

## Keith Swisher '04

Professor Swisher is a man of many callings.<sup>1</sup> Lawyer. Professor of Legal Ethics. Director of the Bachelor of Law and Master of Legal Studies Programs. Ethics Expert. Former Associate Dean of Legal Scholarship and Faculty.

### Education & Experience

He graduated from ASU in 2001 with a degree in political science, summa cum laude, and with honors as a junior fellow for the Political Science Department.<sup>2</sup> He earned his JD from the Sandra Day O'Connor College of Law in 2004, summa cum laude, ranked 1/169 with honors—Armstrong Award recipient (Class Valedictorian); Chief Judge Mary Schroder Award recipient (Federal Bar Association); and Pedrick Scholar.<sup>3</sup> He earned an LLM from Harvard Law School in 2007, with honors—"A" GPA, Editor—Harvard Civil Rights—Civil Liberties Law Review.<sup>4</sup> He also practiced law, taught it, and wrote about it.

2017 to Present: UNIVERSITY OF ARIZONA JAMES E. ROGERS COLLEGE OF LAW. Director, Bachelor in Law and Master of Legal Studies Programs, 2017-Present  
Professor of Legal Ethics, 2017-Present  
Professor of Practice, 2015-2017  
Direct two popular and innovative degree programs.  
Teach Professional Responsibility (Legal Ethics) and Procedure courses.

2012 to Present:  
SWISHER P.C.  
Ethics Counsel and Expert. Advise lawyers, firms, judges, and orgs on legal and judicial ethics and related issues. Serve as a consulting and testifying expert witness in disqualification, malpractice, ineffective assistance of counsel, and disciplinary matters.

2009 to Present:  
CRIMINAL JUSTICE ACT APPELLATE PANEL.  
Represent indigent criminal defendants before the United States Court of Appeals for the Ninth Circuit.  
Argued and won *en banc* reversal of a young and intellectually disabled client's

---

<sup>1</sup> <https://law.arizona.edu/keith-swisher>

<sup>2</sup> See full academic *curriculum vita*, page 1 of 15. <https://law.arizona.edu/keith-swisher>

<sup>3</sup> Ibid.

<sup>4</sup> His thesis is titled, "*The Judicial Ethics of Criminal Law Adjudication*." A version of this original scholarly work is reproduced as a law review article. "Judges in the United States regularly (and often harshly) are disciplined for "bad" criminal law decisions. On a number of levels, it is baffling that this ethical "Rule" - punishing judges for errors of adjudication - has never been the subject of in-depth critical analysis. Thus, this Article is surprisingly the first scholarly work fully deconstructing the Rule (along with attendant considerations in criminal law adjudication) and addressing directly many of the tough questions that have been avoided or mistreated." [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1295162](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1295162)

conviction in United States v. Preston.<sup>5</sup>

#### 2009 to 2014

PHOENIX SCHOOL OF LAW / ARIZONA SUMMIT LAW SCHOOL

Associate Dean of Academic Affairs, 2014

Associate Dean of Faculty Scholarship, 2013-2014

Associate Dean of Faculty Development, 2011-2013

Associate Professor of Law, 2011-2015

Assistant Professor of Law (tenure-track), 2009-2011

Taught Legal Ethics/Professional Responsibility, Jurisprudence, and Torts

Served on Honor Appeals Court

Served on Admissions Committee; Chaired, Subcommittee on Character and Fitness

Served on Academic Standards and Policy Committee, Appointments Committee,

Creative Works Committee, Innovation Committee, and Faculty Development Committee

Served on InfiLaw<sup>6</sup> Consortium Faculty Evaluation Committee and InfiLaw Consortium

Records Management Committee

Served as Faculty Co-Advisor of the Phoenix Law Review

Received highest “collegiality”/360 rating in faculty peer assessment (2012-2013)

2011-2012 Recipient of the InfiLaw National Policy Board Award

Received 2011 Teacher of the Year Award, Second Place (with Brigham Fordam)

Received Faculty Scholarship Recognition for 2010 article (Pro-Prosecution Judges)

Completed Faculty Leadership Training (Naples, Fla.)

#### 2008-2009

Arizona State University Sandra Day O’Connor College of Law

Adjunct Professor of Law, 2008-2009

Taught Legal Ethics (Spring 2008; Spring 2009) (with Mark I. Harrison).

Guest-lectured in Civil Procedure (Fall 2008).

#### 2005-2009

Osborn Maledon, P.A.

Associate, 2005-2009

Summer Associate, 2003

Practiced criminal and commercial litigation, appeals, and legal ethics/professional liability.

Served as advisor to the minority writing internship program.

#### 2006-2007

Harvard Law School—Professor Andrew Kaufman

Research Assistant, 2006-2007

Assisted drafting Fifth Edition of *“Problems in Professional Responsibility for a Changing Profession.”* By Andrew L. Kaufman & David B. Wilkins.

#### 2004-2005

---

<sup>5</sup> 751 F.3d 1008 (9th Cir. 2014) (en banc).

<sup>6</sup> The InfiLaw System is a for-profit consortium of three independent law schools in the United States, consisting of Arizona Summit Law School in Phoenix, Arizona, Florida Coastal School of Law in Jacksonville, Florida, and the Charlotte School of Law. <http://www.infilaw.com/> See also, [https://en.wikipedia.org/wiki/InfiLaw\\_System](https://en.wikipedia.org/wiki/InfiLaw_System)

HON. WILLIAM C. CANBY, JR. US COURT OF APPEALS FOR THE NINTH CIRCUIT

Judicial Clerkship, 2004-2005

Assisted drafting ten published opinions, the majority of which concerned criminal Law, or procedure, among other duties.

2004

FEDERAL PUBLIC DEFENDER'S OFFICE—CAPITAL HABEAS UNIT--

DISTRICT OF ARIZONA

Law Clerk

Researched for and assisted drafting briefs in *Schiro v. Summerlin*,<sup>7</sup> and pleadings for several other capital defendants.

2003

UNITED STATES ATTORNEY'S OFFICE, CRIMINAL DIVISON, DISTRICT OF ARIZONA

Law Clerk (Externship)

2003

PERKINS COIE BROWN & BAIN

Summer Associate

Offered partnership-track associate attorney position.

## Scholarship

Professor Swisher is a prolific writer of books, articles, and essays. His 2019 CV lists four books (authored or co-authored) and twenty-three law review articles and essays.<sup>8</sup> Of particular interest to Arizona lawyers, judges, professors and students is his frequently cited "The Short History of Arizona Legal Ethics."<sup>9</sup> The abstract reads, "This Essay provides a history of Arizona legal ethics: its substance and procedure. A hundred years ago, legal ethics barely existed in Arizona. Fortunately, a century permits significant progress, as captured in this Essay. Following the lead of the ABA (among others), Arizona slowly but surely adopted a modernized system of ethical regulation. And today, Arizona shows increasing signs of autonomy in legal ethics. These signs can be seen in Arizona's independent approach to lawyer screening, prosecutorial ethics, and inadvertent disclosure - to focus on just a few of many examples in this 'short history.'"<sup>10</sup>

His most recent article, in 2018, is enticingly titled "The (Over) Use of Age and Custom in Legal Ethics."<sup>11</sup> It is a by-product of the well-known "Tabor Lecture"<sup>12</sup> given by Professor Swisher in 2017. Its importance in today's legal ethics environment is obvious:

---

<sup>7</sup> 542 U.S. 348 (2004).

<sup>8</sup> See full academic curriculum vita, page 1 of 15. <https://law.arizona.edu/keith-swisher>

<sup>9</sup> 45 Ariz. St. L. J. 813 (2013).

<sup>10</sup> Ibid.

<sup>11</sup> 52 Val. U. L. Rev. 165 (2018).

<sup>12</sup> <https://www.valpo.edu/law/2017-tabor-institute-on-legal-ethics-lectures>

The influence of old and customary ways on legal ethics is ubiquitous. Like other humans, the members and regulators of the profession suffer from heuristics and biases—including the status quo bias. Unsurprisingly, those who resist a particular ethical application or ethical improvement in legal or judicial ethics often invoke tradition and preexisting practice as reasons against change; the ABA, courts, scholars, and lawyers have all done so in recent memory (several examples of which are discussed in this Essay). This older-is-better approach raises concerns because it can ignore or hamper the pursuit of excellence characteristic of professions. In addition to becoming and remaining competent in practice, lawyers and judges are supposed to seek the improvement of the law and the delivery of legal services. Moreover, although ethics of course incorporates and protects certain enduring principles (including deontological concepts), legal and judicial ethics as written or applied are subject to revision to correct previous errors or omissions and to account for the changed context, including new members and new types of practice. On the twentieth anniversary of the Tabor Lecture in Legal Ethics, this Essay explores whether and to what extent a preoccupation with old and customary practices risks stunting and stagnating our ethical professional development.<sup>13</sup>

### Other Writings, Presentations & Press Interviews

Professor Swisher apparently needs no sleep and is constantly at a keyboard somewhere, or in front of a microphone. His fifteen-page curriculum vitae reveals a life-in-full at podiums, benches, lecture halls, news centers, and CLE presentations. The list includes seven “minor publications,” seventy-four “presentations,” five “amicus briefs in appellate courts,” and fifty-one “press-interviews and quotations.”<sup>14</sup>

### Professional Appointments & Awards

He finished his “schooling” in 2007, practiced law for three years, and has taught for the last twelve. In that timeframe, he has been appointed/honored seventeen times:

1. ABA Rosner & Rosner Young Lawyer Professionalism Award. 2018.
2. ABA/BNA Lawyers’ Manual on Professional Conduct, Editorial Board Member, 2008-2011.
3. AJC Judge Learned Hand Award for Emerging Leadership. 2016.
4. American Bar Foundation, Fellow, 2016-Present.
5. American Law Institute, Elected Member, 2018-Present.
6. Arizona Attorney, Editorial Board Member, 2005-2014.
7. Arizona Committee on the Rules of Professional Conduct, 2010-Present.
8. Association of Professional Responsibility Lawyers, 2007-Present.
9. Criminal Justice Act Panel Member, 2009-Present.
10. IAALS at the University of Denver, Committee Member, 2013-Present.

---

<sup>13</sup> 52 Val. U. L. Rev. 165, 166 (2018).

<sup>14</sup> See pages 2-14, <https://law.arizona.edu/keith-swisher>

11. InfiLaw National Policy Board Award. 2011-2012.
12. Judicial College of Arizona, Board Member, 2017-Present.
13. National Institute for Teaching Ethics and Professionalism, 2009 Fellow.
14. O'Connor Advisory Committee--Quality Judges Initiative. 2013-Present.
15. State Bar Fee Arbitration Committee Member and Arbitrator, 2014-Present.
16. State Bar Professionalism Committee, 2007-2013.
17. Tabor Lecture—Tabor Institute on Legal Ethics, Valparaiso University Law School. 2017