

## **MEMORANDUM**

**TO:** Dean Hannah R. Arterian

**FROM:** Professor Christian C. Day, Director, The Center for Law and Business Enterprise

**RE:** The Center for Law and Business Enterprise Activities, 2003-2004

**DATE:** May 16, 2004

The Center has had a busy and productive year in both the Law & Market Economy Program (under the direction of Professor Robin Paul Malloy) and in the corporate law area (under my auspices). Information on the Center is presented in the Introduction, Student Programs, Faculty Achievements, and Future Projects sections.

**INTRODUCTION:** Business law is important to society to further the development of law and support free market economies. Nationally about ten percent of all lawyers work directly for corporations; about 50 percent of all law relates to corporation and business (ranging from “traditional” corporate law to environmental problems, products liability, zoning, etc.). Syracuse graduates mirror the national experience. Thus, it is important to train professional business lawyers to meet our national and global needs. The Center for Law and Business Enterprise does just that.

The Center, founded in 1994, has matured and developed. Much of this progress is attributed to the extraordinary faculty who have joined the Center: Adjunct Professor M. Jack Rudnick (Vice President and General Counsel, Welch Allyn, Inc.), Advisor to the Corporate Counsel Program; Professor Robin Paul Malloy, Professor of Law and Economics; Professor Hilary K. Josephs, our expert on Chinese Law, labor law, international law and foreign investment; Professor Thomas J. Maroney, former United States Attorney for the Northern District of New York and our expert on federal law (including, white collar crime, antitrust, etc.) and ADR.

This year we had the good fortune to add five more members. The new, fully-affiliated faculty are Professor David M. Driesen, an internationally known expert in environmental law; Professor Margaret Harding, a rising star in the field of mediation; and Professor Gregory Germain, an expert in tax, bankruptcy, and corporation law. Our new Affiliate Members are Professor Theodore Hagelin, Director of the College’s innovative Law, Technology and Management Center and Professor Robert Odawi Porter, Professor of Law, Dean's Research Scholar of Indigenous Nations Law and Director, Center for Indigenous Law, Governance & Citizenship. Brief biographies of Center faculty are attached as Exhibit 1.

Our primary emphasis, given resources, has been to develop academic programs and support scholarly activities at the College of Law. The growth of the Certificate and Fellow programs has been remarkable. They support student interest in business and economics, produce competent professionals, and build bridges to other academic units and the community-at-large. This year the Center awarded certificates to nineteen students.

With the welcome addition of new teachers and scholars, the dean's focus on enhancing the research function of the Centers, and with the creation of new programs, the Center is poised to undertake exciting research and service projects.

This spring, the University was designated the Syracuse University Science & Technology Law Center (STLC) by New York State. The University will receive a \$1.05 million grant over three years (the New York Science Technology and Academic Research grant [NYSTAR grant]). The new Center Corporate General Counsel Clinic (CGCC) and the Technology Transfer Research Center (TTRC), under the direct supervision of full-time faculty and with the assistance of practicing professionals, will provide legal representation at modest cost. STLC and CGCC will also create reports on corporate governance, employment agreements, venture capital financing, the issuance of securities, and administrative regulations.

This spring, Professor Robin Paul Malloy launched The Working Group for Property, Citizenship, and Social Entrepreneurism (PCSE), an association of scholars and others focused on the market economy, property rights and social entrepreneurship. PCSE plans to hold its inaugural conference in November at the Greenberg House, in Washington, D.C.

## **I. STUDENT PROGRAMS:**

The Center's primary focus is on student learning and preparation for practice, with faculty research and development and community service strong secondary foci.

*Certificate Programs:* The *Law & Market Economy Program* granted three certificates this spring. Professor Malloy continues to educate many students at the College of Law and Maxwell who are interested in the law and market economies.

Fourteen *Corporate Counsel* certificates were earned in this program's sixth year of operation. We have offered General Counsel nine semesters to date.

One *Airport Case Study Initiative Team Fellow Certificate* was awarded this year. The names of this year's certificate recipients are attached as Exhibit 2.

Many of our students have obtained corporate counsel positions or corporate work in law firms. For a young program we are doing interesting things and the student demand for certificates confirms our efforts. Representative employers of our graduates are found in Exhibit 3.

*Speakers:* The Center sponsored several excellent speakers: Martin D. Gorman, Esquire, General Counsel, Kraft Foods; Ronald Berger, Esquire, Bond, Schoeneck & King, PLLC; and Ronald Wolfsheimer, Chief Financial Officer, The Calvert Group.

### **III. FACULTY ACHIEVEMENTS:**

The Members were busy and productive. Representative activities are detailed below. We have had three books published, 13 articles published or forthcoming, a number of articles and manuscripts under development, and many presentations at conferences.

#### **Members**

##### **Professor Christian C. Day:**

Professor Day served as the Advisor to the Corporate Law Society of the College of Law and The Federalist Society and assisted the student groups with their programs. Professor Day is a member of a working group of entrepreneurial and small business law teachers.

Professor Day published: *Partner to Plutocrat: The Separation of Ownership from Management in Emerging Capital Markets—19th Century Industrial America*, 58 U. Miami L. Rev. 210 (2004) and *Law Schools Can Solve Our Bar Pass Problem—‘Do The Work!’,* 40 Cal. West. L. Rev. \_\_ (No. 2. 2004). *Is There a Tulip in Your Future?: Ruminations on Tulip Mania and the Innovative Dutch Futures Markets*, Journal des Economistes et des Etudes Humaines (Bilingual Journal of Interdisciplinary Studies). The volume is entitled *The Meaning and Role of the Market* (forthcoming 2005). He has the following works in progress: *Chaos” in the Markets—Moral, Legal & Economic Signals in Three Fantastic Bubbles* and *Law & Economics at the Founding: The Conflicting Visions of Hamilton and Jefferson*.

Professor Day presented his *Partner to Plutocrat* paper at Frontiers in Finance and Economics, Lille, France, August 2003, sponsored by the International Society for the Intercommunication of New Ideas (ISINI). He chaired a panel on Corporate Governance and commented upon *Governance, Aid Flows and Market Access: A New Challenge for International Financial Institutions*. In March 2004 he presented his *Chaos* paper at the Association for the Study of Law, Culture and the Humanities Annual Meeting, March 2004, University of Connecticut School of Law, Hartford, CT. This paper was also presented at a faculty research luncheon at Michigan State University/DCL College of Law in March. Finally, in April he attended the Inaugural International Conference on Business, Banking and Finance, the University of the West Indies, Trinidad, where he presented *Partner to Plutocrat* with commentary on the emerging capital markets in the Caribbean Basin.

##### **Professor David M. Driesen:**

Professor Driesen was promoted to full professor this academic year and joined the Center. He is also an Affiliate Member of Maxwell School of Citizenship Center for

Environmental Policy and Administration as well as a number of other centers on campus. He is also a Member Scholar, Center for Progressive Regulation.

Professor Driesen published one book, *THE ECONOMIC DYNAMICS OF ENVIRONMENTAL LAW* (MIT Press 2003).

Driesen also published a number of articles: *Standing for Nothing: The Paradox of Demanding a Concrete Context for Formalist Adjudication*, 89 CORNELL L. REV. 101 (2004) (forthcoming); *Efficiency, Economic Dynamics, and Climate Change: A Critical Look at the NeoClassical Paradigm for Environmental Law*, \_\_\_ J. LAW & MEDICINE \_\_\_ (2004) (forthcoming, with Charles Hall); *The Economic Dynamics of Environmental Law: Cost-Benefit Analysis, Emissions Trading, and Priority Setting*, 31 B. C. ENVTL AFF. L. REV. \_\_\_ (2004) (forthcoming); *Distributing the Costs of Environmental, Health and Safety Protection: The Feasibility Principle, Cost-Benefit Analysis, and Regulatory Reform*, 32 B. C. ENVTL AFF. L. REV. 1 (2004); *The Functions of Transaction Costs: Rethinking Transaction Cost Minimization in a World of Friction* (forthcoming with Shubha Ghosh).

Last, but not least, Professor Driesen organized *The Economic Dynamics of Environmental Law and Static Efficiency Conference*, October 2003, Syracuse University College of Law, Syracuse, New York. In addition to producing the international conference, Professor Driesen presented on several panels.

#### **Professor Gregory Germain:**

Professor Germain published *Discharging their Duty: A Critical Assessment of the Tax Court's Refusal to Consider Bankruptcy Discharge Questions*, Virginia Tax Review (Winter 2004).

Professor Germain taught new courses in Bankruptcy law and Introduction to Corporate and Partnership Taxation (Tax II). He coached a team that competed in the American Bankruptcy Institute's Duberstein Moot Court Competition in New York City. Professor Germain spoke to the Central New York Bankruptcy Bar Association on bankruptcy discharge rules and Tax Court jurisdiction. He was appointed to American Bankruptcy Institute's Law Review Advisory Board.

#### **Professor Margaret Harding :**

Professor Harding was promoted to full Professor and recently joined the Center.

She published, *The Limits of Due Process Protocols*, 19 Ohio St. J. Disp. Res. 369 (2004). She co-directs the new Securities Arbitration Clinic that provides representation to small investors with claims against their brokers under state or federal law.

#### **Professor Hilary K. Josephs :**

Professor Josephs published the second edition of her book, *LABOR LAW IN CHINA*, (Juris Publishing, 2nd ed. 2003).

Professor Josephs has three different research projects: *The Remedy of Apology in Comparative and International Law: Self-Healing and Reconciliation* (accepted for publication in the spring 2004 Emory Journal of International Law); *Legal Institutions and Their "Proper" Place in Economic Development: A Comparison of India and China* (forthcoming in a symposium issue in 2005) and a paper on agriculture, trade and globalization (forthcoming in the Kansas Journal of Law and Public Policy).

Professor Josephs will attend the Economic Growth, Human Development and Governance: India in Comparative Perspective at the Center for the Advanced Study of India, University of Pennsylvania, in June 2004. In February and March of 2004 she spent three weeks in India interviewing government officials, academics, legal organizations, and practicing attorneys. She also attended a conference at the University of Kansas Law School in October 2003 on agriculture, trade and globalization.

Professor Josephs is a member of the Editorial Advisory Board, *The International Lawyer* (published by the ABA Section of Int'l Law & Practice) and a member of the Long Range Planning Committee, American Society of Comparative Law. She worked with Professor Malloy on the College's contribution to the Kaufman Foundation grant application.

### **Professor Robin Paul Malloy:**

Professor Malloy was named the Ernest I. White Professor in May 2004. He also was appointed Senior Associate Dean for Academic Affairs.

Professor Malloy published *LAW IN A MARKET CONTEXT: AN INTRODUCTION TO MARKET CONCEPTS IN LEGAL REASONING* (Cambridge University Press 2004).

Professor Malloy chaired a panel, *Framing the Subject*, and presented *Framing Law at the Intersection of the Normative Sciences and Market Theory* at the Association for the Study of Law, Culture and the Humanities Annual Meeting, March 2004, University of Connecticut School of Law, Hartford, CT.

Professor Malloy was a major contributor to the University's application for a significant entrepreneurship grant from the Kaufman Foundation. While the University did not receive the award this year, it was a finalist and will be invited to submit an application in 2005. Professor Malloy also founded The Working Group for Property, Citizenship, and Social Entrepreneurism. In addition to holding a conference in Washington devoted to social entrepreneurship, property, and the market economy, PCSE under Professor Malloy's leadership is seeking a book contract with a leading university press to publish related materials.

Professor Malloy serves as Editor in Chief of *The Digest*, the law journal of The National Italian American Bar Association, as a Board Member of the AALS Section on Law and Humanities (Program Director for the 2003 meeting), and as a Board Member on the International Round Table for the Semiotics of Law.

### **Affiliate Members**

#### **Professor Theodore Hagelin:**

Professor Hagelin is the Director of The Center for Law, Technology and Management, one of the first of its kind in the nation. This year he was a key writer on the University's Kaufman Foundation grant application. (The University was a finalist and will be invited to reapply for the campus entrepreneurship grant in 2005.) Professor Hagelin was the draftsman for the University's successful NYSTAR grant. The University and the College of Law have been awarded a \$1.05 million grant for the three-year project. Professor Hagelin will direct the school's efforts and focus academic and

research activities statewide on bringing innovations and technology to market, creating jobs and wealth for New York.

**Professor Robert Odawi Porter:**

Professor Porter joined the faculty from the University of Iowa College of Law. He is Professor of Law, Dean's Research Scholar of Indigenous Nations Law and Director, Center for Indigenous Citizenship, Law & Governance. In the fall of 2003 Professor Porter organized *Going Home: A Symposium on the Return of Removed Indigenous Peoples*, Syracuse University, College of Law, Syracuse, New York, November 2003.

Professor Porter has recently been appointed Senior Associate Dean for Research. In that position he will focus faculty and student research efforts.

**IV. FUTURE PROJECTS**

With the happy addition of both new and affiliate members, the Center is reaching a critical mass. The teaching faculty of the Center has always been a strong suit. With our new members, obvious research and project interests are coming into focus. All of the members have an interest to some degree in property rights and citizenship (citizenship being a University focus in its SPIRES program). There also appears to be a number of faculty with a research interest or teaching specialty in markets.

One possible focus might be on markets, capital formation, and property rights. Professor Porter has indicated that such an effort might be of benefit to Native Americans as they seek greater economic and political power. Professor Day returned from Trinidad with ideas for working with some of the emerging market institutions, such as a stock exchange, a money market fund, or a central bank. Center students and faculty could undertake consulting projects, like the World Bank Fellows, and prepare “white papers.” Such consulting could eventuate into placements for our students with native peoples’ agencies and institutions or with agencies and institutions in the English-speaking Caribbean.

The NYSTAR grant offers the Center and its students the opportunity to work on bringing innovations to market by working with law firms advising entrepreneurs in startups. Center students might also be involved in preparing manuals on financing, government programs, etc. for startup businesses and representing businesses through the Corporate General Counsel Clinic.

Next year, the Center will study the creation of a “traditional” small business and entrepreneurship clinic. Such a clinic will dovetail with the efforts of the Corporate General Counsel Clinic and the Technology Transfer Research Center.

The Working Group for Property Citizenship and Social Entrepreneurism program has the potential for a number of students working with academics and researchers at Syracuse and other institutions on matters of property rights, citizenship and free market economies.

The future is tantalizing, ripe with many opportunities for faculty and students.

## V. CONCLUSION

Center faculty have been engaged in an astounding amount of creative research and publication. The Center has reaped the benefits of this strong leadership providing professional education for students interested in business, law, and economics. It is poised to undertake new links with other academic units and has exciting plans for the future.

Respectfully Submitted,

Christian C. Day  
Professor of Law  
Director, The Center for Law & Business Enterprise

## Exhibit 1

### CENTER FACULTY

#### MEMBERS

##### CHRISTIAN C DAY



Professor Day, an expert in Real Estate Finance and Development, Corporations, Closely Held Businesses, Professional Responsibility and Appellate Advocacy, has written extensively on real estate finance, corporate finance, taxation, foreign policy and national defense, legal literature, and legal education and has been published in a number of professional journals. Professor Day was a Research Alumni Fellow in 1992-1993. His current research focuses on corporate takeover contests and on the relationship between liquidity and management structures in entrepreneurial businesses.

His Corporate Counsel Program is a unique curriculum that offers students interested in careers as corporate counsel the opportunity to specialize in their law studies.

Professor Day Co-Chaired the College of Law's Building Committee. That project resulted in MacNaughton Hall (\$17 million for new facilities and renovations for the College). He has consulted on courtroom design and law school building projects. He serves on the ABA Law School Facilities Committee. Professor Day served as Associate Dean for Academics and Acting Director of the Barclay Law Library. He has also served as Moot Court Advisor as well as coaching appellate and trial teams to national competitions. During his tenure as Moot Court Advisor the College earned the coveted American College of Trial Lawyers Emil Gumpert Award (1990) for the best advocacy program in the Nation. The College was also designated the "Outstanding New York State Moot Court Program" by the Defense Association of New York (1988).

Professor Day earned his A.B. from Cornell University and J.D. from New York University School of Law (law review editor). He practiced litigation and corporate real estate with Morgan, Lewis & Bockius, Philadelphia, PA. He is admitted in Pennsylvania and the Eastern District of Pennsylvania. Prior to coming to Syracuse University he taught at The Wharton School, University of Pennsylvania. Professor Day served as an officer in the United States Army Reserve.

## DAVID M. DRIESEN



Professor Driesen teaches environmental law (domestic and international) and constitutional law. He taught a new course in Environmental Legislation and Policy this term that included an extensive original case study of the legislative process creating federal jurisdiction over "waters of the United States" under the Clean Water Act. Part of the study focused on how the legislative process and ultimately the judiciary addressed complaints by business owners that administrative agencies overreached in interpreting this jurisdictional provision to authorize widespread regulation of wetlands.

Professor Driesen came to Syracuse from the Natural Resources Defense Council, a national public interest environmental organization, where he represented public health groups (The American Academy of Pediatrics (California District); American Cancer society, California Division; California Medical Ass'n; American Lung Ass'n etc.) before the Supreme Court in a case challenging a Los Angeles area rule requiring owners of vehicle fleets to purchase especially clean vehicles.

He has recently filed another brief in the D.C. Circuit as the lawyer for a number of U.S. Senators, including both of New York's Senators and Senator Kerry, arguing that the Bush Administrations rules on "new source review" conflict with the Clean Air Act and discourage technological innovation.

## GREGORY L. GERMAIN



Professor Germain specializes in taxation, commercial law and bankruptcy, and corporate law. He obtained his JD degree from the University of California Hastings College of Law in 1985. Following graduation, he worked for one year as an associate at Latham and Watkins in Los Angeles, and for fourteen years as an associate and then partner at Landels Ripley & Diamond in San Francisco. He returned to academics in 1999, obtaining an LLM degree in tax law from the University of Florida. Prior to coming to Syracuse University, Professor Germain spent nine months as an attorney advisor to The Honorable Renato Beghe of the United States Tax Court.

## MARGARET M. HARDING



Professor Harding graduated with honors from Georgetown University Law Center where she was articles and notes editor of the *American Criminal Law Review*. After graduation, she entered private practice with a leading New York City law firm, specializing in corporate and commercial litigation. She teaches torts, alternative dispute resolution, and courses in the business law area. Professor Harding writes and publishes on arbitration law.

## HILARY K. JOSEPHS



Professor Josephs graduated from Radcliff College summa cum laude and Phi Beta Kappa. She received a Ph.D. in East Asian languages and civilizations with a specialization in Chinese history and literature. Prior to her law teaching career, she clerked for the Supreme Court of Hawaii and spent several years in private practice in New York City as a corporate attorney. She has published articles on labor law, international law, foreign investment, and comparative law. She has served on the Executive Committee of the Board of Directors, American Society of Comparative Law, and as Chair, Comparative Law Section, American Association of Law Schools. She has lectured extensively in China.

## ROBIN PAUL MALLOY



Professor Malloy writes extensively on law and market theory and on real estate transactions and development. He has published 10 books, more than 25 articles, contributed to 10 other books, advised on *BMW vs. Gore* in the U.S. Supreme Court and is a board member of the *Land Use and Environmental Law Review*. He serves on the Board of the Law and Humanities section of the AALS and is an advisory group member to the Land and Real Estate Initiative Group at The World Bank. His casebook on Real Estate Transactions is used in a number of law schools. His book, *LAW AND MARKET ECONOMY: REINTERPRETING THE VALUES OF LAW AND ECONOMICS* (Cambridge University Press, 2000), which has been praised for its approach to creativity, innovation, and ethics in the marketplace, has been translated into Spanish and Chinese. Professor Malloy spent three summers in China advising on law and market economy and several weeks in Finland working on similar issues. He was the 1996-97 Sun Life Research Fellow at Oxford University.

## THOMAS J MARONEY



Professor Maroney was an editor of the Syracuse Law Review and a William Cook Fellow at the University of Michigan Law School. He practiced law with a major New York City law firm. He served as chair and board member of the Central New York chapter of the New York Civil Liberties Union, as a visiting professor at the Colorado and Cornell law schools, and as assistant attorney general of the state of New York. He is a labor arbitrator for the American Arbitration Association. Professor Maroney was nominated by President Clinton and confirmed by the United States Senate to serve in the position of United States Attorney for the Northern District of New York.

## M. JACK RUDNICK



Professor Rudnick has been associated with Syracuse University since 1983. In that time, he was an Instructor in the Legal Assistant Program, as well as a professional consultant to Corporate Counsel Certificate Program. Since 1996, he has been an Adjunct Professor in the General Counsel Applied Learning Course. Professor Rudnick is Vice President of Welch Allyn , and specializes in acquisitions, international investments, legislative lobbying, energy and environmental issues, trademarks and patents. Prior to Welch Allyn, Professor Rudnick was Vice President, Secretary and General Counsel at Oneida Limited. He is also a retired Lieutenant Colonel in the U.S. Army. He will be co-teaching the General Counsel Applied Learning Course (LAW 811) this fall with Professor Christian Day.

## AFFILIATE MEMBERS

### THEODORE M HAGELIN



While a student at Temple, Professor Hagelin was editor-in-chief of the law review. After graduation, he was in private practice with a Philadelphia law firm and taught at Boston University and the University of Cincinnati. He specializes in law and technology and teaches courses in computer law, telecommunications law, and intellectual property. Professor Hagelin is the director of the Law, Technology, and Management Program.

### ROBERT ODAWI PORTER



Robert Odawi Porter is a citizen (Heron Clan) of the Seneca Nation of Indians and was raised on its Allegany Territory in upstate New York. After graduating from Syracuse University with a Bachelor of Arts degree in political science and economics, Professor Porter attended Harvard Law School where he received his Juris Doctorate degree in 1989. Upon graduation from law school, he joined the firm of Dickstein, Shapiro & Morin in Washington, D.C. and practiced in the area of business law and government relations.

In 1991, Professor Porter was appointed as the first Attorney General of the Seneca Nation. In this position, he developed an in-house legal department to administer the Nation's legal affairs and eventually was authorized to oversee the Nation's law enforcement agencies. During this time, he was also served as Adjunct Professor at the University of Buffalo School of Law and Visiting Assistant Professor at the University of Tulsa College of Law.

In 1995, Professor Porter left his position with the Seneca Nation to become an Associate Professor of Law at the University of Kansas and Adjunct Professor at Haskell Indian Nations University. At KU, he founded the Tribal Law and Government Center for the joint purpose of preparing a new generation of advocates, particularly Indigenous peoples, for careers representing the legal interests of Indigenous nations and establishing a forum for research and scholarship relating to Indigenous nation law and governance. He received tenure and was promoted to full professor in 2000. In 2002, he left Kansas to join the faculty at the University of Iowa. He has served as the Chief Justice of the Supreme Court of the Sac & Fox Nation of Missouri since 1997 and is a consulting expert or counsel to several Indian nations and Indian organizations.

Exhibit 2

**2003-2004 CENTER CERTIFICATES AWARDED**

**CORPORATE COUNSEL**

Warren	E.	Buliox
Brian	N.	Bauersfeld
Patrick	H.	Lee
Saveen		Kaushal
Mary	C.	King
John	Randolph	Kuhl III
Mauricio		Lopez
Cathy	Jeffery	Malooley
Michael	C.	McKay
Michael	James	Navalkowsky
Andrea	G.	Perry
Victor	L.	Prial
Richard	F.	Shearer
Monica	Kathryn	Woolsey

**AIRPORT CASE STUDY INITIATIVE  
FELLOW**

Stephanie	L.	Pindyck
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**LAW & MARKET ECONOMY**

Erich	E.	Gearity
Carlos	Andres	Padua
Ruth	Janet	Yacobozzi
Diana	A.	Cunningham

Exhibit 3

**REPRESENTATIVE EMPLOYERS  
OF LAW STUDENTS AND GRADUATES**

**ConMed Corporation, Utica, NY**  
**Welch Allyn, Skaneateles, NY**  
**Unity Mutual, Syracuse, NY**  
**New York, Susquehanna & Western Railway, Cooperstown, NY**  
**CVS Corporation, Providence, RI**  
**Niagara Mohawk Corporation, Syracuse, NY**  
**Byran Auto Group, Winter Park, FL**  
**Bond Schoeneck & King, PLLC, Syracuse, NY**  
**Carter, Ledyard & Milburn, New York, NY**  
**McMahon Kublick McGinty & Smith, Syracuse, NY**  
**Morrison & Forester, Washington, DC**  
**Smith Sovik Kendrick & Sugent, PC, Syracuse, NY**  
**Merrill Lynch, Long Island, NY**  
**Jaeckle, Fleischmann & Mugel, LLP, Buffalo, NY**  
**Goodwin Proctor & Hoar, Boston, MA**  
**David M. Thoms & Associates, PC, Detroit, MI**  
**Corporation Counsel, City of New York, NY**  
**Howrey & Simon, London, England, UK**