



# HOLLYWOOD'S brush with the LAW

*The real-life lawyers of Jenson v. Eveleth Taconite Co. take a tour through North Country*

Oscar Wilde famously said that life imitates art more often than the reverse. When it comes to the law, it's difficult to tell just how this truism cuts. In a courtroom, real-life stories emerge only under the influence of artful advocacy, bound by a framework of rules and procedures, and pruned of legally irrelevant details. And if a real courtroom provides only an imitation of life, should anyone be surprised when art's depiction of a courtroom saga fails to bear the unmistakable ring of truth?

The film *North Country* offers an opportunity to consider the question from the vantage point of our own backyard. Set against the sometimes

austere and uncompromising landscape of Minnesota's Iron Range, the film tells a fictionalized version of *Jenson v. Eveleth Taconite Co.* Venued in Minnesota federal court, Jenson was the first sexual harassment lawsuit certified as a class action. In 2002, authors Clara Bingham and Laura Leedy Gansler published a nonfiction account of the case entitled *Class Action: The Landmark Case that Changed Sexual Harassment Law*. Released last fall, *North Country* is based on a screenplay adapted from the book. Directed by Niki Caro (*Whale Rider*), the film features an Oscar-nominated performance by Charlize Theron as Josey Aimes, a thinly veiled version of the real-life lead plaintiff, Lois Jenson. In a far cry from her "you betcha" turn as a police officer in *Fargo*, Francis McDormand

also earned an Oscar nomination for her supporting role as Glory Dodge, a salty, straight-talking miner who eventually throws her support behind the lawsuit even as she battles the debilitating effects of Lou Gehrig's disease.

Reviewers gave *North Country* high marks for the strength of its acting and its cinematography, and for its depiction of the dynamics between the lead character, her family, and her community. But in the next breath, many also expressed dismay at the maudlin antics of its pivotal courtroom scene and the melodrama of its conclusion. Many of the real-life lawyers and judges who actually argued and decided the case were Law School alumni (see sidebar), and those who saw the film echoed this mixed reaction.

With the possible exception of the plaintiffs' real-life lead counsel, Paul Sprenger, probably no lawyer was more involved in *Jenson v. Eveleth* than Jean Boler, '82. Boler, who spent thousands of hours on the plaintiffs' case during her 10 years at Sprenger & Lang, says that she didn't expect the film to be anything but fictional. "I wasn't disappointed that it wasn't factually accurate, because I think that it is certainly possible to portray a story's significance without telling every detail," she says. But she was less than enthusiastic about other aspects of the film, especially its wholly fictional ending.

Larry Schaefer, '88, was also with Sprenger & Lang and was involved in the case during its damages phase. Like Boler, Schaefer thought that the film set up the story's factual background well, but fell short in its portrayal of the case's legal aspects. "But I think the filmmakers had a real challenge in how to depict that kind of litigation," he points out. "There were many different hearings, first for class certification, then liability, and then the damages trial, not to mention the incredibly long discovery process. All of that is difficult to portray in a condensed, Hollywood sort of way." Chief Judge James Rosenbaum, '69, who oversaw the class certification proceeding, sums it up bluntly: "I only handled part of the case, but I believe that there was evidence at the hearing that I conducted for everything shown to have occurred on the job site. And I think it's fair to say that nothing, absolutely nothing, that was shown in the film's courtroom ever actually happened."

No one expects Hollywood to accurately portray every detail of a legal proceeding, and *North Country* certainly doesn't pretend to be a documentary.

But when filmmakers take too broad a dramatic license with the facts or the law, they run the risk of deflating the narrative effect they seek, losing credibility along the way, and ultimately selling their stories short.

### A brief history of *Jenson v. Eveleth*

With *North Country*, the filmmakers faced the challenging task of compressing more than twenty years of litigation and its preceding events into just two brief hours. *Jenson v. Eveleth's* legal history spanned nearly 15 years, from the mid-1980s until its final settlement in 1998. (See timeline.) The lawsuit had its origins in a pattern of sexual harassment that began a decade earlier, in 1974, when the Eveleth Taconite Mine in Eveleth, Minn., first began hiring women miners as the result of an Equal Employment Opportunity Commission consent decree.

The women miners, from their first days on the job, experienced persistent and sometimes soul-crushing harassment from both the male miners and their supervisors. The women's entry into this exclusively male-dominated world was met with scorn and sexual intimidation that included crude jokes and derogatory comments; sexually explicit posters and graffiti in the lunchrooms and locker rooms and on the walls, tools, and equipment; unwelcome touching; and even physical assault.

Lois Jenson began working in the mine in 1975, and for nine years she grew progressively angrier and more disillusioned about the treatment that she and the other women miners endured, and the company's and the

union's unwillingness to address it, even when the women tried to lodge complaints. After she began legal proceedings in 1984, she continued to work at the mine for eight more years. During that time, she kept extensive notes and wisely took photos to document the escalating harassment, while slowly convincing her fellow women miners to join the lawsuit.

After the initial victory of the class certification in 1991, the case was bifurcated into liability and damages phases. Throughout the case, the mine's management company refused to make any reasonable settlement offer, even after a 1992 ruling by Judge Richard Kyle, '62, stated that the mine was liable for maintaining a hostile working environment. Following a lengthy damages trial that included extensive inquiry into the women's personal lives, Magistrate Patrick McNulty, '49, recommended only modest awards. The U.S. Court of Appeals for the Eighth Circuit reversed Magistrate McNulty's decision in 1997, and remanded the case for a jury trial on damages. The mine, now under new management, finally settled the women's claims for a total of \$3.5 million in 1998.

As the case wound this long and tortuous path through the legal system, many of the plaintiffs, including Jenson, paid an enormous personal price. Their families and neighbors in the insular Iron Range community considered the lawsuit a betrayal of the union and the miners, and they openly accused the plaintiffs of trying to close the mine and rob the community of badly needed jobs. To make matters worse, the permanent downturn in the taconite industry coincided with the beginning of the lawsuit, and more and

- **April 1974**
  - Under an EEOC consent decree to settle charges of discriminatory hiring, Eveleth Mine agrees to hire women and minorities in 20 percent of all new jobs.
- **March 1975**
  - Lois Jenson begins working at Eveleth Mines.
- **October 1984**
  - Jenson files a sexual harassment complaint with the Minnesota Department of Human Rights
- **January 1987**
  - The State finds probable cause and moves for conciliation, but the mine's management company, Oglebay Norton, refuses to pay any punitive or compensatory damages to Jenson.
- **August 1988**
  - Paul Sprenger files the case in U.S. District Court, requesting certification as a class action. The case includes three named plaintiffs.
- **May 1991**
  - The class certification hearing begins before Judge James Rosenbaum.

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more jobs were lost to lay-offs. The duration and intensity of the litigation, including its grueling discovery and damages phase, was another formidable challenge, and more than one plaintiff ended up with serious health complications such as post-traumatic stress disorder (PTSD). Consumed by the litigation, Jenson developed such disabling PTSD that she was finally forced to stop working at the mine in 1992, to her great financial detriment. Pat Kosmach, an original plaintiff who partly inspired Frances McDormand's character in the movie, died of Lou Gehrig's disease before the case reached its final resolution.

But as difficult as the case was for these women their sacrifice was not in vain. Although very few similar class actions followed in its wake, the case often receives credit for helping to usher in an era of heightened awareness of sexual harassment in the American workplace, prompting employers to bring serious and sustained efforts to addressing it. The Eighth Circuit's 1997 opinion reversing the original damage award was perhaps even more far-

reaching, because it created new protections for sexual harassment plaintiffs by limiting the scope of permissible discovery into their personal histories.

### North Country's Version of the Facts

In its effort to capture this complex history, *North Country* substantially truncates the case's chronology. Its protagonist, Josey Aimes, begins working at the mine, encounters the harassment, quits her job, institutes the lawsuit, and convinces the other women miners to join the lawsuit in just over a year. Despite its rapid pacing, the film carefully crafts a compelling portrait of the conditions at the mine, and gives a nuanced portrayal of the conflict that Josey encounters with her children, her father, and her fellow women miners when she levels her accusations of sexual harassment. Although it has no basis in fact, Josey's relationship with her father is particularly well-drawn, lending emotional depth to the film's effort to illustrate the opposition the real plaintiffs met within their own families. The father, a miner himself, is

initially deeply hostile toward Josey, but he eventually rallies to her side when his innate sense of decency becomes too deeply offended, both by the harassment itself and the treatment that Josey receives after she sues.

Larry Schaefer found this element of the film particularly effective. "Even though it was purely fictionalized, I imagine that it resonated with many of the women who actually participated in that case," he says. "These women took on a lot, not just Oglebay Norton and Eveleth Mines, but their communities and their families. I don't know that there are many of us who would have the courage, or the principle, or even the stamina to do what these women did. The movie could have portrayed that more, but it did give a sense of what they faced."

Jean Boler agrees. "I think the film did a nice job with the preceding events and setting up the conflicts in the Iron Range and the conflicts in the main plaintiff's community," she says. "It portrayed well the sense of this woman going up against virtually everyone in her family, her community, her workplace, to stand up against the conditions at the mine."

Boler does think that the film played a bit too loose with at least one of the underlying details. In the movie, the plaintiffs' attorney, played by Woody Harrelson, conceives of bringing the case as a class action while sitting in a bar before a wall of mounted deer heads. As he lifts his beer, Harrelson catches sight of the deer and thoughtfully says to himself, "Hmm, the herd." "Woody Harrelson coming to the realization in a bar surrounded with stuffed heads that a class action might be the route to take was very annoying," Boler

- **December 1991**
  - Anita Hill begins testifying in the Clarence Thomas confirmation hearings.
- **December 1991**
  - Judge Rosenbaum certifies the case as a class action, the first such certification for a sexual harassment lawsuit.
  - 139 F.R.D. 657 (D. Minn. 1991).
- **January 1992**
  - Lois Jenson's deteriorating health forces her to stop working at the mine. Shortly after, she is diagnosed with post-traumatic stress disorder.
- **December 1992**
  - The liability phase of the bifurcated trial begins before Judge Richard Kyle in St. Paul, Minn.
- **May 1993**
  - Judge Kyle rules that Eveleth Mines is liable for maintaining a sexually hostile working environment. 824 F. Supp. 847 (D. Minn. 1993). Judge Kyle subsequently appoints retired magistrate Patrick McNulty of Duluth, Minn., as a special master to oversee the damages phase of the case.

laughs. “I just thought, what about all the briefs? What about all the research? And now John Q. Public thinks that that this is how the law gets changed! It was painful.”

For his part, Schaefer wishes that the film’s cast had included an additional plaintiff’s lawyer to depict Jean Boler. “Of the lawyers that worked on the case, Jean was probably the most heroic,” Schaefer says. “It was a tremendous credit to Paul Sprenger to have had the foresight and vision to direct the case as he did, and the tenacity to have stayed with it. But Jean was so important to the case, and she had such an incredible connection to the women and empowered them in many ways, especially during the many times during the 10- or 12-year legal odyssey when they didn’t have the energy to proceed and they were wondering whether it was worth it. So I wish there had been a female character in the film advocating for the women, like there was in real life.”

But these oversights pale in comparison to the film’s abandonment of the facts of *Jenson v. Eveleth* for a tidy, Hollywood-style ending. *North Country*’s pivotal courtroom scene takes place near the end of the film, during the class certification hearing, and includes its fair share of classic cinematic contrivances. The judge vows to certify the class from the bench if Woody Harrelson can produce “just three plaintiffs” (a plot development that Judge Rosenbaum dismisses as “pure gibberish”). A defense witness emotionally recants critical testimony in the face of Harrelson’s grandstanding cross-examination. There is even an “I am Spartacus” moment, in which the spectators in the courtroom stand up, one by one, in a silent show

of changed hearts and newfound support for Josey and the lawsuit.

Of course, a few theatrics need not necessarily sound the film’s death knell. Mary Stumo, ’80, who was the lead defense counsel during the liability and damages portion of the case, chose not to see the film, and so cannot pass judgement on the legitimacy of its courtroom scenes. “I lived the real case, or at least the part of it after the class certification and before the appeal,” she explains. “I was there when the testimony came in, and I know the real story, and I’ve just left it there.”

But on the more general issue of Hollywood’s depiction of the legal process, she is willing to cut filmmakers some slack. “The reality is that you can’t begin to portray a real case in the sense of its complexity, the amount of time that it takes to develop and get to trial, and then the amount of time it takes at trial,” Stumo points out. “And, of course, trials can be boring, and most people just aren’t going to watch that.”

Schaefer agrees, noting that Hollywood’s dramatization of the courtroom serves essentially the same purpose as theatrics in a real-life courtroom. “Trials can be grinding and mind-numbingly boring to anybody who’s not intimately involved with the facts of a case,” he says. “As a trial lawyer, your job sometimes is to try to make things digestible and entertaining if you can, and theatrics in the courtroom can be part of being a good advocate.”

Boler is unwilling to weigh in on the relative merits of *North Country*’s courtroom scene. “I’m probably a little too close to be objective about how it fit in to the pantheon of Hollywood courtroom scenes,” she admits.

But when it comes to the film’s failure to convey the lasting lesson of *Jenson v. Eveleth*, Boler has unabashed misgivings. At the end of the courtroom scene, amid its clear suggestion of a plaintiffs’ victory because of the class certification, a few sentences flash on the screen explaining that the real-life plaintiffs waited another 10 years before finally reaching a “modest financial settlement” of their claims. But the sobering impact of this message is immediately undercut by the final scene, which shows a jubilant Josey teaching her teenage son to drive along an Iron Range highway, through a springtime forest, newly green with fresh growth.

By ending on this uplifting note of redemption and reconciliation, the filmmakers ignored the hard and painful reality that for the real-life plaintiffs, justice came much later, and at an incredible cost. “A filmmaker’s obligation is to make a good film where the emotions are authentic and the ideas are complex, and they aren’t selling out for a Hollywood ending,” Boler says. From her perspective, *North Country* didn’t meet this ultimate obligation because it neglected the real drama of the case, which was the women plaintiffs’ long struggle to come together as a class, and then to persevere through the many years of litigation that followed. “The filmmakers had an opportunity to portray how difficult the legal case was in a way that would have been more artistically fulfilling as well as more true to the story,” she says. “But to do that, you have to deal with the messy details. You have to give up on the quick Hollywood denouement, and somehow make it still the kind of movie that people want to see.”

● **November 1994**

- Plaintiff Pat Kosmach dies of Lou Gehrig’s disease.

● **February 1994**

- Magistrate McNulty permits defense counsel to request plaintiffs’ medical records dating from birth; weeks of grueling depositions follow.

● **January 1995**

- The first half of the damages trial begins.

● **May 1995**

- The damages trial resumes, concluding on June 13.

● **March 1996**

- Magistrate McNulty issues a 416-page report that awards plaintiffs minimal damages.

● **December 1997**

- The Eighth Circuit reverses McNulty’s decision and remands the case for a jury trial on damages. 130 F.3d 1287 (8th Cir. 1997).

● **December 1998**

- On the eve of trial, the remaining 15 plaintiffs settle with Eveleth Mines for a total of \$3.5 million.

## Who's Who in North Country

From lawyers to judges to expert witnesses, many people associated with the University of Minnesota had a role in the legal odyssey of *Jenson v. Eveleth Taconite Co.*

### Attorneys

**Jean M. Boler**, '82, began work on the case as an associate at Sprenger & Lang (where she later became a partner), the firm that represented the plaintiffs for most of the case's 15-year legal sojourn. She invested more than 5,600 hours in the case over the course of 10 years, and argued the case on appeal before the United States Eighth Circuit Court of Appeals. She is now the director of the Employment Division at the Seattle City Attorney's Office.

**Lawrence L. Schaefer**, '88, also worked on the case while an associate at Sprenger & Lang, particularly during the damages phase of the trial. He was a partner and then a managing partner of the firm until 2005, when he joined Mansfield, Tanick & Cohen on an of-counsel basis. Schaefer practices in the areas of class and complex litigation, with an emphasis on employment law.

**Mary E. Stumo**, '80, was the lead defense counsel for defendant Eveleth Taconite Co. from 1992 to 1996, during the liability and damages phases of the lawsuit. Currently a managing partner at Faegre & Benson, Stumo specializes in employment-related disputes, including discrimination, breach-of-contract, whistleblower, and defamation claims.

### Judges

**U.S. District Court Judge Richard Kyle**, '62, presided over the liability portion of the case, and oversaw the damages phase that took place before Special Master Patrick McNulty.

**Magistrate Patrick McNulty**, '49 (now deceased), came out of retirement to serve as a special master in the damages phase of the case.

**Chief Judge, U.S. District Court, James Rosenbaum**, '69, presided over the class certification proceeding, and issued the landmark 1991 ruling that permitted plaintiffs to pursue their hostile work environment claim as a class. He became Chief Judge of the District of Minnesota on July 1, 2001.

**U.S. District Court Judge John Tunheim**, '80, was presiding over the case in 1998, after its remand by the Eighth Circuit, when it settled on the eve of trial.

### Other Professionals

**Dr. Eugene Borgida** is a professor of Psychology and Law at the University of Minnesota and an affiliated faculty member at the Law School who served as plaintiffs' expert witness during the class certification and liability portions of the case. Borgida testified about the effect of sexual stereotyping and sexual imagery in the workplace, and its tendency to contribute to a hostile work environment.

**Catharine MacKinnon**, who was on the University of Minnesota faculty in the early 1980s, first argued in a 1979 treatise, *Sexual Harassment and the Working Woman*, that a hostile work environment could form the basis for a sexual harassment claim under Title VII. The Equal Employment Opportunity Commission embraced the theory in its 1980 guidelines, and the Supreme Court eventually recognized hostile work environment claims in *Meritor Savings Bank, FSB, v. Vinson*, 477 U.S. 57 (1986). MacKinnon has been on the faculty of the University of Michigan Law School since 1990.

Instead, *North Country* forces the story of a long and exhausting legal odyssey to fit uncomfortably into the conventions of a traditional romantic story, complete with the inevitable victory of good over evil. But in real life, complex and lengthy litigation, whether it involves a broken contract or gut-wrenching sexual harassment, rarely ends on such a satisfying note. In its 1997 decision, the Eighth Circuit said, "It should be obvious that the callous pattern and practice of sexual harassment engaged in by Eveleth Mines inevitably destroyed the self-esteem of the working women exposed to it...[and] sought to destroy the human psyche as well as the human spirit of each plaintiff. The humiliation and degradation suffered by these women is irreparable."

The court also acknowledged the role that the protracted litigation had played in compounding the damage: "No one can expect that justice will be rendered to any of the parties when a final opinion is issued more than 10 years after this litigation commenced...If justice be our quest, citizens must receive better treatment."

But strangely enough, *North Country's* disservice to these facts may have yielded a fiction with its own peculiar claim to truth. Schaefer points out that if the film had been a truly accurate telling, it probably would have been more cautionary tale than inspirational fable. "I don't think that any woman would have willingly gone through what those women did, even to achieve the justice that ultimately was served," he observes. "The legal process was just so harrowing and so difficult for them, that had it been depicted, the message would have been a little troubling."

And while he also wishes that the film had remained more faithful to the women miners' story, he walked out of the theater with some appreciation of its message of hope. "I felt good about the fact that someone watching the film would at least get a glimpse of what heroes these women were," he says. "And maybe they would think, if they were ever subject to that kind of treatment, they would also be able to stand up and take on a big corporation and try to vindicate their rights."

The truth is, in a post *Jenson v. Eveleth* world, Schaefer's hypothetical moviegoer is much, much likelier to be right. ●

By Leslie A. Watson. Watson is a freelance writer and a 1999 graduate of the Law School. She can be found online at [www.thebusypen.com](http://www.thebusypen.com).