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A Tribute to Wil Smith, Maine Law Class of 2006

Jennifer Wriggins

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Mentor to a generation of new students

The Maine Law community was terribly saddened by the loss of Wil Smith, who passed away in February 2015 at age 46, after battling cancer for several years.

Wil graduated from the University of Maine School of Law in 2006. As a law student, he provided leadership and a moral compass to his peers. After graduation, his engagement with Maine Law continued – mentoring a further generation of law students, connecting Maine Law with diverse communities and activities in Southern Maine, and serving on the board of directors of the Maine Law Alumni Association.

He also had deep ties to Bowdoin College, where he graduated in 2000, and later became Bowdoin's associate dean of multicultural student programs. At the time of his death, Wil was dean of community and multicultural affairs at the Berkshire School in Sheffield, Mass. He also was associate camp director of the world-renowned Seeds of Peace camp.

"I relied on Wil Smith for his wise counsel and learned from his love for others, when he was in law school and ever since," said Peter Pitegoff, Maine Law professor and former dean. "My son's two summers with Wil at Seeds of Peace heightened my respect for Wil and strengthened our warm friendship. We all miss Wil Smith and will remember him always."

A single father, Wil was deeply devoted to his daughter Olivia, now a young adult. Their story is recounted in Wil's and Olivia's moving StoryCorps conversation, broadcast on National Public Radio and preserved in the American Folklife Center at the Library of Congress.

By Jennifer Wriggins
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Wil Smith was a kind, brave, wise and generally amazing person. He was a quiet and effective world-changer. "All feel the poorer that he has gone from us," as Winston Churchill said in his eulogy of T.E. Lawrence. He was many things to many people – coach, leader, parent, advisor, guide, friend, fiancé; I knew him as a student in my first-year torts class in the fall of 2003.

Few people know that Wil actually changed the field of torts, that foundational course about personal injuries and other civil wrongs, required for all U.S. law students in their first year. He did this by asking a single question that no one else had asked, and opened up an entire field of knowledge.

It was about a month into the semester and we were discussing the civil law of self-defense. The assigned case[1] involved a shooting in which a parking lot owner shot a man in the foot. When the injured man sued the parking lot owner seeking compensation for his injuries, the judge said the parking lot owner's fear was reasonable and that the shooting was justified under the circumstances. The justifying circumstances were that the plaintiff was drunk, had grabbed the defendant, had been asked to leave, and was tall and strong while the defendant was short and weak.

Wil knew, although I did not, that the plaintiff, Paul Silas, a professional basketball player, was African-American. Near the end of the class, Wil raised his hand, mentioned that the plaintiff was African-American, and gently suggested that perhaps the plaintiff's race had something to do with the fear felt by the parking lot owner (who was probably white), and with the conclusion that the fear was reasonable (and the shooting therefore 'justified'). This comment was instructive and sadly, still all too relevant.

Wil also asked how the torts system had dealt with claims brought by and against African-Americans. For me at that moment, time stood still. I knew virtually nothing about the answer to Wil's broader question. It was instantly clear what an important question this was -- torts is part of the legal system; and the legal system, through the fourteenth amendment of the Constitution, promises everyone equal protection of the laws. I told the class and Wil that I did not know but would find out.

Wil Smith (Bangor Daily News photo)

I went back to my office and immediately did some online research, thinking I would find a few great articles, go back to the next class, and explain the general contours of the way the torts system had dealt with claims by African-Americans specifically and race generally. However, I was not able to report back because almost nothing had been published about race and torts in the legal literature! Reams had been written about how the criminal justice system treated African-

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[1] Silas v. Bowen, 277 F. Supp. 314 (D.S.C. 1967).

American defendants, and cases on the topic were discussed in Constitutional Law courses and Criminal Law courses. But the dozens of legal scholars who wrote articles in the field of torts simply had not turned their attention to race and the torts system. No court decisions involving race and torts were discussed in the legal literature.

In the next few years, my research and writing focused on trying to answer Wil's question. The result was a series of articles and a book, *The Measure of Injury: Race, Gender and Tort Law* (N.Y.U. Press 2010, co-authored with Martha Chamallas). This work could not have been done without my many fabulous research assistants (Marya Baron, Zach Brandmeir, Dennis Carillo, David Goldman, Erin Krause, Katharine Rand, Josh Scott, and Rebekah Smith) and the librarians and staff of Maine Law.

We found a wealth of material, including in published legal opinions, hiding in plain sight, that had been overlooked or ignored. We first found that many torts claims, starting at the end of slavery and continuing until the 1960s, were brought by African-American plaintiffs and that judges writing decisions in these cases generally identified the plaintiff's race in the decision. Where a plaintiff was white, judges would not mention this fact. This showed that African-American plaintiffs had access to legal remedies in torts, and also that whiteness of plaintiffs was the unstated default in the torts system. Second, we dug deeper, and read hundreds of cases from across the U.S. We found that a race-based discount was applied in many torts decisions, so that claims by African-Americans were valued for lower dollar amounts than similar claims by whites. While many find this unsurprising, this had never before been written about. Third, we uncovered some early twentieth century cases in which the race bias of the judges was blatantly on display, explicitly devaluing injuries to black plaintiffs. Fourth, we found unheralded cases that were civil rights cases in the form of torts cases. The best example is Bullock v. Tamiami Trails Tours,[2] in which a bus company had to pay damages to a Jamaican couple for injuries they suffered when a white passenger attacked them as they sat in the front of an interstate bus a few months after buses were desegregated.

Besides shining light on these issues through publishing about them, I've spoken to torts classes and legal conferences all across the country about them. The book and articles are used in many torts classes. No one can say or credibly assume that race and racism are separate from and irrelevant to the field of torts. And the research continues, as scholars across the country research further about the question Wil raised.

After Wil graduated, I stayed in touch with him. I sent him a copy of my book and articles that his question inspired. When I told him of the impact he had, he smiled his warm smile, with a twinkle in his eye, and gently nodded. Wil, thank you. I miss you, and will always be grateful for your presence at University of Maine School of Law, and in my life.

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[2] 266 F.2d 326 (5th Cir. 1959).