memorial Fund may be sent to Northwestern School of Law, 10015 S.W. Terwilliger, Portland, Oregon 97219.

### Roy Hirai Nyssa — 1917-1978

Roy Hirai, completing his first term as Malheur County Judge, died December 22, 1978 at the age of 61. He was the victim of a heart attack.

Hirai, of Japanese ancestry, was interred during World War II and worked as a farmhand while in confinement. He continued to farm after the war and after several years developed a produce packing and shipping business.

Hirai was re-elected to his second term as judge in November 1978. He was a past president of the Association of Oregon Counties and the Japanese-American Citizens League.

### Harold Henigson Nyssa — 1906-1978

Harold Henigson, a longtime Nyssa attorney who devoted himself to the study of water and irrigation law, died December 22, 1978 at the age of 72.

Henigson graduated from St. John's University Law School in 1928 and was admitted to the New York State Bar in 1929. He moved to Oregon after having been stationed in Portland during the war and set up a law practice in Nyssa in 1947. At the time of his death he was the senior partner in the

firm of Henigson, Stunz, Fonda and Pratt.

He was involved in numerous activities related to his interest in water law. He served as secretary for both the North Board of Control of the Owyhee Project and the Owyhee Irrigation District. In 1954 he was named director of the Oregon Water Resources Congress and in 1971 he was elected the Oregon director of the National Water Resources Association.

**Hugh I. D.**  
from:  
**Oregon State Bar Bulletin**  
**Volume 36, No. 6, March 1979**

graduated from Willamette University School of Law and was admitted to the Oregon State Bar in 1971. Upon graduation he served as a law clerk under Oregon Supreme Court Judge Arno Denecke before moving east to attend New York University. At NYU Dick received an advanced degree in taxation and in 1973 he accepted a professorship at Loyola University School of Law in Chicago. He joined the Willamette faculty in 1977 and was made a full professor in taxation this past year.

### Status changes:

Voluntary transfer to inactive:  
Effective January, 1979

**Deborah A. Bail**, Idaho  
**Bradford L. Bates**, Washington, D.C.  
**Aaron Tyler Bliss**, Michigan  
**Albert D. Buford, III**, Virginia  
**Jane Cantor**, Washington  
**William Charack**, Portland  
**Stephen L. Dunne**, California  
**Louis Fasano**, West Linn  
**Robert J. Gaughran**, New Jersey  
**Jane A. Gearhart**, Eugene  
**D. Rahn Hostetter**, Virginia  
**James B. Jaqua**, Bend  
**Chester S. Kurzet**, Portland  
**Oscar Yale Lewis, Jr.**, Washington  
**Merlin L. Miller**, California  
**Samuel J. Petrillo**, Idaho  
**E. Bronson Potter**, Lake Oswego  
**Donald Russo**, Washington  
**Bruce Douglas Smith**, Ashland  
**Noam Stampfer**, Portland  
**George B. Stevenson**, Washington  
**Herbert W. Titus**, Eugene  
**Mark Morris Tucker**, Washington  
**John M. Volkman**, Portland

Among  
ourselves



**George Snyder**, Portland, has been appointed the administrator of the Business and Consumer Affairs Committee of the Oregon House of Representatives.

**Ernest Seuell**, an Adrian farmer, was appointed by Governor Victor Atiyeh in January to fill the term of the late Malheur County Judge Roy Hirai.

**Kenneth S. Solomon**, Portland, was recently awarded the State of Oregon Distinguished Service Medal and the US Air Force Legion of Merit upon his retirement from the Oregon Air National Guard.

Springfield attorney **Laurence Thorp** has been elected president of the Springfield Area Chamber of Commerce for 1979.

Oregon City attorney **Jack Caldwell** and **Bill Love**, president of Equitable Savings and Loan in Portland, were recently appointed as Port of Portland commissioners by Governor Victor Atiyeh.

Heppner attorney **William Kuhn** was recently elected first vice president of the Heppner-Morrow County Chamber of Commerce.

**Lou Giovanini**, municipal court judge of Beaverton, has been appointed to serve on the American Judges Association Committee on Ethics, Grievances and Judicial Standards for 1979.

Salem attorney **Robert Davis**, president of Public Affairs Counsel, Inc., will be the first lobbyist to represent the newly formed Association of Oregon Faculties in Salem. Faculty members of the eight Oregon State System of Higher Education schools have joined the new organization, which is aimed at giving the teachers a voice in the Capitol.

LEONARD DUBOFF & ASSOCIATES

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\* ALSO A MEMBER OF THE NEW YORK BAR  
† ALSO A MEMBER OF THE WASHINGTON BAR

OF COUNSEL:  
Roger Tilbury‡

‡ ALSO A MEMBER OF THE MISSOURI BAR

January 4, 1996

Charles Hinkle, Esq.  
Stoel Rives  
900 S.W. Fifth Avenue, Suite 2300  
Portland, Oregon 97204

RE: Candise DuBoff-Jones Scholarship Fund

Dear Charlie:

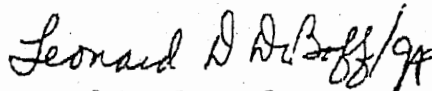
As you may know, shortly after my sister was killed, a scholarship fund was set up in her name.

The terms upon which the money was donated to the fund and the conditions upon which the school accepted the money were that the money would be used for scholarships to be approved by a member of her family. It was understood by the individuals involved in establishing the scholarship that my brother, mother, or I would be kept informed about the dispersals and would be asked to approve those scholarships. To date, we have not been given any information regarding the fund.

Please provide me with accounting of all money received by the Fund and the disposition of those funds. In particular, I would like to know whether any scholarships actually have been paid out and who approved the dispersal. I also would like to know whether funds have been kept in a restricted account and whether they have been invested in order to preserve the Fund as the donors intended.

Thank you very much for your prompt attention to this matter. I do look forward to receiving this information as soon as possible.

Sincerely,



Leonard D. DuBoff

LDD:gp  
cc: Mr. Michael Mooney  
02vniac/hinkle.104



Portland, Oregon 97219

Telephone (503) 244-1181

# Lewis and Clark College

Northwestern School of Law

February 21, 1979

Professor and Mrs. Leonard D. DuBoff  
Lewis and Clark Law School  
10015 S. W. Terwilliger Blvd.  
Portland, Oregon 97219

Dear Len and Mary Ann:

We are receiving gifts daily in memory of your sister, Candise. Each gift is acknowledged and the donor's name registered in a book of memorial gifts. I wanted to reassure you that we will notify you and Randy of all donors to the Candise DuBoff Jones Memorial Fund. Enclosed please find a list of names of donors to date.

At your convenience, Eleanore Baxendale of the Women's Lawyers Caucus; Kathleen Nachtigal, President of the Alumni Association; Phil Roth; Fred Fagg and I would like to meet with you regarding efforts to build a memorial scholarship or endowed chair in Candise's name. Please let us know when you would like us to get together. I will be out of the office until Wednesday or Thursday of next week, (I'm getting married this Saturday.) but if you have any questions or if you would like to leave any messages, please speak with my secretary, Beth Preppernau.

I'd like to express my sincerest sympathies to you. I did not know Candise, but wish I had. Judging from the comments I've heard about her from friends and from Rabbi Stampfer, she must have been a very special and wonderful person. I'm so sorry for this needless tragedy.

Please accept my sincerest condolences. My thoughts are with you. If any of us at the law school can be of assistance, please let us know.

Sincerely,

*Ruth R. Bryson*

Ruth R. Bryson  
Director of Development

RRB/bbp  
Enclosure

MEMORANDUM

TO: Mr. Lee J. Gadinas  
FROM: James W. Dorsey  
DATE: March 29, 1991  
SUBJECT: Endowment Accounts

---

Here are suggested changes to the college business office's December 31, 1990 delineation of law school endowment accounts.

First, four accounts should be added:

a. Leonard Bennett Memorial Fund (unrestricted endowment). This is currently a component of the General Scholarship Fund, dating from June 30, 1982. It has a gift balance of \$4,200, and a June 30, 1990, pro-rated market value amounting to \$6,980. The General Scholarship Fund should be reduced accordingly. It should be established as an independent fund because of recent renewed interest in developing it further. It should be unrestricted because of the absence of documentation as to its purpose;

b. Henry Carey Memorial Fund (unrestricted endowment). This was established by a modest, December, 1990 gift that was not recorded until January, 1991, so I assume it will be reflected in the next, March 31, 1991, endowment report;

c. Nelson D. Terry Scholarship. This was established by a January, 1991 gift, so I assume it will be reflected in the next, March 31, 1991, endowment report;

d. Lamar Tooze Memorial Scholarship. This is currently a component of the General Scholarship Fund, dating from January 2, 1973. It has a gift balance of \$2,500, and a June 30, 1990, pro-rated market value amounting to \$4,155. The General Scholarship Fund should be reduced accordingly. It should be established as an independent fund because of a recent commitment (estate gift) to augment it.

Second, one account should be deleted: F. B. Drinker Scholarship. Monies therein should be added to the Franz B. Drinker-John D. Russell account in the restricted fund (A/C 12-0-1075-4300). The law school has no Drinker Scholarship, though the college of arts and sciences does. The law school does have a Drinker-Russell fund for development of the Drinker-Russell Conference and Reading Room. Deposit of the one gift in

Mr. Lee J. Gadinas  
March 29, 1991  
Page 2

question, from John D. Russell, into the endowment fund was an error.

Third, four additional accounts (in addition to the Edmund O. Belsheim Endowed Chair) should reflect zero spending: Hertzmark and Nycum Scholarships, pending development of higher fund balances; and Henry Carey Memorial Fund and Thomas J. Sherwin Fund, both unrestricted endowment, pending donors' determinations of purposes.

Fourth, there should be one restricted fund: Lorene Sails Higgins Distinguished Visitor Program. The current restricted funds (Crookham, Hertzmark, Jaureguy, Jones, Du Boff Jones, Levin, Manas, and Robt. Miller) should be abolished, restricted fund balances should be added to the endowment fund balances of these accounts, and future earnings therefrom should be added to the unrestricted fund.

JWD:jeh

cc: Dean Stephen Kanter