

Fall 2000

# LAW ALUMNI NEWS



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UNIVERSITY OF MINNESOTA



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## LAW ALUMNI NEWS

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age, marital status, disability,  
public assistance status, veter-  
an status or sexual orientation.

# Dean's Perspective

When one considers the quality of an academic institution, one thinks first of the faculty. At Minnesota, the law faculty always has been nationally distinguished. That reputation continues today. The quality of the faculty's scholarship is remarkable by any standard, and the quality of teaching and instruction is highly successful, as well, as measured by the high pass rates on bar examinations and the school's placement success.

Recently, the *Journal of Legal Studies* by the University of Chicago published a survey of the nation's law faculties. Consistent with our historic reputation, the study ranked the Minnesota law faculty's scholarly impact as 6th in the country and the overall rank of the law faculty, on objective criteria, as 13th for all law faculties and 5th for public university law schools. During 1999–2000, the faculty published 20 books and over 100 articles. With the recent arrival of new faculty, this tradition will remain.

In the summer five new faculty joined our Law School community. Each is featured in this issue of the *Law Alumni*

*News*. With backgrounds and experience ranging from civil rights, intellectual property, tax, and commercial law to law and economics, and with several having graduate training as well, these faculty are indeed very impressive. Together with other recent faculty appointments (featured in previous editions of the *Law Alumni News*), the new faculty hired in the last five years, seven in number, and the three to four more faculty we hope to hire during this year, the faculty will shape and define the future of this Law School. This is, to be sure, a bright future—one that all alumni/ae of this school can be proud.

Next to recruiting and educating a very talented student body, our investment in the capital of the faculty is our most important responsibility. The returns on this investment will determine how well we teach and mentor the next generation of lawyers.



Dean E. Thomas Sullivan

A handwritten signature in dark ink, reading "E. Thomas Sullivan". The signature is written in a fluid, cursive style with some capital letters.

*Dean and William S. Pattee Professor of Law*

# Faculty News and Events



Marianne and Bob Hudec

## Professor Robert Hudec Retires

### Conference in His Honor Held at Law School

After teaching at the University of Minnesota Law School since 1972, Professor Robert E. Hudec retired in May, 2000. A conference honoring Hudec and recognizing his work in international trade was held September 15–16. “The Political Economy of International Trade Law” featured 40 presentations by experts in international law, business and trade from around the world, including former Vice President Walter Mondale.

Professor Hudec plans to continue his scholarship in international trade; he will keep an office at the Fletcher School of Law at Tufts University in Boston, and will return to Minnesota occasionally. Of his career, Hudec said “I feel lucky to have gotten in on the ground floor, as it were... it’s just been fun to watch the

field develop, the international organizations, first the GATT, then the WTO, has just grown and become more powerful doing more things. That’s been really nice to see, it has also been nice to see how many people, both legal scholars and members of the general public paying attention to this. It’s really important.”

Though part of his plans for retirement include traveling and a little fishing, Hudec said his plans are “to keep doing what I’ve been doing all my life, which is reading, writing and research.”

Hudec is a leading authority on the General Agreement on Tariffs and Trade (GATT). He received his LL.B. magna cum laude from Yale University, where he taught before joining the faculty of the University of Minnesota Law School. He will remember Minnesota “as a terrific place to work, due to a really good group of colleagues and deans Auerbach, Stein and Sullivan... Minnesota students are, as advertised, nice people and good students. One of the benefits of teaching at a

top law school is you get interesting and challenging reactions from your students, which you might not get at another place.” ■

## Professor C. Robert Morris Retires

“I had a good time teaching, it was a lot of fun, and with the exception of grading blue books, it was never work, it was all play,” Professor C. Robert Morris reflected over his last 36 years on the faculty at the

Ruminating over his decades of teaching, Morris said “Students have changed tremendously, and they’ve changed for one reason and one reason only, something we had no control over. The student body has become extraordinarily better since I first came, because women have decided that law is a viable career. We always admitted women, but not many women thought it made sense to come. Now around half the student body are women, and those women have displaced a number of less-able men



Sandy and Bob Morris

University of Minnesota Law School. “I did what I wanted to do,” he added, “I’m a little sad to stop doing it, but it’s time to quit.”

Morris earned an LL.B. degree from Yale University in 1951. After graduation, he entered the Air Force where he served as an assistant staff judge advocate. In 1953 he joined the faculty at Rutgers University Law School where he taught for ten years before becoming a member of the University of Minnesota Law School faculty in 1964.

who would have been accepted if women had not been in the pool, and so we’ve thrown away the bottom of the curve. It’s made a tremendous difference at the Law School, and in the classroom experience.”

Morris taught Torts, Property, Corporations and Business Law. His immediate plans include several trips to the Opera in Chicago with his wife, Sandra, a pleasure for him among others that “We didn’t have time to do before.” ■

## Faculty Recognition



**Stephen F. Befort**, Professor of Law and Director of the University of Minnesota Law School's Civil Clinics, has been appointed Associate Dean for Academic Affairs. The Associate Dean for Academic Affairs is responsible for curriculum development and related matters.



**Dan Burk** has been named the 2001 Vance K. Opperman Research Scholar. He was a Visiting Professor during the 1999–2000 academic year and joined the Minnesota faculty in fall 2000. Professor Burk is a nationally recognized scholar in the areas of intellectual property, copyrights, and patents.

**Jim Chen** has been named to the Julius E. Davis Chair in Law for the 2000–2001 academic year. He was honored from 1998 to 2000 as a Vance K. Opperman Research Scholar. Professor Chen teaches and writes in the areas of administrative

law, agricultural law, constitutional law, economic regulation, environmental law, industrial policy and legisla-



tion. He is an editor of *Constitutional Commentary*, the University of Minnesota Law School's faculty-edited constitutional law journal.

**Daniel Farber** was appointed to the McKnight Presidential Endowed Chair in Public Law. Professor Farber is considered one of the top constitutional and environmental law scholars in the United States. The purpose of this new University chair is to recruit and retain world-class scholars of the highest rank who bring distinction to the University of



Minnesota. This chair was the third such position to be created from a \$15 million gift given to the University's Campaign Minnesota by the McKnight Foundation with the goal of establishing endowed chairs and fellowships.

## To Phil with Thanks



**Philip P. Frickey**, Irving Younger Professor of Law, accepted a position at the University of California Law School (Boalt Hall) in Berkeley, California. Professor Frickey was a member of the faculty at Minnesota for 18 years. He is a nationally recognized expert in public law and taught courses in American Indian law, constitutional law, and legislation. He held the 1990–91 Julius E. Davis Chair in Law, the Faegre & Benson Professor in Law from 1991–99, and became the Irving Younger Professor in Law in 1999. Professor Frickey was a co-editor of *Constitutional Commentary*.



On Friday April 14, in Geneva, Switzerland, the United Nations Commission on Human Rights re-elected **David Weissbrodt** for a second four-year term as the U.S. member of the U.N. Sub-Commission on the Promotion and Protection of Human Rights. During his previous term, Professor Weissbrodt participated in preparing a study on the right to a fair trial, a preliminary study on the rights of non-citizens, a review of international legal protections against slavery, and a draft human rights code for companies. In 1998 Weissbrodt was elected Vice-Chair of the Sub-Commission. The

Sub-Commission is a body comprised of 26 members from all over the world. The membership of the Sub-Commission is allocated by region, so that seven members always come from Africa, six come from Latin America, six come from Asia and the remaining come from Europe and North America. The Sub-Commission is engaged in norm development and studies relating to such issues as affirmative action, the rights of non-citizens, the human rights obligations of transnational corporations, globalization and human rights, reservations to human rights treaties, terrorism and human rights, indigenous land rights, etc.

Adjunct Law School Professor Barbara Frey was also elected as an alternate member of the Sub-Commission to serve with Professor Weissbrodt. They jointly teach a course in international human rights each fall semester.

## Faculty Recognition, continued

**Edward Adams** was recently appointed the inaugural holder of the Howard E. Buhse Professorship in Finance Law. He specializes in corporate law, corporate finance, secured transactions, commercial paper and bankruptcy. He is co-Director of the Kommerstad Center for Law and Entrepreneurial Studies at the University of Minnesota Law School.

**Susan M. Wolf** has been named to the Faegre and Benson Professorship in Law.

Professor Wolf, an authority in the areas of health law and bioethics, is the Director of the University's Joint Degree Program in Law, Health & the Life Sciences. She also is a faculty member in the University's Center for Bioethics and Director of the University's new Joint Degree Program in Law, Health & the Life Sciences. Her appointment is jointly supported by the Law School, the Medical School and the Center for Bioethics. ■



Edward S. Adams and Susan M. Wolf were named to the 1999–2000 Julius E. Davis Chair in Law. Pictured during the reception held in honor of the Chair recipients are: Dean Tom Sullivan, Mrs. Julius E. Davis, Professor Susan Wolf and Professor Edward Adams.

## With Thanks, Suzanna



Pictured are Dean Sullivan and Professor Sherry.

### Professor Suzanna Sherry

The Earl R. Larson Chair in Civil Rights and Civil Liberties Law

**Suzanna Sherry** delivered her final reappointment lecture entitled “The War Between The Branches: Reports From The Front” on April 11, 2000. She has been nationally recognized for her work in the areas of constitutional law and federal courts. Professor Sherry taught civil procedure, constitutional law, constitutional theory, constitutional history, federal courts and First Amendment law. She was named to the Earl R. Larson Chair in Civil Rights and Civil Liberties Law in 1992 and held the Julius E. Davis Chair in 1991–92.

Professor Sherry, who was a member of the faculty at Minnesota for 18 years, accepted a position at Vanderbilt University School of Law in Nashville, Tennessee. Her husband, Paul Edelman, also joined the Vanderbilt School of Law and Math Department. ■

# Faculty Research and Development

**Edward S. Adams** revised and updated new editions of his books *Federal Securities Law*, *Proxy Rules Handbook*, *The Investment Company Act of 1940: A Source Book*, *Corporate and Business Associations Statutes, Rules and Forms*, and *Bankruptcy: A Federal Practice Manual*—a work outlining and detailing important concepts of bankruptcy practice. In addition, he published articles entitled “The Easy Case for Derivatives Use: Advocating a Corporate Fiduciary Duty to Use Derivatives” with the *William & Mary Law Review*, “Beyond the Formalism Debate: Expert Reasoning, Fuzzy Logic, and Complex Statutes” with the *Vanderbilt Law Review*, “Spin-Offs, Fiduciary Duty, and the Law” with the *Fordham Law Review*, “Law Redesigns Law: Legal Principles as Principles of Law Firm Organization” with the *Rutgers Law Review*, “A Market-Based Solution to the Judicial Clerkship Selection Dilemma” with the *Maryland Law Review*, “MDP, Not If, But When and How” with the *Minnesota Law Review*, “Farmer Cooperatives and the Securities Laws” with the *University of South Dakota Law Review*, and “The Stockholder–Stakeholder Dilemma: A Proposal for Reform” with the *Emory Law Journal*. He also finalized several articles for law review publication including “Three Hundred and Sixty Degree Subordinate Evaluation and the Duty of Care,” “A Comparative View of Corporate Governance: Lessons From France, Germany, and Japan,” and “Executive Compensation and Equity Swaps.” Finally, he spoke in New York City at a conference regarding Securitization; Munich, Germany on German and American Corporate Governance; Las Vegas, Nevada to an American Bar Association Meeting regarding Corporate Finance Law; Toronto, Canada at the invitation of the Canadian Bar Association on MBA Concepts for Lawyers; Chicago, Illinois at the invitation of the Illinois Bar Association on Corporate Practice Issues; and at the University of Chicago Graduate School of Business on Negative Network Externalities and the Practice of Law.

**Beverly Balos** completed work on the 2000 supplement to the casebook entitled *Law and Violence Against Women: Cases and Materials on Systems of Oppression* co-authored with Mary Louise Fellows. She participated in a conference on Educating to End Domestic Violence sponsored by the American Bar Association Commission on Domestic Violence. She also was invited to participate in a task force formed to explore the feasibility of an Internet-based domestic abuse court preparation project.

**Stephen F. Befort** completed work on three publications concerning the Americans with Disabilities Act. The first is an article, coauthored by Tracey Holmes Donesky, entitled “Reassignment Under the Americans with Disabilities Act: Reasonable Accommodation, Affirmative Action, or Both?” This article will be published in the *Washington & Lee Law Review*. A second piece, entitled “ADA Presents an Unpredictable Landscape,” was published by *Minnesota Lawyer* as part of a special focus edition on employment law topics. The third article is entitled “Is Anyone Still Disabled Under the ADA?: A Review of Appellate Decisions Following the Sutton Trilogy.”

This paper was published in *2000 Employment Law Handbook* and presented at both at the Upper Midwest Employment Law Institute in St. Paul and the Labor Law Institute in St. Louis. Professor Befort also prepared a *2000 Supplement* to his *Employment Law and Practice* book for West Publishing. Along with Ryan Vettleson, he contributed an article on “WARN Act Developments” for the most recent issue of *Labor and Employment Law News*, a publication of the Minnesota State Bar Association. Professor Befort is serving this year as the Law School’s Associate Dean for Academic Affairs.



Elizabeth Heger Boyle

**Elizabeth Heger Boyle** researches international and comparative law from a sociological perspective. Over the past year, she has published four articles. The first, “National Legislating as an International Process: The Case of Anti-Female-Genital-Cutting Laws,” with Sharon Preves, considers the tension between international norms and local politics in the lawmaking process and was published in *The Law &*

*Society Review*. In “Is Law the Rule? Using Political Frames to Explain Cross-National Variation in Legal Activity,” published in *Social Forces*, Professor Boyle uses statistics to assess how state centralization and other aspects of political structure influence the use of legal systems above and beyond the individual motivations involved. In her third article, “Gesture Without Motion? Poetry and Politics in Africa,” published in *Human Rights Review*, she defends the South African Truth and Reconciliation Commission as a positive and concrete influence on the enforcement of human rights globally. Finally, Professor Boyle published “Gender and Professional Purity: The Effect of Occupational Prestige on the Formal and Informal Work Rewards of Physicians in Estonia,” with Donald Barr in *Gender and Society*. That article examines the persistence of gender discrimination, even in a “gender neutral” bureaucracy. Professor Boyle also presented “International Norms and Individual Behavior: The Case of Female Genital Cutting” at the annual meetings of the American Sociological Association in Washington, DC in August, 2000. The presentation included the results of her NSF-funded research. Her article, “Modern Law as a Secularized and Global Model: Implications for the Sociology of Law,” with John W. Meyer, is scheduled to be reprinted next year as a chapter in *Global Legal Prescriptions: The Production and Exportation of New State Orthodoxy*, edited by Yves Dezalay and Bryant Garth, published by the University of Michigan Press.

**Dan L. Burk** joins the faculty in fall 2000 as Professor of Law and Vance K. Opperman Research Scholar. Professor Burk completed work on an article entitled “Patenting Speech,” which is forthcoming in volume 79 of the *Texas Law*

*Review.* He also has recently completed work on “Fair Use Infrastructure for Copyright Management Systems,” a paper co-authored with Professor Julie Cohen of Georgetown University Law Center, which will appear this September in the proceedings of the 28th Annual Telecommunications Policy and Research Conference, held in Alexandria, Virginia. In April he spoke on “The Exclusive Right to Hack” to the Intellectual Property Caucus of the Conference on College Composition and Communication, meeting in Minneapolis; he also spoke in April on “E-Commerce: Tales from the Front” at the seminar on E-Commerce in Financial Services sponsored by the St. Paul Companies. In May he spoke to the Greater Lakes Regional Genetic Group on “Ownership of Genetic Sequences” during their annual meeting, and in May also delivered an address on “Patenting Macromolecules for Fun and Profit” at the Biotechnology 2000 symposium sponsored by 3M corporation. In June he lectured on “Trespass to Computers” to the Nevada State Bar Association during their annual meeting in San Francisco, California. Professor Burk also has been active in the public service: during the spring he co-authored an amicus brief filed with the United States Court of Appeals for the Ninth Circuit on behalf of 28 law professors opposing the District Court’s disposition of the controversy in *eBay v. Bidders Edge*, an Internet trespass case that has attracted national attention. In June, Professor Burk testified before the United States House of Representatives Judiciary Subcommittee on Courts and Intellectual Property during their oversight hearings on the Internet and Federal Courts.



Ann M. Burkhart

### **Ann M. Burkhart**

received the Fesler Research Grant, which was awarded from the Fesler family’s endowment at the Law School. The Grant supported her research on housing issues during the summer. The Minnesota Secretary of State appointed Professor Burkhart to the Minnesota Electronic Real Estate Recording Task Force. Professor Burkhart also recently has been appointed vice-chair of the American College of Real Estate Lawyers Legal Education Committee.

**Carol Chomsky** published her article, “Unlocking the Mysteries of Holy Trinity: Spirit, Letter, and History in Statutory Interpretation,” in the *Columbia Law Review* in the May 2000 issue. She co-authored with Professor Maury Landsman an article entitled “Introducing Negotiation and Drafting into the Contracts Classroom,” based on their collaboration developing and using a contract negotiation and drafting problem in her Contracts class. The article will appear in the September 2000 issue of the *St. Louis University Law Review*. Professor Chomsky continues as co-President of the Society of American Law Teachers and as Coordinator of the newly renamed Bush Early Career Faculty Program: Pursuing Teaching Excellence in a Multicultural University.

**Brad Clary** was promoted in July, 2000 to Professor of Clinical Instruction. On April 28, 2000, he conducted a workshop on “Appellate Brief Writing and Oral Arguments” for the Minnesota State Bar Association, Civil Litigation Section, Appellate Practice Committee. In July, 2000, Professor Clary attended the Legal Writing Institute’s national conference on legal writing in Seattle. He is currently the Site Chair for the Association of Legal Writing Directors’ forthcoming July, 2001, national conference on integrating doctrine, skills, and legal writing across the law school curriculum. Professor Clary is also on the Association of Legal Writing Directors’ Moot Court Committee, which is drafting proposed standard guidelines for law school moot court competitions. He co-authored with Deborah Behles an article on “Roadmapping and Legal Writing” in *Perspectives* (Spring 2000). He is preparing with co-authors Associate Dean Sharon Reich and Adjunct Professor Michael Vanselow a handbook on appellate advocacy which will be published by West Publishing this fall.

**Mary Louise Fellows** was a participant in a conference on the law school curriculum and domestic violence sponsored by the American Bar Association. In May, she also gave a lecture entitled, “The Other ‘Angel in the House’: Childcare Workers and the Middle-Class Household” at Suffolk University Law School as part of a conference on women and work. She completed a 2000 supplement to *Law and Violence Against Women*, a casebook that she co-authors with Beverly Balos. The third edition of her other casebook, *Family Property Law* will be published early next year. In addition, she completed her work on the committees drafting the Uniform Parentage Act and the Uniform Trust Code, both of which were presented to the Uniform Law Commissioners for approval in the summer of 2000.

**Richard S. Frase** spent the summer of 2000 at the Max Planck Institute for Foreign and International Criminal Law, in Freiburg, Germany, studying differences in the sentencing of non-violent crimes in Germany and the United States (in particular: the much more frequent use of non-custodial sanctions, in Germany). This work builds on Professor Frase’s previous comparative criminal justice research, and also complements a comparative study he is conducting, along with criminologist Robert Weidner of the Law School’s Institute on Criminal Justice, examining variations in felony sentencing among American states and counties. Professor Frase continues to serve on the Editorial Board for the second edition of the *Encyclopedia of Crime and Justice*, which is expected to be published in 2002. He also continues to serve as Co-Director and Director of Research, in the Institute on Criminal Justice, and delivered the opening address at the Institute’s May, 2000 national conference on the causes and prevention of jail overcrowding. Professor Frase’s recent publications include two versions of his re-appointment lecture as Benjamin N. Berger Professor of Criminal Law. The more complete version, entitled “Sentencing Guidelines in Minnesota, Other States, and the Federal Courts: A Twenty-Year Retrospective,” appears in volume 12 of the *Federal Sentencing Reporter*. An abbreviated version of the speech was given at a conference on state and federal guidelines, and appears in volume 44 of the *St. Louis University Law Journal*. Also this sum-

mer, Professor Frase's comprehensive review of Professor William Pizzi's recent book, *Trials Without Truth*, was published in volume 3 of the *Buffalo Criminal Law Review*. This review essay, entitled "The Search for the Whole Truth about American and European Criminal Justice," argues that Pizzi's critique of American criminal justice, and his proposals to adopt foreign procedures, are simplistic and overstated. The review seeks to provide a more balanced assessment of American and foreign criminal justice, and to illustrate both the difficulties and the benefits of comparative criminal justice research.

**Joan S. Howland** served as keynote speaker for the Asian/Pacific American Librarians Association Annual Meeting in Chicago in July, 2000. She spoke on the topic "Challenges and Opportunities of Working in a Multicultural Environment." She also gave a presentation entitled "One Size Does Not Fit All: Different Approaches to Different Styles" at the "Stop Talking 'N Start Doing: Recruitment and Retention of People of Color in the Library Profession" symposium at the 2000 American Library Association Annual Conference. Professor Howland will speak at the Kentucky Library Association Annual Meeting in October on the issue of "Leaders as Problem Solvers." Professor Howland continues to serve as Treasurer and as an Executive Board Member of the American Indian Library Association. As Chair of the Association of American Law Schools Committee on Libraries and Technology, Professor Howland is coordinating a program "Distance Education in the the Law School Environment: Separating Reality from Hype" to be presented at the 2001 AALS Annual Meeting. Professor Howland also serves on the AALS Advisory Group on Electronic Publishing. She is co-editing a book for the American Association of Law Libraries publication series entitled *Leadership Roles in Libraries* and published an article "Managing Change in 21st Century Law Libraries" in *Trends in Law Library Management and Technology*.



John H. Matheson

**John H. Matheson** published an article, "Not 'If' but 'How': Reflecting on the ABA Commission's Recommendations on Multidisciplinary Practice" in *Minnesota Law Review* with Professor Edward S. Adams. He published a book, the 2000 edition of *Corporations and Other Business Associations: Statutes, Rules and Forms*, co-authored by Professor Edward S. Adams. He also published an annual supplement for his *Business Law Deskbook*, Volume 20 of the Minnesota Practice Series.

**David McGowan** spoke on electronic commerce issues at the American Association of Law Schools in January, at the University of Illinois in April, and at the American Intellectual Property Law Association in May. He is working on several articles: "Ethos In Law and History: Alexander Hamilton, The Federalist, and the Supreme Court," for *Minnesota Law Review*; "Legal Implications of OpenSource Soft-

ware," for *Illinois Law Review*; "Judicial Writing and the Ethics of the Judicial Office," for *The Georgetown Journal of Legal Ethics*; "The Problems With the Third Way; A Java Case Study," in *Regulating the Global Information Society*; and "Vaporware, The Internet, and Consumer Behavior," in *The Commodification of Information*. Professor McGowan completed three articles last year: "In re J.S.," for *Constitutional Commentary*; "A Microsoft Dialog," coauthored with Professor Daniel J. Gifford for *Antitrust Bulletin*; and "Networks and Intention in Antitrust and Intellectual Property," for *Journal of Corporate Law*.

**Miranda Oshige McGowan** will publish two articles this year. The first, *Reconsidering the Americans with Disabilities Act*, will be published by the *Georgia Law Review* in the fall of 2000. In it, Professor McGowan argues that despite the firestorm of scholarly and press criticism it provoked, the portion of the Supreme Court's 1999 decision in *Sutton v. United Air Lines* that defined what it means to have a disability harmonizes surprisingly well with the ADA's functional approach to defining disability. Professor McGowan explains, however, that the *Sutton* Court's holding on what it means to be "regarded as" disabled eviscerates the ADA's central purpose of dismantling attitudinal barriers that prevent full and equal access to jobs for persons with physical and mental impairments. Professor McGowan recommends a new conception of what it means to be "regarded as" disabled that bars employers from relying on over broad and inaccurate stereotypes about physical and mental impairments, but at the same time allows employers a relatively free hand to devise job requirements, tests, and criteria. Her second article, *Property's Portrait of a Lady*, grew out of Professor's McGowan's interest in law and literature. It will be published by the *Minnesota Law Review*. In it, she uses the lens of Henry James' *The Portrait of a Lady* to explore the consequences of laws premised on the notion that property is valuable because it constitutes the self; and those that value property because it is essential to securing individual freedom. Finally, Professor McGowan continues her empirical research on issues related to affirmative action. She is currently writing an article that finds that the stereotype of Asian Americans as a "model minority," contrary to the view held by many legal scholars, does not create opposition to affirmative action for African Americans or resistance to greater governmental efforts to improve the status and condition of minority groups in the U.S. Surprisingly, in fact, people who view Asian Americans as a "model minority" tend to be more in favor of affirmative action and increased governmental intervention on behalf of minority groups.

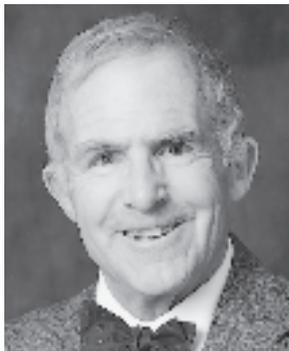
**Michael Stokes Paulsen** was named Briggs & Morgan Professor of Law this year. He presented his inaugural chair lecture in January 2000, entitled "Is Public Education Unconstitutional?" In addition, Professor Paulsen published several articles during the past year: "Abrogating Stare Decisis By Statute: May Congress Remove the Precedential Effect of *Roe* and *Casey*?" in *The Yale Law Journal*; "Dead Man's Privilege: Vince Foster and the Demise of Legal Ethics," in *The Fordham Law Review*, and "A Constitutional Independent Counsel Statute" in *The Wiedener Symposium Law Review*. Professor Paulsen also won a major religious freedom case against

the Edina, Minnesota school district, serving as attorney for a family whose child with disabilities was denied special education services because he attended a religious school. The school district has been ordered to provide special education to the child for six years, and to pay damages and fees of over \$200,000. The case, entitled *Peter v. Wedl* and *Westendorp v. School District #273*, has been cited nationally as one of the most important victories for families in the areas of both disabilities law and school choice. Professor Paulsen was guest commentator on National Public Radio's "Talk of the Nation" (July 5, 2000), discussing the Supreme Court's 1999-2000 Term. He is currently working on a book about separation-of-powers and constitutional interpretation, provisionally entitled *The Power to Say What the Law Is*, to be published by Yale University Press in time for the bicentennial of *Marbury v. Madison* in 2003.

**Sharon L. Reich** spoke in September at the annual Professional Responsibility Seminar sponsored by the Office of Lawyers Professional Responsibility, and at the Bar Leaders Conference sponsored by the Minnesota State Bar Association.

**C. Ford Runge**, Distinguished McKnight University Professor of Applied Economics and Law, spent 1999 on sabbatical leave, working under a Ford Foundation grant on the impacts of genetically modified food and the international trading system. Articles on various aspects of these issues appeared in the April 2000 *Journal of World Trade* ("Labelling, Trade and Genetically Modified Organisms: A Proposed Solution," with Lee Ann Jackson) and in the May-June issue of *Foreign Affairs* ("A Removable Feast," with Benjamin Senauer). He is currently preparing a book length manuscript with colleagues at Minnesota and the International Food Policy Research Institute (IFPRI) in Washington, D.C., tentatively titled *Ending Hunger in the 21st Century: Rethinking Globalization and Food Security*. He presented other papers related to biotechnology issues in Bologna, Italy in June, 2000 and participated in a German Marshall Fund dialogue on US/European attitudes toward biotechnology at Airlie House, Virginia, in July. He was recently elected to membership in the Cosmos Club in Washington, D.C.

**Ferdinand P. ("Andy") Schoettle** published last winter a long article in the *Virginia Tax Review*, "Big Bucks, Cloudy Thinking Constitutional Challenges to State Income Taxes on the Multinationals' Dividends, Interest and Capital Gains—Illumination From The GATT," which looks at the standards used to decide a complaint that a particular tax or similar measure violates a free-trade agreement. Compared in the article are the approaches of the Supreme Court of the United States in considering Commerce Clause challenges to state taxes and of panels appointed to hear complaints lodged by countries under the General



Ferdinand P. ("Andy") Schoettle

Agreement on Trade and Tariffs or the World Trade Organization. In addition, Professor Schoettle has a contract with Lexis/Nexis to publish a new text book in state and local taxation and finance. Finally, Professor Schoettle is working on a new article, "Eliminating the Federal Income Tax Deduction for State and Local Taxes: Implications for Revenues, Spending, Tax Competition and Equality in Tax Burdens among States." He presented the article at the Georgetown University Law Center last spring.

**Gordon Silverstein** will be on leave of absence this year to serve as Senior Editor and Fellowship Program Director for the New America Foundation in Washington D.C. The Foundation, a new organization devoted to developing new voices in the American public policy debate, brings young writers to Washington to generate a vibrant intellectual life and help them establish themselves as public intellectuals. In addition to running the fellowship program and serving as the primary editor for these writers, Silverstein also will devote a significant part of his time in Washington to his own writing, including the completion of a book manuscript titled: *How Law Kills Politics*, that focuses on the ways in which the interdependence of the American legal system and the American political system has had predictable and troubling consequences for both.

**Stephen Simon** conducted Judicial Trial Skills Training Programs at the National Judicial College general jurisdiction course for new judges in April and July of 2000. New trial judges from throughout the United States going through this course are exposed to the University of Minnesota Law School's unique judicial education program. Professor Simon, along with Professor Maury Landsman, has adapted the law school's Judicial Trial Skills Training Program for Administrative Law Judges. Professor Simon and Landsman implemented this modified program for Minnesota Administrative Law Judges in June of this year. Professor Simon gave a presentation at the annual Life Saver's traffic safety conference in Atlanta Georgia in March of 2000. His presentation was on the conflict between the physician/patient medical privilege and the need to obtain impairment and blood alcohol evidence of injured alcohol impaired drivers who receive treatment in a medical facility. Professor Simon presented a paper at the International Council on Alcohol Drugs and Traffic Safety 2000 conference in Stockholm, Sweden in May of this year. The paper was on his research investigating the relationship between the speed of adjudication and the likelihood of recidivism for individuals charged with DWI offenses. Professor Simon's research in this area has been used by the Minnesota Legislature and the Hennepin County District Court. In addition to many pre-trial court appearances, under Professor Simon's supervision, his clinical defense students first chaired three jury trials during the 1999-2000 school year. One of the trials involved a client who was accused of throwing a pie at Governor Ventura. Another defense student of Professor Simon argued a clinic case in the Minnesota Court of Appeals. The issue in the case was the right of a police officer to search the passenger of a motor vehicle.

**Steven S. Smith** completed a co-authored book, *The Politics of Institutional Choice: The Formation of the Russian State Duma*, to be published by Princeton University Press in fall of 2000. He is co-authoring a book entitled *Senate Parties: The Development of Party Leadership and Organization in the U.S. Senate*, which he plans to complete this winter, and he has several book chapters appearing in the next year on the same subject. Professor Smith is conducting research that will lead to a book entitled *Law Making and Decree Making in a Mixed System*, about parliamentary-presidential relations in Russia, a project which is funded by the National Science Foundation. He is revising his textbook, *The American Congress*. During the past year, Professor Smith gave talks on his research at University of California Los Angeles, University of California San Diego, and Washington University, as well as at several conferences. He frequently offers commentary on national and Minnesota politics in the mass media.

**E. Thomas Sullivan** completed the 14th Edition of *Federal Land Use Law* with Professors Dan Mandelker and Jules Gerard. In June he spoke at a conference at Wake Forest University for new law school deans on the subject of development and fund raising. In June, while on a ten-day trip to China with a University delegation, Dean Sullivan participated in an all-day academic conference at Fudan University in Shanghai on competition, trade and intellectual property issues where he delivered two academic papers. In September he was a commentator during a two day international symposium hosted by the Law School in honor of Professor Robert Hudec on the subject of international trade. At the American Bar Association annual meeting in July, Dean Sullivan was elected the Vice-Chair of the Council and Section of Legal Education and Admission to the Bar. He also is serving as Co-Chair of a strategic plan and self study for the ABA Council on Legal Education. Dean Sullivan has been appointed by Martha W. Barnett, the President of the American Bar Association, as a member of the Committee on the Future of the Legal Profession. This presidentially appointed committee of judges, lawyers, and law professors will advise President Barnett on the current and future trends in the legal profession.

**Michael Tonry** has had two books, *Crime and Justice*, volume 27, and *Sentencing and Sanctions in Western Countries* (editor with Richard Frase), published since the beginning of the 1999–2000 academic year. Paperback editions of *Prisons* (with Joan Petersilia, 1999) and the *Handbook of Crime and Punishment* (1998) also appeared, as did several articles. Since October 1999, he has held joint appointments in the Law School and in the Faculty of Law, University of Cambridge, where he directs the Institute of Criminology. In March 2000, he gave the annual Nigel Walker Lecture at Cambridge, in April he lectured on the evolution of penal policy at an NYU conference on the history of imprisonment, and in June he spoke on race, gender, and sentencing at an AALS criminal law teacher's conference in Washington, D.C. In May he was appointed to membership on the Sentencing Policy Review Panel of the English Home Office. He convened an international conference on transnational crime, supported by the U.S. Department of Justice, in January in Cambridge, and

a meeting of the *Crime and Justice* editorial board in Washington in April. In September 1999 at the Law School and in January 2000 in Chapel Hill, N.C., he convened meetings of the Executive Sessions on Sentencing and Corrections, a program now finished which was headquartered at the Law School and supported by the U.S. Department of Justice.

**David Wilkens** received a three-year (2000–2003) McKnight Research Award from the University of Minnesota Arts and Humanities Endowment Fund to support his research. Professor Wilkins is working on three books that have been accepted for publication in 2001. The first, *Nations Within States: American Indian Politics and the American Political System* (Rowman and Littlefield), is a textbook. The second is a book on Indian legal doctrines and has been retitled *Federal Indian Law: The Contest Over Sovereignty* (University of Oklahoma Press) and is co-authored with Tsianina Lomawaima. The third is a co-edited volume, tentatively titled, *American Indian Sovereignty and Identity in the New Millennium* (University Press of Kansas), will be a compilation of essays by American Indian authors who have been influenced by Vine Deloria, Jr. Professor Wilkins also embarked on another book project that will be co-authored with Vine Deloria, Jr., tentatively titled, *The Color of Law*. Professor Wilkins also co-authored an article with Deloria titled, "Racial & Ethnic Studies, Political Science, and Mid-Wifery," that was published in Fall 1999 in *Wicazo Sa Review*. He was invited to submit a piece to *Stanford's Law & Policy Review* which is devoting an issue to indigenous peoples, slated for 2001. His essay is titled, "The Manipulation of Indigenous Status: The Federal Government as Shape Shifter." Professor Wilkins presented papers at two conferences: "If We Can Understand Tribal Sovereignty We're Still Only Part Way There," delivered at the Native American/Corporate America Business Conference in Ontario, Canada, June 2000 and "The Tribal Chair Can Do No Wrong: The Origin and Import of the Doctrine of Tribal Sovereign Immunity," delivered in April, 2000 at the Western Social Sciences Conference in San Diego, California. Also in April, as part of a panel discussion, he delivered a paper titled "Racial Identity & the Federal Recognition Process: A Case Study of the Lumbee Indians," at a Cross-Cultural Symposium "Eating Out of the Same Pot: Relating Black and Native (Hi)stories," that was held at Dartmouth College. Professor Wilkins was a Seminar Leader at a 10-day institute held at Brown University. The institute was titled, "Boundaries and Borderlands III: The Search for Recognition and Community in America." He gave two keynote lectures last winter: "Tribes, Treaties, and Constitutional Tribulations," at Indiana University Law School on March 27, 2000, and "Message for the New Millennium" Campaign, organized by the Boston Student Union Government of Boston University, February 10, 2000.

**David Weissbrodt** began his second four-year term as the United States member of the U.N. Sub-Commission on the Promotion and Protection of Human Rights. At the August 2000 session of the Sub-Commission he presented a review of the implementation of treaties against slavery which the Sub-Commission recommended for publication by the United Nations. He also discussed his first draft of human

rights guidelines for companies and was asked to prepare a second draft to be considered during August 2001. Having submitted a preparatory working paper to the Sub-Commission and the Commission on Human Rights, he was also selected as the U.N. Special Rapporteur on the Rights of Non-Citizens. Weissbrodt also served as a member of the U.N. Working Group on Communications which meets each year to identify governments that are responsible for a consistent pattern of gross violations of human rights. In addition, Weissbrodt became a consultant to the High Commissioner for Human Rights on trafficking in persons and helped to draft guidelines for the High Commissioner on that subject. Weissbrodt published a chapter of a book for the American Bar Association's Annual Meeting in London in August 2000 to celebrate the Anglo-American legal tradition: *Common Law/Common Values/Common Rights/Common Rights: Essays on Our Common Heritage*. The chapter focused on "Human Rights and International Law and Institutions." Weissbrodt also co-authored an article about developments at the 51st session of the U.N. Sub-Commission on the Promotion and Protection of Human Rights, which was published in the *Human Rights Quarterly*. His book on the right to a fair trial was accepted for publication by Kluwer Law International and he also wrote two studies on aspects of Amnesty International's human rights mandate as well as an article on international efforts to combat slavery which has been accepted for publication by the *German Yearbook of International Law*.

**Susan M. Wolf** has been named the Faegre & Benson Professor of Law. She has also become Chair of the University's new Consortium on Law and Values in Health, Environment & the Life Sciences. She continues to direct the Joint Degree Program in Law, Health & the Life Sciences. The Consortium and Joint Degree Program are co-sponsoring a 2000-01 Lecture Series, as well as a February 1, 2001 conference on "Governing GMOs: Developing Policy in the Face of Scientific & Public Debate." The GMOs conference is co-sponsored by the College of Agricultural, Food & Environmental Sciences, and others. Professor Wolf, along with Professor Jeffrey Kahn of the Center for Bioethics, have recently secured a grant from the National Human Genome Research Institute for a two-year project on genetic discrimination in disability insurance. Professor Wolf is also writing on reproductive technologies, bioethics consultation, and patients' rights. The American Medical Association has published a paper to which she contributed as a member of their National Working Group on Health Care Organizational Ethics, entitled "Organizational Ethics in Health Care: Toward a Model for Ethical Decision Making by Provider Organizations." Professor Wolf has lectured recently at the National Institutes of Health and Vanderbilt University on maternal-fetal surgery, at the University of Maryland on managed care, and at an invitational conference at Asilomar in California on scientific self-regulation. She appeared on Minnesota Public Radio discussing genetic patents.

**Mark G. Yudof**, president of the University of Minnesota, spent two weeks this summer in China and Taiwan. He and his delegation of senior administrators and deans visited Chinese universities with which Minnesota has academic

exchange programs, signing several new agreements, and connecting with many of the University's 8,000 Chinese alumni. President Yudof received honorary professorships from Peking University, Fudan University in Shanghai, Xi'an Jiaotong University in Shanghai, and the Fourth Military Medical University. President Yudof completed his contributions to the fourth edition of his book, *Educational Policy and the Law* (with David L. Kirp, Betsy Levin, and Rachel Moran). ■



Pictured are Justice Simonett, granddaughter, Claire Simonett Shey, and wife, Doris, during a reception at the Law School held in Justice Simonett's honor.

## Justice Simonett Retires from Teaching

"I enjoyed teaching very much; the association with the students, testing out ideas...it made the time go by quickly," Justice John E. Simonett reflected on his last twelve years teaching the Art of Appellate Advocacy at the University of Minnesota Law School.

Though retired from teaching, Justice Simonett will continue to practice at the firm Greene Espel, where he works in the area of dispute resolution. He has also practiced in products liability, appellate practice and mediation.

A 1951 graduate of the University of Minnesota Law School, Simonett also served as an Associate Justice on the Minnesota Supreme Court from 1980-1994.

"One of the benefits of teaching, as the years go by, is that I'll meet a young lawyer on the street or at some function, and they're part of the alumni of a class of mine, and it's always fun to see them out in the world and doing well...that's what teaching is all about," Simonett said.

His retirement plans include traveling South during the winter months with his wife Doris, and perhaps a little fishing. ■

# Trespass to Toasters

By Dan Burk, Professor of Law and  
Vance K. Opperman Scholar

For many years, the doctrine of trespass to chattels was an obscure historical oddity, relegated primarily to the occasional footnote in first-year Torts outlines, or perhaps to the final examination questions of particularly sadistic Torts professors. But surprisingly, trespass to chattels is alive and flourishing in the world of digital computer networks. The 21st century revival of this medieval tort claim provides not only a case study of how a legal doctrine can be dusted off and refurbished for use in a new technological setting, but more significantly, a cautionary tale of the unexpected and unintended repercussions generated by applying old law to new situations.

Trespass to chattels began its renaissance in a series of cases involving spam—not the tinned meat product made notorious in the Second World War, and then all over again by the British “Monty Python’s Flying Circus” comedy troupe—but rather the Internet slang term for unsolicited bulk e-mail. The leading case has been an action by the internet service provider (ISP), CompuServe, against Cyber Promotions, a commercial service that transmitted spam to thousands of user addresses on the CompuServe network.<sup>1</sup> CompuServe subscribers had complained about such transmissions, and some had canceled their subscriptions in protest. CompuServe deployed software filters to screen out e-mail from Cyber Promotions, but the bulk e-mailer had evaded the filters by changing or falsifying its message headers. CompuServe had also notified Cyber Promotions that its e-mail transmissions were unwelcome on the CompuServe system, to no avail.

When such self-help measures failed CompuServe sought to enjoin the spam by claiming trespass to chattels. As formulated in the Restatement Second of Torts, a claim of trespass to chattels requires proof that the owner of the chattel has without consent been physically

dispossessed of the chattel, typically under circumstances in which the owner is deprived of the use of the chattel, or where the quality or value of the chattel is thereby impaired. In the case of bulk e-mail, lack of consent was fairly easy to find, once CompuServe had informed Cyber Promotions that its transmissions were unwelcome. But considerable creativity was required to satisfy the elements of dispossession, deprivation, and impairment.

The trial court found that the electronic signals received by the CompuServe system were sufficiently physically tangible to support a trespass claim. It held that the Restatement test requires the owner only to show an interference that impairs the value of the chattel, and not necessarily impairment of the chattel’s physical condition. The court found that CompuServe showed impairment by demonstrating that the spam was a burden on CompuServe’s equipment—processing spam consumes computer processing cycles and occupies computer memory space. Alternatively, the court found that CompuServe was adversely effected by the loss of employee time and resources devoted to attempts to block e-mail from Cyber Promotions. Finally, the court found harm to the subscriber goodwill associated with CompuServe’s services.

Unfortunately, the *CompuServe* opinion essentially created a new cyberspace tort devoid of any meaningful constraint. Although no one likes the nuisance of bulk e-mail, one wonders where the limits of such trespass by electrons might lie. If one is willing to base the physical contact requirement of trespass upon the receipt of electrons, then whole new vistas of electronic trespass are opened to our view. Unwanted telephone callers would seem to be engaging in trespass to chattels when a telephone call sends signals to the instrument of the recipient. So, too, with fax machines that receive unwelcome transmissions. Radios and televisions that receive unwanted transmissions are impinged



Dan Burk

upon by electromagnetic waves that induce the movement of electrons within the receiver. I will not even begin to pursue here the endless possibilities for trespass upon household appliances plugged into electrical outlets, but leave the reader to muse upon whether a demand letter to the utility company that no further current be transmitted to an appliance could occasion a claim for trespass to toasters.

If such examples as these begin to sound a bit silly, that should perhaps indicate the degree of regard properly paid to the “trespass” of electrons upon computers intentionally connected to a network known to carry such electrons. The Restatement test guards against such trivial contacts by requiring that the contact rise to the level of some substantial interference equivalent to physical seizure of the chattel or similar deprivation of its use.<sup>2</sup> This may occur if the chattel is damaged or impaired as to its condition, quality or value.

But in the case of Cyber Promotion’s “impinging electrons,” as in my examples above, the physical contact with the equipment is of course too slight to constitute seizure or deprivation, or cause damage.

Undaunted by this common-sense requirement, the court in *CompuServe* simply bifurcated the requirements of physical contact and impairment, holding that any contact was sufficient, creating a novel rule of inviolability, under which any proximately related “harm” or loss of “value” would satisfy the requirement for damage. This move cuts trespass to chattels free from its moorings of dispossession or the equivalent, allowing the court free rein to hunt for “impairment.” But the chattels at issue—CompuServe’s computers—were not impaired in any usual sense of the word. It is scarcely credible to think that if CompuServe were to either put its equipment up for auction the day before passage of Cyber Promotions’ spam over the network, or the day after the spam, that there would be any diminution in its market price due to the intervening transmissions. Instead, the court found a diminution in value from the loss of computer processing cycles and from the use computer memory required to handle the bulk e-mail messages. No matter that the e-mail messages processed by the recipient systems were precisely the type of communications the equipment was meant to process—they were unwanted communications, and so the court

reasoned that they impaired the equipment by displacing more desirable communications.

This analytical leap on behalf of CompuServe also nicely accommodates my examples above, as communications instruments that are physically contacted by various sorts of electrical signals will be “impaired” by similarly processing the sort of signals that the particular device was intended to process. A telephone engaged by an unwanted call is thus impaired in value because it cannot receive other, more desirable calls while dedicated to the unwanted communication. Radios and televisions receiving unwanted programming are impaired in their value because they cannot receive more desirable communications when tuned to that channel. And unlike the very sensible Restatement requirement of damage to a physical chattel, impairment of this type is pretty much in the eye of the beholder; the signal need not preclude any use of the device, it need only be unwanted. Thus, the “impairment” of the chattel in *CompuServe* amounted to no more than the receipt of annoying content, by which standard I must again conclude that my living room television is enormously impaired—indeed, I would say the cable and broadcast networks have rendered it quite valueless.

The danger in such creative application of the old common law tort is that, as formulated in *CompuServe*, the claim extends beyond the receipt of bulk e-mail to nearly any Internet service imaginable. Consider for example the popular World-Wide Web system running on the Internet. One might plausibly imagine that if trespass can be used to clear a system of spam, CompuServe or AOL could similarly clear their networks of undesirable Internet web content, such as transmissions from pornographic or white supremacist web sites. The elements of cyberspace trespass are clearly present in the case of unwanted web content. Electrons transmitted from web servers impinge on CompuServe’s equipment, just as electrons do in the case of bulk e-mail. There is similarly a loss of data processing capacity in a recipient computer during use of the web, as will be apparent to anyone who has sat and waited for a web page to load—in fact, the graphics-intensive content of the World-Wide Web is likely to occupy far more computer memory than any typical e-mail message. Presumably an ISP need only put a web site on notice that its files are unwelcome on the service provider’s system, and the web site owner becomes a trespasser each time the site is accessed from that system. Trespass may indeed be the all-purpose cause of action for the

...trespass to chattels  
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Internet; the impingement of electrons and the “damage” of occupied memory is inherent in connecting a machine to the Internet, so the application of the claim is limited only by a plaintiff’s imagination.

And, indeed, trespass has begun appearing as a claim in a variety of contexts, most notably in the notorious dispute between the on-line auction service eBay and the auction aggregation service Bidder’s Edge.<sup>3</sup> eBay offers a forum where Internet users can auction almost any item imaginable; there are a number of such auction sites, but eBay is by far the most prominent. Bidder’s Edge offers an aggregation service, where buyers can simultaneously canvass the auctions occurring on eBay and other auction sites. This service is accomplished by means of a software robot that periodically searches the publicly posted information on auction sites, and compiles them into a database of items and prices available. Users searching for, let us say, a particular Beanie Baby toy, need not individually search each of the possible on-line auction sites where the toy might be up for bid. Rather, they are able to search a variety of auctions simultaneously via the aggregator site, which then refers them to the site where the actual auction is taking place.

One might assume that such a service would be a welcome bonanza for auction sites such as eBay, since the aggregator in fact attracts potential customers for their auctions and funnels those customers to the auction site’s service. But eBay’s reaction has been quite the opposite. eBay asserted trespass to its web site, and not surprisingly, given the lack of any meaningful legal constraint on this new form of trespass, prevailed in obtaining a preliminary injunction. As in the “spam” cases, the trial court found physical contact from the exchange of electrons. But finding impairment was a bit more of a challenge, given that the requests for information from the eBay robot comprised only a miniscule fraction of the load on eBay’s servers. As in the case of bulk e-mail, the trial judge reasoned that occupying even that tiny capacity of the server could constitute impairment.

This holding is alarming due to its potential impact on the growing e-commerce sector. On-line retailers have chafed over the Internet’s ability to facilitate easy price comparisons through comparison services like DealTime and MySimon, which aggregate on-line product prices much as Bidder’s Edge aggregates auction data. The prospect that a flurry of trespass suits could stifle such innovative services

prompted 28 law professors who teach and write in the areas of cyberlaw and electronic commerce to file an amicus brief as the eBay decision was appealed to the Ninth Circuit.<sup>4</sup> The signatories to the brief read much like an A to Z “Who’s Who” of American cyberlaw, from Professor Keith Aoki of the University of Oregon to Professor Jonathan Zittrain of Harvard University. Amici law professors pointed out the damage that would likely be done to the development of electronic commerce if each participant in the Internet system were allowed to selectively exclude web contacts based upon this new tort of virtual trespass.

eBay’s counsel opposed the filing of the amicus brief on the somewhat surprising grounds that the amici law professors had no relevant expertise to offer the court. But eBay did not oppose the amicus brief of a different law professor, Professor Richard Epstein, who was commissioned by database owners Reed-Elsevier and the National Association of Realtors to file a brief in support of the trespass theory. The Epstein brief argues that an exclusionary right such as that fashioned by the trial court is appropriate in order to spur the development of cyberspace markets for licenses to use on-line information. With reference to the amicus brief of the other law professors, Epstein asserts that “Amici Professors have failed to engage in any thoughtful inquiry as to how older categories for trespass should carry over into cyberspace.”

Unfortunately, Professor Epstein does not appear to have engaged in that thoughtful inquiry, either. He trots out the tired and worn old Chicago-school economic mantra that everything will sort itself out for the best if only we will only assign property rights and permit it all to be peddled on the market. Casting aside even the pretense of arguing trespass to chattels, Epstein argues for a cyberspace trespass rights equivalent to trespass to land. But of course the intangible, publicly accessible data from the eBay site has none of the characteristics of tangible real property. Information, with its strong public goods character and its diffuse positive externalities, cannot be analyzed using the static, reductionist methods used to assess demand and distribution of isolated goods in tangible commodities markets. It is no accident that in U.S. law, public access to information is the rule, to which intellectual property rights are the rather limited exception—and the cre-

...This holding is alarming due to its potential impact on the growing e-commerce sector...

ation a new and broader form of intellectual property under the guise of “trespass” is a poor fit to the character of information.

And, even to the extent that a comparison to real property may be appropriate, we have never granted absolute exclusionary rights in real property, recognizing instead public rights of access through a variety of doctrines including easements, public rights-of-way, and takings. Surprisingly, Epstein himself has written convincingly of the need *not* to propertize in every case, even in the case of real property—for example, Epstein has pointed out that medieval farmers learned the importance of leaving common areas between their fields, where a team of oxen could be turned in order to plow the next furrow.<sup>5</sup> Analogous commons have long been recognized in the law of intellectual property, which rests upon an extensive shared commons of public domain information. Despite Professor Epstein’s contrary ideology, it is hard to see why we would want to divide the Internet into tiny fiefdoms, creating a “tragedy of the anti-commons”<sup>6</sup> through a broad and novel exclusionary right that might apply to everything from web sites to toasters.

## Judge Bright Receives Prestigious Award



Judge Myron Bright

Judge Myron Bright ('47), senior judge on the United States Court of Appeals for the Eighth Circuit, was presented with the American Judicature Society Herbert Harley Award at the annual meeting of the North Dakota State Bar

Association in June, 2000. The prestigious award is given to individuals who make outstanding contributions to the administration of justice. ■

## Footnotes

1. 962 F. Supp. 1015 (S.D. Ohio 1997).
2. See RESTATEMENT (SECOND) OF TORTS § 217 (1965).
3. 100 F. Supp2d 1058 (N.D. Cal. 2000).
4. See Carl Kaplan, *Treat eBay Listings as Property? Lawyers See Threat*, New York Times on The Web, July 28, 2000 (<http://www.nyt.com>) (Database Cyber-lib, Doc. 8663).
5. Richard Epstein, *Transaction Costs and Property Rights, or, Do Good Fences Make Good Neighbors?* (Chicago Working Papers in Law and Economics, 2d Series) (March 1996).
6. See Michael E. Heller, *The Tragedy of the Anti-commons: Property in the Transition from Marx to Markets*, 111 HARV. L. REV. 621 (1998). ■

## Judge Visits Kosovo



Judge John Tunheim

Judge John Tunheim ('80), United States District Court, spent most of February in Kosovo as part of a federal inter-agency team studying the Kosovo judicial system and is one of the authors of the U.S. government report. ■

# Law + Science

## Tackling 21st Century Problems

*By Susan M. Wolf  
Faegre & Benson Professor of Law  
Professor of Law & Medicine  
Director, Joint Degree Program in Law, Health &  
the Life Sciences  
Chair, Consortium on Law and Values in Health,  
Environment & the Life Sciences*

### I. The Challenge

We live in a Golden Age of science and medicine. Scientists have just completed a rough draft of the genetic sequence comprising the human genome, the instruction manual for human life. The genetic revolution under way will open unprecedented opportunities for preventing, diagnosing, and treating disease. At the same time, breakthroughs in plant and microbial genetics are already transforming the way we think about food, with potential for greater yields and for food tailored to prevent and treat disease. Scientists are now unlocking the secrets of stem cells, creating the potential to grow replacement parts for the human body, rather than allowing people to languish awaiting transplant. We see startling new ways of creating life, from in vitro fertilization with micro-manipulation of gametes and embryos to human cloning. The possibilities seem endless.

But should we use these new techniques? Should we clone, for example? As the debate rages, members of Congress have proposed bans of unprecedented scope that many argue go too far in chilling science. Should we harvest stem cells from human embryos? The National Institutes of Health, Congress, and scientists have been embroiled in controversy, especially on the ethics of creating embryos for research involving their destruction and the use of government money to fund this work. Should we genetically manipulate our foods? Debate has become ferocious, punctuated by a host of proposals ranging from bans to labeling. And how can we make sure that the genetic secrets revealed by the Human Genome Project will be used to inform and help individu-

als, rather than to stigmatize and discriminate against them? Though Francis Collins, the head of the federal genome project, has long urged privacy and anti-discrimination protections, adequate safeguards are not yet in place.

Law, ethics, and public policy are lagging far behind the life sciences. At the University of Minnesota we are acutely aware of this gap. As a public, land-grant, research university, we have an obligation to do more than advance scientific frontiers. We have to tackle the equally difficult questions of how law, ethics, and policy should analyze and govern these advances. Much as the University is leading on plant and microbial genomics, biomedical genomics, and ecosystem analysis, we have a responsibility to lead on questions of law and values. Those interdisciplinary questions are the most challenging of the 21st century.

### II. The Joint Degree Program

To tackle those questions, however, requires creating a new, fully interdisciplinary model for research and debate. The University of Minnesota is creating exactly that in two ways. First, we began offering a unique Joint Degree Program in the Fall of 1999 for students interested in combining a law degree with one of a broad range of graduate degrees in health and the life sciences. No other university in the nation offers a program as interdisciplinary and ambitious.

The Program is training experts in the legal, ethical, and policy problems posed by health, the sciences, and the environment. Our students will become leaders in areas such as managed care and health policy, intellectual property issues in biotechnology, and environmental law and policy. Students in the Program can obtain a J.D. together with an M.S. or Ph.D. in less time and with more academic support and potentially more financial support than if they pursued the two degrees separately. The Pro-



[www.jointdegree.org](http://www.jointdegree.org)

gram will be presenting a 2000–01 Lecture Series on Law, Health & the Life Sciences sponsored by the law firm of Faegre & Benson, a February 1, 2001 conference on genetically modified organisms (GMOs), and other events to draw scholars in these fields to campus. Indeed, our inaugural event was an enormous

success, a March 2000 symposium on “Patenting Life: Genes, Private Property & Public Policy.” The symposium brought together a capacity audience representing faculty, students, industry, private attorneys, and government.

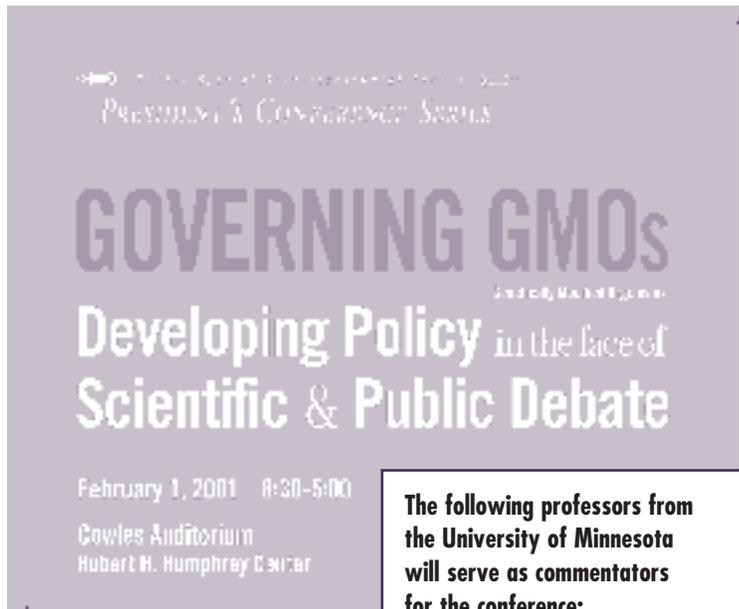
The Program involves roughly 300 faculty members drawn from the Law School, Graduate School, Medical School, School of Public Health, College of Biological Sciences, College of Natural Resources, Humphrey Institute, and Center for Bioethics. The faculty involved reflect the University’s strength in and commitment to human genetics; microbial, plant, and animal genomics; developmental biology; environmental and health policy; the analysis of technology; molecular and neuropharmacology; health law; and bioethics. The Program offers the following degree combinations now, with more to come in the near future:

- J.D. in Law + M.S./Ph.D. in Molecular, Cellular, Developmental Biology & Genetics
- J.D. + M.S./Ph.D. in Ecology
- J.D. + M.S./Ph.D. in Conservation Biology
- J.D. + M.S./Ph.D. in Environmental Health
- J.D. + M.S./Ph.D. in Health Services Research, Policy & Administration
- J.D. + M.S. in Science, Technology and Environmental Policy
- J.D. + M.S./Ph.D. in Pharmacology

The Program joins a distinguished roster of University programs and centers formed or now forming to address the pressing issues in law, ethics, science, and medicine that face us in the 21st century. That roster of outstanding efforts has inspired a further breakthrough at this University, the creation of a University-wide Consortium on Law and Values.

### III. The Consortium

The newly created Consortium on Law and Values in Health, Environment & the Life Sciences coordinates among and builds on the strengths of eight University centers and programs. It will establish a national identity for the University of Minnesota as a leading institution working on law and values in health, the life sciences, and the environment. The Consortium brings together preexisting programs to do what no single program can do alone: create a working structure to make the neces-



**GOVERNING GMOs**  
Developing Policy in the Face of Scientific & Public Debate

February 1, 2001 8:30-5:00  
Cowles Auditorium  
Hubert H. Humphrey Center

**The following professors from the University of Minnesota will serve as commentators for the conference:**

Dan Burk, *Law School*  
 Jim Chen, *Law School*  
 Dan Farber, *Law School*  
 Jeffrey Kahn, *Center for Bioethics*  
 Anne Kapuscinski, *Fisheries & Wildlife*  
 Jean Kinsey, *Applied Economics*  
 Theodore Labuza, *Food Science & Nutrition*  
 Ronald Phillips, *Agronomy & Plant Genetics*  
 Ford Runge, *Applied Economics*  
 David Somers, *Agronomy & Plant Genetics*  
 Nevin Young, *Plant Pathology*

**GMOs Conference**

Thursday, February 1, 2001

A national conference on “Governing GMOs: Developing Policy in the Face of Scientific & Public Debate” will take place from 8:30am to 5pm in Cowles Auditorium, Hubert H. Humphrey Center. This day-long conference is part of the President’s Sesquicentennial Conference Series and co-sponsored by the University’s Consortium on Law and Values in Health, Environment & the Life Sciences; Joint Degree Program in Law, Health & the Life Sciences; and College of Agricultural, Food & Environmental Sciences. Speakers scheduled to appear include President Roger Beachy of the Danforth Plant Science Center, Professor Perry Adkisson of Texas A&M University, Rebecca Goldberg of the Environmental Defense Fund, Professor Thomas Hoban of North Carolina State University, Professor Rochelle Cooper Dreyfus of New York University Law School, and Professor Paul Thompson of Purdue University. Space is limited and advance registration required. Call (888) 671-6214 to register or go to [www.conferences.umn.edu/mn/policy/](http://www.conferences.umn.edu/mn/policy/) and click on “Register Online.”



Professor Sheila Jasanoff of Harvard delivers the inaugural Faegre & Benson Lecture.

sary cross-disciplinary links, hire key faculty to take on the interdisciplinary questions, bring to campus colleagues and guest lecturers to collaborate on these problems, and support students to work on these issues. The Consortium links eight key efforts:

- the Joint Degree Program, which I lead;
- the Center for Bioethics led by Professor Jeffrey Kahn;
- the new Biomedical Genomics Center led by Professor Ashley Haase;
- the new Center for Microbial and Plant Genomics led by Professor Ronald Phillips;
- the Division of Health Services Research, Policy & Administration led by Professor Susan Foote;
- the Institute for Social, Economic, and Environmental Sustainability led by Professor Anne Kapuscinski;
- the planned Center for Global Change led by Professors Robert Sterner and David Tilman; and
- the proposed Program in Agricultural, Food, and Environmental Ethics led by Dean Charles Muscoplat and Assistant Dean Beverly Durgan in the College of Agricultural, Food & Environmental Sciences.

## Faegre & Benson Lecture Series on Law, Health & the Life Sciences

The University's Consortium on Law and Values in Health, Environment & the Life Sciences and Joint Degree Program in Law, Health & the Life Sciences are pleased to announce their 2000–01 Lecture Series. All lectures begin at 12:15 p.m. and take place in Lockhart Hall, Room 25 at the University of Minnesota Law School. The Lecture Series is supported by a grant from the Faegre & Benson law firm.

### Wednesday, September 13, 2000

Professor Sheila Jasanoff presented "Normalizing Biotechnology: Science, Ethics, and Political Culture." Professor Jasanoff is a Professor of Science and Public Policy at the Kennedy School of Government and School of Public Health, Harvard University. Her research investigates how law, science, and politics interact in democratic societies. Her writings focus on the place of science and technology in U.S., European, and Indian politics. This lecture was co-sponsored by the Program in the History of Science and Technology and the Minnesota Center for the Philosophy of Science. Professor Jeffrey Kahn, Director of the University of Minnesota's Center for Bioethics, served as commentator.

### Wednesday, December 6, 2000

Professor Mark Sagoff will present "Advocacy in Ecology." Professor Sagoff is a Professor at the Institute for Philosophy and Public Policy, University of Maryland, College Park. He focuses on biodiversity and protection of environments, not only as resources, but as places of value. The theme of nature as a shared and inherited tradition pervades his work. Professor Daniel Farber, McKnight Presidential Chair in Public Law at the University of Minnesota, will deliver the commentary.

### Wednesday, April 11, 2001

Professor Kristin Shrader-Frechette will present "The Ethics of Introduced Species." Professor Shrader-Frechette is a Professor of Philosophy and Professor of Biology at the University of Notre Dame. Her work is on environmental ethics and policy. Professor Anne Kapuscinski, Director of the University of Minnesota's Institute for Social, Economic, and Ecological Sustainability, will deliver the commentary.

All lectures are free and open to the public. For further information call 612-625-0055.

By linking these eight efforts to bring legal, ethical, and scientific expertise to bear on the toughest issues facing our society, the University of Minnesota will be leaping to the forefront of universities in this nation. A number of prominent research universities are launching efforts in genomics or environmental studies. Very few of them, however, are tackling the legal, ethical, and policy questions. And no other university we know of has proposed to bring the ethical, legal, and scientific experts together in this kind of sustained effort to address the most challenging interdisciplinary issues.

The Consortium will undertake a wide range of projects including:

- linking faculty for collaborative research, grant seeking, colloquia, and workshops;
- supporting faculty in teaching and curricular innovation across disciplines;
- hiring further key faculty crossing disciplinary lines;
- training students in a new interdisciplinary model bridging law, ethics, and science;
- seeking grants to support projects at the intersection of law, ethics, and science;
- attracting and supporting visiting scholars and fellows;
- hosting a lecture series drawing major figures to campus for collaboration;
- working with community and industrial partners on interdisciplinary problems;
- responding to governmental requests for information and model legislation; and
- linking this entire community through vital electronic and hard-copy dialogue.

The Consortium will co-sponsor the 2000–01 Lecture Series with the Joint Degree Program. Both will co-sponsor the February conference on “Governing GMOs: Developing Policy in the Face of Scientific & Public Debate” with the College of Agricultural, Food, and Environmental Sciences. The GMOs conference is part of the President’s Sesquicentennial Conference Series.

#### IV. Making a Difference

Ultimately, the University of Minnesota aims to make a public difference. Through the Consortium and its constituent centers and programs, including the Joint Degree Program, we are working to shift the Minnesota and national conversation about health, the life sciences, and the environment by bringing law, values, and policy to the forefront. We are pioneering a new kind of cross-disciplinary work fully marrying legal, ethical, and scientific expertise. Finally, we are instilling in our students a new appreciation for the importance of values and the possibilities of rigorous thinking across disciplines. ■

# New Faculty Join the Law School

By Tricia Baatz Torrey

Returning and new students entered a world in transformation through the doors of the Law School this fall.

Metal beams and plastic sheathing obscure the imagination's ability to see clearly the shape of the future building, its new classrooms and offices, but the faces of the new faculty (as well as the absence of a few familiar ones) quickly presented a visage of an expanding institution. Here as a visiting professor last year, Dan Burk now holds a permanent faculty appointment; new professors include Guy Charles, Dale Carpenter, Brett McDonnell, and visiting professor George Mundstock.

**Guy-Uriel Charles** earned his J.D. from the University of Michigan Law School in May, 1999 and taught agency and partnership as an adjunct professor at the University of Toledo School of Law in the fall of the same year. At Michigan, he also served as Editor-in-Chief of the *Michigan Journal of Race and Law*. He also is completing a Ph.D. at the University of Michigan in the field of political history and law and politics. This year he will teach civil procedure and a voting rights seminar.

Since his childhood in Stamford, Connecticut, Charles knew he either wanted to be a doctor or a lawyer. "I was always on the debate team in high school, so law seemed a natural option... I like teaching, I find reading and research exciting, so [the idea] of teaching occurred to me in law school." Charles is particularly interested in research and scholarship on the equal protection clause in the Constitution, "treating groups that are differently situated in our society. What can the Government do, both affirmatively or negatively to different groups in our society? And what are the limits of the equal protection clause?"

Charles grew up playing the organ for his church from the time he was ten until he finished high school, but never considered a career

in music. "I was a good organist, but not a dedicated musician," he said. He was attracted to Minnesota because he feels "The University of Minnesota Law School is a great school with a wonderful faculty. In addition, the University has wonderful resources, a great law library and a greater library within the University itself."

He is married to Lora Charles, a nurse and teacher who will spend the next year or so at home with their two children Gabrielle and Alexander.

**Dale Carpenter** graduated with honors from the University of Chicago School of Law, where he earned his J.D. in 1992. He also served as Editor-in-Chief of the *University of Chicago Law Review*. He most recently worked as an associate at the law firm of Howard, Rice, Nemerovski, Canady, Falk and Rabkin in San Francisco. He will teach Sales, First Amendment, a seminar called Sexual Orientation, and Constitutional Law.

"I believe this is the first time the sexual orientation seminar will be taught at Minnesota, and I'm excited that I'm able to create this seminar on my own. I think it's both timely and relevant to political arguments that are going on today... I think it will be a contribution to the life of the Law School," Carpenter said.

He hopes to model his classes so there "will actually be debate, students will be encouraged to take sides on issues, even if they don't agree with them personally, take sides and advocate in front of others, because that is the essence of being a lawyer... I think one of the most effective ways to undercut an opposing position is to understand its weaknesses, and when you understand its weaknesses, you can rebut it more effectively... I want those views to be argued and presented in class."

In his spare time Carpenter likes browsing through bookstores, reading, watching movies



Guy Charles



Dale Carpenter



Brett McDonnell

and eating out as much as possible so he doesn't have to clean up after cooking.

**Brett McDonnell** earned his J.D. from the University of California at Berkeley School of Law (Boalt Hall) in 1997 and graduated second in his class. He will teach Law and Economics and Business Organization and Legislation at Minnesota.

McDonnell, who also earned his Ph.D. in Economics from Stanford University, said he'd wanted to be a teacher his whole life, but "As I neared the end of my economics degree, I realized the type of work you do in economics wasn't fully satisfying to me, it's all highly abstract and highly mathematical, and it's sort of all you do, and I felt myself too far removed from the real-life concerns that I was interested in. I was doing corporate finance and corporate governance, and I became aware of law at that point. I knew it was a possibility," McDonnell said. He felt there was a lot going on in law and economics and realized he could work on the issues he was interested in and find more fulfillment.

"Believe it or not," McDonnell admitted, shaking his head, "in my spare time I like to read a really good paper on law and economics." He lives in Minneapolis with his partner Paul Rubin, and also most recently worked as an associate at the firm of Howard, Rice, Nemerovski, Canady, Falk & Rabkin in San Francisco.

**Dan Burk**, who was a visiting professor from Seton Hall last year, has accepted a permanent faculty position at Minnesota this year.

This academic year he will teach Copyright, Patents and a seminar in Biotechnology. Professor Burk is also the Associate Director of the new joint degree program in Law, Health and the Life Sciences.

"This is a nationally prominent school focusing in the area of legal research," Burk said, adding that President Yudof has also set a priority to focus scholarship and research in the areas of biotechnology and information technology. "A third of the faculty at this University does something in the field of biology...things are happening all over campus. There's an Internet study center in the rhetoric department, a major in Electronic Commerce at the Carlson School of Management, and Dan Gifford is doing significant work on the internet in the area of cyberlaw."

Burk is enthusiastic about the interdisciplinary efforts going on throughout the University, and excited about "the several projects" he's taken on. He lives in St. Paul with his wife, Laurie, and their daughter, Rhiannon.

**George Mundstock** is a visiting professor from the University of Miami Law School who will teach Tax I and International Tax and Corporate Tax while at Minnesota. He earned his J.D. from Harvard in 1978. Before teaching at Miami, he served as attorney-advisor for the Office of Tax Legislative Counsel at the Department of the Treasury.

Mundstock was attracted to the area because he feels "Minneapolis has a much richer legal community than Miami," and "I was delighted when the Faculty and the Dean extended me an offer...it was a chance to be at a first-rate law school with first-rate students in a real law town, be with family and miss hurricane season." He enjoys teaching Tax and Accounting for Lawyers best. "I don't like to think of myself as training tax lawyers as much as training transactional lawyers.

"It's very satisfying to take a student who was a sociology major and have him learn to deal with a statute, and learn some statutory lawyering skills. To see that develop is really fun, to push something very intricate and hopefully to develop those skills further...I like to think I'm adding value."

Last summer Mundstock was one of two evaluation experts for the plaintiffs in the Florida tobacco litigation case, and described it as "a once in a lifetime opportunity."

He hopes to help his students become better lawyers, whether they are tax or non-tax attorneys. "Every lawyer runs into tax issues. I hope to make the subject interesting." ■



Dan Burk



George Mundstock

## New Visiting Professor from University of Uppsala

Mats Kumlien, who has been a senior lecturer at the University of Uppsala's Department of Law since 1994, is teaching a seminar in Comparative Law this fall on the Role of the Lawyer.



Mats Kumlien

"The class will encompass the study of different legal traditions in the world and on the role of legal actors, [such as] judges, lawyers, professors and legislatures, and the differences of legal cultures...the background, education, the concept for the modern rule of law," Kumlien said. In the course legal traditions both western and eastern will be compared,

described and evaluated. Kumlien said "there's no right answer" in terms of identifying the ideal system, "but we have more or less well-founded answers to what is the best solution."

Spring semester Kumlien will focus on his research in legal history, specifically about the balance between the freedom of speech and the protection of citizens in regards to censorship of films. He is also interested in juvenile law and wrote his dissertation on the treatment of juvenile delinquents, focusing on the conflict between treatment and punishment from a comparative and historical perspective.

Kumlien is living in Falcon Heights with his wife, Eva, a neurologist who will take the opportunity to work with a research team at Children's Hospital in St. Paul who are engaged in studying epilepsy controlled through brain surgery. Also with them are their three children, Johanna, 17, Ullrika, 15, and Mattias, 12.

## International Law Librarian Mary Rumsey Joins University of Minnesota Law School Staff

After spending the last several years as student, teacher, mother and lawyer, Mary Rumsey became the Foreign, Comparative and International Law Librarian in June, 2000. Besides selecting materials for the library's collection, Ms. Rumsey aids patrons with research needs.



Mary Rumsey

"I find the work challenging and fun," Rumsey said, mentioning the variety of patrons she meets, ranging from law professors and students from both the Law School and Carlson School of Business to local practitioners. "It reminds me of when I was a kid, and we'd play baseball. We'd never take a strike. We weren't very good at pitching, but

there was a code we had that you had to try to hit whatever anyone threw to you."

Rumsey received her J.D. degree from the University of Chicago Law School. She practiced law at the firm of Best and Flanagan for two years, and also taught at the Friends Elementary School where her children Emma and Jane attend, while she herself attended library school. Just prior to her position at the University of Minnesota, she worked at William Mitchell College of Law as the Electronic Services Librarian.

"International law is such a growing area," she said of her present area of library work, "Globalization is such a cliché, but it really is happening, and I think law firms and legal researchers in general have an interest in it. It's so huge, there's so much you can find out about it. It's not confining at all."

Rumsey is a member of the American Society of International Law, the American Association of Law Libraries and the Minnesota Association of Law Libraries. She has published several book reviews and lives with her two daughters and husband Karl Olmstead.

# Seven Centuries of Law:

## A Celebration of the Rare Books Collection of the University of Minnesota Law Library

By Katherine Hedin  
Curator of Rare Books and Special Collections

On Thursday, April 6, 2000 President Mark G. Yudof and Dean E. Thomas Sullivan hosted a reception for alumni, faculty and friends of the Law School in celebration of the Law Library's Arthur C. Pulling Rare Books Collection. As the Library strategically and enthusiastically embraces a future in which the delivery of digital information will become increasingly prevalent, the President, the Dean, the Director of the Library, the faculty and several prominent alumni paused to reflect on the role and significance of the Rare Books Collection and its claim on our resources.

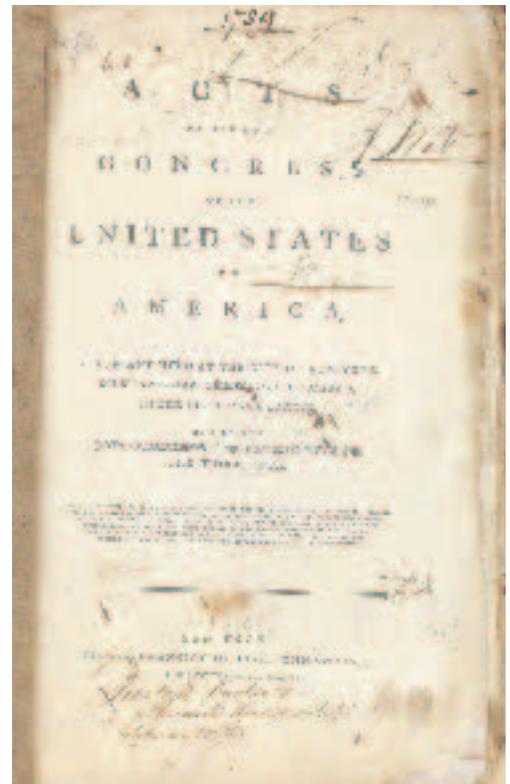
"The Arthur C. Pulling Rare Books Collection," spoke Joan S. Howland, Roger F. Noren Professor of Law and Director of the Law Library, "is one of the finest legal rare book collections in the country, next only to Harvard, the Library of Congress, and the University of California, Berkeley. It deserves our utmost attention, our prudent stewardship, and our finest facility."

Professor Howland's remarks were echoed by Joseph T. O'Neill ('56), who drew a parallel between the importance of the Rare Books Collection to the Law School and the importance of the diary of his great-grandfather, Thomas O'Neill, to his family. The 148-year-old journal, which tersely records the events of Thomas O'Neill's life from his emigration from Ireland on May 15, 1852 through his eventual settlement in St. Paul in 1857, and notes the birth of his children and the day "Mary, the mother" died, has bound together generations of O'Neills. As the tattered binding and flowing penmanship speak in a very immediate and personal way of the significant events in this emigrant's life, so the handmade paper and exquisitely detailed bindings in the Rare Books Collection provide an authentic connection with an author and a past time.

William H. Lindberg ('73), who joins Joe O'Neill as Co-Chair of the Library Campaign, Campaign Minnesota, spoke of the value and depth of the Rare Books Collection. "The richness and elegance of many of these titles reflect the depth and intricacy of our legal history. Emblematic of a time long before the World Wide Web and today's Internet, these titles capture the spirit of law transmitted from Europe to the New World." Lindberg spoke of the importance of a secure, climate controlled environment for the Rare Books Collection. "Because of the fragile nature of these unique treasures, it is imperative that we provide a safe home to assure their preservation."



Pope Gregory IX. *Decretales*. Basel, 1494.  
A very early compilation of papal decretals—or papal decisions—by Raymond of Peñafort, who in about 1230 was commissioned by Pope Gregory IX to collect and harmonize the papal decretals that had developed since the appearance of Gratian's famous *Decretum* in about 1140. This book is an example of incunabula (Latin for "things in the cradle"), books printed in the first fifty years of printing.



*Acts passed at a Congress of the United States of America...the fourth of March, in the year 1789.* New York, 1789.  
First session laws of the United States.



William Lyndwood. *Provinciale seu: Constitutiones Anglie*. Antwerp, 1525. The principal authority for English canon law. The Library also owns the 1501 edition of this work: a rare—and fragile—edition.

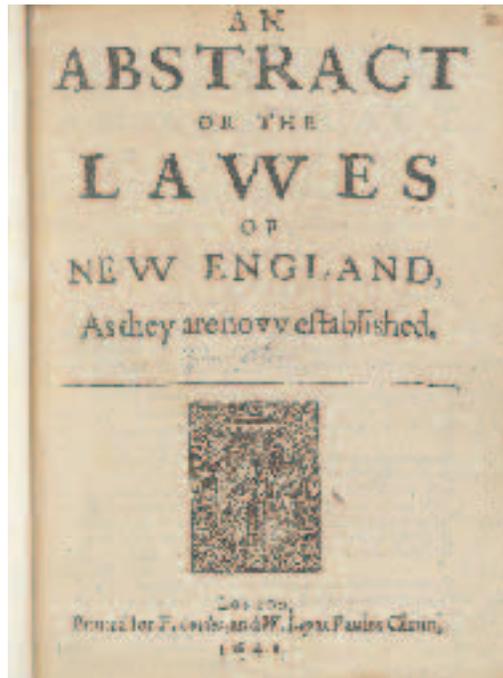
Noting that the Library ranks sixth in size among law school libraries in the United States and hosts more than 250,000 patrons annually, President Yudof urged the audience to remember that the Law Library is the “principal laboratory for law students and faculty and provides the foundation for the Law School’s outstanding curriculum and scholarship.” President Yudof noted that over one hundred years of support from the Law School and the University and the dedication of generations of librarians have resulted in “one of the finest law libraries in the country.”

One of the goals of the Law School’s Capital Campaign is a five million dollar endowment for the Library. This endowment will ensure the Library’s stature as one of the top legal research centers in the country, and will provide for the continued development of its stellar Rare Books Collection. “The Rare Books Collection,” said Dean Sullivan, “is an irreplaceable resource that needs an endowment to ensure its permanence as a resource for future legal scholars.”

An exhibit featuring selected treasures of the Rare Books Collection was prepared for the reception. “Seven Centuries of Law” traces the

development of legal thought and publishing from the late fifteenth century to the present. Unlike previous exhibits which have focused on a particular component of the collection, such as American Indian treaties or historic trials, this exhibit includes a wide range of materials: canon law, English yearbooks, early case reports and abridgements, English and American commentaries and treatises, and American colonial law. The exhibit portrays not only the diversity of materials included in the Rare Books Collection, but also the broad sweep of time represented by its books.

We hope that the sampling of “Seven Centuries of Law” included on these pages will lead alumni to a deeper appreciation of legal history as it is preserved and made accessible at the Law Library. ■



John Cotton. *An abstract of the lawes of New England, as they are now established*. London, 1641.

# Campaign Minnesota: The Law School's Next Century

Law School Building Addition Groundbreaking  
Wednesday, June 7, 2000



Capital Campaign Chair,  
Elliot S. Kaplan ('61)



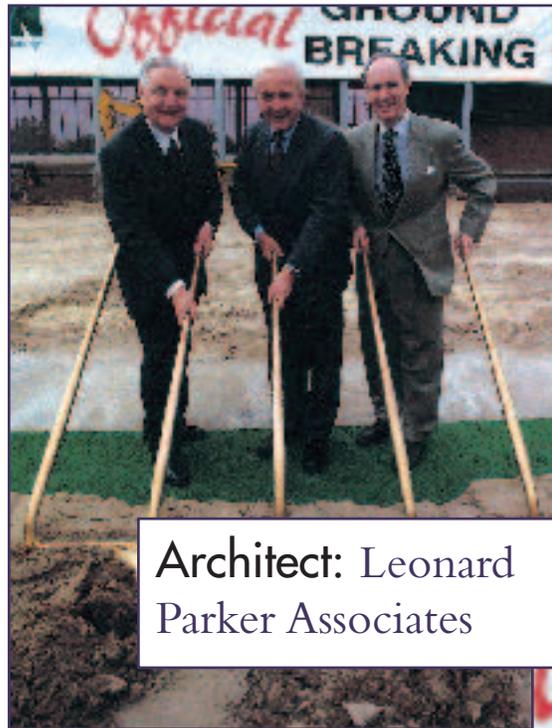
University of Minnesota  
Regent, Patricia B. Spence



President of the University  
of Minnesota, Mark G.  
Yudof



Dean E. Thomas Sullivan



Architect: Leonard  
Parker Associates

Pictured are the Honorable Walter F. Mondale ('56), member of the Campaign Cabinet, Warren R. Spannus ('63), Building Fund Co-Chair, and Dean Sullivan.



Cost: \$9 million

Pictured with Dean Sullivan (above) is Sarah Greenberg, President of Law Council and (below) is Elliot S. Kaplan, Capital Campaign Chair



Over \$21 million has been contributed through *Campaign Minnesota: The Law School's Next Century*. The Law School is deeply grateful for the support of hundreds of alumni and friends who have responded so warmly and enthusiastically to this special campaign, many in addition to their Partners in Excellence Annual Fund gifts. We note with pride more than \$5,000,000 in leadership gifts received from major Twin Cities law firms. All contributors will be recognized in a special publication at the conclusion of the Campaign.

The building addition is one of six priorities of a \$30 million University of Minnesota Law School Capital Campaign.



**Expansion:** Adds 42,000 square feet to existing structure



**Builder:** Ryan Companies US, Inc.



**Physical Resources:** New Rare Books facilities, adjunct faculty offices, student organizations offices, expanded computer facilities, and seminar rooms

- We must raise \$2 million more for the Building Addition to meet the revised goal of \$9 million—and plenty of wonderful naming opportunities remain! The new wing is rising to the north of the existing building, and a gala dedication is planned for Spring 2001.
- Nearly \$6 million has been contributed toward our \$7 million Scholarship Endowment goal, and the Faculty Development Fund goal of \$1 million has been exceeded. Talented students and brilliant faculty always will be the lifeblood of our great Law School, thanks to the understanding and generosity of our exceptional Law School family.
- We continue to push hard to meet goals of \$5 million each in endowment for our Law Library, the Legal Clinical Education and Lawyering Skills programs, and Technology. The Library is an irreplaceable resource for Minnesota, the nation, and the international legal and scholarly community. The Clinics are a unique strength for our Law School, and vital to our mission to integrate theory and doctrine with ethics, skills, and practice.

**Financed by private donations from:** Alumni, friends, corporations, and law firms

Technology is a *must-have* for our future, but the most challenging with which to empathize for many people—yet we *must* be prepared to invest in technologies of which we've not even dreamed in our swiftly changing universe.

**Construction start date:** May 15, 2000  
**Construction completion date:** May 2001 (estimated)

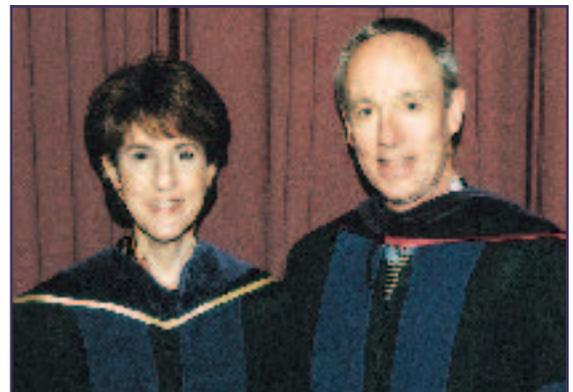
Please join your fellow alumni in supporting *Campaign Minnesota: The Law School's Next Century*. The distinguished standing of your *alma mater* and your pride in your degree will be heightened. Call Martha Martin in the Development Office at 612-625-2060 for information on how you can be a part of this defining moment in the life of the Law School. ■

# Commencement 2000

Class of 2000



## LL.M. Class of 2000



United States Trade Representative, Ambassador Charlene Barshefsky (pictured here with Dean Sullivan) delivered the Commencement Address to the graduates.



Pictured from left to right: Ryan M. Vandewiele, recipient of the Most Promising Lawyer Award; Fernando E. Freire, delivered the LL.M. Graduation Address; Erin M. Keyes, recipient of the Excellence in Public Service Award; Roshan Rajkumar, President of Law Council; and Adam Gislason, delivered the J.D. Graduation Address.



Professor David Bryden received the Stanley V. Kinyon Teaching and Counseling Award.



Professor Stephen Simon received the Stanley V. Kinyon Clinical Teaching Award.

# Law School News and Events

## Exciting New Kommerstad Center

*Edward S. Adams, Howard E. Buhse Professor of Finance Law  
John H. Matheson, S. Walter Richey Professor in Corporate Law  
Co-Directors*

The core program for the new Kommerstad Center for Business Law and Entrepreneurship encompasses four key elements: (1) a Business Law Clinic—presently in the process of being developed and funded; (2) grants for students interested in pursuing entrepreneurial careers; (3) a journal of business law and entrepreneurship; and (4) a lecture series by leading legal and business authorities on business law and entrepreneurship. The specific elements of each of these programs are detailed below. The Center is administered by an Advisory Board consisting of prominent academics, attorneys and entrepreneurs.

### Business Law and Entrepreneurship

Available to students who demonstrated significant business acumen during law school, entrepreneurial grants foster a spirit of entrepreneurship and an appreciation of the roles law and business play side-by-side in corporate America. Grants are provided either (1) for the development of innovative methods of providing legal services for the special problems for new business ventures, or (2) for the development and operation of non-legal entrepreneurial ventures. In either case, the attorney/graduate presents a grant proposal to a Grant Committee including the donor and select members of Advisory Board as well as other designated business persons. The proposal includes, at a minimum, an executive summary, a clear product/service description, a clear management structure and operations descriptions, a precise definition of the targeted market, a statement of competitive advantages, marketing strategies and tactics, financial options, risk evaluations, and distribution issues.

The Grant Committee makes awards on an annual basis based on the feasibility of the proposal, marketability of the product/service, strength of the team, assessment of the risk and the reasonableness of the analysis and forecasts, adequacy of the capital requirements, the return on investment, and the overall organization of the business plan. The first annual awards are expected to be made in April and June of 2001.

The *Minnesota Journal of Business Law and Entrepreneurship* is a faculty-edited journal, published semi-annually, which focuses on business and legal subjects of interest to business, legal, and academic professionals who work in the areas of business law and entrepreneurship. The journal is substantially different from other journals in that it is edited by both legal and business professionals, is the only legal journal to have as one of its primary areas of focus the topic of entrepreneurship, and is one of only a handful of journals that are published in the new media of the internet—increasing its national expo-

sure and enhancing its timeliness. The first issue of the new journal will appear in February of 2001.

A final element of the Kommerstad Center and a key component to its business community outreach function is its speakers' forum series. Pursuant to this series, prominent business and legal speakers from the local, national, and international communities are invited to speak on a quarterly basis to alumni and students of both the law and business schools as well as other attendees on topics of contemporary interest. The primary purpose of the series is to expose graduates and students of the various disciplines to each other and to current issues that are shaping and defining their respective areas of expertise. During the upcoming academic year, the Center anticipates hosting presentations by a celebrated, nationally-recognized entrepreneur who co-founded one of the America's fastest-growing companies in the 1990s, a famous and highly-regarded local attorney who once led one of America's largest publishing entities, and a very successful venture capitalist.

The work and activities of the Center are made possible by the generous contribution of Robert M. Kommerstad, University of Minnesota Law School (J.D. 1952). Mr. Kommerstad is the Chairman and President of Provident Investment Counsel in Pasadena, California, an investment management and consulting firm. He is also a director and founder of Mellon Bank (formerly 1st Business Bank) in Los Angeles, Chairman of the National Board of Big Brothers/Big Sisters of America and a former president and current board member of Big Brothers of Greater Los Angeles. He is on the Board of Advisors of UCLA's Graduate School of Business and the Board of Directors of the University of Minnesota Law School. Mr. Kommerstad served as a captain in the Judge Advocate General's Department of the U.S. Air Force following graduation from Law School. He grew up in South Minneapolis and is a graduate of South High School, where he created and funded the school's first student investment fund. ■



Professor Stephen Befort, Associate Dean for Academic Affairs, welcomed alumni and friends to the Alumni Breakfast at the Minnesota State Bar Association Annual Meeting.

## Law Library Acquires 900,000th Volume

The Law Library, one of the largest and most well respected legal research collections in the country, acquired its 900,000th volume in June. Continuing the development of the world renowned Arthur C. Pulling Rare Book Collection, the item selected for this landmark acquisition is a rare sixth edition of William Blackstone's *Commentaries on the Laws of England*. The volume is the first "pocket edition" of the *Commentaries*, published in Dublin by the printer John Colles in 1775, less than a decade after the release of the first edition. Written in a graceful and lucid style, the *Commentaries* were the first systematic exposition of the common law since the Bracton's survey published in the 13th century. The combination of flowing style and profound learning made the *Commentaries* a best seller among law books in England, Ireland, and the colonies.

Profits from the publication of the *Commentaries* provided a generous income for Blackstone, his wife Sarah, and their seven children. The *Commentaries* also helped support Irish printers and booksellers, who pirated four editions during Blackstone's lifetime. The Law Library owns the first edition of the *Commentaries* published in Oxford, as well

as the first pirated Dublin edition, printed from 1766–1770, each volume dated a year after the corresponding Oxford volume. This latest acquisition adds to the Law Library's truly remarkable collection of English and Irish editions of Blackstone's work.

The Law Library also holds a strong collection of American editions of the *Commentaries*, including the first American edition, published in Philadelphia in 1771–1772. In addition to an impressive collection of abridgements of the *Commentaries* and other works published by Blackstone, the Law Library has an 1856 edition of the *Comic Blackstone*, a satire by Gilbert à Becket, first published in the magazine *Punch* in 1840.

As it continues to expand and preserve its magnificent Rare Book Collection, the Law Library remains a national leader in the integration of electronic resources into a traditional legal research environment. Therefore, although the 900,000th acquisition was a rare unique volume that will be consulted by scholars and researchers for centuries to come, the 900,001st acquisition was an electronic database that includes the United Nations Treaty Collection. ■

## Law School Receives \$2.2 Million Gift

Lucille Dondore passed away April 30, 2000. She graduated from the University of Minnesota with an Education Degree in 1927. From her wish to honor her brother, James Krusemark ('26), grew a commitment to, and belief in, the University of Minnesota Law School. These two loyalties inspired her to gift her estate of nearly \$2.2 million to the Law School through two charitable remainder annuity trusts and a testamentary bequest.

The James L. Krusemark Chair in Law, created with \$1,000,000, will enable the Law School to strengthen its nationally renowned faculty, benefiting students and the continued quality of the institution. The James L. Krusemark and Lucille A. Dondore Family Scholarship endowment, established with \$200,000, will provide full-tuition scholarships in perpetuity for law students. The remainder of the funds, \$1,000,000, will support construction of the urgently needed addition to the Law School. ■

## New Art Collection

Through the generosity of West Group and its parent company Thomson Legal Publishing, the University of Minnesota has acquired the country's finest collection of law-related contemporary American art. At the suggestion of Thomson President and CEO Brian H. Hall, West Group has donated 110 pieces of art to the Law School. These paintings represent the majority of the West Publishing Company Art Collection, developed between 1975 and 1993. This incomparable collection brings together the work of American artists who have chosen to interpret aspects of the law, and in doing so accentuate the law as a vital component of civilization. The paintings, by both well-known and emerging artists, depict topics associated with law and society including patriotism, the courts, the legal profession, due process, equal protection, the environment

and criminal justice. The collection includes works by many well recognized artists such as Robert Barrell, Harvey Breverman, Carmen Cicero, Matthew Daub, Ruby Grady, Mark Greenwood, Barbara Hultman, Claire Klarewicz-Okser, and Greg O'Halloran.

Approximately half of the donated works are currently on display throughout the Law School, greatly adding to ambience of the building. The remainder of the collection will be hung in the new addition upon its completion next Spring. This incredible gift will be formally acknowledged at a reception for Brian Hall and West Group in the near future. This generous donation is yet another example of Thomson Legal Publishing's and West Group's continuing support of the University of Minnesota Law School. ■



Dean Wang Bashu of Tsinghua University Law Center and Dean Sullivan in Beijing in front of new Law Center Building.

## University Delegation Visits China

Dean E. Thomas Sullivan and President Mark Yudof, along with 13 other members of the University of Minnesota traveled to China last June for a ten-day trip. Dean Sullivan participated in an all-day conference at Fudan University on the subject of international competition, trade, and intellectual property; there he presented two papers, one on international competition and the other on competition policy in intellectual property. Two other law school colleagues, Professors Daniel Gifford and Robert Kudrle, also presented papers. Dean Sullivan met with the deans and faculty members from Fudan University in Shanghai, Peking University in Beijing, and Tsinghua University in Beijing to discuss possible faculty-student exchange programs.

Since 1995, the University of Minnesota Law School has offered an LL.M. program for foreign attorneys. Several of the graduates from this program have been from China; currently there are five Chinese students enrolled in both the LL.M. and J.D. programs here.

## University of Minnesota to Host AALS Equal Access to Justice Colloquium

On November 10, 2000, the University of Minnesota Law School will host one of 19 Equal Justice Colloquia sponsored by the Equal Justice Project of the Association of American Law Schools (AALS).

The goals of the project are: 1) to develop models that can be used in different law school settings with various levels of resources to encourage teaching, scholarship, and service activities that support the provision of legal services to underrepresented groups; 2) to develop models for integrating interest in and

commitment to the provision of legal services to underserved communities throughout the entire law school, including traditional teaching, clinical programs, extern programs and library programs; 3) to establish formal relationships between law schools and equal justice communities aimed at providing ongoing support for the provision of legal services to underserved communities; and 4) to evaluate the effectiveness of the variety of approaches that emerge from the project and to create a sustained commitment to equal justice education in

Dean Sullivan added that “The program is helpful from our perspective for three reasons: one, the size and dynamic growth of China it is really becoming much more modernized. It is much more global looking and thinking. The Pacific Rim is the natural next place for economic development and trade. Second, the Chinese students study law in an undergraduate environment, whereas our students study in a professional graduate school, and third, theirs is a civil law jurisdiction where the emphasis is on codes and statutes and far less on judges and the consequences of judges’ decisions, and ours is much more judge-oriented, with judges interpreting the law, making law in a common law tradition. There is a comparative advantage in studying the law of particular civil law jurisdiction.”



Dean Sullivan, Professor Robert Kudrle and President Yudof in the courtroom at Tsinghua University Law Center in Beijing.

Sullivan also spoke of his lasting impressions of his trip, the patient, calm, deliberate movements of the mass of people in the streets, and also the “enormous western view that everybody I talked to has taken; there are very few signs left that this is a country or society mired in the history of Communism. Rather, I saw a country where the people are vibrant and looking forward to trade and economic development with the western world.” ■

our law schools on national and local levels.

The Minnesota Colloquium will bring together faculty from area law schools with providers of legal services, private practitioners and students to discuss ways of implementing these goals. Among the highlights of the colloquium will be a panel of providers of legal services discussing how legal scholarship and curricular change can help them better provide legal services, a report on the ongoing collaboration between the Minnesota Justice Foundation and the local

law schools on the progress of the Law School Public Service Program, and small group discussions with faculty and legal service providers to discuss more effective ways of integrating equal justice issues into their classrooms and their scholarship.

Everyone in the legal community is encouraged to attend. For more information contact Professor Maury Landsman at the Law School or by email at [lands001@tc.umn.edu](mailto:lands001@tc.umn.edu). ■

## The John Dewey Lecture in The Philosophy of Law

Professor Neil MacCormick, Regius Professor of Public Law at the University of Edinburgh, Scotland, delivered the John Dewey Lecture in The Philosophy of Law entitled "Institution and Reason in Law" on April 5, 2000.



Neil MacCormick

Professor MacCormick served as Dean of Law (1973–76); (1985–88); and as Provost of the Faculty Group of Law and Social Sciences and Dean at the University of Edinburgh. His previous posts were in Queen's College Dundee and Balliol College of Oxford University, where he was Fellow and Tutor in Jurisprudence and served as Camerarius, Assistant Tutor for Admissions, and convenor of the Discipline Committee. He was Pro-proctor of Oxford University in 1970–71. He has taught courses as a visitor in Sweden, Norway, Spain, the United States, Canada and Australia.

Professor MacCormick has been President of the Association for Legal and Social Philosophy and the Society of Public Teachers of Law in Great Britain and Northern Ireland, and Vice President of the Royal Society of Edin-

burgh and the International Association for Legal and Social Philosophy. Currently, he is a member of the Executive Council of the European Science Foundation and a member of the Economic and Social Research Council, in which he has a special responsibility for liaison with the British Academy and advises on international links. He was elected a member of the European Parliament for Scotland in June 1999, to serve until July 2004.

Professor MacCormick is the author and co-author of many books, including *Interpreting Precedents: A Comparative Study* (1997); *Constructing Legal System: Legal Theory and "European Union"* (1997); *The Judicial Application of Law* (1992); and *Controversies About Law's Ontology* (1991).

The Lectureship is named in honor of John Dewey, American philosopher, educator, and scholar. A proponent of philosophy of legal realism, Dewey's philosophy of pragmatism related his conception of a moral life to a variety of contemporary social, economic, and political issues. Dewey lived from 1859 to 1952 and spent one year as a professor of philosophy at the University of Minnesota. ■

## With Thanks, Pris



Pictured are Dean Sullivan, Priscilla Cray and former Dean Robert Stein.

Priscilla Cray retired from the Law School in April, 2000. Ms. Cray served in several capacities at the University of Minnesota over 37 years, 20 of which were at the Law School. She started working at the University in the History Department in 1963 and has worked for the Vice President for Academic Affairs, the Vice President for Administration and Planning and joined the Law School in 1980 in the Dean's office. Her 20 years at the Law School have been marked by wonderful service to deans, faculty, staff, students and alumni/ae.

At the reception celebrating her 37 years at the University, Dean Sullivan remarked, "Pris brought to the University and the Law School a unique dedication and insight. Her support for the faculty and her colleagues has been unmatched and will be remembered always with grateful appreciation and love."

## Law School Selected for Carnegie Foundation Research Project

The University of Minnesota Law School was selected by the Carnegie Foundation for the Advancement of Teaching to participate in a significant research project. Scholars from the Carnegie Foundation conducted their on-campus review process in March, 2000. The research project is part of its "Program on Preparation for the Professions." The Program will attempt to understand the fundamental aspects of teaching, research, and learning in a select group of American law schools. Fifteen American law schools out of the 183 were designated for this research project.

The Carnegie Foundation research included: 1) how law is defined in different legal education contexts; 2) how the core epistemologies are transmitted; 3) how the key performance abilities are developed; 4) how a commitment to values, norms, and responsibilities is created; 5) how the context of the institutions bears on the teaching and pedagogies taken; 6) and how pedagogical innovation has developed within the institution.

The Carnegie Foundation plans to disseminate its findings, information about best practices, and recommendations through a web site, a variety of publications and ongoing conversations at meetings and gatherings of legal educators, lawyers, policymakers, opinion leaders and members of the public in the U.S. and abroad. ■

## Law School Keeps Pace with Expanding Intellectual Property Law

“Ideas won’t keep—something must be done about them.”

—Alfred North Whitehead

Intellectual Property, though an old concept of European origin, has become one of the fastest growing areas of law. Although the Law School has offered several courses in Copyright and Patents over the years, the curriculum has expanded to include classes in the areas of electronic commerce and biotechnology, the latter as part of the new joint degree program in Law, Health, and Life Sciences. The *Minnesota Intellectual Property Review* is one of the newest of the Law School’s journals, and the only one to be published primarily in an electronic format.

Professor Emeritus Leo Raskind, who taught copyright at the Law School from 1970-1992, said “The Law School has been preeminent in the field of intellectual property. In the 1970s Professor Russell Burriss and Judge Robert Keeton founded Computer Assisted Legal Instruction (CALI), then in 1985 I organized a symposium issue of the *Minnesota Law Review* on the Semi-Conductor Chip Act of 1984. The school has always had an interest in intellectual property...it’s an important area, and it’s moving very quickly. There are a lot of difficult policy choices. The existing statutes are not particularly well-suited to the new kind of technology, whether bio- or digital information technology, so it’s exciting. The interrelationship between intellectual property law and antitrust law is changing, too, because of technology, what’s called the interface between the two is becoming fluid. I think we should put more resources to it.”

Professor Daniel Gifford, who teaches Intellectual Property, said “As the economy generates more and more value in intangibles, intellectual property law grows in importance. Areas such as microprocessor development, software, biotechnology and entertainment products are dependent upon intellectual property protection. Also, new roles for intellectual property laws are continually being found: the patent protection always which has encouraged industrial innovation is now being supplemented by copyright protection, as software comes to play major roles in production and product design.”

The fact that many new products such as computer software, music, video images and news are being marketed in digital form poses “new challenges for existing legal regimes such as copyright and contract law,” according to Professor David McGowan, who teaches electronic commerce. “Electronic agents have the ability to make contracts with each other. Robots or webcrawlers go from website to website and talk to other robots, making contracts without any human intervention at the actual time the contract is being made.” McGowan said how to deal with these contracts must be considered, because “the technology lowers transactions costs and makes the economy much more efficient...and it’s very clear that large portions of industry are moving in that direc-

tion.” He added that as students enter the “increasingly digitized, electronic world, we will need to focus more on those sorts of issues.”

McGowan, who is also the faculty advisor for the *Intellectual Property Review* journal, said that the students on the journal are addressing some of these issues “as well as some of the really perplexing issues having to do with patenting of various biological or genetic organisms. It’s covering the range of intellectual property issues, issues that will be of great importance for the next generation of lawyers: biogenetics, digital technology, digital sales, owning organisms, and DNA technology.”

“Biotechnology is really what we do at the University of Minnesota,” said Professor Dan Burk, Associate Director of the joint degree program in Law, Health and the Life Sciences. “About a third of the faculty at the University are involved in life sciences and every day they are generating new discoveries in plant, animal, and microbial sciences. The ownership and control of those discoveries are important to the University, the State of Minnesota and to society in general. The kind of research that is taking place here in Minnesota really runs the gamut of intellectual property. Patents are obviously very important, there’s a special kind of patent called a plant patent, applied to many of the things that are being researched over at the agricultural school...Every kind of intellectual property is engaged by the biotechnology discoveries here.”

This year the Law School is offering six courses and seminars in the field, including seminars in the areas of biotechnology, cyberspace and electronic commerce. ■

### *Journal of Legal Studies* Ranks Minnesota Law School

In a study researched by Brian Leiter of the University of Texas and published in the *Journal of Legal Studies*, (January 2000) the University of Minnesota Law School ranked as follows:

- #6 scholarly impact of faculty
- #7 faculty productivity by books
- #11 overall faculty productivity by books and articles

## Career Services [www.eattorney.com](http://www.eattorney.com)

The Career Services Office moved into the 21st century during the summer of 2000, when it adopted [www.eattorney.com](http://www.eattorney.com), a new and widely-used web-based employment and interview scheduling system. [www.eattorney.com](http://www.eattorney.com) allows students to register for and schedule on and off-campus interviews, to research employers around the state and around the country from wherever they have web access. All postings for both students and alumni are published there daily. Postings include permanent and temporary jobs for lawyers and law students, judicial clerkships, student research assistantships, public interest fellowships, writing competitions and scholarships.

Alumni who serve as hiring partners or hiring managers can use [eattorney.com](http://www.eattorney.com) to post positions for students and lawyers. Go to the site, click on SIGN UP, then on ATTORNEY/EMPLOYER, and then on RECRUITING ATTOR-



NEYS. Employers may post jobs into the system at no cost, and they may target specific law schools or post generally to the more than 59 eattorney law school members.

Alumni can now find job postings at eattorney quickly and easily. Go to [www.eattorney.com](http://www.eattorney.com), click on SIGN UP, then on ATTORNEY/EMPLOYER, and then on MAKING A CAREER MOVE/FIND A JOB. To search for a job, register as a Minnesota grad, and create a password and



Photographs were taken during a Career Services Alumni Luncheon in Chicago on June 26, 2000.

login id. After entering the site, click on PROFILE to register your credentials, and then on JOB BANK to search for a job. There are two sections in the JOB BANK. The first, ALUMNI JOB SEARCH, contains jobs posted specifically to the University of Minnesota, and replaces the *Alumni Placement Bulletin*. To enter this section the first time, use the password "gopher." The second section, GENERAL JOB SEARCH, contains jobs posted by employers to any or all eattorney-member law schools. It is not password-protected.

This year the Career Services Office used [eattorney.com](http://www.eattorney.com) to schedule prescreened interviews for both the DC and New York Off Campus Interview Programs which included 43 employers interviewing students from seven law schools (Minnesota, Illinois, Indiana, Iowa, Wisconsin,

USC, UCLA). On September 1, when students dropped 4,715 resumes for the first phases of On Campus Interviewing which included 111 lottery and pre-screen employers, eattorney generated 1010 interviews for 30 lottery employers. By September 21, students had scheduled 1972 interviews with 172 employers for 350 offices around the country and around the world.

If you have questions about the [eattorney](http://www.eattorney.com) system, please contact Career Services Office. Director Susan Gainen (612/624-9881 or [gaine001@tc.umn.edu](mailto:gaine001@tc.umn.edu)) or Associate Director Nora Klaphake (612/626-9467 or [klaph002@tc.umn.edu](mailto:klaph002@tc.umn.edu)). ■

### Career Services Speaker Series

The Third Annual Get Out of Town!!! series will commence in late fall. Any graduate practicing outside of the Twin Cities in large urban centers, small rural settings or anything in between, who is willing to speak to students during the lunch hour about his or her practice and his or her city or town is welcome. The CSO staff needs at least 24 hours to notify students and to arrange for a room for the presentation.

**Are you willing to serve on a practice panel?** Call Susan Gainen (612/624-9881 or [gaine001@tc.umn.edu](mailto:gaine001@tc.umn.edu)) or Nora Klaphake (612/626-9467 or [klaph002@tc.umn.edu](mailto:klaph002@tc.umn.edu)) and let us know your specialty.

# 2000–2001 Lectures at the University of Minnesota Law School

## Professor Robert Post

Alexander F. and May T. Morrison Professor of Law,  
University of California at Berkeley School of Law  
The John Dewey Lecture in the Philosophy of Law  
"Supreme Court Decisionmaking in the 1920s"  
Monday, October 23, 2000 • 3:30 p.m., Lockhart Hall

## Professor Susan Wolf

Faegre & Benson Professor of Law  
University of Minnesota Law School  
"Law and Genetics: Tangled in the Double Helix"  
Thursday, November 9, 2000 • 3:30 p.m., Lockhart Hall

## Professor Elizabeth Warren

Leo Gottlieb Professor of Law, Harvard University Law School  
The William B. Lockhart Lecture  
"On Their Own: Women, Divorce and Bankruptcy"  
Monday, January 29, 2001 • 12:15 p.m., Lockhart Hall

## Professor Lawrence Lessig

Professor of Law, Stanford University Law School  
Horatio Ellsworth Kellar Distinguished Visitors Program  
"Innovation and the Net"  
Thursday, February 22, 2001 • 12:15 p.m., Lockhart Hall

## Professor Daniel A. Farber

McKnight Presidential Chair in Public Law and the  
Henry J. Fletcher Professor of Law  
University of Minnesota Law School  
"It's Not Easy Being Green: A Defense of Eco-Pragmatism"  
Wednesday, March 21, 2001 • 3:30 p.m., Lockhart Hall

## Professor Edward S. Adams

Howard E. Buhse Professor of Finance Law  
University of Minnesota Law School  
"Concepts in Modern Corporate Finance: Juxtaposing  
Agency Costs and Behavioral Finance"  
Wednesday, April 18, 2001 • 3:30 p.m., Lockhart Hall

- › One hour of CLE credits have been requested for all Lectures.
- › For more information call 612-625-2023, or email to [shimm001@tc.umn.edu](mailto:shimm001@tc.umn.edu).

## New Domestic Felony Prosecution Clinic

The most recently established clinic, the Felony Prosecution Clinic, provides students with the opportunity to participate in felony level domestic prosecutions in Hennepin County District Court by second chairing felony prosecution cases. The domestic felony prosecution clinic is a joint educational project with the Hennepin County Attorney's office. Each student is assigned to a county attorney who is part of the Adult Domestic Prosecution Team in the County Attorney's Office. This team prosecutes all felony matters, including felony level assaults, criminal sexual conduct, terroristic threats, burglaries etc., that arise out of a domestic situation. The students will be able to participate in charging decisions, complaint drafting, writing and arguing motions in limine, witness preparation, and second chair trials including witness examination.

Prosecution of domestic related felonies presents some complex and rich issues for exploration with the students. In contrast to misdemeanor prosecution, felonies are viewed in a much more formal and serious manner by the criminal justice system. While misdemeanor prosecution is a high volume, fast process, felony prosecution presents the opportunity to explore in more depth questions that are pushing evidentiary admissibility and constitutional boundaries. Domestic felony prosecution cases are factually complex and allow students to reflect on the dynamics of the attorney/witness relationship within the domestic violence context.

Professor Beverly Balos teaches the Domestic Felony Prosecution Clinic as well as the Domestic Assault Prosecution Clinic and Domestic Violence Clinic. ■

## Order of the Coif

### Class of 2000

Matthew David Bensen	Margaret Kline Kirkpatrick
Nicholas Boebel	Kirk David Knutson
Elizabeth M. Brama	Steven P. LaPierre
Paul D. Chestovich	Julie K. Locke
Jennifer C. Dailey	John S. MacEachern
Page D. Fleegeer	Steve Nachtwey
Todd E. Hanson	Tara Norgard
Amy Schwiderski Hartman	Michelle Kurtz Peterson
Andrew Holly	Bret A. Puls
Tracey Holmes Donesky	Jill Renae Radloff
Kerry Jensen Olson	Sheila Stuhlman
Joo Hyang Kim	Pamela L. VanderWiel
Katie Kittelson	Ryan M. Vandewiele

## Chief Justice Receives Outstanding Achievement Award

Kathleen A. Blatz, Chief Justice of the Supreme Court of Minnesota, was awarded the University of Minnesota's Outstanding Achievement Award by the Law School at the William B. Lockhart Club dinner in April 2000 for her many contributions to the advancement of the law and to the betterment of our Minnesota legal system. The award, which is the highest honor given to alumni, recognizes exceptional achievement in a professional field or in community service. The award was presented by Regent William E. Hogan II.



Chief Justice  
Kathleen Blatz

Chief Justice Blatz received her Bachelor of Arts degree *summa cum laude* from the University of Notre Dame with Phi Beta Kappa honors, her Master of Social Work degree from the University

of Minnesota in 1978, and her Juris Doctorate degree *cum laude* from the University of Minnesota in 1984. She was Director of the Employee Assistance Program at Fairview Community Hospital in Minneapolis from 1979–1981. Also in 1979, she was elected to the Minnesota House of Representatives, where she served eight terms. During her terms in the Legislature, she authored the Cocaine Baby Law, a law creating the Children's Trust Fund and numerous laws to improve the child protection system.

Chief Justice Blatz became an Associate Attorney with the Minneapolis law firm of Popham, Haik, Schnobrich & Kaufman (now Hinshaw & Culbertson) after her graduation from the Law School (1984–1988), and she served as an Assistant County Attorney for Hennepin County (1992–1993). From 1994 to 1996, Chief Justice Blatz was a trial court judge of the Fourth Judicial District. She was appointed Associate Justice of the Minnesota Supreme Court in November, 1996, and in 1998, she became the first woman to serve as Chief Justice of the Minnesota Supreme Court. ■



Pictured are Professor Willard Boyd ('51) and Dean Sullivan at the 2000 Commencement Ceremony.

## Alumnus Receives Honorary Doctor of Laws Degree

Willard L. (Sandy) Boyd was awarded an Honorary Doctor of Laws degree from the University of Minnesota by the Law School during the 2000 Commencement ceremonies on May 13th.

Professor Boyd received his B.S.L. Degree and his LL.B. degrees from the University of Minnesota in 1949 and 1951 respectively. He also earned LL.M. and S.J.D. degrees from the University of Michigan in 1952 and 1962.

Sandy Boyd's career as an educator spans forty-five years. He has been a Professor of Law at the University of Iowa since 1954 and worked as an Associate Dean of the College of Law at the University of Iowa in 1964 and Vice President of Academic Affairs and Dean of the Faculties from 1964 to 1969. He served as President of the University of Iowa from 1969 to 1981. During that time he guided the University through Vietnam war protests and the civil rights movement of the late 1960s at the University of Iowa with an unwavering, but fair hand.

Supporting human rights has been Sandy Boyd's life's passion. His most important appointment came when he was named as the first chair of the University of Iowa's Human Rights Committee which was created to handle discrimination complaints made by members of the University community. The committee did more than just respond to complaints, it was "affirmative" in identifying ways to open the campus and community to diversity.

Professor Boyd also served as the President of the Field Museum of Chicago from 1981 to 1996 and has served as board and committee member of numerous arts and humanities committees and legal education organizations. ■

# Student News

## Dr. Bernard Statland, Class of '02, Heads FDA Department

**B**ernard Statland has a long history with and a fondness for the University of Minnesota. He earned his B.A. degree in Pre-Medical Studies here in 1964, his M.D. in 1968, and a Ph.D. in Biochemistry in 1970. After years of working around the world in the field of clinical pathology, he returned to the University of Minnesota in 1999 to attend law school, forty years to the week after he entered the University as an undergraduate. "I think that will become more common as we become interested in second careers, as people feel they want to work beyond 65 years of age," said Statland, who is now 59, and interested in incorporating his medical background and legal studies in the area of health law.

Last year, a colleague called Statland to inform him of a position that was open at the Food and Drug Administration : Director of the Office of Device Evaluation. "He said he hated to derail me from law school, but felt the position would be an excellent opportunity to combine my experience in medicine with what I was learning in law," Statland said, "As soon as it became clear that there was a good chance I'd get the job, I spoke to Deans Sullivan, Reich and McQuaid. They were very, very supportive of all this."

Statland is on leave from Law School while he holds the position at the FDA. He has more than 350 people in his employ who include medical doctors, biomedical engineers, statisticians and attorneys. Their duty is to evaluate for market approval devices that are not considered drugs or biologics, which include such things ranging from glucose monitors to defibrulators. "We are the gatekeepers who decide whether or not the products will be approved...we must evaluate if the product really works, if it is safe, effective, whether there are negative effects...we want to protect public health, but also want to work with the companies on new technologies to bring new products into the marketplace." There is a mandated 180-day period in which a device must be evaluated by the FDA.

Dr. Statland wishes to return to law school to finish his degree when he leaves his position at the FDA. He said, "I will know much more where to concentrate, and even how to get more from

the law school experience having spent the time here, just as many law students spend the summer away on a clerkship, working anywhere from an Indian reservation to a law firm to the Public Defender's office and come back to law school understanding the application of law...in some way the time I'm spending here is very similar, where perhaps I'm more than knee-deep, perhaps even eyebrow-deep in terms of what the issues are and seeing where all that goes." He added that the year of law school he completed before taking the position at the FDA helped him in many ways. "It helps me realize that one can look at issues from two perspectives, maybe many perspectives...I have also learned to look at 'what is the issue?,' and look to see what the evidence is and what the rules are."

I think that when people work for the government, there really is a sense of public service, the folks I work with here are very committed and very competent and it feels very good to be involved in these issues. I remember Dean Sullivan's presentation very well during orientation and that relates to the ethical imperatives in using law not just for our own personal benefit, but for the benefit of the people we serve, and I really feel that what the people are doing at the FDA represents those ethical issues, so often we deal with questions of integrity and consistency and welfare and I think this is part of a whole process, so when I return to Law School I'll be much more equipped because I've seen this in practice." ■

## Class of 2003 Profile



- ◆ Entering Class: 241
- ◆ 122 Women (51%)
- ◆ 44 Students of Color (18%)
- ◆ Median GPA: 3.64
- ◆ Median LSAT: 162
- ◆ Average age is 25 years.
- ◆ The age range is from 20 to 43 years.
- ◆ 115 colleges and universities represented
- ◆ 33 states and 6 foreign countries represented



Members of the Class of 2000 were recognized by the Minnesota Justice Foundation for their public service work during a reception in April 2000.

## Class of 2000 Public Service Work Recognized

The Law School Public Service Program encourages students to perform at least 50 hours of law-related public service while in law school. These class of 2000 graduates met the 50 hour goal, helping the community through a variety of public interest volunteer positions: Hamra Ahmad, Cynthia Arends, Carousel Andrea Suzanne Bayrd, Stacy Jane Burrell, Elizabeth Ann Co, Philip A. Duran, Monica Grubbs, Kirsten Gullixson, Heidi Lena Johnson, Erin M. Keyes, Susan MacMenamin, Kaela Anne Meyers, James Thomas Nephew, Dana Shenker and Terriy DeAnn Whitehead.

## Student Wins Equal Justice Award

**Heidi Johnson** ('00) was the recipient of the Equal Justice Award by the Minnesota Women Lawyers. The award is given each year to a law student who authors an essay or article addressing a justice and equality related topic. ■

## Six Alumni Featured

Six alumni were featured in *The Official Guide to Legal Specialties: An Insider's Guide to Every Major Practice Area*. The book is a comprehensive resource on the wide array of legal career options, published by the National Association of Law Placement, for students and career services professionals. It includes descriptions of 30 major practice areas and incorporates interviews with several attorneys practicing in each area, from solo practitioners to attorneys in large firms and government agencies. The University of Minnesota Law School alumni who are featured are: Benjamin Casper ('97), Jeffrey Fritz ('87), Theodora Gaitas ('94), Joan Humes ('90), Shannon O'Toole ('82) and Kim Otte ('95). ■

## Amy Standefer, '00, Wins Brown Legal Writing Award

After working eight months on an article on the Federal Juvenile Delinquency Act, a subject that proved "very interesting [but] more complex than I thought it would be," Amy Standefer reaped great rewards: her note was published in the December, 1999 issue of the *Minnesota Law Review*, she won the Steven J. Block prize (awarded to the best senior paper written on a civil rights case), was runner-up for the Burton Legal Writing Award, and was chosen for the Judge John R. Brown Excellence in Legal Writing Award of \$5,000 presented by the Judge John R. Brown Scholarship Foundation in conjunction with the American Bar Association.

"It was such a big deal to me to get on to *Minnesota Law Review*, and then to have my article published...it was a progression and it just kept getting better and better," Standefer said.

Her paper, fully titled "The Federal Juvenile Delinquency Act: A Disparate Impact on Native American Juveniles," addresses the issues of the Act as it relates to Native American juveniles. In her conclusion, Standefer asserts

The procedural safeguards provided by the FJDA serve only to ensure that all but the most serious non-Indian juvenile offenders remain in the state system. In contrast, Native Americans are readily funneled into the federal system, regardless of the seriousness of the crime or the tribe's ability or willingness to exercise jurisdiction over its tribal member.

In order to be considered for the Brown legal Writing Award, current legal writings must be submitted to the Brown Foundation with a letter of recommendation by a law school faculty member or legal professional other than the author of the paper. This past year the only limitation on the topic was that it had to be on a legal subject.

The Judge John R. Brown Scholarship Foundation was established at the time of Judge Brown's death in 1993 from the ?? State Court of Appeals for the Fifth Circuit with the goal of perpetuating his life-long dedication to the discovery and nurturing of new and developing legal talent.

This year Amy Standefer is working with Judge Crippen at the Minnesota Court of Appeals and is interested in working in the field of international criminal law in the future. ■

# Five Distinguished Alumni

## Kent A. Gernander

Class of 1966

**K**ent A. Gernander was elected President of the Minnesota State Bar Association in June, 2000. He graduated from the University of Minnesota Law School, *magna cum laude*, in 1966 where he served as Editor of *Minnesota Law Review*. He is a member of the Order of the Coif. He received his A.B. degree, *cum laude*, from Harvard College.

Photo courtesy of Stan Waldhansen



Kent A. Gernander

Mr. Gernander served as a lieutenant in the U.S. Navy Judge Advocate General's Corps from 1966–1969. Following his military service, he accepted a position with the St. Paul law firm Oppenheimer Wolff & Donnelly, where he had worked during law school. In 1970 he was hired as an associate by Rip Streater and has since practiced with the law firm Streater & Murphy in Winona, Minnesota.

Mr. Gernander has been a very active member of the Minnesota State Bar Association including service on the: Board of Governors (1988–94), (1997–2000); Executive Committee (1992–94), (1997–2000); MCLE Board (1994–2000) and as chair (1995–98). He is a member of the Sections on Litigation, Health Law Business Law and Outstate Practice. He also is a member of the Statewide Lawyer Referral Service Committee, which he chaired from 1984 to 1987.

He has also served on the Minnesota Commission on Judicial Selection (1990–99); Minnesota Lawyers Professional Responsibility Board (1992–99); Third District Ethics Committee, chair (1988–92) and member; Winona County Bar Association President 1982; Men's Hockey Coach, St. Mary's College, Winona, (1974–76); Business Law Instructor, Winona State University (1978–79); and University of Minnesota Law School Board of Visitors and Law Alumni Association Board of Directors.

Mr. Gernander has identified issues of diversity, poverty and technology as priorities that will shape his term as MSBA President. He also plans to explore challenges facing new attorneys and solo practitioners and focus upon adding new resources and tangible benefits to Association members.

## Joan L. Heim

Class of 1968

**J**oan L. Heim joined the law firm of Heller Ehrman White & McAuliffe as special counsel in 1999 and practices in the area of antitrust and competitive law. She graduated from the University of Minnesota Law School, *magna cum laude*, in 1968, where she was a Managing Editor of *Minnesota Law Review*. She is a member of the Order of the Coif. She received her A.B. degree from Wellesley College.



Joan L. Heim

Ms. Heim joined the law firm of Leonard, Street and Deinard in 1968. She then moved to Tokyo, Japan in 1970 and practiced with Braun Moriya & Hoashi law firm. Ms. Heim accepted a position with the Bureau of Competition in the Federal Trade Commission in 1979. She worked in the Evaluation Office, Regional Operations, the International Division and the Compliance Division providing analysis and review of

case initiatives and conduct and merger investigations as well as supervision of divestitures under final orders. Ms. Heim served as an Attorney Advisor to then-Commissioner Mary L. Azcuenaga from 1985 to 1998. She advised the commissioner on enforcement decisions in merger and conduct cases and a number of adjudicative matters including areas like price fixing, PVC merger, and Robinson-Patman Act enforcement.

Ms. Heim is a member of the Minnesota Supreme Court, United States Supreme Court and the District of Columbia Bar.

## Ron Kind

Class of 1990

**R**on Kind was elected to the 3rd Congressional District seat for Wisconsin in 1995 and was reelected to the seat in 1998. The third Congressional District includes sixteen Counties in western Wisconsin along the Mississippi River.

Congressman Kind graduated in 1990 from the University of Minnesota Law School. He received his Master's degree from the London School of Economics and his undergraduate degree from Harvard University, where he graduated with honors in 1985.

Congressman Kind practiced for two years at the law firm of Quarles and Brady in Milwaukee. He then returned to his hometown of La Crosse to become a county prosecutor and



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